

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Berkeley County
Honorable Maite Murphy, Circuit Court Judge
Appellate Case No. 2021-000146

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S.C. SUPREME COURT

THE STATE,

Petitioner,

vs.

RANDY WRIGHT,

Respondent.

APPENDIX (Volume II of II)

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WENDY GRIFFITH - DIRECT EXAM BY MR. MCNEELY

1 (Jury in, 11:18 a.m.)

2 THE COURT: Welcome back, ladies and
3 gentlemen. We are ready to proceed.

4 You may call your next witness.

5 MR. MCNEELY: Thank you. State calls
6 Wendy Griffith.

7 WENDY GRIFFITH,

8 being first duly sworn, testified as follows:

9 THE CLERK: Please be seated. State
10 your full name and spell your last name for the
11 record.

12 THE WITNESS: My name is Wendy Sue
13 Griffith, G-R-I-F-F-I-T-H.

14 THE COURT: Your witness.

15 MR. MCNEELY: Thank you, Your Honor.

16 DIRECT EXAMINATION

17 BY MR. MCNEELY:

18 Q. Ms. Griffith, where are you currently
19 employed?

20 A. A company called HouseCalls-MD.

21 Q. What does HouseCalls-MD do?

22 A. We are medical providers that go to the
23 home of our patients, rather than our patients
24 having to go to a doctor's office.

25 Q. What is your position there?

WENDY GRIFFITH - DIRECT EXAM BY MR. MCNEELY

1 A. I'm a physician's assistant, so I go
2 out and see patients and medically treat them.

3 Q. How long have you been employed in that
4 capacity?

5 A. Part time to full time since July of
6 2015.

7 Q. Were you part time in August of 2015?

8 A. At HouseCalls-MD?

9 Q. Correct.

10 A. I was.

11 Q. Did you work anywhere else in August of
12 2015?

13 A. I was full time at Roper Berkeley,
14 Moncks Corner.

15 Q. As a physician's assistant?

16 A. Correct, in the ER.

17 Q. Please describe your education for the
18 jury.

19 A. I finished high school. I have a
20 bachelor's degree in nutrition/dietetics -- it's
21 the application of nutritional disease -- a
22 master's degree in exercise science, and then a
23 second master's degree in physician assistant
24 studies.

25 Q. Please describe your clinical training.

WENDY GRIFFITH - DIRECT EXAM BY MR. MCNEELY

1 A. As a physician assistant, I assume?

2 Q. Correct.

3 A. You have to have a bachelor's degree to
4 even get into a physician assistant studies
5 master's program, and then it's a 27-month program.
6 The first year is all didactic, you're just
7 learning medicine, a crash course in medicine; and
8 then the second year you're out in the field
9 working under a physician in whatever setting it
10 might be.

11 You have to go through all the
12 rotations, geriatrics, pediatrics, OB-GYN, surgery,
13 all of them. And then you have to pass an exam and
14 then get approved by the Medical Board of South
15 Carolina to practice medicine in the state.

16 Q. Do you hold any licenses or
17 certifications?

18 A. Yes. I have a local one with the South
19 Carolina physician assistants group and then the
20 national level.

21 Q. Are you licensed by the State?

22 A. Oh, yeah.

23 Q. What is a physician assistant?

24 A. It is a medical provider. I am not an
25 assistant to a physician. A physician assistant

WENDY GRIFFITH - DIRECT EXAM BY MR. MCNEELY

1 practices independently. There has to be an MD
2 available by law should I have any questions or
3 need guidance on treating a certain patient. A
4 physician assistant is a medical provider, just
5 like a nurse practitioner or just like a medical
6 doctor themselves.

7 Q. So you can treat patients on your own?

8 A. All the time.

9 Q. As long as there is an MD available in
10 case --

11 A. By phone, text, whatever it might be.

12 Q. What service do you provide in your
13 role as a physician's assistant?

14 A. Typically, I do what we call a history.
15 Whenever somebody has a complaint, I get a lot of
16 information on that and then do a physical exam and
17 then make an assessment. They might need testing
18 for me to make a decision on how best to treat them
19 and what their diagnosis is.

20 Q. So I'll order x-rays, lab tests,
21 whatever, evaluate those and then have a plan of
22 action for treating them.

23 Q. Can you treat wounds?

24 A. Oh, yeah.

25 Q. Sutures, staples?

WENDY GRIFFITH - DIRECT EXAM BY MR. MCNEELY

1 A. Always.

2 Q. And you can do that without a

3 physician?

4 A. Oh, yes.

5 Q. Please tell the jury a little bit about
6 your work history as a physician's assistant.

7 Where did you start out in school?

8 A. Right out of school in the ER, probably
9 in the busiest ER in this area. So I trained for
10 seven years under ivy league ER physicians. I
11 greatly value that experience that I had at that
12 hospital ER, and it's made me the physician
13 assistant that I am today. And then I went to
14 Roper Berkeley.

15 Q. What hospital were you in prior to
16 Roper Berkeley?

17 A. Trident ER.

18 Q. Is that in Summerville?

19 A. It's in North Charleston.

20 Q. And how long were you there in the
21 emergency department?

22 A. Seven years.

23 Q. When did you move to Roper Berkeley?

24 A. March of 2014 maybe.

25 Q. While you were at Trident, how many

WENDY GRIFFITH - VOIR DIRE BY MR. DAVIS

1 emergency patients did you treat?

2 A. At Trident?

3 Q. Yes.

4 A. Probably 50 a shift, 10 shifts a month,
5 so 500 a month times 12 months; a lot.

6 Q. Thousands?

7 A. Thousands.

8 Q. Are you a member of any professional
9 associations or organizations?

10 A. Just the ones I previously mentioned.

11 Q. As a physician's assistant, do you
12 participate in continuing education?

13 A. Oh, I have to. 100 every two hours.

14 Q. A hundred hours?

15 A. Uh-huh.

16 MR. MCNEELY: At this time, the State
17 would move to qualify Ms. Griffith as an expert
18 under Rule 702 in emergency medical services.

19 THE COURT: Any voir dire?

20 MR. DAVIS: Just a few if it please?

21 THE COURT: Certainly.

22 VOIR DIRE EXAMINATION

23 BY MR. DAVIS:

24 Q. Hey, Dr. (sic) Griffith. How are you
25 doing?

WENDY GRIFFITH - VOIR DIRE BY MR. DAVIS

1 A. Hi.

2 Q. You always have a doctor available to
3 you; is that correct?

4 A. At least by phone or text. They don't
5 have to be in the vicinity.

6 Q. Do you have a primary doctor assigned
7 to you, or does it fluctuate or change?

8 A. Every physician assistant has to have a
9 supervising physician.

10 Q. And so Dr. Potts is your supervisor?

11 A. He was on the shift that night with me,
12 but one of the other co-workers is my supervising
13 physician.

14 Q. And you have testified in this capacity
15 before in our court system?

16 A. I've never been a medical witness in a
17 courtroom.

18 Q. You've never been a medical witness in
19 a courtroom. So this is totally new to you?

20 A. I'm just answering questions.

21 Q. Okay. Thank you.

22 MR. DAVIS: No further questions.

23 THE COURT: The Court finds that she is
24 qualified based upon her qualifications and
25 experience pursuant to Rule 702. You may proceed.

WENDY GRIFFITH - CONTINUING DIRECT EXAM BY MR. MCNEELY

1 MR. MCNEELY: Thank you, Your Honor.

2 CONTINUING DIRECT EXAMINATION

3 BY MR. MCNEELY:

4 Q. Ms. Griffith, were you employed at
5 Roper Berkeley Hospital in Moncks Corner as an ER
6 physician's assistant during August of 2015?

7 A. I was.

8 Q. Were you working on the evening of
9 August 8, 2015?

10 A. I was.

11 Q. During that time did you have
12 opportunity to provide treatment to an injured
13 patient named Jimmy Taylor?

14 A. I did.

15 Q. Approximately what time did Mr. Taylor
16 present to the ER that night?

17 A. It was probably somewhere between 9:15,
18 9:45. I know it was late in my shift.

19 Q. Okay. Please tell the jury how
20 Mr. Taylor presented to you at the ER that evening.

21 A. I was the first medical provider to see
22 him. He came in by EMS. EMS was bringing him in
23 on their gurney. I was on the opposite side, the
24 right side of the hospital bed. They were
25 transferring him over.

WENDY GRIFFITH - CONTINUING DIRECT EXAM BY MR. MCNEELY

1 Very emotional, distraught, tearful,
2 shaking all over kind of like you would if you were
3 kind of having a little bit of a shock after an
4 experience like that. He was injured severely in
5 the head. I could see wounds on his torso area, on
6 his face. Trauma patient is what we would call it.

7 Q. Was he bleeding?

8 A. Oh, very much so, especially from the
9 head.

10 Q. Was he conscious?

11 A. He was. He was alert, he was oriented,
12 he could tell me his name, he followed commands,
13 answered my questions appropriately. He could tell
14 me what happened to him.

15 Q. Was he upset?

16 A. Oh, very much so. Like I said, he was
17 emotionally distraught. It was a man crying.

18 Q. Did you ask Mr. Taylor how he suffered
19 those injuries?

20 A. I did.

21 Q. Is that a standard question for you in
22 treating an emergency --

23 A. Oh, you have to. It's part of the
24 history.

25 Q. Did he tell you how he suffered those

WENDY GRIFFITH - CONTINUING DIRECT EXAM BY MR. MCNEELY

1 injuries?

2 A. He did.

3 Q. What did he say?

4 A. He said that he was beaten. He knew
5 who they were and he told me, and he told me that
6 he was attacked by three of them. And I believe
7 that he was either in his garage or driveway when
8 they approached him, and he said he was beaten.

9 He didn't know what he was beaten with.
10 He knew it was a hard object. He was hit several
11 times in the head. He said he was kicked and hit
12 also.

13 Q. Please tell the jury about your initial
14 evaluation of Mr. Taylor's injuries.

15 A. Well, I pretty much just described it,
16 but in a more thorough detail, he had a lot of
17 bleeding in the head, which I wanted to investigate
18 right away, because somebody like that needs to go
19 to CT to get a head CT very fast to see if there is
20 internal bleeding based on what I had seen
21 externally.

22 It was so much bleeding that the root
23 of his hair was so saturated with blood it started
24 to coagulate or like solidify or gelatinize. And
25 it was challenging and tedious to part the hair to

WENDY GRIFFITH - CONTINUING DIRECT EXAM BY MR. MCNEELY

1 get in there and see what the damage was.

2 I want to look for lacerations. I want
3 to look for an open-skull injury, or what we call
4 bone laxity or skull laxity --

5 THE COURT: Ms. Griffith, can you
6 please slow down. Our court reporter has to take
7 it down.

8 THE WITNESS: Oh, sorry. I typically
9 talk fast.

10 THE COURT: That's fine. I just want
11 to make sure that she has time to write everything
12 down.

13 THE WITNESS: Sure, I'll try.

14 And so I needed to investigate his
15 wounds so I know what I'm working with so I know
16 the appropriate testing to order and then try to
17 treat them as soon as possible.

18 BY MR. MCNEELY:

19 Q. Was that part of your differential
20 diagnosis?

21 A. Intracranial hemorrhage? Most
22 definitely, yes.

23 Q. Can you tell the jury what a
24 differential diagnosis is?

25 A. A differential diagnosis, if somebody

WENDY GRIFFITH - CONTINUING DIRECT EXAM BY MR. MCNEELY

1 comes in with chest pain, that can be so many
2 things. It could be a heart attack. It could be
3 indigestion. It could be a panic attack. So when
4 somebody comes in with a chief complaint or an
5 injury or pain somewhere, your differential is all
6 the possible things that could be.

7 So when he came in with all of those
8 head injuries, I needed to figure out what is going
9 on. Is it internal bleeding? Is it just external?
10 You know, severe or lacerations? There's a depth
11 there you have to work.

12 Q. Correct me if I'm wrong, when a medical
13 provider does a differential diagnosis, they start
14 with what the most severe injury could possibly be,
15 rule it out, and work down; is that correct?

16 A. Exactly.

17 Q. Okay. What did you start with for
18 Mr. Taylor to conduct his differential diagnosis?

19 A. Well, his head, of course. It was
20 obvious that he was still bleeding. And, like I
21 told you, he had so much matting. I had to really
22 get in there and get a good look of what was going
23 on. I had to stabilize him before I was able to
24 send him to CT. My biggest concern with him was a
25 brain injury or intracranial hemorrhage.

WENDY GRIFFITH - CONTINUING DIRECT EXAM BY MR. MCNEELY

1 Another area on his face was his eye.
2 He had a laceration, and there was so much
3 swelling. The first thought of an ER PA is a globe
4 injury, which is another word for the eyeball.
5 That is very serious.

6 And, also, the orbit, the thin boney
7 skeleton that holds the globe or the eyeball, if
8 that's fractured, that too is a very serious
9 injury. So those were the things I was thinking
10 when he came in with that type of injury.

11 Q. Was he sent for scans immediately?

12 A. No. We weren't able to do that. You
13 can't send somebody to CT when they're bleeding out
14 of the head. You have to take care of that first.
15 What I did, because it was so difficult to really
16 get to those wounds to see how bad they were, I
17 looked for pulsatile bleeding. It's bleeding from
18 the head that is like an artery.

19 And that's where I numbed him up and
20 then put in some loose staples just to hold those
21 lacerations together and the scalp intact so that
22 hopefully he would clot off and then we could get
23 him to CT.

24 Q. Just to explore that a little more in
25 detail, you said you numbed him a little bit?

WENDY GRIFFITH - CONTINUING DIRECT EXAM BY MR. MCNEELY

1 A. Oh, yeah.

2 Q. Does that mean you provided local
3 anesthesia to the scalp?

4 A. Yes.

5 Q. And then you stapled his lacerations
6 shut?

7 A. I did.

8 Q. Were those to be permanent repairs or
9 was that a temporary --

10 A. Those were temporary.

11 Q. Okay. Can you describe the lacerations
12 for the jury on Mr. Taylor's head? Were they
13 linear or nonlinear?

14 A. The one up on his left eyelid was
15 horizontal and linear, a straight line. And then
16 the one that he had, I believe it was the right
17 temporoparietal is what we call it, the left
18 occiput, the left back of the scalp were what we
19 call irregular. I kind of call them boomerang
20 shaped.

21 Q. Is the main difference between those
22 the shape of them?

23 A. Exactly, yes.

24 Q. How --

25 A. Straight and perfect would be linear;

WENDY GRIFFITH - CONTINUING DIRECT EXAM BY MR. MCNEELY

1 anything C-shaped or stellate would be irregular.

2 Q. How do linear wounds usually come
3 about?

4 A. Usually it's sharp, and clean, like if
5 you're cutting vegetables in your kitchen and you
6 cut yourself with a knife. That would be like a
7 linear laceration.

8 Q. What about a nonlinear wound?

9 A. Nonlinear is like trauma-like impact,
10 blunt object, something like that. You more or
11 less hit something so hard that it shreds or tears
12 or rips.

13 Q. Rather than a slice?

14 A. Exactly.

15 Q. When you first evaluated Mr. Taylor on
16 August 8, 2015, did his wound appear consistent
17 with his statement about what happened that night?

18 A. Very much so.

19 Q. After you completed the initial
20 evaluation and prepped him by stapling him closed
21 enough to send him to CT, was he sent for scans?

22 A. He was.

23 Q. What was scanned?

24 A. Well, with injuries like that you
25 pretty much have to scan from the head all the way

WENDY GRIFFITH - CONTINUING DIRECT EXAM BY MR. MCNEELY

1 down to the pelvis. Because of the markings on his
2 body, we had to assess him also for internal damage
3 or internal bleeding.

4 Q. Did he have any internal bleeding?

5 A. Based on the studies, no.

6 Q. So based on the scans, were you able to
7 determine the extent of his injuries?

8 A. Yes. Yes. He had plenty of external
9 bleeding, like in the subcutaneous tissue you could
10 tell because of the large bruise or ecchymosis.

11 Q. But no internal injuries?

12 A. No internal injuries once the CT came
13 back. He's a very lucky man.

14 Q. At that point, what was the treatment
15 plan for Mr. Taylor?

16 A. Just to comfort him for the most part,
17 get him cleaned up better because he came in
18 looking pretty rough and then to shave the head,
19 get some sutures and staples and replace the
20 temporary ones, control his pain.

21 Q. Was that done?

22 A. Uh-huh, all of that was done.

23 Q. Do you know -- and I'm going to ask
24 specifically about the multiple injuries to his
25 eye.

WENDY GRIFFITH - CONTINUING DIRECT EXAM BY MR. MCNEELY

1 A. Uh-huh.

2 Q. How many sutures was required there?

3 Do you have any idea?

4 A. Just looking at it, I would say maybe

5 five to seven.

6 Q. What about the boomerang injury on his

7 right front head?

8 A. That one -- everybody, you know,

9 staples differently, but I would say probably 10 or

10 12.

11 Q. And how about in the left back of the

12 head?

13 A. I would say probably -- I think

14 Dr. Potts ended up doing part sutures and part

15 staples, but probably a good 15 back there between

16 the two.

17 Q. During that time, was he still

18 bleeding?

19 A. When he was being sutured up the second

20 time?

21 Q. Yes.

22 A. Oh, I'm sure he was. It probably had

23 slowed down, but I'm sure he was.

24 Q. Was he provided additional anesthesia

25 during that procedure?

WENDY GRIFFITH - CONTINUING DIRECT EXAM BY MR. MCNEELY

1 A. Oh, sure. You would have to numb him
2 up again; it doesn't last that long. For him to go
3 to CT for that many CTs and then come back to the
4 ER for suturing, you would have to re-numb him.

5 Q. Were CT scans performed basically from
6 the waist up?

7 A. They were, yeah. With the brain you
8 have to assess the chest wall, do a chest CT. With
9 injuries like that to the abdomen and the rib cage,
10 you have to think about a pneumothorax or a
11 collapsed lung.

12 If it was a broken rib and it punctured
13 his lung, you have to consider all of that. A
14 liver laceration, a spleen laceration, the
15 intestines torn, any damage to the kidney, any of
16 those internal organs in the chest wall or the
17 abdomen after trauma like that you have to
18 consider.

19 Q. Thank you, Ms. Griffith. I want to
20 show you what was marked and admitted into evidence
21 as State's Exhibit 11.

22 MR. MCNEELY: Permission to approach,
23 Your Honor.

24 THE COURT: Yes, sir.

25 BY MR. MCNEELY:

WENDY GRIFFITH - CONTINUING DIRECT EXAM BY MR. MCNEELY

1 Q. I'm handing you a laser pointer with
2 the red button on the top. Is this Mr. Taylor?

3 A. It is.

4 Q. Can you tell the jury what we're
5 looking at in this photo?

6 A. Yeah. Obviously, he has, right here,
7 trauma to that left eye and, obviously, he's got a
8 laceration right there. I can tell that it's --
9 you know, we don't have a whole lot of padding in
10 our eyelid anyway. So I can tell it's pretty deep
11 and starting to clot off.

12 It looks a little gelatinous right
13 there, but when you see an injury like that, I have
14 to be concerned. Was he stabbed with something?
15 Did it go into the globe? And that's why we had to
16 do, like, even a facial bones CT in addition to the
17 head CT.

18 And then because he's so swollen right
19 here -- right here because it's so dark, I can tell
20 that he's bleeding in the soft tissue. And there's
21 so much swelling that he can't even open his eye.
22 And, obviously, he's got some tears right there and
23 over there. So still shaken up by all of this.

24 Q. The red area at the top of the eye, is
25 that the linear wound you described?

WENDY GRIFFITH - CONTINUING DIRECT EXAM BY MR. MCNEELY

1 A. It is the horizontal linear one that I
2 described. It's gaping a little bit, but still
3 considered linear.

4 MR. MCNEELY: Exhibit 12, please.

5 THE WITNESS: I'm sorry?

6 BY MR. MCNEELY:

7 Q. I asked her to change the picture.

8 A. Okay.

9 Q. What are we looking at right here?

10 A. So that's a laceration, and you can
11 tell how it's got that little bit of a C-shape to
12 it so that would be considered irregular. And
13 that's like the right temporoparietal area of the
14 skull is what we call that area.

15 Q. Are those the initial staples that you
16 put in to take him to CR?

17 A. It looks like it to me, yeah.

18 Q. Exhibit 13, please.

19 A. So there you can see how -- how matted
20 and how much bleeding there was that was matting
21 his hair. All over here you can see how much blood
22 -- how much he was bleeding that it matted his hair
23 to that severity. It makes it very difficult to
24 get in there and see the lacerations and get them
25 closed.

WENDY GRIFFITH - CONTINUING DIRECT EXAM BY MR. MCNEELY

1 Q. I apologize -- continue.

2 A. I was just going to say, he's got a
3 partial lack here and then a little bit of
4 something going on right here also.

5 Q. Those two are separate?

6 A. Irregular, uh-huh.

7 Q. You mentioned a wound to the occipital
8 area.

9 A. Well, it's not quite occipital. It's
10 more parietal now that I see it from this angle.
11 Occipital would be down here.

12 Q. Is there an additional wound down there
13 that you can't see?

14 A. I can't tell from this picture, but I
15 thought that it was lower.

16 Q. This is Number 14. What are we looking
17 at here?

18 A. So you can see these marks a little
19 better. I don't know if you can from your angle or
20 not, but they're red, reddened and striated. So
21 you kind of think of what might have been used to
22 make those marks.

23 And, you know, I can't really say it
24 looks like a handprint or fingerprint, but
25 something with a pattern that would leave a pattern.

WENDY GRIFFITH - CONTINUING DIRECT EXAM BY MR. MCNEELY

1 like that. And that's why I'm saying that's when
2 you have to investigate a chest wall injury with a
3 chest CT.

4 And then you can see right down here
5 too, maybe he was kicked, maybe hit with a
6 blunt-force object, but it's enough we have to scan
7 him to check for any internal damage or even a
8 fracture of that upper hip bone.

9 Q. This is Exhibit 15.

10 A. And then here, again, you can see
11 redness from blunt trauma.

12 Q. This is Exhibit 16.

13 A. And that could have been like a
14 horizontal blow, maybe kicked when he was down.
15 It's really hard to say.

16 Q. What are we looking at here?

17 A. This looks like maybe he's been cleaned
18 up a little bit. Yeah, it looks like it because it
19 looks like he's got some cotton right here, and it
20 looks like he's been cleaned up a little bit, maybe
21 even had some hair removed over here so the staples
22 could be adequately placed.

23 And then, like I said, he was alert
24 and, you know, still has the swelling in this eye.
25 It looks like this eye was maybe stitched right

WENDY GRIFFITH - CONTINUING DIRECT EXAM BY MR. MCNEELY

1 there, and enough swelling still in this eye that
2 he probably wasn't able to open it for a few days
3 or longer because of the swelling.

4 Q. He wasn't able to open his eye for
5 several days?

6 A. Oh, I'm sure he wouldn't have been able
7 to because of all that swelling. You just don't
8 have the muscle activity in an eyelid to lift that
9 up and keep it open.

10 Q. This is Exhibit 17.

11 A. Yeah. Looks like they took some of the
12 hair away so they could clean real good and get
13 staples in there.

14 Q. About how long is that wound?

15 A. Oh, I would say maybe six to seven
16 centimeters.

17 Q. Is that a significant or insignificant
18 wound?

19 A. That's pretty significant.

20 Q. This is Exhibit 18. What are we
21 looking at here?

22 A. This looks like -- more like the right
23 side. It's kind of hard to tell from the angle,
24 but this is part of the suture at the back of the
25 head. It looks like, again, they had to shave some

WENDY GRIFFITH - CONTINUING DIRECT EXAM BY MR. MCNEELY

1 hair and do some sutures in that area. And that's
2 probably four or five centimeters.

3 Q. This is Exhibit 20. What are we
4 looking at here?

5 A. Again, blunt trauma to the abdomen,
6 lower abdomen, because of the redness, and looks
7 like there's some swelling when you compare it to
8 these other sides of the abdomen where there is no
9 injuries.

10 Q. Was it that whole side of his torso
11 that you were circling?

12 A. Yeah. Like it's pretty extensive. I
13 mean, it's right there to meet the belly button and
14 all the way out to the right hip bone.

15 Q. This is Exhibit 19.

16 A. This is pretty concerning. You can
17 tell he has a lot of soft tissue bleeding. That he
18 was hit hard enough that he's had a lot of soft
19 tissue bleeding. That is blood pouring into the
20 soft tissue, the subcutaneous tissue like our fatty
21 layer, and those red blood cells are dying off. So
22 they go from, like, red to purple to black.

23 And then all of this -- so, again,
24 significant, significant trauma from the front of
25 his abdomen to his lower back. And that's when you

WENDY GRIFFITH - CONTINUING DIRECT EXAM BY MR. MCNEELY

1 -- and his liver is just right up here, his
2 intestines are in here, his kidneys stuck inside
3 there. All of that you have to be concerned for
4 internal organ damage.

5 Q. What would cause a wound like that?

6 A. Something very hard and forceful,
7 baseball bat, pipe, persistent kicking maybe.

8 Q. You can turn around, Ms. Griffith.
9 Thank you.

10 Based on your medical training, do you
11 have an opinion as to whether or not Mr. Taylor's
12 injuries could have been life-threatening?

13 A. Oh, very much so. Just the head alone.
14 Yeah. Very, very -- like I was saying, if you have
15 a fracture in the orbit, that can lead to a brain
16 bleed; or just all those external injuries with the
17 pulsatile arterial bleeding, I would have suspected
18 severe brain damage, internal bleeding.

19 Q. Possible skull fracture?

20 A. Very much so, yeah. That would damage
21 the brain.

22 Q. Could those have resulted in death?

23 A. Very much so, yes.

24 Q. Luckily for Mr. Taylor, as I understand
25 this correctly --

WENDY GRIFFITH - CONTINUING DIRECT EXAM BY MR. MCNEELY

1 MR. DAVIS: Objection to the
2 characterization, luckily for Mr. Taylor.

3 MR. MCNEELY: I'll rephrase.

4 THE COURT: Thank you.

5 BY MR. MCNEELY:

6 Q. We discussed what could have happened,
7 what likely could have happened.

8 A. Uh-huh.

9 Q. Mr. Taylor did not suffer skull
10 fracture, correct?

11 A. Correct.

12 Q. He didn't have brain trauma?

13 A. He did not.

14 Q. But he could have easily?

15 A. He could have. We were all shocked
16 that every one of those CTs were normal based on
17 what we were seeing externally.

18 Q. If a person is hit in the head multiple
19 times with a bat or pipe or jackhammer, in your
20 opinion, could blows to the head like that be
21 likely to result in death or significant bodily
22 injury?

23 A. Very much so. Those were pretty severe
24 hits to shred his scalp. The scalp is pretty
25 strong. Those were severe hits to shred his scalp.

WENDY GRIFFITH - CROSS EXAM BY MR. DAVIS

1 Those very much could have caused intracranial
2 hemorrhage, skull fracture.

3 Q. What about a single hit to the head
4 with an object like that?

5 A. Oh, yeah. And not only that, it could
6 have been brain damage. He could have been in a
7 vegetative state the rest of the life if it didn't
8 kill him. You have to consider all of those things
9 with injuries like that.

10 Q. A strike to the head like that is not
11 insignificant?

12 A. It is not insignificant. That's
13 severe.

14 MR. MCNEELY: No further questions from
15 the State, Your Honor.

16 MR. DAVIS: May it please the Court,
17 Your Honor.

18 CROSS-EXAMINATION

19 BY MR. DAVIS:

20 Q. Ms. Griffith, how are you doing today?

21 A. Very well, sir. And yourself?

22 Q. You and the Solicitor have had ample
23 time to prepare for this testimony; have you not?

24 A. I think I met with them a few weeks
25 ago.

WENDY GRIFFITH - CROSS EXAM BY MR. DAVIS

1 Q. And how long did you converse with each
2 other?

3 A. Less than ten minutes.

4 Q. Ten minutes?

5 A. Yes.

6 Q. Wow. Wow. But you will admit that
7 what should control is the medical records, don't
8 you think so?

9 A. Say that one more time, sir.

10 Q. What should control as to findings for
11 Jimmy Taylor should be the medical records?

12 A. I think that they should be included,
13 but then the witness of the provider I think is
14 very important also.

15 Q. Okay. Well --

16 A. And, of course, the results of the
17 tests which would be part of the record.

18 Q. I would hope so. What is the
19 significance of no acute intracranial hemorrhaging?

20 A. That means he got very lucky. Even
21 though he was hit to the head several times and he
22 had no internal injuries, he was very lucky.

23 Q. So in your medical journal, they use
24 the terms, you are lucky if you don't have an acute
25 intracranial hemorrhage? That's what you're --

WENDY GRIFFITH - CROSS EXAM BY MR. DAVIS

1 the word you use in your profession, lucky?

2 A. We do not, sir. We try to avoid
3 personal opinion.

4 Q. Okay. But you don't use the word,
5 lucky; isn't that correct?

6 A. True.

7 Q. And, as a matter of fact, you called
8 Dr. Potts that night and told -- and he shared with
9 you that since you had that finding that was very
10 significant; isn't that correct?

11 A. Which finding was very significant?

12 Q. That there was no acute intracranial
13 hemorrhaging.

14 A. We did know the result of the test that
15 night.

16 Q. And you did share it with Dr. Potts?

17 A. Dr. Potts was on when the results came
18 back.

19 Q. Okay. And you reviewed it with him; is
20 that correct?

21 A. I had left for the evening. He took
22 over the patient's care.

23 Q. Okay. And the CT scan of the facial
24 bones showed no evidence of acute fracture or
25 dislocation. What does that mean?

WENDY GRIFFITH - CROSS EXAM BY MR. DAVIS

1 A. That means there was no nasal bone
2 fracture, no orbit fracture, no damage to the
3 globe.

4 Q. Okay. And also in reference to the eye
5 injury that --

6 MR. DAVIS: Do you mind putting that
7 back up on the board?

8 MR. MCNEELY: Which one?

9 MR. DAVIS: The eye, the one that
10 stayed shut for four days. The eye, please.

11 BY MR. DAVIS:

12 Q. Red eye, subconjunctival hemorrhage?

13 A. Yes.

14 Q. That just -- sometimes that's harmless;
15 isn't that correct?

16 A. Very much so. Like if you were to pry
17 his eyelids open, you would see a subconjunctival
18 hemorrhage that was caused by trauma. But, yes,
19 you're correct, they can just be spontaneous.

20 Q. And they do not always require
21 treatment; isn't that correct?

22 A. A subconjunctival hemorrhage most times
23 does not require treatment.

24 Q. Most times does not require treatment.
25 As a matter of fact, it clears up in maybe a week

WENDY GRIFFITH - CROSS EXAM BY MR. DAVIS

1 or so; isn't that true?

2 A. It depends how severe it is, true, it
3 can. But those are the ones that are spontaneous,
4 not caused by trauma.

5 Q. Well, let's go to that. Did you have
6 occasion to see Mr. Jimmy Taylor a week or two
7 weeks after this incident?

8 A. I did not.

9 Q. So you cannot testify with any personal
10 knowledge or professional knowledge as to whether
11 or not his red eye had cleared up?

12 A. I don't know how well he healed.

13 Q. Okay. Thank you. And it's very
14 interesting -- tell us, was it you that requested
15 the alcohol analysis?

16 A. That -- I probably put that order in.
17 It's part of a work-up for trauma.

18 Q. Do you have any notes to tell you what
19 the findings were?

20 A. I do not.

21 Q. Okay. I'm going to see if I can put
22 some medical records together for you.

23 MR. DAVIS: Judge, may I?

24 THE COURT: You may.

25 BY MR. DAVIS:

WENDY GRIFFITH - CROSS EXAM BY MR. DAVIS

1 Q. Look through there and see if you can
2 see the alcohol findings.

3 A. It's right here in front so it looks
4 like 189.

5 Q. And how did you learn it was 189?

6 A. A blood draw will do that and then you
7 send it to the lab.

8 Q. Who did the blood draw?

9 A. I would imagine one of the nurses.

10 Q. Who would have ordered the blood draw?

11 A. One of the providers like myself or
12 Dr. Potts.

13 Q. Did you order it?

14 A. That I don't know.

15 Q. Okay.

16 A. I can't tell by this page if it was
17 ordered by myself or by Dr. Potts.

18 Q. And why would it be ordered?

19 A. It's just part of the trauma workup.

20 Q. Looking through those records, can you
21 tell if he was provided any blood that night? Was
22 he given any blood?

23 A. Not to my knowledge. I can look
24 through all of these, but --

25 Q. Please, this is important.

WENDY GRIFFITH - CROSS EXAM BY MR. DAVIS

1 A. -- I don't think he needed a blood
2 transfusion. There should be a page of labs --
3 sorry, it's taking me a minute. I'm just trying to
4 find it.

5 Q. Seriously, we've been waiting two
6 years, Ms. Griffith, two years.

7 A. I see where the order was placed, but I
8 do not see the results of the CBC -- oh, here we
9 go. It's at the very back. So there's no reason
10 he would need a blood transfusion based on the
11 hemoglobin and hematocrit. And that's what we look
12 at to determine if he needed a transfusion.

13 Q. All of that simply said, he did not
14 have a great significant loss of blood?

15 A. He didn't have a significant loss of
16 blood to cause him to have to have a blood
17 transfusion.

18 Q. Let's go back to the alcohol page that
19 you have in front of you.

20 A. Yes.

21 Q. Tell the ladies and gentlemen what the
22 significance of that 189 in relationship to -- down
23 to the bottom in reference to greater than 300
24 being toxic. Explain that to us, please.

25 A. So it looks like his alcohol level that

WENDY GRIFFITH - CROSS EXAM BY MR. DAVIS

1 evening was 189, and abnormal or toxic range is
2 greater than 300. So he probably was drinking
3 during the time of the incident.

4 I remember asking him, and he told me
5 he had been drinking. I think he told me he was in
6 the driveway working on a car or in the garage. He
7 was outside working on something.

8 Q. So it's your testimony that he told you
9 he had been drinking?

10 A. I asked him specifically, and he said
11 that he had.

12 MR. DAVIS: May I approach the witness,
13 Your Honor?

14 THE COURT: You may.

15 BY MR. DAVIS:

16 Q. I would ask that you review that as
17 part of his record too. Do you see the highlighted
18 area?

19 A. I do.

20 Q. Share that with the jury, what that
21 highlighted portion says.

22 A. It says, the highlighted -- person --
23 it's pertinent negative, that's like what we don't
24 find. It says, patient denies any alcohol
25 consumption.

WENDY GRIFFITH - CROSS EXAM BY MR. DAVIS

1 Q. Patient denies any alcohol consumption.
2 Who would have been responsible for putting that in
3 the medical record?

4 A. It could have been the provider --

5 Q. Well --

6 A. -- myself or one of the nurses.

7 Q. You testified that you were one of the
8 providers that night --

9 A. Uh-huh.

10 Q. -- you said on direct examination;
11 isn't that correct?

12 A. Yeah.

13 Q. Okay.

14 A. It could be -- sometimes we click
15 things that we see, so the wrong thing was clicked,
16 or it could have been part of a nursing note that
17 was put in there, or maybe he told Dr. Potts he
18 hadn't been drinking; but I know I asked him, and
19 he told me that he had some alcohol. But he was
20 very articulate, followed my commands and answered
21 the questions well.

22 Q. So you wouldn't figure that it was any
23 life -- life was not -- he didn't have any
24 life-threatening injuries since he was so
25 articulate and alert?

WENDY GRIFFITH - CROSS EXAM BY MR. DAVIS

1 A. They were very life-threatening. The
2 bleeding of his head, the orbit of the eye, the
3 damage, the external injuries that were obvious.

4 Q. Were there any internal injuries?

5 A. All of the CTs were normal. There were
6 no internal injuries, everything was external.

7 Q. Was there any permanent damage to the
8 eye?

9 A. That I don't know. That would be an
10 ophthalmologist to determine that.

11 Q. And were there any brain -- bleeding on
12 the brain?

13 A. No internal bleeding on the brain; no
14 brain bleed.

15 Q. And getting back to the 189, you can
16 bring in the expertise that we can share. And can
17 you compute the toxicology in reference to blood
18 alcohol in relation to someone being impaired, and
19 how -- what would be your characterization of
20 someone with a 189?

21 A. My immediate thought, he was a guy
22 hanging out in the garage working on his car, or
23 whatever it was, having a few beers.

24 Q. A few beers?

25 A. I don't know. That was my first

WENDY GRIFFITH - CROSS EXAM BY MR. DAVIS

1 thought.

2 Q. I'm talking about the significance of
3 the number, 189 --

4 A. Uh-huh.

5 Q. -- in medical terms. I'm not talking
6 about a few beers. You're the expert. With your
7 training, share -- and with your master's in
8 emergency room treatment, tell the jury what the
9 significance of 189 in comparison to 300 -- greater
10 than 300 being toxic.

11 A. It really is very individual and it
12 depends on how the liver -- your individual liver
13 processes alcohol. Him at 189, he's in the garage
14 working on his car. Me at 189, I could be passed
15 out on the floor. It's very different.

16 Q. Okay. Well, say that in relationship
17 then --

18 MR. MCNEELY: I think it's been asked
19 and answered.

20 MR. DAVIS: I'm not finished, Your
21 Honor.

22 THE COURT: Well, let's move on.

23 BY MR. DAVIS:

24 Q. Yeah. In this regard, if I take what
25 you're telling me, the law in South Carolina, point

WENDY GRIFFITH -- CROSS EXAM BY MR. DAVIS

1 zero either is considered under the influence for
2 driving a car.

3 A. Uh-huh.

4 Q. It would be your position then that
5 even though it's .08, it would depend on whoever
6 the individual is in reference to their equilibrium
7 in ingesting alcohol? That would be your take.

8 A. There are two different levels. You
9 have to be very careful what you're comparing.
10 This is a blood level. It has a different range
11 than what the officers use.

12 Q. I understand.

13 A. Okay. And I am not familiar with what
14 they use, what their normal ranges are. You're
15 saying .8 for intoxication to drive.

16 MR. MCNEELY: Your Honor, may we
17 approach?

18 THE COURT: You may.

19 (Bench conference.)

20 THE COURT: You may proceed.

21 MR. DAVIS: Thank you, Judge.

22 BY MR. DAVIS:

23 Q. Ma'am, you have no information provided
24 as to how these injuries occurred other than what
25 was presented to you; isn't that correct?

WENDY GRIFFITH - CROSS EXAM BY MR. DAVIS

1 A. What the patient told me and based on
2 what I could observe.

3 Q. Okay.

4 A. Those injuries came from blunt force.
5 He said he didn't know what it was, a pipe,
6 baseball bat, kicked, hit. I believe it based on
7 what I had seen.

8 Q. You don't know who initiated that
9 process?

10 A. I do not. Based on what the patient
11 said, he was approached on his own property.

12 Q. Okay. And can you explain to the jury
13 why one of the diagnoses is that this was an
14 unarmed brawl? That's in the medical records.

15 A. Say that term --

16 Q. One of the diagnoses is that this was
17 an unarmed brawl.

18 A. Right. Like the patient had nothing to
19 defend himself with, no weapon.

20 Q. Unarmed brawl. Unarmed, meaning --

21 A. He was unarmed. He wasn't carrying a
22 weapon.

23 Q. Unarmed, meaning there was no weapon at
24 all, ma'am.

25 A. By the patient.

WENDY GRIFFITH - CROSS EXAM BY MR. DAVIS

1 Q. Well, I want you to take your time and
2 look through and tell me where you saw that.

3 A. Is it highlighted?

4 Q. No, ma'am. I'm not going to help you
5 this time.

6 THE COURT: Mr. Davis, if there's a
7 portion of the medical records that you're asking
8 her to look for, instead of her trying to --

9 MR. DAVIS: I'm trying to look for it
10 myself, Your Honor.

11 THE WITNESS: And if it does say,
12 unarmed, that would be on behalf of the patient.

13 BY MR. DAVIS:

14 Q. Wow.

15 A. We wouldn't be commenting on what the
16 other involved had or did not have. We would just
17 be commenting on the patient, that he was unarmed.

18 Q. When people are presented to the
19 emergency room by EMS, they have different codes.
20 Do you recall what code that Mr. Taylor was
21 presented to when he came to the ER?

22 A. I do not. They call that in to the
23 nurse, the nurse that grabs the call.

24 Q. Would there be any way in the medical
25 record or on the EMS run -- I ask that you review

WENDY GRIFFITH - CROSS EXAM BY MR. DAVIS

1 this please. That's the EMS run.

2 A. So it does look like an EMS report and
3 more or less the time they arrived, what they found
4 on exam, where they were taking the man, and then
5 more or less what the patient was saying.

6 Q. Does it say anything about bleeding on
7 that EMS personnel?

8 A. Say that again.

9 Q. Does it say anything about blood and
10 bleeding?

11 A. Yeah. It looks like two areas on the
12 head where there is bleeding noted. Also areas on
13 the front and back torso with abrasions and
14 redness.

15 Q. Okay. And what are some of the
16 description of it?

17 A. In -- specifically about the bleeding?

18 Q. Yes, ma'am.

19 A. In the parentheses behind it, it says,
20 minor, but you could see for yourself from the
21 picture.

22 Q. Yes, ma'am, we all can.

23 These medical records, you were part of
24 those medical records?

25 A. Very much so, yeah.

WENDY GRIFFITH - CROSS EXAM BY MR. DAVIS

1 Q. And it was prepared in the normal
2 course at the Roper Emergency Room facilities?

3 A. Sure.

4 MR. DAVIS: Judge, I move that all of
5 those records be introduced.

6 THE COURT: Any objection?

7 MR. MCNEELY: The only objection I
8 would have, Your Honor, is that they have been
9 separated and put together so many times I don't
10 know what is in there is a complete copy.

11 MR. DAVIS: We'll make sure it's a
12 complete copy.

13 MR. MCNEELY: I think that Ms. Griffith
14 has testified sufficiently about the medical
15 records in regards to everything he pointed out. I
16 don't know that they would add anything and I don't
17 know that a proper foundation has been laid.

18 THE COURT: I will allow it if we can
19 put them all together and ensure they are in the
20 proper order. And that would be Defendant's
21 Exhibit 3.

22 MR. DAVIS: That's correct, Your Honor.
23 Thank you.

24 No further questions, Your Honor.

25 THE COURT: Any redirect?

SARAH ZAPATA - DIRECT EXAM BY MR. MCNEELY

1 MR. MCNEELY: No, Your Honor.

2 THE COURT: You may step down.

3 (DFT. EXH. 3 in evidence.)

4 THE COURT: Call your next witness.

5 MR. MCNEELY: The State calls Sara
6 Zapata.

7 SARAH ZAPATA,

8 being first duly sworn, testified as follows:

9 THE CLERK: Please be seated. State
10 your full name and spell your last name for the
11 record.

12 THE WITNESS: Sarah Zapata,
13 Z-A-P-A-T-A.

14 THE COURT: Your witness.

15 MR. MCNEELY: Thank you.

16 DIRECT EXAMINATION

17 BY MR. MCNEELY:

18 Q. Where are you currently employed,
19 Ms. Zapata?

20 A. I'm employed at the South Carolina Law
21 Enforcement Division commonly known as SLED.

22 Q. What is your position there and how
23 long have you been employed there?

24 A. I'm a forensic scientist in DNA
25 casework department, and I have worked there for a

SARAH ZAPATA - DIRECT EXAM BY MR. MCNEELY

1 little over two years.

2 Q. Please describe your education and
3 training for the jury.

4 A. I have a Bachelor of Science degree in
5 forensic science from the Pennsylvania State
6 University, and upon employment at SLED I
7 completed, approximately, a one-year-long training
8 process under a court-qualified DNA analyst.

9 Q. Was that prior to the two years you had
10 been working at SLED?

11 A. That's part of the two years.

12 Q. Do you hold any licenses or
13 certifications?

14 A. I'm certified by SLED to perform DNA
15 analysis.

16 Q. Please tell the jury about your work
17 history.

18 A. I have worked at SLED two years in
19 their DNA casework department.

20 Q. Did you start with SLED right out of
21 college?

22 A. A little after, yes.

23 Q. Are you a member of any professional
24 organizations?

25 A. I'm not.

SARAH ZAPATA - DIRECT EXAM BY MR. MCNEELY

1 Q. Okay. Do you participate in continuing
2 education programs?

3 A. Yes. We are required to participate in
4 at least eight hours of continuing education every
5 year.

6 Q. In your current position, do you work
7 full-time year around?

8 A. Yes, I do.

9 Q. Tell the jury about your primary
10 functions of your position at SLED?

11 A. As a DNA analyst my job is to process
12 items of evidence, generate DNA profiles from them,
13 and then process standards or known DNA items and
14 compare the unknown profiles that I get from
15 evidence to these known profiles to see if the
16 person who donated the known standard could be a
17 source of the unknown DNA.

18 Q. Is that what you do in your day-to-day
19 practice at SLED?

20 A. Yes.

21 Q. How does case evidence come to be in
22 your possession at SLED?

23 A. When I'm assigned a case, I look at
24 what items have been requested to be processed for
25 DNA; and then I request those items from Evidence

SARAH ZAPATA - DIRECT EXAM BY MR. MCNEELY

1 Control where they are stored securely until it's
2 time for me to work on them; and then those items
3 are transferred to my custody; and then I take them
4 to my secure lab.

5 Q. When evidence comes into your custody
6 at SLED, be it a sample swab or a known standard
7 buccal swab, are those sealed?

8 A. Yes, sir, they are.

9 Q. What do you do if they aren't sealed?

10 A. If they aren't, I would not work on
11 them. I would notify my supervisor and the
12 submitting agency.

13 Q. Why would you not work on them?

14 A. You don't know if they have been
15 tampered with or anyone else touched them. You
16 don't want to work them.

17 Q. The seal insures that they are not
18 contaminated?

19 A. Yes.

20 Q. Once you take possession of the
21 evidence, how do you perform your analysis?

22 A. So I take just a small portion of the
23 sample, whatever the sample is, and using our
24 standard laboratory procedures, take a series of
25 instruments to generate a DNA profile.

SARAH ZAPATA - DIRECT EXAM BY MR. MCNEELY

1 Q. How many cases have you worked for DNA
2 since you started at SLED?

3 A. Approximately 120.

4 MR. MCNEELY: Your Honor, at this time,
5 I move to admit Ms. Zapata as an expert witness in
6 the field of DNA analysis.

7 THE COURT: Any voir dire?

8 MR. DAVIS: I concur, Your Honor, no.

9 THE COURT: She's qualified.

10 MR. MCNEELY: Thank you.

11 BY MR. MCNEELY:

12 Q. Did you receive evidence at SLED to
13 analyze for this case?

14 A. Yes, I did.

15 Q. Please tell the jury what evidence you
16 received.

17 A. I received swabs from a camo visor hat.

18 Q. Did you receive any known standard
19 swabs?

20 A. Yes, I did; standards from Andy Wright,
21 Adam Wright, and Shawn Wright.

22 Q. Is that Andy or Randy?

23 A. Sorry, Adam, Randy and Shawn.

24 MR. MCNEELY: Permission to approach
25 the witness, Your Honor?

SARAH ZAPATA - DIRECT EXAM BY MR. MCNEELY

1 THE COURT: You may.

2 BY MR. MCNEELY:

3 Q. I would like to show you what was
4 marked as State's Exhibits 30, 31, 32, and 33. Can
5 you please look at those items.

6 A. Okay.

7 Q. Do you recognize the items?

8 A. Yes, I do.

9 Q. How do you recognize those items?

10 A. They have my initial along the seal and
11 the date, and there's item numbers printed on them
12 as well as the bar code.

13 Q. Did you seal them?

14 A. Yes, I did.

15 Q. After you completed your testing?

16 A. Yes.

17 Q. Were they sealed -- were the buccal
18 swabs and sample sealed when you received them?

19 A. Yes, they were.

20 Q. And you performed analysis on those?

21 A. Yes.

22 MR. MCNEELY: Your Honor, at this time,
23 I move to admit State's Exhibits 30 through 33 into
24 evidence.

25 THE COURT: Any objection?

SARAH ZAPATA - DIRECT EXAM BY MR. MCNEELY

1 MR. DAVIS: Yes, Your Honor; same basis
2 that you heard in reference to chain of custody.

3 THE COURT: Yes, sir. They're
4 admitted.

5 (STATE EXH. 30 in evidence.)

6 (STATE EXH. 31 in evidence.)

7 (STATE EXH. 32 in evidence.)

8 (STATE EXH. 33 in evidence.)

9 BY MR. MCNEELY:

10 Q. Ms. Zapata, please explain to the jury
11 what a sample swab is?

12 A. A sample swab is from an item of
13 evidence, and when we generate the profiles from
14 that sample, we do not know the source of the DNA.

15 Q. So what is the purpose of you analyzing
16 a DNA swab?

17 A. The purpose is to try to determine who
18 could have come into contact with the item of
19 evidence.

20 Q. You're trying to identify who touched
21 the item or wore the item?

22 A. Yes.

23 Q. What is a buccal swab or buccal swab?

24 A. A buccal swab is a swab taken from the
25 inside of someone's mouth and so we know who the

SARAH ZAPATA - DIRECT EXAM BY MR. MCNEELY

1 donor of that DNA is.

2 Q. What do you get from a buccal swab?

3 A. So from when we test items to do a DNA
4 profile, we want to look at the areas of DNA that
5 differ between people and so we test several
6 different locations along the DNA. And then the
7 combination of all these test results is a DNA
8 profile.

9 Q. So at that point you have a known
10 standard for an individual?

11 A. Yes.

12 Q. And you then compare those known
13 standards to the sample?

14 A. Yes. We compare any DNA in the
15 evidence profile that we can make comparisons to to
16 this known standard.

17 Q. And you performed that analysis in this
18 case?

19 A. Yes, we did.

20 Q. Please explain specifically what
21 analysis you performed on Exhibits 30 through 33.

22 A. Sure. Item 4 was swabs from the camo
23 visor hat. Like I was saying earlier, I take a
24 small portion of the swab, utilize our laboratory
25 procedures to generate this unknown profile.

SARAH ZAPATA - DIRECT EXAM BY MR. MCNEELY

1 In this case, hat, a profile from
2 multiple people. We call that a mixture. That
3 just means that multiple people came in contact
4 with the item. And so I used our guidelines to
5 determine what information from that mixture I
6 could use to make comparisons.

7 And then I went ahead and used the same
8 laboratory procedures to generate a profile from
9 the buccal swabs, and then compared the profile
10 from the evidence swab to the buccal swabs.

11 Q. What were the results of your
12 comparison?

13 A. The DNA profile developed from item 4,
14 which was the swabs from the camo visor hat, is a
15 mixture of at least three individuals. The partial
16 DNA profile of the major contributor to this
17 mixture matches the DNA profile of Shawn Wright.

18 The probability of randomly selecting
19 an unrelated individual having a DNA profile
20 matching this major contributor is approximately 1
21 in 22,000. Due to the inability to supplement
22 statistics, no further interpretation will be
23 offered regarding the minor contributor to the
24 mixture.

25 Q. So what does a mixture mean?

SARAH ZAPATA - CROSS EXAM BY MR. DAVIS

1 A. A mixture just means that the DNA from
2 more than one person is present on an item.

3 Q. What is a major contributor?

4 A. Sometimes one person will leave more
5 DNA than another person, and we call that a major
6 contributor.

7 Q. And what did that tell you in this
8 case?

9 A. In this case, the profile of the major
10 contributor matched the DNA profile of Shawn
11 Wright.

12 Q. Can you assume that Shawn Wright wore
13 that visor?

14 A. That he came in contact with it at some
15 point, yes.

16 MR. MCNEELY: No further questions.

17 THE COURT: Cross-examination?

18 CROSS-EXAMINATION

19 BY MR. DAVIS:

20 Q. How are you doing?

21 A. Fine.

22 Q. Were there any DNA findings pertaining
23 to Mr. Randy Wright?

24 A. In this case, I made comparisons to the
25 major contributor, and he was excluded as a

SARAH ZAPATA - CROSS EXAM BY MR. DAVIS

1 possible source of the major contributor, and I
2 couldn't draw any conclusions about the minor
3 contributors.

4 Q. When you use the words minor and major,
5 one of my favorite channels is the I.E. channel,
6 and I follow forensics pretty good. And some
7 aspect that you had sufficient sample from my
8 client; isn't that correct?

9 A. From his known standard?

10 Q. Well, he sent in his sample.

11 A. Yes. Yes.

12 Q. You had sufficient amount, right?

13 A. Uh-huh.

14 Q. Then on the visor apparently, then you
15 extracted blood from that, that's correct?

16 A. Not blood.

17 Q. What did you extract?

18 A. It was touch DNA. So just --

19 Q. Touch DNA?

20 A. Uh-huh.

21 Q. So this is not blood we're talking
22 about?

23 A. No.

24 Q. Okay. This just means that, in fact,
25 two individuals came into contact with each other?

SARAH ZAPATA - CROSS EXAM BY MR. DAVIS

1 A. It means that at least three
2 individuals came into contact with the hat.

3 Q. With the hat?

4 A. Yes.

5 Q. Touched the hat?

6 A. Yes.

7 Q. I'm lost. And how were you able to
8 determine that Shawn Wright touched the hat?

9 A. So we have very specific guidelines
10 that tell us what information we can use to make
11 comparisons. In order to make a comparison, you
12 have to be able to calculate a statistic.

13 And so, in this case, I could only
14 calculate a statistic on the major contributor, and
15 that major contributor matched the DNA profile that
16 I developed from Shawn Wright's buccal swab.

17 Q. Was any of Jimmy's blood identified?

18 A. I could not make any comparison to the
19 known contributor.

20 Q. Jimmy Taylor is the victim. Did they
21 submit his -- a swab of his in reference to the
22 hat?

23 A. They did not.

24 Q. What would that -- if it was sent to
25 you, what significance would that have been?

SARAH ZAPATA - CROSS EXAM BY MR. DAVIS

1 A. Well, there wasn't any blood on the hat
2 that I was given to process, only a touch swab from
3 the hat; but in this case, because I couldn't make
4 any comparisons to the minor contributors, I don't
5 think that it would have made a difference, because
6 I couldn't use that information to make any further
7 comparisons.

8 Q. You're telling me that if you had taken
9 a swab of Jimmy, the victim, and did your chemical
10 analysis process protocol, you could not determine
11 whether he came into contact with that hat or not?

12 A. I could compare it to the major
13 contributor, but that source has already been
14 identified as Shawn Wright, but I could not make
15 any comparisons to the minor contributors.

16 Q. So then Jimmy would have been
17 considered a minor contributor too?

18 A. I don't know who the minor contributors
19 are.

20 Q. So that excludes Randy Wright also;
21 isn't that correct?

22 A. It's not an exclusion or inclusion; I
23 just cannot make any comparisons to the minor
24 contributors.

25 Q. So it's, in other words, nil,

SARAH ZAPATA - REDIRECT EXAM BY MR. MCNEELY

1 nonexistent?

2 A. It's just unusable information.

3 Q. Unusable, which means you cannot
4 incriminate an individual, in a sense, of useable
5 evidence, in a sense? You can't share this with
6 the jury, in a sense?

7 A. I don't understand the question.

8 Q. I'm not trying to be confusing. You
9 have come into this Court and identified that Shawn
10 Wright wears that hat apparently; isn't that
11 correct?

12 A. He came into contact with it at some
13 point, yes.

14 MR. DAVIS: Okay. No further
15 questions.

16 THE COURT: Any redirect?

17 MR. MCNEELY: Just a couple, Your
18 Honor.

19 REDIRECT EXAMINATION

20 BY MR. MCNEELY:

21 Q. Can you tell us about touch DNA?

22 A. Sure. Touch DNA is DNA left behind
23 when you touch an item.

24 Q. And that could be from grabbing it with
25 your hands?

SARAH ZAPATA - REDIRECT EXAM BY MR. MCNEELY

1 A. Right. It could be from grabbing it,
2 from rubbing on something.

3 Q. It can be from this collar rubbing
4 against the back of my neck?

5 A. Yes.

6 Q. And from me sweating in a visor, right?

7 A. Yes.

8 Q. And the major contributor to this visor
9 was Shawn Wright?

10 A. Correct.

11 MR. MCNEELY: No further questions.

12 Thank you.

13 THE COURT: You may step down, ma'am.

14 Thank you.

15 MR. MCNEELY: At this time, the State
16 rests its case.

17 THE COURT: Ladies and gentlemen of the
18 jury, it's about -- close to 12:30, and the State
19 has rested their case. It's a good time for us to
20 take our lunch break. If you would be back in your
21 jury room at 2:00. We have a couple of other
22 things we need to take care of while you're at
23 lunch, so I'll give you a little bit of extra time
24 for lunch.

25 Please remember, do not discuss the

1 case with anyone or allow anyone to discuss this
2 case with you. We'll see you back at 2:00. Have a
3 nice lunch.

4 (Jury out, 12:24 p.m.)

5 THE COURT: Any motions, Mr. Davis?

6 MR. DAVIS: Yes, Your Honor. I make
7 the motion to dismiss particularly as it deals with
8 assault and battery of a high and aggravated
9 nature, that aspect dealing with serious bodily
10 injury.

11 Now, Judge, I understand the testimony
12 that has been presented, but at the end of the day,
13 basically, what has been presented to this Court is
14 no internal injuries to any major organs whatsoever
15 has been testified in this matter. And,
16 specifically, a read of the elements of the case
17 says, most likely.

18 Drinking too much water can most likely
19 cause injury to you from a medical standpoint. In
20 reference to what is before you, this jury cannot
21 ascertain with any degree of certainty that the
22 injuries that Mr. Jimmy Taylor received was
23 life-threatening to the extent or most likely great
24 bodily injury.

25 For that reason, Your Honor, I would

1 ask that the charges be dismissed in reference to
2 assault and battery of a high and aggravated nature
3 and in an alternative for a lesser included
4 offense.

5 MR. MCNEELY: Thank you, Your Honor.
6 The Court is well aware a directed verdict motion
7 the evidence to be in the light most favorable to
8 the State. The Defendant is charged with assault
9 and battery of a high and aggravated nature of
10 Jimmy Taylor. This requires the Defendant caused
11 injury unlawfully to another person.

12 In this case, there has been ample
13 evidence that Mr. Wright, along with his sons,
14 inflicted bodily injury upon Mr. Taylor in his
15 driveway on August 8, 2015. We heard that from the
16 testimony of the victim himself, and it was
17 corroborated by the other witnesses in this case;
18 and, also, that the -- either great bodily injury
19 to another person results, or the act is
20 accomplished by means likely to produce death or
21 great bodily injury.

22 There has been ample evidence presented
23 in this case by the victim and others that this act
24 of injury was inflicted upon Mr. Taylor with a
25 blunt-force object trauma to the head multiple

1 times. A jury could reasonably find that that
2 means of inflicting injury is likely to produce
3 death or great bodily injury, and it was also
4 specifically testified to by our medical expert,
5 Wendy Griffith.

6 We would ask that the motion be denied
7 and the matter be presented to the jury.

8 THE COURT: Both parties are aware at
9 this juncture that the Court is concerned of the
10 existence or nonexistence of evidence. There is an
11 existence of competent evidence tending to prove
12 the charges contained in the indictment and,
13 specifically, with the assault and battery of a
14 high and aggravated nature.

15 There is testimony to corroborate that
16 -- Ms. Griffith did testify the injuries certainly
17 could have been life-threatening, which also falls
18 into the subsection of an act which, if
19 accomplished, is likely to produce death or great
20 bodily injury or great bodily injury. Subsection A
21 states great bodily injury to another person
22 results or is likely to.

23 So I believe that based upon the
24 evidence of both the victim and Ms. Griffith, along
25 with the corroborating testimony, there is ample

RANDY WRIGHT - EXAM BY THE COURT

1 argument to give it to the jury. So your motion is
2 respectfully denied.

3 MR. DAVIS: Thank you, Your Honor.

4 THE COURT: Is Mr. Wright ready to be
5 placed under oath?

6 MR. DAVIS: He's ready, Your Honor.

7 THE COURT: Mr. Wright, please stand.

8 RANDY WRIGHT,

9 being first duly sworn, testified as follows:

10 THE COURT: Mr. Wright, you need to
11 speak out loud so the court reporter can hear you.

12 THE DEFENDANT: I do.

13 EXAMINATION

14 BY THE COURT:

15 Q. Mr. Wright, at this time, I'm going to
16 explain to you certain of your rights. If you do
17 not understand anything that I say, please let me
18 know. If you want me to explain anything in more
19 detail also, please, let me know. Do you
20 understand?

21 A. Yes, ma'am.

22 Q. We have now reached the stage of the
23 trial where you may present your defense. You have
24 the right to claim the protections given to you by
25 the Fifth Amendment to the Constitution of the

RANDY WRIGHT - EXAM BY THE COURT

1 United States.

2 This amendment states in part that no
3 person shall be compelled in any criminal case to
4 be a witness against themselves. This means you
5 cannot be required to testify in this case. You
6 have the right to testify on your own behalf;
7 however, no one can make you testify.

8 This is a personal right and no one can
9 waive this right except for you. If you decide to
10 testify, you will be subject as to the same rules
11 that govern other witnesses, and you may be
12 examined and cross-examined on any relevant issue
13 in this case.

14 In addition, if you have any
15 convictions involving dishonesty or false statement
16 or for crimes punishable by more than one year of
17 imprisonment, and I determine that the probative
18 value of admitting this evidence outweighs the
19 prejudicial effect to you, the Solicitor will be
20 able to introduce your record to impact your
21 credibility.

22 If you decide to testify, this decision
23 on your part must be made freely, voluntarily,
24 intelligently, and with the knowledge of the
25 protections given to you by the Fifth Amendment and

RANDY WRIGHT - EXAM BY THE COURT

1 the consequences of your decision to testify.

2 If you decide not to testify, I will
3 instruct the jury they cannot use the fact that you
4 did not testify, and they cannot give it any
5 consideration whatsoever, and there is to be
6 absolutely no prejudice to you because you did not
7 testify.

8 It is left entirely up to you as to
9 whether or not you wish to testify. You can talk
10 to your attorney, your family, your friends, but,
11 ultimately, this decision is entirely up to you.
12 Do you understand what I've explained to you?

13 A. Yes.

14 Q. Do you need time to talk to your
15 attorney regarding your decision as to whether or
16 not you will testify?

17 A. Yes.

18 Q. You need more time to talk to him?

19 A. Yes.

20 THE COURT: Take your time.

21 MR. DAVIS: He wants to testify.

22 THE COURT: Mr. Wright, is that
23 correct? You wish to testify today?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: All right, sir. Do you

RANDY WRIGHT - EXAM BY THE COURT

1 have any questions -- other questions regarding
2 your right to testify?

3 THE DEFENDANT: No.

4 THE COURT: All right. We'll be at
5 ease until 2:00 and then we will resume.

6 MR. DAVIS: Thank you.

7 THE COURT: If you-all would, before
8 then, meet me in chambers about 1:45.

9 MR. MCNEELY: With regard to the
10 medical records, do I have everything that -- we
11 have pages 91 --

12 MS. SMITH: We're missing a bunch.
13 This starts with 67 and 68 and then it picks up
14 with 91.

15 MR. MCNEELY: Can I print off a
16 complete copy of the Bates stamps?

17 THE COURT: That would be better.

18 MR. MCNEELY: We will get a
19 Bates-stamped copy.

20 (A luncheon recess transpired.)

21 THE COURT: We're going to bring the
22 jury out. It's come to my attention there was a
23 court officer that potentially overheard a negative
24 comment made by one of the jurors, which I have
25 discussed with both counsel in chambers.

1 The agreement of the parties to best
2 handle this is to bring out the entire jury and
3 basically do a broad question. Let them know that
4 apparently there is -- there was an alleged
5 negative comment made by someone in the courtroom
6 and whether or not the jury, A, heard it; and if
7 they did, if they can set that aside and be fair
8 and impartial to both sides and, obviously, follow
9 the Court's instructions as to the evidence and be
10 the finders of fact based on the evidence and not
11 any personal animosity towards anybody else in the
12 courtroom.

13 Is that the correct recitation of the
14 agreement?

15 MR. MCNEELY: That's how I understood
16 it, Your Honor.

17 THE COURT: Are you okay with that,
18 Mr. Davis?

19 MR. DAVIS: My major concern is that
20 Randy Wright gets a fair trial. And I just view
21 any negativity pertaining there to me; I don't want
22 it to impugn to Randy Wright, especially in an
23 environment that currently exists in this country
24 to a large degree.

25 You and I may disagree, but I think any

1 negativity in that regard could be reflected and
2 sent like a poison and pollute throughout the whole
3 jury panel, and that would negate Mr. Wright
4 getting a fair trial. That's my only concern.

5 I can't remove myself out of this
6 posture as a trial lawyer, but I'm very concerned
7 in reference to where this potentially could go in
8 terms of bias and prejudice against my client's
9 right to a fair trial.

10 THE COURT: And that's as I understand
11 the concern, Mr. Davis; however, as far as the
12 statement is concerned, I think if the jury can say
13 they can set it aside and they weren't affected by
14 it and be fair and impartial, and they're under
15 oath to follow that instruction -- I mean, jurors
16 may not like any of us in the courtroom, but if
17 they can follow the law and be fair and impartial,
18 that's what your client deserves and that's what he
19 would get.

20 MR. DAVIS: Thank you.

21 THE COURT: Let's have our jury,
22 please.

23 (Jury in, 2:17 p.m.)

24 THE COURT: Welcome back, ladies and
25 gentlemen. I hope that you had a nice lunch.

1 Before we get started, there is a little bit of a
2 housekeeping matter I must take up with you, and
3 it's a little bit of an unusual circumstance, but
4 it was brought to my attention that there may have
5 been a negative comment made against someone in the
6 courtroom by a member of the jury.

7 I don't know that for sure. I don't
8 know if anybody heard it; however, I have the duty
9 to ask you, A, if any member of the jury heard it
10 and, if so, if they can set that aside and make a
11 fair and impartial determination of the facts;
12 because you are the judges of the facts based upon
13 the evidence that you hear solely from the witness
14 stand, and not any personal feelings that you may
15 have against anybody in this courtroom; that it is
16 your sworn duty to follow the law and make that
17 determination based upon the evidence as presented
18 during the trial of this case.

19 I'm going to ask you to go to your jury
20 room. Don't discuss it amongst yourselves, because
21 I don't want anyone to influence anyone else, but
22 if you feel that you have heard something and you
23 have been impacted in any way, shape, or form, or
24 you can't make a fair determination of the evidence
25 based upon the facts that you hear from the witness

1 stand, just write me a note and let me know.

2 So what I'm going to do is I will ask
3 you to go to the jury room, and I will have the
4 bailiff pass out a notepad in case anybody does
5 need -- or maybe give a piece of paper to
6 everybody, and if you heard something and you were
7 impacted by it, then we'll need to discuss it a
8 little bit further.

9 (Jury out, 2:19 p.m.)

10 THE COURT: Any exception or objections
11 to my questioning of the jury?

12 MR. MCNEELY: None from the State.

13 MR. DAVIS: None, Your Honor.

14 THE COURT: Okay.

15 We can put on the record that we've had
16 a charge conference in chambers. Both parties have
17 been provided copies of the proposed jury
18 instructions and have no objection to them; is that
19 correct?

20 MR. DAVIS: That's correct, Your Honor.

21 MR. MCNEELY: I apologize, Your Honor.

22 THE COURT: I didn't see you go back
23 there.

24 MR. MCNEELY: Jury charge conference?

25 THE COURT: Correct. Any objections?

1 MR. MCNEELY: No, Your Honor, other
2 than what we discussed.

3 THE COURT: Thank you.

4 (Brief recess.)

5 THE COURT: I have a note signed by the
6 foreperson, Ms. Laura Drolet. We, the jury, can
7 all make a decision based upon the witnesses.

8 We will mark that as a Court's Exhibit.
9 I think it's appropriate to proceed.

10 Any objections?

11 MR. MCNEELY: None from the State.

12 MR. DAVIS: Thank you, Judge.

13 THE COURT: Let's have our jury back.

14 (COURT EXH. 1, Jury note, was marked
15 for identification.)

16 (Jury in, 2:25 p.m.)

17 THE COURT: Welcome back. We are ready
18 to proceed with the trial of the case. Counsel?

19 MR. DAVIS: We call Penny Blair, Your
20 Honor.

21 THE COURT: Yes, sir.

22 PENNY BLAIR,
23 being first duly sworn, testified as follows:

24 THE CLERK: Please be seated. State
25 your full name and spell your last name for the

PENNY BLAIR - DIRECT EXAM BY MR. DAVIS

1 record.

2 THE WITNESS: Penny Darlene Blair,

3 B-L-A-I-R.

4 THE COURT: Your witness.

5 DIRECT EXAMINATION

6 BY MR. DAVIS:

7 Q. Ms. Blair, where do you live?

8 A. [REDACTED], Moncks Corner.

9 Q. How long have you lived there?

10 A. Seven years.

11 Q. Okay. Tell us a little bit about
12 yourself.

13 A. I work at Country Corners.

14 Q. Are you married? Single?

15 A. Single. I live with somebody.

16 Q. Okay. And do you know Randy Wright?

17 A. Yes, I do.

18 Q. How long have you known him?

19 A. Three years.

20 Q. And tell the jury how you come to
21 associate yourself with knowledge of Randy Wright.

22 A. He's a customer that comes into the
23 store that I work at.

24 Q. And how many times would you say that
25 you've had the opportunity to interact with him?

PENNY BLAIR - DIRECT EXAM BY MR. DAVIS

1 A. I talk to him all the time he comes
2 into the store.

3 Q. Can you share with the jury your
4 impression of his demeanor and character as it
5 relates to your association with him.

6 A. He's always been a very respectable man
7 as far as I can tell. I've never had any issues or
8 problems with him, in or outside of the store.

9 Q. And you also know Jimmy Taylor?

10 A. Yes, I do.

11 Q. And tell the jury how you know Jimmy
12 Taylor.

13 A. I used to work at Family Dollar. I
14 worked there for ten years before I worked at
15 Country Corners, and he used to come into the
16 Family Dollar.

17 Q. You've had an opportunity to witness
18 him also?

19 A. Yes, I do.

20 Q. Does he frequent the country store?

21 A. I've seen him once or twice in the
22 Country Corners.

23 Q. Now, you've known Jimmy longer than you
24 have known Randy; isn't that correct?

25 A. Yes, sir.

PENNY BLAIR - DIRECT EXAM BY MR. DAVIS

1 Q. And you've been placed under oath to
2 tell the truth and nothing but the truth; is that
3 correct?

4 A. Yeah.

5 Q. In reference to the country store, does
6 the country store have the ability to videotape
7 people who come in there?

8 A. Yes.

9 Q. Was that availability or process in
10 play on August 8, 2015?

11 A. I did not work that night, and I have
12 no idea if the cameras taped what they have on
13 tape.

14 Q. Okay. But is it customary or part of
15 the protocol for the camera to always be in play?

16 A. Always.

17 Q. So there's no question that if law
18 enforcement had presented themselves, they could
19 have actually secured the camera therein?

20 A. Oh, yes.

21 Q. Have you ever seen Randy rude,
22 disrespectful in any manner whatsoever?

23 A. Never.

24 Q. Okay. You know, sometimes folks come
25 in and they're patrons, and they can show a lot of

PENNY BLAIR - DIRECT EXAM BY MR. DAVIS

1 ugliness in their behavior and character. Have --
2 or did Randy Wright ever exhibit any of those
3 features?

4 A. Never.

5 Q. Have you ever had the opportunity to
6 serve Jimmy when he comes into the country store?

7 A. At the Country Corners, no, but at
8 Family Dollar, yes.

9 Q. How would you compare the two
10 descriptions in reference to the association that
11 took place?

12 A. Meaning -- I didn't understand the
13 question.

14 Q. Do they display the same mannerisms?

15 A. How would -- I'm sorry?

16 Q. Well, you said that Randy's mannerism
17 when he comes in the store, he's polite, he's
18 jolly?

19 A. Uh-huh, yes, sir.

20 Q. In comparison to Jimmy, who --

21 A. No. I've seen Jimmy in the Family
22 Dollar store, and there have been times that he's
23 been intoxicated. And but I --

24 MR. MCNEELY: Your Honor, I will object
25 to this line of questioning. I don't know what

PENNY, BLAIR - DIRECT EXAM BY MR. DAVIS

1 it's relevant to.

2 THE COURT: Sustained.

3 BY MR. DAVIS:

4 Q. Okay. Would you trust Randy Wright in
5 your home?

6 A. Yes.

7 MR. MCNEELY: Objection, Your Honor. I
8 don't know what it is relevant to.

9 MR. DAVIS: Character and reputation.

10 THE COURT: Overruled.

11 Let's move on, Mr. Davis.

12 BY MR. DAVIS:

13 Q. You would trust Randy in your home?

14 A. Yes, sir.

15 Q. And by the way, has Randy ever did any
16 mechanic work for you?

17 A. Yes.

18 Q. And has he always done what he promised
19 he would do?

20 A. Yes.

21 Q. And always kept his word?

22 A. Yes.

23 Q. Does he have a reputation of getting in
24 fights?

25 A. Not that I know of, never. He's always

PENNY BLAIR - CROSS EXAM BY MR. MCNEELY

1 been respectful to me and my job. When I'm at
2 work, I've never had any issues with Randy.

3 MR. DAVIS: No further questions.

4 THE COURT: Cross-examination?

5 MR. MCNEELY: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. MCNEELY:

8 Q. Ms. Blair, you know the Defendant as a
9 customer of the store?

10 A. Yes.

11 Q. He's done some mechanic work for you,
12 right?

13 A. Yes.

14 Q. Do you hang out socially with him?

15 A. No.

16 Q. Have you ever hung out socially with
17 him?

18 A. I've been to his home.

19 Q. Was that for mechanic work?

20 A. Yes.

21 Q. So you went to his home for mechanic
22 work?

23 A. And he's been to my house for mechanic
24 work.

25 Q. It wasn't a social interaction; it was

PENNY BLAIR - CROSS EXAM BY MR. MCNEELY

1 a business deal? He was doing work for you?

2 A. Yes. I know his family. I am friends
3 with his family.

4 Q. You weren't there on August 8th?

5 A. No, I was not at work.

6 Q. You weren't anywhere near Jimmy
7 Taylor's house?

8 A. No.

9 Q. You have no idea what happened that
10 night?

11 A. No.

12 Q. And you have seen Jimmy Taylor as a
13 customer?

14 A. Yes, I have.

15 Q. And he's been respectful to you as a
16 customer?

17 A. Yes.

18 Q. Okay. But you have no idea what
19 happened in this case, you weren't there?

20 A. Only by hearsay.

21 Q. Right, you weren't there.

22 A. I was not. I was not working that
23 night.

24 Q. Okay. And the store has cameras?

25 A. Yes, it does.

PENNY BLAIR - CROSS EXAM BY MR. MCNEELY

1 Q. And do the cameras save everything that
2 is recorded, or do they wipe the recording if you
3 don't --

4 A. If they don't save them, they do wipe
5 the recordings.

6 Q. Do you know how long they have to save
7 it?

8 A. No, I do not.

9 Q. Any idea at all?

10 A. No.

11 MR. MCNEELY: Okay. No further
12 questions, Your Honor.

13 THE COURT: Any redirect?

14 MR. DAVIS: No further questions.

15 THE COURT: You may step down, ma'am.
16 Thank you.

17 You may call your next witness.

18 MR. DAVIS: We call the Defendant, Your
19 Honor, Randy Wright.

20 THE COURT: Mr. Wright.

21 RANDY WRIGHT,

22 being first duly sworn, testified as follows:

23 THE CLERK: Please be seated. State
24 your full name and spell your last name for the
25 record.

RANDY WRIGHT - DIRECT EXAM BY MR. DAVIS

1 THE DEFENDANT: Randy Wright,
2 W-R-I-G-H-T, last name.

3 THE COURT: Your witness...

4 DIRECT EXAMINATION

5 BY MR. DAVIS:

6 Q. How old are you, Randy?

7 A. Sir?

8 Q. How old are you?

9 A. 52.

10 Q. How far did you go in school?

11 A. 11th grade.

12 Q. And are you married?

13 A. Yes.

14 Q. How long have you been married?

15 A. About 32 years.

16 Q. And your wife is in the courtroom?

17 A. Yes, sir.

18 Q. What is her name?

19 A. Angela.

20 Q. And how old were you when you got
21 married to Angela?

22 A. About 25.

23 Q. How many kids do you have?

24 A. We have five.

25 Q. Boys or girls?

RANDY WRIGHT - DIRECT EXAM BY MR. DAVIS

1 A. We got three boys and two girls.

2 Q. And your daughters are in the
3 courtroom?

4 A. One of them.

5 Q. What's her name?

6 A. Hannah.

7 Q. Any grandchildren?

8 A. Yes, sir.

9 Q. How many?

10 A. Eight.

11 Q. How many?

12 A. Eight.

13 Q. Eight grandchildren. What kind of work
14 do you do?

15 A. I do mechanic work.

16 Q. How long have you done mechanic work?

17 A. Since I was probably 15.

18 Q. Okay. And if truth be told, you've
19 done work for Jimmy Taylor before; isn't that true?

20 A. Yes, sir.

21 Q. Any problem with that?

22 A. Not at that time, no.

23 Q. And you told me you had a DUI some
24 eight or nine years ago?

25 A. It was about eight years ago.

RANDY WRIGHT - DIRECT EXAM BY MR. DAVIS

1 Q. Have you had any since?

2 A. No.

3 Q. Do you have any crimes of violence on
4 your record?

5 A. No.

6 Q. Have you ever assaulted anyone?

7 A. No.

8 Q. Ever been in any fights?

9 A. No.

10 Q. Where did you sleep last night?

11 A. Slept on the floor in lockup.

12 Q. You've never spent any time in prison
13 or jail before, have you?

14 A. No.

15 Q. Do you know why we're here, right?

16 A. Yes, sir.

17 Q. It's been almost two years.

18 A. Yes.

19 Q. And you want to tell the jury your
20 version of what happened that day, right?

21 A. Yes, sir.

22 Q. Okay. Now, before you get to that
23 version, there has been some reference that Jimmy
24 Taylor testified that he met you in Piggly Wiggly
25 six months or so before that. Do you have any

RANDY WRIGHT - DIRECT EXAM BY MR. DAVIS

1 recollection of that?

2 A. None.

3 Q. Have you had any beef or animosity
4 towards Jimmy in any way?

5 A. No, I haven't. No.

6 Q. You did not?

7 A. No.

8 Q. Tell the jury on that August 8th, did
9 you go to work.

10 A. Yes, sir.

11 Q. Where did you go to work?

12 A. I worked on Daniel Island.

13 Q. And that's a good distance from your
14 house?

15 A. Yes, sir.

16 Q. How did you get over there?

17 A. I drove.

18 Q. Okay. And what did you do that day?

19 A. I worked on trucks.

20 Q. What type of trucks?

21 A. Dump trucks, excavators, and
22 bulldozers.

23 Q. You do diesel mechanics?

24 A. I do both.

25 Q. You've been doing that since you were

RANDY WRIGHT - DIRECT EXAM BY MR. DAVIS

- 1 15?
- 2 A. Yes.
- 3 Q. You got off from work about what time?
- 4 A. We got back to the garage in
- 5 St. Stephen just around about 5:30.
- 6 Q. And who owns the garage in St. Stephen?
- 7 A. Swamp Fox Utilities.
- 8 Q. And that's who you work for?
- 9 A. Yes.
- 10 Q. How long have you been working with
- 11 them?
- 12 A. About two years.
- 13 Q. Where did you work before them?
- 14 A. I worked at TLS Trucking in Goose
- 15 Creek.
- 16 Q. How long did you work there?
- 17 A. I worked there about year and a half.
- 18 Q. Where did you work before T and L (sic)
- 19 Trucking?
- 20 A. Feller Containment.
- 21 Q. So you've always worked on heavy
- 22 equipment and diesel trucks?
- 23 A. Yes.
- 24 Q. So what time did you get off August 8,
- 25 2015?

RANDY WRIGHT - DIRECT EXAM BY MR. DAVIS

1 A. We got back to the shop because we had
2 to drop some stuff off there. It was probably
3 about 6:00.

4 Q. You said we. Who is we?

5 A. Me and my two sons.

6 Q. The two boys were working with you?

7 A. They did that day.

8 Q. Okay. So you came from Mendel Rivers
9 Road, which is in St. Stephen?

10 A. Yes.

11 Q. And you were driving?

12 A. Yes, sir.

13 Q. And the two boys were in the -- what
14 were you driving?

15 A. I was driving my truck.

16 Q. Is it red?

17 A. White.

18 Q. And when you left St. Stephen on Mendel
19 Rivers Road, where did you go?

20 A. We continued into Moncks Corner, and we
21 stopped at the Country Corner store. I had to get
22 cigarettes and stuff.

23 Q. So you stopped there?

24 A. Uh-huh.

25 Q. When you stopped at the country store,

RANDY WRIGHT - DIRECT EXAM BY MR. DAVIS

1 did you know that Jimmy Taylor was there?

2 A. No, sir, I didn't.

3 Q. How do you learn that Jimmy Taylor was
4 there?

5 A. It was after I entered the store.

6 Q. After you entered the store?

7 A. Yes, sir.

8 Q. Tell the jury what happened after you
9 entered the store.

10 A. Well, they had two lines because they
11 was packed in there usually on the weekends. And
12 so I got in line and, like I said, the lines were
13 long on both sides. And I got in line, and I
14 didn't see him come in, but I was standing in line
15 waiting to get my stuff.

16 I was standing there and just happened
17 to turn around and looked back in the line and he
18 was in my line. And he just stood there with a bad
19 look, mean looking. He had two big bottles of Bud
20 Lite and looked at me with, like, a mean look, you
21 know.

22 I didn't know what was wrong with him.
23 I had never seen him act like that.

24 Q. You had never seen him act like that
25 before?

RANDY WRIGHT - DIRECT EXAM BY MR. DAVIS

1 A. No.

2 Q. Now, the two sons, Adam and Shawn, I
3 think?

4 A. Yes, sir.

5 Q. Did they go into the store with you?

6 A. No, sir.

7 Q. So you were the only individual that
8 went into the store?

9 A. Yes.

10 Q. And after you left the store, tell the
11 jury what happened.

12 A. We got -- I went and got back in my
13 truck. We went to leave the country corner store,
14 I pulled out on the road, on 6, headed to my house.
15 And, like I said, it was dusk out there --

16 Q. I want to stop you. Did you get served
17 before Jimmy Taylor, or did Jimmy Taylor get served
18 before you in that store?

19 A. I got served before he did.

20 Q. So you left before him?

21 A. Yes, sir.

22 Q. Go ahead.

23 A. So, anyway, I pulled out and continued
24 on to home, and it was dusk/dark. There was a lady
25 walking with a baby on the side of the road.

RANDY WRIGHT - DIRECT EXAM BY MR. DAVIS

1 Q. 176?

2 A. Highway 6. And the grass was high, so
3 I was scared she was going to get snake bit, and so
4 I stopped and asked if she needed a ride. I told
5 my boys they would have to get in the back if I
6 have to take her somewhere. She told me, no.

7 She said, my husband is back at the
8 store raising cane. If she gets in a vehicle with
9 somebody and he sees her, there's going to be
10 trouble. I said, okay, I tried. And so she
11 declined the ride.

12 So I turned around. At that point when
13 I turned around back down 6, that's when Mr. Taylor
14 happened to get behind me.

15 Q. How did you know it was Mr. Taylor?

16 A. I didn't know at that point until we
17 got on Cooper Store Road. I knew the same truck
18 was behind me. We got on Cooper Store Road, and he
19 kept getting up on my bumper.

20 Q. What do you mean he kept getting up on
21 your bumper?

22 A. He'd rush up on my bumper, stay there,
23 you know, real close. So, anyway, I continued on
24 until I made my turn on Rainbow Acres. I put my
25 blinker on and went to turn in, and just as I

RANDY WRIGHT - DIRECT EXAM BY MR. DAVIS

1 turned in, something hit the back of my truck.

2 Q. Here you're about to turn onto Rainbow
3 Acres, which would take you to a Pot of Gold where
4 you live, and that's when the bottle impacted the
5 back of the truck?

6 A. Yes, sir.

7 Q. Tell the jury what you did after that.

8 A. He had passed -- once he passed, I
9 noticed the truck. He went on down the road and
10 put a left on to go into his driveway. And I told
11 my sons, I want to find out what his problem was
12 with me. But I never -- me and him ain't never had
13 any problems, so I didn't know. You know, I've
14 been to his house and worked on the truck.

15 At that time, I didn't figure anything
16 was going to happen. So I went on up there and I
17 pulled up and I walked to the truck where Jimmy
18 was. And he had the door open and he had the back
19 seat folded up and had his foot inside the truck
20 like he was waiting.

21 And I just walked up there and asked
22 him, I said, what's your problem with me? What
23 have I done to you? And he was -- you could tell
24 he was intoxicated. And he reached behind the seat
25 and grabbed a club and told me, I will show you

RANDY WRIGHT - DIRECT EXAM BY MR. DAVIS

1 what the MF I will do to you, like that.

2 And then about that time -- before that
3 point I told my boys to stay in the truck, I was
4 just going to see what was wrong with Jimmy. And
5 as I did, one of my sons had come beside me. And I
6 told him, I said, Jimmy, it ain't going to be like
7 this. And he said, I'm going to show you.

8 And he squared back and caught me in my
9 kneecap with the club. At that point, I told him,
10 whoa, whoa, stop, you know. And my oldest son told
11 him, Jimmy, you ain't got to be hitting nobody with
12 that, and he caught him in the ribs with it. And
13 about that time, my other son had come up.

14 I was there first before either one of
15 them. And when they come up, Jimmy said, I'm going
16 to get my gun and shoot all of you MFers, like
17 that. And then he started coming at me again with
18 the club. And once he went to swing on me again,
19 the only thing I could do was grab him around the
20 waist to keep him from hitting me.

21 Once I did that, he got the club under
22 my throat and he had his other forearm choking me.
23 There wasn't nothing I could do. And I kept trying
24 to get out my breath that you're choking me, I
25 can't breathe, I can't breathe. The more I did,

RANDY WRIGHT - DIRECT EXAM BY MR. DAVIS

1 the harder he got.

2 So at that point my sons asked him to
3 let me go. He wouldn't let me go. So they started
4 pulling on him, telling him to let me go, and he
5 would not let go. And I don't know what happened,
6 you know, a little bit before that because I almost
7 passed out he was choking me so hard.

8 So after that I'm not -- everybody hit
9 the ground. And once I got up and everybody
10 stopped, he got up and he was going through his
11 gate to his house. I didn't know what kind of
12 condition he was in because I was on the bottom.
13 And he said he was going to get his gun.

14 Q. Okay. Did you hit --

15 A. I never got a chance to.

16 Q. Never did?

17 A. Never did.

18 Q. But apparently somebody hit Jimmy?

19 A. I was on the bottom of the pile. I
20 can't tell you.

21 Q. Apparently, one of your boys, or both
22 of your boys did strike coming to your defense?

23 A. Yes, sir.

24 Q. And now, you know -- do you recall --
25 you were in the courtroom the whole week when

RANDY WRIGHT - DIRECT EXAM BY MR. DAVIS

1 Mr. Williams testified?

2 A. Uh-huh.

3 Q. Do you recall him or any manner -- in
4 any manner whatsoever?

5 A. No, sir. There wasn't nobody there.

6 Q. You don't recall that?

7 A. No, sir.

8 Q. The words you last hear, he was going
9 to get his gun?

10 A. Yes.

11 Q. And after you left, what did you do?

12 A. I told my sons -- once he got up and
13 went to go to his trailer to get his gun, I told
14 them, I said, let's go because this ain't worth it.
15 Somebody is going to get killed is what I told
16 them.

17 You know, we just walked back to my
18 truck and turned around and went home. At that
19 point when he went walking into the trailer, like I
20 said, it was dark. I didn't know that he had that
21 much --

22 Q. You didn't know the extent of his --

23 A. I did not know.

24 Q. Did you strike Jimmy Taylor at any
25 time?

RANDY WRIGHT - DIRECT EXAM BY MR. DAVIS

1 A. No.

2 Q. You did grab him though?

3 A. Around the waist.

4 Q. Why did you grab him?

5 A. He was getting ready to hit me again
6 with that club.

7 Q. And you and I've had this discussion,
8 why did you follow him after you were about to turn
9 into your driveway and drive the road to take you
10 home?

11 A. That was poor judgment; I shouldn't
12 have. That was -- I shouldn't have.

13 Q. Okay. Did you approach him in any
14 threatening manner whatsoever?

15 A. No, I didn't. I just asked him what
16 have I done to him.

17 Q. And you hadn't done anything to provoke
18 any incident from what took place in the country
19 store?

20 A. No, sir.

21 Q. Had you been drinking that afternoon?

22 A. No, sir.

23 Q. Now, you went home and you shared it
24 with your family apparently?

25 A. Yes, I did.

RANDY WRIGHT - DIRECT EXAM BY MR. DAVIS

1 Q. And did you seek any medical treatment
2 in relation to what happened to you?

3 A. No, I didn't.

4 Q. What kind of injuries, if any, did you
5 receive?

6 A. He got my kneecap, busted it open on my
7 left leg.

8 Q. You shared that with Officer Ward --

9 A. Yes, I did.

10 Q. -- as part of her investigation. Did
11 she at any time make a decision to take any
12 pictures when she saw your property some 11 days
13 later?

14 A. No.

15 Q. What was your understanding then after
16 that night? What was your understanding?

17 A. I thought it was over with.

18 Q. Okay. And so on April -- I'm sorry,
19 strike that, on August 19th, how did you learn that
20 someone from the sheriff's office wanted to discuss
21 this how? Tell me how you got into that process.

22 A. I wasn't at home when they come. I
23 wasn't at home when they had come to serve a
24 warrant, as I understood it.

25 Q. And so you went and turned yourself in?

RANDY WRIGHT - DIRECT EXAM BY MR. DAVIS

1 A. Yes.

2 Q. And when they took the swab, at that
3 point you turned yourself in and volunteered that
4 also?

5 A. Yes.

6 Q. When you turned yourself in and you
7 provided that statement, that was about some 11
8 days after the incident; isn't that correct?

9 A. Yes, sir.

10 Q. And no one from the sheriff's office
11 had come to you on August 9th, August 10, 11, 12,
12 13, 14, 15th -- until the 19th; isn't that right?

13 A. Yes.

14 Q. And you were not represented by
15 counsel?

16 A. No, sir.

17 Q. And you signed what we call a Mirada
18 statement that I have the absolute right to remain
19 silent and do not have to answer any questions or
20 give any statements and this cannot be used against
21 me; that if I answer a statement or give a
22 statement, anything I say can and will be used
23 against me in a court of law. Anything you said?

24 A. Yes.

25 Q. That I have the right to consult with a

RANDY WRIGHT - DIRECT EXAM BY MR. DAVIS

1 lawyer of my choice before I answer questions or
2 give a statement and also have him present while
3 being questioned; that if I wish to talk to a
4 lawyer and have him present but unable to afford to
5 hire a lawyer, one will be appointed to represent
6 me free of charge.

7 You initialed those things and then you
8 still went and shared what happened?

9 A. Yes, sir.

10 Q. Have you ever been interrogated before
11 by law enforcement?

12 A. No, sir.

13 Q. You had never been through that process
14 before?

15 A. No, sir.

16 Q. And it took place at the sheriff's
17 office?

18 A. Yes, sir.

19 Q. And how long would you say that process
20 took?

21 A. Probably about an hour.

22 Q. Do you recall speaking to Detective
23 Ward?

24 A. Uh-huh.

25 Q. And Detective Ward in her statement

RANDY WRIGHT - DIRECT EXAM BY MR. DAVIS

1 said initially you denied even being engaged in any
2 altercation. Tell us about that.

3 A. Whenever they started asking me
4 questions, you know, she was -- they was asking me
5 what kind of truck, make and model, color did I
6 drive. And I told them.

7 And then they said, okay, now you
8 started proceeding on Cooper Store Road toward Mr.
9 Taylor's house. And right then I said, no, you
10 have it all messed up right from the start. And
11 that I didn't want, you know, for it be all mixed
12 up like that.

13 That's why I did the interview, but
14 then once they settled down and calmed down, I went
15 ahead and give the interview.

16 Q. And what do you mean -- do you mean,
17 then they calmed down, they did not prejudge what
18 you were about to say?

19 A. Exactly.

20 Q. And then you shared with them what took
21 place?

22 A. Yes, I did.

23 Q. And there is no question that you told
24 them that Mr. Jimmy Taylor hold up these two beer
25 bottles or large beer containers inside the store?

RANDY WRIGHT - DIRECT EXAM BY MR. DAVIS

1 You shared that with them?

2 A. Yeah.

3 Q. And you also shared with them that this
4 is where it all began?

5 A. Yeah, that's what I said.

6 Q. Did they ask you about, Mr. Randy
7 Taylor (sic), did you have any beef with Mr. Taylor
8 or anything in that regard?

9 A. No.

10 Q. Did they ask you to -- or show any
11 pictures that they had taken of Mr. Jimmy Taylor's
12 vehicle claiming that you had struck that vehicle
13 and caused damage to the front light in any regard?

14 A. No, sir.

15 Q. Okay.

16 A. They didn't check mine.

17 Q. Nobody checked your vehicle at all?

18 A. No, sir.

19 Q. Randy, there's no question that you and
20 your sons have got in a brawl or confrontation with
21 Jimmy Taylor.

22 A. Yes.

23 Q. Can you tell us why?

24 A. I still can't tell you why.

25 Q. Sir?

RANDY WRIGHT - DIRECT EXAM BY MR. DAVIS

1 A. I still can't tell you why.

2 Q. Still can't tell you why. You work
3 that complete day?

4 A. Yes..

5 Q. Could you tell whether Jimmy had been
6 drinking that day on August 8, 2015?

7 A. Yes, sir, I could.

8 Q. And what would you say in that regard?

9 A. The way he acted in the store, and then
10 once I approached him, the staggeriness (sic) and
11 stuff that he had.

12 Q. Is there anything else that you think I
13 may have neglected to share with this jury that you
14 want to share with them? This is your only shot.

15 A. No, sir. Like I said, I had poor
16 judgment. I'm sorry it happened. I wish it never
17 would have happened. I mean, I can't -- you know,
18 being on the bottom of the pile, I can't do
19 nothing, but if I had to do it again, I would have
20 chose not to go up there.

21 Q. Had you ever been in mutual combat with
22 anybody before -- you have a reputation for
23 fighting?

24 A. No, sir. No, sir.

25 Q. How much do you weigh?

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RANDY WRIGHT - CROSS EXAM BY MR. MCNEELY

1 A. I weigh 120 pounds.

2 Q. Would you allow your boys to engage in
3 an invitation to fight just for the sake of it?

4 A. No, sir.

5 Q. Would you park your vehicle across from
6 the country store and lie in wait until someone
7 come out and then invite them or create a situation
8 that causes us to be here today?

9 A. No, sir.

10 Q. Is that in your character?

11 A. No, sir. If he hadn't hit my truck
12 that night with a beer bottle, none of this would
13 have happened.

14 MR. DAVIS: No further questions.

15 THE COURT: Cross-examination.

16 MR. MCNEELY: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. MCNEELY:

19 Q. Good afternoon, Mr. Wright.

20 A. Afternoon.

21 Q. You live in Rainbow Acres?

22 A. Yes, sir.

23 Q. You live with your family?

24 A. Yes, sir.

25 Q. You have a white truck?

RANDY WRIGHT - CROSS EXAM BY MR. MCNEELY

1 A. Uh-huh.

2 Q. Mr. Davis brought up that you had a DUI
3 conviction from eight or nine years ago?

4 A. Uh-huh.

5 Q. Did they take you to jail when you got
6 arrested for that?

7 A. Yes.

8 Q. Did you spend the night?

9 A. Yes, sir.

10 Q. You testified just a few minutes ago
11 you never spent a night in jail until last night;
12 is that not true?

13 A. Trying to think. No, I didn't spend
14 the night. I'm sorry.

15 Q. You knew Jimmy Taylor, correct?

16 A. Yes, sir.

17 Q. Worked on his truck?

18 A. Uh-huh.

19 Q. Mr. Davis was questioning you about the
20 night of August 8th, 2015. You stated that your
21 sons Adam and Shawn were with you that night; is
22 that right?

23 A. Uh-huh.

24 THE COURT: Sir, you need to answer yes
25 or no, please, instead of uh-huh.

RANDY WRIGHT - CROSS EXAM BY MR. MCNEELY

1 THE DEFENDANT: No. I had stated that
2 my other son was with me, Randy. Shawn was with
3 me. I wrote Randy, but it was Shawn.

4 BY MR. MCNEELY:

5 Q. So Shawn was with you?

6 A. Yes.

7 Q. But when you wrote the statement for
8 Detective Ward you said Adam and Randy were with
9 you?

10 A. Yes.

11 Q. That wasn't true?

12 A. Shawn was with me. I got mixed up. I
13 got the names mixed up.

14 Q. You get the kids mixed up a lot?

15 A. Yes, sir, I sure do.

16 Q. And you testified and wrote in the
17 statement -- well, first off, when Detective Ward
18 questioned you on August 19th, you denied being in
19 any altercation on August 8th; did you not?

20 A. I didn't deny it, no.

21 Q. Were you sitting there when she
22 testified that you denied being in an altercation
23 on that night?

24 A. Yes.

25 Q. Ms. Ward is not telling the truth to

RANDY WRIGHT - CROSS EXAM BY MR. MCNEELY

1 this jury?

2 A. Once they started telling me about what
3 was going on before I could tell them what was
4 going on, that's when I stopped.

5 Q. You changed your story when she told
6 you that Jimmy Taylor identified you, didn't you?

7 A. No, I didn't.

8 Q. Well, going from not being in an
9 altercation on August 8th to being in an
10 altercation after your name was identified by the
11 victim, is that --

12 A. I wrote it down. It's wrote down in my
13 report.

14 Q. No question this happened in Jimmy
15 Taylor's driveway, correct?

16 A. Yes, sir, it did.

17 Q. Before that you testified and wrote in
18 your statement that he hit the back of your truck
19 with a beer bottle from behind you?

20 A. Yes, sir.

21 Q. What is the speed on Cooper Store Road?

22 A. It goes from 45 to 55.

23 Q. And he was driving on the road when
24 this happened?

25 A. Yes, sir, he was.

RANDY WRIGHT - CROSS EXAM BY MR. MCNEELY

1 Q. Do you know if Mr. Taylor ever played
2 professional baseball?

3 A. I don't know.

4 Q. I imagine the Braves might want him if
5 he can throw a beer bottle and hit the back of your
6 truck at 50 miles per hour. That would be pretty
7 quick, wouldn't it?

8 A. He was on my bumper, and I was having
9 to make a right turn, and I ain't doing but 20 to
10 turn down my road.

11 Q. Did you take any pictures of the damage
12 to your truck?

13 A. No, I didn't.

14 Q. You went up into Jimmy Taylor's
15 driveway, correct?

16 A. Yes.

17 Q. While he was getting out --

18 A. He was already out.

19 Q. Near the gate in his driveway?

20 A. Yes, sir.

21 Q. You testified that he hit you in the
22 kneecap with the bat?

23 A. Yes, sir. I didn't say a bat; I said
24 it was a club. It wasn't a bat; it was a club.

25 Q. Describe it.

RANDY WRIGHT -- CROSS EXAM BY MR. MCNEELY

1 A. It was round, about that long.

2 (Indicating)

3 Q. What was it made out of?

4 A. I don't know if it was pine or what it
5 was. It was made out of wood.

6 Q. Wood?

7 A. Yeah.

8 Q. And you testified that he choked you
9 with it?

10 A. Yes, he did.

11 Q. And you almost passed out?

12 A. Yes, I did.

13 Q. When Detective Ward interviewed you,
14 you said you didn't have any injuries?

15 A. I told her. I tried to show them to
16 her. They wouldn't look at my knee. I tried to
17 show them.

18 Q. She asked you specifically about
19 injuries, and your testimony to this jury is you
20 tried to show them your knee and they wouldn't look
21 at it?

22 A. I told them, I said, do you want to see
23 my leg where he hit me? And they kept going on
24 with the interview, so...

25 Q. Did you get any medical treatment for

RANDY WRIGHT - CROSS EXAM BY MR. MCNEELY

1 it?

2 A. No, sir.

3 Q. Did you take any pictures of it?

4 A. My daughter did on her phone, but that
5 was two years ago, and they got -- somehow all the
6 pictures got deleted.

7 Q. So you don't have any pictures of this
8 alleged injury?

9 A. No. They said they could get them,
10 people said they can retrieve them somehow.

11 Q. You don't have them here today?

12 A. No.

13 Q. And you testified that while Jimmy was
14 on top of you, he had the club around your neck
15 choking, correct?

16 A. Yes.

17 Q. And while that happened, that's when
18 your sons, Adam and Shawn hit Jimmy?

19 A. They were trying to get him off of me,
20 trying to keep him from choking me.

21 Q. You saw the injuries to Jimmy Taylor's
22 head, correct?

23 A. Yes.

24 Q. Well, if he's got the club while they
25 were hitting him, what did they hit him with?

RANDY WRIGHT - CROSS EXAM BY MR. MCNEELY

1 A. I have no idea.

2 Q. I think it's pretty safe to say those
3 injuries weren't caused by fists; is it not?

4 A. Some of them looked like they probably
5 wouldn't.

6 Q. You went up Mr. Taylor's driveway
7 first?

8 A. Yes.

9 Q. And the boys followed?

10 A. Yes.

11 Q. To confront him in his driveway?

12 A. Yes, sir.

13 Q. You didn't go to the emergency room for
14 any injuries you received?

15 A. No.

16 Q. Did you make a report to law
17 enforcement about the incident?

18 A. No. I thought it was over.

19 Q. But you got cracked in the kneecap with
20 a club and got choked until you passed out, and you
21 didn't make any report to law enforcement.

22 A. No.

23 Q. The first contact you had with law
24 enforcement was on August 19, 2015, that's right?

25 A. Yes.

RANDY WRIGHT - REDIRECT EXAM BY MR. DAVIS

1 MR. MCNEELY: No further questions from
2 the State.

3 THE COURT: Any redirect?

4 REDIRECT EXAMINATION

5 BY MR. DAVIS:

6 Q. Anything prevent you from owning a gun?

7 A. No, sir.

8 Q. You can have a concealed weapon if you
9 want one?

10 A. Yes, sir.

11 MR. MCNEELY: Your Honor, I object to
12 this line of questioning. It's irrelevant and
13 outside of the scope.

14 THE COURT: Sustained.

15 BY MR. DAVIS:

16 Q. You'd never been confronted with this
17 situation before, had you?

18 A. No, sir.

19 Q. In relationship to where the incident
20 took place, was it on the driver's side or the
21 passenger side?

22 A. It was on the driver's side of his
23 truck.

24 Q. And his gate that we see repeatedly on
25 the high fence --

RANDY WRIGHT - REDIRECT EXAM BY MR. DAVIS

1 A. Yes.

2 Q. -- that gate was still shut?

3 A. Yes.

4 Q. He had not entered into actually the
5 enclosure of his property?

6 A. Yes, he did enter. He walked into his
7 house where he said he was going to get his gun.

8 Q. Where did -- when you talked to him to
9 first confront him, was this behind the fence or on
10 the outside of the fence?

11 A. At the point when he turned around and
12 opened the gate and said he was going to get the
13 gun, I told my boys, let's go.

14 Q. Wait a minute now. The fight took
15 place near his vehicle, or where --

16 A. Near his vehicle.

17 Q. Okay. On the --

18 A. Driver's side.

19 Q. Driver's side. And it's your testimony
20 you never struck --

21 A. No, never touched him other than to
22 grab him around the waist.

23 Q. Grabbed him around the waist. And you
24 all went down to the dirt?

25 A. Yes, sir.

1 MR. DAVIS: Okay. Thank you.

2 THE COURT: You may step down, sir.

3 You may call your next witness.

4 MR. DAVIS: We rest, Your Honor.

5 THE COURT: Ladies and gentlemen of the

6 jury, both parties have rested their case. Before

7 we go into closing argument and charge, we would

8 take a brief recess so we can prepare accordingly.

9 We'll be back with you in five minutes

10 or so. Please remember my previous instructions

11 not to discuss this case amongst yourselves. Thank

12 you.

13 (Jury out, 3:10 p.m.)

14 THE COURT: We'll be at ease.

15 MR. MCNEELY: The charge is remaining

16 as is, correct?

17 THE COURT: Correct.

18 MR. MCNEELY: It's my understanding now

19 with closing that I do my closing in its entirety,

20 Mr. Davis then closes, and I get a brief rebuttal.

21 THE COURT: Right, just can't bring up

22 anything new.

23 MR. DAVIS: Thank you, Your Honor.

24 THE COURT: Let's have the jury,

25 please.

CLOSING ARGUMENT BY THE STATE

1 (Jury in, 3:40 p.m.)

2 THE COURT: Welcome back, ladies and
3 gentlemen of the jury. We are now ready to proceed
4 with closing arguments. You may proceed,
5 Solicitor.

6 MR. MCNEELY: Thank you, Your Honor.

7 Good afternoon, ladies and gentlemen.

8 I would like to thank you again for your service
9 during this trial. We are almost to the end. In a
10 few moments when I'm finished speaking and
11 Mr. Davis is finished speaking, you're going to
12 hear from the judge on the law. It will be your
13 job to apply the law to the facts that you have
14 gleaned from this trial.

15 Before we do that, we'll go back over
16 what I think the evidence says. Mr. Davis will do
17 the same. She's going to instruct you, but I will
18 remind you now, what I say and what Mr. Davis says
19 is not evidence. The evidence you heard came from
20 the witness stand and is laid out on this table and
21 it's gleaned from your perceptions.

22 What I'm going to tell you now is my
23 interpretation of what the evidence is. The
24 Defendant in this case, Randy Wright, is charged
25 with assault and battery of a high and aggravated

CLOSING ARGUMENT BY THE STATE

1 nature. I told you yesterday, and I will tell you
2 again, assault and battery of a high and aggravated
3 nature, or ABHAN for short, a person commits the
4 offense of assault and battery of a high and
5 aggravated nature if they unlawfully injure another
6 person and great bodily injury to another person
7 results, or the act is accomplished by means likely
8 to produce death or great bodily injury.

9 That's the crux of this case, ladies
10 and gentlemen. The second this Defendant and his
11 sons bashed Jimmy Taylor over the head with a club
12 or a pipe or a jack handle or a bat, whatever it
13 was we don't know because they took it with them,
14 this is an ABHAN. Split his head wide open and
15 could have easily killed him.

16 Great bodily injury means injury which
17 causes a substantial risk of death or which causes
18 serious permanent disfigurement or protracted loss
19 or impairment of a function of a bodily member or
20 organ. I will talk about this more later, but you
21 heard from Wendy Griffith this morning, not too
22 long ago.

23 She sat right there and told you, one
24 of those licks could have made him a vegetable for
25 the rest of the life. One of them could have

CLOSING ARGUMENT BY THE STATE

1 killed him. He took multiple blows to the head
2 body with that object.

3 The hand of one is the hand of all.

4 When a crime is committed by two or more people who
5 are acting together, the act of one is the act of
6 all. What Mr. Wright did and what his sons did
7 that day, they're all in it together. They're
8 responsible -- Mr. Wright is responsible for each
9 and every strike that he threw and that his sons
10 threw. They were all there together. It was a
11 coordinated assault.

12 She's going to instruct you about
13 reasonable doubt. I think I mentioned it on
14 Tuesday -- or Wednesday rather. Reasonable doubt
15 is not beyond all reasonable doubt. It's not
16 absolute certainty. It's the old saying, death and
17 taxes, that's what we know with absolute certainty.

18 Reasonable doubt is doubt that would a
19 reasonable person to hesitate to act. If the
20 evidence leaves you firmly convinced that the
21 Defendant is guilty, then you must find the
22 Defendant guilty. Again, it's not an absolute
23 certainty.

24 You're going to be charged on several
25 lesser included offenses. I will go over them with

CLOSING ARGUMENT BY THE STATE

1 you now just briefly. You're only to consider the
2 lesser included offenses if you first find that
3 this was not an ABHAN. If you find this is an
4 ABHAN as charged, that he's guilty of this crime,
5 you stop there. If you find it wasn't an ABHAN,
6 then you consider the lesser included offenses.

7 Assault and battery, first degree. A
8 person commits the offense of assault and battery,
9 in the first degree, if the person offers or
10 attempts to injure another person with present
11 ability to do so and the act is accomplished by
12 means likely to produce death or great bodily
13 injury.

14 It sounds kind of confusing when you
15 think about it with ABHAN, but it's really simple
16 when you think about it. If the person is injured
17 and the means by which it was accomplished could
18 have caused death or great bodily injury, it's an
19 ABHAN.

20 If they tried to injure the person, but
21 didn't injure them, and the means could have caused
22 great bodily injury, then it can be an A&B first.
23 If they took a swing at Jimmy's head with a pipe
24 and missed, or just hit his arm and grazed his arm,
25 and he wasn't really hurt, then we would talking

CLOSING ARGUMENT BY THE STATE

1 about an A&B first.

2 That's not what we're talking about
3 here. We're talking about a man who had his head
4 split wide open up in multiple places and could
5 have easily been killed.

6 A&B second degree, below A&B first,
7 obviously. A person commits the offense of assault
8 and battery in the second degree if the person
9 unlawfully injures another person or offers or
10 attempts to injure the person and moderate bodily
11 injury to another person results or moderate bodily
12 injury could have resulted. So if the act was
13 accomplished by means that weren't likely to
14 produce death or great bodily injury, but could
15 produce moderate bodily injury, then that's an
16 assault and battery second.

17 By way of example, if this had just
18 been a fistfight, then we would be talking about an
19 A&B second. You're not going to split somebody's
20 head open, like Jimmy's was, or cause those
21 contusions to his side if you're just talking about
22 a fistfight. This was a multiperson attack on
23 Jimmy with a weapon. A&B second doesn't apply.

24 But moderate bodily injury, just so you
25 know, means physical injury that involves prolonged

CLOSING ARGUMENT BY THE STATE

1 loss of consciousness or causes temporary moderate
2 disfigurement, or temporary loss of the function of
3 a bodily member or organ, or that requires medical
4 treatment when the treatment requires the use of
5 regional or general anesthesia or either results in
6 a fracture or dislocation.

7 And notice, I'm going back, requires
8 medical treatment with regional or general
9 anesthesia. It does not include one-time treatment
10 and subsequent observation of scratches, cuts,
11 abrasions, bruises, burns, splinters or any other
12 minor injuries that do not require critical care.

13 If you look at this case in a vacuum --
14 I'm certain defense attorney is going to argue this
15 -- and you just look at Jimmy's injuries as to what
16 was the result, what were his injuries, then his
17 injuries probably meet the definition of moderate
18 bodily injury. But that's because he was lucky.
19 Not because that's what this would have normally
20 resulted in.

21 The means by which Jimmy was caused
22 injury could have easily killed him. That's why
23 it's an ABHAN, not an A&B second. If you get back
24 there and you disagree that a blow to the head with
25 a pipe like that could have killed a man or

CLOSING ARGUMENT BY THE STATE

1 seriously maimed him, and you find he only had
2 moderate bodily injury, then it's an A&B second. I
3 don't think that's what the evidence shows, but you
4 will be allowed to consider that.

5 Finally, you will be able to consider
6 A&B third. A person commits the offense of assault
7 and battery in the third degree if they injure
8 another person or offer to attempt to injure
9 another person. That means injury that doesn't
10 meet the level of moderate bodily injury, a minor
11 scrape, a touch; and it doesn't definitely meet the
12 definition of great bodily injury.

13 Those are the lesser includeds that
14 you're going to be allowed to consider. As I've
15 said throughout, the lesser includeds just don't
16 apply in this case. This was an ABHAN. Jimmy
17 could have been killed; there was a weapon
18 involved; he got bashed in the skull with it.

19 The defense throughout this case threw
20 out a lot of red herrings, a lot of stuff that
21 doesn't matter, a lot of stuff intended purely to
22 distract from the fact that Jimmy was beaten within
23 an inch of his life, but for Dale Williams walking
24 outside to stop them.

25 Jimmy drank some beers that night. I

CLOSING ARGUMENT BY THE STATE

1 told you that right when Jimmy got up there. He
2 went to Los Arcos in Goose Creek and had a few
3 beers at dinner. It doesn't have anything to do
4 with anything. He's a grown man, an adult.

5 Jimmy may have told EMS initially that
6 he didn't want to go to the hospital. He was
7 beaten in the head multiple times. He was
8 disoriented everybody testified who saw him. He
9 didn't know what was going on. He had no choice
10 due to his injuries. He was bleeding like a stuck
11 pig. He's not not going to go to the hospital and
12 go sleep it off.

13 Jimmy didn't lodge any complaints to
14 medical staff about his treatment a week after the
15 incident. It notes no complaints in the second set
16 of medical records, but he didn't have any
17 complaints about the way he was treated a week ago.
18 I'm sure he had a few complaints about being bashed
19 in the skull and kicked in the side and beaten with
20 a club all over. These have nothing to do with
21 anything, and that's what they want you to focus
22 on.

23 Let's talk about the Defendant's
24 statement for a minute. Let's talk about his
25 statement first that was introduced and then we'll

CLOSING ARGUMENT BY THE STATE

1 talk about the testimony you heard. It's nothing
2 but lies and coverup. When he was asked about the
3 -- if he was involved in an altercation, his first
4 statement wasn't what he told you today. It was, I
5 wasn't involved in any altercation that night. I
6 just went home.

7 And then when Detective Ward confronted
8 him with the fact that Jimmy Taylor specifically
9 identified him, a man he knew from before as the
10 person that assaulted him, he changed his story for
11 the first time.

12 Jimmy threw a bottle at my truck. I
13 was involved in an altercation that night in Jimmy
14 Taylor's driveway, but he started it. Jimmy
15 started hitting me with a club; my sons had to come
16 and rescue me. Shawn wasn't there at all. It was
17 me, Adam, and my other son, Randy, Junior.

18 We know that changed today, and I will
19 get to that in a minute, but let's look at this.
20 This story, if you read it on his statement and
21 think about it, this is Jimmy's story. He knows
22 because he was there and involved in this assault.

23 Once he's caught -- once he's caught by
24 law enforcement as involved in this incident, he
25 knows all the details, and they didn't tell him.

CLOSING ARGUMENT BY THE STATE

1 All he's done is taken Jimmy's story, the facts,
2 and flipped them and blamed them on Jimmy.

3 Oh, I was there now, you're right, but
4 Jimmy had a club. Jimmy hit me. He started it in
5 his driveway. My sons had to come to my rescue.
6 Shawn wasn't there at all. It was me, Adam, and
7 Randy, Junior. It's full of holes and lies and
8 it's a coverup. It's obvious when you read it.

9 Then he testified today, now all of a
10 sudden, Shawn was there because there's been DNA
11 evidence to prove that he was there. Jimmy hit him
12 with a club in the kneecap, cracked him with a
13 wooden club in the kneecap and choked him to nearly
14 passing out, but he didn't need medical attention.
15 He didn't report it to law enforcement.

16 You better believe if somebody cracks
17 me in the kneecap with a club and chokes me half to
18 death, and I didn't have anything to do with it,
19 the first person I call is the police. He didn't
20 call the police because that's not what happened.

21 He didn't go to the hospital because he
22 wasn't injured. The only person injured was Jimmy
23 Taylor; and he was more than just a little injured.
24 This was a coordinated attack on Jimmy by the
25 Defendant and his sons.

CLOSING ARGUMENT BY THE STATE

1 No report made to law enforcement; no
2 injury at all to the Defendant. DNA evidence shows
3 that he lied to Detective Ward. Shawn was there;
4 he was wearing that visor just like Jimmy said.

5 Now let's talk about the facts of what
6 really happened that night. You heard them from
7 Jimmy, his story has been consistent the entire
8 time, and it's corroborated by all the other
9 evidence in this case.

10 On August 8, 2015, Jimmy Taylor was
11 brutally assaulted in his own driveway by this
12 Defendant and his sons. During the assault, he was
13 hit in the head with a long object, a jack hammer,
14 a pipe, a bat, repeatedly. We can't tell you what
15 it was because they took it with them. He just
16 knows it was long and hard and caused him
17 significant injury.

18 The assault was likely to result in
19 death or great bodily injury to the victim, Jimmy
20 Taylor. Luckily for him, though, it was stopped
21 when Dale Williams walked outside.

22 You've have seen this photo; it's in
23 evidence as Exhibit 2. I've just added a little
24 marker right here for the victim's residence. It's
25 kind of hard to see because of all the trees. This

CLOSING ARGUMENT BY THE STATE

1 is the Williams' residence; this is Jimmy's
2 residence; this is the driveway. (Indicating)

3 This is a very high picture. That is
4 no short driveway, and they were all the way up in
5 it.

6 Dale Williams, he was the first person
7 to testify. He was sitting at home in his living
8 room, just inside the front door, and Maggie, the
9 dog, growls and alerted him that something's wrong.
10 It's unusual, so he stepped out. And what did he
11 see at the time? Exactly what Jimmy told you too.
12 He saw three people standing over Jimmy in his
13 driveway while he was laying on the ground. He had
14 an unobstructed view of it.

15 The three people ran away and got into
16 a truck and drove away when they say that he was
17 outside. None of them appeared injured at all, yet
18 the Defendant testified that he'd been cracked in
19 the kneecap, choked half to death, and his son was
20 cracked in the ribs, but they can all three run
21 swiftly to the truck and drive away. It doesn't
22 add up because that's not what happened.

23 Jimmy was hollering for someone to call
24 911. Jimmy stepped into the security light, and he
25 was covered in blood. That's not a paper cut.

CLOSING ARGUMENT BY THE STATE

1 That is soaked through with blood. You can take it
2 back to the jury room and look at it. He made it
3 to the porch; he was bleeding profusely from the
4 head. His shirt was so soaked they had to go get
5 towels to try to help him.

6 EMS came to the scene. Jimmy told them
7 right then and there on the front porch bleeding
8 all over the Williams' front porch swing what
9 happened. It was Randy and his two sons, and they
10 live in Rainbow Acres. His story has been the same
11 since five seconds after this happened.

12 Deanna Williams, she stayed inside
13 because she was scared, and rightfully so. She
14 called 911 and tried to calm Jimmy down. He was
15 disoriented, scared to death. He made it to the
16 porch, and they got towels to help him. EMS came
17 and took him. Jimmy told her; you heard it on the
18 911 tape; you can hear Jimmy in the background.

19 If you want to listen to it again,
20 you're welcome to. She's asking him, who is it
21 Jimmy? What happened? It was Randy and his two
22 sons, and they live in Rainbow Acres. Jimmy's said
23 the same thing since it happened.

24 And, finally, you heard from Jimmy.
25 Unfortunately, there wasn't an eyewitness to the

CLOSING ARGUMENT BY THE STATE

1 entire assault. This would be a lot easier if
2 there was. Everything that you heard, the evidence
3 adds up to tell you that what Jimmy told you on the
4 stand is the truth. Jimmy knows the Defendant and
5 his sons.

6 They approached him angrily in the
7 grocery store several months before, the Defendant
8 did. He said in an aggressive manner, you better
9 quit talking about my family.

10 They didn't like each other
11 particularly. That's the motive for this crime. I
12 don't know when that goes for some people,
13 particularly this Defendant, from I don't like
14 somebody to I'm going to do what they did to Jimmy
15 in his driveway, but something -- something must
16 have been there.

17 On August 8, 2015, Jimmy Taylor had
18 been to Goose Creek that day shopping for work
19 clothes. He had dinner at Los Arcos and headed
20 home to Moncks Corner. Unfortunately, for Jimmy he
21 stopped at the Country Corner store to get gas and
22 sodas. He exited the parking lot and he saw the
23 Defendant and his sons lying in wait for him across
24 the street in the parking lot of an abandoned
25 building.

CLOSING ARGUMENT BY THE STATE

1 I don't know if anybody in the jury
2 ever drives out 6, but there's a brick building
3 just past the Country Corner store to the left.
4 It's been there the entire time I've lived here. I
5 don't know what it was, but that parking lot is
6 right there catty-cornered across from the Country
7 Corner store.

8 The Defendant pulled out right behind
9 him, he followed him closely until they turned onto
10 Cooper Store Road, and then he passed Jimmy. And
11 at that time the passenger in his car through a
12 bottle back to his vehicle.

13 Now, I'm no physicist, but when you're
14 traveling down the road, it's a lot easier to throw
15 something back and let it fall on something that's
16 moving forward -- like it did to Jimmy's car like
17 he told you -- than it is for Jimmy to left-hand
18 bottle rocket a beer bottle out of the back
19 passenger side of his window to a car that's
20 turning off the road. It just doesn't add up
21 because that's not what happened.

22 What happened is, they pulled in front
23 of Jimmy, and they were ticked off, and the
24 passenger, one of the sons, chucked a beer bottle
25 out of the back window, and it hit Jimmy's front

CLOSING ARGUMENT BY THE STATE

1 turn-signal light. They pulled off after that.

2 Jimmy didn't turn down Rainbow Acres. Jimmy wasn't
3 look for a fight. Nobody would be looking for what
4 happened to Jimmy. Jimmy just wanted to go home.

5 He went home, he pulled up into his
6 driveway, he got out like any other day to open his
7 gate and go inside. And that's when it happened.

8 See the driveway right here.

9 (Indicating) This is no short driveway. I wish my
10 driveway was that long. I could park six, eight
11 cars back to back in it. This is a 30-yard-long
12 driveway that turns off to the left. That's closer
13 up. (Indicating) You can see Jimmy's shed and
14 his gate right there.

15 Jimmy's all the way into his driveway.
16 His private property. He exits his vehicle to open
17 his gate, and right when he gets out of his truck,
18 the Defendant and his sons appear right on him at
19 his truck carrying a weapon, and they say, I'm
20 going to F you up. This man right here.

21 (Indicating)
22 He's not the largest man in the world,
23 but he's a big man when he's got two more people
24 than Jimmy does that are bigger than him. I'm
25 going to F you up. Jimmy gets smacked with a long

CLOSING ARGUMENT BY THE STATE

1 metal weapon, and his eye is split wide open. So
2 much that it's swollen shut immediately and
3 bleeding all over. He can't see.

4 The brutal assault continues. This
5 Defendant and his sons, Adam and Shawn, all hitting
6 him continuously at the same time all over his
7 body. Hit in the head repeatedly with a weapon.
8 You've seen the photos. A punch to the head
9 through your hair does not cause that injury.
10 That's a weapon striking his skull. Kicked all
11 over his body as he fell to the ground.

12 He tried to run. Continuous blows make
13 him fall. He's on the ground surrounded by the
14 Defendant and his sons getting repeatedly kicked
15 and hit, head split open and pouring blood. Right
16 here. He pointed it out to you. All the way up in
17 his driveway, he had gotten out to open his gate;
18 his truck is parked right here. He tried to run
19 around it and that's where he falls.

20 Call it luck or call it grace, Maggie,
21 the dog, Jimmy ought to buy her a lifetime supply
22 of Pedigree. Maggie hears what's going on and
23 Maggie growls and tells Dale Williams, something is
24 going on outside, you need to go and see what's
25 happening. And, luckily, Dale paid attention

CLOSING ARGUMENT BY THE STATE

1 because Maggie doesn't do that unless something is
2 wrong.

3 Dale walks outside; the Defendant and
4 his sons are standing over Jimmy laying in his
5 driveway. Dale Williams tells you exactly the same
6 thing that Jimmy does. As soon as they know Dale's
7 there, they run off, get in their truck, pull a
8 U-turn, take the weapon, nobody injured, head home.

9 This is just another view. It's where
10 Jimmy was assaulted laying in his driveway.
11 Probably going to get beat to death had Dale not
12 walked out. And this is the road. You can see how
13 far it is. They had to run back down there and get
14 their truck and leave. That's no short run.

15 If somebody is injured, they don't make
16 it that quick. Jimmy is pouring blood and screamed
17 for someone to call 911 and gets to his feet and
18 manages to make it over to the Williams'
19 blood-soaked shirt around his head. EMS arrives
20 and takes him to the hospital, and you've seen the
21 photos. (Indicating) That's no minor blow to the
22 eye. That's strike one with the pipe. Seven
23 centimeters long. That's no minor blow with a
24 fist.

25 Strike two to the head with a pipe.

CLOSING ARGUMENT BY THE STATE

1 (Indicating) Four to five centimeters long,
2 staples, no minor blow. That's a direct hit. Hit
3 three to the head with a pipe.

4 So much blood coming out of these
5 injuries that they can't even take him for x-rays
6 when he gets to the hospital. They have to give
7 him anesthesia and staple his head shut in three
8 places to even get him an x-ray. It's a miracle
9 that he's sitting in this courtroom today watching
10 this trial. Anesthesia required, and not just the
11 head and face. Enormous contusions to the body
12 that come from long blunt trauma, just like the
13 injuries to his head. See it right there. All
14 over him.

15 Wound repair, additional anesthesia
16 required, profuse bleeding noted. Extensive
17 cleaning required, sutured and stapled all over his
18 head. Sutures all along the front of his eye. Eye
19 completely swollen shut. Staples, 12 or more of
20 them to hold his head shut, staples and stitches.

21 This is no minor beating, folks. This
22 was an assault on Jimmy Taylor's life. Contusions
23 the full length of his torso. That's no minor
24 lick, ladies and gentlemen. That's the worst
25 bruise I have ever seen. Liver right here, kidney

CLOSING ARGUMENT BY THE STATE

1 right here. You heard Jimmy tell you he still has
2 kidney problems.

3 This is multiple days after the
4 incident. (Indicating) His eye completely
5 hemorrhaged, still covered, swollen, stitches still
6 in. Look at that now. His entire side is black.
7 This is over a week after. His entire side is
8 still black.

9 What you can gather from the facts,
10 Jimmy's statement never changes. Jimmy's statement
11 is corroborated by every other bit of evidence in
12 this case: The T-shirt, Dale Williams' testimony,
13 Deanna Williams' testimony, DNA evidence. Jimmy
14 said on night one it was Shawn Wright.

15 The Defendant in his statement told
16 Detective Ward it was Randy Wright and then, all of
17 a sudden today, when the SLED DNA analyst has come
18 and said, oh, it was Shawn Wright because that hat
19 that was left in Jimmy's driveway belonged to
20 Shawn. Well, now it's Shawn. Because it can't be
21 disputed at this point.

22 Hand of one is the hand of all. Does
23 not matter who of the three had the weapon in their
24 hand or who struck which injury-causing blow to
25 Jimmy; they all did it together. Randy Wright is

CLOSING ARGUMENT BY THE STATE

1 criminally responsible for each and every bit of
2 this vicious assault on Jimmy Taylor. They were
3 all in it together, and that's the law. I've
4 talked to you about it enough times that I'm sure
5 you're sick of hearing it from me.

6 ABHAN, a person commits the offense of
7 ABHAN if they unlawfully injure another person and
8 great bodily injury to another person results, or
9 the act is accomplished by means likely to produce
10 death or great bodily injury.

11 Jimmy Taylor was certainly injured on
12 August 8, 2015. That act was certainly
13 accomplished by means likely to produce great
14 bodily injury. You heard it from the medical
15 expert. Don't take it from me. He could have been
16 dead with one blow; definitely could have been dead
17 with two blows; definitely could have been dead
18 with three; definitely could have been dead with
19 four. Could have been a vegetable at least.

20 He's a luck man. That does not
21 alleviate the crime that was perpetrated by this
22 Defendant. Jimmy Taylor is lucky to be alive.
23 Look at him. This affects him every single day.
24 He is a broken man because this Defendant and his
25 sons tried to beat him to death for no good reason

CLOSING ARGUMENT BY THE DEFENSE

1 at all.

2 Hitting another person in the head and
3 face with a pipe, jack hammer or whatever you want
4 to call it, is by definition likely to produce
5 great bodily injury. It doesn't take a medical
6 expert to say it, but you heard her say it. You're
7 smart people; you have common sense. You hit
8 somebody over the head with a jack handle and it
9 doesn't kill them, that's sheer luck.

10 This Defendant is guilty, ladies and
11 gentlemen, of aggravated assault. ABHAN, assault
12 and battery of a high and aggravated nature. And I
13 ask that you return a verdict of guilty because
14 that's what the evidence shows. That's what the
15 evidence in this case shows. Thank you.

16 MR. DAVIS: Madame Forelady and other
17 members of the jury, I want to thank each one of
18 you individually and collectively for extending to
19 me and the Wright family this opportunity to argue
20 and defend this case.

21 I told you in the opening statement
22 what the case was all about. It was which version
23 of facts you were going to adopt. I hope I haven't
24 misrepresented anything in that regard because,
25 basically, that's still where we are. What version

CLOSING ARGUMENT BY THE DEFENSE

1 of the facts are you going to adopt in this case?

2 It's easily seen that the State has
3 adopted the position of Jimmy Taylor 100 percent,
4 hook, sink, every aspect. The only question is
5 whether you as a group or individually will follow
6 the same suit. I have no bone in this other than
7 to seek justice.

8 I got up this morning with the same
9 position I've held for 35 years in doing this job,
10 even when I was a prosecutor. It's not my job to
11 actually impugn myself into a position of what the
12 truth is. Truth is just clear. Truth is something
13 that covers all aspects of who we are. I am
14 convinced and believe in this judicial system that
15 I have been associated for 35 years.

16 I'm a father; I'm a grandfather; I've
17 got three sons and one daughter. My youngest son,
18 he's in the military. He salutes the flag. He's
19 what is called an honor guard. So those of you who
20 are veterans, an honor guard is an individual who
21 actually buries old soldiers.

22 I believe in this system. I believe in
23 this system when I sat where Mr. McNeely sits, and
24 I believe in this system where I sit right now.
25 This system works, but it works with individuals

CLOSING ARGUMENT BY THE DEFENSE

1 coming into the courtroom and what I call not
2 preconceived biases or prejudice. This system
3 works when the evidence or the facts, or the lack
4 thereof, gives you a clear indication of how you
5 should derive at your decision.

6 If you find yourself in a position when
7 you leave here today -- if I happen to but up into
8 any one of the Wright family, I can look them
9 clearly and squarely in the eye and say, you know,
10 I made the right decision. I made the right
11 decision because the State carried its burden of
12 proof beyond a reasonable doubt as to the guilt of
13 Randy Wright.

14 But let's actually look at this for a
15 moment and see what's going on. I think what's
16 more important in this case, not so much what we
17 say, is what we haven't seen because therein I
18 think lies the truth. There's a girlfriend at the
19 house by the name of Candy who did not take this
20 witness stand. Did not. I don't know why, but she
21 could shed some light.

22 There's a video at the store that
23 actually could have shown what type of interaction
24 took place in that Cooper Store (sic) before this
25 incident occurred. That did not appear. There is

CLOSING ARGUMENT BY THE DEFENSE

1 EMS people who said that it was minor bleeding,
2 whatever, he didn't want to go. No EMS individual
3 made it to this chair to share anything with you
4 whatsoever. The version you have is all delay.

5 You have these missing elements. You
6 really don't have actually all of the parties for
7 you to make any decision. What investigations were
8 done in this case separate and apart from the two
9 statements of Randy Wright and Jimmy Taylor? What
10 investigations took place? None. None.

11 There should be something that makes
12 you feel, well, as a juror, as you deliberate that
13 you can corroborate, you know, these two parts go
14 together.

15 Now, you saw Jimmy, you saw Randy.
16 Both of them have statements that you're going to
17 take into the jury room, but, more importantly,
18 there's been this broad context as if luck had so
19 much to do with everything. Luck is great at the
20 casinos. Las Vegas; Hickory, North Carolina;
21 that's where luck comes into play.

22 Luck should not be the derivative in
23 reference to where we're going to make decisions on
24 people's liberty, life, and the pursuit of
25 happiness, because, my friend, that's really what

CLOSING ARGUMENT BY THE DEFENSE

1 we're discussing now this afternoon.

2 That's what really makes me emotional
3 about -- when you are put into a position that
4 actually you want to impact someone's life,
5 liberty, and their pursuit of happiness. You
6 should be competent, each one of you collectively.

7 And for those of you who, for whatever
8 reason may have a dislike, I don't know for
9 whatever reason, I'm going to tell you a
10 psychologist -- as I look at each one of you, I
11 tell you what I'm concerned about.

12 In the majority of the time that I've
13 been doing this, and I've been doing this for a
14 while, that's these jurors that have their arms
15 folded. The psychologist says they're exhibiting a
16 wall. There's nothing that I can do or say to
17 penetrate that.

18 And that's horrible, that's horrific,
19 that's terrible, because in that regard, those type
20 of individuals should tell the judge, Judge, I have
21 an enemy that I want to punish; I have a friend
22 that I want to reward and, therefore, I shouldn't
23 be sitting on this jury. I shouldn't be sitting on
24 the jury, because I have not honored my oath to
25 come in here with an open mind and make a decision

CLOSING ARGUMENT BY THE DEFENSE

1 based on the facts of this case.

2 Now, I will share with you that Randy
3 made a poor judgment that night. Let's think about
4 this from common sense. That's a word that's been
5 used a lot too, common sense and lucky. Common
6 sense and disregard. Look at the movement. If it
7 makes sense that Jimmy, who is highly intoxicated,
8 for whatever reason, who Dr. Griffith apparently --
9 I don't know how she got this information, that he
10 was sitting in his garage drinking a few beers.

11 I'll bet you what we do know is that
12 Randy went to work, he worked all day, didn't
13 consume any alcohol, he stopped at the Cooper Store
14 to get him some cigarettes. You take Jimmy's
15 version. He stopped and get sodas and cigarettes,
16 sodas and cigarettes. And he displayed some
17 ugliness, what I shared with you, behavior towards
18 Randy. Randy, on his way home, and doesn't even
19 make sense, that as he's about to turn in he
20 dislodges a bottle and strikes his vehicle.

21 The sad commentary about this, if I
22 think he's guilty of anything, is poor judgment at
23 that point. In hindsight, he should have turned
24 and went on home to his lovely wife of 24 years and
25 eight grandchildren. That's what he should have

CLOSING ARGUMENT BY THE DEFENSE

1 done.

2 Sometimes you live in the same
3 neighborhood with ugliness -- I'm familiar with it
4 to some degree. When you live around ugliness in
5 the same neighborhood, you kind of confront the
6 ugliness. He parked his car a good distance away
7 from that driveway in the street, and he walked up
8 there.

9 I think if he had to do it over, he
10 would not have walked up there, because he didn't
11 realize his sons were with him too. And when he
12 walked up there -- think about this. Who in this
13 courtroom between the two of them can legally
14 possess a weapon? Jimmy cannot. Randy can.

15 The same manner in which he has his
16 gate locked, secured, I can assure you that Jimmy
17 is not a guy to move around if he doesn't have some
18 type of protection. There is no question in my
19 mind when you look at the version of the facts that
20 Jimmy stepped out with that club that has been
21 elevated for whatever reason -- the State calls it
22 a pipe, the State calls it a jackhammer, the
23 statement that you have in the courtroom references
24 the stick or club, whatever reason, I believe that
25 he brought it at that instance.

CLOSING ARGUMENT BY THE DEFENSE

1 Now, Randy bears some responsibility
2 because Randy went up to him and said, what have I
3 done to you? And from that moment on, things got
4 out of hinge. Things got out of hinge because you
5 now, as individual jurors and collectively, have to
6 make a decision. And I don't care, it still comes
7 down to whose version of facts are you going to
8 adopt.

9 The Solicitor has impressed upon you
10 that these injuries are life-threatening. Well,
11 you know, if you drink too much water, my friends,
12 it's life-threatening. What I want you to address
13 your attention to, you take your time painstakingly
14 and look through the medical records; because, you
15 know, in this whole process of how you've gotten
16 the full picture, the full story has been by a
17 process under our system called cross-examination.
18 The Sixth Amendment right, cross-examination, how
19 you learned from the beginning that this incident
20 occurred or started at the Cooper Store.

21 It was through cross-examination that
22 you learned this aspect about these injuries was
23 non-threatening. It was through cross-examination
24 that you learned that this red eye does not even
25 need treatment. It was through this process that

CLOSING ARGUMENT BY THE DEFENSE

1 you learned that the investigator actually only
2 took two pictures and that the sister involved took
3 the remaining pictures of the injuries.

4 And we learned through
5 cross-examination that as horrific as those
6 lacerations would be in the head, those are large
7 staples that were put there just temporarily, but
8 we learned there was no acute intracranial
9 hemorrhaging, which means that there was no
10 internal bleeding. The injuries looked, but they
11 were still superficial, and the record will support
12 that, the medical records will support that.

13 Now, you may say, Mr. Davis, did Jimmy
14 deserve what happened? I would tell you who Jimmy
15 is. Jimmy's this kind of guy -- you heard him
16 testify -- he doesn't like to take responsibility
17 for anything. He said he -- something happened in
18 his past, and he blamed his twin brother. He
19 wasn't associated with that.

20 And it's the same process in that
21 relationship to what happened that night. He threw
22 that bottle in provocation. He started that
23 provocation at the Cooper Store and proceeded --
24 Randy made a poor judgment approaching him in that
25 driveway on the outside of the fence. He got the

CLOSING ARGUMENT BY THE DEFENSE

1 best of Randy, and them boys came to his rescue.

2 And I want you to pay close attention
3 to Jimmy's own statement. Jimmy's own statement,
4 please. Jimmy's own statement, which this incident
5 occurred on August 8th, and he only presents his
6 statement approximately some five days later, and
7 he had sufficient time to understand and to really
8 appreciate what transpired and to put down actually
9 what happened. In that statement, he does not
10 allude to the fact that Randy Wright touches or
11 hits him.

12 Sometimes when I'm put in this position
13 after and try to cross-examine experts and even
14 people from SLED, one of my central theme, or
15 central consideration, is that I hope that the
16 folks who actually come up here, they too share my
17 passion for the truth. And my passions for
18 whatever the facts are, that is what the facts are.

19 I don't know if I did something
20 personally to Dr. Griffith, but she was just as --
21 wow. I had to ask her, is lucky a medical
22 conclusion in reference to what you come to,
23 because on the records that I reviewed, these were
24 superficial wounds, as horrible as it may look on
25 this big screen pulled up.

CLOSING ARGUMENT BY THE DEFENSE

1 I'm asking you to really look into the
2 aspects of all of the evidence. If rendering your
3 conclusion is not going to make active
4 consideration, they have two alternates on the
5 outside that -- I don't want to be involved in
6 deliberation where it's going to take some
7 painstaking research to try to get to the facts,
8 because in this instance the facts is going to be
9 delineated from two statements because there has
10 been no corroborating investigation by the sheriff.

11 And I tell you why I say that: As each
12 one of these folks came up and talked about the
13 chain of custody, my concern is about what I call
14 the crime-scene-gathered information. That's
15 important to me. That should be important to you
16 because, at the inception, that's where it starts.

17 Randy and his sons' name were
18 pronounced on August 8th and were arrested on
19 August 19th. There is no way to get around that.
20 And during that same process, there is a video
21 apparently at the Cooper Store. There are pictures
22 that could have been taken of Jimmy's car to show
23 whether, in fact, Randy was the aggressor or not.

24 None of this was presented to you, but
25 even more painstaking is the fact that you think

CLOSING ARGUMENT BY THE DEFENSE

1 you would bring the EMS personnel here who actually
2 is on the scene instead of the neighbor who has to
3 live next to Jimmy for the next 25 years,
4 Mr. Williams. Who would be more unbiased? An EMS
5 person, somebody who provided the initial
6 treatment. Somebody else who could come in and
7 say, yeah, he was so drunk he didn't even want to
8 go. He didn't want to do this. We closed up that
9 minor bleeding.

10 The State didn't call anyone pertaining
11 because they want you to join in to this adoption
12 of the facts. They want you to join in and be a
13 part of what I would call -- not cover up the lies.
14 Covering up the lies is on the part of the State.

15 The State, with all its power and
16 resources -- I want you to understand that
17 Mr. Randy Wright is a simple man, a mechanic going
18 to work every day, don't have no tremendous needs,
19 put in a position that he has to fend off the whole
20 state of South Carolina and all its resources. Ask
21 you now to join in with these adoption of facts.
22 Not to give you what you truly need to make a
23 decision, because at the end of the day, what you
24 really have is a dispute as to what took place, two
25 different versions.

CLOSING ARGUMENT BY THE DEFENSE

1 Now, was it smart for Randy to approach
2 Jimmy in his driveway? No, sir. It was not. It
3 was not. But, you know, what? Unlike Jimmy, Randy
4 accepts responsibility for that, that blaming that
5 he did. He accepts responsibility.

6 But I can assure you that Jimmy will
7 not accept any responsibility. Instead, he takes
8 the position that apparently I have put different
9 information in the medical records. He takes the
10 position that maybe I changed the statement in
11 regard to what took place. You take your time
12 painstakingly and review all the evidence, because
13 I'm telling you what's important here is with that
14 statement.

15 When I was a little boy, I had two
16 heros. You young drawers would not appreciate
17 this, but maybe my age group could attest to this.
18 My two heros was Underdog, a little dog with a
19 little kid. Many times in my past 25 years I have
20 found myself as Underdog. Little dog with a kid up
21 against incredible odds trying to find what the
22 truth is. I still find myself in that position a
23 lot of times. I really do.

24 My other hero was Superman, and I tell
25 you why I liked Superman. I liked Superman because

CLOSING ARGUMENT BY THE DEFENSE

1 Superman always said truth, justice, and the
2 American way. It really don't matter to get up in
3 the morning if you're not going to be part of that.
4 If you're not going to be a part of something that
5 is truth and justice and the American way, it's
6 really sad.

7 It's sad because, as I sat in that same
8 particular chair, those were still my heros,
9 Superman and Underdog. It hasn't changed even
10 though I sit in this chair. It hasn't changed, but
11 I think one thing that has flipped in this Underdog
12 world, I understand that the State with all its
13 power and resources, you shall not give them an
14 excuse to find Randy guilty if you cannot beyond a
15 reasonable doubt decipher between the two facts or
16 versions that occurred.

17 It would be a miscarriage of justice
18 for each and every one of you collectively,
19 individually, just to follow suit for what the
20 Solicitor has done and adopt the facts as they were
21 presented to you. Because, my friend, yes, an
22 altercation occurred that night. Yes, there were
23 provocation that night. Yes, there was a brawl
24 that took place. But I think that many shared
25 blame for what happened that night. There was

CLOSING ARGUMENT BY THE DEFENSE

1 shared responsibility.

2 And all I ask is what I asked at the
3 beginning; don't do anything for me. Do something
4 for the system we call truth, justice, and the
5 American way... Don't do it for me. In this system
6 the decision you make, I guarantee you, I guarantee
7 you it hinges on each and every one of us.

8 So when you go back there and
9 deliberate, don't deliberate about the lawyer that
10 may have had an earring in his left ear. Don't
11 deliberate about the lawyer's voice may have been
12 hoarse or whatever, or he may have been loud or he
13 may have mispronounced a word. That is not
14 important, my friend.

15 What is important and what's at stake
16 here is liberty. This man's freedom is at stake.
17 What's at stake here, my friend, is truth. You
18 have two versions of what took place. You can tell
19 me that how you can decipher what happened, other
20 than the fact that the State has decided to align
21 with one side versus the other, you tell me,
22 otherwise, how you can conclude that this young man
23 is guilty of assault and battery of a high and
24 aggravated nature with tremendous consequences and
25 references to his liberty, his pursuit, continued

CLOSING ARGUMENT BY THE DEFENSE

1 pursuit of his happiness with the eight
2 grandchildren.

3 I am certain when I sit down that I
4 will miss some points. I am certain. I am
5 certain, but I am certain also that each one of you
6 individually and collectively have brought your
7 common sense, as the Solicitor said, and you will
8 look closely at the evidence in this case.

9 When I went to bed last night, I knew I
10 had a tremendous burden. It always is. I make no
11 apology for what I do. No apologies. I enjoy what
12 I do. I can look back over my life, put my hand on
13 it (Indicating), with my presence I've made a
14 difference in the lives of countless people. I can
15 look back, I have no hesitation. When I sat in
16 this chair (Indicating), I can look back over my
17 life and account for the difference that I've made
18 with respect to families.

19 But what I wager you to honor, I wager
20 you to honor, don't become a part of this adoption
21 of the facts that the Solicitor have taken to
22 create here. I ask you to return a verdict of not
23 guilty. If you can't see it within your heart to
24 find him not guilty, then at a minimum, some lesser
25 included offense.

CLOSING ARGUMENT (REBUTTAL) BY THE STATE

1 Not that the Solicitor say he was
2 bashed, not that the Solicitor said he was lucky,
3 not the fact that the Solicitor said he was near
4 death, look at the medical records and let the
5 medical records speak, and listen to the Honorable
6 Judge Murphy. Because you promised, you promised
7 when you took your oath that you would follow her
8 instructions.

9 I'm confident, if you follow her
10 instructions, you will come back with a verdict
11 that speaks the truth; one that will allow
12 Mr. Randy, his wife, Angela, Hannah, and the boys,
13 and the grandchildren to go ahead and pursue the
14 happiness they deserve, and this will not be a
15 total destruction of his way of living.

16 Thank you very much.

17 THE COURT: Any reply?

18 MR. MCNEELY: Ladies and gentlemen, I
19 know that you're ready to wrap this up so I will be
20 brief.

21 I talked to you in my previous
22 statement about red herrings and Mr. Davis, and it
23 doesn't seem that we have come any further than we
24 were then. All Mr. Davis wants to talk about is
25 alcohol. It's no mystery Jimmy had a few beers. I

CLOSING ARGUMENT (REBUTTAL) BY THE STATE

1 told you that from the beginning.

2 Jimmy burned a car in 1993 and was
3 convicted of that. It's nothing to do with
4 anything about why we're here today. He was
5 24 years old. I was nine when Jimmy got in trouble
6 for burning a car.

7 What we are here about today is the
8 vicious and coordinated attack on Jimmy by this
9 Defendant and his sons on August 8, 2015. All
10 Mr. Davis wants to focus on is little minutiae,
11 small, inconsequential bits. He does not want to
12 look at the photos. He does not want to look at
13 the evidence.

14 He wants to talk about why you haven't
15 heard from EMS. You didn't hear from EMS, because
16 you heard from Jimmy and the neighbors and the
17 doctor. You didn't hear from Tammy, because she
18 wasn't outside. She was inside; she didn't see
19 anything. You saw what Denise Pendley did; she
20 took the photos.

21 Let's talk about the video at the
22 Country Corner store. There's no video from the
23 Country Corner store because the video wipes itself
24 clean if it's not saved immediately. And it
25 wouldn't show anything anyway. It would show Jimmy

CLOSING ARGUMENT (REBUTTAL) BY THE STATE

1 buying cigarettes.

2 Let's talk Randy Wright's poor
3 judgment. Looks like poor judgment to me. Poor
4 judgment that could have likely killed, maimed,
5 seriously injured Jimmy Taylor.

6 Mr. Davis is right; this is about two
7 stories. You heard Jimmy's story, which was the
8 same five seconds after he was attacked that he
9 gave to Detective Ward August 13th after he was
10 finally able to get off of his couch and bed and go
11 talk to her. And you'll have it with you.

12 And Mr. Davis said he never said got
13 hit by Randy Wright. Well, I'm going to read it to
14 you.

15 I got out of my truck, and they started
16 hitting me in the head. I went to the ground, and
17 they kept hitting me.

18 His story has never changed. This man
19 and his sons beat the tar out of Jimmy Taylor. His
20 statement is corroborated by all the rest of the
21 evidence. Who was there? Shawn Wright was there.
22 Three of them were there. They were standing over
23 him in the driveway.

24 Dale Williams -- his statement is
25 corroborated by all of the other evidence that's

CLOSING ARGUMENT (REBUTTAL) BY THE STATE

1 the one story, the corroborated truth.

2 The second story you heard is this one.

3 It's only changed three to four times since we've

4 been sitting here. He wasn't involved in an

5 altercation. Okay. I was, but it was Jimmy.

6 Shawn wasn't there, but now today when all the

7 evidence is played, Shawn is there also.

8 You have seen the photos, you have seen

9 the evidence. Jimmy very easily could not be

10 sitting in this courtroom today. He was very

11 clearly injured by this Defendant and his sons and

12 he could have lost his life. That's why we're

13 here. That's what this is about. And all you have

14 to do is say this Defendant is guilty of that

15 crime. Thank you.

16 THE COURT: Ladies and gentlemen of the

17 jury, it is now time for me to charge you on the

18 law in this case. The indictment charges the

19 Defendant with assault and battery of a high and

20 aggravated nature.

21 I remind you that the fact the

22 Defendant was arrested, charged, and indicted in

23 this case is not evidence in this case and cannot

24 be considered by you as evidence of guilt in this

25 case, nor does it create any presumption or

CLOSING ARGUMENT (REBUTTAL) BY THE STATE

1 inference of guilt. This document is simply the
2 formal written instrument which contains a charge
3 made against the Defendant. It is the formal
4 document by which the case is brought into court.

5 I remind you that during this trial,
6 you and I have certain duties to perform. As the
7 trial judge, it's my responsibility to preside over
8 the trial of this case, and I also have the duty to
9 rule on the admissibility of evidence offered
10 during this trial.

11 You are to consider only the competent
12 evidence before you. If there is any testimony
13 stricken from the record during this trial, you
14 must disregard that testimony. You are to consider
15 only the testimony which has been presented from
16 the witness stand, any exhibits which have been
17 made part of the record in this case and any
18 stipulations of counsel.

19 I have the additional duty to charge
20 you the law in this case. As a presiding judge,
21 I'm the sole judge of the law, and it is your duty
22 as jurors to accept it and apply it as I now state
23 it to you. If you have any ideas as to what the
24 law is or what the law ought to be, and it does not
25 agree with what I now tell you the law is, you must

CLOSING ARGUMENT (REBUTTAL) BY THE STATE

1 abandon this idea because you are sworn to accept
2 the law and apply it exactly as I state it to you.

3 In every case tried in this court
4 before a jury, the jury becomes the sole and
5 exclusive judge of the facts in this case. A trial
6 judge cannot intimate, state, comment on, or make
7 any statements to the trial jury about the facts in
8 the case. Since you, the jury, are the sole judges
9 of the facts, you are not to infer from what I have
10 said during the progress of the trial in ruling
11 upon the admissibility of evidence or otherwise, or
12 anything that I say now during the course of these
13 instructions to you, that I have any opinion about
14 the facts in this case.

15 The law does not allow me to have an
16 opinion about the facts in this case. This is a
17 matter solely for you, the jury, to determine. As
18 jurors, it is your duty to determine the effect,
19 value, weight, and truth of the evidence presented
20 during this trial.

21 There are two types of evidence which
22 are generally presented during a trial; direct
23 evidence and circumstantial evidence. Direct
24 evidence is the testimony of a person who claims to
25 have actual knowledge of a fact, such as an

CLOSING ARGUMENT (REBUTTAL) BY THE STATE

1 eyewitness.

2 Circumstantial evidence is proof of a
3 chain of facts and circumstances indicating the
4 existence of a fact. The law makes absolutely no
5 distinction between the weight or value to be given
6 to either direct or circumstantial evidence. Nor
7 is a greater degree of certainty required of
8 circumstantial evidence than of direct evidence.

9 You should weigh all of the evidence in
10 the case. After weighing all of the evidence, if
11 you are not convinced of the guilt of the Defendant
12 beyond a reasonable doubt, you must find the
13 Defendant not guilty.

14 Necessarily, you must determine the
15 credibility of witnesses who have testified in this
16 case. Credibility simply means believability. It
17 becomes your duty as jurors to analyze and evaluate
18 the evidence and determine which evidence convinces
19 you of its truth.

20 In determining the believability of
21 witnesses who have testified in this case, you may
22 believe one witness over several witnesses, or
23 several witnesses over one witness. You may
24 believe a part of the testimony of a witness and
25 reject the remaining part of the testimony of that

CLOSING ARGUMENT (REBUTTAL) BY THE STATE

1 same witness. You may believe the testimony of a
2 witness in its entirety or reject it in its
3 entirety.

4 You may consider whether the witness
5 has exhibited to you any interest, bias, prejudice,
6 or other motive in the case. You may also consider
7 the appearance and the manner in which the witness
8 testifies on the witness stand.

9 Normally, a person cannot give opinion
10 testimony. Normally, when a person testifies, they
11 must testify to what they either saw, heard, sense
12 by smell, or something of that nature; however,
13 there is an exception when someone is qualified
14 because of education or experience. They are
15 permitted to give their opinion in certain areas if
16 the Court qualifies them as experts that way.

17 Merely because witnesses are qualified
18 as experts does not mean that you must accept their
19 opinion, but it is evidence for you to use in any
20 way that you see fit and give it the weight and the
21 credibility that you believe is appropriate.

22 What is a reasonable doubt in the law?
23 A reasonable doubt is the kind of doubt that would
24 cause a reasonable person to hesitate to act, but
25 the State has the burden of proving the Defendant

CLOSING ARGUMENT (REBUTTAL) BY THE STATE

1 guilty beyond a reasonable doubt.

2 Some of you may have served as jurors
3 in civil cases where you were told it is only
4 necessary to prove that the fact is more likely
5 true than not true, which is by the greater weight
6 or preponderance of the evidence.

7 In criminal cases, the State's proof
8 must be more powerful than that. It must be beyond
9 a reasonable doubt. Proof beyond a reasonable
10 doubt is proof that leaves you firmly convinced of
11 the Defendant's guilt. There are very few things
12 in this world that we know with absolute certainty,
13 and in criminal cases the law does not require
14 proof that overcomes every possible doubt. If,
15 based on your consideration of the evidence, you
16 are firmly convinced that the Defendant is guilty
17 of the crime charged, you must find him guilty.

18 If, on the other hand, you think
19 there's a real probability that the Defendant is
20 not guilty, you must give him the benefit of the
21 doubt and find him not guilty.

22 A statement alleged to have been made
23 by the Defendant has been admitted into evidence in
24 this case. While the Court has determined that the
25 statement is admissible, I instruct you that you

CLOSING ARGUMENT (REBUTTAL) BY THE STATE

1 make the ultimate decision as to whether or not the
2 Defendant made the statement.

3 If the Defendant did make the
4 statement, you must determine if the statement was
5 made by the Defendant voluntarily and by his own
6 free will. This means that the statement was not
7 caused by pressure, force, fear, threats, coercion,
8 or intimidation, or by hope or a promise of
9 leniency or reward of any kind.

10 In determining whether the statement
11 was voluntary, you should consider the
12 characteristics of the Defendant and the details of
13 the questioning. Some of the factors that you must
14 consider are: The age of the Defendant; the
15 Defendant's education or lack of education; the
16 Defendant's mental ability or capacity; the
17 Defendant's IQ or intelligence; the Defendant's
18 background and environment; the place and length of
19 the detention; the nature of the questioning and
20 the advice or lack thereof to the Defendant of his
21 constitutional rights, including but not limited to
22 the right to remain silent, that any statement
23 could be used against him in a court of law, the
24 right to have a lawyer present, that if he cannot
25 afford a lawyer, a lawyer would be appointed to

CLOSING ARGUMENT (REBUTTAL) BY THE STATE

1 represent him at no cost, and that he could stop
2 making a statement at any time.

3 You must carefully consider all of the
4 surrounding circumstances before you give any
5 weight to an alleged statement.

6 The State has the burden of proving
7 beyond a reasonable doubt that the alleged
8 statement was voluntary. If you determine that it
9 was, you may give the statement any further
10 consideration that you deem proper. You must
11 decide what weight, if any, to be given to the
12 alleged statement.

13 If you determine the alleged statement
14 was not the free and voluntary statement of the
15 Defendant, you should not consider the statement at
16 all.

17 There has been evidence presented that
18 witnesses have made prior statements which are not
19 consistent with the witnesses' present testimony.
20 You may use this evidence to decide whether to
21 believe the witness. You may also use evidence of
22 the earlier contradictory statements to determine
23 the truth of those statements. It is up to you to
24 decide whether to believe the earlier statements of
25 the testimony given at trial.

CLOSING ARGUMENT (REBUTTAL) BY THE STATE

1 If a witness is shown to have knowingly
2 testified untruthfully concerning any material
3 matter, you may consider this in determining
4 whether to trust the witness's testimony as to
5 other matters. You may reject all testimony of
6 that witness or give all or part of the testimony
7 the weight you think it deserves.

8 The Defendant has presented evidence of
9 his good reputation and character to show it would
10 be inconsistent with the Defendant committing the
11 crime. The weight that you give to the testimony,
12 like all other testimony in this case, is for you
13 to decide in your good judgment.

14 You may consider the testimony of the
15 Defendant's good character along with all the other
16 evidence in deciding whether or not the Defendant
17 committed the crime.

18 In order to establish criminal
19 liability, criminal intent is required. For
20 example, the mental state required to be proven by
21 the State for a particular crime might be purpose,
22 intent, knowledge, recklessness, or criminal
23 negligence.

24 Criminal intent must be proven by the
25 State beyond a reasonable doubt. Criminal intent

CLOSING ARGUMENT (REBUTTAL) BY THE STATE

1 is always a matter that must be determined by the
2 jury from the circumstances surrounding the
3 situation. There is no way to prove intent to a
4 mathematical certainty. There is no way that
5 medical science can dissect a person's brain and
6 determine what the person had in mind.

7 The law says that criminal intent may
8 be inferred from the circumstances shown to have
9 existed. This is how you make a determination as
10 to whether or not the elements required was
11 present.

12 It is not necessary to establish intent
13 by direct and positive evidence, but intent may be
14 established by inference in the same way as any
15 other fact by taking into consideration the acts of
16 the party and all of the facts and circumstances of
17 the case.

18 Criminal intent is a mental state, a
19 conscious wrongdoing. It is up to you to determine
20 what the Defendant intended to do based on the
21 circumstances shown to have existed.

22 Criminal intent can arise from the
23 action or a failure to act. It may arise from
24 negligence, recklessness, or indifference to duty
25 or consequences that is considered by the law to be

CLOSING ARGUMENT (REBUTTAL) BY THE STATE

1 the equivalent of criminal intent.

2 If a crime is committed by two or more
3 people who are acting together in committing the
4 crime, the act of one is the act of all. A person
5 who joins with another to commit an unlawful act is
6 criminally responsible for everything done by the
7 other person which happens as a probable or natural
8 consequence of the acts done in carrying out the
9 common plan and purpose.

10 For example, two people can be guilty
11 of killing another person when only one of the two
12 had a gun. There is only one bullet and one of the
13 two that fired the shot that caused the death. If
14 two or more people are together acting together and
15 assisting each other in committing an offense, the
16 act of one is the act of all; or as it is sometimes
17 said, the hand of one is the hand of all.

18 Prior knowledge that the crime is going
19 to be committed is not sufficient to make that
20 person guilty of that crime. Mere knowledge that
21 another person is going to commit a crime, even if
22 the Defendant is present when the crime is
23 committed, is not sufficient to convict the
24 Defendant as a principal.

25 Guilt is a principle as shown by actual

CLOSING ARGUMENT (REBUTTAL) BY THE STATE

1 or constructive presence at the scene as a result
2 of a prior arrangement; therefore, a finding of a
3 prior arranged plan or common scheme is necessary
4 for finding the guilt of the principal. The State
5 must prove beyond a reasonable doubt by competent
6 evidence the theory that the hand of one is the
7 hand of all.

8 A principal in a crime is one who
9 either actually commits the crime or who is
10 present, aiding, abetting, and assisting in
11 committing the crime. When a person doesn't act in
12 the presence of or with the assistance of another,
13 the act is done by both.

14 Where two or more acting with a common
15 plan or attempt are present at the commission of a
16 crime, it doesn't matter who actually commits the
17 crime. All are guilty. The hand of one is the
18 hand of all.

19 Present at the commission of a crime
20 means to be sufficiently near to aid and abet and
21 assist in the commission of the crime; however,
22 mere presence at the scene of a crime is not
23 sufficient to convict one as a principal in the
24 theory of aiding and abetting.

25 Intent is also a necessary element, but

CLOSING ARGUMENT (REBUTTAL) BY THE STATE

1 there must have been a common design or intent to
2 commit the crime, and the crime must have been
3 committed pursuant thereto with the person aiding
4 and abetting by some overt act. Intent means
5 intending the result which actually occurs, not
6 accidentally or involuntarily. Intent may be shown
7 by acts and the conduct of the Defendant and other
8 circumstances from which you may naturally and
9 reasonably infer intent.

10 The State must prove these elements
11 beyond a reasonable doubt. A person commits the
12 offense of assault and battery of a high and
13 aggravated nature if the person unlawfully injures
14 another person and, A, great bodily injury to
15 another person results; or, B, the act is
16 accomplished by means likely to produce death or
17 great bodily injury.

18 Great bodily injury means bodily injury
19 that causes a substantial risk of death, or which
20 causes serious permanent disfigurement or
21 protracted loss or impairment of the function of a
22 bodily member or organ. If you find that the State
23 has failed to prove the Defendant is guilty of an
24 assault and battery of a high and aggravated
25 nature, you must then decide if the State has

CLOSING ARGUMENT (REBUTTAL) BY THE STATE

1 proved the Defendant is guilty of assault and
2 battery, first degree.

3 If you find that the State has failed
4 to prove the Defendant is guilty of assault and
5 battery in the first degree, you must then decide
6 whether the State has proved the Defendant is
7 guilty of assault and battery in the second degree.
8 Likewise, if you find that the Defendant has failed
9 -- has failed to prove the Defendant is guilty of
10 assault and battery, second degree, you must decide
11 whether the State has proved the Defendant is
12 guilty of assault and battery, third degree.

13 Assault and battery, first degree, is a
14 person commits the crime of assault and battery in
15 the first degree if the person unlawfully injures
16 another person and the fact either involves
17 nonconsensual touching of the private parts of
18 another adult either under or above clothing, with
19 lewd and malicious intent or occurred during the
20 commission of a robbery, burglary, kidnapping, or
21 theft.

22 Private parts means the genital area or
23 buttocks of a male or female or the breast of a
24 female. Two, a person may also commit the offense
25 of assault and battery in the first degree if the

CLOSING ARGUMENT (REBUTTAL) BY THE STATE

1 person unlawfully offers or attempts to injure
2 another person with the present ability to do so,
3 and the act either is accomplished by means likely
4 to produce death or great bodily injury, or
5 occurred during the commission of a robbery,
6 burglary, kidnapping, or theft.

7 Great bodily injury means bodily injury
8 which that causes a substantial risk of death or
9 causes serious permanent disfigurement or
10 protracted loss or impairment of the functions of a
11 bodily member or organ.

12 Assault and battery in the second
13 degree is as follows: A person commits the offense
14 of assault and battery in the second degree if the
15 person unlawfully injures another person or offers
16 or attempts to injure another person with the
17 present ability to do so; and either moderate
18 bodily injury to another person results, or
19 moderate bodily injury to another person could have
20 resulted, or the act involves a nonconsensual
21 touching of a private part of an adult, either
22 under or above clothing.

23 Moderate bodily injury means physical
24 injury that involves prolonged loss of
25 consciousness, or that causes temporary or moderate

CLOSING ARGUMENT (REBUTTAL) BY THE STATE

1 disfigurement, or temporary loss of the function of
2 a bodily member or organ, or injury that requires
3 medical treatment or the treatment requires use of
4 regional or general anesthesia, or injury that
5 results in a fracture or dislocation.

6 Moderate bodily injury does not include
7 one-time treatment and subsequent observation of
8 scratches, cuts, abrasions, bruises, burns,
9 splinters or other minor injuries that does not
10 ordinarily require extensive medical care.

11 Private parts means the genital area or
12 buttocks of a male or female or the breasts of a
13 female.

14 Assault and battery, third degree: A
15 person commits the offense of assault and battery
16 in the third degree if the person unlawfully
17 injures another person or offers or attempts to
18 injure another person with the present ability to
19 do so.

20 For purposes of the effect of moderate
21 bodily injury can mean physical injury that
22 involves prolonged loss of consciousness, or that
23 causes temporary or moderate disfigurement or
24 temporary loss of the function of a bodily member
25 or organ, or injury that requires medical treatment

CLOSING ARGUMENT (REBUTTAL) BY THE STATE

1 where the treatment requires use of regional or
2 general anesthesia, or injury that results in a
3 fracture or dislocation.

4 Moderate bodily injury does not include
5 one-time treatment and subsequent observations of
6 scratches, cuts, abrasions, bruises, burns,
7 splinters or any other minor injuries that do not
8 ordinarily require extensive medical care.

9 An assault occurs when a person
10 unlawfully attempts or offers to commit a violent
11 injury upon another person and have the present
12 ability to complete the attempted injury. An
13 assault is the intentional creation of a reasonable
14 fear of immediate bodily harm. It is not necessary
15 that the attempted injury or harm actually take
16 place.

17 For example, if I walk up to you, and
18 when you are within arms reach, I draw back to hit
19 you, that is an assault.

20 A battery is the unlawful touching of
21 another person by a person who has committed the
22 assault. The unlawful touching can be caused by a
23 part of the accused body or by any object that is
24 used within motion.

25 A battery is a completion of the

CLOSING ARGUMENT (REBUTTAL) BY THE STATE

1 assault by using or applying force to another
2 person, however slight, in a rude, angry, or
3 resentful manner without legal justification for
4 doing so. Using my earlier example by carrying out
5 the assault by hitting you, that's the battery.

6 Ladies and gentlemen of the jury, you
7 will have the verdict form, Madame Forelady, in the
8 verdict room. It's rather self-explanatory. It
9 goes to the instructions it will say, No. 1, as to
10 the charge of assault and battery of a high and
11 aggravated nature, we, the jury, unanimously find
12 the Defendant, and then you circle the appropriate
13 verdict. If your verdict on that charge is guilty,
14 then you stop your deliberations at that point. If
15 it is not, then you go to the next question and so
16 on in the same manner.

17 You must sign the verdict form as the
18 jury foreperson and date it. Again, your verdict
19 must be a unanimous one which -- I hate to explain
20 this to people but sometimes they come to us -- all
21 12 of you must agree on the verdict.

22 When you reach a verdict, if you would
23 please knock on the door, and we will bring you
24 back in here to receive it.

25 For the last time, I'm going to ask you

CLOSING ARGUMENT (REBUTTAL) BY THE STATE

1 to go to the jury room. Do not begin your
2 deliberations just quite yet in case I forgot to
3 tell you something. When you receive the verdict
4 form along with all of the exhibits in the jury
5 room, then you may begin your deliberations. Thank
6 you.

7 (Jury out, 4:56 p.m.)

8 THE COURT: Any exceptions or
9 objections to the law from the State or the
10 defense?

11 MR. MCNEELY: Your Honor, I will note
12 for the record that I didn't catch it before under
13 the assault and battery, third degree, definition,
14 it continued to say, A, for purposes of that
15 section and define moderate bodily injury.
16 Moderate bodily injury actually does not apply to
17 A&B third. It's for A&B second.

18 THE COURT: Did I State that for that
19 section or for all of them?

20 MR. MCNEELY: You stated it for A&B
21 second and A&B third. I don't know that it's a
22 major issue. I just wanted to note it.

23 THE COURT: I think it reiterates what
24 the definition of moderate bodily injury is.

25 Any objection?

1 MR. DAVIS: No objection.

2 THE COURT: Okay.

3 (Whereupon, the verdict form and
4 exhibits went to the jury room, 4:58 p.m.)

5 THE COURT: The jury has a question for
6 us. And the question states: The jury is
7 requesting the definition of A&B first degree,
8 second degree, and third degree. We will mark this
9 as a Court's Exhibit.

10 If there's not any objection, I will
11 just bring them in and read those --

12 MR. DAVIS: Why don't you give them the
13 instructions?

14 THE COURT: Well, I've done that in the
15 past, but sometimes they nitpick and go back and
16 forth. I'm happy --

17 MR. DAVIS: Since they say all three,
18 Your Honor --

19 THE COURT: Please don't interrupt me,
20 Mr. Davis.

21 MR. DAVIS: I'm sorry, Judge. I'm
22 sorry.

23 THE COURT: You mean the full charge or
24 just the written charges they've asked for?

25 MR. DAVIS: First, second, and third.

1 THE COURT: I don't have a problem with
2 that, but then I think you almost have to do the
3 whole thing. It's up to you-all.

4 MR. MCNEELY: What's the question?

5 THE COURT: The jury is requesting the
6 definition of ABHAN, ABHAN first degree, second
7 degree, and third degree.

8 MR. MCNEELY: They want all the
9 charges.

10 MR. DAVIS: Yeah.

11 MR. MCNEELY: I don't have a problem
12 with sending a copy of the law as it applies to the
13 assault charges back. I would note that exception
14 I made about the definition of moderate bodily
15 injury after A&B third being removed.

16 THE COURT: Right; I will take it out.

17 MR. MCNEELY: But other than that, I'm
18 fine with that. It is a lot to take in.

19 MR. DAVIS: It is. That was my major
20 concern. It's a lot for them to remember.

21 THE COURT: Sure. And then I don't
22 have to read it all again.

23 MR. DAVIS: I don't have a problem.

24 THE COURT: We will just print those
25 out and review them before they go back, and we'll

1 mark it as a Court's exhibit.

2 (COURT EXH. 2, Jury note, was marked
3 for identification.)

4 (Brief pause.)

5 THE COURT: Do you-all want to come up
6 and take a look at it?

7 (COURT EXH. 3, Jury Charge, was marked
8 for identification.)

9 (Jury charge sent to the jury.)

10 THE COURT: It's my understanding we
11 have a verdict in the case. Anything before I
12 bring the jury out?

13 MR. MCNEELY: Nothing from the State.

14 MR. DAVIS: Nothing from the defense.

15 THE COURT: Okay. Let's have our jury.

16 (Jury in, 6:26 p.m.)

17 THE COURT: Madame Forelady, has the
18 jury reached a verdict?

19 FORELADY: Yes, we have.

20 THE COURT: Please hand it to the
21 bailiff.

22 (Verdict handed to the Court.. Verdict
23 handed to the Clerk.)

24 THE COURT: Please publish the verdict.

25 THE CLERK: In the State of South

VERDICT

1 Carolina, County of Berkeley, versus Randy Wright,
2 Indictment 2016-GS-08-00306.

3 As to the charge of assault and battery
4 of a high and aggravated nature, we, the jury,
5 unanimously find the Defendant guilty. Signed by
6 the Foreperson.

7 Ladies and gentlemen of the jury, if
8 this is your verdict, would you please signify by
9 raising your right hand?

10 THE JURY: (Raised hands)

11 THE COURT: Thank you, ladies and
12 gentlemen. If you would please go to the jury room
13 for the very last time, I will be in there to
14 release you momentarily.

15 (Jury out, 6:28 p.m.)

16 THE COURT: Please prepare the
17 sentencing sheet. I will be right back. Anything
18 before I release the jury?

19 MR. DAVIS: May I approach the bench,
20 Your Honor?

21 THE COURT: Yes, sir.

22 (Bench conference.)

23 MR. DAVIS: Upon the receiving of the
24 verdict, Your Honor, it's been my standard
25 procedure, and I think the State of South Carolina

1 do provide for a process where you can ask for a
2 polling of the jury.

3 I am aware that they all raised their
4 hands, but that's a continuation -- that would be a
5 group aspect polling of the jury. Require an
6 individual -- calling out each specific juror, and
7 I respectfully request that at this time, Your
8 Honor.

9 THE COURT: Mr. Davis, I certainly
10 understand your position; however, the Clerk did
11 ask them, is this your verdict, and each of the
12 jurors raised their hand individually. They looked
13 around and they raised their hand individually, and
14 that's on the record. Your request is respectfully
15 denied.

16 Anything further before I release the
17 jury?

18 MR. DAVIS: Not in that regard, Your
19 Honor.

20 I respectfully ask for a new trial in
21 lieu of the fact that one of the specific jurors
22 made a comment about my role as legal counsel, and
23 he was allowed to remain on the jury. They came
24 back in reference to your questioning, as we
25 discussed primarily, that they could make a

1 decision based on the evidence.

2 They did not relay whether or not they
3 had heard the comment or not, which is somewhat
4 different in relationship to actually making the
5 decision on the facts of the case. And for that
6 reason I ask for a mistrial, Your Honor.

7 THE COURT: Well, a couple of things,
8 Mr. Davis. First of all, when we asked the jury
9 that question, I specifically asked both parties if
10 they were satisfied with the questioning of the
11 jury, at which point you stated that you were. Had
12 you not, I would -- we would then cross the bridge
13 to do further questioning if it was necessary.

14 They did indicate that they were able
15 to make a decision based solely on the evidence
16 that was submitted from the witness stand and I
17 reiterated to them during my questioning of them
18 that they were under oath to follow the law of the
19 court.

20 They stated that they would and there
21 is no other reason to believe they would not do
22 that. So for that reason I deny that motion.

23 MR. DAVIS: Thank you.

24 THE COURT: Anything further before I
25 go release the jury?

1 MR. MCNEELY: Nothing from the State,
2 Your Honor.

3 (A recess transpired.)

4 THE COURT: State ready to proceed?

5 MR. MCNEELY: State is ready.

6 THE COURT: Happy to hear from you
7 Solicitor.

8 MR. MCNEELY: Thank you. The victim,
9 Jimmy Taylor, you have seen, has been present. He
10 asked me to speak on his behalf.

11 THE COURT: Yes, sir.

12 MR. MCNEELY: The State is mindful,
13 Your Honor, of this Defendant's minimal prior
14 record; it's a 2013 DUAC. The State is also
15 mindful of the beating that was handed out to Jimmy
16 Taylor on August 8th, 2015. It's changed his life
17 every day since that incident.

18 He's in pain every day. He didn't
19 deserve what happened to him. This could have been
20 settled with an argument, but, instead, this
21 Defendant made a conscious decision to conspire
22 with his sons and beat the fire out of Jimmy
23 Taylor.

24 This was no minor assault. It was an
25 orchestrated act that was only stopped by the

1 neighbor's dog barking. God only knows where we
2 would be if that dog hadn't alerted Mr. Williams.

3 You've seen the evidence, so I won't
4 belabor it. The State believes that this crime is
5 serious and it deserves serious and significant
6 active time. Your Honor, we would request an
7 active sentence of at least -- we will defer to
8 Your Honor as to what substantial active is
9 appropriate. Thank you.

10 THE COURT: All right. Mr. Davis.

11 MR. DAVIS: Your Honor, may it please
12 the Court. You heard the whole complete case. I
13 have no reservation in defense of this young man.
14 I don't quarrel with the jury's conclusion as to
15 what was reached.

16 Judge, you don't get to be 52 years of
17 age and, all of a sudden, your attitude and
18 behavior changes. I'm going to cheat a little bit
19 because your mom shared something with me that you
20 are fair ever since you were young, and you have
21 continued to carry it on as an adult.

22 I say that to say this: This young man
23 has displayed no indicia of any violence in 52
24 years of his existence being a father, a husband,
25 grandfather. None.

1 Judge, I had a list of people prepared
2 to talk about his character and reputation, but, at
3 the end of the day, really that confronts actually
4 what the facts of the case are in a sense. It
5 confronts actually what the facts of the case are.
6 That's just what it is, his reputation and
7 character.

8 His reputation and character, Your
9 Honor, does not support any violence whatsoever,
10 and I want the Court to actively consider the fact
11 that his record has been blameless for 52 years.
12 No indicia of any violence whatsoever. He's been
13 married to the same woman for a tremendous period
14 of time. He works.

15 And I still consent to the proposition
16 that if he had to go back in time, no matter who
17 threw what bottle, he should have turned home that
18 day on August 8th instead of following behind Mr.
19 Taylor and this incident occurred.

20 But I can say without any hesitation
21 that there's never been any animosity between Randy
22 Wright and Jimmy in this instance. None
23 whatsoever.

24 Judge, any sentence you impose on a
25 52-year-old individual is going to be a hardship.

1 No question about it. Because it's a serious
2 offense, it carries 85 percent. I would ask you to
3 seriously consider, Your Honor, the fact that this
4 is so much out of character in relationship to his
5 past behavior and actions.

6 You, yourself, being a prosecutor
7 understand and appreciate that these behaviors just
8 don't pop up overnight. There's always an
9 indication of people coming before you multiple
10 times..

11 Now, I will agree that Randy has picked
12 and selected and this jury had delivered a very,
13 very serious criminal charge lodged against him,
14 but, Judge, this should not be the end testimony or
15 the end statement as it relates to Randy Wright.
16 He's had his trial and he's had his day in court,
17 but I'm going asking the Court to actively consider
18 a sentence that will not be a death sentence at
19 52 years of age. I think you can fashion something
20 in that particular manner, Your Honor.

21 I'm not going to argue about the
22 specifics of the injury. The law is written in
23 such a way and couched in such a way that the
24 injury can be non-existent and just the
25 characterization of how it happened, but I stand in

1 reference to the medical records and what it
2 supports.

3 What the medical records support and
4 what the medical records talk about is no bleeding
5 on the brain. The medical records speak about no
6 intracranial hemorrhaging. The record speaks about
7 red eye and the record speaks about those instances
8 in reference to the injury that he received.

9 It don't negate it, Judge, but at the
10 end of the day it speaks volumes of the injury that
11 he received. And I say that to say this, Your
12 Honor: Whatever sentence you impose, it's going to
13 be a hardship on his family. Before you impose
14 sentence, I would ask that you hear from Mr.
15 Wright's wife.

16 THE COURT: I would be happy to.

17 MR. DAVIS: Come on.

18 THE COURT: Yes, ma'am. State your
19 name for the record.

20 MS. WRIGHT: Angela Wright.

21 THE COURT: Yes, ma'am.

22 MS. WRIGHT: He's the sole provider of
23 our home. I don't know what to say. I'm asking
24 for leniency, please. I'm married to him for a
25 long time, and this isn't his character of what has

1 been done. And I would like to apologize to Mr.
2 Taylor for what happened to him.

3 MR. DAVIS: And, Judge, I don't want
4 you to think that this family came up with a large
5 sum of money. I represented this family for
6 \$3,000. If I had known it was going to come to
7 this, I wouldn't have taken this case. \$3,000. If
8 I had known I would impact the family for 3,000, I
9 wouldn't take a case like this. Maybe it's time
10 for me to retire, Your Honor.

11 THE COURT: Anything further?

12 MR. DAVIS: Nothing further.

13 THE COURT: You know, Mr. Wright,
14 sometimes senseless things happen, and those are
15 the most disturbing things because it's of concern,
16 obviously, I think, taken into consideration the
17 fact that you don't have a prior record.

18 What really bothers me about this case
19 is the fact that you're a father. And how you
20 could raise two children to become adults to think
21 it's okay to savagely beat somebody with their
22 father. The person that's supposed to teach them
23 respect, responsibility, hard work, compassionate
24 and empathy. But somehow you've raised your boys
25 to think it's okay to beat somebody like this. So

1 that puts a huge question mark about your character
2 that has been brought up, such good character.
3 That just doesn't happen overnight like that.

4 And it's also interesting to hear that
5 everybody's apologized on your behalf except for
6 you.

7 THE DEFENDANT: Well, I think I did on
8 the stand. I said I hate that everything happened,
9 what happened with him. And I wish if I could
10 change it, I would. And I just -- Lord knows I
11 hate what happened to him.

12 MR. DAVIS: Judge, let me just say,
13 I've been practicing a long time. I've met a lot
14 of clients. This just ain't Randy. His two boys
15 were getting ready to plead guilty to ten-year
16 sentences and I decided I was going to defend the
17 father and have his day in court. And then they
18 pulled back their pleas, ten years apiece.

19 And this is the end of the relationship
20 to what he ends up with.

21 Now, I don't regret the decisions I've
22 made, but I see vividly what you're saying. I'm a
23 father; I have three sons. I have always shared
24 with them that what I see as the worst thing, if he
25 was going to engage in any way with Jimmy Taylor,

SENTENCING

1 those boys should not have been there at all. And
2 that's a sad commentary to be honest with you, but,
3 Judge, I still think that he should be extended
4 some mercy for his lack of prior bad behavior.

5 THE COURT: The one thing that I would
6 like to add, Mr. Davis, although the injuries
7 didn't result in significant injury, it could have.

8 MR. DAVIS: It could have. It could
9 have; I agree.

10 THE COURT: Nobody deserves that.
11 Nobody deserves that. It's just something that we
12 can't tolerate.

13 Anything further from anyone?

14 MR. DAVIS: No.

15 MR. MCNEELY: No.

16 THE COURT: On Indictment
17 2016-GS-08-0306, you are hereby committed to the
18 State Department of Corrections for a period of
19 15 years. That's provided upon the service of ten
20 years and probation to follow for five years.
21 Special conditions of probation are that you are to
22 receive substance abuse counseling, random drug and
23 alcohol testing. You must complete anger
24 management and perform 200 hours of community
25 service.

SENTENCING

1 MR. DAVIS: We thank you, Judge.

2 (These proceedings were concluded at

3 6:52 p.m.)

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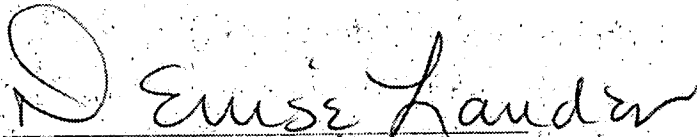
25

1 CERTIFICATE OF REPORTER
2

3 I, Carol Denise Lauder, Registered
4 Professional Reporter and Notary Public for the
5 State of South Carolina at Large, do hereby certify
6 that the foregoing transcript is a true, accurate,
7 and complete record.

8 I further certify that I am neither related
9 to nor counsel for any party to the cause pending
10 or interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this 9th day of February, 2018, at
13 Charleston, Charleston County, South Carolina.
14

15
16 
17 Carol Denise Lauder
18 Registered Professional
19 Reporter, CP
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25

Sign, date, time

The jury is requesting
the definitions of ABH AN
AB First degree, second
degree, & third degree.

5.06

8-31-17

[Signature]



WHM/0308217
WITNESSES

Berkeley County Sheriff's Office

AGENCY CASE NUMBER

2015-08045013

ARREST WARRANT NUMBER

2015A0810400964

DATE OF ARREST

08/19/2015

ACTION OF GRAND JURY

True Bill

Ima M. Marshall 3-22-14
Foreperson of Grand Jury Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2016-GS-08-00306

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

MARCH TERM 2016

THE STATE

VS.

RANDY WRIGHT
W/M DOB: [REDACTED] 1964

Indictment for

**ASSAULT & BATTERY OF A HIGH AND
AGGRAVATED NATURE**

SC Code: § 16-03-0600(B)(1)
CDR Code: 3411

FILED
16 MAR 22 PM 2:49
CLERK OF COURT
BERKELEY COUNTY, S.C.

APPX 506

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

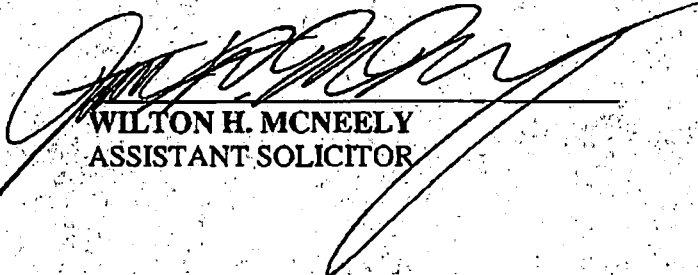
INDICTMENT

At a Court of General Sessions, convened March 2016, the Grand Jurors of Berkeley County present upon their oath:

Assault & Battery Of A High And Aggravated Nature

That in Berkeley County, South Carolina on or about August 8, 2015, the Defendant, Randy Wright, did commit an unlawful act of injury upon the victim, James Carlton Taylor, and as a result, the victim suffered great bodily injury or the act was accomplished by means likely to produce death or great bodily injury, in violation of Section 16-3-600(B)(1) of the South Carolina 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.



WILTON H. MCNEELY
ASSISTANT SOLICITOR

APP'X 507

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

STATE VS.

RANDY WRIGHT

AKA:

Race: _____ Sex: M Age: 52DOB: /1964 SS#: _____

Address: _____

City, State, Zip: _____

DL# _____ SID# _____

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

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

TO: Assault & Battery Of A High And Aggravated NatureIn violation of § 16-03-0600(B)(1) of the S.C. Code of Laws, bearing CDR Code # 3411☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense,The plea is: ☐ Without Negotiations or Recommendation,

ATTEST:

☒ CONVICTED OF or☐ PLEADS☐ Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)☐ Negotiated Sentence,☐ Recommendation by the State.

Wilton H. McNeely Assistant Solicitor 101638 SC Bar #

Defendant

Attorney for Defendant

1587 SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 15 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 10 days/months/years and or payment of \$ _____, plus costs and assessments as applicable*; the balance is suspended with probation for 5 years months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing

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 61.6 (Public Def/Prob) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§14-1-213 (Drug Court Surcharge) \$150 \$ _____

§50-21-114 (BUT Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ 3.75TOTAL \$ 128.75☐ Ordered 200 PTUP days/hours Public Service EmploymentObtain 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: Anger managementmustcomplete☐ Appointed PD or appointed other counsel,

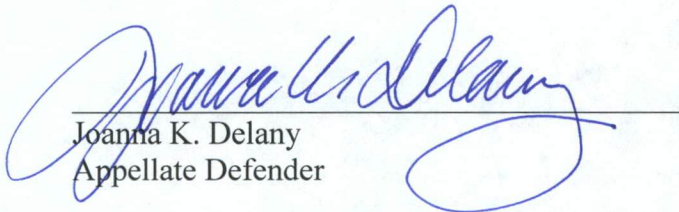
§47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/Deputy Clerk: I. HillCourt Reporter: Denise SandersPresiding Judge: Marie MurphyJudge Code: 2106Sentence Date: 8/31/17

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Joanna K. Delany
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 1st day of April, 2019.

RECEIVED
APR 01 2019
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Berkeley County

Honorable Maite Murphy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RANDY WRIGHT,

APPELLANT

APPELLATE CASE NO. 2017-002130

FINAL BRIEF OF APPELLANT

JOANNA K. DELANY
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

APP'X 510

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred when it refused to poll the jury where defense counsel timely requested the jury be polled, since a poll must be taken if the request is made?

STATEMENT OF THE CASE

On March 22, 2016, a Berkeley County Grand Jury indicted appellant for the offense of assault and battery of a high and aggravated nature. R. 502. Appellant was tried before the Honorable Maite Murphy and a jury August 30 – 31, 2017. R. 1. Steve Davis represented appellant; Wilton McNeely and Jordan Smith represented the state. R. 2.

Appellant was convicted and sentenced to incarceration for fifteen years suspended upon the service of ten years' incarceration and five years' probation. R. 498, ll. 16-20.

This appeal follows.

STANDARD OF REVIEW

The appellate courts of South Carolina review questions of law de novo. *State v. Adams*, 409 S.C. 641, 647, 763 S.E.2d 341, 344 (2014); *Jordan v. State*, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013). “We clarify that appellate courts review questions of law de novo, with no deference to trial courts.” *Smalls v. State*, 422 S.C. 174, 181, 810 S.E.2d 836, 840 (2018).

STATEMENT OF FACTS

On the night of August 8, 2015, Jimmy Taylor was taken to the hospital and received fifteen stitches or staples in his head. R. 502; R. 333, ll. 13-16. Taylor did not have any internal injuries.¹ R. 333, ll. 11-12. How Taylor came to need the stitches was the subject of appellant's trial. Taylor and appellant agreed a physical altercation occurred, but disputed how it unfolded and who was the aggressor. R. 405, ll. 5-9; R. 152, ll. 5-13.

Randy Wright, the appellant, lived "across the way and behind [a] field" from Jimmy Taylor. R. 138, l. 21 – 139, l. 5. Wright was on the way home from work at Swamp Fox Utilities with two of his adult sons, and stopped "at the Country Corner store." R. 399, ll. 6-9; R. 400, ll. 1-21. Wright said he was standing in line when he saw Taylor, who "had two big bottles of Bud Lite" look at him with a "mean look." R. 401, ll. 16-21. "I didn't know what was wrong with him. I had never seen him act like that." R. 401, ll. 22-23.

Wright left the store and headed home, and said that Taylor drove up behind him and began to tail him aggressively. R. 402, ll. 12-14; R. 403, ll. 15-19. "He'd rush up on my bumper, stay there, you know, real close." R. 403, ll. 22-23. Wright said: "I put my blinker on and went to turn in, and just as I turned in, something hit the back of my truck. R. 403, l. 23 – 404, l. 1. After the beer bottle hit his truck, Wright "want[ed] to find out what [Taylor's] problem was with me." R. 404, ll. 4-12; R. 418, ll. 17-20. "[M]e and him ain't never had any problems, so I didn't know." R. 404, ll. 12-13.

Wright said he went to Taylor's house, where Taylor was at his truck. R. 404, ll. 13-20. "I said, what's your problem with me? What have I done to you?" R. 404, ll. 21-23. Wright said

¹ Taylor did not have any internal bleeding or broken bones, but required sutures to his scalp and had bruises on his side. R. 346, l. 23 – 347, l. 3; R. 333, ll. 4-5; R. 333, ll. 16-22; R. 341, ll. 16-25.

Taylor reached behind the seat of his truck and grabbed a club. R. 404, ll. 24-25. “[H]e said, I’m going to show you. And he squared back and caught me in my kneecap with the club.” R. 405, ll. 7-9.

“[O]ne of my sons² had come beside me,” and Taylor “caught [my son] in the ribs with [the club]. And about that time, my other son had come up.” R. 405, ll. 5-13. Wright admitted that one of his sons struck Taylor while coming to his defense, but said: “I was on the bottom of the pile. I can’t tell you [which one].” R. 406, ll. 18-23.

Taylor alleged Wright passed him, and someone threw a beer bottle at Taylor’s truck. R. 148, l. 25 – 149, l. 21. According to Taylor, Wright and his sons came up to Taylor in his driveway and Wright said “he was going to F me up.” R. 150, l. 24 – 151, l. 5; R. 152, ll. 3-5. Taylor claimed he was hit in the head with a metal instrument by Shawn. R. 152, l. 12 – 153, l. 2; R. 157, ll. 20-22. According to Taylor, all three men then began to hit him. R. 154, ll. 17-20. Taylor denied that he pulled a baseball bat out of his truck and attacked Wright. R. 191, ll. 9-12.

Verdict

The jury deliberated for two hours, asking to be re-charged on the elements of ABHAN and its lesser included-offenses. R. 484, l. 7 – 487, l. 16; R. 501. A verdict of guilty was later published by the clerk. R. 487, l. 25 – 488, l. 6.

The clerk said: “Ladies and gentlemen of the jury, if this is your verdict, would you please signify by raising your right hand?” R. 488, ll. 7-9. The transcript reflects the jury “raised hands.” R. 488, l. 10. The court immediately told the jury: “Thank you ladies and gentlemen. If you would please go to the jury room for the very last time, I will be in there to release you

² Wright told Detective Ward that his sons Adam and Randy, Jr., were with him, but testified that he gets his kids “mixed up” sometimes, and that it was actually Adam and Shawn who were with him. R. 417, ll. 7-15.

momentarily.” R. 488, ll. 11-14. The court asked the attorneys: “Anything before I release the jury?” R. 488, ll. 17-18.

Defense counsel asked to approach the bench, and after a bench conference transpired, defense counsel put on the record that he requested the court poll the jury. R. 488, l. 19 – 489, l. 8. Counsel noted that state law “provide[s] for a process where you can ask for a polling of the jury.” R. 488, l. 19 – 489, l. 2. Defense counsel said: “I am aware that they all raised their hands, but that’s a continuation—that would be a group aspect polling of the jury.” R. 489, ll. 3-5. A party may “[r]equire an individual—calling out each specific juror, and I respectfully request that at this time, Your Honor.” R. 489, ll. 5-8.

The court refused to poll the jury, although it had not yet been released. R. 489, ll. 9-17. “[T]he Clerk did ask them, is this your verdict, and each of the jurors raised their hand individually. They looked around and raised their hand individually, and that’s on the record. Your request is respectfully denied.” R. 489, ll. 10-15.

Randy Wright was sentenced to serve an active prison term of ten years. R. 504.

This appeal follows.

ARGUMENT

The trial court erred when it refused to poll the jury where defense counsel timely requested the jury be polled, since a poll must be taken if the request is made.

The court asked the parties if there were any other matters before it released the jury, and the defense requested the court poll the jury. The court's refusal to poll the jury was error. "A trial judge must conduct a jury poll if requested by either party." *Green v. State*, 351 S.C. 184, 196, 569 S.E.2d 318, 324 (2002). "The trial judge must be satisfied that the verdict is unanimous and must conduct a jury poll at the request of either party." *State v. Kelly*, 372 S.C. 167, 170, 641 S.E.2d 468, 470 (Ct. App. 2007).

While the manner of polling is up to the judge, polling must be a query of **each** juror individually. "Polling is a practice whereby the court determines from the jurors **individually** whether they assented and still assent to the verdict." *State v. Linder*, 276 S.C. 304, 308, 278 S.E.2d 335, 338 (1981) (emphasis added). "To poll the jury means to examine each juror **separately**, after a verdict has been given, as to his concurrence in the verdict." *State v. Sanders*, 251 S.C. 431, 436, 163 S.E.2d 220, 224 (1968) (internal quotations omitted) (emphasis added) (quoting Black's Law Dictionary, Fourth Edition). *State v. Roper*, 274 S.C. 14, 20, 260 S.E.2d 705, 708 (1979) (manner of trial judge's polling of the jury was not coercive because it was necessary that the court ask follow-up questions in order that the record accurately reflect the position of the juror).

A close reading of *State v. Linder, supra*, is instructive here. Linder was a death penalty case, and the court polled the jury when it returned a guilty verdict, but refused the defense's request to poll the jury as to the sentencing phase. *Linder*, 276 S.C. at 308, 278 S.E.2d at 337. The defense asked the court to poll the jury to "determine whether the death sentence remained

each juror's recommendation." *Id.* Instead, the trial judge asked the foreman whether each juror had signed the recommendation, and found the foreman's affirmative reply served in place of a poll. *Id.* The South Carolina Supreme Court found this error required reversal. *Id.* "The trial judge must be satisfied that the verdict is unanimous. A jury poll is not absolutely required if the trial judge is otherwise assured that the above requirements have been met and if no request for a poll has been made by a party." *Id.* at 309, 278 S.E.2d at 338.

"Whether a poll of the jury will be conducted is discretionary with the trial judge unless a polling is requested. **If the request is made, a poll must be taken. We establish this rule to dispel any doubt a party might entertain as to the propriety of a jury verdict as rendered.**" *Linder*, 276 S.C. at 309, 278 S.E.2d at 338. (emphasis added).

The object of a jury poll "is to ascertain for a certainty that each of the jurors approves of the verdict as returned; that no one has been coerced or induced to sign a verdict to which he does not fully assent." *Humphries v. District of Columbia*, 174 U.S. 190, 194 (1899). "Courts have recognized that the chief purpose behind an individual poll of jurors is to enable a juror to express any reservation he may have about the verdict free from the pressure of his fellow jurors." *State v. Tennant*, 319 S.E.2d 395, 399 (W.Va. 1984). "[M]embers of a group may react differently when addressed as a group, and when addressed individually." *State v. Pare*, 755 A.2d 180, 193 (Conn. 2000).

"[T]he right to poll the jury, although not constitutional, is nonetheless a substantial right." *United States v. Randle*, 966 F.2d 1209, 1214 (7th Cir. 1992). "The right to poll the jury at the return of the verdict is a corollary to the defendant's right to a unanimous verdict." *State v. Behnke*, 456 N.W.2d 610, 612 (Wis. 1990).

State v. Pare, supra, is analogous to the case at hand. Connecticut had a state practice rule similar to South Carolina's mandate in *Linder* that if a request is made, a poll must be taken. *Id.* at 182. In *Pare*, the court asked the jury collectively about the verdict, and the jury collectively responded that the verdict was unanimous. *Id.* at 184-85. Pare's defense counsel requested that the jurors be polled, but the court refused: "I was looking right at the jury, they all nodded and answered yes to my questions, so I'll deny your request." *Id.* at 186.

The Connecticut Supreme Court found the trial court's failure to conduct a poll was "not subject to harmless error analysis but, rather, requires automatic reversal of the defendant's conviction," because there is no way to ascertain the effects of a poll not taken. *Id.* at 194.

The weight of authority from other states also finds reversible error results from failure to conduct a mandatory poll. "The right to a poll of the jury is a material right derived from the common law. In criminal cases the right to poll the jury is not discretionary, and the denial of that right when timely requested is reversible error." *Rinker v. State*, 492 S.E.2d 746, 747 (Ga. App. 1997) (internal alternations and punctuation omitted). "[T]he denial of one's right to poll the jury dictates that a new trial be awarded." *Commonwealth v. Downey*, 732 A.2d 593, 595 (Pa. 1999). *State v. Behnke*, 456 N.W.2d at 614 (failure to poll jury without the defendant's knowing, voluntary, and unequivocal waiver is grounds for automatic reversal: "Prejudice is presumed."); *State v. Pockert*, 746 P.2d 839, 841 (Wash. App. 1987) (failure to poll jury upon defendant's request is reversible error, even absent any showing of prejudice).

Here, the court asked the parties if they had any matters to address before it released the jury. Defense counsel moved to poll the jury, and correctly explained that although the jurors raised their hands, "that's a continuation—that would be a group aspect polling of the jury." R. 489, ll. 3-5. Counsel requested an individual query of each juror. R. 489, ll. 5-8. "Polling is a

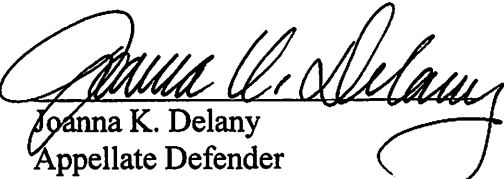
practice whereby the court determines from the jurors **individually** whether they assented and still assent to the verdict.” *Linder*, 276 S.C. at 308, 278 S.E.2d at 338 (emphasis added). The fact that the jurors here “looked around” when they raised their hands illustrates the necessity of an individual poll to “express any reservation” free from the pressure of fellow jurors.

Because counsel made a timely request, the court had a mandatory obligation to poll the jury. The collective question here was not a poll—it was a joint address, not a several poll of each juror. Appellant submits the court’s failure to comply with the law regarding this substantial right requires reversal, since the request was timely made and there is no way to ascertain the results of a poll not taken.³ *State v. Linder*, 276 S.C. 304, 278 S.E.2d 335 (1981).

³ Moreover, the length of the jury’s deliberation (two hours) and its request to be recharged on the elements of the offense and its lesser-included offenses indicate it may have been divided.

CONCLUSION

Based on the foregoing argument, appellant respectfully requests this Court reverse his conviction and sentence and remand for a new trial.


Joanna K. Delany
Appellate Defender

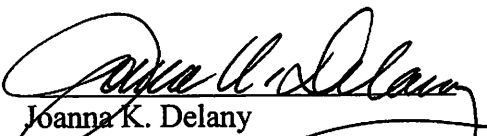
ATTORNEY FOR APPELLANT

This 15th day of April, 2019.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Initial Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

April 15, 2019.



Joanna K. Delany
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ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Berkeley County

Honorable Maite Murphy, Circuit Court Judge

THE STATE,

RESPONDENT,

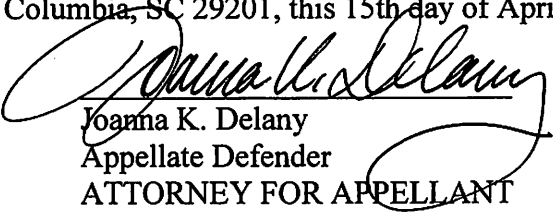
V.

RANDY WRIGHT,

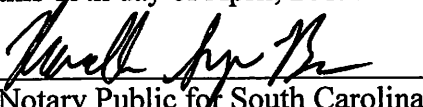
APPELLANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Deborah R.J. Shupe, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 15th day of April, 2019.


Joanna K. Delany
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 15th day of April, 2019.

 (L.S)
Notary Public for South Carolina
My Commission Expires: July 26, 2028

APP'X 525

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Berkeley County
The Honorable Maite Murphy, Circuit Court Judge
Appellate Case No. 2017-002130

The State,

Respondent,

v.

Randy Wright,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The circuit court properly determined each juror concurred in the verdict because each individual juror affirmed their concurrence in open court by raising their hand when the clerk asked the jurors to indicate if the published verdict was their verdict.

STATEMENT OF THE CASE

The State concurs with Appellant's procedural Statement of the Case.

STATEMENT OF FACTS

In March 2016, the Berkeley County Grand Jury indicted Appellant Randy Wright on one count of assault and battery of a high and aggravated nature, arising from an altercation between Appellant and Jimmy Taylor (“Taylor”) on August 8, 2015. The case was called for a jury trial on August 30, 2017, before the Honorable Maite Murphy, Circuit Court Judge.

Dale Williams testified he lived next door to Taylor, and around 8:00 or 9:00 p.m. on August 8, 2015, he was home watching television when his dog started barking. He went to his front porch and saw a group of people in Taylor’s driveway. As he stood on his porch, Williams saw Taylor get up off the ground and start coming up the driveway, and heard Taylor yelling for his girlfriend to call 911. The other people in the driveway went to a truck parked at the end of the street, and quickly drove away.

When Taylor got closer to Williams’ house, Williams saw that Taylor was bleeding from a wound on his head. Williams told Taylor to come over to his house, Williams wrapped a towel around Taylor’s head to stop the bleeding, and saw that Taylor was “beat pretty severely.” While they waited for an ambulance, Taylor told Williams the people who beat him were Appellant and two other people. (Trial Transcript [TT], pp. 52-62; Record on Appeal [R.], pp. 52-62).

Williams’ wife Deanna testified she was also at home the night of the altercation, and described Taylor as “covered in blood.” She was on the phone with emergency services while they waited on her porch for an ambulance. While they waited, Taylor stated Appellant and his two sons jumped him in his driveway. (TT, pp. 75-87; R., pp. 75-87).

Taylor’s sister testified she went to the hospital when she learned Taylor had been injured. She saw Taylor in the emergency room, and described him as “a mess,” with staples in the wound on his head, and bad bruising on his face and body. (TT, pp. 92-109; R., pp. 92-109).

Taylor testified he met Appellant and his sons approximately a year before the altercation when a friend brought them to Taylor's house to help fix Taylor's truck. He had no further contact with Appellant until approximately six months later when Appellant approached him in the grocery store and stated he did not appreciate Taylor talking about his family. (TT, pp. 134-142; R., pp. 134-142).

On August 8, 2015, Taylor went shopping at the Goodwill Store, and then stopped to eat. He started home around 8:00 p.m., and stopped at a convenience store on the way home to buy cigarettes and sodas. As he pulled out of the convenience store parking lot, he saw Appellant and his sons sitting in a truck parked across the street. When he left the parking lot, Appellant pulled out behind him and followed as he drove home. As he turned onto the road leading to his house, Appellant passed him, and someone threw a bottle out of the passenger window, which hit the front and right turn signal light of Taylor's truck. (TT, pp. 142-149; R., pp. 142-149).

After the bottle hit Taylor's truck, Appellant turned into a road before the driveway to Taylor's house. Taylor pulled into his driveway, and when he got out of his truck to unlock the driveway gate, Appellant and his sons approached him. Appellant stated he was going to "f***" Taylor up. Immediately thereafter, one of Appellant's sons hit Taylor in his left eye with a metal object. After he was hit multiple times, Taylor fell to the ground, and Appellant and his sons continued to hit and kick him until Williams came outside. When Williams came onto his porch, Appellant and his sons ran to Appellant's truck, which was parked down the street from Taylor's driveway. Taylor testified he never struck Appellant or his sons. (TT, pp. 149-179; R., pp. 149-179).

Appellant was arrested on August 19, 2015. He initially told the police he had not been involved in an altercation with Taylor, but subsequently stated he and his sons confronted Taylor

after he threw a bottle at Appellant's truck. He further stated Taylor got a club out of his truck and started hitting Appellant on the leg. Appellant claimed his sons tried to block Taylor from hitting him, and Appellant grabbed Taylor by the waist and threw him to the ground. He stated they left when Taylor said he was going to call the police. (TT, pp. 233-271; R., pp. 233-271).

Appellant testified Taylor followed him from the convenience store, and threw a bottle at the back of Appellant's truck. He stated he went to Taylor's house to ask him what was wrong, but Taylor grabbed a club out of his truck and hit Appellant. Appellant testified Taylor was intoxicated, and tried to choke Appellant by holding the club on his neck from behind. His sons tried to pull Taylor off Appellant. Everyone ended up on the ground, and Appellant testified Taylor said he was going to his house to get a gun, so he and his sons left. Appellant testified he had no idea why Taylor attacked him. (TT, pp. 395-415; R., pp. 395-415).

On cross-examination, Appellant stated he did not tell the truth about which sons were with him that night because he was "confused," but denied he changed his story about what happened after the police told him Taylor had identified him. He admitted he did not file a police report or seek any medical care for the injuries he purportedly sustained when Taylor hit him with the club, but claimed he tried to show the police the injury to his knee when he spoke with them, but they would not look at it. Appellant also testified he had no idea how Taylor sustained a head injury or bruises. (TT, pp. 415-422; R., pp. 415-422).

The circuit court charged the jury on the elements of assault and battery of a high and aggravated nature, assault and battery first degree, assault and battery second degree and assault and battery third degree. During deliberations, the jury asked for the definitions of assault and battery first, second and third degree. With agreement of counsel, the court sent the written charges regarding those charges to the jury. (TT, pp. 477-487; R., pp. 477-487).

After deliberating for approximately a total of two hours, the jury convicted Appellant of assault and battery of a high and aggravated nature. After announcing the verdict, the clerk asked jurors to signify that was their verdict by raising their right hands, and all jurors raised their hands. The court sent the jury back to the jury room until they were released. Appellant then acknowledged all the jurors raised their hands, but requested further polling by asking each juror to state individually he or she concurred in the verdict. The court denied the request, noting the clerk asked the jurors to raise their hands if the verdict announced was their verdict, and “they raised their hand individually” in response. (TT, pp. 485-489; R., pp. 485-489).

The court sentenced Appellant to fifteen years incarceration, suspended to ten years incarceration and five years probation. (TT, pp. 496-498; R., pp. 496-498). This appeal followed.

STANDARD OF REVIEW

The standard of review in South Carolina's appellate courts depends on the specific issue presented. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836, 840 (2018). The courts give great deference to the trial court's findings of fact, but reviews questions of law *de novo*. *Id.* In criminal cases, the appellate court sits to review errors of law only. State v. Broadnax, 414 S.C. 468, 779 S.E.2d 789, 791 (2015). Matters within the trial court's discretion will not be reversed on appeal absent an abuse of discretion. State v. Jones, 423 S.C. 631, 817 S.E.2d 268, 270 (2018).

ARGUMENT

The circuit court properly determined each juror concurred in the verdict because each individual juror affirmed their concurrence in open court by raising their hand when the clerk asked the jurors to indicate if the published verdict was their verdict.

Relying primarily on State v. Linder, 276 S.C. 304, 278 S.E.2d 335 (1981), and case law from other jurisdictions, Appellant contends the circuit court erred in denying his request for individual verbal polling of the jurors, and the error mandates reversal of his conviction. Appellant's contention is premised on an expansive interpretation of Linder, and his reliance on it is misplaced. Further, if the circuit court erred in denying Appellant's request, the error is harmless based on the circumstances of this case.

The trial judge must be satisfied the verdict is unanimous, and must conduct a jury poll at the request of either party. Linder, 278 S.E.2d at 338. Polling is intended to provide the trial court a method to determine jurors individually "assented [to] and still assent to the verdict." *Id.*; *see also State v. Kelly*, 372 S.C. 167, 641 S.E.2d 468, 470 (Ct. App. 2007) (same). The trial judge is not required to poll the jury if the court is satisfied the verdict is unanimous, but must conduct a poll if either party requests it. Linder, 278 S.E.2d at 838. Polling the jury means examining the jurors separately as to his concurrence in the verdict. State v. Sanders, 251 S.C. 431, 163 S.E.2d 220, 224 (1968) (*citing* Black's Law Dictionary, Fourth Edition, Page 1320).

The right to a jury poll is not a constitutional right. United States v. Carter, 772 F.2d 66, 67 (4th Cir. 1985) (the right to a poll is not "of constitutional dimension," and the trial judge's collective polling did not violate the defendant's constitutional right to a unanimous verdict); United States v. Miller, 59 F.3d 417, 419 (3rd Cir. 1995) (right to a jury poll is not constitutional, but is rooted in early common law). While acknowledging the significance of a defendant's right

to a jury poll upon request, the Linder court did not mandate any particular method of conducting the poll. 278 S.E.2d at 337-338. In the absence of a mandated procedure to conduct a requested jury poll, the court necessarily left the method of conducting the poll to the trial judge's discretion.

In this case, the circuit court assured each juror separately concurred in the verdict as announced by a show of hands. While the court did not conduct an individual verbal inquiry to each juror, the polling method used certainly achieved the goal of Linder by giving each individual juror the opportunity to express disagreement. Unlike a group question and a group verbal response, where individual assent may be difficult to ascertain, the poll taken allowed the court to easily discern if one or more of the jurors did not raise his or her hand.

Linder is distinguishable from the instant case. In Linder, the trial judge asked the jury foreman if each juror had signed the statutorily required form indicating the jury's recommendation to impose the death penalty. The form was signed in the jury room, and the jurors were not polled in open court, either collectively or individually, as to their assent to the recommendation. The Supreme Court reversed the conviction and sentence, finding, *inter alia*, the trial judge erred by accepting the jury foreman's attestation of the jurors' unanimity. 278 S.E.2d at 338.

Contrary to mere acceptance of the jury foreman's attestation of unanimity, the jurors in the instant case were asked in open court, in the circuit court's presence, to confirm the verdict rendered was their verdict. Each individual juror raised his/her hand in response to the question, and nothing in the record indicates hesitation or uncertainty on the part of any juror. The circuit court was in the best position to observe the jurors as they responded, and determined the verdict was unanimous based on those observation. (TT, pp. 488-489; R., pp. 488-489).

The case law Appellant cites from other jurisdictions is likewise distinguishable. *See United States v. Randle*, 966 F.2d 1209, 1214 (7th Cir. 1992)(federal criminal procedure rule required a poll if requested; no jury poll conducted); *State v. Pare*, 755 A.2d 180, 194-196 (Conn. 2000)(court rule required jury poll if requested and specifically set forth procedure of asking each juror individually to affirm agreement with the verdict; collective poll violated the rule and required reversal); *Commonwealth v. Downey*, 732 A.2d 593 (Pa. 1999)(criminal procedure rule required jury poll if requested; trial court erred in refusing timely request for a jury poll); *Rinker v. State*, 492 S.E.2d 746 (Ga. App. 1997)(denial of defendant's timely request for a jury poll was reversible error; no jury poll conducted); *State v. Behnke*, 456 N.W.2d 610, 64 (Wis. 1990)(combination of violation of defendant's constitutional right to counsel when the verdict was rendered in defense counsel's absence and no jury poll mandated reversal); *State v. Pockert*, 746 P.2d 839, 840 (Wash. App. 1987)(criminal procedure rule required jury poll; judge refused request for jury poll); *State v. Tennant*, 319 S.E.2d 395 (W.Va. 1984)(juror expressed disagreement with the verdict during poll and trial judge's subsequent questioning of the juror was coercive). Contrary to these cases, there is no South Carolina case or procedure rule indicating a collective jury poll, with each juror showing concurrence in the verdict by a show of hands in the trial court's presence, does not meet the requirement of *Linder*.¹

Appellant's contention the denial of his request for further polling of the jury mandates reversal of his conviction places form over substance, and requires pure speculation regarding the impact of an individual poll. "It must be rare that members of a jury would listen to, or speak

¹In *Carter*, the Fourth Circuit acknowledged Rule 31, FRCP merely mandated a jury poll if requested, the manner of conducting the poll was discretionary with the trial court and the collective poll conducted was not reversible error, but "strongly suggest[ed]" the district courts in future cases should ask each juror to respond individually whether he agrees with the verdict. 772 F.2d at 68. Rule 31 was amended in 1998 to specifically require "individual" polling of each juror.

collectively in support of, their foreman, and immediately thereafter contradict themselves if asked to speak individually.” Jaca Hernandez v. Delgado, 375 F.2d 584, 586 (1st Cir. 1967)(explaining why a defendant might think it pointless to require a jury poll). By comparison, it is difficult to imagine how asking jurors to respond collectively, particularly by a show of hands, is more coercive than singling out each individual juror to respond to the same question. Indeed, asking each juror individually to affirm or disavow the verdict in the presence of the other jurors would rationally be more coercive, and less likely to encourage the individuals to dissent after the verdict has been announced. Thus, provided a request for a jury poll is not denied, the trial judge should be permitted to exercise its discretion to poll the jury in the manner it deems most likely to assure individual assent without coercion.

Significantly, Appellant raises no other issue regarding the circuit court’s rulings during the trial. As the United States Supreme Court noted in Humphries v. District of Columbia, 174 U.S. 190 (1899), while the right to poll a jury exists, the “minor matter of failing to poll the jury” does not render the verdict null and void when it is clear the verdict received the assent of all the jurors. *Id.* at 194-195. The record in this case amply supports the circuit court’s determination all the jurors concurred in the verdict as announced.

If this Court determines the circuit court erred by failing to further poll the jurors, the error is harmless. This case was a relatively straightforward two day trial from jury selection to verdict, and it primarily rested on the jurors assessing the credibility of the victim and Appellant. During deliberations, the jury requested the definition of the three charges against Appellant (assault and battery first, second and third degree), and with agreement of counsel, the circuit court sent the jury a written copy of the instructions as originally given. The jury reached its verdict after deliberating for a total of approximately two hours. (TT, pp. 485-488; R., pp. 485-

488). There is no indication the jury struggled to reach a verdict, and as stated above, nothing in the record indicates any of the jurors hesitated in responding affirmatively with a show of hands to the question of whether the verdict as announced was their verdict.

Finally, in light of the fact Linder requires a jury poll if requested, but does not mandate a particular method of polling, the circuit court acted well within current law in determining the collective poll with a show of hands in the court's presence was sufficient, and its ruling should be affirmed. If this Court determines each juror must be asked individually to verbally affirm the announced verdict is his/her verdict, for the benefit of the bench and bar in future cases, the State submits this Court should clarify what type of poll is mandated under Linder, but should not reverse Appellant's valid conviction.

CONCLUSION

Based on the foregoing reasons, the State respectfully submits the judgment and conviction of the lower court should be affirmed.

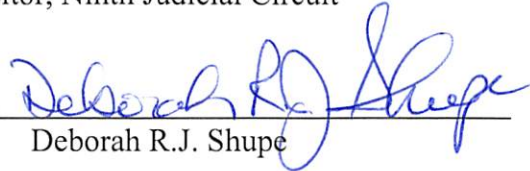
Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

April 12, 2019

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Berkeley County
The Honorable Maite Murphy, Circuit Court Judge
Appellate Case No. 2017-002130

The State,

Respondent,

v.

Randy Wright,

Appellant.

CERTIFICATE OF COUNSEL

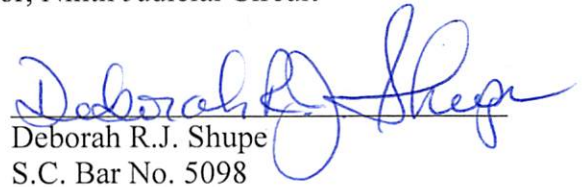
The undersigned certifies this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 14, 2015, order from the South Carolina Supreme Court entitled, "revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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April 12, 2019

APP'X 542

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Berkeley County
The Honorable Maite Murphy, Circuit Court Judge
Appellate Case No. 2017-002130

The State,

Respondent,

v.

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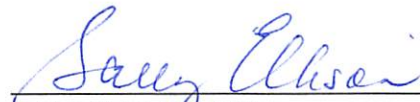
PROOF OF SERVICE

I, Sally Ellison, certify I served the Final Brief of Respondent on Appellant by depositing copies in the United States mail, postage prepaid, addressed to:

Joanna K. Delany
Assistant Appellate Defender
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I further certify that all parties required by Rule to be served have been served.

This 12th day of April, 2019.


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APP'X 543

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Randy Wright, Appellant.

Appellate Case No. 2017-002130

Appeal From Berkeley County
Maitè Murphy, Circuit Court Judge

Opinion No. 5782
Heard August 19, 2020 – Filed November 18, 2020

REVERSED AND REMANDED

Appellate Defender Joanna Katherine Delany, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General Deborah R.J. Shupe,
both of Columbia; and Solicitor Scarlett Anne Wilson, of
Charleston, all for Respondent.

HILL, J.: After deliberating two hours in Randy Wright's trial for assault and battery of a high and aggravated nature (ABHAN), the jury signaled it had reached a verdict. When the jury returned to the courtroom, the trial court directed the courtroom clerk to publish the verdict. The clerk read the verdict form, announcing the jury had found Wright guilty of ABHAN and that the form had been signed by the forelady. The clerk then stated: "Ladies and gentlemen of the jury if this is your verdict, would you please signify by raising your right hand?" In response, each

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juror raised his or her right hand. Wright then asked the trial court to poll each juror individually. The court declined, explaining that, in response to the clerk's inquiry "each of the jurors raised their hand individually." Wright appeals, asserting the clerk's collective inquiry did not satisfy his polling right. We agree and reverse.

I.

The custom of polling a jury after a verdict developed in English practice, although no precise method predominated. See Matthew Hale, *Pleas of the Crown*, 299–300 (Vol. II, 1800) ("[I]f the jury say they are agreed, the court may examine them by poll"). Early South Carolina cases permitted polling in the trial court's discretion. *State v. Wyse*, 32 S.C. 45, 10 S.E. 612, 615 (1890); *State v. Allen*, 12 S.C.L. (1 McCord) 525, 526–27 (1822). The trial court's discretion ended in *State v. Linder*, which held a poll must be taken if requested and implied each juror must be polled individually. 276 S.C. 304, 309, 278 S.E.2d 335, 338 (1981).

The right to poll the jury is not in itself a constitutional right but a procedural protection of the defendant's constitutional right to a unanimous verdict. *State v. Pare*, 755 A.2d 180, 188 (Conn. 2000). It also safeguards the right to a public trial. If the poll reveals the jury's announced verdict is not in fact unanimous, the verdict cannot stand, and the trial court may, as circumstances warrant, direct further deliberation or declare a mistrial. *State v. Kelly*, 372 S.C. 167, 170–71, 641 S.E.2d 468, 470 (Ct. App. 2007). Just as trial counsel has no duty to request a poll, the trial court has no duty to conduct one without a request. *Green v. State*, 351 S.C. 184, 196, 569 S.E.2d 318, 324 (2002); *Linder*, 276 S.C. at 308–09, 278 S.E.2d at 338.

Besides shoring up these rights, individual polling supports several other interests of justice. The courtroom air thins when the jury returns to deliver its verdict. No other trial moment demands the solemn clarity individualized inquiry provides. Individual polling promotes finality and accountability of the verdict stage and enhances the integrity of the deliberative process by ensuring no juror was coerced in the jury room. See *Humphries v. District of Columbia*, 174 U.S. 190, 194 (1899) (observing object of poll "is to ascertain for a certainty that each of the jurors approves of the verdict as returned; that no one has been coerced or induced to sign a verdict to which he does not fully assent"). We note Rule 31 of the Federal Rules of Criminal Procedure was amended in 1998 to require individual rather than collective polling. Fed. R. Crim. P. 31(d). The Advisory Committee note accompanying the change points out collective polling "saves little time and does not always adequately ensure that an individual juror who has been forced to join the majority during deliberations will voice dissent from a collective response." Fed. R. Crim. P. 31 Advisory Committee Notes. We agree; as the proverb goes, valor delights in the test.

Even before the 1998 rule change, several federal circuits held a collective question to the jury asking them to affirm their verdict (by show of hands or by verbal assent), even if asked in open court, is not the best method for accomplishing the purpose of a jury poll. *United States v. Miller*, 59 F.3d 417, 421 (3d Cir. 1995); *United States v. Carter*, 772 F.2d 66, 68 (4th Cir. 1985). In states requiring individual polling upon request, it has been held a collective polling question does not suffice. *State v. Coulthard*, 492 N.W.2d 329, 333 (Wis. Ct. App. 1992); *Miles v. Com.*, 256 S.W.3d 46, 46 (Ky. Ct. App. 2008). As the Connecticut Supreme Court has observed:

These cases reflect the understanding, based on common human experience, that members of a group may react differently when addressed as a group, and when addressed individually. They also reflect the notion that the concept of jury unanimity is sufficiently significant so as to require that, upon request, each juror be required to state his or her verdict in open court—individually—to face the defendant and the state, and confirm, on his or her own, that the collectively reported verdict is truly his or hers.

Pare, 755 A.2d at 193 (collecting cases).

Linder did not endorse a particular method of individually polling the jurors, stating only, "Polling is a practice whereby the court determines from the jurors individually whether they assented and still assent to the verdict." 276 S.C. at 308, 278 S.E.2d at 338. Because *Linder* provided no guidance on the mechanics of proper individual polling, we understand how the trial court could have concluded the clerk's inquiry was enough. But it was not. We conclude individual polling means each juror must be separately asked to confirm verbally on the record that the verdict announced is still his or her verdict. We believe this person-by-person inquiry best advances the prime reason for individual polling: "to dispel any doubt a party might entertain as to the propriety of a jury verdict as rendered." 276 S.C. at 309, 278 S.E.2d at 338. The trial court therefore erred in denying Wright's request for such a poll.

II.

Whether the denial of a jury poll request automatically requires a new trial is a novel question in South Carolina. *Linder* does not say, and we have no controlling statute or rule.

In the past half century, courts have attempted to divide constitutional errors into

two categories: trial errors and structural errors. In general, trial errors that are harmless do not justify reversal. Structural errors, on the other hand, are reversible *per se*, unredeemable by the harmless error doctrine. See *Weaver v. Massachusetts*, 137 S. Ct. 1899, 1908 (2017) (delineating three broad rationales for classifying an error as structural); *State v. Rivera*, 402 S.C. 225, 246–47, 741 S.E.2d 694, 705–06 (2013) (differentiating between structural errors and trial errors subject to harmless error review). The structural/trial error dichotomy does not cover all trial mistakes; some, like the polling error here, elude neat classification. See, e.g., *Weaver*, 137 S. Ct. at 1911 (noting the Court "has granted automatic relief to defendants who prevailed on claims alleging race or gender discrimination in the selection of the petit jury, though the Court has yet to label those errors structural in express terms" (citations omitted)); *State v. Short*, 333 S.C. 473, 476–78, 511 S.E.2d 358, 360–61 (1999) (holding no showing of prejudice required when trial court erred in denying defendant's right to exercise peremptory challenges—a statutory procedural right designed to ensure constitutional right to an impartial jury; instead, error was reversible *per se*).

The structural/trial error distinction is not pivotal to Wright's appeal, for a polling error is not a pure constitutional error, and resembles both an error affecting the "framework within which the trial proceeds" (structural error) and "an error in the trial process itself" (trial error). *Arizona v. Fulminante*, 499 U.S. 279, 310 (1991). The reasoning of *Weaver*, however, offers a rational way out of our classification dilemma. In *Weaver*, the Court noted that in addition to relating to a trial's framework, an error is structural if: (1) the right at issue is designed to protect an interest other than the defendant's interest in being wrongly convicted; (2) the effects of the error are "simply too hard to measure"; or (3) the error always results in fundamental unfairness. 137 S. Ct. at 1908. We believe the denial of the right to individual polling bears all three of these traits. The polling right protects not only the defendant from being wrongfully convicted, but also the public's interest in ensuring the outcome of the criminal trial process is reliable. Denial of the polling right also defies harmless error analysis. To find the error harmless, we would have to conclude the lack of a valid poll was an "error which occurred during the presentation of the case to the jury, and which may therefore be quantitatively assessed in the context of other evidence presented in order to determine whether [the error] was harmless beyond a reasonable doubt." *Fulminante*, 499 U.S. at 307–08 (1991). We cannot say the lack of a valid poll contributed to the verdict, as the error occurred after a verdict was announced. It would be an odd end to the matter to deem it harmless, for in effect we would be presuming the unanimity of the verdict while simultaneously denying the defendant the only real right he has to check behind the presumption. Finally, the denial of the polling right caused fundamental

unfairness by "undermining . . . the systemic requirements of a fair and open judicial process." *Weaver*, 137 S. Ct. at 1911. If an announced verdict lacks unanimity in fact, then the harm to the integrity and fundamental legitimacy of the entire trial is total.

We are mindful of the general rule that a conviction may not be reversed due to "insubstantial errors not affecting the result." *State v. Chavis*, 412 S.C. 101, 109, 771 S.E.2d 336, 340 (2015). It is our firm view that depriving a defendant of his or her polling right is not a technicality, but a material and prejudicial error. *See id.* at 110 n.7, 771 S.E.2d at 340 n.7 ("[W]e readily acknowledge that there are some errors, particularly errors of law, which cannot be rendered harmless by overwhelming evidence."). The individual poll is the best chance the trial court and the parties have to ensure the sanctity and unanimity of the verdict. It is not enough to say, as the State does, that jurors seldom recant upon polling. Experience—and case law—proves they do. *Kelly*, 372 S.C. at 171–72, 641 S.E.2d at 470–71 (involving a juror's recant and citing other cases where it has occurred). The rarity of an episode so threatening to the vital center of our jury system is no reason to ignore it.

Because of the importance of the polling right and the difficulty of deciphering the harm its denial has caused, many federal circuits and state appellate courts have deemed the denial reversible *per se*. *United States v. F.J. Vollmer & Co.*, 1 F.3d 1511, 1522–23 (7th Cir. 1993); *Virgin Islands v. Hercules*, 875 F.2d 414, 419 (3d Cir. 1989); *Miranda v. United States*, 255 F.2d 9, 18 (1st Cir. 1958); *Pare*, 755 A.2d at 194; *Commonwealth v. Downey*, 732 A.2d 593, 595–96 (Pa. 1999); *Miles*, 256 S.W.3d 46, 46–47. We are persuaded by the sound reasoning of these decisions and therefore hold the denial of the defendant's substantial right to an individual poll of each juror in open court—where each juror must express his or her continued assent in the announced verdict—is reversible error *per se*, not subject to a harmless error analysis. We are convinced such a rule incentivizes compliance with proper polling procedure and best honors the value of the right itself.

We are aware retrials are costly and impede judicial efficiency. We are equally aware that appellate reviews requiring lengthy searches through thick transcripts to sense the net impact of an error on the whole trial can also be costly and inefficient where, as here, the error is not in what was done, but what was not done.

REVERSED AND REMANDED.

WILLIAMS and KONDUROS, JJ., concur.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Berkeley County
Honorable Maite Murphy, Circuit Court Judge
Appellate Case No. 2017-002130

THE STATE,

Respondent,

vs.

RANDY WRIGHT,

Appellant.

RESPONDENT’S PETITION FOR REHEARING

Polling of the jury is sometimes—but not always—conducted after a verdict is announced at the conclusion of a trial, and its purpose is simply to help ensure the jury’s verdict is a unanimous one. Green v. State, 351 S.C. 184, 196, 569 S.E.2d 318, 324 (2002). Significantly, jury polling achieves that purpose by giving each of the members of the jury an opportunity to individually assent to the verdict, which typically—up to that point—has only been announced by someone like a foreperson or clerk on the jurors’ collective behalf. See Miranda v. United States, 255 F.2d 9, 17 (1st Cir. 1958) (explaining the purpose of jury polling “is to give each juror an opportunity, before the verdict is recorded, to declare in open court his assent to the verdict which the foreman has returned,” which enables the trial judge and the parties to ascertain with certainty a unanimous verdict free of inducement or coercion has been reached).

In South Carolina, no statute or criminal procedure rule exists that expressly addresses if, when, and how post-verdict jury polling must be conducted in a criminal case tried in one of our

state courts. Cf. State v. Beaty, 423 S.C. 26, 39, 813 S.E.2d 502, 509 (2018) (“[T]here is no codified or otherwise duly adopted court rule governing the content and order of closing arguments in criminal cases in which a defendant introduces evidence.”). Accordingly, based on the mandates of the South Carolina Rules of Criminal Procedure, the proper procedures for jury polling in our state must necessarily be derived from the “practice as it has heretofore existed” in our courts unless and until a specific rule of procedure is adopted through the appropriate constitutionally-delineated process. Rule 37, SCRCrimP; see S.C. Const. art. V, § 4A (“All rules and amendments to rules governing practice and procedure in all courts of this State promulgated by the Supreme Court must be submitted by the Supreme Court to the Judiciary Committee of each House of the General Assembly during a regular session, but not later than the first day of February during each session. Such rules or amendments shall become effective ninety calendar days after submission unless disapproved by concurrent resolution of the General Assembly, with the concurrence of three-fifths of the members of each House present and voting.”).

Regarding the jury polling practices that have heretofore existed in our courts, South Carolina trial judges historically were vested with complete discretion as to both whether and how jury polling was conducted following the return of a verdict in a criminal trial, which left trial judges free to conduct *no* polling at all if satisfied it was not necessary under the circumstances. See, e.g., State v. Simon, 126 S.C. 437, 120 S.E. 230, 232 (1923) (instructing “the well-settled rule” in South Carolina is “neither party has an absolute right to have the jury polled”); State v. Dodson, 14 S.C. 628, 628 (1881) (“The matter of polling the jury is within the discretion of the presiding judge.”). However, the practice of unfettered polling discretion was modified with our Supreme Court’s 1981 decision in State v. Linder, 276 S.C. 304, 309, 278 S.E.2d 335, 338 (1981), which announced and established the following new—and succinct—

procedural rule: “If [a] request [for jury polling] is made, *a* poll must be taken.”¹ (emphasis added). Importantly though, when articulating that new rule, the Supreme Court elected *not* to mandate a specific method by which a jury poll must be taken. Id. Instead of doing so, our Supreme Court chose to leave the particular manner by which polling of the jury is accomplished to the trial judge’s discretion, which has been expressly recognized in our post-Linder jurisprudence and is consistent with what has been described as the “prevailing view” in our nation. See United States v. Miller, 59 F.3d 417, 420 (3d Cir. 1995) (explaining “the prevailing view is that the method chosen [for jury polling] is within the discretion of the trial judge”); State v. Singleton, 319 S.C. 312, 316, 460 S.E.2d 573, 576 (1995) (recognizing the manner of jury polling falls within the trial judge’s discretion). Moreover, even after the decision in Linder, jury polling still is not a necessary or critical component of the criminal trial process in our state, and there is no affirmative duty on defense counsel to request jury polling even though the right to do so exists. See Green, 351 S.C. at 196, 569 S.E.2d at 324 (explaining a trial judge “is not required to conduct a jury poll if the court is satisfied the verdict is unanimous” and defense counsel has “no affirmative duty to request the trial judge poll the jury”); see also Humphries v. District of Columbia, 174 U.S. 190, 194 (1899) (“[Jury polling] is *not a matter which is vital*, is frequently not required by litigants; and, while it is an undoubted right of either, it is not that which must be found in the proceedings in order to make a valid verdict.” (emphasis added)).

¹ Notably, at the time Linder was decided, our Supreme Court was constitutionally vested with authority to promulgate procedural rules for state courts to follow. See Beaty, 423 S.C. at 41, 813 S.E.2d at 510 (“Before 1973, the South Carolina Constitution did not address in any manner the power of [the Supreme] Court to implement rules of practice and procedure in the courts of this State. On April 4, 1973, article V, section 4 of the South Carolina Constitution was amended to grant power to this Court, subject to statutory law, to make rules governing the practice and procedure in all such courts in the unified judicial system.” (internal quotations and brackets omitted)).

In Appellant Randy Wright’s case, the trial judge—through her jury instructions—made abundantly clear to the jurors their verdict had to be a unanimous one. (R. p. 26; p. 483). And, to ensure absolute clarity on that point of law, the trial judge expressly emphasized to the jurors: “[A]ll 12 of you must agree on the verdict.” (R. p. 483). Following that unambiguous and easily-understood directive, the jury began deliberations and, within just under an hour and a half, reached a verdict. (R. p. 485; p. 487). Once they had done so, the jurors returned to the open courtroom, and, with all of them present, the verdict was announced as follows: “As to the charge of assault and battery of a high and aggravated nature, we, the jury, unanimously find [Wright] guilty.” (R. p. 488). Immediately after that, the jurors were asked to individually raise their right hands if the verdict announced was their verdict, and each member of the jury individually raised his or her hand in response. (R. pp. 488-489). Thus, the jury was unquestionably polled during Wright’s trial, and the manner of polling employed resulted in twelve *individual* hands being raised towards the courtroom ceiling to signify all twelve jurors were in full agreement with the guilty verdict that had been announced. (R. pp. 488-489).

Even though the jurors were, in fact, polled in Wright’s case and confirmed both collectively *and* individually the verdict returned was a unanimous one, this Court vacated the jury’s verdict, reversed Wright’s conviction, and remanded the matter for a new trial based solely on the manner in which that polling was conducted. State v. Wright, Op. No. 27562 (S.C. Ct. App. filed Nov. 18, 2020) (Shearouse Adv. Sh. No. 45 at 22). In doing so, this Court determined the manner by which the jurors were polled to ascertain their individual responses was insufficient and “not the best method for accomplishing the purpose of a jury poll.” Then, despite recognizing no South Carolina authority has ever previously mandated jury polling must specifically be conducted in a person-by-person manner, this Court held the trial judge reversibly

erred by failing to conduct polling in precisely such a manner and, by so holding, adopted an entirely new rule of criminal procedure for jury polling in South Carolina consistent with rules that have been promulgated in jurisdictions *other than* our own. Finally, this Court concluded the trial judge's failure to conduct polling in the "best method" was reversible per se without any need for a showing of specific prejudice to Wright. Respectfully, pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, Respondent ("the State") petitions for rehearing because this Court overlooked and misconstrued several critical points in deciding Wright's case.

Initially, this Court appears to have overlooked the fact the polling conducted in Wright's case fully satisfied the purpose of jury polling and was entirely consistent with the "practice as it has heretofore existed" in our state. That is true because—through the jurors being asked to raise their hands individually to confirm the announced verdict was their own—a poll was unquestionably taken, which was all our Supreme Court in Linder said must occur when polling is sought. Linder, 276 S.C. at 309, 278 S.E.2d at 338; see Singleton, 319 S.C. at 316, 460 S.E.2d at 576 (indicating—in a case decided after Linder—the manner in which jury polling is conducted rests within the trial judge's discretion); cf. Miller, 59 F.3d at 421 ("[W]e are bound by our precedent to review the procedure followed in the case before us as one that is within the discretion of the district court."). Likewise, based on the process employed, the jurors were unmistakably given an opportunity to *individually* express agreement or disagreement with the verdict, and they all did just that, which enabled a determination of each individual juror's assent to the verdict. See Miranda, 255 F.2d at 17 (instructing the purpose of jury polling "is to give each juror an opportunity, before the verdict is recorded, to declare in open court his assent to the verdict which the foreman has returned"); see also Linder, 276 S.C. at 308, 278 S.E.2d at 337 ("Polling is a practice whereby the court determines from the jurors individually whether they

assented and still assent to the verdict.”). Similarly, since all twelve jurors were required to individually respond based on the manner in which the polling was conducted, the trial judge—along with everyone else in the courtroom—was able to confirm the jury’s verdict was a unanimous one simply by counting the twelve separate and individual raised hands. See Singleton, 319 S.C. at 316, 460 S.E.2d at 576 (“[T]he trial judge must be satisfied that the verdict is unanimous.”). Under such circumstances, there cannot be any legitimate grounds upon which to find the trial judge abused her broad discretion or otherwise erred merely because she refused to conduct *further* polling of jurors who had already been polled and had all individually expressed agreement with the verdict. Cf. United States v. Carter, 772 F.2d 66, 67-68 (4th Cir. 1985) (indicating it could *not* “conclude the trial judge abused his discretion in polling the jurors by asking for a show of hands” when nothing expressly prescribed the manner by which a jury poll must be conducted at that time and the applicable rule merely indicated “the jury shall be polled at the request of any party or upon the court’s own motion”).

Beyond that, this Court appears to have overlooked the constitutional limits that prevent new rules of procedure in our state from being created and articulated solely by the issuance of published appellate decisions. Regarding those limits, our Supreme Court has explained appellate courts in South Carolina do “not have the power to adopt new rules of procedure for future trials by writing opinions to decide cases” in light of the fact such courts are limited to reviewing for errors of law only in criminal cases. Beaty, 423 S.C. at 41, 813 S.E.2d at 510; see S.C. Const. art. V, § 5 (“The Supreme Court shall constitute a court for the correction of errors at law under such regulations as the General Assembly may prescribe.”). Likewise, the citizens of our state have exclusively delegated authority to promulgate rules—and amendments to rules—governing the practices and procedures to be followed in our state’s courts to our Supreme Court,

and our citizenry further elected to place limits on that authority in the form of legislative oversight. S.C. Const. art. V, § 4A. As a result, this Court was constitutionally restricted from altering, amending, or expanding the practices and procedures for jury polling that have heretofore existed in South Carolina regardless of how prudent this Court believes the practices and procedures that have been formally adopted in other jurisdictions may be. See, e.g., Advisory Committee’s Notes on 1998 Amendments to Fed. R. Crim. P. 31 (“[T]he rule requires that the jurors be polled individually when a polling is requested, or when polling is directed sua sponte by the court.”); Conn. Practice Book § 42-31 (“The [jury] poll shall be conducted by the clerk of the court by asking each juror individually whether the verdict announced is such juror’s verdict.”); Ky. RCr 9.88 (“When the verdict is announced, either party may require the jury to be polled, which is done by the clerk’s or court’s asking each juror if it is his or her verdict.”). Despite those limitations, this Court nonetheless did alter and amend our state’s existing procedures through its decision in *Wright*’s case by holding—for the first time in the history of our state’s jurisprudence—jury polling *must* be specifically conducted in a person-by-person method when it is requested, and, by doing so, this Court acted in a manner directly contrary to the carefully-crafted process set out in our state constitution. See *Beaty*, 423 S.C. at 46, 813 S.E.2d at 512 (“Article V, section 5 of the South Carolina Constitution limits this Court’s authority to correcting errors of law and does not empower us to promulgate a procedural rule for future cases by simply issuing an opinion. Article V, section 4A, of the South Carolina Constitution prohibits this Court from adopting *any* rules of practice and procedure . . . without first going through the prescribed legislative process.” (emphasis added)).

Furthermore, even if a new procedural rule could somehow properly be adopted solely via appellate decision in South Carolina, this Court appears to have overlooked the fact it would

not be appropriate to apply such a new rule retroactively in Wright's case. That is true because new procedural rules generally do not apply retroactively, and, for obvious reasons, a trial judge cannot be faulted for failing to comply with a trial procedure that did not yet exist. See Schriro v. Summerlin, 542 U.S. 348, 352 (2004) ("New rules of procedure . . . generally do not apply retroactively. They do not produce a class of persons convicted of conduct the law does not make criminal, but merely raise the possibility that someone convicted with use of the invalidated procedure might have been acquitted otherwise."). Even though new procedural rules typically do not apply retroactively, this Court applied the new rule it articulated regarding the specific method by which requested jury polling must be conducted to Wright's case despite also correctly recognizing "Linder provided no guidance on the mechanics of proper individual polling." See Hutto v. S. Farm Bureau Life Ins. Co., 259 S.C. 170, 173, 191 S.E.2d 7, 8-9 (1972) ("It is, of course, settled law that a case cannot be considered as a binding precedent on a legal point that was not argued in the case and not mentioned in the opinion." (citation and internal quotations omitted)). Critically, in light of the lack of any specified requirements in Linder regarding the manner in which requested jury polling must be conducted, nothing required the trial judge to specifically conduct person-by-person polling *at the time of Wright's trial*. See Linder, 276 S.C. at 309, 278 S.E.2d at 338 (holding only "[i]f the request is made, a poll must be taken"). Therefore, the trial judge could not have erred by failing to comply with this Court's not-yet-articulated procedural rule, which likewise could not logically or fairly be applied to Wright's case since it was not yet in existence in South Carolina at the time the jury was polled. Cf. Miller, 59 F.3d at 421 (declining to reverse in a case in which only collective polling of the jury was conducted but adopting a supervisory rule that would make individualized polling mandatory when requested "[i]n the future"); Carter, 772 F.2d at 67-68 (finding the district court

judge did not commit reversible error in polling the jury by asking for a show of hands in light of the fact nothing—at that time—“prescribe[d] the manner in which the poll is to be conducted” but suggesting “each juror be asked to respond individually” in *future* cases).

Finally, in concluding no showing of prejudice was necessary in order for a failure to conduct jury polling via a the person-by-person method to constitute reversible error, this Court appears to have overlooked several key points, including our Supreme Court’s post-Linder jurisprudence indicating a prejudice analysis should be conducted when evaluating an appellate challenge to the manner of jury polling. Specifically, since Linder was decided, our Supreme Court has directly conducted a prejudice analysis when addressing an issue involving the method by which a jury was polled, which strongly demonstrates such an analysis remains necessary when conducting appellate review of such an issue. See Singleton, 351 S.C. at 316, 460 S.E.2d at 576 (finding reversal was not warranted based on an issue with the method by which jury polling was conducted because Singleton was *not prejudiced* by it); see also Green, 351 S.C. at 196, 569 S.E.2d at 324 (affirming the denial of post-conviction relief based—in part—on the fact prejudice had not been established even though defense counsel’s actions resulted in the jury not being polled *at all* in a case in which one of the jurors may have been crying when the verdict was announced and the jury foreman expressly stated the verdict was reached “reluctantly”). Additionally, requiring prejudice to be established based on a complaint regarding the manner in which jury polling was conducted would also be fully consistent with the fact appellants in South Carolina are ordinarily required to establish both error *and* prejudice in order to be entitled to reversal on appeal. See Thomasko v. Poole, 349 S.C. 7, 17, 561 S.E.2d 597, 602 (2002) (“It is well established that an appellant seeking reversal of a decision by the trial court must show both error and prejudice.”); State v. King, 367 S.C. 131, 136, 623 S.E.2d 865, 867 (Ct. App. 2005)

(“Error without prejudice does not warrant reversal.”). Furthermore, Wright’s case did *not* involve a situation in which the trial judge failed to comply with an express rule of criminal procedure like occurred in many of the cases in which reversal was found to be appropriate. See, e.g., Gov’t of the Virgin Islands v. Hercules, 875 F.2d 414 (3d Cir. 1989) (“Where reversal may be a harsh result, nothing short of reversal sufficient to remedy *this Rule 31 violation*.” (emphasis added)); Miles v. Commonwealth, 256 S.W.3d 46, 46-47 (Ky. Ct. App. 2008) (finding the trial judge’s failure to comply with the jury polling method expressly delineating in a Kentucky Rule of Criminal Procedure constituted reversible error). Therefore, just like with other issues involving the jury, prejudice necessarily must be established in order for an appellant in South Carolina to obtain reversal based on the manner in which jury polling was conducted, and a conviction cannot be vacated merely because the trial judge perhaps did not conduct polling in the most perfect or efficient manner conceivable. See United States v. Hastings, 461 U.S. 499, 508-509 (1983) (“[T]here can be no such thing as an error-free, perfect trial, and . . . the Constitution does not guarantee such a trial. . . . [W]hen courts fashion rules whose violations mandate automatic reversals, they retreat from their responsibilities, becoming instead impregnable citadels of technicality.” (citations, internal quotations, and brackets in original omitted)); cf. Smith v. Phillips, 455 U.S. 209, 217 (1982) (“[D]ue process does not require a new trial every time a juror has been placed in a potentially compromising situation. Were that the rule, few trials would be constitutionally acceptable.”); State v. Aldret, 333 S.C. 307, 313-314, 509 S.E.2d 811, 814 (1999) (“Given that we have not found automatic reversal warranted even in cases of external influences on a jury’s verdict, we decline to do so in the cases of internal misconduct consisting of premature deliberations. Our decision is consistent with the majority of

jurisdictions which hold a defendant must demonstrate prejudice from jury misconduct in order to be entitled to a new trial.” (citations omitted)).

Critically, when a prejudice analysis is actually conducted as required in Wright’s case, such an analysis shows Wright was not prejudiced by the method of jury polling that was employed during his trial, which is true for several different reasons. First, the jury in Wright’s case was unquestionably properly instructed its verdict must be a unanimous one in a clear and direct manner, and the jurors must be presumed to have followed the trial judge’s clear directive on that point. See United States v. Runyon, 707 F.3d 475, 497 (4th Cir. 2013) (“The assumption has become axiomatic because it is so essential to the efficient functioning of the criminal justice system.”); State v. Grovenstein, 335 S.C. 347, 353, 517 S.E.2d 216, 219 (1999) (“[J]urors are presumed to follow the law as instructed to them.”). Second, the jurors in Wright’s case were actually polled and provided individual responses regarding the unanimous nature of the verdict by a show of hands, which both distinguished the situation involved significantly from cases in which *no* individual responses of any kind were obtained from all the members of the jury and provided objective evidence there were no issues with the unanimity of the verdict announced. Compare Carter, 772 F.2d at 68 (holding the jury polling procedure employed of “asking for a show of hands” was not reversible error even though the jurors were not individually questioned in a person-by-person manner as requested by defense counsel), with Miranda, 255 F.2d at 17 (concluding the trial judge reversibly erred by solely questioning the jury foreman as to whether the verdict was unanimous even though a request for jury polling was timely made); and Linder, 276 S.C. at 308, 278 S.E.2d at 337 (finding the trial judge erred by concluding confirmation of the verdict solely by the jury foreman was sufficient to serve in place of an actual poll). Third, the jury only needed a little more than an hour to reach a verdict in Wright’s straightforward

case, and nothing that occurred before or after the verdict was announced suggesting anything other than complete unanimity amongst the jurors.² Cf. Miller, 59 F.3d at 418 (“When that [collective jury polling] proceeding is considered against the backdrop of a relatively simple case, a short period of deliberation by the jury, and no indication in the record that any of the jurors displayed reluctance or disagreement with the verdict, we cannot say that the district court abused its discretion.”); People v. Masajo, 49 Cal. Rptr. 2d 234, 237 (Cal. Ct. App. 1996) (instructing “the trial court’s failure to ask each juror if the verdict was his or hers requires reversal *only* if appellant were prejudiced by that error” and concluding no prejudice resulted to Masajo from the trial judge’s erroneous refusal to individually poll the jurors as statutorily required in California since nothing in the record indicated the verdict was not unanimous or uncoerced, the swift seventy-two-minute period of deliberations was “indicative of unanimity of opinion,” and each juror was given an opportunity in open court to indicate dissent from the verdict by not raising his or her hand when asked to do so). Fourth and lastly, jury polling—which has been described by the highest of legal authorities as a “minor matter”—still does *not* even have to be conducted at all if not requested in our state, which strongly demonstrates such polling is not a fundamental or necessary component of a criminal trial such that the integrity and legitimacy of the proceedings is jeopardized without it. See Humphries, 174 U.S. at 195 (characterizing a trial judge’s failure to conduct polling of the jury as a “minor matter”); Linder, 276 S.C. at 309, 278 S.E.2d at 338 (“Whether a poll of the jury will be conducted is discretionary with the trial judge *unless* polling is requested.” (emphasis added)); see also Martin v. United States, 182 F.2d 225, 227 (5th Cir. 1950) (instructing “experience of the years has shown that

² Notably, defense counsel did not make his request for additional polling based on anything he had observed or detected regarding the jury and, instead, explained he did so solely pursuant to his “standard procedure.” (R. pp. 488-489).

[the] benefit [of jury polling] to a defendant in effecting a change or modification of the jury's verdict is substantially nonexistent"); People v. Anzalone, 298 P.3d 849, 857 (Cal. 2013) ("The technical error here [in failing to poll the jury] did not affect the essential framework within which [Anzalone]'s trial was conducted. . . . To call what transpired here structural error would be to expand that notion beyond any example articulated by the United States Supreme Court, and elevate form over substance."); People v. McGhee, 964 N.E.2d 715, 723 (Ill. App. Ct. 2012) ("[P]olling the jury is merely a procedural device that helps to ensure that the jury's verdict is unanimous, but it is not an indispensable prerequisite to a fair trial. . . . [W]e must conclude that polling the jury on request, while mandatory, is not so fundamental that the failure to do so affects the fairness of a defendant's trial and challenges the integrity of the judicial process."). Thus, since the jurors must be presumed to follow the instructions given to them, the jurors collectively and individually confirmed they all agreed in the verdict, and nothing occurred suggesting anything other than complete unanimity on the part of the jurors, there are no proper grounds upon which to conclude the jury's verdict was anything other than unanimous even if the jury polling conducted could have possibly been carried out in a better manner. Carter, 772 F.2d at 68; see United States v. Hager, 721 F.3d 167, 189 (4th Cir. 2013) ("Without any evidence to the contrary, we must assume that the jury followed the instructions given to it by the court.").

Accordingly, for all the foregoing reasons coupled with the reasons previously advanced, the State respectfully urges this Court to reconsider this matter pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, vacate its prior opinion, and issue a new opinion correctly affirming Wright's conviction after finding the trial judge did not abuse her discretion or otherwise reversibly err based purely on the manner in which the jury polling—which unquestionably occurred and resulted in a show of twelve individual hands in support of the

verdict announced—was conducted. By doing so, this Court will afford due respect to a verdict returned by an impartial—and properly-instructed—group of jurors who collectively and individually affirmed it was a unanimous one, comply with the limits our state’s citizenry has chosen to put into place concerning the procedural rule-making process, and avoid unnecessarily imposing the significant social costs that flow from the reversal of a conviction. See United States v. Mechanik, 475 U.S. 66, 72 (1986) (“The reversal of a conviction entails substantial social costs: it forces jurors, witnesses, courts, the prosecution, and the defendant to expend further time, energy, and other resources to repeat a trial that has already once taken place; victims may be asked to relived their disturbing experiences.”); Graham v. United States, 231 U.S. 474, 484 (1913) (“It would be absurd to upset a verdict upon a speculation that the jury did not do their duty and follow the instructions of the court.”); Beaty, 423 S.C. at 46, 813 S.E.2d at 512 (instructing our appellate courts are prohibited from adopting “even a much-needed” criminal procedure rule without going through the process delineated by the South Carolina Constitution).

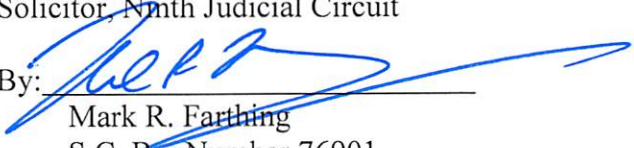
Respectfully submitted,

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December 3, 2020

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Berkeley County
Honorable Maite Murphy, Circuit Court Judge
Appellate Case No. 2017-002130

THE STATE,

Respondent,

vs.

RANDY WRIGHT,

Appellant.

PROOF OF SERVICE

I, Shana Montgomery, certify I have served the within Respondent's Petition for Rehearing on Appellant by sending an electronic copy via email to the address listed in AIS for the following individual:

Joanna K. Delany, Esq.
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify all parties required by Rule to be served have been served.
This 3rd day of December, 2020.



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From: [Shana Montgomery](#)
To: [Kasperski, Katriel](#); [Delany, Joanna](#)
Cc: [Shana Montgomery](#); [Mark Farthing](#)
Subject: State V. Randy Wright ; Petition for Rehearing ; Appellate Case No. 2017-002130
Date: Thursday, December 3, 2020 4:17:17 PM
Attachments: [Wright.Pet for Rehearing \(02440813xD2C78\).pdf](#)

Good Afternoon,

Attached please find a copy of the State's Petition For Rehearing with the proof of service for State v. Randy Wright (2017-002130). Please confirm receipt. This Petition will be submitted to the South Carolina Court of Appeals today via the AIS One Drive System. Please don't hesitate to contact our office should you have any questions.

Thank You.

Shana Montgomery
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The South Carolina Court of Appeals

The State, Respondent,

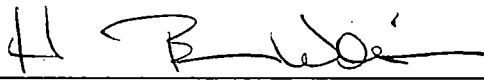
v.

Randy Wright, Appellant.

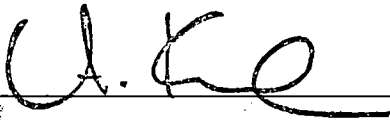
Appellate Case No. 2017-002130

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.



J.



J.

Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire
Joanna Katherine Delany, Esquire
Deborah R.J. Shupe, Esquire
Scarlett Anne Wilson, Esquire
Mark Reynolds Farthing, Esquire
The Honorable Maite Murphy

FILED
Jan 13 2021

APP'X 565