

THE STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO SPARTANBURG COUNTY
Court of Common Pleas

The Honorable Michael G. Nettles, Circuit Court Judge

Appellate Case No: 2018-001188
Lower Court Case No: 2017-CP-42-2751

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S.C. SUPREME COURT

CHRISTOPHER MIDDLETON,

RESPONDENT,

v.

STATE OF SOUTH CAROLINA

PETITIONER.

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable J. Mark Hayes, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CHRISTOPHER ALLEN MIDDLETON

APPELLANT

APPELLATE CASE NO. 2015-002232

RECORD ON APPEAL

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2 COUNTY OF SPARTANBURG }

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5 PLAINTIFF,) OF
6 VS.) RECORD
7 CHRISTOPHER ALLEN MIDDLETON) 2015-GS-42-1128
8 DEFENDANT.)

9
10 october 12th - 14th, 2015
11 spartanburg, south carolina
12

13 B E F O R E:

14 THE HONORABLE J. MARK HAYES, II, Judge; and a jury.

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

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17 ASSISTANT SOLICITOR
18 Attorney for the State

19 JOSHUA SCHULTZ
20 ESQ.
21 Attorney for the Defendant

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23 PAMELA E. GREEN
24 Circuit Court Reporter
25 Seventh Judicial Circuit

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P R O C E E D I N G S

(WHEREUPON, State's Exhibit Nos. 1 through 79 were marked for identification purposes only at this time.)

THE COURT: We're going to have to bring the jury in for jury selection. We're gonna take up most of the gallery. So if you in the gallery -- I think we have some chairs over here that you can come up and sit in. So if you'll come up here. I'm gonna need you to come up here and sit here if you would.

(Pause.)

THE COURT: Okay. Anything before we bring the jury around?

MR. SCHULTZ: None from the defense, Your Honor.

SOLICITOR GILMER: No, Your Honor. I believe we---

THE COURT: All right. I thought we'd take up any motions after we've selected the jury.

SOLICITOR GILMER: Yes, Your Honor.

MR. SCHULTZ: Yes, sir.

THE COURT: All right. Y'all want to bring the jury around?

Okay. They're bringing them around now. Let me know when they're in here and I'll just -- I'll be right behind the door.

(Pause.)

1 THE COURT: All right. Ladies and gentlemen, good
2 afternoon. Thank you for your patience while we got
3 everything started today.

4 We are now going to select the first jury if -- for the
5 week. We're gonna select the first jury in the matter of
6 the State of South Carolina versus Christopher Allen
7 Middleton.

8 Now, there's gonna be a few question I'm gonna have to
9 ask you before we actually start the trial and so the Clerk
10 of Court needs to place you under oath.

11 So, if you would, please stand, raise your right-hand,
12 and repeat out loud when she asks you to do so.

13 (WHEREUPON, the entire jury panel was placed under oath
14 at this time.)

15 THE CLERK: Thank you.

16 THE COURT: Thank you. You may be seated, ladies and
17 gentlemen.

18 Now, ladies and gentlemen, in the event that you're not
19 aware of it, we are making a recording on all -- of
20 everything that takes place in this courtroom. This lady
21 over here to my right's a court reporter. I tell you that
22 because, if ever during this process now, if you can not
23 hear me when I ask these questions, raise your hand and let
24 me know and I will speak up. But when you're responding to
25 the questions, please try to do so loud enough so that both

1 the, the court reporter and everyone else in the courtroom
2 can hear you, but here are the questions that I need to ask
3 you.

4 Ladies and gentlemen, again, this is going to be the
5 trial of the State of South Carolina versus Mr. Christopher
6 Allen Middleton.

7 Mr. Middleton, if you would, please rise and face the
8 ladies and gentlemen of the jury.

9 (Defendant complies.)

10 THE COURT: Ladies and gentlemen, Mr. Middleton is
11 charged by way of indictment of two charges. One is
12 attempted murder and the other is the possession of a weapon
13 during the commission of a violent crime, it's Count Two,
14 and in the indictment, the indictment provides that, in
15 Spartanburg County, on or about June 19th, 2014, and
16 June 20th, 2014, with the intent to kill, attempted to
17 kill one Undralynn Cohen-Middleton with malice aforethought,
18 expressed or implied, by stabbing and cutting the victim
19 with a knife.

20 Ladies and gentlemen, now Mr. Middleton has denied the
21 allegations contained in, in the indictment and so that's
22 the reason -- the purpose of the trial that we're here
23 today. Now, this is Mr. Middleton.

24 Now, ladies and gentlemen, I need for you to please
25 stand if you're related by blood or marriage to

1 Mr. Middleton or if you have a close personal or social
2 relationship with Mr. Middleton.

3 If you do, please stand at this time.

4 (No response.)

5 THE COURT: All right. Thank you, Mr. Middleton. You
6 may be seated.

7 (Defendant complies.)

8 THE COURT: Now, ladies and gentlemen, as I, as I
9 stated, the, the indictment contains that the alleged victim
10 was Mrs. Undralynn Cohen-Middleton.

11 Mrs. Middleton is present and can face the ladies and
12 gentlemen of the jury.

13 (Mrs. Middleton complies.)

14 THE COURT: This is Mrs. Middleton.

15 Ladies and gentlemen of the jury, if you're related by
16 blood or marriage to Mrs. Middleton or if you have a close
17 personal or social relationship with Mrs. Middleton, I would
18 like for you to please stand at this time.

19 (Jurors respond.)

20 THE COURT: All right. Mrs. Middleton, thank you. You
21 may be seated.

22 (Mrs. Middleton complies.)

23 THE COURT: All right. If you would, ma'am, what's
24 your juror number?

25 THE JUROR: I'm Juror Number 5.

1 THE COURT: And you're Ms. Bellamy?

2 THE JUROR: That's correct.

3 THE COURT: Ma'am, the fact that you -- that that has
4 occurred, would that, in anyway, affect your ability to give
5 both the State and the defense a fair and impartial trial in
6 the event you're selected as a member of this jury?

7 THE JUROR: I went to---

8 THE COURT: If you would, ma'am, just answer the
9 question.

10 THE JUROR: Yes.

11 THE COURT: All right. Thank you, ma'am. You may be
12 seated.

13 THE JUROR: Okay.

14 THE COURT: Yes, sir, your juror number?

15 THE JUROR: Four.

16 THE COURT: You're Mr. Beason?

17 THE JUROR: Yes, sir.

18 THE COURT: And, sir, the fact that that has occurred,
19 would that, in anyway, affect your ability to give both the
20 State and the defense a fair and impartial trial in the
21 event you're selected as a member of this jury?

22 THE JUROR: Yes, sir.

23 THE COURT: All right. Thank you, sir. You may be
24 seated.

25 THE JUROR: Your Honor?

1 THE COURT: Oh, yes, ma'am, I'm sorry.

2 Your, your juror number?

3 THE JUROR: 153.

4 THE COURT: You're Ms. Tolan?

5 THE JUROR: Yes, sir.

6 THE COURT: Ma'am, the fact that that has occurred,
7 would that, in anyway, affect your ability to give both the
8 State and the defense a fair and impartial trial in the
9 event you're selected as a member of this jury?

10 THE JUROR: No, sir.

11 THE COURT: Thank you, ma'am. You may be seated.

12 Now, ladies and gentlemen, I'm now going to read you a
13 list of names of potential witnesses who may be called
14 during the course of this trial. I need for you to please
15 listen to these witnesses or listen to these names as I call
16 them. After I call all of the names I'm gonna ask, if you
17 would, to please stand if you're related by blood or
18 marriage to any of these witnesses or if you have a close
19 personal or social relationship with any of these witnesses
20 and I ask you to bear with me. This, this list is quite
21 lengthy, and I would ask that, as I call the name of these
22 witnesses, if, in fact, the witness is in the courtroom, if
23 they would stand and face the ladies and gentlemen of the
24 jury.

25 All right. We have Lisa Cohen. I'm sorry. Lois

1 Cohen.
2 (Witness stands.)
3 THE COURT: All right. Thank you, Ms. Cohen.
4 Robert Montgomery.
5 (Witness stands.)
6 THE COURT: Thank you, Mr. Montgomery.
7 Marcia Cohen-Wright.
8 Loreena Miller-Bobo.
9 Birdie Ballenger.
10 (Witness stands.)
11 THE COURT: Thank you, Ms. Ballenger.
12 Kailei Meante Washington.
13 Amanda Lee Fowler.
14 Master Deputy Wesley Berkeley.
15 Deputy Coby Stepp.
16 Deputy Robert Shaffer.
17 Deputy Bryan Fraley.
18 Deputy Jason Wilson.
19 Deputy Jason Kramer.
20 Deputy Floyd, I'm, I'm sorry, Floyd Turley.
21 Deputy Robert Taylor.
22 Deputy Anthony Knighton.
23 Deputy Steve Henderson.
24 Deputy Curtis Norwood.
25 Deputy John Mayfield.

1 Deputy James Tate.
2 Deputy Angela Nelson.
3 Deputy Anita Mullinax.
4 Deputy Robert Rosenburg.
5 Sergeant Deanna Burgess.
6 Sergeant Jason Bryant.
7 Corporal Mark Miller.
8 Investigator Richie Foster.
9 Investigator Thomas Clark.
10 Investigator Chris Jenkins.
11 Investigator Lorin Williams.
12 Keith Lee.
13 Jennifer Aycock.
14 Betty Butler.
15 Jackie Davis.
16 Doris Yarbrough.
17 Sheree Brown.
18 Kimberly Spainhour.
19 Amy Stephens.
20 Jessica Stowe.
21 Donna Money.
22 Matt Hampton.
23 Randall Smith.
24 Bee Corley.
25 Cornelius Huff.

1 Chris Catalano.

2 Doctor Jason Johnson.

3 Doctor John Falcon.

4 Doctor Sandra Hardin.

5 Doctor Ari Kramer.

6 Doctor Willis Nichols.

7 Janice Baker.

8 Ladies and gentlemen, if you're related by blood or
9 marriage to any of those individuals or if you have a close
10 personal or social relationship with any of those
11 individuals, please stand at this time.

12 (Jurors respond.)

13 THE COURT: All right. We'll start on this side.

14 Yes, sir, your juror number again?

15 THE JUROR: Four.

16 THE COURT: Mr. Beason, the fact that that has
17 occurred, would that, in anyway, affect your ability to give
18 both the State and the defense a fair and impartial trial in
19 the event you're called -- in the event you're selected as a
20 member of this jury?

21 THE JUROR: Yes, sir.

22 THE COURT: All right. Thank you, sir. You may be
23 seated.

24 Yes, ma'am, your juror number?

25 THE JUROR: Eight-one.

1 THE COURT: You're Ms. Israel?

2 THE JUROR: Yes, sir.

3 THE COURT: And, ma'am, the fact that that has
4 occurred, would that, in anyway, affect your ability to give
5 both the State and the defense a fair and impartial trial in
6 the event you're selected as a member of this jury?

7 THE JUROR: No, sir.

8 THE COURT: Thank you, ma'am. You may be seated.
9 Yes, sir, your juror number?

10 THE JUROR: Number 6.

11 THE COURT: You're Mr. Bishop?

12 THE JUROR: Yes, sir.

13 THE COURT: Sir, the fact that that has occurred, would
14 that, in anyway, affect your ability to give both the State
15 and the defense a fair and impartial trial?

16 THE JUROR: No, sir.

17 THE COURT: Thank you, sir. You may be seated.
18 Yes, sir, your juror number?

19 THE JUROR: 128.

20 THE COURT: You're Mr. Pryor?

21 THE JUROR: Yes, sir.

22 THE COURT: Sir, the fact that that has occurred, would
23 that, in anyway, affect your ability to give both the State
24 and defense a fair and impartial trial in the event you're
25 selected as a member of this jury?

1 THE JUROR: No, sir.

2 THE COURT: Thank you, sir. You may be seated.

3 Has any member of the jury panel or a member of their
4 immediate family ever been arrested or prosecuted for the
5 offenses of assault and battery, attempted murder, or
6 criminal domestic violence, if so, please stand at this
7 time.

8 (No response.)

9 THE COURT: Ladies and gentlemen, at this time I would
10 like for the lawyers that will be trying the case today to
11 stand and introduce themselves to you.

12 Yes, ma'am.

13 SOLICITOR GILMER: Thank you, Your Honor.

14 May it please the Court.

15 My name is Meghan Gilmer. I represent the solicitor's
16 office and Spartanburg County and the State of South
17 Carolina. Thank you.

18 MR. SCHULTZ: My name is Attorney Joshua Schultz. I'm
19 the head of Schultz Law Firm and this is my client, Chris
20 Middleton. Thank you.

21 THE COURT: Thank you, sir.

22 Ladies and gentlemen, I need for you to please stand if
23 you're related by blood or marriage to any of the attorneys
24 or if you have a close personal or social relationship with
25 any of the attorneys or if you or a member of your immediate

1 family has ever been represented by any of the attorneys, if
2 so, please stand at this time.

3 (No response.)

4 THE COURT: Ladies and gentlemen, if you or any member
5 of your immediate family has ever been prosecuted -- been a
6 defendant that is being or that is being prosecuted by the
7 Seventh Circuit Solicitor's Office, I need for you to please
8 stand at this time.

9 (No response.)

10 THE COURT: Is there any member of the jury panel or of
11 your immediate family which is a member of an organization
12 that does not recognize the government of the United States
13 or of the State of South Carolina, if so, please stand at
14 this time.

15 (No response.)

16 THE COURT: Has any member of the jury panel formed or
17 expressed an opinion about any issue or matter that
18 involved -- that is involved in this case, if so, please
19 stand at this time.

20 (No response.)

21 THE COURT: Is there any member of the jury panel aware
22 of any bias or prejudice towards either the State or the
23 defendant in this case, if so, please stand at this time.

24 (No response.)

25 THE COURT: Is there any member of the jury panel that

1 was a member of the Grand Jury which issued the indictments
2 in this case, if so, please stand at this time.

3 (No response.)

4 THE COURT: Is there any member of the jury panel who
5 is a member of or a contributor to any group which has as
6 its primary concern the promotion of law enforcement or
7 victim's right?

8 Now, these group would include, but certainly not be
9 limited to, such groups as MADD or SADD or CAVE, Citizens
10 Against Violent Crimes, if so, please stand at this time.

11 (No response.)

12 THE COURT: Does any member of the jury panel know of
13 any reason whatsoever why he or she should not serve as a
14 juror in this case with particular emphasis being placed on
15 your ability to be fair and impartial both to the State and
16 the defense, if so, please stand at this time.

17 (No response.)

18 THE COURT: Does the State have any additional
19 questions?

20 SOLICITOR GILMER: No, Your Honor, we do not.

21 THE COURT: Does the defense?

22 MR. SCHULTZ: No, sir. No, sir.

23 THE COURT: All right. Lawyers approach a moment.

24 (WHEREUPON, a bench conference was held out of the
25 hearing of the jury at this time.)

1 MR. SCHULTZ: Thank you, Your Honor.

2 THE COURT: All right. Ladies and gentlemen, what
3 we're going to do now is these are the Clerks of Court that
4 are sitting down here at the computer screen. They have all
5 of your names, all of your numbers, and all of your
6 information into a computer system that allows them to hit
7 some buttons and they run through a program that's gonna
8 actually generate a random list of names that then is gonna
9 be -- she's then gonna call out the names and we're gonna
10 start what's called a striking process.

11 I just mention this to you now because we actually have
12 behind this door a wooden barrel and we used -- when I
13 started out practicing law, we use to actually use that
14 wooden barrel as part of jury selection. We'd put all your
15 names into a little capsule. We'd write them on there.
16 We'd put them into the barrel. We'd bring in a person that
17 was visually challenged from the School for the Deaf and the
18 Blind. We would have that person actually reach their hand
19 in there and pull the names out one at a time.

20 I just tell you that because jury selection, in some
21 cases, actually would take an -- almost an entire day, and
22 so I beg your patience while we run the computer and print
23 out your names, but this use to be a much lengthier process.

24 We actually, a couple months ago, something happened in
25 Columbia and they went offline and we were not able to

1 actually use the computer. We actually brought that box out
2 for one more time and it was amazing that that got that case
3 resolved. So.

4 But, if you would, the Clerk of Court is going to call
5 the names that have been selected. When your name is
6 called, if you would, bring any personal items that you have
7 with you and I need for you to stand just right up here.
8 One of the bailiffs is gonna come up and stand with you and
9 stand and face the lawyers and then we're gonna do the
10 striking process.

11 I believe we have an agreement that it is five and five
12 and we will go with one alternate.

13 SOLICITOR GILMER: Your Honor, could we do two
14 alternates for the duration of the case?

15 THE COURT: We can do two alternates.

16 SOLICITOR GILMER: Thank you, Your Honor.

17 THE COURT: Okay.

18 MR. SCHULTZ: No objection.

19 THE COURT: We'll do two alternates.

20 SOLICITOR GILMER: Yes, sir.

21 (WHEREUPON, the jury panel was selected at this time.)

22 THE COURT: Anything from the State or defense
23 concerning the manner or method of selection of the jury?

24 SOLICITOR GILMER: Your Honor, may we approach briefly?

25 THE COURT: Uh-huh. (Affirmative).

1 (WHEREUPON, a bench conference was held out of the
2 hearing of the jury at this time.)

3 THE COURT: All right. Anything else from the State or
4 defense concerning the manner and method of selection of the
5 jury?

6 SOLICITOR GILMER: Not from the State, Your Honor.

7 MR. SCHULTZ: No, sir.

8 THE COURT: All right. Thank you very much.

9 Ladies and gentlemen, congratulations on being selected
10 our first jury of the week. Let me talk to these poor souls
11 out here who did not get selected for a moment and then I'll
12 be right back with you.

13 (Pause.)

14 THE COURT: All right. Ladies and gentlemen, again,
15 thank you for -- thank you for your patience while you went
16 through this process of jury selection and congratulations
17 on being selected our first jury for the week.

18 I need to give you some preliminary instructions. You
19 are here in part of this case to decide the facts of the
20 case, and you would decide the facts of the case based upon
21 the evidence and testimony that is presented in this
22 courtroom. Until I instruct you on beginning your
23 deliberations -- to begin your deliberations, you're not to
24 have any discussions about anything involved in this case
25 with anyone.

1 That means that, at break or tonight you go home and
2 you see a loved one and they say oh, you got selected on a
3 jury, what kind of case is it, just very politely tell them
4 that the judge has instructed you to -- instructed me that I
5 can not talk to you about anything involving the case. Once
6 the case is over, you can talk to them as much as you want
7 to. But until the case is concluded, you're not to talk to
8 anyone about anything involving the case.

9 But remember that also means that you can not talk to
10 anyone including yourselves about anything involving the
11 case until you begin your deliberations. Your deliberations
12 will begin at the end of this case when all the evidence has
13 been presented to you, the attorneys have made their closing
14 arguments to you, and I have instructed you as to what the
15 law is.

16 Now, from time to time, you may hear something that
17 takes place in this courtroom that you just don't seem to
18 understand, and that, on a break or in the evenings, you may
19 think well, I'm gonna go on a computer and do a little
20 research. I'm gonna find out about somebody, about one of
21 the lawyers or me, the judge, or you might want to do -- see
22 if there's anything out there about the case on the
23 Internet.

24 You can't do any type of independent research or
25 investigation on anything involving this case. So don't do

1 that on the Internet. You can not even -- if I use a word,
2 a lawyer uses a word that you don't think you quite
3 understand, you can not even go to Webster's Dictionary and
4 pull it off the shelf and look it up. The reason that I
5 have those rules on you is because, when you begin your
6 deliberations, and you engage in your deliberations, they're
7 to be based upon the things that you hear in this courtroom.

8 So keep an open mind. Do not discuss the case among
9 yourselves or with anyone else and allow me and allow the
10 lawyers the opportunity to educate you about what this case
11 is about, about what the law is that you need to apply to
12 the case. So those are the preliminary instructions.

13 I'm now gonna let you -- let the bailiff take you to
14 the jury deliberation room, let you get acclimated to where
15 that is. They'll be, from time to times during the, during
16 this process that I have to take up what's called matters of
17 law with the attorneys. And when I take up matters of law
18 with the attorneys, that has to be done outside of your
19 presence.

20 So, in advance, I apologize for having to do excuse --
21 exclude you from those conversations. But this is one of
22 those times when, when I have to take up a matter of law
23 with the lawyers before we actually start the case.

24 So I'm to -- going to let you -- I'm going to let you
25 retire back to the jury deliberation room, deliberation

1 room. There's restrooms back there. You can stretch your
2 legs and we'll get you back here just shortly to begin the
3 actual case. But you may go with the bailiff.

4 (WHEREUPON, the following takes place outside the
5 presence of the jury.)

6 THE COURT: Okay. All right. All right. If y'all
7 want to make notes, we're going to have, have Juror Number
8 117, Mrs. Miller, serve as our foreperson.

9 All right. I've got that we have some motions in
10 limine that are filed by the State. First that being motion
11 in limine to -- as to third party guilt.

12 Does the defense intend to elicit third party guilt?

13 MR. SCHULTZ: Your Honor, at this time we are not
14 planning on calling any witnesses with the possibly notable,
15 notable exception of my client here. So, at this time, if
16 the defense plans to present any case, we do not plan to
17 present any evidence of third party guilt at this point.

18 THE COURT: Okay. Well, if you decide to do it, I
19 think they're entitled to know about it ahead of time.

20 MR. SCHULTZ: Yes, sir.

21 THE COURT: All right. So I would exclude it if you
22 don't tell them about it.

23 Okay. What about the other motion in limine, the --
24 regarding for an order limiting the testimony of witnesses
25 other than the defendant regarding self-serving statements

1 made by the defendant about the incident?

2 SOLICITOR GILMER: Yes, Your Honor.

3 The defendant did give a statement to law enforcement
4 indicating a possible defense of self-defense. We -- our
5 position is that is a self-serving statement and we would
6 move to keep that out, that that testimony and that
7 statement not be brought up with the State's case in chief
8 or the defense during cross-examination of any of the
9 State's witnesses, Your Honor. It is a self-serving
10 statement. It does not, does not conform with the hearsay
11 rule. Obviously, Your Honor, again, we would just move that
12 if, if the defendant wants to get in that statement, then he
13 would have to testify himself.

14 THE COURT: Yes, sir.

15 MR. SCHULTZ: I, I agree that we are not going to --
16 well, at this time, we're not gonna present Mr. Middleton.
17 Obviously the statement I believe, not entirely
18 self-serving, it's actually what happened. But, at this
19 time, I don't see, unless the State presents it as an
20 exhibit, why that statement can come in. But I'm not, I'm
21 not gonna present it.

22 THE COURT: Okay. All right. So I hear -- if I hear
23 his position correctly, unless the State opens the door --

24 SOLICITOR GILMER: Yes, Your Honor.

25 THE COURT: -- then they would not be eliciting that

1 testimony from the police officer or actually presenting the
2 actual statement in evidence unless the door's opened.

3 MR. SCHULTZ: That's my understanding, Your Honor.

4 THE COURT: Okay. All right. Okay. I don't have any
5 other motions in limine.

6 Anything else in that regards from either side?

7 SOLICITOR GILMER: Your Honor, I have one matter I just
8 wanted to put on the record.

9 There is a 9-1-1 call that the State intends to
10 introduce into evidence. We did redact a small portion of
11 that. In that 9-1-1 call it refers to the defendant
12 possibly being abusive to the victim in the past. We did
13 not want to get into an area of mistrial. So we have
14 redacted that.

15 Mr. Schultz has, has been provided a copy of the
16 original 9-1-1 call and has been afforded the opportunity of
17 listening to the redacted version. It's my understanding he
18 has no objection to that being played as redacted.

19 MR. SCHULTZ: As long as the State presents the
20 redacted version, no, I have no objection at this time.

21 THE COURT: All right. You gonna require them to lay
22 the foundation or are you gonna consent to just playing it?

23 MR. SCHULTZ: No, I'm gonna, I'm gonna require the
24 foundation please.

25 THE COURT: All right. All right.

1 okay. Anything else?

2 SOLICITOR GILMER: Do you have anything, Josh?

3 MR. SCHULTZ: I did, Your Honor.

4 May it please the Court?

5 THE COURT: Uh-huh. (Affirmative).

6 MR. SCHULTZ: Your Honor, the first motion that I would
7 make would be for the state to produce any and all N.C.I.C.
8 reports of any of the testifying witnesses.

9 Your Honor, there's a lot of witnesses here. I'm not
10 sure if the State intends to call all but 52 witnesses on
11 here.

12 THE COURT: Well, a lot of them are police officers.

13 MR. SCHULTZ: Yes, sir, I'm assuming that their, that
14 their N.C.I.C. checks are clear for the police officers.

15 THE COURT: I would make that same assumption.

16 MR. SCHULTZ: Yes, sir, but for the lay witnesses here,
17 Meghan -- Ms. Gilmer has given me some of the N. -- or all
18 of the N.C.I.C. reports that she has. For instance, Louise
19 Ballenger and I believe that would be Birdie Ballenger,
20 Amanda Fowler, Loreena Yvette Miller-Bobo, and, if I'm not
21 mistaken, and hopefully the solicitor, the solicitor can
22 correct me if I'm wrong here, that these are the only
23 N.C.I.C. reports that I have for the State's witnesses if
24 they intend to call them.

25 SOLICITOR GILMER: --You should have the victim's

1 N.C.I.C., Lois Cohen, Robert Montgomery, Marcia
2 Cohen-Wright, Loreena Miller-Bobo, Birdie Ballenger, Kailei
3 Washington, and Amanda Fowler.

4 MR. SCHULTZ: Okay.

5 SOLICITOR GILMER: Those have been provided in
6 discovery.

7 Your Honor, those are the only lay witnesses that are
8 on the State's potential witness list.

9 THE COURT: Okay.

10 MR. SCHULTZ: Beg the Court's patience, Your Honor.

11 (Pause.)

12 MR. SCHULTZ: I have Louise Ballenger, Amanda Fowler,
13 Robert Montgomery, Louise Cheetham.

14 SOLICITOR GILMER: That's Ms. Cohen.

15 MR. SCHULTZ: Okay.

16 SOLICITOR GILMER: Uh-huh. (Affirmative).

17 MR. SCHULTZ: Robert Middleton and Loreena Miller-Bobo
18 and I believe Kailei Washington.

19 SOLICITOR GILMER: Thank you.

20 MR. SCHULTZ: That's all I have.

21 SOLICITOR GILMER: Which one are you missing?

22 I didn't hear that you were---

23 THE COURT: I think that's all of them.

24 SOLICITOR GILMER: I think that's all.

25 MR. SCHULTZ: That's all I believe.

1 THE COURT: Okay.

2 MR. SCHULTZ: Your Honor, as for -- if, if Your Honor
3 would like me to get into what I plan to presenting in my
4 cross for Ms. Fowler should she choose to testify, she
5 has---

6 THE COURT: This is about her criminal record?

7 MR. SCHULTZ: Yes, sir, Your Honor.

8 THE COURT: / Okay.

9 MR. SCHULTZ: If it pleases the Court.

10 She has a 2001 conviction for fraudulent, fraudulent
11 check. She's arrested, but she also has a 2004 conviction,
12 for fraudulent check as well. That may fall -- well,
13 obviously it does fall out, fall out of the ten year
14 guideline. But I would want to present it as a crime of
15 moral turpitude and that's on Fowler.

16 My understanding is that Lois, Lois Cheetham doesn't
17 have a record.

18 Robert Montgomery, no record.

19 Louise Ballenger, that's Birdie Ballenger, no
20 convictions that are applicable.

21 Again, Robert Middleton, no record.

22 Kailei Washington, no, no record.

23 Loreena Miller-Bobo is on probation right now
24 apparently.

25 SOLICITOR GILMER: No, that, that charge was dismissed.

1 It was conditional.

2 MR. SCHULTZ: Okay. I see a convicted --
3 non-conviction, non-conviction conditional discharge but it
4 says custody status probation.

5 Is, is that currently in status of -- is it going to be
6 dismissed or---

7 SOLICITOR GILMER: No.

8 MR. SCHULTZ: ---has it been dismissed?

9 SOLICITOR GILMER: Your Honor, our records indicate
10 that that charge was dismissed, one moment, on
11 August 19th of 2015, and the defendant or, excuse me, Ms.
12 Miller entered into a conditional discharge that was
13 completed and that case was not proessed. So it would be,
14 therefore, our position that that's not a conviction for
15 which she could be impeached on.

16 THE COURT: All right. So the only issue is this
17 criminal record of Ms. Fowler?

18 MR. SCHULTZ: Yes, sir, that would be the only thing
19 that I would like to present if, if the Court would allow
20 it.

21 SOLICITOR GILMER: And, Your Honor, our, our position
22 is that the arrest offense date is outside of the ten years.
23 I believe it was -- happened in February of 2014. Your
24 Honor, at this point it, it appears to be a moot point
25 anyway because the State does not intend to call her at this

1 point.

2 THE COURT: All right.

3 MR. SCHULTZ: Well, if it happened in February of 2014
4 it would fall in --.

5 THE COURT: But they're not gonna call her. So it
6 doesn't matter.

7 SOLICITOR GILMER: Not within -- oh, 2014, yeah, it
8 would fall within ten years.

9 Either way, Your Honor, it's a moot point.

10 MR. SCHULTZ: All right. That's fine, Your Honor.

11 THE COURT: Okay.

12 SOLICITOR GILMER: No, it's 2004. So it would be
13 outside the ten years.

14 MR. SCHULTZ: 2004?

15 SOLICITOR GILMER: Yes.

16 MR. SCHULTZ: Okay. I, I thought Ms. Gilmer said 2014.

17 SOLICITOR GILMER: I'm sorry.

18 MR. SCHULTZ: So -- okay.

19 All right. Your Honor, as far as the -- and, Your
20 Honor, this is a matter of housekeeping here. Mr. Middleton
21 is nearsighted, which means that he can not see far away,
22 Your Honor. So if -- I just want to let, let the Court know
23 about this.

24 If, if the Court is addressing my client and maybe he's
25 looking the other way, he doesn't mean to be rude or

1 anything. He just can't see the Court. I -- so that's,
2 that's the only, only thing I wanted to clear up with that.

3 Your Honor, I know that my last motion here is -- I
4 know sequestration in this State is not a matter of right.
5 But I believe the lay witnesses here could be influenced by
6 what they hear from witnesses. So I would ask of the Court
7 that the, at the very least, the lay, the lay witnesses here
8 be sequestered and that's -- that would be my last motion at
9 this point.

10 THE COURT: Any objection to the request?

11 SOLICITOR GILMER: No objection, but as to the victim,
12 Your Honor, we -- our position is her, it's her right to be
13 here.

14 THE COURT: My understanding is the victim has a right
15 to stay as well as the primary investigating officer --

16 SOLICITOR GILMER: Yes, Your Honor.

17 THE COURT: -- if they are -- all right. Okay.

18 MR. SCHULTZ: Thank you, Your Honor.

19 THE COURT: All right. Now, how long do you think --
20 how long is the State's first witness?

21 SOLICITOR GILMER: Your Honor, the first two -- the
22 first witness will be very brief, Your Honor, and the third
23 witness will be very brief. The second witness will be a
24 little bit lengthier.

25 Your Honor, I'm anticipating, for this afternoon,

1 calling four witnesses. We do have a medical doctor that we
2 are going to call out of order, Your Honor, because he's
3 unavailable tomorrow. So he should be here around four
4 o'clock. That will -- that testimony would end us for the
5 day.

6 THE COURT: All right. Tell you what. Let's step down
7 and everybody get ready and then we'll come back. We'll try
8 to hopefully wrap it up before 5:00 when we get done today.
9 But we'll step down just for a few minutes. Everybody use
10 the restroom and we'll go -- move forward.

11 MR. SCHULTZ: Yes, sir.

12 SOLICITOR GILMER: Thank you, Your Honor.

13 MR. SCHULTZ: Thank you, Your Honor.

14 THE COURT: Just be sure all the lay witnesses
15 understand that they need to stay out of the courtroom.

16 SOLICITOR GILMER: Yes, Your Honor.

17 (WHEREUPON, a short recess was taken at this time.)

18 SOLICITOR GILMER: I'm sorry, Your Honor. This plug-in
19 over here is not very stable. So we're having issues.

20 (Pause.)

21 THE COURT: Okay. Are we ready to bring them in?

22 SOLICITOR GILMER: Yes, sir, Your Honor, we are.

23 MR. SCHULTZ: Yes, sir.

24 THE COURT: All right. And the witnesses have been
25 sequestered that need to be sequestered?

1 SOLICITOR GILMER: And, Your Honor, Ms. Cohen is gonna
2 be the first witness.

3 THE COURT: All right. Let's bring the ladies -- oh,
4 and, Maxie?

5 THE BAILIFF: Yes, sir.

6 THE COURT: Juror Number 117, Ms. Miller, she's gonna
7 be our foreperson.

8 THE BAILIFF: All right, sir. Ms. Miller.

9 THE COURT: Marilyn Miller.

10 (WHEREUPON, the following takes place within the
11 presence of the jury panel.)

12 THE COURT: All right. Ladies and gentlemen, we're now
13 ready to begin the trial of the case. But before we
14 actually can start the trial of the case the Clerk of Court
15 needs to swear you in. So, if you will, please stand, raise
16 your right-hand, and respond out loud when she asks you too.

17 (WHEREUPON, the jury panel was placed under oath at
18 this time.)

19 THE COURT: Thank you. You may be seated, ladies and
20 gentlemen.

21 (Jurors comply.)

22 THE COURT: Ladies and gentlemen, we are now going to
23 begin the trial of the case of the State of South Carolina
24 versus Christopher Allen Middleton.

25 Before we begin this trial I want to tell you that this

1 trial probably will be different from what you might expect.
2 Many people do not have the chance to attend an actual Court
3 session as you are doing now, and may think, from watching
4 television or movies or reading books, that trials are
5 always full of high drama, intense action, or rivetting
6 circumstances.

7 Now, while all of these things may be true at times,
8 this trial is not for entertainment. It is a fundamental
9 part of our democracy, a search for the truth, and an effort
10 to make sure that justice is done between the parties
11 presently before the Court, and searching for the truth and
12 making sure that justice is done is often slow, deliberate,
13 and repetitive. Just the opposite of what you may have seen
14 on television or in movies or read about in books. But this
15 courtroom is a place of honor dedicated to the protection
16 and preservation of citizen's rights through what many have
17 called the greatest justice system ever created.

18 The attorneys appearing before you, they are advocates
19 for the parties that they represent. But first and
20 foremost, they are officers of the Court sworn to uphold the
21 integrity and fairness of our judicial system and to help
22 you in the search for the truth. You should expect them to
23 be professional, competent, and ethical in the
24 representation of their client's interest.

25 But remember that you have taken an oath to try this

1 case and reach a fair and just verdict, and you are also
2 expected to be professional, reasonable, and ethical and I
3 do want to thank you for accepting the important
4 responsibility of jury service and for your contribution
5 today to our justice system.

6 What I will say now, ladies and gentlemen, is intended
7 to serve as an introduction to the trial of this case. My
8 remarks are not a charge on the law of this case. I will
9 instruct you on the law applicable to this case at the end
10 of the trial before you retire to consider your verdict.
11 This is merely an explanation of the procedure that we will
12 follow in the trial of this case so that you may better
13 understand what may be happening.

14 The defendant in this case is charged, by way of
15 indictment, of attempted murder and possession of a weapon
16 during the commission of a violent crime. The elements of
17 which will be explained to you later.

18 Now, the indictment is simply the charge by which the
19 case is brought to the Court, and it is not, in any sense,
20 evidence of any of the allegations contained in it. The
21 defendant has pled not guilty to the indictment, and the
22 State, therefore, has the burden of proving each element of
23 the indictment beyond a reasonable doubt, and it will be
24 your duty, ladies and gentlemen, to decide whether the State
25 has met that burden.

1 Your purpose, as jurors, is to find and determine the
2 facts. You are the sole judge of the facts. If, at anytime
3 during this trial I make a comment regarding the facts, you
4 must disregard my comment. You are to determine the facts
5 from the testimony you hear and other evidence introduced in
6 Court, and it is up to you to determine the inferences which
7 you may feel are properly drawn from that evidence. It is
8 especially important that you perform your duty of
9 determining the facts diligently and conscientiously because
10 ordinarily there is no way to correct an erroneous
11 determination of fact that is made by a juror.

12 On the other hand, and with equal emphasis, the same
13 law that makes you the judge of the facts in this case makes
14 me the judge of the law. The law, as given by the Court, is
15 the only law that you may consider. You must accept and
16 follow it even though, even though you may disagree with it.
17 I can not tell you what the facts are and you can not
18 disagree with me about what the law is or what the law
19 should be.

20 Your job is to take the law as I give it to you and
21 apply it to the facts as you find them from the testimony of
22 the witnesses and other evidence that is introduced, and,
23 after doing that, you will render your verdict, a true and
24 just verdict under the solemn oath that you just took as
25 jurors, and as I've already explained to you and instructed

1 you, until I advise you to begin your deliberations, you
2 must not discuss the case with anyone including your fellow
3 jurors, friends, family members, and anyone involved in the
4 case. This includes discussions face-to-face, others by
5 telephone, email, or text, blog, or any other method of
6 communication. You may not use a computer, a cell phone, or
7 other electronic communication devices at anytime in this
8 courtroom or during the deliberations.

9 During your breaks for meals or overnight, if
10 necessary, you may use these devices. However, you may not,
11 at anytime, use this, use these devices to get or send
12 information about this case. This includes, as I've told
13 you, don't do any research on me, the lawyers involved, the
14 parties involved, the witnesses involved, any of the other
15 court officers, anybody that's in this courtroom. Do not do
16 any type of research or investigation into any person or
17 topic that might be part of this case.

18 During this trial, do not read, listen to, or watch any
19 type of news reports about the case. This includes anything
20 that might be on the news, that might be in the newspaper,
21 the Internet, radio, or television because you must not
22 consider anything that you have read or heard about this
23 case outside of this courtroom whether before or during the
24 trial. Now, after the case is submitted to you, you must
25 discuss it only in the jury room with your fellow jurors.

1 Now, the attorneys and the parties in this case have
2 been advised that they are not to talk to you at all. So if
3 you see any of them involved in this case as you come and go
4 from the courthouse and maybe you know them, and they don't
5 even say hello to you, they're not being rude to you or
6 unfriendly. They're simply following my advice that they
7 too are not to have any contact with you.

8 Now, it's important that you keep an open mind and do
9 not decide any issue in this case until all of the evidence,
10 has been presented, the parties have made their closing
11 arguments, and I have instructed you on the law. It is your
12 solemn responsibility to determine the guilt or the
13 innocence of the defendant and your verdict must be based
14 solely on the evidence, evidence as it is presented during
15 this trial and on the law as I instruct you during and at
16 the close of the trial.

17 In just a moment, the solicitor, she will make what is
18 called an opening statement in which the solicitor will
19 explain to you the issues in this case or at least what the
20 solicitor thinks the issues are in the case, in the case.
21 The attorney for the defendant may also make an opening
22 statement although he is not required to do so.

23 I tell you that what the attorneys state to you, during
24 their opening statements, is not evidence in this case. It
25 is only their contention as to what the issues are in the

1 case. The evidence in this case will be presented to you by
2 testimony of sworn witnesses from this witness stand and any
3 exhibits that are introduced during the course of this
4 trial.

5 As I've already mentioned, from time to time you may
6 hear one of the lawyers say something like Your Honor, I
7 believe we have a question of law or a matter of law to
8 discuss with you or they may say Your Honor, may we approach
9 the bench or sometimes I myself may find it necessary to
10 excuse you from the courtroom for a short while so that the
11 attorneys and I can discuss what's called matters of law.

12 The reason for this is because you are the judges of
13 the facts of this case and sometimes, in discussing and
14 ruling on matters of law, it becomes necessary for me to
15 make statements concerning the facts. In order that you
16 will not be influenced by anything that I say in ruling on
17 matters of law, I will excuse you for a short time while the
18 attorneys and I discuss the -- those, those issues.

19 Now, in determining what the true facts are in this
20 case, you must decide whether or not the testimony of a
21 witness is believable. It is my responsibility to rule, as
22 a matter of law, whether certain testimony is admissible at
23 all or not. But once the testimony is admitted, whether or
24 not you believe it is solely up to you.

25 In deciding whether to believe a witness, you have the

1 right to consider the interest of any witness, the bias of
2 any witness, the prejudice of any witness, the opportunity
3 for the witness to have seen the matters and things about
4 which the witness may testify and the way the witness acts
5 on the witness stand. You have the right to consider
6 anything that is in the record that will help you evaluate
7 the testimony of the witnesses.

8 That means that it is your duty to pay close attention
9 to the witnesses, to observe the witnesses, to listen to the
10 witnesses, and to pay close attention to the attorneys and
11 to the Court. Do not let your thoughts wonder, but give
12 strict attention to the testimony in this case so that, at
13 the end of all the testimony, after the arguments of counsel
14 have been presented to you, and the charge of the law has
15 been presented by me to you, you will then be in a position
16 to determine what the true facts are and apply the law to
17 those facts and thus render a true and just verdict.

18 Now, it is your added duty, Ms. Miller, as the
19 foreperson, to be the foreperson spokesman in this courtroom
20 in the event that that becomes necessary. It will also be
21 your added duty to write the verdict in this case, but I
22 will give you further instructions about that at the
23 conclusion of the case.

24 Now, before we proceed, I need to afford both the State
25 and the defense an opportunity to object to anything that I

1 have just now said to the jury.

2 Any objections from the State?

3 SOLICITOR GILMER: Not from the State, Your Honor.

4 THE COURT: Any from the defense?

5 MR. SCHULTZ: No, sir.

6 THE COURT: At this time we will receive the opening
7 statements of the attorneys.

8 SOLICITOR GILMER: Thank you, Your Honor.

9 May it please the Court, counsel.

10 Ladies and gentlemen of the jury, on June 20th of
11 2014, Undra Cohen-Middleton had surgery scheduled, but Mrs.
12 Middleton never made it to that surgery on that day because
13 her husband, the defendant, Chris Middleton, the night
14 before, stabbed her repeatedly in their marital bed and left
15 her lying there through the night until the next morning her
16 friends and family came over to check on her.

17 You're gonna hear from Mrs. Middleton and she's gonna
18 tell you about that night and what occurred to her. I ask
19 you to be patient with her. This is not an easy thing to
20 have to do.

21 She's gonna tell you about that night, that an argument
22 started. She had taken steps to get a divorce from the
23 defendant. The defendant had found out about that. He was
24 upset about that. He was upset about some different
25 matters. So as Mrs. Undra lied -- laid in the bed that

1 night getting ready for her surgery the next morning, the
2 defendant came into that room with a knife, got on top of
3 her, repeatedly stabbed her, kicked her, struck her, put her
4 back in the bed, and laid in that bed with her that night
5 until the next morning.

6 You're also gonna hear from Ms. Loreena Miller-Bobo who
7 is a friend of Mrs. Middleton. Ms. Bobo had been staying
8 there at the house with Mrs. Middleton. She'd been staying
9 there for about a month, month and a half. Mrs. Undra
10 Middleton had given her a place to stay. She had been
11 staying there, but had left the night before because the
12 defendant was so irate, screaming at her; yelling at her,
13 cursing at her. She had enough. She went somewhere else to
14 diffuse the situation.

15 She got a call from Mrs. Middleton's family the next
16 morning. Mrs. Middleton had never shown up for surgery.
17 Ms. Miller-Bobo went to the Middleton residence and Mrs.
18 Middleton's father was close behind. They went over there
19 to check on her, why didn't she show up for the surgery.
20 When they got her -- got there, they heard moaning in the
21 house. They knocked on the door, the front door, the
22 back-door. Robert Middleton, Mrs. Middleton's father, went
23 to the front door, and the back-door, Loreena Miller-Bobo,
24 Miller-Bobo went there.

25 Loreena Bobo says the defendant, the defendant -- the

1 door opens. She sees the defendant standing there, blood on
2 him, a knife in his hand. He runs off. Ms. Miller-Bobo, I
3 anticipate she's gonna tell you, that she didn't know what
4 she was gonna find in that house. But what she found was
5 certainly not what she expected.

6 Goes into that house, finds lying in the bed
7 Mrs. Middleton. She's been stabbed repeatedly. Her hand's
8 been cut and she has four other stab wounds.

9 At that point I anticipate witnesses are gonna tell you
10 that police were then called out. This, this welfare check
11 for her safety to make sure she was okay immediately was
12 turned into a stabbing call.

13 Mrs. Middleton was life-flighted to the hospital, and
14 we'll have a doctor who will testify and tell you about the
15 nature of her injuries and the severity of those injuries.
16 Now, he's coming in this afternoon to testify. He's gonna
17 be unavailable later in the week. So keep in mind, you will
18 hear more about what happened before he became involved and
19 we're gonna have to call him a little bit out of order. So
20 just keep that in mind when you're listening to his
21 testimony today. But he will be here.

22 The State anticipates you're also going to see
23 photographs that officers with Spartanburg County Sheriff's
24 Office took that day, took of, of the scene where they found
25 Mrs. Middleton, and then other photographs that are involved

1 in this case. The State anticipates we're gonna show you
2 some evidence, some bloody clothing, some items that were
3 found in the residence, and we also have the knife that the
4 State contends was used in this matter.

5 I ask you to use your common sense and I'll have an
6 opportunity to speak with you at the end of this trial. But
7 while you're listening to this testimony, I ask you to take
8 your common sense back with you as you're listening to this
9 testimony and at the end of this trial when you're
10 deliberating this case.

11 I feel certain that, after you hear and see all of the
12 evidence in this case, you're going to make one decision and
13 I anticipate that decision is going to be finding the
14 defendant guilty of attempted murder, that, on that night,
15 he attempted to end the life of his wife and he nearly
16 succeeded. But I ask you to find him guilty of attempted
17 murder and possession of a knife, a knife that was used when
18 he attempted to end her life that night. I feel certain
19 that, at the end of this trial, you will find the defendant
20 guilty.

21 Thank you.

22 THE COURT: Yes, sir.

23 MR. SCHULTZ: May it please the Court, Your Honor.

24 Ladies and gentlemen of the jury, first off, let me
25 thank you very much for your service here today. Also

1 during the course of this week as well.

2 As Judge Hayes said a couple minutes ago, this is a
3 very very extremely important part of our democratic system,
4 our experiment in self-representation. In fact, the jury
5 system itself is older, way older than our American
6 democracy.

7 You, each and every one of you, are now part of the
8 jury system in this country and for the rest of your life
9 you'll take that with you. I think being a juror is, other
10 than somebody's right to vote, is most incredible and I
11 think ultimately rewarding thing that someone can do in this
12 country. So I thank you again for your service.

13 Ladies and gentlemen, we are going to hear, in the next
14 couple days here, the case of the State of South Carolina
15 versus my client, Chris Middleton. I have been representing
16 Mr. Middleton for quite sometime now, and the State is going
17 to attempt to prove that he committed the crime of -- well,
18 actually two crimes, attempted murder and a possession of a
19 weapon during a violent crime.

20 Now, attempted murder, what is that?

21 We can probably guess what it is and maybe your guess
22 may be accurate. But in tomorrow, the judge is gonna
23 instruct you, each and every one of you, on what the law
24 actually means, what attempted murder actually means.

25 The State must prove that, on that date, last year, my

1 client attempted to kill her. He attempted to kill her. I
2 do not believe and I think, at the close of the state's
3 evidence, that they will be able to prove that.

4 I believe, and I think you will share this opinion with
5 me tomorrow in your jury deliberation room, that attempted
6 murder does not fit the facts of this case. This -- I
7 believe, and I think you will believe this as well, that the
8 State will not meet what is known as their burden of proof.

9 Now, you may have heard those words in the movies. I'm
10 sure some of you have watched legal thrillers. Maybe
11 watched -- read John Grisham and Scott Turow and seen
12 movies, and I think almost every TV show nowadays is some
13 sort of legal process in them whatsoever, whether, whether
14 it be CSI or NCIS or whatever. It, it, it has lawyers and
15 it has lawyers talking.

16 But here today, like Judge Hayes said, don't expect
17 high drama here in Court. But I will, will say that the
18 case itself and I think what the State will present and also
19 what I will bring up during cross-examination is direct.
20 Something happened that day, but it wasn't attempted murder.

21 Now, I spoke to you a couple minutes ago about what
22 burden of proof means.

23 What is burden of proof?

24 The State, the folks sitting here, seated here right at
25 this table, carry a burden of proof. They are the ones that

1 bring the charges against Chris. Not me. Not the judge.
2 Not y'all. They're the ones bringing the charges against my
3 client, Chris.

4 Okay. Since they do have that burden, they're the
5 folks that get to go first. They're the folks that have to
6 prove each and every element of the crime. They have to
7 prove it. The judge is gonna go over what the elements mean
8 probably tomorrow, maybe Wednesday, I don't know. But he's
9 gonna go over what those elements are, attempted murder and
10 possession of a violent crime.

11 Now, I believe that they will be -- they will not be
12 able to carry what is known again as their burden of proof.
13 Here's why.

14 I believe that I will be able to, Chris and I, will
15 present enough what is known as reasonable doubt.

16 Now, what does reasonable doubt mean?

17 That's another loaded term and it's about as loaded as
18 the jury system that comes over from England.

19 Reasonable doubt, at least this State defines it,
20 reasonable doubt is doubt that causes a reasonable person
21 some hesitation to act. To act. It is the highest standard
22 of proof that we have in this country.

23 Across the hall they will be doing Civil Court.

24 What is Civil Court?

25 Well, Civil Court is usually about one thing, about one

1 thing only. It's about money. Civil Court, the plaintiff
2 person is suing somebody. When they bring an action, they
3 just have to prove their case beyond preponderance of
4 evidence. That means more likely than not. About 51
5 percent.

6 The State, in this case, in Criminal Court, because
7 we're not talking about money here, folks, we're not talking
8 about who paid what or who got injured or some kind of
9 lawsuit, what we're talking about is, is a man's freedom and
10 justice. That's what we're talking about. That's why the
11 burden is so high.

12 Let me conclude by saying this. Some of you, I say
13 most of you, have bought cars, and, you know, also would say
14 that you probably have bought used cars before, before.
15 Before you roll that car that you bought off the lot, you
16 probably inspected the car. Inspection is very important.

17 The only thing I ask you here today, tomorrow, possibly
18 Wednesday, is to inspect the State's case, their car, as if
19 you were going to buy it because what happens, if you don't
20 buy a car when you inspect it, you roll it off the lot and
21 then it blows up. That's a big responsibility to have.

22 So, as I said before, that's the only thing I want you
23 to do today. Listen. Inspect the State's case. These are
24 the folks bringing the charges. Not us. Not you. Not the
25 judge. Inspect the State's case because they're the ones

Lois Cohen - Direct examination
by Solicitor Gilmer

1 that have the burden of proof.

2 Thank you.

3 THE COURT: Thank you, ladies and gentlemen.

4 Lawyers approach a moment.

5 (WHEREUPON, a bench conference was held out of the
6 hearing of the jury at this time.)

7 THE COURT: Is the State ready to call their first
8 witness?

9 SOLICITOR GILMER: Yes, Your Honor, we are.

10 May it please the Court, Your Honor.

11 The State calls Lois Cohen.

12 THE COURT: Ms. Cohen, just come right up here.

13 (Witness complies.)

14 THE COURT: Ms. Cohen, let the Clerk of Court swear you
15 in.

16 LOIS COHEN, being first duly
17 sworn, testified as follows:

18 THE COURT: Ms. Cohen, be careful getting up to the
19 jury stand.

20 SOLICITOR GILMER: Thank you, Your Honor.

21 If it please the Court?

22 THE COURT: Yes, ma'am.

23 DIRECT EXAMINATION

24 BY SOLICITOR GILMER:

25 Q Would you please state your full name for the record?

Lois Cohen - Direct examination
by Solicitor Gilmer

1 A Lois Jane Cohen.

2 Q And, Ms. Cohen, do you reside here in Spartanburg
3 County?

4 A Yes, I do.

5 Q And do you know an individual named Robert Undralynn
6 Cohen-Middleton?

7 A Yes, ma'am.

8 Q Who is who?

9 THE COURT: All right. Ms. Cohen, the -- I need you to
10 really speak up because the lady that's to your back's got
11 to be able to hear you and that last lady all the way on
12 that side of the courtroom has got to be able to hear you.

13 okay. Thank you.

14 A Yes, I do.

15 Q And how do know the individual?

16 A She's my daughter.

17 Q All right. And what name does she go by?

18 A Robert.

19 Q Is that -- that's her first name?

20 A Yes, ma'am.

21 Q What do most people call her?

22 A Undra.

23 Q Undra.

24 Robert, where did that name come from?

25 A My mother.

Lois Cohen - Direct examination
by Solicitor Gilmer

- 1 Q All right. Is she named -- is Mrs. Undra Cohen named
2 after someone?
- 3 A Her daddy.
- 4 Q And what's his name?
- 5 A Robert Lee Montgomery.
- 6 Q And how old is Mrs. Cohen, Mrs. Undra Cohen?
- 7 A Fifty.
- 8 Q And is she your only child?
- 9 A No, ma'am.
- 10 Q How many children do you have?
- 11 A I have three are living and one dead.
- 12 Q Okay. And is Mrs. Undra Cohen married?
- 13 A Yes, she is.
- 14 Q Who is she married to?
- 15 A To Christopher Middleton.
- 16 Q Okay. And how long have they been married?
- 17 A About eight and a half years.
- 18 Q Okay. Is Mrs. Undra Cohen in the process of getting a
19 divorce?
- 20 A Yes, ma'am.
- 21 Q All right. And I'm going to turn your attention to
22 June 9th -- June 19th of 2014.
- 23 Where was Mrs. Undra Cohen-Middleton living at that
24 time?
- 25 A At Lyman.

Lois Cohen - Direct examination
by Solicitor Gilmer

- 1 Q Is that here in Spartanburg County?
- 2 A Yes, ma'am.
- 3 Q And does she reside there with the defendant, Chris
- 4 Middleton, Middleton?
- 5 A Yes, ma'am.
- 6 Q All right. And how long have they lived there?
- 7 Do you know?
- 8 A Maybe five years, something. I don't know really. But
- 9 about four or five years I think. Maybe a little longer.
- 10 Q Does Mrs. Undra Cohen, does she have any medical
- 11 conditions?
- 12 A Yes, ma'am.
- 13 Q And back in June of 2014 was she getting treatment for
- 14 any medical conditions?
- 15 A Yes, ma'am.
- 16 Q Are you aware of what those medical conditions were?
- 17 A That -- yes, ma'am.
- 18 Q Okay. And what were they?
- 19 A For her myasthenia gravis.
- 20 Q And did she have surgery scheduled on June 20th of
- 21 2014?
- 22 A Yes, ma'am.
- 23 Q And did Mrs. Undra Cohen have -- was she getting cancer
- 24 treatments as well?
- 25 A Yes, ma'am.

Lois Cohen - Direct examination
by Solicitor Gilmer

1 Q And do you know what time her surgery was scheduled for
2 on June 20th of 2014?

3 A I'm not sure. I think it was like 6:30 in the morning,
4 something like that.

5 Q And, on that morning, did you receive a phone call from
6 Spartanburg Regional Medical Center?

7 A Yes, ma'am.

8 Q And what was that call regarding?

9 A They couldn't find Undra anywhere in the, you know, at
10 any of the hospitals or nowhere. They couldn't find her.

11 Q So had she shown for her surgery that morning?

12 A No, ma'am.

13 Q And are you one of her emergency contacts?

14 A Yes, ma'am.

15 Q And when you learned that she had not shown for her
16 surgery that morning at 6:30, what did you do?

17 A I called her phone and I got no answer. So I called
18 her father and asked him to go out there and see, you know,
19 what was going on, why she wasn't at the hospital.

20 Q And that's Robert Montgomery?

21 A Yes, ma'am.

22 Q And did he live close to Undra Cohen-Middleton at the
23 time?

24 A Yes, ma'am.

25 Q And are you aware if he went to her residence?

Lois Cohen - Direct examination
by Solicitor Gilmer

1 A Yes, ma'am, he did.

2 Q Okay. And did you call anyone else that day?

3 A 9-1-1.

4 Q And why did you call 9-1-1?

5 A Because he called me back and he said he couldn't get
6 in the house or nothing, he couldn't see anything, and he
7 told me to call 9-1-1. So I did.

8 Q Did you make -- do you recall if you made one call that
9 day to 9-1-1 or two calls?

10 A Two calls.

11 SOLICITOR GILMER: Your Honor, at this time if I may
12 approach the witness?

13 THE COURT: Yes, ma'am.

14 Q All right. Ms. Cohen, I'm showing you what's been
15 marked as State's Exhibit 1 and State's Exhibit 2.

16 Do you recognize these?

17 A Yes, ma'am.

18 Q And what do you recognize them to be?

19 A The 9-1-1 calls I made.

20 Q Okay. And those were made on June 19th of 2000 or,
21 excuse me, June 20th of 2014?

22 A Yes, ma'am.

23 Q All right. And how do you recognize those items to be
24 those calls?

25 A I got them and initialed the day. You know, I

Lois Cohen - Direct examination
by Solicitor Gilmer

1 initialed them and I recognize them.

2 Q So you had an opportunity to listen to those recorded
3 calls?

4 A Yes, ma'am.

5 Q And are those your initials and the dates---

6 A Yes, it is.

7 Q ---that you listened to them?

8 A Yes, it is.

9 SOLICITOR GILMER: Okay. Your Honor, at this time I
10 would move to enter into evidence -- let me back up, Your
11 Honor.

12 Do these calls -- were these fair and accurate
13 representations of your calls to 9-1-1 that day?

14 A Yes, ma'am.

15 SOLICITOR GILMER: Okay. And, Your Honor, at this time
16 I would move to enter into evidence what's been previously
17 marked as State's Exhibit 1 and No. 2.

18 MR. SCHULTZ: No objection.

19 THE COURT: Without objection, State's 1 and 2 will be
20 admitted.

21 SOLICITOR GILMER: Thank you, Your Honor.

22 (WHEREUPON, State's Exhibit Nos. 1 and 2 were received
23 into evidence at this time.)

24 SOLICITOR GILMER: I would ask to publish to the jury
25 at this time.

Lois Cohen - Direct examination
by Solicitor Gilmer

1 THE COURT: Without objection then you may publish.

2 SOLICITOR GILMER: Thank you.

3 (WHEREUPON, State's Exhibit No. 1 was played for the
4 jury at this time.)

5 Q Now, Ms. Cohen, you said you later made an additional
6 call?

7 A Yes, ma'am.

8 Q Was that right after that one or how much time would
9 you say had passed?

10 A Right after.

11 (WHEREUPON, State's Exhibit No. 2 was played for the
12 jury at this time.)

13 Q Ms. Cohen, that was you on those -- the two 9-1-1
14 calls?

15 A Yes, ma'am.

16 Q And, at that point, were you aware that anything was
17 wrong with Undra?

18 A No, ma'am.

19 Q You just knew she hadn't shown up for her surgery that
20 morning?

21 A (Witness nods affirmatively.)

22 Q Were you later contacted and told that there was, in
23 fact, something wrong with Undra?

24 A Yes, ma'am.

25 Q Did you, did you learn what had happened?

Lois Cohen - Direct examination
by Solicitor Gilmer

1 A Yes, ma'am.

2 Q All right. And what had happened to her?

3 A She had been stabbed and she was just laying, you know,
4 been stabbed by her husband.

5 Q Has she had surgeries due to that stabbing?

6 A Yes, ma'am.

7 SOLICITOR GILMER: Okay. I have no further questions
8 at this time, Your Honor.

9 THE COURT: Yes, sir.

10 MR. SCHULTZ: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. SCHULTZ:

13 Q Ma'am, I'm sorry, ma'am.

14 Your name again is what?

15 A Lois Cohen.

16 Q Lois Cohen?

17 A Yes. Yes.

18 Q And you are the mother of the---

19 A Undra.

20 Q Undra.

21 Okay. Now, ma'am, you've, you've obviously known Undra
22 for all your life, right?

23 A Yes, sir.

24 Q Okay. And you called 9-1-1 two times that day, right?

25 A Yes, I did.

Lois Cohen - Cross-examination
by Mr. Schultz

1 Q Okay. Did you go to the house that day?

2 A Yes, I did.

3 Q All right. And when you got to the house, did you
4 encounter my client?

5 A No.

6 Q You did, you did not encounter him at all?

7 A They wouldn't let me go down there.

8 Q Explain that.

9 who, who is they?

10 A The police. They had me -- made it a crime scene. I
11 couldn't go down in there. I had to sit up at the top of
12 the road with them up there.

13 Q So you, you do not encounter my client at all?

14 Is that, is that your testimony here?

15 A That day?

16 Q Yes, ma'am, that day.

17 A No.

18 Q All right. Okay. So the only information really you
19 know about this incident is, is from what you were -- you've
20 been told with other people, right?

21 A That's right.

22 Q Now, you weren't there the previous night or that early
23 morning, right?

24 A No.

25 Q Okay. And, and your understanding is that the only two

Lois Cohen - Cross-examination
by Mr. Schultz

1 people that were present there were Undra and Chris, right?

2 A That's right.

3 Q Okay. Was Undra's -- did Undra suffer from some, some
4 medical problems, correct?

5 A Yes, she do.

6 Q Okay. Now, at the time you said that she had cancer,
7 correct?

8 A Yes, she have cancer.

9 Q She had cancer.

10 was her cancer in remission at that point or do you
11 remember?

12 A It was in remission.

13 Q It was in remission.

14 Okay. All right. And what kind of cancer did she
15 have?

16 A Breast cancer.

17 Q Breast cancer.

18 Okay. But at the time that this incident occurred it
19 was in remission, correct?

20 A Yes, sir.

21 Q All right. Now, how -- when you went to the house, how
22 close did you get to the house when you responded?

23 A I was not very close.

24 Q Not very close?

25 A I was like two houses up at the end of the road from

Lois Cohen - Cross-examination
by Mr. Schultz

1 her house.

2 Q Okay.

3 A But they wouldn't let me down in there.

4 Q All right. And, and when you mean, again, they, you
5 mean the police?

6 A The police wouldn't let me down in there.

7 Q Okay. All right. And when you -- were they -- did,
8 did you see Undra that day?

9 A When I got to the hospital after her surgery.

10 Q Okay. But did you see Undra in the house?

11 A No.

12 Q All right. Okay. So really your testimony here today
13 is you have no idea what happened in that house, correct?

14 A No, I don't.

15 MR. SCHULTZ: All right. That's all I have, Your
16 Honor. Thank you.

17 THE COURT: Any redirect limited to what he went into?

18 SOLICITOR GILMER: No, Your Honor.

19 THE COURT: Thank you, ma'am. You may step down.
20 Please be careful.

21 Is the State ready to call their next witness?

22 SOLICITOR GILMER: Yes, Your Honor.

23 Your Honor, the State calls Doctor Jason Johnson.

24 THE COURT: All right. Doctor, if you will, just come
25 right up here and let the Clerk of Court swear you in.

Doctor Jason Johnson - Direct examination
by Solicitor Gilmer

1 DOCTOR JASON JOHNSON, being first duly
2 sworn, testified as follows:

3 THE COURT: Sir, just have a -- watch your step up but
4 just have a seat in that red chair.

5 THE WITNESS: Thank you.

6 THE COURT: Pull the red chair up to the microphone.

7 DIRECT EXAMINATION

8 BY SOLICITOR GILMER:

9 Q Would you please state your name for the record?

10 A My name is Jason Johnson.

11 Q And, Doctor Johnson, how are you employed?

12 A I'm employed by Spartanburg Regional Healthcare System.

13 Q And what is the nature of your employment?

14 A I am a physician in the physician group Medical Group
15 of the Carolinas.

16 Q And, as a physician, what are your duties with the
17 hospital?

18 A I serve as a surgeon in several different capacities.
19 I serve about 50 percent of my time in minimally invasive
20 and weight loss and bariatric surgery, and about 50 percent
21 in trauma and acute care surgery.

22 Q In June of 2014 did you have the opportunity to treat a
23 patient named Robert Undralynn Cohen-Middleton?

24 A Yes, ma'am, I did.

25 Q And what was the nature of that treatment---

Doctor Jason Johnson - Direct examination
by Solicitor Gilmer

1 A I was the---

2 Q ---in general?

3 A I was the trauma surgeon on call and was alerted to her
4 injuries and I took over her care when she arrived in the
5 emergency center.

6 Q Before we get into that I want to ask you a few
7 questions about your background and experience as a doctor.

8 How many years have you been licensed?

9 A I've been licensed since 2002 or three. I don't recall
10 when I was a resident and I got my license.

11 Q And where did you receive your undergraduate education?

12 A I received that at East Carolina University in
13 Greenville, North Carolina.

14 Q And what year did you graduate?

15 A I graduated in 1995.

16 Q And what degree did you earn?

17 A I earned a Bachelor of Arts in Chemistry with a minor
18 in biology.

19 Q And what medical school did you attend after
20 undergraduate?

21 A I attended the University of Health Sciences College of
22 Osteopathic Medicine.

23 Q And did you receive a degree from that school?

24 A Yes, I did.

25 Q And what year?

Doctor Jason Johnson - Direct examination
by Solicitor Gilmer

- 1 A I received, I received that degree in 1999.
- 2 Q And to become a doctor you have to do residency
- 3 training.
- 4 Is that correct?
- 5 A That sequentially follows your medical degree, yes.
- 6 Q And where did you do your residency?
- 7 A I did my residency here at Spartanburg Regional Medical
- 8 Center.
- 9 Q Okay. And what specialty was that?
- 10 A General surgery.
- 11 Q And how long did your training and residency take?
- 12 A Five years.
- 13 Q And are you board certified?
- 14 A Yes, I am.
- 15 Q In what specialty?
- 16 A General surgery.
- 17 Q What are your requirements for becoming board
- 18 certified?
- 19 A You have to pass a series of examinations to include a
- 20 written exam and an oral exam. In addition, I am
- 21 recertified, which is the written exam ten years after your
- 22 original certification. And so I recertified this past
- 23 December.
- 24 Q And that certification, is that something that's
- 25 required to work as a doctor in your capacity?

Doctor Jason Johnson - Direct examination
by Solicitor Gilmer

1 A In order to maintain your privileges for admission to a
2 hospital, yes, it is.

3 Q And are you on the staff at any hospitals?

4 You mentioned Spartanburg Regional Medical Center.

5 Is that---

6 A Yes, ma'am.

7 Q ---where you're staffed?

8 A Yes, ma'am, in addition to Pelham Medical Center and
9 Spartanburg Hospital for Restorative Care.

10 Q And with -- at Pelham and Spartanburg Regional, have
11 you had the opportunity to conduct surgeries on individuals?

12 A Yes.

13 Q And what specific types of surgery have you conducted?

14 A I conduct a full range of surgery to include anywhere
15 in the chest, abdomen, peripheral vascular, full gambit of
16 operations primarily related to trauma or, as I stated
17 earlier, to my minimally invasive weight loss surgery.

18 Q And with this trauma surgery, did you conduct those
19 surgeries within the ER, in emergency settings?

20 A Yes, both in the emergency room and also urgently in
21 the operating room.

22 Q And have you had any prior medical training or
23 experience in your career prior to working at Spartanburg
24 Regional?

25 Have you had any military experience?

Doctor Jason Johnson - Direct examination
by Solicitor Gilmer

1 Let me be a little more specific.

2 A Yes, ma'am, I served six years on active duty in the
3 United States Army.

4 Q And with your active duty service, did you partake in
5 any training or any experience in the medical field?

6 A Yes, I was deployed to Operation Iraqi Freedom on two
7 different times, and I served in the capacity of trauma
8 surgeon in Iraq.

9 Q That surgery, did that often result from individuals
10 who had been injured on the battlefield, on the front lines?

11 A I would say 95 percent of the surgery that I did was
12 directly related to battlefield injuries, yes, ma'am.

13 Q Have you ever been called to testify regarding your
14 medical experience on any surgeries that you have performed?

15 A Yes, I have.

16 Q And have you ever been qualified as an expert?

17 A Yes, ma'am, I have.

18 Q All right. And was that in the state or for a -- South
19 Carolina that you were qualified as an expert?

20 A Yes, ma'am, it was.

21 Q And do you recall how you were -- what expertise you
22 were given or how you were qualified as an expert?

23 A I was qualified as an expert in the field of general
24 surgery.

25 Q Have you conducted any studies or written any papers

Doctor Jason Johnson - Direct examination
by Solicitor Gilmer

1 regarding your professional work?

2 A Yes, ma'am, I've published quite a few papers.

3 Q Okay. And what was the content or substance of those
4 papers?

5 What were those based on?

6 A It's a wide variety of things. Everywhere from my
7 experience with weight loss surgery to I was one of the
8 editors of the Battlefield Trauma Book from the United
9 States Army.

10 SOLICITOR GILMER: Your Honor, at this time I would
11 move to have Doctor Johnson qualified as an expert in the
12 field of emergency surgery as well as, Your Honor, surgery
13 regarding bariatrics as well.

14 THE COURT: Yes, sir.

15 MR. SCHULTZ: No objection, Your Honor.

16 THE COURT: All right. Ladies and gentlemen, normally
17 a person can not give opinion testimony. Normally, when a
18 person comes to Court and they testify, they must do so as
19 to what either they saw, heard, or sensed by smell or
20 something of that nature. However, there are -- there is an
21 exception when someone is qualified because of education or
22 experience. They are permitted to give their opinion in
23 certain areas if the Court qualifies them that way. This
24 witness will be qualified in the area of emergency surgery
25 and bariatric surgery to give opinion testimony in those

Doctor Jason Johnson - Direct examination
by Solicitor Gilmer

1 areas.

2 Now, that does not mean that you must accept the
3 opinions. But it is evidence for you to use in anyway that
4 you see fit.

5 SOLICITOR GILMER: Thank you, Your Honor.

6 Doctor Johnson, I just want to clarify.

7 You are no longer in your residency training.

8 Is that correct?

9 A Yes, ma'am, that is correct.

10 Q And the residency is done after Medical School and so
11 you're past that period?

12 A Yes, ma'am, that is correct.

13 Q All right. And back in June of 2014, did you come into
14 contact with Undra Cohen-Middleton?

15 A I don't remember the exact date. But yes, ma'am.

16 Q And was she admitted into the emergency room?

17 A Yes, ma'am.

18 Q And do you recall how she was transported to the
19 emergency room?

20 A My recollection is that it was by Region One helicopter
21 but I would need to reference the history and physical
22 because I can tell you right from there how -- what her mode
23 of transport was.

24 Q When does Regional One helicopter get involved in cases
25 versus an ambulance service?

Doctor Jason Johnson - Direct examination
by Solicitor Gilmer

1 A Typically they're involved in cases where distance is
2 of, of prime concern where someone may be located a little
3 bit further away. In addition, they're involved when we
4 need a higher level of care and also when it's time
5 sensitive patients. So patients that need to be treated
6 more rapidly than the standard ambulance or standard
7 transport would allow.

8 Q And when you came in -- first came into contact with
9 Mrs. Cohen-Middleton, what was the nature of her injuries?

10 A She had some lacerations about herself as well as what
11 appear to be a puncture wound in her upper abdomen and
12 several along her left -- the left side of her chest.

13 Q Do you recall if she had a wound to her hand?

14 A Yes, ma'am, she did.

15 Q And those injuries, in your training and experience as
16 a doctor, would you categorize those as serious injuries?

17 A Yes, ma'am.

18 Q Would you categorize those as life threatening
19 injuries?

20 A Yes, ma'am.

21 Q Okay. And how so?

22 If you would elaborate on that.

23 A Anytime someone has what appears to be a stab wound or
24 a puncture wound to the abdomen it can be life threatening
25 especially in the location where hers was which was in the

Doctor Jason Johnson - Direct examination
by Solicitor Gilmer

1 left upper abdomen. Because of the trajectory of the knife
2 I worry about penetration to the heart, the lung, the colon,
3 the small intestines, the liver, the aorta, and any other
4 adjacent structures. Additionally, she had stab wounds
5 about her chest, breast, and her hand, and so, in those
6 cases, I would absolutely treat that as urgent, which is
7 what we did in this case.

8 Q Were you able to estimate how much blood loss Mrs.
9 Cohen-Middleton had from her injuries?

10 A I was not able to initially just because I could not
11 see inside of her abdomen. She seemed to be stable when she
12 arrived but she did have quite a bit of blood on her clothes
13 as well as her hands and about her body.

14 Q Were you concerned about her condition when she first
15 arrived at the emergency room?

16 A Yes, ma'am, absolutely I was.

17 Q And why were you so concerned?

18 A Again, as I stated, the nature of her injuries could be
19 anything and so -- could be anything from very minor
20 superficial injuries to very deep internal injuries, and
21 just the, the nature of them, the unknown of, of where the,
22 where the puncture wounds were certainly escalates that in
23 my mind and time becomes of essence at that time.

24 Q Was Mrs. Cohen-Middleton rushed into surgery?

25 A Yes, ma'am, she was.

Doctor Jason Johnson - Direct examination
by Solicitor Gilmer

1 Q Do you have an opinion, had she not been rushed into
2 surgery that day, do you feel that her injuries could have
3 led to death?

4 A Yes, ma'am, I do.

5 Q All right. Are all patients who come into the
6 emergency room, emergency room immediately rushed into
7 surgery?

8 A No, they're not. Typically my pattern is that I will
9 assess the injuries and, and score them. If they're life
10 threatening, my goal is to have them in the operating room
11 within 30 minutes, which was about the amount of time that
12 we had her in the operating room, right at 30 minutes.
13 Additionally, sometimes it's more of a two to three hours,
14 which would be a breadth of cases and sometimes it can wait
15 a day and so it's just -- there's different tears and we use
16 them based on injury patterns.

17 Q All right. Now, you told us that you had experience in
18 bariatrics as well.

19 what is bariatrics?

20 what does that mean?

21 A Bariatric surgery is weight loss surgery, surgery for
22 weight reduction.

23 Q And would you expect someone who -- would you expect
24 someone who had been scheduled for surgery the next day,
25 would they have some weakness if they were scheduled for

Doctor Jason Johnson - Direct examination
by Solicitor Gilmer

1 surgery and also had a procedure the day before?

2 would they have some weakness from medical procedures?

3 A Can you clarify your question just a little bit for me
4 please, ma'am?

5 Q What is, what is myasthenia gravis?

6 A Myasthenia gravis?

7 Q Yes.

8 A It's a neurologic condition where there are receptors
9 that fire our muscles and they're antibodies that the body
10 creates that block those receptors from firing normally.
11 That's myasthenia gravis.

12 Q And does that condition cause weakness?

13 A Yes, ma'am, it does, especially in patients who have
14 more of an in-stage myasthenia gravis.

15 Q Would having that condition cause -- on top of being
16 stabbed repeatedly, would that cause weakness to someone?

17 A I think that condition in and of itself would cause
18 weakness but you add on top of it being stabbed. I
19 certainly think that it would cause someone to be extremely
20 weak.

21 Q Okay. If someone had maybe some extra weight and
22 dealing with the myasthenia gravis, which I know I'm
23 probably butchering that word, would that cause someone to
24 have limited mobility?

25 A Absolutely it would.

Doctor Jason Johnson - Direct examination
by Solicitor Gilmer

1 Q And do you recall if Mrs. Cohen-Middleton just had to
2 have one surgery?

3 A To my recollection, in the hospital, she had a total of
4 three procedures done.

5 Q And those procedures, were they all due to the injuries
6 that she came to the ER for on June 20th of 2014?

7 A I'm not sure that the second one was, but the third one
8 was.

9 Q All right. With your education and experience and
10 training as a medical doctor, can you say, to a reasonable
11 degree of certainty, that, had Undra Cohen-Middleton not
12 been rushed into the operating room, that she would have
13 died from her injuries on June 2014 -- in June 2014?

14 A I think there's a high likelihood that she would have
15 died, yes, ma'am, given the fact that she also suffers from
16 myasthenia gravis. I think the two of those, compounded on
17 each other, gives her very little reserve.

18 Q And those injuries that you treated on that date, were
19 those consistent with -- did you have an idea of what would
20 of caused those types of wounds?

21 A It's consistent with some sort of a foreign body, some
22 sort of, of a sharp object like a knife or a -- something
23 sharp, yes.

24 SOLICITOR GILMER: If I could have one moment, Your
25 Honor.

Doctor Jason Johnson - Direct examination
by Solicitor Gilmer

1 (Pause.)

2 SOLICITOR GILMER: Your Honor, if I may approach the
3 witness?

4 THE COURT: Yes, ma'am.

5 SOLICITOR GILMER: Thank you.

6 (Pause.)

7 Q Doctor Johnson, I'm showing you what's been previously
8 marked as State's Exhibits 28, 74, and 75.

9 Do you recognize these?

10 A They do appear to be puncture wounds as well as some
11 blood on the hand and I would just have to say, based on the
12 ID bracelet, that would be consistent with this.

13 Q Okay. With Mrs. Undra Cohen-Middleton in this case?

14 A Yes.

15 Q And those wounds, are those -- would those be consent
16 with being stabbed with a knife?

17 A Yes.

18 Q And are you aware -- if the police were involved in
19 this matter, were they called to the hospital?

20 A I, I don't remember. A lot goes on. It would be
21 reasonable to assume that. But I can't tell you that I
22 distinctly recall the police officer being there but---

23 Q What is your primary focus?

24 A My primary focus is on the patient and ensuring the
25 patient is taken care of.

Doctor Jason Johnson - Direct examination
by Solicitor Gilmer

1 Q And these photographs, do they appear to be accurate
2 representations of the injuries that Mrs. Cohen-Middleton
3 had?

4 A Yes.

5 Q Thank you, Doctor Johnston.

6 Your Honor, at this time I would move to enter into
7 evidence what's been previously marked as State's Exhibit
8 No. 28, 74, and 75.

9 MR. SCHULTZ: Your Honor, I would object to the
10 introduction of these three pictures here. The, the doctor
11 did not take these photographs and I believe the pictures
12 are prejudicial and not probative.

13 THE COURT: All right. I'm going to allow the
14 photographs. I've reviewed the photographs and I don't
15 believe that they are -- that the prejudicial value
16 outweighs the probative value. So I'm gonna allow them.

17 MR. SCHULTZ: Okay.

18 (WHEREUPON, State's Exhibit Nos. 28, 74, and 75 were
19 received into evidence at this time.)

20 SOLICITOR GILMER: Your Honor, I would ask to publish
21 to the jury.

22 THE COURT: All right.

23 SOLICITOR GILMER: Thank you.

24 THE COURT: You may.

25 Q Thank you, Doctor Johnson. I have no more questions at

Doctor Jason Johnson - Cross-examination
by Mr. Schultz

1 this time. Please answer any questions Mr. Schultz has.

2 A Okay.

3 CROSS-EXAMINATION

4 BY MR. SCHULTZ:

5 Q Doctor, you saw Mrs. Middleton-Cohen at -- that day,
6 right?

7 A Yes, sir, that is correct.

8 Q All right. Did -- the day that this incident happened?

9 A Yes, sir.

10 Q All right. And would it, would it be safe to say that
11 you were the primary physician for her on that day that she
12 received treatment?

13 A Yes, sir.

14 Q All right. And had you treated her before?

15 A I can't recall if I had treated her before or not.

16 Q All right. But you were definitely the treating doctor
17 on that day, right?

18 A Yes, sir.

19 Q All right. Can, can you describe to the jury what an
20 exploratory laparotomy is, probably butchering that word?

21 what, what is that?

22 A An exploratory laparotomy?

23 Q Yes.

24 what is that?

25 A It is where we open the abdomen with a long big

Doctor Jason Johnson - Cross-examination
by Mr. Schultz

1 incision and go into the abdomen and look for injuries.

2 Q All right. And what did you find?

3 A If I could please have a copy of my operative report so
4 I could refresh my memory?

5 I would really appreciate it.

6 Q Do you, do you remember what, what you found just --

7 A I---

8 Q -- just without your medical documentation there?

9 A I, I do, but I think I would prefer to have a copy of
10 my operative report if that's possible please.

11 Q All right. Well, how about we do this.

12 Did you notice any wounds there that were more than
13 2-centimeters deep?

14 A The wound to her, to her anterior abdomen was way more
15 than 2-centimeters deep.

16 Q Way more than 2-centimeters deep?

17 A Yes.

18 Q Did you measure it?

19 A Did I measure it?

20 Q Yes.

21 Did you measure the wound to her---

22 A Again, I would need to see my operative report. This
23 is been well over a year ago. So I would need to reference
24 that to answer some of these very specific questions.

25 Q All right. Now, you performed the surgery on her,

Doctor Jason Johnson - Cross-examination
by Mr. Schultz

1 correct?

2 A That is correct.

3 Q All right. And how long did that surgery take?

4 A I would need to review the actual records of anesthesia
5 to see, but usually my goal is to, in a trauma situation, is
6 to have the surgery done within 60 minutes because I'm still
7 in the resuscitation phase during that. So I'm not exactly
8 sure how long. I would have to review the operative records
9 to really get a good sense of the exact minutes we were in
10 the operating room.

11 Q All right. Do you remember if you had any other
12 surgeries scheduled for that day?

13 A Don't recall. I don't recall.

14 Q You don't recall.

15 Okay. But you recall performing surgery, right?

16 A Yes, sir, I do recall performing surgery.

17 Q Okay. When the surgery was performed, do you remember
18 what directly happened after that?

19 Did, did you, did you see her for the rest of the day?

20 A She was admitted to our intensive care unit because of
21 her history of myasthenia gravis and the fear for her not
22 being able to breathe after surgery, which is very common in
23 these patients. I also saw -- so I did not see her again
24 later in the day. We defer that to our surgical critical
25 care intensivist and so her care would of been transferred

Doctor Jason Johnson - Cross-examination
by Mr. Schultz

1 to them.

2 Q All right. So after you performed the surgery you were
3 done, right?

4 A On that day, yes, I was.

5 Q Okay. Now, do you, do you know when she was discharged
6 from the hospital?

7 A I do know when she was discharged from the hospital.

8 Q When was that?

9 A I don't know the exact date, but it seems like it was
10 18 days after her original surgery, in that ball park.

11 Q Eighteen days after that?

12 A Again, I would have to review the record to give you
13 the exact date. She has a very large record. So it's very
14 difficult for me to have memorized every bit of it.

15 MR. SCHULTZ: All right. Your Honor, could I approach
16 the witness?

17 THE COURT: Yes, sir.

18 MR. SCHULTZ: Thank you.

19 Now, doctor, I'm gonna show you what, what's in my
20 computer here. There's, there's a lot of medical records
21 here but could you read that sentence right there?

22 A The patient was discharged back on her home medications
23 as well as prescribed Oxycodone, 5-milligrams, every four
24 hours or do you want me to read it or do you want me to
25 interpret it?

Doctor Jason Johnson - Cross-examination
by Mr. Schultz

1 Q No, I want you to read it and then I'm gonna ask you
2 some interpretations.

3 A Okay. So---

4 SOLICITOR GILMER: Your Honor, I would object to this.
5 I don't know if defense counsel is trying to impeach with an
6 inconsistent statement.

7 THE COURT: All right. I'll sustain the objection.
8 You need to ask him a question in order to use the
9 medical records.

10 MR. SCHULTZ: All right.
11 Can you read this paragraph right here?

12 A Yes, I can read that paragraph.

13 Q Can you read it to the jury?

14 SOLICITOR GILMER: Your Honor, objection.

15 THE COURT: Sustain the objection.

16 You have to ask him a question to where you can use the
17 medical records to either impeach him or show an
18 inconsistent statement or something else. You just can't
19 ask him to read a medical record.

20 Q The patient -- my -- was, was she discharged that day?

21 A Which day?

22 Q The day of the surgery.

23 A No, she was not discharged the day of the surgery.

24 Q Okay.

25 A It was 18 or 19 days later after having two other

Doctor Jason Johnson - Cross-examination
by Mr. Schultz

1 surgeries.

2 MR. SCHULTZ: All right. Your Honor, could I approach?

3 THE COURT: Yes, sir.

4 Q Could you read that statement right there?

5 SOLICITOR GILMER: Your Honor?

6 THE COURT: I'll sustain the objection.

7 MR. SCHULTZ: Your Honor, could we approach?

8 THE COURT: Yes, you may.

9 (WHEREUPON, a bench conference was held out of the
10 hearing of the jury at this time.)

11 MR. SCHULTZ: Thank you, Your Honor.

12 Your Honor, could I approach?

13 THE COURT: Yes, sir.

14 Q All right. Doctor, to the nearest of your
15 recollection, what I'm handing you up here, would this tend
16 to refresh -- recollect your information as to what
17 transpired that day?

18 A Yes.

19 Q Yes, it would.

20 A That would be the recollection of what happened in the
21 operating room.

22 Q Okay.

23 A That doesn't reflect what happened in the trauma bay
24 prior to going to the operating room or anything that would
25 of happened after the operating room.

Doctor Jason Johnson - Cross-examination
by Mr. Schultz

1 Q All right. In, in these medical records, does it say
2 that she was, she was discharged that day?

3 A It does not say that she was discharged that day.

4 Q Okay. What does it say in there?

5 A It says, in the very last sentence of my dictation, the
6 patient tolerated the procedure well. We will admit her to
7 the intensive care unit because of her history of myasthenia
8 gravis.

9 Q Okay. All right. So she was discharged, not out of
10 the hospital, but into where?

11 A I -- she was not discharged at all. The patient
12 tolerated the procedure well. We will admit her to the
13 intensive care unit because of her history of myasthenia
14 gravis.

15 Q All right.

16 A So she was not discharged home on that day.

17 Q She was not dis, dis---

18 A She was not discharged anywhere that day.

19 Q She was not discharged anywhere that day.

20 All right. Now, when she was discharged, did you see
21 her after that?

22 A I don't recall if I saw her or if she was seen in our
23 trauma clinic, which is staffed by multiple trauma surgeons.

24 Q Okay. Now, what did you use to repair the wounds?

25 A May I look at my operative report again please?

Doctor Jason Johnson - Cross-examination
by Mr. Schultz

1 Q All right. You mean this one?

2 A Yes, that one.

3 And which wounds in particular are you talking about
4 please?

5 Q The stab wounds.

6 A Okay. There are several here.

7 Which ones would you like me to tell you about?

8 Q All of them.

9 A All of them.

10 okay. So we repaired the hole in her stomach with silk
11 suture. That was a laceration to her stomach and that would
12 be her, not just her abdomen, but it went through her skin,
13 through her subcutaneous tissue, and you asked me earlier
14 how I know it was more than 2-centimeters because she, the
15 patient, is morbidly obese and she probably had
16 4-centimeters between her skin and the fascia of her
17 abdomen. So I know that stab wound was more than that
18 because it actually put a hole into her stomach.

19 The stomach was closed with -- let me find it in here.
20 We closed the stomach with silk suture. The left chest stab
21 wounds, we used a special device to ensure there was good
22 blood flow because of her history of a mastectomy. I was
23 worried about her sluffing that skin. So we used a --
24 what's called a Spy Device to make sure that we didn't have
25 to take more of the skin off of her chest because it had

Doctor Jason Johnson - Cross-examination
by Mr. Schultz

1 been devitalized. That was 3-centimeters by 2-centimeters
2 by 2-centimeters and I don't see that I dictated the
3 exact -- what we closed those with. Often times I will
4 leave them open and that Penrose drain is there to keep an
5 infection from happening.

6 It's not uncommon for me not to close them because, if
7 the foreign body that she -- that violated that area was
8 dirty, it sets her up for a huge infection for a wound
9 complication.

10 Then I closed her hand wounds with nonabsorbable
11 sutures. The right-hand was closed with nonabsorbable
12 sutures and we closed the skin of her laparotomy incision
13 with staples.

14 Q With staples?

15 A Yes.

16 Q Okay. Was that the extent of your surgery that day,
17 that day?

18 A After a thorough abdominal exploration looking at every
19 inch of her abdomen closing a laceration in her stomach,
20 stapling her skin, doing spy on that, closing her hand, yes,
21 that was the extent of our procedures on that day.

22 Q And that's the last time that you encountered her or
23 no?

24 A I would have to review the records to see if I was on
25 for rounds making rounds on the floor, but that is -- that

Doctor Jason Johnson - Cross-examination
by Mr. Schultz

1 would be for that day.

2 MR. SCHULTZ: All right. Beg the Court's patience,
3 Your Honor.

4 (Pause.)

5 MR. SCHULTZ: That's all I have, Your Honor.

6 THE COURT: Any redirect limited to what he went into?

7 SOLICITOR GILMER: No, Your Honor.

8 THE COURT: Thank you, sir. You, you may step down.
9 Any reason why the witness could not be excused?

10 SOLICITOR GILMER: No, Your Honor.

11 THE COURT: All right. Thank you, doctor. You may
12 also be excused. Thank you for coming.

13 Will the lawyers approach a moment?

14 SOLICITOR GILMER: Yes, Your Honor.

15 (WHEREUPON, a bench conference was held out of the
16 hearing of the jury at this time.)

17 THE COURT: All right. Ladies and gentlemen of the
18 jury, we're going to take the evening break at, at this
19 time. I'm gonna remind you not to have any discussions
20 among yourselves about anything involving the case now that
21 we've actually started the presentation of the testimony.

22 You've heard expert witnesses. Maybe they've used a
23 medical term that, again, that you don't quite understand.
24 Do not even go pull a dictionary off a shelf to go look it
25 up. Allow the attorneys and the Court the opportunity to be

1 able to educate you as to those matters.

2 But I want to thank you for your work today. I'm gonna
3 ask, if you would, to please be back in the jury
4 deliberation room by 9:30 in the morning and we will resume
5 the presentation of the evidence. The bailiff will show you
6 how to get in and out, but thank you very much.

7 You may go with him.

8 (WHEREUPON, the following takes place outside the
9 presence of the jury.)

10 THE COURT: All right. At this time we will stand
11 down. See everyone at 9:30.

12 MR. SCHULTZ: Thank you, Your Honor.

13 SOLICITOR GILMER: Thank you, Your Honor.

14

15 (WHEREUPON, Court was in recess for the evening.)

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1 Tuesday, October 13th, 2015

2
3 THE COURT: All right. I'm told all the jury is
4 present.

5 Anything before we bring the jury in?

6 MR. SCHULTZ: Nothing from the defense, Your Honor.

7 SOLICITOR GILMER: Nothing from the State, Your Honor.

8 THE COURT: Let's bring them in.

9 (WHEREUPON, the following takes place within the
10 presence of the jury.)

11 THE COURT: All right. Ladies and gentlemen, thank you
12 for being on time today. I'm very impressed with that
13 because frequently we have one juror that's always late. So
14 I appreciate you being timely.

15 Is the State ready to call their next witness?

16 SOLICITOR GILMER: Yes, Your Honor, we are.

17 May it please the Court.

18 The State calls Loreena Miller-Bobo.

19 THE COURT: Ms. Bobo, just come right up here and let
20 the Clerk of Court swear you in.

21 LOREENA MILLER-BOBO, being first
22 duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY SOLICITOR GILMER:

25 Q Good morning.

Loreena Miller-Bobo - Direct examination
by Solicitor Gilmer

- 1 would you please state your name for the record?
- 2 A Loreena Miller-Bobo.
- 3 Q And, Ms. Bobo, how are you employed?
- 4 A I work at Draexlmaier.
- 5 Q Okay. Is that here in Spartanburg County?
- 6 A Yes, ma'am.
- 7 Q And do you reside in Spartanburg County?
- 8 A Yes, ma'am.
- 9 Q And do you have any children?
- 10 A Yes, ma'am.
- 11 Q How many children do you have?
- 12 A Two.
- 13 Q And what are their ages?
- 14 A Eighteen and fifteen.
- 15 Q All right. And are they male children, female
- 16 children?
- 17 A My son and daughter.
- 18 Q And daughter.
- 19 Do you know an individual named Undra Cohen-Middleton?
- 20 A Yes, ma'am.
- 21 Q How do you know her?
- 22 A She's my God sister.
- 23 Q And how long have you known her?
- 24 A Around five years.
- 25 Q Do you know an individual named Christopher Middleton?

Loreena Miller-Bobo - Direct examination
by Solicitor Gilmer

1 A Yes, ma'am.

2 Q And who is that?

3 How do you know him?

4 A Her husband.

5 Q And what name does he go by?

6 A Chris.

7 Q And, back in 2014, did you come to live with Undra
8 Cohen-Middleton and Christopher Middleton?

9 A Yes, ma'am.

10 Q And how did that come about?

11 A Me and my sister had got into it, and they were at the
12 house, and he and her agreed that I could come there so I
13 wouldn't have to keep going through that with my sister.

14 Q Undra and Chris agreed for you to come there?

15 A Yes, ma'am.

16 Q So you lived there with them for a period of time.

17 How long would you say that time period was?

18 A A few months.

19 Q And did your children live there with you?

20 A Yes, ma'am.

21 Q And in this house -- was that in Lyman?

22 A Yes, ma'am.

23 Q Is that Spartanburg County?

24 A Yes, ma'am.

25 Q In that particular house, is it a house or an

Loreena Miller-Bobo - Direct examination
by Solicitor Gilmer

1 apartment?

2 A A house.

3 Q How many bedrooms are in the house?

4 A Three.

5 Q Three bedrooms?

6 A Yes, ma'am.

7 Q And who stayed in each of those bedrooms?

8 A Chris and Undra was in the, the master suit. My son
9 and daughter -- well, my son was in the bedroom across from
10 them and me and my daughter was in the back bedroom.

11 Q And Chris and Undra, were they married at this time?

12 A Yes, ma'am.

13 Q And were you aware of any medical problems, prior to
14 June 19th of 2014, that Undra Cohen-Middleton had?

15 A Yes, ma'am.

16 Q And what problems did she have?

17 A Myasthenia gravis something. I can't think of it and
18 she had a port in her heart. She had -- she was a survivor
19 of breast cancer but they had just found more cells. She
20 had a list of stuff going on.

21 THE COURT: All right. Ms. Bobo, if you would, I need
22 you to lean into that microphone. I'm having problems
23 hearing you. The lady way over there's got to be able to
24 hear you as well as I do too. So really speak up. Thank
25 you.

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1 THE WITNESS: Yes, ma'am. Yes, sir.

2 Q Had she had any recent surgery to her shoulder?

3 A Yes, ma'am.

4 Q And while you were staying there with Ms. Undra Cohen,
5 did you take care of her?

6 A Yes, ma'am.

7 Q Okay. Was that part of the agreement that you guys
8 worked out for you staying there?

9 A Yes, ma'am.

10 Q And in your time caring for her, did that include
11 taking her to medical appointments?

12 A Yes, ma'am.

13 Q Did you take her to all medical appointments made at
14 the time or was she able to drive herself at times?

15 A I took her to all except for like two.

16 Q I'm gonna turn your attention to June 19th of 2014.

17 All right. On that date, are you aware if Ms. Undra
18 Cohen-Middleton had a, had a procedure on that day?

19 A To her, her shoulder.

20 Q Did you take her to that appointment?

21 A Yes, ma'am.

22 Q You took, you took her to the appointment on
23 June 19th?

24 A Yes, ma'am.

25 Q Okay. Could the defendant have taken her to an

Loreena Miller-Bobo - Direct examination
by Solicitor Gilmer

1 appointment on that date?

2 A No, ma'am.

3 Q All right. And the night of June 19th -- let's back
4 up a little bit.

5 what time of day was that procedure on the 19th?

6 Do you recall?

7 A That morning.

8 Q And do you recall how long the procedure lasted?

9 A Until in the evening.

10 Q And, after the procedure, did Mrs. Undra Cohen go back
11 home?

12 A Yes, ma'am.

13 Q And that was to

14 A Yes, ma'am.

15 Q And on that date did you also go back to that
16 residence?

17 A Yes, ma'am.

18 Q And did you stay at that residence during the remainder
19 of the night?

20 A Yes, ma'am.

21 Q The remainder of June 19th?

22 A Yes, ma'am.

23 Q Did you spend the night?

24 A Yes, ma'am.

25 Q Okay. The day that Undra was stabbed, are you aware of

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1 what date that was, what date you found her?

2 A Is it the 22nd I think?

3 Q Okay. Could it have been June 20th that you found
4 her?

5 If you had an opportunity -- did you give a written
6 statement to police?

7 A Yes, ma'am.

8 Q If you had an opportunity to look at that statement
9 would it refresh your recollection?

10 A Yes, ma'am.

11 SOLICITOR GILMER: Your Honor, if I may approach the
12 witness?

13 THE COURT: Yes, ma'am.

14 Q Ms. Miller-Bobo, I am showing you what appears to be a
15 voluntary statement.

16 Do you recognize that?

17 A Yes, ma'am.

18 Q Okay. And how do you recognize that?

19 A I wrote it.

20 Q All right. Is that a statement that you gave to the
21 police?

22 A Yes, ma'am.

23 Q All right. If you had an opportunity to look over
24 that, would it refresh your recollection as to the day that
25 this occurred?

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by Solicitor Gilmer

1 A Yes, ma'am.

2 Q Okay. When did you give that statement to police?

3 A On the 20th.

4 Q On June 20th of 2014?

5 A Yes, ma'am.

6 Q And did you give that statement on the same day that
7 you found Undra Cohen?

8 A Yes, ma'am.

9 Q All right. So I'm gonna back up to what we were
10 talking about before.

11 On June 19th, that day Undra Cohen-Middleton had a
12 medical procedure that morning, did you spend the night at
13 that residence on the night of June 19th?

14 A No, ma'am.

15 Q Okay. And why did you not stay that night?

16 A Because her and Chris had got into it and I just wanted
17 to let stuff die down.

18 Q Okay. What do you mean they had gotten into it?

19 A My, my son left the Xbox game and he was mad at her
20 because he was saying that it could mess the Xbox up.

21 Q Who was mad at her?

22 Who was---

23 A Chris.

24 Q Was mad at who?

25 A Undra.

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1 Q And why did you decide to leave?

2 A Because I just was always taught you stay out of
3 matters -- marital affairs and I thought maybe if I left it
4 would make it better cause I didn't want to be in the way.

5 Q Do you remember what time you left that evening?

6 A Around 9:00.

7 Q And you mentioned that your children stayed there with
8 you.

9 Did they stay at the residence that night?

10 A Yes. Well, they father came and got them that night.

11 Q That night.

12 Do you know what time he came and got them?

13 A well, I left at 8:00. They left around 9:00 cause I
14 remember my son told me that they left around 9:00.

15 Q And that night before you left, do you recall if the
16 defendant had been drinking alcohol?

17 A Yes, ma'am.

18 Q Okay. And do you remember what he was drinking?

19 A Vodka.

20 Q And would you say he had had a lot to drink or a little
21 to drink?

22 A A lot.

23 Q Was the defendant angry and cursing that night?

24 A He was just fussing about different stuff, movies, and
25 just fussing.

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by Solicitor Gilmer

1 Q All right. When you left that night you said it was
2 around eight o'clock.

3 Where was the victim, Ms. Undra Cohen-Middleton?

4 A In her room on the bed.

5 Q Okay. And do you know why she was in bed?

6 A She was just -- I guess she was just trying to keep
7 everything calm too.

8 Q Okay. Are you aware if she had any medical procedure
9 the next morning?

10 A She was suppose to go to the doctor and get something
11 done to her port.

12 Q And do you recall what time that surgery was scheduled
13 for?

14 A Probably around 9:00 that morning.

15 Q Ms. Bobo, Ms. Miller-Bobo, did you have an opportunity
16 to go back to the residence on the morning of June 20th of
17 2014?

18 A Yes, ma'am.

19 Q Okay. And, on that morning, did you find the victim to
20 be injured?

21 A Yes, ma'am.

22 Q What made you go back to the residence that morning?

23 A Her sister and mother had called said that she didn't
24 go to the doctor, she didn't make it to her appointment.

25 Q And did you go to the residence on to check

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by Solicitor Gilmer

1 on her?

2 A Yes, ma'am.

3 Q And had you -- did you have your keys with you that
4 morning?

5 A No, ma'am, cause I had left my car there.

6 Q Okay. Who took you?

7 If you left your car there, who took you to the
8 residence that morning?

9 A My friend, Devora.

10 Q Okay. And did she drop you off or did she stay there
11 with you?

12 A She dropped me off.

13 Q When you arrived, was there anyone else outside of the
14 residence with you?

15 A Her father was pulling up. That's why she left.

16 Q That's Undra Cohen-Middleton's father --

17 A Yes, ma'am.

18 Q -- who pulled up?

19 Is that Robert Montgomery?

20 A Yes, ma'am.

21 Q And so he pulled up when you got there and Mrs. Devora
22 dropped you off?

23 A Yes, ma'am.

24 Q Okay. And when -- what did you do when you arrived at
25 the residence?

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1 A Ringing the doorbell, beating on the door.

2 Q And when you said ringing the doorbell, would that be
3 at the front door of the house or the back door of the
4 house?

5 A Front door.

6 Q Front door.

7 How long would you say you rang the doorbell and beat
8 on the door?

9 A About three to five minutes.

10 Q And did you hear anything inside the residence?

11 A No, ma'am.

12 Q What did you do -- did anybody come to the door?

13 A No, ma'am.

14 Q What did you do next?

15 A I went to the back, knocked on that door, nobody came,
16 then I went to the window.

17 Q You went to whose window?

18 A Undra and Chris window. Bedroom window.

19 SOLICITOR GILMER: Your Honor, if I may approach the
20 witness?

21 THE COURT: Yes, ma'am.

22 SOLICITOR GILMER: Your Honor, I have a series of
23 photographs I'm going to show to the witness. Mr. Schultz
24 did see these prior to us beginning this morning.

25 THE COURT: They've been marked?

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1 SOLICITOR GILMER: They have been marked, yes, sir.

2 Yes, Your Honor.

3 All right. Ms. Miller, I'm showing you what's been
4 previously marked as State's Exhibit No. 4, 5, and 6.

5 Do you recognize these?

6 A Yes, ma'am.

7 Q Okay. And what, what is that?

8 what are those that you're looking at?

9 A The front of Undra's house, truck, police cars.

10 Q Okay. And that's No. 4.

11 what about No. 5?

12 A The front and side of the house.

13 Q And that's the house at

14 A Yes, ma'am.

15 Q All right. And what about No. 6?

16 A The back of the house.

17 Q Okay. And these pictures, is that how you recall the
18 house looked that day on June 20th of 2014?

19 A Yes, ma'am.

20 Q Okay. And those -- are those fair and accurate
21 representations of the residence at

22 A Yes, ma'am.

23 SOLICITOR GILMER: All right. Your Honor, at this time
24 I would move to enter into evidence what's been previously
25 marked as State's Exhibit 4, 5, and 6.

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1 MR. SCHULTZ: Your Honor, could I see 4, 5, and 6?

2 THE COURT: (Nods affirmatively.)

3 MR. SCHULTZ: No objection, Your Honor.

4 THE COURT: Without objection it will be admitted as 4,
5 5, and 6 of the State.

6 SOLICITOR GILMER: Thank you, Your Honor.

7 (WHEREUPON, State's Exhibit Nos. 4, 5, and 6 were
8 received into evidence at this time.)

9 SOLICITOR GILMER: I would ask to publish to the jury.

10 THE COURT: All right.

11 SOLICITOR GILMER: First State's Exhibit 4.

12 Your Honor, could we lower the lights?

13 THE COURT: (Nods affirmatively.)

14 SOLICITOR GILMER: Thank you.

15 Q All right. Ms. Miller, I'm gonna hand you a laser
16 pointer and you told us that this is the residence at
17 in Lyman where Undra and Chris lived. First you
18 said you went to the front door.

19 Is that correct?

20 A Yes, ma'am.

21 Q Okay. And where would that have been?

22 A (Witness points.)

23 Q All right. And you said you knocked about three, five
24 minutes, rang the doorbell.

25 Is that at that location?

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- 1 A Yes, ma'am.
- 2 Q All right. After you didn't get any response there,
3 what did you do next?
- 4 A I went to the back door.
- 5 Q okay. All right. This photograph, where would the
6 front door be in relation from that?
- 7 A (Witness points.)
- 8 Q Okay. And you said you went to the back-door.
9 How would you have proceeded to the back-door, from the
10 left or the right of the house?
- 11 A I went that way.
- 12 Q All right.
- 13 THE COURT: Ma'am, if you would, we can't hear you.
- 14 A I went around this way.
- 15 Q And you mentioned a back-door.
16 would that have been --?
- 17 A (Witness points.)
- 18 Q That door, is it two doors that open or one door that
19 opens?
- 20 A They both open, but only one has a doorknob handle.
- 21 Q And you said that you went to a window and knocked.
22 where did you go for that?
- 23 A (Witness points.)
- 24 Q And that window is outside of which room in the
25 residence?

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- 1 A Undra and Chris's bedroom.
- 2 Q All right. After you knocked on that window, did you
3 get any response?
- 4 A Yes, ma'am.
- 5 Q All right. And what response was that?
- 6 A Undra was moaning.
- 7 Q Okay. And did you say anything?
- 8 A Yes, ma'am.
- 9 Q what did you say?
- 10 A Open this door. why, why haven't you been answering
11 anybody. She was just moaning.
- 12 Q Okay. what did you do next?
- 13 A I beat again. I said open this door right now. Then I
14 went back to this door.
- 15 Q Okay. Did you ever get a response at that door?
- 16 A Yes, ma'am.
- 17 Q And who responded to that door?
- 18 A Chris.
- 19 Q And you say Chris.
- 20 Do you see him in the courtroom today?
- 21 A Yes, ma'am.
- 22 Q If you would, point him out and describe an article of
23 clothing he's wearing.
- 24 A (Witness points.)
- 25 Chris, tan pants, the white shirt, black tie.

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by Solicitor Gilmer

1 Q Thank you, Ms. Miller.

2 Your Honor, if the record could reflect the witness has
3 identified the defendant.

4 THE COURT: All right.

5 Q All right. Ms. Miller, I'm gonna show you what's been
6 marked as 7, 8, and 9.

7 Do you recognize those?

8 A Yes, ma'am.

9 Q All right. And how do you recognize those?

10 A It's the picture of Undra---

11 Q Okay. Of Undra and Chris's residence?

12 A Yes, ma'am.

13 Q All right. And as to all of these photos, are these
14 fair and accurate representations of the way the kitchen and
15 the door looked that day?

16 A Yes, ma'am.

17 SOLICITOR GILMER: All right. Your Honor, at this time
18 I would move to enter into evidence what's been marked as
19 Exhibit 7, 8, and 9.

20 MR. SCHULTZ: No objection, Your Honor.

21 THE COURT: Without objection, be State's 7, 8, and 9.

22 SOLICITOR GILMER: Thank you, Your Honor.

23 (WHEREUPON, State's Exhibit Nos. 7, 8, and 9 were
24 received into evidence at this time.)

25 SOLICITOR GILMER: I ask to publish to the jury.

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1 THE COURT: All right.

2 Q All right. Ms. Miller, that photograph right there, if
3 I can get it on the screen right, that's the back-door that
4 you went to?

5 A Yes, ma'am.

6 Q All right. And is that a picture of it from the inside
7 of the residence?

8 A Yes, ma'am.

9 Q All right. And I'm going to show you No. 8.
10 Is that a more expanded view of that door?

11 A Yes, ma'am.

12 Q What do we see right here in front of the door on the
13 inside?

14 A The table.

15 Q Uh-huh. (Affirmative).

16 Okay. And what's to the right?

17 A Bar stools. It's the bar and bar stools.

18 Q All right. What room is to my right of that door?

19 A The kitchen.

20 Q Okay. And if it was -- this picture was closer to me,
21 what room would that be on the other side of that dining
22 room table?

23 A The living room.

24 Q All right. And is that a close-up shot of that door?

25 A Yes, ma'am.

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by Solicitor Gilmer

1 Q Okay. All right. Ms. Miller, I'm gonna show you
2 what's been previously marked, marked as State's Exhibit 10,
3 11, 12, 13, and 14. I'm gonna have you look at all of these
4 photographs.

5 A (Witness complies.)

6 Q Do you recognize these?

7 A Yes, ma'am.

8 Q And how do you recognize these?

9 A It's the kitchen.

10 Q All right. And the kitchen of the residence at

11 ?

12 A Yes, ma'am.

13 Q All right. And are these fair and accurate
14 representations of that residence on June 20th of 2014?

15 A Yes, ma'am.

16 SOLICITOR GILMER: Your Honor, at this time I would
17 move to enter into evidence what's been previously marked as
18 State's Exhibit 10, 11, 12, 13, and 14.

19 MR. SCHULTZ: No objection, Your Honor.

20 THE COURT: Without objection, be State's 10, 11, 12,
21 13, and 14.

22 (WHEREUPON, State's Exhibit Nos. 10 through 14 were
23 received into evidence at this time.)

24 SOLICITOR GILMER: Your Honor, I would ask to publish
25 to the jury.

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by Solicitor Gilmer

1 THE COURT: Okay. That's fine.

2 Q Ms. Miller, you said the kitchen was to the right of
3 that back door.

4 Is that the picture of the kitchen?

5 A Yes, ma'am.

6 Q All right. And why are those bar stools on the
7 countertop?

8 A I had mopped the floor.

9 Q So you had mopped the day before?

10 A Yes, ma'am.

11 Q And is that -- what is that we're looking at?

12 A The microwave, stove, and the countertop.

13 Q So just another view of the kitchen?

14 A Yes, ma'am.

15 Q Okay. And then what is that?

16 A Another view with the refrigerator.

17 Q Okay. And what are we looking at in that picture?

18 A The dining room side.

19 Q So we're just getting a complete picture of the dining
20 room and the kitchen?

21 A Yes, ma'am.

22 Q All right. And is that the same thing?

23 A Yes, ma'am.

24 Q All right. Ms. Miller, when you said you got a
25 response at that back-door, would you tell us about that

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1 please?

2 A Chris opened the door and he had blood on -- all on his
3 shorts and the knife or something, a screwdriver, in his
4 hand.

5 Q Could you tell if it was a knife or a screwdriver?

6 A No, ma'am, I just seen something silver.

7 Q You saw something silver?

8 A Yes, ma'am.

9 Q Do you remember what kind of shorts he had on or what
10 color?

11 A Like some green basketball shorts.

12 Q Do you remember if he had any type of shirt on?

13 A I think a hoodie I think.

14 Q Okay. Do you remember what color it was?

15 A Something with some kind of football team on it.

16 Q Okay.

17 A I'm not sure.

18 Q And you said he had blood.

19 where did he have blood?

20 A On his shorts.

21 Q And do you recall what hand he was holding the silver
22 object?

23 A The right.

24 Q Okay. And did he say anything to you?

25 A He just looked at me.

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by Solicitor Gilmer

- 1 Q All right. And how did he look?
2 A Crazy.
3 Q Did he appear injured?
4 A No, ma'am.
5 Q Did you say anything to him?
6 A I said where's Undra, what have you done to her.
7 Q Did he make any kind of response?
8 A No.
9 Q Okay. And what did he do next?
10 A I just start hollering and her father came around the
11 building and he ran in the woods.
12 Q who ran into the woods?
13 A Chris.
14 Q And what did you do next?
15 A I went into the house to see where Undra was at.
16 Q Did you go in through that back-door?
17 A Yes, ma'am.
18 Q And do you recall where you first went when you went
19 into the house?
20 A Just went all over the house. I went and looked to
21 really through the house. You go around the corner where
22 that, where the kitchen was. You can see the living room.
23 I went down the hall and I went in her room.
24 SOLICITOR GILMER: Okay. Your Honor, I ask to approach
25 the witness.

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by Solicitor Gilmer

1 THE COURT: Yes, ma'am.

2 SOLICITOR GILMER: Thank you.

3 Q Ms. Miller, I'm showing you what's been previously
4 marked as State's Exhibit 15 and State's Exhibit 16.

5 Do you recognize those?

6 A Yes, ma'am.

7 Q And how do you recognize those?

8 A It's the entrance into her bedroom and that's her
9 bedroom.

10 Q Okay. And are these -- do these appear to be how the
11 house looked on June 20th of 2014?

12 A That looks like after they got her out the bed cause it
13 was stuff on the bed.

14 Q After who got her out of the bed?

15 A The ambulance. Ambulance.

16 SOLICITOR GILMER: Okay. Your Honor, at this time I
17 would move to enter into evidence what's been previously
18 marked as State's Exhibits 15 and 16.

19 MR. SCHULTZ: No objection, Your Honor.

20 THE COURT: Without objection, be State's 15 and 16.

21 SOLICITOR GILMER: Thank you, Your Honor.

22 (WHEREUPON, State's Exhibit Nos. 15 and 16 were
23 received into evidence at this time.)

24 SOLICITOR GILMER: May I publish to the jury?

25 THE COURT: Yes, ma'am.

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- 1 Q Okay. All right. Ms. Miller, I'm showing you what is
2 labeled as State's Exhibit 15.
3 What is this that we see in this picture?
4 A The entrance to her bedroom.
5 Q Okay. And is that a hallway that we're looking at?
6 A Yes, ma'am.
7 Q All right. Where would the kitchen have been in
8 relation to that hallway?
9 A Back that way. It's a hall that comes like that and
10 then you go that way to go to her room.
11 Q Okay. And I know it's a little dark, but what is that
12 object, that object right there in the middle, the center of
13 the doorway?
14 A Her bed.
15 Q Okay. And, Ms. Miller, is this a closer-up shot of
16 that?
17 A Yes, ma'am.
18 Q All right. So the bed you're looking at is right
19 through that -- the doorway, the entrance of the doorway?
20 A Yes, ma'am.
21 Q All right. And did you find Undra in that room?
22 A Yes, ma'am.
23 Q Where did you find her?
24 A On her side of the bed.
25 Q Is that the far side that you're pointing to?

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1 A Yes, ma'am, the left side.

2 Q Okay.

3 A Where the --.

4 SOLICITOR GILMER: All right. If I may approach the
5 witness, Your Honor?

6 THE COURT: Yes, ma'am.

7 Q Ms. Miller, I'm showing you what's been previously
8 marked as State's Exhibit 17, 18, and 19.

9 Do you recognize these?

10 A Yes, ma'am.

11 Q And how do you recognize those?

12 A It's her room.

13 Q Whose room?

14 A Undra and Chris.

15 Q Okay. And does that appear to be how her room looked
16 on the date of June 20th of 2014?

17 A That's how -- yes, ma'am.

18 Q Okay. And is there anything different than what you
19 saw on that day?

20 A Not that day, but the day before. But --.

21 Q Okay. The -- you mentioned some covers before.

22 A That's the covers there.

23 Q So those are on the bed when you first went in?

24 A Yes, ma'am.

25 SOLICITOR GILMER: Okay. Your Honor, at this time I --

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1 and do these accurately reflect Mrs. Undra Cohen's room when
2 you found her that day?

3 A Yes, ma'am.

4 SOLICITOR GILMER: Your Honor, I would move to enter
5 into evidence what's been previously marked as State's
6 Exhibit 17, 18, and 19.

7 MR. SCHULTZ: No objection, Your Honor.

8 THE COURT: Without objection, be State's 17, 18, and
9 19.

10 SOLICITOR GILMER: Thank you, Your Honor.

11 (WHEREUPON, State's Exhibit Nos. 17 through 19 were
12 received into evidence at this time.)

13 SOLICITOR GILMER: Ask to publish to the jury.

14 THE COURT: All right.

15 Q Where did you find the victim that day?

16 A (Witness points.)

17 Q And was she lying in bed, sitting in bed?

18 A She was lying there.

19 Q Okay. And was she covered with anything?

20 A She was covered up.

21 Q Okay.

22 A Covered up to like all the way covered up.

23 Q What was she covered with?

24 A Her cover.

25 Q That was the cover she had on her?

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by Solicitor Gilmer

1 A Yes, ma'am.

2 Q Okay. And did you realize anything was wrong when you
3 first went into the bedroom?

4 A No, ma'am.

5 Q Where, where were you when you first entered the
6 bedroom?

7 Did you stay on one side of the bed?

8 Did you immediately go to the other side?

9 A I was on his side of the bed.

10 Q All right. And that's the side closest to the doorway?

11 A Yes, ma'am.

12 Q And when did you realize something was wrong?

13 A I kept saying Undra, why did you miss your doctor's
14 appointment and she just kept saying shhhh, and I said why
15 are you saying shhhh and she said shhhh, where Chris, and I
16 said he ran in the woods, what's wrong, what's going on, and
17 she just said shhhh, shhhh, and I said what, what's wrong
18 and she say he said he's gonna kill you, and I was like what
19 wrong -- what are you talking about.

20 She told me he stabbed me in my arm and she showed me,
21 she showed me her arm. She had it wrapped up with a shirt
22 and I called the police.

23 Q All right. Did you ever see any other injuries to her?

24 A No, ma'am, not, not until I was on the phone with the
25 police.

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by Solicitor Gilmer

1 Q All right. Ms. Miller, I'm showing you what's
2 previously marked as State's Exhibit No. 3.

3 Do you recognize that?

4 A Yes, ma'am.

5 Q How do you recognize that?

6 A It's the 9-1-1 tape.

7 Q All right. And how do you recognize that to be the
8 9-1-1 tape?

9 A It's cause you played, you played it for me.

10 Q Okay. So you've had an opportunity to review that
11 call?

12 A Yes, ma'am.

13 Q All right. And how do you know that that's the one I
14 played for you?

15 A Because I signed it --

16 Q Okay.

17 A -- and dated it.

18 Q Those are your initials and your date on this?

19 A Yes, ma'am.

20 Q Was this call a fair and accurate representation of the
21 9-1-1 call you made that day?

22 A Yes, ma'am.

23 SOLICITOR GILMER: Your Honor, at this time I would
24 move to enter into evidence what's been previously marked as
25 State's Exhibit No. 3.

Loreena Miller-Bobo - Direct examination
by Solicitor Gilmer

1 MR. SCHULTZ: No objection, Your Honor.

2 THE COURT: All right. Without objection, be State's

3 3.

4 SOLICITOR GILMER: Thank you Your Honor.

5 (WHEREUPON, State's Exhibit No. 3 was received into
6 evidence at this time.)

7 SOLICITOR GILMER: Ask to publish to the jury.

8 THE COURT: All right.

9 (WHEREUPON, State's Exhibit No. 3 was published to the
10 jury at this time.)

11 Q Ms. Miller, that male voice that we heard in the
12 background, who was that?

13 A Her father.

14 Q So that's Robert Montgomery?

15 A Yes, ma'am.

16 Q All right. Did the defendant, at any point, come back
17 to the scene after he ran to the woods from the back-door?

18 A No, ma'am.

19 Q At one point in that call we hear what sounds like dry
20 heaving or someone getting sick.

21 Who is that?

22 A Me.

23 Q All right. Did you ever get sick or were you just dry
24 heaving?

25 A I got sick. Dry heave.

Loreena Miller-Bobo - Direct examination
by Solicitor Gilmer

1 Q And at what point did that happen?

2 A When I saw the stabs and stuff on her and the blood on
3 the floor, on the walls and stuff.

4 Q All right. Ms. Miller, I'm gonna show you what's been
5 previously marked as State's Exhibit No. 22.

6 Do you recognize that?

7 A Yes, ma'am.

8 Q How do you recognize that?

9 A That's the side of the room, Undra's side of the room.

10 Q Okay. And is this how you found it that day when you
11 found Mrs. Undra on June 20th?

12 A Yes, ma'am.

13 Q Is this a fair and accurate representation of that day?

14 A Yes, ma'am.

15 SOLICITOR GILMER: Your Honor, at this time I would
16 move to enter into evidence what's been previously marked as
17 State's Exhibit 22.

18 MR. SCHULTZ: Your Honor, I would object to the
19 introduction of this as prejudicial and not probative.

20 (Pause.)

21 THE COURT: All right. I'm going to allow it. I
22 believe the probative value outweighs the prejudicial
23 effect.

24 SOLICITOR GILMER: Thank you, Your Honor.

25 (WHEREUPON, State's Exhibit No. 22 was received into

Loreena Miller-Bobo - Direct examination
by Solicitor Gilmer

1 evidence at this time.)

2 SOLICITOR GILMER: Your Honor, at this time I would ask
3 to publish this to the jury.

4 THE COURT: All right. That will be State's 22.

5 SOLICITOR GILMER: Thank you, Your Honor.

6 where in that bedroom are we looking in that photo?

7 A Undra's side of the bed.

8 Q And what is that in the floor?

9 A Blood.

10 Q And what is that to the right?

11 Is that a wall?

12 A Yes, ma'am.

13 Q Is that leading to another room or the outside of the
14 residence?

15 A If you go back it's the bedroom -- I mean bathroom.

16 Q Okay. Where was the window where you knocked?

17 A Right there.

18 Q So that's the window you knocked on when you heard
19 Undra moaning?

20 A Yes, ma'am.

21 Q I'm gonna show you what's marked as State's Exhibit 21.
22 Do you recognize that?

23 A Yes, ma'am.

24 Q All right. And how do you recognize that?

25 A That's what she had wrapped around her arm.

Loreena Miller-Bobo - Direct examination
by Solicitor Gilmer

1 Q That's what Undra had wrapped around---

2 A Yes, ma'am.

3 Q And No. 20, do you recognize that?

4 A Yes, ma'am.

5 Q Okay. What is that?

6 A That's Chris side of the bed.

7 Q All right. And what is this right here?

8 A The door.

9 Q Okay. And where does that door lead?

10 A That's the hallway you showed earlier.

11 Q And are these accurate representations of items that
12 day in the house on June 20th?

13 A Yes, ma'am.

14 SOLICITOR GILMER: Your Honor, at this time I would
15 move to enter into evidence what's been marked as State's
16 Exhibit 20 and 21.

17 MR. SCHULTZ: No objection, Your Honor.

18 THE COURT: Without objection, be State's 20 and 21.

19 SOLICITOR GILMER: Thank you, Your Honor.

20 (WHEREUPON, State's Exhibit Nos. 20 and 21 were
21 received into evidence at this time.)

22 SOLICITOR GILMER: Ask to publish to the jury.

23 THE COURT: All right.

24 Q I'm showing you 21 first, Ms. Miller.

25 You said that's the shirt that Mrs. Undra had wrapped

Loreena Miller-Bobo - Direct examination
by Solicitor Gilmer

- 1 around her hand?
- 2 A Yes, ma'am.
- 3 Q And, again, what is that?
- 4 A Chris side of the bed.
- 5 Q Okay. And this door right here, where does that lead?
- 6 A Back out the room. It's the hallway you showed
- 7 previously.
- 8 Q Did you ever find a knife in Mrs. Undra's bedroom?
- 9 A Yes, ma'am.
- 10 Q And where did you find it?
- 11 A On Chris side of the bed.
- 12 Q Okay. Did you pick up the knife?
- 13 A I don't even remember.
- 14 Q Okay. And I show you what's been marked as State's
- 15 Exhibit 23.
- 16 Do you recognize that?
- 17 A Yes, ma'am.
- 18 Q Okay. And what do you recognize that to be?
- 19 A The knife out the kitchen.
- 20 Q All right. And do you know where this knife is
- 21 located?
- 22 A On his side of -- on the -- on his nightstand.
- 23 Q On Chris's nightstand?
- 24 A Yes, ma'am.
- 25 Q And do you recall if you called the officer's attention

Loreena Miller-Bobo - Direct examination
by Solicitor Gilmer

1 to the knife?

2 A I think her father told them or either -- I think her
3 dad did.

4 SOLICITOR GILMER: Okay. Your Honor, at this time I
5 would move to enter into evidence what's been previously
6 marked State's Exhibit 23.

7 MR. SCHULTZ: No objection, Your Honor.

8 THE COURT: Without objection, be State's 23.

9 (WHEREUPON, State's Exhibit No. 23 was received into
10 evidence at this time.)

11 SOLICITOR GILMER: Your Honor, I'd ask to publish to
12 the jury.

13 THE COURT: All right.

14 Q Ms. Miller, I'm gonna show you what's been marked as
15 State's Exhibit 24, 25, and 26.

16 Do you recognize these?

17 A Yes, ma'am.

18 Q Okay. And how do you recognize those?

19 A It's the backyard.

20 Q The backyard of where?

21 A Undra and -- Undra and Chris.

22 Q Okay. And do these accurately reflect how that
23 backyard area looked that day on June 20th?

24 A Yes, ma'am.

25 SOLICITOR GILMER: Your Honor, at this time I would

Loreena Miller-Bobo - Direct examination
by Solicitor Gilmer

1 move to enter into evidence what's been previously marked as
2 State's Exhibit No. 24, 25, and 26.

3 MR. SCHULTZ: No objection, Your Honor.

4 THE COURT: Without objection, be State's 24, 25, and
5 26.

6 (WHEREUPON, State's Exhibit Nos. 24, 25, and 26 were
7 received into evidence at this time.)

8 SOLICITOR GILMER: Your Honor, I would ask to publish
9 to the jury.

10 THE COURT: All right.

11 Q Where is that swimming pool in relation to the
12 backyard?

13 A On the left side of the backyard on the back-door.

14 Q And are -- is this a wooded area that we see back here?

15 A Yes, ma'am.

16 Q Is that in the backyard?

17 A Yes, ma'am.

18 Q And that as well?

19 A Yes, ma'am.

20 Q Okay. I'm gonna previously show you what's been
21 admitted and already published State's Exhibit No. 7. I
22 know it's a little bit harder to tell, but do you see that
23 tent in that photograph?

24 A Yes, ma'am.

25 Q Okay. And where is that?

Loreena Miller-Bobo - Direct examination
by Solicitor Gilmer

1 Can you point to it for me?

2 A (Witness complies.)

3 Q Okay. Thank you.

4 Did you think that Mrs. Undra Cohen-Middleton was gonna
5 die that day?

6 A Yes, ma'am.

7 Q And even as she lay there bleeding you said that she
8 told you shhh.

9 why did she tell you shhh?

10 A Cause she say he was gonna kill me.

11 Q So she was worried about you?

12 A Yes, ma'am.

13 SOLICITOR GILMER: I have no further questions at this
14 time, Your Honor.

15 THE COURT: Yes, sir.

16 MR. SCHULTZ: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. SCHULTZ:

19 Q Your name is Ms. Miller-Bobo?

20 A Yes, sir.

21 Q All right. And you, you obviously know the parties in
22 this action, right?

23 A Yes, sir.

24 Q Okay. And how long did you know my client, Chris
25 Middleton, for?

Loreena Miller-Bobo - Cross-examination
by Mr. Schultz

1 A Maybe a few months.

2 Q A few months.

3 okay. And you were living with him, correct?

4 A Yes, sir.

5 Q All right. And how long had you, had you lived with
6 them?

7 A A few months.

8 Q A few months.

9 okay. Now, on the morning that this incident happened,
10 you were at the house, correct?

11 A Yes, sir.

12 Q Okay. So it would be fair, fair to say that you were
13 the first one to see my client and also your God sister I
14 believe?

15 A Yes, sir.

16 Q Okay. There?

17 A Yes, sir.

18 Q Now, you had left the house the previous night,
19 correct?

20 A Yes, sir.

21 Q All right. And so the next time you came back was that
22 next morning, right?

23 A Yes, sir.

24 Q Okay. And where did you stay that night?

25 A My friend, Forest, house.

Loreena Miller-Bobo - Cross-examination
by Mr. Schultz

- 1 Q And how far away was that from that house, the house
2 that my client lived in?
- 3 A About 15 minutes.
- 4 Q All right. When you came to the house, you encountered
5 Chris?
- 6 Is that, is that correct?
- 7 A Yes, sir.
- 8 Q All right. And Chris had on clothes, correct?
- 9 A Yes, sir.
- 10 Q And he had a t-shirt on and shorts?
- 11 A Had on shorts.
- 12 Q He had on shorts?
- 13 A And I can't really remember, remember the shirt.
- 14 Q I'm sorry?
- 15 A I can't really remember the shirt. But I do remember
16 the shorts cause they had blood on them.
- 17 Q Okay. They had blood on them.
- 18 All right. And did the shirt have any, have any blood
19 on it if he was wearing a shirt?
- 20 A Not that I seen.
- 21 Q Okay. Other than that, did you see any blood on him
22 whatsoever?
- 23 A Just on his shorts.
- 24 Q Okay. Now, ma'am, this is the house, correct?
- 25 A Yes, sir.

Loreena Miller-Bobo - Cross-examination
by Mr. Schultz

1 Q All right. And -- thank you.

2 Now, you went around to the back of the house and this
3 is the back of the house, correct?

4 A Yes, sir.

5 Q All right. And the bedroom is right there, correct?

6 A Yes, sir.

7 Q So you went around the back and then you came around to
8 the front?

9 A No, sir.

10 Q Okay. What happened?

11 A I---

12 Q Where did, where did you encounter my client?

13 I'm sorry.

14 Where -- did you encounter my client, at that door,
15 right?

16 A Yes, sir.

17 Q Okay. Did he let you in?

18 A Yes, sir.

19 Q All right.

20 A Well, he opened the back-door.

21 Q He opened the back-door?

22 A Yes, sir.

23 Q And you walked in?

24 A I stood there asking him where Undra was first. Then I
25 seen the blood and started yelling and he ran out the door.

Loreena Miller-Bobo - Cross-examination
by Mr. Schultz

1 Q All right. Now, he, he didn't threaten you at all,
2 right?

3 A No, sir.

4 Q Okay. And, at that point, you went into the back
5 bedroom?

6 A Yes, sir.

7 Q And that's where you encountered your God sister,
8 correct?

9 A Yes, sir.

10 Q Okay. Was she on the ground or was she on the bed?

11 A In the bed.

12 Q In the bed?

13 A Yes, sir.

14 MR. SCHULTZ: All right. Beg the Court's patience,
15 Your Honor.

16 THE COURT: Yes, sir.

17 (Pause.)

18 Q Now, this is the bed, correct, that you found her on,
19 right?

20 A Yes, sir.

21 Q Okay. And that's, that's a view looking towards the
22 back window, correct?

23 A Not the window I knocked on if that's what you're
24 asking, no.

25 Q Yes, ma'am, that's what I'm asking.

Loreena Miller-Bobo - Cross-examination
by Mr. Schultz

1 A No, sir.

2 Q All right. What, what view is it then?

3 A It's the view towards the -- that's their bathroom.
4 There's another window, there's another window that you can
5 see in the other picture, but that's the bathroom, that's
6 the closet, that's the back of the wall. This is the front
7 of the wall.

8 Q All right.

9 A This is the front of the room.

10 Q Thank you.

11 All right. Now -- and that's -- is that a better view
12 of, of where you found her?

13 Where, where was she lying on the bed at that point?

14 A That side of the bed. The left side of the bed.

15 Q Left side of the bed.

16 A Closest to that window.

17 Q Closer to that window?

18 A Yes, sir.

19 Q All right.

20 THE COURT: Mr. Schultz, so the record will be
21 complete, refer to the exhibit number if you would.

22 MR. SCHULTZ: Yes, sir, Your Honor.

23 Referring to State's Exhibit No. 16.

24 THE COURT: Thank you.

25 Q Again, ma'am, referring to State's Exhibit 16, you saw

Loreena Miller-Bobo - Cross-examination
by Mr. Schultz

1 her on that bed---

2 A Yes, sir.

3 Q ---correct?

4 All right. When you first uncovered her that
5 morning---

6 A Yes, sir.

7 Q ---correct?

8 All right. In that picture, do you see any blood on
9 the bed?

10 A I think that's a shirt. I'm not sure.

11 Q All right. Now, you made reference in your direct
12 testimony that her arm was bandaged.

13 Is that correct?

14 A Her arm was wrapped in a shirt.

15 Q Her arm was wrapped in a shirt.

16 Okay. Did you wrap her arm in a shirt?

17 A I did not.

18 Q Okay. Could it have been that Mr. Middleton, my
19 client, had wrapped her arm in a shirt?

20 SOLICITOR GILMER: Objection. Speculation.

21 THE COURT: I'd have to sustain the objection.

22 You want to rephrase it?

23 Q Did anybody respond previously to this incident other
24 than you?

25 Were you the first person to encounter her that

Loreena Miller-Bobo - Cross-examination
by Mr. Schultz

1 morning?

2 A I was the first person there and her father arrived
3 seconds later.

4 Q All right.

5 A So actually me and her father saw her at the same time
6 because we went in the room at the same time.

7 Q Did you find any other knives in the bedroom?

8 A The one that she showed previously on the nightstand.

9 Q That's the only knife that you saw?

10 A That's the only knife I saw besides the one in his
11 hand.

12 Q All right. And just to be clear, when you encountered
13 her, where was the bandage applied to her, or not the
14 bandage, but the shirt?

15 where was that on her?

16 A Applied to her arm.

17 Q Applied to her --?

18 A Uh-huh. (Affirmative).

19 Q Okay. Was it wrapped up very tightly like a
20 tourniquet?

21 A No, she just had it on there.

22 Q She just had it on there.

23 All right. Now, just let me get my time straight.

24 You left the house the previous night around when?

25 A 9:00.

Loreena Miller-Bobo - Cross-examination
by Mr. Schultz

1 Q Nine o'clock?

2 A Yeah.

3 Q Okay. All right. And you came to the house at what
4 time that next morning?

5 A Around -- it's around 9:00ish, 10:00.

6 Q Nine o'clock, ten o'clock that next morning?

7 A Uh-huh. (Affirmative).

8 MR. SCHULTZ: All right. Nothing further, Your Honor.

9 THE COURT: Any redirect limited to what he went into?

10 SOLICITOR GILMER: Yes, Your Honor. Just a few.

11 If I may approach the witness, Your Honor?

12 THE COURT: Yes, ma'am.

13 REDIRECT EXAMINATION

14 BY SOLICITOR GILMER:

15 Q Ms. Miller, I'm gonna show you what's been previously
16 entered into evidence as State's Exhibits 17 and State's
17 Exhibit 19.

18 Have you had an opportunity to look at these?

19 A Yes, ma'am.

20 Q I'll put them up on the projector.

21 All right. As to State's Exhibit 17, what is on the
22 bed at this point?

23 what is the white?

24 A It's just the bed like, you know, how your mattress
25 would have a cover on it, like a mattress cover.

Loreena Miller-Bobo - Redirect examination
by Solicitor Gilmer

1 Q So a mattress cover?

2 A Yes, ma'am.

3 Q And you said that when you first went into the bedroom
4 there were other blankets?

5 A Yes, ma'am.

6 Q All right. And where were those blankets?

7 A (Witness points.)

8 Q Okay. And then I'm gonna show you what's State's
9 Exhibit 19.

10 what do you see in that photo?

11 A That was stuff that was thrown all around and that was
12 stuff that the paramedics pulled off the bed.

13 Q Okay. This stuff you said that was thrown all around,
14 what -- can you tell what that is?

15 A Jewelry.

16 Q Okay. And did Mrs. Undra keep a jewelry box or do you
17 know what that was from?

18 A Yes, she use to sell jewelry at the flea market.

19 Q Did Mrs. Undra keep a tidy house?

20 A Her house was spotless.

21 Q Did she usually have things like blankets in the floor
22 and jewelry boxes in the floor?

23 A Spotless.

24 SOLICITOR GILMER: I have no further questions at this
25 time, Your Honor. Thank you.

1 MR. SCHULTZ: No re, recross.

2 THE COURT: All right. Thank you.

3 Thank you, ma'am. You may step down. Watch your step
4 please.

5 THE WITNESS: Thank you.

6 THE COURT: Ladies and gentlemen, at this time we're
7 gonna take a short recess. I need to remind you not to have
8 any discussions among yourselves about anything involved in
9 the case. But you may retire back to the jury deliberation
10 room. We'll get you back just shortly.

11 (Whereupon, the following takes place outside the
12 presence of the jury.)

13 THE COURT: Lawyers approach a moment.

14 (WHEREUPON, a bench conference was held at this time.)

15 THE COURT: All right. We'll step down.

16 MR. SCHULTZ: Thank you, Your Honor.

17 (WHEREUPON, a short recess was taken at this time.)

18 THE COURT: All right. Let's bring the jury back.

19 (WHEREUPON, the following takes place within the
20 presence of the jury.)

21 THE COURT: All right. State ready to call your next
22 witness?

23 SOLICITOR GILMER: Yes, Your Honor. We are.

24 The State calls Robert Montgomery.

25 THE COURT: Mr. Montgomery, just come right up here.

Robert Montgomery - Direct examination
by Solicitor Gilmer

1 Let the Clerk of Court swear you in.

2 ROBERT MONTGOMERY, being first duly
3 sworn, testified as follows:

4 THE COURT: Sir, just have a seat in that red chair and
5 be careful when you're stepping up there.

6 (Witness complies.)

7 DIRECT EXAMINATION

8 BY SOLICITOR GILMER:

9 Q Would you please state your name for the record?

10 A Report Lee Montgomery.

11 Q And, Mr. Montgomery, do you know Robert Undralynn
12 Cohen-Middleton?

13 A Yes, sir, that's my daughter.

14 Q That's your daughter.

15 And do you know where she lives or where she lived back
16 in June of 2014?

17 A Yeah,

18 Q Is that here in Spartanburg County?

19 A Yeah.

20 Q And on June 20th or 2014 did you have the opportunity
21 to go to Mrs. Undra's residence?

22 A Yeah.

23 Q And why did you go there?

24 A Her mother called me and told me to go. Said the
25 hospital had called her. She suppose to had an appointment

Robert Montgomery - Direct examination
by Solicitor Gilmer

- 1 about six o'clock and she didn't return. She told me to go
2 out there and check on her.
- 3 Q About six o'clock that morning?
- 4 A Yeah.
- 5 Q All right. And did you go over to the residence?
- 6 A Yeah.
- 7 Q And when you arrived, was anyone else there outside of
8 the residence?
- 9 A I got there first and then Loreena pulled up behind me.
- 10 Q Is that Loreena Miller-Bobo?
- 11 A Yeah.
- 12 Q And about how much longer after you arrived did Ms.
13 Miller-Bobo get there?
- 14 A About a minute or two.
- 15 Q Okay. And when you got there, what did you do?
- 16 A Knock on the front door.
- 17 Q All right. And did you get an answer?
- 18 A He come and peeked out the blind right by the door
19 there.
- 20 Q Who came and peeped out the blind?
- 21 A Mr -- the witness.
- 22 Q Mr. who?
- 23 Are you---
- 24 A The defendant.
- 25 Q The defendant?

Robert Montgomery - Direct examination
by Solicitor Gilmer

1 A Yeah.

2 Q Christopher Middleton?

3 A Yeah.

4 Q And who is he to Mrs. Undra?

5 A That's her husband.

6 Q That's her husband.

7 And how long had they been married?

8 Do you know?

9 A About eight years I think. Seven or eight, something
10 like that.

11 Q And so you saw him peek out the blind.
12 Was that at the front door?

13 A Yeah, next to the front door there.

14 Q The front door.

15 If I may approach the witness, Your Honor?

16 THE COURT: Yes, ma'am.

17 Q Okay. I'm showing you what's been previously entered
18 as State's Exhibit No. 4 and what is this in the photograph?

19 A That's the house.

20 Q That's a house.

21 Is that where Undra and the defendant lived?

22 A Yeah.

23 Q All right. And you said you went to the front door.

24 A Yeah.

25 Q Can you point that out with the laser pointer that I'm

Robert Montgomery - Direct examination
by Solicitor Gilmer

- 1 going to give you?
- 2 If you will just push that button right there and if
- 3 you'll point to it on the screen.
- 4 A The screen up here?
- 5 Q Yes, sir.
- 6 A (Witness complies.)
- 7 Q Hold this button right here. When you get ready to
- 8 point, if you'll press that button right there.
- 9 A Okay.
- 10 Q There you go.
- 11 So which door did you go to when you arrived?
- 12 A The front door.
- 13 Q Okay. And where is the front door?
- 14 A Right there to the other side. The carport there.
- 15 Q Right there on the side of the carport?
- 16 A Yeah.
- 17 Q And the garage?
- 18 A Yeah.
- 19 Q Okay. And where did you see the defendant peek out of
- 20 the blind?
- 21 A Right by the door.
- 22 Q Okay. And when you were knocking on the door, was Ms.
- 23 Miller-Bobo there with you?
- 24 A She, she came about the time I got there. She went
- 25 around to the back-door.

Robert Montgomery - Direct examination
by Solicitor Gilmer

1 Q All right. And the back-door -- I'm gonna show you
2 what's been marked and entered as State's Exhibit 6.

3 A Yep.

4 Q All right. And you said that's -- where's the
5 back-door?

6 A Right there.

7 Q All right. So that's where Ms. Miller-Bobo went?

8 A Yeah.

9 Q All right. And did anyone ever come to the front door
10 when you were there?

11 A No.

12 Q Did anyone ever come to the back-door that you're aware
13 of?

14 A He run out the back-door by her.

15 Q Who ran out, who ran out the back-door?

16 A Mr. Middleton.

17 Q The defendant?

18 A Yeah.

19 Q And did you see him run out the door?

20 A No, I didn't see him.

21 Q Okay. Did you see him at any point that day?

22 A Hu huh. (Negative).

23 In other words, right about the time he went out the
24 back-door, it's some, it's some bushes and trees right there
25 by the back-door about 25, 50 feet, something like that.

Robert Montgomery - Direct examination
by Solicitor Gilmer

- 1 Q Did you see him running into the woods?
- 2 A Hu huh. (Negative).
- 3 Q All right. Did anyone tell you that he'd run into the
- 4 woods?
- 5 A Well, she said he went in the woods, Ms. Bobo.
- 6 Q What did you do next?
- 7 A About that time the police had got there.
- 8 Q Okay. And did you go inside the residence?
- 9 A Yeah.
- 10 Q All right. What did you discover when you went inside
- 11 the residence?
- 12 A All the blood and all that and she just wasn't
- 13 breathing.
- 14 Q And did Mrs. Undra have injuries that you observed?
- 15 A Yeah.
- 16 SOLICITOR GILMER: If I could have one moment, Your
- 17 Honor.
- 18 THE COURT: (Nods affirmatively.)
- 19 (Pause.)
- 20 Q All right. I'm gonna show what's been previously
- 21 marked as State's Exhibit 27.
- 22 Do you recognize that?
- 23 A Yeah.
- 24 Q All right. How do you recognize that?
- 25 A By the tape around there.

Robert Montgomery - Direct examination
by Solicitor Gilmer

- 1 Q Okay. And what is that in the photograph?
- 2 A The back.
- 3 Q The back of what?
- 4 A The house.
- 5 Q of Undra's house?
- 6 A Yeah.
- 7 Q Okay. And does that accurately represent how her house
- 8 and the area around it looked that day---
- 9 A Yeah.
- 10 Q --on June 20th?
- 11 A Yeah, that's the tree and the bushes right by there.
- 12 SOLICITOR GILMER: Your Honor, at this time I would
- 13 move to enter into evidence what's been previously marked as
- 14 State's Exhibit 27.
- 15 MR. SCHULTZ: No objection, Your Honor.
- 16 THE COURT: Without objection be State's 27.
- 17 (WHEREUPON, State's Exhibit No. 27 was received into
- 18 evidence at this time.)
- 19 SOLICITOR GILMER: Thank you, Your Honor.
- 20 Ask to publish to the jury.
- 21 THE COURT: Yes, ma'am.
- 22 Q What do we see in this photograph?
- 23 What is this in this photograph?
- 24 A That's the back --
- 25 Q Okay.

Robert Montgomery - Direct examination
by Solicitor Gilmer

1 A -- where the tape is around the back.

2 Q All right. If you're looking at the front of the
3 house, is that the left side or the right side of the house?

4 A The left.

5 SOLICITOR GILMER: I have no further questions at this
6 time, Your Honor.

7 THE COURT: Yes, sir.

8 MR. SCHULTZ: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. SCHULTZ:

11 Q You are Robert Montgomery?

12 A Yep.

13 Q All right. And you are the -- how are you related to
14 Mrs. Undra?

15 A That's my daughter.

16 Q Your daughter?

17 A Yeah.

18 Q Okay. And obviously you've known her all your life,
19 correct?

20 A Yeah.

21 Q All right. And you were there at the house that day,
22 correct?

23 A Yeah.

24 Q All right. Were you there at anytime at the house
25 previously to arriving there that morning?

Robert Montgomery - Cross-examination
by Mr. Schultz

1 A Hu huh. (Negative).

2 Q Sir?

3 A I been out there in the past.

4 Q You been out there in the past.

5 Okay. Were you there the previous night that this
6 incident happened?

7 A Uh-huh. (Negative).

8 Q Sir?

9 A I was there when they called me to go out there.

10 Q Right.

11 But were you there the previous night when this
12 happened?

13 Yes or no?

14 A The night?

15 Q Yes, sir.

16 A No, I wasn't out there when it happened.

17 Q All right. You were one of the persons to go inside
18 the house that morning, correct?

19 A About -- the polices (sic) -- me and -- the polices
20 (sic) went right behind me.

21 Q The police went right behind you?

22 A Yeah.

23 Q Okay. All right. Did you see Undra that day?

24 A Yeah.

25 Q All right. Okay. And when you saw her that day, was

Robert Montgomery - Cross-examination
by Mr. Schultz

1 she bandaged?

2 A She was all stabbed, blood everywhere.

3 Q All right. Blood everywhere.

4 Okay. Did you see a t-shirt anywhere around her?

5 A What now?

6 Q Did you see, see a t-shirt?

7 Was she bandaged with a t-shirt?

8 A She had it wrapped around her arm there.

9 Q She had it wrapped around her arm.

10 Okay. And, at that point, did the police take over and
11 EMS take over?

12 A Yeah.

13 Q And you left, correct?

14 A Yeah, I didn't leave though. I just went outside.
15 They put everybody outside.

16 Q Okay. And you went to the hospital that day.

17 Is that correct?

18 A (Witness nods affirmatively.)

19 MR. SCHULTZ: Okay. Your Honor, begging the Court's
20 patience.

21 (Pause.)

22 MR. SCHULTZ: Thank you, Your Honor. That's all I
23 have.

24 THE COURT: Any redirect limited to what he went into?

25 SOLICITOR GILMER: Yes, sir, Your Honor.

Robert Montgomery - Redirect examination
by Solicitor Gilmer

1 REDIRECT EXAMINATION

2 BY SOLICITOR GILMER:

3 Q Mr. Montgomery, you said that EMS and the police came
4 out.

5 How was Mrs. Undra transported to the hospital?

6 A Helicopter.

7 Q By helicopter?

8 A Yeah.

9 Q Thank you.

10 I have no further questions, Your Honor.

11 THE COURT: Thank you, sir. You may step down.

12 Any reason why the witness can not be excused?

13 SOLICITOR GILMER: Not at this time, Your Honor.

14 THE COURT: All right.

15 MR. SCHULTZ: No, sir.

16 THE COURT: Sir, if you would, just wait out in the
17 hallway.

18 State ready to call their next witness?

19 SOLICITOR GILMER: Yes, Your Honor.

20 State calls Deputy Wes Berkeley.

21 If I may approach Madam Court Reporter, Your Honor.

22 THE COURT: Sir, come right up here and let the Clerk
23 of Court swear you in.

24 WESLEY BERKELEY, being first duly
25 sworn, testified as follows:

Wesley Berkeley - Direct examination
by Solicitor Gilmer

1 THE COURT: Sir, just have a seat in the red chair and
2 pull the red chair up to the microphone.

3 (Witness complies.)

4 DIRECT EXAMINATION

5 BY SOLICITOR GILMER:

6 Q Would you please state your name for the record?

7 A Samuel Wesley Berkeley.

8 Q Okay. And how are you employed?

9 A With the Spartanburg County Sheriff's Office.

10 Q And how long have you been with the Spartanburg County
11 Sheriff's Office?

12 A Twenty-four years.

13 Q And what are your duties with the Sheriff's Office?

14 A Patrol officer.

15 Q What is a patrol officer?

16 what does that entail?

17 A Answering calls, investigating minor crimes. Mainly,
18 you know, patrolling a certain area of the county.

19 Q And what is your area?

20 A Greer and Holly Springs.

21 Q And what type of training did you receive to be a
22 police officer?

23 A The training from the Criminal Justice Academy in basic
24 law enforcement and other secondary training in radar, Data
25 Master, DUI detection, and let's see. All kind of law

Wesley Berkeley - Direct examination
by Solicitor Gilmer

1 enforcement training.

2 Q And do you have to have consistent training to keep up
3 with your licensure or ability to be a police officer?

4 A Yes, ma'am.

5 Q And, Deputy Berkeley, did you -- were you working with
6 the Spartanburg County Sheriff's Office back on
7 June 20th of 2014?

8 A Yes, ma'am.

9 Q Did you respond to a call out at in
10 Lyman?

11 A I did.

12 Q And is that location in Spartanburg County?

13 A Yes, ma'am.

14 Q And when you were first dispatched, what was the nature
15 of that initial dispatch?

16 A A welfare check.

17 Q And what is a welfare check?

18 A Where we go out and check for, you know, to make sure a
19 citizen is okay.

20 Q And was that dispatch later changed to something else?

21 A Yes, ma'am.

22 Q And what was it changed to?

23 A A stabbing.

24 Q And do you recall what time you arrived at the
25 residence that morning?

Wesley Berkeley - Direct examination
by Solicitor Gilmer

- 1 A Can I refer to my report?
- 2 Q Would that refresh your recollection?
- 3 A Yes, ma'am.
- 4 Q Yes, sir.
- 5 A It would be 10:36AM.
- 6 Q Okay. When you arrived on scene, did you have any
- 7 information at that time as to what had occurred?
- 8 A Just a stabbing.
- 9 Q And were there any parties on scene when you arrived?
- 10 A Yes, ma'am.
- 11 Q Who was on scene?
- 12 A Mr. Westmoreland, and let's see, Ms. Miller-Bobo and
- 13 Mrs. Cohen.
- 14 Q You said Mr. Westmoreland.
- 15 Do you mean Robert Lee Montgomery?
- 16 A Montgomery. I'm sorry.
- 17 Q Montgomery.
- 18 A I should of said Montgomery instead of Westmoreland.
- 19 I'm sorry.
- 20 Q And did you know who Mr. Montgomery was?
- 21 A I was advised, when I arrived on scene, that he was
- 22 Mrs. Cohen's father.
- 23 Q And then what about Ms. Loreena Miller-Bobo?
- 24 A A friend of Mrs. Cohen's.
- 25 Q All right. And did you have the opportunity to come

Wesley Berkeley - Direct examination
by Solicitor Gilmer

1 into contact with the victim?

2 A Yes, ma'am.

3 Q All right. And what did you observe?

4 A She had some cuts. There was a lot of dried blood on
5 the bed and on her clothing, let's see, and I asked her, you
6 know, what had happened and she told me that she had been
7 stabbed -- let's see. I can refer here again.

8 Q Are you refreshing your recollection with your report?

9 A Yes, ma'am. Let's see. She told me she was stabbed in
10 the left shoulder, the left breast, and the left lower
11 stomach as well as her right-hand.

12 Q Did you observe those injuries?

13 A Yes, ma'am.

14 Q And do you recall what she was wearing at the time?

15 A No, ma'am.

16 SOLICITOR GILMER: All right. If I may approach the
17 witness, Your Honor?

18 THE COURT: Yes, ma'am.

19 Q I'm gonna show you State's Exhibit 28 that's been
20 previously admitted.

21 Do you recognize that?

22 A Yes, ma'am.

23 Q And how do you recognize that?

24 A That's how her hand looked when I saw her laying in the
25 bed.

Wesley Berkeley - Direct examination
by Solicitor Gilmer

- 1 Q All right. Did it appear to be injured?
- 2 A Yes.
- 3 Q All right. And do you recall which hand that was?
- 4 A The right.
- 5 Q The right-hand.
- 6 How would you assess her condition when you arrived on
- 7 scene?
- 8 A She was kind of sluggish. Not talking a whole lot.
- 9 Q Do you recall how tall, about how tall Mrs. Undra was
- 10 when you came into contact with her?
- 11 A No, ma'am.
- 12 Q Okay. What about her weight?
- 13 A I mean I could tell, from her laying in the bed, that,
- 14 you know, she was a little heavy.
- 15 Q And where on the bed was she lying?
- 16 A On the right side.
- 17 Q Was that closest to the entrance of the bedroom or
- 18 further away?
- 19 A Closest.
- 20 Q The closest to the entrance of the bedroom?
- 21 A Yes, ma'am.
- 22 Q Okay. All right. I'm showing you what's previously
- 23 been admitted as No. 17.
- 24 Where was she lying on the bed?
- 25 A (Witness points.)

Wesley Berkeley - Direct examination
by Solicitor Gilmer

1 Q Okay.

2 A The door's right here.

3 Q All right. Had EMS arrived at that point?

4 A No, ma'am.

5 Q Okay. And who was in the bedroom with her?

6 A That would of been Mr. Montgomery and Ms. Miller-Bobo.

7 Q Okay. And did you call for EMS?

8 A No, ma'am, they were previous on the way when it was
9 upgraded to a stabbing.

10 Q All right. So, at that point, 9-1-1 had already been
11 called?

12 A Yes, ma'am.

13 Q And the victim had already been found?

14 A Yes, ma'am.

15 Q Okay. All right. Did you ever find any type of weapon
16 on scene?

17 A Yes, ma'am.

18 Q All right. And where was that found?

19 A In Ms. Miller-Bobo's hand.

20 Q Okay. And did she give that to you?

21 A No, ma'am, I asked her to lay it on the coffee table in
22 the living room.

23 Q Okay. And did she do that?

24 A Yes, ma'am.

25 Q All right. I'm gonna show you what's been previously

Wesley Berkeley - Direct examination
by Solicitor Gilmer

1 marked as State's Exhibit 30.

2 Do you recognize this?

3 A Yes, ma'am.

4 Q And how---

5 A It's a living room.

6 Q Okay. And you said that you laid the knife on the
7 coffee table.

8 Is that in that living room?

9 A Well, I advised her to lay it---

10 Q I'm sorry.

11 A Yes, ma'am.

12 Q Her to lay it there.

13 A Yes, ma'am.

14 Q Did she have -- was it wrapped in anything?

15 A It was laying on a towel in her hand.

16 Q Okay. And did she advise you where she had found that?

17 A No, ma'am.

18 Q Okay. And did you -- did it appear to have any
19 substance on the knife?

20 A Some blood, yes, ma'am.

21 Q Okay. And is this a fair and accurate representation
22 of what you saw that day and where Ms. Loreena Miller-Bobo
23 laid the knife?

24 A Yes, ma'am, it's kind of light there, but that's it
25 right there.

Wesley Berkeley - Direct examination
by Solicitor Gilmer

1 Q Okay. And I'm gonna show you what's been previously
2 marked as State's Exhibit No. 29.

3 What do you see there in that photo?

4 A Appears to be blood --

5 Q All right.

6 A -- on the knife blade.

7 Q And is that a fair and accurate representation of the
8 knife as you saw it that day?

9 A Yes, ma'am.

10 SOLICITOR GILMER: Your Honor, at this time I would
11 move to enter into evidence what's been previously marked as
12 State's Exhibit 30 and 29.

13 MR. SCHULTZ: No objection, Your Honor.

14 THE COURT: Without objection, be State's 29 and 30.

15 SOLICITOR GILMER: Thank you, Your Honor.

16 (WHEREUPON, State's Exhibit Nos. 29 and 30 were
17 received into evidence at this time.)

18 SOLICITOR GILMER: If I may publish to the jury?

19 THE COURT: Yes, ma'am.

20 Q This is State's Exhibit 30.

21 If you would, point out the coffee table in that photo
22 please.

23 A Right there between the chair on the left.

24 Q Okay. And let me give you this---

25 THE COURT: All right. Officer, we're making a

Wesley Berkeley - Direct examination
by Solicitor Gilmer

1 recording of everything that happens here. So when you turn
2 and speak that way---

3 THE WITNESS: Sure.

4 THE COURT: ---this lady behind you needs to be able to
5 hear you.

6 THE WITNESS: All right.

7 THE COURT: So speak up if you can.

8 THE WITNESS: Yes, sir.

9 THE COURT: Thank you.

10 Q Press that button right on the side. There you go.

11 A Coffee table. That's the coffee table in the center of
12 the picture.

13 Q And where was the knife?

14 A Right there.

15 Q Okay.

16 A Right there in the -- on the edge of the table.

17 Q Okay. And you said this is a closer-up photo of that
18 knife?

19 A Yes, ma'am.

20 Q All right. And did you collect that knife through
21 your, your investigation or work in this case?

22 A No, ma'am.

23 Q Do you typically collect evidence?

24 A No, ma'am.

25 Q Who would do that in your office?

Wesley Berkeley - Direct examination
by Solicitor Gilmer

1 A An ID officer.

2 Q And would you have instructed the ID officer or made it
3 known to him where to put -- what evidence to collect if
4 there was something that you could -- found or someone else
5 had found with your knowledge?

6 A Yes, ma'am.

7 Q Okay. And did you ask the family, Mr. Montgomery and
8 Ms. Miller-Bobo, to exit the residence?

9 A Yes, ma'am, when EMS arrived.

10 Q Okay. And what, what was the purpose -- why did you do
11 that?

12 A It was kind of tight and I knew they were gonna have to
13 get the stretcher in and besides, you know, securing the
14 scene for evidentiary reasons.

15 Q Okay. And was the victim transported to Spartanburg
16 Regional Medical Center?

17 A Yes, ma'am.

18 Q And how was she transported?

19 A By helicopter, Air One -- Regional One. I'm sorry.

20 Q Okay. And, at that time, did you secure the residence
21 once you had everyone outside?

22 A Yes, ma'am.

23 Q Okay. And did you speak with an investigator regarding
24 getting a search warrant for the residence?

25 A Yes, ma'am, or they advised me they were going to get a

Wesley Berkeley - Direct examination
by Solicitor Gilmer

1 search warrant for the residence.

2 Q All right. Did you learn what time the victim had been
3 injured, had been stabbed?

4 A No, ma'am.

5 Q Did you begin a crime scene log?

6 A Yes, ma'am.

7 Q What's the purpose of a crime scene log and what is
8 that?

9 A Okay. It's a sheet of paper basically to log in the
10 times and the time when you go into a crime scene and also
11 the time when you leave or clear the crime scene and all
12 personnel who goes in and for what purpose.

13 Q And did you have any other involvement in the case?

14 A After leaving the residence, once investigators took
15 the scene from me, I continued out and went to Murphy Road
16 to be part of the perimeter for the K-9 search.

17 Q Okay. And you said a K-9 search.

18 What was that for -- what were they searching for?

19 A Mr. Middleton.

20 Q The defendant in this case?

21 A Yes, ma'am.

22 SOLICITOR GILMER: I have no further questions at this
23 time, Your Honor.

24 THE COURT: Yes, sir.

25 MR. SCHULTZ: Thank you, Your Honor.

Wesley Berkeley - Cross-examination
by Mr. Schultz

1 CROSS-EXAMINATION

2 BY MR. SCHULTZ:

3 Q Officer, you were the first deputy on the scene?

4 A Yes, sir.

5 Q Is that correct?

6 A Yes, sir.

7 Q Okay. All right. Did you arrive with EMS or did EMS
8 arrive after you?

9 A After me, sir.

10 Q Okay. After you.

11 Okay. So you were the first person to encounter Undra
12 on the -- in, in the bedroom.

13 A Yes, sir.

14 Q Is that correct?

15 A Yes, sir.

16 Q Okay. All right. Were there, were there any wounds to
17 her throat?

18 A Not that I could see.

19 Q Were there any wounds to her head?

20 A Not that I recall.

21 Q Were there any wounds to her legs?

22 A Not that I could see or recall.

23 Q All right. Now, you testified that it was -- you, you
24 were there.

25 Did you notice -- were the, were the wounds deep or

Wesley Berkeley - Cross-examination
by Mr. Schultz

1 were they cuts?

2 How would you describe them?

3 A I couldn't really tell because of the dried blood on
4 them when she was, you know, showing me where they were.

5 But, you know, I could tell they were knife wounds but I'm
6 not a, you know, professional in that count of -- type of---

7 Q Yeah.

8 A I couldn't tell.

9 Q We understand.

10 Okay. All right. Now, she was talking to you, right?

11 A Yes, sir.

12 Q All right. And you said on your direct examination
13 that she was sluggish, right?

14 A Uh-huh. (Affirmative).

15 Yes, sir.

16 Q Was, was she able to get up under her own power?

17 A I don't believe so.

18 Q Okay. So she was lifted onto a gurney, right?

19 A Yes, sir.

20 Q Were you the one that did the lifting or was it
21 somebody else?

22 A It was EMS personnel.

23 Q Okay. Now, you testified to the fact that you found
24 the knife or somebody else gave you a knife?

25 A No, someone else showed me the knife.

Wesley Berkeley - Cross-examination
by Mr. Schultz

1 Q Someone else showed you the knife.

2 Okay. And referring back to State's Exhibits -- this
3 is No. 29.

4 Is this the knife that was shown to you?

5 A Yes, sir.

6 Q These spots on here that you see up on the screen here,
7 was there any explanation as to what these were?

8 A Blood.

9 Q All right.

10 A Appeared to be blood.

11 Q Now, I know you don't do any DNA testing, but did you
12 submit these to the evidence custodian?

13 A I did not.

14 Q All right. Somebody else did, right?

15 A Yes, sir.

16 Q Okay. And is it your opinion that this was the knife
17 that was used?

18 A Very possible, yes, sir.

19 Q Well, let me finish my question.

20 A Okay. Sure.

21 Q Was this knife used in the incident?

22 A I believe that it was.

23 Q All right. Did you find any other knives in the
24 residence at that time that you conducted your
25 investigation?

Wesley Berkeley - Cross-examination
by Mr. Schultz

- 1 A No, sir.
- 2 Q All right. Did you find any other -- did you find a
3 gun?
- 4 A No, sir.
- 5 Q All right. So this is the only knife that you found on
6 that day, correct?
- 7 A The only knife that I was shown that day, correct.
- 8 Q All right. Did you do a search of the house or was
9 that your job that day?
- 10 A That's not my job. I secured it.
- 11 Q All right. About how long did you stay at the house
12 before you were -- you exited the house?
- 13 A Can you clarify that about -- how long was I inside
14 or---
- 15 Q Yes, sir.
- 16 How long were you inside the house?
- 17 A I would say approximately 35 minutes.
- 18 Q Thirty-five minutes.
- 19 Okay. Did you take statements from anybody?
- 20 A No, sir.
- 21 Q All right. So you were -- really your -- would it be
22 fair to say that your job that day was not the principal
23 investigating officer, right?
- 24 You were -- you just responded to the call and then
25 conducted a perimeter search, right?

Wesley Berkeley - Cross-examination
by Mr. Schultz

1 A Yes, sir.

2 Q All right. And then you left, right?

3 A I did the initial report also.

4 Q Okay. Did you have any further involvement in the case
5 afterwards?

6 A Not---

7 Q Other than this?

8 A Other than the perimeter, no.

9 MR. SCHULTZ: Okay. Beg the Court's patience, Your
10 Honor.

11 (Pause.)

12 Q Just a couple more questions about the knife.

13 A Uh-huh. (Affirmative).

14 MR. SCHULTZ: Beg the Court's patience, Your Honor.

15 (Pause.)

16 Q Again, referring to State's Exhibit 29, can you
17 describe to the jury, just using your hands, how big this
18 knife was?

19 A Probably just a little -- (Witness demonstrates.)

20 Q All right.

21 THE COURT: We can't hear you.

22 THE WITNESS: Sir?

23 THE COURT: Did you say something?

24 THE WITNESS: I -- about that big. I'm sorry.

25 THE COURT: All right.

Wesley Berkeley - Cross-examination
by Mr. Schultz

1 THE WITNESS: Using my fingers to say, probably eight
2 inches.

3 Q And, in your experience, would you call that a rather,
4 rather large knife?

5 A Medium size knife I would say.

6 Q All right. Was it sharp?

7 A It appeared to be. I didn't examine it that closely.
8 I looked at it when she laid it on the table and it looked
9 like a kitchen knife.

10 Q Okay. I'm sorry.

11 A Looked like a kitchen knife.

12 Q Looked like a kitchen knife.

13 Okay. That's all I have, Your Honor.

14 THE COURT: Any redirect limited to what he went into?

15 SOLICITOR GILMER: Yes, Your Honor. Just a couple.

16 REDIRECT EXAMINATION

17 BY SOLICITOR GILMER:

18 Q In your experience, would this knife be categorized as
19 a deadly weapon?

20 A Yes, ma'am.

21 Q In your experience, could this type of knife cause
22 someone's death?

23 A Yes, ma'am.

24 SOLICITOR GILMER: I have no further questions, Your
25 Honor.

1 THE COURT: All right. Thank you, sir. You may step
2 down.

3 Lawyers approach a moment.

4 (WHEREUPON, a bench conference was held out of the
5 hearing of the jury at this time.)

6 THE COURT: All right. Ladies and gentlemen, we
7 have -- trying to schedule this so that we can handle
8 several things and so we are going to take a lunch break a
9 little bit early today. I want to thank you for your
10 attention and patience while we presented some -- the
11 testimony this morning.

12 I need to remind you not to have any discussions among
13 yourselves about anything involving the case as well as do
14 not do any type of independent research or investigation in,
15 into the case.

16 With that being said, taking a look at that clock on
17 the wall, it's a little bit after 11:20, 11:22. I'm gonna
18 ask, if you would, to be back in the jury deliberation room
19 by 1:15 and then we will begin with the presentation of the
20 additional testimony for the afternoon, but, again, thank
21 you for your work this morning, but you may go with the
22 bailiff.

23 (WHEREUPON, the following takes place outside the
24 presence of the jury.)

25 THE COURT: All right. At this time we'll stand

1 adjourned until about 1:15.

2 MR. SCHULTZ: Thank you, Your Honor.

3 (WHEREUPON, Court was in recess for the lunch break.)

4 THE COURT: Anything before we bring the jury back?

5 SOLICITOR GILMER: No, Your Honor.

6 MR. SCHULTZ: Not from the defense.

7 THE COURT: All right. All right. Let's bring the
8 jury back.

9 (WHEREUPON, the following takes place within the
10 presence of the jury.)

11 THE COURT: Is the State ready to call their next
12 witness?

13 SOLICITOR GILMER: Yes, Your Honor, we are.

14 Your Honor, the State calls Robert Undra
15 Cohen-Middleton.

16 ROBERT UNdra COHEN-MIDDLETON, being
17 first duly sworn, testified as follows:

18 THE COURT: Ma'am, just be careful stepping up there.

19 DIRECT EXAMINATION

20 BY SOLICITOR GILMER:

21 Q Would you please state your name for the record?

22 A Robert Undra Cohen-Middleton.

23 Q And what name do you go by?

24 A Undra.

25 Q And do you prefer to go by Undra Cohen or Undra

Robert Cohen-Middleton - Direct examination
by Solicitor Gilmer

1 Middleton?

2 A Undra Cohen.

3 Q And, Mrs. Cohen, where do you -- where did you live
4 back in June of 2014?

5 A At , South Carolina.

6 Q Okay. Is that in Spartanburg County?

7 A Yes, ma'am.

8 Q All right. And who lived there with you at the time?

9 A It was me, Christopher, Loreena, and her two kids.

10 Q And that's Loreena Miller-Bobo?

11 A Uh-huh. (Affirmative).

12 Loreena Miller-Bobo.

13 Q All right. And when you say Christopher, who are you
14 talking about?

15 A Christopher Middleton.

16 Q And who -- what relationship was he to you?

17 A My husband.

18 Q And how long had you guys been married?

19 A Eight and a half years.

20 Q And how long had you lived at ?

21 A This -- ever since August of 2006.

22 Q And did you live there during that time with the
23 defendant?

24 A Yes, ma'am.

25 Q And currently are you in the process of getting a

Robert Cohen-Middleton - Direct examination
by Solicitor Gilmer

1 divorce from the defendant?

2 A Yes, ma'am.

3 Q All right. Let's talk a little bit about your medical
4 conditions prior to June 19th of 2014. It's my
5 understanding you had a medical procedure on June 19th of
6 2014.

7 What was that for?

8 A I had a magnesium infusion.

9 Q And what is a magnesium infusion?

10 A It's cause my magnesium had dropped so low and I was
11 getting them every week. My doctor said that it could cause
12 me to have a heart attack because my magnesium was so low.
13 So I had to get an infusion every Thursday.

14 Q Okay. And do you have a port for that?

15 A Hu huh. (Negative).

16 Not for that now.

17 Q Okay. Did you have a port at the time for that?

18 A Yes, ma'am.

19 Q All right. And what is a port --

20 A well, I have a---

21 Q -- your understanding of it?

22 A I have a cancer port here and they goes in and put a
23 port in here to do my magnesium, my plasmapheresis
24 treatments and any other thing cause they can draw -- they
25 can draw blood from here but they can't like that -- like

Robert Cohen-Middleton - Direct examination
by Solicitor Gilmer

1 when I get my port, you draw blood and then you put it back
2 in me. They takes and puts my blood through a machine and
3 clean it and run the bad plasma out and put new plasma back
4 in and run my blood back in.

5 Q Okay. And how often were you getting those treatments?

6 A I had to have six at the time.

7 Q Okay. Six in one day or---

8 A No.

9 Q ---are they spread out over---

10 A Spread out.

11 Q And how far apart were your treatments typically?

12 A Just two days apart.

13 Q And you mentioned you had a port for cancer treatment.

14 Tell me a little bit about that.

15 A In 2012, March of 2012, I went to take my -- well, I
16 went to take my mammogram on March 11th. I got a call
17 back on March the 12th saying I needed to come in. So me
18 and my mom went down there and they took me to a room and
19 told me that I had breast cancer and that, that they was
20 gonna have to do a lump, lump, I can't think of that name,
21 lump -- they's gonna remove the knot out of my breast and
22 also, when I went through that, that was on May the 8th, I
23 had my cancer surgery and they also did a breast reduction
24 and then, under the right arm, I had lymph nodes.

25 So they had to take those out and there's, there's

Robert Cohen-Middleton - Direct examination
by Solicitor Gilmer

1 nothing that they can do with this arm anymore. They can
2 only use this arm, but all my veins have gone. So they said
3 the next thing would be in my foot.

4 Q Okay. And back in June of 2014, was your cancer in
5 remission at that time?

6 A Yes, ma'am.

7 Q All right. When had you been cancer free?

8 A 2013.

9 Q And when you were diagnosed with cancer, did you have
10 to undergo radiation and/or chemotherapy?

11 A I went to both.

12 Q Both of those?

13 A Uh-huh. (Affirmative).

14 Q And how long of a period of time were you receiving
15 those treatments?

16 A My chemo, I only got four treatments because I got so
17 sick they had to put me in the hospital. My radiation, it
18 burnt me all the way down to my white meat. So they had to
19 stop it and do treatments for me. But it was like four
20 months for my chemo and then I went in for like four months
21 for my radiation.

22 Also suppose to have eight total chemos, but I couldn't
23 get them and a total of 12 radiations, but I didn't get to
24 have all that. They had to stop it because I was -- it
25 was -- I was getting sicker.

Robert Cohen-Middleton - Direct examination
by Solicitor Gilmer

1 Q On June 20th of 2014 it's my understanding that you
2 may of had a medical procedure scheduled that day.

3 What was that far?

4 A I had to have my plasmapheresis port put in so I could
5 have my plasma done. My myasthenia had got really bad. So
6 I had to have six treatments of plasmapheresis.

7 Q And you mentioned your myasthenia gravis.

8 How -- what is that?

9 How does that affect you?

10 A Myasthenia gravis is a weakness of your muscles and
11 your bones. It cause you to fall a lot. It cause your
12 eyelids to droop, your speech to slur, and I had have a
13 total thymectomy and that helped it really good. So far I
14 hadn't had to have anymore plasmas. So the myasthenia is,
15 right now, under control. But I have some more health
16 things that came up.

17 Q Okay. Does the myasthenia gravis, does that make you
18 weak?

19 A Yes, ma'am.

20 Q All right. And were you affected by that back in --
21 back on June 19th and 20th of 2014?

22 A Yes, ma'am.

23 Q Had you ever had any injury to your shoulder?

24 A Yes, ma'am.

25 Q Okay. And did you have surgery, at some point, on your

Robert Cohen-Middleton - Direct examination
by Solicitor Gilmer

1 shoulder?

2 A I had surgery two weeks before the incident.

3 Q Okay. And what shoulder was that?

4 A My left shoulder.

5 Q Okay. And during the time you talked -- you told us a
6 little bit about the cancer and then the conditions that --
7 the conditions you had back in June of 2014.

8 During this time, were you married to the defendant?

9 A Yes, ma'am.

10 Q All right. And, to your knowledge, was he aware of
11 these treatments that you were undergoing?

12 A Yes, ma'am.

13 Q Okay. Did he ever take you to any of your medical
14 appointments?

15 A Maybe one or two.

16 Q Okay. Who would typically take you or, would anyone
17 take you?

18 Would you drive yourself?

19 A My mom took me, helped me through my cancer, and then
20 when Loreena Miller-Bobo moved in, she was helping me with
21 my arm and with my myasthenia gravis cause I had got back in
22 a bad shape with it.

23 Q Okay. On June 19th of 2014, did you have a procedure
24 that morning?

25 A Yes, ma'am.

Robert Cohen-Middleton - Direct examination
by Solicitor Gilmer

1 Q And who took you to that procedure?

2 A Christopher Middleton.

3 Q Okay. And was that common?

4 A No, ma'am.

5 Q And your husband, I'm gonna go -- have you go ahead and
6 do you see him in the courtroom today?

7 A Yes, ma'am.

8 Q All right. If you would point to him and describe an
9 article of clothing he's wearing.

10 A He got on a white shirt and some brown pants, black
11 tie, glasses, and black shoes.

12 SOLICITOR GILMER: Okay. Your Honor, if the record
13 could reflect the victim is identified the defendant.

14 THE COURT: All right.

15 SOLICITOR GILMER: Thank you.

16 Q On June 20th of 2014, the procedure that you had
17 scheduled, who was suppose to take you to that procedure?

18 A Christopher Middleton.

19 Q And what time was the procedure scheduled for?

20 A It was scheduled for me to be there at 6:30 but the
21 surgery wasn't scheduled until 8:30.

22 Q So it's actually a surgery that you had -- you have?

23 A Yes, ma'am.

24 Q Are you aware if they were going to put you under
25 anesthesia?

Robert Cohen-Middleton - Direct examination
by Solicitor Gilmer

1 A Yes, ma'am.

2 Q Okay. Did you have any limitations as to food or drink
3 prior to that surgery?

4 A Yes, ma'am, couldn't have nothing to drink or eat after
5 12:00.

6 Q After 12:00 midnight?

7 A Uh-huh. (Affirmative).

8 Q All right. Mrs. Cohen, I'm going to bring your
9 attention to June 19th of 2014. You told us that you had a
10 procedure on that day.

11 Do you recall what time that was?

12 A It was at 9:30 that morning.

13 Q Okay. And how -- about how long did that procedure
14 take?

15 A It takes six hours.

16 Q And, to your knowledge, did it take six hours?

17 A Yeah, the procedure itself takes six hours but when you
18 go -- when I go they have to take my blood, send it down,
19 make sure my blood -- the blood levels are right, and my
20 white, my white and red cells are okay, and then, when they
21 get -- she get the -- go through it, then she have to send
22 down for my medicine. They fix up the medicine and send it
23 back.

24 So actually it's like an eight hour thing with me
25 getting my medicine and stuff but the treatment itself is

Robert Cohen-Middleton - Direct examination
by Solicitor Gilmer

1 six hours.

2 Q Okay. Did you, after the treatment, did you go back to
3 your residence?

4 A Yes, ma'am.

5 Q And that was

6 A Yes, ma'am.

7 Q About what time?

8 Do you recall what time you arrived back?

9 A We got there about seven o'clock cause it was late.
10 About 7:00.

11 Q Okay. And, that night, what did you do when you got
12 home?

13 A I went in my room and laid down. My husband said that
14 I was weak and I was from the treatment. It had drained me
15 a lot. So I laid down and he told me to get some rest, and
16 he said that he was having company and they was gonna drink
17 a few beers and play Playstation and I asked him to shut the
18 door so I didn't have to hear that.

19 Q Do you know who else was at your house that night?

20 A No, ma'am, I didn't see anybody. I just -- he just
21 told me that his friend was coming over. But I did see the
22 kids that day because I didn't even know Loreena had left.
23 The kids came in my room and told me their dad was coming to
24 pick them up and I said where your mom and they said she's
25 gone, and they said Auntie. I said what's the matter and

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by Solicitor Gilmer

1 they said Auntie, Chris came in our room and said he don't
2 know why my mom -- why they mama told them don't mess with
3 nothing because don't a M.F. thing belong to them in this
4 house anyway and they was kind of scared and they didn't
5 want to leave me. But I told them to go ahead and go home.
6 I was, you know, I didn't think nothing of it.

7 So they daddy came and got them. So it just me and
8 Chris in the house then and I never seen his friend Al. So
9 I can't say if he was in there or not.

10 Q All right. And when you went to bed, was that in the
11 master bedroom?

12 A Yes, ma'am.

13 Q Okay. And what side of the bed did you sleep on?

14 Did you sleep on the side of the bed closest to the
15 entryway into the bedroom or the other side?

16 A No, I slept on the side close to the window.

17 SOLICITOR GILMER: Okay. Your Honor, if may approach
18 the witness?

19 THE COURT: Yes, ma'am.

20 SOLICITOR GILMER: Thank you.

21 Okay. I'm gonna show you what's been previously marked
22 and entered as State's Exhibit 17.

23 Do you recognize that?

24 A Yes, ma'am.

25 Q And what is that in that photograph?

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by Solicitor Gilmer

1 A That's our bedroom, the lamp, the table, and covers,
2 curtain, and blood, of course.

3 Q Okay. And you said that you slept on the side of the
4 bed away from the entrance into the room?

5 A Yes, ma'am.

6 Q Okay. All right. I'm gonna have you point to where
7 you slept and use this button right here and turn it this
8 way.

9 A I slept on this side of the bed right here --

10 Q Okay.

11 A -- near that window right there.

12 Q All right. And did you have a separate nightstand from
13 the defendant?

14 A Yes, ma'am.

15 Q All right. Which one was yours and which one was his?

16 A This is mine and that's Christopher's.

17 Q Okay. All right. On that date, did you stay in bed
18 that night?

19 Did you ever go out into the living room?

20 A No, ma'am.

21 Q And what do you next remember?

22 A I was laying down and I had to go to the bathroom. I
23 got up, went in the bathroom. I heard the door open. It
24 was Christopher and he stood right in the door and just said
25 B, I hate you.

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1 Q I know we're in a courtroom and it's -- and you're in
2 front of a lot of people you don't know but I need you to be
3 very specific with your language. You're not gonna offend
4 anybody.

5 Okay. So I need to -- we need to know exactly what was
6 said that---

7 A Okay.

8 Q Okay. So he came in there and what did he say?

9 A He said bitch, I hate you.

10 Q All right. And what happened next?

11 A It just startled me and I was like whatever, Chris. I
12 said go on back in there where your company is, and he said
13 yeah, I better go back in there and he left out and I got up
14 and washed my hands and got back on the bed.

15 Q Where did you wash your hands?

16 A In the bathroom.

17 Q All right. And what happened next?

18 A I got in the -- I was laying in there and I heard the
19 doorbell -- I mean I heard the alarm say front door open
20 cause I had an alarm on there would tell me which door
21 anybody was going in and out off and I thought to myself,
22 yeah, they getting ready to leave. But then he came in the
23 door, in the room, and he locked the door and the---

24 Q Who came in the room?

25 A Christopher came in the room and he locked the door.

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1 That didn't startle me because we had Loreena and her kids
2 there. So we kept the door locked most of the time.

3 Q The bedroom door?

4 A The bedroom door and he came in and he would -- he was
5 like you gonna talk to me and I was like no. I never took
6 my -- I never looked at him cause I was laying like this and
7 he was standing right there at the door.

8 Q And which way were you facing when you were laying like
9 that?

10 A I was facing like this.

11 Q Okay. And, for the record, you have your hands in a
12 folded position of -- against your face?

13 A Yes, ma'am.

14 Q Were you facing the entryway or --?

15 A No, ma'am.

16 Q -- the wall?

17 A I was facing -- I was laying right there and I was
18 turned over on my side and I had my hands folded up and I
19 was looking at TV cause I didn't want to argue cause I
20 wasn't feeling good and I didn't want to go through that.

21 Q All right. So what happened next?

22 A So he was like so you want a divorce and I didn't know
23 he had a knife. So automatically I said yeah, I want a
24 divorce. I'm tired of this. You been taking me through
25 hell since we been married. Yeah, we had a few good days,

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1 but every time I turnaround you're embarrassing me, you cuss
2 me out in front of people and---

3 Q How do you think he knew you wanted a divorce?

4 A In my, my journal. He had found it wednesday night.

5 Q All right. Continue. I'm sorry to have stopped you.

6 So you told him you, you wanted to end the marriage,
7 you had enough, and then what happened next?

8 A And he said so, so you ain't gonna talk to me and I
9 said you know what, I'm tired of talking. We been talking
10 and it don't go nowhere. When I talk to you all you do is
11 cuss me out and call me all kind of names.

12 So he did walk around the bed, but I still didn't see a
13 knife, and then he came over there, he got on top of me, he
14 said you gonna talk now and I said no and then he just
15 started stabbing me and I put my hands up like this to try
16 to keep him from doing it and that's how he cut my hand
17 right there, and then, while he, while I was stabbed, he
18 looked at me and he said you gonna get a divorce but you
19 ain't gonna sign no damn papers and he hit me in this jaw
20 and I fell off the bed, hit that wall, and bounced back up
21 against the bed, and blood -- that's where the blood started
22 pouring out of my stomach right there.

23 Q Now, I'm gonna back you up a little bit and you said
24 that he got on top of you.

25 A Yeah.

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1 Q How do you mean?

2 A He flipped me over -- he came around the room, the bed,
3 flipped me over, and he got on the top of me in the bed.

4 Q Okay. And were you still laying down at that time?

5 A Yes, ma'am.

6 Q All right. And do you remember how many times he
7 stabbed you?

8 A He stabbed me five times and cut me once.

9 Q And those are the total injuries that you had as far as
10 the stab wounds or the cut wounds?

11 A Yes, ma'am.

12 Q All right. Did you see him with a knife?

13 Were you able to see what he was stabbing you with?

14 A No, I didn't see the knife until he had knocked me in
15 the floor and I was down there and he was saying I'm gonna
16 kill you. I'm -- I'm, I'm already dead. So I might as well
17 kill you and he was -- he asked me -- he said have you ever
18 loved me and I said Chris, I've loved you from the beginning
19 and I was getting ready to say something else and he kicked
20 me in my face.

21 Q He kicked you in your face?

22 A Yes, ma'am.

23 Q Okay.

24 A And he started asking me another question and he said
25 you better shut up. He said your lying ass. He said you

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1 ain't never loved me. You take everybody before me. You
2 sent my car back and it was just crazy stuff that he was
3 talking to me about, and I was trying to be calm so that he
4 wouldn't hurt me anymore, but he asked me another question
5 and he kicked me in my face again, and I start just not
6 wanting to answer nothing.

7 And then he, he was standing there and he said well,
8 since, since you about dead, I might as well kill myself and
9 he took the knife he had and he just done it like that on
10 his stomach, and me being who I was, I said Chris, baby,
11 please don't, don't hurt yourself, don't hurt yourself,
12 please, and then he said yeah, I'm gonna just kill myself.
13 He took the knife. He just went across his neck like that
14 and it just left a little white line cause he didn't really,
15 do any harm to himself.

16 Then he scooted down in the floor and he was talking to
17 me and he said Undra, tell the truth. You, you love
18 everybody more than you love me, and then he said, and I
19 believe you licking cootie, and I said Chris, I would never
20 do nothing like that, and he slapped me in my face and he
21 said tell another lie and I'll stab you in your heart.

22 So I was just trying to be calm with him so he wouldn't
23 hurt me no more, and he was just talking about you took your
24 family over me, your big fat ass mama, your gorilla ass also
25 looking daddy. I mean he was just saying -- then he said

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by Solicitor Gilmer

1 you better be glad cause I had asked my friend for a gun and

2 I was gonna kill all you little mother fuckers.

3 Q Mrs. Undra, do you remember what he was wearing --

4 A He had on some---

5 Q -- when he stabbed you?

6 A He had green shorts and white shirt at the time.

7 Q What -- was it a white t-shirt, long sleeve shirts--

8 A Hu huh. (Negative.)

9 Q Button down shirt?

10 A Short sleeve shirt.

11 Q Short sleeve t-shirt.

12 Did he ever change into something different?

13 A Yeah, when -- excuse me. When he slid down in the
14 floor and he was talking to me he told me, he said get your
15 ass up there on that bed, and I said Chris, I can't move. I
16 didn't know at the time that he had punctured my liver, my
17 small intestines, and my bowels, and that's why I couldn't
18 move. And he said I ain't gonna tell you again to get up in
19 there and I was like Chris, I promise you, I'm telling you
20 the truth, I can't move.

21 So he took and laid the knife at the very foot of the
22 bed, came over there, and jerked me up, and when he jerked
23 me up all my blood just gushed on his shirt. So he threwed
24 me in the bed and covered me up and he went to our little
25 armoire and took the white t-shirt off that he had on, put a

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1 yellow hoodie on, but he never did change those bloody
2 shorts. Then he got in the bed and laid beside me with the
3 knife to my head and said if you ain't dead by in the
4 morning, I'm gonna stab you in your head and I'm gonna watch
5 you take your last breath and I'm gonna, excuse me, and I'm
6 gonna leave out of here a free man cause ain't nobody gonna
7 know who did this to you and won't nobody know where I am
8 cause I'll be gone.

9 He woke -- when he woke up that morning he was talking
10 to me and then he was like bitch, you ready, and I said
11 Chris, please. He said don't fucking Chris please me. He
12 said I told you if you wasn't dead in the morning I was
13 gonna stab you in your damn head, and he, he got ready to do
14 like this and he went like that and (witness knocks on the
15 stand three times). Lord, I thought it was my mom and I
16 said mom and he jumped up off of me and went in there, and I
17 heard the back-door say back-door open.: I never heard the
18 front door open cause I just heard Loreena screaming,
19 Loreena Bobo-Miller, I heard her screaming and I didn't know
20 if he had hurt her or what.

21 But then she came in the room and she was like why you
22 didn't go to your doctor's appointment, they looking for
23 you, and I was saying shhh, shhh, shhh and she was like why
24 you gonna -- why you telling me to the shhh, and I said it's
25 Chris. She said Chris run out the back-door, what is going

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1 on, and she said why is your hand wrapped up, and I said
2 cause he done cut me in my hand and he said he didn't want
3 to look at that shit. So he wrapped my hand up.

4 she said what you mean he cut you in your hand. So she
5 took the shirt off my hand and then she just started
6 screaming because my hand had just puff up like that and was
7 just blood, black blood and everything, and she was
8 screaming. And then she was like Rob, he done cut her, he
9 done cut her, and my daddy said cut who.

10 And so my daddy came down the hall. I did see my daddy
11 come down the hall and then there was a police officer came
12 right behind my dad, and the police officer asked me was I
13 hurt anywhere else and I told him yes. And he said where
14 have you been. I said I don't know quite where all the stab
15 wounds at. But I know one is in my stomach really bad and I
16 said my hand and he was like oh, my God.

17 So by that time Loreena called 9-1-1 and she was
18 screaming and telling them that I had been cut in my hand.
19 She didn't know I had been cut other places. And she asked
20 me, she said have you been cut other places, and I said
21 yeah, he cut me all over here. And she went to walk around
22 to my side of the bed and she just fell down because she
23 seen all that blood. And she was just screaming, screaming,
24 screaming, and the next thing I know that room was crowded
25 with everybody and they were saying that my breathing was

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1 shallow, I had lost so much blood, that they -- they was
2 like you a miracle because all the blood that you lost and
3 you laid here over 12 hours and just bled.

4 And then the next thing I know I just started fading
5 out and they was like we got to get Regional One to get her
6 to the hospital. Then they start putting something on the
7 wounds to try to keep them from bleeding and stuff and they
8 cut my clothes off of me, and then they brought a board in
9 and they slid me, got me on that board, and they was like we
10 got to get her on this board, then we'll get her on the
11 stretcher.

12 So they got me on the board. Then they put me on --
13 they got me off the bed and went through the hall and the
14 stretcher was in the hall. They put me on the stretcher and
15 they were getting ready to roll me out the door to get on
16 the helicopter, and I just, I just couldn't -- I went out
17 and I, I heard my sister say Undra, Undra, my sister Marsha
18 Cohen, right -- she was screaming Undra, Undra, and they was
19 telling them that they was getting ready to take me, fly me
20 to the hospital because I couldn't ride in an ambulance
21 cause it would take too long and they didn't want to lose
22 me.

23 Q Okay. So they -- so you took -- you were transported
24 by Regional One to the hospital?

25 A Yes, ma'am.

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1 Q That was the Spartanburg Regional Medical Center?

2 A Yes, ma'am.

3 Q Okay. And did you have surgery there at Spartanburg
4 Regional Medical Center?

5 A Yes, ma'am.

6 Q All right. How many surgeries have you had to have
7 because of what the defendant did to you that night?

8 A I've had three surgeries in my stomach. I've had to be
9 on a bag because it was so bad in my stomach and I was on a
10 bag for like eight months. Home health had to come out and
11 change my bandages three times a day, seven days a week
12 because of all the stab wounds and stuff, and like, when I
13 was in the hospital, they stapled me because they couldn't
14 sew me up because it had been too long.

15 The doctor came in the next day and they was pus coming
16 out the staples. So they had to rush me back in the
17 emergency room. When they rushed me back this time, they
18 put in retention bands, which was like a thing that
19 stretched all over -- cause my stomach opened to all the way
20 here and they put them in and I, I was sleep. So, when I
21 woke up, I was back in intensive care and I went to my room.

22 I was in intensive care for five days. I was in my
23 room and I went in June, June 20th and I got out July the
24 9th. So I was in the hospital that long as -- and then
25 before I could get home, they had to take me back to surgery

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1 cause I set up another infection and they came in and do
2 some -- tried to give me some plasma exchanges, but my body
3 wouldn't take it. So they had sent -- just leave me alone,
4 don't do to plasma exchanges because I was on too much
5 steroids, and it would just make me go down faster.

6 So, when I got home, I was there at home -- at my mom's
7 house for like two weeks. The retention bands had started
8 cutting in my stomach and everything. So I had to go back
9 in the hospital for them to take the retention bands out,
10 and the one that was way down off of my stomach right here,
11 he said he had to leave it cause it was holding my stomach
12 together. But in the process, they had to leave my stomach
13 opened.

14 So I had to have my stomach opened and it, it's just
15 really rough because, looking at my stomach everyday opened
16 like that, and -- but they said they couldn't close it. I
17 had to heal from the inside out.

18 Q You mentioned that, during this, the defendant also
19 struck you in the face.

20 A Yes, ma'am.

21 Q Have you had any damage from that?

22 A Yes, ma'am, I have a T.J -- T.M.J. splint that I have,
23 but I -- when I have it in I can't talk that good. So we
24 decided to take it out when I come up here, and I'm going in
25 for the -- to get my jaw wired in the three places that it

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1 was broke. So I'll be getting that done pretty soon.

2 SOLICITOR GILMER: Your Honor, if I may approach the
3 witness?

4 THE COURT: Yes, ma'am.

5 Q All right. Mrs. Cohen, I'm going to show you what's
6 been previously marked as State's Exhibit No. 31.

7 Do you recognize that?

8 A Yeah, that's my right-hand.

9 Q And do you know when that was taken?

10 A No, ma'am, I don't know when that was taken. It must
11 have been when I was in -- it looked like when I was in the
12 ICU.

13 Q So this would of been after June 19th---

14 A Yes, ma'am.

15 Q ---2014?

16 A Uh-huh. (Affirmative).

17 Q And is that a fair, accurate representation of your
18 hand---

19 A Yes, ma'am.

20 Q ---and after you received that medical treatment?

21 A Yes, ma'am, he told me that when he did that that it
22 was cut so deep that it had some of my nerves cut. So
23 that's why I can't feel anything in this hand.

24 SOLICITOR GILMER: Okay. Your Honor, at this time I
25 would move to enter into evidence what's been previously

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1 marked as State's Exhibit 31 and publish to the jury.

2 MR. SCHULTZ: No objection, Your Honor.

3 THE COURT: Without objection, be State's 31.

4 (WHEREUPON, State's Exhibit No. 31 was received into
5 evidence at this time.)

6 Q And you said -- which hand was that?

7 A My right-hand.

8 Q Right.

9 All right. Mrs. Cohen, I'm also gonna show you what's
10 been previously marked as State's Exhibit No. 32 and do you
11 recognize that?

12 A Yes, ma'am.

13 Q And what is that?

14 A That's my leg.

15 Q Your leg.

16 Is there anything that stands out in that picture to
17 you?

18 A Where he kicked me and stuff. There's bruises on my
19 leg.

20 Q So these are injuries that occurred on June 19th of
21 2014?

22 A Yes, ma'am.

23 Q And does this photograph accurately reflect that
24 injury?

25 A Yes, ma'am.

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1 Q All right. I'm gonna show you what's been previously
2 marked as State's Exhibit 33.

3 Do you recognize that?

4 A Yes, ma'am.

5 Q And what is that?

6 A That's where when he was trying to find my cell phone
7 and he, he was just being ugly and kicking me and hitting me
8 and all that is bruises from where he kicked me and hit me.

9 Q And does it appear from that photograph you were still
10 in the hospital?

11 A Yes, ma'am.

12 Q All right. And did these photographs fairly and
13 accurately represent your injuries---

14 A Yes, ma'am.

15 Q ---after June 19th?

16 A Uh-huh. (Affirmative).

17 SOLICITOR GILMER: Your Honor, I would ask to enter
18 into evidence what's been previously marked as State's
19 Exhibit 32 and 33.

20 MR. SCHULTZ: Can, can I see them?

21 SOLICITOR GILMER: Oh, sorry, Josh.

22 MR. SCHULTZ: No objection.

23 THE COURT: Without objection, be State's 32 and 33.

24 SOLICITOR GILMER: Thank you, Your Honor.

25 (WHEREUPON, State's Exhibit Nos. 32 and 33 were

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1 received into evidence at this time.)

2 SOLICITOR GILMER: I would ask to publish to the jury.

3 THE COURT: Yes, ma'am.

4 Q First I have State's Exhibit 32 and then State's
5 Exhibit 33.

6 Mrs. Under, I want to go back and ask you a few things
7 about that night. You said something about your phone. He
8 was trying to find your phone.

9 A Yes, ma'am.

10 Q Tell me what you mean by that.

11 A When he had stabbed me and everything and knocked me in
12 the floor, he kept saying where's your phone, where's your
13 phone, and then he got my pocketbook and he went in, he
14 start throwing stuff, and I had money in it, and I had told
15 him I didn't have any money cause I wasn't gonna -- so he
16 was like bitch, you tell the most lies. I thought you
17 didn't have no money, and he threw the money down at me and
18 he was like you a, you a, you a fucking liar. Every time I
19 turn around you doing this shit, doing that, say you ain't
20 got this, you say you ain't got this.

21 But I didn't say anything because I didn't want to get
22 hurt anymore and I was like -- you know, he's like you hear
23 me talking to you and I was like yeah, I hear you talking to
24 me. Oh, you gonna sit there and not say shit, and I, I was
25 like Chris, you know what, why don't you just, why don't we

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1 just go to the doctor cause, you know, I got to go to the
2 doctor in the morning, tell them somebody broke in and hurt
3 me like this, and he said bitch, you think I'm stupid. You
4 done done that before.

5 He said I'm not going to no hospital with you. He said
6 you ain't gonna make it to no hospital, and I was -- I just
7 shut up then I was -- cause I didn't want to get hurt
8 anymore. With all this, the stabbing and the kicking and
9 the punching and all that stuff, and then like when we were
10 laying in the bed, I didn't know what -- why I couldn't move
11 even though I wasn't gonna move cause the knife was to my
12 head.

13 But I was so scared because I didn't know why I
14 couldn't move, and I blanked out a couple of times, but I
15 stayed woke that whole night and he went to sleep with the
16 knife to my head, and I wasn't gonna move because, if I'd of
17 moved, he probably would of just stabbed me in my hand.

18 Q Where did he sleep?

19 A On, on -- oh, just -- he slept right there and I was
20 right here.

21 Q Okay. Mrs. Undra, where did you keep your phone?

22 A At the time it was in my pocketbook.

23 Q Uh-huh. (Affirmative).

24 A But I usually kept it on my dresser.

25 Q Okay. And what color was your phone at the time?

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- 1 A Black.
- 2 Q What kind of phone was it?
- 3 A Now I had another phone that had a purple cover on it
- 4 and it was a Samsung. But the black phone was brought to me
- 5 in the hospital.
- 6 Q Okay.
- 7 A I don't know what happened to the purple phone with the
- 8 purple casing on it.
- 9 Q I'm gonna show you what's previously entered as State's
- 10 22.
- 11 Whose phone is that?
- 12 A That white one?
- 13 Q Uh-huh. (Affirmative).
- 14 A That's mine.
- 15 Q I'm sorry?
- 16 A That's mines.
- 17 Q That's yours?
- 18 A Uh-huh. (Affirmative).
- 19 Q Okay. And was that the phone that was in your
- 20 pocketbook?
- 21 A No, ma'am, it was a black one in my pocketbook.
- 22 Q Okay. And where was this phone when this was
- 23 happening?
- 24 A This phone was plugged up. It was suppose, it was
- 25 suppose to be getting charged, but he took it out the wall.

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1 Q The defendant took it off the wall?

2 A Yes, ma'am, Christopher.

3 Q All right. And when did he do that?

4 A He done that when he jerked the phone, the house phone
5 out the wall, and he jerked my phone out the wall when he
6 had already stabbed me and I was in the floor.

7 Q Okay. And I'm gonna show you what's been previously
8 entered as State's 21.

9 Do you recognize this?

10 A Yes. Yes, ma'am.

11 Q And what is that?

12 A That's the shirt that he had on, that I had on, my blue
13 Tar Heels shirt.

14 Q Did you have that shirt wrapped around your hand at
15 anytime?

16 A No, ma'am, the shirt that was wrapped around my hand
17 was a white and yellow or white and orange Clemson shirt,
18 long sleeved shirt.

19 Q Okay.

20 A That's what was wrapped around my hand.

21 Q All right. And did you have two blue shirts on that
22 night?

23 A No, ma'am.

24 Q Okay. So you had this shirt on?

25 A Yes, ma'am.

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1 Q All right. I'm gonna show you what's been previously
2 entered as State's Exhibit No. 19.

3 What do you see in that photograph?

4 A That's my jewelry that I use to sell. I can't tell if
5 that's --.

6 Q And how did that come to be on the floor?

7 A He threw it -- Christopher threw it in the floor.

8 Q Okay. And at what point did he do that?

9 A He had already seen I was sitting in the floor. He
10 threw all that stuff in the floor and my money and
11 everything that was thrown in the floor.

12 Q And are those blankets at the foot of the bed?

13 A Yes, ma'am.

14 Q Were those on the bed?

15 A Yes, ma'am.

16 SOLICITOR GILMER: If I could have one moment, Your
17 Honor?

18 THE COURT: (Nods affirmatively.)

19 (Pause.)

20 Q Has the defendant sent you any letters?

21 A Yes, ma'am.

22 Q And have you responded to those letters in anyway?

23 A No, ma'am.

24 Q And, in those letters, has he made apologies for the
25 way he treated you?

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1 A No, ma'am.

2 Q And, in those letters, has he asked you to get back
3 together with him?

4 A Yes, ma'am.

5 Q Do you have any intention of doing that?

6 A No, ma'am.

7 SOLICITOR GILMER: If I could have one moment, Your
8 Honor.

9 THE COURT: (Nods affirmatively.)

10 (Pause.)

11 Q Mrs. Cohen, did you eventually see the knife that he
12 used against you that night?

13 A Yes, ma'am.

14 Q What did it look like?

15 A It was the knife out of the block. It was a -- we have
16 a little block in our kitchen that he had bought me,
17 Christopher had bought me, and it was one of those silver
18 butcher knives -- like silver knives out of that block.

19 Q And do you know what he did with it?

20 A No, ma'am.

21 Q Okay. I'm showing you what's been previously admitted
22 as State's 23.

23 Do you recognize that?

24 A Yes, ma'am.

25 Q Does that appear to be the knife that he used against

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1 you that night?

2 A Yes, ma'am.

3 Q All right. And is that one of the knives kept in the
4 knife block?

5 A Yes, ma'am.

6 Q And, at any point, do you know if he ever put it on his
7 nightstand?

8 A No, ma'am.

9 Q You don't know?

10 A No, ma'am.

11 Q Do you know if Ms. Miller-Bobo found the knife that
12 night?

13 A She found it that morning.

14 Q Or that morning. I'm sorry.

15 A Yes, ma'am, and she put it in a rag.

16 SOLICITOR GILMER: All right. Your Honor, if I could
17 have one moment?

18 THE COURT: (Nods affirmatively.)

19 (Pause.)

20 Q I'm going to show you what's been previously admitted
21 as State's 12.

22 Where was the knife block in your house?

23 A That's it right there.

24 Q Okay. And obviously you -- there's a fridge right
25 here?

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1 A Uh-huh. (Affirmative).

2 Q What's on the other side of that fridge?

3 A Which side?

4 Q Is there an opening to go out into the hallway there?

5 A No. No, ma'am.

6 Q All right. So the kitchen stops where that paint --
7 there's no doorway there?

8 A No, ma'am.

9 Q All right. And what's this white on the very side of
10 the photograph?

11 A The drawers and the stove.

12 Q Right here.

13 A The wall. The wall.

14 Q All right. Is that a pantry?

15 A Oh, yes, ma'am, that is our pantry.

16 Q How many entranceways do you have into the kitchen?

17 A One.

18 Q All right. And is that through the dining room area?

19 A Yes, ma'am.

20 SOLICITOR GILMER: Okay. Your Honor, I have no further
21 questions at this time.

22 THE COURT: Yes, sir.

23 MR. SCHULTZ: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. SCHULTZ:

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by Mr. Schultz

- 1 Q Mrs. Cohen?
- 2 A Yes, sir.
- 3 Q That's, that's what you go by---
- 4 A Yes, sir.
- 5 Q ---now?
- 6 A Yes, sir.
- 7 Q Okay. All right. And you, you were married to
- 8 Christopher a long time, right?
- 9 A Eight and a half years.
- 10 Q Eight and a half years.
- 11 Okay. Did you have any children together?
- 12 A No, I can't have kids.
- 13 Q Okay. Now, the night and I suppose the morning that
- 14 this incident happened here, was there anybody else present
- 15 in the home?
- 16 A Not to my knowledge when it happened. Like I said,
- 17 Loreena Miller was there and her two kids was there but her
- 18 two kids came in the room and said they mom was gone and
- 19 they dad was picking them up and he -- Christopher said that
- 20 his friend, Al, was coming over. But I, I can't testify to
- 21 that cause I never seen that.
- 22 Q Okay. You never saw Al at all?
- 23 A No, sir.
- 24 Q Did you have any idea that anybody in the house was
- 25 there previous to this incident?

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by Mr. Schultz

- 1 A No, sir.
- 2 Q okay. So you never saw Al or any of Chris's friends
3 that night?
- 4 A No, sir.
- 5 Q okay. So him saying that I'm bringing a bunch of
6 people over to play Playstation, was that a lie or what,
7 what was that?
- 8 A He just said Al was coming over, him and Al.
- 9 Q okay.
- 10 A He said maybe Al coming over and we gonna drink a few
11 beers and play Playstation and I said okay, will you shut
12 the door cause I don't want to hear the noise. When they
13 play Playstation they get compatible, compatible (sic) and
14 they get to fussing and stuff, but I never seen Al. So I
15 can't really say Al was in there or not.
- 16 Q who is Al?
- 17 A It's Christopher's friend, Lorenzo, Lorenzo, or
18 something like that.
- 19 Q Lorenzo?
- 20 A Lorenzo something.
- 21 Q All right. Okay. Now, your -- you had just received a
22 magnesium infusion.
- 23 Is that correct?
- 24 A Yes, sir.
- 25 Q okay. And you, you need these infusions --

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by Mr. Schultz

- 1 A Yes, sir.
- 2 Q -- right?
- 3 Okay. Is, is that because of your cancer or is that---
- 4 A No, it's I have so many illnesses and my magnesium fell
- 5 down to like a one and it was that life threatening because,
- 6 when you fall down like that, you can have a heart attack or
- 7 a stroke or something. So my nephrologist doctor ordered me
- 8 to have them every Thursday.
- 9 Q Okay. And that, that was -- I mean that was life
- 10 threatening before you actually had this incident, correct?
- 11 A Yes, sir.
- 12 Q Okay. And you, you had received the magnesium infusion
- 13 that same morning, right?
- 14 A Yes, sir.
- 15 Q Okay. Was that at Spartanburg Regional or was it at
- 16 another hospital?
- 17 A At Spartanburg Regional.
- 18 Q All right. You also received plasma treatments, right?
- 19 A Yes, sir.
- 20 Q Okay. And these are -- help to sustain your life,
- 21 right?
- 22 A Yes, sir.
- 23 Q Okay. And I'm assuming such that you also received
- 24 Insulin shots for your diabetes?
- 25 A No, sir, I'm on the pill.

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by Mr. Schultz

1 Q You're on the pill?

2 A Uh-huh. (Affirmative).

3 Q Okay. But you need these pills to maintain your
4 diabetic---

5 A No.

6 Q ---diabetic condition?

7 A Well, my family doctors put me on the diabetic pills
8 because I was borderline and now I'm Type II. But I still
9 just take one pill because of my myasthenia gravis and my
10 fibromyalgia and sciatica and breast cancer and stuff. So
11 she just took me off two and put me on one.

12 Q So you also have fibromyalgia as well?

13 A Yes, sir.

14 Q Okay. Explain to the jury what fibromyalgia is.

15 A Chronic pain. Fibromyalgia is just you hurt all the
16 time and everything, and they, they try to give you stuff to
17 help you with it, but it don't help that much because it's
18 just -- it's a chronic pain thing that you have.

19 Q So up-until this incident you were, you were going --
20 you were a seeing doctor almost -- and is it a fair
21 statement to say that you were seeing your, your doctor,
22 your primary care physician or your nephrologist on a weekly
23 basis?

24 A I was seeing all of my doctors by that -- I had a
25 doctor's appointment about everyday.

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1 Q Okay.

2 A And different doctors. So --.

3 Q All right. Now, I'm assuming you're on disability.
4 Is that correct?

5 A Yes, sir.

6 Q Okay. And you're on disability for your various
7 ailments, right?

8 A Yes, sir.

9 Q Okay. How -- and how -- I mean that's how you pay for
10 your surgeries and various medical procedures?

11 A Oh, I don't have to pay for my surgeries.

12 Q Okay. How, how do you pay for them?

13 A I have Medicaid.

14 SOLICITOR GILMER: Your Honor, I would object.
15 Relevance.

16 THE COURT: I would sustain the objection unless you
17 want to lay a foundation.

18 MR. SCHULTZ: Yes, sir.

19 Now, the appointment that you had scheduled that you
20 never said, that was for 6:30 in the morning there?

21 A I had to be there at 6:30 and the surgery was at 8:30.

22 Q And where was that again?

23 A At Spartanburg Regional.

24 Q All right. Now, backing up to the previous night
25 there, about what time approximately did you lay down on the

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1 bed?

2 A when I came back from my infusion?

3 Q Yes, ma'am.

4 A It was like about 7:30, eight o'clock because

5 Christopher, Christopher said to -- I needed to lay down

6 because I was really weak and he said baby, lay down, get

7 you some rest cause you don't look good and usually when I

8 get those infusions they take a lot of me because---

9 Q Chris was saying this, right?

10 A Yes.

11 Q Okay. All right. Go on. I'm sorry.

12 A Oh. And thought -- so I got in the bed and I laid down

13 and he turned the TV on for me and then he said baby, Al's

14 coming over and we're gonna play some Playstation and drink

15 a few beers and I said okay, and I said will you shut the

16 door cause I don't want to hear that noise, and all I can

17 tell you is I heard the doorbell, but I don't know if

18 anybody was in there or not.

19 Q Okay. So -- but you were laying down, right?

20 A Yes, sir.

21 Q Okay. All right. Okay. Now, you said a little later

22 that Chris came in and, and locked the door, right?

23 A No, he locked the door when he came in the second time.

24 Q The second time. Okay.

25 A Yes, sir.

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1 Q And what, what did he say the first time?

2 A That first time when he came in, after he had, I had
3 laid down, that's when I was in the bathroom and he came in
4 the bathroom and just, out of the blue, and said bitch, I
5 hate you.

6 Q Okay. So you -- do you have any idea what prompted
7 this at all?

8 A No, sir.

9 Q Okay. So nothing -- you're, you're saying that
10 Chris -- because your testimony here today is that
11 previously he was, he was being very, I guess for lack of a
12 better word, sympathetic to your magnesium treatment that,
13 that morning, right?

14 A Yes, sir.

15 Q Okay. And then what you're saying is he, he just
16 snapped his fingers and just turned around and he was mad or
17 angry at you?

18 A Yes, sir.

19 Q And you have no explanation why he changed like that.
20 Is that correct?

21 A To be honest with you, that's what I lived with for
22 eight and a half years.

23 Q Okay. All right. But, but on that -- so previous to
24 that you weren't arguing at all, right?

25 A We had had an argument that Sunday and I had called the

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1 police on him.

2 SOLICITOR GILMER: Your Honor, may we approach on a
3 matter of law?

4 THE COURT: All right. Y'all want to approach for a
5 moment?

6 (WHEREUPON, a bench conference was held out of the
7 hearing of the jury at this time.)

8 MR. SCHULTZ: Thank you, Your Honor.

9 SOLICITOR GILMER: Thank you, Your Honor.

10 MR. SCHULTZ: Beg the Court's patience, Your Honor.

11 THE COURT: Uh-huh. (Affirmative).

12 (Pause.)

13 Q Now, ma'am, at, at some point that night you were in
14 your bed where you usually sleep, correct?

15 A Yes, sir.

16 Q And that's near the window --

17 A Yes, sir.

18 Q -- right?

19 okay. And your testimony here today is that my client,
20 Chris, got on top of you, right?

21 A Yes, sir.

22 Q okay. And he stabbed you.

23 Is that what you're saying?

24 A Yes, sir.

25 Q okay. And looking at the bed there in the exhibits

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1 that you've seen, okay, he -- your testimony is that he
2 stabbed you on the bed.

3 Is that correct?

4 A Yes, sir.

5 MR. SCHULTZ: Okay. Again, begging the Court's
6 patience, Your Honor.

7 (Pause.)

8 Q How long were you on the bed while this was going on?

9 A I was already on the bed from when I came home, but
10 when he got on top of me and stabbed me -- he, he got on top
11 of me. He said bitch, you want a divorce, I'm gonna give
12 you one, but you're not gonna sign any papers and he said
13 you hear me. You ain't gonna talk to me and I said no. I
14 did know he had the knife at the time. So I was like get
15 off of me. No, I don't want to talk to you, and he said you
16 gonna wish you had of talked to me, and then he started
17 stabbing me and all.

18 Like I said, I put my hands up trying to keep him from
19 stabbing me, but he still stabbed me and while, while I was
20 laying there on the bed, he, he said I'm so tired of you,
21 sick of you, and I'm gonna give you a divorce. Like I told
22 you, I'm gonna give you a divorce, but you ain't gonna sign
23 no papers.

24 And he took his fist, he balled up his fist, and he hit
25 me so hard on this side of my face that I fell off the bed,

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1 hit the wall, bounced back up to the bed, and went like this
2 and blood just came pouring out of my stomach, and I said
3 Chris, Chris, and he said don't fucking Chris me, and I was
4 like oh my God and I just start praying to the Lord.
5 Without him knowing, I was just saying Lord, please send
6 somebody to find me, please Lord, please Lord. I was just
7 saying cause Chris would have killed me if that knock hadn't
8 of came on that window that morning. He would of killed me.
9 That's it.

10 Q Now, do, do you see any blood on the bed right there
11 where my fingers are there?

12 Do you see any blood?

13 A It's some blood on the bed. I can't really see what.

14 Q Let me put it to you this way.

15 Is there a large amount of blood on the bed there where
16 I'm pointing at right now?

17 A No, sir.

18 Q Referring to State's Exhibit No. 17.

19 A No, it's not a large amount of blood, no.

20 Q All right. Now, Mrs. Cohen, this incident happened
21 around what time again?

22 A It happened about ten o'clock.

23 Q All right. And your testimony here today is from, from
24 ten o'clock until about nine o'clock the next morning --

25 A 11:30.

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- 1 Q 11:30 the next morning --
- 2 A Uh-huh. (Affirmative).
- 3 Q -- is when you heard a knock on the door?
- 4 A Yes, sir, on my window.
- 5 Q On your, on your window?
- 6 A Uh-huh. (Affirmative).
- 7 Q Okay. And that was your, your friend, Ms. Bobo, right?
- 8 A Yes, sir.
- 9 Q Okay. So from that previous night till about
- 10 11:30 that morning, okay, you were alone with, with Chris,
- 11 right?
- 12 A Yes, sir.
- 13 Q Okay. And at any point did you fall asleep?
- 14 A No, sir.
- 15 Q Okay. You stayed awake that entire night?
- 16 A Yes, sir.
- 17 Q Okay. Did Chris stay awake that entire night?
- 18 A No, I think he changed into the yellow hoodie. He got
- 19 in the bed with me and laid down, and said if you not dead
- 20 by in the morning, I'm gonna stab you in your head, watch
- 21 you take your last breath, and I'm gonna walk out this door
- 22 a free man cause ain't nobody gonna know you was even here,
- 23 that he was even there.
- 24 Q All right. And so your testimony here today is that,
- 25 at some point, my client, Chris, he fell asleep, right?

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- 1 A Yes, sir.
- 2 Q Okay. And now your testimony here today, today too is
- 3 that he, I guess, tried to cut himself on his, on his neck
- 4 like this?
- 5 A Yes, sir.
- 6 Q okay. Did he start bleeding at any point?
- 7 A No, sir.
- 8 Q Okay. You also said in your, your direct testimony
- 9 that he cut himself on his thumb.
- 10 Is that correct?
- 11 A On his what?
- 12 Q On his thumb I think you said.
- 13 A Hu huh. (Negative).
- 14 I said---
- 15 Q No.
- 16 Where was it then?
- 17 A I said he did the knife like that on his stomach.
- 18 Q He did the knife like this on his stomach?
- 19 A Yeah, but he wasn't hurt.
- 20 Q He wasn't hurt.
- 21 A No, sir.
- 22 Q So your, your testimony today is that he, he wasn't
- 23 bleeding at all?
- 24 A No, sir.
- 25 Q Okay. So there shouldn't be any of his blood anywhere

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by Mr. Schultz

- 1 in the house, right?
- 2 A No, sir.
- 3 Q All right. Now, at some point, I believe a shirt was
- 4 wrapped around your hand.
- 5 Is that correct?
- 6 A Yes, sir.
- 7 Q Okay. Did you do that or did Christopher?
- 8 A Christopher done that. He said---
- 9 Q Christopher.
- 10 A ---he didn't want to look at that shit.
- 11 Q Okay. Chris did that?
- 12 A Yes, sir.
- 13 Q Okay. And what time did he do that?
- 14 A Sir?
- 15 Q What time did he wrap the t-shirt around you?
- 16 A I have no idea cause I mean it wasn't a clock in our
- 17 room for me to be looking at the time.
- 18 Q Okay. But was, was it, was it during the night or was
- 19 it during the morning?
- 20 A No, during the night.
- 21 Q During the night?
- 22 A Yes, sir.
- 23 Q Okay. And at any point did you have your cell phone
- 24 with you?
- 25 A No, sir, it wasn't -- it was in my pocketbook. If --

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by Mr. Schultz

1 one was in my pocketbook and one was on the table beside me.

2 Q Okay. Now, the, the cuts to your body happened the --
3 during the night --

4 A Yes, sir.

5 Q -- correct?

6 All right. And did he assault you at any point after
7 that?

8 A When he knocked me in the floor, yeah. He kicked me in
9 my face. He punched me in my face. He had -- he'd step on
10 my leg and then he threw me in the bed after he got through
11 with all that.

12 Q But after that, did -- were there any more assaults on
13 your person further that night?

14 A No, he just held the knife to my head.

15 Q He held a knife to your head?

16 A Uh-huh. (Affirmative).

17 Q But then he went to sleep, right?

18 A Uh-huh. (Affirmative).

19 Q So he didn't hold the knife to your head all the time,
20 right?

21 A Yes, he was asleep and the knife was here. He -- I
22 mean this is me. This is Christopher. He had the knife.
23 He was right here laying flat. I was right here laying flat
24 and he had that knife right there the whole time, and I
25 wasn't gonna be stupid and try to move or run because I

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1 didn't want to die.

2 Q All right. Do you know how long Chris fell asleep for?

3 A No, sir, he, he woke up that morning and I don't know
4 what time that morning it was or nothing. I just know that,
5 at 11:30, everybody was just piling in there at the house.

6 Q So you, you don't -- what time does Chris usually wake
7 up?

8 A Oh, he wake up at different times.

9 Q Okay.

10 A He don't have a time limit where he wake up.

11 Q All right. Did he wake up earlier that day or did he
12 wake up later?

13 A No, he woke up just as Loreena was knocking on that
14 window. He had woke up and he was getting ready to stab me
15 in my head and the knock came at the window and I said mama.
16 I thought it was my mama, but it turned out it was Loreena
17 Bobo and he jumped up and went through the house and she
18 said -- I don't like to do she said he said.

19 But she said, when he came out to the door, he had a
20 knife in his hand or a screwdriver or something like he was
21 gonna stab whoever was at that back-door. But if you peep
22 out that bedroom window, if you peep out the first bedroom
23 window, you can see whoever is out there, their cars, and
24 everything.

25 So he knew my dad probably was out there and Loreena

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- 1 cause my dad said he peeped out the window. So you can see
2 the cars when you peep out that window in the front room --
3 in the living -- bedroom.
- 4 Q All right. Thank you.
- 5 Now, was, was the knife in his hand at that point?
- 6 A He jumped up with it.
- 7 Q He jumped up?
- 8 A Yes, sir.
- 9 Q Okay. But clearly obviously he didn't stab you, right,
10 anymore?
- 11 A No, sir.
- 12 MR. SCHULTZ: Okay. Beg the Court's patience, Your
13 Honor.
- 14 (Pause.)
- 15 Q Now, ma'am, going, going back to before this incident
16 happened, actually happened, what did you have for diner
17 that night?
- 18 Do you remember?
- 19 A What I had for dinner that---
- 20 Q Yes, ma'am.
- 21 Do you remember?
- 22 A Loreena cooked. So I, I mean I can't remember what I
23 had cause she tried to fix me something cause I couldn't eat
24 after twelve o'clock that night.
- 25 Q After twelve o'clock that night?

Robert Cohen-Middleton - Cross-examination
by Mr. Schultz

1 A Uh-huh. (Affirmative).

2 Q Okay. Had Chris picked you up any food from Burger
3 King or anything?

4 A McDonald's, he -- that was when we were in the, in the
5 infusion room and he went and got us something to eat with
6 my credit card.

7 Q Okay. In the infusion room.

8 So what time was that?

9 A We got down there at 9:30. She got me ready about
10 11:00.

11 Q 9:30AM or---

12 A 9:30AM. My nurse prompt (sic) me about 11:00 and he
13 said baby, you want something to eat and I said yeah, and he
14 said well, what you want. I said it don't matter. Just,
15 you know, I don't like Hardee's and he said give me your
16 credit card. So I gave him my credit card and he came back
17 and we ate the food and I went to sleep and I looked over
18 there and he was asleep.

19 MR. SCHULTZ: All right. That's all I have at this
20 point, Your Honor.

21 THE COURT: Any redirect limited to what he went into?

22 SOLICITOR GILMER: Just one question, Your Honor.

23 REDIRECT EXAMINATION

24 BY SOLICITOR GILMER:

25 Q Mrs. Cohen, did you feel that you were gonna die that

Robert Cohen-Middleton - Redirect examination
by Solicitor Gilmer

1 night?

2 A Yes, ma'am.

3 SOLICITOR GILMER: Okay. I have no further questions,
4 Your Honor.

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

6 THE WITNESS: Okay.

7 THE COURT: Be careful.

8 Ladies and gentlemen, at this time we're gonna take a
9 short recess. I'm gonna need to remind you not to have any
10 discussions among yourselves or anything involved in the
11 case. But you may retire back to the jury deliberation
12 room. We'll get you back shortly.

13 (WHEREUPON, the following takes place outside the
14 presence of the jury.)

15 THE COURT: If you will, please keep your seat.

16 All right. We'll step down for a few minutes.

17 MR. SCHULTZ: Thank you, Your Honor.

18 (WHEREUPON, a short recess was taken at this time.)

19 THE COURT: Anything before we bring the jury back?

20 SOLICITOR GILMER: No, Your Honor.

21 MR. SCHULTZ: None from the defense.

22 THE COURT: All right. Let's bring the jury back.

23 (WHEREUPON, the following takes place within the
24 presence of the jury.)

25 THE COURT: Is the State ready to call their next

Robert Shaffer - Direct examination
by Solicitor Gilmer

1 witness?

2 SOLICITOR GILMER: Yes, Your Honor.

3 THE COURT: Yes, ma'am.

4 SOLICITOR GILMER: State calls Deputy Robert Shaffer.

5 THE COURT: Sir, just come right on up here and let the
6 Clerk of Court swear you in.

7 ROBERT SHAFFER, being first duly
8 sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY SOLICITOR GILMER:

11 Q Would you please state your name for the record?

12 A Robert Shaffer.

13 Q And how are you employed?

14 A I'm employed with Spartanburg County Sheriff's Office.

15 Q And how long have you been with the Spartanburg County
16 Sheriff's Office?

17 A Be 16 and a half years.

18 Q Sixteen and a half?

19 A And a half, yes.

20 Q And what are your present duties with the Spartanburg
21 County Sheriff's office?

22 A I'm currently assigned as a school resource officer.

23 Q And how long have you been a school resource officer?

24 A Since May of this year.

25 Q May of this year.

Robert Shaffer - Direct examination
by Solicitor Gilmer

1 And prior to that, what was your -- what were your
2 duties with the Sheriff's Office prior to you becoming a
3 school resource office?

4 A Assigned to the forensics department and ID department.

5 Q And what does the forensic department and ID department
6 do?

7 A I draw the -- process crime scene by photographing,
8 processing for prints, collecting evidence.

9 Q And how long did you have that role with the Sheriff's
10 Office?

11 A A little over about eight and a half years.

12 Q And tell us a little about your training and
13 experience, one, to become a police officer and then
14 specifically to become an officer with the forensics and ID
15 unit.

16 A First -- okay. First I went through Mercer College for
17 Acwood 20 (phonetic) for police academy and then I came down
18 here and got hired and went through the South Carolina
19 Academy and went to a couple crime scene schools, processing
20 scenes, fingerprinting, and fingerprinting identification
21 class.

22 Q And do you have to consistently keep up with training
23 to do that work?

24 A Yes. Yes, we do.

25 Q And a ballpark number, how many crime scenes would you

Robert Shaffer - Direct examination
by Solicitor Gilmer

1 say you have worked over the years?

2 Thousands, hundreds?

3 A Thousands.

4 Q And have you had the opportunity, with the Sheriff's
5 office, to work any stabbing calls, attempted murder cases,
6 things of that nature?

7 A Yes, I have.

8 Q And, back on June 20th of 2014, were you employed
9 with the Spartanburg County Sheriff's Office?

10 A Yes, I was.

11 Q And what was your role on that date with the Sheriff's
12 Office?

13 A Working for the crime scene unit.

14 Q And, on that date, were you dispatched out to
15 in Lyman?

16 A Yes, I was.

17 Q Is that residence in Spartanburg County?

18 A Yes, it is.

19 Q And how did you become involved?

20 How did you come to be called out to that scene?

21 A I was dispatched through 9-1-1.

22 Q Okay. And prior to arrival on scene, what did you
23 first do?

24 A I got information from the deputy on the scene. He had
25 the scene secured and I waited for the detectives.

Robert Shaffer - Direct examination
by Solicitor Gilmer

1 Q Is that your typical procedure?

2 A Yes, it is.

3 Q Does, does the on scene deputy give you an idea of what
4 type of investigation has started?

5 A Yes, he give me the details pertaining to the call.

6 Q And does -- is that how you know what evidence to look
7 for and things to collect?

8 A Yes, it's the starting process of it, yes.

9 Q And do you recall what time you arrived on scene that
10 day?

11 A Yeah, I got here at 11:27.

12 Q Is that in the morning?

13 A AM, in the morning.

14 Q And, on that date, prior to entering the residence, did
15 you wait for any instructions?

16 A Yes, I did. Wait for Detective Clark to bring out a
17 search warrant.

18 Q And that search warrant granted you permission to
19 search the residence and collect evidence?

20 A Yes, it did.

21 Q What do you typically do first when you go into a crime
22 scene?

23 A I talk with the responding officers and talking with
24 the detectives to see what they have from interviews and
25 first initial we do a walk around outside the residence and

Robert Shaffer - Direct examination
by Solicitor Gilmer

1 then I go in and do an initial walk through the crime scene.

2 Q Okay. And I'm going to show you a number of exhibits.

3 Okay. I'm showing you -- I'm gonna give you these as a
4 group. Showing you what's been marked as State's Exhibit
5 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, and
6 48. If you will take a look at, look at those for me
7 please.

8 A (Witness complies.)

9 Q Do you recognize these exhibits?

10 A Yes, I do.

11 Q And how do you recognize them?

12 A Those are photographs I took of the crime scene.

13 Q All right. And are -- were these photographs taken
14 upon or shortly after your arrival at ?

15 A Yes, shortly after the execution of the search warrant.

16 Q Are these photographs fair and accurate depictions of
17 the crime scene as you saw it that day?

18 A Yes, they are.

19 SOLICITOR GILMER: All right. Your Honor, at this time
20 I would move to enter into evidence what's been previously
21 marked as State's Exhibit 34 through 48.

22 MR. SCHULTZ: No objection, Your Honor.

23 THE COURT: Without objection, be State's 34 through
24 48.

25 SOLICITOR GILMER: Thank you, Your Honor.

Robert Shaffer - Direct examination
by Solicitor Gilmer

1 (WHEREUPON, State's Exhibit Nos. 34 through 48 were
2 received into evidence at this time.)

3 SOLICITOR GILMER: Ask to publish to the jury.

4 THE COURT: Yes, ma'am.

5 Q All right. Deputy Shaffer, we're gonna go through
6 these photographs. First I want you to walk us through what
7 rooms you would have first processed in the house.

8 A The first one, I was walking through the front door, I
9 went into the living room.

10 Q Okay. And did you observe anything in the living room?

11 A Yes, I did.

12 Q And---

13 A On the---

14 Q And what did you observe?

15 A I observed the living room, on the coffee table by like
16 the remote control for a gamer. There was a knife that was
17 marked Item Number 6.

18 Q All right.

19 A Kitchen knife.

20 Q And did you collect any evidence at that time?

21 A No, not at that time.. Photographed.

22 Q Photographed it.

23 And where did you go next?

24 A Then I walked into the kitchen dining room area.

25 Q Okay. And did you make photographs at that point?

Robert Shaffer - Direct examination
by Solicitor Gilmer

- 1 A Yes, I did.
- 2 Q All right. Did you notice anything in the kitchen and
3 dining room area?
- 4 A On the back-door going outside by the door handle
5 there's a blind. There appeared to be a transfer of smear
6 of blood.
- 7 Q Okay. All right. I'm showing you what's been marked
8 and admitted as State's 34.
- 9 what are we looking at in this photograph?
- 10 A That's the front door of the residence walking into the
11 front -- into the living room and that's that back kitchen
12 door I was talking about. The blind with the blood on it.
- 13 Q Okay. There's a pointer. You can just use that.
- 14 In this view, is it from the front door straight to the
15 back-door?
- 16 A Yes, it is as I was walking in.
- 17 Q What is this right here?
- 18 Can you tell?
- 19 A From my -- I believe that was medical waste from EMS.
- 20 Q Okay. You say you walked into the living room.
- 21 Do you recall where the coffee table was where you
22 found the knife?
- 23 A Right in this area here. It's not in that photograph.
- 24 Maybe right here out of view of the photo.
- 25 Q Okay. All right. Next I'm showing you State's 35 and

Robert Shaffer - Direct examination
by Solicitor Gilmer

1 you, you said that you found some, some blood evidence in
2 the dining room.

3 where was that found?

4 A In the dining room on the blood -- on the knife.

5 Q Other than the knife, did you find any blood evidence
6 on the back-door?

7 A Yes, on the back-door.. Here's that door handle right
8 about in this area here. He was showed another photograph
9 but right there was some blood transfer.

10 Q Okay. I'm showing you State's 35 and did you test that
11 for blood?

12 A Yes, I did there. I put a check and it was positive
13 for blood.

14 Q Okay. All right. Next did you go into the other two
15 bedrooms other than the master bedroom?

16 A Yes, I did.

17 Q Did you find any evidence in those rooms?

18 A One of the bedrooms had a cell phone and a box opened
19 up with like a I think AT&T SIMS card kit --

20 Q Okay.

21 A -- on the bed.

22 Q Did you determine any relevance as to that evidence?

23 A At that time I did not know.

24 Q Okay. Next did you then go into the master bedroom
25 where the victim was located?

Robert Shaffer - Direct examination
by Solicitor Gilmer

1 A Yes, I did.

2 Q All right. And what did you observe in that room?

3 A When you initially walked in there was a bed. When you
4 come in through the front door and off the side over here is
5 a TV. Between the TV and the bed there was sheets pulled
6 off. Then when you come around the bed there was like a
7 jewelry box and stuff overturned. There's a large amount of
8 blood, like a pool of blood in the carpet, and stuff on the
9 wall like transfer, and also there was a -- some clothing,
10 t-shirts, some t-shirts on the bed. There was a -- the bed
11 liner was soaked with blood.

12 Q Okay. I'm gonna show you what's been admitted as
13 State's 36.

14 What stands out in that photo?

15 A This here is like the front foot of the bed right here.
16 Here's like the, if you come in, the TV would be right about
17 here. The front -- the door coming in the room. You come
18 around. Here's the blood on the carpet between the bed and
19 the wall.

20 Q Did you find any blood on the wall?

21 A There was, there was some on the wall in this general
22 area over in here.

23 Q Okay. All right. Next I'm showing you State's 37.

24 A Like in this area right in here.

25 Q Okay. And that was blood?

Robert Shaffer - Direct examination
by Solicitor Gilmer

- 1 A Yes, ma'am.
- 2 Q All right. And then State's 38.
- 3 Is that blood?
- 4 A Yes.
- 5 Q All right. And then State's 39.
- 6 A Blood.
- 7 Q Is that a closer shot of the photo that we just saw?
- 8 A Yes, it is.
- 9 Q All right. State's 40.
- 10 A Just more blood on the carpet in front of the bed area.
- 11 Q State's 41.
- 12 A The bed right here. Here's like the little nightstand
- 13 stuff and there's a little --.
- 14 Q Is that side of the bed closest to the windows?
- 15 A Yeah, this side -- yeah, this is the -- between the
- 16 wall here and the window or the curtain and right here in
- 17 the other wall. Little carpet stains right here.
- 18 Q Were they blood stains there?
- 19 A Yeah, be about in this area here.
- 20 Q All right. And 42.
- 21 A Just a close-up of the blood.
- 22 Q Okay.
- 23 A The bed's right here and here's the lamp.
- 24 Q And that's the victim side of the bed closest to the
- 25 windows?

Robert Shaffer - Direct examination
by Solicitor Gilmer

- 1 A Yes, it is.
- 2 Q All right. And is there anything in particular that
3 stands out regarding that blood --
- 4 A No.
- 5 Q -- splatter?
- 6 And then State's 43.
- 7 A Just another close-up.
- 8 Q And State's 44.
- 9 A That's the bed, the wall. That had a little nightstand
10 with a lamp. That's that area right here where the blood
11 and some items thrown on the floor there.
- 12 Q Did you find any blood on the wall?
- 13 A In the wall over here by the curtain. Be right -- say
14 in this area about here and the blood on the wall about the
15 lampshade where it be about here and this is where the
16 victim was -- reportedly where the victim was laying.
- 17 Q Okay. And then State's 45.
- 18 A That's the bed linen. This is like looking from the
19 door going into the room. The victim would of been laying
20 right here. The blood on the wall, the large blood in the
21 carpet would be over her. Right by here would be the --
22 here's a lampshade right here and there's like blood that
23 had soaked.
- 24 Q Is that a mattress cover that was on the bed?
- 25 A Yeah, a mattress.

Robert Shaffer - Direct examination
by Solicitor Gilmer

1 Q State's 46. I, I think I'm---

2 A Just another close-up of the blood on the mattress
3 liner cover.

4 Q And then 47.

5 A I'd say this is a large blood stain here on the carpet,
6 nightstand. Just another view showing the mattress and the
7 liner.

8 Q Is there any blood on the side of the mattress liner?
9 I know it's hard to see.

10 A I don't see any on this one here.

11 Q I'm gonna -- if I could approach the witness, Your
12 Honor?

13 THE COURT: Yes, ma'am.

14 A Right in this area there was some.

15 Q Some blood?

16 A Yeah, some blood splatter.

17 Q And State's Exhibit 48.

18 A As you're coming in, there's like the sheets, the TV,
19 and pulled over, like a jewelry box and this is the bed here.

20 Q And prior to you going into the scene and processing
21 the scene on that date, had EMS already been in the house?

22 A Yes, they have.

23 Q And was the victim in the house when you were
24 processing the scene?

25 A No, the victim would be in -- process being transported

Robert Shaffer - Direct examination
by Solicitor Gilmer

1 out of the area.

2 Q And was there anyone else in the residence with you
3 other than law enforcement?

4 A No.

5 Q When there is blood evidence, as in this case, do you
6 typically collect the DNA sample from the suspect and the
7 victim?

8 A Yes, we do.

9 Q Okay. Were samples collected from the victim,
10 Mrs. Undra Cohen-Middleton, by you?

11 A Yes.

12 Q And did you also collect a sample from the defendant?

13 A Yes, we did.

14 Q And when was that taken from the defendant?

15 A It would of been June 22nd, 2014, at 12:59PM.

16 SOLICITOR GILMER: Okay. And, Your Honor, if I may
17 approach the witness?

18 THE COURT: Yes, ma'am.

19 Q Deputy Shaffer, I'm going to show you what's been
20 previously marked as State's Exhibit 49.

21 Do you recognize that?

22 A Yes, I do.

23 Q And how do you recognize that?

24 A My writing on there. My initials on the seal.

25 Q And what do you recognize that to be?

Robert Shaffer - Direct examination
by Solicitor Gilmer

1 A It's on the -- 15 is my Buccal swab of the victim.

2 Q Okay. And I'm going to show you State's Exhibit 50.

3 Do you recognize that?

4 A Yes, I do.

5 Q And when you collect those swabs from an individual,
6 what is your procedure?

7 A At that time I do get permission from everybody.
8 Asking if they have any questions. We take two sterile
9 cotton swabs, Q-tips. We've got a sterile little box. We
10 open the box. We have to open it up and swab the side of
11 their cheeks for Buccal cells and we immediately put them in
12 a, in the box and I put them in another envelope and I
13 immediately put them in this envelope and seal them up in
14 there so that they don't get cross-contaminated.

15 Q Okay. And you said you took the defendants on
16 June 22nd.

17 When did you take the victim's Buccal swab?

18 A The victim was on the -- June 21st of 2014 at 11:47.

19 Q Okay.

20 A Let me confirm that. I have 11:48 here. One minute.

21 Q And when you took the swab from her, what would you
22 immediately have done?

23 A As I said, I would of put it in the box, put in it
24 another envelope, put it in the envelope, seal it, and I
25 immediately take it to the Sheriff's Office and place it

Robert Shaffer - Direct examination
by Solicitor Gilmer

- 1 into evidence or secure it in our evidence room.
- 2 Q And the evidence room, is that a locked room?
- 3 A Yes, it is locked and it's limited.
- 4 Q What are the procedures for the evidence room to make
- 5 sure they're -- there's no tampering, contamination?
- 6 A For the evidence room at the Sheriff's Office?
- 7 Q Uh-huh. (Affirmative).
- 8 A We have -- we turn them in and hand them to the
- 9 custodian and they sign.
- 10 Q And that is a room -- is that room accessible to other
- 11 law enforcement officers without oversight by the evidence
- 12 custodian?
- 13 A No, I know it's controlled by them and there's a
- 14 procedure and you probably need -- I know we, we just can't
- 15 get in there, no. It's secured.
- 16 Q Okay. And did you follow the same procedure when you
- 17 took the swab from the defendant?
- 18 A Yes, I did.
- 19 Q Is there anything about either of those packages that
- 20 appear that anything's been tampered with?
- 21 A Aside where SLED did their thing by which is protocol.
- 22 Q SLED.
- 23 What is SLED?
- 24 A State Law Enforcement Division.
- 25 Q And would those pieces of evidence have been sent down

Robert Shaffer - Direct examination
by Solicitor Gilmer

1 to SLED for testing?

2 A Yes.

3 Q Okay. And as far you know, was that done in this case?

4 A Yes.

5 SOLICITOR GILMER: Your Honor, at this time I would
6 move to enter into evidence what's been previously marked as
7 State's Exhibit 49 and 50.

8 MR. SCHULTZ: No objection, Your Honor.

9 THE COURT: All right. Without objection, be State's
10 49 and 50.

11 SOLICITOR GILMER: Thank you.

12 (WHEREUPON, State's Exhibit Nos. 49 and 50 were
13 received into evidence at this time.)

14 SOLICITOR GILMER: Your Honor, if I could beg the
15 Court's indulgence.

16 (Pause.)

17 Q Deputy Shaffer, did you collect physical evidence in
18 this case?

19 A Yes, I did.

20 Q Okay. Okay. All right. I'm showing you what's been
21 marked as State's Exhibit 60.

22 Do you recognize that?

23 A Yes, I do.

24 Q And how do you recognize that?

25 A That's my handwriting and initials on the back.

Robert Shaffer - Direct examination
by Solicitor Gilmer

1 Q All right. And when you collect a piece of evidence,
2 how do you package it?

3 A Like in these case, everything is individually wrapped
4 and you wear gloves. You make sure nothing's
5 cross-contaminated and then you put them in an opened,
6 unused bag.

7 Q And how do you turn those into evidence?

8 A Went ahead and seal them and immediately take them in
9 the custodian room and give it to them.

10 Q All right. Let me see the other side.

11 All right. I'm showing you what's been marked as
12 State's Exhibits 62.

13 Do you recognize that from the packaging?

14 A Yes, I do.

15 Q And what do you recognize that to be?

16 A It's the mattress liner.

17 Q Okay. And was that the mattress liner that we saw in
18 the photographs?

19 A Yes, it is.

20 Q All right. I'm gonna show you what's previously marked
21 as State's Exhibit 58.

22 Do you recognize that?

23 A Yes, I do.

24 Q Okay. And how do you recognize that?

25 A It's my writing and my initials.

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by Solicitor Gilmer

- 1 Q Okay. State's Exhibit 61.
2 Do you recognize this -- that?
3 A Yes, I do.
4 Q Okay. And how do you recognize it?
5 A It's my handwriting.
6 Q All right. And State's Exhibit 57, how do you
7 recognize that?
8 A Yes, I do.
9 Q And how do you recognize that?
10 A By my writing on it.
11 Q Okay. All right. Deputy, here's some gloves.
12 Okay. First we're gonna start with 61. I want to take
13 a look at that.
14 Okay. You can open it.
15 A (Witness complies.)
16 Q Without taking it out, is there any reason why you
17 would believe that would not be in the same or substantially
18 the same condition as to when you collected it that day on
19 June 20th?
20 A Yes, it is.
21 Q It's the same condition.
22 Okay. Same for 57?
23 A Go ahead and open it?
24 Q Yes.
25 A It's in another bag.

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by Solicitor Gilmer

- 1 Can I open that or just --?
- 2 Q Uh-huh. (Affirmative).
- 3 You can open that too.
- 4 A Take my coat off.
- 5 Q Yeah, that's fine.
- 6 A Yeah.
- 7 Q Any reason to believe that that is not in the same or
- 8 substantially the same conditions as when you collected it
- 9 on June 20th?
- 10 A No.
- 11 Q All right. Same questions for 58. You may open it.
- 12 A Uh-huh. (Affirmative).
- 13 Q Any reason to believe that that is not in the same or
- 14 substantially same condition as when you collected it?
- 15 A No.
- 16 Q No. 60, any reason to believe it's not in the same or
- 17 substantially same condition?
- 18 A No.
- 19 Q Okay. And, finally, No. 62, any reason to believe it
- 20 is not in the same or substantially same condition as when
- 21 you collected it?
- 22 A No.
- 23 Q And all these are items that were collected by you as
- 24 part of your investigation?
- 25 A Yes.

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by Solicitor Gilmer

1 SOLICITOR GILMER: All right. Your Honor, at this time
2 I would move to enter into evidence what's been previously
3 marked as State's Exhibit 60, 58, 57, 61, and 62.

4 MR. SCHULTZ: No objection, Your Honor.

5 THE COURT: Without objection.

6 Let me see if I've got these numbers right.

7 That will be State's 60?

8 SOLICITOR GILMER: Yes, sir.

9 THE COURT: 58, 57, 61, and 62.

10 SOLICITOR GILMER: Yes, Your Honor. That's correct.

11 THE COURT: All right. Thank you.

12 (WHEREUPON, State's Exhibit Nos. 57, 58, and 60 through
13 62 were received into evidence at this time.)

14 Q And I'm not gonna have you pull all of these out, but
15 if you could just tell us what the item is and where it was
16 located.

17 A This is my Item No. 13 will be the blue and green
18 pillow from the bed.

19 THE COURT: What item was that?

20 THE WITNESS: It'd be my Item 13, State's Exhibit 61.

21 THE COURT: All right. If you would, use that number
22 for us.

23 THE WITNESS: Sixty-one. Okay. Sorry, Your Honor.

24 Q All right. I'm showing you No. -- State's Exhibit 60.

25 A It will be a tan pillow from the bed.

Robert Shaffer - Direct examination
by Solicitor Gilmer

1 Q Okay. State's Exhibit 58.

2 A It's a Delta Pro weight shirt.

3 Q Okay. State's Exhibit 57.

4 A Pro Edge 2XL Clemson shirt.

5 Q Okay. And State's Exhibit 62.

6 A Mattress liner.

7 Q Okay. All right. Deputy Shaffer, did you collect the
8 knife on the coffee table?

9 A Yes, I did.

10 Q All right. I'm showing you what's been previously
11 marked as State's Exhibit 55.

12 Do you recognize that?

13 A Yes, I do.

14 Q And how do you recognize that?

15 A My writing.

16 Q Okay. And, if you will, go ahead and open that box.

17 A It's okay if I pull a knife out?

18 SOLICITOR GILMER: Your Honor, he brought his own knife
19 to open the evidence. I've given Court security a heads-up
20 about it, Your Honor.

21 THE COURT: All right.

22 THE WITNESS: Is it---

23 THE COURT: Go ahead, yes, sir.

24 Q Okay. And without taking it out of the box, does it
25 appear to be in the same or substantially the same

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by Solicitor Gilmer

1 conditions?

2 If you need to take the wrapper out, you can take that
3 part of it out.

4 A Can I have a glove?

5 Q Does it appear to be in the same or substantially the
6 same condition?

7 A Yes, it does.

8 Q All right. And, to your knowledge, was some of this
9 evidence sent down, to include the knife, sent down to SLED,
10 for testing?

11 A Yeah, I know detectives, detectives sent stuff down.

12 Q Okay. And you said the knife was in the same or
13 substantially the same condition and this is the knife that
14 you collected from the coffee table?

15 A Yes, it is.

16 SOLICITOR GILMER: Your Honor, at this time I would
17 move to enter into evidence what's been marked as State's
18 Exhibit 55.

19 MR. SCHULTZ: That's, that's the box, correct?

20 SOLICITOR GILMER: The -- well, the contents of the
21 box.

22 MR. SCHULTZ: All right. No objection, Your Honor.

23 THE COURT: Without objection, be State's 55.

24 SOLICITOR GILMER: Thank you, Your Honor.

25 (WHEREUPON, State's Exhibit No. 55 was received into

Robert Shaffer - Direct examination
by Solicitor Gilmer

1 evidence at this time.)

2 SOLICITOR GILMER: Your Honor, I'd ask to publish to
3 the jury.

4 THE COURT: All right.

5 Q Okay. And that's the knife that you collected from the
6 coffee table at ?

7 A Yes, I did.

8 Q Thank you. Thank you.

9 Deputy Shaffer, were you later called out to
10 in Greer in Spartanburg County?

11 A Yes, I was.

12 Q All right. And did you have an opportunity to collect
13 a knife at that location?

14 A Yes, I did.

15 Q All right. And do you know who lived at the residence
16 there?

17 A I don't recall.

18 Q Okay. And where was this knife located?

19 A It was up there in the front seat of the Mercedes Benz
20 that was behind the residence.

21 Q Okay.

22 A Kind of out in the yard.

23 Q All right. And I'm gonna show you what's been marked
24 as State's Exhibit 56.

25 Have you, have you opened it?

Robert Shaffer - Direct examination
by Solicitor Gilmer

1 A No.

2 Q You've looked inside it?

3 If you will go ahead and open that.

4 A (Witness complies.)

5 Can I get another pair?

6 Q Yeah.

7 A (Witness complies.)

8 Q Okay. Is that in the same or substantially the same
9 condition as when you collected it?

10 A Yes, it is.

11 SOLICITOR GILMER: All right. Your Honor, if I could
12 have one moment?

13 (Pause.)

14 Q Deputy Shaffer, I'm showing you what's been marked as
15 State's Exhibit 51, 52, 53, and 54.

16 Do you recognize those?

17 A Yes, I do.

18 Q How do you recognize those?

19 A Those are photographs I took of the address in Greer.

20 Q Okay. And is that the knife you collected?

21 A Yes, it is.

22 Q All right. And those photographs were taken by you.

23 Do they fairly and accurately, accurately represent or
24 depict what you saw that day when collecting this knife?

25 A Yes, I did.

Robert Shaffer - Direct examination
by Solicitor Gilmer

1 SOLICITOR GILMER: Your Honor, at this time I would
2 move to enter into evidence what's been previously marked as
3 State's Exhibit 56, 51, 52, 53, and 54.

4 MR. SCHULTZ: No objection, Your Honor.

5 THE COURT: Without objection, be State's 51, 52, 53,
6 54, and 56.

7 SOLICITOR GILMER: Thank you, Your Honor.

8 (WHEREUPON, State's Exhibit Nos. 51 through 54 and 56
9 were received into evidence at this time.)

10 SOLICITOR GILMER: Your Honor, at this time I would ask
11 to publish to the jury.

12 THE COURT: All right.

13 Q Deputy Shaffer, I'm showing you what's been marked as
14 State's Exhibit 51.

15 Is that the residence where the knife was located?

16 A Yes, it is.

17 Q And what do we see in that photograph?

18 A It's like the back side yard and right here is the
19 Mercedes Benz where the knife was located at.

20 Q Okay. Is it that, that second car behind the red
21 truck?

22 A Yes, the black Mercedes with that little mattress.

23 Q And what's the significance, significance of that
24 mattress?

25 A I know when officers responded there he moved that. He

Robert Shaffer - Direct examination
by Solicitor Gilmer

1 observed and located the knife the first time.

2 Q And was the knife inside the car or outside the car?

3 A It was inside the car.

4 Q So the mattress was inside the car as well?

5 A Oh, I believe it was out. He said he had to move it
6 and looked inside the vehicle. When he looked in, that's
7 when he saw the knife.

8 Q All right. And that picture, what do you see in that
9 photograph?

10 A Here's -- the first seat right here is the driver's
11 seat and over there's the passenger seat and the passenger
12 seat where the back seat and the seating part there in the
13 corner you see the, the, you know, the -- right there's the
14 knife.

15 Q Okay.

16 A Steering wheel.

17 Q All right. And 54.

18 A Just a close-up of the blade.

19 Q And as to State's Exhibit 56, if you could publish that
20 to the jury please.

21 A (Witness complies.)

22 Q Thank you.

23 If I could have one moment, Your Honor.

24 THE COURT: (Nods affirmatively.)

25 (Pause.)

Robert Shaffer - Cross-examination
by Mr. Schultz

1 SOLICITOR GILMER: I have no further questions at this
2 time.

3 CROSS-EXAMINATION

4 BY MR. SCHULTZ:

5 Q Detective Shaffer?

6 A Yes, sir.

7 Q How are you today?

8 A Pretty good.

9 Q Good.

10 Now, you, you responded to this, this incident there
11 last June.

12 Is that, that correct?

13 A Yes.

14 Q All right. Other than responding to the incident and
15 collecting evidence, did you have any further involvement in
16 this case?

17 A No.

18 Q All right. But you were the principal officer to
19 collect the evidence, correct?

20 A On the crime scene, yeah, and the other scene.

21 Q On the crime scene and the other scene.

22 Okay. All right. And your initial, what you put in
23 your report at least initially is that the suspect stabbed
24 the victim numerous times.

25 Is that correct?

Robert Shaffer - Cross-examination
by Mr. Schultz

- 1 A Yeah, just through dispatches---
- 2 Q All right.
- 3 A And through synopsis.
- 4 Q All right. Very good.
- 5 Did you visit the victim in the hospital at all?
- 6 A No, I did not.
- 7 Q Okay.
- 8 A Except that one time when I did the Buccal swab---
- 9 Q All right.
- 10 A ---like the next day.
- 11 Q And explain what a Buccal swab is.
- 12 A It's like a little cotton swab. They go in there and
- 13 do Buccal swabs or Buccal cells for SLED. It goes through
- 14 the process of developing a DNA profile.
- 15 Q Did you also do a Buccal swab on Chris?
- 16 A Yes, I did.
- 17 Q All right. And did you photograph Chris at all?
- 18 A Yes, I did.
- 19 Q Okay. Did you notice anything particularly interesting
- 20 about Chris that day?
- 21 A I know he had some injuries. He had a -- lacerations
- 22 and puncture wounds.
- 23 Q Lacerations and puncture wounds?
- 24 A Yeah.
- 25 Q Okay. And that was the same day that this allegedly --

Robert Shaffer - Cross-examination
by Mr. Schultz

1 the incident happened.

2 Is that correct?

3 A No, I took my photographs. It was on the 22nd,
4 June 22nd, and it was approximately -- I collected Buccal
5 swabs at 12:59. I took the photographs shortly after that.
6 So sometime about one o'clock, 1:00, 1:15, I took the
7 photos.

8 Q Okay. Well, my question is what -- was it -- the
9 incident happened -- when did the incident happen --

10 A It happened on the---

11 Q ---according to your notes?

12 A Yeah, it happened on the 20th. So two days -- about
13 two days earlier. Two days went by.

14 Q Two days earlier or two days later?

15 A No, two days after the incident. I'm sorry.

16 Q Two days after.

17 Okay. And that's when you photographed my client,
18 right?

19 A Yes, and did the Buccal swabs.

20 Q Okay. And you noticed lacerations and, and puncture
21 wounds or puncture wound?

22 A I believe there was three puncture type injuries to the
23 abdomen.

24 Q Three.

25 All right. Okay. So it would be your -- assuming that

Robert Shaffer - Cross-examination
by Mr. Schultz

1 that's true, there, there was a struggle?

2 SOLICITOR GILMER: Objection, Your Honor.

3 THE COURT: I'd have to -- you want to rephrase the
4 question. I'd have to sustain it the way it's asked.

5 MR. SCHULTZ: I'll lay a foundation, Your Honor.

6 Q Okay. You collected all the evidence in this, in the
7 house and also at the other scene, right?

8 A Yeah, they're on , yes.

9 Q Okay. And the first scene was on what road?

10 A It was on in Lyman.

11 Q Okay. Now, when you're talking about blood when you
12 testified in your direct testimony and also now, you have no
13 idea whose blood that is, right?

14 A No.

15 Q Okay. And that's why you submit it to DNA expert to
16 analyze it, right?

17 A Yes, that's why.

18 Q Okay. Now, the most blood was found in the bedroom,
19 correct?

20 A Correct.

21 Q All right. And those are accurately -- that's
22 accurately reflected in the, in the pictures, right?

23 A Yes, they are.

24 Q Okay. Okay. Now, you also collected the Farberware
25 kitchen knife, right?

Robert Shaffer - Cross-examination
by Mr. Schultz

- 1 A Yes, sir.
- 2 Q And that's been previously marked as State's Exhibit,
3 correct?
- 4 A Yeah, two of them. Collected two of those knives.
- 5 Q Two of those knives?
- 6 A Yeah.
- 7 Q Okay. Were they both tested for blood?
- 8 A I know the one at the scene was. The other one had
9 nothing obvious. I went ahead and packaged it and waited
10 for SLED to do further analysis if the detectives wanted
11 that.
- 12 Q Okay. So that, that item that was entered into
13 evidence was tested, correct, or no?
- 14 A Which one are you talking about?
- 15 We have two knives. I mean---
- 16 Q The, the first one that was entered into evidence by
17 Ms. Gilmer.
- 18 A The first one from the crime scene?
- 19 Q Yes, sir.
- 20 A From Lilly.
- 21 I'm assuming it went down. I did not take care of the
22 SLED lab. I can't --.
- 23 Q Okay. You, you can't testify to that?
- 24 A I can't testify to what was sent down, no.
- 25 Q All right. Now, you also know there was a red

Robert Shaffer - Cross-examination
by Mr. Schultz

1 substance on the interior blind, correct?

2 A Yes.

3 Q Okay. Do you know if that was tested?

4 A I don't know. I tested it on the scene if that's
5 what -- for blood. But beyond whose blood it is, I couldn't
6 tell you.

7 Q Right.

8 But you -- how, how did you test it there?

9 A It was a -- called a quick, called a quick check. It's
10 just tests positive or negative for blood.

11 Q Okay.

12 A That's all. It just tells you it's blood.

13 Q All right. And there was also a blue iPhone on the bed
14 with the AT&T SIM kit --

15 A Yes.

16 Q -- according to your report there?

17 A Yes.

18 Q Okay. Did you test that for blood?

19 A No.

20 Q Okay. Did you do a swab on that?

21 A No, I just collected the stuff just in case detective
22 request something at an earlier date. We have it.

23 Q Okay. There was a large reddish stain on the carpet
24 between the bed and the wall there that's been tested,
25 right?

Robert Shaffer - Cross-examination
by Mr. Schultz

- 1 A Yeah. Yes.
- 2 Q All right. Did you test that for blood?
- 3 A Yes, I did.
- 4 Q What did it come up with?
- 5 A Positive for blood.
- 6 Q Positive for blood.
- 7 Okay. Now, you investigated, in the however many years
- 8 that you've been working for the county, you've investigated
- 9 several crime scenes, correct?
- 10 A Correct.
- 11 Q Okay. And, in your experience, what does blood
- 12 splatter indicate?
- 13 A It's transferred. Moving around. Motion.
- 14 Q All right. Can you elaborate on that?
- 15 A Yeah, show -- I can try a little bit with some pictures
- 16 but I can't just -- I mean just motion of stuff and
- 17 touching, moving.
- 18 Q Touching, moving between what?
- 19 A Yeah, I mean transfer. You know, I mean -- that's kind
- 20 of -- I can't -- I don't really know what you're looking for
- 21 in that question you're asking me.
- 22 Q Okay. No, I'm, I'm just looking for you to, to explain
- 23 what transfer means in your words.
- 24 A Oh, transfer, just touching. Rolling up against
- 25 something, that's a transfer in spite of something just cast

Robert Shaffer - Cross-examination
by Mr. Schultz

1 off, you know, like shake a wet hand, that's not enough.

2 Q okay. All right. Now, you, you got a search warrant
3 that was executed.

4 Did you execute the search warrant?

5 A I executed it, yes.

6 Q okay. And the search warrant was done that day or the,
7 the next day?

8 A It was done that day.

9 Q All right. Did you execute the search warrant with
10 anybody else?

11 A I mean the detectives were there.

12 Q Yes, sir.

13 okay. So there, there were other people, right?

14 A Yeah, detectives.

15 Q okay. And you did most of the photography that day,
16 right?

17 A Yeah, on the scene, yes.

18 Q okay. Was there anybody there, besides the officers
19 there, when you did the, the search warrants --

20 A No.

21 Q -- when you executed the search warrants?

22 A The house was secured and crime scene log was done.

23 Q okay. And, again, you can't determine if all that
24 blood is from one person or from two people, right?

25 A I can't, no.

Robert Shaffer - Cross-examination
by Mr. Schultz

1 Q Right.

2 Okay. That's all I have, Your Honor. Thank you.

3 THE COURT: Any redirect limited to what he went into?

4 SOLICITOR GILMER: Yes, Your Honor.

5 REDIRECT EXAMINATION

6 BY SOLICITOR GILMER:

7 Q Deputy Shaffer, with blood spatter, you said that can
8 be caused from movement.

9 would that consist of someone stabbing someone with a
10 knife?

11 A Yes, it could.

12 Q Now---

13 A Just that can.

14 Q I'm sorry.

15 Could that result in blood spatter?

16 A Yes.

17 Q And could blood spatter also be caused by someone
18 moving from one position to another?

19 A Yes, it could.

20 Q So if someone was pushed or hit off of a bed, could
21 that have caused blood spatter to the wall we saw in these
22 photos?

23 A It could.

24 Q Mr. Schultz brought up a blue Iphone that was found in
25 one of the other bedrooms. Before I believe I asked you

Robert Shaffer - Redirect examination
by Solicitor Gilmer

1 about that and you said you didn't determine there was any
2 significance of that phone.

3 Are you aware if someone else had lived in one of the
4 bedrooms?

5 A That I can't -- I can not recall if somebody did or
6 not.

7 Q Is it fair to say that, when you're collecting
8 evidence, you collect what you think, at that time, might be
9 deemed relevant, but it may not later be?

10 A Yeah, because the scene, the house was very neat, tidy,
11 and it was just out of place for the situation and it just
12 --.

13 Q On that date, when you investigated this crime scene,
14 did you find that the blood in the bedroom was concentrated
15 to one area?

16 A Yeah, a lot of it was pretty much on the carpet down
17 there. Some up there in that one place on that liner up in
18 that area and the -- but the majority of it was on the
19 carpet between the bed and the wall.

20 Q And that was on the right side of the bed?

21 A Yes.

22 Q Closest to the wall?

23 A Yes.

24 Q Prior to becoming a law enforcement officer, did you
25 have any training with EMS?

Robert Shaffer - Redirect examination
by Solicitor Gilmer

1 A Yes, I did.

2 Q And how long were you with EMS?

3 A Approximately five years as a paramedic in
4 Pennsylvania.

5 Q And you were called in to take some photographs of the
6 residence and the knife and also you collected a Buccal swab
7 from the defendant.

8 Did anything of these, these, these injuries that
9 Mr. Schultz asked you about, did they appear to be
10 superficial?

11 A The stabbing kind of did. It's like it was older and
12 the laceration appeared to be something kind of fresh.
13 Nothing a couple days. There really was no healing going on
14 from what I seen. It appears to be something---

15 Q And that was on June 22nd.

16 A Yes, June 22nd. Approximately two days after the
17 incident happened.

18 Q Were those injuries possibly consistent with a
19 self-inflicted wound?

20 A The wrist, yes, my opinion.

21 SOLICITOR GILMER: I have no further questions at this
22 time, Your Honor.

23 MR. SCHULTZ: A couple more, Your Honor.

24 THE COURT: Keep it limited to what she went into.

25 MR. SCHULTZ: Yes, sir.

Robert Shaffer - Recross examination
by Mr. Schultz

1 RECROSS EXAMINATION

2 BY MR. SCHULTZ:

3 Q You said in your redirect that there was blood on the
4 wall, correct?

5 A Yes, there was.

6 Q Okay. And Ms. Gilmer asked you if the splatters on the
7 wall are consistent with somebody stabbing, right?

8 A Yeah.

9 Q Okay. And Ms. Gilmer also asked you if they're
10 consistent with somebody rolling over from the bed to the
11 floor, right?~

12 A Yeah.

13 Q Okay. Could they also be consistent with a struggle?

14 A Yeah, I mean there's not enough splatter that really
15 made a determination. We had blood on the wall. One little
16 droplet, it's kind of hard to make a, you know, a -- just on
17 that one call -- amount of blood I don't -- it's quite
18 difficult.

19 Q Well, you don't know?

20 A Yeah, I couldn't tell with this.

21 Q All right. Now, you said, and please correct me if I'm
22 wrong here, the stab wounds that you noticed on my, my
23 client, I believe, looked a couple days old.

24 Is that correct?

25 A Yeah, they looked -- there's some healing going on.

Robert Shaffer - Recross examination
by Mr. Schultz

1 scabbing.

2 Q Scabbing, a couple days old?

3 A Yeah, it looked like -- you see it on the edges of
4 them.

5 Q Okay. And you took the photographs of my client the
6 day after this incident occurred?

7 A No, approximately two days.

8 Q Two days?

9 A On the 22nd about one o'clock.

10 MR. SCHULTZ: All right. That's all I have, Your
11 Honor.

12 SOLICITOR GILMER: Nothing further, Your Honor.

13 THE COURT: All right. Thank you, sir. You may step
14 down.

15 The lawyers approach a moment.

16 (WHEREUPON, a bench conference was held out of the
17 hearing of the jury at this time.)

18 MR. SCHULTZ: Thank you, Your Honor.

19 THE COURT: All right. Ladies and gentlemen, I'm gonna
20 need you to take a short recess. Again, do not have any
21 discussions among yourselves about anything involving the
22 case. We'll get you back just shortly. Please retire to
23 the jury deliberation room.

24 (WHEREUPON, the following takes place outside the
25 presence of the jury.)

1 THE COURT: All right. We'll step down for a second.

2 MR. SCHULTZ: Thank you, Your Honor.

3 SOLICITOR GILMER: Thank you, Your Honor.

4 (WHEREUPON, a short recess was taken at this time.)

5 THE COURT: Okay. Anything before we bring the jury
6 back?

7 SOLICITOR GILMER: No, Your Honor.

8 MR. SCHULTZ: Not from the defense, Your Honor.

9 THE COURT: Let's bring them back.

10 (WHEREUPON, the following takes place within the
11 presence of the jury.)

12 THE COURT: State ready to call their next witness?

13 SOLICITOR GILMER: Yes, Your Honor.

14 Your Honor, the State calls Deputy Robert Taylor.

15 THE COURT: Sir, just come right up here and let the
16 Clerk of Court swear you in.

17 ROBERT TAYLOR, being first duly
18 sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY SOLICITOR GILMER:

21 Q Please state your name for the record.

22 A Deputy Robert Taylor.

23 Q How are you employed?

24 A Through the Spartanburg County Sheriff's Office K-9.

25 Q And -- I'm sorry. What---

Robert Taylor - Direct examination
by Solicitor Gilmer

- 1 A Spartanburg County Sheriff's Office K-9 unit.
- 2 Q And how long have you been employed with the
- 3 Spartanburg County Sheriff's Office?
- 4 A Five years.
- 5 Q And how long have you been on the K-9 team or K-9 unit?
- 6 A About four to five years.
- 7 Q And did you become involved in a case on -- that
- 8 occurred on June 19th of 2014 at in
- 9 Spartanburg County?
- 10 A Yes, ma'am.
- 11 Q All right. And what was your involvement in that case?
- 12 A To assist another handler on a K-9 track. Be a support
- 13 unit.
- 14 Q And are other deputies typically brought in to be
- 15 support units on K-9 tracks?
- 16 A Yes.
- 17 Q And during that K-9 track, did you locate any evidence
- 18 in the case?
- 19 A Yes.
- 20 Q And what did you locate?
- 21 A A yellow sweatshirt or shirt, long sleeve shirt.
- 22 Q And where was that located?
- 23 A It was on the ground in the wood line behind the house.
- 24 Q And did you collect that yellow sweatshirt?
- 25 A I did.

Robert Taylor - Direct examination
by Solicitor Gilmer

1 Q All right. And what did you do with it once you
2 collected it?

3 A I collected it and met CSI Investigator Tony Knighton
4 at 129 and 29 at the Spinx Station and turned it over to him
5 to be processed at the Sheriff's Office.

6 SOLICITOR GILMER: Okay. Your Honor, if I may approach
7 the witness?

8 THE COURT: Yes, ma'am.

9 Q Deputy Taylor, I'm going to show you what's been
10 previously marked as State's Exhibit 63 and 64.

11 Do you recognize these?

12 A Yes.

13 Q And how do you recognize those?

14 A This is a thick vegetation area where the shirt was
15 located where the dog initially went in and, and then this
16 is a picture of the shirt that's found.

17 Q And, around that shirt, was there any evidence that
18 someone had been in that area recently?

19 A Yes, the vegetation in the area was pushed down at a
20 direction away from the house indicating that somebody had
21 been through that direction.

22 Q And you said this was the wood line.

23 was that directly behind ?

24 A Yes.

25 Q Okay. And when was this shirt recovered?

Robert Taylor - Direct examination
by Solicitor Gilmer

1 Do you recall?

2 A The same day, that evening. I don't know the time.

3 Q Okay. And did you take that first photograph?

4 A I did.

5 SOLICITOR GILMER: All right. Your Honor, at this time
6 I would move to enter, to enter into evidence what's been
7 previously marked as State's Exhibit 63 and 64.

8 MR. SCHULTZ: No objection, Your Honor.

9 THE COURT: Without objection, be State's 63 and 64.

10 SOLICITOR GILMER: Thank you, Your Honor.

11 (WHEREUPON, State's Exhibit Nos. 63 and 64 were
12 received into evidence at this time.)

13 THE COURT: I would ask to publish to the jury.

14 MR. SCHULTZ: Yes, ma'am.

15 Q And do you see the yellow sweatshirt in that
16 photograph?

17 A Yes, ma'am.

18 Q And where -- there's -- here's a pointer right here
19 beside you, Deputy Taylor.

20 Where is that?

21 A It's right here.

22 Q Okay.

23 A The direction of the push would be this way into the
24 thick vegetation that's here almost like a tunnel and then
25 everything was laid down this way and the yellow shirt

Robert Taylor - Direct examination
by Solicitor Gilmer

1 there.

2 Q okay. And is that the yellow sweatshirt you recovered?

3 A Yes, ma'am.

4 Q And when you recovered this item, was it specifically
5 during a K-9 track to find the defendant?

6 A Yes.

7 Q Was that all of your involvement in this case, Deputy
8 Taylor?

9 A Yes, ma'am.

10 Q Thank you. I have no further questions. Please answer
11 anything that Mr. Schultz may have.

12 CROSS-EXAMINATION

13 BY MR. SCHULTZ:

14 Q Officer, this was taken in the -- this photograph was
15 taken by yourself, correct?

16 A Yes, sir.

17 Q All right. And this was taken in the woods outside of
18 the house where the incident---

19 A Yes, sir.

20 Q ---happened?

21 A Yes, sir.

22 Q Okay. And, again, describe what that yellow thing is
23 there.

24 A That yellow thing is the yellow sweatshirt pictured in
25 the second picture.

Robert Taylor - Cross-examination
by Mr. Schultz

- 1 Q Okay. And I'm assuming you're shining, you're shining
2 your flashlight or is that the thing---
- 3 A Yes, sir.
- 4 Q ---the flash of the camera there?
- 5 A It's a flashlight.
- 6 Q Flashlight?
- 7 A Yeah.
- 8 Q Okay. All right. Is there anything else to focus on
9 in this picture besides the shirt there?
- 10 A No, sir.
- 11 Q Okay. Sir?
- 12 A No, sir.
- 13 Q No, it's not.
- 14 Okay. And this is the shirt, State's Exhibit 64?
15 This is the shirt that was found, right?
- 16 A Yes, sir.
- 17 Q Okay. All right. Did you send that down to be
18 analyzed?
- 19 A Yes, sir.
- 20 Q Okay. And you don't know the results of that analysis,
21 do you?
- 22 A No, sir.
- 23 Q Okay. Did you test it for blood?
- 24 A No, sir.
- 25 Q Okay. So you just -- you just collected it and sent it

Robert Taylor - Cross-examination
by Mr. Schultz

1 down to evidence, correct?

2 A Yes, sir.

3 Q Is that your only involvement in this case besides
4 today?

5 A Yes, sir.

6 Q Thank you.

7 No further questions.

8 SOLICITOR GILMER: No further questions, Your Honor.

9 THE COURT: All right. Thank you, sir. You may step
10 down.

11 SOLICITOR GILMER: State calls Deputy Anthony Knighton,
12 Knighton.

13 THE COURT: Sir, just come right up here and let the
14 Clerk of Court swear you in.

15 ANTHONY KNIGHTON, being first duly
16 sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY SOLICITOR GILMER:

19 Q Would you please state your name for the record?

20 A Anthony Knighton.

21 Q And how old are you employed?

22 A Crime scene investigator with the Spartanburg County
23 Sheriff's office.

24 Q And how long have you been employed with the Sheriff's
25 office?

Anthony Knighton - Direct examination
by Solicitor Gilmer

1 A Approximately eight and a half years.

2 Q Did you have any involvement with a case that resulted
3 on June 20th, June 19th, June 20th of 2014 at
4 in Lyman?

5 A Yes, ma'am.

6 Q What was the extent of your involvement?

7 A I received a -- into evidence a yellow sweatshirt from
8 Deputy Taylor.

9 Q Okay. Is that Deputy Robert Taylor?

10 A Yes, ma'am.

11 Q And do you recall when you received that from him?

12 A 21:00 hours, nine o'clock PM.

13 Q Okay. For those of us who aren't law enforcement, what
14 does 21:00 hours mean?

15 A 9:00PM.

16 Q 9:00PM.

17 Okay. And where did you collect this from him?

18 A The Spinx Station at the corner of 29 and 129.

19 SOLICITOR GILMER: All right. Your Honor, if I may
20 approach the witness?

21 THE COURT: Yes, ma'am.

22 Q Deputy Knighton, I'm showing you what's been previously
23 marked as State's Exhibit 65.

24 Do you recognize this?

25 A Yes, ma'am.

Anthony Knighton - Direct examination
by Solicitor Gilmer

1 Q And how do you recognize that?

2 A That's the bag I packaged it up in.

3 Q And once you packaged the sweatshirt, what did you do
4 with the bag?

5 A I placed it into the evidence locker at the Sheriff's
6 office. A locked locker.

7 Q I'm sorry.

8 what was the last thing you said?

9 A A locked evidence locker.

10 Q A locked evidence locker.

11 I'm gonna have you open this and just don't pull
12 anything out. If you'll just look into the package.

13 A (Witness complies.)

14 Q Does that item appear to be in the same or
15 substantially the same condition as when you collected it
16 from Deputy Taylor?

17 A Yes, ma'am.

18 SOLICITOR GILMER: And, Your Honor, at this time I
19 would move to enter into evidence what's been previously
20 marked as State's Exhibit No. 65.

21 MR. SCHULTZ: No objection, Your Honor.

22 THE COURT: Without objection, be State's 65.

23 SOLICITOR GILMER: Thank you, Your Honor.

24 (WHEREUPON, State's Exhibit No. 65 was received into
25 evidence at this time.)

Anthony Knighton - Direct examination
by Solicitor Gilmer

1 SOLICITOR GILMER: I would ask to publish to the jury.

2 THE COURT: All right.

3 Q Pull it out and show it to the jury.

4 A (Witness complies.)

5 Q Thank you.

6 Deputy Knighton, was that the extent of your
7 involvement in this case?

8 A Yes, ma'am.

9 SOLICITOR GILMER: I have no further questions at this
10 time, Your Honor.

11 THE COURT: Yes, sir.

12 CROSS-EXAMINATION

13 BY MR. SCHULTZ:

14 Q All you did was collect this and then put it down the
15 chain of custody?

16 Is that correct?

17 A Yes, sir.

18 Q All right. That's your only involvement?

19 A Yes, sir.

20 Q All right. Thank you.

21 Nothing further.

22 THE COURT: Thank you, sir. You may step down.

23 THE WITNESS: Yes, sir.

24 SOLICITOR GILMER: Your Honor, the State calls Janet
25 Baker.

Janet Baker - Direct examination
by Solicitor Gilmer

1 THE COURT: Ma'am, just come right up here.

2 JANET BAKER, being first duly
3 sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY SOLICITOR GILMER:

6 Q Would you please state your name for the record?

7 A Janet Baker.

8 Q Ms. Baker, how are you employed?

9 A I'm a registered nurse at the Spartanburg Regional
10 Emergency Center.

11 Q And how long have you been working at the Spartanburg
12 Regional Medical or Emergency Center?

13 A Six years.

14 Q Were you working there on June 20th of 2014?

15 A Yes.

16 Q Do you recall a victim who had come into the Emergency
17 Center with stab wounds?

18 A Yes.

19 Q All right. And do you remember her -- Ms. Robert
20 Undralynn Cohen-Middleton?

21 A Yes.

22 Q With your involvement and working at Spartanburg
23 Regional, did you have the opportunity to collect clothing
24 from her?

25 A I did.

Janet Baker - Direct examination
by Solicitor Gilmer

1 Q All right. Or clothing that was worn by her?

2 A I did.

3 Q All right. And what did you do with that clothing once
4 you collected it?

5 A We collect the evidence and put it in a paper bag and
6 wait to hand it over to the police officers.

7 Q Okay. And did you then turn it over to the Spartanburg
8 County Sheriff's Office?

9 A I did.

10 Q All right. And would it be common for you to collect
11 everything that the person was wearing including underwear?

12 A Yes, anything that came on the victim would be in the
13 bag. We collect anything that was there.

14 Q Okay. And, again, you turned that evidence over to a
15 deputy with the Spartanburg County Sheriff's Office?

16 A Correct.

17 SOLICITOR GILMER: All right. I have no further
18 questions at this time, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. SCHULTZ:

21 Q Your only involvement in this case was to turn over
22 potential evidence to the Sheriff's Office?

23 A That was -- do what now?

24 Is that my only --?

25 Q Your only involvement in this case was to turn over

Janet Baker - Cross-examination
by Mr. Schultz

1 evidence to the Sheriff's Office?

2 A I took care of the patient when she came in.

3 Q Okay. But other than that, that was your only
4 involvement in this case?

5 A Uh-huh. (Affirmative).

6 MR. SCHULTZ: All right. Nothing further, Your Honor.
7 Thank you.

8 SOLICITOR GILMER: Nothing further, Your Honor.

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

10 SOLICITOR GILMER: State calls Sergeant Deanna Burgess.

11 THE COURT: Just come right up here, ma'am.

12 DEANNA BURGESS, being first duly
13 sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY SOLICITOR GILMER:

16 Q Would you please state your name for the record?

17 A Deanna Burgess.

18 Q And how are you employed?

19 A With the Spartanburg County Sheriff's Department
20 Forensics Department as a sergeant.

21 Q And how long have you been employed with the
22 Spartanburg County Sheriff's Office?

23 A Just over 31 years. No, just over 30 years.

24 Q Okay. And were you employed with the Sheriff's Office
25 back in June of 2014?

Deanna Burgess - Direct examination
by Solicitor Gilmer

1 A I was.

2 Q All right. And were you involved in anyway with a
3 stabbing case from in Lyman?

4 A I did pick up some clothing from the hospital.

5 Q All right. And that clothing, who was it alleged to
6 have belonged to?

7 A The victim. I didn't know that -- the name at the
8 time. I was just notified by Officer Shaffer that there had
9 been a stabbing and that there was some clothing at the
10 hospital.

11 Q And did you receive that from Nurse Janet Baker?

12 A I did.

13 SOLICITOR GILMER: Your Honor, if I may approach the
14 witness?

15 THE COURT: (Nods affirmatively.)

16 Q Sergeant Burgess, I'm showing you what's been marked as
17 State's Exhibit 66, and 67, and 68.

18 Do you recognize these items?

19 A Yes.

20 Q And how do you recognize them?

21 A They're the clothing that I picked up from Nurse Baker
22 and took to the Sheriff's office and photographed and put it
23 into these bags.

24 Q All right. And once you put those into the bags, what
25 did you do with them next?

Deanna Burgess - Direct examination
by Solicitor Gilmer

- 1 A I sent them to the evidence department.
- 2 Q Okay. And is that a locked facility?
- 3 A Yes, it is.
- 4 Q A secure facility.
- 5 A (Witness nods affirmatively.)
- 6 Q All right. And I'm gonna show you what's been marked
- 7 as 69, 70, 71, 72, and 73.
- 8 Do you recognize those?
- 9 A I do.
- 10 Q And how do you recognize them?
- 11 A These are the clothes that I brought back from the
- 12 hospital and made these photographs.
- 13 Q Okay. And do those fairly accurately -- fairly and
- 14 accurately represent the clothing that you received from
- 15 Nurse Baker --
- 16 A Yes, they do.
- 17 Q -- back in June?
- 18 And does this clothing, these, these physical exhibits,
- 19 do they seem to be tampered with in anyway?
- 20 A I know that they weren't from the time that I picked
- 21 them up at the hospital.
- 22 Q Okay. I'm gonna have you open the physical exhibits
- 23 and don't take anything out. If you'll just open them.
- 24 A Okay.
- 25 (Witness complies.)

Deanna Burgess - Direct examination
by Solicitor Gilmer

1 Q All right. Did those three items appear to be in the
2 same or substantially the same condition as when you
3 received them from Nurse Baker?

4 A I put them in these bags, but, yes, they are the same
5 as when I put them in the bags.

6 SOLICITOR GILMER: Okay. Your Honor, at this time I
7 would move to enter into evidence what's been marked as
8 State's Exhibit 66, 67, and 68 as well as 69, 70, 71, 72,
9 and 73.

10 MR. SCHULTZ: No objection.

11 THE COURT: Without objection, be State's 66, 67, 68,
12 69, 70, 71, 72, and 73.

13 SOLICITOR GILMER: Okay. Thank you, Your Honor.

14 (WHEREUPON, State's Exhibit Nos. 66 through 73 were
15 received into evidence at this time.)

16 SOLICITOR GILMER: Your Honor, I would ask to publish
17 to the jury.

18 THE COURT: Okay.

19 Q I am showing you what's been marked and admitted into
20 evidence at State's 69.

21 Do you recognize that?

22 A I do.

23 Q Okay. What do you recognize that to be?

24 A That's the shirt that I collected from the nurse.

25 Q And then State's 71.

Deanna Burgess - Direct examination
by Solicitor Gilmer

1 A That's the same shirt.

2 Q All right. 73.

3 A Those are the pants. That's the opposite side of the
4 same pair of pants and that's the shirt.

5 Q And this pink in the corner?

6 A Is the underwear.

7 Q An it's your understanding that these were all items
8 the victim was wearing when she was admitted to the
9 emergency room---

10 A It's---

11 Q ---on June 20th of 2014?

12 A Yes.

13 Q Sergeant Burgess, is that the extent of your
14 involvement with this case?

15 A It is.

16 SOLICITOR GILMER: All right. I have no further
17 questions at this time, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. SCHULTZ:

20 Q You collected all that evidence?

21 A Yes, sir.

22 Q All right. From Mrs. Cohen?

23 A From Nurse Baker.

24 Q From Nurse Baker.

25 Okay. So, Nurse Baker gave it to you and then you put

Deanna Burgess - Cross-examination
by Mr. Schultz

1 it in the evidence room?

2 A I did.

3 Q Okay. And, again, as Ms. Gilmer said, that's the
4 extent of your involvement in this case, right?

5 A It is.

6 Q Okay. I don't think I know the answer to this, but you
7 did not do any testing, no forensic analysis, or anything?

8 A I did not.

9 Q All right. Thank you so much.

10 SOLICITOR GILMER: Nothing further.

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

12 THE WITNESS: Thank you.

13 THE COURT: Corporal Mark Miller, Your Honor.

14 (Pause.)

15 SOLICITOR GILMER: Your Honor, we're gonna call one
16 other witness prior to him. It will be Cornelius Huff.

17 THE COURT: Sir, just come right up here.

18 CORNELIUS HUFF, being first duly
19 sworn, testified as follows:

20 THE COURT: Just have a seat in the red chair and pull
21 the red chair up to the microphone.

22 THE WITNESS: All right.

23 DIRECT EXAMINATION

24 BY SOLICITOR GILMER:

25 Q would you please state your name for the record?

Cornelius Huff - Direct examination
by Solicitor Gilmer

1 A Cornelius Huff.

2 Q And how are you employed?

3 A Spartanburg Regional Hospital as a paramedic.

4 Q As a paramedic?

5 A Uh-huh. (Affirmative.)

6 Q And how long have you been a paramedic with Spartanburg
7 Regional?

8 A Since '98.

9 Q A long time?

10 A Yeah, a long time.

11 Q What type of experience do you have to get to be a
12 paramedic or type of training?

13 Let me reword that.

14 A It's intensive. Two years of Upstate EMS College. I
15 have 27 years in fire and EMS service as a paramedic. So a
16 long time.

17 Q Were you working as a paramedic on June 20th of 2014?

18 A Yes.

19 Q Were you dispatched out to _____ in Lyman?

20 A Yes.

21 Q And what was the nature of that call out?

22 A It came out as a stabbing victim. I responded with
23 Medic 9. I was the assistant supervisor that day and I
24 responded as backup to them. Any type of traumatic calls.

25 Q Do you remember about how many paramedics were called

Cornelius Huff - Direct examination
by Solicitor Gilmer

1 out that day?

2 A A total of three including me.

3 Q Okay. Was the injured individual transported by
4 ambulance service?

5 A I made the choice not to transport her by ground
6 because of her wounds were very critical. I considered her
7 a very critical patient. So I chose to have her flown by
8 Regional One to get her to the hospital faster than we could
9 by ground.

10 Q Do you recall what type of wounds she had?

11 A We noted several stab wounds in the upper chest area,
12 and just her condition with her blood pressure and all the
13 other things that were transpiring. That's why we chose to
14 rapidly transport her to the hospital.

15 Q Was her condition concerning to you?

16 A Yes, I considered her a very critical patient.

17 Q Okay. And was she conscious, conscious when you first
18 went out?

19 A Yes, she was. I did have the opportunity to, to speak
20 with her after I made my report with the paramedics that was
21 there prior to my arrival and she could barely speak to us.
22 I was just basically asking her her condition, how does she
23 feel, is she in any pain. She was just basically whispering
24 back to me answers.

25 Q Did she appear to have suffered from a large amount of

Cornelius Huff - Direct examination
by Solicitor Gilmer

1 blood loss?

2 A Yes, we noted that in the bed area and around her.

3 Q Were her conditions, the way she was acting, her
4 behavior, her blood pressure, were those things consistent
5 with someone who had lost a lot of blood?

6 A Yes.

7 Q Did you have concerns about treating this patient or
8 moving her in anyway?

9 A I did. Because she was laying in that condition for so
10 long, a lot of times when you move a patient that has been
11 laying in the -- with traumatic injuries, you can offset a
12 lot of things and I was very concerned, once we moved her,
13 what was gonna take place, if she was gonna expire with us,
14 and under our care. So we were preparing ourselves just for
15 that to take place if she decided to go -- she went to
16 cardiac arrest, we were prepared for that. It was a pretty
17 traumatic incident.

18 Q So when you say expire, do you mean she could have
19 died?

20 A Yes.

21 Q And that was in -- was that a grave concern of yours?

22 A Yes, it was.

23 Q I have no further questions at this time. Thank you.

24 A Okay.

25 CROSS-EXAMINATION

Cornelius Huff - Cross-examination
by Mr. Schultz

1 BY MR. SCHULTZ:

2 Q Did she go into cardiac arrest?

3 A No, sir, she didn't.

4 Q Okay. Did she have blood transfusions?

5 A What do you mean blood transfusions?

6 Q Did you administer any kind of blood transfers
7 whatsoever---

8 A No, sir.

9 Q ---while you were there?

10 A No, sir, we do not do that.

11 Q All right. When did you leave the patient?
12 When you brought her into the emergency room?

13 A No, when we transferred the patient to Regional One
14 crew, that's when we gave our full report. They always
15 enter the back of our ambulance and then we gave the report
16 and we transfer the patient and we take our stretcher to
17 Regional One and place them on the helicopter and then
18 that's when our care is released.

19 Q Did, at any point, she lose consciousness?

20 A No.

21 MR. SCHULTZ: Thank you, Your Honor. That's all I
22 have.

23 THE COURT: All right. Thank you, sir. You may step
24 down.

25 SOLICITOR GILMER: State calls Corporal Mark Miller.

Mark Miller - Direct examination
by Solicitor Gilmer

1 THE COURT: Come right up here, sir.

2 MARK MILLER, being first duly
3 sworn, testified as follows:

4 SOLICITOR GILMER: Thank you, Your Honor.

5 DIRECT EXAMINATION

6 BY SOLICITOR GILMER:

7 Q Would you please state your name for the record?

8 A My name is Marcus J. Miller.

9 Q And how are you employed?

10 A I'm employed by the Spartanburg County Sheriff's
11 Office.

12 Q And how long have you been employed with the
13 Spartanburg County Sheriff's Office?

14 A Since August of 1995. Over 20 years.

15 Q All right. And what are your duties with the Sheriff's
16 Office?

17 A I'm a patrol supervisor as a corporal. I'm also a K-9
18 handler. I have two dogs currently at this time and then
19 whatever they may, may need.

20 Q Back in June of 2014, were you involved in a K-9 track
21 over off in Lyman?

22 A I was.

23 Q Okay. And what was the nature of that K-9 track?

24 A It was, I believe, for a stabbing.

25 Q And were you able to locate a suspect?

Mark Miller - Direct examination
by Solicitor Gilmer

- 1 A I was not. Not on the track.
- 2 Q All right. Corporal Miller, I'm going to jump ahead.
- 3 You also had other involvement in this case.
- 4 Did you respond out to in Greer?
- 5 A I did.
- 6 Q Is that in Spartanburg County?
- 7 A It is.
- 8 Q Okay. And was that a residence at that location?
- 9 A It was.
- 10 Q And do you know the owner of that residence?
- 11 A I didn't at the time.
- 12 Q Do you now?
- 13 A I met her on scene but I didn't know her prior or --
- 14 and probably haven't seen her since.
- 15 Q Do you recall her name?
- 16 A I do not.
- 17 Q All right. If you had an opportunity to look at your
- 18 report, would that refresh your recollection?
- 19 A It would.
- 20 Q And Corporal Miller, were you the lead officer on this
- 21 case?
- 22 A I -- as far as the K-9 track, but as far as the lead I,
- 23 I wouldn't say I was. The supervisor on scene or somebody
- 24 like that would probably be the lead.
- 25 SOLICITOR GILMER: Okay. Your Honor, if I may approach

Mark Miller - Direct examination
by Solicitor Gilmer

1 the witness?

2 THE COURT: (Nods affirmatively.)

3 Q Corporal Miller, I'm showing you your supplemental in
4 the case. If you'll look over that and see if it refreshes
5 your recollection as to the owner of that residence at
6 Sunnyglen.

7 A (Witness complies.)

8 Q Does that refresh your recollection?

9 A It does.

10 Q All right. Who was the owner of the property?

11 A Birdie Ballenger.

12 Q And did you know her to be an acquaintance of the
13 defendants?

14 A She stated she was.

15 Q On that particular date did you receive verbal and
16 written consent from Ms. Ballenger to look in a car on her
17 property?

18 A Yes, I, I remember the car.

19 Q And what type of car was it?

20 Do you recall?

21 A I remember it was broken down. It was a black Mercedes
22 Benz. I remember it was -- it did not look operational at
23 all. It looked like it had been sitting there for quite
24 some time.

25 SOLICITOR GILMER: Your Honor, if I may approach the

Mark Miller - Direct examination
by Solicitor Gilmer

1 witness?

2 THE COURT: (Nods affirmatively.)

3 Q I'm showing you what's been previously admitted as
4 State's 51.

5 Does that appear to be Ms. Ballenger's residence?

6 A It does.

7 Q All right. And State's 52, does that appear to be the
8 car?

9 A Yeah, the one in the back.

10 Q Okay. And have you use that pointer right there to
11 your right.

12 And did you recover or did you view any evidence in
13 that vehicle?

14 A Yeah, I, I was told by the -- Investigator Jenkins to,
15 I'm not sure how he perceived the, the knowledge to check
16 that specific car for evidence. When I got there I did get
17 consent to search it and I couldn't see anything by just --
18 I always try to look without contaminating anything, by just
19 peering into the vehicle before I touch anything.

20 After I couldn't see anything specific, I went in there
21 and after moving I believe it was a child's mattress, I was
22 able to spot a, a knife in there, which definitely seemed
23 out of place. So at that point I backed out to close the
24 car door, called for forensics to come out there without
25 touching anything further than that.

Mark Miller - Direct examination
by Solicitor Gilmer

1 Q And you said there was a mattress?

2 A It looked like it -- it was like a child's mattress.

3 I'm not sure if it was a crib or one of those toddler

4 mattresses, but it was like an old mattress.

5 Q Did you---

6 A I mean there was like stuff stored in that car. It was
7 older.

8 Q Okay. Do you see a mattress in the photographs that's
9 before you?

10 A Yeah, I believe I -- I see that one right there. But
11 when I went into it it was in the car.

12 Q Okay. But that is that mattress that---

13 A Yeah, it was definitely that size. It was definitely a
14 child's. It looked like a toddler bed.

15 Q Okay.

16 A Something along those lines.

17 Q And where exactly did you find the knife again in the
18 vehicle?

19 A It's under that mattress.

20 Q Under the mattress.

21 Do you see the knife where you found it?

22 A I do not. Not in that picture. It's hard for me to
23 see kind of this angle.

24 Q Okay. And did you move the knife in anyway prior to
25 calling---

Mark Miller - Direct examination
by Solicitor Gilmer

1 A Absolutely not. I never touched it.

2 Q All right. And did you call someone out to collect the
3 knife?

4 A Yeah, I called for a forensic technician to remove it.

5 Q Do you recall which technician came out to collect that
6 knife?

7 A I believe it was Officer Shaffer.

8 SOLICITOR GILMER: I have no further questions at this
9 time, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. SCHULTZ:

12 Q Officer Miller, did you investigate the incident
13 location scene at all during your investigation of this
14 case?

15 A With the dog I did track.

16 Q Okay. Did you go inside the house at all?

17 A I don't recall going in the house at all, sir.

18 Q Okay. But you went outside the house, right?

19 A Yes, out into the back where, where we believe the
20 subject may have fled.

21 Q All right. And then you were -- were you dispatched to
22 Ms. Ballenger's home or did you just arrive there on a hunch
23 or how did you get there?

24 A No, I, I was told to go there, sir.

25 Q You were told to go there by --?

Mark Miller - Cross-examination
by Mr. Schultz

- 1 A I was asked by Investigator Jenkins to---
- 2 Q All right.
- 3 A ---to respond to that---
- 4 Q Okay.
- 5 A ---house.
- 6 Q And did you take, take, take a statement from Ms.
7 Ballenger?
- 8 A Yes, sir.
- 9 Q Okay. And you obviously entered it into evidence,
10 right?
- 11 A No, sir, I called for a forensic technician to collect
12 the -- are you talking about the property, the knife?
- 13 Q Yes, sir.
- 14 A I did not put that in evidence. That would of been --
15 the forensic technician would of done that.
- 16 Q Okay. But you, you were the first one that noticed the
17 knife, right?
- 18 A I saw it, yes.
- 19 Q Did the knife have any blood on it?
- 20 A I don't recall seeing blood.
- 21 Q You don't recall seeing blood?
- 22 A I'm not sure, to be honest. I don't recall.
- 23 Q Did you test -- did you---
- 24 A It's been, it's been a while.
- 25 Q I'm understanding.

Mark Miller - Cross-examination
by Mr. Schultz

1 Did you test it at all?

2 A Of course not, no. That's not my position.

3 Q Not your purview?

4 A No, sir.

5 Q All right. But you, you just handed it down the chain
6 of custody, correct?

7 A I called -- yeah, I sealed the crime scene basically
8 when I saw that evidence, and then I called for a forensic
9 technician to collect something of that significance.

10 Q All right. And you're, you're positive there was no
11 blood on that knife?

12 A I can not say that. I can not say I'm positive of that
13 or not, sir.

14 Q All right. But you didn't notice any?

15 A I don't -- I mean I honestly don't recall without
16 seeing a picture of it. I've been to a lot of crime scenes
17 since this one --

18 Q I understand.

19 A -- and I don't want to say something that, you know,
20 my -- like I said, I just don't remember if -- seeing it, if
21 I did or not.

22 Q All right. Thank you.

23 Nothing further.

24 SOLICITOR GILMER: No further questions, Your Honor.

25 THE COURT: Thank you, sir. You may step down.

Amy Stephens - Direct examination
by Solicitor Gilmer

1 THE WITNESS: Thank you.

2 THE COURT: Is the State ready to call the next
3 witness?

4 SOLICITOR GILMER: Yes, Your Honor.

5 The State calls Amy Stephens.

6 THE COURT: Just come right up here and let the Clerk
7 of Court swear you in.

8 AMY STEPHENS, being first duly
9 sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY SOLICITOR GILMER:

12 Q Would you please state your name for the record?

13 A Amy Stephens.

14 Q And how are you employed?

15 A I'm currently employed with the South Carolina Law
16 Enforcement Division also known as SLED.

17 Q And what is SLED's purpose in this state?

18 A Oh, SLED is an assisting agency as well as we have a
19 forensic laboratory that performs, performs testing from
20 evidence that is submitted from our law enforcement agencies
21 throughout the state.

22 Q And when SLED gets involved with the evidence testing,
23 will you walk us through -- a piece, a piece of evidence
24 when it comes to SLED, who typically brings that to SLED?

25 A An evidence person or an officer with the law

Amy Stephens - Direct examination
by Solicitor Gilmer

1 enforcement agency will submit that evidence to our
2 laboratory.

3 Q And when that evidence comes into the laboratory, are
4 you typically the first person who sees it?

5 A My department is, yes.

6 Q All right. Okay. And if you would walk us through the
7 chain of evidence.

8 Say there was DNA evidence in a case, a piece of
9 evidence that needed DNA testing.

10 How would the piece of evidence make its way through
11 SLED?

12 A When the agency arrived to submit evidence, we would
13 take their submission paperwork, enter the case information
14 into our computer system. At that time a unique lab number
15 would be generated for that case as well as an item number
16 for any evidence associated with that case. We would then
17 package the evidence according to our policy. The evidence
18 would either be transferred directly to our evidence room or
19 it could be transferred to another technician or a scientist
20 without our, our laboratory. Another technician may
21 retrieve that evidence and transfer it to a technician or a
22 scientist as well and then it is their responsibility to
23 perform analysis on that.

24 Q And do you do any testing yourself---

25 A No, I do not.

Amy Stephens - Direct examination
by Solicitor Gilmer

1 Q ---on things?

2 Specifically in the case of Christopher Middleton,
3 Middleton, was evidence presented to SLED by the Spartanburg
4 County Sheriff's Office?

5 A Yes, it was.

6 Q And does SLED typically keep a chain of custody log as
7 to where -- when the evidence comes in, who its brought by,
8 and where it's moved to?

9 A Yes, every case that is submitted to our laboratory
10 maintains a chain of custody.

11 Q And if I were to show you a chain of custody in a
12 specific case, could you tell me exactly where this evidence
13 was and where it went to next?

14 A Yes, I could.

15 SOLICITOR GILMER: Your Honor, if I may approach the
16 witness?

17 THE COURT: Yes, sir.

18 Q Ms. Stephens, I'm showing you what's been previously
19 marked as State's Exhibit 78.

20 Do you recognize that?

21 A Yes, this is the chain of custody related to SLED Lab
22 Number L14-07812.

23 Q And is there a victim and suspect that's correlated
24 with that case?

25 A Yes, there is.

Amy Stephens - Direct examination
by Solicitor Gilmer

1 Q All right. And who -- is that stated on the report?

2 A We rely on our submission documents for that
3 information.

4 Q So you would go off of the SLED case number --

5 A Yes.

6 Q -- with the evidence?

7 A Yes.

8 Q Okay. Particularly with these chain of custodies, does
9 it indicate every piece of evidence that comes into SLED for
10 a given SLED case number?

11 A Yes, it does.

12 Q So you can see each piece of evidence as it comes in
13 and where it goes next.

14 Is that correct?

15 A That's correct.

16 Q As to -- I'm gonna let you refer to this report.

17 As to Item Number 1, what do you have Item Number 1 on
18 the case is?

19 A SLED Item Number 1 is a knife, a Farberware kitchen
20 knife collected from the coffee table.

21 Q And how did you receive that evidence?

22 A I received this evidence on June 24th, 2014, at
23 11:06AM from Angela Nelson with the Spartanburg County
24 Sheriff's Office.

25 Q And Angela Nelson, are you aware -- what is her role at

Amy Stephens - Direct examination
by solicitor Gilmer

1 the Spartanburg County Sheriff's Office?

2 Are you aware?

3 A From my knowledge, she delivered the evidence to SLED.
4 I don't know exactly what her role is within the Sheriff's
5 Department.

6 Q Does she appear to be a law enforcement officer?

7 A Yes.

8 Q And when she brought you that evidence, would it have
9 been opened or tampered with in anyway?

10 A No.

11 Q And how do you know that?

12 A Well, if any evidence is brought in and it appears to
13 be tampered with in anyway, a note would have been made in
14 the case file and there were no notes made.

15 Q And that, that piece of evidence, that knife, how -- if
16 you will walk us through the process.

17 Where did it go after it left you?

18 A Once I logged it in, I transferred it to our secure
19 evidence room to evidence processing intake shelf 03. On
20 May 21st, 2015, at 3:48PM Forensic Technician Jennifer
21 Aycock, she was employed within my department, transferred
22 this evidence to Forensic Technician Betty Butler.

23 Q And is that where the evidence -- the last person the
24 evidence saw or did it go any further?

25 A After Betty Butler had possession of it it was returned

Amy Stephens - Direct examination
by Solicitor Gilmer

1 to our department to be returned to the agency.

2 Q So the testing had been finished at that point?

3 A That's correct.

4 Q Okay. Is there a second item on there?

5 A Yes, there is.

6 Q Okay. And what is that item?

7 A SLED Item Number 2 is described as a Delta Pro white
8 t-shirt.

9 Q All right. And how was -- did SLED receive that item?

10 A I received this item from Angela Nelson of the
11 Spartanburg County Sheriff's Office on June 24th, 2014, at
12 11:06AM.

13 Q And if you would walk us through where that evidence
14 went next.

15 A Once I logged the evidence in I transferred the
16 evidence to large evidence processing intake shelf six
17 located in our evidence room. On May 21st, 2015, at
18 3:48PM Forensic Technician Jennifer Aycock retrieved that
19 evidence and transferred the evidence to Betty Butler.

20 Q And was that the final stage of that piece of evidence?

21 A Up to the point of analysis, yes.

22 Q All right. And is there another item on that?

23 A Yes.

24 Q All right. If you'll go to that item.

25 A SLED Item Number 3 is described as a Pro Edge Clemson

Amy Stephens - Direct examination
by Solicitor Gilmer

1 shirt from bed.

2 Q And where did that evidence go once it came to you?

3 A I received this piece of evidence from Angela Nelson of
4 the Spartanburg County Sheriff's Office on June 24th,
5 2014, at 11:06AM. Once I retrieved it or received it from
6 Angela Nelson I transferred it to our evidence room to large
7 evidence processing intake shelf six. On May 21st, 2015,
8 at 3:48PM Forensic Technician Jennifer Aycock retrieved that
9 evidence from that shelf and transferred it to Forensic
10 Technician Betty Butler.

11 Q Okay. And is Betty -- Ms. Butler then responsible for
12 testing of the item?

13 A Yes, she is.

14 Q All right. Is there any additional item listed?

15 A Yes, there is.

16 Q Okay.

17 A SLED Item Number 4 is described as a white mattress
18 liner from bed.

19 Q And did you receive that evidence?

20 A Yes, I did. I received it from Angela Nelson of the
21 Spartanburg County Sheriff's Office on June 24th, 2014, at
22 11:06AM. After I received the evidence, I, again,
23 transferred this piece of evidence to large evidence
24 processing intake shelf six which is located in our evidence
25 room. On May 21st, 2015, at 3:48PM Forensic Technician

Amy Stephens - Direct examination
by Solicitor Gilmer

1 Jennifer Aycock received that evidence from the shelf
2 located in our evidence room and transferred it to Forensic
3 Technician Betty Butler.

4 Q Okay. And then Ms. Butler was responsible for testing
5 of the item.

6 Is that correct?

7 A That's correct.

8 Q Okay. Are there any additional items?

9 A Yes, there is.

10 Q Okay.

11 A SLED Item Number 5 described as a Buccal swab for
12 Robert Cohen-Middleton.

13 Q All right. And how is that received by SLED?

14 A I received this piece of evidence from Angela Nelson of
15 the Spartanburg County Sheriff's Office on June 2nd, 2014
16 at 11:06AM. I then transferred this evidence to our
17 evidence room, to DNA intake shelf 93. On June 1st, 2014,
18 excuse me, 2015, at 2:10PM Forensic Technician Jackie Davis,
19 who is employed within my department, transferred this
20 evidence to Forensic Scientist Donna Money.

21 Q And did Ms. Money then conduct testing on the item?

22 A Yes, she did.

23 Q All right. Are there additional items?

24 A Yes, there are. SLED Item Number 6 is described as a
25 Buccal swab from Christopher Allen Middleton.

Amy Stephens - Direct examination
by Solicitor Gilmer

1 Q Okay. And how is the item received by SLED?

2 A I received this piece of evidence from Angela Nelson of
3 the Spartanburg County Sheriff's Office on June 24th, 2014
4 at 11:06AM. I then transferred this evidence to our
5 evidence room to DNA intake shelf 93. On June 1st, 2015,
6 at 2:10PM Forensic Technician Jackie Davis retrieved this
7 evidence from that shelf and transferred it to Forensic
8 Scientist Donna Money.

9 Q And then did Ms. Money then conduct testing on the
10 piece of evidence?

11 A Yes, she did.

12 Q Are there additional items?

13 A SLED Item Number 7, which is a Farberware knife from
14 vehicle.

15 Q And how was that item received by SLED?

16 A I received this piece of evidence from Angela Nelson of
17 the Spartanburg County Sheriff's Office on June 24th,
18 2014, at 11:06AM. I then transferred this evidence to our
19 evidence room to evidence processing intake shelf 03. On
20 May 21st, 2015, at 3:48PM Forensic Technician Jennifer
21 Aycock retrieved this evidence and transferred it to
22 Forensic Technician Betty Butler.

23 Q Okay. And then did Ms. Butler, to your knowledge,
24 conduct testing on the item?

25 A Yes, she did.

Amy Stephens - Direct examination.
by Solicitor Gilmer

1 Q And are there any other additional items?

2 A Not parent items, no, there's not.

3 Q So that's all that you have as far as what you received
4 from Angela Nelson with the Spartanburg County Sheriff's
5 Office?

6 A That's correct.

7 Q And from that chain of custody, are there any notes or
8 any evidence that any items, any of these items could have
9 been tampered with in anyway?

10 A No, there are not.

11 Q Is there anything that would lead you to believe that
12 any of these items could have resulted in any type of
13 contamination?

14 A No, there's not.

15 Q And does SLED keep -- all of these different areas that
16 you mentioned, does SLED keep provisions in place to attempt
17 to make sure there's no tampering or no contamination?

18 A Yes, we do.

19 Q So this chain of custody is, is to keep track of where
20 the evidence goes within SLED?

21 A Yes, it keeps track of the evidence from the time it is
22 submitted to our laboratory until the time it's returned to
23 the agency.

24 SOLICITOR GILMER: I have no further questions at this
25 time, Your Honor.

Amy Stephens - Direct examination
by Solicitor Gilmer

1 Your Honor, if I may, I apologize. I would move to
2 enter into evidence what's been previously marked as State's
3 Exhibit 78.

4 MR. SCHULTZ: No objection, Your Honor.

5 THE COURT: Without objection, be State's 78.

6 SOLICITOR GILMER: Thank you, Your Honor.

7 (WHEREUPON, State's Exhibit No. 78 was received into
8 evidence at this time.)

9 SOLICITOR GILMER: And, Your Honor, at this time I have
10 no further questions.

11 CROSS-EXAMINATION

12 BY MR. SCHULTZ:

13 Q How long have you been, been employed with SLED?

14 A Approximately nine and a half years.

15 Q Okay. Now, you are basically the evidence custodian in
16 this matter?

17 A I'm a forensics technician with the evidence control
18 department.

19 Q Okay. Now, you don't do any testing on the material,
20 right?

21 A No, we do not analyze inventory or open any evidence
22 that was submitted to our department.

23 Q Okay. Now, you don't look under a microscope and
24 analyze something or---

25 A No.

Amy Stephens - Cross-examination
by Mr. Schultz

1 Q You don't do any testing with DNA or anything like
2 that?

3 A No, I do not.

4 Q Okay. All right. And that would be, I believe, Ms.
5 Donna Money?

6 A That's correct.

7 Q All right. And she's a forensic scientist.

8 You're not a scientist, right?

9 A No, sir, I'm a technician.

10 Q Okay. All right. And explain, again, I'm sorry, don't
11 mean to belabor the point, but explain, again, what a
12 technician's duties are.

13 A Forensic technician with that, within my department is
14 to log in packages and transfer evidence for forensic
15 analysis. We do not open inventory or analyze any evidence
16 submitted to our department.

17 Q All right. Thank you.

18 Nothing further.

19 SOLICITOR GILMER: No further questions, Your Honor.

20 THE COURT: Thank you, ma'am. You may be excused.

21 Lawyers approach a moment.

22 (WHEREUPON, a bench conference was held out of the
23 hearing of the jury at this time.)

24 THE COURT: Yes, ma'am.

25 SOLICITOR GILMER: Thank you, Your Honor.

Kailei Washington - Direct examination
by Solicitor Gilmer

1 Your Honor, the State calls Kailei Washington.

2 THE COURT: Ma'am, just come up -- right up here and
3 let the Clerk of Court swear you in please.

4 KAILEI WASHINGTON, being first duly
5 sworn, testified as follows:

6 THE COURT: Ma'am, please have a seat in the red chair
7 and just pull the chair up to the microphone.

8 DIRECT EXAMINATION

9 BY SOLICITOR GILMER:

10 Q Would you please state your name for the record?

11 A Kailei Washington.

12 Q And, Ms. Washington, are you employed?

13 A Yes.

14 Q How are you employed?

15 A I work for Rainbow Child Development Center.

16 Q Is that here in Spartanburg County?

17 A No, it's in Greenville County.

18 Q In Greenville County.

19 And do know an individual named Undra Cohen-Middleton?

20 A Yes.

21 Q And how do you know her?

22 A She is my second cousin.

23 Q And do you know an individual named Christopher
24 Middleton?

25 A Yes.

Kailei Washington - Direct examination
by Solicitor Gilmer

1 Q And how do you know him?

2 A He was her husband or is her husband.

3 Q So they were married.

4 How long have you known Chris Middleton?

5 A Since they've been married. I'm not sure of the year.

6 The -- a lot of time.

7 Q Okay. And back in June of 2014, I'm gonna call your
8 attention to that.

9 Were you aware that Mrs. Cohen-Middleton was stabbed on
10 that date?

11 A Yes.

12 Q Okay. And did you happen to go over to the residence
13 on that date?

14 A Yes.

15 Q All right. Did you go inside the residence?

16 A No.

17 Q All right. And where -- how did you go to the
18 residence?

19 Did you walk?

20 Were you in a vehicle?

21 A I was in my car.

22 Q Okay. And what made you go to the residence?

23 A I was just driving through being nosey.

24 Q Okay. And where the residence is located, is there a
25 cul-de-sac nearby?

Kailei Washington - Direct examination
by Solicitor Gilmer

1 A Her house is located at the end of, of the cul-de-sac.
2 Like not in the cul-de-sac but right before the end of it.

3 Q And on the date that you went over there, was it on
4 June 20th of 2014, the day that Undra was stabbed?

5 A Yes.

6 Q All right. And about what time would you say that was
7 when you drove by?

8 A Afternoon. I'm not sure on the time.

9 Q Okay. Do you know if it was after Mrs. Cohen-Middleton
10 was at the hospital?

11 A It was.

12 Q All right. And when you went by, were there any police
13 at the residence at that time that you could tell?

14 A No.

15 Q And when you drove to the residence, did you observe
16 anything out of the ordinary?

17 A The front door was ajar, there was a car parked in the
18 yard that wasn't hers, and Chris was on the side of the
19 house.

20 Q All right. When you say Chris, are you talking about
21 Christopher Middleton?

22 A Yes.

23 Q All right. Do you see him in the courtroom today?

24 A Yes.

25 Q All right. If you would point him out and describe an

Kailei Washington - Direct examination
by Solicitor Gilmer

1 article of clothing he's wearing?

2 A He has on a black tie.

3 SOLICITOR GILMER: Your Honor, if the record could
4 reflect the witness is identified the defendant.

5 THE COURT: All right.

6 Q And where exactly did you see him in relation to the
7 residence?

8 A He was standing at the front of the house on the side
9 near the front porch with his back to the wall.

10 SOLICITOR GILMER: Your Honor, if I may approach the
11 witness?

12 THE COURT: Yes, ma'am.

13 Q All right. Ms. Washington, I'm gonna show you what's
14 been previously admitted as State's 4. There is a laser
15 pointer to your right if you want to use it.

16 Can you show us where you saw the defendant that day?
17 There's a button on the side.

18 A He was standing over to the side of the house.

19 Q All right. And you said there was a door ajar.
20 which door would that be?

21 A The front door.

22 THE COURT: All right. Ms. Washington, I need to let
23 you know we are making a recording of everything that
24 happens here. So when you turn away, this lady, who's the
25 court reporter, can not hear you as well.

Kailei Washington - Direct examination
by Solicitor Gilmer

1 THE WITNESS: Okay.

2 THE COURT: So please speak up loud enough so that the
3 young lady way on the other side of the courtroom as well as
4 I can hear you.

5 okay?

6 THE WITNESS: Uh-huh. (Affirmative).

7 THE COURT: Thank you.

8 A Would you like me to repeat it?

9 Q Yes.

10 which door did you see ajar?

11 A It was the front door of the house, the screen door,
12 which is glass.

13 Q Okay. And where did you see the defendant?

14 A On the side of the house by the front porch.

15 Q And do you recall what he was wearing?

16 A He had on a black t-shirt that had a graphic design on
17 it with gray shorts.

18 Q Okay. And did you see any blood on his clothing?

19 A No, I could not.

20 Q Did he seem injured in anyway?

21 A No, he was smiling.

22 Q What do you mean smiling?

23 A He had like a smirk on his face that you would think of
24 as a child who was trying to get away with something, that
25 they had been caught, or they're trying to sneak out of the

Kailei Washington - Direct examination
by Solicitor Gilmer

1 house say where they're not suppose to be.

2 Q When you saw him, did you pull into the driveway?

3 A No, I did not. I made the circle in the cul-de-sac.

4 Q Okay. And did he appear to have seen -- to see you?

5 A Yes, he did. When he saw me he began to run to the
6 back of the house.

7 Q And are you aware of what's behind the house?

8 A Forage like woods. Woodsy area.

9 Q Did you report this to the police?

10 A Yes, I did.

11 Q And was that the Spartanburg County Sheriff's Office?

12 A Yes.

13 Q All right. And did the defendant seem injured in
14 anyway?

15 A No, he did not.

16 Q All right. Did you see anyone else at the residence---

17 A No.

18 Q ---at this time?

19 A No.

20 Q And just to clarify, you said this was the afternoon of
21 June 20th?

22 A Yes.

23 SOLICITOR GILMER: I have no further questions at this
24 time, Your Honor.

25 CROSS-EXAMINATION

Kailei Washington - Cross-examination
by Mr. Schultz

1 BY MR. SCHULTZ:

2 Q Your testimony here today is that you saw Chris in the
3 afternoon of the incident?

4 On June 20th, did you see my client?

5 Is that what you're saying here?

6 A Yes.

7 Q Okay. You saw him on the side of the house there?

8 A Yes.

9 Q Okay. Now, you were in your car when you saw him.

10 A Yes.

11 Q Is that correct?

12 Okay. And you were driving on the road, right?

13 A Yes.

14 Q Okay. And describe to the jury basically how, how many
15 feet away were you when you saw -- allegedly saw him.

16 A Okay. Well you see this curb here?

17 Q Yes.

18 A This curb goes around the entire cul-de-sac. They
19 don't stay too far from the actual curb in the cul-de-sac.

20 When my car made the point to where it would curve and go

21 around, I looked into my rearview mirror and I saw Chris

22 standing on the side of the house. He saw me as well

23 because before my car made the complete circle he was

24 running toward the back of the house.

25 Q He was running towards the back of the house?

Kailei Washington - Cross-examination
by Mr. Schultz

1 A Uh-huh. (Affirmative).

2 Q Is that what you're saying?

3 A When my car made the complete circle, when I initially
4 saw him, he was standing with his back toward the house, and
5 when my car completed the circle, he took off running toward
6 the back of the house.

7 Q All right. And you saw him when your car was in
8 motion, correct?

9 A Yes, in my review mirror.

10 Q All right. Did you stop whatsoever to ascertain if it
11 was really him?

12 A I didn't need to stop. I'm pretty aware of Christopher
13 Middleton and what he looks like.

14 Q All right. And what you describes to Ms. Gilmer is
15 that he was wearing shorts and a t-shirt, correct?

16 A That's correct.

17 Q All right. And what color t-shirt was he wearing?

18 A It was a black t-shirt.

19 Q All right. And you also said that he had no visible
20 wounds.

21 Is that correct?

22 A That's correct.

23 Q Okay. But you were standing -- you were in your car in
24 motion and you were a, a distance away, not that, that much,
25 but you were a distance away from him.

Kailei Washington - Cross-examination
by Mr. Schultz

1 would that be fair and accurate to say?

2 A That would be accurate, but can I correct you for a
3 moment?

4 Q Well, you could possibly later, but what I'm getting to
5 the point is you claimed to have not seen any injuries to
6 Mr. Middleton, right?

7 A She asked me if he seemed injured. He did not seem
8 injured.

9 Q He did not seem injured.

10 Okay. Now, was -- now, he was wearing a t-shirt,
11 right?

12 A Yes, he had on a black t-shirt.

13 Q All right. But you don't know if he had any
14 lacerations under that t-shirt because he had the t-shirt
15 on, right?

16 A That's correct.

17 Q Okay. All right. He had shorts on.

18 So you don't know if he had any lacerations or cuts to
19 his legs or anything, right?

20 A That's correct.

21 Q Okay. And you also don't know if he had any
22 lacerations to his neck?

23 Is that correct?

24 A That's correct.

25 Q All right. Because you were a distance away, right?

Kailei Washington - Cross-examination
by Mr. Schultz

1 A That's correct.

2 Q Okay. Was it through a car window that you see him?

3 A At which point?

4 Q At any point did you see him through your car window?

5 A I saw him, saw him through multiple windows. When I
6 made the complete circle, in the cul-de-sac, I saw him
7 through my windshield window. When I looked at him through
8 my rearview mirror, I saw him through both the passenger
9 door and my rearview window.

10 Q Okay. Did you have tint on your windows?

11 A I do not recall.

12 Q You don't recall.

13 So you were driving -- so you don't recall if you had
14 tint on your windows?

15 A I don't recall if I had tint on my window. I do recall
16 speaking about getting tint put on my car but I'm not sure
17 if I had tint on my car at that time or not.

18 Q Do you have tint on your car now?

19 A I don't -- I no longer have that vehicle. So --.

20 Q Oh, you don't know.

21 Could it been possible, at that time, that you had tint
22 on your car?

23 Yes or no.

24 A It could be.

25 MR. SCHULTZ: All right. That's all I have, Your

Kailei Washington - Redirect examination
by Solicitor Gilmer

1 Honor. Thank you.

2 THE COURT: Any redirect limited to what he went into?

3 SOLICITOR GILMER: Yes, Your Honor.

4 REDIRECT EXAMINATION

5 BY SOLICITOR GILMER:

6 Q Ms. Washington, did you see the defendant run from the
7 residence?

8 A Yes, when he was standing against the side of the wall
9 I did.

10 Q So he was not walking?

11 He was running?

12 A He was running.

13 Q Is that right?

14 He was running?

15 A Correct.

16 SOLICITOR GILMER: I have no further questions, Your
17 Honor.

18 THE COURT: All right. Thank you, ma'am. You may step
19 down. Watch your step if you would as you step down.

20 All right. Ladies and gentlemen of the jury, we're
21 going to take a break for the evening. I need to, again,
22 remind you not to have any discussions among yourselves
23 about anything involved in the case nor have any discussions
24 with anyone else. Also, do not do any type of independent
25 research or investigation into anything that involves this

1 case, and also refrain from, if there are any media reports
2 about the case, please do not read them, watch them on the
3 television, listen to them on the radio, or, or the like.

4 I want to thank you for your work today. I'm gonna ask
5 you, if you would, please be back in the jury deliberation
6 room by 9:30 in the morning and we'll resume the taking of
7 the testimony.

8 You may go with the bailiff.

9 (WHEREUPON, the following takes place outside the
10 presence of the jury.)

11 THE COURT: All right. We will step down.

12 Let me see the lawyers in the back just for a moment.
13 We'll step down.

14

15 (WHEREUPON, Court was in recess for the evening.)

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October 14th, 2015

THE COURT: Y'all wanted to talk about the jury charges?

MR. SCHULTZ: Yes, Your Honor.

THE COURT: Okay.

MR. SCHULTZ: Do you wish us to approach or---

THE COURT: Yeah, y'all can approach.

(WHEREUPON, a bench conference was held at this time.)

THE COURT: All right. I've had an extensive conference at the bench with the attorneys about potential charges. We're gonna continue on with the trial of the case at this time and I'll welcome any other comments about the request for charges at a later time.

Is there anything that we need to put on the record before we bring the jury back as far as having someone in the courtroom?

MR. SCHULTZ: Judge, I just have a couple things before I get into that.

My client brought to my attention the newspaper article that was, I believe, in yesterday's paper, 10/13/015. There's a, there's a picture of him in handcuffs on the front page of the paper there.

I know the Court has strongly, several times, advised the jury that they can not do any research there but we

1 hope, because of the ubiquitous stuff, ubiquitousness of
2 this picture here not only on-line, but also in the paper
3 too, I would just like to bring that to the Court's
4 attention and, and I'm, I'm assuming that the, that the jury
5 didn't do any research and comply with the judge's
6 instructions here.

7 Thank you, Your Honor.

8 THE COURT: All right. Do you want me to, do you want
9 me to make this part of the record?

10 MR. SCHULTZ: Yes, sir.

11 (WHEREUPON, the newspaper article was marked as Court's
12 Exhibit No. 1 and received into evidence at this time.)

13 THE COURT: Is there anything particular you're asking
14 me to do?

15 MR. SCHULTZ: Your Honor, I, I, I would ask the Court,
16 I don't mean to be presumptuous with this, but I would ask
17 the Court to, again, remind the jury that to, to not do any
18 research, to not look in -- look at any media involvement or
19 media reports or anything like that, and I think that would
20 preserve the record, and I think it would be -- I think it
21 would just be just generally good to do that, Your Honor.

22 THE COURT: Well, I, I think I've done that every time
23 that we took a break---

24 MR. SCHULTZ: Yes, sir.

25 THE COURT: --and I'll continue to do that and be very

1 mindful of doing that.

2 MR. SCHULTZ: Yes, sir, Your Honor.

3 THE COURT: And I remember -- and you think this
4 picture shows him in handcuffs?

5 MR. SCHULTZ: Yes, sir.

6 THE COURT: I mean I can---

7 MR. SCHULTZ: Well; it doesn't, it doesn't show the
8 handcuffs but it shows him with his hand behind his back and
9 maybe a reasonable person could assume that he was in
10 handcuffs.

11 THE COURT: Or maybe it would be reasonable for us that
12 regularly participate in the process of trials to understand
13 that that inference might be appropriate but I would find it
14 hard to believe that an everyday person on the streets is
15 gonna, not seeing handcuffs, would come to the inference
16 that he's wearing handcuffs as it's difficult to see that.

17 All right.

18 MR. SCHULTZ: Yes, sir.

19 THE COURT: But you're protected on the record. We'll
20 make that part of the -- we'll make that a Court's Exhibit.

21 MR. SCHULTZ: Thank you, Your Honor.

22 THE COURT: Anything else?

23 SOLICITOR GILMER: Your Honor, there was the matter
24 about Ms. Ballenger, the witness.

25 MR. SCHULTZ: Your Honor, Ms. Ballenger is, is here and

1 she's here in support of Mr. Middleton there. Because she
2 was on the State's witness list, she was not -- well, she
3 obviously was not called but I know every, every witness,
4 not only for the State, but also potentially for the defense
5 is under sequestration order at this time. But I'm not
6 gonna present a case at all, Mr. Middleton, and I'm sure the
7 Court will address this a little later on, Mr. Middleton is
8 not going to take the stand nor am I, nor am I going to call
9 Ms. Ballenger to take the stand either---

10 THE COURT: Okay.

11 MR. SCHULTZ: ---Your Honor.

12 SOLICITOR GILMER: Your Honor, the State is fine then
13 with her staying in here with the understanding that she
14 will not be called as a witness and that has been put on the
15 record.

16 Thank you, Your Honor.

17 THE COURT: Okay.

18 MR. SCHULTZ: Thank you, Your Honor.

19 THE COURT: Anything else before we bring the jury in?

20 MR. SCHULTZ: No, sir.

21 SOLICITOR GILMER: No, Your Honor.

22 THE COURT: All right. Let's bring them in.

23 (WHEREUPON, the following takes place within the
24 presence of the jury.)

25 THE COURT: All right. Ladies and gentlemen, I

1 appreciate your patience while we got started this morning.
2 we were able to resolve several matters involving issues of
3 law prior to bringing you out. So I appreciate your
4 patience while we were able to accomplish those. I think
5 that we will be able to move expeditiously today.

6 So, at this time, is the State ready to call their next
7 witness?

8 SOLICITOR GILMER: Yes, Your Honor. We are.

9 May it please the Court.

10 The State calls Betty Butler.

11 BETTY BUTLER, being first duly
12 sworn, testified as follows:

13 THE COURT: Just have a seat in the red chair and just
14 pull the chair up to the microphone.

15 (Witness complies.)

16 DIRECT EXAMINATION

17 BY SOLICITOR GILMER:

18 Q Would you please state your name for the record?

19 A Betty Walker Butler.

20 Q Ms. Butler, how are you employed?

21 A I'm employed, employed with the South Carolina Law
22 Enforcement Division as a forensic technician.

23 Q Is that agency also known as SLED?

24 A Yes, it is. It does.

25 Q And what is the purpose of SLED in South Carolina?

Betty Butler - Direct examination
by Solicitor Gilmer

1 A The purpose of SLED is to assist agencies throughout
2 the State with various evidence.

3 Q And how long have you been employed with SLED?

4 A Over 19 years.

5 Q And what is your educational background?

6 A I have degrees in secretary of science and business
7 management.

8 Q And do you have any specialized training in your work
9 with SLED?

10 A Yes, as -- I was trained by two forensic technicians
11 and DNA analyst on hundreds of items. At the end of that
12 training I had to take a proficiency test and a competency
13 test. Every year after that we have to -- I have to take a
14 proficiency test to make sure that I still knowing what I'm
15 doing.

16 Q And in your field with SLED, what particularly do you
17 do?

18 A I look for -- do a presumptive test for blood, semen,
19 hairs, fibers, skin cells, or anything that could be of
20 value to, to a particular case.

21 Q You said you do a presumptive test.

22 Is that, is that analysis or results of that then
23 forwarded on to someone else at SLED?

24 A That's correct.

25 Q And so you analyzed multiple different types of bodily

Betty Butler - Direct examination
by Solicitor Gilmer

1 fluids?

2 A That's correct.

3 Q Does that include blood?

4 A Yes, it does.

5 Q And what is the significance of the type of results
6 that you receive from different kinds of analysis of blood
7 in, in certain cases?

8 A In certain cases, when the request is for blood, I do a
9 chemical test and I do -- it's a possibility. When I said
10 presumptive test, it's a possibility there is blood. If
11 it's a possibility it's blood, it turns pink and I cut
12 particular areas out and forward it to the DNA analyst for,
13 for the analysis.

14 Q So you made cuttings of certain pieces of evidence that
15 come into SLED?

16 A That's correct, yes.

17 Q And did you have an opportunity to work a case number
18 that came into SLED L1407812?

19 A Yes.

20 Q And when did you work that case?

21 A May 22nd, 2015.

22 SOLICITOR GILMER: And, Your Honor, at this time I
23 would move to qualify as an expert in -- as an expert
24 witness in the analysis of blood and other bodily fluids.

25 THE COURT: Yes, sir.

Betty Butler - Direct examination
by Solicitor Gilmer

1 MR. SCHULTZ: No objection, Your Honor.

2 THE COURT: All right. Ladies and gentlemen, again,
3 normally a person can not give opinion testimony. Normally
4 a person -- when a person testifies, they must do so as to
5 what either they saw, heard, or sensed by smell or something
6 of that nature. However, there is an exception, when
7 someone is qualified, because of education or experience.
8 They are permitted to give their opinion in certain areas if
9 the Court qualifies them that way.

10 This witness will be qualified in the areas of analysis
11 of blood and other bodily fluids to give opinion testimony
12 in that area. Now that does not mean that you must accept
13 the opinion but it is evidence for you to use in anyway that
14 you see fit.

15 SOLICITOR GILMER: And, Your Honor, if I may approach
16 the witness?

17 THE COURT: (Nods affirmatively.)

18 Q Ms. Butler, I'm showing you what's been previously
19 marked and entered at State's Exhibit 78.

20 What is that that you're -- that's in front of you?

21 A State's Exhibit 78 is SLED's chain of custody of
22 L147812 (sic).

23 Q And does that chain of custody ensure or keep track of
24 where the evidence goes within SLED?

25 A Yes, it does.

Betty Butler - Direct examination
by Solicitor Gilmer

1 Q Is there anything in that chain of custody that would
2 lead you to believe that this evidence was tampered with in
3 anyway or contaminated in anyway?

4 A No, it doesn't.

5 Q Does SLED keep safeguards in place to prevent any
6 tampering or contamination?

7 A Yes, they do. Every, every evidence that comes into
8 the division, we have to make sure it's properly sealed and
9 initialed and dated before it is worked on.

10 Q Going back specifically to this case, the L1407812, how
11 did you initially receive the evidence?

12 A When I received SLED's L147812 (sic) it was sealed. I
13 would look for the seal and I would look for the agency's
14 initials and the date before I open a piece of evidence.

15 Q And is there anything in the record that would cause
16 you to believe that that procedure was not followed in this
17 case?

18 A It was followed in this case.

19 Q And, specifically, did you receive all of the items at
20 one time or separately?

21 A I received all the items at one time.

22 Q And how many different items did you receive?
23 would it help to refer to your report?

24 A Five, five items at one time.

25 Q And if you could walk us through. Let's start with the

Betty Butler - Direct examination
by Solicitor Gilmer

1 first item.

2 What was that item?

3 A The first item, SLED Item Number 1, was a knife, silver
4 in color.

5 Q All right. And did you do any testing on that knife?

6 A Yes, I did. I did a presumptive test meaning that I --
7 first I examine and look at it, do a visual test, and I do a
8 chemical test for a presumptive test of blood. If the
9 chemical test turns pink, that means it's a possibility of
10 blood is there. So I take a swab, dry it, dry it, put it
11 into a sealed envelope, put my date and my initials on it,
12 sign it, I'll put a description on it, and give it to the
13 analyst for further analysis.

14 Q All right. And what analyst would that have been sent
15 to?

16 A Donna, Donna Money.

17 Q All right. And did you see a second item?

18 A SLED Item Number 2 was a t-shirt that was also white in
19 color.

20 Q Okay. And what did you do with that shirt?

21 A With that shirt, I did a visual test and it was several
22 items there for that looks like it was a possibility of
23 blood. I made two cuttings, two -- a SLED Item Number 2.1
24 and 2.2, which was representative samples of this cause I
25 left some there meaning there's other spots, but I did the

Betty Butler - Direct examination
by Solicitor Gilmer

1 best -- the spots that I thought that was best for this
2 particular case.

3 Q And is that typical procedure when you receive---

4 A Yes.

5 Q ---receive evidence?

6 A Yes, it is.

7 Q All right. And did you receive a third item?

8 A I received SLED Item Number 3, a t-shirt which also is
9 white in color, and I did two cuttings, SLED Item 3.1 and
10 3.2. There again, I left some more samples there because I
11 got the ones that I thought that was better for this
12 particular case.

13 Q Okay. And those two cuttings, were they from different
14 areas of the shirt or they were from the---

15 A It was.

16 Q All right. And do you recall what areas?

17 A Cutting 3 point -- SLED Item Number 3.1 was cutting
18 from the front of the shirt. SLED Item Number 3.2, cutting
19 from the right rear sleeve of the shirt.

20 Q And those items, were they -- did you do a presumptive
21 testing for blood?

22 A Yes, I did.

23 Q And were those positive?

24 A And they were positive and I transferred it forward for
25 further testing.

Betty Butler - Direct examination
by Solicitor Gilmer

1 Q All right. Did you see a fourth item?

2 A It was SLED Item Number 5. It was a mattress liner
3 also white in color.

4 Q And did you do testing on that item?

5 A I did. It -- I made one cutting, which is SLED Item
6 Number 4.1, and that was a representative sample. I -- it
7 was more like more there. So I just got one sample of the
8 cutting and transferred it for further analysis.

9 Q Okay. And did you receive a result from your testing
10 on that?

11 A Yes, SLED Item Number 7 was a knife that was silver in
12 color and I swabbed the entire knife and that too was
13 positive for presumptive test on blood and I transferred
14 those swabs to the DNA analyst.

15 Q And I'm gonna go specifically back to Item Number 1.

16 Your Honor, if I can approach the witness?

17 THE COURT: Yes, ma'am.

18 Q Okay. I'm going to show you what's been previously
19 marked as State's Exhibit 56 and then also State's Exhibit
20 55. Now obviously there were two knives.

21 Did you have any further description as to which was
22 Item Number 1?

23 A Item Number 1, SLED Item Number 1, SLED Item Number 1,
24 which was a knife, was a Farberware knife, which, which
25 marked clearly SLED Item Number, the lab number, and then

Betty Butler - Direct examination
by Solicitor Gilmer

1 the item number.

2 Q Okay. And from your records, do you have -- did you
3 have indication of where that particular knife was located?

4 A From my records, I have the swab from the knife blade.

5 SOLICITOR GILMER: Okay. And, Your Honor, if I may
6 approach the witness?

7 THE COURT: Yes, ma'am.

8 Q I'm going to show you what's been, what's been
9 previously marked as State's Exhibit 76.

10 Do you recognize that?

11 A State's Exhibit 76 is SLED's evidence processing
12 report.

13 Q Okay.

14 A That is a report that's generated from the items that I
15 processed.

16 Q All right. And do you generate that report along with
17 Analyst Jessica Stowe?

18 A Jessica Stowe, she's the one review -- every piece of
19 evidence that comes in has to have review. It reviews
20 actually two more times and this particular person, which is
21 Jessica Snow (sic), review my report and generate this
22 particular report.

23 Q Okay. And is that report a fair and accurate depiction
24 of the results that you received when you did the testing on
25 the evidence that we have just gone over?

Betty Butler - Direct examination
by Solicitor Gilmer

1 A Yes, it does.

2 Q Okay. I'm gonna have you look at that back page and
3 I'm gonna, again, ask you about Item Number 1 and what do
4 you have listed as Item Number -- SLED evidence Item Number
5 1?

6 A SLED Item Number 1 is a knife.

7 Q Okay. In the description, is there a further
8 description of where that knife would of been located by the
9 applicable law enforcement agency?

10 A It says item description Farberware, Farberware kitchen
11 knife collected from the coffee table biohazard. It also
12 has the word biohazard on it.

13 Q Okay. Let's go back to your results of Item Number 1.
14 If you could tell the jury about that again.

15 A SLED's Item Number 1, I swabbed the -- which -- the
16 blade of the knife, which is -- I generated the Item, SLED
17 Item Number 1.1 from the blade of the knife. That's where
18 1.1 comes in.

19 Q Okay. And then let's go to SLED Item Number 7. I
20 believe that was the other knife.

21 Is that correct?

22 A Yes, it was. Yes, it is.

23 Q Okay. And do you have a description as to where SLED
24 Item Number 7 was located by the applicable law enforcement
25 agency?

Betty Butler - Direct examination
by Solicitor Gilmer

1 A Yes, it was knife from the vehicle. Biohazard.

2 Q Okay. And what were the results of your tests with
3 that knife?

4 A It was -- when I did the presumptive test for blood, it
5 came up positive meaning the color change of pink, and I
6 treated Item Number 7.1 and transferred it to the analyst
7 for further testing.

8 SOLICITOR GILMER: And, Your Honor, at this time I
9 would move to enter into evidence what's been previously
10 marked as State's Exhibit No. 76.

11 MR. SCHULTZ: No objection, Your Honor.

12 THE COURT: Without objection, be State's 76.

13 SOLICITOR GILMER: Thank you, Your Honor.

14 (WHEREUPON, State's Exhibit No. 76 was received into
15 evidence at this time.)

16 Q And do you know which analyst these items were
17 forwarded to?

18 A Analyst Donna Money.

19 Q Okay. Thank you.

20 Your Honor, I have no further questions at this time.

21 CROSS-EXAMINATION

22 BY MR. SCHULTZ:

23 Q Now, ma'am, you have no decision on what you test?

24 I mean you just get the evidence and you test it,
25 right?

Betty Butler - Cross-examination
by Mr. Schultz

1 A Yes, I do.

2 Q Okay. So all the evidence that you tested here was
3 given to you by, by whom again?

4 A I received it from the evidence control department,
5 Jennifer Aycock.

6 Q Okay. And Jennifer Aycock gets it from the
7 investigating agency?

8 A That's correct.

9 Q Now, you said that you tested or you, you swabbed for
10 the knife blade in Item 1.

11 Is that right?

12 A That's correct.

13 Q Okay. And what did you -- did you, did you find any
14 blood there?

15 A I did.

16 Q Okay. And was that sent out to be analyzed?

17 A It was.

18 Q Okay. And you don't have any conclusions about whose
19 blood it was, right?

20 A No.

21 Q That's not your job, right?

22 A No, I didn't.

23 Q That's somebody else's job, right?

24 A Yes.

25 Q And you also tested a white t-shirt and that's Item 2,

Betty Butler - Cross-examination
by Mr. Schultz

1 right?

2 A That's correct.

3 Q All right. And, and Item 2.2 was a, another white
4 t-shirt, right, or no?

5 A 2 point?

6 Q 2.2.

7 A 2.2 is a cutting from the left side of the shirt.

8 Q All right.

9 A That's what I cut out from the t-shirt.

10 Q Okay. In your report, did you have any -- did you ever
11 analyze any carpet stains or any cuttings from a carpet or
12 anything like that, again, according to your report?

13 A No, none. No carpet at all.

14 Q All right. Now, you're an expert in, in these -- in
15 this analysis. I'm gonna ask you just a couple just general
16 questions about blood testing and evidence like that.

17 Can sweat or skin cells be left behind on items and
18 then tested for DNA?

19 A It's a possibility.

20 Q Okay. Did you test anything like that?

21 Do you know, according to your report, if you tested
22 sweat?

23 A The request was for blood and that's what I looked for.
24 You can always go back, if someone requests that. We can
25 always go back but the request was for blood -- looking for

Betty Butler - Cross-examination
by Mr. Schultz

1 blood.

2 Q All right. Now, the, the request was not for skin
3 cells, right?

4 A That's correct.

5 MR. SCHULTZ: Okay. All right. Your Honor, beg the
6 Court's patience.

7 THE COURT: Uh-huh. (Affirmative).

8 (Pause.)

9 MR. SCHULTZ: That's all I have, Your Honor.

10 THE COURT: Any redirect limited to what he went into?

11 SOLICITOR GILMER: Yes, Your Honor. Just one for the
12 record.

13 If I may approach the witness?

14 THE COURT: Yes, ma'am.

15 REDIRECT EXAMINATION

16 BY SOLICITOR GILMER:

17 Q Ms. Butler, I'm gonna show you what's been previously
18 marked as State's Exhibit No. 79.

19 Do you recognize that?

20 A State's Exhibit 79 is the cuttings that I took.

21 Q And those are for the items that we've already been
22 over?

23 A That's correct.

24 Q Okay. And those cuttings, were they then forwarded to
25 someone else within SLED?

Betty Butler - Redirect examination
by Solicitor Gilmer

1 A Yes, it was.

2 Q And who were they forwarded to?

3 A Donna Money.

4 Q Okay. And do these appear to be tampered with in
5 anyway or do they appear to be in the same or substantially
6 the same condition as when you took those cuttings and then
7 forwarded them to Ms. Money?

8 A It was -- she, she would have cut along the sides. I
9 sealed it along here with my initials and my date but she
10 would cut along the sides to open this particular package.

11 Q Okay.

12 A Donnie Money.

13 Q Thank you.

14 Your Honor, at this time I would move to enter into
15 evidence what's been previously marked as State's Exhibit
16 79.

17 MR. SCHULTZ: No objection, Your Honor.

18 THE COURT: Without objection, be State's 79.

19 SOLICITOR GILMER: Thank you, Your Honor.

20 (WHEREUPON, State's Exhibit No. 79 was received into
21 evidence at this time.)

22 SOLICITOR GILMER: I have no further questions at this
23 time, Your Honor.

24 MR. SCHULTZ: No recross.

25 THE COURT: Thank you. Thank you, ma'am. You may step

Betty Butler - Redirect examination
by Solicitor Gilmer

1 down.

2 Is the State ready to call your next witness?

3 SOLICITOR GILMER: Yes, Your Honor.

4 The State calls Donna Money.

5 THE COURT: Ma'am, just come right up here and let the
6 Clerk of Court swear you in.

7 DONNA MONEY, being first duly sworn,
8 testified as follows:

9 THE COURT: Just have a seat in the red chair and pull
10 the red chair up to the microphone.

11 (Witness complies.)

12 DIRECT EXAMINATION

13 BY SOLICITOR GILMER:

14 Q Would you please state your name for the record?

15 A Donna Money.

16 Q Okay. And, Ms. Money, how are you employed?

17 A Excuse me?

18 Q How are you employed?

19 A I am a DNA analyst with the South Carolina Law
20 Enforcement Division as known as SLED.

21 Q And how long have you been with SLED?

22 A Approximately three years.

23 Q All right. And, during that time, have you always been
24 a DNA analyst?

25 A Yes.

Donna Money - Direct examination
by Solicitor Gilmer

1 Q And what is your educational background?

2 A I have a Bachelor's Degree in Forensic Science from the
3 Pennsylvania State University.

4 Q And do you have any specialized training in the area of
5 forensic science?

6 A Upon my employment with SLED I underwent a training
7 program under a qualified DNA analyst for a year and a half.
8 It involved doing practice samples, training samples, an
9 oral exam, a Mock Court or written exam, and some competency
10 samples.

11 Q While with SLED, do you have to maintain training for
12 DNA analysis?

13 A Yes.

14 Q And with your time at SLED, is that your primary
15 position doing DNA analysis or do you undertake other
16 duties?

17 A DNA analysis is my primary job duty.

18 Q And have you had opportunities to work various cases in
19 analyzing DNA evidence?

20 A Yes.

21 SOLICITOR GILMER: Your Honor, at this time I would
22 move to qualify this witness as an expert in the field of
23 DNA analysis.

24 MR. SCHULTZ: No objection.

25 SOLICITOR GILMER: Thank you, Your Honor.

Donna Money - Direct examination
by Solicitor Gilmer

1 THE COURT: All right. Ladies -- all right. Ladies
2 and gentlemen, again, normally a person can not give opinion
3 testimony. Normally, when a person testifies, they must
4 testify as to what they either saw, heard, or sensed by
5 smell or something of that nature. However, there is an
6 exception. When someone is qualified because of education
7 and experience they are permitted to give their opinion in
8 certain areas if the Court qualifies them that way.

9 This witness will be qualified in the area of DNA
10 analysis to give opinion testimony in that area. Again,
11 that does not mean that you must accept the opinions but it
12 is evidence for you to use as you see fit.

13 Yes, ma'am.

14 SOLICITOR GILMER: Thank you, Your Honor.

15 Did you have an opportunity to work a SLED Case Number
16 L1407812?

17 A Yes.

18 Q And when did you work that case?

19 A May I consult my report?

20 Q Yes, ma'am, if that would refresh your recollection.

21 A I received evidence for this case in June of 2015.

22 Q All right. And what evidence did you receive?

23 A I received -- may I consult my report?

24 Q Yes, ma'am.

25 A I received SLED Item 1.1, a swab from a knife blade,

Donna Money - Direct examination
by Solicitor Gilmer

1 SLED Item 2.1, cutting from the front rear collar of a Delta
2 Pro white t-shirt, SLED Item 2.2, a cutting from the left
3 side of a Pro Edge Clemson shirt, SLED Item 3.1, a -- excuse
4 me. I misspoke. SLED Item 2.2 was the cutting from the
5 left side of a Delta Pro white t-shirt. SLED Item 3.1 is a
6 cutting from the front of a Pro Edge Clemson shirt. SLED
7 item 3.2 is a cutting from the right rear sleeve of a Pro
8 Edge Clemson shirt. SLED Item 4.1 was a cutting from the
9 center of a mattress liner. SLED Item 7.1 were swabs from
10 the exterior of the knife from a vehicle. Those are my
11 items of evidence and then I received two standards.

12 SOLICITOR GILMER: Your Honor, if I may approach the
13 witness?

14 THE COURT: Uh-huh. (Affirmative).

15 Yes, ma'am.

16 Q Ms. Money, I'm gonna show you what's been previously
17 admitted as State's Exhibit 79.

18 Do you recognize that?

19 A Yes.

20 Q And what is that?

21 A This is the heat sealed pouch that SLED will place
22 submitted evidence in. For this case it was Container B,
23 which contains all the items of evidence. I verified this
24 by seeing my initials and date are across the heat seal and
25 I can see my initials and date on the evidence items

Donna Money - Direct examination
by Solicitor Gilmer

1 themselves.

2 Q And who did you receive those cuttings from?

3 A May I consult my chain of custody?

4 Q Yes, ma'am, and I actually can show you what's been
5 previously entered as State's 78 if that will help as well.

6 A I received SLED Container B from Forensic Technician
7 Betty Butler.

8 Q And I'm also going to show you what's been previously
9 entered as State's Exhibit 49 and 50. If you could tell us
10 what that is as well.

11 A State Exhibit 49 is SLED Item Number 5, which is the
12 Buccal swab from Robert Cohen-Middleton, and then State
13 Exhibit No. 50 is SLED Item Number 6, Buccal swabs from
14 Christopher Allen Middleton.

15 Q Are those the two samples that you referred to earlier?

16 A Yes, these are the standards that were submitted.

17 Q The standards. I'm sorry.

18 And if you will look at State's Exhibit 78, which is
19 been previously entered into evidence?

20 A (Witness complies.)

21 Q Is there anything from that report that would lead you
22 to believe that any tampering or any contamination occurred
23 with any of these pieces of evidence that you received and
24 analyzed?

25 A The chain of custody verifies and the fact that the

Donna Money - Direct examination
by Solicitor Gilmer

1 items of evidence, when I receive them, were sealed and the
2 seals were initialed and dated by the individual that I
3 received it from, Forensic Technician Betty Butler, the
4 items within were sealed as well and those seals were
5 initialed and dated also by Betty Butler.

6 Q Okay. All right. I'm gonna have you walk us through
7 each of the items that you received. You mentioned before
8 that you received two standards.

9 What is the purpose of those two standards?

10 A Standards are submitted as means to have us compare
11 them to submitted items of evidence.

12 Q Okay. And would you have used those two standards in
13 your analysis at the other items that you received?

14 A Yes, the analysis of the standards is conducted at the
15 end after we've analyzed the items of evidence and then we
16 will conduct a comparison to see if those individuals were
17 or were not present on the items of evidence.

18 Q Do you typically know anything about the underlying
19 allegations in a case when you do testing?

20 A When we receive our case assignments we do have access
21 to instant reports and the packing slips that the
22 investigating agency and submitting officer will submit to
23 SLED at the time that they arrive, and we read through the
24 incident report to see when and where the items of evidence
25 were collected to make sure that what was submitted is

Donna Money - Direct examination
by Solicitor Gilmer

1 pertinent, pertinent to our analysis, and it also gives
2 demographic information pertaining to the individuals
3 involved.

4 Q And is that demographic information important in making
5 your analysis?

6 A It does not affect our analysis. It just helps to
7 write out our reports because we have to make sure that we
8 don't inadvertently do a statistic on a victim's sample off
9 of their body, for instance. So we are aware of who's the
10 victim and who's the suspect and we do list them on our
11 reports.

12 Q Is there a difference also or is it important to know
13 whether someone's male or female?

14 A In this instance it did not matter, but in some cases
15 it is pertinent to know if an individual is male or female.
16 Again, it doesn't affect our analysis -- our interpretation
17 upfront, but it could determine whether to proceed with an
18 additional analysis or not.

19 Q Okay. Let's move to the analysis you did that day. If
20 we could start with Item -- SLED Item 1.1.

21 What was that again?

22 A SLED Item 1.1 was a swab from a knife blade.

23 Q And what did you do with that item, if anything?

24 A So I conducted a DNA analysis on it. It was submitted
25 to me just as a swab. I did not receive the actual item

Donna Money - Direct examination
by Solicitor Gilmer

1 itself and I did our typical DNA analysis process, which is
2 I would extract the DNA from that swab. Then I would
3 determine how much DNA is present on that swab. After that
4 I would amplify or make copies of the DNA and then that will
5 get run through a machine to separate the DNAs, which would
6 be visualized as peaks in a person's body.

7 Q And that particular item, 1.1, did you have any
8 indication as to which item that was and where that knife
9 was located?

10 A Could you rephrase that question?

11 Q I can.

12 That particular item, did you have any information as
13 to where the applicable law enforcement agency had located
14 that item, where they collected it?

15 A According to the incident report, there was no
16 indication of a specific location of where the knife was
17 collected. There was a mention of multiple knives. But it
18 doesn't specify which knife Item 1.1 was exactly.

19 Q Would that be consistent with Betty Butler's Item
20 Number 1, and if she did 1.1 -- if I may approach the
21 witness, Your Honor?

22 THE COURT: (Nods affirmatively.)

23 Q If I show you State's Exhibit 76, which is been
24 previously entered, if you would look through that report
25 and see if there's any indication where that knife would

Donna Money - Direct examination
by Solicitor Gilmer

1 have been located by the law enforcement agency.

2 A According to the analysis request printout sheet from
3 our iLAB System, it indicates that this knife was collected
4 from a coffee table.

5 Q Okay. All right. What results did you receive after
6 your testing of that coffee table knife?

7 A Would you like me to just read my result?

8 Q If that would be easier for you, yes, ma'am.

9 A The DNA profile developed Item 1.1 is a mixture of at
10 least two individuals. The DNA profile developed from the
11 major contributor to this mixture matches the DNA profile of
12 Robert Cohen-Middleton. The probability of randomly
13 selecting an unrelated individual having a DNA profile
14 matching the major contributor to this mixture is
15 approximately one in 750 quadrillion. Christopher Allen
16 Middleton can not be excluded as a minor contributor to this
17 mixture. The probability of randomly selecting an unrelated
18 individual who could have contributed to this mixture is
19 approximately 1 in 51.

20 Q And what does that mean in layman's terms?

21 What do those numbers mean?

22 A The first part of my results statement stating that the
23 major contributor matches the DNA profile of Robert
24 Cohen-Middleton indicates that that profile for the major
25 contributor matches the profile developed from the standard

Donna Money - Direct examination
by Solicitor Gilmer

1 of Robert Cohen-Middleton and the statistic of one in 751
2 quadrillion is a weight that we apply to indicate that,
3 within a reasonable degree of scientific certainty, that
4 those two profiles are from the same individual.

5 The second part of the result pertaining to Christopher
6 Allen Middleton not being able to be excluded does not mean
7 a match. It means that there were additional DNA types
8 present, since it was a mixture, that were consistent with
9 the DNA profile developed from the standards submitted for
10 Christopher Allen Middleton, and since that there are more
11 alleles present, that will bring the statistic down to, in
12 this case, 1 in 51, which, again, is a weight being applied
13 to that piece of evidence.

14 Q And 1 in 51, does that mean -- what does that mean, the
15 probability of selecting someone else is -- what does that
16 mean?

17 If you can further explain that.

18 A With mixtures statistics we use more DNA types than say
19 a single source profile, which, at each location, you only
20 have one or two DNA types present. With mixtures, you have
21 three or more potentially present, and using different
22 locations, that not just one person has -- different people
23 in the world's population may also have similar DNA types.
24 Those are taken into account, and because of that, the
25 weight is brought down to about 1 in 51.

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by Solicitor Gilmer

1 It's not saying that if you go out into a group of 51
2 people one person is gonna have it. That's not what it
3 means. Just a weight indicating that this person can not be
4 excluded, but we can not say for certain that it is an exact
5 match.

6 Q With a number like 1 in 750 quadrillion, does that give
7 more certainty in your mind that that is the person whose
8 DNA that was?

9 A Yes.

10 Q All right. So the higher the number the more certain
11 it is. The lower the number the more uncertain that that's
12 someone DNA, and if I'm not saying that correctly, please
13 feel free to correct me.

14 A Well, a number below say, for instance, the world's
15 population which is approximately seven million people, it
16 doesn't necessarily mean that it's uncertain, but it's to
17 remain conservative. So it prevents the possibility of
18 false inclusions or exclusions. And since you just have a
19 lot more people -- not a lot more people, you have a lot
20 more DNA types being taken into account, it just brings a
21 number down because you're not looking at one singular
22 person.

23 Q And just to clarify, this evidence that you were
24 testing was blood evidence.

25 Is that correct?

Donna Money - Direct examination
by Solicitor Gilmer

1 A I can not say for certain this came directly from
2 blood. I can just say that the profiles developed came from
3 DNA that was present. I just can not say what body fluid it
4 came from.

5 Q And Betty -- and these cuttings were the ones that
6 Betty Butler sent over or the swabs were the ones that Betty
7 Butler sent over to you?

8 A Yes.

9 Q All right. Let's move onto Item 2.1.
10 Did you analyze that item?

11 A Yes.

12 Q All right. If you would, tell us your results.

13 A The DNA profile developed from Item 2.1 is a mixture of
14 at least two individuals. The DNA profile of the major
15 contributor to this mixture matches the DNA profile of
16 Robert Cohen-Middleton. The probability of randomly
17 selecting an unrelated individual having a DNA profile
18 matching a major contributor to this mixture is
19 approximately 1 in 24 quintillion. The partial DNA profile
20 of the minor contributor to this mixture is insufficient for
21 interpretation.

22 Q And how about the next item?

23 The next item -- if you want to go through this
24 together.

25 A The DNA profile developed from Items 2.2, 3.1, and 3.2,

Donna Money - Direct examination
by Solicitor Gilmer

1 and 4.1 matches the DNA profile of Robert Cohen-Middleton.
2 The probability of randomly selecting an unrelated
3 individual having a DNA profile matching these items is
4 approximately 1 in 24 quintillion.

5 Q And if you could tell us specifically what were those
6 items, 2.2, 3.1, 3.2, and 4.1?

7 A Item 2.2 was a cutting from the left side of a Delta
8 Pro white t-shirt. Item 3.1 was a cutting from the front of
9 a Pro Edge Clemson shirt. 3.2 was a cutting from the right
10 rear sleeve of a Pro Edge Clemson shirt. Item 4.1 was a
11 cutting from the center of a mattress liner.

12 Q And just to confirm, do you have Robert Cohen-Middleton
13 listed as the victim in this case?

14 A Yes.

15 Q And it -- it appears you may have analyzed one
16 additional item.

17 If you can tell us about that?

18 A Are you referring to Item 7.1.

19 Q Yes, ma'am.

20 A The partial DNA profile developed from Item 7.1 matches
21 the DNA profile of Christopher Allen Middleton. The
22 probability of randomly selecting an unrelated individual
23 having a DNA profile matching this item is approximately one
24 in 220 million.

25 Q And what is Item 7.1?

Donna Money - Direct examination
by Solicitor Gilmer

1 A Item 7.1 is swabs from the entire exterior of knife
2 from vehicle.

3 SOLICITOR GILMER: Your Honor, if I may approach the
4 witness?

5 THE COURT: Yes, ma'am.

6 SOLICITOR GILMER: Thank you.

7 Ms. Money, I'm showing you what's been previously
8 marked as State's Exhibit 77.

9 Do you recognize that?

10 A I recognize the first four pages of it being my report
11 and these -- there's an additional page which is a
12 submission slip from our iLAB system.

13 Q All right. And is that a fair and accurate
14 representation of the results that you received from your
15 analysis on SLED L -- L1407812?

16 A Yes.

17 SOLICITOR GILMER: Okay. Your Honor, at this time I
18 would move to enter into evidence what's been previously
19 marked as State's Exhibit 77.

20 MR. SCHULTZ: No objection, Your Honor.

21 THE COURT: Without objection, be State's 77.

22 (WHEREUPON, State's Exhibit No. 77 was received into
23 evidence at this time.)

24 SOLICITOR GILMER: Your Honor, I have no further
25 questions at this time.

Donna Money - Cross-examination
by Mr. Schultz

1 THE COURT: Yes, sir.

2 MR. SCHULTZ: Thank you, Your Honor.

3 May it please the Court?

4 THE COURT: Yes, sir.

5 CROSS-EXAMINATION

6 BY MR. SCHULTZ:

7 Q Did you receive more than -- any other evidence there
8 that you've tested?

9 Did you get anything more?

10 A I didn't receive anything additional other than what is
11 listed in my report.

12 Q okay. All right. So you never got cuttings from a
13 yellow shirt?

14 A No, I did not.

15 Q Did you ever get cuttings from black, black pants?

16 A I did not.

17 Q Did you ever, did you ever get cuttings from a blue
18 shirt?

19 A I did not.

20 Q All right. Now, Item 1.1, that's what I'm most
21 concerned with about here. You, you stated that you can
22 state with some sort of scientific, maybe not certainty
23 would be the right word, but I'm just gonna use it,
24 scientific certainty that the DNA contained Item 1.1, and,
25 again, that's the knife, belonged to at least Robert

Donna Money - Cross-examination
by Mr. Schultz

1 Cohen-Middleton, correct?

2 A Yes, the major contributor to the mixture was
3 consistent with the DNA profile of Robert Cohen-Middleton.

4 Q Okay. And the minor contributor to this mixture was
5 Christopher Allen Middleton, my client, right?

6 A He can not be excluded as a minor contributor but I'm
7 not saying that it matches him.

8 Q Okay. It doesn't match him, but why is he a minor
9 contributor?

10 A With mixture profiles, it indicates that more than one
11 person's DNA is present, and depending on the strength of
12 the DNA profile that we developed, we can go in and see if
13 we can pull a major contributor, which means an individual
14 whose been contributing much more DNA than the other
15 contributors in this mixture. The DNA types remaining,
16 after pulling the major contributor, then are compared to
17 the standards that were submitted and those types remaining
18 are compared to see if they are consistent with any of the
19 submitted standards.

20 And if an individual, for instance, has a nine and the
21 nine is a minor contributor, then they can not be excluded.
22 If -- we're not saying that that nine is that person's nine
23 but we can't exclude them because it is consistent.

24 Q All right. Did you compare any other DNA to the DNA
25 that you found on that knife?

Donna Money - Cross-examination
by Mr. Schultz

1 It was just for my client and the -- and Mrs., Mrs.
2 Cohen, right?

3 A Yes, those were the only two standards submitted.

4 Q Those were the only two standards submitted?

5 A Uh-huh. (Affirmative).

6 Q Okay. Now, when you test DNA you actually test
7 alleles, right?

8 A That is the term we use for the numbers that are
9 represented in a person's profile.

10 Q Okay. And alleles, for lack of a better word, bind the
11 helix on the DNA, right, on DNA, right?

12 A No.

13 Q Okay. What do alleles do?

14 A Alleles are DNA types. What we test for are called
15 short tandem repeats or STR's. Those are sequences in DNA
16 that repeat over and over again and the number times are --
17 number of times that they repeat equals the number that is
18 represented in a person's profile.

19 Q All right. So, again, how, how do you look at, look at
20 these?

21 Do you look on -- under a microscope, electron
22 microscope, or how do you, how do you actually physically
23 compare it?

24 A When we go through our process, the final step is
25 putting our sample extract through a machine that will

Donna Money - Cross-examination
by Mr. Schultz

1 separate the DNA based on size, and depending on the size of
2 that DNA type, it will get visualized by a computer program
3 as a peak, and a person may have one or two peaks at the 15
4 locations that we look at, and each peak is represented by a
5 number and those numbers are what will be placed into a
6 person's profile.

7 Q All right. Now, Item 2.1 you said in your report is a
8 mixture of two individuals, correct?

9 A Of at least two.

10 Q Of at least two.

11 Okay. Did you use the Buccal swab to test for the
12 presence of Mr. Middleton's DNA in Item 2.1?

13 A We -- the profile developed from that individual was
14 compared to the profile developed from Item 2.1.

15 Q Why couldn't you get a match of another person on Item
16 2.1?

17 I know you got a match of Robert Cohen-Middleton but
18 explain to the jury why you could not get a match on another
19 individual.

20 A The remaining DNA types, after pulling the major
21 contributor, were insufficient meaning that there wasn't
22 enough information to draw any conclusion that, in this, in
23 this instance, there were only three DNA types and the way
24 SLED does our interpretations is we do not feel that it is
25 appropriate to create an interpretation when there's just

Donna Money - Cross-examination
by Mr. Schultz

1 not enough information.

2 Q Now, going back to Item 1.1, was the handle of the
3 knife tested according to your report?

4 A What I received was a swab from the knife blade. After
5 consulting the paperwork that was submitted for evidence
6 processing, what I read and what I saw, it indicates that
7 only the blade was tested. The request didn't indicate for
8 SLED to test the knife handle but that is a call that
9 evidence processing would have to make.

10 Q Okay. Not you?

11 Evidence processing?

12 A Uh-huh. (Affirmative).

13 Q Okay. All right. Would that have been helpful in this
14 case to test the blade or, excuse me, the handle of the
15 knife?

16 SOLICITOR GILMER: I would object, Your Honor.
17 Speculation.

18 THE COURT: You want to try to rephrase the question?

19 MR. SCHULTZ: Yes, sir.

20 Q You tested the blade, right?

21 A I tested the swab from the blade.

22 Q The swab from the blade.

23 Okay. But nothing was given to you about any swabs
24 from the handle of the knife, right?

25 A I did not receive any swabs from a handle.

Donna Money - Cross-examination
by Mr. Schultz

1 Q Okay. Could it have been possible -- well, let me
2 rephrase that.

3 Could you have, if you had gotten a swab from the
4 handle of the knife blade, could you have tested that for
5 sweat or skin cells?

6 A I would be testing it from DNA. We can't -- excuse me.
7 We can not pinpoint exactly where DNA comes from.

8 Q Okay. But could you have gotten DNA from a swab of a
9 handle of a knife if that was given to you?

10 A It's possible. I can't say for certain if DNA would or
11 would not be developed.

12 MR. SCHULTZ: All right. Beg the Court's patience,
13 Your Honor.

14 (Pause.)

15 MR. SCHULTZ: Thank you, Your Honor. Nothing further.

16 THE COURT: Any redirect limited to what she went
17 into -- he went into?

18 SOLICITOR GILMER: No, Your Honor.

19 THE COURT: Thank you, ma'am. You may step down.
20 Yes, ma'am.

21 SOLICITOR GILMER: Your Honor, at this time the State
22 rests.

23 THE COURT: All right. Ladies and gentlemen, that
24 leaves us to a point where I have to take up some matters of
25 law with the attorneys. So I'm going to have to excuse you

1 from the courtroom.

2 Again, I want to remind you not to have any discussion
3 among yourselves about anything involving the case. But you
4 may retire back to the jury deliberation room and we'll get
5 you back just shortly.

6 (WHEREUPON, the following takes place outside the
7 presence of the jury.)

8 MR. SCHULTZ: Thank you, Your Honor.

9 May it please the Court.

10 Your Honor, at this time I'd like to make a motion
11 to -- for directed verdict on this case. The -- my client's
12 under indictment right now for attempted murder and also for
13 possession of a weapon during the a violent crime. The
14 violent crime obviously being the attempted murder.

15 At this time I do not believe the State has produced
16 sufficient evidence to -- in order to meet their burden of
17 proof by reasonable doubt and more preponderance of the
18 evidence I believe. So I believe that the Court should
19 grant me a or grant us a directed verdict at this time of
20 not guilty.

21 Thank you.

22 SOLICITOR GILMER: Thank you, Your Honor.

23 Your Honor, in-viewing the evidence in the light most
24 favorable to the State, the State submits we have proved a
25 prima facie case of attempted murder and possession of a

1 weapon during a violent crime.

2 Your Honor, the victim testified as to what occurred
3 that night. The defendant entered the bedroom with a deadly
4 weapon, a knife, and stabbed her repeatedly. We heard her
5 story, how he left her lying there for approximately 12
6 hours, Your Honor, while she bled.

7 We've heard from the medical personnel, the doctor in
8 this matter, as well as the EMT, who talked about how severe
9 her injuries were, how both expressed their opinions as to
10 whether those injuries were life threatening. She was
11 actually rushed into the operating room, Your Honor. I
12 think there's no, there's no question as to how severe her
13 injuries were after the defendant's actions.

14 Your Honor, the victim puts the defendant in the house
15 as the one who repeatedly stabbed her. We have two
16 witnesses, one of which sees him in the house peeking out
17 from the inside, a second witness who sees him run out the
18 door with a knife covered in blood.

19 Your Honor, the State feels that we have had sufficient
20 evidence to put him at the scene and that he is the guilty
21 party in this matter.

22 Your Honor, as to the attempted murder, I think it's
23 evident the defendant had a specific intent to kill that day
24 when he repeatedly stabbed the victim with a deadly weapon
25 and left her lying there.

1 Your Honor, again, the State submits that we have
2 proved a prima facie case of attempted murder and possession
3 of a weapon during a violent crime.

4 THE COURT: Any reply?

5 MR. SCHULTZ: No, sir.

6 THE COURT: All right. At this juncture in the trial
7 this Court has to apply a standard of viewing the evidence
8 in a light most favorable to the non-moving party, and, in
9 doing so, I would have to deny the motions. I believe the
10 State has produced sufficient evidence to meet their burden
11 at this stage.

12 Any other motions?

13 MR. SCHULTZ: No, sir, Your Honor. Not on DV, but as
14 far as jury requests.

15 THE COURT: All right. Does the, does the defense
16 intend to call witnesses?

17 MR. SCHULTZ: No, sir.

18 THE COURT: And the defendant, has, has he made the
19 decision whether he's going to testify?

20 MR. SCHULTZ: He has, Your Honor.

21 THE COURT: And that decision right now is what?

22 MR. SCHULTZ: Your Honor, Mr. Middleton is not going to
23 testify in his own defense.

24 THE COURT: All right.

25 SOLICITOR GILMER: Your Honor, could we have the

1 defendant place that on evidence as well?

2 THE COURT: Yeah.

3 SOLICITOR GILMER: Thank you, Your Honor.

4 THE COURT: All right. Mr. Middleton, there's some
5 questions that I need to ask you. I need for you to please
6 raise your right-hand and let the Clerk of Court swear you
7 in.

8 (WHEREUPON, the defendant was placed under oath at this
9 time.)

10 THE COURT: All right. Thank you, sir.

11 Mr. Middleton, I've got a few questions that I need to
12 ask you. If ever, during this process, if you can not hear
13 me, you let me know and I will speak up. But, Mr.
14 Middleton, at this time I'm going to explain to you certain
15 of your rights. If you do not understand anything that I
16 say, please let me know. If you want me to explain anything
17 in more detail, please let me know that as well.

18 Do you understand that?

19 THE DEFENDANT: Yes, sir, Your Honor.

20 THE COURT: All right. Sir, we have now reached the
21 stage of this trial where you may present your defense. You
22 have the right to claim the protections given to you by the
23 Fifth Amendment to the Constitution of the United States.
24 This amendment states, in part, no person shall be
25 compelled, in any criminal case, to be a witness against

1 himself.

2 Now, this means that you can not be required to testify
3 in this case. You have the right to say -- you have the --
4 I'm sorry. You have the right to testify on your own
5 behalf. However, no one can make you testify in this case.

6 This is a personal right and no one can waive this
7 right except you. If you decide to testify, you will be
8 subject to the same rules that govern other witnesses and
9 you may be examined and cross-examined on any relevant issue
10 in this case. In addition, if you have any convictions
11 involving dishonesty or false statements or for crimes
12 punishable by imprisonment for more than one year, and this
13 Court determines that the probative value of admitting this
14 evidence outweighs its prejudicial effect to you, the
15 solicitor will be able to introduce your record to attack
16 your credibility.

17 Now, if you decide to testify, this decision, this
18 decision on your part must be freely, voluntarily, and
19 intellectually made with knowledge of the protections given
20 to you by the Fifth Amendment and the consequences of your
21 decision to testify. If you decide not to testify, I will
22 instruct the jurors that they can not give the fact that you
23 did not testify any consideration whatsoever and that there
24 is to be absolutely no prejudice to you because you did not
25 testify.

1 It's left entirely up to you whether or not you testify
2 or not. You may talk with your lawyer, your family, and
3 your friends, or anyone else. The final decision will be
4 left entirely up to you.

5 Now, sir, do you understand what I have just explained
6 to you?

7 THE DEFENDANT: Yes, sir, Your Honor.

8 THE COURT: All right. Do you have any questions about
9 anything that I've explained to you?

10 THE DEFENDANT: No, sir, Your Honor.

11 THE COURT: All right. Have you been able to discuss
12 with your lawyer whether or not you should testify or should
13 not testify?

14 THE DEFENDANT: Yes, sir, Your Honor.

15 THE COURT: All right. And, sir, do you wish to speak
16 with your lawyer again about the decision whether you should
17 or should not testify?

18 THE DEFENDANT: Yes, sir, Your Honor.

19 THE COURT: You do wish to?

20 THE DEFENDANT: Yes sir.

21 THE COURT: Okay. Feel free to, sir.

22 THE DEFENDANT: Yes, sir.

23 (Pause.)

24 MR. SCHULTZ: Thank you, Your Honor.

25 THE COURT: And, Mr. Middleton, have you made a

1 decision whether or not you want to testify or you do not
2 want to testify?

3 THE DEFENDANT: Yes, sir, I made a decision, Your
4 Honor, not to testify.

5 THE COURT: All right. All right. And, Mr. Middleton,
6 this decision that you've made not to testify, is -- has
7 anybody come to you and threatened you in anyway or have
8 they made you any promises in order to get you to make this
9 decision?

10 THE DEFENDANT: No, sir, Your Honor. They hadn't.

11 THE COURT: Am I correct to conclude that your decision
12 that you made is a free and voluntary decision on your part?

13 THE DEFENDANT: Yes, sir, Your Honor.

14 THE COURT: All right. And, up to now, are you
15 satisfied with the work that your lawyers have done for you?

16 THE DEFENDANT: Yes, sir, Your Honor.

17 THE COURT: All right. All right. I'll find that his
18 decision is a free and voluntary decision on his part and
19 has been made with -- intellectually made by him
20 understanding the protections afforded to him by the Fifth
21 Amendment.

22 All right. Thank you, Mr. Middleton. You may be
23 seated.

24 (Defendant complies.)

25 MR. SCHULTZ: Thank you, Your Honor.

1 THE COURT: All right. What I would -- does the
2 defense wish to rest in front of the jury?

3 MR. SCHULTZ: Yes, sir.

4 THE COURT: All right. All right. What I'd propose we
5 do is let's bring the jury back in, let the defense rest,
6 and then I'll explain, and then -- will the lawyers approach
7 a moment?

8 I have a question.

9 (WHEREUPON, a bench conference was held at this time.)

10 MR. SCHULTZ: Thank you, Your Honor.

11 SOLICITOR GILMER: Thank you, Your Honor.

12 THE COURT: All right. Let's bring the jury in.

13 (WHEREUPON, the following takes place within the
14 presence of the jury.)

15 THE COURT: Yes, sir, Mr. Schultz.

16 MR. SCHULTZ: Thank you, Your Honor.

17 May it please the Court?

18 THE COURT: Yes, sir.

19 MR. SCHULTZ: At this time the defense rests, Your
20 Honor.

21 THE COURT: All right. Ladies and gentlemen, what that
22 means is we have reached a point of this trial where all of
23 the evidence has now been presented to you that you will
24 consider as part of your deliberations. This is a critical
25 important stage in this trial and I'm gonna renew and

1 reiterate to you my instructions that you are not to do any
2 type of independent research, investigation into anything
3 involving the case. That includes my reminder to you that,
4 in the event there's been any news reporting on the TV,
5 radio, newspaper, Internet, you're not suppose to be looking
6 at you -- anything that's been reported about this case in
7 the event that there is anything that is out there.

8 I tell you that because, at this juncture, as opposed
9 to holding you hostage in the back, I have some matters of
10 law that I have to take up with the attorneys that involve
11 this case. It's gonna be -- take us a little bit of time.
12 So instead of just having you sit in the back, I'm going to
13 let you take an early lunch and I'm gonna ask, if you would,
14 by looking at the clock up there, it's almost 11:00, ask
15 you, if you would, to be back in the jury deliberation room
16 maybe about -- try to be back about one o'clock and we will
17 hopefully be finished with all of the legal matters and then
18 we will proceed with the closing arguments from the
19 attorneys. I then will instruct you on the law in the case
20 and then, after that, you will begin your deliberations.

21 But I do want to thank you for your patience and your
22 time while we went through the presentation of the evidence
23 this morning, and, at this time, you may go with the
24 bailiff.

25 (WHEREUPON, the following takes place outside the

1 presence of the jury.)

2 THE COURT: We had previously had a bench conference
3 concerning the charges.

4 Mr. Schultz, you had some issues you wished to raise?

5 MR. SCHULTZ: That's correct, Your Honor. Thank you.

6 Your Honor, at this time the defense would make a
7 motion to ask of the Court that the Court instruct the jury
8 on the affirmative defense of self-defense. I understand
9 that the defendant has not testified. I also understand
10 that we have not presented any evidence at this point.

11 Obviously, the State's burden of proof to present their
12 case and I believe we've done sufficient job of poking holes
13 in the State's case at this point. But I do believe that we
14 have raised at least some evidence of self-defense.

15 The law, the case law, is very clear of this that, at
16 the very least, if the defense or any party raises at least
17 a little bit of self-defense during the course of either the
18 State's case in chief or the defendant's case in chief that
19 the instruction must be given. We are asking, again, that
20 the self-defense be given.

21 The reason why I'm asking that is that the deputy
22 testified, I believe it was yesterday, that my client had
23 sustained wounds and they were starting to, I believe his
24 words, were starting to scab up. I believe that officer had
25 confronted my client the day after the incident or, or

1 another day after the incident. But, nevertheless, he
2 noticed there were wounds, he took pictures of them, and he
3 testified as to that and his report bears that out as well
4 even though the report is not in evidence. His testimony is
5 in evidence.

6 The other reason we're asking for self-defense is that
7 the DNA expert for SLED came up here and testified that
8 there was, in her words, a mixture of a minor contributor to
9 the mixture on the knife blade was my client. So, at the
10 very least, Your Honor, I believe that we have raised, not a
11 lot of evidence of self-defense, but at least a little and I
12 believe the case law is very clear that, that if the defense
13 raises a little bit of self-defense, then the instruction
14 must be given. I think that's very clear.

15 Again, I would tend to believe that, because of the
16 wounds that my client received and these, these are not
17 wounds, you know, like that happened a couple weeks later, I
18 mean these are, these are wounds that happened within 24 to
19 48 hours after the incident actually happened.

20 I believe that there was some sort of struggle and, by
21 that assumption, I also believe that, that we have raised
22 the issue, the issue of self-defense. So that's the
23 argument I'm making on the record for that.

24 Thank you.

25 THE COURT: Any other requests?

1 MR. SCHULTZ: Your Honor, I would also request not only
2 for self-defense, but I would also request a lesser included
3 charge of -- well, obviously the Court's gonna instruct
4 attempted murder and probably assault and battery of a high
5 and aggravated nature. I would ask the Court to also charge
6 assault and battery first, assault and battery second, and
7 assault and battery third. Those are all lesser included
8 offenses of attempted murder and also ABHAN as well.

9 The reason why I'm making specifically assault and
10 battery second degree is that, according to the jury
11 instructions that I've been given here, a person commits the
12 offense of assault and battery in the second degree if the
13 person unlawfully injures another person or offers or
14 attempts to injure another person with the presentability to
15 do so and either moderate bodily injury to another person
16 results or moderately bodily injury to another person could
17 have resulted.

18 Further on, Your Honor, if I could, moderate bodily
19 injury means physical injury that involves prolonged loss of
20 consciousness or that causes temporary or moderate
21 disfigurement or temporary loss of function of a bodily
22 member or organ or injuries that requires medical treatment
23 when the treatment requires the use of regional or general
24 anesthesia or the injury results in effect -- or injury that
25 results in fracture or dislocation and that's -- I, I

1 believe that -- obviously the State is, is saying that this
2 is great bodily injury.

3 But this could be, I think, a question of fact for the
4 jury to determine whether the injuries themselves were great
5 bodily injury or moderate bodily injury. If the Court
6 believes that it could be a question of fact for the jury to
7 look at, analyze, look at the evidence, look at the evidence
8 of injuries, and then conclude that it possibly could be a
9 question of fact, then I believe assault and battery second
10 degree should be given because I believe that it is a
11 question of fact between great bodily injury and moderate
12 bodily injury, and I believe the facts of the State's case
13 fit moderate, moderate bodily injury. Again, means physical
14 injury involves prolonged loss of consciousness or that
15 causes temporary or moderate disfigurement or temporary loss
16 of a function of a bodily member or organ.

17 Your Honor, I believe that there was some testimony
18 that one of the wounds perforated the outer lining of her
19 stomach. So I would believe that that falls under temporary
20 loss and function of a bodily member or organ or injury that
21 requires medical treatment when the treatment requires the
22 use of regional or general anesthesia. I believe some
23 anesthesia was administered, but I think the facts fit
24 assault and battery second degree, and I think it should be
25 a question of fact for the jury to consider.

1 Thank you.

2 THE COURT: What about third?

3 MR. SCHULTZ: And, Your Honor, the, the third degree is
4 a person commits the assault and battery in the third degree
5 if a person unlawfully injures another person or offers or
6 attempts to injure another person with the presentability to
7 do so.

8 Your Honor, again, that's basically, you know, what we
9 have here. We have -- and I think the facts may fit that as
10 well.

11 So, again, I would ask -- and, and there's no --
12 unfortunately, in the statute, and also in the jury
13 instructions in the, in the bench book that Your Honor has,
14 there's nothing in the, in the assault and battery statute
15 that delineates moderate bodily injury to great bodily
16 injury. The only statutes that, that do that are assault
17 and battery of a high and aggravated nature, which has great
18 bodily injury, which defines great bodily injury, and then
19 assault and battery in the second degree, and assault and
20 battery in the second degree defines moderate bodily injury.

21 Unfortunately, assault and battery in the first
22 degree -- well, actually, I'm sorry, Your Honor. I
23 misspoke.

24 Assault and battery first degree explains great bodily
25 injury as well. Great bodily injury means bodily injury

1 which causes a substantial risk of death, which causes
2 serious permanent disfigurement, or protracted loss or
3 impairment of the function of a bodily member or organ.
4 That's my understanding of assault and battery first degree.

5 So, again, Your Honor, I know attempted murder is gonna
6 be instructed. I'm assuming that assault and battery of a
7 high and aggravated nature is going to be instructed. But I
8 would ask that assault and battery first, because it does --
9 now, assault and battery first does, does involve great
10 bodily injury. Assault and battery second involves moderate
11 bodily injury, which I believe is a question of fact for the
12 jury. Assault and battery third degree doesn't have any
13 language delineating it from great bodily injury or moderate
14 bodily injury. It just says that it's very bare bones
15 assertion of what the charge is.

16 So that's what I'm asking. I'm asking that all of the
17 assault charges be considered by the court and -- when,
18 when -- to instruct the jury.

19 THE COURT: Anything else?

20 MR. SCHULTZ: No, sir.

21 THE COURT: Yes, ma'am.

22 SOLICITOR GILMER: Thank you, Your Honor.

23 If I could address the lesser included offenses first
24 on the jury instruction, Your Honor, the State, as the State
25 has earlier said, we believe that attempted murder and

1 assault and battery of a high and aggravated nature will be
2 the only two charges that should be submitted to the jury as
3 possibilities.

4 Your Honor, as to starting with assault and battery
5 third degree, Your Honor, those are cases where there's a
6 push, there's a slap. There may not even be any injury that
7 resulted. So, Your Honor, I'm not gonna address that too
8 much longer. Obviously do not think assault and battery
9 third degree should be given as a lesser included in this
10 case.

11 As to assault and battery second degree, Your Honor, we
12 do not feel that that is an appropriate lesser included to
13 be in the jury instructions as well, Your Honor.

14 Your Honor, we are dealing with a case where the victim
15 was stabbed. She had five separate stab wounds. Bled out
16 through the period of approximately 12 hours. We had EMT,
17 medical personnel, the doctor who testified she was rushed
18 into the operating room, which is not standard for all
19 people that come into the emergency room. They are not
20 rushed into surgery.

21 Your Honor, she was life-flighted by Regional One. We
22 feel like the State has shown time and time again through
23 this testimony that these injuries were not assault and
24 battery second, assault and battery third, or even assault
25 and battery first degree.

1 Your Honor, per the assault and battery first degree
2 statute, that says the defendant offered or attempted to
3 injure another person with the presentability to do so and
4 the act is accomplished by means likely to produce great --
5 death or great bodily injury.

6 well, yes, the defendant's actions could produce death
7 or great bodily injury. However, Your Honor, he didn't just
8 offer or attempt to offer. He actually did. And that gets
9 us to assault and battery of a high, of a high and
10 aggravated nature and that statute says if the person
11 unlawfully injures another person and great bodily injury to
12 another person results or the act is accomplished by means
13 likely to produce death or great bodily injury.

14 Your Honor, again, this is not just an offer or an
15 attempt to cause that. That injury was actually caused.
16 Therefore, we believe that the only lesser included offense
17 that should be given to the jury is assault and battery of a
18 high and aggravated nature.

19 THE COURT: Isn't it speculation to lower it to a
20 assault and battery first charge based on the testimony?

21 The only testimony that this Court has received
22 indicates that there was the malice issue, that he intended
23 to kill her.

24 SOLICITOR GILMER: With the malice, yes, Your Honor,
25 that would come into effect with the attempted murder.

1 Maybe I'm misunderstanding what --.

2 THE COURT: Okay. Go ahead. I'm sorry I didn't mean
3 to interrupt.

4 SOLICITOR GILMER: That's okay, Your Honor. We, we do
5 feel that there was a specific intent to kill.

6 THE COURT: What about the self-defense?

7 SOLICITOR GILMER: Your Honor, with the self-defense,
8 the defense attorney may -- Mr. Schultz may believe there
9 was some struggle or some self-defense but there's been no
10 evidence to suggest that, Your Honor.

11 He talks about these wounds that Deputy Shaffer
12 testified to. Yes, Deputy Shaffer did say, in his
13 experience as a law enforcement officer and EMS, the
14 defendant had fresh wounds two days after this. Those fresh
15 wounds appeared to be to his wrist and Deputy Shaffer said
16 those appeared to be self-inflicted.

17 He did say that there was some scabbing wounds to the
18 defendant's abdominal area that did not appear fresh.
19 However, Your Honor, I would like to remind the Court that
20 the defendant had been on the run for two days. He had been
21 through the woods. K-9 searches had been out to try to
22 track him.

23 Also, Your Honor, the victim testified in her statement
24 that, during the attack on her, the defendant had the knife
25 and actually made a statement about injuring himself and

1 that, as she indicated through her testimony, that that
2 knife would have been a poke towards his abdominal area,
3 Your Honor.

4 Your Honor, I do not feel that there is any evidence of
5 self-defense in this matter. The defendant elected not to
6 testify adding to that state of mind that he might could of
7 said in his testimony, Your Honor. Other than that, there's
8 no evidence of that.

9 As far as the SLED analyst testimony, she testified
10 that the knife that was in -- that was found on the coffee
11 table was the victim's DNA and the knife in the car that was
12 found two days later was the defendant's -- had the
13 defendant's DNA on it.

14 So, Your Honor, I think the only thing that had -- she
15 said might of had that minor 1 in 51 minor component would
16 have been a shirt that the victim alleged the defendant had
17 been wearing. So, obviously, DNA can be switched from
18 sweat, blood, anything like that, touch DNA.

19 Your Honor, with a self-defense, also the case law says
20 that a person is justified in using deadly force in
21 self-defense when the defendant was without fault in
22 bringing on the difficulty, the defendant actually believed
23 he was in emanant danger of losing his life or sustaining
24 serious bodily injury or he actually was in such emanant
25 danger. If the defense is based upon the defendant's actual

1 belief of emanant danger, a reasonable and prudent man of
2 ordinary firmness and courage would have entertained the
3 same belief and the defendant had no other probable means of
4 avoiding the danger of losing his own life or sustaining
5 serious bodily injury than to act as he did in this
6 particular incident.

7 Your Honor, the testimony would show that the victim
8 had been in a medical procedure earlier that day, had
9 surgery scheduled that next morning. She testified that she
10 was in bed, the defendant entered the bedroom irate with the
11 knife, and attacked her, Your Honor.

12 Your Honor, we do not feel that there is any evidence
13 to support a self-defense charge to the jury, Your Honor,
14 and we would ask that the judge not -- the Court not give
15 that instruction.

16 THE COURT: Any reply?

17 MR. SCHULTZ: Your Honor, Your Honor, I have no reply
18 to self, self-defense. But I would, I would, again, beg the
19 Court to instruct the jury on assault and battery first
20 degree. I believe the facts do fit the assault and battery
21 first degree at least instruction that I would present to
22 the Court here and just let me read this.

23 A person may, may also commit the offense of assault
24 and battery in the first degree if the person offers or
25 attempts. He, my client, Mr. Middleton is on trial for

1 attempted murder. To injure another person with the
2 presentability to do so and the act either is accomplished
3 by means likely to produce death or great bodily injury.

4 Again, great bodily injury means bodily injury which
5 causes a substantial risk of death or which causes serious
6 permanent disfigurement or protracted loss or impairment of
7 the function of a bodily member or organ.

8 Obviously, Your Honor, I'm arguing for everything, all
9 the assault charges to be put in there. But I believe my
10 best argument is for the lesser included offense of assault
11 and battery in the first degree to be given.

12 THE COURT: Your best argument is for assault and
13 battery of a high and aggravated nature.

14 MR. SCHULTZ: Yes, Your Honor. I understand the Court,
15 Court's opinion with that, but---

16 THE COURT: Uh-huh. (Affirmative).

17 MR. SCHULTZ: ---what I'm advocating for is for
18 everything for the jury to consider in this because we do
19 have some factual differences that I think the jury should
20 be allowed to go into. I'm of the opinion, and hopefully
21 the Court shares this, that when a jury goes back there, I
22 think they should be given all of the options in the world
23 in order to figure out what really happened. They're the
24 finder of fact and the more options, I think, are given to
25 the jury, I, I think the better decision that juries

1 throughout this country can make if they're given sufficient
2 options.

3 I'm arguing for obviously attempted murder and ABHAN
4 but also for all assault and battery first degree, assault
5 and battery second, and assault and battery third. And I
6 think the facts fit assault and battery first degree.
7 There's not a, a substantial, a big substantial difference
8 between assault and battery first degree and assault and
9 battery high and aggravated nature.

10 The jury instructions, I think, are very very similar,
11 and that's what I'm asking for first.

12 THE COURT: All right. Okay. I am not going to
13 instruct on self-defense. The evidence, viewing it in a
14 light most favorable to the defendant, I think the jury
15 would be speculating beyond belief to reach into, the
16 evidence as been presented in this case, I think the jury
17 would be asked to reach into levels of speculation that this
18 Court just doesn't believe that the jury can do based on the
19 facts that have been presented on the issue of self-defense.
20 So I'm not gonna instruct self-defense.

21 I'm gonna go back and take a look at assault and
22 battery of a high and aggravated nature. Also assault and
23 battery in the first degree.

24 Right now I'm strongly feeling like I will do the
25 lesser included offense of assault and battery high and

1 aggravated nature. I need to take a look at assault and
2 battery in the first degree.

3 Based on the evidence that's been presented, I -- this
4 injury that was suffered goes beyond assault and battery in
5 the second degree. So I'm gonna take a look at whether it's
6 first or whether I can include first and I'll let you know
7 shortly.

8 Anything else?

9 MR. SCHULTZ: Would the Court like my instruction?

10 THE COURT: Well, if you're gonna propose one I would.

11 MR. SCHULTZ: Yes, sir.

12 THE COURT: All right. We'll step down for a few
13 moments. I'll come back and let you know.

14 We'll stand at ease.

15 MR. SCHULTZ: Thank you, Your Honor.

16 (WHEREUPON, a short recess was taken at this time.)

17 THE COURT: All right. The Court's ruling, I am gonna
18 charge assault and battery of a high and aggravated nature.
19 There's a -- in our research, there is a distinction that
20 the same evidence that be can used to infer malice can also

21 be used to infer assault and battery of a high and
22 aggravated nature. So I'm going to charge that.

23 I am not gonna charge assault and battery in the first
24 degree. Not gonna charge assault and battery in the first
25 degree based on State versus Middleton. I believe that that

1 case was -- that case was enlightening to me as to creating
2 that difference between assault and battery of a high and
3 aggravated nature, but also assault and battery in the first
4 degree. Do not believe that, with the undisputed facts that
5 we have in this case as to the type of injury that occurred,
6 the way the injury occurred, that that, that that would
7 justify going and charging the lesser of assault and battery
8 in the first degree.

9 We have another issue that has arisen. One of our
10 jurors is involved -- been involved in an automobile
11 accident and will not be back. And so -- that is
12 Mr. Lattimore if you're making notes if that matters to you.
13 So we will have to select one of the alternates to be -- to
14 sit in his place.

15 Now, my understanding, and y'all correct me if you're,
16 if I'm wrong, is that I'm to draw lots.

17 SOLICITOR GILMER: I haven't had this situation before,
18 Your Honor. So I would have to research it, but if you know
19 what---

20 THE COURT: Okay. I'll tell you what we'll do.

21 While you're out on the lunch break, let that -- while
22 Mr. Schultz is taking his 30 minutes to go through his
23 notes, let's everybody take a look at how we select from the
24 alternate.

25 okay?

1 SOLICITOR GILMER: Okay, Your Honor.

2 THE COURT: We'll step down and see y'all about
3 one o'clock.

4 MR. SCHULTZ: Thank you, Your Honor.

5 (WHEREUPON, Court was in recess for the lunch hour.)

6 THE COURT: I reviewed the proposed verdict forms with
7 the attorneys and they approved those two verdict forms.

8 All right. We had not reviewed the assault and battery
9 high and aggravated nature charge. I think this will be
10 agreeable. I just want to be sure I reviewed it with you.

11 MR. SCHULTZ: Yes, sir.

12 THE COURT: Assault and battery of a high and
13 aggravated nature. A person commits the offense of assault
14 and battery of a high and aggravated nature if the person
15 unlawfully injures another person and A, great bodily injury
16 to another results, or, B, the act is accomplished by means
17 likely to produce death or great bodily injury. Great
18 bodily injury means bodily injuries which causes a
19 substantial risk of death or which causes serious personal
20 disfigurement or protracted loss or impairment of the
21 function of a bodily member or organ.

22 Okay. We'll---

23 MR. SCHULTZ: Yes, sir.

24 SOLICITOR GILMER: Yes, sir.

25 THE COURT: ---go with that.

1 All right. Okay. We'll now bring the jury in.

2 Oh, wait, wait.

3 We had the alternate issue.

4 Did y'all -- what do y'all want to do?

5 SOLICITOR GILMER: Your Honor, I think probably if we
6 just move to the first alternate that would be sufficient
7 and I'm not sure who that is, but---

8 THE COURT: Okay.

9 MR. SCHULTZ: Yeah, I don't have any objection to that.
10 That's fine.

11 THE COURT: Okay. All right. That would be who?

12 That would be Ashley Henderson.

13 All right. Inform Ms. Ashley Henderson that she will
14 now sit with the regular jury and the, and for purposes of
15 the record, the juror who had the accident was
16 Mr. Lattimore. So he will not be present.

17 MR. SCHULTZ: And, Judge, could we approach briefly?

18 THE COURT: Briefly.

19 Wait a minute. Don't bring them in.

20 (WHEREUPON, a bench conference was held at this time.)

21 THE COURT: Madam Clerk.

22 All right. Between those two.

23 (Pause.)

24 THE COURT: All right. We'll stand at ease for a few
25 minutes.

1 MR. SCHULTZ: Thank you, Your Honor.

2 (WHEREUPON, a short recess was taken at this time.)

3 THE COURT: We've reviewed the code. It's Code Section
4 14-7-134 that deals with the alternate juror whenever one of
5 the jurors becomes incompetent, either through sickness,
6 illness, death, requires that, if you have more than, more
7 than one alternate juror, then you are to do it by ballot.

8 So we placed both names on the ballot, allowed the
9 Clerk of Court to draw. The Clerk of Court has drawn the
10 name of Mrs. Taylor. So she will serve -- be moved from the
11 alternate to the regular juror to substitute for Mr. Archie
12 Lattimore, which the Court has been informed was involved in
13 a pretty -- sounds like a serious automobile accident and
14 had to be transported by ambulance to the emergency room.

15 Okay. Anybody have -- place anything on the record for
16 that?

17 SOLICITOR GILMER: No, Your Honor. Not from the State.

18 MR. SCHULTZ: No, Your Honor. I believe that the Court
19 did it the proper way.

20 THE COURT: All right. Thank you.

21 If you will inform Mrs. Taylor that she will now serve
22 as a regular juror.

23 THE BAILIFF: Yes, sir.

24 THE COURT: Okay.

25 (WHEREUPON, the following takes place within the

1 presence of the jury.)

2 THE COURT: Madam Forelady, ladies and gentlemen of the
3 jury, the parties have now presented their evidence in the
4 case and it is now time for the attorneys to make what is
5 called their closing arguments to you.

6 Now, the arguments of the attorneys are not evidence in
7 this case. Their statements and arguments are meant to help
8 you understand the evidence and apply the law to the
9 evidence. You should disregard any remark, statement, or
10 argument which is not supported by the evidence presented
11 during the trial or the law that I will explain to you after
12 the arguments have been presented.

13 But, at this time, we will receive the closing
14 arguments from the attorneys.

15 Yes, ma'am.

16 SOLICITOR GILMER: Thank you, Your Honor.

17 May it please the Court, counsel.

18 Members of the jury, bitch, I hate you.

19 On June 19th of 2014 the defendant's actions spoke
20 even louder than his words for, on that night, he repeatedly
21 stabbed his wife in their marital bed and left her bleeding
22 to die for 12 hours until help came.

23 At the beginning of this trial I told you the State
24 would give you the tools that you would need to determine
25 what happened that day and to find the defendant guilty of

1 attempted murder and possession of a weapon during a violent
2 crime and I submit to you the State has given you those
3 tools and you, along with your common sense, have enough to
4 render guilty verdicts in this case.

5 Now, I anticipate Judge Hayes is going to instruct you
6 on the law after myself and Mr. Schultz have an opportunity
7 to speak with you. The defendant is charged with attempted
8 murder and possession of a weapon during a violent crime.

9 Attempted murder, I anticipate the judge is gonna tell
10 you that, on that date, the defendant, he would have to have
11 what's called malice aforethought. Now, malice is any ill
12 will, hostility towards the victim, and I submit to you that
13 we've shown that on that night.

14 Malice aforethought means -- it does not mean that he
15 had, had to wait and plan this for weeks, days, months prior
16 to this happening. He could form that malice aforethought
17 from the time it took to get that knife from the kitchen and
18 go into the bedroom. He could form that malice aforethought
19 by the time it took for him to get on top of the victim and
20 repeatedly stab her with that knife.

21 Ladies and gentlemen, you have seen a lot of evidence
22 in this case and we appreciate your patience in getting
23 through all the legal formalities that it takes to show you
24 evidence, to let you see it, and to let you hear it, and we
25 do appreciate your patience.

1 This is my opportunity to speak with you about the
2 case. The State has the burden of proof in this matter to
3 prove that the defendant committed these acts beyond a
4 reasonable doubt.

5 Now, I anticipate Judge Hayes is going to give you the
6 definition of beyond a reasonable doubt and tell you what
7 that means. I ask you to keep in mind and I anticipate he's
8 going to tell you that that does not mean beyond all doubt
9 or beyond possible doubt. There are very few things in this
10 world that we can say with absolute certainty. So I ask you
11 to keep that in mind and not hold the State to the standard
12 that we do not have to be held to. The standard is beyond a
13 reasonable doubt.

14 I want to walk back through what happened that night.
15 The State has to prove that the defendant had intent to kill
16 the victim.

17 Now, we've, we've given you testimony. We've shown you
18 photographs about the victim was repeatedly stabbed five
19 times. Her hand, her breast, her shoulder, her abdominal
20 area. She was stabbed with a knife, a knife that we submit
21 to you obviously could cause much damage, as we see in this
22 case, and it could cause death as well, and, fortunately,
23 it's not what we're dealing with here in this case.

24 Mrs. Cohen, Mrs. Undra Cohen laid there for 12 hours
25 after her husband repeatedly stabbed her. He did not call

1 police. He did not call medical assistance. He did not
2 call friends, family. Did not take her to the hospital.
3 Nothing. If that is not an intent to kill, after repeatedly
4 stabbing her and leaving her in the bed for 12 hours to
5 bleed out, I don't know what is.

6 I want to take an opportunity to walk, walk with you
7 back through the case and what we know happened that night
8 and the evidence that, again, I submit to you show that this
9 defendant is guilty of attempted murder and possession of a
10 weapon during a violent crime.

11 You initially heard from the victim's mother, Mrs. Lois
12 Cohen, and her mother told you about how she received a call
13 from the hospital on that morning. Mrs. Under had surgery
14 scheduled for 6:30. Mrs. Undra has been -- not been in the
15 best health. She's a former cancer survivor. She also had
16 had shoulder surgery two weeks prior to this and she was
17 dealing with a condition called myasthenia gravis that the
18 doctor told you about causes weakness.

19 We heard from Ms. Cohen who told you that, on that
20 morning, she received a call from the hospital concerned
21 because Mrs. Undra had not shown up for her appointment,
22 which was not usual. She was not there. So Ms. Cohen
23 called 9-1-1 and you heard that 9-1-1 call. Not necessarily
24 thinking anything necessarily was wrong, but just wanting to
25 send an officer out to go check on her daughter. As you

1 see, Ms. Cohen herself, Ms. Lois Cohen, is not in the best
2 of health herself.

3 We heard that initial call. Simply send an officer out
4 for a welfare check to see if Mrs. Under was okay. You've
5 heard that call.

6 Next you heard from Loreena Miller-Bobo, God sister,
7 friend, former roommate of Mrs. Undra who she had been
8 staying there. She was taking care of Mrs. Undra, taking
9 her to her medical appointments. But, on that particular
10 morning, the day before, the defendant had taken Mrs. Undra
11 to her medical appointment, and, on that next morning, he
12 was to take her to her medical appointment at 6:30 in the
13 morning.

14 How convenient.

15 Nobody would know, would realize Mrs. Under had never
16 shown up for her medical appointment because the defendant
17 was to take her.

18 So Ms. Miller-Bobo gets a call from Ms. Lois Cohen, the
19 victim's mother. Ms. Lois also calls Robert Montgomery,
20 which you heard -- who you heard from as well, who is the
21 victim's father.

22 At that point they go out to the residence.
23 Mr. Montgomery lived a little bitter close to where Undra
24 and Chris lived in their marital home. He goes out there
25 not really thinking anything of it, wondering where his

1 daughter is. He goes to the front door along with Ms.
2 Miller-Bobo who arrived about the same time.

3 At that time they say they repeatedly knocked, rang the
4 doorbell. Nobody comes to the door. But Robert Montgomery
5 tells you he did see the defendant peek out those blinds.
6 Saw him peek out those blinds.

7 Ms. Miller-Bobo goes back to the back-door. You saw
8 photos of the house. Goes back to the back-door. She
9 knocks on the bedroom window. She hears Mrs. Undra moan.
10 She tells Mrs. Undra, not realizing anything's amiss at that
11 point, answer the door, why aren't you answering the door.

12 Ms. Loreena Miller-Bobo goes to the back-door.
13 Immediately the defendant answers the door covered in blood,
14 with a knife, screwdriver, silver item, she says a silver
15 object in his hand. She wasn't sure if it was a knife or a
16 screwdriver. But she knew it was some type of weapon and it
17 was silver in nature.

18 Well, ladies and gentlemen, we showed you a picture of
19 a knife that was found later in a vehicle on the property of
20 an acquaintance of the defendant, a knife that later was
21 found to have his DNA on it. Silver object. Consistent
22 with the same knife that was located in the house that Mrs.
23 Undra was stabbed with.

24 Ms. Loreena told you, walked you through, you heard
25 that 9-1-1 call, walked you through her coming into the

1 house. First not realizing anything was wrong. There were
2 blankets over Mrs. Undra. She couldn't tell -- she saw --
3 she had her arm, hand wrapped up in a shirt. Couldn't
4 really tell what was wrong.

5 She starts questioning Mrs. Undra. Mrs. Undra, being
6 in the condition that she is, even says shhh because she is
7 concerned for her friend's safety because this man, who is
8 just repeatedly stabbed her, she don't -- she doesn't know
9 if he's still in the house or not. So she's concerned for
10 her friend's safety.

11 Mrs. Undra tells her sure -- shhh. Ms. Loreena
12 Miller-Bobo, Undra, what's going on, what's going on. I see
13 the hand. What's happening. You can hear in that 9-1-1
14 call exactly what happened that day, that heart wrenching
15 call. You can hear what happened.

16 She goes -- she is first on the run -- the opposite
17 side of the bed where Mrs. Undra is. At some point the
18 blanket is removed. Oh, my God, what has happened in this
19 house. You can hear that in her voice. She walks around to
20 the other side of the bed and she sees all that blood in the
21 floor not knowing, not knowing what is happened.

22 She told you, Ms. Loreena, told you about how Mrs.
23 Undra kept a tidy house. She told you how the jewelry box
24 that was in the floor that Mrs. Undra later told you had
25 been thrown by the defendant, things ranshacked (phonetic)

1 in that room, that would not have been in the floor cause
2 Mrs. Undra kept a tidy house.

3 She walked us through the bedroom where Mrs. Undra was
4 found. Again, she walks to the first side of the bed when
5 you come into the room from the hallway. Mrs. Undra's on
6 the other side where that wall is. She tells you how,
7 again, she walks to the other side of the room, sees all
8 that blood, and you can hear her dry heaving on the call
9 giving you an idea of how bad this was.

10 We also heard from Deputy Wes Berkeley who was the
11 initial responding officer on that day. He told you I went
12 out there. I got a call, a dispatch call about a welfare
13 check.

14 Well, that immediately turned into a stabbing when, by
15 the time it took Mr. Montgomery and Loreena Miller-Bobo to
16 get there and figure out this is not just a welfare check.
17 It was a stabbing. It was changed when she made that 9-1-1
18 call.

19 Mr. -- Deputy Berkeley told you about how Ms.
20 Miller-Bobo had handed him a knife. She had it in a towel
21 to give to him. This is the knife that Mrs. Undra was
22 stabbed with. She gives it to him, he puts it on the coffee
23 table, and you saw photos of that as well.

24 He also told you about how he observed some of the
25 injuries to Mrs. Undra at that time and how she was Life

1 Flighted or via Regional One to the hospital. He told you
2 about that. He told you about how he then started the crime
3 scene log, got the family out of the residence, which is
4 typical procedure, standard procedure, and turned the case
5 over.

6 You also heard from Deputy Shaffer. Now that was a
7 little bit of tedious testimony. We went through all the
8 exhibits. We had to do all the legal formalities to get
9 that through but you heard from him.

10 Deputy Shaffer testified to the evidence that he went
11 through at the crime scene, that he collected. He told you
12 about the blood and how the blood was concentrated on the
13 right side of the bed, the side of the bed that was closest
14 to the wall, closest to this blood right here that we see in
15 this photo, closest to that window where Loreena Miller-Bobo
16 said she heard Mrs. Undra.

17 Also, the nightstand that has been pointed out was Mrs.
18 Undra on that side of the bed. That's where that blood is
19 concentrated. You see it on the mattress liner. You see it
20 in the floor. You have blood on the side of the wall
21 consistent with when -- what Mrs. Undra told you that, when
22 the defendant struck her in the face, she fell to the floor.

23 Transfer of the blood, Deputy Shaffer went through that
24 with you. There's blood splatter on the wall next to the
25 curtain, on the curtain, and there's that blood splatter

1 back between the headboard of the bed as well as the lamp.

2 All consistent in that's where this took place. All
3 consistent with what Mrs. Undra told you when the defendant
4 came into that bedroom. She was sleeping, getting ready for
5 her 6:30 surgery the next morning, came into that bedroom,
6 got on top of her, and repeatedly stabbed her. That's where
7 that happened. All the blood's concentrated there and
8 that's what was collected by Deputy Shaffer in the
9 photographs he took, the evidence he took, the blood
10 swabbings that he took as well.

11 He also took photos again of that jewelry box that was
12 there in the floor, the blankets that he said he came in
13 after EMS. Obviously the first concern was getting Mrs.
14 Undra to a hospital, making sure that she was gonna be okay.
15 That was his first concern. He came in after that, after
16 the EMT's had been there, and he collected what he could
17 based upon what they knew at that time.

18 You also saw, in one of these photos, if you look at
19 the corner of the wall, you see Mrs. Undra's phone. Now,
20 she told you about it. I don't have the photo up here but
21 it was right here. You'll have an opportunity to take these
22 photos back with you in the jury room as well as the other
23 evidence. You'll see a phone lying there. So she said that
24 was her phone, he had taken it, it was away from her.

25 She was stuck in that bed, a woman that was already

1 weak from a staff -- from a medical procedure the day
2 before, cancer survivor, recovering from shoulder surgery,
3 and that myasthenia gravis that causes weakness, and, on top
4 of that, having been stabbed five times. That's where she
5 laid in that bed for 12 hours.

6 Next we heard, we heard from Mrs. Undra. Mrs. Undra
7 told you about -- she walked us through what happened on
8 June 19th. She said the defendant took her to a medical
9 appointment that day. That was not common. Usually she
10 maybe took herself or Ms. Miller-Bobo would take her. The
11 defendant took her that day. She said the procedure lasted
12 about six hours.

13 She says she got, she got home early that evening. She
14 went to bed. She had the surgery scheduled the next
15 morning. Limitations as far as what she could eat and what
16 she could drink. She goes to bed. She hears -- she knows
17 Ms. Miller-Bobo leaves at some point. Ms. Miller-Bobo's two
18 kids are there. They come in, tell her Chris, the
19 defendant, is acting out, and they're going home. Their,
20 their father is gonna pick them up.

21 Mrs. Undra told you she thought a guy named Al was
22 there at some point. She doesn't know for sure. She heard
23 the door alarm saying door open, door was open, and the
24 defendant comes in the room at some point. He's already
25 angry at some point cause he's found out she's taking steps

1 to get a divorce.

2 He comes into the room a second time. Locks the door.
3 She's sleeping facing the window, facing that -- the curtain
4 that we see there. He comes in. She doesn't realize he
5 has, he has a knife at first. He's arguing with her.
6 Starts out bitch, I hate you. He's wanting to argue. She's
7 saying Chris, I've got surgery for the next morning. Leave
8 it alone. He keeps arguing. The next thing she knows he
9 flips her over.

10 He flips her over and, at some point, she realizes he
11 has that knife, and, with that knife, he gets on top of her.
12 She's lying, the right side of the bed, on her back, and he
13 repeatedly stabs her one, two, three, four, five. Her
14 hands, her shoulder, her breast, her abdominal area. Five
15 wounds.

16 This woman, who already has medical conditions, who's
17 already weak, surgery scheduled the next morning. He knows
18 of this because they've been married for eight and a half
19 years. Repeatedly stabs her five times.

20 You've seen the wound to her hand. You've seen the
21 wound to her abdominal area, those rushed photos that had to
22 be taken because she was going to be rushed into surgery.
23 You saw that hand wound with the blood, that witnesses have
24 testified to, appear dried.

25 why did it appear dried?

1 Because that poor woman laid in that bed for 12 hours
2 bleeding out. Twelve hours. That is longer than the time
3 we all were together yesterday in this trial. Twelve hours.
4 She laid there. This man let her lay there after he, after
5 he professed his love for her. They were married and he let
6 her lay there after he repeatedly stabbed her.

7 He knew where she had to be at 6:30 the next morning
8 and he knew that nobody would be looking for her. So he had
9 plenty of time, plenty of time, and he let her lay there.
10 He let her lay there bleeding out.

11 How do we know how bad these injuries were, how bad
12 these injuries were after she'd been stabbed repeatedly,
13 laid in that bed for 12 hours, in pain, bleeding out,
14 wondering if she was gonna die, and wondering if that man is
15 gonna finish her off with that knife he started with, that
16 knife that he held near her head that entire night?

17 I can't imagine.

18 The doctor testified and first we heard, we heard from
19 Cornelius Huff. He was the EMT. He testified that, when he
20 got there, he has a long -- many years of experience as a
21 paramedic. When Mr. Huff got there he saw how badly she was
22 injured. He saw that she was bleeding to the point of he
23 was afraid to move her it was so bad. He said she was
24 sluggish at that point. She was conscious. She was talking
25 some. Obviously she was very aware of everything that was

1 going on.

2 He made the decision that this was so bad, and due to
3 the distance, they needed to Life Flight her, Regional One
4 her to the hospital, and that's what they did. And Doctor
5 Johnson came in here and he -- we called him a little bit
6 out of order cause he has some professional -- he had some
7 surgeries scheduled for yesterday. So we had to call him a
8 little bit out of order. But he told you, this doctor who
9 has multiple -- much experience in general surgery and
10 emergency surgery, he's done emergency surgeries at
11 Spartanburg Regional, he's a surgeon in the U.S. Military
12 and did battlefield emergency surgeries, all this experience
13 he has and he said she was immediately rushed into surgery
14 because, had she not been rushed into surgery, there's a
15 good chance she would have died. These wounds were
16 absolutely life threatening and he rushed her into surgery.

17 He told you as well -- he talked a little bit about he
18 does bariatrics and weight loss surgery on the side, which
19 is nothing to do with this case, but for the fact of he, he
20 told you that Mrs. Undra has -- was carrying a little bit of
21 extra weight that day, and, and, on that day, he was talking
22 about these wounds and how, even with the extra weight that
23 she had on, one of those stab wounds was so deep that it
24 created a hole in her stomach liner. That's how deep that
25 wound was. So you can imagine the thrust with that knife,

1 how hard the defendant stabbed her on that night.

2 Eighteen days in the hospital. Eighteen days in the
3 hospital because of this and multiple surgeries. Doctor
4 Johnson was gravely concerned.

5 Let's talk a little bit about the SLED witnesses that
6 came in. Put that up today to give you a whole picture,
7 walking you through the case. Their testimony was very
8 simple today.

9 Mr. Schultz is gonna have an opportunity to speak with
10 you after I do. But I ask you to keep in mind the testimony
11 was very simple.

12 The victim's DNA was found on the knife in the house.
13 That knife that was found two days later after the defendant
14 had been on the run, after K-9s tried to find him, two days
15 later that knife was found in the car of his acquaintance,
16 Birdie Ballenger, hidden under a mattress. This was an old
17 abandoned car. You saw photos of it.

18 That knife had his DNA on it. It's as simple as that.
19 It's a lot of blood evidence that was analyzed. Came back
20 to the victim, Mrs. Cohen, Mrs. Undra, and there were two
21 knives that were analyzed, the one in the house obviously he
22 stabbed her with, Mrs. Undra's blood, and the one in the car
23 that he had had with him for two days, the one that Loreena
24 Miller-Bobo saw him with at the door when he came to the
25 door bloody, right before she found Mrs. Undra. He had had

1 it with him for two days in the woods. Back with his DNA.
2 A knife that matched the knives that were in the kitchen
3 and, and looked like the knife that he had stabbed Mrs.
4 Undra with. The knife right here that they kept on the
5 knife block.

6 K-9 track. You had an officer come in and tell you
7 about a yellow sweatshirt that was found in the woods. That
8 yellow sweatshirt tells you the defendant was on the run.
9 He knew what he had done. He knew it was wrong and he was
10 on the run. That yellow sweatshirt that Mrs. Undra told you
11 he put on after he stabbed her repeatedly, after he said
12 well, I'm just gonna put some marks on myself he puts that
13 yellow sweatshirt on.

14 It's back -- it will go back with you back in evidence.
15 We can send some gloves back as well if you want to look at
16 it. One thing I say that you will notice on that
17 sweatshirt, appears to be a lot of blood on the outside, but
18 none on the inside. This man was not injured and we knew he
19 wasn't injured because we heard from Loreena Miller-Bobo.
20 She said he seemed perfectly fine when he ran out that door.
21 He ran away from the -- Mrs. Undra leaving her there and he
22 ran into the -- those woods and you saw the woods around the
23 house.

24 We also heard from Kailei Washington. Now, Ms.
25 Washington told you that she went back to the residence

1 where Mrs. Undra lived. I believed she said they were
2 cousins, distance relative. She was being nosey is what she
3 said and she drove to the house, drove to the house there.

4 At the house she said on the side of the house she saw
5 the defendant in a black shirt and a pair of green shorts up
6 against the house. When -- she said when he saw her he
7 takes off running again. He did not seem injured. This man
8 was perfectly fine and he took off running.

9 what did she tell us?

10 She said he had a smile on his face like a child whose
11 realized he's just gotten away from something, gotten away
12 with something.

13 Ladies and gentlemen, he thought he did and I'm gonna
14 ask you here today don't let him get away. Hold him
15 accountable for what he did to Mrs. Undra that night.

16 Now, Mr. Schultz is gonna have a few minutes to speak
17 with you after I do and I anticipate that he may ask you to
18 find the defendant not guilty, but that if you do find the
19 defendant guilty, to find him guilty of what's called a
20 lesser included offense, and that lesser included offense
21 would be assault and battery of a high and aggravated
22 nature, and I anticipate the judge is gonna tell you -- what
23 that essentially means is that the defendant caused serious
24 bodily injury to Mrs. Undra, to the victim.

25 Ladies and gentlemen, the difference in that and

1 attempted murder is that he just caused the injury, caused
2 the injury, but maybe he didn't have an intent to kill her.
3 But, ladies and gentlemen, I think the evidence is very
4 clear in this case that he had every intent to kill
5 Mrs. Undra on that night. And but for the fact of Ms.
6 Loreena Miller-Bobo showing up when she did with the
7 victim's father, it might of happened.

8 I told you how he came. He had that knife. He came
9 into the room. He got on top of this woman, already had
10 medical conditions, and he stabbed her repeatedly. Stabbed
11 her repeatedly. She anticipates that how she said -- she
12 thinks it happens -- happened about 10:00 that night. About
13 10:30, a little before 10:30 the next morning is when
14 Loreena Miller-Bobo comes to check on her.

15 stabbed her repeatedly, punched her, fell in the floor,
16 kicked her, punched her. You saw the bruising to her arms,
17 to the legs. Continues to curse her, berate her while she's
18 lying in the floor bleeding out.

19 At some point he picks her up, puts her back in the
20 bed, lays there with her with a knife to her head 12 hours,
21 12 hours after he repeatedly stabbed her with the knife.

22 Ladies and gentlemen, if that's not attempted murder I
23 don't know what it is in this case.

24 I want to leave you with going back to Loreena
25 Miller-Bobo and what she -- her testimony was and I want to

1 leave you with that 9-1-1 call, which I think is a great
2 picture of how serious this was, and a great picture of how
3 consistent -- what the victim says, what Ms. Loreena
4 Miller-Bobo says, walking you through that scene, that scene
5 where she comes into the house, she finds Mrs. Undra's hand
6 wound. She finds it with it wrapped in a t-shirt not
7 knowing what's going on because, I guess, that's the least
8 the defendant could do. He wrapped her hand for her. But
9 he didn't do it out of good graces because Mrs. Undra told
10 you he did it because he didn't want to look at that shit.
11 That's why he wrapped her hand.

12 Not because he's caring. Obviously that wasn't true
13 after he stabbed her repeatedly five times.

14 That 9-1-1 call gives you -- takes you to that. Takes
15 you to the point when Ms. Miller-Bobo finds that, and, at
16 that point, when she realizes the gravity of what is
17 occurred.

18 Five stab wounds. Multiple surgeries. All of that
19 blood consistent with the victim's blood.

20 We know what happened there and, again, I submit to you
21 the state has given you the tools, what you need to find the
22 defendant guilty of attempted murder in that he had every
23 intent to kill Mrs. Undra on June 19th of 2014, and but
24 for the fact that Loreena Miller-Bobo and Robert Montgomery
25 showed up on June 20th, 2014, that would have happened.

1 These life threatening injuries could have been the end and,
2 ladies and gentlemen, that's that specific intent to kill.

3 (WHEREUPON, the 9-1-1 call was played for the jury at
4 this time.)

5 SOLICITOR GILMER: Ladies and gentlemen, the State is
6 asking you to hold the defendant accountable. Hold him
7 accountable for the five stab wounds he inflicted upon Mrs.
8 Undra. Hold him accountable for the 12 hours she laid
9 bleeding out that night in their marital bed. Hold him
10 accountable for the multiple surgeries that she's had to
11 endure since this.

12 Ladies and gentlemen of the jury, the State is
13 confident that, when you go back in that jury room to
14 deliberate, your common sense and the tools that the State
15 has given you this week, the State is confident that you are
16 going to find the defendant guilty of attempted murder,
17 trying to end the life of his wife, and possession of a
18 weapon during a violent crime.

19 Thank you.

20 THE COURT: Yes, sir.

21 MR. SCHULTZ: Thank you, Your Honor.

22 May it please the Court, counsel.

23 Ladies and gentlemen, first of all I want to thank each
24 and every one of you for your service here in this matter.
25 I've watched each and every one of you perform your duty

1 with the utmost diligence and responsibility.

2 Like I said Monday afternoon, it seems like a long time
3 ago now, but, like I said Monday afternoon, is a vital part
4 of this democracy to have jurors like yourself perform and
5 faithfully execute your duties and I think you have done
6 that and you will continue to do in the outcome of this
7 case.

8 We've heard testimony, starting Monday, going on into
9 Tuesday, and now this morning, and not this afternoon, but
10 we've heard these long testimonies from the State's
11 witnesses in these -- in this case. And I do not believe
12 and I think maybe you do not believe that they have met
13 their burden of proof with this case, and I spoke to you
14 before about what burden of proof means. It is the State's
15 burden and entirely the State's burden to produce evidence
16 sufficient to convict my client or the defendant guilty
17 beyond a reasonable doubt.

18 Now, pretty soon the judge is going to instruct you on
19 the applicable law in this case.

20 Your Honor, beg the Court's patience. I'm gonna move
21 this out of the way a little bit.

22 THE COURT: Yes, sir.

23 MR. SCHULTZ: Thanks, Megan.

24 What is reasonable doubt?

25 Reasonable doubt is a doubt that causes a reasonable

1 person to hesitation to act. Some hesitation to act.

2 In this case, I believe that we have shown enough
3 reasonable doubt in this case.

4 The key thing that I want to tell you here today is, if
5 Mr. Middleton, if Chris wanted to kill, he had ample
6 opportunity to do it. He didn't do it and that -- because
7 of that, because of the time that we're talking about here,
8 you must find him not guilty of attempted murder.

9 There was nobody at the house besides Mrs. Cohen and
10 Chris that night until the next morning. Her statement or
11 her testimony presents the fact that he held -- Chris held
12 this very sharp knife by her head all during the course of
13 the night.

14 If he wanted to kill her he could of done it. He had
15 the opportunity. He at least had 11 to 12 hours to do it
16 with this knife and he could of done it. He had the means
17 to do it with this knife and he had, obviously, the time to
18 do it with this knife.

19 But, ladies and gentlemen, the reason why we're here
20 today, to decide guilty or not guilty, is that he didn't do
21 it. He didn't do it. He didn't not attempt to kill.

22 You heard the doctor, it seems like a long time ago,
23 but you've heard the doctor testify. I believe this was
24 Monday afternoon. Doctor Johnson I believe was his name. I
25 believe he got up there and I asked some questions as to how

1 deep the wounds were and I believe he said they were
2 4-centimeters, 4-centimeters.

3 Again, is those wounds consistent with somebody with,
4 with evidence that would intent to prove that somebody
5 wanted to kill somebody with those cuts?

6 One of the other important issues that I want to talk
7 to you about is what the State left out. What they left
8 out.

9 When investigations are done, people have notions about
10 what happened. In this case, the State already had a
11 preconceived notion of what happened that day. Chris did
12 this and there was nothing else to be done. They already
13 made it up in their own mind, and, and I think, in fact I
14 know, that when the DNA expert for SLED testified today, I
15 asked him (sic) several questions about what was tested and
16 what wasn't tested.

17 They could of very easily submitted, and this is the
18 Sheriff's office, or the investigating agency there, they
19 could of very easily submitted a piece of the carpet here.
20 They could of very easily done that to see if Chris's blood
21 was on there as well. They didn't do it.

22 So what did they test?

23 Well, according to State's Exhibit 76 and 77, they
24 tested a knife blade that was given to them by Mrs. Cohen's
25 family. They tested cuttings found near a collar of a Delta

1 Pro white t-shirt. They tested the left side of a Delta Pro
2 white t-shirt. They tested the front of a Pro Edge Clemson
3 shirt. They tested the right rear sleeve of a Clemson
4 shirt. They tested a center of the mattress liner. They
5 tested an entire exterior of knife from vehicle.

6 I ask you, ladies and gentlemen of the jury, looking at
7 all the evidence that they have at their disposal and Ms.
8 Gilmer talked to you about tools that the State has given
9 you in the last couple days. They need to give you more
10 tools.

11 Here are the tools that they could of provided to you
12 and they didn't provide to you. The -- State's Exhibit 35,
13 blood on the blinds of the door.

14 Was this tested?

15 No.

16 Why not?

17 Now, the carpet, I've already went into. This carpet
18 right here, here's another view of it here in State's
19 Exhibit 22.

20 Was this tested?

21 No.

22 Blood found on the walls, State's Exhibit 43, was this
23 tested?

24 No.

25 The State -- and they only tested it a couple months

1 ago for DNA, in June of this year. June of 2015. This
2 happened in June of 2014.

3 They already had---

4 SOLICITOR GILMER: Your Honor, I object to that.

5 THE COURT: I beg your pardon?

6 SOLICITOR GILMER: I would object to that.

7 THE COURT: All right. Ladies and gentlemen, I've
8 informed you that the closing arguments are not evidence in
9 the case, and that the statements and arguments are meant to
10 help you understand the evidence and apply the law to the
11 evidence. You should disregard any remark, statement, or
12 argument which is not supported by the evidence presented
13 during the trial or the law that I will instruct you on.

14 MR. SCHULTZ: The simple fact in the matter is that the
15 State had the preconceived notions of what happened.

16 When somebody comes to you and says I know what
17 happened, this is what happened, it's called confirmation
18 bias. That's what the State is attempting to do with this
19 case.

20 Now, you heard from the DNA analyst here today, Ms.
21 Money. She testified about, about four or five hours ago
22 now. About four hours. And she said that, on one of the
23 articles, there was a chance that Mr. Middleton, Chris's
24 blood, was on that as well.

25 So think about that. Put your own conclusions, put

1 your own mind to work when you go in that jury deliberation
2 room.

3 what other things could they have done that they failed
4 to do?

5 where's -- and I asked several questions of the
6 officers and also the DNA analyst.

7 Did they receive anymore evidence?

8 No.

9 No, they just got clothes, knife, another knife, and
10 that was it.

11 Okay. Where's the carpet?

12 Where's all this?

13 What about swabbing on the handle of the knife?

14 What about swabbing in and around anywhere else in the
15 crime scene?

16 Where is this?

17 The State, in my argument here, the State has not given
18 you the tools to convict this man. The State has given you
19 the tools to believe their side of the story but they have
20 not given you the tools to convict him beyond a reasonable
21 doubt.

22 So what am I getting at here?

23 What, what is this?

24 The key thing I think here is that, if he had wanted to
25 accomplish this, he had the means to do it. He had the

1 opportunity to do it but the simple fact of the matter is he
2 didn't. He didn't do it. He didn't kill her and that's the
3 basis of my argument here.

4 He stayed with her that night and into that morning.
5 If he wanted to do it he could do it. He didn't do it.

6 So what does this add up to?

7 It is my theory on this case, and I think I've
8 advocated for my argument correctly here, is that he should
9 not be guilty of attempted murder. I think that's what it
10 adds up to.

11 Now, let me conclude by talking about what I talked
12 about a couple days ago, burden of proof, reasonable doubt.
13 I believe that the defense has shown enough reasonable doubt
14 in this case to find Chris not guilty of attempted murder
15 and that's what I'm trying to get at here.

16 You can not let your passions unduly influence you with
17 this. You must take what the State and myself has given
18 you.

19 You, ladies and gentlemen of the jury, are the finder
20 of fact because we've heard from the State. They have their
21 burden of proof. They did not carry their burden.

22 Once the State did an investigation, they got what they
23 wanted and then they stopped. They want you to believe
24 their version of events when they should of produced more
25 tools for you to sufficiently establish, beyond a reasonable

1 doubt, that attempted murder happened.

2 I told you Monday that something happened that night,
3 and I think we all know that something happened, but it
4 wasn't attempted murder.

5 Thank you.

6 THE COURT: All right. Ladies and gentlemen; if you
7 would, I'm gonna let you step and stretch your legs for just
8 a few moments before I instruct you on the law. If you
9 would, just stand up and stretch your legs just a little
10 bit.

11 (Jurors comply.)

12 THE COURT: All right, ladies and gentlemen.

13 All right. Ladies and gentlemen, we, unfortunately,
14 had one of the jurors had an emergency that occurred during
15 the lunch break. So one of your jurors did not return to
16 participate in hearing the closing arguments and will not be
17 participating in the deliberation, and, according to
18 statute, we drew lots between the two alternates.

19 So, Ms. Taylor, you will now serve as part of the 12
20 people of this jury.

21 Ladies and gentlemen, I need to remind you that the
22 indictments that were issued in this case, that the
23 indictments charge the defendant with attempted murder and
24 possession of a weapon during the commission of a violent
25 crime.

1 I remind you that the fact that the defendant was
2 arrested, charged, and indicted in this case is not evidence
3 in this case and can not be considered by you as evidence of
4 guilt in this case nor does it create any presumption or
5 inference of guilt. The indictments are simply the formal
6 written instrument which contains the charges made against
7 the defendant. The indictments are the formal documents by
8 which the case is brought into Court.

9 Now, these indictments in this case allege two
10 different offenses against the defendant. The charges are
11 one, attempted murder, and, two, possession of a weapon
12 during the commission of a violent crime. Each of the
13 indictment charges a separate and distinct offense. You
14 must decide each indictment separately on the evidence and
15 the law applicable to it uninfluenced by your decision as to
16 any other indictment. The defendant may be convicted or
17 acquitted on any or all of the charges that are against him.
18 You will be asked to write verdict forms of guilt on each of
19 the charges that are present -- of guilt or innocence of
20 each of the charges that are against him.

21 Now, the defendant has pled not guilty to the
22 indictment. That plea puts the burden on the State to prove
23 the defendant guilty. A person charged with committing a
24 criminal offense in South Carolina, no matter how serious
25 the charge, is never required to prove himself innocent. I

1 charge you that it is an important rule of law that the
2 defendant, in a criminal trial, again, no matter the
3 seriousness of the charge, may be, will always be presumed
4 to be innocent of the crime for which the indictment was
5 issued unless guilt has been proven by evidence satisfying
6 you of that guilt beyond a reasonable doubt.

7 Now, this presumption of innocence does not end when
8 you begin your deliberations. But it is -- it accompanies
9 the defendant throughout the trial until you reach a verdict
10 of guilt based on evidence satisfying you of that guilt
11 beyond a reasonable doubt. The presumption of innocence is
12 like a robe of righteousness placed about the shoulders of
13 the defendant which remains with the defendant until it has
14 been stripped from the defendant by evidence satisfying you
15 of the defendant's guilt beyond a reasonable doubt.

16 The presumption of innocence is not a mere legal
17 theory. It is not just a legal phrase. It is a substantial
18 right to which every defendant is entitled unless you, the
19 jury, are satisfied, from the evidence, of the defendant's
20 guilt beyond a reasonable doubt.

21 Now, what is reasonable doubt in the law?

22 A reasonable doubt is the kind of doubt that would
23 cause a reasonable person to hesitate to act.

24 The State has the burden of proving the defendant
25 guilty beyond a reasonable doubt and some of you may have

1 served as jurors in civil cases where you were told that it
2 is only necessary to prove a fact, to prove that a fact is
3 more likely true than not true such as by the greater weight
4 or by the preponderance of the evidence. In criminal cases,
5 the State's proof must be more powerful than that. It must
6 be beyond a reasonable doubt.

7 Proof beyond a reasonable doubt is proof that leaves
8 you firmly convinced of the defendant's guilt. There are
9 very few things in the world that we know with absolute
10 certainty, and, in criminal cases, the law does not require
11 proof that overcomes every possible doubt. If, based on
12 your consideration of the evidence, you are firmly convinced
13 that the defendant is guilty of the crime charged you must
14 find the defendant guilty. If, on the other hand, you think
15 there is a real possibility that the defendant is not
16 guilty, you must give the defendant the benefit of the doubt
17 and find him not guilty.

18 Now, I remind you that, during this trial, you and I
19 have had certain duties to perform. As the trial judge, it
20 is my responsibility to preside over the trial of this case
21 and I also have the duty to rule on the admissibility of
22 evidence offered during the trial. You are to consider only
23 the competent evidence that is before you. If there was any
24 testimony ordered stricken from the record during this case,
25 you must disregard that testimony. You are to consider only

1 the testimony which has, which has been presented from the
2 witness stand and exhibits which have been made part of the
3 record of this case.

4 Now, I have the additional duty to charge you the law
5 applicable to this case, and, as the presiding judge, I am
6 the sole judge of the law of this case and is your -- and it
7 is your duty, as jurors, to accept and apply the law as I
8 now state it to you. If you already have any ideas as to
9 what the law is or what the law ought to be, and it does not
10 agree with what I now tell you the law is, you must abandon
11 this idea because you are sworn to accept the law and apply
12 the law exactly as I state it to you.

13 In every case in this Court before -- a jury, the jury
14 becomes the sole and exclusive judge of the facts in a case.
15 A trial judge can not intimate, state, comment on, or make
16 any statement to a trial jury about the facts of a case.
17 Since you, the jury, are the sole judge of the facts in this
18 case, you are not to infer, from what I have said during the
19 progress of this trial in ruling on the admissibility of
20 evidence or otherwise or anything that I say now during the
21 course of this instruction to you, that I have an opinion
22 about the facts in this case. The law does not allow me to
23 have an opinion about the facts. This is a matter solely
24 for you, the jury, to determine. As jurors, it is your duty
25 to determine the effect, the value, the weight, and the

1 truth of the evidence that has, that has been presented
2 during this trial.

3 Now, ladies and gentlemen, they're normally -- there
4 are two types of evidence which are generally presented
5 during a trial. That would be direct evidence and
6 circumstantial evidence.

7 Now, direct evidence is the testimony of a person who
8 claims to have actual knowledge of a fact such as an eye
9 witness. It is evidence which immediately establishes the
10 main fact to be proved.

11 Circumstantial evidence is proof of a chain of facts
12 and circumstances indicating the existence of a fact. It is
13 evidence which immediately establishes collateral facts from
14 which the main fact may be inferred.

15 Now, circumstantial evidence is based on inference and
16 not on personal knowledge or observation but the law makes
17 absolutely no distinction between the weight or value to be
18 given either direct or circumstantial evidence nor is a
19 greater degree of certainty required of circumstantial
20 evidence than of direct.

21 Ladies and gentlemen, you should weigh all of the
22 evidence that has been presented in this case. After
23 weighing all of the evidence, if you are not convinced of
24 the guilt of the defendant beyond a reasonable doubt, then
25 you must find the defendant not guilty.

1 Ladies and gentlemen, necessarily you must determine
2 the credibility of witnesses who have testified.
3 Credibility simply means believability. It becomes your
4 duty, as jurors, to analyze and evaluate the evidence and
5 determine which evidence convinces you of its truth.

6 In determining the believability of witnesses who have
7 testified, you may believe one witness over several
8 witnesses or several witnesses over one. You may believe a
9 part of the testimony of a witness and reject the remaining
10 part of the testimony of that same witness. You may believe
11 the testimony of a witness in its entirety or reject the
12 testimony of a witness in its entirety. You may consider
13 whether any witness has exhibited to you any interest, bias,
14 prejudice, or other motives in this case. You may also
15 consider the appearance and the manner of the witness while
16 that witness was on the witness stand.

17 The rules of evidence ordinarily do not permit
18 witnesses to testify to opinions or conclusion. An
19 exception to this rule exists for witnesses that we call
20 expert witnesses. A witness, who by education and
21 experience, has become expert in some art, science,
22 profession, or calling may state an opinion as to relevant
23 and material matters in which the witness claims to be an
24 expert and may also state the reason for those opinions.

25 You should consider any expert opinion received in the

1 evidence in this case and, like other evidence, give it the
2 weight you think it deserves. If you decide the opinion of
3 an expert witness is not based on sufficient education and
4 experience or if you conclude that the reasons given in
5 support of the opinion are not sound or that the opinion is
6 outweighed by other evidence, you may disregard the opinion
7 in its entirety. An expert witnesses testimony is to be
8 given no greater weight than that of other witnesses simply
9 because the witness is an expert. Further, you are to --
10 you are not required to accept the expert's opinion even
11 though it was not contradicted.

12 Now, ladies and gentlemen, I instruct you and emphasize
13 that the fact that the defendant did not testify is not a
14 factor to be considered by you in anyway in your
15 deliberations and in your consideration of the questions of
16 the guilt or innocence of the defendant. Ladies and
17 gentlemen, it must not be considered by you in any manner
18 whatsoever. A defendant has the constitutional right to
19 remain silent and the assertion of this right must not be
20 considered by you in your deliberations.

21 I repeat, under the oath, you are to draw no conclusion
22 whatsoever from the fact that the defendant in this case did
23 not testify. The fact that this defendant did not testify
24 should not even be discussed in the jury room.

25 The burden of proof, as I state it to you, is on the

1 State. The defendant is not required to prove his
2 innocence. The burden of proof remains on the State to
3 prove guilt beyond a reasonable doubt.

4 Ladies and gentlemen, the defendant is charged with
5 attempted murder. In order to prove this crime, the State
6 must prove that the defendant attempted to kill another
7 person with malice aforethought, either express or implied.

8 Malice aforethought is hatred, ill will, or hostility
9 towards another person. It is the intentional doing of a
10 wrongful act without just cause or excuse and with an intent
11 to inflict an injury or under circumstances that the law
12 will infer an evil intent. Malice aforethought does not
13 require that malice exist for any particular time before the
14 act is committed. The -- but malice must exist in the mind
15 of the defendant just before and at the time of the act is
16 committed. Therefore, there must be a combination of the
17 previous evil intent and the act.

18 Malice aforethought may be expressed or inferred.
19 These terms expressed or inferred do not mean different
20 kinds of malice but merely the manner in which malice may be
21 shown to exist. That is either by direct evidence or by
22 inference from the facts and circumstances which are proved.

23 Express malice is shown when a person speaks words
24 which express hatred or ill will for another or when the
25 person prepared beforehand to do the act which was later

1 accomplished. For example, lying in wait for a person or
2 any other acts of preparation going to show that the deed
3 was within the defendant's mind would be expressed malice.

4 Malice may be inferred from conduct showing a total
5 disregard for human life. If facts are proved, beyond a
6 reasonable doubt, sufficient to raise an inference of malice
7 to you, to your satisfaction, this inference would be simply
8 an evidentiary fact to be considered by you, the jury, along
9 with the other evidence in the case and you may give it the
10 weight that you decide it should receive, receive.

11 A specific intent is -- to kill is not an element of
12 attempted murder but there must be a general intent to
13 commit serious bodily injury. Intent means intending the
14 result which actually occurs. - Not accidentally or
15 involuntarily. Intent may be shown by acts and conduct of
16 the defendant and other circumstances from which you may
17 naturally and reasonably infer intent.

18 Evidence of the character of the act, the character of
19 the instrument used, the manner in which it is used, the
20 purpose to be accomplished, and the resulting wounds or
21 injuries may be considered in determining the intent with
22 which the act was committed. Intent may also be inferred
23 when it is demonstrated that the defendant voluntarily and
24 willfully commits an act the natural tendency of which is to
25 destroy another's life.

1 Now, ladies and gentlemen, if you do not find the
2 defendant guilty of attempted murder, you should also
3 consider the -- whether the State is met its burden of proof
4 as to the lesser included offense of assault and battery of
5 a high and aggravated nature. A person commits the offense
6 of assault and battery of a high and aggravated nature if
7 the person unlawfully injures another person and, one, great
8 bodily injury to another person results or, two, the act is
9 accomplished, is accomplished by means likely to produce
10 death or great bodily injury. Great bodily injury means
11 bodily injury which causes a substantial risk of death which
12 causes serious permanent disfigurement or protected loss or
13 impairment of the function of a bodily member or organ.

14 Ladies and gentlemen, if you find the defendant guilty
15 of either the attempted murder charge or the assault and
16 battery of a high and aggravated nature, then you should
17 also consider the charge of possession of a weapon during
18 the commission of a violent crime.

19 The defendant is charged with possession of a weapon
20 during the commission of or attempt to commit a violent
21 crime. The State must prove, beyond a reasonable doubt,
22 that the defendant visibly displayed a knife during the
23 commission of a violent crime. A knife means an instrument
24 or tool with a sharp cutting blade, whether or not fastened
25 to a handle, which can be used to inflict a cut, slash, or

1 wound.

2 In order to find the defendant guilty of possession of
3 a weapon during the commission of a violent crime, you must
4 first find the defendant guilty of either committing a
5 violent crime or attempting to commit a violent crime.

6 Ladies and gentlemen, I instruct you, under the law of the
7 state of South Carolina, attempted murder and assault and
8 battery of a high and aggravated nature are both considered
9 violent crimes. The State must prove, beyond a reasonable
10 doubt, that the weapon further advanced or helped in the
11 commission of the crime.

12 Now, Madam Forelady, ladies and gentlemen of the jury,
13 there are two possible verdicts as to each of the charges
14 that you will address in your jury room. The fact that I
15 have placed not guilty above guilty on each of the charges
16 is of no importance. I simply had to put one before the
17 other for your consideration. So that does not matter.

18 But, ladies -- but Madam Forelady, and ladies and
19 gentlemen of the jury, I need to let you know that your
20 verdict must be unanimous. All 12 members of the jury must
21 agree and the verdict of the jury can not be based on
22 passion, sympathy, or capriciousness. It must be based on
23 the evidence that has been presented in this courtroom.

24 Madam Forelady, I need to let you know that the jury
25 should conduct their deliberations only when all 12 members

1 are present. If, for some reason, somebody has to go to the
2 rest room, make a telephone call, or leave, the
3 deliberations should cease and not begin again until all 12
4 members are present.

5 Madam Forelady, I have prepared verdict forms. I
6 prepared two verdict forms for your use in the jury room.
7 The verdict form that I have entitled verdict form number
8 one, you will go through and consider the charge of
9 attempted murder and make your determination. You then, if
10 you find the defendant not guilty, then you would also
11 consider the lesser included offense of assault and battery
12 of a high and aggravated nature. If, by chance, you find
13 the defendant guilty of attempted murder, then you would not
14 consider the assault and battery of the high and aggravated
15 nature charge.

16 But whatever the jury's decision are on those two
17 charges, you would then execute, sign your name here on the
18 line, and date it. If, in fact, you have found the
19 defendant guilty of one of those two charges, then you would
20 also consider the offense -- the charge under the, under the
21 charge of the -- under the possession of a weapon during the
22 commission of a violent crime. You then would consider
23 those two charges as well, and then, once the jury makes
24 their determination, sign and date the document.

25 Now, there's one other important thing that you must

1 do, Madam Forelady. You must knock on the door and tell the
2 bailiff when the jury has finished their deliberations. One
3 time I did not tell a jury that, and -- they were back there
4 for an extraordinarily long period of time. We kept
5 wondering what are they doing. So finally we had to send
6 the bailiff back there and they said well, you didn't tell
7 us what to do when we decided. So, please, once you
8 conclude your deliberations, please knock on the door and
9 let the bailiff know.

10 Ladies and gentlemen of the jury, I'm now gonna let you
11 retire back to the jury, to the jury deliberation room. But
12 do not start your deliberations. They're still a couple
13 matters of law I need to address with the attorneys. The
14 bailiff will instruct you when to begin your deliberations.
15 But right now you may return back to the jury room.

16 (WHEREUPON, the following takes place outside the
17 presence of the jury.)

18 THE COURT: Any exceptions to the charge from the
19 State?

20 SOLICITOR GILMER: No, Your Honor.

21 THE COURT: Any from the defense?

22 MR. SCHULTZ: Your Honor, could we approach briefly?

23 THE COURT: Uh-huh. (Affirmative).

24 (WHEREUPON, a bench conference was held at this time.)

25 MR. SCHULTZ: Thank you, Your Honor.

1 THE COURT: Now, what about the alternate?

2 I can have her placed in another jury room and held
3 until we have a verdict or, if the defense will agree to go
4 with less than 12 in the event that we have an emergency, I
5 can dismiss her. But I would to -- but the defense would
6 have to agree to that. So I can -- I do not mind holding
7 her.

8 MR. SCHULTZ: I, I think she should be held.

9 THE COURT: Okay. We'll hold her.

10 SOLICITOR GILMER: I agree, Your Honor.

11 THE COURT: Okay. Now, if y'all will check the
12 exhibits just to be sure that they're all correct.

13 SOLICITOR GILMER: Yes, Your Honor.

14 (Pause.)

15 THE COURT: All right. We'll go back on the record.
16 All right. Y'all have reviewed the evidence that's
17 gonna be presented?

18 SOLICITOR GILMER: Yes, Your Honor, we have and all of
19 the exhibits are there.

20 MR. SCHULTZ: Defense agrees.

21 THE COURT: All right. You may take that back to the
22 jury and give the verdict form to the bailiff -- to the
23 foreperson and tell them they may begin.

24 THE BAILIFF: Okay.

25 THE COURT: We will step down and stand at ease.

1 (WHEREUPON, the jury began deliberations at 2:45PM and
2 returned with a verdict at 4:08PM.)

3 THE COURT: I'm told that we have a verdict.
4 Anything before we bring the jury in?

5 SOLICITOR GILMER: Not from the State, Your Honor.

6 MR. SCHULTZ: Not from the defense.

7 THE COURT: All right. Let's bring the jury.

8 (WHEREUPON, the following takes place within the
9 presence of the jury.)

10 THE COURT: Madam Forelady, I'm told the jury has
11 reached a verdict.

12 Is that correct?

13 THE FORELADY: Yes, we have.

14 THE COURT: If you will, give the verdict form to the
15 bailiff and bring it to me.

16 (Forelady complies.)

17 THE COURT: All right. Madam Clerk, if you will please
18 publish the verdict.

19 THE CLERK: Yes, sir.

20 On Indictment Number 2015-GS-42-1128, the State versus
21 Christopher Allen Middleton, Middleton, as to the charge of
22 attempted murder, we, the jury, unanimously find Christopher
23 Allen Middleton guilty. Signed by the foreperson. Dated
24 October the 14th of 2015.

25 The verdict form number two, if you found -- if you,

1 the jury, have found the defendant, Christopher Allen
2 Middleton, guilty of either attempted murder or assault and
3 battery of a high and aggravated nature, then consider the
4 charge of possession of a weapon during the commission of a
5 violent crime, the verdict is guilty. Signed by the
6 foreperson. Dated October the 14th of 2015.

7 Ladies and gentlemen of the jury, is this your verdict
8 and still your verdict, if so, please raise your right-hand.

9 (WHEREUPON, all jurors raise their hand at this time.)

10 THE CLERK: So say you-all.

11 THE COURT: Anything from the State or defense before I
12 dismiss the jury?

13 SOLICITOR GILMER: Not from the State, Your Honor.

14 MR. SCHULTZ: Request the polling, Your Honor.

15 THE COURT: All right. Madam Clerk, if you will poll
16 the jury.

17 THE CLERK: Yes, sir.

18 (WHEREUPON, the jury was polled at this time with all
19 jurors answering in the affirmative that this was and is
20 still their verdict.)

21 THE CLERK: Your Honor, the jury's been polled.

22 THE COURT: Thank you.

23 (WHEREUPON, the jury panel was dismissed at this time.)

24 THE COURT: Anything before we proceed with the -- with
25 sentencing?

1 SOLICITOR GILMER: Not from the State, Your Honor.

2 THE COURT: Mr. Schultz.

3 MR. SCHULTZ: Your Honor, at this time I would move for
4 a new trial based upon the objections made and overruled
5 and -- but I, I would ask for, for a new trial based upon
6 any evidence that was admitted over my objections.

7 THE COURT: All right. I will consider all prior
8 objections made by the; made by the defense as part of that
9 motion. I could not grant the motion. I think that there
10 is sufficient evidence that was presented to the jury to
11 justify the decision that was made in the case.

12 MR. SCHULTZ: Yes, sir. And, Your Honor, I also make a
13 motion for a new trial based upon the Court not instructing
14 the jury on the lesser included offenses of A and B first,
15 second, and third and, and also self-defense---

16 THE COURT: Okay.

17 MR. SCHULTZ: ---instruction.

18 SOLICITOR GILMER: Your Honor, we would stand beside --
19 stand behind our previous arguments that, by a matter of
20 law, the Court instructed the jury on what was appropriate
21 in this case.

22 THE COURT: All right. I would have to deny the
23 motions based upon our earlier discussions and, and on those
24 matters. I believe that I was correct but you're protected
25 on the record.

1/ MR. SCHULTZ: Yes, sir. Thank you, Your Honor.

2 THE COURT: All right. You want to proceed with
3 sentencing?

4 SOLICITOR GILMER: Yes, Your Honor.

5 If I may approach, Your Honor?

6 THE COURT: Yes, sir.

7 Mr. Middleton, if you would, just please come right up
8 here with your attorney.

9 (Parties comply.)

10 THE COURT: Mr. Middleton, I need to remind you that
11 you remain under oath.

12 Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Okay. Sir, I'm gonna ask you some
15 preliminary questions.

16 How old are you?

17 THE DEFENDANT: 44.

18 THE COURT: How far did you go in school?

19 THE DEFENDANT: Tenth grade.

20 THE COURT: Did you ever obtain a GED?

21 THE DEFENDANT: No, sir.

22 THE COURT: Are you married, single, divorced, widowed?

23 THE DEFENDANT: Separated at the moment.

24 THE COURT: Do you have children?

25 THE DEFENDANT: Yes, sir, I do.

1 THE COURT: How many?

2 THE DEFENDANT: One.

3 THE COURT: How old?

4 THE DEFENDANT: Eight.

5 THE COURT: And prior to your arrest on these charges

6 did you have a job outside the home?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: What were you doing?

9 THE DEFENDANT: I worked at Innovative Fibers. I drove
10 a forklift.

11 THE COURT: Ever serve in the military?

12 THE DEFENDANT: No, sir.

13 THE COURT: How long a time have you been in jail on
14 these charges?

15 THE DEFENDANT: Sixteen months, Your Honor.

16 SOLICITOR GILMER: 480 days, Your Honor.

17 MR. SCHULTZ: That fits my record as well.

18 THE COURT: Prior record?

19 SOLICITOR GILMER: Yes, Your Honor.

20 Dating back to 1988, malicious injury to property,
21 burglary third degree, grand larceny.

22 1989, grand larceny.

23 1990, parole violation.

24 1991, escaping from jail.

25 1992, leaving the scene of an accident, no valid

1 driver's license, false statement to police.

2 1993, assault and battery, false imprisonment in which
3 he was sentenced to ten years suspended to five years prison
4 and five years probation. I do have a certified copy of
5 that conviction that I would like to hand up, criminal
6 conspiracy for a -- what appears to be a drug charge.

7 1994, possession of crack, assault and battery of a
8 high and aggravated nature. He served or he's sentenced to
9 ten years in prison on that charge. It was originally an
10 assault and battery with intent to kill but he pled to the
11 lesser charge. Also an escape in which he received five
12 years prison to run consecutively, stalking.

13 2003, misprision of a felony.

14 In 2007, two counts of criminal domestic violence first
15 offense against this same victim.

16 Your Honor, I am passing up certified copies of
17 convictions that Mr. Schultz has seen for the false
18 imprisonment charge, the assault and battery of a high and
19 aggravated nature conviction, and the two convictions for
20 criminal domestic violence first offense.

21 Your Honor, the victim would like to address the Court
22 at the appropriate time.

23 THE COURT: All right. And did you say the victim---

24 SOLICITOR GILMER: Yes, Your Honor. She would.

25 Your Honor, if she could stand right here if it would

1 be okay with the Court.

2 THE COURT: You want to -- can you speak from right
3 there?

4 MRS. COHEN-MIDDLETON: Yes, sir.

5 THE COURT: Okay. Ma'am, I'll be more than happy to
6 hear from you. I know we -- you've introduced yourself
7 during the course of the trial, but, for this proceeding, if
8 you'd just state your full name for the record.

9 MRS. COHEN-MIDDLETON: Yes, sir. Robert Undralynn
10 Cohen-Middleton.

11 THE COURT: Yes, ma'am, be more than happy to hear from
12 you.

13 MRS. COHEN-MIDDLETON: Okay. Your Honor, Chris
14 Middleton, who is my soon to be ex-husband, deserves to do
15 30 or more years for trying to kill me and stabbing me
16 several times like I was nothing to him. He kicked me in my
17 face. He punched me in my face. He left me just bleeding
18 and dying and -- all night long. He didn't try to help me
19 or nothing and he put me in the bed and got in the bed
20 beside me with a knife to my head all night. I didn't go to
21 sleep or nothing. But by the grace of God I am here and I
22 am alive.

23 THE COURT: Thank you, ma'am.

24 MRS. COHEN-MIDDLETON: Thank you.

25 THE COURT: Anything else from the State?

1 SOLICITOR GILMER: No, Your Honor. I would just call
2 attention to the fact that the defendant has served prison
3 time before, ten years, and five years consecutive, and yet
4 here we are again before the Court with a crime of violence.

5 THE COURT: Yes, sir, Mr. Schultz.

6 MR. SCHULTZ: Thank you, Your Honor.

7 May it please the Court.

8 As Mr. Middleton said, he's 44 years old. He spent --
9 he's already spent significant time in jail. He's lived all
10 his life pretty much in South Carolina. He, he moved here
11 ten years ago. I think he was living in Greenwood prior to
12 that.

13 He, he tells me that he was working in Innovative Fiber
14 earning a very good living making about \$12.00 an hour for
15 eight months before he was picked up on these charges. He,
16 at the time that -- before he was picked up, he attended
17 church in Greer and, since being in jail, my understanding
18 is that he's been back and forth to medical as symptoms I
19 guess I would describe as similar to heart attack. They
20 usually apparently give him Nitroglycerin pills to aid in
21 that and to make the pain and the ailments just a little
22 better and his mother is also in poor health as well. I
23 believe she had a heart bypass two years ago and she's gonna
24 have another one in the near future here.

25 I've spoken to Mr. Middleton so many times I've, I've

1 lost track. My associate, Ms. Tatt, is also gone over the
2 extensive discovery with him several times in this case.
3 He's, he's been, I, I can say with some degree of certainty,
4 that he's, he's been one of my favorite clients there at the
5 jail because he's never once, to my recollection, raised his
6 voice at me or was rude to anybody, nobody on my staff. I
7 mean he's, he's probably one of the most polite gentlemen
8 that I've ever had the opportunity to represent.

9 I've always like talking to him even when I was in,
10 when I go to Pod 3 to see him, and I got to see another
11 individual. He may come up to me and say I understand if
12 you don't got to see me. I can wait. Been very patient
13 with this, this process. So I have, I have nothing but good
14 things to say about Mr. Middleton. I've come to know him
15 quite well during this time. I, I like him.

16 Obviously this is unfortunate occurrence for I think
17 everybody involved here. But, Your Honor, I just want to
18 let the, let the Court know what kind of person I, I deal
19 with almost on a monthly basis here is not the Chris
20 Middleton here that is -- was convicted of this charge here.
21 I've got nothing -- like I said before, I got nothing but
22 good things to say about him.

23 He's a, he's a gentleman and I've always got along well
24 with him and that's all I have to say, Your Honor.

25 THE COURT: Mr. Middleton, is there anything that you

1 would like to say or want me to know or consider?

2 THE DEFENDANT: Yes, sir, the fact that I was -- I been
3 in jail for so long and the fact that I was constantly
4 denied a bond, but first and foremost, I would just, I would
5 just like to apologize to the victim, the family, the Courts
6 as well for my part that I played in this, Your Honor, and I
7 accept full responsibility for my part.

8 There was a lot of things, Your Honor, left out, and I,
9 I don't think I got, I got the fair results of that. But
10 I'll be man enough to say for my part, Your Honor, I'll -- I
11 ask the Courts for its leniency and mercy. But I, I will
12 except full responsibility for mines, Your Honor.

13 But I wish things could of came out a little bit
14 different because, at this -- in this process since I've
15 been in jail, I've lost a home. I lost a wife. I lost
16 family members. I lost my kids. The list goes on and on,
17 Your Honor, and I could never do anything to replace that.
18 I just pray to God that I can better myself from this day
19 forward and make amends for my part that I did.

20 I know I was wrong and I sincerely apologize for my
21 part, Your Honor, but it was, like I said, it was a lot of
22 things that was done and wasn't -- I don't think that it was
23 proper but I except full responsibility for my actions, Your
24 Honor, and I just beg the Court's mercy because the things
25 that I've done in the past, Your Honor, I've paid for them.

1 It's, it's a constantly black cloud over my head.

2 I've been to prison. I done my time. I got out. I
3 made amends with my life, Your Honor. Even -- Your Honor, I
4 have been gone for so long. My wife knew me prior to me
5 coming out. So it's not like she just met this new guy.
6 She knew me, what type of individual I was, my
7 characteristics, some of my ways. She may not know the
8 essence of me but she knew a lot of my ways, Your Honor.

9 But with that being said, Your Honor, I just ask the
10 Court have mercy on me and I accept the full responsibility
11 for my actions.

12 THE COURT: Thank you, Mr. Middleton.

13 SOLICITOR GILMER: And, Your Honor, I did speak with
14 Mr. Schultz about the State seeking a permanent restraining
15 order and I have that form as well if I could approach?

16 MR. SCHULTZ: Your Honor, just for the record, I had a
17 brief conversation with my client. We have no objection to
18 a permanent restraining order being issued.

19 THE COURT: All right. On the -- I've, I've executed
20 the permanent restraining order.

21 On these charges, these will be concurrent sentences,
22 on the attempted murder, it is a 30 year sentence at the
23 Department of Corrections. He'll receive credit for the 480
24 days. I've also indicated not to be any contact with the
25 victim as part of this sentence as well. That will run

1 concurrent with the five year sentence on the possession of
2 a weapon during the violent -- during the commission of a
3 violent crime. Receiving credit for 480 days. Again, no
4 contact with the victim.

5 Good luck to you, sir.

6 SOLICITOR GILMER: Thank you, Your Honor.

7 (WHEREUPON, the copies of indictments were marked as
8 Court's Exhibit No. 2 and received into evidence at this
9 time.)

10

11 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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C E R T I F I C A T E

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2
3 I, Pamela E. Green, Official Court Reporter for the
4 Seventh Judicial Circuit of the State of South Carolina, do
5 hereby certify that the foregoing is a true, accurate and
6 complete Transcript of Record of the proceedings had and
7 evidence introduced in the trial of the captioned case,
8 relative to appeal, in the Court of General Sessions for
9 Spartanburg County, South Carolina, on the 12th, 13th, and
10 14th day of October, 2015.

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

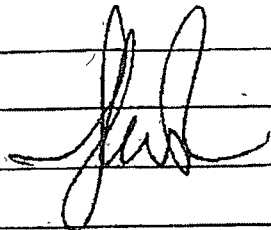
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16 January 29th, 2016

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21 PAMELA E. GREEN, Court Reporter
22
23
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WITNESSES

Spartanburg County Sheriff's Office



ARREST WARRANT NUMBER

2014A4210102478 (Count 1)

2014A4210102479 (Count 2)

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Guilty for Count 1

Guilty for Count 2

Foreperson of Petit Jury

Date: Oct 14, 2015

DOCKET NO.

15-GS-42-1128

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS
MAR 16 2015

TERM

THE STATE

vs.

CHRISTOPHER ALLEN MIDDLETON

Indictment for
ATTEMPTED MURDER AND
POSSESSION
OF WEAPON DURING COMMISSION
OF A VIOLENT CRIME
SC Code 16-03-0029; 16-23-490
CDR Code 3410; 0549
Class FEL-A; FEL-F

15 MAR 13 PM 3:54
M. HAYES

A CERTIFIED COPY

M. Hayes
CLERK OF COURT
SPARTANBURG COUNTY
BY: [Signature]
DATED: 10/14/15

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

MAR 12 2015

At a Court of General Sessions, convened on _____, the

Grand Jurors of Spartanburg County present upon their oath:

ATTEMPTED MURDER (Count I)

That Christopher Allen Middleton did, in Spartanburg County on or between June 19, 2014, and June 20, 2014, with intent to kill, attempted to kill [REDACTED] with malice aforethought, expressed or implied, by stabbing and/or cutting the victim with a knife, in violation of Section 16-03-0029, Code of Laws of South Carolina, (1976, as amended).

**POSSESSION OF WEAPON DURING
COMMISSION OF A VIOLENT CRIME (Count II)**

That Christopher Allen Middleton did, in Spartanburg County on or between June 19, 2014, and June 20, 2014, possess a knife during the commission of a violent crime as defined in Code §16-01-0060, to wit: ATTEMPTED MURDER, in violation of Code §16-23-0490. CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.

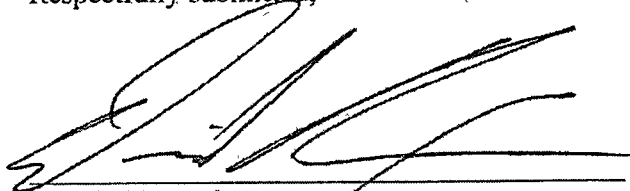
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

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 South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'David Alexander', is written over a horizontal line.

David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 4th day of August, 2016.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable J. Mark Hayes, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CHRISTOPHER ALLEN MIDDLETON

APPELLANT

APPELLATE CASE NO 2015-002232

ANDERS BRIEF OF APPELLANT

DAVID ALEXANDER
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

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in refusing appellant's requested jury instructions for self-defense and for the lesser-included offense of second-degree assault and battery?

STATEMENT OF THE CASE

On March 12, 2015, a Spartanburg County grand jury indicted appellant Christopher Allen Middleton for attempted murder and possession of a weapon during commission of a violent crime. R. 433 - 434. On October 12, 2015, appellant was tried before the Honorable J. Mark Hayes and a jury. R. 1. Meghan Gilmer represented the State. R. 1. Joshua Schultz represented appellant. R. 1. The jury convicted appellant on both charges. R. 420, l. 10 - 421, l. 10. Judge Hayes sentenced appellant to concurrent terms of thirty years' imprisonment for attempted murder and five years' imprisonment on the weapons charge. R. 430, l. 19 - 431, l. 4. This appeal follows.

ARGUMENT

The trial court erred in refusing appellant's requested jury instructions for self-defense and for the lesser-included offense of second-degree assault and battery.

Appellant's wife, Robert Undra Cohen-Middleton ("Wife"), accused him of stabbing her. R. 178, l. 21 – 186, l. 3. According to Wife, she returned home from a medical procedure and went to her room to rest. R. 176, ll. 11 – 18. Appellant took her to the doctor and brought her home. R. 174, ll. 1 – 2. Wife got into bed. R. 176, l. 11 – 177, l. 16.

Wife claimed that at some point in the night, appellant entered the room, stood in the door and said, "bitch, I hate you." R. 179, ll. 8 – 9. Appellant had learned that Wife intended to divorce him. R. 180, l. 21 – 181, l. 4. After arguing, Wife claimed appellant stabbed and hit her. R. 181, l. 5 – 187, l. 3. Supposedly after stabbing her, appellant then got in the bed beside Wife and went to sleep. R. 185, ll. 2 – 13.

Wife had another medical procedure scheduled for the next morning. R. 101, ll. 8 – 11. When Wife did not show up for the appointment, a family friend named Loreena Miller-Bobo ("Bobo") and Wife's father went to her house to check on her. R. 101, ll. 15 – 24. R. 102, ll. 13 – 20. Bobo claimed appellant opened the door holding a "something silver" in his hands and had blood on his shorts. R. 112, ll. 2 – 20. Appellant ran into the woods. R. 113, ll. 9 – 13.

Bobo found Wife in her bed. R. 115, ll. 21 – 24. Her father saw blood. R. 143, ll. 10 – 15. The police arrived at about the same time. R. 143, ll. 6 – 7. The EMT who responded "noted several stab wounds" and had Wife transported to the hospital by helicopter. R. 277, ll. 3 – 24. Wife's most serious injury was a stab wound that put a hole in her stomach. R. 88, ll. 9 – 18. Wife ultimately recovered from this wound. R. 188, ll. 6 – 189, l. 17.

Bobo was living with Wife and appellant. R. 94, ll. 7 – 9. The night of the incident, Bobo stayed at a friend's house because appellant and Wife got into an argument. R. 99, ll. 9 – 20. Bobo stated that she left because, “her and Chris had got into it and I just wanted to let stuff die down.” R. 99, ll. 15 – 17.

The first police officer on the scene was given a knife with blood on it by Bobo. R. 155, ll. 6 – 20. The knife was wrapped in a towel. R. 155, ll. 14 – 15. The police recovered another knife during their investigation. R. 243, l. 13 – R. 244, l. 3. When the police took appellant into custody, they noted that he “had some injuries.” R. 246, ll. 19 – 22. Appellant had “lacerations and puncture wounds.” R. 246, ll. 19 – 22. The police officer stated appellant had “three puncture type injuries to the abdomen.” R. 247, ll. 20 – 23. SLED could not exclude appellant as a contributor to the DNA mixture found on the knife recovered from the house. R. 339, ll. 5 – 19. Appellant's blood was found on the other knife recovered by police. R. 343, ll. 15 – 24.

After the close of the evidence, appellant requested a self-defense charge. R. 360, l. 5 – 361, l. 23. Defense counsel argued appellant was entitled to a self-defense charge because of the evidence of appellant's wounds and the DNA evidence on both knives. R. 360, l. 5 – 361, l. 23. The trial judge refused to give a self-defense instruction. R. 372, ll. 12 – 20.

Appellant also requested the trial judge charge the lesser-included offense of second degree assault and battery. R. 362, l. 1 – 365, l. 20. Appellant argued that second degree assault and battery “involves moderate bodily injury, which I believe is a question of fact for the jury.” R. 365, ll. 10 – 12. Defense counsel cited the statutes defining “moderate bodily injury.” R. 364, ll. 11 – 20. The trial judge refused to charge this lesser-included offense. R. 373, ll. 3 – 7.

The trial judge erred in refusing to charge self-defense. “If there is any evidence in the record from which it could reasonably be inferred that the defendant acted in self-defense, the defendant is entitled to instructions on the defense, and the trial judge's refusal to do so is reversible error.” State v. Muller, 282 S.C. 10, 10, 316 S.E.2d 409, 409 (1984). “When reviewing the circuit court’s refusal to deliver a requested jury instruction, appellate courts must consider the evidence in a light most favorable to the defendant.” State v. Williams, 400 S.C. 308, 314, 733 S.E.2d 605, 608-09 (Ct. App. 2012).

A trial judge has the responsibility to craft a self-defense charge tailored to the facts of a case. State v. Brandt, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011); State v. Fuller, 297 S.C. 440, 444-45, 377 S.E.2d 328, 331 (1989). As this Court recognized in Fuller, there is a “body of common law self-defense” and trial judges must “consider the facts and circumstances of the case at bar in order to fashion an appropriate charge.” Fuller at 443, 377 S.E.2d at 330.

The trial court ignored evidence that there was a struggle. Appellant knew that Wife planned to divorce him. R. 180, l. 21 – 181, l. 4. Wife testified that they had a disagreement. R. 181, l. 5 – 187, l. 3. Appellant’s DNA was found on both the knife discovered at the scene by Bobo and on the knife later recovered by the police. R. 339, ll. 5 – 19. R. 343, ll. 15 – 24. Furthermore, the wounds the police documented on appellant were strong evidence of a struggle. R. 247, ll. 20 – 23. Appellant’s wounds were puncture wounds—which are consistent with a knife fight rather than wounds suffered in the course of the attack described by Wife.

The trial court’s refusal to give a self-defense charge could not rightfully be based on the defendant’s failure to present any evidence. The defendant has no burden to present evidence. U.S. Const. amends. V, VI, XIV. The State has the burden of disproving self-defense beyond a reasonable doubt. State v. Dickey, 394 S.C. 491, 499, 716 S.E.2d 97, 101 (2011). Some

evidence of self-defense existed in this case and the trial judge erred in refusing appellant's requested charge.

The trial court also erred in refusing to charge second-degree assault and battery because it was a question of fact whether Wife's injuries were "moderate bodily injuries" as defined in the statute. S.C. Code Ann. § 16-3-600(A)(2). The law to be charged is determined from the evidence presented at trial. State v. Knoten, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001). Reversible error is committed if the trial court fails to give a requested charge on an issue raised by the evidence. State v. Hill, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993). Moreover, when determining whether the evidence requires a charge on a lesser included offense, the court views the facts in the light most favorable to the defendant. See Knoten, 347 S.C. at 302, 555 S.E.2d at 394 (requiring the trial court to view facts in the light most favorable to a defendant when determining whether to charge involuntary manslaughter).

The assault and battery statute defines "moderate bodily injury" as:

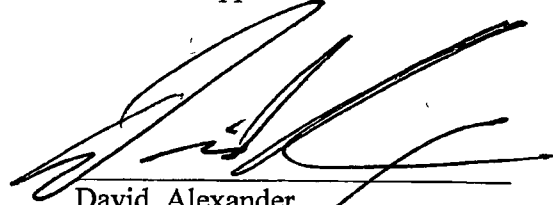
physical injury that involves prolonged loss of consciousness, or that causes temporary or moderate disfigurement or **temporary loss of the function of a bodily member or organ, or injury that requires medical treatment when the treatment requires the use of regional or general anesthesia** or injury that results in a fracture or dislocation. Moderate bodily injury does not include one-time treatment and subsequent observation of scratches, cuts, abrasions, bruises, burns, splinters, or any other minor injuries that do not ordinarily require extensive medical care.

S.C. Code Ann. § 16-3-600(A)(2) (emphasis added). A person is guilty of second-degree assault and battery if they unlawfully injure another person and it results in "moderate bodily injury." S.C. Code Ann. § 16-3-600(D). Second-degree assault and battery is differentiated from ABHAN because ABHAN requires "great bodily injury," which is defined as "protracted loss or impairment of a bodily member or organ." S.C. Code Ann. § 16-3-600(A)(1) and (B)(1).

Because there was evidence that Wife suffered only a temporary injury to an organ (her stomach), it was a question of fact whether she suffered a great bodily injury or a moderate bodily injury. Appellant was entitled to have the jury determine this question of fact and the trial judge erred in refusing to give this requested charge.

CONCLUSION

For the foregoing reasons, this Court should reverse appellant's convictions and remand this case for a new trial.

A handwritten signature in black ink, appearing to read 'David Alexander', written over a horizontal line.

David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 4th day of August, 2016.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable J. Mark Hayes, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CHRISTOPHER ALLEN MIDDLETON

APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Christopher Allen Middleton states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before The Honorable J. Mark Hayes, which was held on October 12-14, 2015, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, He asks the Court to relieve him as counsel for Christopher Allen Middleton.

Respectfully Submitted,

David Alexander
Appellate Defender
ATTORNEY FOR APPELLANT

This 4th day of August, 2016.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
Honorable J. Mark Hayes, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CHRISTOPHER ALLEN MIDDLETON

APPELLANT

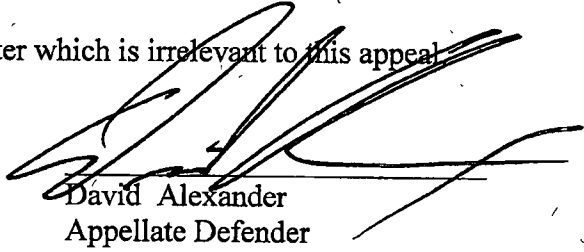
DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

- (1) Trial transcript:
- (2) True-billed indictment(s)

I certify that this designation contains no matter which is irrelevant to this appeal.

August 04, 2016



David Alexander
Appellate Defender

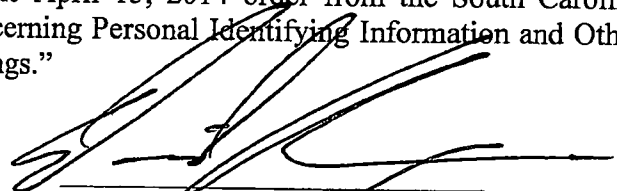
South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders 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."

August 04, 2016.



David Alexander
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

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable J. Mark Hayes, Circuit Court Judge

THE STATE,

RESPONDENT,

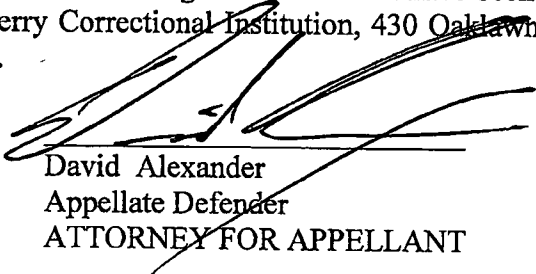
V.

CHRISTOPHER ALLEN MIDDLETON

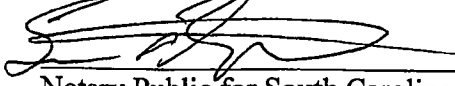
APPELLANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter have been served on Christopher Allen Middleton, 213662, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 4th day of August, 2016.


David Alexander
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 4th day of August, 2016.

 (L.S)
Notary Public for South Carolina

My Commission Expires: October 30, 2022

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Christopher Allen Middleton, Appellant.

Appellate Case No. 2015-002232

Appeal From Spartanburg County
J. Mark Hayes, II, Circuit Court Judge

Unpublished Opinion No. 2017-UP-178
Submitted February 1, 2017 – Filed April 19, 2017

APPEAL DISMISSED

Appellate Defender David Alexander, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General John Benjamin Aplin,
both of Columbia, for Respondent.

PER CURIAM: Dismissed after review pursuant to *Anders v. California*, 386
U.S. 738 (1967). Counsel's motion to be relieved is granted.

APPEAL DISMISSED.¹

LOCKEMY, C.J., and HUFF and THOMAS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



RECEIVED
MAY - 8 2017

ATTORNEY GENERALS

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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COLUMBIA, SOUTH CAROLINA 29201
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May 05, 2017

The Honorable M. Hope Blackley
PO Box 3483
Spartanburg SC 29304-3483

REMITTITUR

Re: The State v. Christopher A. Middleton
Lower Court Case No. 2015GS4201128
Appellate Case No. 2015-002232

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Christopher Allen Middleton, 213662
Alan McCrory Wilson, Esquire
John Benjamin Aplin, Esquire
David Alexander, Esquire

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF

Mr. Christopher Allen Middleton
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2017-CP-42-2751

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention SPARTANBURG COUNTY
2. Name and location of Court which imposed sentence Spartanburg County Courthouse
170 Magnolia Street Spartanburg S.C. 29306
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2015-65-42-1128
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) October 14, 2015 30 year for Attempted Murder 5 years Concurrent for Poss. of Weapon
during commission of 4 violent crime
 - (b) _____

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: see attached pages 8-12
- 2017 JUN -9 AM 11:43
CLERK OF COURT

(a) See additional pages attached (p 8-12)

(b) _____

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) See Additional pages attached (p 8-12)

(b) _____

(c) _____

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? NO

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO

(d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

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iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

2017 AUG -9 AM 11:43
CLERK OF COURT

- (a) your arraignment and plea?
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i.

ii. Joshua Schultz, 184 North Daniel Morgan Ave

iii. Spartanburg SC, 29306

(b) the proceedings at which each such attorney represented you:

i.

ii. Trial

iii. Sentencing

19. State clearly the relief you seek in filing this application:

New trial

20. Are you now under sentence from any other court that you have not challenged?

NO

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CLERK, CLERK

STATE OF SOUTH CAROLINA

County of _____

VERIFICATION

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Christopher A. Middleton ✓

SWORN to and subscribed before me this 4th
day of August, 2017.

Nancy C. Oshroff (L. 84)
Notary Public

My Commission Expires: 1-23-2023

2017 AUG -9 AM 11:43
CLERK OF COURT

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Christopher & Middleton ✓
Applicant

SWORN or affirmed and subscribed before me this
4th day of August, 2017

Nancy C. Marshall
Notary Public

My Commission Expires: 1-23-2022

2017 AUG -9 AM 11:43
CLERK

ATTACHMENT 10 FOR APPLICATION

PAGES 2 AND 3 10(a) AND 11

10. State concisely the grounds on which you base your allegations that you are being held in custody, unlawfully.

a. Applicant Christopher Allen Middleton alleges that he is being held in custody unlawfully in violation of his Sixth and Fourteenth Amendment Right of the United States Constitution and South Carolina Constitution Article 1 section 14 to effective assistance of counsel.

11. State concisely and in the same order the facts which support each of grounds set out in (10).

ISSUE 1

Applicant Mr. Christopher Allen Middleton claims that pursuant to the first prong test in Strickland v. Washington, 466 U.S. 668, 681-688 (1984), that is, trial counsel Mr. Joshua Schultz performance fell below on objective standard of reasonableness in,

Failing to object to Trial Judge Honorable J. Mark Hayes II erroneous jury charge, "that intent to kill is not an element of attempted murder but there must be a general intent to commit serious bodily injury. See Id in exhibit #1 attached, trial transcript of case 2015-GS-42-1128 before Judge Hayes, on October 12-14, 2015. Trial transcript pages 414, lines 11-13.

Applicant Mr. Middleton claims that general intent is not an element of attempted murder. See State v. King, 412 S.C. 403, 712 S.E.2d 189.

Applicant Mr. Middleton further claims that, pursuant to the second prong test in Strickland v. Washington, 466 U.S. 668, 687-88 1984, that he was prejudice by trial counsel Mr. Schultz's deficient performance in failing to object to Trial Judge Hayes' charge to the jury that a specific intent to kill is not an element of attempted murder but there must be a general intent to commit serious bodily injury, because pursuant to State v. King, 412 S.C. 403, 712 S.E.2d 189, general intent is not an element of attempted murder, allowing the jury to find Applicant guilty of an uncharged offense.

Applicant Mr. Middleton claims that had it not been for counsel's error there is a reasonable probability the outcome of the trial would have been

different and therefore pursuant to State v. King, 412 S.C. 403, 112 S.E.2d 189, he is entitled to a new trial.

ISSUE 2

Applicant Mr. Christopher Allen Middleton claims that pursuant to the first prong in Strickland v. Washington, 466 U.S. 668, 687-88 (1984) that his trial counsel Mr. Joshua Schultz's performance fell below an objective standard of reasonableness in failing to make proper objections to preserve his motions for a self-defense charge to the jury. See Id in exhibit #1, trial transcript page 360 line 5, through page 361 line 25; Page 368 line 6 through 370 line 18; Page 372 lines 12-20. Trial counsel did not object to Trial Judge's refusal to charge the jury on Self-defense.

Applicant Mr. Middleton further claims that pursuant to the second prong test in Strickland v. Washington, 466 U.S. 668, 687-88 (1984), that he was prejudiced by trial counsel Mr. Schultz's deficient performance in failing to object to trial judge Hayes' refusal to charge jury on Self-defense because failure to object resulted in the issue not being preserved for review on appeal by the S.C. Court of Appeals resulting in the S.C. Court of Appeals filing an no merit Ander Brief. See Id as exhibit #2 attached.

Applicant states that had it not been for his trial counsel's deficient performance, there is a reasonable probability the outcome of the proceeding, would have been different.

ISSUE 3

Applicant Mr. Christopher Allen Middleton claims that pursuant to the first test in Strickland v. Washington, 466 U.S. 668, 687-88 (1984) that his trial counsel Mr. Joshua Schultz's performance fell below an objective standard of reasonableness in failing to proper motion the trial court for a directed verdict of acquittal pursuant to In re Winslip, 397 U.S. 358, on grounds that the prosecution failed to prove the element of specific intent. See Id. in exhibit #1, trial transcript page 351 line 10, and for failing to object to trial judge's denying his motion that he did request, to preserve the issue for review on appeal by the S.C. Court of Appeals.

Applicant Mr. Middleton further state that pursuant to the second prong test in Strickland v. Washington, 466 U.S. 668, 687-88 (1984) he was prejudiced by his trial counsel Mr. Schultz's deficient performance because prejudiced him of his right to judicial review of the trial judge's denial

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his directed verdict motion for acquittal on appeal by the S.C. Court of Appeals, and he was also prejudiced when trial counsel did not state his grounds for a directed verdict of acquittal based on the prosecution failed to pursuant to In re Winship, 397 U.S. 358, fail to prove beyond a reasonable doubt the element of specific intent.

Applicant states that had it not been for counsel's deficient performance as stated above, there is a reasonable probability the outcome of the trial would have been different.

ISSUE 4

Applicant Mr. Christopher Allen Middleton claims that pursuant to the first prong test in Strickland v. Washington, 466 U.S. 668, 687-88 (1984), that his trial counsel Mr. Joshua Schultz's performance fall below an objective standard of reasonableness in failing to object to Trial Court Judge Honorable J. Mark Hayes unconstitutional burden shifting presumption charge to the jury that:

Malice may be inferred from conduct showing a total disregard for human life if facts are proved beyond a reasonable doubt, sufficient to raise an inference of malice to you, to your satisfaction. This inference would be simply an evidentiary fact to be considered by you. The jury along with other evidence in the case and you may give it the weight that you decide it should receive. See Id. in exhibit #1, trial transcript page 414 lines 4-10.

Applicant Mr. Middleton states that Trial Judge Hayes should have made it clear to the jury that it is free to accept or reject the permissive inference depending on its view of the evidence. State v. Woods, 282 S.C. 18, 310 S.E.2d 673 (1984); State v. Lewellyn, 281 S.C. 119, 314 S.E.2d 326 (1984); State v. Elmore, 279 S.C. 417, 308 S.E.2d 781 (1983). Because generally the trial judge is required to charge only the current law of South Carolina; State v. Brown, 362 S.C. 258, 261, 607 S.E.2d 93, 95 (Cl. App. 2004); In State v. Nava, 338 S.E.2d 791 (S.C. 1990) S.C. Supreme Court in State v. Petterson, 287 S.C. 244, 385 S.E.2d 800 (1985) held that burden shifting presumption are unconstitutional, that specifically a criminal charge that prima facie case may be rebutted by other evidence in impermissible State v. Key, 282 S.C. 413, 319 S.E.2d 338 (1984) because it unconstitutionally shifts burden of proof to

defendant evidentiary presumption must be charged as permissive inference with specific instruction that jury may accept or reject inference. U.S.C.A. Const. Amend 5th, 14th, Criminal Law Key 778 (5), State v. Adams, 791 S.C. 132, 352 S.E.2d 483 (1987); State v. Petterson supra.

Trial Judge Hayes did not charge the jury or instruct the jury that they may accept or reject inference. Id. in exhibit #1, transcript page 414 lines 4-10, nor did trial counsel Mr. Schultz object to the impressive inference.

As a result of counsel's failure to object, Applicant claims that pursuant to the second prong test in Strickland v. Washington, 466 U.S. 668, 667-86 (1984) that had it not been for his, trial counsel Mr. Schultz's, deficient performance in failing to object to Trial Judge Hayes' impremissive inference charge to the jury, there is a reasonable probability the outcome of his trial would have been different.

CONCLUSION

Applicant Mr. Christopher Allen Middleton based on the preponderance of the evidence set forth above in Issues 1-4 that this Honorable Court will reverse his conviction and sentence under criminal case 2015-GS-42-1123 of 30 years for attempted murder and 5 years concurrent for possession of a weapon during a violent crime, Id. in exhibit 1, trial transcript page 420 lines 20-25, page 430 line 21 -- page 431 line 4, and remand for a new trial.

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CLERK OF COURT

I, the Applicant Christopher Allen Middleton, hereby under the acts of perjury and hereby under oath, state that the information, claims and evidence in my PCR application is true to the best of my knowledge.

I have made apart of this PCR application, as exhibit #1 enclosed.... The jury trial transcript of criminal case 2015-GS-42-1128 of October 12-14th 2015, before the Honorable J. Mark Hayes II of Spartanburg County, and exhibit #2 a copy of Appellate Case No. 2015-002232, Anders v. California 386 U.S. 73 Brief, so that it will be apart of the record.

SUBSCRIBED AND SWORN TO before me
This 4th day of August, 2017

Notary: Nancy C. Marshall

Expire: 1-23-2022

/s/ Christopher A. Middleton ✓

Christopher Allen Middleton

#213662, C-1-A 222

Perry Correctional Institution

430 Oaklawn Road

Pelzer, S.C. 29669

2017 AUG -9 AM 11:43
RECEIVED

1 STATE OF SOUTH CAROLINA

2 COUNTY OF SPARTANBURG

COURT OF GENERAL SESSIONS

3
4 STATE OF SOUTH CAROLINA,

5 PLAINTIFF,

6 VS.

7 CHRISTOPHER ALLEN MIDDLETON

8 DEFENDANT.

TRANSCRIPT

OF

RECORD

2015-GS-42-1128

9
10 october 12th - 14th, 2015
11 Spartanburg, South Carolina

12
13 B E F O R E:

14 THE HONORABLE J. MARK HAYES, II, Judge; and a jury.

15
16 A P P E A R A N C E S:

17 MEGHAN GILMER
18 ASSISTANT SOLICITOR
Attorney for the State

19 JOSHUA SCHULTZ
20 ESQ.
Attorney for the Defendant

21
22
23 PAMELA E. GREEN
24 Circuit Court Reporter
25 Seventh Judicial Circuit

2017 AUG -9 PM 12:51
M. HOFF BLANKLEY

Exhibit 2

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable J. Mark Hayes, Circuit Court Judge

THE STATE.

RESPONDENT.

V.

CHRISTOPHER ALLEN MIDDLETON

APPELLANT

APPELLATE CASE NO 2015-002232

ANDERS BRIEF OF APPELLANT

DAVID ALEXANDER
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

2017/06-9 AM 11:43

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in refusing appellant's requested jury instructions for self-defense and for the lesser-included offense of second-degree assault and battery?

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STATEMENT OF THE CASE

On March 12, 2015, a Spartanburg County grand jury indicted appellant Christopher Allen Middleton for attempted murder and possession of a weapon during commission of a violent crime. R. 433 - 434. On October 12, 2015, appellant was tried before the Honorable J. Mark Hayes and a jury. R. 1. Meghan Gilmer represented the State. R. 1. Joshua Schultz represented appellant. R. 1. The jury convicted appellant on both charges. R. 420, l. 10 - 421, l. 10. Judge Hayes sentenced appellant to concurrent terms of thirty years' imprisonment for attempted murder and five years' imprisonment on the weapons charge. R. 430, l. 19 - 431, l. 4. This appeal follows.

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ARGUMENT

The trial court erred in refusing appellant's requested jury instructions for self-defense and for the lesser-included offense of second-degree assault and battery.

Appellant's wife, Robert Undra Cohen-Middleton ("Wife"), accused him of stabbing her. R. 178, l. 21 – 186, l. 3. According to Wife, she returned home from a medical procedure and went to her room to rest. R. 176, ll. 11 – 18. Appellant took her to the doctor and brought her home. R. 174, ll. 1 – 2. Wife got into bed. R. 176, l. 11 – 177, l. 16.

Wife claimed that at some point in the night, appellant entered the room, stood in the door and said, "bitch, I hate you." R. 179, ll. 8 – 9. Appellant had learned that Wife intended to divorce him. R. 180, l. 21 – 181, l. 4. After arguing, Wife claimed appellant stabbed and hit her. R. 181, l. 5 – 187, l. 3. Supposedly after stabbing her, appellant then got in the bed beside Wife and went to sleep. R. 185, ll. 2 – 13.

Wife had another medical procedure scheduled for the next morning. R. 101, ll. 8 – 11. When Wife did not show up for the appointment, a family friend named Loreena Miller-Bobo ("Bobo") and Wife's father went to her house to check on her. R. 101, ll. 15 – 24. R. 102, ll. 13 – 20. Bobo claimed appellant opened the door holding a "something silver" in his hands and had blood on his shorts. R. 112, ll. 2 – 20. Appellant ran into the woods. R. 113, ll. 9 – 13.

Bobo found Wife in her bed. R. 115, ll. 21 – 24. Her father saw blood. R. 143, ll. 10 – 15. The police arrived at about the same time. R. 143, ll. 6 – 7. The EMT who responded "noted several stab wounds" and had Wife transported to the hospital by helicopter. R. 277, ll. 3 – 24. Wife's most serious injury was a stab wound that put a hole in her stomach. R. 38, ll. 9 – 18. Wife ultimately recovered from this wound. R. 188, ll. 6 – 189, l. 17.

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Bobo was living with Wife and appellant. R. 94, ll. 7 – 9. The night of the incident, Bobo stayed at a friend's house because appellant and Wife got into an argument. R. 99, ll. 9 – 20. Bobo stated that she left because, “her and Chris had got into it and I just wanted to let stuff die down.” R. 99, ll. 15 – 17.

The first police officer on the scene was given a knife with blood on it by Bobo. R. 155, ll. 6 – 20. The knife was wrapped in a towel. R. 155, ll. 14 – 15. The police recovered another knife during their investigation. R. 243, l. 13 – R. 244, l. 3. When the police took appellant into custody, they noted that he “had some injuries.” R. 246, ll. 19 – 22. Appellant had “lacerations and puncture wounds.” R. 246, ll. 19 – 22. The police officer stated appellant had “three puncture type injuries to the abdomen.” R. 247, ll. 20 – 23. SLED could not exclude appellant as a contributor to the DNA mixture found on the knife recovered from the house. R. 339, ll. 5 – 19. Appellant’s blood was found on the other knife recovered by police. R. 343, ll. 15 – 24.

After the close of the evidence, appellant requested a self-defense charge. R. 360, l. 5 – 361, l. 23. Defense counsel argued appellant was entitled to a self-defense charge because of the evidence of appellant’s wounds and the DNA evidence on both knives. R. 360, l. 5 – 361, l. 23. The trial judge refused to give a self-defense instruction. R. 372, ll. 12 – 20.

Appellant also requested the trial judge charge the lesser-included offense of second degree assault and battery. R. 362, l. 1 – 365, l. 20. Appellant argued that second degree assault and battery “involves moderate bodily injury, which I believe is a question of fact for the jury.” R. 365, ll. 10 – 12. Defense counsel cited the statutes defining “moderate bodily injury.” R. 364, ll. 11 – 20. The trial judge refused to charge this lesser-included offense. R. 373, ll. 3 – 7.

The trial judge erred in refusing to charge self-defense. "If there is any evidence in the record from which it could reasonably be inferred that the defendant acted in self-defense, the defendant is entitled to instructions on the defense, and the trial judge's refusal to do so is reversible error." State v. Muller, 282 S.C. 10, 10, 316 S.E.2d 409, 409 (1984). "When reviewing the circuit court's refusal to deliver a requested jury instruction, appellate courts must consider the evidence in a light most favorable to the defendant." State v. Williams, 400 S.C. 308, 314, 733 S.E.2d 605, 608-09 (Ct. App. 2012).

A trial judge has the responsibility to craft a self-defense charge tailored to the facts of a case. State v. Brandt, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011); State v. Fuller, 297 S.C. 440, 444-45, 377 S.E.2d 328, 331 (1989). As this Court recognized in Fuller, there is a "body of common law self-defense" and trial judges must "consider the facts and circumstances of the case at bar in order to fashion an appropriate charge." Fuller at 443, 377 S.E.2d at 330.

The trial court ignored evidence that there was a struggle. Appellant knew that Wife planned to divorce him. R. 180, l. 21 – 181, l. 4. Wife testified that they had a disagreement. R. 181, l. 5 – 187, l. 3. Appellant's DNA was found on both the knife discovered at the scene by Bobo and on the knife later recovered by the police. R. 339, ll. 5 – 19. R. 343, ll. 15 – 24. Furthermore, the wounds the police documented on appellant were strong evidence of a struggle. R. 247, ll. 20 – 23. Appellant's wounds were puncture wounds—which are consistent with a knife fight rather than wounds suffered in the course of the attack described by Wife.

The trial court's refusal to give a self-defense charge could not rightfully be based on the defendant's failure to present any evidence. The defendant has no burden to present evidence. U.S. Const. amends. V, VI, XIV. The State has the burden of disproving self-defense beyond a reasonable doubt. State v. Dickey, 394 S.C. 491, 499, 716 S.E.2d 97, 101 (2011). Some

evidence of self-defense existed in this case and the trial judge erred in refusing appellant's requested charge.

The trial court also erred in refusing to charge second-degree assault and battery because it was a question of fact whether Wife's injuries were "moderate bodily injuries" as defined in the statute. S.C. Code Ann. § 16-3-600(A)(2). The law to be charged is determined from the evidence presented at trial. State v. Knoten, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001). Reversible error is committed if the trial court fails to give a requested charge on an issue raised by the evidence. State v. Hill, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993). Moreover, when determining whether the evidence requires a charge on a lesser included offense, the court views the facts in the light most favorable to the defendant. See Knoten, 347 S.C. at 302, 555 S.E.2d at 394 (requiring the trial court to view facts in the light most favorable to a defendant when determining whether to charge involuntary manslaughter).

The assault and battery statute defines "moderate bodily injury" as:

physical injury that involves prolonged loss of consciousness, or that causes temporary or moderate disfigurement or temporary loss of the function of a bodily member or organ, or injury that requires medical treatment when the treatment requires the use of regional or general anesthesia or injury that results in a fracture or dislocation. Moderate bodily injury does not include one-time treatment and subsequent observation of scratches, cuts, abrasions, bruises, burns, splinters, or any other minor injuries that do not ordinarily require extensive medical care.

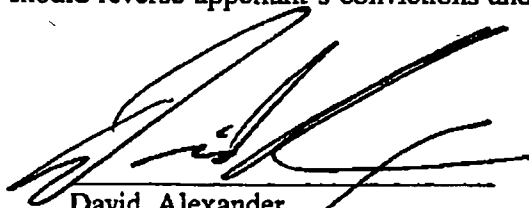
S.C. Code Ann. § 16-3-600(A)(2) (emphasis added). A person is guilty of second-degree assault and battery if they unlawfully injure another person and it results in "moderate bodily injury." S.C. Code Ann. § 16-3-600(D). Second-degree assault and battery is differentiated from ABHAN because ABHAN requires "great bodily injury," which is defined as "protracted loss or impairment of a bodily member or organ." S.C. Code Ann. § 16-3-600(A)(1) and (B)(1).

Because there was evidence that Wife suffered only a temporary injury to an organ (her stomach), it was a question of fact whether she suffered a great bodily injury or a moderate bodily injury. Appellant was entitled to have the jury determine this question of fact and the trial judge erred in refusing to give this requested charge.

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CONCLUSION

For the foregoing reasons, this Court should reverse appellant's convictions and remand this case for a new trial.

A handwritten signature in black ink, appearing to read 'David Alexander', is written over a horizontal line.

David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 4th day of August, 2016.

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable J. Mark Hayes, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CHRISTOPHER ALLEN MIDDLETON

APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Christopher Allen Middleton states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before The Honorable J. Mark Hayes, which was held on October 12-14, 2015, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, He asks the Court to relieve him as counsel for Christopher Allen Middleton.

Respectfully Submitted,

David Alexander
Appellate Defender
ATTORNEY FOR APPELLANT

This 4th day of August, 2016.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
Honorable J. Mark Hayes, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CHRISTOPHER ALLEN MIDDLETON

APPELLANT

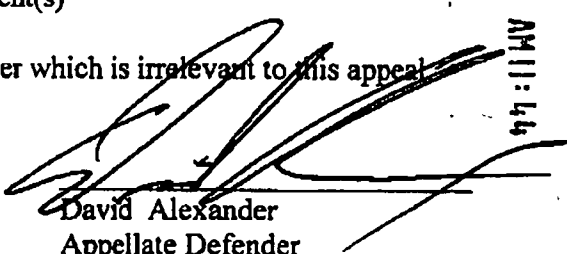
DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

- (1) Trial transcript:
- (2) True-billed indictment(s)

I certify that this designation contains no matter which is irrelevant to this appeal.

August 04, 2016


David Alexander
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

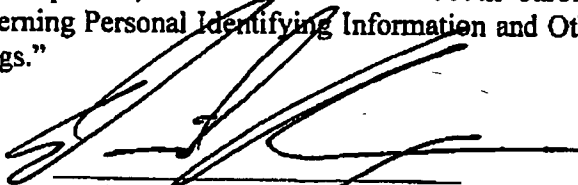
ATTORNEY FOR APPELLANT

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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders 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."

August 04, 2016.



David Alexander
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

2017 AUG -9 AM 11:44
FBI - COLUMBIA

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable J. Mark Hayes, Circuit Court Judge

THE STATE,

RESPONDENT,

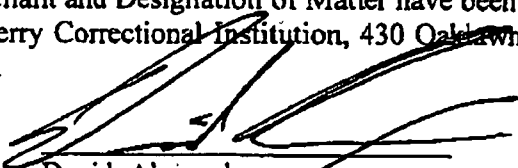
V.

CHRISTOPHER ALLEN MIDDLETON

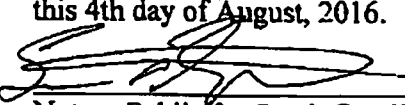
APPELLANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter have been served on Christopher Allen Middleton, 213662, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 4th day of August, 2016.


David Alexander
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 4th day of August, 2016.

 (L.S)
Notary Public for South Carolina
My Commission Expires: October 30, 2022

2017 AUG -9 AM 11:44

10:04:48 Tuesday, August 29, 2017

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 08/29/17
OMCOMITA RELEASE DATE SCREEN C060579
SCDC# > 213662 LOC: PERRY
MIDDLETON, CHRISTOPHE ALLEN SCDC CLASSIFICATION...: VIOLENT
OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL REGISTRY...: N
SEXUAL PREDATOR...: NOT APP
DNA STATUS.....: COMPLETED
GPS REQUIREMENT...: N
PREA DECISION....: PREA PERP...: NONE
PREA VICTIM.....: HIGH VULNERABLE
CURRENT SENTENCE: 030-00-000 CONSECUTIVE SENTENCE ...: N
030-00-000 CURRENT SENT START DATE: 06/21/2014
PROJECTED COMPLETION DATES
MAXOUT DATE: 12/14/2039 CURRENT EWC ..: 2 F 5
YOA SIX YEAR DATE: / / CURRENT EEC ..: B7
INITIAL PAROLE DATE: 00/00/0000 NEXT PAROLE HEARING DATE: 00/00/0000
TOTAL GT DAYS EARNED: 000000 LABOR CREW/WORK PROG DATE: 99/99/9999
TOTAL EARNED WORK CREDITS ...: 000410 LABOR CREW DISQ REASON:
TOTAL EDUCATION CREDITS: 000163 CATEGORY 4 OR 5 OFFENSE
TOTAL EXTRA EARNED CREDITS ..: 000 SUPERVISED REENTRY DATE...: 00/00/00
TOTAL SERVICE TIME EARNED ...: 001148 ISS.....:
PFKEYS: 5:HISTORY OF DATE CHANGES

South Carolina Department of Corrections

Classification Summary Reports

Date: Tuesday, August 29, 2017

Classification Summary Reports

Inmate Number **213662**

Submit

Classification Summary Report for MIDDLETON, CHRISTOPHE ALLEN :

Create PDF

CLASSIFICATION SUMMARY REPORT DATED 08/29/2017

SCDC# 00213662

MIDDLETON, CHRISTOPHE ALLEN

FBI# 234992JA5

OFFENDER ADULT-STRAIGHT
TYPE: SENTENCE

INSTITUTION: PERRY

SECURITY/CUST: 3 MINIMUM IN

CURR INCARC 30 YRS 0 MOS 0
SENT: DAYS

VICTIM
WITNESS: SEPREQ:N

MED
CLASS:

INST
RESTRICT: NO RESTRICTION

MENTAL NMH (NO MENTAL
CLASS: HEALTH TRE

CURRENT NO CURRENT
PROGRAM: PROGRAM

SEX REGISTRY: N

DNA: C

AGE: 46



RESIDENT
STABILITY: NA

DORMROOMBUNK_CODE: Q1A 0222 B

PROJ MAXOUT
DATE: 12/14/2039

PROJ PAROLE
DATE:

EWC
JOB: RECREATION AIDE

ASSIGNMENT: BUILDING #1

EWC
LEVEL: 2F5 EEC LEVEL:

EDUC
PGM: MASONRY (ABE)

PREVIOUS NUMBERS:

00150793

Y00150793

CURRENT OFFENSES	YRS	MOS	DYS	COUNTY	START	SENTENCE	V/NV	CAT	INDICT
ATTEMPTED MURDER	30	0	0	SPARTANBURG	06/21/2014	V	4	15GS4201128	
FIREARMS PROVISION	5	0	0	SPARTANBURG	06/21/2014	N	3	15GS4201128A	

COMPLETED OFFENSES	YRS	MOS	DYS	COUNTY	START	SENTENCE	V/NV	CAT	INDICT

ILLEGAL ARREST	3	0	0	GREENWOOD	05/30/2003	N	2	93GS241031
STALKING	1	0	0	GREENWOOD	09/08/1994	N	4	94GS24557
FALSE IMPRISONMENT	5	0	0	GREENWOOD	09/08/1994	N	4	93GS241031
ESCAPE	5	0	0	EDGEFIELD	05/18/1994	N	4	94190261
ASSL&BATTERY-HIGH&AGG NAT	10	0	0	EDGEFIELD	05/18/1994	N	3	94190258
CRIMINAL CONSPIRACY	5	0	0	EDGEFIELD	05/18/1994	N	2	9419093
CRIMINAL CONSPIRACY	5	0	0	EDGEFIELD	11/30/1993	N	2	94190259
CRACK POSSESS	5	0	0	EDGEFIELD	11/30/1993	N	2	9419073

PRIOR COMMITMENTS OVER 90 DAYS:

INMATE HAS NO PRIORS

PREVIOUS OFFENSES	PREVSCDCID	YRS	MOS	DYS	COUNTY	START	SENTENCE V/NV CAT	INDICT
UNAUTHORIZED USE-VEHICLE	00150793	1	0	0	MCCORMICK	11/01/1991	N 2	91GS350241
ESCAPE	00150793	1	0	0	MCCORMICK	11/01/1991	N 4	91GS350212
BURGLARY-3RD DEGREE	Y00150793	4	0	0	MCCORMICK	07/13/1988	N 2	00001
LARCENY	Y00150793	1	0	0	MCCORMICK	02/22/1990	N 2	00001
GRAND LARCENY	Y00150793	4	0	0	MCCORMICK	07/13/1988	N 2	00001

DETAINERS (HOLD,WANTED,NOTIFY):

NO DETAINERS

ESCAPES:

04/19/1994	CLASS I	ESCAPE
06/02/1991	CLASS I	ESCAPE

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

03/22/1995	FIGHTING WITHOUT A WEAPON	CONVICTED	MAJOR DISC. HEARING	INMATE ASSAULT	N

PREVIOUS ASSAULTIVE DISCIPLINARIES:

NO PREVIOUS ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

02/08/2002	I/M UNDER INFLUENCE/POSS ALCOHOL OR BUCK	CLOSED	OTHER ACTION TAKEN/INFORM
12/04/1999	SEXUAL MISCONDUCT	DISMISSED	CHARGES DROPPED/INSUFF. E
03/29/1996	FALSE STATEMENT TO HARM ANOTHER PERSON	CONVICTED	MAJOR DISC. HEARING
03/28/1996	SEXUAL MISCONDUCT	CONVICTED	MAJOR DISC. HEARING

PREVIOUS NON-ASSAULTIVE DISCIPLINARIES:

NO PREVIOUS NON-ASSAULTIVE DISCIPLINARIES HISTORY

HISTORY OF MOVEMENTS:

01/05/2016	PERRY	INCARCERATED	RETURN FROM COURT
01/05/2016	SPARTANBURG CO	AUTH ABSENCE (AWL)	TO COURT
12/08/2015	PERRY	INCARCERATED	ADMINISTRATIVE
10/19/2015	KIRKLAND	INCARCERATED	R&E PROCESSING
10/19/2015	PERRY	INCARCERATED	NEW ADMISSION
07/02/2008	UNK	RELEASE	PAROLE SATISFIED
07/29/2005	SPARTANBURG CO	PAROLE	PAROLE BOARD ACTION
07/14/2005	MCCORMICK	INCARCERATED	ADMINISTRATIVE
07/14/2005	KIRKLAND	INCARCERATED	MEDICAL

06/28/2005	MCCORMICK	INCARCERATED	ADMINISTRATIVE
06/28/2005	PERRY	INCARCERATED	COURT/PAROLE HEARING VIA
01/13/2005	MCCORMICK	INCARCERATED	ADMINISTRATIVE
01/13/2005	KIRKLAND	INCARCERATED	MEDICAL
12/28/2004	MCCORMICK	INCARCERATED	ADMINISTRATIVE
12/28/2004	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
12/09/2004	MCCORMICK	INCARCERATED	ADMINISTRATIVE
12/09/2004	KIRKLAND	INCARCERATED	MEDICAL
06/09/2004	MCCORMICK	INCARCERATED	ADMINISTRATIVE
06/09/2004	PERRY	INCARCERATED	COURT/PAROLE HEARING VIA
10/16/2003	MCCORMICK	INCARCERATED	ADMINISTRATIVE
10/16/2003	KIRKLAND	INCARCERATED	MEDICAL
08/01/2003	MCCORMICK	INCARCERATED	ADMINISTRATIVE
08/01/2003	KIRKLAND	INCARCERATED	MEDICAL
05/30/2003	MCCORMICK	INCARCERATED	RETURN FROM COURT
05/30/2003	GREENWOOD CO	AUTH ABSENCE (AWL)	TO COURT
04/30/2003	MCCORMICK	INCARCERATED	ADMINISTRATIVE
04/30/2003	PERRY	INCARCERATED	COURT/PAROLE HEARING VIA
03/31/2000	MCCORMICK	INCARCERATED	ADMINISTRATIVE
03/30/2000	KIRKLAND	INCARCERATED	MEDICAL
03/03/2000	MCCORMICK	INCARCERATED	ADMINISTRATIVE
03/03/2000	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
02/01/2000	MCCORMICK	INCARCERATED	ADMINISTRATIVE
02/01/2000	GREENWOOD CO	AUTH ABSENCE (AWL)	MEDICAL
09/09/1994	MCCORMICK	INCARCERATED	RETURN FROM COURT
09/08/1994	GREENWOOD CO	AUTH ABSENCE (AWL)	TO COURT
07/28/1994	MCCORMICK	INCARCERATED	RETURN FROM COURT
07/19/1994	GREENWOOD CO	AUTH ABSENCE (AWL)	TO COURT
06/01/1994	MCCORMICK	INCARCERATED	ADMINISTRATIVE
05/19/1994	PERRY R&E	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
RECREATION AIDE	12/10/2015	-		2F5
MEDICAL ORDERLY	06/29/2005	07/29/2005	RELEASED/PAROLED	2F5
RECREATION AIDE	02/09/2005	06/28/2005	INMATE REQUEST	2F5
WARDKEEPER ASSISTANT	05/24/2001	02/08/2005	INMATE REQUEST	2F5
RECREATION AIDE	01/26/2001	05/10/2001	PLACED IN ST/SP CUSTODY	2F5
RECREATION AIDE	10/05/2000	01/25/2001	MI ELIGIBLE FOR LEVEL 2	3F5
WARDKEEPER ASSISTANT	03/11/2000	10/04/2000	LATERAL TRANSFER	3F5
WARDKEEPER ASSISTANT	06/12/1997	02/16/2000	MEDICAL	3F5
WARDKEEPER ASSISTANT	12/04/1996	06/11/1997	CUSTODY REVIEW	5F5
WARDKEEPER ASSISTANT	05/07/1996	11/06/1996	MEDICAL	5F5
CUSTODIAL WORKER	10/12/1995	03/29/1996	DISCIPLINARY/LOCK-UP	7F5
FOOD SERVICE AIDE	06/06/1994	06/15/1994	INMATE REQUEST	5F7

HISTORY OF EARNED EDUCATION CREDITS:

EEC DESCRIPTION	START DATE	END DATE	TERMINATION REASON
BONUS 15 OR MORE	01/13/2017	-	
BONUS 15 OR MORE	10/18/2001	04/29/2003	INMATE REQUEST
BONUS 15 OR MORE	07/13/2000	05/10/2001	PLACED IN ST/SP CUSTODY

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

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[Version: 1.4.12 Built: 02/03/2015 11:57:23 AM Time: 10:08:04 AM]

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG
STATE VS.

Christopher Allen Middleton

AKA:

Race: BLACK Sex: M Age: 44

DOB: 0 SS#: [REDACTED]

Address:

City, State, Zip: Dec

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Murder / Attempted Murder (Up to 30 years)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015GS4201128

A/W#: 2014A4210102478

Date of Offense: 6/19/2014 - 6/20/2014

S.C. Code § 16-03-0029

CDR Code #: 3410

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0029

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

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

ATTEST:

GILMER, MEGHAN

SC Bar# 81157

Defendant

Attorney for Defendant

SC Bar# 74518

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation formonths/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 480 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

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

\$ paid to Public Defender Fund

Other:

no contact with victim

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

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2137

Sentence Date: 10/14/15

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG
STATE VS.

Christopher Allen Middleton

AKA:

Race: Sex: M Age: 44

DOB: 70 SS#

Address: Doc

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: Weapons / Possession of Weapon during Violent Crime (5 years prison)

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45

w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

GILMER, MEGHAN

81157 SC Bar#

Defendant

Attorney for Defendant

74518 SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 180 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

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

Clerk of Court/ Deputy Clerk

Court Reporter:

CCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015GS4201128A

A/W#: 2014A4210102479

Date of Offense: 6/19/2014 - 6/20/2014

S.C. Code § : 16-23-0490

CDR Code #: 0549

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

PTUP

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

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

\$ paid to Public Defender Fund

Other:

No Contact with Victim

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

Presiding Judge

Judge Code: 2133

Sentence Date: 10/14/15

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Christopher Middleton, #213662,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2017-CP-42-2751

RETURN

Respondent, making its Return to the application for Post-Conviction Relief ("PCR") filed on August 9, 2017, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. In March 2015, the Spartanburg County Grand Jury indicted Applicant for one count of attempted murder and one count of possession of a weapon during the commission of a violent crime (2015-GS-42-1128). The charges resulted from an incident on June 20, 2014, in which Applicant attacked and repeatedly stabbed his wife while she was lying in bed before leaving her there until the next morning. (Tr. p. 47).

E. Joshua Schultz, Esquire, represented Applicant. Assistant Solicitor Meghan Gilmer represented the State. On October 12, 2015, Applicant proceeded to trial before the Honorable J. Mark Hayes, II. The jury found Applicant guilty as indicted on both counts. Judge Hayes sentenced Applicant to imprisonment for thirty years for attempted murder and five years for possession of a weapon during the commission of a violent crime, to be served concurrently. Judge Hayes also executed a permanent restraining order. (Tr. p. 430).

Applicant filed a timely notice of appeal. Appellate Defender David Alexander filed a brief on behalf of Applicant pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed Applicant's appeal and granted counsel's motion to be relieved. State v. Middleton, Op. No. 2017-UP-178 (S.C. Ct. App. filed April 19, 2017). The remittitur was returned to the circuit court on May 5, 2017.

Attached to this Return are the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records (including the Record on Appeal), and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel

- a. "Failing to object to trial judge's erroneous jury charge, 'that intent to kill is not an element of attempted murder but there must be a general intent to commit serious bodily injury ... and that [Applicant] was prejudiced by Trial Counsel in failing to object to the trial judge's charge to the jury that a specific intent to kill is not an element of attempted murder but there must be a general intent to commit serious bodily injury.'"
- b. "Failing to make proper objections to preserve his motions for a self-defense charge to the jury ... Trial Counsel did not object to the trial judge's refusal to charge the jury on self-defense ... and that [Applicant] was prejudiced by Trial Counsel's deficient performance in failing to object to trial judge's refusal to charge jury on self-defense because failure to object resulted in the issue not being preserved for review on appeal."
- c. "Failing to properly motion the trial court for a directed verdict of acquittal pursuant to In re Winshi, 397 U.S. 358, on grounds that the prosecution failed to prove the element of specific intent. Applicant further states that he was prejudiced by Trial Counsel's deficient performance because it prejudiced him of his right to judicial review of the trial judge's denial of his directed verdict motion for acquittal on appeal."

- d. “Failing to object to trial judge’s unconstitutional burden shifting presumption charge to the jury: ‘Malice may be inferred from conduct showing a total disregard for human life if facts are proved beyond a reasonable doubt, sufficient to raise an inference of malice to you, to your satisfaction. This inference would be simply an evidentiary fact to be considered by you, the jury, along with other evidence in the case and you may give it the weight that you decide it should receive.’ Tr. p. 414, ll. 4-10. Trial judge should have made it clear to the jury that it is free to accept or reject the permissive inference depending on its view of the evidence.”

III.

Respondent submits Applicant’s allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466

U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Applicant's allegation that Trial Counsel was ineffective for not objecting to the trial judge's jury charge on attempted murder is without merit. The trial judge explicitly charged the jury that intent means that the defendant intended the result which actually occurs. (Tr. p. 414). Applicant's allegation mischaracterizes the trial judge's statement in a way that implies the trial judge instructed that attempted murder is a general intent crime, but this was not the case.

Moreover, Applicant's allegation that Trial Counsel was ineffective for not objecting to the trial judge's refusal to charge the jury on self-defense is not supported by the record. A defendant is entitled to a self-defense charge where the evidence shows that (1) he was without fault in bringing on the difficulty, (2) he actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, (3) a reasonably prudent person of ordinary firmness and courage would have entertained the same belief, and (4) he had no other probable means of avoiding the danger other than to act as he did. State v. Sullivan, 345 S.C. 169, 547 S.E.2d 183 (2001); State v. Anderson, 338 S.C. 277, 525 S.E.2d 901 (2000). Trial Counsel requested a charge on self-defense, but Judge Hayes declined, explaining that the jury would be "speculating beyond belief" to consider self-defense. (Tr. p. 372). Applicant was convicted of attempted murder after stabbing and beating his wife while she was lying in bed the night before a surgery. The facts of this case would not have warranted a self-defense charge. Trial Counsel was not deficient for failing to object to the trial judge's refusal.

Furthermore, Applicant was not prejudiced by the refusal. Applicant alleges that Counsel's failure to object left the issue unpreserved for appeal. However, the refusal to charge the jury on self-defense was precisely the issue taken up on appeal in Applicant's Anders brief. This allegation is conclusively refuted by the record.

Respondent therefore submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a), SCRPC. All claims should be made well in advance of the evidentiary hearing. If Applicant has is represented by an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits, witnesses, and materials used to produce potential expert witness testimony be

provided to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

V.

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel. As to all other allegations, Respondent moves for summary dismissal pursuant to § 17-27-70 of the South Carolina Code of Laws on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VI.

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

[Signature block on following page]

VII.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of trial counsel.

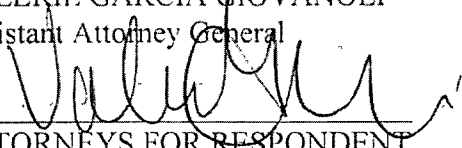
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

VALERIE GARCIA GIOVANOLI
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

January 10, 2018

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

2017-CP-42-2751

CHRISTOPHER MIDDLETON, #213662,

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

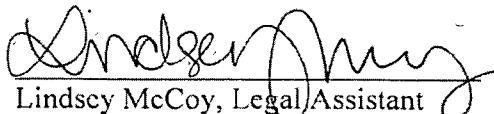
STATE OF SOUTH CAROLINA,

Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Susannah C. Ross, Esquire
Ross & Enderlin, PA
330 East Coffee Street
Greenville, South Carolina 29601

DATED this the 10th day of January, 2018.


Lindsey McCoy, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG) CASE NO.: 2017-CP-42-2751

CHRISTOPHER MIDDLETON)

vs.)

TRANSCRIPT OF RECORD

STATE OF SOUTH CAROLINA)

FEBRUARY 22, 2018
SPARTANBURG, SOUTH CAROLINA

BEFORE THE HONORABLE MICHAEL G. NETTLES

APPEARANCES:

VALERIE GIOVANOLI, ASSISTANT ATTORNEY GENERAL
COLUMBIA, SOUTH CAROLINA

ATTORNEY FOR THE STATE

SUSANNAH C. ROSS, ESQUIRE
SPARTANBURG, SOUTH CAROLINA

ATTORNEY FOR THE APPLICANT

SHIRLEY BROOM
16TH Circuit Court Reporter

I-N-D-E-X

WITNESSES:	DIRECT	CROSS	RE-DIRECT	RE-CROSS
Josh Schultz				
By Ms. Giovanoli	19			
By Ms. Ross		20		
By Ms. Giovanoli			21	

E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	EVD.

(NO EXHIBITS)

1 THE COURT - Ms. Giovanoli, you're recognized.

2 MS. GIOVANOLI - This will be Christopher
3 Middleton vs. The State of South Carolina. Docket number
4 is 2017-CP-42-2751. We're before the Court on an
5 application for post-conviction relief filed on August 9th,
6 2017. In March, 2015 applicant was indicted for one count
7 of attempted murder and one count of possession of a weapon
8 during the commission of a violent crime. The charges
9 resulted from an incident on June 20th, 2014 in which
10 applicant attacked and repeatedly stabbed his wife while
11 she was lying in bed, then leaving her there til the next
12 morning. Josh Schultz represented applicant, and on
13 October 12th, 2015 applicant proceeded to trial before The
14 Honorable J. Mark Hayes, II. The jury found applicant
15 guilty as indicted on both counts. Judge Hayes sentenced
16 applicant to imprisonment for thirty years for attempted
17 murder and five years for possession of a weapon during the
18 commission of a violent crime that he serve concurrently.
19 Judge Hayes also executed a permanent Restraining Order.
20 Applicant did file a timely notice of appeal and Appellant
21 Defender David Alexander filed a brief on behalf of
22 applicant pursuant to Anders vs. California. The South
23 Carolina Court of Appeals dismissed his appeal and the
24 remittitur was returned to the Circuit Court on May 5th,
25 2017. Applicant subsequently filed this post-conviction

1 relief application alleging ineffective assistance of
2 counsel, four specific allegations. The State is present
3 and ready to proceed. Applicant is also present and is
4 represented by Ms. Susannah Ross to whom I will hand it
5 over.

6 THE COURT - Ms. Ross, you're recognized.

7 MS. ROSS - Thank you, Your Honor. Mr.
8 Middleton's basic issues are ineffective assistance of
9 counsel. The argument that he briefs quite effectively is
10 that his attorney failed to object to the attempted murder
11 charge which is found on page 414 of the transcript, line
12 11. In State v. King, a case that came out before Mr.
13 Middleton's trial -- I think about four or five months
14 before Mr. Middleton's trial -- that exact jury instruction
15 was found to be objectionable and error to give that
16 instruction. Subsequent ---

17 THE COURT - Harmless error or reversible error?

18 MS. ROSS - It said reversible error and that's
19 where we get into some of the issues. The 2015 State v.
20 King said it was error to give that instruction, and then
21 that was taken up by the Supreme Court and in Opinion
22 published in 2017 the State v. King Supreme Court said on
23 page 14 that this error cannot be deemed harmless, and it
24 goes on to find the error being the instruction which is
25 given on page 414, so it has the exact same jury

1 instruction and says this is error to give this instruction
2 and it cannot be held harmless, so ---

3 THE COURT - Let's see what Ms. -- you might have
4 some more issues, but let's -- that might be the threshold
5 question. Let's hear what Ms. Giovanoli has to say about
6 that.

7 MS. GIOVANOLI - And, yes, I do think that that is
8 the most meritorious issue in this case. In 2015 -- she's
9 correct -- the Court of Appeals did issue a published
10 Opinion finding that this instruction was incorrect, and
11 they kind of -- it was a really -- it's, actually, still
12 on-going. State vs. King, the remittitur hasn't been
13 handed down. It's still up in the Supreme Court pending on
14 a petition for rehearing. So in 2015 the Court of Appeals
15 first heard the direct appeal from King finding that the
16 statute, attempted murder, even though it was based on the
17 common law ABWIK -- the common law charge of ABWIK -- that
18 the statute intended for there to be specific intent to
19 kill in order to prove attempted murder, so the instruction
20 that had been given prior to State vs. King, and had been
21 given for a while, was that specific intent to kill wasn't
22 required. It was just the general intent to commit serious
23 bodily injury, so that has been deemed incorrect. At the
24 time of this trial, it was about six months after the Court
25 of Appeals Opinion, this case was pending Cert in Supreme

1 Court, and we all know that a lot of times the Supreme
2 Court takes Certiorari from the Court of Appeals to change
3 their decision, so the state of the law wasn't -- although
4 the Court of Appeals Opinion was authoritaded, the state of
5 the law wasn't final. It was still being litigated. In
6 this case that -- that same jury charge was ---

7 THE COURT - You're saying that the Court of
8 Appeals Opinion was out when the charge was given.

9 MS. GIOVANOLI - Yes, that's correct. And that --
10 and State vs. King is still pending before the Supreme
11 Court, and -- but they did render an Opinion affirming the
12 Court of Appeals and further elaborating why they thought
13 that specific intent was an element for the crime to be
14 proved -- proven by the State.

15 THE COURT - What do you have to say about their
16 request for post-conviction relief?

17 MS. GIOVANOLI - Well, I think that we need some
18 testimony to -- but my arguments would first be that not
19 objecting to it was it reasonable because the state of the
20 law isn't final. State vs. King isn't a final case, and at
21 the time of the trial it was, actually, pending on
22 Certiorari before the Supreme Court, so that would be
23 deficiency. As far as prejudice, I think that we've got --
24 this record and has a very strong -- if you read the record
25 -- it's about 400 pages -- that even if that one sentence

1 that the Judge read in the instruction, specific intent to
2 kill was not a requirement, absent that error, that the
3 outcome would not have changed. This is one of the best --
4 I don't want to say best -- never mind -- this is a solid
5 attempted murder case, and even had he read the correct
6 instruction, the jury would've found him guilty of
7 attempted murder, not ABHAN, which was the lesser included
8 offense. The difference being attempted murder and ABHAN,
9 the only difference being specific intent to kill.

10 MS. ROSS - And that's a harmless error analysis
11 and that simply can't apply to this. We don't know what
12 the jury would've done. We can't get ---

13 THE COURT - Can I see the Supreme Court decision?

14 MS. ROSS - Yes. Please ignore -- see if that's
15 okay. I put a note -- my note on top.

16 (WHEREUPON, DOCUMENT HANDED UP TO THE COURT.)

17 (WHEREUPON, BRIEF PAUSE)

18 THE COURT - Who wrote the Opinion for The Court
19 of Appeals?

20 MS. GIOVANOLI - I don't have that information
21 right off hand, but I can figure it out.

22 MS. ROSS - For The Court of Appeals?

23 THE COURT - Right.

24 MS. ROSS - Few, Judge Few.

25 MS. GIOVANOLI - Justice Few?

1 MS. ROSS - Justice Few, sorry.

2 THE COURT - Does he recuse himself from reviewing
3 his own decision?

4 MS. ROSS - I don't know whether he did or not.

5 MS. GIOVANOLI - I don't know that either.

6 THE COURT - I was just wondering.

7 MS. ROSS - Beatty, as you can see, wrote the
8 Opinion.

9 (WHEREUPON, PAUSE IN RECORD)

10 THE COURT - This thing's purely like a question
11 of law, but I want to hear from both sides as to whether we
12 need to elicit any testimony. I'll hear from the applicant
13 first.

14 MS. ROSS - Judge, I believe that the question can
15 be answered as a matter of law. If you disagree with that,
16 we can -- be happy to present testimony.

17 THE COURT - Okay. Ms. Giovanoli, you know, the -
18 - I know that you've indicated that you wanted to talk
19 about the merits of the case and whether or not -- or the
20 horrendous facts of the case essentially, but the record --
21 the trial transcript is a part of the record. For
22 appellate purposes, all that can -- do we need to go
23 through all that that? I'm -- and if we do, I want -- and
24 you have a good reason for it I want to hear it. I just
25 want to know.

1 MS. GIOVANOLI - And so our -- just so I can
2 clarify -- there's four issues that were pled in the
3 application, but we're talking about this one issue.

4 THE COURT - Right. Well, I think it's going to
5 be dispositive, and, of course, I -- you can only grant a
6 new trial for one issue, ---

7 MS. GIOVANOLI - Sure.

8 THE COURT - --- but I think probably I do need to
9 address the others if they intend on going forward with
10 them.

11 MR. GIOVANOLI - Well, I think in order for us to
12 make our argument with regard to deficiency, testimony
13 needs to be presented. I don't think that because -- in
14 the King case it was found to be not harmless error, that
15 means that applicant can prove prejudice in his case.
16 Prejudice under Strickland is a different standard. It's
17 absent the error which would be counsel's failure to object
18 to the erroneous jury charge. Is it a reasonable
19 likelihood that the outcome of the trial would've changed,
20 and I think that -- that if you read this transcript, the
21 evidence -- and I can go through all of the evidence
22 against him -- there's no reasonable possibility that
23 absent that one charge, failure to object, the outcome
24 would've been different, and I also think speaking to
25 Strickland there's a strong presumption of reasonable

1 representation. I don't think that applicant can overcome
2 that, and I also don't think that he can overcome that
3 prejudice prong based on the evidence that was presented at
4 trial. But you're right, I mean ---

5 THE COURT - Well, what do you have to say about,
6 if I'm in a position to grant the post-conviction relief
7 with regard to this legal issue -- and I think the statute
8 requires that I address all issues on -- that are presented
9 -- and if you elect to go forward on the other, I imagine
10 we do need to have an evidentiary hearing.

11 MS. ROSS - I wouldn't, Your Honor. The other --
12 this -- the others -- in my review of the transcript, I saw
13 some hearsay that was allowed that wasn't objected to.
14 That's clear from the transcript, and I have an argument --
15 I thought an argument wasn't made that could've been made.
16 Those are very secondary issues. I don't think ---

17 THE COURT - So you're waiving the presentment ---

18 MS. ROSS - I would waive them, yes, sir.

19 THE COURT - All right. Well, -- Ms. Giovanoli,
20 I'm going to allow you to summarize your perception of the
21 facts, and, if necessary, you can call witnesses after
22 that, and I'll allow her an opportunity to comment on that
23 and why that would render it harmless or not, but I'll be
24 glad to hear from you, and after you do that, if you want
25 to elicit testimony, I'll be happy to hear it.

1 MS. GIOVANOLI - Okay. So I will give you a
2 summarization of the facts, and I don't believe this is my
3 perception. This is, actually, in the record, and I'll try
4 to make citations for the record where I've annotated them.

5 So on page 182, the victim, actually, testified.
6 She testified at length and in detail about the incident.
7 She testified numerous times regarding malice, so whenever
8 -- well, first the facts of the case are that he stabbed
9 his wife five times, then he let her bleed out in the bed
10 for 12 hours while he slept next to her. He made
11 statements to her, the B word, I hate you, other statement,
12 you're going to get your divorce, just not by signing
13 papers. Another statement, I'm going to watch you die,
14 watch you take your last breath. Another statement, I'm
15 going to kill you. Another statement, if you're not dead
16 by morning, I'm going to kill you then, I'm going to stab
17 you in your head. And, like I said, he stabbed her five
18 times. He also cut her on her hand. So the physical
19 evidence was consistent with the victim's testimony. She
20 also, after the stabbing he punched her in the jaw which
21 knocked her onto the floor. She testified at -- at that
22 point the stab wound that had entered her stomach caused
23 blood to spill out onto the floor. Physical evidence was
24 consistent with that. There was a big blood stain on her
25 side of the bed where she was laying. She was also kicked.

1 After she was knocked to the floor, she was also kicked
2 multiple times and -- let's see -- the friend who,
3 actually, found her -- so, essentially, he had volunteered
4 to take to her surgery the next morning. She had numerous
5 medical conditions. She was -- had received cancer
6 treatment. She also had -- and I can't remember what the
7 disease was called -- it was like asthenia gravis, but it
8 caused her to be extremely weak. She had had a procedure
9 the day before the incident that was an eight-hour
10 procedure. She was receiving blood plasma transfers, so
11 she was extremely weak and she was, basically, in bed. She
12 was scheduled for surgery the next morning. He was
13 supposed to take her to the surgery, however, that night he
14 stabbed her five times. The morning of -- of her surgery,
15 the hospital called her mother to inform her, hey, you
16 know, your daughter was supposed to be here for surgery and
17 she never showed up. So at that point I believe it was a
18 friend who went out to the victim's residence, knocked on
19 the doors, they couldn't get an answer. Eventually, he
20 opened the back door -- the applicant opened the back door
21 covered in blood, he ran off. The -- the friend testified
22 he had something silver in his hand, either a knife or a
23 screwdriver. He ran off through the woods and he fled.
24 They went in and they found the victim with the stab
25 wounds. She was, actually, helivaced to the hospital and

1 immediately entered her in traumatic surgery. Her -- her
2 wounds were extremely -- they were fatal, and she could've
3 died if she was left there any longer.

4 THE COURT - They could have been fatal.

5 MS. GIOVANOLI - What's that? Well, she survived.

6 THE COURT - Yeah.

7 MS. GIOVANOLI - And there was testimony from the
8 doctor that said that this was a fatal wound and that she
9 would have bled out. That's why they helivaced her, and
10 that's why they rushed her into emergency surgery.

11 THE COURT - That's semantics, but I don't it'd be
12 fatal would if you don't die. It could cause fatality.

13 MS. GIOVANOLI - Okay. So she was left 12 hours
14 without any aid while he slept beside her after having
15 stabbed her five times. So the physical evidence was also
16 consistent. There was dried blood on her, as well as the
17 bed, so that shows that she had been there for a while. It
18 wasn't -- it wasn't still wet. It was dried blood. Then
19 also -- he also hid for a number of days before being found
20 with another knife in his possession. The defendant did
21 not testify in this case, and that was absolutely his
22 right, but the jury was left with undisputed testimony, the
23 victim's entire story that she's been stabbed five times --
24 -

1 THE COURT - The problem is that the jury was told
2 they did not have to find that there was intent to kill and
3 they very well could have, but they were instructed that
4 great bodily injury was the standard, and I understand what
5 you're saying, and you're probably saying or taking the
6 position that it wouldn't have made any difference, but I
7 think the Supreme Court said that it can't be harmless
8 error, that it's dispositive that you have to charge a
9 specific intent to kill.

10 MS. GIOVANOLI - I think that the harmless error
11 doesn't equate to prejudice under the Strickland prong.
12 We're addressing ineffective assistance of counsel, so I
13 think that the two standards, while they are very similar,
14 are not the same, and in this case we're addressing
15 ineffective assistance of counsel would the outcome -- was
16 there a reasonable probability that the outcome of the
17 trial would've been different absent the error, and that's
18 the failure to object. So and I -- and I will agree that
19 this was an error. I will concede that it was an error not
20 to challenge the jury instruction, but error is not always
21 equate to deficiency in the preju -- under Strickland
22 either. But I just wanted to make a couple of more notes
23 with regard to the record. The solicitor and the defense
24 attorney both strenuously argued that intent to kill, and
25 the solicitor addressed it three times in three different

1 sections, page 394, 395 and 397. She exactly said, that's
2 that specific intent to kill. Counsel as well made the
3 same statements that he didn't have an intent to kill her,
4 because if he did, he would've done it. He had every
5 opportunity to do so. He was there for 12 years; he had a
6 knife and he could've done it. If he had an intent to
7 kill, he would've killed her. So they were arguing to the
8 jury that he had no intent to kill, and I think that with a
9 four hundred page transcript and that one line that the
10 Judge read that says, the -- I'm sorry -- I want to refer
11 to it -- a specific intent is to kill is not an element of
12 attempted murder but there must be a general intent to
13 commit serious bodily injury. That line taken out of
14 context, yes, well, you can say, well, that's error, that
15 there's -- there's no way we can come back from that, it's
16 -- can't be harmless, but that's not -- that's not the
17 standard for Strickland. Strickland is deficiency,
18 prejudice, and if you look at this entire record, which we
19 are required to do, absent that one error, would it --
20 reasonable possibility it would've affected the outcome of
21 trial, and there's just absolutely no ---

22 THE COURT - Apparently, what you're saying is
23 that was a big debate between the defense counsel and the
24 solicitor as to whether or not he intended to kill her.

25 MS. GIOVANOLI - Exactly.

1 THE COURT - And -- which makes it very important
2 that they understand what the law is, because they've got
3 to apply the law -- the facts to the law.

4 MS. GIOVANOLI - Absolutely.

5 THE COURT - And in this case if that was a major
6 contention in the trial, it would be harmless error not to
7 say that not only do you have to prove that he meant to
8 hurt her but he meant to kill her. But -- and that was a
9 big -- and the more you argue you about it from a defense
10 standpoint and say, well, he didn't really mean to kill her
11 and you argue and argue and argue about it and then the
12 Judge tells them, well, you don't really have to do that.
13 I think that might've made a difference perhaps.

14 What do you have to say about that, Ms. Ross?

15 MS. ROSS - Judge, I think that harmless error
16 analysis is the same. That's why the Court goes through
17 it, and I think that the Supreme Court -- the Justice has
18 spoken in State v. King and said that this is an error that
19 cannot be deemed harmless, and I certainly agree that as a
20 defense counsel when you get up and make an argument saying
21 if he had intended to kill he would've, you have to have
22 specific intent, and then the Judge stands up and gives the
23 jury an instruction that says the opposite ---

24 THE COURT - Which is contrary to the law?

1 MS. ROSS - Exactly. It certainly makes your
2 entire argument look ridiculous and is highly prejudicial,
3 so we would argue again that this is a case where there is
4 substantial prejudice, and I would agree that even if there
5 wasn't, that's not the analysis here, because it can't be
6 harmless error and that's what ---

7 THE COURT - Well, you know, she's saying that it
8 would not have made a difference in the outcome of the
9 case. What do you have to say about that and the second
10 prong of Strickland?

11 MS. ROSS - I believe it well could have, because
12 a correct charge under State vs. King would not -- would
13 have required a specific intent to kill and there would be
14 a strong argument that with the 12 hours, you know, given
15 the facts of this case in sleeping next to a woman after
16 stabbing her, if he -- if there was an intent to kill, she
17 would be killed, and then the testimony is full of her
18 talking back and, you know, she would've been killed if
19 there was a specific intent to kill, and that would've been
20 a strong argument for the jury if it had been supported by
21 the Judge's charge which it was not.

22 THE COURT - All right. Well, Ms. Giovanoli, if
23 you would like to proffer any testimony, be glad to hear
24 it.

1 MS. GIOVANOLI - Yes, absolutely. We would call
2 Mr. Josh Schultz to the stand.

3 THE COURT - Yes, sir, if you could please come
4 forward and place your left hand on the Bible and raise
5 your right hand as the clerk administers the oath.

6 Let me -- first of all, did you want to offer any
7 testimony?

8 MS. ROSS - No, Your Honor.

9 MR. MIDDLETON - No, sir.

10 MS. ROSS - No.

11 THE COURT - Okay. Very good.

12 JOSHUA SCHULTZ, AFTER BEING FIRST DULY SWORN,
13 TESTIFIES AS FOLLOWS -

14 THE COURT - Very good. Have a seat.

15 MR. SCHULTZ - Thank you.

16 THE COURT - I'm going to ask you if you could to
17 state your full name for the record and spell your last.

18 MR. SCHULTZ - Yes, sir. My name is Attorney
19 Joshua Schultz. Schultz, S-c-h-u-l-t-z.

20 DIRECT EXAMINATION

21 BY MS. GIOVANOLI -

22 Q Thank you. I'm going to cut straight to the point.
23 You represented -- I'm sorry -- Mr. Middleton during his
24 attempted murder trial.

25 A I did.

1 Q Okay. And since the only real issue for debate here
2 is this jury charge, at the time of the trial were you
3 aware of the Court of Appeals decision in State vs. -- I am
4 escaping my words -- King?

5 A Yes, I believe that it was on Cert at that -- at that
6 time.

7 Q Okay, were ---

8 THE COURT - Say that again, now. What did you
9 say?

10 A I believe it was on Cert, Your Honor.

11 THE COURT - Okay.

12 Q At the time of trial.

13 A Yes.

14 Q Okay. And so you were aware of the Court of Appeals
15 decision in 2015?

16 A Yes, at the time of the trial, yes.

17 Q Okay. So what was your view of the state of the law
18 at that time?

19 A Well, like I said, the decision was on Cert, and so I
20 wasn't sure or not that I should introduce that when
21 arguing for a -- arguing for the instructions on my side.

22 Q Okay. And you had objected to this jury instruction
23 and the proper instruction had been given pursuant to the
24 Court of Appeals Opinion. What, in your experience,
25 would've happened if the Supreme Court had reversed the

1 Court of Appeals and then you were back to the general
2 charge that had been given?

3 A I'm not sure -- I'm not -- I don't think I could tell
4 the future ---

5 Q Why didn't you object to the jury instruction?

6 A Because it was on Cert. I wasn't sure if that was
7 proper or not.

8 MS. GIOVANOLI - Okay, well, I have no further
9 questions.

10 THE COURT - Any cross examination?

11 CROSS EXAMINATION

12 BY MS. ROSS -

13 Q Well, it was a published Opinion, wasn't it?

14 A It was.

15 Q By the Court of Appeals.. Correct?

16 A Yes, ma'am.

17 Q So nothing on it said this can't be used as precedent
18 in the law and be a basis for an objection?

19 A Absolutely not.

20 Q All right. And you're saying you just chose not to
21 make that objection.

22 A Correct.

23 Q And that was because you knew it would be in error not
24 to make the objection?

1 A No, I -- it was on Cert and I felt that -- like I said
2 to Ms. Giovanoli, it could've been improper.

3 THE COURT - What you're saying is you don't have
4 much faith in what Justice Few had to say on the Court of
5 Appeals?

6 MR. SCHULTZ - No, Your Honor, I -- I have the
7 utmost faith in Justice Few's ---

8 THE COURT - Oh, I was just picking at you.

9 MR. SCHULTZ - Yes, sir.

10 MS. ROSS - Okay, I have no further questions.

11 MS. GIOVANOLI - I just have one last question.

12 THE COURT - Yes.

13 RE-DIRECT EXAMINATION

14 BY MS. GIOVANOLI -

15 Q In your experience, does the Supreme Court grant
16 Certiorari in Court of Appeals cases often times to flip
17 them?

18 A Yes.

19 Q We don't know what the Supreme Court's was going to
20 decide ---

21 A I'm not a mind-reader, yes.

22 MS. GIOVANOLI - Okay. No further questions.

23 THE COURT - Let me ask this. Everybody seems to
24 be -- I thought as a general rule the Circuit Court Judge

1 and lawyers are supposed to abide by the Court of Appeals
2 rulings until they're reversed. Is that right?

3 MS. GIOVANOLI - I think ---

4 THE COURT - That's what I've always done.

5 MS. GIOVANOLI - When I -- the Court of Appeals
6 Opinion was absolutely authoritative on this case, and in
7 the abundance of caution Mr. Schultz should've object, but
8 because the standard of deficiency is reasonableness in
9 light of the ---

10 THE COURT - I understand all that. The question
11 you asked I didn't really get the point of. You said that
12 if he would've charged the specific intent to kill and they
13 had changed the Opinion, it would've been -- it would've
14 made no difference because the defendant would have already
15 been tried and acquitted or convicted and it would've been
16 to his favor.

17 MS. GIOVANOLI - Okay, if that ---

18 THE COURT - And it would be -- first of all, if
19 he was acquitted, it would be double-jeopardy for trying it
20 again and -- and if they reversed the Court of Appeals it
21 would make no difference, it would be of no consequence.

22 MS. GIOVANOLI - Right, except that incorrect
23 instruction would've been read in his trial. He would have
24 been convicted based on the Court of Appeals held that the

1 instruction should be -- had the Supreme Court flipped it,
2 that instruction would've been erroneous.

3 THE COURT - You think they would've been retried
4 him if he'd been acquitted with an improper law or would
5 that be double jeopardy? That's my question.

6 MS. GIOVANOLI - No. No. I think it would (sic)
7 only affected if he was convicted of attempted murder. And
8 had Judge Schultz objected and then they read the Court of
9 Appeals -- what they had held to be the proper instruction
10 and then it went up to the Supreme Court -- see the state
11 of the law wasn't final. The King's case hadn't -- even
12 the remittitur hadn't been issued.

13 THE COURT - Well, I think it was final until they
14 change it.

15 MS. GIOVANOLI - Okay. Well, the remittitur
16 hadn't been sent back down and that's when it's final. The
17 Court of Appeals decision was final, absolutely, but
18 because the Supreme -- my argument here is that because the
19 Supreme Court accepted Cert on this issue and it was a very
20 hot issue, that it was reasonable for a trial attorney at
21 that time to not object. Now, it was not error, but it was
22 a reasonable error, because error doesn't necessarily
23 equate to deficiency and we can read Strickland over and
24 over and gather that the standard to find something
25 deficient would have to have been -- it was unreasonable,

1 and so in light of the, I guess, the lack of finality in
2 the case law in this case, I would argue that not objecting
3 was not deficient, may have been error. Standard isn't
4 perfection. In the abundance of caution he should've
5 objected to preserve that issue, but I don't think it was
6 unreasonable in light of the state of the case law.

7 THE COURT - Very good.

8 Well, I'm going to ask that Ms. Ross prepare an
9 Order to that effect granting the post-conviction relief on
10 the issue of the fact that the -- the jury charge was
11 improperly given and not objected to.

12 MS. ROSS - Thank you, Your Honor.

13 THE COURT - Thank you very much. You may step
14 down.

15 MR. SCHULTZ - Thank you, Your Honor.

16 THE COURT - Anything from the State ---

17 MS. GIOVANOLI - No, and I think that ---

18 THE COURT - -- on this case or anything else?

19 MS. GIOVANOLI - Not in this case, and I think
20 that concludes all the hearings.

21 THE COURT - I'm looking forward to reading some
22 riveting Orders on this case and others.

23 MS. GIOVANOLI - Thank you.

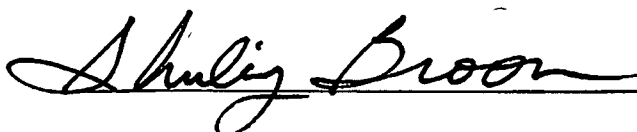
24 (END OF TRANSCRIPT)

25

C E R T I F I C A T E

I, Shirley Broom, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing 25 pages is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the proceedings of Christopher Middleton vs. State of South Carolina, as taken by me in Court of Common Pleas for the Sixteenth Judicial Circuit on February 22, 2018, and provided by me this the 6th day of July, 2018.

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

A handwritten signature in cursive script, reading "Shirley Broom", written over a horizontal line.

Shirley Broom, CVR-M
Official Court Reporter,
Certified Verbatim Reporter, In and
for the State of South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	IN THE SEVENTH JUDICIAL CIRCUIT
	)	
CHRISTOPHER MIDDLETON	)	
APPLICANT,	)	
	)	
VS.	)	ORDER GRANTING
	)	POST-CONVICTION RELIEF
THE STATE OF SOUTH CAROLINA	)	
	)	
RESPONDENT.	)	CASE NO: 2017-CP-42-2751

This matter comes before the Court by way of Mr. Middleton's application for post conviction relief filed August 9, 2017, alleging ineffective assistance of counsel for failing to object to trial counsel's erroneous jury charge on attempted murder, failing to make proper objections to preserve his motions for a self-defense charge to the jury, failing to properly motion the trial court for a directed verdict of acquittal, and failing to object to the trial judge's unconstitutional charge that malice may be inferred by conduct showing a total disregard for human life. A evidentiary hearing was held at the Spartanburg County Courthouse on February 22, 2018. The Applicant was present represented by Susannah Ross, Esquire. Valerie Garcia Giovanoli, Esquire, of the Office of the Attorney General represented State.

At the hearing, the Applicant waived his right to testify and all allegations concerning ineffective assistance of counsel for failing to object to trial counsel's erroneous jury charge on attempted murder. E. Joshua Schultz, Esquire, testified on behalf of the State. The court had before it a copy of the Spartanburg County Clerk of Court Records, Applicant's records from South Carolina Department of Corrections, the trial transcript, the Respondent's Application, the State's Return, and the Applicant's appellate records.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2018 JUN 18 AM 9:07
M. HOPKINS
CLERK

PROCEDURAL HISTORY

Applicant is serving a thirty year sentence in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. In March 2015, the Spartanburg County Grand Jury indicted Applicant for one count of attempted murder and one count of possession of a weapon during the commission of a violent crime (2015-GS-42-1128). The allegation was that Applicant stabbed his wife a number of times on or between June 19 and 20, 2014.

On October 12, 2015, Applicant proceeded to trial before the Honorable J. Mark Hayes. He was represented by E. Joshua Schultz, Esquire, and Assistant Solicitor Meghan Gilmer prosecuted the case. The jury convicted Mr. Middleton on both counts and Judge Hayes sentenced him to thirty years for attempted murder and five years for possession of a weapon during the commission of a violent crime, to be served concurrently.

Mr. Middleton filed a timely Notice of Appeal. Appellate Defender David Alexander filed an Anders brief in the matter, The South Carolina Court of Appeals dismissed Applicants appeal and granted counsel's motion to be relieved. State v. Middleton, Op. No. 2017-UP-178 (S.C. Ct. App. filed April 19, 2017). The remittur was returned to the circuit court on May 5, 2017.

SUMMARY OF PCR HEARING

Mr. Middleton waived his right to testify and waived all allegations except ineffective assistance of counsel for failing to object or voice exceptions to trial counsel's jury charge on attempted murder which is found on page four-hundred and fourteen (414), line eleven (11), of the trial transcript. It reads, "A specific intent is -- to kill is not

an element of attempted murder but there must be a general intent to commit serious bodily injury." Mr. Middleton's counsel submitted *State v. King* decided six months prior to his trial, where the Court of Appeals found that the exact same charge was erroneous because attempted murder requires proof a specific intent to kill. *State v. King*, 412 S.C. 403, 408, 772 S.E.2d 189, 192 (Ct. App. 2015), S.C. Code Ann. § 16-3-29 (Supp.2014). She further referenced the Supreme Court opinion which Affirmed as Modified the Court of Appeals' opinion and further ruled that the error of charging the jury that a specific intent to kill is not an element of attempted murder cannot be held harmless. *State v. King*, App. Case No. 2015-001278, Opinion No. 27744 (2017).

Joshua Schultz, Esquire, was called to the stand on behalf of the State. His testimony pertaining to his failure to object to the jury charge was that he was aware of the *King* opinion but did not object because he believed it was not necessary because Supreme Court had taken certiorari.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the record in its entirety and has heard and weighed the testimony at the post-conviction relief hearing. In accordance with S.C. Code Ann. § 27-80 (2003) this Court's finding of fact and conclusions of law are set forth below.

The burden of proof is on the applicant in post-conviction proceedings to prove the allegations in his application. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). In order to establish a claim of ineffective assistance of counsel, a PCR applicant must prove: (1) counsel failed to render reasonably effective assistance under prevailing professional norms; and (2) counsel's deficient performance prejudiced the applicant's case. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). To show counsel was

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deficient, the applicant must establish counsel failed to render reasonably effective assistance under prevailing professional norms *Strickland*, 466 U.S. at 688; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show prejudice, the applicant must show that but for counsel's errors, there is a reasonable probability the result of the trial would have been different. *Strickland*, 466 U.S. at 694; *Johnson v. State*, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial. *Johnson*, 325 S.C. at 186, 480 S.E.2d at 735.

The transcript of Mr. Middleton's trial clearly shows the trial judge gave an erroneous jury charge on attempted murder. (Trial p. 414, l.11) Although he claimed to have been fully aware of the *King* opinion that found a specific intent to kill was an element of attempted murder, trial counsel failed to submit a compliant proposed instruction. He further failed object or take exception after the improper jury charge was given. (Trial p. 418) *State v. King*, 412 S.C. at 411, 772 S.E.2d at 194. I find this was error and amounted to ineffective assistance of trial counsel. I further find no strategic basis for allowing the improper jury charge which was clearly prejudicial to his agent.

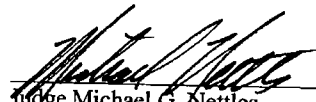
The jury charge in this case negated the requirement of any proof of an essential element of the charge against the Applicant. This error substantially undermines confidence in the outcome of trial. If the error had been properly preserved for appeal, the appellate court would likely have reversed as evidenced by the *King* opinions. Furthermore, to underscore the prejudicial nature of the improper charge, the Supreme Court held that the error cannot be harmless. *State v King*, App. Case No. 2015-001278, Opinion No. 27744, Page14 (2017)

CONCLUSION

Based on the above, this Court grants the Applicant post-conviction relief in this matter.

IT IS THEREFORE THE ORDER OF THIS COURT that the Applicant's conviction and sentence be vacated and this case remanded to General Sessions. If the State chooses to appeal this Order, I retain jurisdiction to address the appeal bond.

AND IT IS SO ORDERED this 29 day of May, 2018.


Judge Michael G. Nettles
Presiding Judge
Seventh Judicial Circuit

 Florence, South Carolina.

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