

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Marlboro County

Honorable Paul M. Burch, Circuit Court Judge

RECEIVED

Dec 22 2020

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DAMAINÉ ANTRON MCCOY,

APPELLANT

APPELLATE CASE NO 2020-000180

RECORD ON APPEAL

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State of South Carolina	)	Court of General Sessions
	)	Fourth Judicial Circuit
County of Marlboro	)	Case No. 2017-GS-34-00216
	)	Case No. 2019-GS-34-00517
	)	
	)	
The State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Transcript of Record
	)	(Day 1 of 2)
	)	
Damaine A. McCoy,	)	
	)	
Defendant.	)	
	)	

January 27, 2020
Bennettsville, South Carolina

B E F O R E:

The Honorable Paul M. Burch, Judge; and a jury

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

Elizabeth Munnerlyn, Esquire
Attorney for the State

Michael Stephens, Esquire
Attorney for the Defendant

Krystal J. Smith
Circuit Court Reporter

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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(NO EXHIBITS PRESENTED)

COURT REPORTER LEGEND

dashes	--	intentional or purposeful interruption
		or change in thought
ellipses	. . .	trailing off
[ph]		phonetically written
[sic]		written as said

1 JANUARY 27, 2020

2 (WHEREUPON, the proceedings began.)

3 THE COURT: Yes, ma'am.

4 MS. MUNNERLYN: May it please the Court, Your Honor.

5 In Indictment Number 2017-GS-34-216, the State versus
6 Damaine Antron McCoy, an indictment for resisting arrest with
7 a deadly weapon, and also Indictment Number 2019-GS-34-517,
8 the State versus Damaine Antron McCoy, an indictment for
9 assault and battery of a high and aggravated nature, the
10 State is ready for trial.

11 THE COURT: Ladies and gentlemen of the petit jury
12 panel, if I could have your attention. The Court at this
13 time is calling for the trial of a case that began entitled
14 the State of South Carolina versus Damaine Antron McCoy
15 charged in the bill of indictments by the Grand Jury of
16 Marlboro County with the offense of assault and battery of a
17 high and aggravated nature and resisting arrest with a deadly
18 weapon. The defendant is present in court and represented by
19 Mr. Michael Stephens.

20 Mr. Stephens, if you will have Mr. McCoy stand and face
21 the jury. We need to see if he might be related to anybody.

22 Thank you, sir.

23 Some additional questions, case specific voir dire is
24 what we call it. Are any members of the petit jury panel
25 related by blood, connected by marriage or have any business,

1 social, religious or fraternal relationship with Mr. Damaine
2 Antron McCoy? If so, we need you to stand at this time.

3 (WHEREUPON, several people stood.)

4 THE COURT: Yes? Your name, please.

5 JUROR NUMBER 33: Jessica Burnett.

6 THE COURT: How does that question apply?

7 JUROR NUMBER 33: I know him.

8 THE COURT: Okay. But you're not related to him?

9 JUROR NUMBER 33: No.

10 THE COURT: Okay. And how do you know him?

11 JUROR NUMBER 33: From school.

12 THE COURT: From school? Okay. Thank you.

13 Anyone else?

14 MR. STEPHENS: What number was she?

15 THE COURT REPORTER: What's her number?

16 THE COURT: Oh, we need your number.

17 THE CLERK: 33.

18 JUROR NUMBER 33: I don't know my number.

19 THE COURT: Hold on. Your number?

20 JUROR NUMBER 33: 33.

21 THE COURT REPORTER: Thank you.

22 THE COURT: And I saw another hand. Yes, ma'am?

23 JUROR NUMBER 223: My number is 223. I know him from
24 prior.

25 THE COURT: But you're not related?

1 JUROR NUMBER 223: Not that I know of.

2 THE COURT: Okay. Thank you.

3 Yes?

4 JUROR NUMBER 30: I know him.

5 THE COURT: And your number?

6 JUROR NUMBER 30: 30.

7 THE COURT: 30?

8 JUROR NUMBER 30: Yes.

9 THE COURT: I may come back to y'all. Okay? I may have
10 some additional questions.

11 Potential witnesses, ladies and gentlemen. If they're
12 present, I'm going to ask them to stand where they can get a
13 look at them.

14 Buddy Cole.

15 Trevor Murphy.

16 Gerald McCoy.

17 Melissa McCoy Lewis.

18 Kansas Cole.

19 Any other witnesses?

20 MS. MUNNERLYN: No, Your Honor.

21 THE COURT: Same question, ladies and gentlemen. Are
22 any members of the petit jury panel related by blood or
23 connected by marriage with any of those potential witnesses
24 that are present and some not present or you have any
25 business, social, religious or fraternal relationship with

1 those individuals? We need you to stand at this time.

2 (WHEREUPON, there was no response.)

3 THE COURT: Have any of you formed or expressed an
4 opinion as to the guilt or innocence of the defendant? If
5 so, we need you to stand, but don't make any comment.

6 (WHEREUPON, there was no response.)

7 THE COURT: Are any members of the petit jury panel
8 conscious of any interest, any bias or any prejudice for or
9 against the defendant? If so, we need you to stand at this
10 time.

11 (WHEREUPON, there was no response.)

12 THE COURT: Any members of the panel represented
13 presently by the Fourth Circuit Solicitor's Office or by the
14 Fourth Circuit Public Defender's Office, either represented
15 presently or represented in the past, we need you to stand at
16 this time.

17 (WHEREUPON, there was no response.)

18 THE COURT: Have any members of the panel ever been
19 personally represented by Ms. Munnerlyn or by Mr. Stephens?

20 (WHEREUPON, two people stood.)

21 JUROR NUMBER 42: She was my lawyer in a divorce case.

22 THE COURT: And your name or number?

23 JUROR NUMBER 42: Number 42.

24 THE COURT: 22?

25 JUROR NUMBER 42: 42.

1 THE COURT: 42. Thank you.

2 JUROR NUMBER 197: She was my attorney in a custody
3 battle.

4 THE COURT: And your number?

5 JUROR NUMBER 197: 197

6 THE COURT: 97?

7 THE COURT REPORTER: What was it? 97?

8 THE COURT: Did you say 97?

9 JUROR NUMBER 197: 197.

10 THE COURT: 197. I'm sorry.

11 THE COURT REPORTER: Thank you.

12 THE COURT: All right. For all of you that responded to
13 a question, listen carefully to this question. That's not
14 only for y'all but everybody, but specifically those that
15 have already stood.

16 I ask you now if you are seated on this panel, can you
17 give both the State and the defendant a fair and impartial
18 trial? If not, I need you to stand, but don't make any
19 comment.

20 (WHEREUPON, there was no response.)

21 THE COURT: Any further inquiry from the State?

22 MS. MUNNERLYN: Not from the State, Your Honor.

23 THE COURT: From the defense?

24 MR. STEPHENS: No, sir.

25 THE COURT: All right. Madam Clerk, we'll turn it over

1 to you. Five and five.

2 If your name is called, we need you to come around.

3 Watch your step here. If you need assistance, raise your
4 hand on the way up here and let us know and we will get
5 assistance for you.

6 We need you to come to this microphone and turn around
7 and face both tables where they can get a good look at you
8 and they can decide whether they want you on this jury panel
9 or not. It may be that you'll be seated on this one and one
10 later on, but we will turn that over to the attorneys and
11 Madam Clerk to do that at this point.

12 So one other thing. If your name is called, when you
13 come forward bring your personal belongings with you because
14 if you're seated you're going to need to have them over
15 there. Okay?

16 Madam Clerk.

17 THE CLERK: She's printing them now.

18 (WHEREUPON, there was a pause in the proceedings, after
19 which the proceedings resumed as follows.)

20 THE CLERK: Like Judge Burch said, please come forward,
21 stand here in front of the microphone, and turn around and
22 face the back of the courtroom. And bring whatever you have
23 with you, a jacket or your purse.

24 197, Heywood Ransom.

25 (WHEREUPON, an Hispanic male came forward.)

1 THE CLERK: What says the State?

2 MS. MUNNERLYN: Please present the juror.

3 THE CLERK: What says the defendant?

4 MR. STEPHENS: Would the Court excuse this juror for
5 cause? He was --

6 THE COURT: I can't.

7 MR. STEPHENS: -- represented by Ms. Munnerlyn. We'll
8 excuse the juror from this case.

9 THE CLERK: Okay. You can return to your seat, please.
10 141, Ramona Lynch.

11 (WHEREUPON, a black female came forward.)

12 THE CLERK: What says the State?

13 MS. MUNNERLYN: Please present the juror.

14 THE CLERK: What says the defendant?

15 MR. STEPHENS: Please swear the juror.

16 THE CLERK: Okay. Please have a seat in the jury box,
17 Ms. Lynch.

18 214, Whitney Stillwell.

19 (WHEREUPON, a white female came forward.)

20 THE CLERK: What says the State?

21 MS. MUNNERLYN: Please present the juror.

22 THE CLERK: What says the defendant?

23 MR. STEPHENS: Please seat the juror.

24 THE CLERK: Please have a seat in the jury box.
25 46, Melissa Clark.

1 (WHEREUPON, a white female came forward.)
2 THE CLERK: What says the State?
3 MS. MUNNERLYN: Please present the juror.
4 THE CLERK: What says the defendant?
5 MR. STEPHENS: Please seat Ms. Clark.
6 THE CLERK: Please have a seat in the jury box.
7 Number 69, Elizabeth Easler.
8 (WHEREUPON, a white female came forward.)
9 THE CLERK: What says the State?
10 MS. MUNNERLYN: Please present the juror.
11 THE CLERK: What says the defendant?
12 MR. STEPHENS: Excuse Ms. Easler.
13 THE CLERK: Please return to your seat.
14 136, Woodroe Locklear.
15 (WHEREUPON, a Native American male came forward.)
16 THE CLERK: What says the State?
17 MS. MUNNERLYN: Please present the juror.
18 THE CLERK: What says the defendant?
19 MR. STEPHENS: Please seat the juror.
20 THE CLERK: Okay. Please have a seat in the jury box.
21 226, Chad Tolson.
22 (WHEREUPON, a white male came forward.)
23 THE CLERK: What says the State?
24 MS. MUNNERLYN: Please present the juror.
25 THE CLERK: What --

1 MR. STEPHENS: Excuse Mr. Tolson from this case.

2 THE CLERK: Please return to your seat.

3 115, Carmella Johnson.

4 (WHEREUPON, a black female came forward.)

5 THE CLERK: What says the State?

6 MS. MUNNERLYN: Please present the juror.

7 THE CLERK: What says the defendant?

8 MR. STEPHENS: Seat Ms. Johnson, please.

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

10 234, Charles Watson.

11 (WHEREUPON, a black male came forward.)

12 THE CLERK: What says the State?

13 MS. MUNNERLYN: Please present the juror.

14 THE CLERK: What says the defendant?

15 MR. STEPHENS: Seat Mr. Watson.

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

17 23, India Bridges.

18 (WHEREUPON, a black female came forward.)

19 THE CLERK: What says the State?

20 MS. MUNNERLYN: Please present the juror.

21 THE CLERK: What says the defendant?

22 MR. STEPHENS: Seat Ms. Bridges.

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

24 60, Frances Davis.

25 (WHEREUPON, a black female came forward.)

1 THE CLERK: What says the State?
2 MS. MUNNERLYN: Please present the juror.
3 THE CLERK: What says the defendant?
4 MR. STEPHENS: Seat Ms. Davis.
5 THE CLERK: Please have a seat in the jury box.
6 64, Jawancey Douglas.
7 (WHEREUPON, a black male came forward.)
8 THE CLERK: What says the State?
9 MS. MUNNERLYN: Please present the juror.
10 THE CLERK: The defendant?
11 MR. STEPHENS: Seat Mr. Douglas.
12 THE CLERK: Please have a seat in the jury box.
13 239, Robert Whitt.
14 (WHEREUPON, a white male came forward.)
15 THE CLERK: What says the State?
16 MS. MUNNERLYN: Please present the juror.
17 THE CLERK: What says the defendant?
18 MR. STEPHENS: Please excuse Mr. Whitt.
19 THE CLERK: Please return to your seat.
20 240, Chambee Williams.
21 (WHEREUPON, a black male came forward.)
22 THE CLERK: What says the State?
23 MS. MUNNERLYN: Please present the juror.
24 THE CLERK: What says the defendant?
25 MR. STEPHENS: Seat Mr. Williams.

1 THE CLERK: Please have a seat in the jury box.
2 17, Anthony Bollinger.
3 (WHEREUPON, a white male came forward.)
4 THE CLERK: And what says the State?
5 MS. MUNNERLYN: Please present the juror.
6 THE CLERK: The defendant?
7 MR. STEPHENS: Swear Mr. Bollinger.
8 THE CLERK: Okay. 182, Larry Pegues.
9 (WHEREUPON, a black male came forward.)
10 THE CLERK: What says the State?
11 MS. MUNNERLYN: Please present the juror.
12 THE CLERK: What says the defendant?
13 MR. STEPHENS: Seat Mr. Pegues.
14 THE CLERK: Okay. Please have a seat in the jury box.
15 THE COURT: Two alternates.
16 THE CLERK: Okay. Alternate number one, Number 30,
17 Priscilla Brown.
18 (WHEREUPON, a black female came forward.)
19 THE CLERK: What says the State?
20 MS. MUNNERLYN: Please strike the juror.
21 THE CLERK: Okay. Please return to your seat.
22 84, Frieda Dupree-George.
23 MS. MUNNERLYN: I'm sorry. What was the number?
24 THE CLERK: Number 84.
25 (WHEREUPON, a black female came forward.)

1 THE CLERK: What says the State?

2 MS. MUNNERLYN: Please present the juror.

3 THE CLERK: What says the defendant?

4 MR. STEPHENS: Seat Ms. George.

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

6 Number 125, Mindy Lane.

7 (WHEREUPON, a white female came forward.)

8 THE CLERK: What says the State?

9 MS. MUNNERLYN: Please present the juror.

10 THE CLERK: What says the defendant?

11 MR. STEPHENS: Seat Ms. Lane.

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

13 THE COURT: All right. Any matters concerning the jury
14 selection from the State or the defense?

15 MS. MUNNERLYN: None from the State, Your Honor.

16 MR. STEPHENS: No, sir.

17 THE COURT: Okay. Counsel, if y'all come forward and
18 let's get our timing down pat here.

19 Members on the panel that are back in the gallery, we
20 need to put you on the call-in system and the best time that
21 we can do now is to ask you to call in after six tomorrow
22 night. Make sure you have that number.

23 Back years ago when Mr. Stephens and I first started
24 practicing, you would have to sit here all week because we
25 didn't have the technology to have you call in. Now we have

1 that technology; so we can let you go back and go to work
2 tomorrow, but we need you to check back in after six to see
3 when we might need you back. It may tell you to call in at
4 another time of day, but we'll give you an update hopefully
5 tomorrow night. Okay?

6 All right. Y'all are dismissed. Enjoy your evening and
7 we'll see you when we call you back.

8 (WHEREUPON, the jury panel was dismissed and exited the
9 courtroom.)

10 THE COURT: We've got to probably wrap up here in a few
11 minutes, anyway you look at it. So we're going to start this
12 trial in the morning at 9:45. If you could come on and be
13 here, you know, 5 or 10 minutes early, I'd appreciate it.
14 Mr. Luther will show you where to report in the morning.

15 My instructions at this time -- first of all, we'll put
16 you in rows and get that squared away tomorrow. All right?

17 What I need to instruct you on this time do not allow
18 anybody to contact you concerning this case. Do not discuss
19 this case with anyone. Don't even go home and talk to your
20 family members about it.

21 This case is to be decided on the evidence that's
22 presented to you in this courtroom; so do not research this
23 case in any form or fashion. In other words, stay off that
24 Internet.

25 Now, there are many different ways that people can try

1 to contact you and try to influence you in our modern world.
2 It can be in person. It could be through a third party. It
3 could be the Internet, Facebook, Twitter, whatever. It may
4 be by telephone call and, like I said, by a third person.

5 Do not allow anybody to contact you concerning this case
6 and, if that happens, you immediately notify the Sheriff's
7 Department of such contact. Now, if it happens here in the
8 courthouse, you immediately let Madam Clerk or me know or any
9 of the courthouse staff. Okay?

10 All right. 9:45 in the morning. We'll get started then
11 and if you'd follow Mr. Luther out, he will show you where
12 the jury room is and if y'all will promptly respond at that
13 time.

14 Now, Mr. Foreman, we'll have to take you back that way
15 to get to the other ramp. Okay? And you will be the
16 foreperson of the jury. So that works out good because
17 you'll be sitting up front. Normally, you would be in the
18 seat behind you.

19 All right. See you in the morning.

20 (WHEREUPON, the jury exited the courtroom.)

21 THE COURT: A juror informed me that she thinks Mr. Cole
22 may have been a patient at the healthcare facility sometime
23 back. But other than that, she thinks he was a former
24 patient out there, but it doesn't affect her ability. If
25 y'all are concerned about that, should we have to shift her

1 up, we can talk to her at that time. Okay.

2 MR. STEPHENS: We've got one matter, Your Honor.

3 MS. MUNNERLYN: Your Honor, we did have this defendant
4 evaluated.

5 THE COURT: Okay.

6 MS. MUNNERLYN: And there was a report that was issued
7 by the Department of Mental Health, and I would just hand
8 that up to the Court for a finding in that regard, Your
9 Honor.

10 THE COURT: Mr. Stephens, have you had a chance to look
11 at it?

12 MR. STEPHENS: I have, Your Honor.

13 MS. MUNNERLYN: And we would just move that there be a
14 finding that he is competent to move forward to stand trial
15 tomorrow.

16 MR. STEPHENS: That's what the report says, Your Honor.
17 He does have some issues, but I think as far as the standard,
18 he's competent to stand trial and I think the report reflects
19 that.

20 THE COURT: It's noted Mr. McCoy demonstrated a good
21 understanding of courtroom procedures and his charges and a
22 rational appreciation for his legal situation, the ability to
23 evaluate his legal options in a logical manner, the capacity
24 to work with his attorney in a rational manner, and the
25 capacity to exhibit appropriate behavior in the courtroom.

1 I adopt the findings of the medical personnel here and
2 see no reason why we should decide differently. So he is
3 competent to go forward. We will -- anything else for the
4 day?

5 MR. STEPHENS: Thank you.

6 MS. MUNNERLYN: I don't think so, Your Honor.

7 THE COURT: All right. It's been a long day. We had
8 technical difficulties, but we managed to work through it. I
9 would encourage all parties to stay here a few minutes to see
10 if there's any common ground you may come to and maybe
11 resolve this case. That's about all I can say in a General
12 Sessions case is to encourage you to continue to negotiate.

13 All right.

14 MR. STEPHENS: Thank you, Your Honor.

15 MS. MUNNERLYN: Thank you, Your Honor.

16 (WHEREUPON, the proceedings adjourned for the day.)

17

18 --- END DAY 1 OF 2 ---

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State of South Carolina	)	
	)	Certificate
County of Florence	)	

I, the undersigned, Krystal J. Smith, Notary Public and Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 19, constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of General Sessions for Marlboro County, South Carolina, on the 27th day of January, 2020.

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

s/ Krystal J. Smith

Court Reporter

Florence, South Carolina

July 29, 2020

State of South Carolina	)	Court of General Sessions
	)	Fourth Judicial Circuit
County of Marlboro	)	Case No. 2017-GS-34-00216
	)	Case No. 2019-GS-34-00517
	)	
	)	
The State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Transcript of Record
	)	(Day 2 of 2)
	)	
Damaine A. McCoy,	)	
	)	
Defendant.	)	
	)	

January 28, 2020
 Bennettsville, South Carolina

B E F O R E:

The Honorable Paul M. Burch, Judge; and a jury

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

Elizabeth Munnerlyn, Esquire
 Attorney for the State

Michael Stephens, Esquire
 Attorney for the Defendant

Krystal J. Smith
 Circuit Court Reporter

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19	<u>COURT REPORTER LEGEND</u>			
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21			or change in thought	
22	ellipses	. . .	trailing off	
23	[ph]		phonetically written	
24	[sic]		written as said	
25				

1 JANUARY 28, 2020

2 (WHEREUPON, the proceedings began at 10:03 a.m.)

3 THE COURT: Good morning, everyone. All right. We've
4 got all the jurors back. We had one that was running a
5 little late. We're ready to go. Anything before we bring
6 them in?

7 MS. MUNNERLYN: Your Honor, we have already marked three
8 exhibits that I believe the defense is going to stipulate to,
9 1, 2, and 3. That's the weapon, which is the cane that's
10 seated right down in front of the court reporter on the
11 floor, and then the medical records from the hospital and
12 then the probate court order for pickup.

13 MR. STEPHENS: That's correct, Your Honor.

14 THE COURT: Thank y'all for doing that.

15 All right. Madam Bailiff, if you'd bring them in.

16 (WHEREUPON, the jury entered the courtroom at 10:05
17 a.m.)

18 THE COURT: Thank you. Good morning, everybody. We're
19 ready to proceed with the trial. The first thing we need to
20 do is have Madam Clerk put you under oath and then I've got a
21 few opening remarks to make to you and then we'll turn it
22 over to the attorneys.

23 THE CLERK: Everyone please rise and raise your right
24 hand.

25 Do you solemnly swear or affirm that you shall well and

1 truly try and a true deliverance make between the State of
2 South Carolina and the defendant at bar, whom you shall have
3 in charge, and a true verdict give according to the law and
4 the evidence? If you accept this oath, please say, "I do."

5 THE JURORS: I do.

6 THE COURT: First of all, thank you again for willing to
7 serve and coming in and doing your civic duty. A few opening
8 remarks basically to let you know how we're going to proceed.

9 All of you are already aware now this is the Court of
10 General Sessions, which means we are concerned with the
11 trying of the cases on the criminal docket here in Marlboro
12 County. The phases of the trial that we will go through will
13 be as follows.

14 I will give both sides ample opportunity to make opening
15 statements to you. Opening statements are not mandatory, but
16 normally the attorneys use that time to outline the case to
17 you and sort of give you a little overview of what you will
18 be hearing in the evidentiary portion.

19 After opening statements will come the evidentiary
20 portion where you will receive the evidence. Evidence may
21 take several different forms. It may be testimony from this
22 witness stand right here. It may be photographs. It may be
23 documents. It may be physical type items. But it's crucial
24 that you -- that you listen and observe the evidence because
25 you are the finders of the facts in the case. In South

1 Carolina, the jury is the finder of the facts.

2 The judge is the judge of the law. I'm not permitted to
3 get involved in any discussion of the facts. I sit up here
4 as a neutral referee to rule on evidentiary and procedural
5 matters. I do not have an opinion about the facts of the
6 case. The sole province of a jury is to find the facts. It
7 is the judge who applies -- provides the law to you to apply
8 to those facts.

9 So the end result of any trial is to reach a verdict.
10 And how do you do that? You listen to the facts, you decide
11 what the facts are, and you apply those facts to the law that
12 I will give to you and thus reach a verdict.

13 Not only in South Carolina, but in all 50 states, the
14 burden of proof is upon the State to prove guilt beyond a
15 reasonable doubt. If you were in civil court, that burden
16 would be a different burden, and I will talk to you in the
17 judge's charge to you about proof beyond a reasonable doubt.

18 After the evidentiary portion of the case, you will have
19 the opportunity to hear closing arguments by counsel and
20 that's where they try to persuade you to see the facts as
21 they see them. Now, with that said, what the attorneys say
22 during the progress of the trial is not evidence. They may
23 refer to the evidence, quote something from some testimony
24 that was said, but what an attorney says is not evidence.

25 After the closing arguments are completed, then will

1 come the judge's charge on the law where you will receive the
2 law of the case. After that, the time to deliberate will
3 come.

4 So in saying that, I have to tell you at this time
5 please do not deliberate this case until that time comes.
6 Don't even discuss it amongst yourselves until I instruct you
7 to begin your deliberations.

8 I've spoken with counsel this morning. It's not going
9 to take several days to try this case, but we will take our
10 time and whenever you need a break -- and we normally try to
11 break every hour or so. If you need a restroom break or
12 whatever, you just raise your hand and get the bailiff's
13 attention or get my attention and we will break at that time.

14 All right. That's basically how we're going to proceed.
15 With that said, I'm going to turn it over to the attorneys
16 for the trial and the State has the burden of proof; so the
17 State will go first.

18 Madam Solicitor?

19 MS. MUNNERLYN: May it please the Court, Your Honor.

20 THE COURT: Yes, ma'am.

21 MS. MUNNERLYN: Mr. Stephens.

22 MR. STEPHENS: Solicitor.

23 OPENING STATEMENT ON BEHALF OF THE STATE

24 MS. MUNNERLYN: Ladies and gentlemen of the jury, good
25 morning. My name is Elizabeth Munnerlyn and I'm here this

1 morning on behalf of the State of South Carolina and Buddy
2 Cole. And this case is -- this case is an important one, but
3 I will tell you up front it will be a relatively brief case
4 and we anticipate that likely it will end today. So your
5 service will be by comparison be a pretty short stint. Okay?

6 And I'm going to try to present to you because it's my
7 burden of proof to prove to you that the defendant in this
8 case, Damaine McCoy, is guilty of the crimes charge. Okay?
9 So I'm just right now going to give you a little snapshot of
10 what I think the evidence is going to show just so you can
11 follow along as the witnesses testify with how things are
12 going. Okay?

13 Now, you heard when I called the case that there were
14 two indictments read. So there are two charges in this case
15 and the defendant, Damaine McCoy, is charged with, first,
16 assault and battery of a high and aggravated nature and,
17 second, with resisting arrest with a deadly weapon. Those
18 are two separate and distinct charges and so they have to be
19 separately proven. Okay? Each of those charges have
20 elements that have to be proven and they are as follows.

21 Assault and battery of a high and aggravated nature is
22 when a person unlawfully injures another person resulting in
23 great bodily injury or when the act is accomplished by means
24 likely to produce great bodily injury. Okay? So that's
25 assault and battery of a high and aggravated nature. Each of

1 those elements have to be proven.

2 Then we have resisting arrest with a deadly weapon.
3 That is when a law enforcement officer is attempting to
4 lawfully arrest another person and they resist that arrest
5 with the use of a deadly weapon. Okay? You have to prove
6 that the person had possession of a deadly weapon.

7 So those are the two crimes that are charged. So just
8 to give you a little snapshot of what I -- of what the facts
9 are, all of this stems from an incident that occurred back on
10 April the 5th of 2017 in Clio, South Carolina.

11 And on that particular evening, there was a call that
12 came in to 9-1-1 for assistance there regarding the defendant
13 at a residence there in Clio. So deputies responded. At the
14 time, Buddy Cole was a deputy working that night with the
15 Marlboro County Sheriff's Department. He and one of his
16 fellow deputies responded to this particular call.

17 They went down to Clio and when they arrived they
18 learned that what had happened was the defendant had taken a
19 child, a baby or a toddler, a one-year-old, and taken the
20 child from the home and left and refused to give the child
21 back to his family. And he had left supposedly with a pot of
22 hot water and they were concerned and he was acting out and
23 strange.

24 And so they got in the car with the deputies. They
25 found him. They went around. It was a little distance away.

1 He had gone to another house actually on Myrtle Street in
2 Clio and so the two deputies there were there in two separate
3 vehicles. They went down with the family members and located
4 him and he was actually at this house on Myrtle Street in
5 Clio and he still had the child in his arms. He also had a
6 cane, which had a metal tire tool of sorts or a pry tool
7 taped to the end of it, in his possession and he was
8 continuing to refuse to give the child to family members.

9 He was on the corner of the porch and so deputies came
10 up to try to assist and family members were already trying to
11 talk to him to try to get to the baby when they drove up. He
12 was using the cane already to swing at family members and so
13 the deputies backed the family members away and attempted to
14 get the child.

15 While they distracted the defendant, one of the family
16 members was able to come up from behind and he had set the
17 child on the porch and they were able to grab the child from
18 behind without him knowing and then that's when the physical
19 confrontation occurred between the defendant and Officer Cole
20 and Officer Wheeler, who was assisting him that particular
21 night.

22 And I think what he will tell you is that the defendant
23 was delusional. He was out of control. He was swinging the
24 cane and actually ended up striking Officer Cole multiple
25 times with the cane, including in the head, in the arm, and

1 all over his back.

2 They struggled with him for an extended period of time
3 when I think they'll tell you felt like hours but probably
4 was only minutes, and it took 3+ people to restrain him and
5 ultimately get him in handcuffs.

6 And after that, Mr. Cole, of course, will testify to his
7 injuries. He lost consciousness and as a result of his
8 injuries has not been able to return to work.

9 And so we would allege that because of all of those
10 facts of what happened this particular evening in Clio that
11 the defendant is, in fact, guilty of both assault and battery
12 of a high and aggravated nature for the assault upon Officer
13 Cole and resisting arrest with a deadly weapon for resisting
14 arrest of the efforts of both deputies with the use of the
15 cane.

16 And we believe that once you hear all the evidence, you
17 will be firmly convinced beyond a reasonable doubt, which is
18 my burden of proof, that the defendant is, in fact, guilty of
19 both of these crimes.

20 Thank you for your attention. I'll try to present you
21 all the witnesses that are available to me. Thank you.

22 THE COURT: Counsel.

23 MR. STEPHENS: May it please the Court.

24 THE COURT: Yes, sir.

25 MR. STEPHENS: Solicitor.

OPENING STATEMENT ON BEHALF OF THE DEFENDANT

MR. STEPHENS: Good morning, ladies and gentlemen. I just wanted to -- one thing before we get started. Judge Burch mentioned yesterday he and I have been practicing law a long time and that's kind of true. Judge Burch and I are the same age. I went to law school late, but I've been hanging around the courthouse since he's been practicing law, so when he was talking about the phone-in system for the jury.

I'm from Dillon. Like I said, I used to hang around the courthouse and I was law enforcement and I was a clerk of court over there and then I decided to go to law school, just to introduce myself very quickly.

I agree with most of what Ms. Munnerlyn just said. The only disagreement we have is was it a great bodily injury or a moderate bodily injury or just an injury. Now, that's important.

Can y'all see this?

Because as she said, the State has got the burden of proof and they have my client charged with what we call ABHAN, assault and battery of a high and aggravated nature, and that requires great bodily injury.

Also included in that is assault and battery first degree, which is what they call a lesser-included, and the judge will give you the law on that. And there's also assault and battery second degree, which is also a lesser-

1 included. And there's assault and battery third degree,
2 which is still a lesser-included.

3 And the way you distinguish these is by the injury,
4 which she said great bodily injury, moderate, and then just
5 injury. Y'all know what I'm trying to write.

6 Great bodily injury, moderate bodily injury, and just an
7 injury, and that distinguishes assault and battery high and
8 aggravated nature, assault and battery first degree, assault
9 and battery second degree, and assault and battery third
10 degree. We think the injuries will show you that it should
11 be either assault and battery second degree or assault and
12 battery third degree, and the evidence will show what the
13 injuries are.

14 And like I said, that is the -- Mr. -- my client, Mr.
15 McCoy, he hit Mr. Cole in the head with this cane. Our
16 disagreement is on the extent of his injuries. We don't
17 think it's a great bodily injury and we don't think the
18 evidence will show it's a great bodily injury. We think the
19 evidence will show it's just an injury or some kind of
20 moderate bodily injury.

21 But we ask you to listen to the evidence and at the end
22 make your decision, as the clerk just swore you in on the law
23 and the evidence.

24 And as Ms. Munnerlyn said, it's their burden of proof.
25 They have to prove every element of this offense and if they

1 -- if they can't, you must find him guilty of a lesser, and
2 he's guilty of a lesser-included because he hit Mr. Cole. We
3 just don't think it's a great bodily injury. That's our only
4 disagreement.

5 Thank you so much. Thank you.

6 THE COURT: Thank you, counsels.

7 All right. Madam Solicitor?

8 MS. MUNNERLYN: Thank you, Your Honor. I would call
9 Buddy Cole to the stand.

10 THE COURT: Come around to be sworn, please.

11 THE CLERK: Do you solemnly swear or affirm that the
12 evidence and testimony you shall give the Court at this time
13 shall be the truth, the whole truth, and nothing but the
14 truth, so help you God?

15 THE WITNESS: Yes, ma'am.

16 THE CLERK: Be seated and state your full name, please.

17 THE WITNESS: Buddy Allen Cole.

18 MS. MUNNERLYN: Your Honor, before I begin, I just want
19 to -- I'll just say for the jury we have stipulated -- the
20 defendant and defendant's counsel and I have stipulated to
21 three exhibits.

22 Exhibit 1 is the weapon, which is the cane. Exhibit 2
23 is the hospital records from the initial emergency room visit
24 for the victim, Mr. Cole. And then the third exhibit is the
25 probate court order for detention.

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1 THE COURT: All right.

2 MS. MUNNERLYN: Those are all three already in evidence.

3 THE COURT: Both sides are in agreement they be in
4 evidence, they're so admitted.

5 (WHEREUPON, State's Exhibit Number 1, cane in box,
6 State's Exhibit Number 2, medical records, and State's
7 Exhibit Number 3, probate court order, were admitted
8 into evidence.)

9 MS. MUNNERLYN: Thank you, Your Honor.

10 BUDDY COLE, being first duly
11 sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MS. MUNNERLYN:

14 Q: Okay. You go by Buddy; right?

15 A: Yes, ma'am.

16 Q: Okay. Buddy, I want to -- first of all, you've already
17 said your name, Buddy Allen Cole. How -- do you live here in
18 Marlboro County?

19 A: I do.

20 Q: You've lived here most all your life?

21 A: Yes, ma'am.

22 Q: Okay. And at the time of this incident, what were you
23 doing? What was your occupation?

24 A: I was a sheriff's deputy, Marlboro County Sheriff's
25 Department.

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1 Q: Okay. And how long had you worked in law enforcement at
2 that time?

3 A: About 25 years, 26 years.

4 Q: Okay. All right. And how old were you then?

5 A: How old am I now?

6 Q: Well, either way. You can give us your age now or then.

7 A: I'm 54 now.

8 Q: Okay. Okay. So at the time of the incident, you were
9 about -- you were 51 or 52?

10 A: Fifty, 51, somewhere in there.

11 Q: Okay. All right. Well, let's go to the day this
12 incident happened on April the 5th of 2017. You were working
13 that evening; is that right?

14 A: Night shift, yes, ma'am.

15 Q: Okay. So night shift. What time do you come on?

16 A: We come on -- well, the shift runs 6 to 6, but we
17 usually come on about 5:15.

18 Q: Okay. All right. And do you recall getting a call to
19 go to Clio?

20 A: Yes, ma'am.

21 Q: Okay. Where were you when that call came out?

22 A: We had just cleared a call up in Wallace on Della
23 Heights Road, on the dirt road portion of Della Heights Road.

24 Q: Okay. Now, who else was -- was Sean Wheeler working
25 that night also?

BUDDY COLE - DIRECT

1 A: Yes, ma'am.

2 Q: Okay.

3 A: He was my lieutenant.

4 Q: All right. And when you came on or when this call came
5 out in regards to the defendant, did you and he have any
6 discussion about any existing paperwork at the Sheriff's
7 Department?

8 A: Yes, ma'am. As I stated, we had just cleared a call up
9 in Wallace on Della Heights Road. As we had cleared the
10 call, we were standing outside of our cars on the little dirt
11 road portion and we were talking about the call we had just
12 been on. That's when we received the call to go to Mr.
13 McCoy's residence on -- in Clio.

14 And when we got the call, they gave me the call and we
15 got the call. Lt. Wheeler with me said that's the same guy
16 we've got a pick-up order on. We went there earlier in the
17 day to pick him up on the order, but as we was going to Clio,
18 a bad storm come up. So we turned around and said we'll go
19 the next day when it wasn't storming.

20 I said so we've got a pick-up order, and he said yeah.
21 I said, well, we'll go down there and handle the call. Once
22 we get through with the call, we'll go ahead and pick him up
23 on the order and, you know, just kill two birds with one
24 stone, and he agreed. And he got in his car and I got in my
25 car and we left and he was leading me. He -- we were -- he

BUDDY COLE - DIRECT

1 was ahead of me.

2 Q: Okay. Okay. I'm going to show you what's already in
3 evidence now as State's Exhibit 3 and see if you recognize
4 that paperwork?

5 A: I don't the first few pages, but the back page.

6 Q: Okay. You're aware of the back page. So the back page
7 of that paperwork is actually the order for detention;
8 correct?

9 A: Yes, ma'am.

10 Q: That is the portion of that paperwork that the Sheriff's
11 Office would have received?

12 A: Yes, ma'am.

13 Q: Okay. So the first couple of pages there is sort of the
14 petition to the probate court setting forth why they are
15 asking for the pick-up order?

16 A: Yes, ma'am.

17 Q: Okay. But you as deputies of the Sheriff's Office would
18 not have seen those first two pages?

19 A: I didn't see it. No, ma'am.

20 Q: Okay. The only thing that y'all would see would be the
21 actual order for detention?

22 A: Yes, ma'am.

23 Q: Which does not set forth any problems or any specific
24 issues the defendant was having or anything like that?

25 A: No, ma'am.

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1 Q: Okay. All right. So you go. Y'all drive to Clio and
2 what happened when you got to Mr. McCoy's house?

3 A: Well, on the way to Clio, we were ready. The initial
4 call come out as a disturbance, a disorderly conduct. It
5 come out as a domestic basically what it come out as, but it
6 was a disorderly conduct.

7 And on the way down, we was between Wallace and
8 Bennettsville. Dispatch radioed Lt. Wheeler back and told
9 him that Mr. McCoy had left the house with a metal walking
10 cane and a hot pot of boiling water, and I just couldn't
11 understand why water was coming out. And so we kept on
12 going.

13 When we turned on Number 9 out of Bennettsville headed
14 towards Clio, we was probably right there close to where the
15 new Marlboro Electric is and they radioed us back and said
16 that the suspect, which was Mr. McCoy, had went in a house
17 and took a child by force and left the residence with the
18 child and wouldn't give it back.

19 So we kind of stepped it up then because we knew we had
20 a kidnapping on our hands then. So we stepped it up and we
21 went to the street Mr. McCoy lives on. I can't remember the
22 name of the street.

23 Q: Zion Street?

24 A: Zion Street. It's right behind the Tiger Mart.

25 Q: Okay.

BUDDY COLE - DIRECT

1 A: And we went and as we was going down the street, a lady
2 had run out of the house and run up to Lt. Wheeler's car.

3 MR. STEPHENS: Object to anything somebody might have
4 told Lt. Wheeler.

5 BY MS. MUNNERLYN:

6 Q: Don't tell us what the lady said. Just tell us what you
7 did as a result of what she told you?

8 A: Okay. A lady got in Lt. Wheeler's car and Lt. Wheeler
9 come on the 800 radio. There's two radios in our car. We
10 have an 800 radio, which we can talk to each other and nobody
11 hears it because scanners won't pick it up, and then we have
12 a regular radio.

13 So he got on the 800 radio and told me -- he said follow
14 me. We'll go to where the child is at. I said -- then I
15 told him okay. So we left and went down several streets and
16 we went across Highway 9 and we went down and turned left
17 onto Maple Street.

18 And as we turned left, I seen a crowd at a house there
19 on the left and we pulled up in front of the house out in the
20 highway. And as I exited my vehicle, I could see a crowd to
21 the -- if you're facing the house, it was to the right of
22 inside the house and I could see Mr. McCoy on the porch
23 swinging the cane. I didn't know what it was at the time,
24 but he was swinging something and had the child, holding the
25 child. And so we exited the vehicle.

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1 Q: Before you go any further, do you see Mr. McCoy in the
2 courtroom today?

3 A: Yes, ma'am.

4 Q: Where is he?

5 A: Sitting there beside Mr. Stephens.

6 Q: Okay.

7 MS. MUNNERLYN: Your Honor, if the record could just
8 reflect that he has pointed out the defendant.

9 THE COURT: All right.

10 MS. MUNNERLYN: Your Honor -- excuse me.

11 BY MS. MUNNERLYN:

12 Q: Mr. Cole, okay. So you're at the house now on Myrtle
13 Street; correct?

14 A: Yes, ma'am.

15 Q: And you see Mr. McCoy standing on the porch of this
16 house?

17 A: On the corner of the -- the porch. You come up on the
18 middle of the porch on the steps and then you can go to your
19 left or to the right. You go to your right and then get to
20 the corner of the house, it cuts back like this. He was
21 right there on that corner, and the banister was probably
22 about as high as that banister right there that the jury is
23 sitting by.

24 Q: Okay. All right. Tell us -- you said you could see him
25 swinging -- swinging something in his hand?

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1 A: Yes, ma'am.

2 Q: Okay. When you pulled up?

3 A: Yes, ma'am.

4 Q: Okay. And so what did you proceed to do when you got
5 there?

6 A: When we got out of the vehicles, Lt. Wheeler went to the
7 steps of the porch. I went to the right-hand side to where
8 Mr. McCoy was to confront him. And I was there and I kept
9 trying to talk to him and he kept saying some stuff like God
10 has sent him to do something. I don't -- I couldn't really
11 understand. All I could hear is God or a higher power had
12 sent him to destroy something.

13 And one of the family members -- a bunch of family was
14 over there to the right and one of the family members stepped
15 up. They said -- I think they called him Dank. I think
16 that's what they said.

17 Man, let me get -- let me get that baby. And he -- he
18 swung at the family member and said I'll kill y'all MFs. And
19 I grabbed the family and pulled them back. I said, man,
20 don't get hit. I said -- I said it ain't worth getting hit.

21 So I stepped back up and I was trying to talk to him and
22 I was telling him, man, just give me the child. We'll work
23 it out in court. And I kept trying to talk to him and when I
24 would step forward, he swung at me and I went -- and I went
25 back and he pointed at me and he said I'll kill you, MF.

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1 And he kept swinging and he kept talking about a higher
2 power, a higher power. So I left where he was at and I went
3 over to where Lt. Wheeler was and I told Lt. Wheeler -- I
4 said I can't get a shot on him with the taser because he's
5 holding the child. I said, but if he puts that child down,
6 I'm going to shoot him with the taser. You run up and grab
7 the child and I'll take care of him, and he said okay.

8 So I went back over and I kept trying to talk to him. I
9 don't know what made him do it, but at one point he turned
10 around and set the child down kind of behind him on the
11 corner of the house -- on the corner of the house. Yes,
12 ma'am. But when he took --

13 Q: On the porch?

14 A: On the porch. Yes, ma'am.

15 Q: Okay.

16 A: And when he turned around, when he turned back around, I
17 shot him in the chest with the taser. And when I shot him
18 with the taser, he fell. He didn't fall, but he went
19 backwards and when he went backwards he snatched the prongs
20 out of his chest and as he did he jumped over the banister of
21 the porch and as he jumped he swung the cane and I done like
22 this because he swung at my face.

23 And I threw my arm up and that's when he hit me right
24 there and fractured my arm. Well, when he landed, he was
25 hitting me with it and I turned to try to run from him

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1 because he'd done snatched my prongs out and I couldn't shoot
2 him again with the taser.

3 So I was going to try to run from him to separate myself
4 and get my gun because at that point the taser won't work.
5 So I was going to get my gun and I was going to shoot him.
6 But I was trying to run from him and he was steady hitting me
7 in my back with the -- with the cane. I couldn't get away
8 from him. He was steady hitting me.

9 So I turned to go towards Wheeler, Lt. Wheeler, and I
10 could see Lt. Wheeler standing there. He had his gun like
11 this and I hollered shoot him and, as I hollered shoot him,
12 that's when I got hit right here behind my right ear and I
13 went down. Everything went black.

14 I went down and I could feel myself getting hit when I
15 was coming to and the next thing I knew Lt. Wheeler shot him
16 with a taser and, when he did, I grabbed Mr. McCoy and we
17 went to fighting. At that point, I can see blood on me and
18 -- and we were fighting or tussling. And Lt. Wheeler, after
19 he shot him with the taser --

20 Q: When you say he shot him, he shot him with the taser or
21 the gun?

22 A: Taser. With the taser.

23 Q: Taser? Okay.

24 A: He had shot him with the taser. Well, when me and Mr.
25 McCoy was locked up tussling, Lt. Wheeler pulled the trigger

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1 on the taser again. Well, the taser, if you pull the trigger
2 on it, it's going to run five seconds before it cuts off
3 unless you cut it off yourself. Well, when he pulled the
4 trigger, I was locked up with Mr. McCoy. So I got tased
5 also. So we -- we fell and we were on the ground fighting.
6 Lt. Wheeler come and got in the middle of us in the fight and
7 we were on top of Mr. McCoy and we couldn't handle him. We
8 couldn't handle him. We got one --

9 Q: When you say you couldn't handle him, how were you on
10 top of him?

11 A: He rolled. He was on the ground and we was on top of
12 him tussling. Lt. Wheeler got one handcuff on him and he was
13 still swinging, trying to get up. And at that point, I
14 grabbed my walkie-talkie and I hollered for help across the
15 radio. I couldn't remember Terry's number because I done
16 been hit and I couldn't remember Terry and I just said Terry,
17 help us. Terry Freeman, which is the sergeant at McColl PD.

18 And I throwed my radio down and Lt. Wheeler lost his
19 radio in the scuffle. We could hear the radios going off,
20 but we didn't know where they were. So we kept tussling with
21 him and tussling with him. And one of the family members, I
22 don't know who it was, come and got -- was trying to help us
23 get him handcuffed. And Mr. McCoy --

24 Q: So there were three of you then?

25 A: There was three of us on him then.

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1 Q: Okay. When you say three of you on him, he's on the
2 ground on his stomach?

3 A: On his stomach, yes.

4 Q: With one arm behind him?

5 A: No. He had one cuffed, but he had snatched it on back
6 and he was swinging with the cuff.

7 Q: Okay.

8 A: And we were still trying to get him. At this point, I
9 was getting weak. I was bleeding. I was bleeding pretty
10 good and I could see blood going down my arm because it was
11 starting to rain a little bit and I could see blood running
12 down my arm. And he -- and all three of us was trying to get
13 him. He done a pushup with us on his back.

14 Q: So three men are on his back and he does a pushup?

15 A: He done a pushup with us on his back, but we got him
16 back down and I told Lt. Wheeler -- I said I'm getting weak,
17 and we were still wrestling. And at that time, Mr. McCoy had
18 grabbed -- had reached over and got my taser off the ground
19 and stuck it to my leg and tased me on my leg, and I jump up
20 and I started stomping his wrist and I kicked the taser out
21 of his hand.

22 When I came back down on top of him, I don't know what
23 happened, but I must take have come down with my knee on his
24 neck. I don't know because I was -- I was kind of
25 disoriented and I can -- I remember hearing somebody holler

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1 don't break his neck. And we kept on him and I told Wheeler
2 -- I said I can't fight no more and Wheeler said I'm getting
3 tired. He kept saying I'm getting tired. And I don't know
4 if my knee in his neck or not. I don't know how, but he must
5 have gotten weak or something. I remember Lt. Wheeler
6 hollering I got him and at that point I black out.

7 And then when I come to, I'm laying on the ground. Lt.
8 Wheeler is still on top of him and I can hear Lt. Wheeler
9 screaming across the radio for an ambulance. Some lady is
10 holding my head. I was told it was Mr. McCoy's mom. I don't
11 know. She was holding my head and I can remember hearing her
12 telling me, Mister, please don't die.

13 And some lady was pouring water in my mouth, you know,
14 trying to help me and I don't know who that was. And then --
15 then I went out again and then when I come to again, Josh
16 Goff with McColl Police Department and Terry Freeman with
17 McColl Police Department -- Terry was at my head and Josh
18 Goff was holding my arm up like this and my arm was swole up
19 real big and I was begging Josh to call my wife. I felt like
20 I was dying. I wanted to call her so I could talk to her.

21 Q: Do you need some water?

22 A: My wife.

23 Q: Do you need some water?

24 A: No, I'm good.

25 Q: Okay.

BUDDY COLE - DIRECT

1 A: I'm good. And so the lady was trying to help me and
2 they were there on top of him and then he leans over while
3 he's still on his stomach and kicks me.

4 Q: Who did?

5 A: Mr. McCoy kicks me. Yes, ma'am.

6 Q: Okay.

7 A: And they grabbed his legs and then slide him over and I
8 went out again and, when I come to again, rescue -- no. I
9 can't think of his name, the game warden, short, heavysset
10 game warden.

11 Q: Ricky Covington?

12 A: Ricky Covington. He was standing over me. He said --
13 because it was raining and he was standing over me. He said
14 I'm going to keep you -- keep you dry.

15 Q: Okay.

16 A: And he said, Buddy. He said, just hang in there. I
17 said, somebody please get my phone and let me call my wife.

18 Q: All right. And so how quick -- do you remember how
19 quick the ambulance came after that?

20 A: The ambulance come. It was Craig Walker. He was the
21 paramedic, and I know him from when I worked in Chesterfield
22 County. He kept trying to talk to me and he told them they
23 needed to hurry up and get me to the hospital and I don't
24 even remember them putting me in the ambulance.

25 Q: Okay. All right. Well, tell us -- first of all, let's

BUDDY COLE - DIRECT

1 go back to -- now, so the only deputy who is with you when
2 you initially responded was Deputy Wheeler; correct?

3 A: Yes, ma'am.

4 Q: Okay. And is he able to be here today?

5 A: No, ma'am.

6 Q: Okay. Do you know why?

7 A: Yes, ma'am.

8 Q: Why is that?

9 A: Lt. Wheeler has been real sick the last few months and
10 they can't figure out what's wrong with him and he's lost 50
11 pounds.

12 MR. STEPHENS: Objection to relevance, Your Honor. She
13 asked him why he couldn't appear.

14 THE COURT: It's asked and answered.

15 MS. MUNNERLYN: Okay. All right.

16 BY MS. MUNNERLYN:

17 Q: So he just couldn't physically appear?

18 A: He's sick and not able to be here. Yes, ma'am.

19 Q: Okay. Okay. All right. I want to show you what's been
20 marked as State's Exhibit 1, I believe this is. Yes. Do you
21 recognize that?

22 A: Yes, ma'am.

23 Q: Where do you recognize that from?

24 A: That's what he hit me with.

25 Q: That's what who hit you with?

BUDDY COLE - DIRECT

1 A: Mr. McCoy.

2 Q: Who?

3 A: Mr. McCoy.

4 Q: Okay. All right. Okay. So you went to -- you were

5 transported to McLeod Hospital?

6 A: In Florence.

7 Q: Okay. And tell us a little bit about your injuries?

8 A: My head was busted open and I --

9 Q: Okay. Let's talk about that then. So your head was

10 busted open and you had to have staples in it?

11 A: Yes, ma'am. Seven staples.

12 Q: Seven staples in your head and that's there above your

13 right ear?

14 A: My right ear. Yes, ma'am. Behind my right ear.

15 Q: Okay.

16 A: I still got the scar there.

17 Q: All right. Okay. And what else?

18 A: My arm was swole up real big and my back. I had big

19 knots in my back.

20 Q: And now, when did you -- was there anything broken?

21 A: My arm was fractured.

22 Q: Okay.

23 A: But they didn't -- when they x-rayed it, they didn't see

24 a fracture because it was swole so big.

25 Q: Okay. All right. When did you -- when did they find

BUDDY COLE - DIRECT

1 the fracture?

2 A: Four days later when I went to CareSouth for a follow-
3 up. The swelling had went down and when they X-rayed it
4 then, they found the fracture.

5 Q: Okay. All right. So you had a fracture to that arm.
6 Left arm?

7 A: My left forearm. Yes, ma'am.

8 Q: Okay. All right. And you had the seven staples in your
9 head?

10 A: Yes, ma'am.

11 Q: And what else?

12 A: My back.

13 Q: Your back?

14 A: I had big knots in my back.

15 Q: And you had a concussion?

16 A: Yes, ma'am.

17 Q: Okay.

18 A: Severe concussion.

19 MR. STEPHENS: Your Honor, I hate to be contrary, but
20 Ms. Munnerlyn likes to lead the witness. He's been in law
21 enforcement 25 years. He knows how to testify. She just
22 needs to ask him the question and let him answer. She leads
23 witnesses.

24 THE COURT: Be careful with it.

25 MS. MUNNERLYN: Your Honor, the records are already into

BUDDY COLE - DIRECT

1 evidence. It's all in the record. I'm just trying to get it
2 in as quickly as I can.

3 MR. STEPHENS: The record speaks for itself.

4 MS. MUNNERLYN: I'll ask the questions.

5 MR. STEPHENS: The record speaks for itself.

6 MS. MUNNERLYN: Okay.

7 THE COURT: All right. Let's be careful not to lead.

8 BY MS. MUNNERLYN:

9 Q: These -- I'm going to show you what's been marked as
10 State's Exhibit 2. Do you recognize what that is?

11 A: It's a medical record from McLeod Hospital.

12 Q: Okay. So those are your medical records from that
13 night?

14 A: Yes, ma'am.

15 Q: Okay. All right. And they set out exactly what they
16 found that night?

17 A: Yes, ma'am.

18 Q: Including the things we've just discussed?

19 A: Yes, ma'am.

20 Q: Okay. And after -- after you left the hospital, tell us
21 what -- after you had that initial examination and went home,
22 what effects did you have as a result of this particular
23 incident and these injuries?

24 A: I was having severe headaches and -- excuse me. And
25 Kansas, my wife, had to clean my arm and stuff up and my --

BUDDY COLE - DIRECT

1 the staples got infected in my head. They had to take them
2 out early. And I was having severe headaches and back aches
3 and pain in my right leg. And several days later, I started
4 having seizures.

5 Q: Okay. And what, if anything -- did you have to have any
6 additional treatment as a result?

7 A: Yes, ma'am. They sent me to see a neurologist in
8 Charleston.

9 Q: Okay. And did you have any surgeries thereafter?

10 A: I had -- I've had three back surgeries since this
11 incident. Yes, ma'am.

12 Q: Okay. And are you now -- have you been able to return
13 to work?

14 A: No, ma'am. The doctors won't clear me.

15 Q: Okay. So you're still under a doctor's care?

16 A: Yes, ma'am.

17 Q: And it's been almost 3 years?

18 A: Yes, ma'am.

19 MS. MUNNERLYN: Court's indulgence just one moment.

20 That's all the questions I have at this time. Answer
21 any questions that Mr. Stephens might have.

22 THE WITNESS: Yes, ma'am.

23 MR. STEPHENS: May it please the Court.

24 CROSS-EXAMINATION

25 BY MR. STEPHENS:

BUDDY COLE - CROSS

1 Q: You -- you told us you have been in law enforcement for
2 25 years?

3 A: Yes, sir, Mr. Stephens.

4 Q: Where have you worked, Mr. Cole?

5 A: I've worked for Chesterfield County, Pageland PD,
6 Marlboro County. I've worked at McColl, Bennettsville.

7 Q: Is that all?

8 A: I worked in North Carolina for eight years.

9 Q: Where did you work up there?

10 A: Maxton and Rockingham.

11 Q: Did you work at Fairmont?

12 A: Yes, sir, I did.

13 Q: And where's the first place you worked at?

14 A: City of Bennettsville.

15 Q: Okay. When you were at the City of Bennettsville, what
16 year was that?

17 A: 1986.

18 Q: Did you get any injuries during that time?

19 A: No, sir.

20 Q: Did you get in any -- have you been -- were you in any
21 automobile accidents at that time?

22 A: Not that I can recall. I've been in some automobile
23 accidents on duty, but I don't recall any in Bennettsville.

24 Q: Now, you said that you've had three back surgeries?

25 A: Yes, sir.

BUDDY COLE - CROSS

1 Q: That was with Dr. William Edwards?

2 A: Yes, sir.

3 Q: Okay. And as a matter of fact, you saw Dr. Edwards the
4 day before this incident?

5 A: I seen him before this incident, but I don't know when
6 it was.

7 Q: Would you -- would you deny that you saw him on April
8 4th?

9 A: I won't deny it. No, sir. I mean I don't know when it
10 was.

11 Q: As a matter of fact, you've seen Dr. Edwards since 2015,
12 haven't you?

13 A: Yes, sir.

14 Q: For leg pain and back pain?

15 A: Yes, sir.

16 Q: And after this accident, you saw Dr. Edwards again,
17 didn't you?

18 A: Yes, sir.

19 Q: And you never relayed to him that you had been in an
20 incident at work?

21 A: I did. I told him what happened at work.

22 Q: Okay. But you didn't tell him you were having seizures,
23 did you?

24 A: Yes, sir, I did.

25 Q: And you told Dr. Edwards that or you told another doctor

BUDDY COLE - CROSS

1 that?

2 A: I told Dr. Edwards.

3 Q: Be careful now. You're under oath, Mr. Cole.

4 A: I understand I'm under oath. Yeah, I did tell Dr.
5 Edwards.

6 Q: So if Dr. Edwards said you didn't?

7 A: I did. He may not remember, but I did.

8 Q: Well, how about -- but you had been seeing him since
9 2015?

10 A: Yes, sir.

11 Q: And the day before on April 4th, he told you you were
12 probably going to need surgery; right?

13 A: No, sir, he didn't.

14 Q: How about in 2001? Were you in an accident?

15 A: Yes, sir. I was in an automobile accident in
16 Rockingham.

17 Q: How about were you in a scooter crash?

18 A: I was.

19 Q: And what happened?

20 A: I sheared the bone off my left elbow.

21 Q: Okay. What -- I mean what happened? You went over the
22 --

23 A: Sir?

24 Q: How did the accident happen?

25 A: I slid into the grass and it throwed me over the

BUDDY COLE - CROSS

1 handlebars.

2 Q: Okay. Did you break both arms?

3 A: Broke both arms. Yes, sir.

4 Q: And how many surgeries did you have to have on that?

5 A: I've had six on my left elbow.

6 Q: And in 2004, did you have an automobile accident?

7 A: I did.

8 Q: And what happened there?

9 A: I flipped my Trans Am three times.

10 Q: And what kind of injuries did you have?

11 A: I had a head injury and I broke my sternum.

12 Q: Okay. You had a severe head injury, didn't you?

13 A: Yes, sir.

14 Q: And at that time, you complained about dizziness?

15 A: Yes, sir.

16 Q: And possible seizures?

17 A: No. I never had a seizure. I had what you call a

18 tremor.

19 Q: Tremor?

20 A: Yes, sir.

21 Q: You had tremors. And then in 2001, you were working in

22 Chesterfield?

23 A: No. 2001, I worked with Rockingham PD.

24 Q: Excuse me. When you were in Rockingham, did you get in

25 an automobile accident?

BUDDY COLE - CROSS

- 1 A: I did.
- 2 Q: In a police car?
- 3 A: I did.
- 4 Q: And what happened there?
- 5 A: The airbag come in -- come out and hit me in the face
- 6 and knocked me out.
- 7 Q: How did -- I mean did you run into somebody?
- 8 A: Yeah. I was going on a call and I was going down the
- 9 street and a van was parked side of the road and he done a U-
- 10 turn in front of me and I T-boned him.
- 11 Q: Okay. And you had to go to the hospital?
- 12 A: I did.
- 13 Q: And in 2007, did you hurt your right hand hitting
- 14 somebody at work affecting an arrest?
- 15 A: I may have. 2007?
- 16 Q: How about in 2008? Did you hurt your left side when you
- 17 fell on a metal bench?
- 18 A: Yes, sir. Yes, sir. I remember that.
- 19 Q: And you have mild chronic C-5, 6, 7, and 8 stenosis? Do
- 20 you know?
- 21 A: I don't.
- 22 Q: And in 2012, were you in a car collision, a multiple car
- 23 collision, and went to Marlboro County Hospital?
- 24 A: Yes, sir.
- 25 Q: Okay. Do you remember what you hurt at that time?

BUDDY COLE - CROSS

- 1 A: I hurt my lower back. No, no, no, my top back. It was
2 the top.
- 3 Q: And that was in 2012?
- 4 A: Yes, sir.
- 5 Q: In 2013, did you get rear-ended in a motor vehicle
6 accident?
- 7 A: That was 2012.
- 8 Q: But you didn't get -- have an accident in 2013?
- 9 A: Not that I can recall. I remember getting rear-ended in
10 2012, November 2012.
- 11 Q: All right. And in December of 2016, did you go to --
12 you had a motor vehicle accident in Conway?
- 13 A: Yes, sir.
- 14 Q: Okay. And you had leg pain, blurred vision, and chest
15 pain?
- 16 A: Yes, sir.
- 17 Q: Now, you had -- this wasn't the first time you had
18 tussled with somebody at work?
- 19 A: No, sir.
- 20 Q: When arresting somebody, was it?
- 21 A: (No verbal response.)
- 22 Q: Now, did you also -- did you hurt your back or your arm
23 helping to lift a stretcher into an ambulance at some point?
- 24 A: I don't recall.
- 25 Q: In September of 2011?

BUDDY COLE - CROSS

1 A: I don't recall.

2 Q: You wouldn't deny it though, would you?

3 A: I wouldn't deny it, but I wasn't on no rescue squad or
4 nothing like that then.

5 Q: Do you -- do you ever remember ever helping load the
6 ambulance when they were short?

7 A: I don't remember, sir.

8 Q: Okay. That's fine. And you've had to wear a cervical
9 collar before, haven't you?

10 A: I don't never recall wearing a cervical collar, a neck
11 collar.

12 Q: You never wore one?

13 A: No, sir. I mean I did when they got me out of my -- in
14 2004 when I wrecked the Trans Am, they put one on me and took
15 me to the hospital and then when they got there, they took it
16 off of me. I never wore it out of the hospital.

17 Q: Now, you -- you have a Worker's Comp claim filed?

18 A: Yes, sir.

19 Q: Okay.

20 MS. MUNNERLYN: Your Honor, I would just object. I mean
21 that is certainly not related to the actual incident and
22 whether the crime occurred. He's asking about the other
23 injuries. The Worker's Comp claim has nothing to do with
24 that.

25 MR. STEPHENS: That's all I wanted.

BUDDY COLE - CROSS

1 THE COURT: Okay.

2 MR. STEPHENS: For him to admit or deny.

3 THE COURT: All right.

4 BY MR. STEPHENS:

5 Q: And you also -- do you admit or deny you presently have
6 Marlboro County and the sheriff sued for wrongful
7 termination?

8 A: Yes, sir.

9 MS. MUNNERLYN: Your Honor, I would object. Completely
10 irrelevant to this incident.

11 THE COURT: Move on to something else, please.

12 MR. STEPHENS: All right, sir.

13 BY MR. STEPHENS:

14 Q: Now, you've seen some doctors for -- you've seen doctors
15 since this accident -- since this incident that are related
16 to the Worker's Comp claim?

17 MS. MUNNERLYN: Again, Your Honor, I would object.

18 MR. STEPHENS: Your Honor, he's claiming injuries.

19 MS. MUNNERLYN: Can we approach?

20 (WHEREUPON, a bench conference was held in the presence
21 of the jury but out of the hearing of the jury off the
22 record, after which the proceedings resumed as follows.)

23 THE COURT: Ladies and gentlemen of the jury, if you'll
24 step back to your room and let me handle a matter of law,
25 please.

BUDDY COLE - CROSS

1 (WHEREUPON, the jury exited the courtroom at 10:58 a.m.)

2 THE COURT: Let me -- before I hear anything further,
3 let me look at the new statute, the revised statute on
4 assault and battery of a high and aggravated nature.

5 (WHEREUPON, there was a pause in the proceedings, after
6 which the proceedings resumed as follows.)

7 THE COURT: All right. Go ahead. What's going on with
8 that?

9 MR. STEPHENS: Well, she's objected to me asking about
10 these injuries, but on direct he inferred that he had these
11 back surgeries because of this accident. He said he'd had
12 three back surgeries because of this accident.

13 On my cross-examination, it was revealed that he'd been
14 seeing this doctor since 2015 and that these surgeries were
15 already in the works before this accident and that he's got
16 these injuries. He's claiming these spells and the seizures
17 for the Worker's Comp case, but he's also claiming them to
18 try to prove great bodily injury here in the criminal case.
19 I don't see how you can separate the two.

20 MS. MUNNERLYN: I'm not objecting to the injuries. I
21 mean he asked about all kinds of injuries, prior injuries and
22 that sort of thing. I wouldn't object to that.

23 I just don't think we need to talk about the actual
24 Worker's Comp claim. He can ask him all he wants about his
25 injuries. I don't object to that. He testified on direct

BUDDY COLE - CROSS

1 that he had the three back surgeries, I believe, Your Honor,
2 on my questioning and says that they were as a result of
3 this, but I mean, you know, the Worker's Comp claim stems out
4 of this. I realize that, but it's a completely separate
5 issue.

6 That's -- if he wants to ask him about injuries, then
7 that's fine. I don't have any objection to that, what he
8 wants to ask him or cross him on his injuries, but the actual
9 claim is a separate issue. Whether or not he made a claim
10 doesn't have anything to do with whether or not this
11 defendant committed any of these injuries and whether or not
12 this is a great bodily injury versus a moderate bodily or
13 whatever he wants to argue it as far as injury.

14 THE COURT: Well, now, straighten -- straighten my line
15 of thought on it. I thought the Workmen's Comp claim came
16 from the injury from this particular arrest scenario.

17 MS. MUNNERLYN: It does. It does, but what I'm saying
18 is the Worker's Comp claim itself is not proof or no proof of
19 whether it's a great bodily injury or a moderate bodily
20 injury. If he wants to ask him about the injury, then I
21 think that's fine, but if he -- but when he goes into asking
22 him about the Worker's Comp claim, whether or not he has a
23 claim or what's happened in that claim doesn't have any
24 relevance as to this. The only thing he needs to ask about
25 is injuries.

BUDDY COLE - CROSS

1 MR. STEPHENS: She could be -- that could be no further
2 from the truth, Your Honor. This Worker's Comp claim is
3 inextricably intertwined with this, the proof of injuries. He's
4 been going to these Worker's Comp doctors for injuries he
5 claims occurred in this incident.

6 I have the right to say, well, didn't Dr. So-and-so say
7 you're not having seizures as opposed to just having spells.
8 This doctor says these injuries aren't from this incident.
9 This doctor says they are. I mean that's something they'll
10 work out in Worker's Comp, but --

11 MS. MUNNERLYN: Well, unless he's going to bring these
12 doctors in, I don't know. You know, unless he -- if he says
13 he didn't say it or he didn't do it, you know, that's one
14 thing, but he doesn't need to bring up the Worker's Comp
15 claim. He can ask him did you see Dr. Edwards or Dr. So-and-
16 so about X and he can say no or yes to that. Unless he's
17 going to bring the doctors, I don't think he can go any
18 further on that.

19 THE COURT: Well, you know, under this revised statute,
20 this is the problem we've got that's different from the old
21 law. You've got A and B. Great bodily injury to another
22 person results. So that opens them up to be able to go into
23 the actual injury.

24 And then B, the act is accomplished by means likely to
25 produce death or great bodily injury. So you've got two

BUDDY COLE - CROSS

1 prongs there you can go after, and I'm assuming the State is
2 certainly going to go after B since this is being thrown into
3 the defense, but A allows great bodily injury to another
4 person results. That gives him the door to go in and ask
5 about the actual injuries.

6 But how far are you going to go into the Workman's Comp
7 claim?

8 MR. STEPHENS: I'm going to ask him about the injuries
9 and, you know, just like, you know, they implied on direct
10 these three back surgeries were from this incident. Well, he
11 admitted on cross that he'd been seeing Dr. Edwards since
12 2015 for these same complaints. You know, if he says he's
13 having seizures and some doctor tells him, no, you're having
14 spells, I think I get to ask him about that.

15 THE COURT: I'm going to let him go into it to a certain
16 extent because of that A. That gives him the doorway to go
17 through and all this is a little different than what it used
18 to be. The legislature went in and adjusted all of this.

19 MS. MUNNERLYN: Your Honor, my whole point is there's no
20 need to discuss this Worker's Comp claim. If he wants to ask
21 him if he saw X doctor and X doctor said this, then I think
22 he can do that, but I mean there's no reason to discuss the
23 fact that it's a Worker's Comp claim.

24 MR. STEPHENS: It goes to credibility, believability,
25 bias of the witness.

BUDDY COLE - CROSS

1 THE COURT: All right. I'm going to overrule the
2 objection for now, but if you get too far out on a tangent --

3 MR. STEPHENS: You always do, Your Honor.

4 THE COURT: Well, the reason I'm saying that, you got B
5 here --

6 MR. STEPHENS: I understand.

7 THE COURT: -- you need to be concerned with too.

8 MR. STEPHENS: I understand.

9 THE COURT: All right. In other words, if the State
10 relies on B, what you're going into really doesn't have
11 anything to do with B.

12 MR. STEPHENS: I understand.

13 THE COURT: Bring them back in.

14 (WHEREUPON, the jury entered the courtroom at 11:06
15 a.m.)

16 BY MR. STEPHENS:

17 Q: Mr. Cole, during this incident, did you have on a vest?

18 A: Sir?

19 A: Did you have on a vest?

20 A: No, sir.

21 Q: And you say you've been in law enforcement for 26 years?

22 A: Yes, sir.

23 Q: And you had testified that you had seven staples in your
24 head?

25 A: Yes, sir.

BUDDY COLE - CROSS

1 Q: Your arm was swollen?

2 A: Yes, sir.

3 Q: And you had knots on your back?

4 A: Yes, sir.

5 Q: Okay. And now, when you were in Chesterfield County,
6 you worked with the Sheriff's Department?

7 A: Yes, sir.

8 Q: And you got fired from there?

9 A: Yes, sir.

10 MS. MUNNERLYN: Objection, Your Honor.

11 MR. STEPHENS: I'm not going to ask him why.

12 MS. MUNNERLYN: I just think anything like that would be
13 completely irrelevant.

14 THE COURT: Sustained.

15 BY MR. STEPHENS:

16 Q: Did you suffer any trauma when you lost your job in
17 Chesterfield County?

18 A: No, sir.

19 Q: Okay. You didn't -- you didn't have any problems?

20 A: I mean I was upset and depressed. Yes, sir.

21 Q: Okay. And you've been -- you've had some depression
22 through the years?

23 A: For that?

24 MS. MUNNERLYN: Objection, Your Honor. Again, I don't
25 know what -- how that specifically would relate to the issue

BUDDY COLE - CROSS

1 that he is raising, which is on the injuries.

2 THE COURT: Sustained.

3 BY MR. STEPHENS:

4 Q: You've been -- you saw Dr. Edwards since 2015 for back
5 pain and leg pain?

6 A: Yes, sir.

7 Q: Okay. And you've been in law enforcement for 26 years?

8 A: Yes, sir.

9 Q: You've seen people shot?

10 A: Sir?

11 Q: You've seen people get shot?

12 A: Yes, sir.

13 Q: You've seen people get cut?

14 A: Yes, sir.

15 Q: And you've been -- you've had to tussle with people you
16 were detaining?

17 A: Yes, sir.

18 Q: And you've been in multiple car wrecks?

19 A: Yes, sir.

20 Q: Okay. So you've had a lot of trauma in the 26 years
21 you've been in law enforcement?

22 A: Yes, sir.

23 Q: And it eventually piles up on you?

24 A: Yes, sir.

25 Q: And it has an effect on you?

BUDDY COLE - REDIRECT

1 A: Yes, sir.

2 MR. STEPHENS: That's all I have, Your Honor.

3 THE COURT: Solicitor?

4 MS. MUNNERLYN: Just a couple questions, Your Honor.

5 REDIRECT EXAMINATION

6 BY MS. MUNNERLYN:

7 Q: Buddy -- okay. So Mr. Stephens has asked you about many
8 things that have happened over your law enforcement career?

9 A: Yes, sir. Yes, ma'am.

10 Q: You've had many incidents, haven't you?

11 A: Yes, ma'am.

12 Q: Is that unusual for a law enforcement career?

13 A: No, ma'am.

14 Q: Okay. Did you have any -- the injuries that you had as
15 a result of this incident, were they there before this
16 happened, before you were attacked by the defendant?

17 A: No, ma'am.

18 Q: Okay. And --

19 A: Going back to what he -- what Mr. Stephens asked about
20 prior, seeing Dr. Edwards prior, I have seen him for back
21 problems, but they were always treated with chiropractic. He
22 said I didn't need surgery.

23 Q: Okay.

24 A: The surgery come up after this incident.

25 Q: So you would have back problems from time to time?

BUDDY COLE - REDIRECT

1 A: Yes, ma'am.

2 Q: And when you did have those problems before this
3 incident, what would you do?

4 A: I'd seen Dr. Edwards before, but he said I didn't need
5 surgery and then I saw a few chiropractors and it was always
6 fixed with chiropractic.

7 Q: Okay.

8 A: Therapy.

9 Q: Okay. All right. And so you weren't having those
10 specific issues? When you went on this call, you weren't
11 having those specific issues that developed after this
12 incident?

13 A: That needed surgery?

14 Q: Yes?

15 A: No, ma'am.

16 Q: Okay. And then thereafter you had three surgeries and
17 the chiropractic care did not help?

18 A: No, ma'am.

19 Q: Okay. You had to have the surgeries?

20 A: I had to have the surgery. Yes, ma'am. And I've got
21 two rods -- two screws and a rod in my back.

22 Q: Okay.

23 MS. MUNNERLYN: I don't have any further questions, Your
24 Honor.

25 MR. STEPHENS: Just one.

BUDDY COLE - RECROSS

1 THE COURT: Yes, sir.

2 RECROSS-EXAMINATION

3 BY MR. STEPHENS:

4 Q: But you don't deny that you saw Dr. Edwards the day
5 before this incident?

6 A: I don't know if it was the day before, but I had -- I
7 did see him soon.

8 Q: And it's your testimony y'all never discussed surgery?

9 A: Sir?

10 Q: Y'all never discussed surgery?

11 A: We did discuss surgery, but he said I didn't need
12 surgery.

13 MR. STEPHENS: That's all. Thank you.

14 MS. MUNNERLYN: Nothing further, Your Honor.

15 THE COURT: Thank you, sir. You may step down.

16 THE WITNESS: Thank you.

17 THE COURT: Be careful with that step over there.

18 THE WITNESS: Yes, sir.

19 MS. MUNNERLYN: Your Honor, I'd next call Kansas Cole to
20 the stand.

21 THE CLERK: Do you solemnly swear or affirm that the
22 testimony you shall give the jury in this case shall be the
23 truth, the whole truth, and nothing but the truth, so help
24 you God?

25 THE WITNESS: Yes, ma'am.

KANSAS COLE - DIRECT

1 THE CLERK: Please have a seat and state your full name.

2 THE WITNESS: Kansas Amanda Steen Cole.

3 KANSAS COLE, being first duly
4 sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MS. MUNNERLYN:

7 Q: You go by Kansas?

8 A: Yes, ma'am.

9 Q: Okay. What is your relationship to Buddy Cole?

10 A: I'm his wife.

11 Q: Okay. And how long have you and he been married?

12 A: Since December the 5th, 2016.

13 Q: Okay. So y'all were married at the time of this
14 particular incident?

15 A: Yes, ma'am.

16 Q: Okay. And are you familiar with the injuries he
17 received on the particular night of this incident?

18 A: Yes, ma'am.

19 Q: Okay. Did you go to the hospital?

20 A: Yes, ma'am.

21 Q: Okay. And did you -- have you seen the impact it has
22 had on him since that incident?

23 A: Yes, ma'am. Every day.

24 Q: Okay. Tell us how this incident has impacted him and
25 what his injuries were?

KANSAS COLE - DIRECT

1 A: He had a fractured arm. His head -- he was -- right
2 above his ear he had a big gash. It was really deep. He was
3 beaten. Well, he had injuries to his back that looked like
4 softballs were underneath his back, I mean underneath the
5 skin. There were just knots all over his back.

6 And he started having seizures shortly after that. I
7 was actually staying up while he slept and then I would sleep
8 whenever he was up and, like, somebody was able to watch him.
9 But he was having awful nightmares, screaming, kicking while
10 he was asleep.

11 He -- I've just watched him decline his health. He's --
12 I mean he can't do any activities that he used to do. I mean
13 he used to do yard work and, you know, different stuff like
14 that and he can't do anything like that now. I mean he has
15 to hire somebody to do it or I do. I mean he -- he's not
16 able to do anything that he used to do.

17 Q: And this has all developed since this particular
18 incident?

19 A: Yes, ma'am.

20 Q: Prior to this incident, he was able to do all those
21 things?

22 A: Oh, yes, ma'am.

23 Q: Okay.

24 A: I mean he used to could get the lawnmower and go cut the
25 grass and I mean dig up a bush if it needs done. You know,

KANSAS COLE - DIRECT

1 he used to do housework too and I mean all kinds of things.

2 Q: Okay. All right. And did he have the seizures or any
3 of those things --

4 A: No, ma'am.

5 Q: -- beforehand?

6 A: No, ma'am. None. None whatsoever.

7 Q: And he has had to have three back surgeries; is that
8 correct?

9 A: Yes, ma'am.

10 Q: Since this incident?

11 A: Yes, ma'am.

12 Q: Okay. And he has not yet been able to return to work?

13 A: No, ma'am. There's no way he can.

14 Q: Okay. Now, you told me about the nightmares?

15 A: Yes, ma'am.

16 Q: What --

17 A: He'll have nightmares and he'll scream like, no, no,
18 don't hit me, don't hit me. He's hit me before while he was
19 asleep, punched me in my eye. He's punched me on, like, my
20 jaw or my chin and he's grabbed me around my throat. I've
21 actually had to, like, push him in his face to wake him up
22 because he had me around my throat like this choking me.

23 He's actually punched our little miniature schnauzer who
24 sleeps in the bed with us. I mean he sees Mr. McCoy's face
25 and he'll -- I mean he'll scream his name while he's asleep.

KANSAS COLE - DIRECT

1 Don't hit me. Damaine, please don't hit me.

2 Q: Okay.

3 A: I mean he used to roll off the bed too when he was
4 fighting in his sleep. He would roll off the bed. So now I
5 have to push the bed up against the wall and he has to sleep
6 against the wall. It's tough.

7 Q: And none of that was -- was any of that happening --

8 A: No, ma'am.

9 Q: -- before this incident?

10 A: No, ma'am. Never.

11 Q: Okay.

12 A: And Buddy is not a violent person at all. I've known
13 him for a while and he's -- he's not violent at all. Never
14 would he ever lay a hand on me. Never would he.

15 Q: Okay. Okay.

16 MS. MUNNERLYN: Court's indulgence just one moment.

17 Okay. I don't have any further questions. Answer any
18 questions Mr. Stephens may have for you.

19 MR. STEPHENS: No questions.

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

21 THE WITNESS: Thank you.

22 MS. MUNNERLYN: Gerald McCoy.

23 THE CLERK: Do you solemnly swear or affirm that the
24 testimony you shall give the Court and jury in this case
25 shall be the truth, the whole truth, and nothing but the

GERALD MCCOY - DIRECT

1 truth, so help you God?

2 THE WITNESS: I do.

3 THE CLERK: Please be seated and state your full name
4 for the record.

5 MS. MUNNERLYN: Mr. --

6 THE WITNESS: My name is --

7 MS. MUNNERLYN: Go ahead. I'm sorry.

8 THE WITNESS: Gerald McCoy.

9 GERALD MCCOY, being first duly
10 sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MS. MUNNERLYN:

13 Q: Okay. Mr. McCoy, where do you reside?

14 A: I live next door to him. That's my cousin.

15 Q: So Damaine McCoy is your cousin?

16 A: Yes, ma'am.

17 Q: Okay. And you live right next door to him?

18 A: Yes, ma'am.

19 Q: Okay. All right. And so since he's your cousin, you've
20 know him most all of your life?

21 A: Yes.

22 Q: Okay. All right. Were you at home the day this
23 incident happened?

24 A: Yeah, I was.

25 Q: Okay. And you said -- do you live in close proximity to

GERALD MCCOY - DIRECT

1 Mr. McCoy?

2 A: Like, right there in the next house like that.

3 Q: In the next house over?

4 A: Yeah, the next house over.

5 Q: Okay. All right. Tell us what happened. Were you --

6 were you at your house when -- when this all started?

7 A: Nah. We was, like, in the yard.

8 Q: Okay.

9 A: And he was like -- I guess he came out and we just --

10 Q: Who? Who came out?

11 A: Damaine. And we just followed. You know what I'm

12 saying? Followed him wherever he was going.

13 Q: Why were you following him?

14 A: Well, I guess he had his nephew.

15 Q: He had his nephew?

16 A: He had his nephew.

17 Q: And how old was the nephew? He was little? He was a

18 baby?

19 A: Yeah. He was a baby, yeah.

20 Q: A small child; correct?

21 A: Yeah.

22 Q: Okay.

23 A: So we followed him.

24 Q: Now, who is we?

25 A: It was, like, three of us.

GERALD MCCOY - DIRECT

1 Q: Okay.

2 A: You know, so we followed him, like, just say all of us

3 went on, like, a little walk you could say.

4 Q: Okay. Would he -- would he give the nephew back to his

5 -- to his mama?

6 A: Let's see.

7 Q: Or the people who were there at the house?

8 A: Let's see. I guess he wouldn't.

9 Q: Okay. So he wouldn't give the baby back. So that's why

10 y'all were following him?

11 A: Yeah. We was just trying to --

12 Q: Okay.

13 A: -- get the baby back.

14 Q: All right. Y'all were just trying to help --

15 A: Yeah, that's it.

16 Q: -- get the baby back?

17 A: That's all.

18 Q: And that was it?

19 A: That was it.

20 Q: Okay. All right. So -- so when he left the house,

21 where did he go with the baby?

22 A: He went to his aunt's house. That's where the walk was.

23 The whole walk, when we walked, we went to his aunt's house.

24 Q: Okay.

25 A: Okay.

GERALD MCCOY - DIRECT

1 Q: And she lives where?

2 A: Um -- what's the street?

3 Q: Is that where this incident --

4 A: Yes.

5 Q: -- took place?

6 A: Yes.

7 Q: So on Myrtle Street --

8 A: Yes.

9 Q: -- is where she lives?

10 A: Yes. So we walked from where we was to her house.

11 Q: Okay. And the whole time, he had the baby?

12 A: Yeah, he had the baby.

13 Q: Okay. All right. And when you got to -- and it was

14 just you and these other -- these other people --

15 A: Yeah.

16 Q: -- with you, the three of y'all going?

17 A: Uh-huh.

18 Q: Kind of with him?

19 A: Yeah.

20 Q: Okay. All right. And when you got to the house, what

21 happened?

22 A: We was trying to come up with something, like, so we can

23 get -- get the little cousin back. Right? So we came up

24 with something, but when that came into play, that's when

25 they finally showed up.

GERALD MCCOY - DIRECT

1 Q: Who is they?

2 A: I think it was the sheriff or the county.

3 Q: The deputies?

4 A: Yeah, they showed up.

5 Q: Okay.

6 A: All right.

7 Q: All right. Well, let me ask you this. When did you

8 first see the cane?

9 A: I seen the cane when we first started walking.

10 Q: Okay. So he had the cane with him the whole time?

11 A: When we first started walking, yeah.

12 Q: Okay.

13 A: But, you know.

14 Q: Okay. All right. And so when he -- he had the cane

15 with him still when he was on the porch at the house with the

16 baby at the aunt's house?

17 A: Yeah.

18 Q: Okay. All right. So what happened when the deputies

19 arrived?

20 A: I don't know. I was already -- we already had a plan

21 together.

22 Q: Okay.

23 A: And I was already in the process of going along with it.

24 Q: All right.

25 A: When all that went down, I don't know what happened. My

GERALD MCCOY - DIRECT

1 back was turned like this. I didn't see nothing else.

2 Q: All right. So what -- what -- what do you remember
3 happening?

4 A: Okay. When all that went down, like he said, they was
5 tussling with him and stuff, when he got tired, the officer
6 right there got tired, he rolled over. That's when we
7 stepped in to help out. When he rolled over, we looked at
8 him and so we started helping him out too. So we was holding
9 him and helping him out at the same time.

10 Q: You were holding him?

11 A: We was holding Damaine down.

12 Q: Damaine?

13 A: Yes. When he rolled over --

14 Q: On the ground?

15 A: Yes. When he rolled over like that, you know, and went
16 on his back, we was holding him. So I left from helping them
17 out to help him out.

18 Q: Okay. But who got the baby? Who ended up getting the
19 baby?

20 A: I got the baby.

21 Q: Okay. So you're the one that actually --

22 A: Yeah. Yes, I got --

23 Q: -- went up and grabbed the baby?

24 A: Yes. I got him.

25 Q: Okay. How did that go -- go along?

GERALD MCCOY - DIRECT

1 A: It was, like, when they got there -- okay. All this was
2 going on probably like an hour or earlier, you know. His mom
3 called him earlier to come check on him anyhow, but nobody
4 showed up. All this took place probably like an hour, for
5 like an hour or so.

6 Q: Okay.

7 A: So they finally got there. When they got there, like I
8 said, we done -- I was already, like, halfway on the porch
9 when they got there.

10 Q: Had he -- he'd already -- he put the baby down?

11 A: Yeah, the baby was already down. We done had everything
12 planned out and everything.

13 Q: Okay. All right. So what happened?

14 A: All right. I got the baby. I picked him up and when I
15 turned my back, I ain't seen -- you know, I couldn't see
16 nothing else. Everything went down after that, I guess.

17 Q: Okay.

18 A: That's when everything, you know, went down.

19 Q: What did you do with the baby?

20 A: I gave him to his mama.

21 Q: Okay. You ran and grabbed the baby and you took the
22 baby to his mama. Where was his mama?

23 A: She was, like, in the corner, like, on the side. So I
24 just gave him to her and went to help.

25 Q: Okay. So did you see -- you saw them do the taser?

GERALD MCCOY - DIRECT

1 A: No, I didn't see no taser. I couldn't see nothing.
2 When I picked him up, my back was turned like that and that's
3 when everything went down. I couldn't see nothing else.
4 Q: Okay.
5 A: When I came for the baby, that's when everything, you
6 know, and they had him on the ground and all that and that's
7 when we went in and helped them kind of sustain it. That's
8 when he rolled over and that's when we turned our attention
9 to him. So -- so we had two situations going on at one time.
10 Q: So you -- now, you gave a statement, a video statement,
11 right after this happened; correct?
12 A: Yes, ma'am.
13 Q: Okay. And you stated in that statement that he started
14 running after the white officer?
15 A: No, I didn't say that.
16 Q: You deny you said that?
17 A: I did not say that. No, I didn't say that. I didn't
18 say he ran after no -- no officer.
19 Q: Okay. So did you say when he hit him with the taser he
20 was talking about the Lord and different stuff?
21 A: No, I didn't. No, I did not say that.
22 Q: You deny saying that too?
23 A: I didn't say that. I did not say none of that.
24 Q: And when you were trying to give the baby to your
25 cousin, that's when he jumped up and ran after the officer?

GERALD MCCOY - DIRECT

1 A: No. I did not say that.

2 Q: And then he just swung the cane at the officer?

3 A: I didn't say that.

4 Q: You deny you said any of that?

5 A: I didn't say none of that. When I told you what I said,
6 when I picked him up and turned my back like that, I couldn't
7 see nothing else. All of that went into play.

8 Q: So you deny that you saw him swing that? You deny that
9 you said that?

10 A: I didn't see none of that. That's, like, when you
11 picked -- when I picked him up, the last thing I probably
12 seen when I turned my back like that, he probably had his
13 hand in the air like that and he fell over the rail like
14 that. I guess they either tased him then or -- you know.

15 Q: But you never saw him swing at the officer?

16 A: No.

17 Q: Run after the officer? You didn't see any of that?

18 A: No, ma'am. I didn't see none of that.

19 MS. MUNNERLYN: Your Honor, we need to take a brief
20 recess. I need to set up the video statement.

21 THE COURT: All right. Ladies and gentlemen, let's take
22 a recess of 15 minutes here. It's time for the court staff
23 to have a break too.

24 Will y'all assist the jury?

25 (WHEREUPON, the jury exited the courtroom at 11:26 a.m.)

GERALD MCCOY - DIRECT

1 (WHEREUPON, there was a break in the proceedings from
2 11:27 a.m. until 11:56 a.m., after which the proceedings
3 resumed as follows.)

4 MR. MUNNERLYN: Judge, I don't know exactly where this
5 is in this statement. Just for the record, I don't know how
6 well I can stop it and start it. So I'm just going to play
7 the whole thing. I don't think it's really long, maybe 10 or
8 15 minutes.

9 THE COURT: We need the witness to come back to the
10 stand. Yes, sir.

11 THE BAILIFF: Are you ready?

12 THE COURT: We're ready, if they are ready.

13 (WHEREUPON, the jury entered the courtroom at 11:58
14 a.m.)

15 THE COURT: Okay. Y'all don't have to keep the same
16 seat every time. And I need you to shift over to this side,
17 if you'll move down one, because of the lineup of this video.
18 I think that'll be a lot better for everybody to see. We've
19 got everybody.

20 Solicitor?

21 MS. MUNNERLYN: Thank you, Your Honor.

22 BY MS. MUNNERLYN:

23 Q: Now, Mr. McCoy, you gave a video statement at the time
24 of the incident; correct?

25 A: Yes.

GERALD MCCOY - DIRECT

1 (WHEREUPON, State's Exhibit Number 4, video statement,
2 was played on the screen in the courtroom. Not
3 transcribed herein.)

4 BY MS. MUNNERLYN:

5 Q: So -- so you did say he started running after the
6 officer and he swung at the officer with the cane?

7 A: No.

8 Q: You just didn't see whether he hit him? You did. I'm
9 just talking about your statement --

10 A: I seen he had --

11 Q: -- saying he swung.

12 A: -- the cane and he -- like that. I don't know who. He
13 had the cane like that. I don't know who he swung at or
14 whatever, but I ain't said which officer he hit or who he
15 hit.

16 Q: And you said when he was tased it deuced him up?

17 A: Yeah. It had to.

18 Q: So he got kind of crazy after they tased him?

19 A: He jumped back up. Whatever that -- whatever I said
20 right there, when I grabbed the baby, that's when I heard the
21 psssh and he fall over and he jumped up.

22 Q: In fact, you said that y'all had -- you had to help him?
23 Because he was so strong, y'all had to help restrain him?

24 A: Yes.

25 Q: And then help with the officer --

GERALD MCCOY - DIRECT

1 A: Yes.

2 Q: -- who was on the ground? Okay.

3 MS. MUNNERLYN: I don't have any further questions then.
4 Answer any questions that Mr. Stephens might have.

5 MR. STEPHENS: No questions.

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

7 MS. MUNNERLYN: Court's indulgence just one moment.

8 THE COURT: All right. While we're standing at ease,
9 Madam Clerk is going to give you a menu for lunch, send out
10 and get some lunch. Okay?

11 MS. MUNNERLYN: Just one more witness, Your Honor. That
12 will be Melissa McCoy Lewis.

13 THE COURT: All right. If you'll raise -- put your left
14 hand on the Bible and raise your right.

15 THE CLERK: Do you solemnly swear or affirm that the
16 testimony you shall offer the Court and jury in this case
17 shall be the truth, the whole truth, and nothing but the
18 truth, so help you God?

19 THE WITNESS: I do.

20 THE CLERK: Thank you. Please be seated. Be careful.

21 THE COURT: We'll take care of that other right after we
22 get through with the witness.

23 THE WITNESS: Melissa McCoy Lewis.

24 MELISSA MCCOY LEWIS, being
25 first duly sworn, testified as follows:

DIRECT EXAMINATION

3 Q: Ms. Lewis, how are you related to Damaine McCoy?

5 Q: Okay. All right. And you live on Zion Street in Clio?

7 Q: And he was staying there with you?

9 Q: Okay. And you had had some problems with him so you
10 went and got the probate order?

12 Q: Okay. And you were at home the night this happened?

14 Q: Tell us what happened with the baby?

15 A: Well, first, I had went to get an order earlier that day
16 on April the 5th, 2017. I went there and, when I went there,
17 it was -- I went there about 11:30. I left from there about
18 12. I went to Tri-County and the lady had had the paper and
19 she said she --

20 Q: Okay. Don't tell me anything anybody else said. Just
21 tell me what you did.

22 A: That's what I did. I went.

23 Q: Okay. But don't tell me what the lady at mental health
24 said.

25 A: No, what she said. What she did.

MELISSA MCCOY LEWIS - DIRECT

1 Q: Okay. So you can tell me what she did.

2 A: She took the paper and she faxed the paper to the police
3 department. She faxed the paper and then she brung the paper
4 back. She got a copy and brung the paper back and had on the
5 envelope, emergency, take to the -- emergency pickup, take to
6 the ER.

7 And then after that, I went back home. I went back
8 home, but they called her from the courthouse. They had --
9 on the phone, they called the police department. I was right
10 there and then she told me I could go ahead and leave,
11 they'll be there soon.

12 So when I left from there, I went straight home and
13 waited for them and I waited two hours and nobody showed. I
14 waited and I waited until about 7:30 until when the incident
15 happened. And I called 9-1-1 and that's when about an hour
16 and something after that they came.

17 But with the baby, what happened was I was in the house.
18 I was in the room sitting on the bed and I was feeding the
19 baby, and Damaine came and playing with the baby. So I told
20 him to stop so I could feed the baby. So he picked the baby
21 up and he was playing with him and he was going out the door.
22 He was going out the door and then my daughter was standing
23 there. He just move her head out the way and he went out the
24 door.

25 So then they called my cousin and them to come, to come

MELISSA MCCOY LEWIS - DIRECT

1 and help get the baby back. So after that, he went on the
2 porch and he went on the porch and after that I came back and
3 I called 9-1-1. I called 9-1-1 and then I went back out. He
4 was going down the road and he got on -- went to Myrtle
5 Street and when he went to Myrtle Street, he was on the -- he
6 went on the porch.

7 He put the baby down. He put the baby down and was
8 standing there and, after that, Gerald and them -- they had a
9 plan to -- to get the baby back. And when they had the plan,
10 when the police showed up, Gerald and them were already in
11 the plan. They walked up. They said nothing to nobody.
12 They walked up, said nothing, and then they stood right there
13 because Gerald went around and got the baby.

14 After that, Damaine was standing there. He still had
15 the cane in his hand. He wasn't swinging or nothing. He had
16 the cane in his hand and Officer Buddy Cole tased him. He
17 fell over, jump back up. He swung the cane and I got the
18 baby and got in the car.

19 Q: And did you see what happened after that?

20 A: No.

21 Q: So you were in the car with the baby?

22 A: Yes.

23 Q: And did you at some point get out to help the officer
24 after he was on the ground?

25 A: Well, they had done had him in handcuffs and stuff when

1 I got out.

2 Q: Okay. Yeah. So once -- he was already in handcuffs,
3 but you got out and there were some others helping the
4 officer when he was on the ground?

5 A: Yes.

6 Q: Okay. And he was bleeding and y'all were helping him
7 with it?

8 A: Well, I didn't see no blood.

9 Q: Okay. How long was it before the ambulance arrived?

10 A: I don't recall.

11 Q: You don't recall?

12 A: Huh-uh.

13 Q: Okay. So you were in the car pretty much the entire
14 time that the struggle between Damaine and the officers was
15 happening?

16 A: Yes.

17 Q: So you really didn't see any of that?

18 A: I didn't see that.

19 Q: Okay. Okay.

20 MS. MUNNERLYN: Court's indulgence just one moment.

21 BY MS. MUNNERLYN:

22 Q: Were you assisting in holding the officer's head when he
23 was on the ground and trying to help him when he was still on
24 the ground?

25 A: I hold his head, not his hands.

MELISSA MCCOY LEWIS - DIRECT

1 Q: His head? Yes, that's what I mean.

2 A: Uh-huh.

3 Q: Okay.

4 MS. MUNNERLYN: All right. I don't have any further
5 questions. Answer any questions that Mr. Stephens has.

6 MR. STEPHENS: No questions.

7 THE COURT: You can step down. Thank you.

8 MS. MUNNERLYN: That's all that we have, Your Honor.

9 THE COURT: All right. Everybody stand at ease a
10 minutes and let's get these forms checked off.

11 MR. STEPHENS: Can we approach while they're doing that?

12 THE COURT: Sure.

13 (WHEREUPON, a bench conference was held in the presence
14 of the jury that but of the hearing of the jury off the
15 record, after which the proceedings resumed as follows.)

16 THE COURT: All right. Ladies and gentlemen, I'm at a
17 point that I've got a take up a matter of law. So I am going
18 to have to ask you to step back to your room. If y'all will
19 assist Mr. Foreman. Quickly fill those out back there and
20 Madam Clerk will take care of that and let me go ahead and
21 take care of the matter of law. If y'all will step back to
22 the room.

23 (WHEREUPON, the jury exited the courtroom at 12:27 p.m.)

24 THE COURT: Are you ready?

25 MR. STEPHENS: Yes, sir.

1 THE COURT: Mr. McCoy, I need your undivided attention
2 because I need to discuss with you a very important
3 constitutional right concerning the Fifth Amendment, your
4 right to remain silent.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Okay. Counsel?

7 MR. STEPHENS: Yes, sir.

8 THE COURT: Do you understand everything that Mr.
9 Stephens has gone over with you about your right to testify
10 and not to testify?

11 THE DEFENDANT: Yes.

12 THE COURT: You understand his advice?

13 THE DEFENDANT: Yes.

14 THE COURT: Do you understand that you do have a right
15 to testify at your own defense, but you also have a
16 constitutional right to remain silent. If you elect not to
17 testify, it cannot be held against you. That's your Fifth
18 Amendment right and I will instruct the jury that it cannot
19 be held against you.

20 In other words, it can't mitigate against you in any
21 way. It's an important right though that you have to make on
22 your own. It needs to be intelligently entered into, freely
23 and voluntarily entered into.

24 Now, if you decide to testify, you will be treated just
25 like any other witness and you could be cross-examined and

1 impeached as the State may see fit within the rules of
2 evidence and procedure. So in other words, you would subject
3 yourself to cross-examination.

4 Now, have you discussed this with Mr. Stephens to where
5 you have made your own decision about this?

6 THE DEFENDANT: Yes.

7 THE COURT: Now that I have explained your Fifth
8 Amendment right to you -- and that's under the United States
9 Constitution. There's also a similar counterpart provision
10 under our state Constitution. Do you need a minute or two to
11 discuss your decision with him?

12 THE DEFENDANT: We discussed it.

13 THE COURT: Okay. And what have you decided to do?

14 THE DEFENDANT: I've decided not to speak.

15 THE COURT: And that's -- that's your freely and
16 voluntarily and your intelligent decision to do that? Nobody
17 has threatened you or promised you anything concerning this?

18 THE DEFENDANT: No. Nobody threatened me. I mean it's
19 a decision of ours.

20 THE COURT: Okay. Thank you very much.

21 THE DEFENDANT: Thank you.

22 THE COURT: Okay. When we bring the jury back in, are
23 y'all ready to argue?

24 MS. MUNNERLYN: Can we discuss charges, Judge? I mean
25 what all would you charge?

1 THE COURT: Well, under this new statutory scheme, it's
2 going to be basically from the actual statutes.

3 MS. MUNNERLYN: Right, right, but I mean are you going
4 to charge all degrees of assault and battery or just --

5 THE COURT: Well, I'll be more than glad to hear --

6 MS. MUNNERLYN: Okay.

7 THE COURT: -- what the State's position is because we
8 know there have been some case decisions about charging too
9 much.

10 MS. MUNNERLYN: Yes, Your Honor.

11 THE COURT: In other words, what's been presented in the
12 facts, what's properly in the record. We've got to confine
13 it to that or we could have a problem.

14 MS. MUNNERLYN: Yes, sir. And that would be my
15 argument, Your Honor. I would -- I would argue certainly
16 that there -- it's uncontested I think that -- that he -- you
17 know, he used his weapon. Mr. Stephens even basically stood
18 up and said that, you know, they weren't contesting any of
19 that.

20 The only question is the actual injuries and I think,
21 you know, that they haven't shown anything different as far
22 as the stapling in his head. All of that is in the records.
23 I think certainly the least that you could find would be A&B
24 second. I don't think A&B third would be appropriate and I
25 question whether or not A&B second is even, because A&B

1 second would be moderate injury, Your Honor.

2 Ao I think it would be at least at that level because it
3 did require he went to the hospital, he did have to have the
4 stapling in his head, he did have a fractured arm. So that
5 would be at least at the level of the moderate injury. We
6 haven't had anything different from that basic level.

7 MR. STEPHENS: Well, I don't think we're required to
8 present anything on the level.

9 THE COURT: Pardon?

10 MR. STEPHENS: I don't think we're required to present
11 anything. We're not required to make the case. It's on the
12 solicitor.

13 MS. MUNNERLYN: That's right. And that hasn't been
14 contested. That minimal level hasn't been contested. The
15 only contesting in the questioning on the cross-examination
16 of my witnesses is whether it's the great -- the greater
17 injury versus just that.

18 MR. STEPHENS: Well, I --

19 THE COURT: I guess we might've got ahead. What is the
20 defense requesting to be charged?

21 MR. STEPHENS: We would request you to charge -- of
22 course, you've got to charge ABHAN, A&B first, second, and
23 third.

24 THE COURT: All right. I agree with the State based on
25 the facts that's before the Court and some of these recent

1 decisions that have come out of this circuit that the third
2 shouldn't be charged. I don't think under these facts anyway
3 in any kind of way that you can justify a charge for what we
4 used to know as simple assault.

5 MR. STEPHENS: Well, it would be simple assault and
6 battery, Your Honor, and the fact that --

7 THE COURT: No doubt.

8 MR. STEPHENS: That the records -- the medical records
9 show that he didn't have a broken arm. The medical records
10 show he had stitches in his head and he had some bruises on
11 his back, and we think that that would be just an injury
12 under assault and battery.

13 Of course, it's going to be up to the jury to decide
14 great bodily injury or moderate bodily injury. They could
15 decide it's just an injury and so we would ask that you
16 consider that and charge assault and battery third also.

17 THE COURT: All right. You'll get the -- you'll get all
18 but third under the facts that are before the Court.

19 Now, make sure I'm right. There's three agreed-upon
20 exhibits that came in. They're all State's --

21 MR. STEPHENS: Yes, sir.

22 THE COURT: -- exhibits. Okay.

23 MS. MUNNERLYN: And, Your Honor, we did not mark the --
24 I think the court reporter wanted me to mark the statement.
25 I didn't put that in evidence, but just played it. So we'll

1 mark that DVD for the court reporter. We need to mark that
2 as State's 4.

3 THE COURT: Yes.

4 MS. MUNNERLYN: Okay.

5 THE COURT: That would be appropriate.

6 (WHEREUPON, the statement on DVD was marked as State's
7 Exhibit Number 4.)

8 MR. STEPHENS: Are we ready to argue?

9 MS. MUNNERLYN: Yeah. We're getting ready to do it
10 right now. I just need to move this.

11 THE COURT: If they're through, we can bring them back.

12 THE BAILIFF: Bring the jury in?

13 THE COURT: If they're ready.

14 MS. MUNNERLYN: May we approach, Your Honor?

15 THE COURT: Yes.

16 (WHEREUPON, a bench conference was held off the record,
17 after which the proceedings resumed as follows.)

18 (WHEREUPON, the jury entered the courtroom at 12:39
19 p.m.)

20 THE COURT: Okay. Mr. Foreman and ladies and gentlemen
21 of the jury, we're ready to move on to the next phase of the
22 trial with closing arguments.

23 Solicitor?

24 MS. MUNNERLYN: May it please the Court, Your Honor.

25 THE COURT: Yes.

1 MS. MUNNERLYN: Mr. Stephens.

2 CLOSING ARGUMENT ON BEHALF OF THE STATE

3 MS. MUNNERLYN: Ladies and gentlemen of the jury, I told
4 you we would be brief and we have been. So we have come to
5 the end of the case and now it's almost time for it to be in
6 your hands. And as I told you at the beginning, it's my
7 burden of proof to prove that the defendant, Damaine McCoy,
8 is guilty of assault and battery of a high and aggravated
9 nature or some lesser-included offense and resisting arrest
10 with a deadly weapon.

11 And the judge is going to -- after we do our closing
12 arguments, the judge is going to charge you on what the law
13 is. So he is going to tell you exactly what those elements
14 are.

15 So you listen to him. So if anything I say doesn't
16 agree with what he says, you listen to what he says. Okay?

17 But I'm going to try to tell you my position and that is
18 that we believe we have proven this case beyond a reasonable
19 doubt. We believe that once you go back there and you
20 collectively consider all of the evidence that was presented,
21 including the exhibits, this cane, the exhibits which have
22 been admitted here, look at those and think about them and
23 talk about them.

24 And also, think about what you heard from the witness
25 stand. What did each of the witnesses that came here and

1 testified to you to their memory of what occurred, what did
2 they say? And when you go back there and you review all of
3 this, then you collectively are going to put all that
4 together and it's going to be like a puzzle.

5 And I think when you put it together that you are going
6 to agree that I have proven beyond a reasonable doubt that
7 the defendant, Damaine McCoy, is, in fact, guilty of
8 resisting arrest with a deadly weapon, as well as assault and
9 battery of a high and aggravated nature. Okay?

10 Let's talk about -- let's talk about the elements
11 because the judge is going to charge you not just -- first of
12 all, let's -- so that we get this out of the way, the
13 resisting arrest charge. Resisting arrest with a deadly
14 weapon.

15 The defendant -- we have to be able to show that the
16 defendant resists the lawful efforts of an officer to arrest
17 him. So we know Damaine and all the witnesses have testified
18 that the defendant resisted. In fact, his attorney stood up
19 here and told you they don't deny that. He did resist the
20 efforts of Officer Buddy Cole and Wheeler in their attempts
21 to arrest him on April the 5th of 2017.

22 And he did it with the use of a deadly weapon, and we
23 present to you that this is a deadly weapon. It is a cane,
24 but taped to the end of it is a metal tool which is quite
25 heavy. And we argue to you that that is a deadly weapon, but

1 you will have that back there in the jury room with you. You
2 look at it. You can do whatever you want to with it. You
3 can pass it around. Y'all can swing it if you'd like, but
4 don't hit each other with it.

5 So we present to you that this evidence that's before
6 you clearly meets the elements of that offense. So I think
7 you can get that charge out of the way quickly. Damaine
8 McCoy clearly resisted arrest of Buddy Cole and Wheeler while
9 using this weapon and he used it against them and he did have
10 it in his possession at the time he resisted arrest. Those
11 are all of the elements of resisting arrest with a deadly
12 weapon. Okay?

13 Let's move on to the more taxing charge. The indictment
14 is for assault and battery of a high and aggravated nature.
15 That is -- that is the charge that we present to you and that
16 we believe that he is guilty of and we believe the evidence
17 supports that.

18 To be assault and battery of a high and aggravated
19 nature, the elements are the defendant or a person, who is in
20 this case the defendant, unlawfully injures another person,
21 the person in this case is Buddy Cole, resulting in great
22 bodily injury or the act is accomplished by means likely to
23 produce death or great bodily injury. Okay?

24 So it's a two-pronged -- the last element has two
25 prongs. It's not an "and", it's an "or." So you can either

1 prove there was great bodily injury or that the act is likely
2 to produce great bodily injury.

3 And so you have to consider is the swinging of a weapon
4 such as this at someone's head and upper body -- is that act
5 likely to produce great bodily injury? That's if you don't
6 believe there's great bodily injury. Would that act alone,
7 the act of swinging that at the other person, be likely to
8 produce great bodily injury? And I submit to you it is.

9 But let's talk about what we heard. You heard from --
10 from several witnesses, the first of which, of course, was
11 Buddy Cole, who was the actual victim we call it in this
12 case. He was actually an officer on this particular night
13 and, as you have heard, he was going to try to arrest the
14 defendant, Damaine McCoy. The charge initially or the call
15 initially came in as a disorderly conduct or a domestic
16 situation.

17 So they went out. When they -- when they were on the
18 way, they were informed it had changed, that he had actually
19 taken a baby and left the house. So it had changed the
20 dynamics of the situation to a potential kidnapping.

21 So when they arrived at the house, the initial
22 residence, of course, was Zion Street, which is Ms. Lewis's
23 home, which is where Damaine lived, but, of course, he was no
24 longer there when the officers arrived. So one of the family
25 members got in the vehicle with them and they went around to

1 the other house on Myrtle Street, which is apparently his
2 aunt's house.

3 And there is where everyone was gathered and that's
4 where everything really happened, and I don't think -- much
5 of this is not contested. Everything that's contested is
6 about Buddy Cole's injuries, but again I argue to you
7 remember that second prong. It can either be great bodily
8 injury or the act can just be likely to produce great bodily
9 injury, and again I remind you there's that cane.

10 So when they got there, he's on the steps. He still has
11 the baby. He still has the baby in his arm. He hasn't put
12 the baby down yet, but he also has this cane in his hand and
13 he's swinging it. He's swinging at family members who get
14 anywhere close to him and try to get that baby.

15 And they tried to talk to him, but there isn't any
16 talking to him. He's talking about there's a higher power
17 and what the Lord is going to do and just sort of talking out
18 of his head. And then finally, he puts the baby down on the
19 porch and his cousin, who was here and you heard him testify,
20 he was able to get up behind him and grab the baby and get
21 the baby away from him, and that's when it all started.

22 They tased him to try to take him into custody at that
23 point and he, as the cousin says, just -- I think he called
24 it deuced him. He just -- the tase deuced him up. It's like
25 he just got all this energy and he was -- had superhuman

1 strength and he was -- he was able to fight and three -- it
2 took three men, three grown men, to handcuff him and to
3 restrain him.

4 But he came over that porch rail, came after Officer
5 Buddy Cole with swinging -- swinging the cane, swinging that
6 metal piece on the end of that cane at his head. Struck him
7 at least one time right here because he had to have seven
8 staples behind his ear and up above his ear.

9 The first blow was on that arm. You remember the
10 testimony there the first blow was struck to that arm when he
11 threw it up. That's what fractured the arm. In the initial
12 x-rays, of course, they couldn't see the fracture, but four
13 days later they were able to see it after the swelling had
14 gone down and they were able to further evaluate it.

15 So he has a fractured arm, he has seven staples behind
16 his ear, and back trouble, which was exacerbated by all of
17 this, and he ends up having to have three different back
18 surgeries as a result. He had a concussion. He lost
19 consciousness. It sounds as if from the testimony at least
20 twice he lost consciousness.

21 All of these things play into how serious of an injury
22 this is, and most telling is that in the almost 3 years since
23 this incident has happened that he has not been able to
24 return to work. That his injuries have prevented his doctors
25 releasing him to return to being a deputy.

1 So all of these things combined together I argue produce
2 a great bodily injury that resulted from him being struck
3 with this cane, this metal object on the end.

4 But if you don't agree as to great bodily injury, I
5 think we must definitely admit that second prong, which is
6 the act of Damaine McCoy swinging that cane with the metal
7 object on it was likely to produce great bodily injury, and
8 that's all we have to show for it to be assault and battery
9 of a high and aggravated nature.

10 But if you're not convinced, the judge is also going to
11 charge you with two other lesser-included offenses. Those
12 are assault and battery first degree and assault and battery
13 second degree. So you'll have to weigh.

14 Now, the first degree has many different elements to it,
15 some of which include factual situations which aren't a part
16 of this case. Okay? So I think some of them you'll clearly
17 be able to just rule out.

18 But assault and battery first -- and I'm just going to
19 read it to you from the statute and, again, I argue none of
20 this applies because you're going to -- you're going to find
21 him guilty of assault and battery of a high and aggravated
22 nature, but the lesser-included of assault and battery first
23 is this.

24 A person commits assault and battery first degree if the
25 person unlawfully injures another person. And it's the same

1 -- it starts out the same. A person unlawfully injures
2 another person and the act -- there are several "ors" here.

3 One, involves nonconsensual touching of the private
4 parts of a person. We're not -- this is not this case. So
5 we move to the next one.

6 Or occurred during the commission of a robbery,
7 burglary, kidnapping or theft. Okay? So that's a
8 consideration for you.

9 Or offers or attempts to injure another person with the
10 present ability to do so and the act is accomplished by means
11 likely to produce death or great bodily injury or occurred
12 during the commission of a robbery, burglary, kidnapping or
13 theft. So that's assault and battery first.

14 Assault and battery second is if a person unlawfully
15 injures another person or offers or attempts to injure
16 another person with the present ability to do so and moderate
17 bodily injury results. Okay?

18 So moderate bodily injury is a physical injury that
19 involves prolonged loss of consciousness or that causes
20 temporary or moderate disfigurement or temporary loss of a
21 function of a bodily member or organ or injury that requires
22 medical treatment when the treatment requires the use of
23 regional or general anesthesia or injury that results from a
24 fracture or dislocation. Again, so that's moderate bodily
25 injury.

1 So A&B second is moderate bodily injury, but I argue to
2 you you have to consider assault and battery of a high and
3 aggravated nature first and if you believe we've proved that
4 the assault and battery of a high and aggravated nature was
5 committed, then -- and you're convinced beyond a reasonable
6 doubt, then you must find him guilty of the greater offense
7 of assault and battery of a high and aggravated nature.

8 If not, then only then would you move to the lesser-
9 included offense of assault and battery first degree and then
10 to assault and battery second degree. You can only find him
11 guilty of one. Okay?

12 But I just ask you in thinking about the evidence and in
13 arguing about it and considering it to think about why people
14 would testify certain ways, what the relationships are, if
15 there is any, between a witness and the defendant, and why
16 their testimony might be more helpful or less helpful. Okay?

17 And I think when you can take all those -- because this
18 -- this is -- this is a legal thing, but it's all just
19 reasonable common sense. Okay? And you have to think about
20 what makes sense.

21 What -- how these people testified, how does it all fit
22 together to make sense? So what really happened? How did it
23 happen? How do the pieces fit together? That's your job to
24 figure it out and then to see how it fits into the offenses
25 as they are charged and as the judge is going to tell you the

1 elements are. Okay?

2 And so all I ask is for you to go back and thoroughly
3 consider every bit of evidence. Look at all of the exhibits.
4 Discuss all of the testimony and then and only then make a
5 determination of what your verdict will be. And I thank you
6 in advance for your attention.

7 THE COURT: Thank you, Solicitor.
8 Counsel?

9 MR. STEPHENS: May it please the Court.
10 Solicitor.

11 CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

12 MR. STEPHENS: Ladies and gentlemen of the jury, I too
13 would like to thank you for your attention.

14 As I told you from the beginning, the only thing I was
15 disagreeing with the solicitor on was injuries. I think Mr.
16 Cole testified that he had a busted head and seven staples,
17 his arm was swollen, and he had knots on his back.

18 And you'll have these medical records. This is State's
19 Exhibit Number 2. You'll have these medical records back
20 there in the jury room and I ask you to look at them. I
21 would ask you to look at a couple things.

22 One is he went to the emergency room and he stayed about
23 two hours. In the emergency room, they put seven staples in
24 his head and there's a note in here they did an x-ray of his
25 forearm, his left forearm, and it says they saw something.

1 but upon further review of prior x-rays of 11/9/2009
2 demonstrated this finding was present on the prior exam.
3 This finding is -- finding is most keeping with old trauma or
4 old surgical findings.

5 So they said they found an old injury. They didn't say
6 there was a fracture. There's been no medical records
7 introduced that he had a fracture of his arm.

8 It also showed that there was a staple -- a number of
9 staples, seven, complexity simple, and if you look at arrival
10 date and discharge date, I think the discharge decision was
11 made about an hour and 33 minutes after he was there.

12 So this was an emergency room visit. We would say that
13 would be a moderate injury.

14 Now, there was some question the solicitor had said that
15 under assault and battery of a high and aggravated nature, if
16 the act is accomplished by means likely to produce death or
17 great bodily injury. That same section is under assault and
18 battery first degree, which we submit he should be found
19 guilty of assault and battery first degree or assault and
20 battery second degree. If the emergency room visit is a
21 moderate injury, then I think you should find him guilty of
22 assault and battery second degree.

23 Assault and battery -- I don't think that there's a
24 great bodily injury. I think it's a moderate bodily injury,
25 but as the solicitor said, if the act is accomplished by

1 means likely to produce death or great bodily injury. Well,
2 that same sentence is under assault and battery first degree.
3 So you could find him guilty of assault and battery first
4 degree just by that one sentence, but as I said, we submit
5 that these injuries are moderate.

6 There was some question about back surgeries. It was
7 brought out on cross-examination that Mr. Cole had seen Dr.
8 Edwards since 2015. He had been having back trouble since
9 then. They tried to say that these surgeries were tied to
10 this incident. As Mr. Cole stated, he's got a Worker's Comp
11 claim pending. So naturally, they're trying to say that all
12 injuries come from this incident, but he was seeing Dr.
13 Edwards since 2015 for leg and back pain, as he said under
14 oath.

15 So we just think it's a matter of what kind of injuries
16 he suffered. We think it was an emergency room visit. It's
17 a tragic thing. Mr. Cole has been in law enforcement for 26
18 years. I believe he said he's seen a lot of trauma. He's
19 been in some automobile accidents and so things build up over
20 time.

21 But we would just ask you not to lay all of his problems
22 at the feet of Damaine McCoy. As you heard his mother say,
23 she had gone to get an order from probate court to pick him
24 up because he had some issues, and this is an unfortunate
25 thing. We're lucky nobody got hurt any worse. Mr. Cole did

1 get staples in his head.

2 And -- but we would ask you to just look at the
3 injuries. They are moderate injuries. We would ask for a
4 verdict of assault and battery second. According to this
5 statute, it could be assault and battery first, but we don't
6 think it's any more than that. It's either assault and
7 battery first or assault and battery second.

8 As far as resisting arrest, assault by resisting arrest,
9 there's actually two sections under the resisting arrest.
10 There's an A section, which there's no assault when resisting
11 arrest, and a B section, which he's charged under. There is
12 an assault when he's resisting arrest.

13 We'd ask you -- we think it would probably be unfair to
14 convict him of two assaults for the same incident, for the
15 same blow that was struck, to convict him under two statutes,
16 so we would ask you to either convict him of assault while
17 resisting arrest or assault and battery first or second, but
18 not both, and that -- or you could resist -- convict him of
19 the lesser resisting arrest where there's no assault and
20 convict him of assault and battery first or assault and
21 battery second.

22 We think that -- we don't think there's any great bodily
23 injury. We think it's moderate bodily injury. This one
24 sentence that the solicitor had pointed out exists under
25 assault and battery high and aggravated nature and assault

1 and battery first degree.

2 So if there's any doubt, the doubt should be weighed in
3 favor of the defendant. And we would just ask you to look at
4 the medical records. He's got the probate order. And just
5 weigh the evidence and, like I said from the beginning, it's
6 a matter of how severe his injuries were, and we would ask
7 for a verdict of guilty of assault and battery first or
8 assault and battery second. Thank you.

9 THE COURT: Thank you, counsel.

10 Ladies and gentlemen of the jury, it becomes my duty at
11 this time to charge you the law of the case. Does anybody
12 need a brief recess? Because this is going to take just a
13 few minutes. Okay?

14 All right. I want to thank you for patiently listening
15 to the presentation of this case and I want to thank counsel
16 for their able presentation of their respective case.

17 CHARGE ON THE LAW

18 THE COURT: It becomes my duty as trial judge under the
19 Constitution of this state to charge and instruct you the law
20 applicable to the case and it's your duty as jurors to accept
21 and apply the law as the Court states it to you. As jurors,
22 it's your exclusive duty to decide all issues of fact in the
23 case and for that purpose to determine the effect, the value,
24 and the weight of the evidence.

25 Both the State and the defendant have a right to expect

1 that you will conscientiously consider and evaluate the
2 evidence and apply the law of the case thereto, to the end
3 that both the State of South Carolina and the defendant will
4 receive and obtain a fair and impartial trial in this case.

5 When I use the word defendant, I'm referring to the
6 defendant, Damaine McCoy. The State of South Carolina by the
7 bills of indictment in this particular case charge the
8 defendant with the offense of assault and battery of a high
9 aggravated nature and also resisting arrest with a deadly
10 weapon.

11 To the charges and to the indictments, the defendant has
12 entered pleas of not guilty. A plea of not guilty by a
13 defendant places the burden of proof on the State to prove by
14 the evidence the guilt of the defendant beyond a reasonable
15 doubt before you, the jury, can find the defendant guilty.

16 A defendant is presumed in law innocent of the charges
17 contained in an indictment. It is a cardinal and fundamental
18 rule of the law of evidence that a defendant, irrespective of
19 the enormity of the charge against him, will always be
20 presumed innocent of the crime for which he's indicted unless
21 and until the guilt of the defendant has been proved by
22 evidence that satisfies you, the jury, of his guilt beyond a
23 reasonable doubt.

24 The presumption of innocence is not a mere legal theory
25 and it's not just a legal phrase. The presumption of

1 innocence is a substantial right to which every accused is
2 entitled. Our Supreme Court has declared that the
3 presumption of innocence is like a robe of righteousness
4 placed about the shoulders of a defendant and it remains with
5 the defendant and assigns him to that class of innocence
6 until the presumptive robe of righteousness has been stripped
7 from his person by evidence satisfying you, the jury, of the
8 guilt of the defendant beyond a reasonable doubt.

9 The presumption of innocence accompanies a defendant
10 from the time of his arraignment and appearance in the court
11 and continues with the defendant throughout every stage of a
12 trial and continues with the defendant after you retire to
13 the jury room to deliberate your verdict. The presumption of
14 innocence continues in existence to the benefit of the
15 defendant until you, the jury, reach the conclusion that the
16 State has proved the guilt of the defendant beyond a
17 reasonable doubt.

18 The State is not required to prove the guilt of the
19 defendant beyond all doubt or beyond every doubt, but beyond
20 a reasonable doubt. Proof beyond a reasonable doubt is proof
21 that leaves you firmly convinced of the defendant's guilt.

22 There are very few things in this world that we know
23 with absolute certainty and in criminal cases the law does
24 not require proof that overcomes every possible doubt. If
25 based upon your consideration of the evidence you are firmly

1 convinced that the defendant is guilty of the crime charged,
2 you must find him guilty. If, on the other hand, you think
3 there's a possibility that he is not guilty, you must give
4 the benefit of the doubt and find him not guilty.

5 I charge you that the defendant is entitled to every
6 reasonable doubt arising in the case. If any upon issue --
7 any issue that's essential to conviction and a verdict of
8 guilty, you have a reasonable doubt about that as to how that
9 issue is to be resolved, it would be your duty to resolve the
10 reasonable doubt in favor of the defendant.

11 A defendant, ladies and gentlemen, is not required to
12 prove his innocence, but the State is required in law to
13 prove every essential element of the offenses charged against
14 the defendant by evidence that satisfies you, the jury, of
15 the guilt of the defendant beyond a reasonable doubt before
16 you can convict the defendant and find him guilty.

17 Now, if you find the defendant guilty, but you have a
18 reasonable doubt as to whether the defendant would be guilty
19 of the greater crime charged or the lesser crime charged,
20 then you would resolve that reasonable doubt in favor of the
21 defendant and write a verdict of guilty only as to the lesser
22 charge. But of course, you could not write a verdict of
23 guilty to any charge unless as to that charge you find all
24 elements of the charges have been proved by the State beyond
25 a reasonable doubt.

1 Sometimes, you know, in cases you have a straight up
2 charge that has no lesser-included offenses, but in some
3 charges you do have lesser-included offenses. And you will
4 get a better understanding of that when I get into the
5 particular statutes that we are concerned with with these
6 indictments.

7 Now, these are the indictments. You will have them a
8 little later on. Indictments are not evidence and cannot be
9 considered by the jury as evidence in a case. The indictment
10 is simply the formal written instrument which contains the
11 charges against the defendant and it serves as the formal
12 document by which the case is processed into our court
13 system.

14 During the trial, each of us, you and I, have certain
15 duties to perform. As the trial judge, it's my
16 responsibility to preside over the trial of the case and I
17 also have the duty to rule upon or pass upon the
18 admissibility of the evidence offered during the progress of
19 the trial.

20 You are to consider only the competent evidence before
21 you and you are to disregard and disabuse from your mind any
22 testimony ordered stricken from the record of this case
23 during the progress of the trial, if there be any, and you
24 are to consider only the testimony which has been presented
25 from the witness stand, together with any exhibits admitted

1 into the record of this case and any stipulations of counsel
2 made into the record, if there be any.

3 Now, I have the additional duty to charge you the
4 applicable law of the case and, as the presiding judge, I am
5 the sole judge of the law of the case and it's your duty to
6 accept and apply the law as I state it to you. If you have a
7 preconceived idea as to what the law is or what the law ought
8 to be in this case and it should not agree with what I tell
9 you the law is, you are obligated under your oath to abandon
10 this preconception on your part because you are sworn to
11 accept the law precisely as I state it to you.

12 In every case tried in this court before a jury, the
13 jury becomes the sole and exclusive judge of the facts of the
14 case. You, the jury, are the judge of the facts in this case
15 and the Court is the judge of the law in the case.

16 The Constitution of this state has declared that the
17 trial judge shall not intimate, state, comment upon or make
18 any statement to a trial jury about the facts of the case.
19 Since you are the sole judge of the facts, you are not to
20 infer from anything that I've said during the progress of
21 this trial in ruling upon the admissibility of evidence or
22 otherwise or anything that I say to you during the course of
23 this charge that I have an opinion about the facts in the
24 case.

25 That is a matter solely for you, the jury, to determine.

1 As jurors then, it is your duty to determine, as I've stated
2 to you, the effect, the value, and the weight of the evidence
3 presented during the course of the trial.

4 Necessarily then, you must assess the credibility of the
5 witnesses who have testified in the case. Credibility is
6 simply a legalistic term which means believability. I charge
7 you that in determining the question of the credibility or
8 believability of witnesses, you may believe one witness as
9 against several witnesses or several witnesses as against one
10 witness.

11 You may believe a part of the testimony of a witness and
12 reject the remaining part of the testimony of that same
13 witness. You may believe the testimony of a witness in its
14 entirety or reject the testimony of a witness in its
15 entirety.

16 You may consider whether any witness has exhibited any
17 interest, any bias or any prejudice in the case, and you may
18 consider the demeanor of a witness and the appearance of a
19 witness from the witness stand. And you may consider the
20 opportunity for knowledge concerning those things about which
21 a witness testifies.

22 The law, ladies and gentleman, requires that you
23 exercise your good judgment, your common sense, your sense of
24 logic and reason, and your experiences in life, and you apply
25 these attributes of ability to the evidence and you determine

1 the weight of the evidence and to these state of facts as you
2 determine you take and apply the law as I state it to you and
3 thus arrive at a verdict in the case.

4 Now, before I get into the actual charge on the
5 statutes, I also need to charge you that I instruct you now
6 and emphasize to you that the election of a defendant in the
7 trial of a case not to testify on his own behalf is not a
8 factor to be considered by you in any way in your
9 deliberations and in your consideration on the question of
10 the guilt or innocence of the accused. It must not be
11 considered by you in any manner whatsoever against the
12 defendant or mitigate against him in any respect whatsoever.

13 Under your oath, you are to reach no inference and draw
14 no conclusion whatsoever from the fact that the defendant in
15 the case did not himself testify. This should not even be
16 discussed in the jury room. The burden -- as I have stated
17 to you, the burden of proof is upon the State. It is not
18 incumbent upon an accused to prove his innocence.

19 Now, the first indictment that I have here is the
20 resisting arrest with a deadly weapon. I charge you from
21 Section 16-3-625 of the Code of Laws of the State of South
22 Carolina of 1976, as amended. It's entitled resisting arrest
23 with deadly weapon.

24 A person who resists the lawful efforts of a law
25 enforcement officer to arrest him or another person with the

1 use or threat of use of a deadly weapon against the officer
2 and the person is in possession or claims to be in possession
3 of a deadly weapon is guilty of a felony. As used in this
4 section, deadly weapon means any instrument which can be used
5 to inflict deadly force.

6 As to assault and battery of a high and aggravated
7 nature, I charge you from Section 16-3-600 of the Code of
8 Laws of 1976, as amended.

9 A person commits the offense of assault and battery of a
10 high and aggravated nature if the person unlawfully injures
11 another person and (a) great bodily injury to another person
12 results or (b) the act is accomplished by means likely to
13 produce death or great bodily injury.

14 I mention the lesser-included offenses. The next one I
15 move to is the lesser-included offense of assault and battery
16 in the first degree.

17 A person commits the offense of assault and battery in
18 the first degree if the person unlawfully injures another
19 person and the act occurred during the commission of a
20 robbery, burglary, kidnapping, or theft, or offers or
21 attempts to injure another person with the present ability to
22 do so and the act is accomplished by means likely to produce
23 death or great bodily injury, or occurred during the
24 commission of a robbery, burglary, kidnapping or theft.

25 Assault and battery in the first degree is a lesser-

1 included offense of assault and battery of a high and
2 aggravated nature. The next charge that's a lesser-included
3 offense is that of assault and battery in the second degree.

4 I charge you that a person commits the offense of
5 assault and battery in the second degree if the person
6 unlawfully injures another person or offers or attempts to
7 injure another person with the present ability to do so and
8 moderate bodily injury to another person results or moderate
9 bodily injury to another person could have resulted. Assault
10 and battery in the second degree is a lesser-included offense
11 of assault and battery in the first degree and assault and
12 battery of a high and aggravated nature.

13 For purposes of those sections, the following
14 definitions:

15 One, great bodily injury means bodily injury which
16 causes a substantial risk of death or which causes serious
17 permanent disfigurement or protracted loss or impairment of
18 the function of a bodily member or organ.

19 Two, moderate bodily injury means physical injury that
20 involves prolonged loss of consciousness or that causes
21 temporary or moderate disfigurement or temporary loss of the
22 function of a bodily member or organ or injury that requires
23 medical treatment when the treatment requires the use of
24 regional or general anesthesia or injury that results in a
25 fracture or dislocation. Moderate bodily injury does not

1 include one-time treatment and subsequent observation of
2 scratches, cuts, abrasions, bruises, burns, splinters or any
3 other minor injuries that do not ordinarily require extensive
4 medical care.

5 Ladies and gentlemen, you're not partisans or advocates
6 for the State of South Carolina or the defendant. You do not
7 serve as jurors to reward friends or punish enemies.
8 Obviously, such a perverted system of justice would be
9 intolerable in our society.

10 You have been selected by both the State and the
11 defendant as fair and impartial jurors. It is your duty then
12 by your joint deliberations to determine the facts in this
13 case, giving to the defendant the benefit of every reasonable
14 doubt on each and every issue. Then to the facts which you
15 determine, you then take and apply the law which has been
16 given to you by the Court and thus arrive at a verdict. When
17 you have accomplished these responsibilities, you will have
18 satisfied your oath as jurors and you will have discharged
19 your duty to the Court.

20 I will now instruct you on the form of the verdict in
21 the case. Mr. Foreman, when the jury has deliberated and
22 reached a verdict, you will find on the backside of each
23 indictment a verdict form.

24 As to the charge of resisting arrest with a deadly
25 weapon, once the jury has reached a verdict, it will be your

1 duty to write in the appropriate verdict. Guilty or not
2 guilty would be the choices of verdict on this particular
3 verdict form. Once a verdict is reached, you need to write
4 that in, sign your name where it says, there's a line down
5 here for the foreperson, and put the date in. Okay? That's
6 as to the resisting arrest.

7 Now, as to the assault and battery of a high and
8 aggravated nature and the lesser-included offenses, on that
9 verdict form on the back of that indictment, there's four
10 choices of verdict. Once the jury has reached a verdict as
11 to what that might be, it would be your duty to check the
12 appropriate verdict, sign your name, and date it.

13 On this particular case, those four choices -- you're
14 not to give any weight to the numerical order. They have to
15 be put in some order, but don't give any weight to the
16 numerical order. Assault and battery of a high and
17 aggravated nature. Two is assault and battery first degree.
18 Three, assault and battery second degree. Four is not
19 guilty.

20 The verdicts that you reach, ladies and gentlemen, must
21 be a unanimous verdict. All twelve jurors must agree on the
22 verdict that you authorize Mr. Foreman to write.

23 At this time, I'm going to ask you to step back to the
24 jury room. Relax a few minutes. Do not deliberate this case
25 until I check off with counsel and we send the exhibits back

1 to you, along with these indictments.

2 Mr. Luther, I need you to assist the jury back to the
3 jury room and I need our alternate juror to be placed in one
4 of the separate rooms in case they are needed in a few
5 minutes, but they won't go into the jury room with the jury
6 at this time. Okay?

7 All right. If all of you will step back and give me a
8 few minutes and we'll get you to work. Hopefully, your lunch
9 will be here very shortly.

10 (WHEREUPON, the jury exited the courtroom at 1:25 p.m.)

11 THE COURT: All right. Counsel, any exceptions or
12 comments for the record? And we'll get by that and we need
13 to check off on the exhibits. I assume everything should
14 still be there.

15 MS. MUNNERLYN: No, Your Honor, none from the State.

16 MR. STEPHENS: None from the defense.

17 THE COURT: Thank y'all for working together to get this
18 case presented.

19 MS. MUNNERLYN: Sure.

20 THE COURT: It sure makes my job easier when y'all can
21 perform your duties, as you have done.

22 (WHEREUPON, there was a pause in the proceedings to
23 check the exhibits, after which the proceedings resumed
24 as follows.)

25 MS. MUNNERLYN: There you go. The exhibits are ready.

1 THE COURT: Madam Clerk?

2 THE CLERK: Yes, sir.

3 THE COURT: Madam Clerk, if y'all will take those back
4 and tell them they may begin their deliberations. And I have
5 the indictments.

6 (WHEREUPON, jury deliberations began at 1:27 p.m.)

7 THE COURT: Have you got anything else before we break
8 for lunch?

9 MS. MUNNERLYN: No, Your Honor.

10 THE COURT: All right. We'll stand at ease.

11 (WHEREUPON, there was a break in the proceedings from
12 1:28 p.m. until 3:15 p.m., after which the proceedings
13 resumed as follows.)

14 THE COURT: All right. Mr. Joyner, are you ready?

15 THE BAILIFF: You can bring them in.

16 (WHEREUPON, the jury entered the courtroom at 3:16 p.m.)

17 THE COURT: Madam Clerk?

18 THE CLERK: Mr. Foreman, have y'all reached a verdict?

19 THE FOREMAN: Yes, we have.

20 THE COURT: All right. Signed and dated.

21 Madam Clerk, you may publish the verdicts.

22 VERDICT

23 THE CLERK: Okay. Indictment Number 2017-GS-34-216,
24 State v. Damaine McCoy, indictment for resisting arrest with
25 a deadly weapon, verdict guilty. Signed Anthony Bollinger,

1 1/28/2020.

2 Indictment Number 2019-GS-34-517, State v. Damaine
3 McCoy, indictment for assault and battery of a high and
4 aggravated nature, verdict guilty of assault and battery
5 first degree. Signed Anthony Bollinger, 1/28/2020.

6 Is this your verdict, so say you all? If yes, raise
7 your hand.

8 (WHEREUPON, all jurors complied.)

9 THE CLERK: Yes. Okay.

10 THE COURT: Anything further of the jury?

11 MS. MUNNERLYN: Not from the State, Your Honor.

12 MR. STEPHENS: Just thank them for their service.

13 THE COURT: Mr. Foreman and ladies and gentlemen of the
14 jury, thank you so much for your service on this case.

15 Can I -- before I dismiss the jury on this case, can I
16 meet with the solicitor and Mr. Stephens up here just a
17 minutes?

18 MR. STEPHENS: Certainly.

19 (WHEREUPON, a bench conference was held in the presence
20 of the jury but out of the hearing of the jury off the
21 record, after which the proceedings resumed as follows.)

22 THE COURT: This is what we're going to do. We're going
23 to release you for the day. I want you to call in after 6
24 tonight. Make sure you got that number because right now
25 we're lined up to have to seat another jury and I'll need you

1 back to join the panel members because we've got a limited
2 number of jurors and, you know, we have to have so many.

3 So if y'all will, please call in after 6 tonight. Once
4 again, thank you for helping us with this case and check with
5 us tonight and we'll give you further instructions as to when
6 we need you back. Right now, it looks like it will be
7 sometime tomorrow, but things are subject to change.

8 All right. Mr. Luther, if you will assist the jury and
9 we will assist Mr. Foreman. He's going to need to go that
10 way.

11 THE CLERK: And, Your Honor, just verify that they have
12 their -- still have their black cards with the numbers.

13 THE COURT: You've still got -- everybody still got this
14 card?

15 THE CLERK: With the jury voice mail.

16 THE COURT: He needs one and she -- or he needs one.
17 Did you need another one, ma'am? Okay. If you all would,
18 return your badges, we'll reissue them if need be.

19 All right. Everybody else remain seated while the jury
20 departs.

21 (WHEREUPON, the jury was released and exited the
22 courtroom at 3:20 p.m.)

23 THE COURT: All right. Anything in mitigation you'd
24 like to express to the Court?

25 MR. STEPHENS: Your Honor, of course, as you know, this

1 case is almost three years old. I got into it a little late.
2 He had a private attorney to start with. I got in it about a
3 year or 18 months after his arrest, and his mother and I have
4 been working on it.

5 It's been a very difficult case. He's been -- of
6 course, he's been evaluated. As I told you earlier, he's
7 competent. He does have some issues.

8 We would just ask that you show some mercy. It was an
9 unfortunate situation that day with the child. Luckily, no
10 one was hurt any more seriously.

11 And we would just ask you give him concurrent time and
12 we ask that you not give him all of it. Just show -- give
13 him some mercy. He's -- like I said, he's got some issues
14 and don't hold that against him.

15 THE COURT: All right. Thank you.

16 I'll hear from the State and then I'll come back and see
17 if Mr. McCoy wants to say anything to me. Okay?

18 THE DEFENDANT: All right.

19 THE COURT: Solicitor?

20 MS. MUNNERLYN: Your Honor, obviously, this was a very
21 serious matter for Mr. Cole. I'm going to ask him to address
22 you himself in just a minute.

23 But we would just like for you to sentence him in a
24 substantial manner in accordance with the injuries. Of
25 course, this has changed Mr. Cole's -- Officer Cole's life.

1 He's not likely to be able to police anymore. So it's --
2 it's just changed everything for him and so we think the
3 sentence should be appropriate.

4 THE COURT: All right. Let me come back to the officer
5 after I hear from Mr. McCoy, if he would like to be heard.

6 MR. STEPHENS: Stand up.

7 THE DEFENDANT: Assault and battery. Assault and
8 battery is the -- the begin attack on a person. I was
9 assaulted first with a taser and then it was a reaction, not
10 a resisting arrest. I was not resisting any arrest. I was
11 tased and I reacted to him tasing me because he didn't figure
12 out the situation. He just came up there and tased me.

13 And then resisting arrest and assault and battery is two
14 of the same charge. It's for one crime. So how can I get
15 charged twice for one crime?

16 THE COURT: All right. Mr. Cole?

17 MR. COLE: Judge, that night when I went there, I tried
18 to handle that as easy as I could. Mr. McCoy told me --
19 pointed that thing at me and told me he was going to kill me.
20 And when he beat me with that thing, I thought my life was
21 over.

22 Now, he's -- I've lost a 20-something or 30-year police
23 career now. I'm not going to be able to go back. I'm not
24 the same person I was, not even to her, but I do -- I've
25 forgiven Mr. McCoy because you can't go to heaven with hatred

1 in your heart. I don't hate and I forgive him for what he
2 done, and I thank his mother and his family for trying to
3 help me and I appreciate them. I don't hold no animosity
4 towards none of them, not even Mr. McCoy.

5 I just ask that he get some help and I ask you to
6 sentence him accordingly, and I feel like that he needs to
7 get some type of mental health help and I'd like for him to
8 get that. Thank you.

9 THE COURT: Thank you.

10 Well, this situation was bad enough, but it sure could
11 have been a lot worse. Mr. McCoy, it sounds like you're
12 extremely fortunate that you are here and able to have this
13 trial. You put a lot of people in danger.

14 I don't know what the background was about the child,
15 but obviously, you had your whole family upset over a child
16 that you had taken out of the house. You endangered the
17 child, you endangered your family, you endangered yourself,
18 and then you endangered these police officers that I --
19 common sense tell me that they didn't -- they didn't want to
20 be there any more than you wanted them there. They certainly
21 would not desire to go into a situation like that if it
22 wasn't for the call of duty and they answered.

23 THE DEFENDANT: It was a city call.

24 THE COURT: Do we have any sentencing sheets available?

25 MS. MUNNERLYN: Yes, sir.

1 (WHEREUPON, there was a pause in the proceedings, after
2 which the proceedings resumed as follows.)

3 THE COURT: Mr. McCoy, I'm going to proceed to
4 sentencing, but I need to get clear on the record at this
5 time you need to fully understand that you have appellate
6 rights. In order to preserve your appellate rights, you must
7 file a notice of appeal within ten days of your sentencing.

8 THE DEFENDANT: All right, Your Honor. I don't want to.
9 I want to go to the Supreme Court.

10 (WHEREUPON, there was a pause in the proceedings, after
11 which the proceedings resumed as follows.)

12 MR. STEPHENS: He got jail time. The warden --

13 THE JAIL WARDEN: He got 1,029 days, 1,029 days.

14 THE COURT: Well, you know, unfortunately for Mr. McCoy,
15 I don't want to agree with his reasoning about these crimes
16 being so similar. They're totally different crimes, even
17 though they do involve the terms assault. I mean resisting
18 arrest is one thing and assault and battery in the first
19 degree is another situation.

20 SENTENCE

21 THE COURT: All right. On the assault and battery in
22 the first degree, the sentence is 10 years in the State
23 Department of Corrections. Credit for the 1,029 days.

24 And on the resisting arrest with a deadly weapon, the
25 sentence is 7 ½ years consecutive. Credit for 1,029 days.

1 To counsel it will be obvious why it's not the maximum
2 sentence. All of you know and are familiar with the post-
3 trial situation. So that's the way it's going to be.

4 MR. STEPHENS: Thank you, Your Honor.

5 MS. MUNNERLYN: Thank you, Your Honor.

6 THE DEFENDANT: That's 17 years? 18 years?

7 MR. STEPHENS: That's 17 years.

8 THE DEFENDANT: I appreciate y'all. Thank you.

9 (WHEREUPON, the proceedings ended at 3:32 p.m.)

10

11 --- END REQUESTED TRANSCRIPT ---

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State of South Carolina	)	
	)	Certificate
County of Florence	)	

I, the undersigned, Krystal J. Smith, Notary Public and Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 113, constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of General Sessions for Marlboro County, South Carolina, on the 28th day of January, 2020.

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

s/ Krystal J. Smith

Court Reporter

Florence, South Carolina

June 27, 2020

WITNESSES

Trevor W Murphy

Marlboro County Sheriff

Law Enforcement Case #:
284

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I
hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and
plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER
MAR0967

ARRESTED ON: 0000-00-00

ACTION OF GRAND JURY

True B. H.

Grand Jury Foreperson

Date

VERDICT

1. ~~Assault + Battery of a High + Aggravated Nature~~
2. ☒ ~~Assault + Battery 1st Degree~~
3. ~~Assault + Battery 2nd Degree~~
4. ☒ ~~Not Guilty~~

Petit Jury Foreperson

Date

1/28/2020

DOCKET NUMBER:
2019-GS-34-0517

The State of South Carolina

County of Marlboro

COURT OF GENERAL SESSIONS

Term:
October 2019

THE STATE

vs.

Damaine Antron McCoy

INDICTMENT FOR

Assault/Assault & Battery of a high and
aggravated nature offense; Penalty statutes
16-03-0600(B)(2); felony C

§16-03-0600(B)(1)

CDR Code: 3411

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF MARLBORO)

Assault/Assault & Battery of a high and aggravated
nature offense; Penalty statutes 16-03-0600(B)(2);
felony C

§16-03-0600(B)(1)

At a Court of General Sessions, convened on October 01, 2019, the Grand Jurors of Marlboro County present upon their oath:

ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE

CDR: 3411, 16-3-600(B)

That Damaine Antron McCoy did in Marlboro, on or about April 5, 2017, unlawfully injure Buddy Cole and great bodily injury to Buddy Cole occurred, in violation of Section 16-3-600(B) of S.C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



WILLIAM B. ROGERS, JR.
SOLICITOR

WITNESSES

Trevor W Murphy

Marlboro County Sheriff

Law Enforcement Case #: 2017-001640
284

 WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I
hereby waive presentment to the Grand Jury.

 Defendant

I hereby appear in my own proper person and
plead guilty to the within indictment or to:

 Defendant

ARREST WARRANT NUMBER
2017A3410100177

ARRESTED ON: 2017-04-10

ACTION OF GRAND JURY

True Billed

Grand Jury Foreperson

11 JUL 2017

Date

VERDICT

 Guilty

 Petit Jury Foreperson

Date

 1/28/2020

DOCKET NUMBER:
2017-GS-34-0216

The State of South Carolina**County of Marlboro**

COURT OF GENERAL SESSIONS

Term:
JULY 2017

THE STATE

vs.

Damaine Antron Mccoy

INDICTMENT FOR

**Resisting / Resisting arrest with a deadly
weapon - 1st offense**

§16-03-0625

CDR Code: 2352

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF MARLBORO)

Resisting / Resisting arrest with a deadly weapon -
1st offense

§16-03-0625

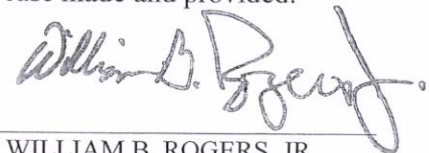
At a Court of General Sessions, convened on JULY 11, 2017, the Grand Jurors of Marlboro County present upon their oath:

RESISTING ARREST WITH A DEADLY WEAPON

CDR: 2352 16-03-0625

That Damaine Antron Mccoy did in Marlboro County on or about April 5, 2017, knowingly and willfully resist the lawful efforts of a Law Enforcement Officer to arrest him/her or another person with the use or threat of use of a deadly weapon against the Officer, to wit: BUDDY COLE and that the defendant was in possession or claimed to be in possession of a deadly weapon, in violation of Section 16-03-0625, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



WILLIAM B. ROGERS, JR.
SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

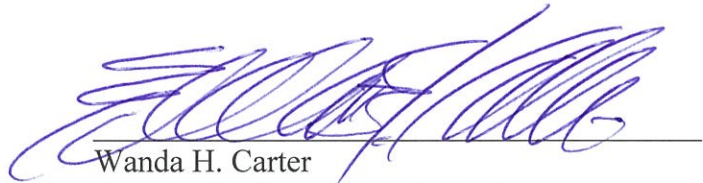
Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

RECEIVED

Dec 22 2020

SC Court of Appeals



Wanda H. Carter
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 22nd day of December, 2020.