

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

Clifton Newman, Circuit Court Judge

Appellate Case No. 2021-001226

Opinion No. 2021-UP-259 (S.C. Ct. App. filed July 7, 2021)

The State of South Carolina,

Respondent,

v.

James Kester,

Petitioner.

APPENDIX

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S.C. SUPREME COURT

INDEX

INDEX	i
RECORD ON APPEAL	1
FILED SEPTEMBER 17, 2019	
FINAL BRIEF OF APPELLANT	484
FILED OCTOBER 4, 2019	
FINAL BRIEF OF RESPONDENT	531
FILED OCTOBER 2, 2019	
OPINION NO. 2021-UP-259	559
FILED JULY 7, 2021	
PETITION FOR REHEARING.....	564
FILED JULY 22, 2021	
ORDER DENYING PETITION FOR REHEARING	572
FILED OCTOBER 1, 2021	

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

Clifton Newman, Circuit Court Judge

Appellate Case No. 2018-001852

Case No. 2017-GS-40-5220; 5223; 5224; 5226-5227; 5229-5232

State of South Carolina,

Respondent.

v.

James Kester,

Appellant,

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INDEX

TRANSCRIPT OF HEARING ON REQUEST FOR SELF-REPRESENTATION	1
DATED OCTOBER 4, 2018	
TRANSCRIPT OF APPELLANT’S TRIAL	31
DATED OCTOBER 8-10, AND 12, 2018	
PRE-TRIAL MOTIONS	
ALLEN BRINSON (IN-CAMERA)	
Direct Examination by Mr. Eaton	42
HEATHER COLLINS (IN-CAMERA)	
Direct Examination by Mr. McGlothlin.....	55
JURY SELECTION.....	61
OPENING STATEMENT BY MR. MCGLOTHIN	101
OPENING STATEMENT BY MR. KESTER	103
TESTIMONY	
BONNIE MONTGOMERY	
Direct Examination by Mr. Eaton	106
JENNIFER SOHN BROWDER	
Direct Examination by Mr. McGlothlin.....	117
JAMIE BROWDER	
Direct Examination by Mr. Eaton	122
Cross Examination by Mr. Kester.....	129
KAYLIN WHITE	
Direct Examination by Mr. Eaton	129
JOHN PHILLIP WORKS	
Direct Examination by Mr. Eaton	134
KELLI SOHN MONTGOMERY	
Direct Examination by Mr. Eaton	138
Cross Examination by Mr. Kester.....	144

HOLLY YANDEL

Direct Examination by Mr. Eaton	146
Cross Examination by Mr. Kester	156
Redirect Examination by Mr. Eaton	158
Recross Examination by Mr. Kester	159

JOSHUA LEDBETTER

Direct Examination by Mr. McGlothin.....	160
Cross Examination by Mr. Kester.....	165
Redirect Examination by Mr. McGlothin	166

WILLARD SOHN

Direct Examination by Mr. Eaton	168

JAN SOHN

Direct Examination by Mr. McGlothin.....	176
Cross Examination by Mr. Kester.....	179
Redirect Examination by Mr. McGlothin	180
Recross Examination by Mr. Kester	181

LAURA GABRELS

Direct Examination by Mr. McGlothin.....	183
Cross Examination by Mr. Kester.....	190

TONYA WHITE

Direct Examination by Mr. McGlothin.....	193

KITTY HENDERSON

Direct Examination by Mr. McGlothin.....	198

MICHAEL ROONEY

Direct Examination by Mr. Eaton	203
Cross Examination by Mr. Kester.....	213

ANGELA GRACE WORKS

Direct Examination by Mr. McGlothin.....	214

KATHRYN HOLLOMAN

Direct Examination by Mr. McGlothin.....	221

JOHN BRIAN MONTGOMERY

Direct Examination by Mr. McGlothin.....	226
Cross Examination by Mr. Kester.....	230

KATHERINE CATER MONTGOMERY	
Direct Examination by Mr. Eaton	231
Cross Examination by Mr. Kester	234
RILEY ELIZABETH MONTGOMERY	
Direct Examination by Mr. Eaton	237
Cross Examination by Mr. Kester	241
JOHN E. MONTGOMERY	
Direct Examination by Mr. Eaton	242
Cross Examination by Mr. Kester	250
ALLEN BRINSON	
Direct Examination by Mr. Eaton	252
HEATHER COLLINS	
Direct Examination by Mr. McGlothlin	258
GEORGE WISE	
Direct Examination by Mr. McGlothlin	261
ROBERT UHALL	
Direct Examination by Mr. Eaton	268
Cross Examination by Mr. Kester	284
WILLIAM HILTON	
Direct Examination by Mr. Eaton	288
THE STATE RESTS	311
MOTION FOR DIRECTED VERDICT	311
COURT’S RULING ON MOTION FOR DIRECTED VERDICT	315
THE DEFENSE RESTS	324
CLOSING ARGUMENT BY MR. EATON	325
CLOSING ARGUMENT BY MR. KESTER	333
CHARGE ON THE LAW	341
VERDICT	386
SENTENCING	439

COURT’S EXHIBIT #3 (JURY NOTE)	442
COURT’S EXHIBIT #4 (JURY NOTE)	443
STATE’S EXHIBIT #90 (CRASH DATA REPORT)	444
STATE’S EXHIBIT #91 (STATE NEWSPAPER OBITUARY)	450
INDICTMENTS	451
SENTENCING SHEETS.....	469
CERTIFICATE OF COUNSEL	478

THE FOLLOWING EXHIBITS ARE ON FILE WITH THE RICHLAND COUNTY CLERK OF COURT’S OFFICE: STATE’S EXHIBIT #1 (911 CALLS); STATE’S EXHIBIT #2 (RECORDED INTERVIEW); STATE’S EXHIBIT’S #4-7; 20-27; 32-86 (PHOTOGRAPHS)

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF RICHLAND) COURT OF GENERAL SESSIONS
3) No. 2017 GS 40 05220

4 STATE OF SOUTH CAROLINA)
5)
6 versus) TRANSCRIPT OF RECORD
7)
8 JAMES B. KESTER)
9 Defendant)

10 Columbia, South Carolina
11 October 4, 2018

12 B E F O R E :

13 HONORABLE CLIFTON NEWMAN, Judge Presiding

14
15 A P P E A R A N C E S :

16 For the State: V. EATON, Esq.
17 Assistant Solicitor

18 For the Defendant: B. NETTLES, Esq.
19 J. DELGADO, Esq.

20 Reporting: DCRP

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I N D E X

1		
2		
3	DEFENDANT SWORN	
4	Questions by the Court	p. 4
5		
6	Ruling of the Court	29
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

EXHIBITS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
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NO EXHIBITS WERE PROFFERED OR ADMITTED

1 (The within matter came before the Court for hearing
2 on October 4, 2018)

3 SOLICITOR: May it please the Court, Your Honor.

4 This is Mr. Kester, James B. Kester, with his attorn-
5 eys, Bill Nettles and James Delgado.

6 Your Honor, Mr. Kester is first up next week on twelve
7 counts of attempted murder from July 2017. Judge Jun, Your
8 Honor, set a bond on a charge to satisfy the appellate re-
9 cord before your Honor. Miss Jun set a bond.

10 It is my understanding that Mr. Kester intends to re-
11 present himself and that would be the reason we are before
12 Your Honor.

13 THE COURT: All right, and what is the status of coun-
14 sel here? Mr. . . .

15 SOLICITOR: At the moment, he's in custody at the
16 jail.

17 He has counsel, Your Honor.

18 THE COURT: At this moment in time, you are not being
19 relieved as counsel.

20 MR. DELGADO: We are counsel in this case, and we do
21 think it would be a mistake. We know this case well enough
22 to act as his counsel. We think it should stay with us.

23 If he is allowed to act as his own counsel we could
24 act as stand-by counsel. He has a right to represent him-
25 self and try his own case.

1 THE COURT: But I mean, at this moment in time you
2 all have not been relieved as counsel for him.

3 MR. DELGADO: We know his case well enough that we'd
4 say he needs counsel and we'd like him to stay with us. I
5 can say he's been responsible enough that he can sit here
6 and act and we can stay here as stand-by counsel for him.

7 THE COURT: All right. Mr. Nettles, you are co-coun-
8 sel on the case?

9 MR. NETTLES: Yes, sir.

10 THE COURT: All right. Mr. Kester, . .

11 DEFENDANT: Yes, sir.

12 THE COURT: Please stand for me for a moment, and we
13 need to swear him in to discuss some things with me.

14 JAMES B. KESTER, being duly
15 sworn, testified as follows:

16 THE COURT: All right, Mr. Kester. What is your full
17 name?

18 DEFENDANT: James Robert Kester.

19 THE COURT: And how do you spell your last name?

20 DEFENDANT: K E S T E R.

21 THE COURT: Kester. Yes, sir.

22 As I understand it from listening to the Solicitor and
23 Mr. Delgado, you want to represent yourself in this case?

24 DEFENDANT: Yes, sir.

25 THE COURT: And you do not want Mr. Delgado and Mr.

1 Nettles to be your lawyers any longer?

2 DEFENDANT: I would say they can be a back-up, but I'd
3 be the lawyer, and like they just said.

4 THE COURT: And you want that? You want them to be
5 stand-by counsel, meaning they will be there to answer ques-
6 tions for you and give you some pointers on the law.

7 And doing that, I mean, not count as representations on
8 your behalf to the Court or to the jury.

9 DEFENDANT: Yes.

10 THE COURT: Do you understand that? They can say some
11 things to the Court but they wouldn't be representing you on
12 the case.

13 That's the way you want it to be?

14 DEFENDANT: Yes.

15 THE COURT: How old are you?

16 DEFENDANT: Sixty-six.

17 THE COURT: And what is your educational background?

18 DEFENDANT: Well, I got about three years of college
19 at the University of South Carolina.

20 THE COURT: And what were you studying there?

21 DEFENDANT: Mathematics.

22 THE COURT: And are you retired or what is your status
23 employment-wise?

24 DEFENDANT: Retired.

25 THE COURT: From what line of work?

1 DEFENDANT: Well, I've had more or less several --
2 several different jobs. I did some landscaping work and
3 I worked at Allen Chemical Company here, and I took care of
4 my daughter about twenty years because she got ruined by
5 the Department of Mental Health.

6 So I did that until she passed in 2016. I took care
7 of my mother eleven years. So I was taking care of my
8 mother and my daughter at the same time.

9 My mother would have had to be in a nursing home and
10 my daughter would have been a druggie. She was a vegetable
11 when she got out. She was in the eighth grade before and
12 she couldn't even read or wash her hair or do nothing after-
13 wards.

14 So that's what I did for about twenty-some years.

15 THE COURT: Have you ever been treated for abuse of
16 alcohol or drugs? or for mental illness?

17 DEFENDANT: No, sir.

18 THE COURT: Did you have a competency exam? Was there
19 a competency exam done in this case?

20 DEFENDANT: What? As far as me representing myself?

21 THE COURT: No. Going to doctors to determine your
22 competency to stand trial. Was that done in this case?

23 Let me ask the Solicitor first.

24 DEFENDANT: No, sir.

25 SOLICITOR: In the case there was a retained

1 psychiatrist, Your Honor.

2 THE COURT: Okay, and what was his finding, Mr.
3 Delgado?

4 MR. DELGADO: That he was competent to give testimony,
5 competent to stand trial.

6 That was done voluntarily by him. It was requested of
7 him, which he did. He cooperated, and he was given a diag-
8 nosis of competent to stand trial.

9 THE COURT: Do you agree with that, Mr. Kester?

10 DEFENDANT: Yes, sir.

11 Yes, sir, I do.

12 THE COURT: Going back to the question of have you
13 ever been treated for abuse of alcohol or drugs, or for
14 mental illness . .

15 A. DEFENDANT: No, sir.

16 THE COURT: . . have you taken any drugs, medication
17 or anything in the last twenty-four hours?

18 DEFENDANT: No, sir. I've never been on anything.

19 THE COURT: Do you fully understand and comprehend ev-
20 erything you are doing here today?

21 DEFENDANT: Yes, sir.

22 THE COURT: Are you aware of any physical, any emo-
23 tional or nervous problems, or anything that might affect
24 your ability to understand what we are assessing here to-
25 day, sir?

1 DEFENDANT: I understand completely.

2 THE COURT: All right. Have you ever studied the law
3 before?

4 DEFENDANT: I've read law books about the law, and I
5 don't know too much about it. But I've been around it for
6 a long time.

7 THE COURT: What kind of law studying did you do?

8 DEFENDANT: Read law books and that's it.

9 THE COURT: In recent years or a long time ago or . .

10 DEFENDANT: In the past few years.

11 THE COURT: Before this case or since the case?

12 DEFENDANT: Since it, more or less.

13 THE COURT: Have you ever been in criminal court be-
14 fore?

15 DEFENDANT: No, sir. I had one small misdemeanor and
16 that's all. That was 1990, and my daughter had gone to Ann
17 Middle School and she said a boy made a remark to her and
18 she wanted to go over and talk to him. First of all, I
19 went to her homeroom and got into an involvement. Me and
20 her walked a lot.

21 For some reason, the police arrested me and charged me
22 with four things and I defended myself, and they stacked
23 the charges so much that I -- I was acquitted on two of
24 them and two I was not. I think I had three weekends in
25 jail and that was the extent of it.

1 THE COURT: Which Court was that tried in?

2 DEFENDANT: Magistrate's Court.

3 THE COURT: Here?

4 DEFENDANT: Yes, sir. That was the extent of it.

5 THE COURT: That was a jury trial?

6 DEFENDANT: Yes, sir.

7 THE COURT: And how did you do in that trial as far as
8 handling objections or questions or . . .

9 DEFENDANT: It was a snap compared to this. It was
10 small, you know.

11 THE COURT: All right.

12 DEFENDANT: But I think I did okay.

13 THE COURT: In this case are there other charges, Soli-
14 citor?

15 SOLICITOR: Twelve counts of attempted murder, sir.

16 THE COURT: Twelve counts of attempted murder. Each
17 count of attempted murder carries a possible sentence of up
18 to thirty years.

19 Do you understand that?

20 DEFENDANT: Yes, sir.

21 THE COURT: And you are charged with twelve counts of
22 that, and attempted murder is also classified in the law
23 as a most serious offense. Is that
24 right?

25 SOLICITOR: Yes, sir.

1 THE COURT: And as a most serious offense -- if you
2 have two or more most serious offenses, not in the same
3 setting like this but at any other time, you can be sen-
4 tenced to life without the possibility of parole.

5 DEFENDANT: I'd have to argue in a case like that. I
6 have a lot of problems with how they charged me.

7 THE COURT: All right.

8 DEFENDANT: I've got a Five Million Dollar bond, and
9 I see guys who have been there for killing -- I see guys
10 with two or three killings who get out on a Hundred
11 to a Hundred and Fifty Thousand. A Five Million Dollar
12 bond.

13 THE COURT: What is important is for me to understand
14 right now that you understand the possible punishment for
15 what you're charged with.

16 DEFENDANT: Yes, sir.

17 THE COURT: And the possible punishment for those
18 crimes.

19 You understand those things?

20 DEFENDANT: Yes, sir.

21 THE COURT: So do you know what the elements are of
22 the crime of attempted murder?

23 Do you know what that is?

24 DEFENDANT: Yes, sir. I understand what they're say-
25 ing, but, you know, I disagree with these charges.

1 THE COURT: You could argue that to the jury, and you
2 may raise some issues with me as well, but . .

3 DEFENDANT: Yes, sir.

4 THE COURT: . . I want to be sure you understand the
5 elements of the crime of attempted murder.

6 DEFENDANT: I feel like if I get ten years that's the
7 same as getting thirty or forty years at my age, but I don't
8 agree with all these charges.

9 Like you said, that would be for the jury.

10 THE COURT: Right. Well, let's look at this thing
11 here of attempted murder. Where is it?

12 (Brief pause)

13 Attempted murder -- do you understand that to prove at-
14 tempted murder the State must prove that you attempted to
15 kill someone else . .

16 DEFENDANT: Yes.

17 THE COURT: . . with malice, either express or implied
18 malice. That's basically what attempted murder is.

19 DEFENDANT: Yes, sir.

20 THE COURT: And malice has a definition as well, so
21 do you believe you fully understand the elements of the
22 crimes you are charged with?

23 DEFENDANT: Yes, sir.

24 THE COURT: All right.

25 (Brief pause)

1 THE COURT: How do you want to get rid of them?

2 DEFENDANT: Well, you know, to me I've been incompe-
3 tent up to now, and now I'm trying to get the discovery.
4 I'm trying to get from the State a few things. I didn't
5 get the discovery until a few days ago.

6 When I called they never took my call but maybe two
7 times in fifteen months I've been incarcerated. You know,
8 so I nodded off on it.

9 You know, they've got a lot of things. They've got
10 a Hundred Thousand Dollars which is a lot of money, and
11 I don't expect to get all if I paid that much but, I mean,
12 I know I have got no justice from my lawyers.

13 I think they have been negligent and due diligence I
14 know has been fairly minimum, and since there's no due dili-
15 gence . .

16 Q. All right. You have indicated -- Mr. Delgado has prac-
17 ticed law for -- goodness, it's been a long time.

18 How many years now?

19 MR. DELGADO: A couple of years.

20 THE COURT: You've been a lawyer I know for over thirty
21 years.

22 Mr. Nettles was a U.S. Attorney and prosecutor on be-
23 half of the State of South Carolina.

24 DEFENDANT: I know the politics. I know he was a U.S.
25 Attorney and he was in politics as well for six and a half

1 or so.

2 THE COURT: All right.

3 DEFENDANT: So, you know, I've been sitting there for
4 fifteen months shut down, and, like I say, no discovery un-
5 til a few days ago. A lot of things I just got.

6 THE COURT: As I understand it, they are ready and are
7 ready and prepared for trial. Is that right, Mr. Nettles?

8 MR. NETTLES: That's correct.

9 THE COURT: Yeah. So, I mean, we have two of the most
10 experienced lawyers in Richland County with their varied
11 experience in trying cases.

12 Now, Mr. Delgado tried a murder case here just last
13 year and, against the pundits' expectations, he was found
14 not guilty.

15 DEFENDANT: I haven't seen any of that.

16 THE COURT: I mean, I'm not trying to convince you of
17 what you should do but I want to be sure that you under-
18 stand that you have two of the best lawyers in town based
19 on their reputations and their experience.

20 And you are charged with crimes for which you can get
21 a lifetime. As you said, you are sixty-six and if you get
22 ten years, fifteen years, twenty years, that's like a life
23 sentence.

24 DEFENDANT: That's right.

25 THE COURT: To me, you have a whole lot on the line and

1 so you are trying to evaluate it when you are just mad with
2 them because you are unsatisfied that they haven't been
3 taking your phone calls and all that. You believe you can
4 do a better job then they can do in representing yourself.

5 DEFENDANT: I bet I'd do a better job.

6 THE COURT: Okay, and when you make those kinds of mis-
7 takes you can't go back, after you make a mistake, and they
8 have indicated they are willing to stay on and be here dur-
9 ing the course of the trial and be available to you, but
10 you cannot have hybrid representation, meaning that the
11 three of you all can't try the case together.

12 They will be the lawyers for you or you will be your
13 own lawyer.

14 DEFENDANT: Well, I mean, I want me to be -- I mean,
15 they've got all these accolades like you said but not in my
16 case.

17 THE COURT: Well, your case hasn't come to trial yet.
18 That's the . .

19 DEFENDANT: Yeah, but I could see where it was going,
20 and I . .

21 THE COURT: All right. Well, do you understand that
22 should you represent yourself I as the Judge cannot help
23 you try your case? I can't tell you how you should try
24 your case.

25 You will be on your own in trying your case except for

1 being able to consult with them.

2 DEFENDANT: Yes, sir.

3 THE COURT: It may be that you are familiar with the
4 rules of criminal procedure . .

5 DEFENDANT: I'm not too familiar with that. I know the
6 prosecution goes first and then the defense. You know,
7 and a few more aspects of it.

8 THE COURT: Are you familiar with the rules of evidence?

9 DEFENDANT: The rules of evidence in my case would be
10 -- I'm pretty sure I know that, yes, sir.

11 THE COURT: Have you seen the rules?

12 DEFENDANT: I've seen a lot of things since I've
13 been incarcerated, as I told you, for fifteen months. I've
14 been reading some lawbooks but I don't know if they were on
15 the rules of law.

16 THE COURT: For example, you've heard about hearsay be-
17 fore?

18 DEFENDANT: Yes, sir.

19 THE COURT: And can you explain to me about hearsay?

20 DEFENDANT: Yes, I know that hearsay is what somebody
21 might have heard somebody else say.

22 THE COURT: Yes. Of course, in hearsay there are many
23 exceptions to the rule.

24 DEFENDANT: Yes, sir.

25 THE COURT: So it may be hearsay in some instances but

1 the person can still testify to hearsay under some circum-
2 stances.

3 DEFENDANT: Yes, sir.

4 THE COURT: Do you know that? People spend years and
5 years trying to understand that and sometimes spend a lot
6 of years and never understand it but understand it better
7 than someone who doesn't understand it.

8 DEFENDANT: Well, I may not be that familiar with it
9 but I know what it is.

10 THE COURT: Do you have any motions that you plan to
11 make concerning anything?

12 DEFENDANT: I might need a little help or something
13 about that. I can start the trial itself and I would prob-
14 ably make a motion to dismiss the charges which you would
15 deny motions like that, I guess.

16 THE COURT: There are many, many, many motions now.

17 You understand you have a right to testify and to not
18 testify?

19 DEFENDANT: Yes, sir.

20 THE COURT: If you testify, the prosecutor can ask
21 you questions or cross examine you.

22 DEFENDANT: Right.

23 THE COURT: And you . .

24 DEFENDANT: Normally if you testify . .

25 THE COURT: You can testify and the Prosecutor can ask

1 you things . .

2 DEFENDANT: Right.

3 THE COURT: Then he can ask you things and I can't act
4 as your lawyer or . .

5 DEFENDANT: Right.

6 THE COURT: You can't ask yourself questions and then
7 . .

8 DEFENDANT: Normally if you -- say you testify and in
9 a narrative form . .

10 THE COURT: Yes, sir.

11 DEFENDANT: . . but you can't testify through asking
12 questions when examining other witnesses. You have your
13 turn to testify, but with regard to the procedures you can
14 ask any witness any questions but you can't then give -- you
15 can't give speeches as a part of asking questions.

16 THE COURT: If I testify, that means in a narrative I
17 can testify from the stand and then I'd be crossed by the
18 prosecutor.

19 DEFENDANT: Yes, sir. That's how it works.

20 THE COURT: Okay. Yes, sir.

21 DEFENDANT: And they can object to some of the things
22 you might testify to even though you testify in a narrative
23 form. You can't . .

24 THE COURT: You know, there can be an objection by you
25 or the prosecutor.

1 DEFENDANT: And you can sustain or agree, and I'll
2 agree with you. I'll agree . .

3 THE COURT: And I may say overruled or . .

4 DEFENDANT: Or you can sustain.

5 THE COURT: . . sustain. You get to give reply.
6 Right?

7 DEFENDANT: Yeah.

8 THE COURT: All right. Are you ready to go to trial
9 on Monday?

10 DEFENDANT: Like I said, I just got some stuff today
11 that I probably should have got a long time ago or maybe
12 within a few days. He said he just got it from the prose-
13 cution.

14 I've got to get up to speed on it but I think I am ,
15 though. I've got to do some preparation but I think I am
16 though.

17 THE COURT: Well, that's why we are here now because
18 Monday is right around the corner. So we have to get it
19 clear, number one, whether or not you'll be representing
20 yourself, and I'd have you aware this trial is the number
21 one trial. The jury is coming in Monday morning at around
22 nine or ten o'clock.

23 DEFENDANT: Yeah, I know. That's the first thing you
24 do is pick a jury.

25 THE COURT: And you'd have a few preemptory strikes and

1 a couple of other strikes.

2 DEFENDANT: Right. He'll have five.

3 THE COURT: The Prosecutor has five and . .

4 DEFENDANT: And I'll have ten. He'll have five and
5 we'll have ten, I believe.

6 THE COURT: . . you'll have ten.

7 DEFENDANT: Right.

8 THE COURT: So that's the first thing you do is pick
9 a jury.

10 You understand if you do not testify I have to instruct
11 the jury they cannot hold that against you; that you are
12 presumed to be not guilty and the State has to prove your
13 guilt beyond a reasonable doubt. They cannot consider whe-
14 ther or not you testify in deciding whether you're guilty or
15 not guilty.

16 DEFENDANT: Yes, sir. I know I have the right to tes-
17 tify or not.

18 THE COURT: Do you believe you have some defenses to
19 these charges?

20 (Pause)

21 DEFENDANT: Uh, yes.

22 THE COURT: All right, and, of course, once the State
23 seeks to prove the offenses against you then you have the
24 right to present a defense, to present any defense that you
25 might have and have the Court subpoena any witnesses that

1 you might have to testify for you, and you can testify, of
2 course as you said, for yourself and present your defense.

3 So you understand that your attorneys can help you
4 with many things, including everything that we've been
5 talking about.

6 DEFENDANT: That's right.

7 THE COURT: Particularly in understanding the rules that
8 govern the trial of a case and presenting your defense for
9 you, and to ensure that the evidence that the State seeks
10 to offer against you complies with all the rules of evi-
11 dence.

12 DEFENDANT: Yeah. I've been thinking with them as the
13 stand-by to sit down, you know, in the background but that
14 would influence a jury to wonder they are there, so what
15 I'm saying is I've been thinking about maybe getting some-
16 body else as stand-by.

17 THE COURT: Instead of these lawyers?

18 DEFENDANT: That maybe the jury would wonder . .

19 THE COURT: Well, during the trial no one will ever say
20 that they used to be your lawyer and you fired them.

21 DEFENDANT: Yes, sir.

22 THE COURT: That won't be mentioned at all. Whether
23 or not someone on the jury would wonder why you chose to
24 represent yourself rather than have lawyers represent you,
25 of course -- someone on the jury may think that because they

1 are used to folks being represented by lawyers and not re-
2 present themselves.

3 DEFENDANT: And I can't elaborate on that just like you
4 just asked me a few minutes ago, and I told you then, but I
5 mean, you know, I can't tell the jury I want the lawyer on
6 stand-by.

7 THE COURT: That's why we're discussing all of that
8 now outside the presence of a jury, because that type of
9 discussion would never take place in the presence of a jury.

10 DEFENDANT: Yes, sir.

11 THE COURT: All right. You recall what Abraham Lincoln
12 said about a person who represents himself . .

13 DEFENDANT: Yes, sir. Has a fool for a lawyer. That
14 might come true before a jury but I have to . .

15 THE COURT: They might have heard that as well, sir,
16 and it may be that they find that the fact that you repre-
17 sent yourself cannot be held against you in any way because
18 you have a constitutional right to represent yourself.

19 DEFENDANT: Yes, sir.

20 THE COURT: All right, so you know I will instruct the
21 jury of the fact that you have a constitutional right to
22 represent yourself and the fact that you represent yourself
23 cannot be held against you in any way.

24 DEFENDANT: Yes, sir.

25 THE COURT: I said from the beginning that you have

1 highly skilled lawyers here who have done well to the high-
2 est level in the law, reached to the highest level, and
3 they have given good results to many clients that I am fa-
4 miliar with.

5 DEFENDANT: I didn't see it with me though. Like I
6 said, I'm playing catch up right now with some stuff they
7 are giving me -- right now.

8 THE COURT: Yeah. Well, for what it's worth, it is
9 my opinion you would be much better off if you were defended
10 by the well-trained lawyers that you have.

11 That it is really unwise for you to represent your-
12 self because you are not familiar with the law and the pro-
13 cedures to the extent that would be most beneficial to
14 you.

15 All of that -- me saying all of that, you have a con-
16 stitutional right as I said to represent yourself and Mr.
17 Delgado alluded to that earlier.

18 This is particularly in light of the fact of the pos-
19 sible punishment that you face if you were found guilty of
20 these crimes.

21 DEFENDANT: Yes, Sir.

22 THE COURT: Understanding all of that, do you need to
23 think about this a little more or have you made up your
24 mind?

25 DEFENDANT: I've made up my mind, yes.

1 THE COURT: The decision is made freely and voluntar-
2 ily on your part to represent yourself and have the law-
3 yers as sit-down counsel or stand-by counsel?

4 DEFENDANT: I might want to bring in somebody.

5 THE COURT: So that you might have three stand-by coun-
6 sel or still have two, but you want to knowingly waive your
7 right to counsel and represent yourself?

8 DEFENDANT: Yes, sir.

9 THE COURT: All right.

10 (Brief pause)

11 THE COURT: And, of course, with the way you are here
12 and with stand-by counsel, if you change your mind and you
13 decide that you want to -- that you are over your head and
14 you better let the lawyers take over just let me know at,
15 any point in time and we'll . .

16 DEFENDANT: You mean before the trial?

17 THE COURT: Before or during the trial.

18 DEFENDANT: Yes, sir. You know, I've been there for
19 fifteen months and . .

20 THE COURT: As of right now, you are number one.

21 DEFENDANT: Sir, can I . .

22 THE COURT: Yes, sir.

23 DEFENDANT: I've been there fifteen months and I hav-
24 en't been in no scrap before and this is really my first
25 stay in jail, this whole thing, and the lawyers know the

1 facts.

2 So, I mean, you know, as far as mental, I mean, you
3 know, I've never had a trial. I've never been on any
4 anti-psychotic drugs. That's what they demolish my daughter
5 with, and I tried to stop it but they banned me from even
6 seeing her for six hundred days. That is what they did.
7 So when she got out she didn't even know what her name was.
8 I mean, . .

9 THE COURT: Yes, sir.

10 DEFENDANT: . . you know, they should do better and I
11 don't think somebody should do that stuff.

12 THE COURT: Let's go back to this case. I mean, he's
13 number one and we'll call the case in their schedule.

14 (Discussion between counsel and the Court concerning
15 cases scheduled, with different Solicitors speaking to the
16 Court.)

17 THE COURT: What's the Indictment Number in this case?

18 SOLICITOR: 5220, 5223, 5224, 5226, 5227, 5229, 5228,
19 5230, 5231, 5232, 5233, 5234; all 2017 GS 40.

20 THE COURT: All right. So with regard to Mr. Kester,
21 to be judged mentally ill a person needs to be in a mental
22 institution until they are judged to be in a condition to
23 be transferred to the general population or transferred
24 from a mental ward or mental place to regular population.

25 Is that your understanding?

1 UNIDENTIFIED PERSON: Yes, Your Honor. That is a minor step
2 in the whole process.

3 MR. NETTLES: We have had discussions about the charges
4 being reduced but they have opted not to do that.

5 THE COURT: You have attempted to get them to re-
6 duce the charges then.

7 MR. NETTLES: He and I have discussed the possibility
8 of the charges being reduced.

9 THE COURT: And the State refused?

10 MR. NETTLES: Yes, sir. That's correct. We have been
11 asking for things.

12 THE COURT: All right. You aren't called upon to
13 explore here what plea offers have been explored or made,
14 if any, or whether they have been accepted or rejected.

15 Your telling me that -- I mean, was there a plea
16 offer to guilty but mentally ill?

17 Is that your understanding, sir? Mr. Kester?

18 DEFENDANT: Yeah, they tried to get them to reduce the
19 charges for a plea bargain, and -- and, like I said, my
20 daughter was given so much toxic drugs that she couldn't
21 take it anymore.

22 So people who have got mental problems, people with
23 poor mental health, I mean, I got -- I got that in writing.
24 One day she drank straight forty glasses of water her brain
25 was cooked so bad. In the middle of the night she'd be

1 hollaring, please help. I should have helped her at the
2 time but I kind -- I shouldn't have let that slide. I
3 mean, I tried different things and I got arrested at the
4 time for going to visit her when they denied it, and they
5 threw the case out because they did have a trespass in the
6 Department of Mental Health. They went to the General As-
7 sembly and got a (inaudible) and solely because of me.

8 I mean, after they threw my case out I went to the Gen-
9 eral Assembly.

10 I don't even think they are allowed to do that to one
11 individual but they did it anyway.

12 (The Court speaking to unidentified person in a low
13 voice off the record)

14 THE COURT: I understand some of the things that you're
15 upset about. Of course, I have no idea or knowledge of the
16 facts. I don't know anything about this case, so whether
17 any of the people involved or alleged victims are associated
18 with what has caused you to be upset about with the Depart-
19 ment of Mental Health -- I'm not sure of the extent of it.

20 DEFENDANT: With all that's going on, I'm worried I left
21 out something while they were doing this to my daughter.
22 You said had I been under any stress, and I should have said
23 yes.

24 I lost my left eye due to this and I've been trying to
25 get them to get those records that they've been telling me

1 a year that they did and that is another thing.

2 Like I said, they've been negligent and that's why I had
3 to do this.

4 THE COURT: Do you plan to have the doctor testify for
5 you?

6 DEFENDANT: He passed away. That was Dr. Milney. I
7 don't know if you ever heard of him.

8 THE COURT: No, I don't think so.

9 DEFENDANT: They told me they would but they never got
10 the records. They told me they will for a year but I don't
11 have them now.

12 (Brief pause)

13 THE COURT: All right. Well, what else do we need to
14 talk about that might make things smoother on Monday?

15 SOLICITOR: There might be some things that might
16 come up. We could Email any special matter.

17 MR. NETTLES: We have worked together well in the past
18 and anything that comes up we would agree . .

19 THE COURT: So with the consent of counsel -- not of
20 counsel but if that's what Mr. Kester wants to do.

21 MR. KESTER: Well, they rarely took my phone calls over
22 all the time but two times. Maybe they will now, you know.

23 THE COURT: If you find something try to get it to me,
24 although I'm not sure what it might be.

25 28 All right.

1 MR. KESTER: If that's the case, I wish it had been
2 happening for the last year. I've called countless times
3 and never got an answer.

4 THE COURT: I am granting your motion to relieve them
5 and for you to proceed to represent yourself. Be sure to
6 be ready to go on Monday at this point.

7 MR. KESTER: Okay, thank you.

8 THE COURT: Is there any reason that Mr. Kester should
9 be restrained in any way during the course of the trial
10 while in the presence of the jury?

11 DEFENDANT: The State would leave that matter to the
12 Court's discretion although I would almost prefer that he
13 be under restraint.

14 THE COURT: We have to let Mr. Kester move around, and
15 there is no indication that he would cause any threat to
16 anyone by being able to. We will have deputies in here to
17 make sure he doesn't try to run out the back door.

18 Other than that, he can be unrestrained while in the
19 presence of the jury.

20 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

21

22

23

24

25

CERTIFICATE

I, HARRIET P. BENNETT, Court Reporter for S. C. Court Administration, hereby certify that the foregoing transcript was prepared to the best of my ability from records of SCDP, having been heard in the Court of General Sessions for Richland County on October 4, 2018.

FUTHER, I certify that I am neither of kin nor of counsel, nor do I have any interest in the same.

February 13, 2019



1 State of South Carolina) Court of General Sessions
 2 County of Richland) Fifth Judicial Circuit
 3
 4 State of South Carolina,) Transcript of Record
 5 vs.) 2017-GS-40-05220
 6 James B. Kester) 2017-GS-40-05223
 7) 2017-GS-40-05224
 8) 2017-GS-40-05226
 9) 2017-GS-40-05227
 10) 2017-GS-40-05228
 11) 2017-GS-40-05229
 12) 2017-GS-40-05230
 13) 2017-GS-40-05231
 14) 2017-GS-40-05232
 15) 2017-GS-40-05233
 16) 2017-GS-40-05234
 17
 18 October 8th-10th, 2018
 19 October 12th, 2018
 20
 21 Columbia, South Carolina
 22
 23 B E F O R E:
 24
 25 The Honorable Clifton Newman, Judge; and a Jury

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 Samuel McGlothin, Assistant Solicitor
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 Circuit Court Reporter

1	<u>I N D E X</u>	
2	WITNESS	PAGE
3	Pretrial Motions	10
4	Allen Brinson (In-Camera)	
5	Direct Examination by Mr. Eaton	12
6	Heather Collins (In-Camera)	
7	Direct Examination by Mr. McGlothlin	25
8	Jury Selection	31
9	Opening Statement	
10	By Mr. McGlothlin	71
11	By Mr. Kester	73
12	Bonnie Montgomery	
13	Direct Examination by Mr. Eaton	76
14	Jennifer Sohn Browder	
15	Direct Examination by Mr. McGlothlin	87
16	Jamie Browder	
17	Direct Examination by Mr. Eaton	92
18	Cross Examination by Mr. Kester	99
19	Kaylin White	
20	Direct Examination by Mr. Eaton	100
21	John Phillip Works	
22	Direct Examination by Mr. Eaton	104
23	Kelli Sohn Montgomery	
24	Direct Examination by Mr. Eaton	108
25	Cross-Examination by Mr. Kester	114
26	Holly Yandel	
27	Direct Examination by Mr. Eaton	116
28	Cross-Examination by Mr. Kester	126
29	Redirect Examination by Mr. Eaton	128
30	Recross Examination by Mr. Kester	129
31	Joshua Ledbetter	
32	Direct Examination by Mr. McGlothlin	130
33	Cross-Examination by Mr. Kester	135
34	Redirect Examination by Mr. McGlothlin	136

1	Willard Sohn	
2	Direct Examination by Mr. Eaton	138
3	Jan Sohn	
4	Direct Examination by Mr. McGlothin	146
5	Cross-Examination by Mr. Kester	149
6	Redirect Examination by Mr. McGlothin	150
7	Recross Examination by Mr. Kester	151
8	Laura Gabrels	
9	Direct Examination by Mr. McGlothin	153
10	Cross-Examination by Mr. Kester	160
11	Tonya White	
12	Direct Examination by Mr. McGlothin	163
13	Kittie Henderson	
14	Direct Examination by Mr. McGlothin	168
15	Michael Rooney	
16	Direct Examination by Mr. Eaton	173
17	Cross-Examination by Mr. Kester	183
18	Angela Grace Works	
19	Direct Examination by Mr. McGlothin	184
20	Kathryn Holloman	
21	Direct Examination by Mr. McGlothin	191
22	John Brian Montgomery	
23	Direct Examination by Mr. McGlothin	196
24	Cross-Examination by Mr. Kester	200
25	Minor 1	
26	Direct Examination by Mr. Eaton	201
27	Cross-Examination by Mr. Kester	204
28	Minor 2	
29	Direct Examination by Mr. Eaton	207
30	Cross-Examination by Mr. Kester	211
31	John E. Montgomery	
32	Direct Examination by Mr. Eaton	212
33	Cross-Examination by Mr. Kester	220
34	Allen Brinson	
35	Direct Examination by Mr. Eaton	222

1	Heather Collins	
2	Direct Examination by Mr. McGlothin	228
3	George Wise	
4	Direct Examination by Mr. McGlothin	231
5	Robert Uhall	
6	Direct Examination by Mr. Eaton	238
7	Cross-Examination by Mr. Kester	254
8	William Hilton	
9	Direct Examination by Mr. Eaton	258
10	Continued Direct Examination by Mr. Eaton	275
11	Motion for Directed Verdict	281
12	Closing Argument	
13	By Mr. Eaton	295
14	By Mr. Kester	303
15	Charge of the Court	311
16	Motion for Mistrial	351
17	Allen Charge	352
18	Verdict of the Jury	356
19	Victim Impact	369
20	Sentence of the Court	409
21	Certificate of Reporter	411
22		
23		
24		
25		

E X H I B I T S				
	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
1				
2				
3	S-1	9-1-1 Calls	10	230
4	S-2	Recorded Interview	10	18, 226
5	S-3	Photograph	10	80
6	S-4	Photograph	10	233
7	S-5	Photograph	10	96
8	S-6	Photograph	10	233
9	S-7	Photograph	10	96
10	S-8	Photograph	10	85
11	S-9	Photograph	10	233
12	S-10	Photograph	10	150
13	S-11	Photograph	10	233
14	S-12	Photograph	10	233
15	S-13	Photograph	10	233
16	S-14	Photograph	10	233
17	S-15	Photograph	10	233
18	S-16	Photograph	10	233
19	S-17	Photograph	10	233
20	S-18	Photograph	10	233
21	S-19	Photograph	10	233
22	S-20	Photograph	10	177
23	S-21	Photograph	10	177
24	S-22	Photograph	10	177
25	S-23	Photograph	10	177

1	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
2	S-24	Photograph	10	177
3	S-25	Photograph	10	177
4	S-26	Photograph	10	177
5	S-27	Photograph	10	177
6	S-28	Photograph	10	233
7	S-29	Photograph	10	233
8	S-30	Photograph	10	233
9	S-31	Photograph	10	233
10	S-32	Photograph	10	177
11	S-33	Photograph	10	181
12	S-34	Photograph	10	181
13	S-35	Photograph	10	181
14	S-36	Photograph	10	181
15	S-37	Photograph	10	181
16	S-38	Photograph	10	181
17	S-39	Photograph	10	156
18	S-40	Photograph	10	156
19	S-41	Photograph	10	156
20	S-42	Photograph	10	156
21	S-43	Photograph	10	156
22	S-44	Photograph	10	156
23	S-45	Photograph	10	156
24	S-46	Photograph	10	156
25	S-47	Photograph	10	156

1	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
2	S-48	Photograph	10	156
3	S-49	Photograph	10	156
4	S-50	Photograph	10	156
5	S-51	Photograph	10	156
6	S-52	Photograph	10	156
7	S-53	Photograph	10	156
8	S-54	Photograph	10	156
9	S-55	Photograph	10	156
10	S-56	Photograph	10	156
11	S-57	Photograph	10	156
12	S-58	Photograph	10	194
13	S-59	Photograph	10	194
14	S-60	Photograph	10	194
15	S-61	Photograph	10	194
16	S-62	Photograph	10	194
17	S-63	Photograph	10	194
18	S-64	Photograph	10	194
19	S-65	Photograph	10	143
20	S-66	Photograph	10	143
21	S-67	Photograph	10	143
22	S-68	Photograph	10	143
23	S-69	Photograph	10	165
24	S-70	Photograph	10	165
25	S-71	Photograph	10	165

1	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
2	S-72	Photograph	10	165
3	S-73	Photograph	10	165
4	S-74	Photograph	10	165
5	S-75	Photograph	10	165
6	S-76	Photograph	10	
7	S-77	Photograph	10	
8	S-78	Photograph	10	203
9	S-79	Photograph	10	203
10	S-80	Photograph	10	203
11	S-81	Photograph	10	
12	S-82	Photograph	10	219
13	S-83	Photograph	10	219
14	S-84	Photograph	10	210
15	S-85	Photograph	10	210
16	S-86	Photograph	10	210
17	S-87	Photograph	10	171
18	S-88	Photograph	10	171
19	S-89	Advisement of Rights	10	18, 226
20	S-90	Crash Data Report	10	244
21	S-91	State Newspaper Obituary	10	254
22	S-92	Search Warrant	10	
23	S-93	Photograph	78	80
24	S-94	Photograph	78	
25	S-95	Photograph	121	121

1	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
2	C-1		267	
3	C-2		275	
4	C-3		330	
5	C-4		355	
6				
7				
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1 (The following proceedings were held October 8, 2018,
2 beginning at 2:09 PM.)

3 (State's Exhibit Numbers 1 through 92 were marked for
4 identification.)

5 **BAILIFF:** Court come to order. All rise.

6 You may be seated. No cell phone usage, please.

7 Thank you.

8 **THE COURT:** All right. Good afternoon, Mr. Eaton.

9 **MR. EATON:** If it pleases the Court, Your Honor?

10 **THE COURT:** Yes, sir.

11 **MR. EATON:** The State calls James Kester, Your Honor.

12 Mr. Kester is charged with twelve counts of attempted
13 murder. We are here for trial as Your Honor knows. Would
14 you like me to read the indictment numbers, Your Honor?

15 **THE COURT:** Yes, sir.

16 **MR. EATON:** Those are -- start with 2017-GS-40-5220,
17 223, 224, 226, 227, 228, 230 -- I'm sorry, 229, 231, 232,
18 233 and 234, Your Honor.

19 **THE COURT:** All right. Mr. Kester, are you ready to
20 proceed?

21 **MR. KESTER:** Yes, sir. Yes, sir, Your Honor.

22 **THE COURT:** All right. Any other matters before the
23 jury comes in?

24 **MR. EATON:** Very briefly, Your Honor. There are
25 three things that I had brought up to the Court previously

1 and in talking with Mr. Kester's shadow counsel these may
2 be sort of non-issues. There is a 9-1-1 call or -- well,
3 there are several 9-1-1 calls, one of which the State
4 intended to play during opening statements. There's also
5 the question of the -- you know, whether Mr. Kester
6 knowingly and intelligently waived his right to counsel
7 and to silence for purposes of his Miranda warnings and
8 also there was a search warrant that was sworn out that
9 was taken -- pursuant to which officers found some
10 evidence, some relevant evidence, in Mr. Kester's car.

11 My understanding is it's possible that Mr. Kester is
12 willing to stipulate to the authenticity of the 9-1-1,
13 his waiver under Miranda, you know, as far as Jackson v.
14 Denno, as well as the probable cause for the search
15 warrant of the car, but if he's not, I'd ask that we
16 take those up pre-trial. But if he's willing to stipulate
17 to those things, then we can just move forward. If he
18 acknowledges that, I think the State is in good shape,
19 Your Honor.

20 **THE COURT:** Mr. Kester, what's your position
21 concerning the 9-1-1 call and the statements you made to
22 the police and the search warrant?

23 **MR. KESTER:** They can play it. I'm not waiving
24 anything on this, so whatever he's got. You know, I just
25 got discovery a few days ago. I'm having to play catch-up

1 on everything.

2 **THE COURT:** All right, sir. So it's not a waiver,
3 so you can proceed at this time. Whatever evidence and
4 testimony that you have must be played outside the
5 presence of the jury. I believe 103.

6 **MR. EATON:** Yes, Your Honor.

7 **THE COURT:** It will be -- the Court needs to hear it
8 and rule on it outside the presence of the jury.

9 **MR. EATON:** And so I guess I understood you to say
10 he's not waiving anything and we need to have that hearing
11 now; is that correct?

12 **THE COURT:** Yes, sir.

13 **MR. EATON:** Okay. Your Honor, I would call Corporal
14 Brinson to the stand.

15 (Whereupon, Allen Brinson was duly sworn by the
16 Court.)

17 **THE CLERK:** Please have a seat and state your name
18 for the record.

19 **THE COURT:** We can have a truncated version of it
20 only as it relates to admissibility of the evidence.

21 **MR. EATON:** Yes, Your Honor.

22 ALLEN BRINSON,

23 having been duly sworn, testified as follows:

24 DIRECT EXAMINATION (In-Camera)

25 BY MR. EATON:

1 Q. Good afternoon, Corporal Brinson. What was your role
2 in this case, Corporal Brinson?

3 A. I was at the time a member of the Traffic Safety
4 Unit. We were responding to what was originally cast as
5 a collision, car versus pedestrians.

6 Q. If you could speak into the mic, please.

7 A. Okay.

8 **THE COURT:** Which mics are on?

9 **BAILIFF:** Those are on, Your Honor.

10 **THE COURT:** We're just -- she turned just something
11 on.

12 BY MR. EATON:

13 Q. Okay. I'll cut to the chase. Corporal Brinson, did
14 you give Mr. Kester his Miranda warnings in this case?

15 A. Yes, I did, inside the interview room.

16 Q. Where was that?

17 A. 715 Bluff Road.

18 Q. And do you recognize what's been marked as State's
19 Exhibit 89 for identification?

20 A. This is the form that I read to him and then he signed
21 afterwards for his Miranda rights.

22 Q. And could you just briefly tell the Court what those
23 rights were?

24 A. During this form, it's -- it's basically the
25 advisement of rights. Do you want me to read them?

1 Q. Yeah, just -- just briefly touch on each one.

2 A. Okay. The right to remain silent. Anything you say
3 can be used against you in a court of law. You have the
4 right to talk to a lawyer for advice before we ask you any
5 questions and to have him with you during the questioning.
6 If you cannot afford a lawyer, one will be appointed for
7 you before any questioning if you wish. If you decide to
8 answer questions now without a lawyer present, you will
9 still have the right to stop answering at any time. You
10 also have the right to stop answering at any time until
11 you talk to a lawyer.

12 Waiver of these rights. I have read the statement
13 of my rights and I understand what my rights are. I am
14 willing to make a statement and answer questions. I do
15 not want a lawyer at this time. I understand and know
16 what I'm doing. No promises or threats have been made to
17 me. No pressure or coercion of any kind has been used
18 against me.

19 After reading this to him, I asked if he understood
20 everything, which he agreed he did, and then he signed his
21 name and I also signed it stating that I witnessed it.

22 Q. Did you give those to him orally, like verbally?

23 A. It was given to him verbally and then turned around
24 and shown to him so he could read over it on his own also.

25 Q. And did he seem to understand what you told him?

1 A. Yes, sir.

2 Q. What was his demeanor?

3 A. He seemed to be normal in the interview room. He
4 was following along. As I was reading, he was nodding his
5 head like he was following along taking in everything that
6 was being said.

7 Q. Did he seem to be under the influence of anything?

8 A. No, sir.

9 Q. Did he have a chance to ever, you know, get some
10 water, go to the bathroom, things like that?

11 A. Yes, sir. He was given his chances and he was given
12 water in the interview room.

13 Q. Corporal Brinson, do you recognize this disk? It's
14 been marked for identification as State's 2.

15 A. Yes.

16 Q. And what's that?

17 A. A disk of the interview.

18 Q. Okay.

19 A. Or a copy of the disk of the interview.

20 **MR. EATON:** And I don't know if the Court wants to
21 watch any of the Miranda on that disk. We do have it
22 uploaded to the board or if the Court --

23 **THE COURT:** Not at this time.

24 **MR. EATON:** Okay.

25 Your Honor, at this point I would offer the Advice of

1 Rights form, as well as the recorded video of Mr. Kester's
2 statement into evidence.

3 **THE COURT:** All right. Questions, Mr. Kester? Do
4 you have questions for the officer on the issue of the
5 voluntariness of your statement and the recording of the
6 -- that's been offered into evidence?

7 **MR. KESTER:** No, Your Honor.

8 **THE COURT:** All right. I find that the statements
9 given were voluntarily given in compliance with Miranda
10 v. Arizona and they are admissible.

11 With regard to the video of the interview, is there
12 anything on there other than the statement itself on the
13 video?

14 **MR. EATON:** No, sir. Not that I'm aware of.

15 **THE COURT:** All right.

16 **MR. EATON:** It is simply a video of the interview
17 room. It's a built-in camera from the corner of the
18 interview room of only Mr. Kester's statement.

19 Now I will go ahead and say at this point, Your Honor,
20 he makes some references in his statement to having been
21 arrested previously by the Department of Mental Health. I
22 took it upon myself initially to redact his references to
23 having been arrested so that those were not prejudicial
24 acts or, you know, prior bad acts that could possibly
25 prejudice him. In talking with his shadow counsel, my

1 understanding of that is Mr. Kester prefers the entire
2 video of his statement without those redactions, so that
3 is the version that we're putting into evidence at this
4 point.

5 **THE COURT:** Without redaction?

6 **MR. EATON:** Yes, Your Honor.

7 **THE COURT:** Is that correct, Mr. Kester?

8 **MR. KESTER:** He said I mentioned the Department
9 of Mental Health. Since he entered the Department of
10 Mental Health, I did get arrested for -- they called it
11 trespassing because they held my daughter 600 days and
12 poisoned her, like they put chemicals and all you see in
13 children, they did that to my daughter and she came out a
14 zombie, a vegetable. And when they arrested me, I went to
15 court and they threw it out because they didn't have a
16 trespassing law in the Department of Mental Health and
17 they went to the General Assembly and had a law enacted,
18 coded, and I saw that in the newspaper, so -- solely by
19 me.

20 And then another time that I didn't see my daughter
21 for 400 or 500 days I called the doctor and he arrested me
22 for telephone calls, illegal telephone calls, and he didn't
23 show up. I mean, what are you gonna do? They hold your
24 only child forever and she comes out and she doesn't even
25 know her name. I mean --

1 **THE COURT:** Well, do you want the jury to know that
2 you've been arrested by the Department of Mental Health
3 before?

4 **MR. KESTER:** Yes, I do.

5 **THE COURT:** All right. So that part will stay in
6 the statement even though it references a prior arrest.

7 **MR. KESTER:** Yeah, because it was bogus and they
8 didn't have a law and I couldn't see my daughter for no
9 reason. They inundated her with 3,000 milligrams of
10 lithium a day, plus Haldol, and she just wanted to get
11 out so bad. And it ruined me and I lost my left eye. I
12 took care of her for twenty something years and she -- she
13 couldn't even go to the bathroom, brush her teeth, brush
14 her hair.

15 Yeah, that's good. That's fine if he entered that.

16 **THE COURT:** All right. That will be in. So you may
17 step down on that issue.

18 (State's Exhibit Number 2, the Recorded Interview,
19 and State's Exhibit Number 89, the Advisement of Rights
20 Form, were admitted into evidence.)

21 **MR. EATON:** I'm sorry, there was one more issue.

22 **THE COURT:** Okay. Go ahead.

23 **MR. EATON:** Yes, sir. If I may, Your Honor, there is
24 one more issue with this same officer.

25 **THE COURT:** All right.

1 **MR. EATON:** And this would be -- so this officer
2 swore out -- didn't execute, but swore out a search
3 warrant for Mr. Kester's car to include black box data
4 and whatever was in his car.

5 BY MR. EATON:

6 Q. So if I can approach with what's been marked for
7 identification State's Exhibit 92, Corporal Brinson, could
8 you, please, identify that?

9 A. Yes, the search warrant that we -- that I sworn out
10 to -- in order to search the vehicle, the 2003 Cadillac
11 that Mr. Kester was driving.

12 Q. Okay. And did you go to a ministerial recorder?

13 A. Yes, sir, a recorder did sign it and it was served at
14 a later date.

15 Q. Okay. And can you just, please, tell the Court kind
16 of -- to the best of your memory and based on what's in the
17 search warrant what the probable cause was for that search
18 warrant?

19 A. Basically it come down that the collision -- the
20 Cadillac was used during the -- wherein it hit the twelve
21 pedestrians and due to the severe nature of the incident
22 and multiple victims sustaining extensive injuries, the
23 preservation and collection of evidence is critical, which
24 included us to try to get ACM which would determine if --
25 it was available for speeding, braking or anything else of

1 that nature. Basically the black box of the car. Also any
2 -- any other evidence that would aid in the investigation
3 and could be considered as contributing was collected from
4 the car at that time.

5 Q. And so did you explain that to the -- to the judge or
6 rather the ministerial recorder?

7 A. Yes. Basically it's already wrote up for them just
8 like it is now, we turn it over to them and they ask us
9 questions and if there's any questions we explain the
10 situation and if it's probable they sign it and we can
11 issue it.

12 Q. And now were you the one who actually executed this
13 search warrant on Mr. Kester's car?

14 A. No, the person who originally signs it out is not
15 allowed to execute it. It has to be a second party.

16 Q. And why would it be important to get, you know, this
17 black box data from Mr. Kester's car?

18 A. The black box data would give you if there was -- the
19 speed possibly it was going, also whether the brakes were
20 smashed, whether seatbelts was used, airbags deployed,
21 anything like that it could show us what contributed to the
22 collision itself or what was going on in the car at that
23 time.

24 Q. And can you just tell the Court the things that were
25 -- I know you didn't do it, but the things that were

1 collected pursuant to the search warrant, please.

2 A. Yes, sir. According to this, when it was executed,
3 an inventory was done. The airbag control monitor data
4 was imaged and saved to a file. Various receipts from
5 inside the vehicle, a spiral bound notebook from inside
6 the vehicle in the front, numerous newspapers was also
7 inside, a black in color cell phone was in the center
8 console, TracFone cards were in the center console, a
9 memorial flyer was found in the glove box, mini -- mini
10 cassette tapes were found in the console. Hair was
11 collected from the windscreen, blood was swabbed from the
12 car from the windshield and windscreen and blood was
13 swabbed from the hood area.

14 Q. Let me --

15 **MR. EATON:** Your Honor, I would offer State's 92
16 into evidence.

17 **THE COURT:** All right. Any questions for the officer
18 on the issue of getting a search warrant, Mr. Kester?

19 And, Officer, when the jury comes in and during the
20 trial, if he gets up, you don't need to move -- you know,
21 he can move around freely.

22 **THE DEPUTY:** Sure.

23 **MR. KESTER:** You say I can?

24 **THE COURT:** You can. I'm telling the police officer
25 that he doesn't have to stand -- stand guard over you

1 because we don't want -- we're not trying to prejudice
2 you to the jury --

3 **MR. KESTER:** Yes, sir.

4 **THE COURT:** -- by having them -- having it appear
5 that you may be a danger. So when he stands up, you don't
6 need to stand up.

7 **DEPUTY SUPERVISOR:** I was going to explain that.

8 **THE COURT:** All right. Go ahead, Mr. Kester.

9 **MR. KESTER:** I don't have any questions for him,
10 Your Honor.

11 **THE COURT:** All right. I find that there's probable
12 cause for a search warrant to be issued based on the
13 testimony of the officer.

14 With regard to whatever was collected in the search
15 warrant, do you have any question or any contention that
16 any of those things were unduly prejudicial towards you?

17 **MR. KESTER:** As far as the TracFone goes, I used the
18 TracFone for a long time. That was my sole phone. I
19 didn't use it for -- to discard it, I had the same phone
20 number on it, and then later on I got a phone at Verizon,
21 but, you know, that's why I had a TracFone. You can
22 buy a card and if you don't use it very often --

23 **THE COURT:** All that explaining you can do if you
24 testify --

25 **MR. KESTER:** Yes, sir.

1 **THE COURT:** -- but with regard to the things that --

2 **MR. KESTER:** Okay.

3 **THE COURT:** -- that they got out of your car,
4 including some -- tell me those things again. Let me hear
5 him summarize those things one more time.

6 **MR. EATON:** Yes, Your Honor. So at this -- and I
7 will, of course, offer these things at the appropriate
8 time during the trial itself, but a crash expert from
9 Columbia Police Department took data and he was able to
10 image and save data from the airbag control module from
11 the car, and he'll be able to explain that during trial.
12 The police collected receipts, notebooks, newspapers.

13 Now the newspaper will be a relevant piece of
14 evidence, but that we will introduce into evidence during
15 the trial itself. There was a cell phone, a TracFone, a
16 flyer, cassette tapes, hair and blood. Now there were no
17 forensics conducted on those. The main things that will be
18 coming up at trial will include the airbag control module
19 data and the newspaper in which the obituary was running
20 for the funeral that he came to, so that newspaper was
21 right there next to him including that obituary, so those
22 are the main things, Your Honor.

23 **THE COURT:** All right. So with regard to any of those
24 things that were contained or received as a result of the
25 search warrant, any claim of -- that any of those things

1 are unduly prejudicial towards you, Mr. Kester?

2 **MR. KESTER:** No, sir.

3 **THE COURT:** All right.

4 **MR. KESTER:** No, sir.

5 **THE COURT:** All right. So the search warrant and
6 the matters listed in the return are admissible -- are
7 admitted -- are admissible before they are admitted.

8 **MR. EATON:** Thank you, Your Honor.

9 Just as a housekeeping matter, actually the 9-1-1
10 custodian is here.

11 **THE COURT:** All right. You may step down.

12 **THE WITNESS:** Thank you, Your Honor.

13 (Witness excused.)

14 **MR. McGLOTHIN:** Your Honor, on the matter of the
15 9-1-1 call, the State would call Heather Collins.

16 **THE COURT:** All right. Come forward. And until the
17 -- the court reporter knows Mr. Eaton, I believe, and --

18 **THE COURT REPORTER:** McGlothlin.

19 **THE COURT:** You know him, Mr. McGlothlin?

20 **THE COURT REPORTER:** Yes. Now the shadow counsel I
21 don't know who they are.

22 **THE COURT:** Shadow counsel are -- if you-all will
23 state your name for the record, please, so the court
24 reporter will have that in the record.

25 **MR. DELGADO:** My name is John Delgado.

1 **MR. NETTLES:** Bill Nettles.

2 **THE COURT:** All right.

3 (Whereupon, Heather Collins was duly sworn by the
4 Clerk of Court.)

5 **THE CLERK:** Please have a seat and state your full
6 name for the record.

7 **THE WITNESS:** My name is Heather Collins.

8 HEATHER COLLINS,

9 having been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. MCGLOTHLIN:

12 Q. Thank you, Ms. Collins. If you can, where do you
13 work?

14 A. I'm employed with Columbia Richland 9-1-1.

15 Q. What do you do there?

16 A. I am the deputy director.

17 Q. What kinds of duties do you have? Briefly kind of
18 summarize.

19 A. I'm in charge of operations in terms of adequate
20 staffing. In addition to that, I'm also in charge of being
21 the custodian of records, making sure that our recording
22 system records and that we have evidence for situations
23 like this.

24 Q. Okay. Could you briefly describe how the 9-1-1
25 recording process works.

1 A. We have multiple radio channels, as well as
2 twenty-five 9-1-1 incoming lines, all of which are
3 recorded. All of the administrative lines are recorded,
4 as well, and all radio traffic is recorded for all four
5 different jurisdictions we dispatch for.

6 Q. Are those -- the 9-1-1 calls themselves, are they
7 automatically recorded?

8 A. Yes, that's not an option.

9 Q. Okay. So when they dial 9-1-1 and click call, as
10 soon as it connects they -- immediately the recording
11 starts?

12 A. Actually the recording picks up the ring. It's
13 before actual contact is made. You will hear the line
14 ringing on the recording.

15 Q. Okay. And do those calls accurately reflect what's
16 said by both parties on either side?

17 A. Oh, definitely.

18 Q. And this is kept ordinarily in every case?

19 A. Yes, it's state law that all 9-1-1 centers have
20 recordings that are held for a minimum of 60 days.

21 Q. Okay. How long are they kept?

22 A. At Columbia Richland we keep all phone recordings
23 and audio for ninety days.

24 Q. Okay. And did you receive a request from the
25 solicitor's office and/or the Columbia Police Department

1 for calls in this matter?

2 A. Yes, we did.

3 Q. Okay. And did you provide recordings?

4 A. Yes, we did.

5 Q. Okay. I'm gonna show you what's been marked as

6 State's Exhibit 1.

7 A. Okay.

8 Q. Do you recognize that?

9 A. I do.

10 Q. What is that?

11 A. This is a disk with the phone calls pertaining to this

12 incident downloaded on here.

13 Q. How do you know -- have you heard those calls?

14 A. I have. I listened to them today and confirmed that

15 these are the correct calls for this case.

16 Q. Okay. And those accurately reflect the calls as they

17 were -- as they took place?

18 A. That is correct. They are numbered, I believe, 1

19 through 8 or 9.

20 Q. Have they been altered in any way since their original

21 recording?

22 A. No, sir.

23 Q. Okay.

24 **MR. MCGLOTHLIN:** At this time, Judge, the State would

25 move to admit State's 1, the 9-1-1 recordings.

1 **THE COURT:** Any questions, Mr. Kester, as to the
2 9-1-1 calls, the authenticity of the calls?

3 **MR. KESTER:** No, Your Honor.

4 **THE COURT:** All right. Well, this witness has
5 authenticated the calls, the calls are non-testimonial as
6 far as case law, and they're admissible subject to being
7 admitted.

8 **MR. McGLOTHIN:** Thank you, Your Honor.

9 **THE COURT:** You may step down.

10 **THE WITNESS:** Thank you.

11 (Witness excused.)

12 **THE COURT:** Okay. Yes, sir.

13 **MR. McGLOTHIN:** And, Your Honor, I just wanted to
14 clarify given the testimony here from Ms. Collins that --
15 I believe you just stated they're not -- have not been
16 entered into evidence at this point, but we just wanted
17 to be sure that we can use at least one of those calls
18 in our opening statement.

19 **THE COURT:** Yes, sir.

20 **MR. McGLOTHIN:** Okay. Thank you.

21 **THE COURT:** You can expect it to be admitted based
22 on the Court's ruling.

23 **MR. McGLOTHIN:** Thank you.

24 **THE COURT:** Are y'all ready for the jury?

25 **MR. EATON:** Yes, Your Honor.

1 Can I just touch on two brief housekeeping matters?

2 **THE COURT:** Yes, sir.

3 **MR. EATON:** One, I have -- so for purposes of, for
4 example, the 9-1-1 call, his video, even photos that we
5 hope to admit into evidence, I have the actual evidence
6 on a disk or a physically printed photo that's gonna go
7 into evidence. I also have duplicates of those things
8 uploaded to the smart board and so as long as the Court
9 and Mr. Kester have got no problem with that, they'll be
10 the exact same things, there would be times that I would
11 like to use the smart board. You know, for example, we
12 don't have good way to --

13 **THE COURT:** You can use anything that's in evidence.
14 You can publish anything to the jury that's in evidence.

15 **MR. EATON:** Yes, Your Honor.

16 **THE COURT:** All right. If it's the same or a
17 duplicate or whatever, if it's in evidence, you can use
18 it.

19 **MR. EATON:** Thank you, Your Honor.

20 And then the only other thing is the State
21 completely agrees and understands about the fairness of
22 the -- you know, the options of how we're presenting in
23 the courtroom. I know that a number of the victims in
24 this case have some concerns about cross-examination,
25 for example, particularly the child victims, who I

1 believe will testify, and so I would -- you know,
2 they're all here in the courtroom right now and I've
3 assured them that Mr. Kester -- you know, that everything
4 will be -- he will comport himself properly and so forth,
5 but I wanted to just put that out there for the victims'
6 sake because that was a concern on their part, Your Honor.

7 **THE COURT:** Okay. Well, he has a right to confront
8 any witnesses against him and we will deal with all issues
9 relating to that as they come about.

10 **MR. EATON:** Yes, Your Honor.

11 **THE COURT:** All right. We're ready for the jury.

12 I have a list -- the State has submitted some
13 questions that y'all wanted me to ask the jury.

14 Do you have any questions you want me to ask the
15 jury, Mr. Kester? Did you give Mr. Kester a copy of your
16 questions?

17 **MR. EATON:** Through his shadow counsel.

18 **THE COURT:** All right.

19 **MR. KESTER:** Did y'all get them?

20 Yeah, you could ask the jury, Your Honor, if any of
21 them are predisposed to maybe hearing about this and
22 seeing it and would have any type of bias.

23 **THE COURT:** All right. If they know anything about
24 it or heard anything about it, et cetera?

25 **MR. KESTER:** Yes, sir.

1 **THE COURT:** All right. I'll do that.

2 (Pause in proceedings.)

3 **THE COURT:** Let's all stand for a moment while we're
4 waiting for our jurors to come in.

5 All right. You can be seated.

6 Yes, sir.

7 **MR. KESTER:** Has the jury come in yet?

8 **THE COURT:** They're coming in now.

9 **MR. KESTER:** I wanted to add one more item to what I
10 mentioned about the predisposition in this case.

11 **THE COURT:** All right.

12 **MR. KESTER:** And that is none of them have anything
13 -- them, their family, their spouses, connected with the
14 Department of Mental Health.

15 **THE COURT:** All right. I'll include that.

16 **MR. KESTER:** Thank you.

17 (Whereupon, the jury panel enter the courtroom at
18 2:51 PM.)

19 **BAILIFF:** Jury panel all present, Your Honor.

20 **THE COURT:** Thank you.

21 Good afternoon. Ladies and gentlemen, I am Clifton
22 Newman and I am presiding in this courtroom. Next to me
23 is my law clerk, Kelly Reid, and my intern, Kaitlyn Cook.

24 You-all were sent up here for jury selection in the
25 next case coming up, the one that the State is gonna call

1 right now.

2 You may call the case.

3 **MR. EATON:** Your Honor, the State calls James Kester.

4 **THE COURT:** Ladies and gentlemen, the State has
5 called for trial the case of the State versus James B.
6 Kester. This case comes into court as a result of an
7 indictment or series of indictments returned by the grand
8 jury of Richland County charging Mr. Kester with attempted
9 murder. How many counts?

10 **MR. EATON:** Twelve counts, Your Honor.

11 **THE COURT:** Twelve counts of attempted murder.

12 Mr. Kester has pled not guilty to each and every one
13 of these charges. He is presumed to be not guilty of each
14 and every one of these charges. He cannot be found guilty
15 of any charge unless the State presents evidence that
16 convinces a jury of his guilt beyond a reasonable doubt.
17 And that is the purpose of a trial, to determine whether
18 or not the State can meet that burden of proof.

19 Now you-all have gone through a process this morning
20 called jury qualifications where the judge asked -- the
21 Court asked a number of questions to determine your
22 qualifications to serve on jury duty and all of you are
23 qualified to serve. You took an oath at that time to give
24 complete and truthful responses to all questions that you
25 were asked and you are under that same oath at this time

1 to give complete and truthful responses to any questions
2 that might apply to you.

3 We are now going to do what's called a voir dire
4 process in which I'm gonna ask a number of questions and
5 then we're going to select the jury to hear this case.
6 And we're gonna pick fourteen of you. We need fourteen
7 people who are not only qualified but fourteen people who
8 are available, who don't have any conflicts this week,
9 who's feeling good, feeling well, who's not under -- who
10 don't have any personal emergencies or anything that would
11 prevent you from giving this case your full attention.

12 Mr. Kester, if you will stand and face the jury panel.

13 (Whereupon, the Defendant stands.)

14 **THE COURT:** All right. Very good. You may be seated.

15 And the State, if you will stand and introduce
16 yourself and your colleagues and anyone else you want to
17 introduce.

18 **MR. EATON:** Thank you, Your Honor.

19 Good afternoon. My name is Vance Eaton. I'm a
20 prosecutor here in Richland County, an assistant solicitor.
21 This is my co-counsel, Sam McGlothin, our law clerk Peter
22 O'Riley, our lead investigator William Hilton from the
23 Columbia Police Department, and our two paralegals,
24 Cynthia Jones and Melissa Quisenberry.

25 **THE COURT:** All right. If you-all will stand as well

1 so the jury can see who all are hear.

2 All right. Thank you.

3 Mr. Kester is representing himself in this case.

4 He's not represented by counsel. He has a constitutional
5 right to represent himself. He has, however, two counsels
6 who are here who might assist him if he desires to ask
7 them for assistance.

8 And if you-all will stand, Mr. Nettles and
9 Mr. Delgado.

10 **MR. DELGADO:** My name is John Delgado. I'm an
11 attorney. I practice here in Columbia.

12 **MR. NETTLES:** My name is Bill Nettles. I'm an
13 attorney practicing here in Columbia.

14 **THE COURT:** If any member of the jury panel is a
15 friend or a relative or associate or acquainted with
16 anyone who has been introduced thus far; Mr. Kester, the
17 solicitors, the lawyers, paralegals, if you know any of
18 them in a personal, social, any kind of relationship with
19 any of them, please stand.

20 (Potential juror stands.)

21 **THE COURT:** Yes, ma'am.

22 **POTENTIAL JUROR:** I know Mr. Eaton. Our children
23 used to play together after school.

24 **THE COURT:** All right. And you're Juror Number?

25 **POTENTIAL JUROR:** 303.

1 **THE COURT:** 303. The fact that you know Mr. Eaton
2 and your children play together at school, would that
3 prevent you from being a fair and impartial juror if
4 selected in this case?

5 **POTENTIAL JUROR:** No, sir.

6 **THE COURT:** All right. Thank you, Juror Number 303.
7 Likewise, any other jurors? And remember under your
8 oath, you must give complete and truthful responses to any
9 and all questions. And there are no right or wrong answers
10 to any questions, but it would be a violation of your oath
11 as a juror to -- for example, if you know this person, but
12 you don't feel like standing up. You must give complete
13 and truthful responses.

14 So any other jurors?

15 All right. I have a -- well, some questions to ask
16 you. Mr. Kester's charged with twelve counts of attempted
17 murder and the alleged incidences occurred on or about
18 July 19, 2017, at -- Greenlawn Cemetery?

19 **MR. EATON:** Yes, Your Honor.

20 **THE COURT:** Where Mr. Kester allegedly sought to
21 drive his vehicle into a group of people and resulting in
22 the charges of attempted murder at Greenlawn Cemetery on
23 July 19, 2017.

24 Is that fairly accurate of the allegations?

25 **MR. EATON:** Yes, Your Honor.

1 **THE COURT:** All right. If any member of the jury
2 know anything about this case or has heard anything about
3 this case, please stand.

4 (Potential jurors stand.)

5 **THE COURT:** All right. When you stand, tell me your
6 juror number and tell me whether or not you have formed
7 an opinion at this moment in time concerning the guilt or
8 innocence of Mr. Kester. Your juror number and whether
9 or not you've formed an opinion at this point in time
10 concerning the guilt or innocence of Mr. Kester.

11 Yes, sir.

12 **POTENTIAL JUROR:** Juror Number 156. No opinion.

13 **THE COURT:** All right. Thank you.

14 Yes, ma'am.

15 **POTENTIAL JUROR:** Juror Number 48. No opinion.

16 **THE COURT:** Thank you.

17 **POTENTIAL JUROR:** Juror Number 82. No opinion.

18 **POTENTIAL JUROR:** Juror Number 184. No opinion.

19 **POTENTIAL JUROR:** 34. No opinion.

20 **POTENTIAL JUROR:** 29. No opinion.

21 **THE COURT:** And you may be seated after giving the
22 information.

23 Yes, ma'am.

24 **POTENTIAL JUROR:** 294. No opinion.

25 **POTENTIAL JUROR:** 45. No opinion.

1 **POTENTIAL JUROR:** 303, and I would just like to
2 disclose that I am friends with one of the victim's family
3 members, so I feel like I would have an opinion.

4 **THE COURT:** All right. And, Juror Number 303, based
5 on your knowing Mr. Eaton and knowing an alleged victim,
6 you believe that you cannot be fair and impartial in this
7 case?

8 **POTENTIAL JUROR:** Yes, sir.

9 **THE COURT:** All right. So we will not consider you
10 for selection, but stay with us, all right?

11 **POTENTIAL JUROR:** Okay.

12 **THE COURT:** Yes, ma'am.

13 **POTENTIAL JUROR:** 301, Your Honor. I have no opinion.

14 **THE COURT:** All right. Juror Number?

15 **POTENTIAL JUROR:** 301.

16 **THE COURT:** 301. All right.

17 Now the following people may testify in this case,
18 and if you're here I need you to stand so the jurors
19 can see you. Investigator Hilton has stood already.
20 Investigator Nick Fortner. Investigator Chauncey Duckett.
21 Investigator Wayne Montgomery. Investigator George Wise.
22 Investigator Zachary Jackson. None of them are here yet.
23 They all work at the Columbia Police Department.

24 Detective C. Morris from West Columbia Police
25 Department. Corporal Allen Brinson, Columbia Police

1 Department. Ivan Birochak, corporal, CPD. Sergeant
2 Robert Uhall, CPD. Officer Elizabeth Fulford, Columbia
3 Police Department. Jackie Richburg, 9-1-1 Communications.
4 Holly Yandel, EMS.

5 Additional possible witnesses are Joshua Ledbetter,
6 John Works, Angela Works -- there's John Works and Angela
7 Works. Kaylin White. Kevin Carter. Jennifer Browder.
8 Laura Gabrels. Michael Rooney. Kathryn Holloman. Tonya
9 White. Willard Sohn, S-O-H-N. Jan Sohn. Gerald Floyd.
10 Kittie Henderson. John Montgomery and John Montgomery,
11 Junior. [REDACTED] Minor 2 [REDACTED] Minor 1 [REDACTED]. Kelli
12 Montgomery. Jamie Browder.

13 Thank you-all.

14 If any members of the jury panel are either a friend
15 or a relative, acquaintance, associate or if you know any
16 of the prospective jurors, would you, please, stand.

17 (Potential jurors stand.)

18 **THE COURT:** Yes, sir.

19 176. I used to know John Montgomery. He was the
20 dean at the USC School of Law. I used to work there.

21 **THE COURT:** You used to work at the law school?

22 **POTENTIAL JUROR:** Yes, sir.

23 **THE COURT:** All right. And would that prevent you
24 from being a fair and impartial juror should he testify?

25 **POTENTIAL JUROR:** No, sir.

1 **THE COURT:** All right. Thank you.

2 **POTENTIAL JUROR:** I'm Juror Number 304. And I do not
3 know if Gerald Floyd stood up, but I believe I know him.

4 **THE COURT:** Who is it, John Floyd?

5 **POTENTIAL JUROR:** Gerald is what I heard. Is it John?

6 **THE COURT:** You heard what again?

7 **POTENTIAL JUROR:** Gerald Floyd.

8 **THE COURT:** Gerald Floyd. It is Gerald Floyd. Is he
9 here? He is not here. All right. But the fact that you
10 know Gerald Floyd, do you believe that would affect your
11 ability to be a fair and impartial juror?

12 **POTENTIAL JUROR:** No, Your Honor.

13 **THE COURT:** All right. Thank you.

14 And we've already taken you off the list, Number 303,
15 so you don't have to stand anymore with regard to any of
16 the questions.

17 If you or any member of your family has ever been a
18 victim of a crime of violence. A crime of violence --
19 crimes of violence are generally consider rape, robbery,
20 murder, burglary, attempted murder. Have you or any member
21 of your immediate family ever been a victim of a crime of
22 violence? If so, please stand. Give your Juror Number
23 and the crime if you're standing as you go.

24 (Potential jurors stand.)

25 **THE COURT:** Yes, sir.

1 **POTENTIAL JUROR:** Juror Number 29. My nephew was
2 murdered.

3 **THE COURT:** All right.

4 **POTENTIAL JUROR:** 210. My sister was murdered.

5 **POTENTIAL JUROR:** 273. My sister was attempted
6 murdered.

7 **THE COURT:** All right.

8 **POTENTIAL JUROR:** 82. My niece was raped.

9 **POTENTIAL JUROR:** 93. Rape and attempted murder.

10 **POTENTIAL JUROR:** 102. Two uncles were murdered.

11 **THE COURT:** If any of that would affect your ability
12 to be a fair and impartial juror, please stand.

13 (Potential jurors stand.)

14 **THE COURT:** All right. Juror number?

15 **POTENTIAL JUROR:** 93.

16 **POTENTIAL JUROR:** 82.

17 **THE COURT:** Juror Number 82 will not be considered.
18 Yes, ma'am.

19 **POTENTIAL JUROR:** 93.

20 **THE COURT:** Juror Number 93 will not be considered.

21 The same question. If any of you or any member of
22 your immediate family has ever been accused of a crime of
23 violence, please stand.

24 If you or any member of your immediate family has ever
25 been accused of a crime of violence. If so, please stand.

1 (Potential juror stands.)

2 **THE COURT:** Yes, sir. You thought about standing?

3 **POTENTIAL JUROR:** Yeah, it was not immediate family.

4 **THE COURT:** Okay. All right. Just tell me why you
5 were gonna a stand.

6 **POTENTIAL JUROR:** It was a cousin of mine. He
7 actually was person charged with attempted murder.

8 **THE COURT:** A cousin of yours?

9 **POTENTIAL JUROR:** (Nods head.)

10 **THE COURT:** And your juror number?

11 **POTENTIAL JUROR:** 195.

12 **THE COURT:** Thank you, sir.

13 Is there any member of the jury panel or any member
14 of your immediate family employed by or work in close
15 association with the South Carolina Department of Mental
16 Health? If so, please stand. If you or any member of
17 your immediate family is employed by, works closely with,
18 you're a patient, at the South Carolina Department of
19 Mental Health. If so, please stand.

20 (Potential jurors stand.)

21 **THE COURT:** Yes, ma'am. Juror number?

22 **POTENTIAL JUROR:** Juror Number 48. I'm employed by
23 the Department of Mental Health Public Safety Division.

24 **THE COURT:** And how long have you been working there?

25 **POTENTIAL JUROR:** Eight years.

1 **THE COURT:** And what -- you said public safety?

2 **POTENTIAL JUROR:** Public Safety Division, correct.
3 Yes.

4 **THE COURT:** All right. Thank you.
5 Yes, ma'am.

6 **POTENTIAL JUROR:** I'm Juror Number 147 and my husband
7 is currently employed as a psychiatrist with the South
8 Carolina Department of Mental Health.

9 **THE COURT:** All right. Thank you.
10 Is any member of the jury panel or any member of your
11 immediate family related by blood or connected by marriage
12 with any of the lawyers or anyone who works in the Fifth
13 Circuit Solicitor's Office? If so, please stand.

14 If any juror or any member of your immediate family
15 contributes to any organization that supports victims
16 rights such as MADD, SADD, Sister Care, or prisoners
17 rights or defendants rights such as the Innocence Project,
18 the ACLU or related organizations. If so, please stand.

19 (Potential juror stands.)

20 **THE COURT:** Yes, sir.

21 **POTENTIAL JUROR:** Juror 304. I contribute to the
22 ACLU.

23 **THE COURT:** All right. Thank you, sir.

24 If any of you work in law enforcement or if you
25 have any close friends or family members who work in law

1 enforcement. If so, please stand.

2 (Potential jurors stand.)

3 **THE COURT:** Yes, ma'am.

4 **POTENTIAL JUROR:** Juror 172. My son works for DPS.

5 **POTENTIAL JUROR:** 34. My father's a U.S. marshal.

6 **THE COURT:** Current, past?

7 **POTENTIAL JUROR:** Current.

8 **THE COURT:** Thank you.

9 Yes, sir.

10 **POTENTIAL JUROR:** 304. Customs agent, my
11 grandfather. He's a retired customs agent.

12 **THE COURT:** All right.

13 **POTENTIAL JUROR:** 108. My brother-in-law is a
14 private investigator for Richland County.

15 **THE COURT:** And what's his name?

16 **POTENTIAL JUROR:** Michael Wenzel.

17 **THE COURT:** Thank you.

18 All right. Ladies and gentlemen, I've asked you a
19 number of questions. If you did not respond to any of
20 the questions because you were moving too slow or I was
21 moving too fast or if you know of any reason why you
22 should not be selected to be on this case or any reason
23 why you cannot be a fair and impartial juror in this case,
24 please stand.

25 (Potential jurors stand.)

1 **THE COURT:** Yes, sir.

2 **POTENTIAL JUROR:** I had a family emergency come up
3 a couple of hours ago and I need to be out there.

4 **THE COURT:** All right.

5 **POTENTIAL JUROR:** 156.

6 **THE COURT:** 156. All right. Just come up here for a
7 moment unless you want to tell me what it is from there?

8 **POTENTIAL JUROR:** (Indicating.)

9 (Whereupon, the following proceedings were held at
10 the bench.)

11 **POTENTIAL JUROR:** I got a call this morning that my
12 father was sent to the hospital, but when I last heard he
13 was in critical care.

14 **THE COURT:** All right. I'll excuse you from jury
15 duty. 156?

16 **POTENTIAL JUROR:** Yes, sir.

17 **THE COURT:** All right. Thank you sir.

18 (Bench conference concluded.)

19 **THE COURT:** All right. We'll not use Number 156. He
20 has a family emergency.

21 Ladies and gentlemen, as well, we typically run court
22 from 9:30 until about 5:30 in the afternoon. Sometimes
23 that conflicts with jurors who have to pick up babies at
24 5:00 in the northeast and faraway places. If you have
25 any personal family conflicts that would prevent you from

1 being here all day up until 5:30 or so in the afternoon,
2 please stand.

3 (Potential jurors stand.)

4 **THE COURT:** All right. Yes, sir.

5 **POTENTIAL JUROR:** Juror Number 100. My wife's out
6 of town until Wednesday and I have to pick the kids up at
7 five.

8 **THE COURT:** Okay.

9 **POTENTIAL JUROR:** I can leave at five and pick them
10 up in time.

11 **THE COURT:** We won't be able to use you, Number 100.

12 All right. So Number 100 will not serve.

13 Yes, ma'am.

14 **POTENTIAL JUROR:** 223, and I have to pick up my son
15 from aftercare over in Irmo.

16 **THE COURT:** At?

17 **POTENTIAL JUROR:** 5:30.

18 **THE COURT:** And your juror number is what?

19 **POTENTIAL JUROR:** 223.

20 **THE COURT:** 223 will not be selected.

21 Yes, ma'am.

22 **POTENTIAL JUROR:** My daughter is a senior this year
23 and tomorrow she's having her senior night and it starts
24 at 6:30, but I have to be there before 6:30.

25 **THE COURT:** All right. We'll get you there at 6:30.

1 That's in Columbia, I presume?

2 **POTENTIAL JUROR:** It is Westwood in Blythewood.

3 **THE COURT:** All right. We'll get you there.

4 **POTENTIAL JUROR:** Should I dress before I come or
5 will I have time to go home and get dressed?

6 **THE COURT:** No, you better come dressed up. You
7 better come dressed up just in case. Just midway dressed.

8 All right. Ladies and gentlemen, if you know of any
9 reason, senior night or something, why you should not be
10 selected, please stand.

11 Any additional questions that the State or the defense
12 would like to address?

13 **MR. EATON:** None from the State, Your Honor.

14 **THE COURT:** Mr. Kester?

15 **MR. KESTER:** No, Your Honor.

16 **THE COURT:** All right. Very good.

17 Ladies and gentlemen, if you will follow
18 Ms. Pendergast's instructions we will precede with jury
19 selection.

20 **THE CLERK:** Ladies and gentlemen of the jury panel,
21 when I call your number, please come to the microphone
22 located here in the center. At the microphone, please
23 state your number and your place of occupation.

24 Juror Number 92.

25 And, please, bring any personal items that you have

1 with you.

2 (Whereupon, Shantiara D. Grant, a black female, was
3 called forward.)

4 **POTENTIAL JUROR:** I'm Juror Number 92 and I work for
5 Wal-Mart.

6 **THE CLERK:** What says the State?

7 **MR. EATON:** Please present this juror.

8 **THE CLERK:** What says the defense?

9 **MR. KESTER:** Strike the juror.

10 **THE CLERK:** Please return to the back of the
11 courtroom.

12 Juror Number 15.

13 (Whereupon, Tina D. Belk, a black female, was called
14 forward.)

15 **POTENTIAL JUROR:** I'm Number 15 and I don't work.

16 **THE CLERK:** What says the State?

17 **MR. EATON:** Please present the juror.

18 **THE CLERK:** What says the defense?

19 **MR. KESTER:** I didn't understand her. What did you
20 say?

21 **POTENTIAL JUROR:** I don't have a job.

22 **MR. KESTER:** You can seat her.

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

24 Juror Number 276.

25 (Whereupon, Chelsea D. Vogleson, a black female, was

1 called forward.)

2 **THE COURT:** The strikes are actually five and five,
3 not five and ten. Five and five.

4 **POTENTIAL JUROR:** My name is Chelsea Vogleson and I'm
5 a speech and language pathology assistant and a graduate
6 student.

7 **THE COURT:** Does that mic work? I'm not able to hear
8 very well.

9 **BAILIFF:** It should be working now.

10 **THE COURT:** State your name again.

11 **POTENTIAL JUROR:** My name is Chelsea Vogleson. I'm
12 a speech and language pathology assistant and a graduate
13 student.

14 **THE CLERK:** What says the State?

15 **MR. EATON:** Please present the juror.

16 **THE CLERK:** What says the defense?

17 **MR. KESTER:** Where do you do your speech pathology?

18 **POTENTIAL JUROR:** At All On Board Speech.

19 **MR. KESTER:** At where?

20 **POTENTIAL JUROR:** All On Board Speech. It's a home
21 health.

22 **MR. KESTER:** Strike the juror.

23 **THE CLERK:** Please return to the back of the
24 courtroom.

25 **THE COURT:** Two down and three to go.

1 **MR. KESTER:** What, sir?

2 **THE COURT:** You have five total. Five strikes.

3 **MR. KESTER:** I thought I had ten.

4 **THE COURT:** No, it's five.

5 **MR. KESTER:** I thought it was ten peremptory.

6 **THE COURT:** No, there are only five strikes.

7 **MR. KESTER:** What are the other strikes?

8 **THE COURT:** The State has five strikes, the defense
9 has five strikes.

10 **MR. KESTER:** Okay. I was thinking there was ten and
11 five.

12 **THE COURT:** Initially I did as well, but not for
13 attempted murder. For murder it's five and ten, attempted
14 murder it's five and five.

15 **MR. KESTER:** Okay.

16 **THE CLERK:** Juror Number 172.

17 (Whereupon, Amy E. McHenry, a white female, was
18 called forward.)

19 **POTENTIAL JUROR:** Amy McHenry, and I work for
20 America's Home Place. General manager -- sales manager.
21 I'm sorry.

22 **THE CLERK:** What says the State?

23 **MR. EATON:** Please present this juror.

24 **THE CLERK:** What says the defense?

25 **MR. KESTER:** Strike the juror.

1 **THE CLERK:** Please return to the back of the
2 courtroom.

3 Juror Number 147.

4 (Whereupon, Elizabeth L. Leaphart, a white female,
5 was called forward.)

6 **POTENTIAL JUROR:** I'm Elizabeth Leaphart. I'm
7 a mental health therapist. I'm also an education
8 coordinator in psychiatry for the USC School of Medicine.

9 **THE CLERK:** What says the State?

10 **MR. EATON:** Please present the juror.

11 **THE CLERK:** What says the defense?

12 **MR. KESTER:** Your Honor, I thought she was struck to
13 begin with because -- I mean, to me she's disqualified.

14 **THE COURT:** Do you challenge her for cause?

15 **MR. KESTER:** Well, I think wasn't her husband -- they
16 both work at the Department of Mental Health, so I --

17 **THE COURT:** All right. Ma'am, tell me again -- your
18 juror number is?

19 **POTENTIAL JUROR:** 147.

20 **THE COURT:** And you work at?

21 **POTENTIAL JUROR:** I work for the USC School of
22 Medicine.

23 **THE COURT:** USC School of Medicine.

24 **MR. KESTER:** What did you say your husband was?

25 **POTENTIAL JUROR:** He's a psychiatrist for the

1 Department of Mental Health.

2 **THE COURT:** Your husband is a psychiatrist at the
3 Department of Mental Health?

4 **POTENTIAL JUROR:** Yes, Your Honor.

5 **THE COURT:** And just to -- Mr. Kester has a complaint
6 against the Department of Mental Health and that's -- is
7 that a fair statement?

8 **MR. KESTER:** My life and my daughter's life was ruined
9 there. So, I mean --

10 **THE COURT:** That is part of his defense or contention
11 in this case. Your husband is a psychiatrist at the
12 Department of Corrections {sic}. Do you know of any reason
13 why you cannot be fair and impartial to the State and to
14 the defense?

15 **POTENTIAL JUROR:** No, Your Honor.

16 **MR. KESTER:** Your Honor, explain -- because, you know,
17 that will be another strike and you say we only get five
18 and that will be my fourth one.

19 **THE COURT:** That's why you have to use them very
20 judiciously.

21 **MR. KESTER:** Well, I have to strike this one. I mean,
22 you know, that's --

23 **THE COURT:** All right. She's -- I don't find any
24 basis for cause based on --

25 **MR. KESTER:** Ma'am, would you be partisan if this --

1 if part of this involves the Department of Mental Health?

2 **POTENTIAL JUROR:** I have no opinion.

3 **MR. KESTER:** What do you mean?

4 **POTENTIAL JUROR:** I have no bias.

5 **MR. KESTER:** Ma'am?

6 **POTENTIAL JUROR:** I have no bias.

7 **MR. KESTER:** I guess strike this juror.

8 **THE COURT:** All right.

9 **THE CLERK:** Please return to the back of the
10 courtroom.

11 Juror Number 98.

12 (Whereupon, Yvonne D. Hall, a black female, was
13 called forward.)

14 **POTENTIAL JUROR:** Hi. I'm Number 98. My name is
15 Yvonne Hall and I'm a registered nurse at Palmetto Health
16 Richland.

17 **THE COURT:** What says the State?

18 **MR. EATON:** Please present this juror.

19 **THE CLERK:** What says the defense?

20 **MR. KESTER:** Your Honor, if I run out of strikes,
21 then he just -- he just does it; is that correct?

22 **THE COURT:** Yeah. You can only strike unless you
23 can challenge for a legal cause, then they will be seated
24 unless he strikes them.

25 **MR. KESTER:** What kind of nursing do you do, ma'am?

1 **MR. EATON:** I'm sorry, Judge. I've got to object.
2 We don't have individual voir dire here in this state.

3 **THE COURT:** Yeah, the questions are asked by the
4 judge, but I'm gonna allow -- well, what do you -- tell
5 me, again, your occupation.

6 **POTENTIAL JUROR:** I'm a registered nurse at Palmetto
7 Health Richland.

8 **THE COURT:** A registered nurse at Palmetto Richland
9 and you -- any subspecialty beyond being a registered
10 nurse?

11 **POTENTIAL JUROR:** Nephrology.

12 **THE COURT:** Nephrology.

13 **MR. KESTER:** What exactly is that?

14 **THE COURT:** The kidneys?

15 **POTENTIAL JUROR:** Kidneys.

16 **MR. KESTER:** Kidneys? You can seat the juror.

17 **THE CLERK:** Please have a seat in the jury box.
18 Juror Number 192.

19 (Whereupon, Annie B. Moore, a white female, was
20 called forward.)

21 **POTENTIAL JUROR:** Juror 192, and my husband and I
22 both are retired.

23 **THE CLERK:** What says the State?

24 **THE COURT:** What kind of -- you-all are retired.
25 What kind of work did you used to do?

1 **POTENTIAL JUROR:** We both worked for grocery stores.

2 **THE COURT:** Grocery stores. All right.

3 **THE CLERK:** What says the State?

4 **MR. EATON:** Please present the juror.

5 **THE CLERK:** What says the defense?

6 **MR. KESTER:** Could I confer with them one minute?

7 **THE COURT:** Yes, sir.

8 (Discussion between the Defendant and shadow counsel.)

9 **MR. KESTER:** Your Honor, I might not have struck one

10 of the first for cause thinking I had ten, so, you know,

11 that's already done. The first couple of ones I may not

12 have struck if I knew I only had five. Since I've only

13 got one more, you can seat the juror.

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

15 Juror Number 244.

16 (Whereupon, Kathryn C. Skinner, a white female, was

17 called forward.)

18 **POTENTIAL JUROR:** 244. I work at Spinx.

19 **THE CLERK:** What says the State?

20 **MR. EATON:** Please present this juror.

21 **THE CLERK:** What says the defense?

22 **MR. KESTER:** You can seat the juror.

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

24 Juror Number 14.

25 (Whereupon, Travis V. Bartley, a black male, was

1 called forward.)

2 **POTENTIAL JUROR:** My name is Travis Bartley. I
3 work at a warehouse at Target Distribution.

4 **THE CLERK:** What says the State?

5 **MR. EATON:** Please excuse the juror.

6 **THE CLERK:** Please return to the back of the
7 courtroom.

8 Juror Number 57.

9 (Whereupon, Mozet B. Corley, a black female, was
10 called forward.)

11 **POTENTIAL JUROR:** My name is Mozet Corley and I am an
12 instructional assistant at Richland School District 2.

13 **THE CLERK:** What says the State?

14 **MR. EATON:** Please present juror.

15 **THE CLERK:** What says the defense?

16 **MR. KESTER:** What kind of instructional specialist
17 are you?

18 **POTENTIAL JUROR:** I work with students who are at
19 least two grade levels behind and we help them with
20 reading and their math.

21 **MR. KESTER:** You can seat the juror.

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

23 Juror Number 176.

24 (Whereupon, David M. McMahan, a white male, was called
25 forward.)

1 **POTENTIAL JUROR:** 176, David McMahan. I'm property
2 claims supervisor for Farmers Insurance.

3 **THE CLERK:** What says the State?

4 **MR. EATON:** Please present the juror.

5 **THE CLERK:** What says the defense?

6 **MR. KESTER:** Yeah, you mentioned you -- you know
7 Dean Montgomery, the former dean?

8 **POTENTIAL JUROR:** Yes.

9 **MR. KESTER:** And, you know, I know he's got to have
10 a lot of judiciary power and all that, so I figure he
11 should have been struck when -- you know, had a conflict
12 there, Your Honor.

13 **THE COURT:** All right. The fact that you -- and I
14 think I asked you the question already, the fact that you
15 may know a witness or you knew him from the law school,
16 Dean Montgomery, would that affect your ability to be fair
17 and impartial?

18 **POTENTIAL JUROR:** No.

19 **MR. KESTER:** Your Honor, he can say no, but --

20 **THE COURT:** He's given --

21 **MR. KESTER:** To me, it's blatant that he -- you know,
22 he knows the dean and that should -- should discount him
23 automatically. I mean --

24 **THE COURT:** That's not the test. The test is if you
25 can be fair and impartial and he's given that answer under

1 oath.

2 **MR. KESTER:** I'm gonna have to use my last strike
3 on him and then, you know, he'll have -- he'll have it
4 automatic himself the rest of the way.

5 **THE COURT:** All right.

6 **THE CLERK:** You may return to the back of the
7 courtroom.

8 Juror Number 71.

9 (Whereupon, Stephen H. Epting, a white male, was
10 called forward.)

11 **POTENTIAL JUROR:** 71. I'm self-employed selling
12 cars.

13 **THE CLERK:** What says the State?

14 **MR. EATON:** Please excuse the juror.

15 **THE CLERK:** Please return to the back of the
16 courtroom.

17 Juror Number 28.

18 (Whereupon, Cassandra Bosier, a black female, was
19 called forward.)

20 **POTENTIAL JUROR:** Juror Number 28. I'm a principal.

21 **THE CLERK:** What says the State?

22 **MR. EATON:** Please present the juror.

23 **THE COURT:** Does the defense challenge for cause?

24 **MR. KESTER:** Where are you principal, ma'am?

25 **POTENTIAL JUROR:** Richland School District 2.

1 **MR. KESTER:** As far as I'm concerned, you can seat
2 the juror, but --

3 **THE CLERK:** You can have a seat in the jury box.

4 **THE COURT:** No challenge for cause.

5 **THE CLERK:** Juror Number 237.

6 **POTENTIAL JUROR:** My name is Michael Scott. I'm Juror
7 Number 237 and I work for a pharmaceutical plant.

8 **THE COURT:** What says the State?

9 **MR. EATON:** Please present this juror.

10 **THE CLERK:** Does the defense challenge for cause?

11 **MR. KESTER:** No, ma'am.

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

13 Juror Number 48.

14 (Whereupon, Julia G. Cleveland, a black female, was
15 called forward.)

16 **POTENTIAL JUROR:** Juror Number 48, Julia Cleveland,
17 South Carolina Department of Mental Health.

18 **THE CLERK:** What says the State?

19 **MR. EATON:** Please present this juror.

20 **THE CLERK:** Does the defense challenge for cause?

21 **MR. KESTER:** Yeah.

22 **THE COURT:** What's the basis?

23 **MR. KESTER:** What, sir?

24 **THE COURT:** You challenge her for cause?

25 **MR. KESTER:** Let's see. My five peremptory strikes

1 and then what are the other strikes you have also?

2 **THE COURT:** If there is a legal basis to not seat
3 her based on her not being able to be a fair and
4 impartial juror.

5 **MR. KESTER:** Yeah, I don't think she can.

6 **THE COURT:** It can't be based on your personal
7 opinion. It has to be based on a some legal basis as
8 determined by me. What is the problem with her sitting?

9 **MR. KESTER:** She works where my little girl was
10 destroyed.

11 **THE COURT:** Where do you work, ma'am?

12 **POTENTIAL JUROR:** Department of Mental Health,
13 Public Safety Division.

14 **THE COURT:** All right. I'm gonna excuse her for
15 cause.

16 **THE CLERK:** You may return to the back of the room.
17 Juror Number 283.

18 (Whereupon, Leanna L. Washington, a black female, was
19 called forward.)

20 **POTENTIAL JUROR:** Juror 283. Assistant support
21 specialist for Palmetto Health Richland.

22 **THE CLERK:** What says the State?

23 **MR. EATON:** Please present the juror.

24 **THE CLERK:** Does the defense challenge for cause?

25 **MR. KESTER:** You said that was a support specialist?

1 **POTENTIAL JUROR:** Assistant support specialist.

2 **MR. KESTER:** What is that?

3 **POTENTIAL JUROR:** I work with computers.

4 **MR. KESTER:** You can seat the juror.

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

6 Juror Number 105.

7 (Whereupon, Keith L. Harris, a black male, was called
8 forward.

9 **POTENTIAL JUROR:** Juror Number 105, quality control,
10 quality assurance manager, Moncrief Army Hospital.

11 **THE CLERK:** What says the State?

12 **MR. EATON:** Please present the juror.

13 **THE CLERK:** Does the defense challenge for cause?

14 **MR. KESTER:** You said Moncrief?

15 **POTENTIAL JUROR:** Yes, sir.

16 **MR. KESTER:** That's at Fort Jackson, right?

17 **POTENTIAL JUROR:** Yes, sir.

18 **MR. KESTER:** And what's your position there?

19 **POTENTIAL JUROR:** Quality control, quality assurance
20 manager.

21 **MR. KESTER:** With insurance you say?

22 **POTENTIAL JUROR:** Assurance.

23 **MR. KESTER:** Assurance?

24 **POTENTIAL JUROR:** Yes.

25 **MR. KESTER:** What is that actually?

1 **POTENTIAL JUROR:** I deal with all kinds of complaints
2 as far as medical issues, the oxygen, you know, hazardous
3 materials and things like that.

4 **MR. KESTER:** You can seat the juror.

5 **THE CLERK:** Please have a seat in the jury box.
6 Juror Number 33.

7 (Whereupon, Tatiyana Y. Brice, a black female, was
8 called forward.)

9 **POTENTIAL JUROR:** I'm Juror 33 and I'm an -- I go to
10 college.

11 **THE CLERK:** What says the State?

12 **MR. EATON:** Please present the juror.

13 **THE CLERK:** Does the defense challenge for cause?

14 **MR. KESTER:** Where did you say you worked, ma'am?

15 **POTENTIAL JUROR:** I go to college.

16 **MR. KESTER:** So you're a student?

17 **POTENTIAL JUROR:** Uh-huh.

18 **MR. KESTER:** What are you studying?

19 **POTENTIAL JUROR:** Medical billing and coding.

20 **THE COURT:** Medical business you say?

21 **POTENTIAL JUROR:** Billing and coding.

22 **THE COURT:** Medical billing and coding.

23 **MR. KESTER:** Yes, sir. I understand. Working with
24 computers, right? Computer language and things? Yeah,
25 you can seat the juror.

1 **THE CLERK:** You can have a seat in the jury box.

2 Juror Number 267.

3 (Whereupon, Jacquelyn Stacy Tilley, a white female,
4 was called forward.)

5 **POTENTIAL JUROR:** I'm Stacy Tilley and I work for
6 Lexington Cardiology.

7 **THE CLERK:** What says the State?

8 **MR. EATON:** Please present this juror.

9 **THE CLERK:** Does the defense challenge for cause?

10 **MR. KESTER:** You said you worked where?

11 **POTENTIAL JUROR:** Lexington Cardiology.

12 **MR. KESTER:** You can seat the juror.

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

14 Juror Number 305.

15 (Whereupon, Joy C. McClendon, a black female, was
16 called forward.)

17 **POTENTIAL JUROR:** Juror Number 305. I'm a veteran.
18 Disabled veteran.

19 **THE CLERK:** What says the State?

20 **MR. EATON:** Please present the juror.

21 **THE CLERK:** Does the defense challenge for cause?

22 **MR. KESTER:** You can present the juror.

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

24 Juror Number 65.

25 (Whereupon, Sonaite Debebe-Kumssa, a black female, was

1 called forward.)

2 **THE COURT:** Strikes are one and two for the
3 alternates. We'll pick two alternates.

4 **POTENTIAL JUROR:** Juror Number 65. I work for the
5 Richland Library.

6 **THE CLERK:** What says the State?

7 **MR. EATON:** Please present the juror.

8 **THE CLERK:** What says the defense?

9 **MR. KESTER:** Did you say library?

10 **POTENTIAL JUROR:** Yes, sir.

11 **MR. KESTER:** Which library?

12 **POTENTIAL JUROR:** Richland Library Ballentine.

13 **MR. KESTER:** You can seat the juror.

14 **THE CLERK:** Please have a seat in the jury box.
15 Juror Number 304.

16 (Whereupon, Jared T. Rogers-Martin, a white male, was
17 called forward.)

18 **POTENTIAL JUROR:** I do IT for Colonial Life.

19 **THE CLERK:** What says the State?

20 **MR. EATON:** Please present the juror.

21 **THE CLERK:** What says the defense?

22 **MR. KESTER:** He may have a conflict because he's
23 associates with one of the people and it looks to me like
24 a conflict, Your Honor.

25 **THE COURT:** All right. Let me -- come up and let me

1 hear what you have in mind.

2 (Whereupon, the following proceedings were held at
3 the bench.)

4 **MR. KESTER:** Judge, he mentioned he knew one of the
5 people just like the other fella I struck knew Dean
6 Montgomery.

7 **MR. EATON:** State v. Morris, knowing a victim in a
8 case is not -- I mean, if he's trying to do it for cause.
9 He has a preemptory strike right now he can use.

10 **MR. KESTER:** I still have one?

11 **MR. EATON:** I believe.

12 **THE COURT:** Yeah, the strikes are one and two.

13 **MR. KESTER:** I have one?

14 **MR. EATON:** Correct. We're on alternates now.

15 **MR. KESTER:** Oh, I get one?

16 **THE COURT:** One minute. The Defendant, how many
17 alternates did he strike?

18 **THE CLERK:** None.

19 **THE COURT:** You have two.

20 **MR. KESTER:** Oh, two?

21 **THE COURT:** Yes.

22 (Bench conference concluded.)

23 **MR. KESTER:** Yeah, you can strike the alternate,
24 Your Honor.

25 **THE CLERK:** Please return to the back of the

1 courtroom.

2 Juror Number 280.

3 (Whereupon, John G. Walker, a white male, was called
4 forward.)

5 **POTENTIAL JUROR:** 280, John Walker. I'm a freelance
6 writer and editor. I also do legal document review and
7 analysis. I'm an inactive member of the South Carolina
8 Bar.

9 **THE CLERK:** What says the State?

10 **MR. EATON:** Please excuse this juror.

11 **THE CLERK:** Please return to the back of the
12 courtroom.

13 Juror Number 294.

14 (Whereupon, Phyllis V. Wilson, a black female, was
15 called forward.)

16 **POTENTIAL JUROR:** Juror 294. My name is Phyllis
17 Wilson. I'm employed at Best Cleaning Services of
18 Columbia.

19 **THE CLERK:** Does the State challenge for cause?

20 **MR. EATON:** No, Your Honor.

21 **THE CLERK:** What says the defense?

22 **MR. KESTER:** You can seat the alternate juror,
23 please.

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

25 **THE COURT:** Are there any matters of law regarding

1 the jury selection?

2 **MR. EATON:** Not from the State, Your Honor.

3 **MR. KESTER:** I didn't -- I didn't hear your question,
4 Your Honor.

5 **THE COURT:** Are there any matters of law regarding
6 the jury selection?

7 **MR. KESTER:** No, Your Honor.

8 **THE COURT:** All right. Ladies and gentlemen, you-all
9 have been selected to be the jury in the trial of this
10 case. Those of you who were not selected, thank you very
11 much for your cooperation. You-all can go back downstairs
12 and they will give you some more details.

13 (Whereupon, the jury panel was excused at 3:40 PM.)

14 **THE COURT:** Ladies and gentlemen, you-all have been
15 selected to be the jury in the trial of the case. Once
16 you are selected on a jury, you cannot discuss the case
17 with each other or with anyone else or allow anyone to
18 discuss it with you or in your presence until I tell you
19 that it's time to do so and that will be after you have
20 listened to the entire case and the closing arguments of
21 counsel.

22 We're gonna give you-all a few minutes break. If
23 you-all will go to the jury room and get acquainted with
24 each other. Do not discuss the case. We're gonna deal
25 with a few preliminary matters and we'll have you out as

1 soon as we can.

2 **BAILIFF:** Follow me, ladies and gentlemen.

3 (Whereupon, the jury retires to the jury room at
4 3:41 PM.)

5 **THE COURT:** All right. Are there matters before we
6 get rolling?

7 **MR. EATON:** None from the State, Your Honor.

8 **MR. KESTER:** I don't know. Lately my hearing's been
9 off, so. I don't know if I have a hearing problem because
10 where I've been they've checked it. So what did you say,
11 Your Honor?

12 **THE COURT:** Are there any matters you want to bring
13 to my attention before we get started?

14 **MR. KESTER:** No, Your Honor.

15 **THE COURT:** Okay. Did you say you had to set
16 something up for opening statements or are you ready to
17 go?

18 **MR. EATON:** It's ready, Your Honor.

19 **THE COURT:** Okay. We're gonna take about ten minutes
20 and then we'll get started with opening statements.

21 (Recess taken.)

22 **BAILIFF:** Court come to order, please. All rise.
23 You may be seated.

24 **THE COURT:** All right. Are you ready for the jury?

25 **MR. EATON:** The State's ready, Your Honor.

1 **MR. KESTER:** Yes, Your Honor.

2 **THE COURT:** All right. Let's bring them on.

3 (Whereupon, the jury returns to the courtroom at
4 3:55 PM.)

5 **BAILIFF:** The jury is seated, Your Honor.

6 **THE COURT:** All right. Ladies and gentlemen, if
7 you-all will stand to be sworn.

8 **THE CLERK:** Please raise your right hand.

9 At the end of the statement that I'm about to give,
10 please respond by saying I do.

11 (Whereupon, the jury was duly sworn by the Clerk of
12 Court.)

13 **THE CLERK:** You may be seated.

14 **THE COURT:** All right. Ladies and gentlemen, you
15 have just taken an oath to well and duly try this case
16 and render a true verdict according to the law and
17 according to the evidence so help you God. As long as
18 you hold true to that oath that you just took, you will
19 have complied with your responsibility as a juror and no
20 one will have any right to criticize any verdict that you
21 render in this case.

22 As I mentioned earlier, this case comes into court
23 as a result of indictments returned by the grand jury of
24 Richland County and these indictments charge the Defendant,
25 James B. Kester, with attempted murder, twelve counts of

1 attempted murder, twelve different indictments. He has
2 pled not guilty to each and every one of these charges.
3 He's presumed to be not guilty and he cannot be found
4 guilty unless the State presents evidence which convinces
5 each and every one of you of his guilt beyond a reasonable
6 doubt.

7 And that is your responsibility as the jury in this
8 case, to listen to the evidence, because you are the sole
9 judges of the facts of the case and it will be for you in
10 the end to determine the facts of the case based on the
11 testimony presented from this witness stand together with
12 any other exhibits introduced into evidence and out of all
13 of the folks who were summoned to appear on jury duty,
14 only the twelve of you who will deliberate can determine
15 the facts of this case.

16 Just as only you can determine the facts of the case,
17 as the presiding judge I am the sole judge of the law of
18 the case and you must accept as correct the law as I state
19 it to you at this time, during the trial and in greater
20 detail at the end of the trial.

21 Right before you went out, I indicated to you that
22 you are not to discuss the case with anyone else or allow
23 anyone to discuss it in your presence because you are to
24 decide the case solely based on the evidence received here
25 in the courtroom and not from any other source. Which

1 means that you're not to do any Internet research, you're
2 not going to engage in social media, you're not going to
3 read any newspaper accounts, TV accounts. If any of those
4 things might pop up, you are to refrain from paying any
5 attention to them or reading them because that would be
6 unfair to your fellow jurors because you're to decide the
7 case solely based on what's presented in court.

8 Now later in the process I will appoint one of you
9 to serve as the foreperson of the jury and that person
10 will have the responsibility to be the spokesperson of
11 the jury and to preside over the jury deliberation and
12 complete any of the verdict forms representing the
13 unanimous verdict of the jury.

14 I look forward to working with you in this case. I
15 want to be sure that all of you stay sharp, focussed and
16 alert. If you need a break at any point in time, if you
17 think that you've been sitting too long, get my attention
18 or the bailiffs attention and we'll take a break because
19 we want to keep you mentally focussed and engaged. You
20 play a critical role in our judicial process, the most
21 important role in our judicial process, and we will
22 respect that role in the presentation of this case to you.

23 In just a moment we'll hear opening statements first
24 by the State and then Mr. Kester will have an opportunity
25 to make an opening statement. The burden of proof is not

1 on the defense, it's on the State. He's not obligated to
2 make a statement. If he does, then he will have that
3 right just as the State has the same right. We'll move
4 on now to opening statements.

5 Yes, sir, Mr. McGlothlin.

6 **MR. MCGLOTHIN:** May it please the Court, Your Honor?

7 **THE COURT:** Yes, sir.

8 (Whereupon, State's Exhibit Number 1, the 9-1-1 call,
9 was played.)

10 **MR. MCGLOTHIN:** Ladies and gentlemen of the jury,
11 what you just heard was the moments shortly after
12 Mr. James Kester drove his car into a group of mourners
13 at a funeral at Greenlawn Cemetery on July 19, 2017.

14 Now usually I get up here and come up with a catchy
15 theme to keep your attention, but I don't think that
16 that's necessary in this case. I think the evidence and
17 the facts that you find will be shocking and I think as it
18 goes on you'll see what I mean.

19 On that day, July 19, 2017, the Defendant, he read
20 an obituary of a woman named Margaret Livingston. The
21 evidence will show he didn't know Ms. Livingston, she
22 didn't know him. The only thing he knew about her was
23 that she had worked at the Department of -- the South
24 Carolina Department of Mental Health for thirty years.
25 She had passed and her family and friends had gotten

1 together to mourn her and as you will find later in the
2 Defendant's statement he holds a vendetta against the
3 South Carolina Department of Mental Health for wrongs
4 that he thinks they did to his daughter.

5 Now he went there that day, he drove, and as he
6 pulled up to the -- kind of to the side where the tent was
7 a little ways in over the grave site, and he asked a few
8 people standing there, he said is this the service for
9 Margaret Livingston, and they said yes. He backed up the
10 vehicle, put it into drive, turned it 90 degrees and gunned
11 it, driving over grave markers until inevitably mowing down
12 the friends and family of Margaret Livingston. You will
13 hear them talk about hearing the engine roar and seeing
14 the vehicle, his Cadillac DeVille. You'll hear about the
15 bodies of the victims flipping over the car and the broken
16 bones and the screaming children left in the wake.

17 Now, again, none of these people knew James Kester.
18 He didn't know any of them. All he knew was some of these
19 people may work for the Department of Mental Health. When
20 he turned his car off the path and drove into that crowd
21 of people, he intended to kill them. He put that throttle
22 down. You will hear -- or you will see from the report
23 from the car he actually gave it over 90 percent throttle.
24 He wasn't holding back. He intended to kill them. And
25 this was all about retribution against the Department of

1 Mental Health.

2 Now we're the State, myself and my co-counsel. It's
3 our job, as the judge explained, to prove to you beyond a
4 reasonable doubt that Mr. Kester did attempt to kill
5 another person with malice aforethought, either express
6 or implied. That's the way the State of South Carolina
7 defines attempted murder. And malice may be a word you've
8 heard, but in a legal sense it's an intentional doing of a
9 wrongful act without just cause or excuse.

10 You're gonna hear from a lot of eye witnesses from
11 the scene, you'll hear from many of the victims from that
12 day, as well as a number of law enforcement, first
13 responders. You'll hear from an expert on the car -- the
14 data from the car that was pulled. However, after you've
15 heard all the testimony, seen all the evidence in this
16 case, it will be your turn to decide what is fact in this
17 case, what is the truth in this case. And before you make
18 that, we'll have another chance to come up before you and
19 give our closing statement, and we're gonna ask that you
20 find the Defendant, James Kester, guilty of attempted
21 murder.

22 Thank you.

23 **THE COURT:** Mr. Kester.

24 **MR. KESTER:** Thank you, Your Honor.

25 I'm not a lawyer as you might know, but, yeah, I was

1 involved in an -- in an incident and my daughter's buried
2 right out there and so I went out there. I did read that
3 in the newspaper. And this was when she was thirteen and
4 a half years old. In 1991 to '93 they said she'd be out
5 in a couple of weeks and they kept her 600 days and so,
6 you know, I was going out there to see if somebody may be
7 there that might have known my daughter.

8 So I went out there and I don't know. When she was
9 there 300 days, they made up malicious lies against me
10 because she was fixing to get out of there. Probate, she
11 should have never been in. DSS, they got in it, they
12 should have never been in it, but they told them that I
13 sexually abused my daughter. They kept her in there 300
14 more days and by the time 600 days had passed I didn't have
15 a child anymore, she was a vegetable. I have the records
16 to show that.

17 So when I went out there that day -- while this was
18 going on in the early nineties, my left eye had a stroke
19 in it and I went to the eye doctor and he didn't know
20 about it. He said have you been under stress? I said yes.
21 So I lost my left eye because of that. So when I went out
22 there, no, I didn't intend to kill anybody because there's
23 a road that leads up to there. If I would have gone fifty
24 or sixty miles an hour, that would have really wiped a lot
25 of people out. I know people got hurt, but I was right

1 next to the site. I don't know what happened. I blacked
2 out or something and I rolled through there and some
3 people got hurt, but I did not -- I did not go out there
4 intending to kill or harm anyone.

5 And after they said I sexually abused my daughter
6 after 300 days, they all conspired and they called
7 Childrens Protective Services, DSS. The Department of
8 Mental Health, they held her 300 more days and they
9 wouldn't allow me to see her. That's 600 days. She was
10 in the eighth grade. She used to read a lot of books.
11 I'd take her to Pizza Hut and they had a program called
12 Reading is Fundamental. When she got out, she would stare
13 at a book for hours and I'd say go on and try to read
14 something and she couldn't do it. She couldn't read one
15 word after that. You'll see what they did to her.

16 And this was not an intentional act. I told you I
17 was right next to it, I wasn't like speeding like that
18 where the road -- like, you know, the burial place, I was
19 right next to it and something happened, I went through
20 there and hurt a few people. Yeah, they'll -- they'll all
21 testify, there were a lot of people there, but that's what
22 happened.

23 Thank you.

24 **THE COURT:** Call your first witness.

25 **MR. McGLOTHIN:** The State calls Bonnie Montgomery.

1 (Whereupon, Bonnie Montgomery was duly sworn by the
2 Clerk of Court.)

3 **THE CLERK:** Please have a seat and state your name
4 for the record.

5 BONNIE MONTGOMERY,
6 having been duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. MCGLOTHIN:

9 Q. Could you, please, state your name for the record?

10 A. Bonnie Montgomery.

11 Q. Thank you, Ms. Montgomery. Could you, please, tell
12 us where you work, if you do.

13 A. I have a private practice. I'm a psychologist.

14 Q. And do you know Margaret Livingston?

15 A. I do.

16 Q. Okay. How did you know her?

17 A. She was -- she, of course, has since died, but she
18 was the aunt of my daughter-in-law, Kelli Montgomery.

19 Q. I'm gonna take you back to July 19, 2017. What were
20 you doing that day?

21 A. We went to Peggy -- we knew her as Peggy. We went to
22 Peggy's funeral with my daughter-in-law, Kelli, my son,
23 granddaughters and all of the relatives. We went to the
24 funeral at Dunbar Funeral Home and then we went over to
25 Greenlawn where there was a graveside service, a very

1 brief graveside service, and we -- after the graveside
2 service we disbursed. Kelli asked me if I would like to
3 see where her grandparents were buried and I said I would,
4 so we walked over. The graves were right at the edge of
5 the road. The graves were right at the edge of the road,
6 you know, kind of parallel to the grave, so I was standing
7 next -- next to the road and -- do you want me to continue?

8 Q. Well, I didn't want to interrupt you, but --

9 A. Okay.

10 Q. I'm gonna show you what's been marked as State's
11 Exhibit 3. Do you recognize that? Do you recognize that?

12 A. Let's see. With respect to -- it looks a little
13 different, but, yes, there was -- both the tent that --
14 this was -- they had a tent where we did the graveside
15 service and there was the casket and I think it was right
16 where Kelli and I were standing.

17 Q. What does it show? Without too much detail, just --

18 A. Do you want me to say what the photo shows?

19 Q. Just in general.

20 A. In general, it just shows the Greenlawn with the tent
21 set up for where Kelli's Aunt Peggy was going to be buried
22 and then you can see cars and --

23 Q. Does that photo accurately represent the way that
24 cemetery looked that day?

25 A. I -- yeah, I mean, I think it does. My -- my memory

1 of it is that the tent was more like -- you know, these
2 look kind of -- I mean, I remember the tent being kind of
3 close to the -- this looks like a longer perspective, but,
4 you know, the tent with the chairs in it being kind of
5 close to the road.

6 (State's Exhibit Number 93 was marked for
7 identification.)

8 BY MR. MCGLOTHIN:

9 Q. And now I want to show you State's Exhibit 93. Does
10 that give a little different perspective?

11 A. Yes. In other words, I would presume this was going
12 around the cemetery and this was -- this is on the side.

13 Q. Does that -- without showing it to the jury --

14 A. Okay.

15 Q. -- does that accurately depict the way the cemetery
16 looked that day from your memory?

17 A. From my memory. Basically there was -- there was the
18 tent -- there was a tent where the casket was and then
19 there was a road, you know, that went kind of parallel to
20 the -- I mean, went beside the tent and then another road
21 that kind of came back around where all our cars were
22 parked, but this road is the road that Mr. Kester pulled
23 up to.

24 Q. Okay.

25 A. He -- Mr. Kester pulled up right up where I had been

1 standing by the graveside where my daughter-in-law's
2 grandparents were buried and he pulled up right beside --
3 beside that on the road going straight and he rolled down
4 his window and I was standing there with Kelli's sister,
5 Jennifer Browder, we were both standing there, he rolled
6 down the window, leaned over towards us and said is this
7 Margaret Livingston's funeral, and we said yes.

8 Q. Was there anything interesting about that particular
9 question?

10 A. Well, I didn't think about it at the time, but later
11 we never called her Margaret, we all always called her
12 Peggy, and I don't think I -- I didn't realize her formal
13 name was Margaret, so from that standpoint.

14 Q. And we'll get to where you're leading, but I do want
15 to take a moment.

16 **MR. MCGLOTHIN:** Your Honor, at this time we would
17 like to enter State's 93 and -- and State's 3 into
18 evidence.

19 **THE COURT:** Any objection?

20 **MR. KESTER:** What did he say, Your Honor?

21 **THE COURT:** He's offering it into evidence. Do you
22 have any objection?

23 **MR. KESTER:** Those two you just showed me?

24 **MR. MCGLOTHIN:** Yes.

25 **MR. KESTER:** (Shakes head.)

1 **THE COURT:** They're admitted.

2 **MR. McGLOTHIN:** Thank you, Your Honor.

3 (State's Exhibit Number 3, and State's Exhibit
4 Number 93, photographs, were admitted into evidence.)

5 BY MR. McGLOTHIN:

6 Q. And I just want to use this photograph, State's
7 Exhibit 3. Does that show the cemetery kind of up close?

8 A. Right. The tent was -- you know, it wasn't set too
9 far from the road, where the casket was and the chairs,
10 you know, were arranged for people to sit.

11 Q. And then State's 93, that's an aerial view of the
12 cemetery that day?

13 A. (Nods head.)

14 Q. And where were you in relation to this photograph
15 when Mr. Kester pulled up? Is it shown on there?

16 A. I think it's right -- it's like, if I can understand
17 it, right here. He was coming up that little side road,
18 I believe.

19 Q. Okay.

20 A. I think this other place is where we were all parked
21 around it.

22 Q. Okay. So what happened after you informed him that
23 that was Peggy's service?

24 A. After that, I turned away and I was going to -- my
25 son said he was going to introduce me to his teacher who

1 was at the funeral, so I turned away looking for him and
2 then all of a sudden I heard -- I heard screaming, crying,
3 and I heard the acceleration of a car and I looked up and
4 it happened so quickly I was literally -- the car was
5 stopped by the time I saw what had happened, it just
6 accelerated through the -- the whole cemetery and people
7 were on the ground and hurt, bleeding. It was really
8 frightening and terrible. And I called 9-1-1 and I -- and
9 I think other people did, too, but I called 9-1-1 and I
10 said -- the person on the phone said to me you need to
11 walk around and tell me exactly what the hurts are --
12 who's hurt and how many people are hurt, what are their
13 injuries, so I started walking around the cemetery and I
14 saw Kelli's dad down on the ground, he couldn't get up, I
15 saw other people, and I walked -- kept walking to -- they
16 kept saying keep looking, tell me who else was injured, so
17 I walked and I got up to the car, Mr. Kester's car, and
18 stopped at this point and I said what happened and he said
19 the car went out of control and I looked over and it
20 looked to me like he still had the keys on. I said turn
21 that engine off and he said it's off and then I just looked
22 at him and he -- he looked very sheepish. He didn't look
23 like someone who had accidentally caused all these
24 injuries. He didn't look -- he didn't say oh, my gosh,
25 what happened, are people okay. He just sat there like

1 he'd been caught red-handed. It was just -- he just sat
2 there like that. And then 9-1-1 -- then people were
3 coming, arriving, you know, so fortunately they came so
4 quickly to help us. So I told 9-1-1 they're here,
5 everybody's here, so I think that's when I -- I hung up
6 the phone.

7 Q. Is the man you saw driving the car that day present
8 in the courtroom today?

9 A. Yes.

10 Q. Could you, please, point him out and give a brief
11 description?

12 A. It's Mr. Kester. He's the one who is the Defendant
13 sitting there in the black jacket and black tie.

14 Q. Thank you. Were you injured at all in the -- in the
15 incident?

16 A. No, I was not.

17 Q. And the family?

18 A. Yes. My husband saw our son thrown off of his car
19 and rolled off and our son -- I thought our son had died,
20 and he still has nightmares about it. And my husband, he
21 didn't realize that he was -- he had -- I saw him, he was
22 getting up, he had been on his knee, and he had -- he
23 didn't know he had been hit, but he was sideswiped. Our
24 granddaughter, somebody -- I thank God, I don't know who
25 it was, but somebody pushed her out of the way and she

1 fell on the granite stones at the cemetery and broke her
2 elbow and her arm. It was really a bad break. She had
3 to have surgery. And our other granddaughter got hit on
4 the shoulder and turned, you know, flipped. Thank goodness
5 she wasn't hurt very badly. Our daughter-in-law was not
6 hurt, thank goodness, but literally everybody in the
7 family, the close family, except me and my daughter-in-law
8 were hurt, physically hurt.

9 Q. Did you see the path the car took or did you not see
10 it until --

11 A. I did not see it. It kept -- it must have happened
12 so quickly because I did not look up until I heard
13 accelerating and screaming from everybody. I didn't look
14 up before that and so I didn't see him until he came --
15 you know, the car was at a stop when I saw it.

16 Q. When you said you heard the accelerating of the car,
17 what -- could you describe that?

18 A. It just sounded like -- in fact, you know, whenever I
19 hear a car now accelerating, it's scary. But just varoom,
20 like that.

21 Q. It was loud?

22 A. Yeah, it was loud and it just didn't stop until --
23 then it stopped suddenly.

24 Q. Was it a normal amount of acceleration? Did you
25 feel --

1 A. No. I mean, it was obviously a put your foot on the
2 floor kind of acceleration.

3 Q. Did you see where the car eventually came to a rest?

4 A. I mean, I think there was a little -- there might
5 have been a little -- I didn't see it, but it seemed like
6 it was up against maybe a little tiny, tiny hill or
7 something. I don't know.

8 Q. I'm gonna show what's been marked as State's
9 Exhibit 8. Do you recognize that?

10 A. (Nods head.)

11 Q. Does that accurately reflect the scene that day?

12 A. (Nods head.) Yes.

13 **MR. MCGLOTHIN:** The State would move State's
14 Exhibit 8 into evidence.

15 **THE COURT:** Any objection? Show it to the Defendant.

16 **MR. MCGLOTHIN:** Yes, sir.

17 **THE COURT:** Did you show to him?

18 **MR. MCGLOTHIN:** Yes, sir.

19 **THE WITNESS:** We came back to this spot and --

20 **THE COURT:** Just a moment. Did you offer it into
21 evidence?

22 **MR. MCGLOTHIN:** Yes, sir.

23 **THE COURT:** Show it to -- let me see that.

24 **MR. MCGLOTHIN:** (Handing.)

25 **THE COURT:** Any objection to that exhibit?

1 **MR. KESTER:** No, Your Honor.

2 **THE COURT:** It's admitted.

3 **MR. McGLOTHIN:** Thank you, Your Honor.

4 (State's Exhibit Number 8, a photograph, was admitted
5 into evidence.)

6 BY MR. McGLOTHIN:

7 Q. And what does this picture show? And you can show it
8 to the jury as well.

9 A. I mean, I think it shows something's gone. You know,
10 there's a mess kind of like, you know, things have been
11 tossed. We came back to this area and just sat because,
12 you know, the ambulances were coming and we were trying to
13 get the children, but my granddaughter, the one who was
14 fourteen at the time, you know, fourteen -- anyway she's
15 fifteen now, but we sat in one of those chairs and she
16 said grandma, why, why did they do that. I said I don't
17 know, I don't know. But it was just horrifying. It
18 really was.

19 Q. Is Mr. Kester's vehicle shown in that photograph?

20 A. Yes. Yes, it's in this corner there.

21 Q. Ms. Montgomery, did you know Mr. Kester prior to that
22 day?

23 A. No.

24 Q. Had you ever heard his name before?

25 A. No.

1 Q. Had you ever met his daughter?

2 A. No.

3 Q. You'd never heard her name before?

4 A. No.

5 **MR. McGLOTHIN:** Nothing further. Please answer any
6 questions the Defendant may have.

7 **THE COURT:** Yes, sir.

8 **MR. KESTER:** Like I said, I'm not refusing some
9 people got hurt, but it was not done intentionally. I
10 was right next to it like I stated before.

11 **THE COURT:** Do you have any questions that you want
12 to ask the witness?

13 **MR. KESTER:** No, Your Honor.

14 **THE COURT:** All right. Anything further from the
15 State?

16 **MR. McGLOTHIN:** No, Your Honor.

17 **THE COURT:** Thank you. You may step down.

18 **THE WITNESS:** Thank you, Your Honor.

19 (Witness excused.)

20 **MR. McGLOTHIN:** The State calls Jennifer Browder.

21 (Whereupon, Jennifer Browder was duly sworn by the
22 Clerk of Court.)

23 **THE CLERK:** Please have a seat and state your full
24 name for the record.

25 **THE WITNESS:** My name is Jennifer Sohn Browder.

1 JENNIFER SOHN BROWDER,
2 having been duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. MCGLOTHIN:

5 Q. And just to be certain, is it a hyphenated last name
6 or do you go by Ms. Browder?

7 A. Just Jennifer Browder, but you said full name.

8 Q. Okay. I just wanted to be sure I called you what you
9 wanted to be called.

10 Ms. Browder, where do you work?

11 A. USC.

12 Q. What do you do there?

13 A. I do research in the School of Public Health.

14 Q. Okay. Did you know Peggy Livingston?

15 A. She's my aunt. My father's sister.

16 Q. Okay. So you've known her most of your life?

17 A. Since I was born.

18 Q. Okay. Did you have a close relationship with her?

19 A. I did.

20 Q. Were you at her funeral --

21 A. I was.

22 Q. -- back in 2017?

23 A. (Nods head.)

24 Q. Could you tell me a little bit about that day?

25 A. So as Bonnie just said, we were at Dunbar Funeral

1 Home for the funeral services, then we went to the
2 graveside, and it was very hot that day. So I have three
3 young children. At the time they were five, eight and
4 eleven, and the guy that performed the graveside services
5 tried to make it very quick because it was so hot and so
6 it was like literally five minutes. Then we got up and we
7 were kind of mingling and as Bonnie stated my grandparents
8 are buried very close to Peggy's grave, more towards the
9 road though. Her tent was over here and we were over to
10 the road. So my sister and mother --

11 Q. I apologize for interrupting you.

12 **MR. MCGLOTHIN:** Just for the Court's information, we
13 are showing State's Exhibit 93 on the board here.

14 Permission to ask the witness to step down?

15 **THE COURT:** Yes, she can do that.

16 **MR. MCGLOTHIN:** If you could, please, step down.

17 **THE WITNESS:** (Witness complies.)

18 BY MR. MCGLOTHIN:

19 Q. I didn't know if you can see it from where you were.
20 Could you, please -- and try not to touch it. It's a
21 little finicky. Could you, please, point where -- kind of
22 where you were describing there.

23 A. So this is where Peggy was buried, where we had the
24 service, and my grandparents are buried actually closer
25 to the street, a little bit over here from this. So --

1 and we were all parked along here. So we were like kind
2 of -- it's kind of out of the frame here, but I think it's
3 actually close to that tree.

4 Q. Okay.

5 A. But we were close to the road there. Like right
6 there.

7 Q. So what happened after you walked over there?

8 A. Do you want me to step back up there?

9 Q. You can sit down if you're more comfortable there.

10 A. Yes, I'd like to sit down.

11 So it had been a while since I'd seen my grandparents'
12 grave, so my sister and I -- I remember her kind of tearing
13 up and then Kelli, my sister, walked away and Bonnie and
14 I were standing there and this gray Cadillac slowly drove
15 up next to us, so it would have been on my left where I
16 pointed, and Mr. Kester rolled down his window -- not his
17 window, it was actually the passenger side window, and
18 looked directly at me and said is this Margaret
19 Livingston's funeral and I said yes and then I turned back
20 around to Bonnie and I saw the car go straight and the
21 tents were to my right and then I hear literally the car
22 jump the curb and like, varoom, and literally looked up
23 and my three children were in -- in that crowd of people,
24 as was my father and whole family, my husband, and he just
25 plowed right through and her kept going all the way through

1 and he tried to make a pass back around until his car got
2 stuck and I -- do you want me to keep going?

3 Q. Sure.

4 A. I took off my heels and started running and I found
5 my three children and my husband. Once I got them all --
6 made sure that they were okay, I saw that my dad was hurt,
7 and I was actually afraid to look at him because I thought
8 he was dead, which I couldn't even handle it. But all of
9 the -- it just like crept through my mind that he had said
10 Margaret Livingston and I knew that nobody called her
11 Margaret, we all called her Peggy, so I knew he didn't know
12 that and I knew he had done it on purpose.

13 So in my mind I was like oh, my God, he was trying to
14 kill us. So then I ran around to the car and found John
15 Montgomery -- not Junior, but older John Montgomery, and
16 he just said to me make sure he doesn't get out of the car
17 in case he has a gun and he's trying to kill us and I said
18 he just asked me was this the Margaret Livingston funeral.

19 Q. Did you ever see a gun?

20 A. I didn't, no, but I was worried. I felt very strongly
21 that he had done it on purpose, so I went up to several
22 people and as soon as the police got there I was like you
23 need to hear me, I know he did it on purpose because he
24 very clearly just asked me -- and it also clicked in my
25 mind that Margaret Livingston was what it had said in the

1 obituary, and so -- yeah.

2 Q. Did you see where the car came to a stop?

3 A. I did.

4 Q. Okay. Is that on this photograph here?

5 A. It is. Where your hand is.

6 Q. Right there?

7 A. Uh-huh.

8 Q. I'm gonna go back a few steps from what you were
9 saying. So your attention was drawn to it by the sound of
10 the car?

11 A. Yes.

12 Q. Can you describe that again?

13 A. The sound?

14 Q. Yes, please.

15 A. There was no smooth -- there was like a curb, so it
16 was literally like a bump and varoom, like a loud
17 acceleration. Now actually our whole family when we hear
18 a loud sound like that, me and my children jump. It's
19 like terrifying. But, yeah, it just -- he went literally
20 in between the casket and the front row of chairs where we
21 had just been sitting. I think if he had gotten there
22 five minutes earlier with him going so fast he would have
23 hit all of us sitting, but the sound was very loud and
24 intense.

25 Q. Did you know Mr. Kester at the time?

1 A. No.

2 Q. Had you ever heard his name?

3 A. No.

4 Q. Did you know his daughter?

5 A. No.

6 **MR. McGLOTHIN:** Thank you. Nothing further. Please
7 answer any questions the defense has.

8 **THE COURT:** Mr. Kester.

9 **MR. KESTER:** I don't have any questions, Your Honor.

10 **THE COURT:** All right. Thank you. You may step down.
11 (Witness excused.)

12 **THE COURT:** Next witness.

13 **MR. EATON:** Jamie Browder.

14 (Whereupon, Jamie Browder was duly sworn by the Clerk
15 of Court.)

16 **THE CLERK:** Please have a seat and state your full
17 name for the record.

18 **THE WITNESS:** My name is Jamie Browder.

19 **MR. EATON:** May it please the Court, Your Honor?

20 **THE COURT:** Yes, sir.

21 JAMIE BROWDER,

22 having been duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. EATON:

25 Q. Good afternoon, Mr. Browder. Mr. Browder, what is

1 your connection to this family, the family of Margaret
2 Livingston?

3 A. I'm married to Jennifer Browder. Her great aunt was
4 Peggy Livingston. She welcomed me in from the moment I
5 met her.

6 Q. So that was your wife who just testified?

7 A. Yes, sir.

8 Q. Okay. Where do you live?

9 A. We live behind the VA, so relatively close to
10 Greenlawn Cemetery.

11 Q. And what do you do, Mr. Browder?

12 A. I'm a South Carolina public school teacher.

13 Q. What grade do you teach?

14 A. I teach a prekindergarten class of twenty students
15 who qualify to be in my class because of developmental
16 delays.

17 Q. Mr. Browder, I take it you were there that day?

18 A. Yes, sir.

19 Q. Could you describe what happened, I guess, at the
20 beginning of the -- of the day when you got there? What
21 happened briefly?

22 A. Yeah. So as my wife stated, it was a very hot day.
23 The service was abbreviated because of the heat and then I
24 joined the family moving toward the grandparents' grave
25 site, I'd never actually been there myself, and it was a

1 moment where we all shared. From there we moved back
2 toward the tent where Peggy's casket was. I walked with
3 my youngest daughter and my son and my son told me he
4 wanted to spend some time at the casket to remember
5 Peggy. Peggy was very close to my son. She was always
6 in attendance at his baseball and basketball games. They
7 had a deep connection.

8 Q. Mr. Browder, if you don't mind, if I could stop you
9 and if you'd step on down and just -- what you just
10 described, where you went, and could you, please, show
11 the jury on State's Exhibit 93? So you can point or use
12 this pointer, if you want. Whatever you prefer.

13 A. I can say that I have not been back to the site since
14 the funeral, so.

15 Q. Can you get yourself oriented?

16 A. Yes. If I'm correct, as my wife stated the grave of
17 the grandparents being here, then we walked along this
18 path to Peggy's casket.

19 Q. And so what's the tent? The tent that's shown in
20 this image, what is that?

21 A. From my recollection, this would have been Peggy's
22 casket and there was chairs all through here for the
23 family and friends of the family to sit during the service.

24 Q. And now you said you had walked over somewhere else
25 first. Where was that? This tree right here?

1 A. Wherever the grandparents' grave site was located.
2 Again, that was my first time going to Greenlawn and I
3 have not been back since because of the experience.

4 Q. I understand. Thank you. You can take the stand
5 again.

6 A. (Witness complies.)

7 Q. I'm gonna approach you with State's 5 and 7 for
8 identification. If you can just take a look at these
9 and see if you can orient yourself with these two
10 photographs.

11 Do you recognize these?

12 A. Yes.

13 Q. What do they show just generally?

14 A. Two tents, Peggy's casket and chairs that were placed
15 for the family to use.

16 Q. So this was the scene where they held her actual
17 burial or was about to be?

18 A. Yes.

19 Q. Okay. And does this look like it did that day?

20 A. Yes, very much.

21 **MR. EATON:** I'd offer 5 and 7 into evidence, Your
22 Honor.

23 **THE COURT:** If you will show them to him.

24 **MR. EATON:** (Hanging.)

25 **THE COURT:** Any objection? Any objection?

1 **MR. KESTER:** No, Your Honor.

2 **THE COURT:** Then they're admitted.

3 (State's Exhibit Number 5 and State's Exhibit
4 Number 7, photographs, were admitted into evidence.)

5 BY MR. EATON:

6 Q. So, Mr. Browder, I guess starting with State's 5,
7 can you kind of show the jury on this photo where you --
8 where you were when it happened?

9 A. Yeah. So I would have been on the other side of the
10 tents probably five feet from the casket.

11 Q. And then looking at State's 7, does that help orient
12 as well? Where were you on this one?

13 A. Yes, the same, just a little bit of a closer view of
14 the photo. Just, again, five feet from the casket.

15 Q. So the back side -- well, you were close to the
16 casket. So the left or the right side, which side were
17 you on of the two tents?

18 A. I would have been on the right side of this tent.

19 Q. Okay. Or the right tent, I guess?

20 A. Yeah.

21 Q. Okay. Thank you.

22 Please describe to the jury what you remember in
23 those moments.

24 A. Yeah, as I was saying going back, you know, taking
25 a moment with my son. You know, we knew that was soon

1 to be the lowering of the casket and he -- this was his
2 first funeral as well, Aunt Peggy's, and we were having
3 a conversation, remembering the good times, you know,
4 answering any questions that he may have had. From there
5 it was the most horrific sound I'd ever heard in my life.
6 It sounded like just screeching metal, shrapnel being
7 thrown. I just -- a sound I'd never heard before. I
8 looked back over my right shoulder and then I was able
9 to view the oncoming gray Cadillac. It was heading
10 directly toward my son and me. Just quick reflexes,
11 not thinking about it, I basically just did a swing
12 movement with my right arm and -- and I threw my son out
13 of the way of the oncoming car. And he knows I saved
14 his life. I mean -- and I fully believe that if I would
15 not have moved him out of the way, he would have been
16 killed that day.

17 At that point in my recollection is everything went
18 in slow motion. Mr. Kester's car came by and it was so
19 close to me I feel like I could have put my hand on top
20 of the car. Then, whoosh, it just took off. It just
21 jetted by me. I saw my father-in-law being hit by the
22 car, laying on the ground, bleeding. I saw a lot of
23 family members screaming. It was like a battlefield
24 almost. And then I just went -- kind of keeping an eye
25 on the car yet at the same time trying to find my wife,

1 trying to find my children, and then I was able to locate
2 my sister-in-law, Kelli, and she was with her -- my niece
3 who had a broken arm.

4 Q. Mr. Browder, from either of these pictures are you
5 able to remember today and point out kind of exactly how
6 the car went through the tent? Can you tell that, like
7 the path it took?

8 A. No, I can only guess pulling back from memory. I
9 don't think it went through the tent because if it went
10 through the tent it would have hit the casket, so it was
11 on the outside perimeter of the tent. It must have just
12 missed the tents and must have came very close.

13 Q. Are you sure about that?

14 A. I'm not absolutely sure.

15 Q. Okay. Mr. Browder, do you know Mr. Kester?

16 A. No, sir.

17 Q. Have you ever heard of his daughter?

18 A. No, sir.

19 **MR. EATON:** Thank you. No further questions.

20 **THE COURT:** Any questions Mr. Kester?

21 **MR. KESTER:** I know some people got hurt and I'm
22 sorry, it wasn't intentional, and according to this I
23 was going sixteen miles an hour when I went through
24 there.

25 **MR. EATON:** And I'd like to object, Your Honor, to

1 this form of cross-examination.

2 **THE COURT:** Do you have questions of the witness?
3 You can't give a speech to the jury. You have to ask
4 questions of the witness.

5 CROSS-EXAMINATION

6 BY MR. KESTER:

7 Q. It says sixteen miles an hour. Like I said, I
8 didn't -- it was a long winding road. If I went out there
9 intending that, somebody would be fifty, sixty miles an
10 hour. It's sixteen miles an hour and I know some people
11 got hurt and I'm sorry.

12 **MR. KESTER:** All right. Thank you.

13 **THE COURT:** All right. You may step down.

14 (Witness excused.)

15 **THE COURT:** Call your next witness.

16 **MR. EATON:** Kaylin White. Kaylin White.

17 (Whereupon, Kaylin White was duly sworn by the Clerk
18 of Court.)

19 **THE CLERK:** Please have a seat. State your full name
20 for the record.

21 **THE WITNESS:** My name is Kaylin White and my mother
22 and grandmother were two of the victims that got injured
23 in this accident.

24 KAYLIN WHITE,

25 having been duly sworn, testified as follows:

1 DIRECT EXAMINATION

2 BY MR. EATON:

3 Q. Ms. White, what -- how do you fit into the whole
4 family?

5 A. Peggy is my cousin.

6 Q. Peggy was your cousin?

7 A. Uh-huh.

8 Q. And what do you do?

9 A. I'm a dental assistant.

10 Q. Where do you do that?

11 A. Out in Irmo.

12 Q. And from your perspective, can you just briefly tell
13 the jury what happened that day from the beginning of the
14 ceremony.

15 A. Uh-huh. So we were all -- the ceremony probably was
16 five minutes. It was super hot. We had just got done
17 talking about Peggy and how good she was and said a little
18 prayer and then we were gonna go to my cousin's house and
19 gather around and kind of celebrate Peggy's life, but we
20 weren't able to do that. I remember standing kind of at
21 the back corner of the tent kind of near the tree and I
22 was talking to my cousins, we were talking about school
23 and things like that, and I remember looking out of the
24 corner of my eye and seeing this little silver Cadillac
25 and I saw him roll down the window, I wasn't sure what he

1 was saying, I was a little bit further away, and I kind of
2 turned back to talk to my cousins and the next thing I
3 heard was a loud engine like a race car just took off. I
4 remember running towards the front of the tent. He
5 probably got to the front of the tent and I started chasing
6 after the car. I remember screaming at my mom and I
7 remember her turning around and about that time she
8 couldn't do anything, the car was already on the top of
9 the tent. I remember chasing after the car while it came
10 to a stop. I called 9-1-1. I was probably the first one
11 to call 9-1-1. I remember one of our family friends was
12 on top of the hood just holding on for dear life. My
13 grandpa followed right behind me along with my two cousins
14 and the car came to a stop and I was trying to get the
15 car's license plate number and I remember my two cousins
16 pulled the front guy off the car and I remember looking
17 into the car at his rear view mirror and he was looking
18 dead back at me and we made eye contact and I remember him
19 moving his gearshift to see if the car would move and it
20 wasn't moving and I remember turning around and seeing my
21 mom on the ground with her hand up, blood was coming out
22 of the side of her hand, her head was bleeding. Everybody
23 was screaming. I remember looking at my grandma, she was
24 laying on the ground. I just remember seeing everybody
25 else frantically running around.

1 Luckily the casket was never hit, the tents were
2 never hit. I remember returning back to my mom and I was
3 thinking lord knows what else this guy has. I didn't know
4 what he came to do, what he had in his car, so I remember
5 going to my car, trying to find the keys and grabbing my
6 gun. I went -- my car -- one of our cars was kind of near
7 where his car was parked, but like parallel to it, and I
8 remember grabbing my gun and walking not necessarily right
9 next to his car, but by his car. I never pointed my gun at
10 him. I just briefly had some words with him. I'm not sure
11 if he heard me or not, but I basically told him not to get
12 out of the car and I remember going back to my mom and
13 trying to help her and make sure everybody else was okay.

14 Q. So did you -- did you see the entire path of the car
15 from the road where it came to rest?

16 A. Yes, sir.

17 Q. And can you kind of show on State's Exhibit 5 or 7,
18 I guess -- let's say State's 5. Can you show the jury
19 where it went?

20 A. So he -- I was kind of standing around this back
21 corner and I remember him coming through here and somehow
22 he made it through the tent without hitting the tent. I
23 know he was very aware of his surrounding. He came to the
24 side of the tent and made sort of a turn like this way,
25 so it was further out, but his car ended up going this

1 way and I remember knowing if his car didn't stop he was
2 either, one, gonna try to get away or, two, he was gonna
3 come back for round two. Luckily his car stopped.

4 Q. So you're saying that Mr. Kester just threaded that
5 hole into the tent, through the tent, under it?

6 A. Yes.

7 Q. Didn't even hit the poles?

8 A. No.

9 Q. Okay. And do you know Mr. Kester?

10 A. No, sir, I do not.

11 Q. Have you ever heard of his daughter?

12 A. No, sir, I haven't.

13 **MR. EASTON:** Thank you. No further questions.

14 **THE WITNESS:** Thank you.

15 **THE COURT:** Any questions of this witness?

16 **MR. KESTER:** No, Your Honor.

17 **THE COURT:** All right. Thank you. You may step
18 down.

19 **THE WITNESS:** Thank you.

20 (Witness excused.)

21 **THE COURT:** Call your next witness.

22 **MR. EATON:** John Works.

23 (Whereupon, John Phillip Works was duly sworn by the
24 Clerk of Court.)

25 **THE CLERK:** Please have a seat and state your full

1 name for the record.

2 **THE WITNESS:** John Phillip Works.

3 JOHN PHILLIP WORKS,

4 having been duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. EATON:

7 Q. Mr. Works, if you could tell the jury your connection
8 to the family, please.

9 A. My father-in-law is Margaret -- or is Margaret
10 Livingston's brother. Aunt Peggy. She's my aunt by
11 marriage.

12 Q. And, Mr. Works, what do you do?

13 A. I'm in-house counsel for LS3P Associates. We're an
14 architectural firm in Charleston, South Carolina.

15 Q. Mr. Works, did you come up for the funeral that day?

16 A. Yes, sir.

17 Q. Could you tell the jury what you remember from that
18 incident, please?

19 A. The graveside service had just ended and I was
20 standing on -- if you were facing the casket in the
21 seating area that's already been indicated, I was sitting
22 on the right side of the tent with my two children; my
23 seven-year-old daughter and my nine-year-old son, and my
24 wife was under the tent next to the casket talking to some
25 other family members and friends. And it was hot as people

1 have already said. It was very hot, so I was gonna walk
2 with my kids back over to our car, which was parallel,
3 parked along that large curve on the left-hand side of the
4 screen.

5 Q. Can you step down for a second and show the jury what
6 you're talking about?

7 A. All right. This is the tent, this is the casket, the
8 entry road, the road we came in on. I was parked along
9 this curve. I'm not sure which one of these cars is mine,
10 it may not even be here at this point, but it was along
11 this curve. So I was standing here and, like I said, we
12 walked -- me, my two children and one of their little
13 cousins were walking over this way across the line of cars
14 coming up this road, and I hear a loud roar, an engine,
15 and right after that I heard a loud clatter and right after
16 that I heard screaming. They were all in sequence, very
17 loud, all together.

18 So I'm standing here with my two kids and I turn and
19 I look back and I see a car emerge from the tent, from
20 this tent right here, going this direction, and it came
21 out and there's chairs and people coming off the car,
22 going all directions, and it just keeps on going across
23 the graveyard.

24 And I know that my wife was -- I mean, I'd just left,
25 she was in there, so my kids and I run back in this

1 direction and I'm looking for my wife and my kids are
2 behind me yelling mom, looking for their mom.

3 Q. Take your time.

4 A. And I find my wife under the tent. She indicates
5 that she's been hit in the back. The first thing she
6 asked about was the kids. I told her the kids were fine.
7 The next thing she asked was about her dad and she crawls
8 over to where her dad was in the path of the car and he's
9 laying there bleeding, there's other people who's laying
10 around bleeding, people walking around screaming, on the
11 ground, screaming for people that they're looking for,
12 and that's it.

13 I tried to help my wife get the kids back in the
14 car and turn on the air conditioning. I made a couple
15 of trips back and forth over here to get an umbrella,
16 Advil, water, whatever, while we waited for the EMTs and
17 police to arrive. And by the way, they came very fast.
18 They did a great job. They were there immediately and
19 brought this bus out there to pick up victims, so the
20 emergency services folks did a really good job.

21 (Whereupon, the witness returns to the witness stand.)

22 Q. Mr. Works, then did you -- did you see the car pass
23 through the tent?

24 A. I saw the car coming out of the tent.

25 Q. Coming out of the tent. And when you saw it, did you

1 say there was a person still on it or did you see that?

2 A. I saw people coming off and out from in front of the
3 car. I don't remember if there was somebody on the car or
4 not, but I saw chairs and people going in all directions
5 and at that point I was not paying attention to the car,
6 I was paying attention to the tent where it came out of.

7 Q. But you yourself were not hurt?

8 A. No, sir.

9 Q. Do you know Mr. Kester?

10 A. No, sir.

11 Q. Do you know anything about his daughter?

12 A. At the time of this event, I'd never heard of
13 Mr. Kester, didn't know anything about him, nothing.

14 **MR. EATON:** Thank you. Nothing further.

15 **THE COURT:** Yes, sir.

16 **MR. KESTER:** I have no questions, Your Honor.

17 **THE COURT:** All right. Thank you, sir.

18 **THE WITNESS:** Thank you.

19 (Witness excused.)

20 **THE COURT:** Yes, sir.

21 **MR. EATON:** Kelli Montgomery.

22 (Whereupon, Kelli Montgomery was duly sworn by the
23 Clerk of Court.)

24 **THE CLERK:** Please have a seat and state your full
25 name for the record.

1 **THE WITNESS:** My name is Kelli Sohn Montgomery.

2 KELLI SOHN MONTGOMERY,

3 having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. EATON:

6 Q. Ms. Montgomery, please tell the jury how you fit into
7 the family tree.

8 A. I am Aunt Peggy's niece and she was also my Godmother.
9 She was my niece -- I'm her niece. Sorry. She was my
10 aunt. Sorry. I'm nervous.

11 Q. And so who did you come to the funeral with that day?

12 A. I came with my whole family. We actually rode in the
13 limo. My children came with my mom later on, but I was
14 there with my father, my sister, everyone you see up there.

15 Q. How many kids do you have?

16 A. I have two children, two girls. **Minor 1** is currently
17 fifteen, she was fourteen at the time. And **Minor 2** who is
18 almost thirteen. She was eleven at the time of the
19 incident.

20 Q. And you said the kids came with someone else?

21 A. The adults rode in the limo on the way to the service,
22 but we had my mom bring all the kids, give them a little
23 snack on the way over because we knew we were waiting to
24 go back to my sister's to hang out after the service with
25 the family.

1 Q. And so when this happened, had the service concluded?

2 A. Yes. I -- like my sister, Jennifer, stated earlier,
3 we went over to show my mother-in-law Bonnie my
4 grandparents' graves, so I was over there with them for
5 just a few minutes and I kind of got upset because I
6 hadn't been there in a while, so I walked back over and
7 was standing in the middle of the tent. It was really hot
8 as everyone keeps saying and so I went and stood and my
9 sister, Jennifer, and Bonnie stayed back when Mr. Kester
10 pulled up, so I did not see him pull up.

11 Q. Do you know which side -- if you're orientated on
12 here, which side he pulled up on?

13 A. I believe it was by the tree by my grandparents'
14 grave.

15 Q. This sort of right side over here is where he pulled
16 up?

17 A. Yes.

18 Q. Did you -- at what point did you become aware of his
19 -- him and his car?

20 A. So I was standing across from the casket. The casket
21 was here.

22 Q. And we can use -- if I can, we can use --

23 A. Pictures?

24 Q. We'll use State's Exhibit 5 if you want to show the
25 jury and orient everybody.

1 A. Okay. So here's the casket. I was standing right
2 in between the two tents, right in the middle, to get some
3 shade. I'd just been standing in the sun for a few
4 minutes, it was really hot, so I walked over and was
5 standing right here right before he drove in front of me.

6 Q. Okay. And so when did you realize that he was there
7 or that his car was there?

8 A. I saw a car turn and I looked up and what I heard was
9 the car jumping the curb and then I heard him gunning it
10 and just started plowing towards us and I was standing in
11 between this and this and he literally drove right in front
12 of me and just like my brother-in-law said he could have
13 touched it, I could have touched the car. That's how close
14 he came. And he drove through and I could hear it, you
15 know, going loud, gassing it, like somebody was putting
16 their foot on the pedal and going, and I looked right and
17 that's when I saw my fourteen-year-old daughter fly in the
18 air and I saw my husband John flying in the air and I can
19 still see him, his tie going sideways, and then I looked
20 over and saw my father on the ground and I couldn't look
21 anymore because, as my sister said, I thought he was dead.
22 So I didn't look, and before I could react and do anything
23 my eleven-year-old walked up to me and was crying and I
24 looked over and saw her arm dangling literally and I knew
25 she had broken her arm.

1 So I immediately went behind the casket and sat on the
2 ground just so I could sit down and be with her because I
3 didn't really want her to see any more trauma going on.
4 She was eleven years old at the time. So I sat with her
5 and then I had several family members tell me they heard
6 screaming, I'm pretty sure that was me as I'd just seen my
7 husband and my other child getting hit by the car and my
8 father on the ground and I was just screaming like a bad
9 movie scene, lots of screaming, and then my brother-in-law,
10 Jamie, did find me and sat with me and I told him not to
11 leave me and he didn't and I'm forever grateful for him not
12 leaving me.

13 I could not find my husband. I though he was dead
14 because I never saw him after he got hit by the car. I
15 was screaming for him. I didn't know where he was at
16 that point and I could see my fourteen-year-old literally
17 running around and I was begging for her to come to me and
18 finally she came to me and sat down and I said please don't
19 leave me, please don't leave me, I knew she had been hit by
20 the car, and by the grace of God she's okay. But she'd
21 lost her shoes and that's what her fourteen-year-old mind
22 was worried about, she couldn't find her shoes. So that's
23 what we were worried about in the moment, but it was really
24 scary, so.

25 Q. If I could take you back for just a second. So we can

1 see part of the road. Are you saying that this is the road
2 that he started from?

3 A. Yes, sir.

4 Q. And so are you saying that he went from this road --
5 which direction was he coming from?

6 A. I never saw him pull up. I just saw him turn at the
7 curb, but I could say -- do you want me to come down?

8 Q. Yes, please do.

9 A. So I'm standing like literally -- oh, I'm sorry.

10 Q. That's okay.

11 A. So I was standing under the tent right in the middle
12 and I looked left and the car -- I heard the car turn --
13 or jump the curb and he gassed it and drove underneath the
14 tent.

15 Q. So -- but he was on this road here which is going this
16 way, right?

17 A. I really -- I don't know which way -- direction. I
18 never saw him drive up. I just heard him -- the curb when
19 he jumped the curb. That's when I looked up and he just
20 plowed right into the tent between the casket and --

21 Q. Was it a curb or just these graves?

22 A. No, there's a little bit of a -- like a little curb
23 there.

24 Q. Either way, this is perpendicular to the tent; is that
25 correct?

1 A. Yes.

2 Q. So the road he was on -- was the road he was on in any
3 way pointed towards the tent?

4 A. No.

5 Q. So could a person possibly be on that road, going down
6 that road, and somehow end up in the tent?

7 A. No.

8 Q. Did he have to --

9 A. He had to turn, jump it, gun it. That's what I saw.

10 Q. Okay. And just to wrap up, do you know Mr. Kester?

11 A. No, sir.

12 Q. Had you ever heard of his daughter, Joy?

13 A. No.

14 Q. Were you aware of anything that had happened with Joy
15 and DMH twenty-five years ago in 1991?

16 A. No, sir.

17 **MR. EATON:** Thank you. No further questions.

18 **THE WITNESS:** Do I go back up there?

19 **MR. EATON:** Briefly, please.

20 **THE COURT:** Any questions, Mr. Kester?

21 **MR. KESTER:** Like I said, I'm sorry people got hurt.
22 It was not done intentionally.

23 **MR. EATON:** Judge, I object to his form of
24 questioning the witnesses. I realize he's not an
25 attorney, but still --

1 **MR. KESTER:** I'm sorry.

2 | **THE COURT:** You must ask questions.

3 | CROSS-EXAMINATION

4 BY MR. KESTER:

5 Q. My daughter was -- when she was thirteen, could you
6 imagine for inappropriate laughing, smiling, giggling?
7 They drug -- they gave her massive drugs and destroyed her
8 brain. Can you imagine this happening to either one of
9 your daughters? That would be horrific, wouldn't it?

10 | A. I didn't know your daughter.

11 | Q. Huh?

12 | A. I did not know your daughter.

13 Q. Well, I'm sorry your daughter, you know -- but it was
14 not done intentionally.

15 **THE COURT:** Anything further by the State?

16 **MR. EATON:** No, Your Honor.

17 | **THE COURT:** You may step down.

18 (Witness excused.)

19 **THE COURT:** One final witness by the State for this
20 day?

21 **MR. EATON:** I beg the Court's indulgence one moment,
22 Your Honor.

23 (Pause in proceedings.)

24 **MR. EATON:** If it is acceptable to the Court, Your
25 Honor, the next witness that I was planning to call is

1 prepared to be here tomorrow morning if the Court is okay
2 with breaking at this point?

3 **THE COURT:** Okay.

4 All right. Ladies and gentlemen, that will be it for
5 this day. We're going to recess and we need you back at
6 9:30 tomorrow morning. Please do not discuss the case or
7 allow anyone to discuss it with you or in your presence.
8 Remember you're not to do any further checking or research
9 or anything to find out anything more about the case.

10 We'll see you tomorrow morning at 9:30.

11 (Whereupon, the jury was excused for the day at
12 5:15 PM.)

13 **THE COURT:** Anything further before we break for the
14 day?

15 **MR. EATON:** Not from the State, Your Honor.

16 **MR. KESTER:** No, Your Honor.

17 **THE COURT:** All right. We'll resume at 9:30 tomorrow
18 morning.

19 (Whereupon, the proceedings were concluded for
20 October 8, 2018, at 5:15 PM.)

21 (The following proceedings were held October 9, 2018,
22 beginning at 9:44 AM.)

23 **BAILIFF:** Court come to order. All rise.

24 You may be seated.

25 **THE COURT:** Good morning.

1 **MR. EATON:** Good morning, Your Honor.

2 **THE COURT:** Any matters? Any issues?

3 **MR. EATON:** Not from the State, Your Honor.

4 Are you ready to proceed, Mr. Kester?

5 **MR. KESTER:** Yes, Your Honor.

6 **THE COURT:** All right.

7 You can bring in the jury.

8 **BAILIFF:** Yes, sir.

9 (Whereupon, the jury enters the courtroom at 9:48 AM.)

10 **BAILIFF:** The jury is seated, Your Honor.

11 **THE COURT:** All right. Thank you.

12 Good morning.

13 **THE JURY:** Good morning.

14 **THE COURT:** Mr. Eaton, your next witness.

15 **MR. EATON:** Your Honor, the State calls Holly Yandel.

16 (Whereupon, Holly Yandel was duly sworn by the Clerk
17 of Court.)

18 **THE CLERK:** Please have a seat and state your full
19 name for the record.

20 HOLLY YANDEL,

21 having been duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. EATON:

24 Q. Good morning, Ms. Yandel.

25 A. Good morning.

1 Q. Ms. Yandel, what do you do?

2 A. I'm a paramedic with Richland County EMS.

3 Q. And how long have you been doing that?

4 A. A little better than eighteen years.

5 Q. All here in Richland County?

6 A. Yes, sir.

7 Q. And what do your duties consist of?

8 A. I'm a sergeant with the County, which means I'm a
9 senior paramedic. I run the truck as well as supervise
10 eight other people on the -- on the normal rotation of our
11 shifts.

12 Q. And tell the jury a little bit about your training and
13 experience as an EMT.

14 A. I'm a nationally registered EMT paramedic, which means
15 I can do all of the advanced procedures that are allowed by
16 law for -- within the state guidelines, as well as the
17 national. So I can go anywhere in the United States and
18 work under the national guidelines.

19 Q. And have you taken training to become an EMT?

20 A. Yes. It's about a two-year training program that we
21 do through Midlands EMS here in Lexington County.

22 Q. And do you have to stay current on training?

23 A. Yes, we have several state and national registry
24 certifications that we have to keep valid; ACLS, which is
25 advanced cardiac life support, pediatric advanced life

1 support, CPR. There are a number of certifications that
2 have to stay valid to stay registered as a nationally
3 registered paramedic.

4 Q. And in your years of experience could you even guess
5 how many scenes you've responded to?

6 A. Last year I ran 1700 calls.

7 Q. 1700 in a year?

8 A. Yes.

9 Q. Have you ever taught training for other EMTs?

10 A. I am a preceptor for paramedics that are in school.
11 I also train other crew chiefs so they can go off and have
12 their own trucks and run their own trucks and we have
13 ride-along EMT basics that come and do training with us and
14 I precept them as well.

15 **MR. EATON:** Your Honor, because of Ms. Yandel's
16 training, knowledge and experience, I would ask that the
17 Court recognize her as an expert in emergency medical
18 treatment.

19 **THE COURT:** Any questions concerning that,
20 Mr. Kester?

21 **MR. KESTER:** Is the prosecution still questioning?

22 **THE COURT:** He's offering her as an expert witness
23 in emergency medical treatment. Do you agree or oppose?

24 **MR. KESTER:** Yeah, I don't see any reason why not.

25 **THE COURT:** All right. She is qualified as an

1 expert.

2 **MR. EATON:** Thank you, Your Honor.

3 **THE COURT:** Ladies and gentlemen, an expert witness
4 can offer opinions where lay witnesses ordinarily cannot.

5 **MR. EATON:** Thank you, Your Honor.

6 BY MR. EATON:

7 Q. Ms. Yandel, do you remember responding to a scene on
8 July 19th last year?

9 A. Yes, sir.

10 Q. Where was that?

11 A. Greenlawn Cemetery.

12 Q. And how do you get your notification of a call?

13 A. We have a dispatch system with an ADL computer system
14 in our trucks that dispatches the calls to us and routes
15 us to the call with a brief description of the incident.

16 Q. And is that what happened in this case?

17 A. Yes.

18 Q. And who -- who was first on-scene?

19 A. I was.

20 Q. What did you find when you got there?

21 A. There were a number of patients on the ground kind of
22 spread out across the scene. There were probably maybe
23 fifty people or so on -- just in the general area when we
24 first arrived.

25 Q. I want to approach you with what's been marked for

1 identification as State's Exhibit 95. Before we show it
2 to the jury, do you recognize that?

3 A. Yes, sir.

4 Q. What is that?

5 A. This was the scene at Greenlawn Cemetery where the
6 burial was set up and then main roads coming in.

7 Q. Can you tell that it is a shot from that day?

8 A. Yes.

9 Q. How can you tell that?

10 A. Well, our Richland County EMS bus is on-scene, as
11 well as the -- where the grave marker tent was set up is
12 about where it was when we got there.

13 Q. And all that's visible in the picture?

14 A. Yes.

15 Q. So that accurately and fairly represents the scene
16 as you remember it?

17 A. Yes, sir.

18 **MR. EATON:** Your Honor, I'd offer State's -- I'll
19 show it to Mr. Kester.

20 I'd offer State's 95 into evidence, Your Honor.

21 **THE COURT:** Any objection?

22 **MR. KESTER:** No, Your Honor.

23 **THE COURT:** It's admitted.

24 **MR. KESTER:** No, Your Honor.

25 **THE COURT:** Yes, sir.

1 (State's Exhibit Number 95, a photograph, was marked
2 and admitted into evidence.)

3 **MR. EATON:** I beg your indulgence, Your Honor.

4 BY MR. EATON:

5 Q. Ms. Yandel, if you don't mind just stepping down and
6 just orienting us to where you were and where everything
7 was that day, please.

8 A. All right. This is the burial tent.

9 Q. Try not to touch it because it will move.

10 A. Yeah. Garners Ferry Road would have been up here and
11 Leesburg Road was down this way. We came in off Leesburg
12 around here and probably parked our unit right in here
13 when we first got on-scene because we left that way, that
14 particular route, to go out. By that time there were a lot
15 of fire trucks and other responding units.

16 **MR. NETTLES:** May I approach?

17 **THE COURT:** Yes, sir.

18 (Proceedings held at the bench; not reported.)

19 BY MR. EATON:

20 Q. You can proceed.

21 A. Sure. Well, we came in off of Leesburg Road and came
22 this way and parked our unit in here so we would have easy
23 access to the patients that were in the area.

24 Q. And where were all the patients when you got there?

25 A. Well, they were kind of scattered around, but most of

1 them were concen -- oops.

2 Q. That's okay.

3 A. -- were concentrated in this general area right there.

4 Q. Thank you. You can take the stand back.

5 A. (Witness complies.)

6 Q. So, Ms. Yandel, when you get to a scene like this

7 with multiple patients, what -- what do you do?

8 A. Well, we have a -- what's called a mass casualty
9 triage system in place with our county. We use a disaster
10 bag that has triage tags in it so we can quickly assess
11 all the patients on-scene and rate them based on the
12 severity of their injuries. It's a color-coded rating
13 system; red, yellow and green, red being the most critical,
14 then yellow are injured but not critical, life-threatening
15 situations, and green are basically walking wounded;
16 bumps, bruises, scrapes, anything that's not imminently
17 life-threatening.

18 Q. And can you -- is there like a definition for mass
19 casualty scene?

20 A. Any -- our ambulances are capable of holding three
21 or four patients. Anything above and beyond that, then we
22 have to call for multiple resources to come in and help us
23 and we classify it as mass casualty and set up a command so
24 we can organize and get everybody off the scene as quickly
25 as possible.

1 Q. So did this qualify as a mass casualty scene?

2 A. Yes, sir.

3 Q. Do you remember specifics of the treatment that you
4 provided to all the people there?

5 A. Initially everyone is assessed based on imminent life
6 threats. If anyone was critical, if they weren't breathing
7 or if they had any injury that was causing great blood
8 loss, we'd treat that really quickly and move on. But we
9 try and categorize everyone very quickly so as the other
10 ambulances come on -- come on-scene anyone with a red tag
11 can be scooped up and taken immediately because they need
12 critical care as quickly as possible.

13 Q. And in this case do you remember the exact number of
14 patients and their names?

15 A. I do not.

16 Q. Would it help refresh your memory to look at the EMS
17 reports from that day?

18 A. Yes. Thank you.

19 Q. I'll give you a second to look through some of those.

20 A. Okay. Most -- most of the patients I remember. The
21 yellows and the reds I remember.

22 Q. And so tell the injury, again, what does the red mean
23 in triage?

24 A. Red is a critical patient that needs advanced care as
25 quickly as possible, you know, if they have an arterial

1 bleed or multiple fractures or what might be considered
2 internal injuries based on the mechanism of injury, they
3 need to get to the hospital first.

4 Q. Were there people tagged red in this mass casualty
5 scene?

6 A. Yes, sir.

7 Q. And could you tell the jury a little bit about those,
8 please.

9 A. We had one gentleman that had multiple fractures.
10 You can lose a lot of blood internally with multiple long
11 bone, like legs or arms, fractures, so due to that and his
12 age he was a critical patient, he needed to go immediately
13 to the hospital in case there was some bleeding going on
14 that we couldn't see, so we stabilized him and got him off
15 the scene as quickly as possible. There was an elderly
16 woman who, I believe, actually had been run over by the
17 car and because of her vital signs and her age and the
18 mechanism of injury, I was worried that there was a lot
19 of internal injuries so she was red, of course, and we got
20 her off the scene as quickly as possible.

21 Q. Do you remember their names?

22 A. I -- I don't. I can refer to their names in --

23 Q. If you're able to see if you can --

24 A. Willard Sohn was one.

25 Q. Did you say Willard?

1 A. Yes, sir. And Laura Gabrels. She couldn't remember
2 the actual incident, so -- and she had a large hematoma or
3 goose egg on her head, and I was worried that she may have
4 some sort of head injury from the incident. Generally if
5 you can't remember what happened, you got knocked out, so
6 I wanted to make sure that she got to an MRI and got
7 scanned quickly, so she was definitely red.

8 I believe there was another one that was red to start
9 with. I can't remember her name. I'm sorry. I can't
10 remember her name, the other one. I'm sorry, I don't see
11 it offhand.

12 Q. Suffice it to say there were patients, victims, on the
13 mass casualty scene who were red tagged that day?

14 A. Yes, sir.

15 Q. In your expert opinion in emergency medical treatment,
16 could some of these people have died from their injuries
17 without treatment?

18 A. Yes.

19 Q. And how's that? Why's that?

20 A. Due to the internal injuries and the blood loss that
21 can be sustained from blunt force trauma if it's not
22 reversed, it is more than likely that they could have bled
23 out internally.

24 Q. And you mentioned a bus. What's the bus for?

25 A. The bus is a supersized ambulance. We converted --

1 the County converted a greyhound bus-sized bus into a
2 mobile ambulance that holds twenty-six people. Anything
3 that we can do on an ambulance, we can also do on that
4 bus, and it just allows us to transport a much larger
5 number of people at the same time.

6 **MR. EATON:** Thank you, Ms. Yandel. No further
7 questions.

8 **THE COURT:** Cross-examination, Mr. Kester?

9 **MR. KESTER:** Yes, sir. I've got a couple of sheets
10 here.

11 CROSS-EXAMINATION

12 BY MR. KESTER:

13 Q. Good morning, Ms. Yandel.

14 A. Good morning.

15 Q. I've just got a couple of things. I just got
16 discovery just a couple of days ago, at the end of last
17 week, so I -- but at least on a couple of pages I have
18 they write the injuries sustained were nonlife-threatening.
19 It's their document. Can I show it to you? Or it doesn't
20 matter, I guess. Okay.

21 And also --

22 **THE COURT:** Do you have -- sir, just a moment. Are
23 you asking her a question or making a statement?

24 **MR. KESTER:** Yes, sir, Your Honor.

25 **THE COURT:** What is the question to her?

1 **MR. KESTER:** Okay.

2 BY MR. KESTER:

3 Q. So these documents, at least a couple of them, say
4 nonthreatening injuries. Also -- nonlife-threatening
5 injuries, and I know you've worked hundreds of thousands
6 of car wrecks probably and fatalities and, you know, major
7 injuries and people, you know. It's -- and according to
8 this, you know, we're not talking about intent because
9 you're -- you know, you're discussing this, but, you know,
10 I'd say it was not intentional and we not talking about
11 that with you, but it says I was going sixteen miles an
12 hour.

13 Now you've worked thousands of accidents I'm sure
14 and, I mean, sixteen miles an hour is -- is what this says
15 right here that I just received from them, so what is your
16 comment on that?

17 A. I'm sorry. What are you -- what are you asking, sir?

18 Q. I was going sixteen miles an hour.

19 A. I'm not an expert on --

20 Q. Okay.

21 A. -- blunt force trauma versus mass ratio. I don't --

22 Q. Yeah, but I just wanted to note these
23 nonlife-threatening injuries and the speed was sixteen
24 miles an hour.

25 **MR. KESTER:** Thank you, Your Honor.

1 **THE COURT:** All right. Redirect.

2 **MR. EATON:** Briefly, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. EATON:

5 Q. Ms. Yandel, were there people there who had
6 nonlife-threatening injuries?

7 A. Yes, absolutely.

8 Q. Okay.

9 A. They were the green tags, the walking wounded, that I
10 talked about.

11 Q. But there were also people there who were red tagged?

12 A. Correct.

13 Q. And what does that mean again?

14 A. It means they had critical, life-threatening injuries.

15 Q. And Mr. Kester mentioned, you know, that you've
16 probably worked a lot of auto accidents. Have you had a
17 case where people were hit by cars before?

18 A. Yes.

19 Q. Okay. And do you get into the details of the speed
20 versus the person and their weight and things like that?

21 A. No, sir.

22 Q. Do you often know much or anything about how fast a
23 person was driving?

24 A. Only based on what the drivers of the vehicles say,
25 but we don't do any kind of investigation into the

1 accidents.

2 Q. But, I guess, regardless in this case was the car
3 going fast enough to cause life-threatening injuries to
4 people?

5 A. Yes.

6 **MR. EATON:** Thank you. No further questions.

7 **THE COURT:** Any other questions, Mr. Kester?

8 **MR. KESTER:** Just one.

9 **THE COURT:** All right.

10 RE CROSS EXAMINATION

11 BY MR. KESTER:

12 Q. Ms. Yandel, why do you think these reports say
13 nonthreatening injuries then? I mean, why would they --
14 these people who wrote this, they knew about everything,
15 so why --

16 A. Yes, sir. There were people on-scene that did not
17 have life-threatening injuries.

18 Q. But it says the total though was -- I've got to get
19 my glasses -- talked about everyone and said nonthreatening
20 injuries.

21 A. I -- I'm not sure what you're looking at, but there
22 were three different levels of injuries on the scene;
23 green, which were nonlife-threatening --

24 **MR. KESTER:** Your Honor, could I show this to
25 Ms. Yandel?

1 **THE COURT:** Yes, sir.

2 BY MR. KESTER:

3 Q. Would -- would you read the last line on that
4 paragraph?

5 A. The injuries sustained were nonlife-threatening.

6 Q. Okay. I have two or three papers that say that and
7 I just got them the other day.

8 A. All right. But I'm -- like I said, I don't know what
9 this is referring to, if it was a specific patient or --

10 Q. No, it was referring to everyone.

11 **MR. KESTER:** All right. Thank you.

12 **THE COURT:** You may step down.

13 **THE WITNESS:** Thank you.

14 (Witness excused.)

15 **MR. McGLOTHIN:** The State calls Josh Ledbetter.

16 (Whereupon, Joshua Ledbetter was duly sworn by the
17 Clerk of Court.)

18 **THE CLERK:** Please have a seat and state your full
19 name for the record.

20 JOSHUA LEDBETTER,

21 having been duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. McGLOTHIN:

24 Q. Would you, please, state your name for the record?

25 A. Joshua Ledbetter.

1 Q. Mr. Ledbetter, where do you work?

2 A. Richland County EMS.

3 Q. And what do you do there?

4 A. I'm a crew chief paramedic.

5 Q. And what does that mean?

6 A. I'm in charge of my ambulance and my crew member.

7 Q. Okay. And what is your, I guess, background in --
8 what kind of education do you have, training and
9 certification?

10 A. I've been a paramedic since 2007 -- yes, 2007. I've
11 been with Richland County since 2005, the two-year program
12 for paramedic, advanced cardiac life support, pediatric
13 advanced life support, CPR. I'm a national registered
14 paramedic. I can go anywhere in the United States and be
15 recognized as a paramedic.

16 Q. Do you receive continued recertification and education
17 on those topics?

18 A. Yes. We have to maintain that and every two years we
19 recertify.

20 Q. Are you involved with educating other people in your
21 field or within the Richland County EMS system?

22 A. I am. I train new employees. I'm a preceptor for
23 paramedic and EMT students and I also train crew chiefs to
24 be alone with another EMT by themselves on the ambulance.

25 **MR. MCGLOTHIN:** Okay. At this time the State would

1 like to recognize Mr. Ledbetter as an expert in emergency
2 medical services.

3 **THE COURT:** What say you, Mr. Kester?

4 **MR. KESTER:** That's okay with me, Your Honor.

5 **THE COURT:** All right. He's an expert as stipulated.

6 **MR. MCGLOTHIN:** Thank you.

7 BY MR. MCGLOTHIN:

8 Q. I'm gonna take you back to July 19, 2017. Were you
9 working that day?

10 A. Yes, sir.

11 Q. Did you respond to a scene that day?

12 A. Yes, sir.

13 Q. And what had happened?

14 A. We got dispatched to a motor vehicle collision with
15 an injured pedestrian is what it was dispatched as.

16 Q. Okay. Did you respond?

17 A. Yes.

18 Q. Okay. What happened when you got there?

19 A. There was Ms. Yandel's unit and another unit there.
20 As responding supervisor, I take over incident command
21 and --

22 Q. What does -- what does that entail, I guess?

23 A. Directing other ambulances, other crews getting in
24 there, also triaging the patients that were there.

25 Q. And when you say triaging --

1 A. Using the triage system of the red, yellow, green
2 tags.

3 Q. Okay. So once you were there and then kind of taking
4 command, can you walk us through what happened, who you
5 talked to, I guess?

6 A. As many people as we could get -- I could get to was
7 triaged with the tags, trying to speak to every person
8 there to check on injuries.

9 Q. And you'd go through that same triage system just kind
10 of one person at a time?

11 A. You spend about thirty seconds with each patient.

12 Q. Do you know -- do you remember how many people
13 approximately you spoke to that day?

14 A. There was between probably forty and fifty.

15 Q. Okay. Where -- did you red tag anybody that day?

16 A. There were red tags, yes.

17 Q. Okay. Do you remember their injuries?

18 A. I do not.

19 Q. Okay. If you saw the reports from that day, would it
20 help refresh your memory?

21 A. These here? Yes, sir.

22 Q. Please take a moment to review those.

23 A. I do remember some.

24 Q. Okay. Can you tell us about some of the injuries you
25 observed?

1 A. I remember the gentleman with the broken leg and we
2 were having to splint it.

3 Q. And when you say splint it, what does that mean?

4 A. Just immobilizing the leg where it will not move to
5 cause further injury.

6 Q. Do you remember anybody else that you treated that
7 day?

8 A. I remember the lady that had the loss of consciousness
9 and was confused, doesn't remember what happened.

10 Q. What is concerning about that loss of consciousness?

11 A. If you're hit hard enough to render you unconscious
12 for a time, that could cause internal bleeding within the
13 brain and the skull.

14 Q. Okay. Were there any signs of that?

15 A. With loss of consciousness, yes. Absolutely.

16 Q. But with internal bleeding?

17 A. Loss of consciousness inside the brain is definitely
18 a sign of internal bleeding.

19 Q. Okay. Would you categorize that as life-threatening?

20 A. Absolutely.

21 Q. In your expert opinion, were any of the other
22 injuries you observed that day something you would
23 consider life-threatening?

24 A. The -- the gentleman with the broken leg absolutely.
25 There were so many people I can't really remember

1 everything.

2 Q. Okay. Why is a broken leg so concerning?

3 A. The bones can move back and forth severing arteries
4 and causing more bleeding where you can have a large amount
5 of blood loss that way.

6 Q. Okay. Are there important arteries in the leg?

7 A. There are.

8 Q. Okay. What -- could you kind of go into a little
9 more detail about that? I'm not a doctor, so.

10 A. So you have very large arteries that pretty much
11 split at your pelvis and go all the way down to your feet
12 and any bone movement in there can tear those arteries and
13 cause a large amount of blood to be lost.

14 Q. And in your expert opinion that blood loss could lead
15 to loss of life?

16 A. Yes.

17 Q. Okay.

18 **MR. McGLOTHIN:** No further questions. Please answer
19 any questions the defense may have.

20 **THE COURT:** Cross-examination, Mr. Kester?

21 **MR. KESTER:** Yes, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. KESTER:

24 Q. What was your name again? I'm sorry.

25 A. Joshua Ledbetter.

1 Q. Yeah, Mr. Ledbetter, I'm just reiterating what I just
2 said. This was -- this was a report that -- like it says,
3 no -- the injuries sustained were nonlife-threatening. Do
4 you -- your colleague just read it. Would you want to read
5 it, too?

6 A. If you'd like me to, I can read it.

7 Q. That last line, Mr. Ledbetter.

8 A. It says the injuries sustained were
9 nonlife-threatening.

10 Q. Sir?

11 A. It says injuries sustained were nonlife-threatening.

12 Q. Yes, sir. Also I'm sure you've worked hundreds of
13 bad wrecks, car wrecks and all that, and they put here I
14 was -- the speed was sixteen miles an hour. What do you
15 think about sixteen miles an hour, that rate?

16 A. I'm not a physics major. I couldn't tell you what
17 causes what injuries due to speeding.

18 Q. Okay.

19 **MR. KESTER:** Thank you.

20 **THE COURT:** Redirect?

21 **MR. McGLOTHIN:** Briefly, Your Honor.

22 REDIRECT EXAMINATION

23 BY MR. McGLOTHIN:

24 Q. Was the report that he just had you read, was that
25 created by your -- the Richland County EMS system, one of

1 the EMTs?

2 A. Not that I saw.

3 Q. Okay. But in your opinion there were life-threatening
4 injuries on that scene?

5 A. Yes, sir.

6 **MR. MCGLOTHIN:** Okay. Thank you. Nothing further.

7 **THE COURT:** Anything further of this witness?

8 **MR. KESTER:** Just one quick thing, Your Honor.

9 This is a legitimate report here and so I'm sure
10 things will get coordinated among the different, you know,
11 groups out there, so I just wanted to say that.

12 Thank you.

13 **THE COURT:** Was that a question or a statement or
14 what?

15 **MR. KESTER:** It was just a statement, Your Honor.

16 **THE COURT:** The jury is to disregard the statement
17 and you may step down.

18 (Witness excused.)

19 **THE COURT:** Your next witness.

20 **MR. EATON:** Willard Sohn.

21 (Whereupon, Willard Sohn was duly sworn by the Clerk
22 of Court.)

23 **THE CLERK:** Please have a seat and state your full
24 name for the record.

25 WILLARD SOHN,

1 having been duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. EATON:

4 Q. Good morning, Mr. Sohn.

5 A. Good morning, sir.

6 Q. Mr. Sohn, where are you from?

7 A. I was born in Seven Springs, Pennsylvania, but I grew
8 up here in Columbia.

9 Q. And are you part of the family that was involved in
10 this incident?

11 A. It was my sister Peggy Livingston that passed away.
12 We were at her funeral. My last sibling.

13 Q. And how old was she?

14 A. Seventy-one.

15 Q. And if you don't mind me asking, how old are you?

16 A. I'm now sixty-nine.

17 Q. So your older sister?

18 A. Yes. I was the baby.

19 Q. How many siblings were there?

20 A. Another brother who passed away.

21 Q. If you would, Mr. Sohn, just tell the jury a little
22 bit about who Peggy was.

23 A. Okay. Peggy was born in Sumter, South Carolina. She
24 was born with some deficiencies in life.

25 Q. Move a little closer to the mic.

1 A. Sure. She had some issues with her eyes and with
2 her ears and her hearing and all, so she grew up in an
3 environment where she struggled to hear and towards the
4 latter part of her life had even more difficulty on the
5 telephone, but it didn't stop her. Peggy -- Peggy was a
6 traveler. She loved to get in the car and go somewhere
7 and very often it would be to go see grandchildren. She
8 considered my seven grandchildren her grandchildren. She
9 had a daughter, but did not have any grandchildren.

10 She loved life, she loved the Gamecocks and she loved
11 kitty cats. She had a bunch of kitty cats. The people
12 that met her knew what kindness was in her. She could get
13 feisty, but she -- she just was a good person with a good
14 sense of humor. Probably underserved in life just because
15 of some of the things that occurred along the way, but she
16 worked for a long time and everywhere she worked -- and
17 she was basically underpaid like a lot of people are and
18 some of that, I think, came from some of those earlier
19 deficiencies, but people -- I mean, you can see -- they
20 talked about it. They loved her very much. She would
21 travel so often here to see all of my grand kids, the ones
22 in Charleston and here in Columbia, and she was just a
23 loving -- a loving person.

24 Q. And so family had gathered for the service. Can you
25 tell us about that?

1 A. Yeah, she --

2 Q. Or tell the jury, I guess.

3 A. Sure. She died on -- died on July 16th. We were
4 preparing for that because she had cancer.

5 Q. Move a little closer.

6 A. We were preparing for that because she had cancer for
7 the second time and she lasted for a long time. Her --
8 her money where you get -- where they pay for a long stay
9 in one of those facilities, she almost made it through
10 that, but she didn't. But -- what was the rest of the
11 question?

12 Q. Just the service.

13 A. Yes. Yes, so we were preparing for that. We had a
14 lot of time, so it was set up for Wednesday and you see a
15 lot of the people that are here were at that funeral and
16 some additional folks, and -- but we really didn't have a
17 chance -- I don't know if anybody did, maybe others did,
18 I didn't have a chance to grieve. I really haven't
19 grieved yet for her because there's been so much other
20 things going on in my life since then and all of these
21 people.

22 So, anyway, on July the 19th at the funeral, which
23 was over, and everybody talked about how hot it was out
24 there at Greenlawn, and I took my grandson down to where
25 it was described as, down to where my grandparents' grave

1 was. I asked him, Will, if he would like to see where
2 that was and -- and he said yes and then other people I
3 noticed were starting to go down there. And then I went
4 up -- began to leave and Mr. Floyd, who is not here, was
5 the driver and I saw one of my -- my cousin's -- cousin's
6 daughter, and that's Tonya, and I hadn't had chance to say
7 hello to her, so I was walking right past the casket and
8 she was coming over to me and the next thing I saw and I
9 felt was I -- I thought the awning had come down on me or
10 whatever and then the next thing I felt, and honestly I've
11 felt pretty much since then, was incredible pain. I mean,
12 it was like -- whoosh -- and, you know, I didn't know what
13 it was. I didn't know what happened to me, I didn't know
14 what happened to anybody, but the next thing I knew --
15 well, I guess you want me to go into this? Is that fine?

16 Q. Go right ahead.

17 A. The next thing I realized I was laying this way on
18 the ground and I knew -- because this leg was flopped over
19 like that, this leg, and I knew this leg was broken and I
20 knew my wrist was broken and I thought this one might be
21 broken and I knew I was banged in the head. And I don't
22 know how much time there was between or whether, as the
23 others say, that I was unconscious or not, but I think I
24 was hurt a little bit. And then my daughter -- and then
25 my daughter, Angela, came over and I guess she saw how

1 badly I was hurt, even though she was hurt also, she came
2 over and put my head on her leg to kind of get me up like
3 that. And then I recall the -- the responders coming up
4 and -- I don't mean to be funny about this, but they --
5 they actually tore my pants off and I was telling them to
6 just take them off because they were very expensive pants,
7 but they were very kind.

8 And what I remember from that time to this day is one
9 four letter word, pain. I have been in pain ever since
10 then and some of the other people here can say the same
11 thing. I've had to -- I've had to pay extraordinary
12 amounts of money for drugs I didn't want to take. I've
13 been in a rehab facility, I was in a hospital for a long
14 time, I had home health come in, and I have to still three
15 times a week go to therapy, which costs me a hundred and
16 eighty something dollars a week.

17 Q. Mr. Sohn, if I may, I'm gonna -- I'm gonna interrupt
18 you, excuse me, and I'm gonna show you what have been
19 marked for identification as State's 65, 66, 67 and 68.
20 If you could take a look at those. I know it's not
21 pleasant.

22 A. That's me?

23 Q. Isn't it?

24 A. It could be. I mean, yeah, it's me. Yeah. I hate
25 to still look at those.

1 Q. And what are those pictures of?

2 A. Well, they're pictures -- one of them is the casting
3 of my right leg where I still have a rod in it. I've had
4 a rod in it since they did the surgery at the hospital
5 and then there's my left leg, which I had a broken fibula
6 there. I had a tibia break over here and then a wrist
7 break and later another wrist break. And then they're
8 showing pictures of me with a collar around my neck. I
9 can't even recognize myself in that picture. And then
10 just some -- some of the open bleeding wounds.

11 Q. But those are all pictures of you after the incident
12 getting treatment?

13 A. Yes, sir.

14 **MR. EATON:** At this point I'd offer State's -- I'm
15 sorry -- 65, 66, 67 and 68 into evidence.

16 **THE COURT:** Any objection?

17 **MR. KESTER:** No, Your Honor.

18 **THE COURT:** They're admitted.

19 (State's Exhibit Number 65 through 68, photographs,
20 were admitted into evidence.)

21 BY MR. EATON:

22 Q. While he's doing that, you said that your sister
23 worked at the Department of Mental Health?

24 A. I'm not sure I did say that, but she did.

25 Q. Or you said something about her job. I'm sorry.

1 A. Yes.

2 Q. But what did she do there?

3 A. Well, she was a word processor, but she moved up a

4 little bit. She was working kind of in an administrative

5 capacity after that, but kind of a little secretarial sort

6 of situation --

7 Q. So, I mean --

8 A. -- for a long time.

9 Q. Yes. Was she responsible for patient care?

10 A. No.

11 Q. Okay. And what's that?

12 A. That's my left leg.

13 Q. What was it, State's -- I'm sorry.

14 A. My left leg. It had a broken femur in it. It still

15 does.

16 Q. We're looking at State's 67.

17 And State's 65, what's that?

18 A. It amazes me that it's me, but that's me. I don't

19 know if that was in the hospital or where.

20 Q. And then State's 68?

21 A. That's showing my left leg, as well as my right leg,

22 which had a tibia and fibula break, and where they put --

23 then put a rod in it. It's from here all the way down to

24 my ankle and from that I have developed neuropathy in both

25 legs.

1 Q. And say that word again. I'm sorry.

2 A. I developed neuropathy in both legs, which means I
3 have to take a drug for that to decrease the -- if you
4 know what neuropathy is, the pain, your nerve endings are
5 just burning, and that's a -- that's an every day thing.

6 Q. And then, again, State's 68?

7 A. Yeah.

8 Q. What does that show?

9 A. Both of my legs. The same situation.

10 Q. Okay. Mr. Sohn, before this incident had you ever
11 heard of James Kester?

12 A. No.

13 Q. Had you ever heard of his daughter Joy?

14 A. No.

15 Q. Were you aware of anything that had happened to
16 his daughter twenty-five years ago at the Department of
17 Mental Health?

18 A. No.

19 **MR. EATON:** Thank you. Please answer Mr. Kester's
20 questions.

21 **MR. KESTER:** I don't have any follow-up, Your Honor.

22 **THE COURT:** All right. You may step down.

23 (Witness excused.)

24 **MR. McGLOTHIN:** The State calls Jan Sohn.

25 (Whereupon, Jan Sohn was duly sworn by the Clerk of

1 Court.)

2 **THE CLERK:** Please have a seat and state your full
3 name for the record.

4 JAN SOHN,

5 having been duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. MCGLOTHIN:

8 Q. Could you, please, state your name for the record?

9 A. Jan Sohn.

10 Q. Ms. Sohn, how do you fit into the family tree here?

11 A. Well, Will Sohn is my former husband and our children.
12 Peggy was my sister-in-law.

13 Q. And do you currently work?

14 A. I do.

15 Q. And where do you work?

16 A. I work for Lexington Medical Center as a medical
17 office supervisor.

18 Q. How long have you been doing that?

19 A. Not in this particular place, but thirty years.

20 Q. Okay. I'm gonna draw your attention to July 19, 2017.
21 Do you remember that day?

22 A. I do.

23 Q. Did you attend a funeral service that morning?

24 A. I did.

25 Q. Would you briefly tell me about that.

1 A. Well, we had been sitting in the tent. The service
2 was conducted and he made it kind of short because it was
3 warm out there and then -- then we all kind of migrated
4 out for a little bit and then it wasn't very long and I
5 went back under the tent and was standing at the back of
6 the tent, the casket was at the front, just to get a
7 little shade and a car just -- I could hear the motor gun,
8 it all happened so fast, and it just went right through
9 the middle of the tent and took out everybody that was
10 under it and beyond it. And I didn't know what to do at
11 that moment. I was just -- it's your whole family. What
12 do you do? Who you see first? Who do you walk to? I was
13 not injured though.

14 Q. So what first drew your attention to the car?

15 A. Well, I could hear it. I wasn't facing in that
16 direction and I could hear the car and I heard it gunning.
17 It sounded like it was gunning to go. I don't -- I'm not
18 -- I don't know how to say it any different than that. It
19 just -- and then it flew past and it was like inches from
20 me. I had to lean back. It just went right in front of
21 me.

22 Q. And -- but you weren't injured?

23 A. Well, I believe I hit the corner of the post and I
24 got a bruise on my back, but I was not injured like
25 everyone else. I did not go to the hospital or -- I mean,

1 I went to the hospital, but I didn't go to be seen.

2 Q. Okay. Can you describe kind of what happened after
3 -- what you did right after that?

4 A. Well, it was -- it was chaotic. Everybody was
5 screaming and I was trying to -- I didn't know where to
6 go. I went to my daughter. She was trying to find her
7 husband and my granddaughter was on the ground and then
8 my other granddaughter -- it just was -- then I could see
9 everyone laying out in the -- in the cemetery on top of
10 the -- the stones and could see the car in the distance
11 and -- and then lots of people called 9-1-1 and it just --

12 Q. Did you see where the car stopped?

13 A. Yes.

14 Q. Where was that?

15 A. It was -- it kept going and it looked like he -- it
16 almost looked like it was trying to turn, but I -- I don't
17 know that for sure. But it was at a distance out into the
18 cemetery and we all thought it may have gotten stopped by
19 one of the bronze vases for the flowers out there. I
20 don't --

21 Q. Did you know Mr. Kester?

22 A. I did not know Mr. Kester.

23 Q. Had you ever heard his name?

24 A. No, never heard his name.

25 Q. Had you ever heard of his daughter?

1 A. No.

2 Q. Did you know anything about --

3 A. No.

4 Q. -- her involvement with the Department of Mental
5 Health?

6 A. Not in any way.

7 **MR. McGLOTHIN:** Thank you. No further questions.
8 Please answer any questions the defense may have.

9 **THE COURT:** Mr. Kester.

10 CROSS-EXAMINATION

11 BY MR. KESTER:

12 Q. What was your name?

13 A. Jan Sohn.

14 Q. Ms. Sohn, you say when the car went through there
15 and then it stopped, what do you mean? It was -- you
16 thought it was turning or whatever?

17 A. Well, it -- it just looked like it was -- it went
18 straight out and then it just looked like it was turned
19 a little bit from the straight direction it had gone
20 originally.

21 Q. It didn't turn though, did it?

22 A. It came to a stop.

23 **MR. KESTER:** Okay. Thank you.

24 **THE WITNESS:** You're welcome.

25 **THE COURT:** Anything further of this witness?

1 **MR. McGLOTHIN:** Yes, Your Honor. Briefly.

2 Your Honor, I'm gonna show the witness what's been
3 marked for identification as State's Exhibit 10.

4 REDIRECT EXAMINATION

5 BY MR. McGLOTHIN:

6 Q. Do you recognize that?

7 A. I do.

8 Q. What does it show?

9 A. Wow. It's turned way more than I thought that -- I
10 remember that it was, but the car, it went through that
11 tent, knocked those chairs over, and then ended up out in
12 the middle like it was turning.

13 Q. Does that accurately reflect the scene as you remember
14 it that day?

15 A. Yes. With the exception of people being everywhere,
16 yes.

17 **MR. McGLOTHIN:** At this time the State would enter
18 State's Exhibit 10.

19 **THE COURT:** Any objection?

20 **MR. KESTER:** No, Your Honor.

21 **THE COURT:** It's admitted.

22 (State's Exhibit Number 10, a photograph, was
23 admitted into evidence.)

24 BY MR. McGLOTHIN:

25 Q. So on this picture, is his car shown here where it

1 stopped?

2 A. Yes.

3 Q. Okay. And you mentioned it kind of coming to a rest
4 at an angle?

5 A. It did.

6 Q. And that's what made you think it was turning around?

7 A. Yes.

8 Q. Okay.

9 **MR. McGLOTHIN:** Thank you. Nothing further.

10 **THE COURT:** Anything further of this witness?

11 **MR. KESTER:** Yes, Your Honor.

12 **THE COURT:** All right.

13 **MR. KESTER:** Let me get the exhibit there.

14 **MR. McGLOTHIN:** Sure.

15 **RE CROSS EXAMINATION**

16 **BY MR. KESTER:**

17 Q. See where the car's located?

18 A. Yes, sir.

19 Q. Yeah, I mean, does it look like it's turned around?

20 A. It's not turned all the way around, but it is turned.
21 It was going directly straight and then it looks like it's
22 turned.

23 Q. And it never moved from there, did it?

24 A. No, it stopped.

25 Q. And there's nothing there that really could have

1 stopped it. You said a gravestone, but how could a
2 gravestone have stopped a --

3 **MR. KESTER:** Okay. Thank you.

4 **THE COURT:** You may step down.

5 (Witness excused.)

6 **THE COURT:** We'll take about a ten minute break. If
7 you'll go to the jury room. Please do not discuss the
8 case.

9 (Whereupon, the jury retires to the jury room at
10 10:48 AM.)

11 **THE COURT:** And we'll take about ten minutes.

12 (Recess taken.)

13 **BAILIFF:** Court, please, come to order. All rise.
14 You may be seated.

15 **THE COURT:** All right. Bring in the jury.

16 (Whereupon, the jury returns to the courtroom at
17 11:14 AM.)

18 **BAILIFF:** The jury is seated, Your Honor.

19 **THE COURT:** All right. The next witness.

20 **MR. McGLOTHIN:** The State calls Laura Gabrels.

21 (Whereupon, Laura Gabrels was duly sworn by the Clerk
22 of Court.)

23 **THE CLERK:** Please have a seat and state your full
24 name for the record.

25 **THE COURT:** My name is Laura Gabrels.

1 LAURA GABRELS,
2 having been duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. MCGLOTHIN:

5 Q. Ms. Gabrels, what do you do for a living?

6 A. I'm retired now. I worked with -- I worked in social
7 work and mental health for most of my career.

8 Q. And where did you primarily work or who did you work
9 for?

10 A. Okay. I worked probably the most with a private
11 practice of psychiatrists and worked in some hospitals.

12 Q. And how do you fit into the family tree here?

13 A. I met Will on my first date with my husband
14 forty-four years ago and he and Michael have always been
15 best friends. So I've known Will for -- since I was still
16 in college.

17 Q. Did you know Peggy, his sister?

18 A. Uh-huh. Yes, sir. We were involved in a lot of
19 family events with the Sohn family.

20 Q. Okay. And were you at her service back in 2017?

21 A. Yes.

22 Q. Could you tell me a little bit about that day?

23 A. I was one of the pallbearers and I remember, well,
24 focussing on that, but then after the service at the
25 cemetery was over we were just kind of catching up with

1 each other a little bit, the people that were there, and
2 I remember hearing somewhere behind me people's voices
3 raising and then I heard them sounding real alarmed and
4 so I leaned over to see what was going on and I think
5 right about that time was when I saw this big car coming
6 right there and that's all I remember of what happened
7 because I -- I was knocked out.

8 Q. Do you remember where you were standing at the time?

9 A. I think it was towards the back of the tent, but, no,
10 I'm really not certain about that.

11 Q. So after losing consciousness, what is the next thing
12 you remember?

13 A. I had some sort of hazy memories that kind of floated
14 in and out and I remember -- well, I was telling people I
15 didn't need to go to the hospital and they were saying
16 yes, you do, and then I'd kind of float out again, but I
17 -- I'm not sure what else I remember.

18 Q. Okay. Were you taken to the hospital that day?

19 A. Uh-huh.

20 Q. Okay. Did you receive injuries?

21 A. Yes. I had a brain bleed that was like on both sides
22 of my head. I was told that I knocked hard enough that it
23 bounced back and hit the back of my head as well, or I was
24 bleeding back there, and I had a broken nose, I had some
25 deep thing that I had to have a lot of stitches right here

1 and my hands apparently hit the ground or a gravestone or
2 something because I still have pain in my hands that has
3 been there since the accident and so it makes it -- it
4 hard sometimes to do things, and I was just really banged
5 up. It was -- it hurt to move and I was in the neurology
6 ICU for a while. I didn't really understand any of that
7 at first, but -- I was like by myself and they kept having
8 people come around and talk to me and it was all pretty
9 scary.

10 Q. I'm gonna show you what's been marked as State's
11 Exhibits 39 through 57 for identification. Let me hand
12 those up to you. Do you recognize those photographs?

13 A. Uh-huh.

14 Q. What do they show? I know there's a lot there, but
15 if you could kind of summarize briefly.

16 A. They show me -- it must have been just at the
17 hospital, but they show all my face and there's some of
18 them that show my arm where -- anyway, there's a lot of
19 blood on me. I think at least some of these were taken
20 when I was not conscious.

21 Q. Do they accurately reflect your condition at the
22 hospital?

23 A. Uh-huh.

24 **MR. MCGLOTHIN:** We would move to admit State's 39
25 through 57.

1 **THE COURT:** Any objection?

2 **MR. KESTER:** I'm sorry, Your Honor. I was looking at
3 something. Could you repeat that, please?

4 **MR. McGLOTHIN:** Just any objection to the photographs
5 I just showed you?

6 **MR. KESTER:** No. No, Your Honor.

7 **THE COURT:** All right. They're admitted.

8 **MR. McGLOTHIN:** Thank you.

9 (State's Exhibit Number 39 through 57, photographs,
10 were admitted into evidence.)

11 BY MR. McGLOTHIN:

12 Q. Okay. Ms. Sohn {sic}, I'm just gonna swipe through
13 these.

14 A. Okay.

15 Q. Could you kind of describe what each one shows, the
16 significance of the photographs?

17 A. Okay. That shows where my nose was broken.

18 Q. This is -- I'm showing State's 39. Go ahead.

19 A. I think -- well, that -- there's a cut over here,
20 there's a cut over on the other side, and I'm, you know,
21 just in that neck brace thing.

22 Q. Okay. And State's 40, is that just a similar shot
23 to the prior -- the previous one?

24 A. Uh-huh.

25 Q. I skipped by a couple. And State's 41, is that just

1 kind of from the other side there?

2 A. (Nods head.)

3 Q. But it shows the same injuries you spoke of?

4 A. Uh-huh.

5 Q. Okay. Here we go. That's fine. Now what does this
6 one show? This is State's 42.

7 A. Well, it shows a little bit of the cuts and the
8 bruising there and on my fingers, somewhere about there.

9 Q. Okay. And what is that photograph of?

10 A. That's a photograph of the underneath of my tongue,
11 which I bit very hard as -- I mean, I kind of vaguely
12 remember that as I was passing out at the time, but that
13 still bothers me today. It just -- it is numb kind of
14 and just has never felt the same as my mouth felt before.

15 Q. And State's 44. Is this the injury you referred to
16 earlier to your arm?

17 A. Yes, all the stitches. Uh-huh.

18 Q. And just a close-up of that one?

19 A. Uh-huh.

20 Q. And that's State's 45. Oops. 46 and 47. What is 47
21 there?

22 A. I think it's showing where I hit. It's -- also I
23 had a pretty bad place on my elbow.

24 Q. And that's here in the bottom there, is where you're
25 referring to?

1 A. Uh-huh.

2 Q. And that -- is that another shot of that, what you
3 just described?

4 A. Uh-huh.

5 Q. That's 48. And 49?

6 A. (Nods head.)

7 Q. The same thing?

8 A. Uh-huh.

9 Q. And then so what does that photograph show? This is
10 State's 50.

11 A. I think that was because I hit my head. It shows
12 where the blood started pooling under here and all the
13 bruising up over my eyes.

14 Q. And then 51, is that you in the hospital?

15 A. Uh-huh.

16 Q. Okay.

17 A. That's when I was about to go home.

18 Q. And you've -- you're shown in a sling here. Did you
19 have a broken bone in your shoulder or your arm?

20 A. No, I just had those stitches that -- I'm getting my
21 left and my right mixed up, and that was pretty painful.
22 And also my hand.

23 Q. Okay. So that was just to keep the stitches
24 immobilized?

25 A. Yeah, and the arm. Just --

1 Q. And 52, that's pretty much the same picture?

2 A. (Nods head.)

3 Q. What is 53 here? Can you tell what that is? It's a
4 little large. You may be able to see it a little better
5 in the smaller version I handed up.

6 A. That was under my arm.

7 Q. Okay. That's just cuts?

8 A. Uh-huh.

9 Q. Okay. And 54?

10 A. That was -- I think that -- that looks like my arm
11 when it had healed a lot. Okay. This is under my arm.

12 Q. Okay.

13 A. That was 53.

14 Q. All right. Thank you. So that's that same cut we
15 saw earlier, just some time had elapsed?

16 A. Uh-huh.

17 Q. And then 54, what is that?

18 A. That's just showing my eye and the -- the bruising
19 and blacking and --

20 Q. Okay. And 55, is that the other eye?

21 A. That's -- uh-huh. That's with the cut over that.

22 Q. And 56 is another close-up of the eye?

23 A. Uh-huh.

24 Q. And can you describe -- I think you said that was
25 pooling of the blood. Is that your understanding?

1 A. Yeah, it's like I -- and I've got -- I saw a picture
2 of me or saw in the mirror, but it was like I just had
3 these big black circles under my eyes that I think I was
4 really scary looking, too.

5 Q. Do you remember how long that lasted for?

6 A. There was some of that after I came home.

7 Q. Okay.

8 A. It was like a week, maybe more. I'm not sure.

9 Q. Okay. Did you know Mr. Kester prior to this day?

10 A. No, never heard of him.

11 Q. Did you ever know his daughter?

12 A. Unh-unh, never heard of her.

13 **MR. McGLOTHIN:** Thank you. Nothing further. Please
14 answer any questions Mr. Kester has.

15 CROSS-EXAMINATION

16 BY MR. KESTER:

17 Q. We never knew each other before, have we,
18 Ms. Gabrels?

19 A. No.

20 Q. What area of mental health are you in?

21 A. I worked with patients, all different ages.

22 Q. Involving what?

23 A. Mental health problems that were interfering with
24 their life.

25 Q. And you've had a few yourself, too, haven't you?

1 A. Uh-huh.

2 Q. That's correct, right?

3 A. (Nods head.)

4 Q. You sued me, my car insurance and my -- and me
5 personally though, haven't you?

6 **MR. McGLOTHIN:** Objection, Your Honor. I believe
7 this is an improper line of questioning mentioning another
8 suit.

9 **MR. KESTER:** I'm sorry. I'm sorry.

10 BY MR. KESTER:

11 Q. Have you sued me?

12 A. I don't -- I don't -- I don't think that's relevant
13 to what we're talking about.

14 **MR. McGLOTHIN:** Your Honor, my objection to the
15 initial question still stands. I don't think it's either
16 relevant or proper for him to bring up a --

17 **THE COURT:** I overrule the objection. You may answer
18 the question and you may -- you can ask the question and
19 you may answer the question.

20 **THE WITNESS:** My understanding is that we have a
21 lawsuit out because we've had so much -- so many bills and
22 because of what you did.

23 BY MR. KESTER:

24 Q. So you -- have you sued my car insurance and -- and
25 me personally?

1 A. I'm not really sure.

2 Q. Have -- have you had any payouts yet?

3 A. No. And I spent several days in the hospital and
4 I've had a lot of on-going healing.

5 Q. What do you think if a child goes somewhere and they
6 diagnose her with inappropriate laughing, grinning,
7 smiling, giggling, they inundate her with drugs, 3,000
8 milligrams of Lithium, and hold them for 600 days because
9 all they did was have inappropriate laughing? What do you
10 think about that?

11 A. I don't answer that about patients because that I've
12 never had anything to do with. That's not ethical for me
13 to do.

14 **MR. KESTER:** Okay. Thank you.

15 **THE COURT:** Any redirect?

16 **MR. McGLOTHIN:** Nothing, Your Honor. Thank you.

17 **THE COURT:** Thank you. You may step down.

18 (Witness excused.)

19 **MR. McGLOTHIN:** The State calls Tonya White.

20 (Whereupon, Tonya White was duly sworn by the Clerk
21 of Court.)

22 **THE CLERK:** Please have a seat and state your full
23 name for the record.

24 **THE WITNESS:** Tonya White.

25 TONYA WHITE,

1 having been duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. MCGLOTHIN:

4 Q. Ms. White, how do you fit into the family tree here?

5 A. Peggy is my cousin.

6 Q. And what do you do for a living?

7 A. I'm a dental assistant.

8 Q. Okay. How long have you been doing that?

9 A. I've been doing it since 1993.

10 Q. Where do you live?

11 A. I live in the Columbia area.

12 Q. Okay. Do you remember July 19, 2017?

13 A. Yes, sir, I do.

14 Q. Did you attend your cousin's funeral that day?

15 A. Yes, I did.

16 Q. Could you tell me a little bit about what happened?

17 A. Yes. We had gone to the service at Dunbar, then I
18 was on my lunch break with my daughter and I said let's go
19 to the burial service, so we went because I don't see my
20 cousins very often, so we went to kind of celebrate Aunt
21 Peggy and to get with my cousins. And I was leaving, I
22 had met with Will kind of up in the corner, I was getting
23 ready to go back to work, I went to give him a hug and
24 the next thing I remember I hear somebody kind of vaguely
25 calling my name. I didn't see any -- you know, I don't

1 hear any -- I just hear somebody call my name and I kind
2 of vaguely remember turning and then I wake up and I look
3 around and I see this mass chaos behind me and I see this
4 car back over my left shoulder and I realize at that time
5 that my leg is broken. It's actually hyperextended
6 backwards. I had blood gushing out of the back of my head
7 and I had a rash -- like tire tread marks on the back of
8 my legs and on the back of my arms up here I have a really
9 bad rash on the back of my -- on the back of my shoulders
10 up here. I thought my ankle was broken because it was
11 about two to three times size that it originally was and
12 my left knee was messed up as well, too.

13 Q. Did you lose consciousness there?

14 A. I don't know if I per se lost consciousness. I don't
15 know if it was my brain's way of kind of shutting down due
16 to the trauma, the impact of the car hitting me, but I
17 remember kind of as soon as I hit the ground and I landed
18 fifteen feet from where I actually was standing. So when
19 I sat up, I remember everything else. Now the actual
20 trauma of the car hitting me, I don't remember any of that,
21 but from sitting up I remember everything from then on.

22 Q. Were you taken to the hospital?

23 A. Yes, I was.

24 Q. What injuries did you sustain?

25 A. Well, I had a tibial plateau fracture in my right

1 knee. I had a dislocated knee in my left that my doctor
2 had to actually pop into place in the ER. I had a --
3 they called it a sprain in my left ankle and then I had
4 bad road rash on my back, all on my arm, on my hips. I
5 did have a cut on the back of my head from -- I guess from
6 hitting a tombstone, I'm not really sure what it was, but
7 I have had three surgeries because of this accident.

8 Q. Okay. I'm gonna show you what's been marked as
9 State's Exhibits 69 through 75. Do you recognize those
10 photos?

11 A. Yes, sir, I do.

12 Q. If you could, just briefly summarize what they show.

13 A. They show bruising on my arms and then the blood on
14 the back of my head, in my hair, and then the -- my right
15 leg braced before they actually did the surgery, and that's
16 basically what these show.

17 Q. Can I see those for a second?

18 A. Yeah.

19 **MR. MCGLOTHIN:** At this time the State would like to
20 enter State's Exhibits 69 through 75.

21 **MR. KESTER:** Yes, Your Honor.

22 **THE COURT:** Admitted without objection.

23 **MR. MCGLOTHIN:** Thank you.

24 (State's Exhibit Number 69 through 75, photographs,
25 were admitted into evidence.)

1 BY MR. MCGLOTHIN:

2 Q. And I'm gonna pull these up on the board here. And
3 so just going through your description again, kind of one
4 at a time, this is just a shot of your face following it?

5 A. That's right. Uh-huh.

6 Q. And what is that a photograph of?

7 A. So that is my right leg that they had braced with
8 gauze around it before they did surgery the next day.
9 They had it immobilized. And you can see the bruises on
10 my arm and my hands.

11 Q. Okay. And what was the -- you said you had a
12 dislocated --

13 A. In that knee, I had what's called tibial plateau
14 fracture.

15 Q. All right. Do you know what that means more plainly?

16 A. Yes. It means that it's basically where your tibia
17 goes into your knee it's broken, so they had to have --
18 I had a plate and four screws put in my leg.

19 Q. That's just another photograph of the same things?

20 A. Yes.

21 Q. And what is this?

22 A. That is my foot. If you see on the inside of my
23 big toe that's just a big blood area. That was pretty
24 painful. And that's my lovely mark for the surgery for
25 the next day.

1 Q. Okay.

2 A. And then that's the back of my head that -- where I
3 had the cut with all the blood in the back of my hair.

4 Q. Okay. And is there some blood shown here in this
5 photograph?

6 A. Yes, my head's -- if you look up in the upper left
7 area where it's red, that's all the blood.

8 Q. Right in there?

9 A. Uh-huh.

10 Q. Okay.

11 A. And then that's my arm again with bruising.

12 Q. And that's just a close-up view?

13 A. Yes, sir.

14 **MR. McGLOTHIN:** All right. Nothing further. Please
15 answer any questions the defense may have.

16 **MR. KESTER:** I have none, Your Honor.

17 **THE COURT:** All right. Anything further of this
18 witness?

19 **MR. McGLOTHIN:** No, Your Honor.

20 **THE COURT:** You may step down.

21 (Witness excused.)

22 **MR. McGLOTHIN:** At this time the State would call
23 Kittie Henderson.

24 (Whereupon, Kittie Henderson was duly sworn by the
25 Clerk of Court.)

1 **THE CLERK:** Please have a seat and state your full
2 name for the record.

3 **THE WITNESS:** Kittie Henderson.

4 KITTIE HENDERSON,
5 having been duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. MCGLOTHIN:

8 Q. Thank you, Ms. Henderson. How are you related to
9 Peggy Livingston?

10 A. I am not related to Peggy. I have known the Sohn
11 family since I was sixteen years old. I've been very
12 close friends with them, so that's why I was at the
13 funeral.

14 Q. Okay. Were you a friend of Peggy herself?

15 A. Oh, yes. Peggy and Donna and Will and his brother
16 Paul that's also deceased. But, yeah, and their mother
17 and father. I knew them all very well and Will's wife,
18 Jan, was my best friend, so.

19 Q. Were you at the funeral service back in 2017?

20 A. Yes.

21 Q. Could you tell me a little bit about what happened
22 that day?

23 A. Well, we had a -- there was a lovely gathering at the
24 funeral home, at Dunbar, and then we left and went to the
25 cemetery for the burial and so everything went fine and

1 afterwards we were -- a lot of people were standing around
2 still. It was very warm that day, but we were still
3 standing around talking and then the -- the accident
4 happened.

5 Q. What first -- what did you see?

6 A. I did not see anything because I was close to the
7 casket and so when he came through there, I didn't see
8 anything. The first thing I remember is just being aerial
9 and then I ended up on one of the tombstones, the bronze
10 tombstones, on my hands and knees. And I got up. I knew
11 I couldn't run, but I got up and walked to my car because
12 I saw people bleeding. The whole way walking to my car I
13 saw people bleeding and laying down on the ground and I
14 saw, you know, the guys being on the car and thrown that
15 broke their legs and so on -- on the -- and I went and got
16 my cell phone and called 9-1-1 and the young lady who was
17 there with me she got her cell phone and her pistol, then
18 we went back to the car and that's when -- he was stopped
19 at that point and he -- he was planning to move on and go
20 back and then we -- the emergency vehicles came and it
21 was just -- there were just bodies -- there were bodies
22 everywhere. It was the most horrific thing I've ever seen
23 and I can assure you I've seen a lot of bad things in my
24 life.

25 Q. I'm gonna backtrack just to touch on something you

1 said before. Were you struck by the vehicle?

2 A. Obviously I was. Like I said, I didn't remember
3 being struck by the vehicle, but a couple of days later I
4 -- I remember being aerial.

5 Q. When you say aerial, what do you mean?

6 A. I went up in the air, so I knew I had gone, you know,
7 over something, but the next -- it took a couple of days
8 before I happened to notice that I had the imprint of the
9 headlight bruise on my left buttocks and I had the fender
10 -- where the fender had hit me on my left leg. So how it
11 -- I was hit and turned and fell over obviously on the
12 gravestone over the car. But I saw him -- I saw plenty of
13 other people hit or a lot of the aftermath of the hit, but
14 I saw the guys being carried on the hood of the car until
15 they fell off. It was -- it was horrendous.

16 Q. I'm gonna show you what's been marked as State's
17 Exhibits 87 and 88. Do you recognize these photographs?

18 A. Yes.

19 Q. What do they show?

20 A. That showed when I was at the -- at the hospital. I
21 refused -- I refused to be admitted to the hospital. I've
22 had a lot of things happen to me before in a hospital, so
23 I wouldn't stay. I went back. I did everything as an
24 outpatient because I won't stay in the hospital. I've had
25 -- I've had MRSA at one hospital and sepsis at another in

1 Columbia, so I won't go to a Columbia's hospital. I'm
2 sorry if I have hurt -- stepped on toes, it's just my fear.
3 But that's -- that's me afterwards, but I was -- well, I
4 didn't get my MRI. When I was going to get x-rayed, they
5 did take me to get x-rayed and they wanted me to stay in
6 the hospital overnight for an MRI, and I refused to stay
7 in the hospital for it.

8 Q. Do those photos accurately depict the way you looked
9 that day?

10 A. Yes. Yes. I didn't know I looked that awful, but,
11 yes, they do. But my knees -- you can see where my knees
12 are damaged from landing on the grave site.

13 **MR. MCGLOTHIN:** At this time the State would enter
14 State's Exhibits 87 and 88.

15 **THE COURT:** Any objection?

16 **MR. KESTER:** No, Your Honor.

17 **THE COURT:** They're admitted.

18 **MR. MCGLOTHIN:** Thank you, Your Honor. And I'm just
19 gonna pull these up so the jury can see them.

20 (State's Exhibit Number 87 and 88, photographs, were
21 admitted into evidence.)

22 BY MR. MCGLOTHIN:

23 Q. So what does that photograph show?

24 A. That, I think, is when I was in the examining room
25 before I had the x-ray.

1 Q. Okay. And what about that one?

2 A. The same thing. And that's where my knees were --
3 you can see they're bruised, but they did -- I had a
4 band-aid on was all I had on.

5 Q. Did you -- do you remember when these photographs
6 were taken?

7 A. Right after. Right after. It wasn't long after we
8 got from the hospital -- got to the hospital.

9 Q. Okay.

10 A. I was one of the last ones taken because they took us
11 in priority and I -- I did not feel like I was a priority
12 patient, so I was one of the last ones taken.

13 Q. But you mentioned earlier that more bruising showed
14 up after this -- these were taken?

15 A. Oh, yes. Yes. The bruising showed up on my -- on
16 the left hip and my calf like a couple of days later.

17 Q. But those -- that's not shown in either of these
18 photographs?

19 A. No. No. I did take pictures of that, but you don't
20 have them thank goodness.

21 **MR. McGLOTHIN:** Thank you, Ms. Henderson. Please
22 answer any questions the defense may have.

23 **MR. KESTER:** I didn't have any more -- have any
24 questions, Your Honor.

25 **THE COURT:** Thank you. You may step down.

1 (Witness excused.)

2 **THE COURT:** Yes, sir.

3 **MR. EATON:** Michael Rooney.

4 (Whereupon, Michael Rooney was duly sworn by the
5 Clerk of Court.)

6 **THE CLERK:** Thank you. Have a seat and state your
7 full name.

8 **THE WITNESS:** My name is Michael Rooney.

9 MICHAEL ROONEY,

10 having been duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. EATON:

13 Q. Good morning, Mr. Rooney. Mr. Rooney, what do you
14 do?

15 A. I'm retired.

16 Q. What did you do -- before retirement, what did you
17 do?

18 A. Did you say what did I do before retirement?

19 Q. Yes, sir.

20 A. I've been in the mental health field since I was
21 seventeen years old, which was a long time ago.

22 Q. And where did you work?

23 A. One of the places I worked for was the South Carolina
24 Department of Mental Health. I started out as a nursing
25 assistant and finished up as a center director.

1 Q. And where else did you work?

2 A. I worked a lot in the private sector, inpatient and
3 outpatient psychiatric and substance abuse treatment
4 centers, and currently I have a part-time job at Savannah
5 Memorial Hospital doing the same thing.

6 Q. And if you could tell the jury, as we have with most
7 folks, how you fit into the family?

8 A. Well, I'm not a relative by blood, but Will and I
9 met in the first grade and I immediately became friends
10 with him and his older brother, who's since passed away,
11 and my family was already in the process of breaking apart
12 and so the Sohns basically took me in. I probably spent
13 two or three nights a week at their house and so that's
14 how I knew Peggy and -- and his parents and him and his
15 brother.

16 Q. And so, I mean, how long have y'all been friends
17 then?

18 A. Let's see. Sixty-five years approximately.
19 Sixty-four, sixty-five.

20 Q. So it's fair to say y'all are all very close?

21 A. Yes. Uh-huh.

22 Q. And just briefly tell the jury about the ceremony and
23 what led up to the incident.

24 A. Okay. Well, they'd asked me to be a pallbearer for
25 Peggy and I certainly said yes. And as you've heard

1 before, after the graveside ceremony we were all sort of
2 milling around, catching up with each other on a very hot
3 day, and I remember seeing Mr. Kester's car pull into the
4 cemetery just because it was the only thing moving. It
5 was the only car moving at the time. The only funeral
6 apparently happening that day was ours in that area -- or
7 Peggy's, and -- and that's really the last thought I
8 remember giving to the car and all until -- and obviously
9 I blacked out for some part of this because the next thing
10 I know I am riding on the hood of this Cadillac blazing
11 through the cemetery and my back is up against the
12 windshield and I believe that there was some people with
13 me on the hood from time to time and there were probably
14 people who were being bounced off because nobody was there
15 when the car finally stopped. I don't know what stopped
16 the car, but my momentum carried me certainly to the front
17 of the hood and then a couple of the cousins made it to
18 me pretty quickly and helped me off. I tried to stand up
19 to go see who the driver of this car was, but I discovered
20 my legs didn't work, so I couldn't stand up, and on the
21 instruction of these people because one of whom was a
22 student nurse, I rolled away from the car about fifteen,
23 twenty yards in front of the car.

24 So I'm laying there at that point and I noticed that
25 the car is still kind of chugging in my direction. It

1 seemed to be caught up on something, I couldn't tell what,
2 but it was chugging in my direction. I didn't want to get
3 hit again, so I started screaming please, somebody put
4 something in front of this car, another car or something,
5 and one of the people that worked for the cemetery pulled
6 one of the lawn tractors up between me and the car.

7 So after that I just -- I relaxed a lot and the --
8 the EMTs and police were there immediately almost, within
9 a matter of a very few minutes, and then I was loaded into
10 the ambulance and taken to the hospital.

11 Q. I'm gonna show you what has been marked for
12 identification as State's 20 through 27 and 32. If you'd,
13 please, take a look at those.

14 A. Uh-huh. It's a picture of the --

15 Q. Before we talk about what's on them, do you recognize
16 those?

17 A. I sure do.

18 Q. Would you look at each one?

19 A. Uh-huh.

20 Q. And -- and what do they show just generally?

21 A. This is a picture of the front of the car. The first
22 one's kind of a wide angle that shows the whole windshield
23 and as I look at this picture I remember being on that car,
24 on the hood, speeding through the graveyard and wondering
25 if I should try to roll off or stay on the car. Which way

1 would I stand the better chance of living.

2 Q. And so do those look like the car looked that day and
3 what you remember seeing that day?

4 A. Absolutely. I remember trying to look through the
5 windshield to see who was driving and because of how
6 shattered it is, I assume from my body and others, that I
7 couldn't tell -- I couldn't see through the windshield.

8 **MR. EATON:** I would offer State's 20 through 27 and
9 32 into evidence.

10 **THE COURT:** Any objection?

11 **MR. KESTER:** I have no objection, Your Honor.

12 **THE COURT:** They're admitted.

13 (State's Exhibit Number 20 through 27, and State's
14 Exhibit Number 32, photographs, were admitted into
15 evidence.)

16 BY MR. EATON:

17 Q. And so let's look at State's 32. What does it show?
18 I mean, it's obvious, but what does it show?

19 A. That's the windshield of the car that I was leaning
20 back against at the end of the ride.

21 **MR. EATON:** Your Honor, I'll publish these to the
22 jury.

23 BY MR. EATON:

24 Q. And then, again, Exhibit 20?

25 A. That's a shot from the side and it looks like you can

1 see in there that it has come to rest directly on top of
2 someone's grave, so that may have been what stopped the
3 car.

4 Q. And 21? I know this is cumulative, but just --

5 A. From the front.

6 Q. 22?

7 A. The same thing. A little closer.

8 Q. 23?

9 A. That's a very close-up shot of the right side of the
10 windshield.

11 Q. 24?

12 A. And that's the closest shot yet showing blood on the
13 windshield as well.

14 Q. Do you know if that's your blood?

15 A. I don't know.

16 Q. 26?

17 A. The car from the side with the driver's door open.

18 Q. And what do you -- I mean, what do you kind of notice
19 about -- about the windshield from that angle?

20 A. Well, it's dented in.

21 Q. And what -- what dented it in?

22 A. It could have been my body or someone else's body that
23 bounced off the car.

24 Q. I don't remember if we had 25, but --

25 A. Yeah, that's a good picture of the smash.

1 Q. 27?

2 A. Open car door, driver's door.

3 **MR. EATON:** Okay. I'll publish all of these to the
4 jury.

5 BY MR. EATON:

6 Q. So Mr. Rooney, I mean, do you remember the -- the
7 moment of impact?

8 A. I don't. Thank goodness.

9 Q. But do you remember being on the -- on the windshield
10 or the hood?

11 A. Yes, I do. Uh-huh.

12 Q. How long did that last?

13 A. While the car was in motion. Well, it seemed like a
14 long time, but it was probably, you know, a matter of
15 seconds. Under a minute.

16 Q. What was going through your head at that point?

17 A. Well, as I said, I was a little surprised to see
18 other people with me and then to see them leave in some
19 way or another, fell off or bounced off, and then I was
20 attempting to decide should I try to stay on here or
21 should I roll off, how long is this gonna go on, and
22 before I came to a decision the car stopped.

23 Q. So at that moment you -- I mean, you still had your
24 wits about you?

25 A. I guess.

1 Q. And your memory seems fairly vivid from that point;
2 is that fair?

3 A. Yeah, it's vivid. Yeah.

4 Q. After -- after the lawn tractor got in between y'all,
5 what happened?

6 A. Well, then I could stop rolling away because there
7 was a barrier between the car and me and so the two people
8 who were helping me out, the cousins, were still there
9 telling me just to lay still, so I did. I laid there on
10 the grass until the EMTs came to me.

11 Q. When you were on the hood of that car, were you scared
12 for your life?

13 A. Absolutely.

14 Q. What kind of injuries did you sustain?

15 A. I broke both of my legs to use simple language and
16 that's a picture of both of those broken legs up there on
17 the screen. I didn't break any skin on my legs apparently
18 that I see. I had to have surgery to repair the right one
19 and a cast to repair the left one.

20 Q. I'll go back and stop you. Actually I want to
21 approach you with what has been marked for identification
22 as State's 33 through 38.

23 A. Okay.

24 Q. Again, if you'd, please, take a look at those and tell
25 me if you recognize them.

1 A. It looks like this first one here is after surgery and
2 after the application of the cast because I'm sitting in a
3 wheelchair. It looks like I had been discharged from the
4 hospital at this point because I think that's Will Sohn's
5 rehab facility where I had gone to visit him. And a closer
6 up picture of the same surgically repaired right leg.

7 This is a picture of me that -- I'm laying in a
8 hospital bed and I still have the same shirt on that I was
9 wearing when the attack took place. The next one is the
10 cast that was put on my left leg to repair the broken bone
11 there. And I guess this one is a picture of my lower legs
12 it looks like on a gurney in the hospital prior to surgery
13 or casting.

14 **MR. EATON:** Your Honor, I'd offer State's 33 through
15 38 into evidence.

16 **THE COURT:** Any objection?

17 **MR. KESTER:** No, Your Honor.

18 **THE COURT:** They're admitted.

19 (State's Exhibit Number 33 through 38, photographs,
20 were admitted into evidence.)

21 BY MR. EATON:

22 Q. Mr. Rooney, if you could just -- I guess this is 33.
23 Is that you?

24 A. Yes.

25 Q. And --

1 A. Yes.

2 Q. -- what does this show? What does this show?

3 A. Well, that the left leg. The -- right where the
4 cursor is, there's two small bones in that part of your
5 leg, and one of them was broken, so I couldn't put any
6 weight on it without excruciating pain. That was part of
7 why I couldn't stand up in the field.

8 Q. And then was there injuries to the other leg?

9 A. Yes, there was. The patellar capsule, which is right
10 where the femur and the lower leg bones come together
11 behind the kneecap, that was destroyed by the blow. And
12 luckily I met an excellent surgeon who repaired that
13 damage.

14 Q. I don't have all of those on the smart board, so we'll
15 just very quickly touch on the rest of these. So the rest
16 of these then from 35 to 36, 37, and 38, what do those
17 show?

18 A. Both my broken legs before and after the repairs.

19 Q. And, Mr. Rooney, did you know Mr. Kester?

20 A. No.

21 Q. Did you ever run into his daughter?

22 A. No.

23 Q. Ever hear of her at DMH when you were there?

24 A. No.

25 Q. Did you have anything to do with her treatment there?

1 A. No.

2 **MR. EATON:** Thank you. No further questions.

3 CROSS-EXAMINATION

4 BY MR. KESTER:

5 Q. Mr. Rooney, when the vehicle stopped you said
6 something about a tractor pulling up there, but did the
7 vehicle go anywhere else once it stopped?

8 A. As I said, it seemed to be lunging forward as if to
9 try to get off of whatever it was hung up on.

10 Q. What was it hung up on?

11 A. I do not know.

12 Q. You think that little marker would hold the car?

13 A. There are vases in those little markers that pop up
14 to a height of about like this and they're metal.

15 Q. But the car didn't move, did it?

16 A. Yes, it did.

17 Q. How far?

18 A. Inches.

19 Q. Inches.

20 A. It was inching toward me. That's why I wanted
21 something between you and me.

22 Q. You say you've been in the mental health field for a
23 long time, correct?

24 A. Yes.

25 Q. What do you think about inappropriate grinning,

1 laughing, smiling and they detain somebody 600 days and
2 after 300 days the Department of Mental Health conspired,
3 a lot doctors and workers there, and blames me for sexual
4 abuse, which was a malicious lie, and then they keep her
5 300 more days and she comes out a vegetable, what do you
6 think about that type of treatment?

7 A. I wouldn't hazard an opinion without having the whole
8 story.

9 Q. Well, you just heard it. I'll document it. It's
10 documented. It's all documented.

11 **MR. KESTER:** That's all.

12 **THE COURT:** Any additional questions?

13 **MR. EATON:** No, Your Honor.

14 **THE COURT:** Thank you. You may step down.

15 (Witness excused.)

16 **THE COURT:** Your next witness.

17 **MR. MCGLOTHIN:** The State calls Angela Works.

18 (Whereupon, Angela Grace Works was duly sworn by the
19 Clerk of Court.)

20 **THE CLERK:** Please have a seat and state your full
21 name for the record.

22 **THE WITNESS:** Angela Grace Works.

23 ANGELA GRACE WORKS,

24 having been duly sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY MR. MCGLOTHIN:

2 Q. Good morning, Ms. Works. How do you fit into this
3 family?

4 A. Peggy -- Peggy Livingston was my aunt.

5 Q. Okay. And so you would say you knew her pretty well
6 then?

7 A. Yes. Yes.

8 Q. Did you have a close relationship with her?

9 A. I did. And we're the family that was in Charleston
10 that was talked about. She would come and see my children
11 playing sports like basketball and they're some of the
12 ones that she would say that she was gonna steal my dad's
13 grandchildren, they were hers, not his, so.

14 Q. What do you do for a living?

15 A. I'm a physical therapist.

16 Q. And where do you work?

17 A. I work at the Medical University of South Carolina
18 in Charleston and I also do home health for a company
19 called Interim.

20 Q. How long have you been doing that?

21 A. I've been a PT since 1992 and I primarily work with
22 neuro patients, head injuries, spinal cord injuries, MS,
23 all of that.

24 Q. Were you at Peggy's funeral back in 2017?

25 A. Absolutely.

1 Q. Could you tell me a little bit about what happened?

2 A. Yes. So, you know, you've already heard that we were
3 there, we had gone through both services at Dunbar, which
4 I'm very thankful he was not there because the outcome
5 would have been bad, but even worse. But we were at the
6 graveside and you've heard how other family members had
7 walked to over where my grandparents' gravestone was and
8 my children, who at that time were seven and just turned
9 nine, had never walked over there. So we walked over there
10 with the other -- my nieces and nephews, so there's seven
11 grandchildren in total, and we walked over there and we
12 were standing there with my dad Will and then we walked
13 away and then I think after that is when my sisters, as
14 they described, they went over and had their moment.

15 So we had already left and my husband had spoken and
16 he said I'm gonna take my children to the car -- thank the
17 Lord -- to the car to go move the car seats to my sister's
18 car so that they could all ride together to my sister's
19 house where we were gonna have, you know, the gathering
20 with the family that never got to happen. We didn't have
21 that.

22 And so my husband was taking the kids to do that and
23 then I was gonna stay -- I was -- my dad was walking under
24 there and, you know, you're always a PT, so, you know, they
25 have these little stones that are under -- the markers are

1 underneath that grass stuff and so I just was -- I had my
2 eye on him and just making sure everything was good, which
3 is just kind of what I do, and I was -- so, you know, the
4 funeral home has the -- you know, where the casket is, and
5 then the first -- you know, it's usually equal distance
6 between the casket and the seats, the chairs, the front
7 row, and so I was -- I feel like I was midway and I was
8 looking at my dad who was about to go -- the last thing I
9 remember he was at the end of the chairs, like if you were
10 going on the other side of the tent, and I feel like he --
11 the last thing I can remember is he was right there and
12 about to maybe go behind it and I just remember thinking
13 gosh, if something happened, I'm not even close enough to
14 do anything, and then -- I now know I felt nothing, but
15 one minute I'm standing there and then there's a gentleman
16 named Mr. Floyd, who I only had met driving in the car with
17 the family to the funeral, he was the one who drove us from
18 the funeral home, the next minute I am on top of him on top
19 of my aunt's casket. So he's kind of draped on it.

20 Now I don't have a picture of it because -- well,
21 then -- but the only thought in my head is what's going on
22 because I feel like the tent is coming down, but it's not.
23 I don't realize -- she was trying to describe aerial. I
24 just know that -- I guess it was me -- the sensation of me
25 going wherever I was going and -- and then screams. You

1 could just hear the sound, like all the screams going up,
2 and then, like I said, I'm -- I'm kind of -- he's draped on
3 the casket and I'm kind of draped on him.

4 Q. I'm gonna show you what's already been entered as
5 State's 7 and 5. I don't know if that will help you kind
6 of describe where you were positioned.

7 A. Oh, yeah.

8 Q. And could you just briefly kind of use that to
9 describe where you were?

10 A. Here's my aunt Peggy and I don't want to forget that
11 because that was pretty freaking huge and here's the
12 chairs. So, you know, I don't know if this was after the
13 fact -- this is after it all happened or not? I guess so.
14 I guess so.

15 Q. Yes, ma'am.

16 A. So these have probably been moved, so I don't know
17 how correct they are exactly, but I feel like I was
18 somewhere right in this middle and I feel like my dad was
19 going like right here, somewhere like going right there,
20 and I guess just that little bit where I was to the side
21 save me from having a ride on the car and then I ended up
22 I feel like right here. I feel like I was right in the
23 middle. So, like I said, he was kind of draped there and
24 I was on -- kind of partially up on him.

25 Q. What injuries did you sustain, if any?

1 A. So at the moment -- do you want me to tell what else
2 happened right there?

3 Q. Oh, sure. Please. I'm sorry. I didn't mean to --

4 A. That's okay. So at that moment then my ten-year-old
5 -- ten at the time -- my ten-year-old nephew comes running
6 around screaming are you okay? He's one of the ones who
7 loved his aunt very much. He has to go through this again.
8 This is the worst day of his life and now it doubly worse.

9 And then -- then my husband comes up. You know, as I
10 said, I'm a PT, so the first thing I'm thinking is spinal
11 cord, I'm like don't touch me, and I said -- no, the first
12 thing I said is where are the kids and he said the kids are
13 fine and I said get them away from here because everyone is
14 screaming and then -- so then he did that. He went to go
15 move our kids so they would not have to hear and see all of
16 this and then once I figured out -- then I asked Mr. Floyd
17 if I could please lie my head on his thigh for a minute,
18 which I did, and when I figured out everything was not
19 going to -- you know, that I wasn't gonna be paralyzed from
20 this, then I -- no, the next thing I asked is where my dad
21 was because the last thing I was doing I was looking at
22 him, so I looked for him and then I could see -- I don't
23 have an idea of the distance at all, I just know he was out
24 this way, and so I crawled -- I guess I felt like I could
25 not -- I can't tell you what I felt like because I felt

1 nothing. I crawled on my hands and my knees to him and
2 when I knew it was okay, then I put his head in my lap and
3 that's where we were from there.

4 At that point I didn't know that I hurt anywhere and
5 then I started -- I started feeling spasms, you know, in
6 this large group of paraspinals, I felt spasms all along
7 my neck in here, and at the time I didn't know I had a
8 broken toe. A big deal in the big picture, but I did have
9 a broken toe, the great toe, which, you know, could affect
10 work and lifting patients and all that kind of stuff, but
11 I didn't know that until they were having me walk because
12 as they put it I was one of the walking wounded, so I
13 didn't know it was hurt until I was walking there as far
14 as that goes.

15 And then each day, of course, you felt more. You
16 know, I didn't realize, but it probably hit me. I have no
17 clue, so I can't tell you specifically. I just know where
18 I hurt. It probably hit me here, I pivoted some kind of
19 way and then I realized I hurt over here the next day I
20 guess from when it threw me into poor Mr. Floyd, so. So
21 spasm, neck, back. I still have hip pain. The big toe's
22 better. Sometimes it gets stabbing, but nothing in the
23 big picture compared to my family members.

24 Q. Did you know Mr. Kester prior to that day?

25 A. Absolutely not.

1 Q. Had you ever known his daughter?

2 A. Absolutely not.

3 Q. Okay.

4 **MR. MCGLOTHIN:** Thank you. Nothing further. Please
5 answer any questions the defense may have.

6 **MR. KESTER:** I have none, Your Honor.

7 **THE COURT:** All right. Thank you. You may step down.
8 (Witness excused.)

9 **MR. MCGLOTHIN:** The State calls Kathryn Holloman.
10 (Whereupon, Kathryn Holloman was duly sworn by the
11 Clerk of Court.)

12 **THE CLERK:** Please have a seat and state your full
13 name for the record.

14 **THE WITNESS:** My name is Kathryn Holloman and Peggy
15 was my cousin, my first cousin. We were very close.
16 Almost like sisters. She didn't have any sisters, she had
17 brother.

18 KATHRYN HOLLOMAN,
19 having been duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. MCGLOTHIN:

22 Q. Thank you. Ms. Holloman, do you currently work?

23 A. No, I'm retired.

24 Q. What -- did you do anything -- were you employed
25 prior to being retired?

1 A. Yes, I was a teacher's assistant in Lexington
2 District 2 Special Ed.

3 Q. And you've already told us you were related to
4 Ms. Livingston?

5 A. Yes.

6 Q. Were you present for the funeral service?

7 A. Yes, sir, I was.

8 Q. Could you tell me a little bit about what happened
9 that day?

10 A. I really can't because I do not remember. The only
11 thing I do remember is I saw a car coming towards me and
12 I took my right hand and held it up like most people do,
13 like stop, and that's all I remember until, oh, a little
14 while later and I went to get up and my daughter said
15 momma, don't move, there's something wrong with your leg,
16 and that's all I remember.

17 Q. What is the next thing you remember after that?

18 A. After that, when I was in the hospital, the doctors
19 came and asked me if my leg hurt, I said no. They said
20 does your hip hurt, I said no. They said what about your
21 shoulder? I said yes, fix my shoulder. It broke my left
22 leg, my right hip and my right shoulder and, of course,
23 I've had two surgeries on my shoulder and I cannot lift my
24 arm very far at all.

25 Q. Did you ever learn what actually took place?

1 A. Did I -- sir?

2 Q. Did you ever learn what actually happened?

3 A. Other than -- no.

4 Q. Okay.

5 A. I just -- I don't remember anything. I just heard
6 bits and pieces, you know, of people talking, but what
7 actually did happen, no. And I don't want to know to be
8 honest.

9 Q. I'm gonna show you what's been marked as State's
10 Exhibits for identification 58 through 64. Do you
11 recognize those photos?

12 A. Yeah, they're all pictures of -- of my injuries.

13 Q. Do they accurately reflect your condition after the
14 incident?

15 A. I don't remember having a neck brace.

16 Q. Don't show them to the jury. I'm sorry. If you
17 could just describe them.

18 A. No, I don't remember having a neck brace on at all,
19 so I don't know, you know, about that, but my legs and
20 stuff they were bruised, I remember that, and I had to
21 have surgery on my left knee -- my left leg, but they
22 did not put a cast on it because with my left leg and my
23 right hip and my right shoulder broke, I could not balance
24 myself to walk, so I had to stay in bed from July when it
25 happened until the end of October. I could not get up and

1 walk around and that's not a very good feeling.

2 Q. Yes, ma'am. If I could hold them just a second.

3 A. (Handing.)

4 **MR. MCGLOTHIN:** At this time the State would enter
5 State's Exhibits 58 through 64.

6 **THE COURT:** Any objection?

7 **MR. KESTER:** No, Your Honor.

8 **THE COURT:** They're admitted.

9 **MR. MCGLOTHIN:** Thank you, Your Honor.

10 (State's Exhibit Number 58 through 64, photographs,
11 were admitted into evidence.)

12 BY MR. MCGLOTHIN:

13 Q. You can hold them if you'd like to and I'll pull them
14 up from here. So as you mentioned, this shows you in the
15 neck brace?

16 A. Uh-huh.

17 Q. Okay. But you don't actually remember that?

18 A. I do not remember that.

19 Q. You weren't conscious at this time or you don't have
20 recollection of it?

21 A. I don't have recollection.

22 Q. But that's you?

23 A. Yes. Yes, it is.

24 Q. So that was State's 58 and 59. Do you know what this
25 is showing, State's 60?

1 A. It looks like a -- like a bruise on my right hip.

2 Q. Okay. Do you remember receiving that at all?

3 A. No, I sure don't.

4 Q. Okay. State's 61, do you know what that shows?

5 A. It shows my -- the swelling of my left leg and -- and
6 my right leg.

7 Q. So is that what your leg normally looked like?

8 A. No, sir. I don't have the bruises on me.

9 Q. Okay. And State's 62, is that just a closer up
10 picture of that?

11 A. Yes, sir.

12 Q. And 63, again, just another --

13 A. Just another.

14 Q. And I believe that's -- excuse me. There should be
15 a 64. And what does 64 show?

16 A. It looks like my back -- no, excuse me, that's my arm.
17 That's my shoulder. That's my shoulder.

18 Q. And that's the shoulder you mentioned earlier being
19 injured?

20 A. Yes, sir. My right shoulder.

21 Q. And you stated you still don't have full use of it?

22 A. No, sir. I can't lift it any higher than that and I
23 had to have two surgeries on it.

24 **MR. MCGLOTHIN:** Thank you, Ms. Holloman. Please
25 answer any questions the defense may have for you.

1 **THE WITNESS:** Okay.

2 **MR. KESTER:** I have none, Your Honor.

3 **THE COURT:** Thank you. You may step down.

4 (Witness excused.)

5 **THE COURT:** Your next witness.

6 **MR. MCGLOTHIN:** The State calls John B. Montgomery.

7 **THE CLERK:** Raise your right hand.

8 (Whereupon, John Brian Montgomery was duly sworn by
9 the Clerk of Court.)

10 **THE CLERK:** Have a seat and state your name for the
11 record.

12 **THE WITNESS:** John Brian Montgomery.

13 JOHN BRIAN MONTGOMERY,

14 having been duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. MCGLOTHIN:

17 Q. Thank you, Mr. Montgomery. What do you do for a
18 living?

19 A. My company is a small employee-owned manufacturer of
20 food ingredients. I manage sales and marketing for them.

21 Q. Okay. How long have you been doing that?

22 A. I've been with that company for about six years, since
23 2012.

24 Q. How do you fit into the family tree?

25 A. My wife Kelli is Peggy's daughter -- excuse me, niece.

1 My father-in-law is Will Sohn, who was Peggy's brother --
2 who's Peggy's brother. We've been married for about
3 twenty years.

4 Q. And did you know Peggy?

5 A. Very well, yes.

6 Q. Were you close with her?

7 A. Very much so. She was a very sweet lady. We dated
8 long before we were married and I knew Peggy for many
9 years even before we were married, so.

10 Q. Okay. Were you -- were you present at her funeral
11 service?

12 A. Yes, I was a pallbearer.

13 Q. Could you tell me a little bit about that?

14 A. I was a pallbearer. Like everybody mentioned, it was
15 a very hot day. The memorial service or funeral was at
16 Green -- or at Dunbar on Devine Street and we went out to
17 Greenlawn for the -- for the burial afterwards.

18 Q. Okay. And were you there for the incident that took
19 place?

20 A. I was there. I was standing on the far side of the
21 green tent from the road that Mr. Kester's car would have
22 entered the cemetery area from.

23 Q. I'm gonna show you State's -- what's been entered as
24 State's 5 and 7 --

25 A. All right.

1 Q. -- just for context of where you were standing. Do
2 either of those help?

3 A. Yes. I think the car would have come from this
4 direction here and I probably would have been kind of on
5 the far side of that just underneath or just outside of
6 the tent opposite the side of the road.

7 Q. And so what did you see happen?

8 A. Actually I did not see anything happen sort of before
9 I was struck myself. I did hear a very -- I heard
10 somebody, at the time I didn't know, I later found out it
11 was my wife's cousin Tina, somebody yelled -- she yelled
12 look out or oh, God, look out, something like that, I can't
13 be sure exactly sure what it was, but it was a very -- done
14 in such a way that you could tell there was fear in their
15 voice. It made me turn over my -- looked over my left
16 shoulder and literally the car was probably no further than
17 the court reporter is to me. I was immediately struck by
18 it. Basically I had no time to react other than just to
19 know that there was a car there and it was gonna hit me,
20 which it did. So I was one of the people that shared a
21 ride with Mr. Rooney very briefly. Thankfully mine was
22 much shorter. I remember kind of tumbling off the car,
23 landed on my right side and could see the car driving away
24 with Michael still on top of it. So the scene he described
25 was kind of my -- my vantage point from lying on my side

1 and watching him drive away and a couple of cousins going
2 out to -- to check on him.

3 Q. Did you see where the car eventually came to rest?

4 A. I did, yeah.

5 Q. Did you see anything -- it moving beyond that at
6 all?

7 A. I did see -- I watched it move and kind of, you
8 know, come to a stop with Michael on it. I kind of
9 watched the scene where they got him off it. I do
10 remember it looked like, at least from my vantage point,
11 I thought potentially it was backing up. I'm not -- you
12 know, at that exact moment I remember thinking this was
13 intentional, he ran over us, potentially he's trying to
14 come back, I don't know, but as everybody said it stopped
15 at that point. It didn't move any further from there.

16 Q. Did you receive any injuries?

17 A. Fortunately, no, I wasn't hurt other than bumps and
18 bruises. I went to the emergency room and was checked
19 out, but luckily no permanent physical injuries.

20 Q. Did you know Mr. Kester prior to this event?

21 A. I did not.

22 Q. Had you ever heard of his daughter prior to this
23 event?

24 A. No, I have not -- had not.

25 **MR. MCGLOTHIN:** Thank you. Please answer any

1 questions the defense may have.

2 CROSS-EXAMINATION

3 BY MR. KESTER:

4 Q. Mr. Montgomery, you have a few lawsuits against me,
5 too, right now, don't you?

6 A. I know that we received a settlement through our own
7 car insurance company. I honestly am not sure what our
8 family attorney's doing presently.

9 Q. How much did you get there?

10 A. My youngest daughter, who was injured in the incident,
11 received a settlement, again, from our own car insurance
12 company for I believe \$100,000, but it's strictly to her
13 and it's payouts -- multiple payouts over a series of
14 years as she gets older, so I personally have not received
15 anything.

16 Q. So you have pending cases against my insurance company
17 and me, right?

18 A. I honestly don't know what litigation is pending
19 currently.

20 Q. Let me ask you something, Mr. Montgomery.

21 A. Yes, sir.

22 Q. How would you feel if one of your daughters was
23 detained 600 days for inappropriate laughing and giggling
24 and then in the middle of it they accuse you sexual abuse
25 and she came out a vegetable?

1 A. Sir, I don't feel comfortable commenting on a
2 hypothetical situation and I'm not going to.

3 **MR. KESTER:** Okay. All right. Thank you.

4 **THE COURT:** Anything further?

5 **MR. McGLOTHIN:** No, Your Honor.

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

7 **THE WITNESS:** Yes, sir.

8 (Witness excused.)

9 **THE COURT:** The final witness before lunch.

10 **MR. EATON:** [REDACTED] Minor 1 .

11 (Whereupon, [REDACTED] Minor 1 was duly
12 sworn by the Court.)

13 **THE WITNESS:** [REDACTED] Minor 1 .

14 [REDACTED] Minor 1 ,

15 having been duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. EATON:

18 Q. Good morning, [REDACTED] Minor 1 . And how old are you?

19 A. Fifteen.

20 Q. And who are your parents?

21 A. Kelli and John Montgomery.

22 Q. Okay. So was that your dad who just testified?

23 A. Yes, sir.

24 Q. What grade are you in?

25 A. I'm a sophomore in high school.

1 Q. And were you at the funeral that day?

2 A. Yes, sir.

3 Q. Can you tell the jury what you remember?

4 A. I went to the funeral service at Dunbar and I sat
5 next to my grandmother and my cousins and then we got in
6 my aunt's car and my grandma drove me and my sister and
7 three of my cousins to a funeral service at Greenlawn
8 because all of our parents were in the family car and then
9 we got out and it was really hot and then we had the short
10 service and then we were all walking around and I saw my
11 great grandparents' graves and was just talking to family
12 members that I didn't see that often and then I was under
13 the green awning and then all of a sudden I was like flying
14 through the air, I couldn't see anything, and then I landed
15 on my right leg. Nothing really hurt in the moment. My
16 leg was shaking, I could hardly get it to stop, but then I
17 saw my sister on the ground and then just like went over to
18 her and my mom.

19 Q. And I just realized your first name is **Minor 1**, but
20 you actually go by your middle name, **Minor 1**; is that right?

21 A. Yes, sir.

22 Q. I apologize.

23 A. You're fine.

24 Q. So, **Minor 1**, did you see the car coming?

25 A. I saw it drive into the cemetery, but I didn't see

1 anything after that.

2 Q. And did you go to the hospital?

3 A. I was taken in the ambulance with my sister and my
4 dad and my mom and I just very quickly treated just to see
5 if anything was severely wrong and I was fine, so I was
6 discharged, but I stayed while my sister was there.

7 Q. And, **Minor 1**, I'm gonna show you what has been marked
8 for identification as State's 78, 79 and 80. Do you
9 recognize these, **Minor 1**?

10 A. Yes, sir.

11 Q. What are these?

12 A. That is me at the hospital, I believe, and scratches
13 I got on my right shoulder.

14 **MR. EATON:** Your Honor, I'd offer into evidence
15 State's 78, 79 and 80.

16 **MR. KESTER:** Yes, Your Honor.

17 **THE COURT:** Admitted without objection.

18 (State's Exhibit Number 78, 79 and 80, photographs,
19 were admitted into evidence.)

20 BY MR. EATON:

21 Q. Can you just tell the jury what we've got here?

22 A. That's just me, yeah, and then --

23 Q. Where was that?

24 A. I believe it was in the hospital.

25 Q. Okay. And then what's this one, which is 79?

1 A. That is my right shoulder where I had cuts on my
2 shoulder.

3 Q. And then, again, Number 80?

4 A. That's just a closer shot of the scratches.

5 Q. **Minor 1**, did you realize that you had been hit by a
6 car?

7 A. No, sir. I was -- didn't really know what had
8 happened. My eyes were closed. I just started tumbling
9 through the air and then landed on my right side and didn't
10 really know what had happened.

11 **MR. EATON:** Thank you, **Minor 1**. No further questions.

12 CROSS-EXAMINATION

13 BY MR. KESTER:

14 Q. **Minor 1**, how would you feel if every time you
15 laughed --

16 **MR. EATON:** Objection. Speculation, Your Honor. She
17 has no firsthand knowledge of what he's about to ask.

18 **THE COURT:** I can't rule on an objection before a
19 question is asked.

20 BY MR. KESTER:

21 Q. If you laughed or giggled to monsters who would just
22 give you ten times as much medicine and then they ruined
23 you in the end, I mean, at a young age, at your age, how
24 would that make you feel?

25 **MR. EATON:** It calls for speculation. It's also

1 irrelevant to the testimony that she just gave.

2 **THE COURT:** The objection is sustained. Not on
3 the --

4 **MR. KESTER:** Okay. But --

5 **THE COURT:** -- totally on the basis that it's --

6 **MR. KESTER:** But I don't have to follow his testimony.
7 I mean, that could be another area. I don't have to delve
8 into what he did.

9 **THE COURT:** I don't understand you, but I sustain the
10 objection. Ask another question.

11 **MR. KESTER:** Well, that's it, Your Honor. That's all.

12 **THE COURT:** Any redirect?

13 **MR. EATON:** No, Your Honor.

14 **THE COURT:** Thank you. You may step down.

15 (Witness excused.)

16 **THE COURT:** And we're gonna break for lunch. We're
17 going to resume at 2:00. We've ordered lunch for the
18 jurors. You do not have to stay in the jury room until
19 2:00, but do not congregate outside or in the lobby area
20 in front of the courtroom. Do not go anyplace in which
21 anyone who is involved in the case might be. Do not
22 discuss the case or allow anyone to discuss it with you or
23 in your presence.

24 We will reconvene at 2:00.

25 (Whereupon, the jury was excused for lunch at

1 12:44 PM.)

2 **THE COURT:** We'll be in recess until 2:00.

3 (Whereupon, a luncheon recess was taken.)

4 **BAILIFF:** Court come to order. All rise.

5 You may be seated.

6 **THE COURT:** Bring in the jury.

7 (Whereupon, the jury return to the courtroom at

8 2:11 PM.)

9 **BAILIFF:** The jury is seated, Your Honor.

10 **THE COURT:** All right. Welcome back, ladies and
11 gentlemen.

12 Ms. Bosier, Juror Number 28, I'm gonna appoint
13 you to serve as the foreperson of the jury. And the
14 foreperson's seat is which one?

15 **BAILIFF:** This seat right here where the gentlemen
16 is.

17 **THE COURT:** If you-all could switch seats there.

18 All right. As foreperson, you will serve as the
19 spokesperson for the jury from this point forward and
20 will have the responsibility of presiding over the jury
21 deliberations and completing the verdict form representing
22 the unanimous verdict of the jury at the end of the trial.

23 Very good. And you may call your next witness.

24 **MR. EATON:** Thank you, Your Honor.

25 Before I call the next witness, I was just gonna

1 clarify something from pre-trial about State's Exhibits 1,
2 2, 89 and 92. I want to just offer those in evidence at
3 this point. There was a little confusion with the court
4 reporter about what was in. So I'm offering those at this
5 point.

6 **THE COURT:** What is it?

7 **MR. EATON:** It's the 9-1-1 call, the video recorded
8 statement and the advice of rights and the search warrant,
9 Your Honor.

10 **THE COURT:** The Court doesn't admit evidence during a
11 pre-trial. I might make certain rulings, but it has to be
12 properly introduced and authenticated during the trial.

13 **MR. EATON:** Yes, Your Honor.

14 **THE COURT:** The State calls John E. Montgomery. I'm
15 sorry. The State calls **Minor 2**.

16 (Whereupon, **Minor 2** was duly sworn
17 by the Clerk of Court.)

18 **THE CLERK:** Please have a seat and state your full
19 name for the record.

20 **THE WITNESS:** **Minor 2**.

21 **Minor 2**,

22 having been duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. EATON:

25 Q. **Minor 2** how old are you?

1 A. I'm twelve.

2 Q. What grade are you in?

3 A. I'm in seventh grade.

4 Q. Who are your parents?

5 A. Kelli and John Montgomery.

6 Q. And so was that your sister who testified right
7 before lunch?

8 A. Yes.

9 Q. **Minor 2**, were you at the funeral that day?

10 A. Yes.

11 Q. Could you tell the jury what you remember, please?

12 A. I remember we were going -- I was in the car with my
13 grandmother and she was driving my sister and I and my
14 three cousins and we got there and the next thing I know I
15 was talking with -- we did the service and I was talking
16 with my grandmother and my cousin and the next thing I
17 know I was on the ground and I looked around and I heard
18 people screaming and I got up and I walked over to my mom
19 and my arm was dangling and she went and she sat me down
20 behind the casket.

21 Q. Did you see the car coming?

22 A. I did not.

23 Q. Did you -- did you feel it hit you?

24 A. I didn't.

25 Q. So do you kind of have a space that you don't

1 remember there?

2 A. Yes.

3 Q. Okay. Did anyone treat you right there at the
4 cemetery?

5 A. Well, someone, like the EMS people, they came and
6 they -- they wrapped my arm and put it in a sling and they
7 sat with me for like ten minutes and then put me in an
8 ambulance with my dad, my sister and my mom and took me to
9 the hospital.

10 Q. And what did they do at the hospital?

11 A. At the hospital we sat there for -- they took me to
12 a room and we were there for a few hours and they wrapped
13 my arm and then they had to transfer me to a different
14 hospital where I spent the night there and the next day I
15 had surgery and I had two pins put in my left arm and I
16 had a cast for five weeks.

17 Q. **Minor 2**, I'm gonna show you some pictures. These have
18 been marked for identification as State's 84, 85 and 86.
19 Do you recognize these?

20 A. Yes. So that's me when we got to the hospital the
21 first time and then that was when we were at the hospital
22 and that was right before they wrapped my arm.

23 Q. And then this one?

24 A. And that one is a picture of my arm right before they
25 wrapped it and where it's swollen.

1 **MR. EATON:** Your Honor, I'd offer State's 84, 85 and
2 86 into evidence.

3 **THE COURT:** Any objection?

4 **MR. EATON:** I'm sorry, I may have missed something.
5 I'm offering them now.

6 **MR. KESTER:** All right.

7 **MR. EATON:** No, I'm --

8 **THE COURT:** Any objection to those exhibits?

9 **MR. KESTER:** No objections, Your Honor.

10 **THE COURT:** They're admitted.

11 (State's Exhibit Number 84 through 86, photographs,
12 were admitted into evidence.)

13 BY MR. EATON:

14 Q. Okay. And so just like you told me, **Minor 2** would you
15 tell the jury?

16 A. Yes. So that is me right when I got to the hospital
17 before they wrapped my arm and that is when we got to the
18 hospital and that's before they wrapped my arm and you can
19 see that it's really swollen around my elbow.

20 Q. That's 85. Do you know from looking at this where
21 your arm was broken?

22 A. It was broken right here, I believe, in two places,
23 right there and right there, and I had two pins put in.

24 Q. Is that above and below your elbow?

25 A. Yes.

1 Q. And then how about that one?

2 A. That's also when we were at the hospital before they
3 wrapped it and you can see it's really swollen around the
4 elbow and that's where I broke it at.

5 Q. Did it hurt?

6 A. Yes.

7 Q. Do you have a scar from the surgery?

8 A. I -- I have two.

9 Q. Do you mind showing it to the jury?

10 A. Okay. So I have one scar right here. It kind of
11 looks like a cross, it's a little purple. And then I have
12 one right here where the pin is. It's like small little
13 dots.

14 **MR. EATON:** Thank you, **Minor 2** I have no further
15 questions.

16 **THE COURT:** Any questions by Mr. Kester?

17 CROSS-EXAMINATION

18 BY MR. KESTER:

19 Q. Did you have a cast on your arm?

20 A. I did.

21 Q. About how long?

22 A. Five weeks.

23 Q. Five weeks?

24 A. (Nods head.)

25 Q. Is -- your arm's mobile now, isn't it? You can --

1 A. Yes.

2 Q. Everything's okay then?

3 A. Yes.

4 **MR. KESTER:** Okay. Thank you.

5 **THE COURT:** Anything further?

6 **MR. EATON:** No, Your Honor.

7 **THE COURT:** Thank you. You may step down.

8 (Witness excused.)

9 **THE COURT:** Next witness.

10 **MR. EATON:** The State calls John E. Montgomery.

11 (Whereupon, John E. Montgomery was duly sworn by the
12 Clerk of Court.)

13 **THE CLERK:** Please have a seat and state your full
14 name for the record.

15 JOHN E. MONTGOMERY,

16 having been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. EATON:

19 Q. If you would state your name for the record.

20 A. John E. Montgomery.

21 Q. Good afternoon, Mr. Montgomery. Mr. Montgomery, what
22 do you do?

23 A. I just retired from the University of South Carolina
24 Law School in May. Before that I was a law professor for
25 forty-five years or so, which is a very long time, and I

1 was dean of the law school for about sixteen years.

2 Q. What did you teach?

3 A. Personal injury law, administrative law, environmental
4 law.

5 Q. Not criminal?

6 A. Not criminal. I know very little about criminal law.

7 Q. And could you tell the jury how you fit into the
8 family?

9 A. We were at the funeral -- my wife and I were at the
10 funeral of our daughter-in-law's aunt, Peggy Livingston.
11 And like everyone else has said we went to the service at
12 Dunbar and then went to the service at Greenlawn and parked
13 the car, walked over, sat in the tent and then after the
14 service was over we got up and she went one way, I went
15 another way, and we were just talking with friends and
16 family.

17 Q. And if I can, I want to direct your attention to
18 State's exhibit 95. So looking at State's Exhibit 95, are
19 you fairly well orientated to the layout of the cemetery
20 there?

21 A. Yes. Yes.

22 Q. If you -- if you don't mind stepping down for a
23 minute.

24 A. (Witness complies.)

25 Q. So, Dean Montgomery, if you -- if you could show

1 us where -- where were you in the moments before this
2 happened?

3 A. Okay. I was standing kind of on this side of the
4 tent toward the back with the road over here. This is
5 the casket.

6 Q. Great. So did you happen to be looking at where he
7 came from?

8 A. Well, what happened was as soon as the service was
9 over and we were mingling around, I was looking for where
10 my wife was and I was coming around and I saw a car coming
11 -- I saw a car kind of pull up kind of in this area where
12 that truck is standing.

13 Q. Which direction did it come from?

14 A. It was coming this way.

15 Q. So from this way?

16 A. That's correct. I didn't see it come in, but I did
17 see it pull up. I saw my wife, Bonnie Montgomery, who
18 testified first, and Jennifer Browder, who testified
19 second, they were talking to whoever was in the car at
20 that point. I glanced away and then I backed over here
21 and I glanced back over my left shoulder and I saw the car
22 very slowly -- how fast, two or three miles an hour, just
23 creeping along, and then it pulled off into the grass. The
24 car was one-third on the road and two-thirds on the grass
25 and it was pointed kind of in the direction of the tents.

1 Q. So you're saying the car went from facing along this
2 road --

3 A. Yes.

4 Q. -- to facing towards the tents?

5 A. Exactly right.

6 Q. And what happened next?

7 A. Well, the car stopped. And it flashed through my
8 mind, it's not customary, it's very unusual when somebody
9 comes to a funeral and everybody's parked like this, for
10 somebody to pull into the grass, off of the road into the
11 grass, and that just struck me as very out of the ordinary.
12 I wasn't fearful at that point, but it was worrisome
13 because the car was -- the car engine was running. It was
14 about from here, from me, to the jury back to this -- well,
15 not all the way to the back of the courtroom, but back
16 where the barrier is --

17 Q. The bar?

18 A. The bar, yeah. And it just -- it was there for, I
19 don't know, ten, fifteen seconds, maybe even a little bit
20 longer, and what flashed through my mind was this is --
21 this is not normally what happens at a funeral. And also
22 flashing through my mind was this is kind of like when
23 you're getting ready to take off in an airplane, you know,
24 Delta or United or American. The pilot taxies out to the
25 taxiway, goes to end of the runway and then turns the plane

1 onto the runway and stops and then a few seconds later
2 gears up and the plane zips down the runway and takes off.
3 And so when I was watching this happen, thinking what's
4 going on here, the car just started roaring. It was almost
5 like starting a drag race. And the car just ran through
6 the tent here, came, I don't know, kind of like this, I
7 guess, somehow missed the tent poles and knocked into
8 people.

9 The first thing I remember seeing was my son being
10 flipped over the hood of the car, just literally boom,
11 boom, boom, just like that, and I thought my God, he's
12 killed, he's killed. Anyway, the car zipped away and when
13 it went by me, then I could see across to the other side,
14 and I saw my two granddaughters on the ground crying and
15 one of them was holding her arm and I quickly went kind of
16 over to check out what was going on. There didn't really
17 seem to be any life-threatening injuries, but they were all
18 in a lot of pain and suffering at that moment.

19 At that point I kind of turned this way and started,
20 again, looking for my wife and kind of wandered out this
21 way and Mr. Michael -- or Michael was kind of in here
22 someplace, maybe fifteen, twenty yards away from the car,
23 and it struck me that -- after that and then I wandered
24 all the way out here very close to the side of the car,
25 and the car seemed -- mind you, still -- the engine was

1 still running and it had -- I didn't see this, but the car
2 had turned this way as if it was gonna go around again or
3 make an escape, get out of the way, but it was stuck on
4 something, I didn't see what it was stuck on, and I yelled
5 for the driver, who was Mr. Kester, I assume, not through
6 the windshield, but through the side glass, turn your
7 engine off, don't drive the car, stop. I don't know
8 whether he heard me or not, maybe he didn't, but I did
9 see that he was just kind of downtrodden and beaten down
10 and just kind of, I don't know, just -- it was kind of a
11 strange situation.

12 And then there were people and just bodies around
13 here and there scattered around, people yelling, people
14 in agony, people screaming in pain, and when I was coming
15 through here to kind of walk out this way, I specifically
16 remember somebody saying my, God -- something to the effect
17 of my, God, he's gonna do it again, he's gonna come around
18 and try to run over us again. And you can see there was
19 nothing out there. There's no shelter. I mean, you're
20 just out there. And I didn't realize my wife had gone
21 over here to talk with him. This may be the same time,
22 maybe a little later, I don't know, then I just came back
23 and was trying to get to my family.

24 Q. So at the moment that the car came through the tent,
25 were you in the tent or --

1 A. I was standing kind of inside the tent, but on the --
2 kind of on the -- I was under the tent, but kind of to the
3 road side of the tent.

4 Q. And did the car hit you?

5 A. Yes, it did. It did not do any -- nearly the damage
6 that it did to other people. I had a gash on my leg and
7 a bruise on my knee and my leg that really showed up the
8 next day, kind of like a bone bruise, but at the time I
9 didn't -- I was not aware until I started going out this
10 way that I had blood running down my leg. I do not
11 remember being hit. It's just a -- that's a blank. It's
12 still a blur. I don't have any recollection of that. I
13 had a very clear recollection of what happened before and
14 just a sense of what happened after.

15 Q. So this moment when he has started to turn his car
16 towards the tent, were you able to see him?

17 A. There was somebody driving the car, but I could not
18 -- I could not say it was Mr. Kester.

19 Q. At that point?

20 A. What was real clear to me is that when he pulled that
21 car around and stopped right there, it was a purposeful,
22 deliberative, intentional act. This is not something
23 that happens because the car's out of control or somebody
24 blacks out. That -- that just doesn't fit at all with
25 what I saw.

1 Q. Thank you. You can take the stand back.

2 A. (Witness complies.)

3 Q. Now did you receive some treatment?

4 A. I went to the hospital to visit my family and one of
5 the EMTs, I don't remember who it was, kind of said you're
6 bleeding and I pulled up my pants leg and saw it was
7 bleeding and I came over and they bandaged it up, but I
8 did not seek any treatment at the hospital.

9 Q. And I'll approach you with what is marked as 82 and
10 83, State's exhibits. Do you recognize those?

11 A. Yeah, that's my -- yeah.

12 **MR. EATON:** I'd offer State's 82 and 83 into evidence,
13 Your Honor.

14 **THE COURT:** Any objection?

15 **MR. KESTER:** No, Your Honor.

16 **THE COURT:** They're admitted.

17 (State's Exhibit Number 82 and 83, photographs, were
18 admitted into evidence.)

19 BY MR. EATON:

20 Q. Okay. And so just, again, can you tell the jury what
21 that is?

22 A. Yeah, that is -- that was my left leg or left calf,
23 it was hit on the side, and that's where the blood -- the
24 gash was and the blood was coming down my leg.

25 Q. Do you know what part of the car hit you?

1 A. No, I have no recollection.

2 Q. Do you have a lawsuit against him?

3 A. No.

4 Q. Are you aware of the lawsuits?

5 A. Yes. In fact, I recommended a lawyer for my son and
6 for my son and daughter-in-law's -- my son's father-in-law,
7 Will Sohn. There were a lot of expenses coming out of
8 this situation.

9 Q. And why are they -- why did they sue him?

10 A. Excuse me?

11 Q. Why did they sue him?

12 A. I don't know. You'd have to ask Mr. Robert Goings,
13 the lawyer, but I would assume it's because he didn't have
14 enough assets, so he was -- and I can --

15 Q. I just meant generally why would these people sue
16 him?

17 A. Because he ran over them and caused them a lot of
18 damage and people normally want to be compensated when
19 that happens.

20 **MR. EATON:** Thank you. No further questions.

21 CROSS-EXAMINATION

22 BY MR. KESTER:

23 Q. Did my car move once it got through there? You
24 talked about it moving around.

25 A. After it got to where?

1 Q. In that area where you said it --

2 A. You mean, it moved through the tent? Point to me,
3 please, sir.

4 Q. I guess it was somewhere out in here.

5 A. Yeah, I know.

6 Q. How -- how did it move?

7 A. I didn't see it move. I just saw it up against
8 something.

9 Q. Yeah.

10 A. I thought the motor was running.

11 Q. Your family's already got one hundred thousand they
12 said, so I guess they're trying to compound that and get a
13 good bit more, correct?

14 A. Wouldn't you?

15 Q. You do sue people. That's one of your practices,
16 correct?

17 A. No, I don't sue people at all. I teach law.

18 Q. Yeah, but now -- are you in private practice now?

19 A. No, never have been.

20 Q. I see.

21 **MR. KESTER:** Okay. That's it.

22 **THE COURT:** Any redirect?

23 **MR. EATON:** No, Your Honor.

24 **THE COURT:** Thank you. You may step down.

25 (Witness excused.)

1 **MR. EATON:** May it please the Court, Your Honor?

2 **THE COURT:** Yes, sir.

3 **MR. EATON:** The State calls Corporal Brinson. Allen
4 Brinson.

5 (Whereupon, Allen Brinson was duly sworn by the
6 Clerk of Court.)

7 **THE CLERK:** Please have a seat and state your full
8 name for the record.

9 **THE WITNESS:** Allen Brinson. I'm a corporal with the
10 City of Columbia Police Department.

11 ALLEN BRINSON,

12 having been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. EATON:

15 Q. Corporal Brinson, what do you do at CPD?

16 A. Currently I'm assigned to South Region. At the time
17 of this collision at the cemetery, I was assigned to the
18 traffic division.

19 Q. And what -- what was the scene like when you arrived
20 that day?

21 A. Very chaotic, people were everywhere. EMS workers,
22 police department were everywhere trying to help those that
23 were injured. Just a lot of chaos.

24 Q. And what role did you take once you got there?

25 A. I was the first traffic unit on the scene, so we were

1 trying to determine what was going on at that time. My
2 role was to make contact with the original officers that
3 arrived on-scene to try to figure out what exactly was
4 going on and what had happened at that time.

5 Q. When did you first make contact with Mr. Kester?

6 A. It was a few minutes after arriving on the scene.
7 I made contact with him at his car where he was still
8 sitting inside the car.

9 Q. And did he stay sitting in his car or what did you do
10 with him?

11 A. He was -- still stayed sitting in his car. I believe
12 at that time EMS was still checking -- was coming over to
13 check on him also to make sure he was okay at which time
14 he stepped out of the car so they could do blood pressure,
15 things like that that they normally do, and then they had
16 to have him sign off that he didn't wish for any treatment.

17 Q. And then what happened?

18 A. After that I did talk to him a few seconds there just
19 trying to figure what had happened at that time, but due
20 to the heat and everything else I walked him back over to
21 my patrol car, which was sitting on the surface road on
22 the right-hand side, and put him inside the AC in my car,
23 and I believe we got him a bottle of water and stuff just
24 so he could cool down because it was a very hot day so we
25 could, you know, make sure he was okay at that point to be

1 -- to talk to.

2 Q. And then where did you go?

3 A. After being there for a little bit, it was just --
4 we made the decision that we would take him back to
5 715 Bluff Road to the interview room, which myself and
6 Investigator Hilton met up -- met at the interview room.

7 Q. I'm gonna approach you with what have been marked
8 as State's 2 and 89. Do you recognize these?

9 A. Yes, sir. This is the Miranda rights that's read to
10 him at the interview room and that is a copy of the video
11 from the interview.

12 Q. So 89 is the Miranda form?

13 A. Yes, sir.

14 Q. And 2 is the interview?

15 A. Yes, sir.

16 Q. Do you recognize those?

17 A. Yes, I do.

18 Q. You've seen those before?

19 A. Yes, I have, sir.

20 Q. Is that the form that you actually filled out with
21 him or read to him?

22 A. Yes.

23 Q. How did you go over it with him?

24 A. You -- I actually take it and there are spots on here
25 to fill out. 715 Bluff Road is where we were at. At that

1 point I actually go down and read each line. In fact, on
2 each page you can see it's broken out into portions. I
3 read that portion, stop, look over at Mr. Kester and make
4 sure he is following along with what I am saying.

5 Q. And then as far as this disk, how do we -- how do we
6 end up with this footage?

7 A. There's a camera that's inside the interview room
8 that records everything that takes place. It has to be
9 turned on before we enter the room and it's not turned off
10 until everybody exits the room. It's a recording that is
11 made that we cannot stop at that point in time.

12 Q. And were you the only person who interviewed him?

13 A. I was in the interview room and also Investigator
14 Hilton.

15 Q. Did you stay in there the whole time?

16 A. I did not stay the whole time. We were in and out
17 depending on what each one of us were taking on at that
18 time.

19 **MR. EATON:** Your Honor, at this point I would offer
20 State's 2 and State's 89 into evidence.

21 **THE COURT:** Any objection?

22 **MR. KESTER:** What did you say you're offering? What
23 are you putting into evidence?

24 **MR. EATON:** The video interview and the Miranda form.

25 **MR. KESTER:** That's okay, Your Honor.

1 **THE COURT:** They're admitted.

2 (State's Exhibit Number 2, a Recorded Interview, and
3 State's Exhibit Number 89, the Advisement of Rights Form,
4 were admitted into evidence.)

5 **MR. EATON:** I beg the Court's indulgence.

6 BY MR. EATON:

7 Q. Corporal Brinson, did you also get a search warrant
8 in this case?

9 A. Yes, we did a search warrant of the vehicle.

10 Q. And briefly tell the jury how that works.

11 A. A search warrant is where we have to go in front of
12 a ministerial court that works for the City of Columbia,
13 which is not quite like a judge, but very similar. They
14 have the right to sign off on warrants. We have to do an
15 affidavit. Basically for us we actually fill in the
16 warrant forms, take it up to them, they read over it to
17 make sure that we have the proper probable cause for the
18 search warrant, and if we do, then they sign the search
19 warrant and give it back to us to issue against the vehicle
20 itself.

21 Q. So you swore out a warrant to search his car?

22 A. Yes, sir.

23 Q. And then I think my last thing, Corporal Brinson,
24 back on the scene, do you recognize that as the scene on
25 State's Exhibit 3?

1 A. Yes, sir.

2 Q. Were those chairs like that?

3 A. No, sir. Those chairs according to -- a couple of
4 them were up when I first arrived, but according to the
5 funeral directors and the EMS on the scene, they set those
6 chairs back up underneath the tent in order to let some of
7 the people sit in them to get out of the heat. Pretty much
8 every chair was knocked over at the time.

9 Q. What county did this happen in? Where did this
10 happen?

11 A. I'm sorry?

12 Q. Where did this happen, what county?

13 A. It's in the City of Columbia, Richland County.

14 **MR. EATON:** Thank you. No further questions.

15 **THE COURT:** Questions, Mr. Kester?

16 **MR. KESTER:** No, Your Honor.

17 **THE COURT:** All right. Thank you. You may step
18 down.

19 (Witness excused.)

20 **MR. McGLOTHIN:** I beg the Court's indulgence for
21 just a minute.

22 (Proceedings held at the bench; not reported.)

23 **THE COURT:** Ladies and gentlemen, I'll have you go
24 to the jury room in a few minutes. Please do not discuss
25 the case.

1 (Whereupon, the jury retires to the jury room at
2 2:43 PM.)

3 **THE COURT:** We'll take five minutes.

4 (Recess taken.)

5 **BAILIFF:** Court come to order. All rise.

6 You may be seated.

7 **THE COURT:** All right. Bring in the jury.

8 **BAILIFF:** Yes, sir.

9 (Whereupon, the jury returns to the courtroom at
10 2:53 PM.)

11 **BAILIFF:** The jury is seated, Your Honor.

12 **THE COURT:** Thank you. Your next witness.

13 **MR. MCGLOTHIN:** The State calls Heather Collins.

14 (Whereupon, Heather Collins was duly sworn by the
15 Clerk of Court.)

16 **THE CLERK:** Please have a seat and state your full
17 name for the record.

18 **THE WITNESS:** My name is Heather Collins.

19 HEATHER COLLINS,

20 having been duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. MCGLOTHIN:

23 Q. Ms. Collins, where do you work?

24 A. I'm the deputy director for Columbia Richland 9-1-1.

25 Q. Okay. And what do you do there?

1 A. Basically my job duties entail management of the
2 operations, as well as being the custodian of records.

3 Q. What kind of duties do you have as the custodian of
4 records?

5 A. Well, we're responsible by state law to maintain
6 recordings of all incoming phone calls and outgoing phone
7 calls from within the 9-1-1 center. The State law requires
8 a minimum of sixty days and we hold our records for ninety.

9 Q. Okay. So could you briefly explain the process of
10 how the calls are recorded?

11 A. A lot of people actually aren't aware of this, but
12 on a 9-1-1 call the minute that you hit 9-1-1, the
13 recording begins. It actually is recording as soon as
14 the line starts ringing even before we pick up.

15 Q. So it's done automatically?

16 A. Correct.

17 Q. Okay. And is the storage of that, after the call's
18 made, is that automatically done as well?

19 A. It is digitally kept so that we can access it,
20 correct.

21 Q. And is that done for every call -- every 9-1-1 call
22 that's made?

23 A. Every call and every radio transmission that is made
24 through the center.

25 Q. Did you receive a request from either our office or

1 the Columbia Police Department for the 9-1-1 calls involved
2 in this case?

3 A. Yes, we did.

4 Q. And did you produce the recordings for that?

5 A. I did.

6 Q. Okay. I'm gonna show you what's been marked as
7 State's Exhibit 1 for identification. Do you recognize
8 that?

9 A. I do.

10 Q. What is that?

11 A. This is the disk that contains the telephone calls of
12 the incident that we're here today for.

13 Q. Have you heard those calls?

14 A. I have.

15 Q. Do they accurately represent -- do the recordings
16 accurately represent the calls as they were made that day?

17 A. Yes.

18 **MR. MCGLOTHIN:** Okay. At this time the State would
19 move to enter State's Exhibit 1 into evidence.

20 **THE COURT:** Any objection?

21 **MR. KESTER:** No, Your Honor.

22 **THE COURT:** It's admitted.

23 (State's Exhibit Number 1, 9-1-1 calls, is admitted
24 into evidence.)

25 **MR. MCGLOTHIN:** No further questions. Thank you very

1 much.

2 **THE WITNESS:** Thank you.

3 **MR. MCGLOTHIN:** Please answer any questions the
4 defense may have.

5 **MR. KESTER:** I don't have any questions, Your Honor.

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

7 **THE WITNESS:** Thank you.

8 (Witness excused.)

9 **THE COURT:** Next witness.

10 **MR. MCGLOTHIN:** The State calls George Wise.

11 (Whereupon, George Wise was duly sworn by the Clerk
12 of Court.)

13 **THE CLERK:** Please have a seat and state your full
14 name for the record.

15 **THE WITNESS:** My name is George Wise.

16 GEORGE WISE,

17 having been duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. MCGLOTHIN:

20 Q. Mr. Wise, CSI Wise? How do I refer to you?

21 A. Most people call me George.

22 Q. Okay. Sure. George, where do you work?

23 A. I work for the Columbia Police Department.

24 Q. And what do you do there?

25 A. I'm a crime scene investigator.

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

2 A. I've been a crime scene investigator eight years.

3 Q. Could you briefly describe what a crime scene
4 investigator does?

5 A. Basically go to a crime scene and once it's secured
6 we go in and we photograph it, videotape it, and collect
7 evidence.

8 Q. And were you called to Greenlawn Cemetery in July of
9 last year?

10 A. Yes.

11 Q. Okay. And what did you do when you got there?

12 A. Well, once I got to the scene and all, I began
13 gathering information of what had actually taken place.
14 Once I received that information, I began taking
15 photographs of the scene.

16 Q. Okay. I'm gonna show you what's been marked for
17 identification as State's Exhibits 4, 6, 9, 11 through 17
18 -- or, excuse me, 11 through 19, and 28 through 31.

19 Could you flip through those and tell me if you
20 recognize all of them?

21 A. (Witness complies.)

22 Q. Did you get a chance to look at all of them?

23 A. Yes, these are the photographs I took.

24 Q. Okay. Those are the photos you took?

25 A. Yes.

1 Q. Okay. And do they accurately reflect the scene from
2 that day?

3 A. Yes.

4 Q. Okay.

5 **MR. McGLOTHIN:** At this time the State would move
6 State's Exhibits 4, 6, 9, 11 through 19, and then 28
7 through 31, into evidence.

8 **THE COURT:** Any objection?

9 **MR. KESTER:** No, Your Honor.

10 **THE COURT:** They're admitted.

11 **MR. McGLOTHIN:** Thank you, Your Honor.

12 (State's Exhibit Number 4, 6, 9, 11 through 19, and
13 28 through 31, photographs, were admitted into evidence.)

14 BY MR. McGLOTHIN:

15 Q. Okay. So not I'm gonna go through all of these. So
16 what's the first thing you would have shot when you got
17 there? Is there a certain process you like to go through?

18 A. Well, if we have street signs, I'll take pictures of
19 street signs and addresses, show the numbers, but since we
20 were in a cemetery I basically start off where the vehicle
21 left the roadway.

22 Q. Okay. Do you know if there's a picture in there of
23 that? Is that -- this is State's 4. Is that --

24 A. I believe that's gonna be it because we were trying
25 to show the tire marks as it left the roadway.

1 Q. Okay. Are the tire marks there on the photograph?

2 A. You can see -- starting right here in this area, you
3 can see what appears to be a track mark here and here.

4 Q. Okay. And so from there how would you proceed?

5 A. Basically just try to follow the same path the vehicle
6 took.

7 Q. Okay. So looking at State's 6, is that kind of in the
8 next line there?

9 A. Yes. Yes, that would be basically toward the tent
10 area and then through the tent and out.

11 Q. Okay. And State's 9, is that just another kind of
12 angle of that same area?

13 A. Yes.

14 Q. Okay. And so after you kind of shot the path, where
15 -- you just continued on to the vehicle itself?

16 A. Yes, I would continue on to the vehicle and once I
17 got to the vehicle, then I would be taking pictures of the
18 vehicle.

19 Q. Okay. Is there a specific order you take pictures of
20 the vehicle in?

21 A. Normally I start with the back and I just do like a
22 360 all the way around. I start from the right and go kind
23 of counterclockwise.

24 Q. So showing State's Exhibit 26, is that the vehicle?

25 A. Yes.

1 Q. And that's where it was stopped at the time?

2 A. Yes.

3 Q. And did you photograph the windshield?

4 A. Yes.

5 Q. Okay. And looking at State's 22 and 23, are those
6 those photographs?

7 A. Yes.

8 Q. Okay. What, if anything, did you notice about the
9 windshield?

10 A. The breakage of glass, a red stain marking, the
11 outside mirror bent in.

12 Q. And did you take photos inside?

13 A. The driver's side door was open, so I took pictures
14 of what I could see in plain view.

15 Q. Do you have those?

16 A. Yeah, I do have them.

17 Q. And could you just show those to the jury and kind of
18 explain what you're seeing there?

19 A. This photograph would be the driver's floorboard.
20 Like I said, the driver's door was open once I approached
21 the vehicle. And here you have the driver's seat.

22 Q. And you can kind of see in this -- in State's 29,
23 you can kind of see some things in the passenger seat.

24 A. Yes, that's basically showing the condition of the
25 vehicle, the front seat.

1 Q. Did you go through that -- the things in that seat?

2 A. No, I did not.

3 Q. Okay. Do you remember -- or can you tell from the
4 photograph what -- what was there?

5 A. I think just miscellaneous papers, but, no, I did
6 not go through it. I just photographed it. I did not go
7 through it. I think it was more or less miscellaneous
8 type papers, newspapers.

9 Q. Uh-huh.

10 A. Again, this would be probably the center console of
11 the front seat and this would be the passenger seat, which
12 we were speaking about the miscellaneous papers and
13 newspapers.

14 Q. Thank you. Did you do any other -- anything other
15 than shoot the photographs when you were there on the
16 scene?

17 A. Once I photographed the scene, I left from that
18 location and went to -- I went to Richland Hospital and
19 made contact with some of the victims there at that
20 location. Like I said, a lot of information was coming to
21 me at the time, so when I left the scene from the cemetery
22 I really didn't have much information of who was actually
23 our victims. There were numerous people who were struck
24 by the vehicle, so once I made it to the hospital I tried
25 to talk to everybody I could speak to and find out by word

1 of mouth who was at the scene, who got struck by the
2 vehicle, and took photographs of their injuries, and then
3 from there I went to Baptist Hospital and basically the
4 same thing. I came in contact with people, meeting them,
5 spoke to them, and they led me to other people who were
6 also struck by the vehicle, and I took photographs of
7 their injuries.

8 Q. Why is it so important to gather all of this
9 information for your purposes?

10 A. Basically it's just for investigations and all so
11 they can have like a photo image of what took place and
12 what they're looking at when somebody says, you know,
13 well, I was struck by the car. The reason I take the
14 photographs is to show what happened and it shows
15 investigations what took place. Just basically
16 documentation.

17 Q. Where's Greenlawn Cemetery located?

18 A. Right off Greenlawn Drive. Is that the question
19 you're asking me?

20 Q. Is it -- what county is it in?

21 A. Richland County.

22 Q. Is it in the city?

23 A. Yes.

24 Q. Okay.

25 **MR. MCGLOTHIN:** Nothing further. Please answer any

1 questions the defense may have.

2 **MR. KESTER:** I have no questions, Your Honor.

3 **THE COURT:** Thank you. You may step down.

4 (Witness excused.)

5 **THE COURT:** Yes, sir.

6 **MR. EATON:** The State calls Robert Uhall.

7 (Whereupon, Robert Uhall was duly sworn by the
8 Clerk of Court.)

9 **THE CLERK:** Please have a seat and state your full
10 name for the record.

11 **THE WITNESS:** Robert Uhall.

12 ROBERT UHALL,

13 having been duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. EATON:

16 Q. Good afternoon, sir. Is it Sergeant Uhall?

17 A. Yes, Robert Uhall. City of Columbia Police
18 Department.

19 Q. Sergeant Uhall, what do you do at CPD?

20 A. Currently I'm assigned as the supervisor over the
21 Traffic Safety Unit.

22 Q. What do your duties include there?

23 A. My day-to-day duties entail supervising one corporal
24 and seven officers, supervising a traffic safety grant,
25 supervising twenty school crossing locations, eight school

1 crossing guards and twelve private security that we hire.
2 Also I maintain our electronic crash reporting system with
3 the City and assist all city officers with getting accounts
4 and working on crash data reports and citations.

5 Q. So you've worked a lot of crashes?

6 A. Yes.

7 Q. Hundreds?

8 A. I don't work them so much anymore because I have
9 supervisor duties now, but I would venture -- I've been
10 employed fourteen and a half years. I've worked thousands
11 of collisions and supervised or reviewed tens of thousands.

12 Q. So do you have training in accident analysis and
13 reconstruction?

14 A. Yes, I have extensive training in at-scene technical
15 collisions, digital reconstruction, motorcycle/ped/bike,
16 event data recorder. I'm very knowledgeable in traffic
17 reconstruction.

18 Q. Have you taken special courses?

19 A. Yes, I've taken courses through the South Carolina
20 Criminal Justice Academy. You get a basic -- you get
21 basic crash abilities at the academy when you become law
22 enforcement and then if you start working towards, like
23 me, if I want to do traffic safety, so I had to take
24 advanced courses to get into more physical -- the more
25 technical side of traffic collisions. I've taken them

1 there. I've also travelled to IPTM in Florida at the
2 University of Florida and taken several classes.

3 Q. What's that mean, IPTM?

4 A. Institution of Police Technology and Management.
5 I've taken ped/bike and event data recorder and several
6 others at IPTM.

7 Q. And when you're doing -- when you're investigating
8 an accident or an incident that involves a vehicle, is
9 there any special technology you use?

10 A. On severe collisions that may end up in a court such
11 as this. On day-to-day collisions I don't use too much
12 advanced technology, but when we start getting into traffic
13 reconstructions when we have to figure out how a wreck
14 occurred to testify in front of folks such as yourselves,
15 there is some technology we use.

16 One of them is the Bosch data recorder. In simplest
17 terms, cars record data. It's always recording data.
18 Cars record data, one, from the manufacturers so they can
19 make safer vehicles and also so it can keep you safe.
20 Something's got to tell your car what to do. Your
21 electronic stability control has come about these days,
22 airbags. Something has to tell that stuff to work and how
23 and when to work, so I gather data out of the sensors that
24 tell the car what to do in those circumstances.

25 Q. And what is that -- you mentioned a control module.

1 What was that again?

2 A. Airbag control module. So when you're driving the
3 car, as I said, it always records data. It wants to know
4 how fast you're going, at what rate of travel you're going,
5 steering input, whether you have a seatbelt on or off.
6 There are a lot of things that are more on newer cars
7 and less on older cars and all this data tells the
8 airbag control module what's going on with the car. At
9 a certain point the airbag control module says something
10 is happening, I need to tell the airbags to deploy or I
11 need to start getting ready to tell the airbags to deploy.
12 That's pretty much what an airbag control module is. It
13 controls the deployment and non-deployment of airbags.

14 Q. And you have training and experience in recovering
15 data from this thing?

16 A. Yes. I utilized a tool manufactured by Bosch. You
17 may have heard them. They make dishwashers and things
18 like that. They have a tool, which I brought with me.

19 Q. And before we get to that, Sergeant Uhall, just
20 briefly -- I mean, where did you learn -- where did you
21 learn to use this thing to extract the data?

22 A. I learned how to use it a IPTM in Jacksonville,
23 Florida.

24 **MR. EATON:** Your Honor, at this time I'd ask that the
25 Court recognize Sergeant Uhall as an expert in accident

1 reconstruction and the recovery of airbag control module
2 data.

3 **THE COURT:** Any objection?

4 **MR. KESTER:** No, Your Honor.

5 **THE COURT:** He's so admitted.

6 BY MR. EATON:

7 Q. And, if you could, go ahead and tell the jury some
8 more about how you do this, please.

9 A. Okay. So basically it's a tool that hooks to a
10 computer manufactured by Bosch. It plugs into the
11 computer and it's basically an interface that I would
12 then put to -- you have a diagnostic port under your
13 dash. You may have an insurance company that has you
14 plug something into it so you can get a reduced rate or
15 something, but, again, that's because it's recording data
16 and that's just an access terminal to get some of the data
17 that the car records. If I can't get to it from there,
18 that's the most easiest spot to get to it, but I've taken
19 a car apart if the car's too wrecked. You get severe
20 collisions and sometimes we have to get the fire department
21 to help us cut the car apart or mechanics out there to
22 help us take things apart so we don't harm ourselves
23 getting to it and we can go right to the module or the
24 sensors themselves, but they're much more difficult to get
25 to.

1 So basically we plug into the car, we make sure it
2 has proper power, the airbag control module, so it can
3 receive information and the computer -- we like to use the
4 word image, not really download. We're not changing the
5 data, taking it or transferring it, we're more or less
6 just taking pictures of the data is what's happening. So
7 we image the data, make a copy of it and save it to an
8 external device such as a thumb drive or a PDF file or
9 something of that nature.

10 Q. Did you use this Bosch device to get data from
11 Mr. Kester's car?

12 A. I did.

13 Q. Did you just go out there and do that willy-nilly or
14 how did that come about?

15 A. No. So due to -- just like cell phones have in them
16 a lot of people's personal information, cars also have a
17 lot of personal information, so we need to get a person's
18 permission or we need to get permission through the courts
19 by means of a search warrant to obtain that data. I can't
20 just go and hook it up to a car to get the data.

21 Q. So there was a search warrant done?

22 A. There was a search warrant done by Corporal Brinson
23 for this data.

24 **MR. EATON:** I'm gonna approach with what's been
25 marked as State's Exhibit 90.

1 Does the Court need a copy this, Your Honor?

2 **THE COURT:** Yes, sir.

3 **MR. EATON:** (Hanging.)

4 BY MR. EATON:

5 Q. Sergeant Uhall, do you recognize this?

6 A. Yes, I do. It's a copy of the report generated from
7 the Bosch crash data retrieval system on the date of the
8 search warrant.

9 Q. And was that the data for this case?

10 A. It was at date I retrieved it. The crash date was
11 listed as the 19th of July and I imaged it on the 20th of
12 July.

13 Q. But it's the -- the report for Mr. Kester's car?

14 A. Yes.

15 Q. And did you produce that report?

16 A. I did produce the report.

17 **MR. EATON:** I'd offer State's Exhibit 90 into
18 evidence, Your Honor.

19 **THE COURT:** That's okay with me, Your Honor.

20 (State's Exhibit Number 90, a Crash Data Report, was
21 admitted into evidence.)

22 BY MR. EATON:

23 Q. So if I could direct your attention -- so what's the
24 first page of this report telling us?

25 A. The first page of the report gives me some basic

1 information such as it was me who was the operator of the
2 Bosch CDR that day. I have our internal agency case number
3 or report number, if you will. It has the information of
4 the vehicle, the VIN, the vehicle identification number,
5 listed, and it shows what version of software I used at
6 the time. If you wanted to re-image something at a later
7 date, there may be an update to the software that would
8 give me access to all of the information. And it tells me
9 the type of device that I'm pulling it from. In this case
10 it was the airbag control module because, again, there's
11 different sensors in the car that tell us different things
12 and in this case we utilized the airbag control module.

13 Q. What kind of car was it?

14 A. This was a Cadillac DeVille.

15 Q. Do you know any of the specs of the car? I mean --

16 A. It's a four-door sedan, about 4,000 pounds give or
17 take.

18 Q. About 4,000 pounds you say?

19 A. Yes.

20 Q. So I guess if -- if we could look at Page 3 of your
21 report, what is this page telling us?

22 A. This page is telling me that there was an event
23 recorded. This event that was recorded was a
24 non-deployment event. What that means is that the
25 sensors were telling the airbag control module something

1 is going on right now, it's bad but it's not bad enough
2 to deploy the airbags because airbags can injure or kill
3 people themselves, so it's got to reach a certain level
4 of severity before airbags are deployed. So that's what
5 it's telling us in this case, is that first there was a
6 non-deployment event. It tells me that the driver was
7 buckled at the time. It tells me the ignition cycles at
8 the event, basically how many times the key from
9 manufacture -- from the date of manufacture how many turns
10 to the on position. In this case it was 7,757. It tells
11 me how many ignition cycles are at investigation or at
12 the time I'm imaging the data. In this case, it was two
13 ignition cycles after. One ignition cycle was accounted
14 for when the tow truck driver had to turn it in the on
15 position to manipulate the steering wheel to retrieve the
16 vehicle from the cemetery and then the second one is
17 accounted for when I applied power to the airbag control
18 module. That way I could retrieve the information. It
19 tells me the crash record was not locked in this case,
20 which is typical of a non-deployment event. Typically in
21 a non-deployment event for General Motors they're held
22 within -- on average 250 ignition cycles. So for an
23 average person maybe a month, month and a half of driving
24 it, then it will free up that space so further
25 non-deployment events will be recorded. So if you had

1 something with your car that happened like five years ago,
2 you don't have to worry about it, you know, showing how
3 much your air bags deployed. It shows me that the
4 recording was completed. It tells me there's not multiple
5 events and it tells me that there were not multiple events
6 recorded.

7 That's the basic information. And then it gets into
8 the stuff that I really look for when I'm doing any sort
9 of a collision reconstruction.

10 Q. Okay. And let me -- let me slow you down. We've
11 actually got this right here, so you can kind of walk us
12 through. You've just now been talking about --

13 A. I've been talking about --

14 Q. -- the top portion right here?

15 A. Yes. The top portion where I was talking about it
16 momentarily ago and now the stuff that's highlighted on
17 there is what I'd like to get into.

18 Q. Yes. So what is -- what does AE means?

19 A. Okay. AE means algorithm enabled. Basically telling
20 the device that something's going on, we need to prepare
21 to deploy or not deploy the airbag.

22 Q. Algorithm?

23 A. Enabled. You can think of it as an event, basically
24 an event that tells the airbag it needs to go off or get
25 ready to go off.

1 Q. Something that happened?

2 A. Something that happened.

3 Q. And when we say event, like what might an event be?

4 A. Something out of the normal for a vehicle. If you're
5 driving down the road and you slam on the brakes really
6 hard, if you hit a curb, that's gonna start it. Slamming
7 on the brakes won't do it, but when you start hitting
8 curbs and large bumps and things like that. An algorithm
9 enabled event is typically one to two G's, you know,
10 basically one to two times normal -- normal weight of
11 gravity, things going on.

12 Q. Okay.

13 A. So it starts recording. In this case, General Motors
14 has five seconds here, so at a minimum you're looking at
15 4.9 seconds before the algorithm event.

16 Q. So it's -- why is it -- why is it negative 5,
17 negative 4, negative 3, 2, 1?

18 A. So when you reach down to negative 5, that is 5 to
19 5.99 seconds before the event.

20 Q. So we're talking about --

21 A. So you actually work backwards if you want to look
22 at it. So like if the event would be -- kind of like the
23 countdown to a shuttle launch or the shuttle going in the
24 air, I guess, or a rocket, what have you. So if you look
25 at one, that's the most recent data available at the time

1 before that event. One second.

2 Q. So this is all leading up to whatever triggered the
3 car --

4 A. It's leading up to whatever triggered the car --

5 Q. -- to record?

6 A. -- to record this non-deployment data.

7 Q. Okay.

8 A. So it's pretty simple to look at. You're looking at
9 vehicle speed, engine speed and RPMs and percent throttle.
10 Vehicle speed is computed by rotation of the tires. So on
11 a dry surface, dry, flat surface, studies have shown that
12 to be accurate to within an error of one to four percent.
13 There's things that can change vehicle speed such as if
14 the owner of a vehicle buys bigger or smaller tires or
15 vastly under-inflates their tires. That's gonna change
16 the rotation of the tires and the speed that's recording.
17 Things such as wheel lockup, wheel slip, things of that
18 nature can change the speed. Engine RPM, that one's
19 recording to the power steering control module and that
20 sent to the airbag control module to the computer's
21 electronics, and that one's pretty accurate in itself, and
22 an eight percent throttle was applied at the throttle
23 sensor and then below that we have another section that
24 deals strictly with braking.

25 So when I looked at this data, what it told me is

1 eight seconds before the event, the brakes were not
2 applied in this particular collision. And what it tells
3 me also is that from five seconds out, like a countdown,
4 it's like watching a jet or a shuttle take off, somebody's
5 applying the throttle before an event.

6 Q. So when we look at this percent throttle, it gets up
7 to 96 percent throttle. What does that mean in plain
8 language?

9 A. It means you're gunning it. You've got your foot
10 down.

11 Q. Okay. And leading up to whatever triggered it, did
12 he ever hit the brake?

13 A. No one hit the brake in this event. The brake was
14 paused the entire time.

15 Q. All right. So do we know what was the event that
16 caused the computer to record this data?

17 A. No, I don't know the event that caused the data to
18 record.

19 Q. I mean, could you really know for sure?

20 A. No, not in this case. All I know is that it happened
21 when the vehicle was last running.

22 Q. And so could rumbling over grave sites be enough?

23 A. It most definitely -- most definitely. Anything
24 that's gonna cause a large jerking or slamming of the car,
25 jostling around of the vehicle is enough. Like I said,

1 it only takes one to two G's right in there to make the
2 difference and that's really not much.

3 Q. Okay. Could hitting twelve people, twelve human
4 beings, their bodies, be enough?

5 A. It could, especially if they're more grouped
6 together. It's about change in velocity and weight
7 transfer more than anything.

8 Q. If there were a human body of an adult male that was
9 smashed on the windshield as the car moved, would that be
10 enough to trigger it?

11 A. On the windshield, like if they just got dropped out
12 of the sky, probably not because you get what's called a
13 fender or a roof fall in those cases and you're not gonna
14 have much change in -- much change in the vehicle dynamics.

15 Q. But, I guess, hitting a human body --

16 A. Right, anything -- especially on the front or on the
17 bumper area, the entire front of the car, is gonna be
18 enough.

19 Q. Do we know -- looking back at the report, do we know
20 that sixteen miles an hour was the fastest that he got
21 during that event?

22 A. No. Again, I don't know by data from this car where
23 that event occurred along that path of travel. It could
24 have occurred at the beginning, it could have occurred
25 near the end. All I do know is somebody was on the

1 throttle and they weren't on the brake.

2 Q. So does the thing -- does it basically stop recording
3 when the event starts?

4 A. I'm sorry?

5 Q. Does it stop recording this data when the event
6 begins?

7 A. Correct, unless it senses an additional event, a
8 more severe event, then the data would be recorded over,
9 especially if you had a deployment event. A deployment
10 event is going to permanently lock in an airbag control
11 module. It never goes away.

12 Q. So Mr. Kester could have well driven faster than
13 sixteen miles an hour when he ran over people?

14 A. Correct. Correct. All I know is at a minimum the
15 vehicle's speed is somewhere around sixteen miles an hour
16 at the time this event occurred.

17 Q. In your experience with accidents and, you know,
18 vehicle versus pedestrian, I mean, can sixteen miles an
19 hour -- say that's the fastest he went. Is that enough
20 to seriously injure or kill people?

21 A. Yes. I like to use the term "collision", not
22 accidents though. Yes, I've worked well over -- well
23 over probably a hundred and twenty fatal collisions in
24 Columbia in my time in the last ten years in the traffic
25 unit and a good portion of these fatal collisions involved

1 pedestrians. We've had vehicles strike pedestrians and
2 kill them from a stop, we've had them rolling over, we've
3 had one in a school zone at a real low speed. We've seen
4 very low speeds resulting in serious and fatal collisions.

5 Q. Sergeant Uhall, I'm gonna turn, again, to the search
6 warrant that y'all did on the car. Was that the only
7 thing that y'all got from the car?

8 A. No. The car was a mess for lack of a better term.
9 The inside was a mess. It looked like somebody had been
10 living out of it, full of newspapers and fast food stuff
11 and various receipts, so I had to go through all of that.

12 Q. And so did y'all collect some things?

13 A. Yeah.

14 Q. I'm gonna --

15 A. Anything that I felt was pertinent to the case we
16 collected and separated from the trash.

17 Q. Okay. Thank you. I'm gonna approach you with
18 what's been marked as State's Exhibit 91. Do you recognize
19 this?

20 A. Yes. This is a newspaper found in the vehicle. What
21 brought my attention to it was the obituary section because
22 the collision occurred at a cemetery and in the obituary
23 section was an obituary for a Ms. Livingston on that date
24 and time.

25 Q. So you collected that from the car pursuant to the

1 search warrant?

2 A. I did.

3 **MR. EATON:** Your Honor, I'd offer State's Exhibit 91
4 into evidence.

5 **THE COURT:** Any objection?

6 **MR. KESTER:** No, Your Honor.

7 **THE COURT:** It's admitted.

8 (State's Exhibit Number 91, a State Newspaper
9 Obituary, was admitted into evidence.)

10 **MR. EATON:** Just for the record, the State's only --
11 the extent of Exhibit 91 is the obituary itself, not the
12 entire newspaper.

13 I beg the Court's indulgence.

14 Thank you. No further questions.

15 **THE COURT:** Yes, sir.

16 CROSS-EXAMINATION

17 BY MR. KESTER:

18 Q. Your name's Mr. Uhall; is that right?

19 A. Yes, sir.

20 Q. Okay. You know the algorithm enabled where it says
21 seconds before minus one. From what I read, that could be
22 down to one-tenth of one second, so that's almost there at
23 zero?

24 A. It could be up to. Immediately it starts recording
25 and then it works synchronistically back from that point

1 in time. So from the minus one second everything is
2 within a second at that point and then from that minus one
3 backwards is exactly second for second.

4 Q. So at sixteen miles per hour -- there would be a lot
5 more damage if somebody was going thirty-five or forty
6 miles per hour, wouldn't it?

7 A. Damage to a vehicle?

8 Q. Yeah. In this case, people who -- you know, the
9 faster you go, the more damage, correct?

10 A. To a person? That can be based upon the vehicle.
11 Slow speeds can be more fatal than fast speeds --

12 Q. How would that be?

13 A. -- or more -- more than moderate speeds. Let me
14 correct that. So what kills pedestrians the most is, of
15 course, your extreme speeds, your interstates. You start
16 seeing amputations typically between thirty-five and
17 forty-five miles an hour. In excess of forty-five miles
18 an hour, you start to get extreme roof faults, which is
19 basically where a person's center of gravity -- just the
20 law of physics is gonna stay in motion with the car and
21 they're travelling a great distance both -- both laterally
22 and vertically based on the angle of the car, so that when
23 they come down the strikes to the ground is what does a
24 lot of damage at greater speeds; however, at slow speeds
25 you have crushing injuries. Crushing injuries can be

1 extremely deadly, especially to the elderly, the young,
2 and if somebody has crushing injuries to an abdomen area.
3 At slower speeds we've seen people killed. Like I said,
4 I've worked collisions where people were going no more
5 than five miles an hour and killed somebody. I've worked
6 collisions with moderate speeds where people are all
7 right. So it varies on where they're struck by the car
8 and the dynamics of the car and pretty much everything
9 involved. Speed's not the sole deciding factor in any
10 injury.

11 Q. How can you be going nine miles an hour with no
12 percent and then you're going nine miles an hour with
13 thirteen percent?

14 A. Because, again, it takes time for vehicles to act.
15 Vehicles, especially in this Cadillac DeVille, should be
16 equipped with an electronic throttle control. Unlike
17 older cars, when you put the vehicle in drive and mash
18 that gas and get it to go, you get a delay in these
19 things. Another safety feature enabled. Vehicle
20 dynamics, I can't answer for every single thing that
21 occurs.

22 Q. If this car had a problem with the cruise control just
23 coming on, could you detect that?

24 A. Could I detect cruise control coming on? No, but
25 typically a vehicle with cruise control on will have a

1 speed that doesn't change --

2 Q. When you go --

3 A. -- because that's the purpose of it, to have control.

4 Q. When you go from negative two to negative one on the
5 algorithm, then it says 96 percent, then it comes down to
6 82 percent.

7 A. Can you repeat it? I can't hear you.

8 Q. The algorithm, when it goes from negative two to
9 negative one and on percent throttle 96, then it lowers to
10 82.

11 A. Yes, I see that.

12 Q. If there was constant throttle, then why would it be
13 lowered from 96 to 82?

14 A. At that point the throttle was let up a little bit,
15 but, again, brakes were not applied in this case.

16 Q. But you concede that sixteen miles an hour would do
17 a lot less harm than if somebody went up a road and did
18 forty, fifty, sixty miles an hour? Sixteen miles an hour.

19 A. I can't testify to that honestly because, again, it
20 comes down to vehicle dynamics and what they're striking.

21 Q. Then it's obvious.

22 **MR. KESTER:** All right. Thank you.

23 **THE COURT:** Anything further of this witness?

24 **MR. EATON:** No, Your Honor.

25 **THE COURT:** Thank you. You may step down.

1 (Witness excused.)

2 **THE COURT:** You may call your next witness.

3 **MR. EATON:** Your Honor, the State calls Investigator
4 Hilton. William Hilton.

5 (Whereupon, William Hilton was duly sworn by the
6 Clerk of Court.)

7 **THE CLERK:** Please have a seat and state your full
8 name.

9 **THE WITNESS:** Investigator William Hilton.

10 WILLIAM HILTON,

11 having been duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. EATON:

14 Q. Investigator Hilton, what do you do at CPD?

15 A. I am an investigator with the Columbia Police
16 Department. I investigate violent crimes.

17 Q. How long have you been a police officer?

18 A. A police officer, twenty-six years.

19 Q. And an investigator?

20 A. I was promoted in 2011.

21 Q. 2011?

22 A. Yes.

23 Q. Let me put that mic down a little bit for you. There
24 you go.

25 You said you investigate violent crimes?

1 A. Yes, sir.

2 Q. Did you investigate this incident?

3 A. I did.

4 Q. How did you first get word of this incident?

5 A. We got a call from the scene that a vehicle had went
6 into people at a cemetery. Initially we thought it might
7 have been just a regular traffic accident, but when
8 I got to the scene Mr. Kester was already in the back of
9 a patrol car and we went to 715 Bluff Road to conduct an
10 interview of him.

11 Q. And so what did you find when you got to the scene?

12 A. Once I got to the scene, it was really chaotic just
13 as the other officer said. We had people everywhere,
14 turned over chairs, numerous emergency equipment. Just
15 chaos at the scene.

16 Q. What was your first -- your first steps?

17 A. My first step was to first check on any witnesses
18 or any victims and see if we had a suspect that could be
19 identified. At that time I was alerted that we had the
20 Defendant here detained because he was stopped and his
21 vehicle was still on-scene. Then I was told that we had
22 numerous victims that some had already been transported
23 to the hospital and some were still on the scene.

24 Q. And so how many -- I mean, were there a lot of law
25 enforcement there?

1 A. Yes, there was. We had Richland County Sheriff's
2 Department, we were there, City of Columbia, highway
3 patrol was there, EMS was there. Yes, there was a lot of
4 emergency services out there.

5 Q. And so after you took your first initial steps
6 checking on witnesses and victims, what did you do next?

7 A. Well, then I went to 715 Bluff Road to interview
8 Mr. Kester because he was in custody with Corporal Brinson
9 and he and I went up and interviewed him.

10 Q. I mean, at that point, I guess, while you were still
11 at the scene --

12 A. Okay.

13 Q. -- were you drawing conclusions about what you thought
14 had happened at that point?

15 A. Right. It looked like from the scene -- we were told
16 that the car, where you see the arrow, was coming down,
17 the driver just gunned it and ran through the grave site
18 where the mourners and the family members were standing
19 just shortly -- right after the funeral had ended.

20 Q. So, I mean, did something seem off about that?

21 A. Right. It's not normal for a car to be out in the
22 middle of a field at a funeral where all the mourners
23 are standing and the suspect is still in the car -- or
24 the person who did it was still in the car when law
25 enforcement arrived.

1 Q. So were you kind of in a sort of supervisory role at
2 the scene as the lead investigator?

3 A. Okay. As lead investigator, right. As lead
4 investigator, I'm responsible for the entire case,
5 everything that happens, all photos. Investigator Wise
6 came and took photos. Sergeant Uhall came and did the
7 ACM. Any type of information that's gathered as a result
8 of the investigation is given back to me so I can compile
9 the information and give it to the solicitor's office.

10 Q. So when y'all got to -- you said Bluff Road?

11 A. Bluff Road.

12 Q. What did y'all do there?

13 A. We made sure that Mr. Kester was given his Miranda
14 rights, which it was recorded, and he agreed to speak to
15 me and Corporal Brinson and we interviewed him at that
16 time.

17 Q. So giving someone their rights, is that a standard
18 part of --

19 A. Right, that's standard. We tell them we have to
20 advise you of your rights because we don't want you to
21 say anything that could incriminate you and you didn't
22 know that you didn't have to talk to us, so we go line
23 by line and make sure that -- and make sure that the
24 defendant knows what his rights are -- his or her rights
25 are.

1 Q. I mean, did he seem to know what was going on at that
2 point?

3 A. Right.

4 Q. What was his affect?

5 A. He seemed to be -- like he knew what was going on.
6 He was not -- he didn't appear to be under any -- the
7 influence of anything.

8 Q. What was his demeanor like?

9 A. His demeanor was like, you know, okay. He didn't
10 appear to -- it didn't seem to phase him, what he did.
11 It's just that's more of what happened. You know, he
12 didn't appear to be moved or shaken at all by the incident.

13 Q. So after giving him the warning of what his rights
14 were --

15 A. Right.

16 Q. -- did he decide to talk to y'all?

17 A. Right, he agreed. It's on video. He agreed to talk
18 to us and tell us what took place.

19 Q. And just -- we're gonna watch it, but very briefly,
20 what did he say to y'all?

21 A. After being advised of his rights, and we were
22 talking about the incident that just took place, he
23 seemed to focus on the Department of Mental Health and
24 something that happened to his daughter. Every time we
25 would try to get back to the incident, he would take the

1 interview back to the Department of Mental Health. For
2 whatever reason he just wanted to talk about the
3 Department of Mental Health.

4 Q. I guess before we play it, let me show you State's
5 Exhibit 91. Have you -- have you seen this before?

6 A. Yes.

7 Q. Would you just go ahead and read the obituary to the
8 jury, please.

9 A. Margaret S. Livingston, that one?

10 Q. Yes, sir.

11 A. A funeral service for Margaret S. Livingston, seventy,
12 will be held at 12:00 PM, Wednesday, July 19, 2017, at
13 Dunbar Funeral Home, Devine Street Chapel, with the burial
14 at Greenlawn Memorial Park. The family will receive
15 friends from 11 to 12 at the funeral home. Ms. Livingston
16 died Sunday, July 16, 2017. Born in Sumter, South
17 Carolina, she was a daughter of the late William James
18 Sohn and Sarah Davis Sohn. A graduate of Cardinal Newman
19 High School, she attended Lander University and graduated
20 from Palmer Junior College. She retired with over
21 thirty years of service as an administrative assistant for
22 the South Carolina Department of Mental Health. She was
23 an avid Gamecocks fan and loved her many cats. Surviving
24 are her daughter, Donna M. Livingston, of Columbia, her
25 brother William -- I'm sorry, Will J. Sohn of Columbia,

1 nieces Kelli Montgomery, John, and Jennifer S. Browder,
2 Jamie, both of Columbia, and Angela S. Works, John, of
3 Mount Pleasant; and five grandnieces and two grandnephews
4 whom she dearly loved. She was predeceased by her brother,
5 Paul T. Sohn. Memorials will be made to the American
6 Cancer Society or a local animal shelter of one's choice.
7 Please sign the online guestbook.

8 Q. And so Mr. Kester, did he -- that was in his car,
9 right?

10 A. This was in his car.

11 Q. Did he admit that he had --

12 A. Right.

13 Q. -- that that's what took him there?

14 A. This is what he said. In the interview when we asked
15 him how did he end up at the -- at the funeral, he said he
16 saw this obituary in the newspaper and he also noted that
17 she worked for the Department of Mental Health so he wanted
18 to go there to see if he recognized or if he saw anybody
19 that he may have known from when his daughter was there.

20 Q. When you interview someone, are there certain
21 techniques that you use that you're trained in?

22 A. Yes, sir.

23 Q. I mean, do you -- are you often trying to be
24 adversarial with people?

25 A. No, I'm not trying to be adversarial. As an

1 interviewer, my job is to extract information and so
2 whatever you want to talk about, I want to talk about
3 also. If you want to talk about football, we'll talk
4 about football, but my ultimate goal is to extract the
5 information from the incident that I'm trying to get.

6 Q. And were you kind of using some of those techniques
7 with Mr. Kester?

8 A. Right. Absolutely.

9 Q. Okay.

10 A. I would often -- I would agree with -- things that
11 he would agree with, I would agree with also to bring him
12 down, to get you down, so I can get the information I'm
13 looking for.

14 Q. And by get you down, you mean -- what do you mean by
15 that, your defenses?

16 A. Right. When people are being interviewed by the
17 police, they're normally up and guarded because everybody
18 thinks the police is up to something, so my job is to get
19 your mind off of that, to get you -- to get your guard
20 down, get your defenses down, get you to settle down a
21 little bit so I can get the information I'm trying to get.

22 Q. And we'll go ahead and watch parts of Mr. Kester's
23 interview.

24 (Whereupon, State's Exhibit Number 2 was played.)

25 (Video paused.)

1 Q. And what do we have here?

2 A. That's the interview room.

3 **MR. EATON:** I beg the Court's indulgence for just
4 one moment, please.

5 (Video continued.)

6 Q. I'll fast-forward a bit. Do you know what you're
7 doing right now while you're out of the room?

8 A. Right, I -- there was another officer that was in
9 another office. I was -- in fact, it was Sergeant
10 Franklin, if I remember correctly. I was just giving him
11 an update of why we were there.

12 Q. All right. So what are you about to do here?

13 A. We're about to read him his rights.

14 (Video continued.)

15 **MR. EATON:** I beg the Court's indulgence one moment.
16 I'm gonna pick back up where we were on this file.

17 Your Honor, may we approach?

18 **THE COURT:** Yes, sir.

19 (Proceedings held at the bench; not reported.)

20 **THE COURT:** Ladies and gentlemen, we'll have you go
21 to the jury room. Please do not discuss the case.

22 (Whereupon, the jury retires to the jury room at
23 4:20 PM.)

24 **THE COURT:** So, Mr. Eaton, are you saying it's an
25 additional hour or the total length is an hour?

1 **MR. EATON:** Your Honor, there's a lot of dead time
2 in it. We're at thirty minutes out of about an hour and
3 forty-eight, but there's probably at least half an hour
4 of dead time in there so there could be another hour of
5 actual active interview. I anticipated at this point
6 though that Investigator Hilton is the State's final
7 witness.

8 **THE COURT:** All right. Well, we'll take a little
9 break and then press son.

10 **MR. EATON:** Thank you, Your Honor.

11 **THE COURT:** We have a juror who wants to leave by
12 5:30 though, so we might fit that timeline possibly or
13 come close to it.

14 **MR. EATON:** Sure.

15 **THE COURT:** We'll take about five minutes.

16 (Court's Exhibit Number 1 was marked for
17 identification.)

18 (Recess taken.)

19 **BAILIFF:** Court come to order. Please rise.

20 You may be seated.

21 **THE COURT:** We're going to go until 5:15 and we'll
22 quit at 5:15. So at whatever point you are, we're gonna
23 quit at 5:15.

24 **MR. EATON:** Yes, Your Honor.

25 **THE COURT:** And you can bring the jury back.

1 (Whereupon, the jury returns to the courtroom at
2 4:32 PM.)

3 **BAILIFF:** The jury's seated, Your Honor.

4 **THE COURT:** You may proceed.

5 **MR. EATON:** We'll pick back up with your interview
6 of Mr. Kester.

7 (Whereupon, State's Exhibit Number 2 continued
8 playing.)

9 (Video paused.)

10 BY MR. EATON:

11 Q. I mean, what are you doing right here? What's going
12 on with the Defendant at this point in the interview?

13 A. Did you want me to back up just a little bit and come
14 forward?

15 Q. Sure.

16 A. Earlier in the interview you saw me leave out and
17 Corporal Brinson was left in there. At that point in time
18 we were thinking that it may have been an accident, that
19 it may have been he just drove off the side of the road,
20 but in the first fifteen minutes of the interview when I
21 get up and walk out, I had another officer also watching
22 on the camera and I confirmed with that person at that
23 point in time I think this was intentional and going into
24 this interview right here I'm going along with him because
25 I'm noticing in the interview that he's not mentioning

1 anything about I'm sorry, I didn't mean to do it, it was
2 -- he actually had no -- it seemed like he had no remorse
3 for what had taken place, so right now I'm going along
4 with him. He's mad. I said if someone did that to my
5 daughter, I would be mad, too, and that's why I said that
6 in the interview.

7 Q. I'm gonna fast-forward just a little bit here.
8 It's a little repetitive, but I'm gonna fast-forward some.

9 (Video continued.)

10 (Video paused.)

11 Q. Do you remember going back out again?

12 A. I don't remember if I went back out. I don't
13 remember. It's kind of long.

14 Q. Did you go out and come back in?

15 A. Right.

16 (Video continued.)

17 **MR. EATON:** Your Honor, I know that Your Honor was
18 intending to end court today around 5:15. I did have
19 some more direct for Investigator Hilton, but the state
20 will be happy to pick that back up in the morning.

21 **THE COURT:** All right.

22 Ladies and gentlemen, we'll break for today now and
23 we'll start back at 9:30 tomorrow morning. Please do not
24 discuss the case with anyone.

25 (Whereupon, the jury was excused for the day at

1 5:11 PM.)

2 **THE COURT:** Were you through with the video or do
3 you just want to --

4 **MR. EATON:** Yes, Your Honor. The video is through.
5 I just have a few more questions for the investigator.

6 **THE COURT:** All right. We'll see everybody at 9:30.

7 (Whereupon, the proceedings were concluded for
8 October 9, 2018, at 5:11 PM.)

9 (The following proceedings were held October 10, 2018,
10 beginning at 9:45 AM.)

11 **BAILIFF:** Court come to order. All rise.
12 Please be seated.

13 **THE COURT:** Yes, sir.

14 **MR. KESTER:** Your Honor, I was wondering under the
15 rule of completeness to play through the tape.

16 **THE COURT:** Under the rule of completeness play
17 through the tape?

18 **MR. KESTER:** The rest of it.

19 **THE COURT:** All right. What says the State?

20 **MR. EATON:** Judge, I was just fast-forwarding through
21 some stuff about his hotel room. I wasn't -- there was
22 nothing that I was trying to skip that was of any -- that
23 was relevant. You know, it's in evidence, so the rule of
24 completeness is satisfied because it is actually in
25 evidence. The jury has the whole video and, of course,

1 will be able to -- to watch the whole thing. All those
2 electronics on that disk are evidence that the jury has --

3 **THE COURT:** How are they gonna be able to do that?

4 **MR. EATON:** Often we send in a -- what we call
5 sterilized computer to the jury room to review digital
6 evidence that has been recorded.

7 **THE COURT:** I was just asking.

8 **MR. EATON:** Yes, sir.

9 **THE COURT:** You send in what?

10 **MR. EATON:** A computer stripped of everything except
11 what's necessary to play the evidence.

12 **THE COURT:** All right.

13 All right. Let's see that rule of completeness. You
14 know, you balance the -- when you give them this rule of
15 completeness, you balance the right of the State to present
16 its evidence as it sees fit with the Defendant's right for
17 the jury not to be misled by not getting a complete picture
18 and then you balance that with the Defendant's right to
19 present his own evidence.

20 I have no clue as to what's on the rest of the tape.
21 For me to know whether the rule of completeness should
22 dictate playing more, I mean, we sat here for an hour and
23 a half kind of getting the same things over and over.
24 Then, of course, at the end I did hear Mr. Kester, he was
25 starting to say something when you cut it off.

1 **MR. EATON:** Yes, sir. He was asking to go use the
2 bathroom and that was -- that was at the end of the
3 interview.

4 **THE COURT:** Yeah, he said I've been here a long time
5 and I don't know what else he was gonna say. What else do
6 you want them to hear?

7 **MR. KESTER:** How long is left on the tape; do you
8 know?

9 **MR. EATON:** Oh, it's minutes. And if that's all that
10 -- I didn't know if he meant the little places where I
11 fast-forwarded a little bit. A big chunk of that was --
12 was nothing, where the investigators left the room and it
13 was just silence, so I skipped through that. And then if
14 we want to wrap up with that last bit, it was literally
15 just him saying I've been here, I need to use the restroom,
16 and them taking him out to use the restroom.

17 **MR. KESTER:** I know that was -- there wasn't left much
18 on there? The parts you fast-forwarded and all that, what
19 was that?

20 **MR. EATON:** Nothing. So I fast-forwarded through a
21 little discussion of his hotel room. I fast-forwarded
22 through some dead space.

23 **THE COURT:** We heard about some of the hotel -- we
24 heard about some of the hotel rooms had bed bugs and this
25 and that --

1 **MR. EATON:** Yes, Your Honor.

2 **THE COURT:** -- a different hotel.

3 **MR. KESTER:** Your Honor, I'll -- I'll just drop that.
4 I mean, you know, I'm not gonna make a big issue out of
5 that. I'll drop it.

6 **THE COURT:** Okay. Very good.

7 Other than that, are you-all ready to press on?

8 **MR. EATON:** The State's ready, Your Honor.

9 **MR. KESTER:** Yes, Your Honor.

10 **THE COURT:** All right. Let's bring them on.

11 (Whereupon, the jury enters the courtroom at 9:51 AM.)

12 **BAILIFF:** Your Honor, the jury is present.

13 **THE COURT:** All right. Good morning.

14 Madam Forelady, how is the jury doing?

15 **FOREPERSON:** We're doing well, sir.

16 **THE COURT:** Very good.

17 All right. We're in day number three. Day number
18 three. Your next witness or continuing on with the same
19 witness.

20 **MR. EATON:** Yes, Your Honor. The State recalls
21 Investigator Hilton to the stand.

22 **THE COURT:** All right.

23 **BAILIFF:** Your Honor?

24 **THE COURT:** Yes, sir. Oh, we're missing somebody.

25 **BAILIFF:** You know, you excused the young lady.

1 We've got to -- we've got to fill a slot.

2 **THE COURT:** Oh, okay. I thought someone told me that
3 she showed up.

4 **BAILIFF:** No.

5 **THE COURT:** Yesterday I got -- I received a note
6 from the -- Juror Number 15 that says I have to leave --
7 let's see. I have to leave 5:15 to go get my baby girl
8 and go to the hospital because my daddy's on his dying
9 bed and just found out this morning.

10 So I spoke with her during the last -- one of the
11 breaks and allowed her to make a phone call to check on
12 her father and offered to just let her go at the time
13 this came -- was brought to my attention, but she wanted
14 to stay and she was gonna go to the hospital downtown here
15 and check on her father and I told her that she did not
16 have to return if circumstances were such that she -- that
17 she needed to be with her family instead of here. She
18 didn't come back, so she is excused.

19 So under the rules we're going to, by lot, select one
20 of the two remaining jurors to fill that empty chair.
21 We'll shake them in a cup and then we'll have -- is there
22 any objection to Ms. Pendergast picking one out from the
23 cup, Solicitor?

24 **MR. EATON:** No objection, Your Honor.

25 **THE COURT:** Mr. Kester?

1 **MR. KESTER:** Me?

2 **THE COURT:** No. Any objection to the court reporter
3 -- the clerk picking?

4 **MR. KESTER:** Yes, Your Honor. Certainly.

5 **THE COURT:** All right.

6 **THE CLERK:** Number 65.

7 **THE COURT:** Number 65, you are a sitting jury member.
8 All right. You may proceed.

9 **MR. EATON:** Thank you, Your Honor.

10 (Court's Exhibit Number 2 was marked for
11 identification.)

12 WILLIAM HILTON,
13 having been previously sworn, retook the witness.
14 stand and testified as follows:

15 CONTINUED DIRECT EXAMINATION

16 BY MR. EATON:

17 Q. Good morning, Investigator Hilton.

18 A. Good morning, sir.

19 Q. Investigator Hilton, you're still under oath.

20 A. Yes, sir.

21 Q. And you and I have not discussed anything, right?

22 A. No.

23 Q. So yesterday we -- we watched a long interview. Do
24 you remember -- we stopped the interview. Do you remember
25 what took place after we stopped it?

1 A. At the end of the interview, uh-huh, Mr. Kester asked
2 to go to the bathroom and we let him out to go to the
3 bathroom.

4 Q. Is there -- is there any more interview of him?

5 A. No, that's all. That was all.

6 Q. Okay. So I just wanted to recap a few things from
7 that interview. I know some of it was a little hard to
8 hear. Did Mr. Kester really ever express concern for the
9 people he ran over?

10 A. No, he didn't. Only -- almost in the end when I
11 brought it up to him he asked maybe -- as I said something
12 about the victims, then he said something like okay. He
13 didn't -- he didn't express any -- any remorse or anything
14 about running over anybody.

15 Q. And you asked him about how his car was working. What
16 did he say?

17 A. Right, he said -- he said that his car was working
18 fine.

19 Q. And after you asked him if he was mad, did he say
20 I've been thinking about this but never acted on it?

21 A. Right.

22 Q. What -- how did you take that?

23 A. So then I -- if I remember the interview correctly,
24 he said, well, you know, I've been thinking about that
25 stuff, but -- I thought about it for a long time, but I

1 never acted on it. I said what do you mean about that
2 and he said I never did do anything, but I was thinking
3 about it for such a long time.

4 Q. But did he --

5 **MR. KESTER:** Your Honor --

6 **THE COURT:** Yes, sir.

7 **MR. KESTER:** What he's saying, I don't -- it should
8 be on the tape and I hadn't heard that, so I think he's
9 speculating and saying things and if it's on the tape, I
10 want to see it -- I mean, it needs to be seen.

11 **THE COURT:** All right. Restate the question, please.

12 **MR. EATON:** Yes, Your Honor.

13 BY MR. EATON:

14 Q. After asking Mr. Kester if he was mad, do you
15 remember him saying I've been thinking about this, but
16 never acted on it?

17 A. Right, that's -- that's on the tape.

18 **MR. KESTER:** I don't recall saying that. I mean --

19 **THE COURT:** All right. Well, you will have an
20 opportunity to cross-examine him. I overrule the
21 objection.

22 **MR. EATON:** I beg the Court's indulgence for just a
23 moment, Your Honor.

24 (Whereupon, a portion of State's Exhibit Number 2 was
25 played.)

1 BY MR. EATON:

2 Q. Okay. So just to clarify because I know it's a
3 little hard to hear this audio --

4 A. Right.

5 Q. -- do we hear correctly that -- you say were you mad
6 at somebody and he then said I've been thinking about this
7 stuff for a long time?

8 A. That's correct.

9 MR. KESTER: Could you play a little further? I mean,
10 continue a little bit?

11 (Video played.)

12 MR. KESTER: Could you continue?

13 MR. EATON: I'm just -- Your Honor, of course,
14 Mr. Kester will have the chance to cross-examine
15 Investigator Hilton with this evidence that's already in.

16 THE COURT: Yes, sir. You may proceed as you want to.

17 MR. EATON: Thank you.

18 BY MR. EATON:

19 Q. Later in the video, in the interview, when you asked
20 him about -- or when you say to him, you know, I'd want to
21 get revenge, do you remember him saying I deal with this
22 every day, something along those lines?

23 A. That's correct.

24 Q. Okay. Now does he -- does he say he never braked --
25 hit the brakes?

1 A. No, he never said he hit the brakes. I remember
2 asking him how did the vehicle stop and he says something
3 stopped it, but he never did -- he never did say he hit
4 the brakes.

5 Q. Do you remember him saying I should have braked?

6 A. Right, that's -- I remember him saying that.

7 Q. Did -- now at any point did you get any indication
8 that he knew any of these people from Adam?

9 A. No.

10 Q. Or that any of them had anything to do with his
11 daughter?

12 A. Right. In fact, I asked him a couple of times if
13 he knew anybody and I even went on to ask if he knew
14 Ms. Livingston and he said I just saw it in the paper.

15 Q. This stuff about maybe I'd see somebody nice there,
16 did that -- did that make any sense to you? Or how did
17 you take that, him talking about maybe I'd see somebody
18 who was nice?

19 A. Well, when we were -- when I was talking to
20 Mr. Kester, he was talking about how -- he mainly talked
21 about the doctors and the nurses and how he felt that his
22 daughter was treated and he thought he would -- he might
23 be able to see somebody nice who may not have treated his
24 daughter as bad as he thought some people treated his
25 daughter. That's how I took that.

1 Q. And so -- but what did he end up doing? It's obvious,
2 but what did he end up doing at the funeral?

3 A. Well, he went to the funeral and asked was it
4 Ms. Livingston's funeral as he saw that she worked at
5 the Department of Mental Health and he ran his car -- it
6 appeared he backed up and drove into the people all
7 because they were connected to the Department of Mental
8 Health.

9 Q. So you -- at the beginning there was -- you said some
10 question about could this have been an accident.

11 A. That's correct.

12 Q. Wrap things up for us Investigator Hilton.

13 A. Right. Initially we thought it might have been an
14 accident. That's why I tried to check the safety of
15 his car initially and as we went further into the
16 investigation thought maybe this could have been an
17 intentional act and so traffic couldn't work it because
18 an accident is just that, it's an accident, but an
19 intentional act would require an investigation, which is
20 breaking the law because he intended to harm someone.

21 **MR. EATON:** Thank you. Please answer Mr. Kester's
22 questions.

23 **THE WITNESS:** Yes, sir.

24 **MR. KESTER:** I didn't -- I don't have any questions
25 for him.

1 **THE COURT:** All right. You may step down.

2 (Witness excused.)

3 **THE COURT:** Your next witness.

4 **MR. EATON:** The State rests, Your Honor.

5 **THE COURT:** All right. Ladies and gentlemen, that's
6 the State's case. We need to discuss some matters with
7 the parties. I'm gonna have you take a break in the jury
8 room. Please don't discuss the case.

9 (Whereupon, the jury retires to the jury room at
10 10:05 AM.)

11 **THE COURT:** All right. Any matters of law at this
12 time?

13 **MR. EATON:** Not from the State, Your Honor.

14 **MR. KESTER:** I'd like to ask for, Your Honor, a
15 directed -- directed verdict; that they don't have enough
16 for what I'm charged with.

17 **THE COURT:** All right. From the State?

18 **MR. EATON:** Yes, Your Honor. As the Court knows,
19 the standard for a directed verdict is if there is
20 substantial circumstantial evidence or any -- or a
21 scintilla of direct evidence. In this case, the State has
22 presented both direct and circumstantial evidence in the
23 form of the witnesses who were there who saw Mr. Kester
24 turn his car towards all of them, who heard him rev his
25 engine, from Mr. Kester's -- and run over them and cause

1 them great bodily injury, a number of them. Of course,
2 Mr. Kester's own statement as to his vendetta against the
3 Department of Mental Health, his reading the obituary that
4 took him there in the first place to this funeral with
5 these strangers he didn't know, and to include data from
6 the car itself that shows that he punched the gas and
7 didn't brake. All of this taken together, Your Honor,
8 is more than enough for this to go to a jury for the
9 jury's consideration. There's testimony from EMS that
10 this could have been fatal.

11 Additionally, a car under South Carolina law is a
12 deadly weapon, a deadly instrumentality, so because of all
13 those reasons there's more than enough for this to go to
14 the jury on twelve counts of attempted murder, Your Honor.

15 **THE COURT:** All right. Mr. Kester.

16 **MR. KESTER:** The data on there says the -- the speed
17 was sixteen miles an hour. That doesn't equate to the
18 charges. It's relatively a low speed and I know a few
19 people did get hurt now, but I don't think they got enough
20 for what I'm charged with.

21 **THE COURT:** You don't think so?

22 **MR. KESTER:** No, sir.

23 **THE COURT:** All right. Well, that's -- that's why
24 we have a jury to see what they think. Under Rule 19 of
25 the Rules of Criminal Procedure, Rule 19(a) says on motion

1 of the Defendant or its own motion, the Court shall direct
2 a verdict in the Defendant's favor on any offense charged
3 in the indictment after the evidence on either side is
4 closed, if there's a failure of competent evidence tending
5 to prove the charge in the indictment. In ruling on the
6 motion, the trial judge shall consider only the existence
7 or nonexistence of the evidence and not its weight.

8 The case law further indicates and directs that the
9 -- in considering a motion for directed verdict, the
10 evidence is viewed in the light most favorable to the
11 State to determine whether there's any evidence, either
12 direct or circumstantial evidence, which reasonably tends
13 to prove the guilt of the accused or from which the guilt
14 may be fairly and logically deduced.

15 So we have, viewing the evidence in the light most
16 favorable to the State, a premeditated design to go to
17 the burial site and intentionally driving a vehicle into
18 a crowd of people. So if the jury believes that,
19 considering the evidence in the light most favorable to
20 the State, then the jury could conclude that the use of
21 an automobile, which can be a deadly weapon, is a
22 dangerous instrument and can be a deadly weapon depending
23 on how it's used, and it's all for the jury to determine.

24 The case is complicated to some extent based on the
25 Supreme Court's most recent holding in State v. King,

1 which says the State must prove that the Defendant had the
2 specific intent to kill and that can be proven by direct
3 or circumstantial evidence, it's for the jury to weigh it,
4 and if the -- if the jury does not believe that -- not
5 only a specific intent to kill one individual, but the
6 specific intent to kill twelve separate individuals, that
7 the jury is to consider each indictment separately because
8 he's indicted for twelve separate counts, and should the
9 jury conclude that he did not have the specific intent to
10 kill a particular individual, then the jury can consider
11 whether he had the intent to commit -- to cause serious
12 bodily injury.

13 That would drop it down to ABHAN. If he had intent
14 to cause moderate bodily injury, that would drop it to
15 that offense, so assault and battery, or if he had intent
16 to cause an injury, no specified degree, that drops it to
17 the lowest degree of assault and battery. And criminal
18 intent is always a question for the jury to determine.
19 There's no way we can go into a man's brain and figure
20 out what he had on his mind, so the jury is to look at
21 the facts and circumstances of the case and make that
22 determination.

23 So they have an awesome responsibility in this case
24 because not only do they have to figure out generally
25 what Mr. Kester intended, but specifically as to each

1 victim listed in each of these individual indictments,
2 and hopefully they will be able to distinguish -- when
3 they deliberate, hopefully based on the testimony they
4 can distinguish Angela Works from John Montgomery from
5 **Minor 2** from Gerald Floyd and from the others
6 because they have to consider each indictment separately,
7 and that's quite a task to ask the jurors to be able to
8 figure out what the specific intent to kill and to do
9 serious bodily injury or to do moderate bodily injury, or
10 if it's an accident, so that's why we put twelve folks in
11 the box to figure it all out.

12 So I deny that motion.

13 **MR. KESTER:** Okay.

14 **THE COURT:** All right. Now, Mr. Kestler -- Kester,
15 we have reached the point in the trial where you have the
16 right to present your defense, and I need to discuss with
17 you your right to testify, so you need to come right in
18 front of me right here and be sworn so I can talk to you
19 for a moment.

20 (Whereupon, James B. Kester was duly sworn by the
21 Clerk of Court.)

22 **THE COURT:** Mr. Kester, at this time I'm going to
23 explain to you certain of your rights. If you don't
24 understand anything that I say, please let me know --

25 **MR. KESTER:** All right.

1 **THE COURT:** -- and I will explain it in more detail
2 if I need to. Do you understand?

3 **MR. KESTER:** Yes, sir.

4 **THE COURT:** We've now reached the stage of the trial
5 where you may present your defense. The State just
6 rested. It's now the defense's turn. You have the right
7 to claim the protections to you by the Fifth Amendment to
8 the Constitution of the United States. This amendment
9 states, in part, no person shall be compelled in any
10 criminal case to be a witness against himself. This means
11 that you cannot be required to testify. You, however,
12 have the right to testify on your own behalf if you want
13 to, but no one can make you testify. Whether or not you
14 testify is a personal right that you possess and no one
15 can waive this right except you.

16 Now if you decide to testify, you will be subject to
17 the same rules that govern other witnesses and you may be
18 examined and cross-examined on any relevant issue in the
19 case. In addition, if you have any convictions regarding
20 dishonesty or a false statement or convictions of crimes
21 for which imprisonment for more than one year is possible
22 and I determine that the probative value of admitting this
23 evidence outweighs its prejudicial effect to you, the
24 solicitor then will be able to introduce your record to
25 attack your credibility. I'm not suggesting that you have

1 a record, but if you do that's the standard that applies.

2 If you decide to testify, this decision on your
3 part must be freely, voluntarily and intelligently made
4 with knowledge of the protections given you by the Fifth
5 Amendment and the consequences of your decision to
6 testify. If you decide not to testify, I will include
7 in my jury charge an instruction to the jury that they
8 cannot give the fact that you did not testify any
9 consideration whatsoever and that there is to be
10 absolutely no prejudice to you because you did not
11 testify.

12 It's left entirely up to you whether or not you
13 testify. You may talk to family, friends, standby
14 counsel, anyone else that you'd like to, but the final
15 decision would be left entirely up to you as to whether
16 or not you testify.

17 Do you understand what I've explained?

18 **MR. KESTER:** Yes, sir. Yes, Your Honor.

19 **THE COURT:** Do you have any questions -- any
20 questions about that?

21 **MR. KESTER:** No, Your Honor.

22 **THE COURT:** Have you figured out whether or not
23 you're gonna testify?

24 **MR. KESTER:** No, I'll consult a minute, if that's
25 okay?

1 **THE COURT:** All right. Take as much time as you
2 need to consult and let me know. In the meantime, we'll
3 take a few minutes while they're conferring, so we'll be
4 in recess for about eight minutes.

5 (Recess taken.)

6 **BAILIFF:** Court come to order. Please rise.
7 You may be seated.

8 **THE COURT:** What did you decide, Mr. Kester?

9 **MR. KESTER:** I'm gonna waive it, Your Honor.

10 **THE COURT:** You've decided not to testify?

11 **MR. KESTER:** Yes, Your Honor.

12 **THE COURT:** All right. Are you gonna put up any
13 witnesses, any defense?

14 **MR. KESTER:** No, Your Honor.

15 **THE COURT:** All right. So that means the next thing
16 will be jury argument is what we're gonna go into, final
17 arguments. When they come out, I'm gonna recognize you
18 and then you'll tell the jury the defense rests or
19 whichever way you say it that's what it will mean.

20 Do you understand?

21 **MR. KESTER:** Yes, Your Honor.

22 **THE COURT:** All right. F. Lee Bailey says the
23 defense never rests. That's the name of his book.

24 **MR. KESTER:** Justice who?

25 **THE COURT:** F. Lee Bailey.

1 **MR. KESTER:** Oh, I know. I know.

2 **THE COURT:** Do you know him?

3 **MR. KESTER:** I know who he is, yeah.

4 **THE COURT:** All right.

5 **MR. KESTER:** He's a famous -- famous lawyer there,
6 F. Lee Bailey.

7 **THE COURT:** That was the name of his book, but
8 you're resting. You're not gonna present a defense?

9 **MR. KESTER:** Yes, Your Honor.

10 **THE COURT:** All right. So we can talk then about
11 the jury charges. I just took the lead in sending
12 you-all a copy of what we've been working on as a jury
13 charge. It's not -- not a substitute from hearing
14 you-all out and what your thoughts are and may be
15 concerning any requested charges.

16 I received from the State some requested charges
17 particularly wanting me to charge, in effect, implied
18 malice, which is -- it's a form of implied meaning that
19 the jury can apply malice to the use of a deadly weapon
20 or a dangerous instrument, which a car is. But State v.
21 King says there is no -- there must be a specific intent
22 to kill and basically nothing is implied and you cannot.

23 **MR. EATON:** Your Honor, I don't -- I don't disagree
24 with that and if -- if language did get through to the
25 Court that -- me asking for implied malice, I did not

1 intend to do that.

2 **THE COURT:** All right. So any requests from the
3 State to modify anything that -- we've cleaned up assault
4 -- the assault and battery first degree versus -- versus
5 ABHAN because with assault and battery it can be assault
6 and battery first degree regardless of whether or not
7 great bodily injury actually occurs versus ABHAN, great
8 bodily injury occurs, and so in the grand scheme of
9 things, which the Court is obliged to give the jury the
10 options of the various offenses based on what an
11 interpretation of the evidence can be, the jury can find
12 him guilty as charged, attempted murder, or assault and
13 battery of a high and aggravated nature, or assault and
14 battery first degree, or assault and battery second
15 degree, or assault and battery third degree if it's --
16 basically if a simple injury occurred and that was his
17 -- and there's no proof of intent to kill or cause serious
18 bodily injury.

19 So it's all back on the jury and -- and the lawyers
20 and Mr. Kester.

21 Yes, sir.

22 **MR. EATON:** Your Honor, did Your Honor intend to
23 instruct from State v. Wilds that an automobile is
24 regarded as a dangerous instrument?

25 **THE COURT:** I think that would be -- that would

1 conflict with State v. King. Let's see State v. King.
2 There's specific language in State v. King. One quote
3 from State v. King says one cannot attempt to kill
4 another with implied malice because there's no such
5 criminal offense as intent to achieve an unintended
6 result, so -- and the cases that says that an automobile
7 is a dangerous instrument, which means it could be used
8 as a deadly weapon, they're all in conjunction with
9 implying malice based on -- based on the use of --
10 whether it's any kind of deadly weapon.

11 Most traditionally it is that malice can be -- the
12 charge was malice can be implied through the use of a
13 deadly weapon, which is, you know, a hatchet, a hammer or
14 this or that, and could also be a car. So I believe that
15 to charge the jury that -- I mean, of course, it's common
16 sense to them that, you know, a car, depending on how
17 it's used, could cause danger, but I don't -- I believe
18 it would cross over and run afoul of State v. King to
19 charge that it's a dangerous instrument in connection
20 with, therefore, malice or intent to kill could be
21 implied. So I believe all of that's gonna be on you to
22 try to convince the jury and not based on me charging the
23 jury, all right?

24 **MR. EATON:** Yes, sir.

25 **THE COURT:** What have you got to say about that

1 Mr. Kester?

2 **MR. KESTER:** What did you say, Your Honor?

3 **THE COURT:** What do you have to say about that, if
4 anything?

5 **MR. KESTER:** I don't have anything to say about
6 that.

7 **THE COURT:** All right.

8 Okay. Well, we're gonna move into closing arguments
9 if you-all are ready.

10 **MR. KESTER:** Yes, sir.

11 **THE COURT:** Yes, sir.

12 **MR. EATON:** Your Honor, could I just have five -- I
13 mean, I thought we were -- he said in opening he was --
14 they were gonna hear about his -- you know, his case and
15 all that, so I was more prepared to -- if I could have
16 five minutes, Your Honor.

17 **THE COURT:** I understand.

18 **MR. EATON:** Thank you.

19 **THE COURT:** Okay. We'll take five more minutes.
20 We'll take five minutes.

21 **MR. EATON:** Thank you, Your Honor.

22 (Recess taken.)

23 **BAILIFF:** Court come to order. All rise.

24 You may be seated.

25 **THE COURT:** Yes, sir.

1 **MR. EATON:** Your Honor, I know that Mr. Kester has
2 shadow counsel and he's not an attorney, and so I just
3 ask that if you'd make clear that a closing statement is
4 not a time to testify as to new matters that were -- that
5 did not come out in the trial, that he understands that,
6 Your Honor.

7 **THE COURT:** All right. Is it?

8 **MR. KESTER:** Ask him to clarify that, Your Honor.

9 **THE COURT:** He wants to know what you mean.

10 **MR. EATON:** I'd just add that closing statements are
11 not testimony, that new things -- you know, inferences
12 that can be drawn from the evidence are admissible.

13 **THE COURT:** Well, you know, as it occurs quite often
14 when statements of Defendants are played during the
15 State's case, then those statements are testimony and the
16 Defendant doesn't have to testify because he's testified
17 in the statement, but whatever reasonable inferences comes
18 through those statements, there's, you know, there's some
19 leeway there. I know that -- I mean, you can't get into
20 medical history and all those things because none of
21 that's in through the statements, but as it relates to
22 his actions or his intent, whatever, much of that can be
23 commented on based on the inferences drawn from what's in
24 evidence. But beyond that I would have to just listen to
25 objections and then rule because I don't --

1 **MR. EATON:** Yes, Your Honor.

2 **THE COURT:** -- I have no idea what's on anyone's
3 mind.

4 **MR. EATON:** Yes, sir.

5 **THE COURT:** How about that, Mr. Kester?

6 **MR. KESTER:** Yes, Your Honor.

7 **THE COURT:** All right. Let's bring them on.

8 (Whereupon, the jury returns to the courtroom at
9 11:01 AM.)

10 **BAILIFF:** The jury's seated, Your Honor.

11 **THE COURT:** All right.

12 Now, ladies and gentlemen, that's the State's case.
13 It's the defense's turn.

14 Mr. Kester.

15 **MR. KESTER:** What did you say, Your Honor?

16 **THE COURT:** It's the defense's turn, your turn, to
17 present your defense.

18 **MR. KESTER:** Yes, sir. I thought we already went
19 over that, Your Honor.

20 **THE COURT:** If you're resting, you must do so in the
21 presence of the jury.

22 **MR. KESTER:** Yes, sir.

23 **THE COURT:** You're resting?

24 **MR. KESTER:** Yes, sir.

25 **THE COURT:** All right. Thank you.

1 **MR. KESTER:** Thank you.

2 **THE COURT:** Ladies and gentlemen, that's the
3 defense's case. The defense has rested as well. That
4 means that you have heard all of the testimony in the
5 case. It's now time for closing arguments. In closing
6 arguments, the State goes first, the defense goes last.

7 Yes, sir.

8 **MR. EATON:** May it please the Court, Your Honor?

9 **THE COURT:** All right.

10 **MR. EATON:** Ladies and gentlemen, James Kester
11 should be found guilty of attempted murder because he
12 took his car and went to a funeral with a bunch of
13 strangers and ran over them on purpose.

14 Now I'm gonna keep this fairly short and simple
15 honestly. As Mr. McGlothin told you at the beginning
16 of this trial, the evidence and the facts in this case
17 largely speak for themselves. When this family gathered
18 that day to mourn and to celebrate the life of Margaret
19 Livingston, of Ms. Peggy, that was supposed to be a place
20 that was reverent, a place of remembrance, a place that's
21 even, you know, kind of sacred, and Mr. Kester through
22 his actions turned that into a scene of terror and horror,
23 into a mass casualty scene with EMTs red tagging people
24 in critical condition.

25 These people had nothing to do with Mr. Kester or

1 his problems, anything that happened twenty-five years
2 ago to him. They didn't know him and he didn't know
3 them. Even if he had gone back in 1991 and run over a
4 doctor because he was mad at how that doctor treated his
5 daughter, that would still be attempted murder, much less
6 completely innocent people twenty-five years later who
7 knew nothing about him.

8 Now Mr. Kester, there he is, is a sad case. There's
9 something very sad about him, and I acknowledge that.
10 I'm not without compassion for him. It sounds like he's
11 been through a lot, but don't let that distract you from
12 what he did to these people who had nothing to do with
13 those problems. There's nobody in this courtroom who
14 hasn't experienced some kind of hardship in their life.
15 Every single one of us has. And we've all been mad
16 before. We've all thought to ourselves I'm so mad I
17 could whatever, but 99.999 percent of us aren't going out
18 and acting on that, especially for something that we hold
19 a grudge for for twenty-five years, which is sad, but it
20 doesn't excuse what he did to these people.

21 Mr. Kester made a series of very deliberate decisions
22 and choices starting with in his hotel room reading this
23 obituary of Ms. Peggy and reading that she had been an
24 administrative assistant for the South Carolina Department
25 of Mental Health and that triggered him for that grudge,

1 that beef that he was holding onto in his heart and in his
2 mind for all those years. He needs somebody to blame.
3 His daughter had died in a fire in his house as he said
4 in 2016, so he needed somebody to blame and he was still
5 angry.

6 So he read this, he got into his car, he drove to
7 the funeral, he rolled down the window to make sure he
8 was in the right place, he backed it up -- so he came
9 down this road here as John Montgomery told us, rolls
10 down the window to make sure he's in the right place,
11 backs it up, lines it up like a jet about to go down the
12 tarmac and he guns it right through this tent until he
13 got stuck or spun out or whatever it was on gravestones.

14 That is not an accident. That is a deliberate act.
15 There's no way to construe that as an accident. The
16 cruise control doesn't do that. You know, if you
17 accidentally hit the gas at some point, you might lurch
18 forward a few feet before you realize what you've done.
19 Sergeant Uhall got up here. He's a really smart guy. He
20 knows a lot about cars. He told y'all Mr. Kester never
21 hit the brake. Mr. Kester told y'all he never hit the
22 break, and he should have.

23 And so as Sergeant Uhall told us, this -- this thing
24 triggered the car to start recording. It kind of -- it
25 kind of went backwards almost. So whatever started it we

1 just have the seconds leading up to that point. So we
2 don't know that the fastest he went was just sixteen
3 miles an hour. The triggering event here could have been
4 the second he rolled over that curb and those first few
5 gravestones. He may have gone much faster than that
6 because for whatever reason that things stops recording
7 once it's triggered. And this shows us also that he never
8 hit the brake and this 96 percent throttle like Sergeant
9 Uhall told us means he gunned it. He punched the gas and
10 he gunned it at those people. That is not an accident.

11 And so if we think about that with this space here,
12 I mean, he really didn't even have that much space between
13 this road and this tent. I mean, what if he had had more
14 space? Do you think he would have just stayed at sixteen
15 if that's what he's saying, just that he only hurt them
16 and didn't kill them? He went there with rage in his
17 heart and he tried to kill these people by running over
18 them. It's common sense that a car versus pedestrian,
19 that when someone is hit by a car, that that's deadly.
20 People get killed when they get hit by cars and but for
21 the grace of God these people walked out of there. Men,
22 women and children, blood on the windshield, bones
23 crunching, the chairs flying around. He was trying to
24 kill them.

25 And, of course, they sued him. Anybody would. He

1 ran over them with a car. So that somebody got, you know,
2 money out of their own insurance policy has nothing to
3 do with what he did. He carried Michael Rooney on his
4 windshield some hundred or so feet, clinging on, hanging
5 onto the hood, wondering if he was gonna die until he
6 rolled off and with two broken legs tried to roll out of
7 the way of the car.

8 He was trying to kill these people. These people
9 who didn't know him, never heard of him or his problems.
10 He changed their lives with what he did. When he went
11 there with his newspaper in the passenger seat to find
12 the people that he was angry at, knocking down the
13 flowers on tombstones, the whole way out.

14 You're gonna hear the judge tell y'all that you can
15 find him guilty of attempted murder, which means he had
16 the specific intent to kill these people, which he did.
17 He had the rage in his heart and in his mind and he
18 gunned it at them and ran over this crowd of people who
19 were innocent.

20 And the judge will also tell you that you can find
21 him guilty of aggravated assault, another level of
22 assault, and that will be in y'all's hands. If you look
23 at this evidence and you look at the way he used this car
24 to attack these people, that's somebody who was trying to
25 kill people. He intended to kill them. They're just

1 lucky that they only got hurt badly.

2 The judge is gonna tell you that a person who's
3 guilty of attempted murder that you must find that he
4 had malice. What is malice? You know, ill will, hatred.
5 It's an old-timey phrase you might hear, a malignant heart
6 bent on mischief. I think that might be what the judge
7 tells you. But I'll tell you what malice is. Malice is
8 when you read something in the paper that triggers some
9 hatred that you have for some people and then you drive
10 through a funeral where people are mourning their loved
11 one, people you don't know because you're angry, you line
12 your car up 90 degrees from the road and gun it to run
13 over them. That's malice. That's malice in Mr. Kester's
14 heart and in his mind.

15 Now y'all are gonna have all of this stuff that you
16 can go back through. You can watch his statement again
17 to law enforcement and you'll hear how he almost
18 immediately just goes into ranting about what DMH did to
19 his daughter in the early nineties. Again, it's a little
20 pathetic, but it doesn't make it okay. You're gonna hear
21 him admit he didn't brake. You're gonna hear him -- I
22 mean, even when Investigator Hilton asked him, you know,
23 you must have been mad, you must have been trying to get
24 revenge on somebody, his answer isn't no, I wasn't, I
25 didn't mean to do it. His answer is well, I've been

1 thinking about this for a long time. He doesn't even
2 deny it. What would a normal person do after they ran
3 over a bunch of people? Call 9-1-1, get out and say are
4 oh, my, God, are y'all okay, what have I done, I didn't
5 mean to.

6 He doesn't say any of that. He spends almost
7 all that interview talking about his grudge against the
8 Department of Mental Health and it's only near the end
9 when he even asks -- when Hilton prompts him and, you
10 know, says hey, man, you ran over a bunch of people, he
11 then kind of says well, I hope they're okay. He's not
12 thinking about that because that's what he meant to do.
13 He was carrying out his rage on those people. He was
14 carrying out his vendetta, this grudge, this beef that he
15 had.

16 And if it wasn't clear, they had nothing to do with
17 him, didn't know him from Adam. They know him now. And
18 y'all hear him in his interview say well, what comes of
19 it, comes of it. What comes of it, comes of it. Well,
20 yeah, I guess it does because here we are.

21 Y'all came in here with your common sense, you didn't
22 check that at the door, and it is common sense that this
23 is not an accident. It's common sense that if this were
24 some kind of accident, I mean, he might maybe have bumped
25 a car or something. Is it -- is it a coincidence -- bear

1 with me one moment. Is it just a coincidence that his
2 car happened to thread right through the hole in that
3 tent? He didn't hit the poles. Is it a coincidence
4 that if this were an accident that that's where he just
5 happened to go in this huge cemetery? Is it just a
6 coincidence that he just happened to run over these
7 twelve people against whom he had this grudge? That's
8 not how accidents work. It's no accident. He did this
9 on purpose. Cruise control didn't do that. And he knew
10 what was going on. It's clear he's got some issues, but
11 he knew what was going on there and he's known what's
12 going on here in this courtroom.

13 Ladies and gentlemen, he, through his actions in
14 those brief seconds, he changed these people's lives;
15 especially little **Minor 1** and little **Minor 2** We all want
16 for our children that they view the world as a safe place,
17 especially when you're somewhere like a funeral in a
18 cemetery, and at least for a while Mr. Kester took that
19 away from these people and from little **Minor 1** and little
20 **Minor 2** and here in this courtroom, in this courthouse, in
21 this system that we call justice, we can't give that back
22 to them, we can't go back in time and fix it, we can't
23 take away what happened. What we can do, and what I'm
24 asking y'all to do, is say we hear you, we have heard what
25 happened to you and we condemn that. That is not okay in

1 this community. It is not okay for him to hurt innocence
2 people like that. That's what we can do.

3 Now if y'all feel like I dragged this out, I
4 apologize, but I believe that I have to prove this case
5 and that every one of those people have the right to have
6 their day in court and to be heard about what happened to
7 them. So this will be in y'all's hands and I thank you
8 for your attention the last three days. Now I know y'all
9 have been -- not been able to talk about it, but now
10 you'll be able to and it will be in your hands.

11 He meant to kill these people. This wasn't an
12 accident and it wasn't even aggravated assault. He went
13 there with hatred in his heart and he ran over people with
14 4,000 pounds of steel because he was trying to kill them,
15 and so I ask y'all that you find James Kester guilty of
16 twelve counts of attempted murder. Thank you.

17 **THE COURT:** Mr. Kester.

18 **MR. KESTER:** I thank you for being here these days.
19 These glasses, I didn't want them, but -- I don't like
20 this stuff, but that's what they for me. I've been --
21 I've been in Richland County since July 17th -- I mean,
22 July 19th of last year, and they don't let me shave either
23 but twice a week, so that's why, you know, I hadn't --
24 didn't do that. But also I have a five million dollar
25 bond and I see people in there with two and three

1 fatalities, a hundred to \$150,000 bond, so you can see
2 what the State's doing. A five million dollar bond.

3 And I've -- I haven't been thinking -- I wasn't
4 thinking about doing -- hurting these people. What I was
5 thinking about was what my daughter was -- every day when
6 I took care of her for twenty something years after they
7 transformed her life into a three or four-year-old who
8 couldn't even wear a diaper and would wet everything and
9 couldn't wash her hair or comb it or brush her teeth.
10 Her teeth turned black. They were rotten because I'd give
11 her a toothbrush and she'd chew on it.

12 And I don't know. I had a record of -- I wanted my
13 lawyers to get that. Every time I'd asked them to do
14 something, they'd look at me funny. And, you know, to
15 say I have been under stress and I lost my left eye due
16 to this. These people went to the statehouse, had a law
17 enacted against me. I couldn't even -- if I called her,
18 two people would be converged on her and if I said
19 something, they'd -- if she said oh, they mentioned --
20 she mentioned something, they'd slam the phone down. I'd
21 called them back and usually it would be off the hook.
22 If they answered it, then I'd say why did you do that,
23 they'd say she said something wrong.

24 I mean, I feel like I've been in a place lower
25 than North Korea. My daughter was held 600 days for

1 inappropriate laughing. I wish -- I should have had
2 these documents to show you like the State has documents,
3 but my lawyers never even did that. I mean, I have them.

4 I wonder if I could submit them to -- any of these
5 to show the jury? Your Honor?

6 **THE COURT:** It's closing arguments. The evidence --
7 the jury has received all of the evidence.

8 **MR. KESTER:** Could I have done it in the -- if I
9 would have -- wouldn't have waived the last part, could I
10 have done it then?

11 **THE COURT:** Yeah, you were given an opportunity to
12 present your defense. Now you're making closing
13 arguments.

14 **MR. KESTER:** Okay. I'm -- no, I'm not finished, but
15 I -- you know, I'm not making sense.

16 August 18, 1992. They come by during the middle of
17 the night and she says no, no, no, help me, help me. I
18 feel like I've forsaken her for what was being done to
19 her. I should have got her out one way or another.

20 9-3-91, two days after she went in, her reading was
21 ninth grade and math -- spelling, eighth grade and math
22 fifth grade. Then when she got out, her IQ was 55. I
23 wish I could put that up there with everything. A
24 neurologist says she functions better around children
25 and adults who are significantly handicapped with

1 retardation and other neurological impairments. Her
2 dementia and encephalopathy is so severe she
3 couldn't even be tested.

4 April 10, 1992, she had a fever and a sore throat.
5 An hour later they pulled her up and made her have some
6 teeth filled. That's why I'm telling you this is North
7 Korea or even worse.

8 December 31, 1992. This says she vomited her
9 medicine and then later on the next day, she refused
10 the medicine. Lithium, 600 milligrams. They gave her
11 3,000 milligrams a day. An adult on lithium gets 600
12 milligrams. This says she said she tried to preserve her
13 brain, salvage her brain. She says I don't care, I'm not
14 going to take it. They forced it down her.

15 The day she went in, 9-1-91, for every day all they
16 put inappropriate laughing, laughing outbursts, so they
17 ruined her brain because she laughed and grinned and
18 giggled.

19 This says she was initially placed in their custody
20 on the basis of a misunderstanding of a policeman who
21 escorted her from the school. So she should have never
22 been -- the Department of Mental Health got DSS involved
23 to keep me from making decisions about all the toxic
24 drugs.

25 This says how long should she be placed in? One

1 month it says. That's when she originally got there.

2 They kept her 600 days.

3 [REDACTED]. That's my -- that was on my birthday as a
4 matter of fact. DSS said they were getting out, the
5 probate court said to release her, and right at -- right
6 when that happened, the same second almost, they said we
7 just got a report of sexual abuse. So a lot of doctors
8 and social people and nurses they all called the children's
9 protective services, so they held her 300 more days. Her
10 low level -- after this happened, 600 days, she acts with
11 five and seven year olds or even less.

12 When she went in she weighed 122 pounds. She gained
13 a hundred pounds. She was over 200 pounds. And she
14 danced, swam. She had no coordination after.

15 She wrote a letter 7-24-92. She said I need to get
16 out. She said I need to go read, I need to exercise.
17 That never came to fruition because they -- they were
18 just determined that -- they were possessed with taking
19 care of her, with -- with her being in their grasp.

20 March 5, 1993. They were giving her so much toxic
21 drugs she consumed forty glasses of water in one day.
22 They have that noted. She'd even go by the sink and
23 drink out of the sink.

24 Then one day before the 600 days was up they brought
25 another sexual charge against me. They wrote it out

1 like they did the first one, but by then it didn't matter.
2 She was ruined already. She got out because this was
3 bogus just like the first one.

4 Now getting to this -- that day I went out there,
5 I saw the -- I saw it in the newspaper. My daughter's
6 buried right near there, so I figured I'd go out there
7 where my mother and father and daughter are buried and
8 go to their plots and then go by there and I could -- to
9 see if some -- you know, if someone there would remember
10 my daughter.

11 She died in 2016. I went out there and -- like I
12 said before, I'd have to do the errands for her and I
13 came back and there was smoke and I -- people cooked out
14 behind us and I thought it was that and I went in and it
15 was -- there was fire. I'd never had a fire before and
16 the smoke was so thick I called the fire department and
17 I guess she didn't know to get out and all that. She'd
18 ingested smoke and they -- she went to Augusta Burn
19 Center and she passed away in three days. That was a year
20 -- that was in 2016.

21 So I went out there and I -- I don't know what
22 happened. I mean, like I said, with my eyes, if they
23 would have got the records, you could have -- you would
24 have seen I have like PTSD. I mean, I lost my left eye.
25 The doctors said -- thought it was a stroke and he said

1 you've been under pressure, under stress, so I -- I went
2 through there and I -- some people got hurt. I'm -- I'm
3 sorry about that. But, you know, speed does matter though
4 because they said I was going sixteen and at Fort Jackson
5 they had a crash and the guy had a vehicle and was going
6 forty or fifty and hit six soldiers, you might have seen
7 that, too, and two of them immediately died and four of
8 them were critical, so that's why speed matters.

9 And, like I said, there was a road there. You've
10 seen it. I mean, it winds up. If I would have gone
11 fifty or sixty, there would have been what they call
12 great damage. And I -- I didn't try to turn around
13 though. People kept saying that, but after I was through
14 there the vehicle stopped. It didn't -- it didn't go
15 anywhere. So, you know, if you compare -- and I told the
16 investigator -- I mean, my lawyers should have checked my
17 car. They didn't even do that, man. Every time I'd ask
18 them to do something -- they got paid a lot. I mean,
19 more -- more than twenty thousand, four or five times
20 that much. Every time I'd ask for them to do -- I mean,
21 they're in here now, you know, telling me a few things,
22 but -- but I -- I didn't intend on hurting people and,
23 like I say, it would have been -- if I would have done it,
24 I would have sped in if I'd been thinking about it and
25 instead of, you know, moderate, moderate -- sometimes you

1 can have broken bones, it's moderate injury.

2 I mean, I've been a -- I went sixty-five years in
3 this world with relatively no record. I had one
4 misdemeanor in about 1990. You know, I went over and --
5 it was with my daughter, too. She was at school and she
6 said a kid, a boy, had said something real vulgar to her,
7 so I went over there to tell the principal and, I don't
8 know, I walked to her homeroom like a lot -- a lot of us
9 do and it was near the office and I -- we left and I went
10 to the office and for some reason I got arrested and I
11 was defending myself and, you know, they charged a couple
12 of things and -- but right after that the principal, she
13 had done that to other parents, her name is Ms. Turbeville,
14 and the students go to Dreher -- I mean, my daughter when
15 I got that during this, and she -- they had a -- hundreds
16 of parents went over there and got rid of her, so, you
17 know, she had -- she had done that, for, you know, ever.
18 That's the only time.

19 So really I've got no record. I've been out there
20 sixty-five years. I took care of my mother eleven years.
21 That wasn't -- that wasn't that easy because I was taking
22 care of my daughter, too. My mother passed in 2013, my
23 father passed in 2002. My mother was in a walker and
24 needed some help and I -- I took care of her and -- and
25 my daughter at the same time.

1 So I -- I just want you to think that it was not
2 intentional and if you could find that for me, I'd
3 appreciate it. Thank you.

4 And also, like I said, there's a distinction between
5 great and moderate, so if you -- if you look -- if you
6 look at that, I mean, you know, I'd say it's a low level,
7 if anything, you know. It wasn't intentional, but,
8 otherwise, I'd say it's low level what they call assault,
9 not a -- not nothing -- because there's a big difference
10 in what happened at Fort Jackson and -- and what happened.
11 I mean, I'm glad most of them people are doing better.
12 Of course, the scene at the end, I mean, you know, when
13 it happened, they looked not good, graphic, but, you
14 know -- so I appreciate y'all's attention and all that.

15 **THE COURT:** Madam Forelady and Members the Jury,
16 you've heard the testimony, received all of the evidence
17 and you've heard the arguments. I will now explain the
18 law that applies to this case.

19 Under the Constitution and the law of South Carolina,
20 you are the finders of the facts. I do not have the
21 right to pass upon the facts or to express any opinion
22 that I might have as to them because this is a matter
23 solely for you, the jury, to determine. As jurors then,
24 it is your duty to determine the effect, the value, the
25 weight and the truth of the evidence presented during

1 this trial.

2 As the trial judge, it is my responsibility to
3 preside over the trial and to rule upon the admissibility
4 of the evidence offered. You are to consider only the
5 testimony which has been presented from this witness
6 stand, together with any exhibits which have been made a
7 part of the record.

8 I have the additional duty to charge you the law
9 applicable to this case. As the presiding judge, I am
10 the sole judge of the law. It is your duty as jurors to
11 accept as correct and apply the law as I now state it to
12 you and then deliberate and reach your verdict.

13 Finally, I charge you in this regard that you should
14 not be concerned with what you think the law ought to be,
15 but rather what I charge you that the law is. You are
16 also the judges, the sole judges, of the credibility --
17 you are the sole judges of the credibility, that is the
18 believability, of the witnesses who have testified and of
19 the evidence which has been presented during this trial.

20 In evaluating credibility, you may take into
21 consideration many things such as the demeanor or manner
22 of testifying, whether the witness had reason to be biased
23 or prejudiced or whether the testimony of a witness was
24 contradicted on the one hand or supported and corroborated
25 on the other hand. It becomes your duty as jurors to

1 analyze and to evaluate the evidence and determine that
2 evidence which convinces you of its truth.

3 There are two types of evidence which are
4 generally presented during a trial, direct evidence
5 and circumstantial evidence. Direct evidence is the
6 testimony of a person who asserts or claims to have
7 actual knowledge of a fact, such as an eyewitness.
8 Circumstantial evidence is proof of a chain of facts and
9 circumstances indicating the existence of a fact. The
10 law makes absolutely no distinction between the weight
11 or value to be given either direct or circumstantial
12 evidence. Nor is a greater degree of certainty required
13 of circumstantial evidence than of direct evidence. You
14 should weigh all of the evidence in the case. After
15 weighing all the evidence, if you are not convinced of
16 the guilt of the Defendant beyond a reasonable doubt,
17 you must find the Defendant not guilty.

18 You should consider any expert opinion given by a
19 witness like any other -- and like any other evidence
20 give it the weight that you think it deserves. If you
21 decide that an expert opinion is not based on sufficient
22 education and experience or if you decide that the
23 reasons given in support of the opinion are not sound or
24 that the opinion is outweighed by other evidence, you may
25 disregard the opinion entirely.

1 The Defendant, James B. Kester, is representing
2 himself. The fact that the State is represented by
3 counsel and the Defendant is not should not play any
4 part in your deliberations. The Defendant has a
5 constitutional right to represent himself and you must
6 apply the law without regard to the Defendant's status as
7 a self-represented party. You should neither favor nor
8 penalize the Defendant or the State because the Defendant
9 is self-represented.

10 Now I instruct you and emphasize that the fact that
11 the Defendant did not testify is not a factor to be
12 considered by you in any way in your deliberations and on
13 your consideration on the question of the guilt or the
14 innocence of the Defendant. It must not be considered
15 by you in any manner whatsoever. A Defendant has a
16 constitutional right to remain silent and the assertion
17 of this right must not be considered by you in your
18 deliberations. So I repeat. Under your oath you are to
19 draw no conclusion whatsoever from the fact that the
20 Defendant did not testify. The fact that the Defendant
21 did not testify should not even be discussed in the jury
22 room.

23 The burden of proof, as I have stated to you, is on
24 the State. The Defendant is not required to prove his
25 innocence. The burden of proof remains on the State to

1 prove guilt beyond a reasonable doubt. The fact that the
2 Defendant, James B. Kester, is charged and indicted is
3 not evidence and cannot be considered as evidence of
4 guilt, nor does it create any presumption or inference of
5 guilt. The indictments are simply the formal written
6 instruments which contain the charges made against the
7 Defendant. The indictments are the formal documents by
8 which this case was brought into court.

9 Now the indictments in this case allege twelve
10 charges against the Defendant. The indictments charge
11 the Defendant with twelve separate counts of attempted
12 murder. Each charge is a separate and distinct charge.
13 You must decide each charge separately on the evidence
14 and the law applicable to it and your decision as to one
15 charge should not be influenced by your decision as to
16 the other charges. The Defendant may be convicted or
17 acquitted on each charge. You will be asked to write a
18 separate verdict for each crime charged.

19 The Defendant has pled not guilty to the charges
20 alleged against him. The burden is on the State to prove
21 the Defendant guilty. A person charged with committing
22 a criminal offense in South Carolina is never required
23 to prove himself innocent. I charge you that is an
24 important rule of the law that the Defendant in a
25 criminal trial no matter the seriousness of the charges

1 will always be presumed to be innocent of the crime for
2 which the indictments were issued unless guilt has been
3 proven by evidence satisfying of you of that guilt beyond
4 a reasonable doubt.

5 The presumption of innocence does not end when you
6 begin your deliberations, but it accompanies the Defendant
7 throughout the trial until you reach a verdict of guilt
8 based on evidence satisfying you of that guilt beyond a
9 reasonable doubt. The presumption of innocence is like a
10 robe of righteousness placed about the shoulders of the
11 Defendant which remains with the Defendant until it has
12 been stripped from the Defendant by evidence satisfying
13 you of the Defendant's guilt beyond a reasonable doubt.
14 The presumption of innocence is not a mere legal theory,
15 it's not just a legal phrase. It is a substantial right
16 to which every defendant is entitled unless you, the
17 jury, is satisfied from the evidence of the guilt of the
18 Defendant beyond a reasonable doubt.

19 The State must prove the Defendant guilty beyond a
20 reasonable doubt. So what is a reasonable doubt in the
21 law? A reasonable doubt is a doubt which causes an
22 honest, sincere, conscientious juror in search of the
23 truth to hesitate to act. Proof beyond a reasonable doubt
24 would, therefore, be proof of such a convincing character
25 that a reasonable person would not hesitate to rely and

1 act upon it in the most important of his or her own
2 affairs.

3 Proof beyond a reasonable doubt can also be
4 described as proof that leaves you firmly convinced of
5 the Defendant's guilt. Now there are -- now there are
6 very few things in this world that we know with absolute
7 certainty and in criminal cases the law does not require
8 proof that overcomes every possible doubt. If, based
9 on your consideration of the evidence, you are firmly
10 convinced that the Defendant is guilty of the charge or
11 charges against him, you must find him guilty. If, on
12 the other hand, you think that there's a real possibility
13 that he's not guilty, you must then give him the benefit
14 of the doubt and find him not guilty.

15 The Defendant, James B. Kester, is charged with
16 attempted murder. In order to prove this crime, the
17 State must prove the Defendant had the specific intent
18 to kill Angela Works, Jan Sohn, **Minor 2**, John
19 Montgomery, Junior, John Montgomery, Kittie Henderson,
20 Gerald Floyd, Willard Sohn, Tonya White, Catherine Jean
21 Holloman, Michael Rooney and/or Laura Gabrels with malice
22 aforethought. Specific intent means that the Defendant
23 consciously intended the completion of acts constituting
24 murder.

25 Attempted murder is the attempt to kill a person

1 with express malice, or more completely defined,
2 attempted murder is the performance of an act or acts
3 which tend but failed to kill a human being when such
4 acts are done with express malice mainly with the
5 deliberate intent to kill. Malice is hatred, ill will or
6 hostility towards another person. It is the intentional
7 doing of a wrongful act without just cause or excuse and
8 with an intent to inflict an injury. Malice aforethought
9 does not require that malice exist for any particular time
10 before the act is committed, but malice must exist in the
11 mind of the Defendant just before and at the time the act
12 is committed. Therefore, there must be a combination of
13 a previous evil intent and the act.

14 Express malice is shown when a person speaks words
15 which express hatred or ill will for another or when the
16 person prepared beforehand to do the act which was later
17 accomplished. For example, lying in wait for a person,
18 or any other acts of preparation going to show that the
19 deed was within the Defendant's mind, would be express
20 malice.

21 A specific attempt includes an intent to do a
22 particular criminal act along with an act falling short
23 of the act intended. The State must show more than mere
24 preparation of intent. There must be some overt act
25 committed in the effort to commit the crime.

1 If you find that the State has failed to prove beyond
2 a reasonable doubt that the Defendant committed attempted
3 murder, you may consider whether the State has proven
4 beyond a reasonable doubt that the Defendant committed
5 assault and battery of a high and aggravated nature.
6 Included within the offense of attempted murder is the
7 lesser offense of assault and battery of a high and
8 aggravated nature.

9 To prove assault and battery of a high and aggravated
10 nature, the State must prove beyond a reasonable doubt
11 that the Defendant unlawfully injured another person and
12 great bodily injury to another person results, or the act
13 was accompanied by means likely to produce death or great
14 bodily injury. Great bodily injury means bodily injury
15 which causes the substantial risk of death or which causes
16 serious permanent disfigurement or protracted loss or
17 impairment of the function of a bodily member or organ.

18 If you find that the State has failed to prove beyond
19 a reasonable doubt that the Defendant committed assault
20 and battery of a high and aggravated nature, you may
21 consider whether the State has proven beyond a reasonable
22 doubt that the Defendant committed assault and battery
23 in the first degree. Included within the offense of
24 attempted murder and assault and battery of a high and
25 aggravated nature is the lesser offense of assault and

1 battery in the first degree.

2 A person commits the offense of assault and battery
3 in the first degree if the person unlawfully offers or
4 attempts to injure another person with the present
5 ability to do so and the act is accompanied by means
6 likely to produce death or great bodily injury regardless
7 of whether great bodily injury actually results.

8 If you find that the State has failed to prove
9 beyond a reasonable doubt that the Defendant committed
10 assault and battery in the first degree, you may consider
11 whether the State has proven beyond a reasonable doubt
12 that the Defendant committed assault and battery in the
13 second degree. Included within the offense of attempted
14 murder and assault and battery of a high and aggravated
15 nature and assault and battery in the first degree is
16 the lesser offense of assault and battery in the second
17 degree.

18 A person commits the offense of assault and battery
19 in the second degree if the person unlawfully injures
20 another person or offers or attempts to injure another
21 person with the present ability to do so and moderate
22 bodily injury to another person results or moderate
23 bodily injury to another person could have resulted.

24 Moderate bodily injury means physical injury that
25 involves prolonged loss of consciousness or that causes

1 temporary or moderate disfigurement or temporary loss
2 of the function of a bodily member or organ or injury
3 that requires medical treatment when the treatment
4 requires the use of regional or general anesthesia or
5 injury that results in a fracture or dislocation.
6 Moderate bodily injury does not include one-time
7 treatment and subsequent observation of scratches, cuts,
8 abrasions, bruises, burns, splinters or other minor
9 injuries that do not ordinarily require extensive medical
10 care.

11 If you find that the State has failed to prove
12 beyond a reasonable doubt that the Defendant committed
13 assault and battery in the second degree, you may consider
14 whether the State has proven beyond a reasonable doubt
15 the offense of assault and battery in the third degree.
16 Included within the offense of attempted murder, assault
17 and battery of a high and aggravated nature, assault and
18 battery in the first degree and assault and battery in
19 the second degree is the lesser offense of assault and
20 battery in the third degree.

21 A person commits the offense of assault and battery
22 in the third degree if the person unlawfully injures
23 another person or offers or attempts to injure another
24 person with the present ability to do so.

25 The Defendant has raised the defense of accident.

1 An act may be excused on the ground of accident if it
2 is shown that the act was unintentional and that the
3 Defendant was acting lawfully. The burden is on the
4 State to prove beyond a reasonable doubt that an act
5 was not an accident. If after examining all evidence
6 presented in this case you have a reasonable doubt as to
7 whether the act was not an accident -- let's see. I'm
8 gonna read that over.

9 If after examining all the evidence presented in
10 this case you have a reasonable doubt as to whether the
11 act was an accident, you must find the Defendant not
12 guilty.

13 In order to establish criminal liability, criminal
14 intent is required. For example, the mental state
15 required to prove -- to be proven by the State for a
16 particular crime might be purpose, intent, knowledge,
17 recklessness or criminal negligence. Criminal intent
18 must be proven by the State beyond a reasonable doubt.
19 Criminal intent is always a matter that must be determined
20 by the jury from the circumstances surrounding the
21 situation.

22 There's no way to prove intent to a mathematical
23 certainty. There's no way medical science can dissect a
24 person's brain and determine what the person had in mind,
25 so the law says that criminal intent may be inferred from

1 the circumstances shown to have existed. This is how
2 you make a determination of whether or not the element
3 requiring intent was present. It is not necessary to
4 establish intent by direct and positive evidence, but
5 intent may be inferred by inference in the same way, by
6 any other facts taken into consideration, acts of the
7 parties, and all the facts and circumstances of the case.
8 Criminal intent is a mental state, a conscious wrongdoing.
9 It is up to you to determine what the Defendant intended
10 to do based on the circumstances shown to have existed.

11 A statement alleged to have been made by the
12 Defendant has been admitted into evidence. While the
13 Court has determined -- the Court has determined that the
14 statement is admissible, I instruct you that you make the
15 ultimate decision of whether or not the Defendant made
16 the statement. If the Defendant did make the statement,
17 you must determine whether the statement was made by the
18 Defendant voluntarily and of his own free will. This
19 means that the statement was not coerced or not caused by
20 pressure, force, fear, threats, coercion or intimidation
21 or by hope for a promise of leniency or a reward of any
22 kind.

23 In determining whether the statement was voluntary,
24 you should consider both the characteristics of the
25 statement and the details of the questioning. Some of

1 the factors that you must consider are the age of the
2 Defendant, the Defendant's education or lack of
3 education, the Defendant's mental ability or capacity,
4 the Defendant's IQ or intelligence, the Defendant's
5 background and environment, place and length of detention,
6 the nature of the questioning and the advice or lack
7 thereof to the Defendant of his constitutional rights,
8 including but not limited to, the right to remain silent,
9 that any statement could be used against him in a court
10 of law, the right to have a lawyer present, that if he
11 could not afford a lawyer, a lawyer could be appointed to
12 represent him without any cost, and that he could stop
13 making a statement at any time. You must carefully
14 consider all of the circumstances -- all the surrounding
15 circumstances before you give any weight to an alleged
16 statement.

17 The State has the burden of proving beyond a
18 reasonable doubt that the alleged statement was voluntary.
19 If you determine it was, you may give the statement any
20 further consideration you deem proper. You must decide
21 what weight, if any, should be given to the alleged
22 statement. If you determine the alleged statement was
23 not the free and voluntary statement of the Defendant,
24 you should not consider the statement at all.

25 Madam Forelady and Members of the Jury, I am required

1 to charge you the law as I have done through these
2 instructions now being given to help guide you to a just
3 and lawful verdict. Whether some of these instructions
4 would apply will depend upon what you find to be the
5 facts. The fact that I have instructed you on the
6 various subjects must not be considered as indicating an
7 opinion of this Court as to what you should find to be
8 the facts or what your verdict should be.

9 Now you've been chosen and sworn to give the parties
10 a fair and impartial trial. When you have done so, you
11 will have complied with your oath and no one will have a
12 right to criticize your verdict. You must not be
13 influenced by opinions or expressions of opinion you may
14 have heard outside of the courtroom, but rather should
15 base your verdict solely on the testimony of the sworn
16 witnesses who took the stand, the exhibits received into
17 evidence and the law which I have stated. You should
18 not be swayed by caprice, passion, prejudice or improper
19 sympathy for or against anyone. Remember you have no
20 friends to reward or enemies to punish and all parties
21 are entitled to a fair and impartial trial.

22 It is your duty as jurors to consult with one another
23 and to deliberate in an effort to reach an agreement.
24 Each of you must decide this case for yourself, but only
25 after impartial consideration of all the evidence with

1 your fellow jurors. In the course of your deliberation,
2 do not hesitate to reexamine your own views and change
3 your opinion if you become convinced it is erroneous;
4 however, do not surrender your honest conviction as to
5 the weight or effect of the evidence solely because of
6 the opinion of your fellow jurors or for the mere purpose
7 of returning a verdict. As I stated earlier, you are the
8 judges, judges of the facts. Your verdict must represent
9 the considered judgment of each juror. In other words,
10 your verdict must be unanimous.

11 Now you may have noticed that I have read these
12 instructions. I do so to give you the law as accurately
13 as possible. I will give you a copy of these instructions
14 to have in the jury room. You may refer to these
15 instructions to assist you in your deliberations. You
16 must consider the instructions as a whole and may not
17 follow some and ignore other.

18 And, Madam Forelady, it will be your duty to preside
19 over the deliberations of the jury. If during your
20 deliberations you should desire to communicate with the
21 Court, please reduce your message or question to writing,
22 signed by your foreperson and the foreperson only, and
23 pass the note to the bailiff who will bring it to my
24 attention. I will then respond as promptly as possible,
25 either in writing or by having you return to the

1 courtroom. I caution you, however, with regard to any
2 message or question you might send that you should never
3 state or specify your numerical division at the time.

4 Now you've heard the evidence and you've heard the
5 law. Whatever your verdict, Madam Forelady, you will
6 indicate it on the verdict forms, and there's a separate
7 verdict form for each of the twelve counts of the
8 indictments, and then sign and date your verdict form.

9 And the verdict form says: We, the jury, by -- with
10 respect, and then it lists the particular alleged victim,
11 unanimously find the Defendant, James Kester, either
12 guilty of attempted murder or guilty of assault and
13 battery of a high and aggravated nature or guilty of
14 assault and battery in the first degree or guilty of
15 assault and battery in the second degree or guilty of
16 assault and battery in the third degree or not guilty.
17 You check whatever you find as to that particular charge
18 -- indictment; check it, sign it, date it.

19 Remember that although the foreperson is the only
20 juror who writes the verdict, it is not hers alone. The
21 verdict has to be unanimous and, Madam Forelady, you're
22 not authorized to write the verdict until all of you have
23 agreed on the verdict as to each indictment.

24 Now, ladies and gentlemen, I will send you to your
25 jury room, but do not begin discussing this case until

1 you've received a copy of this jury charge and the
2 exhibits. Once you receive these things, that will be
3 your signal to begin your deliberations. Once you begin
4 deliberations, you will deliberate until you have reached
5 a verdict, at which time you will knock on the door,
6 advise the bailiff and we will bring you out to receive
7 the verdict.

8 Now we have thirteen of you. We're down to thirteen.
9 We can only use twelve to deliberate, so out of the first
10 twelve jurors selected if there -- if there's any reason
11 -- if there are any reasons why you cannot continue with
12 deliberations, any reason whatsoever you cannot continue
13 with the deliberations, please let me know while we still
14 have that thirteenth juror on the back row.

15 If you cannot continue, please raise your hands.

16 All right. All hands are down. That means all
17 first twelve jurors are good to go with deliberations,
18 so we'll have all of you go to the jury room except for
19 the alternate juror who will stay in the courtroom.

20 (Whereupon, the jury retires to the jury room at
21 12:08 PM.)

22 **THE COURT:** All right. Are there any additions or
23 exceptions?

24 **MR. EATON:** None from the State.

25 **THE COURT:** Any additions or exceptions, Mr. Kester?

1 **MR. KESTER:** No, Your Honor.

2 **THE COURT:** All right. Well, then if you-all will
3 take a look at the exhibits and make sure you-all agree
4 on the exhibits that should go to the jury, then we'll
5 have them get going.

6 Just give me a second to speak to the alternate
7 juror, Juror Number 13. Are you Ms. Sonaite?

8 **ALTERNATE JUROR:** Ms. Wilson.

9 **THE COURT:** Ms. Wilson. Phyllis Wilson, is that
10 you?

11 **ALTERNATE JUROR:** Yeah.

12 **THE COURT:** Okay. All right. Well, we didn't --
13 you've listened to the case, and we certainly appreciate
14 it, but we can only use twelve jurors to deliberate, so
15 as it turns out you will not be able to participate in
16 the deliberations so we're going to excuse you from
17 further participation in the trial. That may be good
18 news to you. You may be ready to go home and prepare
19 for the rain or whatever, except that we're having the
20 jurors call back after 6 PM to find out if we're gonna
21 do another case tomorrow, so you will need to call in
22 after 6:00 PM. But you are free to go. If you want to
23 wait for the lunch that we've ordered, you can do so.

24 Is it here yet?

25 **THE CLERK:** Yes.

1 **THE COURT:** It's already here, so she can take it
2 to go.

3 All right. Thank you.

4 **ALTERNATE JUROR:** Thank you.

5 (Whereupon, the alternate juror was dismissed.)

6 **THE COURT:** All right. So let's check the exhibits
7 and then see if they can get going to deliberations.

8 (Pause in proceedings.)

9 (Whereupon, the evidence and the verdict forms were
10 submitted to the jury at 12:25 PM.)

11 (Court's Exhibit Number 3 was marked for
12 identification.)

13 **BAILIFF:** Court come to order. Please rise.
14 You may be seated.

15 **THE COURT:** All right. We have a note from the
16 jury.

17 We, the jurors, are in a need of a way to assign the
18 pictures to the names of each of the victims. We also
19 need chalk. There's a couple of asterisks. Can we have
20 the electronic files that have the names assigned?
21 Another asterisk. We only have pictures of nine of the
22 victims, but verdicts needed for twelve.

23 What says the State?

24 **MR. EATON:** Judge, if I could have one moment to
25 confer, please.

1 **THE COURT:** All right.

2 **MR. NETTLES:** Your Honor?

3 **THE COURT:** Yes, sir.

4 **MR. NETTLES:** Did they ask for chalk or a chart?

5 **THE COURT:** Chalk, C-H-A-L-K. I believe that's what
6 it says. C-H-A-L-K. There's a blackboard back there and
7 they just wanted something -- did y'all give them chalk
8 already?

9 **THE CLERK:** Yes, Your Honor.

10 **THE COURT:** Good. I think I told them to just go
11 ahead and give them some chalk.

12 **MR. EATON:** Your Honor, could I just -- I'm sorry,
13 Your Honor. Can I just request that we be in recess for
14 a bit and do a little more research at my desk, please?

15 **THE COURT:** Well, I don't know. I mean, I've had
16 them waiting for a while. What kind of research are you
17 planning to do?

18 **MR. EATON:** Some case law.

19 **THE COURT:** They're -- you know, the jury has the
20 case. The jurors are deliberating. The jury is asking
21 for -- in effect, for you to present clearer information
22 so that they can associate testimony with a particular
23 victim so they'll know how to complete the verdict form.
24 We can't open the case and have everyone testify and say
25 I am so and so and I am so and so, and most of them are

1 back there. But the -- you know, I -- without infringing
2 on the Defendant's rights, I indicated at the end of --
3 in ruling on the directed verdict that -- did some extra
4 talking saying what difficulty this will be and having
5 the jury associate names of one victim versus the other.
6 You know, as they testified they introduced themselves
7 and gave testimony and described their injuries and their
8 thoughts and gave their testimony, which is great while a
9 person's listening, but for twelve strangers to then later
10 on figure out who that was and what their injuries were is
11 a very tough task.

12 Now perhaps with the nine pictures had -- when they
13 testified you had -- had they been asked to -- after
14 saying this is a picture of my leg, well, let's write
15 your name on back of this exhibit, then they would --
16 they'd have -- that part would be off the table. She
17 says we have nine -- pictures of nine victims, they may
18 not know who's who, and they have twelve indictments, so
19 I'm not sure how much research can clarify that -- that
20 problem.

21 **MR. EATON:** Yes, sir. I was looking at a very brief
22 summary of State versus Plyler and State versus Carlson,
23 which would allow the trial judge to permit the jury to
24 review testimony and it allows the Court to give evidence
25 to the jury beyond that specifically requested in the

1 Court's discretion or other evidence relating to the same
2 factual issue. So that was what I wanted to read more
3 about, Your Honor, in formulating my suggestion.

4 **THE COURT:** Well, I can answer any questions the
5 jurors might have and they've asked these questions.
6 They've asked can they have electronic files. I'm not
7 sure what that is. Is there such a thing?

8 **MR. EATON:** I'm sorry. Could you tell me again what
9 that --

10 **THE COURT:** She says can we have the electronic
11 files that have the names assigned. Is there --

12 **MR. EATON:** Oh. So there were folders with -- that
13 were on the smart board that had a name of a victim on
14 the folder that had pictures that were in evidence that
15 they were looking at, so I think that's probably what
16 they're referring to. I mean, you know, the testimony
17 that is out there -- the transcript exists of when each
18 person testified what the exhibit number was when they
19 testified.

20 So, you know, I think there is some permissible way
21 with the evidence that's already in the record for us to
22 marry those up and for the jury to marry those up. You
23 know, how difficult that is, whether we can -- using
24 what's already in the record from the transcript from the
25 testimony to, you know, show them that there are those

1 pictures for each person, we'd have to replay it all. I
2 mean --

3 **THE COURT:** That's what -- that's what you
4 anticipate in preparing your case for trial so that the
5 jury will be able to handle those issues when they go to
6 the jury room. I mean, are you -- are you asking me for
7 them to come back and for us to reopen it and more
8 testimony to --

9 **MR. EATON:** No, sir.

10 **THE COURT:** Do you want me to tell the jury and
11 have everyone introduce themselves so the jury will have
12 a name and a face?

13 **MR. EATON:** I'd be -- I mean, I would be fine with
14 that, Your Honor, if that's what the Court is suggesting.

15 **THE COURT:** I'm not suggesting anything. I'm just
16 asking questions. I'm hearing from you and I'll hear
17 from Mr. Kester, but it is just readily apparent to me,
18 and should have been readily apparent to you, that the
19 jury would have difficulty associating names with
20 indictments and with injuries if the only thing they
21 were getting to see is an introduction as the person
22 testified.

23 I couldn't see your smart board from here, so if
24 you already showed them something that had each victim's
25 picture on it and that was not introduced into evidence,

1 they have all of the evidence and -- so I will reread
2 this to you.

3 We, the jurors, are in need of a way to assign the
4 pictures to the names of each of the victims. We also
5 need chalk, which they've been given. Can we have the
6 electronic files that have the names assigned? We only
7 have pictures of nine of the victims, but verdicts needed
8 for twelve.

9 Let's see what Mr. Kester thinks about it and then
10 I'll come back to you.

11 **MR. KESTER:** Your Honor, all the evidence is in.

12 **THE COURT:** I understand that, but the jury wants --
13 the jury has questions, so how do you want me to answer
14 their questions?

15 **MR. KESTER:** Well, I can't add anything, so why can
16 he just keep piling things in, Your Honor?

17 **THE COURT:** All right. Mr. Eaton?

18 **MR. EATON:** Your Honor, again, having only a summary
19 of State versus Plyler and State versus Carlson in front
20 of me, I mean, if the Court wants to allow the victims
21 to introduce themselves again to the jury, I'm fine with
22 that. I think the other remedy here --

23 **THE COURT:** I have no desire to do anything other
24 than to wait for the jury to give me a verdict. I'm not
25 suggesting anything. I'm asking what is it that you want

1 me to do. I have no desires.

2 **MR. EATON:** Your Honor, State versus Plyler allows
3 the Court to allow the jury to review testimony which is
4 in the record.

5 **THE COURT:** All right.

6 **MR. EATON:** Therefore -- and it also gives the Court
7 discretion to allow the jury to review other evidence.
8 I would need to read the entire Plyler case to give the
9 Court more suggestions based on that case.

10 **THE COURT:** All right.

11 **MR. EATON:** At a minimum I think that case suggests
12 that we could use the transcript -- the testimony that
13 exists to marry up the names with the pictures.

14 **THE COURT:** You started out asking for some more
15 time to review some cases including Pyler, Plyler?

16 **MR. EATON:** Plyler, Your Honor.

17 **THE COURT:** Plyler. All right. We'll take a break
18 and let you do some more reading there.

19 **MR. EATON:** Thank you, Your Honor.

20 **THE COURT:** What year is that Plyler, 1980?

21 **MR. EATON:** Yes, sir.

22 **THE COURT:** All right. Let's see what Plyler tells
23 us. Let see if we might have to find something else.
24 Plyler -- State v. Plyler, 1980. G. Ross Anderson for
25 the Appellant. Appellant was found guilty of murder and

1 sentenced to life and he appeals alleging errors. We
2 affirm. The facts are primarily undisputed. On the night
3 in question, Appellant's ex-wife and the victim, her
4 sister, left their place of employment and by separate
5 cars went to their mother's home. After a brief visit,
6 the victim proceeded home, which was only a short distance
7 away. The ex-wife then telephoned her sister. The victim
8 was alone at the time of this conversation, but during
9 the conversation the victim excused herself to answer the
10 door. Because the receiver of the phone was placed on the
11 couch sixteen feet in front of the door, the ex-wife
12 overheard the conversation and recognized the voice of her
13 former husband. Several gunshots were heard. The ex-wife
14 rushed to her sister's residence and found her sister
15 unconscious and shot several times. Never regained
16 consciousness. Gun was never found. A neighbor indicated
17 she saw a car stop in front of the victim's house, a
18 passenger whom she identified only as wearing pants got
19 out of the car and then left. The passenger trotted up to
20 the door, thereafter shots were heard, saw the passenger
21 running away.

22 Initially the Appellant argued that the judge
23 erred in admitting the wife's -- ex-wife recount of the
24 conversation she heard over the phone because it
25 constituted hearsay. We disagree. The challenged

1 evidence does not appear to have been offered for the
2 substantive truth of the matter, but rather to place
3 Appellant at the scene. Since an early period,
4 witnesses' testimony of identification of a person by
5 having heard his voice has been regarded as legitimate
6 for establishing identity. As such it is not subject to
7 the hearsay exception. Sufficient testimony as to the
8 recognition of the voice was given to warrant admission.

9 Let's see what the Carlson case says.

10 Okay. Further along the line, error was also
11 assigned in the ruling of the judge relative to the
12 request of the jury to review the testimony of the
13 witness. The jury requested the testimony of the ex-wife
14 be read back to them. The tape was replayed and upon
15 the conclusion of the direct testimony, the foreman
16 informed the court that the jury had heard all they
17 desired, the tape was stopped, the jury returned to their
18 deliberations. The judge denied the Appellant's motion
19 that the jury be required to hear cross-examination to
20 prevent overemphasis on the portion that reheard. He
21 contended that was error. A trial judge, in his
22 discretion, may permit the jury at their request to
23 review, in the Defendant's presence, testimony after
24 beginning their deliberations. The extent of such review
25 is within the discretion of the trial judge to be

1 exercised in the light of the jury's request. The court
2 is not required to submit evidence to the jury for
3 review beyond that specifically requested, but may in
4 its discretion have the jury review other evidence
5 relating to the same factual issue so as to not give
6 undue prominence to the evidence requested. And we find
7 no abuse of discretion in the refusal of the trial judge
8 to require a review of all of the testimony of the witness
9 in this case, and that's that.

10 And we get that all the time. The jury wants to
11 hear a specific portion of the testimony or the direct
12 examination of a witness and the other side says no,
13 judge, we want them to hear cross-examination as well
14 and you'd say well, the jury didn't ask to hear the
15 cross-examination, they only wanted to hear the direct
16 examination, and that seems to have been the issue in
17 that case.

18 But we'll still take a break and if you can find
19 something else or -- you know, they're -- they're still
20 deliberating, so.

21 **MR. EATON:** Yes, sir.

22 **THE COURT:** And we have over things we're scheduled
23 to do at 2:00.

24 **MR. EATON:** And if I may, Your Honor?

25 **THE COURT:** Yes, sir.

1 **MR. EATON:** Clearly under that case it would be
2 permissible to allow the jury to listen back through
3 testimony. Of course, any testimony that's been taken
4 in this trial is already in the record. Each person
5 said their name when they testified, they described their
6 injuries, which, of course, is evidence, and for many
7 of them pictures are submitted with the exhibit numbers
8 stated on the record, so we could have them listen to the
9 whole trial again. I think that --

10 **THE COURT:** We could, but we're not, and they haven't
11 requested to listen to it all over again.

12 **MR. EATON:** Yes, sir. And so I -- and didn't mean
13 that -- I'm just saying rhetorically we could just since
14 they've already seen all that and heard all of that
15 organize the victim photos by victim since it's already
16 in the record. It's already there.

17 **THE COURT:** You're using the word the "record". Do
18 you mean the jury -- they've heard the testimony, they
19 have all the exhibits. They -- what else do you want
20 them to receive?

21 **MR. EATON:** Nothing additional. All I'm saying
22 is that by organizing the -- these files are already
23 organized by victim when we presented them to them.
24 We're not submitting anything new to the jury if we
25 organize them by victim name. The digital version of

1 these exhibits was organized in folders with their names
2 on them.

3 **THE COURT:** You're asking -- you had something that
4 you showed the jury, but you didn't offer it into
5 evidence and now you want to put it in evidence? The
6 jury would like to see it. They'd like to see what you
7 showed them, which you didn't put in evidence, and the
8 defense is objecting as I take it.

9 **MR. EATON:** And, Your Honor, I'm saying that --
10 well, they are in evidence. All the pictures are in
11 evidence, Your Honor --

12 **THE COURT:** All right.

13 **MR. EATON:** -- and who they were is in evidence
14 because that was testified to and it's part of the record
15 already of the trial when we were giving testimony, so
16 it's all already there.

17 **THE COURT:** I'm not following what you're -- I have
18 to answer the jury's question. They want to assign the
19 pictures to the names of each of the victims. Can we
20 have the electronic files that have the names assigned?
21 They want more evidence. They want clearer evidence.
22 They wanted you to present something so they'll know who's
23 who when they go back -- when they went back to consider
24 the evidence as to the particular victims.

25 **MR. EATON:** And I'm -- I'm saying the evidence is in.

1 **THE COURT:** They have pictures of eight victims, but
2 they may or may not -- may not know the names of the
3 victims who they have pictures of because the pictures
4 were randomly put in evidence, but they'd have to come
5 back and listen to the testimony of each person to be
6 able to associate the picture -- the testimony with the
7 name and we're not gonna listen to the testimony all
8 over again. They haven't requested to -- us to do that.
9 That's the dilemma in presenting evidence to a jury.
10 I mean, you know, when you put stuff in evidence, you have
11 to have in mind that the jury is to deliberate on this
12 evidence in the jury room. I mean, they -- you know, for
13 them to -- the case was presented to the jury and that
14 while maybe it wasn't specifically said, but that -- well,
15 you did say it; well, he's trying to kill all of them, so
16 whoever they are if their name's on this indictment, he
17 tried to kill them because they're all in the same place
18 at the same time all facing the same danger, all -- he
19 intended to kill all of them. And the jurors may
20 ultimately reach that conclusion, I don't know, but since
21 there are twelve individual counts and they have to decide
22 each count separately, you know, it would be helpful if
23 they knew who they were deliberating concerning and I
24 don't know how I can in answering that question present
25 any clearer evidence.

1 If you have the smart board that has names of
2 victims -- a picture and then the name by the picture,
3 that would be something that would be -- that could have
4 been beneficial to them, but it would constitute -- may
5 constitute introducing additional evidence after the jury
6 has been deliberating for two plus hours. We started at
7 12:25, it's now 2:15. We can't reopen the case and give
8 them more evidence. We always, in hindsight, say well, I
9 wish I had done this, I wish I had offered that, I wish I
10 had presented this, I wish I had presented that, I wish I
11 had said this, I wish I had said that, but we're beyond
12 that point so I'm confined and limited in the manner in
13 which I can respond to these questions.

14 Mr. Kester says -- what did you read off to me? What
15 did you say?

16 **MR. KESTER:** The evidence is in, Your Honor.

17 **THE COURT:** He says the evidence is in. That's a
18 true statement.

19 **MR. EATON:** I'm not disagreeing with that, Your
20 Honor, and I'm not suggesting that any new evidence go
21 to the jury. That's not what I'm suggesting.

22 **THE COURT:** Okay.

23 **MR. EATON:** As Your Honor said in pre-trial, I may
24 show the jury something that's in evidence to include
25 digital evidence, and so those photos are already in

1 evidence, it's just a different format. Now also in
2 evidence is a physical picture versus a digital one.

3 **THE COURT:** So those photos --

4 **MR. EATON:** That they're referring to.

5 **THE COURT:** -- are in evidence?

6 **MR. EATON:** Yes, sir. Yes, Your Honor. So that's
7 in evidence. Also in evidence is --

8 **THE COURT:** It's -- part of the dilemma quite often
9 the judge has is, you know, you put the picture -- the
10 TV there and it's in front of the jury and you're showing
11 them things and I don't know what you're showing them.
12 You-all were kind of enough to send us copies of most of
13 the evidence. Is that something that we have?

14 **MR. EATON:** Yes, sir. They may not have been
15 organized by -- by person when we sent them to you. So
16 this is a digital version of the -- of the evidence. It
17 is the same photos, the same evidence. The other thing
18 that is already in evidence is which victims correspond
19 to which exhibits. That is in evidence. They don't
20 remember it all because there were a lot, but that is in
21 the record. It was presented during the trial as part of
22 the record that already exists.

23 **THE COURT:** Well, if it's in evidence and the jury
24 has all the evidence, then they already have what they've
25 asked for.

1 **MR. EATON:** Well, they don't have the transcript.

2 **THE COURT:** You mean the transcript that the court
3 reporter is working on or --

4 **MR. EATON:** The recording, if you will. I'm not
5 suggesting that we go back and play it. I'm just
6 respectfully pointing out to the Court that that is all
7 in evidence.

8 **THE COURT:** Well, we know everyone who -- everyone
9 who testified identified themselves and the jury saw them
10 and heard them.

11 **MR. EATON:** And those exhibits were identified for
12 the record.

13 **THE COURT:** The jury doesn't -- the jury -- they
14 don't remember who they were.

15 **MR. EATON:** Yes, sir.

16 **THE COURT:** And -- and they would have wanted you
17 to present something to them so that they would know who
18 they were and that's -- and that's that.

19 Any additional thoughts about anything from anybody?
20 Do you still need some more time to go research something?

21 **MR. EATON:** Well, if Your Honor is not inclined to
22 either allow the digital versions to go back to the
23 jury or otherwise use the record as it exists on the
24 transcript, either allow them to match them back up or
25 to allow us to match them up based on what's already in

1 the record, then I would just ask for a little time to
2 help -- make a suggestion as to what the answer should
3 be.

4 **THE COURT:** All right. Well, we'll give you time
5 to make a suggestion as to what the answer should be
6 because I don't really understand what you just said --

7 **MR. EATON:** Yes, sir.

8 **THE COURT:** -- or what you're really asking me.

9 **MR. EATON:** Thank you, Your Honor.

10 **THE COURT:** All right. We'll just have you-all
11 clear out and we'll -- I don't have to give the jury an
12 immediate answer. We'll just move onto something else.

13 (Pause in proceedings.)

14 (Recess taken.)

15 **BAILIFF:** Court come to order.

16 Be seated, please.

17 **THE COURT:** All right. Mr. Eaton, what else --
18 what's on your mind?

19 **MR. EATON:** Your Honor, I suggest that we send the
20 indictments back to the jury. That we be allowed to --
21 this is all already in evidence. What they want is in
22 the record as part of the evidence. That you allow me
23 to take the exhibits and put them with the indictments
24 and send those back to the jury. That was already done.
25 From the minute they got in here they heard those

1 indictments and they heard everybody on the stand with
2 their name and the exhibit.

3 **THE COURT:** And you're conflicting your request
4 with your argument. First tell me first what you want
5 me to do so I can understand that before I hear your
6 argument.

7 **MR. EATON:** Yes, Your Honor. I would like to send
8 to the jury the indictments and I would like you to allow
9 me to put the pictures with the indictments to which
10 they correspond because all of that is already in the
11 record.

12 **THE COURT:** All right. What do you say, Mr. Kester?

13 **MR. KESTER:** I say no, Your Honor, because he's
14 creating new evidence.

15 **THE COURT:** Well, I have no problem in sending the
16 indictment -- the indictments to the jury because, you
17 know, typically we might send the indictments. I don't
18 send the indictments where the -- where the jury is being
19 asked typically to -- not asked, but they're given the
20 options of different verdicts because the indictments for
21 attempted murder has a spot where it says verdict and
22 typically it will say guilty or not guilty, but since
23 they can also make findings of a lesser included offense,
24 we prepare verdict forms in those instances.

25 That notwithstanding, I have no problem with sending

1 the indictments to the jury. Allowing you to put pictures
2 with the indictments, that's receiving evidence back from
3 the jury room and, in effect, making a new presentation
4 of the evidence to the jury. I'm not going to allow
5 that. In addition to the fact that the jurors do not
6 have pictures of -- per their note they have pictures of
7 nine of the twelve and that doesn't fully answer their
8 question.

9 You know, part of what the State has to prove of
10 the Defendant is identification. The State must prove
11 beyond a reasonable doubt that -- the identity of the
12 defendant who commits a crime. Likewise, the State has
13 to prove the identity of victims of crimes and the burden
14 is on the State and the Defendant is entitled to have the
15 Court hold the State to their obligation.

16 I'm gonna bring the jury in. I'll give them the
17 indictments and I'll not give them any additional
18 evidence.

19 **MR. EATON:** May I, Your Honor? I would also ask for
20 an instruction to the jury that evidence may take various
21 forms to include testimony.

22 **THE COURT:** They know that.

23 **MR. EATON:** The testimony is evidence.

24 **THE COURT:** I've emphasized that. That's the very
25 first thing I told them; to consider the testimony from

1 this witness stand together with the exhibits.

2 Bring the jury, please.

3 (Whereupon, the jury returns to the courtroom
4 2:48 PM.)

5 **BAILIFF:** The jury is seated, Your Honor.

6 **THE COURT:** All right. Thank you.

7 Madam Forelady and Members of the Jury, I received
8 your note earlier. We, the jurors, are in need of a way
9 to assign pictures to the names of each of the victims.
10 We also need chalk, and I had them to give you the chalk.
11 That request was pretty easy. Can we have the electronic
12 files that have the names assigned? We only have pictures
13 of nine of the victims, but verdicts needed for twelve.

14 As I indicated to you-all at the beginning of the
15 jury charge, you have heard all of the evidence --
16 you've heard all of the testimony and received all of the
17 evidence and the case is now given to you to deliberate
18 based on the testimony and based on the evidence. We
19 cannot present any additional testimony to you. You've
20 heard from the witnesses already. If you desire to
21 listen to any -- rehear any testimony, the court reporter
22 has recorded all the testimony, you can rehear any
23 testimony that you might want to rehear, but you cannot
24 receive any additional evidence.

25 I do have the indictments that I will submit to you

1 because the -- a verdict form was prepared. There's a
2 place for verdict on the back of each indictment, but I
3 submitted verdict forms instead of the indictments. I
4 will submit the indictments to you in the event that
5 assists you in any way. And if you-all will resume
6 deliberating.

7 (Whereupon, the jury retires to the jury room at
8 2:51 PM.)

9 **THE COURT:** Any additions or exceptions?

10 **MR. EATON:** No, Your Honor.

11 **MR. KESTER:** No, Your Honor.

12 **THE COURT:** All right. We'll be at ease on this
13 case one more time as the jury resumes and we'll press on
14 with other solicitor matters.

15 (Pause in proceedings.)

16 (Recess taken.)

17 **BAILIFF:** Court come to order. Please, rise.
18 You may be seated.

19 **THE COURT:** A note from the jury says: We, the
20 jury, have not come to a unanimous verdict concerning
21 all twelve counts and at this point we represent a hung
22 jury.

23 What says the State?

24 **MR. EATON:** Well, Your Honor, I think they can
25 deliver a verdict on the charges -- if I understand that

1 correctly, they have come to a verdict on some charges.
2 They can render a verdict on some charges and others can
3 mis-try. I mean, Your Honor, can -- it's, of course, in
4 your discretion to give an Allen charge.

5 **THE COURT:** Uh-huh.

6 What says the defense, Mr. Kester?

7 **MR. KESTER:** Your Honor, the way I understand it is
8 if they're hung, they're hung. I don't interpret it the
9 way he does, Your Honor.

10 **THE COURT:** All right.

11 **MR. KESTER:** So, Your Honor, I ask for a mistrial.

12 **THE COURT:** Do you want me to give the jury an Allen
13 charge on the counts that they're hung on?

14 **MR. KESTER:** No, Your Honor.

15 **THE COURT:** All right.

16 Anything else?

17 **MR. KESTER:** No, Your Honor.

18 **MR. EATON:** Your Honor, they're -- they're separate
19 indictments, separate charges, separate victims, so the
20 jury can render a verdict on only some of them.

21 **THE COURT:** All right. If you will bring in the
22 jury.

23 (Whereupon, the jury returns to the courtroom at
24 4:34 PM.)

25 **BAILIFF:** The jury is seated, Your Honor.

1 **THE COURT:** All right. Welcome back, ladies and
2 gentlemen.

3 Madam Forelady and Members of the Jury, you sent
4 out a note saying: We, the jury, have not come to a
5 unanimous verdict concerning all twelve counts. At this
6 point we represent a hung jury.

7 As I stated to you in the jury charge, jury
8 instructions, the verdict of the jury must be a unanimous
9 verdict as to each and every count. Well, not as to
10 each and every count, but as to each and every indictment
11 and each indictment must be considered separately. So
12 you have twelve different indictments for which you
13 can render a verdict on and each is to be considered
14 separately.

15 When a matter is in dispute, it isn't always easy
16 for even two people to agree. I'm sure if you're married
17 you know that. So when twelve people must agree, it
18 becomes even more difficult. In most cases absolute
19 certainty cannot be reached or expected; however, you
20 have a duty to make every reasonable effort to reach a
21 unanimous verdict as to each indictment. In doing so,
22 you should consult with one another, express your own
23 views and listen to the opinions of your fellow jurors,
24 tell each other how you feel and why you feel that way
25 and you discuss your differences with an open mind.

1 Although the verdict on each indictment must be
2 unanimous, every one of you has a right to your own
3 opinion. The verdict you reach must be your own verdict,
4 the result of your own convictions, and you certainly
5 should not give up your firmly held beliefs merely to be
6 in agreement with your fellow jurors. The majority
7 should consider the minority's opinion and the minority
8 should consider the majority's opinion. You should
9 carefully consider and respect the opinion of each other
10 and reevaluate your position, if necessary, for
11 reasonableness, correctness and impartiality. You must
12 lay aside all outside matters and reexamine the questions
13 before you based on the law and the evidence in this
14 case.

15 As to any particular indictment that you may be
16 able to -- unable to agree on, I must declare a mistrial
17 as to that particular indictment. In that case, it does
18 not mean that anyone wins, it just means that at some
19 future time I or another judge will try that particular
20 indictment or this entire case if you do not agree on
21 any indictments with some other jury sitting where you
22 now sit. The same participants will come and the same
23 lawyers will and/or the self-represent Defendant will ask
24 basically the same questions and get basically the same
25 answers and we'll go through the process again. And you

1 were selected from the same source and from the same --
2 in the same manner that any future jury will be and
3 there's no reason for me to believe that the case will
4 ever be submitted to twelve more intelligent, impartial,
5 conscientious and competent jurors than you or that more
6 or clearer evidence will be produced on one side or the
7 other.

8 I, therefore, ask that you return to your
9 deliberations with the hope that you can arrive at a
10 verdict within a reasonable time as to each indictment.
11 If there are indictments that you've reached a unanimous
12 verdict on, we will receive those indictments. If you're
13 a hung jury as to each and every indictment, you will
14 inform the Court of that. If you're able to reach a
15 verdict on every indictment, inform the Court of that.

16 So please return to the jury room.

17 (Whereupon, the jury retires to the jury room at
18 4:40 PM.)

19 **THE COURT:** Any exceptions to the charge?

20 **MR. EATON:** Not from the State, Your Honor.

21 **THE COURT:** Yes, sir.

22 **MR. KESTER:** Your Honor, I object that -- to charge
23 the jury go back after they're hung.

24 **THE COURT:** Yes, sir. I certainly understand your
25 objection. The law of the state, however, is that the

1 trial judge has a duty to urge the jurors to reach a
2 verdict. However, the judge cannot coerce them. And in
3 determining whether or not an Allen charge should be
4 given or is coercive, the Court must consider the length
5 of the deliberation, the complexity of the matter that
6 the jury is considering and also any attempt to respond
7 and interpret the jury's note. The note of the jury does
8 not seem to suggest that they have not reached a verdict
9 or could not reach a verdict on some of the counts, they
10 indicate -- it indicates they've not come to a unanimous
11 verdict concerning all twelve counts. In that instance,
12 the Court receives the verdict of the jury on the counts
13 that they've reached a unanimous on and declare a mistrial
14 on the others that they have not or cannot reach a
15 unanimous verdict on.

16 So your exception is noted and we'll be in recess.

17 (Court's Exhibit Number 4 was marked for
18 identification.)

19 (Recess taken.)

20 **BAILIFF:** Court come to order.

21 Thank you. Please be seated.

22 **THE COURT:** I understand there's a verdict. You can
23 bring in the jury.

24 (Whereupon, the jury returns to the courtroom at
25 6:47 PM to report the verdicts.)

1 **BAILIFF:** The jury is seated, Your Honor.

2 **THE COURT:** Okay. Thank you.

3 Madam Forelady, will you stand for me.

4 Have you reached a verdict?

5 **FOREPERSON:** Yes, sir, we have.

6 **THE COURT:** On each and every count?

7 **FOREPERSON:** On every count.

8 **THE COURT:** Is it unanimous?

9 **FOREPERSON:** It is unanimous.

10 **THE COURT:** All right. Thank you. Pass it up and
11 you may be seated.

12 If the Defendant will stand.

13 You may publish the verdicts.

14 **THE CLERK:** Indictment Number 2017-GS-40-5232, State
15 of South Carolina versus James B. Kester. We, the jury,
16 with respect to Minor 2, unanimously find the
17 Defendant, James B. Kester, guilty of assault and battery
18 in the first degree. This is signed Foreperson, Juror
19 Number 28, October 10, 2018.

20 Indictment Number 2017-GS-40-5233, State of South
21 Carolina versus James B. Kester. We, the jury, with
22 respect to Jan Sohn, unanimously find the Defendant,
23 James B. Kester, not guilty. This is signed Foreperson,
24 Juror Number 28, October 10, 2018.

25 Indictment Number 2017-GS-40-5227, State of South

1 Carolina versus James B. Kester. We, the jury, with
2 respect to Willard Sohn, unanimously find the Defendant,
3 James B. Kester, guilty of assault and battery in the
4 first degree. This is signed Foreperson, Juror
5 Number 28, October 10, 2018.

6 Indictment Number 2017-GS-40-5229, State of South
7 Carolina versus James B. Kester. We, the jury, with
8 respect to Kittie Henderson, unanimously find the
9 Defendant, James B. Kester, guilty of assault and
10 battery in the first degree. This is signed Foreperson,
11 Juror Number 28, October 10, 2018.

12 Indictment Number 2017-GS-40-5223, State of South
13 Carolina versus James B. Kester. We, the jury, with
14 respect to Michael Rooney, unanimously find the Defendant,
15 James B. Kester, guilty of assault and battery in the
16 first degree. This is signed Foreperson, Juror Number 28,
17 October 10, 2018.

18 Indictment Number 2017-GS-40-5231, State of South
19 Carolina versus James B. Kester. We, the jury, with
20 respect to John Montgomery, Junior, unanimously find the
21 Defendant, James B. Kester, guilty of assault and battery
22 in the first degree. This is signed Foreperson, Juror
23 Number 28, October 10, 2018.

24 Indictment Number 2017-GS-40-5224, State of South
25 Carolina versus James B. Kester. We, the jury, with

1 respect to Kathryn Jean Holloman, unanimously find the
2 Defendant, James B. Kester, guilty of assault and battery
3 in the first degree. This is signed Foreperson, Juror
4 Number 28, October 10, 2018.

5 Indictment Number 2017-GS-40-5220, State of South
6 Carolina versus James B. Kester. We, the jury, with
7 respect to Laura Gabrels, unanimously find the Defendant,
8 James B. Kester, guilty of assault and battery in the
9 first degree. This is signed Foreperson, Juror Number 28,
10 October 10, 2018.

11 Indictment Number 2017-GS-40-5226, State of South
12 Carolina versus James B. Kester. We, the jury, with
13 respect to Tonya White, unanimously find the Defendant,
14 James B. Kester, guilty of assault and battery in the
15 first degree. This is signed Foreperson, Juror Number 28,
16 October 10, 2018.

17 Indictment Number 2017-GS-40-5234, State of South
18 Carolina versus James B. Kester. We, the jury, with
19 respect to Angela Works, unanimously find the Defendant
20 James B. Kester, not guilty. This signed Juror Number 28,
21 October 10, 2018.

22 Indictment Number 2017-GS-40-5230, State of South
23 Carolina versus James B. Kester. We, the jury, with
24 respect to John Montgomery, unanimously find the
25 Defendant, James B. Kester, guilty of assault and battery

1 in the third degree. This is signed Foreperson, Juror
2 Number 28, October 10, 2018.

3 Indictment Number 2017-GS-40-5228, State of South
4 Carolina versus James B. Kester. We, the jury, with
5 respect to Gerald Floyd, unanimously find the Defendant,
6 James B. Kester, not guilty. This is signed Juror
7 Number 28, October 10, 2018.

8 Madam Foreperson, are these your verdicts and the
9 verdicts of the entire jury?

10 **FOREPERSON:** Yes.

11 **THE COURT:** Any additional polling requested by the
12 State or the defense?

13 **MR. EATON:** Not by the State, Your Honor.

14 **THE COURT:** Any from the Defendant?

15 **MR. KESTER:** Yeah, I'd appreciate that, Your Honor.

16 **THE COURT:** Okay. If you will poll the jurors
17 individually as to whether these are their verdicts and
18 if they are still their verdicts.

19 **THE CLERK:** Juror Number 28, were these your
20 verdicts?

21 **FOREPERSON:** Yes.

22 **THE CLERK:** Are they still your verdicts?

23 **FOREPERSON:** Yes.

24 **THE CLERK:** Juror Number 65, were these your
25 verdicts?

1 **JUROR:** Yes.

2 **THE CLERK:** Are they still your verdicts?

3 **JUROR:** Yes.

4 **THE CLERK:** Juror Number 98, were these your
5 verdicts?

6 **JUROR:** Yes.

7 **THE CLERK:** Are they still your verdicts?

8 **JUROR:** Yes.

9 **THE CLERK:** Juror Number 192, were these your
10 verdicts?

11 **JUROR:** Yes.

12 **THE CLERK:** Are they still your verdicts?

13 **JUROR:** Yes.

14 **THE CLERK:** Juror Number 244, were these your
15 verdicts?

16 **JUROR:** Yes.

17 **THE CLERK:** Are they still your verdicts?

18 **JUROR:** Yes.

19 **THE CLERK:** Juror Number 57, were these your verdicts?

20 **JUROR:** Yes.

21 **THE CLERK:** Are they still your verdicts?

22 **JUROR:** Yes.

23 **THE CLERK:** Juror Number 237, were these your
24 verdicts?

25 **JUROR:** Yes.

1 **THE CLERK:** Are they still your verdicts?

2 **JUROR:** Yes.

3 **THE CLERK:** Juror Number 283, were these your
4 verdicts?

5 **JUROR:** Yes.

6 **THE CLERK:** Are they still your verdicts?

7 **JUROR:** Yes.

8 **THE CLERK:** Juror Number 105, were these your
9 verdicts?

10 **JUROR:** Yes.

11 **THE CLERK:** Are they still your verdicts?

12 **JUROR:** Yes.

13 **THE CLERK:** Juror Number 33, were these verdicts?

14 **JUROR:** Yes.

15 **THE CLERK:** Are they still your verdicts?

16 **JUROR:** Yes.

17 **THE CLERK:** Juror Number 267, were these your
18 verdicts?

19 **JUROR:** Yes.

20 **THE CLERK:** Are they still your verdicts?

21 **JUROR:** Yes.

22 **THE CLERK:** Juror Number 305, were these your
23 verdicts?

24 **JUROR:** Yes.

25 **THE CLERK:** Are they still your verdicts?

1 **JUROR:** Yes.

2 **THE CLERK:** The jury has been polled, Your Honor.

3 **THE COURT:** All right. The verdicts are the
4 unanimous verdict of the jury. Thank you very much,
5 ladies and gentlemen for your service.

6 Any post-trial motions?

7 **MR. EATON:** Not from the State, Your Honor.

8 **MR. KESTER:** Pertaining to what, Your Honor?

9 **THE COURT:** Any post-trial motions pertaining to
10 the verdicts the jury just rendered in this case.

11 **MR. KESTER:** Yeah, I'd like to put in for an appeal.

12 **THE COURT:** You appeal someplace else. This is
13 still the trial right now. Post-trial motions.

14 **MR. KESTER:** Okay.

15 **THE COURT:** Appeals go to a different court.

16 **MR. KESTER:** Okay. Thank you, Your Honor.

17 **THE COURT:** All right. Ladies and gentlemen,
18 thank you very much. You know, coming into court it
19 may seem as if things may be kind of simple, but it's
20 really -- really not. There's a lot involved in
21 presenting a case and there's a lot in proving a person
22 guilty beyond a reasonable doubt and getting twelve
23 ordinary citizens to come in and expect them to
24 understand the law, understand the evidence and render
25 a unanimous verdict, so I want to commend you on your

1 going through the journey and reaching a conclusion,
2 in reaching a unanimous verdict. I know it's been
3 difficult based on the length of time that you-all have
4 deliberated.

5 This particular charge of attempted murder is giving
6 a lot of people in the state a lot of difficulty
7 understanding the charge and applying it in cases. About
8 four or five years ago the Legislature changed the law
9 because in South Carolina the crime of attempted murder
10 did not exist. It either went from murder to assault and
11 battery with intent to kill, but the Legislature decided
12 to put in the offense of attempted murder and got rid of
13 assault and battery with intent to kill and put in these
14 various levels of assault; assault, you know, first
15 degree, assault second degree, assault third degree. And
16 I think it primarily was because before a simple assault
17 was thirty days and the next level assault was ten years
18 and to create some midlevel assaults they re -- sort of
19 restructured everything, but in doing so in passing the
20 attempted murder statute, they wrote into the law that a
21 specific intent to kill is a part of attempted murder,
22 meaning the State has to prove that the person had in
23 their mind a specific intent to kill, and that's a very
24 high bar to overcome by the State.

25 And last year they had a case from Charleston, State

1 v. King, that reversed some trial court's decision and
2 really grappled -- the State Supreme Court is grappling
3 with that on the issue of the meaning of attempted murder
4 and what has to be established to prove it, and really the
5 difficulty in applying the law. So you-all, to the extent
6 that you-all had a hard time figuring it out, it wasn't
7 surprising.

8 I had a case in Summerville about a month -- about
9 six weeks ago where the guy robbed a lady and stabbed her
10 in the face and he was charged with attempted murder and
11 the jury stayed out about six hours trying to figure out
12 even though he stabbed her in the face whether he had a
13 specific intent to try to kill her and in the end they
14 found him guilty of assault and battery of a high and
15 aggravated nature and along with the robbery it was so
16 -- so gruesome. However, he got thirty years for the
17 robbery and twenty years for stabbing her, so he -- he
18 may as well have been found guilty of attempted murder.

19 But your verdicts represent in my view a lot of hard
20 work and intelligence in attempting to understand the
21 facts of this case and in applying the law. You found
22 him guilty of assault and battery first degree and it
23 says a person commits assault and battery in the first
24 degree if the person unlawfully offers or attempts to
25 injure another person with the ability to do so and the

1 act is accomplished by means likely to produce death or
2 great bodily injury regardless of whether a great bodily
3 injury or death occurs.

4 So considering the evidence presented and perhaps
5 in some of your minds a lack of clarity as to what was
6 going on with Mr. Kester there and considering the fact
7 that that's what all twelve of you agreed on, that's the
8 verdict in the case.

9 Now the fact that he has been convicted of so many,
10 the possible sentence on each offense -- assault and
11 battery first is up to ten years, isn't it?

12 **MR. EATON:** Yes, Your Honor.

13 **THE COURT:** So he could receive up to ten years for
14 each count, so he's -- he's still facing a significant
15 amount of time. We're gonna get into sentencing -- I
16 think we're going to do it later on though. It's now
17 7:00 and I'm sure you-all are tired, the family is tired,
18 everyone is tired. We're not going to impose sentence
19 today, we're gonna schedule sentencing for next week.
20 Mr. Kester has been in jail under how many -- a five
21 million bond?

22 **MR. KESTER:** That's right, Your Honor.

23 **THE COURT:** So he's not going anywhere. Of course,
24 he has no bond now that he's been convicted so he's
25 heading back to Alvin S. Glenn and we'll schedule

1 sentencing next week. I think we'll probably just go
2 ahead and set the time now so that everyone will know
3 about it. I'm thinking next Wednesday at noon. And
4 since we have the family here, the victims here, I'm
5 thinking of scheduling it for that time.

6 Just talk with them for a moment and we'll stand by.

7 (Pause in proceedings.)

8 **THE COURT:** We can -- actually we can do it next
9 Wednesday at noon or this Friday at noon. We're gonna
10 be in trial, but the court is closed tomorrow, so.

11 **MR. EATON:** Your Honor, I think the consensus would
12 be this Friday if that suits the Court.

13 **THE COURT:** All right. We'll schedule sentencing
14 for this Friday at noon, at which time I will be happy
15 to hear from any victims regarding any and everything
16 that the victims want to say, that the solicitor wants
17 to present, and Mr. Kestler -- Kester wants to present
18 and anyone you want to speak on your behalf as well.

19 So that's that and we will check out for today.
20 The courthouse is closed tomorrow. We'll be back Friday
21 morning.

22 Madam Forelady, I'm gonna speak with you outside of
23 the courtroom, as well as any other jurors who want to
24 talk with me. You are free to speak with anyone you want
25 to about this case at this moment in time, but you're not

1 obligated to speak with anyone about it if you don't want
2 to. If anyone bothers you, let me know, and Judge Newman
3 will take care of it.

4 So we're gonna be adjourned.

5 (Whereupon, the proceedings were concluded for
6 October 10, 2018, at 7:04 PM.)

7 (The following proceedings were held on October 12,
8 2018, beginning 12:41 PM.)

9 **BAILIFF:** Court come to order. All rise.

10 You may be seated.

11 **THE COURT:** All right. This is the sentencing
12 hearing for Mr. James Kester.

13 Mr. Eaton.

14 **MR. EATON:** Yes, Your Honor. If it pleases the
15 State -- if it pleases the Court, Your Honor, Vance Eaton
16 for the State.

17 As Your Honor is well aware, we went through the
18 jury trial of Mr. Kester this week and he was convicted
19 of eight counts of assault and battery in the first
20 degree and one count of assault and batter in the third
21 degree the day before yesterday.

22 As a preliminary matter, I might just ask to clarify
23 that Mr. Kester is still pro se at this moment?

24 **THE COURT:** Mr. Kester, you're still representing
25 yourself?

1 **MR. KESTER:** Yes, Your Honor.

2 **THE COURT:** All right.

3 **MR. EATON:** Thank you, Your Honor.

4 Your Honor, I'm asking Your Honor to sentence
5 Mr. Kester to the maximum and I'm asking you to sentence
6 him to consecutive time. I believe that this case
7 merits consecutive time because of the nature of this
8 act because as was made very clear, as Your Honor very
9 correctly pointed out, every single one of these
10 indictments, of these charges, of these convictions,
11 involves a separate intent, a separate assault on a
12 separate victim, a separate person who's sitting here
13 who experienced his or her own pain and trauma, and in a
14 number of cases will live with that -- will live with
15 physical pain or infirmity for the rest of their life
16 and for all of whom they will live with at least trauma
17 psychologically from this for the rest of their life.

18 Your Honor, Mr. Kester had a choice in how he dealt
19 with his own trauma. He had a choice to walk around and
20 allow that thing to consume him with hatred and rage. He
21 had that choice and he chose to devolve to the point that
22 he did with his anger, his rage, his vendetta. And I
23 know I've repeated all those words a number of times to
24 the jury, but he's the one who made that choice and the
25 jury found what he did to these people was a deliberate,

1 intentional act to them.

2 Now, Your Honor, I know the Court is well within
3 its right to hear anything you feel is relevant to the
4 sentencing of Mr. Kester. I know there are a number of
5 people who want to address Your Honor and I'd ask that
6 you hear from -- from all of them if you see fit, to
7 include those who were not even on charges -- victims of
8 charges to begin with because everyone out there that
9 day, everyone, was impacted by what Mr. Kester did;
10 people who saw it, the people who were standing far away,
11 and so as members of this community I'd ask that if Your
12 Honor sees fit that you allow all of those who wish to
13 speak to address Your Honor.

14 So those are the reasons, Your Honor, that I'm
15 asking for consecutive time and the maximum.

16 **THE COURT:** All right. I'm happy to hear from
17 whomever would like to speak.

18 **KELLI MONTGOMERY:** My name is Kelli Montgomery.
19 Your Honor, thank you for listening to us today.

20 July 19, 2017, is a day that I can never erase from
21 my memory. It was the day that was supposed to be about
22 celebrating the life of my Aunt Peggy, but instead will
23 always be a day where I almost lost my husband John, my
24 two children, **Minor 1** and **Minor 2** my father Will and many
25 of my family members here today whom I love very dearly.

1 James Kester took what should have been a very
2 sacred day for our family in mourning and turned it into
3 a chaotic, horror filled day that we can never forget no
4 matter how long he is in jail. I have vivid memories and
5 flashbacks all the time of what I saw that day. It plays
6 back over and over. I'm outraged at what he's put our
7 family through this week as well as everything he put us
8 through that day. Every time I'm in a parking lot with
9 my children and I want to just get in my car and I hear a
10 car rev their engine, I jump. My children grab my hands.
11 They're twelve and fifteen. I should not be worried about
12 that at this point in my life, but I am because they're
13 scared that someone could hit them with a car.

14 He showed no remorse for our family that day nor
15 this week in what we have been through. We had to sit
16 and listen to him talk about what happened to his daughter
17 over and over again, but he never considered what we might
18 be feeling; that he could have taken my children away from
19 me and my husband and my father. I did not know this man,
20 but he was okay with attempting to do that.

21 He's terrorized our family since that day and he
22 deserves to be in jail for the rest of his life serving
23 consecutive sentences for the actions that he took that
24 day. Thank you.

25 **THE COURT:** Thank you.

1 **KELLI MONTGOMERY:** If you don't mind, I did not want
2 to put my two daughters through another day of this, so
3 they did write a very short, brief statement if you would
4 allow me to read that very quickly?

5 **THE COURT:** Yes, ma'am.

6 **KELLI MONTGOMERY:** [REDACTED] Minor 1, my daughter,
7 fifteen. You Honor, it was very scary being hit by a
8 car at my Aunt Peggy's funeral. I am glad that after
9 being hit by the car that Mr. Kester drove that I was
10 able to walk away with scratches and bruises. I am
11 lucky that the worst of my injuries was just a bone
12 bruise in my knee; however, that injury has kept me out
13 of playing tennis and other sports for over a year now.
14 I feel scared that he could get out of jail one day and
15 hurt me or my family again. Please send him to prison
16 for a very long time. [REDACTED] Minor 1.

17 And then [REDACTED] Minor 2, my twelve-year-old. Your Honor, the
18 idea of this man getting out of jail scares me. I will
19 never forget that day at my Great Aunt Peggy's funeral.
20 It is a memory that I will have forever. It was very
21 scary when I broke my arm and I was also really scared
22 when I had to have surgery. It was hard when I had to
23 have my pins taken out and I cried a lot. I wasn't able
24 to swim the rest of that summer, play tennis on my school
25 tennis team or continue with my travel soccer team. I

1 hope no other child ever has to feel scared at a funeral
2 or scared when they hear a car driving by like I do.
3 I'm glad my arm healed, but I will never forget what
4 Mr. Kester did to me and my family. Please put the man
5 away in jail for a very long time. Thank you. **Minor 2**

6 **[REDACTED]**

7 Thank you for allowing me to read that.

8 **THE COURT:** Thank you.

9 **TONYA WHITE:** Tonya White. As Kelli just mentioned,
10 that day, on July 19th, was supposed to be a day to mourn
11 our loved one, Peggy, who loved anyone she ever came in
12 contact with, but Mr. Kester ruined that day for everyone
13 when he decided to come to that funeral and just plow
14 through the field and what we feel try to just kill every
15 one of us there that he could get to.

16 I was one of the last ones hit. Me and my cousin
17 Will were hugging when we were leaving. My mother was
18 actually the first one hit. I was the last one hit, so
19 he was probably going obviously faster than sixteen when
20 he got to me. I ended up fifteen feet from where I was
21 actually standing. I remember sitting up, seeing my
22 22-year-old daughter who was there behind the car chasing
23 this car to make sure this man did not get out to hurt
24 anyone else again or to drive around. I remember looking
25 around, seeing chaos and worrying about my 74-year-old

1 mother at the time because she was hit.

2 I knew I had a broken leg. I had gashes in the back
3 of my head. My head was pouring blood. At the time I
4 didn't know what to do. I just had to sit there and wait
5 for EMS to come. I had surgery the next day. I had a
6 plate and four screws put in my knee. I went home and
7 two weeks later I was rushed back to the emergency room
8 where I had thought I was having a blood clot, but at the
9 time it turned out to be a panic attack due to the fact
10 of what Mr. Kester had put upon myself. November the 4th
11 I had to have emergency surgery because the tissue in my
12 leg had died due to the impact of the trauma of the car
13 hitting me, so at the time I was on six weeks of IV
14 antibiotics and oral antibiotics not knowing if I would
15 eventually lose my leg or not because we had no idea.

16 And then just a month and a half ago I had another
17 surgery to remove the plate and screws in my leg because
18 my body was not able to handle it. I have a permanent
19 disfiguration. My leg has permanent bruising in it, I
20 have permanent scarring there, I have limited mobility.
21 I am not able to enjoy my grandchildren that are now here,
22 to get down on the floor to play with them.

23 You know, it has caused mental, you know, things
24 with us. Like I said, a panic attack I never had before
25 that he caused on me. Seeing cars, walking through a

1 parking lot, I have to make sure they clearly go past me
2 because I don't know if they're gonna hit me like
3 Mr. Kester did. I have a daily reminder. Every day I
4 get out of my bed I have to stand there before I can walk
5 because my leg is in so much pain still to this day.

6 He -- he calls this an accident. It's not an
7 accident. It's an intentional act. He meant to come
8 there and do that that day. He could have got out if
9 wanted to speak to someone, but he chose to drive his
10 car through us. He never felt sorry or remorse for any
11 of this. I know he said he was sorry, but I feel that
12 his attorneys told him to say that. I -- I hope he never
13 gets out because he does -- as being his own attorney,
14 he does know now where I live and my family lives, so I
15 feel that, okay, he was trying to get revenge on the
16 Department of Mental Health, why is he not gonna get
17 revenge on myself or my family for putting him in jail?
18 So if he gets out, he can come -- he could do the same
19 thing to me or my family. It is not right for me to live
20 in fear on a daily basis if Mr. Kester ever gets out.

21 So I'm asking you, Your Honor, to please, please,
22 sentence him to the maximum sentence and the consecutive
23 years that he can get so he cannot get out and torture me
24 or my family ever, ever again.

25 **THE COURT:** Thank you, Ms. White.

1 **TONYA WHITE:** If you don't mind, my mother was a
2 victim. She does not want to speak. Can I just say
3 something on her behalf right quick just on her injuries?

4 **THE COURT:** Yes, ma'am.

5 **TONYA WHITE:** So my mother, she's seventy-six years
6 old now. She was a very -- she was the first one hit.
7 She saw him coming. She put her hand up to try to tell
8 him to stop, but obviously he did not stop. She suffered
9 a broken shoulder, a broken hip and a broken leg -- and a
10 broken knee. She only had one limb that was not injured.
11 She was in the hospital for almost four solid months; in
12 a hospital and a nursing home where she could not get out
13 of her bed. She had to rely on someone to take her to
14 rehab in the facility where she was at. My dad spent
15 every day at the hospital with my mother and every day
16 that I could be wheeled in there myself and my siblings,
17 we went and saw my mother. She had to -- she could not
18 lift her shoulder to -- only this much, so she has
19 permanent damage to her arm. She couldn't even lift her
20 grandchildren or play with her grandchildren where she
21 should be enjoying that -- her great grandchildren and
22 her grandchildren right now.

23 So we are asking again, Your Honor, that he be put
24 to -- that he be put in jail for the maximum sentence so
25 that we do not have to fear for our life ever, ever again.

1 **THE COURT:** Tell me your mother's name again.

2 **TONYA WHITE:** I'm sorry. Her name is Kathryn Jean
3 Holloman.

4 **THE COURT:** Thank you.

5 **TONYA WHITE:** Thank you.

6 **JENNIFER BROWDER:** Hi, Your Honor. My name is
7 Jennifer Browder. For three days I heard Mr. Kester
8 talk about what happened to his daughter, and I truly
9 felt sorry for them both. One thing I didn't hear was
10 Mr. Kester show any sympathy, empathy or concern for what
11 happened to my daughters and son when he chose to drive
12 his car directly at our family. The names on the
13 indictments show those that got injured physically in this
14 attack, but they don't show the traumatic psychological
15 injuries that we all are left with having witnessed this
16 at the funeral.

17 My youngest daughter was five years old on the day
18 of the funeral, the summer before her kindergarten year.
19 Her strongest memory of her Aunt Peggy's funeral, which
20 by the way, today is Peggy's birthday, is that her
21 Pop-Pop, Ms. Laura and Mr. Michael were all wearing black
22 socks. She knows that because as she saw them lying
23 injured and bloodied they all had on no shoes because they
24 had been knocked out of -- off of their feet when the car
25 slammed into them.

1 My middle daughter was eight years old on the day
2 of the funeral. Just three nights ago after I told her
3 where I had been on Monday she waked me up in the middle
4 of the night after having a bad dream. Momma, I'm trying
5 to think of good things, but all I can think about is that
6 man driving his car through the tent.

7 My son was ten years old on the day of the funeral.
8 He was asked last year to write an essay about his most
9 significant life event. While other children in his
10 class wrote about vacations to Disney World and siblings
11 being born, Will wrote about his Aunt Peggy's funeral
12 and how he would never forget how a man almost killed
13 him if not for his dad pushing him out of the way of
14 Mr. Kester's car. He stood in front of his class read
15 the essay and the whole class cried, as well as he.

16 My most vivid memory of that day was the screams I
17 heard endlessly from my children once I put them in my
18 car to try to shield them from the chaos and trauma they
19 were witnessing. All three of them, along with my niece,
20 could not stop screaming what is happening, why did he do
21 this to us.

22 Mr. Kester callously tried to point out to my
23 12-year-old niece, who bravely took the stand, that her
24 arm was all healed up suggesting that she is fine now.
25 I would argue that none of us are fine for this event.

1 We have traumatic memories that will last our entire
2 lifetime.

3 I urge you to consider all of the impacts of
4 Mr. Kester's actions that day, not just the injuries that
5 but for the grace of God could have killed several people
6 that I love. He has proven that he can hold a grudge and
7 act on it long after, so please kept him locked up long
8 enough to avoid him seeking any kind of revenge on my
9 family once he gets out by sentencing him to consecutive
10 years.

11 Thank you so much for your consideration.

12 **JOHN B. MONTGOMERY:** I'm John B. Montgomery.

13 **THE COURT:** Yes, sir.

14 **JOHN B. MONTGOMERY:** Thank you, Your Honor, for the
15 opportunity to be heard on the sentencing of Mr. Kester.
16 I very much appreciate it. The other members of our
17 family can speak far more effectively from firsthand
18 experience than I can about the physical damage to their
19 bodies and the subsequent financial hardship and emotional
20 trauma as a result of his attack. Their testimony speaks
21 for itself and hopefully goes a long way to demonstrate
22 how violent this attack was, so I won't add anything more
23 to what has already been and what will be very well said.

24 However, there are two things that truly keep me up
25 at night when I think about this event and hopefully

1 which Your Honor will consider in the sentencing of
2 Mr. Kester. First is the fact that only a tiny window
3 of time separates the significant damage Mr. Kester
4 actually inflicted on our family from what could have
5 been a far greater and more horrific tragedy. Had he
6 arrived at the burial service a mere five minutes earlier,
7 instead of plowing through a group of people that had
8 somewhat dispersed after the burial ceremony Mr. Kester
9 would have found forty or fifty people all seated tightly
10 packed in rows of chairs under the tent. Among that
11 group were children as young as five and elderly family
12 members and friends. They would have been completely
13 defenseless and unable to get out of the way of the car
14 streaking directly at them and being used as a deadly
15 weapon by an individual seeking revenge against innocent
16 people.

17 Five minutes, Your Honor, and I have absolutely no
18 doubt that instead of twelve counts of attempted murder,
19 Mr. Kester would have faced charges for successfully
20 killing two or three times that many, which I truly
21 believe that he intended and hoped to do on that day.

22 Five minutes, Your Honor, and instead of hearing
23 about this case in the State newspaper and on local TV,
24 it would have been front page national news and on every
25 broadcast in the country. Five minutes saved me from

1 going to twenty funerals in the past year, possibly those
2 of my own children, wife, parents, nieces, nephews and
3 extended family.

4 Secondly, and maybe even more horrifying, to be in
5 what could have -- what could have happened last July 19,
6 2017, what didn't, is what might actually happen in the
7 future if Mr. Kester doesn't spend the rest of his life
8 in prison. The individual has shown the capacity to
9 harbor a grudge for an extraordinarily long period of
10 time. Even more importantly and horrifyingly he's shown
11 a clear willingness to act on those grudges through the
12 use of deadly force in extracting his revenge against
13 completely innocent people and without any hint of
14 remorse or admission of guilt for his actions. If he
15 attacked our family once over something that happened
16 twenty-five years ago, I truly shudder to think about
17 what he's capable of doing after sitting in a prison cell
18 for a few short years obsessing over nothing but getting
19 revenge against the people who he thinks put him there
20 in his own twisted rationalization of the event or even
21 other innocent people whose only offense is to have the
22 bad luck to share the same last name or employer or even
23 profession of one of us here today.

24 Such as how this man's mind works, Mr. Kester has
25 shown that he holds grudges with no expiration date. He

1 has shown he's willing to take action to get revenge on
2 those grudges, he's shown he is willing to be violent
3 with no remorse. He has shown he is willing to attack
4 innocent, defenseless women and children and elderly
5 people.

6 I hope Your Honor will protect all of us here today
7 for the grudge he now surely holds against all of us and
8 sentence Mr. Kester to prison for the rest of his life.

9 And thank you very much for the opportunity to speak.

10 **THE COURT:** Thank you.

11 I want to remind anyone who reads something that the
12 court reporter has to transcribe everything that is being
13 stated and we typically read three or four times faster
14 than we talk and she is struggling to keep up, so keep
15 that in mind. If you read, read at a normal speaking
16 pace.

17 **THE COURT REPORTER:** Thank you.

18 **THE COURT:** Thank you.

19 Yes, ma'am.

20 **LAURA GABRELS:** Your Honor, my name is Laura
21 Gabrels, and on July 19, 2017, I was going to the funeral
22 of my dear friend with her family and suddenly I was
23 knocked out. I'm told that I was trying to talk, but I
24 made no sense in what I was saying. I kind of faded in
25 and out a time or two. I was trying to ask where my

1 husband was and what happened to him. I ended up with a
2 concussion, my brain -- my brain was bleeding inside my
3 skull, and there was several days when I was in critical
4 care being observed to make sure that this did not swell
5 up and worsen.

6 I woke up one day after several days realizing that
7 my brain was just blank. It was terrifying because I
8 didn't know where I was or what had happened. I was by
9 myself at that point and I was also hurting all over.
10 My nose was broken. My hands still hurt with neuropathy
11 from my being pushed to the ground on probably a
12 gravestone.

13 But before this happened I had a career. I was
14 working. I worked for forty years helping people,
15 people with mental health problems, I worked with people
16 in hospice for several years, and most recently at the
17 time this happened I was helping children who were
18 autistic. Now I have -- I've lost that job. I have not
19 been able to get another job. Both my hands continue to
20 hurt with the neuropathy. I'm taking medication and have
21 since the attack to help my hands and even with the
22 medication, which helps some, they still hurt all the
23 time.

24 I do believe that Mr. Kester attacked us with the
25 intent to kill as many people as he could. There was

1 just -- not just the twelve of us injured, but all of
2 us were injured in some way emotionally, mentally,
3 physically. We were all injured. My biggest concern is
4 that especially these children, and there were at least
5 five of them minimum, that he will be on the street at
6 some point and we all will be looking over our shoulder.
7 He has shown no regret for what he did. He's given no
8 indication that he wouldn't do the very same thing if
9 he were on the street free. I don't want particularly
10 these young children to be living their lives looking
11 over their shoulder for him until his death.

12 I ask you -- there were twelve different charges.
13 I ask you to give him twelve different sentences, one
14 after the other, so that he will not be free to come
15 after us. He knows our names and our addresses and that
16 he will not be able to hurt any of us anymore.

17 Thank you, Your Honor.

18 **THE COURT:** Thank you.

19 **JOHN E. MONTGOMERY:** Thank you, Your Honor, for the
20 opportunity to be heard.

21 **THE COURT:** Yes, sir.

22 **JOHN E. MONTGOMERY:** My name is John Montgomery.
23 I was one of the several people that was injured by
24 Mr. Kester at Greenlawn Cemetery that day when he used
25 his car as a weapon to run over and through many, many

1 people.

2 I want to focus -- my personal view is I have a lot
3 of anger, a tremendous amount of anger about this. I'm
4 not gonna voice that today. That's for another time and
5 another place. I want to focus on the mental impact that
6 Mr. Kester's action had on me. My physical injuries
7 were over and done with in two weeks. I was fine after
8 that, so I don't -- I'm fine with that, but Mr. Kester
9 imposed a kind of a sentence on me, and I'm sure other
10 people as well, when he ran over us and through us. He
11 destroyed partially, completely took away, stole, peace
12 of mind and sense of security, and that's not -- those
13 things are not easily replaced, especially where kids are
14 concerned.

15 I wake up in the middle of the night -- I've awoken
16 in the middle of the night countless times from violent
17 dreams of a car bearing down on me and I know I cannot
18 escape, I know I'm gonna be hit. Then I have nausea.
19 Sometimes I can go back to sleep, some I'm awake the
20 whole rest of the night. Like other people have said,
21 I'm very insecure where there are lots of cars around,
22 any kind of loud noises whether around the university or
23 Five Points or the grocery store. It really doesn't
24 make any difference. So that's a kind of post-traumatic
25 stress. I'm still serving that sentence that Mr. Kester

1 imposed on me fifteen months later. It may go on
2 indefinitely, it may go on for the rest of my life, so it
3 will be a life sentence. Obviously I'm using an analogies
4 here.

5 There are a few things I want to mention very
6 quickly. The injuries were horrific; brain bleeds,
7 blood on the car's windshield, smashed faces, broken
8 bones, car tracks on people's limbs, bodies thrown
9 around like tenpins at the bowling alley. I can't even
10 -- really have yet to come up with a word or two to sum
11 all that up. Horrific, monstrous, evil. I don't know.
12 I'm not there yet.

13 Secondly, there were kids involved. My two precious
14 granddaughters were injured, other children were
15 traumatized. And, finally, this happened at a cemetery,
16 at a funeral. Cemeteries are hallowed ground, they're
17 sanctuaries, they're places for grieving and for
18 consolation, and at the end of the service for Peggy as
19 is typical in many funeral services whoever was in charge
20 said may she rest in peace. There was no peace that day
21 in Greenlawn Cemetery. Mr. Kester destroyed that then
22 and he's continuing to do it, so I argue very much for an
23 extended sentence.

24 Thank you, Your Honor.

25 **THE COURT:** Yes, sir. Thank you.

1 **KITTIE HENDERSON:** My name is Kittie Henderson,
2 Your Honor.

3 **THE COURT:** Yes, ma'am.

4 **KITTIE HENDERSON:** Thank you for listening to me
5 today.

6 I would like to say that -- I'm not gonna go through
7 everything everybody else has said because I think we've
8 heard it over and over again. And people are not gonna
9 believe it, but I'm gonna be short and sweet this time
10 because usually I can talk quite a bit. But I don't feel
11 like it today. My main problem is I didn't know this man.
12 None of us knew this man. We didn't know anything about
13 his daughter. He didn't know anything about us and we
14 were standing there grieving for a loved one or a friend
15 in my case and he just plowed through us with not a care
16 in the world about what happened to us.

17 My grandchildren -- I have two children, their
18 spouses and six grandchildren, and my children and their
19 spouses and my grandchildren they've always looked up to
20 me as such a strong person, which I am, but now they still
21 love me just the same and they still hug me and kiss me,
22 but I see the pity, the sympathy, in their eyes that I
23 don't want to see at sixty-eight years old. It is just
24 very hard on me and I'm not gonna go over all my injuries
25 because there's very little on my body that doesn't hurt

1 and I've been to so many doctors and so many specialists
2 and I still have a ton. I had to not go to any this
3 week because of the trial, but I still have a ton more
4 surgeries and stuff to go through.

5 Please, please do not give him a sentence
6 concurrently. He -- he did too much damage to get out
7 that quickly, Your Honor.

8 Thank you for your time.

9 **THE COURT:** All right. Thank you.

10 **KAYLIN WHITE:** My name Kaylin White and I thank you
11 for allowing me to speak today.

12 I was not physically hurt in this accident, but
13 mentally and emotionally part of me was taken. I won't
14 let this man define my life, but the accident has altered
15 me in many ways. When I go to lay down on my bed at
16 nighttime, I have nightmares that consume my brain and I
17 have different scenarios of how this did and didn't turn
18 out. I saw this man coming and as soon as I saw him
19 coming, I took out after the car. When the car came to
20 a stop, I looked directly in the rearview mirror and he
21 looked directly back at me and he had no remorse or care
22 for what he just did. Instead, he tried to put his car
23 back in reverse and drive multiple times either to leave
24 or finish what he came to do. I constantly look over my
25 shoulder in fear when I go out in public and that's not

1 how I want to live my life at twenty-four years old.

2 Currently -- at the time of this accident I was in
3 nursing school and working full-time. When my mom got
4 out of the hospital, I was laying in her living room on a
5 futon mattress waking her up every four hours to give her
6 pain medication and make sure she got to go to the
7 bathroom because she couldn't walk, and that happened for
8 several months. And due to the amount of stress and the
9 amount of time I spent taking care of her, I had to get
10 out of my semester at nursing school, so I was not able
11 to finish. We have kids in the family that aren't from
12 the Columbia area that have to travel from Charleston and
13 they have the fear of getting in their car to come see
14 their family because they view Columbia as a very bad
15 place.

16 Lastly what I want to say is that this man came to
17 the burial site to do one thing and he didn't accomplish
18 what he came to do, so -- and all of us here fear that
19 if he gets out either he's gonna come find one of us or
20 anybody sitting in this courtroom today and maybe change
21 their lives, and all I'm doing is asking for this man to
22 face the rest of his life in prison and spend as much
23 time as you're allowed to give him.

24 Thank you.

25 **THE COURT:** Thank you.

1 **WILLARD SOHN:** Thank you, Judge, for hearing me.

2 I'm Will Sohn. I was the -- I am the brother of
3 Peggy Livingston whose funeral we were at. I have one
4 question if I can ask this. I don't know. Mr. Kester
5 the entire time has basically sat like that and not faced
6 us. Could we ask that he faces us?

7 **THE COURT:** Mr. Kester?

8 **MR. KESTER:** What?

9 **WILLARD SOHN:** Even when he -- when he said he was
10 sorry, he never looked at us. The whole trial. And
11 we're over here talking about our lives and what he's
12 done to us and that man has sat there just like today
13 with his neck down and not looked at us at all.

14 **MR. KESTER:** Your Honor, I thought maybe they didn't
15 want me to glance back at them. That's why, you know,
16 I -- I hadn't done it.

17 **WILLARD SOHN:** And, Mister, I asked you the first
18 time I saw you to turn around and look at me and -- I'm
19 sorry, Judge.

20 **MR. KESTER:** Do you want me to face them then?

21 **THE COURT:** It's entirely up to you.

22 **MR. KESTER:** No, I don't -- I don't mind doing that.

23 **WILLARD SOHN:** Buddy, I saw you the first time when
24 you were trying to get a reduction in bond and I said --
25 I asked you, I said do you know me and you said no, and I

1 asked you do you know any of my family and you said no,
2 and I said were you out there and you said yes, so there
3 we are. And this whole court -- this whole -- even
4 today you've just done what you've done, you sat down
5 there and looked at us like you don't give a damn --
6 excuse me -- darn about us, and that's okay.

7 July 16th my sister died. She had been dying for a
8 while. She had colon cancer. She'd had it before, she
9 had suffered a great deal, and she was in hospice and she
10 was in a nursing facility at that time, a skilled nursing
11 facility, and I don't remember how many days but she --
12 she finally died and so then I had the task along with
13 her daughter Donna to plan that funeral, to write that
14 obituary, and I've felt guilty for what's in that obituary
15 because it says where she worked and how long, and this
16 man decided to come out there and do whatever he decided
17 he wanted to do.

18 Now unlike others, I haven't spent a lot of time in
19 this past year thinking about him. I've tried to keep
20 him out of my life as much as I can until this trial came
21 up. I just said it's too much because my everyday living
22 is taking a step and every step I take -- this is not
23 fake -- every step I take is painful. Now I'm gonna go
24 back to this. So I tried to keep -- not even think about
25 him.

1 When the attack occurred, I heard people crying and
2 with my adrenalin could not feel all that happened to me,
3 but could hear many people crying around me, and that
4 scared me so much. And then I realized I was crying and
5 then I felt hurt and tremendous pain. I looked down at
6 my leg and saw that my leg was bent like this, my right
7 leg. It was a tibia and fibula break, which I now have
8 a rod in that will be in there the rest of my life. It
9 restricts my walking and my running, anything like that.
10 I cannot do that ever again. I heard my grand kids
11 crying. I also realized there was a break on my left
12 leg, later diagnosed as break at the top of the fibula,
13 the fibula itself, and broke the MCL. I felt pain in my
14 wrist. I couldn't get up. It was later diagnosed as a
15 broken wrist.

16 Then I began to feel extreme pain. One of my
17 daughters, Angela, who's not here today, came over and
18 put my head on her knee, and she was also hurt. Then I
19 remember having my clothes torn off of me and that's just
20 -- you know, I don't know how to describe that. You know,
21 they come over with a big thing of scissors, they're
22 trying to help you and you're watching your pants get
23 ripped off of you and my shirt cut off. I just didn't
24 know what was going on.

25 Then I was placed on a gurney in an ambulance. In

1 the ambulance, I looked over and saw my friend Laura who
2 was talking incoherently and she had a huge gash on her
3 face and her head was bleeding. It was scary to watch
4 that. And I've seen a lot of things in life, but that
5 scared the heck out of me. At that point -- at this
6 point I didn't know the extent of the horror and the
7 pain and suffering of my family and friends who were
8 gathered there for my sister and her passing. From there
9 I was in the hospital for a couple of weeks in a fog
10 because of the drugs they give you, operated on, and then
11 I was moved to an assisted living facility in Wildwood
12 Downs for almost eight weeks, two months of my life.

13 The first week I was bedridden and then I had to
14 learn how to slide from the bed to a chair to able to get
15 to the bathroom or to take a shower or to do anything.
16 The pain was extreme and I was on multiple drugs that I
17 did not want to be on, medication you can easily become
18 addicted to. My everyday life was a struggle. I went
19 to occupational therapy and physical therapy daily.
20 Helpful, but painful. I can't even describe what that
21 feels like to make a step when you have not made a step
22 in a long time.

23 That was what I knew for a couple of months.
24 Medicare would only pay for so much time, so I was
25 prematurely released. Then my family really took over,

1 picked me up, brought me home, brought me food, picked
2 up medication, cleaned my house, took care of my bills,
3 rearranged furniture so I could get around in a
4 wheelchair in my home, took me to countless follow-up
5 appointments with several doctors, and now I've got four
6 or five doctors I didn't have before. My family and
7 friends have got me through this incredible and difficult
8 time where I was unable to take care of myself or my
9 home.

10 I see Mr. Kester's back to doing the same stuff.
11 He's sitting down there writing notes instead of looking
12 at me.

13 The next step was home health. I had occupational
14 and physical therapy at home for several months. I then
15 had friends and family drive me to outpatient physical
16 and occupational therapy, which continues to this day,
17 but I'm now able to drive that far, which is about a mile
18 and a half.

19 Currently I have moments where I begin to cry for
20 what's happened to me, but more so for what's happened
21 to all of my family. My seven grandchildren were there,
22 fortunately, only two of them were hurt, and friends that
23 I love. My cousin Jean, who's seventy-six, had multiple
24 hip and shoulder pain and she's still in therapy. Jean's
25 daughter Tonya had multiple breaks in legs. I mean, if

1 you could see, you know, what it's like in my leg, you
2 could see it, and see her disfiguration, you could
3 understand that's what that car did. It torpedoed us.
4 My good friend Michael, who broke both of his legs, had
5 them broken, has followed a similar path of recovery like
6 me learning to walk again at sixty-eight and I'm still
7 learning to do that. My granddaughter **Minor 2** who at
8 eleven years old had to have surgery and pins placed in
9 her arm where it was broken. My other granddaughter
10 **Minor 1** who was hit directly by the car and flew off the
11 hood along with my son-in-law John, it is a miracle that
12 they only had bruises and scratches. My daughters Angela
13 and Jennifer, whose children witnessed this horrific
14 scene, have emotional and traumatic issues to deal with
15 this senseless terrorist act.

16 And the first time I saw that man I said you are a
17 terrorist and you are evil and I still feel that today
18 and nothing in here has shown me any differently. My
19 grandson **████**, who lives in Charleston, fears returning to
20 this city because he thinks it's an evil city because of
21 what he had saw, and many others who still have a visual
22 of the awful impact that they carry with them daily.

23 Financially, I've been retired for nine years living
24 on social security and a small pension. Medicare's paid
25 part of the cost of this incident and I pay the rest.

1 Every time any of the events I've mentioned occur I have
2 to pay a co-pay out of my pocket and continue to do so.
3 My therapy today is \$180 a week on me. I don't have that
4 kind of money to continue with the care.

5 These should be -- some of the things that brought
6 me such joy in life I cannot -- I can no longer do and
7 most likely will never be able to do again. Just
8 something as simple as going out and playing ball,
9 hugging, dancing. I love to shag, I used to do that. I
10 cannot do that. I will fall over and fall down. I have
11 a hard time just getting up every morning and getting
12 into a car. The pain I feel while riding in a car is
13 just -- the neuropathy is always there in both legs in
14 my everyday life. I have added medicine that does not
15 help.

16 Currently I'm not -- I'm no longer in a wheelchair,
17 I'm no longer in that walker. This, this, is what you've
18 left me with, this cane. Every day everywhere I go I
19 have this cane. I get out of bed, I get the cane. I'm
20 cautious very much going up and down steps. All I ask
21 God is why, what did I do or my family do to deserves
22 this. Many people say that I'm a good man, a friend, a
23 father. I don't understand why at this point I can't
24 throw a simple football with my grandson or play
25 basketball or softball with my granddaughters. I just

1 don't understand why did this happen.

2 I have trouble feeling empathy for James Kester,
3 the perpetrator. Hopefully he will never have another
4 opportunity to do this to another family member and, of
5 course, I'm like the rest saying we certainly hope,
6 Your Honor, that you will give consecutive sentences to
7 this man and maybe God one day will give me the grace to
8 forgive you. Right now no way. And your sorry yesterday
9 was BS.

10 Thank you, Your Honor.

11 **THE COURT:** Thank you.

12 **MICHAEL ROONEY:** My name's Michael Rooney.

13 Mr. Kester, I'd like for you to face me if you are
14 so inclined and I'll be quick relatively speaking.

15 Your daughter is not proud of you. You have
16 tarnished and sullied her memory, her legacy, her
17 reputation just as clearly as if you spit on her
18 gravestone out there at Greenlawn. She doesn't want
19 you to go around trying to kill people. And nobody
20 thinks this was an accident. The jury might have gotten
21 hung up on some technicalities and didn't want to go
22 extreme on you. Some people do. Her memory is not
23 something to be dragged out at your convenience when you
24 want to stoke your anger and provide an excuse for your
25 own murderous impulses. I hope to God some day you can

1 realize that. Her memory should be alive. It's a sacred
2 thing that should be joyous for you to think of your
3 daughter, and it can be. I believe in miracles. This
4 was a miracle. After you went to all the trouble to find
5 the obituary, read the obituary, drive to the funeral,
6 drive through us, drive over us, drive under us, there's
7 miracles. And this is God's way of telling you this
8 ain't the way for you to fix your daughter's memory. I
9 pray the judge sentences you to consecutive terms, but
10 if you happen to get out while you and I are both still
11 alive, I hope our paths cross again and that this time
12 the element of surprise is on my side. May you rot in
13 your cell.

14 Thank you, Your Honor.

15 **THE COURT:** Thank you.

16 **MICHAEL ROONEY:** Restorative justice is a term that
17 I've heard in DJJ for a long time. I don't know if it's
18 made its way up to the adult level yet or not, but this
19 is a great place for it.

20 **THE COURT:** Yes, sir. Anything further from the
21 State?

22 **MR. EATON:** Your Honor, you know, we -- from these
23 victims we've just heard expressions of trauma, anger,
24 pain, fear, and not just the fear that they experienced
25 that day, but I think a very compelling case for the fear

1 that they would feel if Mr. Kester were to get out.

2 As I said, I'm asking for the maximum, consecutive
3 time. I stand with these victims and echo what they've
4 said and that's the sentence I ask for, Your Honor.

5 **THE COURT:** All right. Mr. Kester.

6 **MR. KESTER:** What, do I just speak from here?

7 **THE COURT:** Yes, sir.

8 **MR. KESTER:** This is immaterial, but they didn't
9 issue razors yesterday and I couldn't shave. I asked
10 them for one and they wouldn't even bring me one.

11 **THE COURT:** Mr. Kester, if you would come -- come
12 to the mic in front of you.

13 **MR. KESTER:** Okay. I told them I was sorry and I
14 didn't mean to, but it looks like they have a lot of
15 vengeance for me. They say I had vengeance, but they
16 have it -- they have vengeance, too.

17 You know, there were twelve counts. I don't even
18 know if he knew how many counts there was because --
19 and the jury did not find me guilty of attempted murder,
20 they didn't find me guilty of aggravated assault and
21 battery assault. Assault and battery first degree, that's
22 what they found me guilty of, and eight counts. I think,
23 what, three counts I was acquitted and one count it was
24 third degree.

25 So the jury didn't think I tried to kill these

1 people. I've been under immense stress from my daughter
2 just dying within a year and all I went through with her,
3 with what they did to her. You know, I've been a good
4 citizen for sixty-five years of my life with barely a
5 record. One small misdemeanor and that's all. So, you
6 know, I -- I think I deserve, you know, a chance here.
7 You know, I've been in there fifteen months so far. I
8 believe on these things -- one, you aren't supposed to
9 sentence for separate things if it's one thing. Aren't
10 they all sentenced like it's one so -- and not separate?
11 Isn't that what the law says?

12 **THE COURT:** No.

13 **MR. KESTER:** It doesn't?

14 **THE COURT:** No.

15 **MR. KESTER:** You know, they wanted -- they had me
16 stacked up with 360 years, twelve times thirty, for
17 attempted murder. Now, you know, I know each carries
18 ten years each, but, you know, you look at cases in the
19 area. A young lady hit a gentleman, a USC student, by
20 Sonic on South Main and she left the scene. She was drunk
21 and drugged and he had seventeen surgeries. She got zero
22 time. So, you know, we need to compare some of the other
23 cases in the area.

24 I told you I lost my left eye due to the stress of
25 what they did to my daughter. What they did to her was

1 unfathomable. First they ruin her life and then they
2 accuse me of sexual abuse. I mean, how much more can
3 somebody be -- be done to somebody? Then I took care of
4 her twenty years and she was -- she wasn't even a human
5 being. She was like a three-year-old.

6 And I -- you know, I've always got along good with
7 my neighbors. I should have brought some up, but, you
8 know, I had -- that's why I'm pro se because they -- they
9 could have done that or they could have even checked my
10 cruise control because it does jump in there. And I'm
11 just wondering Mr. Montgomery being an ex-dean, this
12 being -- USC is about the only law school. I know
13 they've got a fledgling school in Charleston that really
14 has had a lot of ups and downs, so I'm hoping, Judge,
15 that he -- that doesn't influence you because I'm sure he
16 knows every judge in the judiciary.

17 **THE COURT:** I attended law school in Ohio.

18 **MR. KESTER:** Yes, sir. Okay. Well, I'm sure you've
19 known him since you've been here though.

20 I had eight counts of first -- of assault and
21 battery first degree. Well, how many counts did they
22 end up with in all? Because they said twelve. Was it
23 twelve in all or was there -- I'd appreciate, Your Honor,
24 if you'd check that.

25 **THE COURT:** You were convicted of eight counts of

1 assault and battery first degree and one count of assault
2 and battery third degree.

3 **MR. KESTER:** Well, how many other counts were there
4 that --

5 **THE COURT:** There were three additional counts.

6 **MR. KESTER:** Because at first the jury said they
7 only saw nine counts. Maybe -- maybe they found the
8 other three because I don't -- I think they charged me
9 -- stacked it so much they didn't even know how many
10 counts there was, the prosecution.

11 **THE COURT:** The jury said they had photographs of
12 eight of the victims or something.

13 **MR. KESTER:** Like I said, compare the -- the other
14 cases in the area that might have a little similarity
15 to mine and the young lady got no time for seventeen
16 surgeries of a young man.

17 Now I'm sorry. I know these people don't believe
18 me, so, you know, if I say it, they'll think it's like
19 crocodile tears or something, so -- by me, so. I mean,
20 you know, I'm -- I'm sorry. I went out there stressed.
21 The jury knew it, they -- they know that I blacked out or
22 something like when I lost my left eye. My daughter's
23 buried right near that site and I went through there and
24 like it -- it showed sixteen miles an hour. Like I said,
25 at Fort Jackson he was going forty or fifty and he killed

1 two and put four in critical.

2 I don't believe I need any more time. I mean, you
3 know, I'm not gonna harm anybody out there. I've never
4 harmed anybody in my life. I mean, that was like a -- I
5 just blacked out and went through there. I mean, I'm --
6 I'm sorry it happened. I'm sorry to the people who got
7 hurt.

8 I mean, I read all the time in the paper that
9 somebody's got five or six counts of attempted murder
10 and they end up getting a couple of years and I was
11 found innocent of attempted murder, I mean, or
12 aggravated assault and battery, so I don't -- I don't
13 how -- compared to the other cases, I don't see how I
14 could be sentenced to too much.

15 And, you know, I had to come to trial. I know that
16 counts against you sometimes, Judge. They say you're
17 using the court and all that, but you know I didn't get
18 any -- I didn't get any plea deal, no legitimate plea
19 deal, so I -- I mean, I had to come to trial, so. They
20 -- they didn't offer me any plea deal, so I -- you know,
21 usually you do and they say well, that's better than,
22 you know, using the Court and all that for, you know,
23 some -- three or four days, so, that's -- that's a fact
24 there.

25 Now I'm a -- I'm a peaceful individual. I never

1 got in a feud with a neighbor and in the fifteen months
2 I've been up there, I haven't got in no feuds and I just
3 blacked out and this happened, I mean, and I'm -- I'm
4 sorry to the people who got hurt.

5 Okay. Thank you.

6 **THE COURT:** All right. A response, Mr. Eaton?

7 **MR. EATON:** Well, Your Honor, it would have been
8 legally appropriate to charge him with more counts than
9 he was charged with for all the people that he didn't
10 even hit since it was an attempt, but in any event,
11 Your Honor, every case is unique as Your Honor knows.
12 I'm not asking for time based on what he was charged
13 with, I'm asking for time based on what he did, what
14 the jury found him guilty of, and that -- those crimes'
15 impact on these victims, Your Honor. So I think the
16 maximum, consecutive, is appropriate given this case,
17 the case before the Court.

18 **THE COURT:** Mr. Kester, I am trying to -- as I
19 listened you and listened to everyone else, I'm trying
20 to distinguish between your use of an automobile to
21 attack people in -- a congregation of people. The
22 difference between yours and any other terrorist attack,
23 between yours and the car that rammed into a crowd over
24 the years in London and Paris and New York and San Diego
25 and other places, and as early as 2010 the Department of

1 Homeland Security issued an alert to law enforcement that
2 attacks by vehicles being used as a deadly weapon was on
3 the -- on the rise and that these targeted locations that
4 they should be on the lookout for where a large number of
5 people who congregate includes sporting events and, of
6 course, now at the Federal courthouse and other
7 courthouses they have pillars erected so vehicles
8 cannot crash into buildings. The same thing at many
9 other sporting venues.

10 But sporting events, entertainment venues, shopping
11 centers, you know, but they didn't put an alert out
12 concerning funerals and so your case is unique in the
13 sense that out of all these different terroristic attacks
14 with vehicles being used as a deadly weapon you chose to
15 do it at a funeral. And in most of these other instances
16 the person driving the vehicle never makes it out.
17 They're usually shot and killed or sort of on a suicide
18 mission.

19 But you opted to use your vehicle to crash into a
20 group of mourners at a funeral and I think for -- of all
21 the other terrorists who have done these things, they all
22 in their minds had legitimate reasons in their minds just
23 as the folks who hijacked the plane and crashed it into
24 the field in Pennsylvania and the Pentagon that was
25 headed toward the Whitehouse. In their mind they had

1 their legitimate reasons. They were on a mission of some
2 sort. Even Timothy McVeigh with his load of dynamite
3 that crashed into the Federal building in Oklahoma and
4 killed all those people, and I'm trying, in my mind, to
5 distinguish your conduct from any of them.

6 Do it for me. How about it? What's the
7 distinction?

8 **MR. KESTER:** I don't think there is a -- much of a
9 similarity because that's mash -- mass casualties with
10 Timothy McVeigh and even the fella --

11 **THE COURT:** Well, he had dynamite in his truck.
12 Of course, it was mash -- mass casualties if he was
13 carrying dynamite, but people at the restaurants in
14 Paris and in London and places, the end result were
15 mangled bodies, broken bones, terror, trauma, nightmares,
16 mental suffering.

17 **MR. KESTER:** I have PTSD. That's what I've had over
18 the last twenty years.

19 **THE COURT:** Well, perhaps most of those people
20 that's what they had that led them to do it, so I'm
21 trying to understand what distinguishes your conduct
22 from any of the rest of them.

23 **MR. KESTER:** Well, I think since I was going sixteen
24 miles an hour. I mean, it hurt some people, but sixteen
25 miles an hour is not that fast.

1 **THE COURT:** And you base that on what?

2 **MR. KESTER:** The tests they did and it said minus
3 one second, which could have been one-tenth of a second.
4 That's how fast the car was going. It started at a nine
5 and then like twelve and then sixteen miles an hour. I
6 wasn't --

7 **THE COURT:** At the time it struck the very first
8 thing, which could have been a headstone or a monument
9 or --

10 **MR. KESTER:** I wasn't even thinking about it. I
11 didn't intend on doing it. When I went up there, there
12 was a road there. Like I said, I could have been going
13 fifty or sixty and then that would have really -- that
14 would have done a lot of different damage. A few --
15 some people got hurt now and I'm -- I'm sorry about that.

16 **THE COURT:** Well, you were facing a number of
17 charges. Attempted murder, the jury decided that the
18 State could not prove that you had the specific intent
19 to kill. Of course, it's very difficult for them to
20 know what was inside your mind, but they found you guilty
21 of engaging in acts that's likely to produce death or
22 great bodily injury regardless of whether or not you
23 accomplished your goals and for each one of those
24 offenses you -- the maximum possible sentence is up to
25 ten years.

1 You know, I've certainly come into this sentencing
2 hearing with an open mind to hear what everyone has to
3 say and hear what you have to say and --

4 **MR. KESTER:** Well, this was an aberration for me.
5 I mean, you know, like I said, I've led a clean life
6 sixty-five years and something happened. I blacked out
7 and went through there and a few people got hurt.

8 **THE COURT:** Well, you think of the guy over in
9 Dallas who -- a military person, just got out of the
10 military, a spotless record, and he found a great
11 location and started picking off police officers,
12 shooting them, and they ended up having to throw an
13 explosive in there to blow him up to end his reign of
14 terror. And that's what you engaged in, a reign of
15 terror on that day, and I am strongly influenced by the
16 victims. I feel sorry for you at age sixty-six --

17 **MR. KESTER:** Yeah.

18 **THE COURT:** -- for you to decide that you were
19 going to do what you did. That's unfortunate for you.
20 If you needed some type of therapy, mental health
21 yourself or medication or whatever you might have needed,
22 if you needed it, it would have been best for you to have
23 taken that course rather than decide to plow into this
24 group of people.

25 **MR. KESTER:** I asked for help all those years to

1 help me get my daughter out and nobody cared then. The
2 same people wouldn't have cared, but now the shoe is on
3 the other foot and, you know, it's --

4 **THE COURT:** Yeah, but those people didn't treat
5 your daughter. Those people didn't know your daughter.
6 Those people had nothing to do with --

7 **MR. KESTER:** I mean, but that got me stressful
8 over the years. But I don't think I deserve much time.
9 You'll probably -- you'll probably give it to me, but,
10 you know --

11 **THE COURT:** Well, you created this bed, you've got
12 to sleep in it. You engaged in the acts and you must
13 suffer the consequences just as they are continuously
14 suffering the consequences of your acts. They're
15 suffering the consequences of your acts, so why not you?

16 **MR. KESTER:** I think the people who did this to my
17 daughter should be brought to justice. They poisoned
18 her, they made malicious lies up about me. I looked in
19 the state code of laws and they say those are against
20 the law when you're working in an institution. They did
21 all of that and I don't think the time -- or the statute
22 of limitations would be up on that either.

23 **THE COURT:** We're not here on that case today.

24 **MR. KESTER:** Yes, sir.

25 **THE COURT:** We're here on these cases today.

1 **MR. KESTER:** Yes, sir.

2 **THE COURT:** And sentences are as follows. On
3 Indictment Number 2017-GS-40-5220 for assault and battery
4 first degree against Laura Gabrels, the sentence is
5 ten years and you will receive credit for the time that
6 you've served.

7 As to Indictment 2017-GS-40-5223, as to the assault
8 on Michael Rooney, the sentence is ten years.

9 As to Indictment 2017-5224, as to Kathryn Jean
10 Holloman, the sentence is ten years.

11 As to Indictment Number 2017-5226, the assault of
12 Tonya White, the sentence is ten years.

13 As to Indictment 5227, the victim being Willard Sohn,
14 the sentence is ten years.

15 As to Indictment Number 5229, the victim being Kittie
16 Henderson, the sentence is ten years.

17 As to Indictment Number 5231, the victim being John
18 Montgomery, Junior, the sentence is ten years.

19 As to Indictment Number 5232, the victim being **Minor 2**
20 **[REDACTED]**, the sentence is ten years.

21 As to Indictment Number 5230 as to John Montgomery,
22 the sentence is thirty days, assault and battery third
23 degree.

24 You're entitled to credit for time served on each
25 sentence. Each sentence is to be served consecutively.

1 **MR. KESTER:** Okay. I want to appeal the sentence.

2 I want to make note of that.

3 **THE COURT:** That's done in the Court of Appeals.

4 **MR. EATON:** Thank you, Your Honor.

5 **THE COURT:** Good luck to you, sir.

6 And we'll be in recess.

7 (Whereupon, the proceedings were concluded for
8 October 12, 2018, and the trial, at 1:53 PM.)

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C E R T I F I C A T E

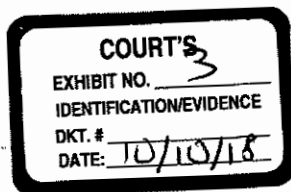
I, Stacy S. Johnson, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned case in Circuit Court on October 8th-10th and October 12, 2018.

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

December 22, 2018

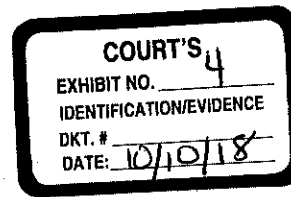
/s/ Stacy S. Johnson
STACY S. JOHNSON
CIRCUIT COURT REPORTER



10/10/18

We the jurors are in
need of a way to assign
the pictures to the names
of each of the victims.

We also need check.
10/10/18



10.10.18

We the jury have not come to
a unanimous verdict concerning
all 12 counts. At this point, we
represent a hung jury.

CBOROK

IMPORTANT NOTICE: Robert Bosch LLC and the manufacturers whose vehicles are accessible using the CDR System urge end users to use the latest production release of the Crash Data Retrieval system software when viewing, printing or exporting any retrieved data from within the CDR program. Using the latest version of the CDR software is the best way to ensure that retrieved data has been translated using the most current information provided by the manufacturers of the vehicles supported by this product.

CDR File Information

User Entered VIN	1G6KE54YX3U182524
User	ROBERT UHALL
Case Number	170020783
EDR Data Imaging Date	07/20/2017
Crash Date	07/19/2017
Filename	1G6KE54YX3U182524_ACM.CDRX
Saved on	Thursday, July 20 2017 at 09:58:56
Collected with CDR version	Crash Data Retrieval Tool 16.6
Reported with CDR version	Crash Data Retrieval Tool 16.6
EDR Device Type	Airbag Control Module
Event(s) recovered	Non-Deployment

Comments

No comments entered.

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Jeannette W. McRae
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

Data Limitations

Recorded Crash Events:

There are two types of Recorded Crash Events. The first is the Non-Deployment Event. A Non-Deployment Event records data but does not deploy the air bag(s). It contains Pre-Crash and Crash data. The SDM can store up to one Non-Deployment Event. This event can be overwritten by an event that has a greater SDM recorded vehicle longitudinal velocity change. This event will be cleared by the SDM, after approximately 250 ignition cycles. This event can be overwritten by a second Deployment Event, referred to as a Deployment Level Event, if the Non-Deployment Event is not locked. The data in the Non-Deployment Event file will be locked, if the Non-Deployment Event occurred within five seconds before a Deployment Event. A locked Non Deployment Event cannot be overwritten or cleared by the SDM.

The second type of SDM recorded crash event is the Deployment Event. It also contains Pre-Crash and Crash data. The SDM can store up to two different Deployment Events, if they occur within five seconds of one another. If multiple Non-Deployment Events occur within five seconds prior to a Deployment Event, then the most severe Non-Deployment Event will be recorded and locked. If multiple Non-Deployment Events precede a Deployment Event, and occur within five seconds of each other (but not necessarily all within five seconds of the Deployment Event), then the most severe of the Non-Deployment Events (which may have occurred more than five seconds prior to the Deployment Event) will be recorded and locked. If a Deployment Level Event occurs within five seconds after the Deployment Event, the Deployment Level Event will overwrite any non-locked Non-Deployment Event. If multiple Non-Deployment Events occur within five seconds prior to a Deployment Event, and one or more of those events was a Pretensioner Deployment Event, then the most recent Pretensioner Deployment Event will be recorded and locked. Deployment Events cannot be overwritten or cleared by the SDM. Once the SDM has deployed an air bag, the SDM must be replaced.

Data:

- SDM Recorded Vehicle Longitudinal Velocity Change reflects the change in longitudinal velocity that the sensing system experienced during the recorded portion of the event. SDM Recorded Vehicle Longitudinal Velocity Change is the change in velocity during the recording time and is not the speed the vehicle was traveling before the event, and is also not the Barrier Equivalent Velocity. For Deployment Events, the SDM will record 100 milliseconds of data after Deployment criteria is met and up to 50 milliseconds before Deployment criteria is met. For Non-Deployment Events, the SDM can record up to the first 150 milliseconds of data after algorithm enable. Velocity Change data is displayed in SAE sign convention.
- Event Recording Complete will indicate if data from the recorded event has been fully written to the SDM memory or if it has been interrupted and not fully written.
- SDM Recorded Vehicle Speed accuracy can be affected by various factors, including but not limited to the following:
 - Significant changes in the tire's rolling radius
 - Final drive axle ratio changes
 - Wheel lockup and wheel slip
- Brake Switch Circuit Status indicates the open/closed state of the brake switch circuit.
- Pre-Crash data is recorded asynchronously. The 1.0 second Pre-crash data value (most recent recorded data point) is the data point last sampled before AE. That is to say, the last data point may have been captured just before AE but no more than 1.0 second before AE. All subsequent Pre-crash data values are referenced from this data point.
- Pre-Crash Electronic Data Validity Check Status indicates "Data Invalid" if:
 - The SDM receives a message with an "invalid" flag from the module sending the pre-crash data

- No data is received from the module sending the pre-crash data
- No module present to send the pre-crash data
- Engine Speed is reported at two times the actual value in the following vehicles, if the vehicle is equipped with a 6.6L Duramax diesel engine (RPO LB7, LBZ, LLY, or LMM):
 - 2001-2006 Chevrolet Silverado
 - 2007 Chevrolet Silverado Classic
 - 2001-2006 GMC Sierra
 - 2007 GMC Sierra Classic
 - 2006-2007 Chevrolet Express
 - 2006-2007 GMC Savana
 - 2003-2009 Chevrolet Kodiak
 - 2003-2009 GMC Topkick
- Driver's and Passenger's Belt Switch Circuit Status indicates the status of the seat belt switch circuit. If the vehicle's electrical system is compromised during a crash, the state of the Driver's Belt Switch Circuit may be reported other than the actual state.
- The Time between Non-Deployment to Deployment Events is displayed in seconds. If the time between the two events is greater than 25.4 seconds, "N/A" is displayed in place of the time.
- If power to the SDM is lost during a crash event, all or part of the crash record may not be recorded.
- Multiple Events will indicate whether one or more associated events preceded the recorded event.
- Multiple Events Not Recorded can be used in the following scenarios:
 - If a single event is recorded, this parameter will indicate whether one or more associated events prior to the recorded event was not recorded due to insufficient record space (because there were more events than there were available event records).
 - If two associated events are recorded, this parameter for the first event will indicate whether one or more associated events prior to the first event was not recorded due to insufficient record space.
 - If two associated events are recorded, this parameter for the second event will indicate whether one or more associated events between the first and second events was not recorded due to insufficient record space.
- All data should be examined in conjunction with other available physical evidence from the vehicle and scene.

Data Source:

All SDM recorded data is measured, calculated, and stored internally, except for the following:

- Vehicle Speed, Engine Speed, and Percent Throttle data are transmitted by the Powertrain Control Module (PCM), via the vehicle's communication network, to the SDM.
- Brake Switch Circuit Status data is transmitted by either the ABS module or the PCM, via the vehicle's communication network, to the SDM.
- The Belt Switch Circuit is wired directly to the SDM.

Hexadecimal Data:

Data that the vehicle manufacturer has specified for data retrieval is shown in the hexadecimal data section of the CDR report. The hexadecimal data section of the CDR report may contain data that is not translated by the CDR program. The control module contains additional data that is not retrievable by the CDR tool.

01027_SDMGF_r006

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Jeanette W. McBride
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA



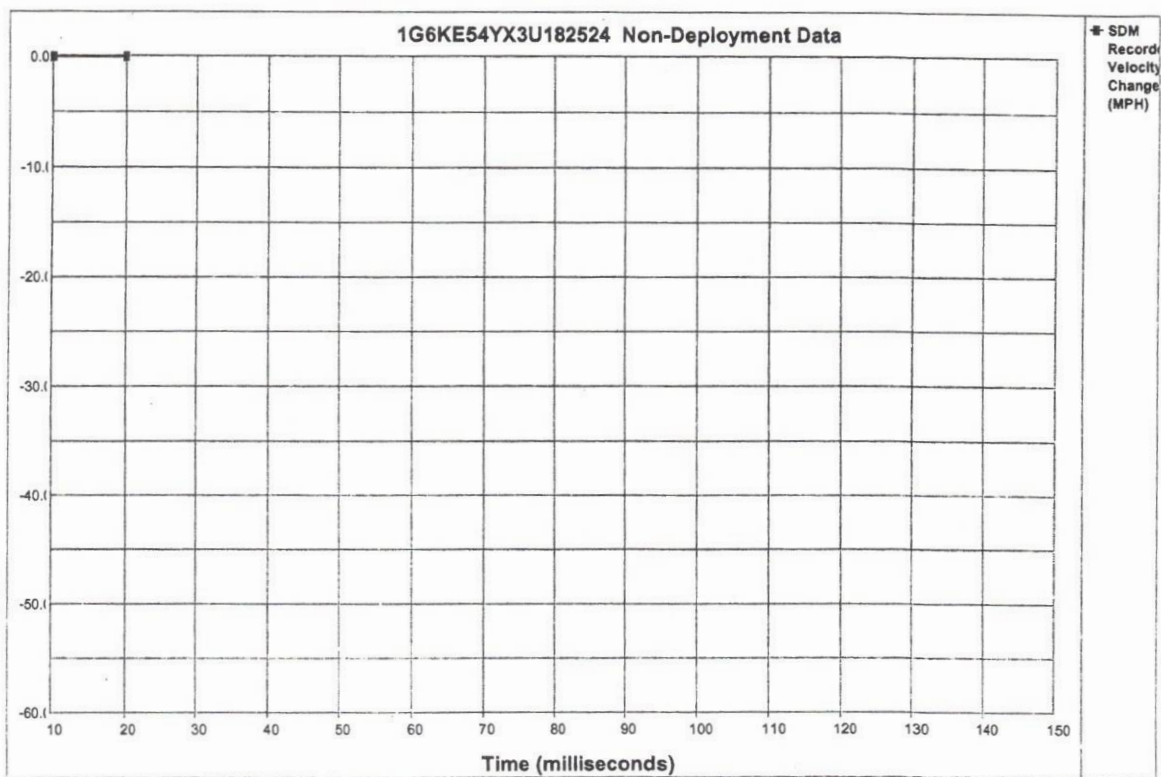
System Status At Non-Deployment

SIR Warning Lamp Status	OFF
Driver's Belt Switch Circuit Status	BUCKLED
Ignition Cycles At Non-Deployment	7757
Ignition Cycles At Investigation	7759
Maximum SDM Recorded Velocity Change (MPH)	-0.16
Algorithm Enable to Maximum SDM Recorded Velocity Change (msec)	15
Crash Record Locked	No
Event Recording Complete	Yes
Multiple Events	No
Multiple Events Not Recorded	No

Seconds Before AE	Vehicle Speed (MPH)	Engine Speed (RPM)	Percent Throttle
-5	9	1344	0
-4	9	1088	13
-3	12	1856	67
-2	15	1920	96
-1	16	2240	82

Seconds Before AE	Brake Switch Circuit State
-8	OFF
-7	OFF
-6	OFF
-5	OFF
-4	OFF
-3	OFF
-2	OFF
-1	OFF

CERTIFIED TRUE COPY
 OF ORIGINAL FILED,
Jeanette W. McBride
 C.C.C.P.&G.S.
 RICHLAND COUNTY
 SOUTH CAROLINA



Time (milliseconds)	10	20	30	40	50	60	70	80	90	100	110	120	130	140	150
Recorded Velocity Change (MPH)	0.00	0.00	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

CERTIFIED TRUE COPY
 OF ORIGINAL FILED,
Joanette W. McBride
 C.C.C.R.&G.S.
 RICHLAND COUNTY
 SOUTH CAROLINA



Hexadecimal Data

```

$01 F1 27 36 BA 9E B6
$02 D5 00 33 33 00 00
$03 41 53 32 33 30 36
$04 4B 31 52 51 56 31
$05 00 00 00 00 00 00
$06 25 75 39 58 00 00
$07 00 00 00 00 00 00
$08 41 44 59 36 58 22
$09 88 30 30 58 35 32
$0A 00 00 00 00 00 00
$0B 00 00 00 00 00 00
$0C 00 00 00 00 00 00
$0D 00 00 00 00 00 00
$0E 00 00 00 00 00 00
$0F 00 00 00 00 00 00
$10 FC 36 80 00 00 00
$11 82 81 82 7B 7A 7B
$12 99 00 87 20 20 00
$13 00 01 00 00 00 00
$14 1D 00 05 05 00 00
$15 36 FA 4B 44 45 46
$16 46 45 FA 45 48 48
$17 48 48 00 00 00 00
$18 00 FF 51 EC 01 00
$19 00 00 00 00 00 00
$1A 00 00 00 00 00 00
$1B 00 00 00 00 00 00
$1C 00 00 00 00 00 00
$1D 00 00 00 00 00 00
$1F FF 00 00 00 00 00
$20 12 FE 00 00 FF FF
$21 FF FF FF FF FF FF
$22 FF FF FF FF FF FF
$23 FF FF FF FF FF FF
$24 00 00 08 00 06 01
$25 00 00 00 03 FF FF
$26 00 00 00 00 00 00
$27 00 00 00 00 00 00
$28 00 00 00 02 FC 36
$29 E0 A5 FF FF FF FF
$2A FF FF FF FF FF FF
$2B FF FF FF FF FF FF
$2C FF FF FF FF FF FF
$2D FF FF 00 00 00 00
$30 FF FF FF FF FF FF
$31 FF FF FF FF FF FF
$32 FF FF FF FF FF FF
$33 FF FF FF FF FF FF
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$37 FF FF FF FF FF FF
$38 FF FF FF FF FF FF
$39 FF FF FF FF FF FF
$3A FF FF FF FF FF FF
$3B FF FF FF FF FF FF
$3C FF FF FF FF FF FF
$3D FF FF 00 00 00 00
$40 1A 18 13 0F 0E 00
$41 00 00 D0 F4 AB 20
$42 00 00 23 1E 1D 11

```

CERTIFIED TRUE COPY
 OF ORIGINAL FILED,
Jeanette W. M. Bude
 C.O.C.R.&G.S.
 RICHLAND COUNTY
 SOUTH CAROLINA

```
$43 15 00 7D 80 00 00
$44 05 00 00 00 00 00
$45 3F 00 0C 00 00 00
$46 00 00 12 0A 0A 0A
$47 0A 00 7D 80 00 00
$48 FF FF FF FF FF FF
$49 FF FF FF FF FF FF
$4A FF FF FF FF FF FF
$4B FF FF FF FF 00 00
$4C FF FF FF FF FF FF
$4D FF FF FF FF FF FF
$4E FF FF FF FF FF FF
$4F FF FF FF FF 00 00
$50 FF FF FF FF FF FF
$51 FF FF FF FF FF FF
$52 FF FF FF FF FF FF
$53 FF FF FF FF FF FF
$54 FF FF FF FF FF FF
```

Disclaimer of Liability

The users of the CDR product and reviewers of the CDR reports and exported data shall ensure that data and information supplied is applicable to the vehicle, vehicle's system(s) and the vehicle ECU. Robert Bosch LLC and all its directors, officers, employees and members shall not be liable for damages arising out of or related to incorrect, incomplete or misinterpreted software and/or data. Robert Bosch LLC expressly excludes all liability for incidental, consequential, special or punitive damages arising from or related to the CDR data, CDR software or use thereof.

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Jeannette W. M. B. S. de
C.C.C.P. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA

Public Accountant in private and corporate accounting. He began his public accounting career with Robert A. Bruce & Co. in 1958. In 1962, Jimmie founded his own public accounting firm and in 1972, joined Carswell, Green, Cantey. Also, Jimmie worked in corporate accounting with Harold D. Brown Co. and most recently with Tobaccoville Inc.

Jimmie was a charter member and President of the Glen Sertoma Club. He served as co-chairman of the United Way of Kershaw County and served on the board and as president of the Kershaw County Chamber of Commerce. Jimmie was a member and past president of the Camden Club. He served as a member of the State Board of Education and was chairman from 1980.

He was elected to the Kershaw County Council in 1982 and served one term. In 1982, Jimmie was elected to the Camden City Council and served 8 years, and also served as Mayor Pro Tem. He also served in the United States Army and the South Carolina National Guard for 12 years.

He enjoyed spending time with his children and grandchildren at Lake

He is survived by his children: James D. Brown, Jr. (Becca) of Primrose Green (George) of Augusta, Dr. William Nettles (Amy) of Columbia, his grandchildren, III, Fletcher, Mary Margaret, and Tim Fisher, Wren

Kennerly, Virginia Spell, Louise Dodenhoff, Rebecca Bonnette and Sarah Poole; brothers, Watson, Horace and Richard Poole.

Folk Funeral Home, Inc. and Crematory, Williston, SC is assisting the family with arrangements. Visit our on-line registry at www.folkfuneralhome.com.

Amy Louise Jackson Jones



COLUMBIA - Mrs. Amy Louise Jackson Jones entered eternal rest and peace with the Lord on Thursday, July 13, 2017 at Palmetto Richland Memorial Hospital in Columbia.

Amy was born [redacted] and was the daughter of the late Robert and Carrie Jackson.

She leaves to cherish fond memories four children: Tommy (Robin) Jones, Tomeka (Marlon) Scott, Tony (Judean) Jones, Tim (Latonya) Jones; two sisters, Thomasena (Elijah) Davis, Patricia (Alexander) Morris; four brothers: John (Lettie) Jackson, Sam (Rutha) Jackson, James Jackson, Freddie (Amy) Jackson; five granddaughters: Jada, Leanna, Grayson, Addison, and Emerson; four grandsons: Tom-

host of nieces and nephews.

Her homegoing service will be held Tuesday, July 18, 2017, 1:00 PM at Temple of Faith Bible Way Church, 2850 Congaree Rd, Gadsden, SC, with burial in the church's cemetery. Bostick Tompkins Funeral Home, has been entrusted with the arrangements. Condolences and flowers may be sent by visiting www.bosticktompkinsinc.com.

Margaret S. Livingston

COLUMBIA - A funeral service for Margaret S. Livingston, 70, will be held at 12:00 p.m. Wednesday, July 19, 2017 at Dunbar Funeral Home, Devine Street Chapel, with burial in Greenlawn Memorial Park. The family will receive friends from 11:00 until 12:00 p.m. at the funeral home.

Mrs. Livingston died Sunday, July 16, 2017. Born in Sumter, S.C., she was a daughter of the late William James Sohn and Sarah Davis Sohn. A graduate of Cardinal Newman High School, she attended Lander University and graduated from Palmer Junior College. She retired with over 30 years of service as an Administrative Assistant for South Carolina Department of Mental Health. She was an avid Gamecocks fan and loved her many cats.

Surviving are her daughter, Donna M. Livingston of

Columbia; her brother, Will J. Sohn of Columbia; nieces, Kelli S. Montgomery (John), Jennifer S. Browder (Jamie), both of Columbia, and Angela S. Works (John) of Mt. Pleasant; and five grand-nieces and two grand-nephews whom she dearly loved. She was predeceased by her brother, Paul T. Sohn.

Memorials may be made to American Cancer Society or a local animal shelter of one's choice.

Please sign the online guestbook at www.dunbarfunerals.com.

SINCE 1884

DUNBAR
FUNERAL HOME

OBITUARY INFORMATION

Deadline for
text and photos:

Monday-Sunday 3 p.m.

Email:

stateobits@thestate.com

Call:

(803) 771-8452

FAX:

(803) 771-8611

For more information
or to place an
"In Memory Ad"

JUST 30 MINUTES A WEEK THIS SCHOOL
YEAR CAN CHANGE A CHILD'S LIFE FOREVER.

VOLUNTEER.UWAY.ORG/MRC

WITNESSES

(S) William R Hilton
— Columbia Police Department

ARREST WARRANT NUMBER

2017A4021601838

ACTION OF GRAND JURY

TRUE BILL

Keith Bl
Foreperson of Grand Jury SEP 13 2017
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2017GS4005220

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2017
105

THE STATE

vs.

James B Kester

Indictment for
ATTEMPTED MURDER

SC Code: 16-03-0029
CDR Code: 3410

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

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on September 13, 2017,
the Grand Jurors of Richland County present upon their oath:

ATTEMPTED MURDER

That James B Kester did in Richland County on or about July 19, 2017, did
with the intent to kill, attempt to kill Laura Gabrels with malice aforethought,
either expressed or implied. All in violation of SC Code of Laws § 16-3-29
(1976, as amended).

Against the peace and dignity of the State, and contrary to the
statute in such case made and provided.



DAN JOHNSON, SOLICITOR

WITNESSES

(S) William R Hilton
– Columbia Police Department

ARREST WARRANT NUMBER

2017A4021601839

ACTION OF GRAND JURY

TRUE BILL

Keith Bl
Foreperson of Grand Jury
Date:

SEP 13 2017

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2017GS4005223

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2017

105

THE STATE

vs.

James B Kester

**Indictment for
ATTEMPTED MURDER**

SC Code: **16-03-0029**
CDR Code: **3410**

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

Witness:

C.C.C. PLS. AND G.S.

458

453

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on September 13, 2017,
the Grand Jurors of Richland County present upon their oath:

ATTEMPTED MURDER

That James B Kester did in Richland County on or about July 19, 2017, did
with the intent to kill, attempt to kill Michael Rooney with malice
aforethought, either expressed or implied. All in violation of SC Code of
Laws § 16-3-29 (1976, as amended).

Against the peace and dignity of the State, and contrary to the
statute in such case made and provided.



DAN JOHNSON, SOLICITOR

WITNESSES

(S) William R Hilton

- Columbia Police Department

ARREST WARRANT NUMBER

2017A4021601840

ACTION OF GRAND JURY

TRUE BILL

Keir R
Foreperson of Grand Jury
Date:

SEP 13 2017

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2017GS4005224

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2017
105

THE STATE

vs.

James B Kester

**Indictment for
ATTEMPTED MURDER**

**SC Code: 16-03-0029
CDR Code: 3410**

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

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on September 13, 2017,
the Grand Jurors of Richland County present upon their oath:

ATTEMPTED MURDER

That James B Kester did in Richland County on or about July 19, 2017,
did with the intent to kill, attempt to kill Kathryn-Jean Holloman with malice
aforethought, either expressed or implied. All in violation of SC Code of
Laws § 16-3-29 (1976, as amended).

Against the peace and dignity of the State, and contrary to the
statute in such case made and provided.



DAN JOHNSON, SOLICITOR

WITNESSES

(S) William R Hilton
— Columbia Police Department

ARREST WARRANT NUMBER

2017A4021601841

ACTION OF GRAND JURY

TRUE BILL

Keith Bl

Foreperson of Grand Jury

Date:

SEP 13 2017

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2017GS4005226

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2017

105

THE STATE

vs.

James B Kester

**Indictment for
ATTEMPTED MURDER**

SC Code: 16-03-0029

CDR Code: 3410

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

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on September 13, 2017,
the Grand Jurors of Richland County present upon their oath:

ATTEMPTED MURDER

That James B Kester did in Richland County on or about July 19, 2017,
did with the intent to kill, attempt to kill Tonya White with malice
aforethought, either expressed or implied. All in violation of SC Code of
Laws § 16-3-29 (1976, as amended).

Against the peace and dignity of the State, and contrary to the
statute in such case made and provided.



DAN JOHNSON, SOLICITOR

WITNESSES

(S) William R Hilton
- Columbia Police Department

ARREST WARRANT NUMBER

2017A4021601842

ACTION OF GRAND JURY

TRUE BILL

Keith Bl
Foreperson of Grand Jury SEP 13 2017
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2017GS4005227

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2017
105

THE STATE

vs.

James B Kester

**Indictment for
ATTEMPTED MURDER**

SC Code: 16-03-0029
CDR Code: 3410

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

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on September 13, 2017,
the Grand Jurors of Richland County present upon their oath:

ATTEMPTED MURDER

That James B Kester did in Richland County on or about July 19, 2017,
did with the intent to kill, attempt to kill Willard Sohn with malice
aforethought, either expressed or implied. All in violation of SC Code of
Laws § 16-3-29 (1976, as amended).

Against the peace and dignity of the State, and contrary to the
statute in such case made and provided.



DAN JOHNSON, SOLICITOR

WITNESSES

(S) William R Hilton
– Columbia Police Department

ARREST WARRANT NUMBER

2017A4021601844

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

SEP 13 2017

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2017GS4005229

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2017
105

THE STATE

vs.

James B Kester

Indictment for
ATTEMPTED MURDER

SC Code: 16-03-0029
CDR Code: 3410

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

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

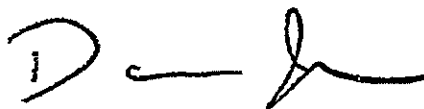
INDICTMENT

At a Court of General Sessions, convened on September 13, 2017,
the Grand Jurors of Richland County present upon their oath:

ATTEMPTED MURDER

That James B Kester did in Richland County on or about July 19, 2017,
did with the intent to kill, attempt to kill Kittie Henderson with malice
aforethought, either expressed or implied. All in violation of SC Code of
Laws § 16-3-29 (1976, as amended).

Against the peace and dignity of the State, and contrary to the
statute in such case made and provided.



DAN JOHNSON, SOLICITOR

WITNESSES

(S) William R Hilton
– Columbia Police Department

ARREST WARRANT NUMBER

2017A4021601845

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

SEP 13 2017

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2017GS4005230

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2017

105

THE STATE

vs.

James B Kester

**Indictment for
ATTEMPTED MURDER**

SC Code: 16-03-0029

CDR Code: 3410

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

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on September 13, 2017,
the Grand Jurors of Richland County present upon their oath:

ATTEMPTED MURDER

That James B Kester did in Richland County on or about July 19, 2017,
did with the intent to kill, attempt to kill John Montgomery with malice
aforethought, either expressed or implied. All in violation of SC Code of
Laws § 16-3-29 (1976, as amended).

Against the peace and dignity of the State, and contrary to the
statute in such case made and provided.



DAN JOHNSON, SOLICITOR

WITNESSES

(S) William R Hilton
- Columbia Police Department

ARREST WARRANT NUMBER

2017A4021601846

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

SEP 13 2017

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2017GS4005231

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2017

105

THE STATE

vs.

James B Kester

**Indictment for
ATTEMPTED MURDER**

SC Code: 16-03-0029

CDR Code: 3410

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

Witness:

C.C.C. PLS. AND G.S.

470

465

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

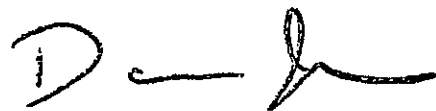
INDICTMENT

At a Court of General Sessions, convened on September 13, 2017,
the Grand Jurors of Richland County present upon their oath:

ATTEMPTED MURDER

That James B Kester did in Richland County on or about July 19, 2017,
did with the intent to kill, attempt to kill John Montgomery Jr. with malice
aforethought, either expressed or implied. All in violation of SC Code of
Laws § 16-3-29 (1976, as amended).

Against the peace and dignity of the State, and contrary to the
statute in such case made and provided.



DAN JOHNSON, SOLICITOR

WITNESSES

(S) William R Hilton
- Columbia Police Department

ARREST WARRANT NUMBER

2017A4021601847

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

SEP 13 2017

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2017GS4005232

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2017

105

THE STATE

vs.

James B Kester

**Indictment for
ATTEMPTED MURDER**

SC Code: 16-03-0029

CDR Code: 3410

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

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

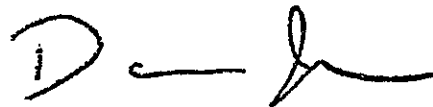
INDICTMENT

At a Court of General Sessions, convened on September 13, 2017,
the Grand Jurors of Richland County present upon their oath:

ATTEMPTED MURDER

That James B Kester did in Richland County on or about July 19, 2017,
did with the intent to kill, attempt to kill [REDACTED] Minor 2 with malice
aforethought, either expressed or implied. All in violation of SC Code of
Laws § 16-3-29 (1976, as amended).

Against the peace and dignity of the State, and contrary to the
statute in such case made and provided.



DAN JOHNSON, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Richland
STATE VS.
James B Kester

AKA:

Race: WHITE Sex: M Age: 66DOB: [REDACTED] SS#: [REDACTED]Address: No PermanentCity, State, Zip: Columbia, SCDL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
TO: Assault & Battery 1st degree

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017GS4005220A/W#: 2017A4021601838Date of Offense: 7/19/2017S.C. Code § : 16-03-0029CDR Code #: 3410

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-600(c)(1) of the S.C. Code of Laws, bearing CDR Code # 3412☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor[Signature]
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: Oct 12, 2018☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the SCDOC.15 months☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %) \$ § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ § 14-1-211(A)(2) (DUI Surcharge) \$100 \$ § 56-5-2995 (DUI Assessment) \$12 \$ § 56-1-286 (DUI Breath Test) \$25 \$ Proviso (Public Def/Probation) \$500 \$ § 14-1-212 (Law Enforce. Funding) \$35 \$ § 14-1-213 (Drug Court Surcharge) \$ § 50-21-114 (BUI Breath Test Fee) \$50 \$ § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ 3% to County (if paid in installments) \$

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter: [Signature]

SCCA/217 (04/2018)

PTUP days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender FundOther:

☐ Appointed PD or appointed other counsel,
Proviso requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge [Signature]Judge Code: 2127Sentence Date: Oct 12, 2018

STATE OF SOUTH CAROLINA

COUNTY OF Richland
 STATE VS.
James B Kester

AKA:

Race: WHITE Sex: M Age: 66DOB: [REDACTED] SS#: [REDACTED]Address: No PermanentCity, State, Zip: Columbia, SCDL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Assault & Battery 1st degree

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017GS4005223A/W#: 2017A4021601839Date of Offense: 7/19/2017S.C. Code §: 16-03-0029CDR Code #: 3410

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-600(c)(1) of the S.C. Code of Laws, bearing CDR Code # 3412

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
 (CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor79921
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: Oct 12, 2018☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the SCDOC.
15 months☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ plus 20% fee: \$ days/hours Public Service EmploymentPayment Terms: Obtain GED ☐☐ Set by SCDPPPS Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender FundOther: Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	

TOTAL

Clerk of Court/ Deputy Clerk [Signature]Court Reporter: [Signature]

SCCA/217 (04/2018)

Presiding Judge [Signature]Judge Code: 2127Sentence Date: Oct 12, 2018

STATE OF SOUTH CAROLINA

COUNTY OF Richland
STATE VS.
James B Kester

AKA:

Race: WHITE Sex: M Age: 66DOB: [REDACTED] SS#: [REDACTED]Address: No PermanentCity, State, Zip: Columbia, SCDL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
TO: Assault & Battery 1st degree

in violation of § 16-03-600(c)(1) of the S.C. Code of Laws, bearing CDR Code # 3412

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor79921
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: Oct 12, 2018☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the SCDOC.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso (Public Def/Probation)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (04/2018)

IN THE COURT OF GENERAL SESSIONS.

INDICTMENT/CASE#: 2017GS4005224A/W#: 2017A4021601840Date of Offense: 7/19/2017S.C. Code § : 16-03-0029CDR Code #: 3410

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

PTUP

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender FundOther:

☐ Appointed PD or appointed other counsel,
Proviso requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge

Judge Code: 2127Sentence Date: Oct 12, 2018

STATE OF SOUTH CAROLINA

COUNTY OF Richland
STATE VS.
James B Kester

AKA:

Race: WHITE Sex: M Age: 66DOB: [REDACTED] SS#: [REDACTED]Address: No PermanentCity, State, Zip: Columbia, SCDL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Assault & Battery 1st degree

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017GS4005226A/W#: 2017A4021601841Date of Offense: 7/19/2017S.C. Code § : 16-03-0029CDR Code #: 3410

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-600(c)(1) of the S.C. Code of Laws, bearing CDR Code # 3412☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor79921
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: Oct 12, 2018☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the SCDoc.15 months☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso (Public Def/Probation)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter: [Signature]

SCCA/217 (04/2019)

PTUP days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.Presiding Judge [Signature]Judge Code: Q127Sentence Date: Oct 12, 2018

STATE OF SOUTH CAROLINA

COUNTY OF Richland
STATE VS.
James B Kester

AKA:

Race: WHITE Sex: M Age: 66DOB: [REDACTED] SS#: [REDACTED]Address: No PermanentCity, State, Zip: Columbia, SCDL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Assault & Battery 1st degree

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017GS4005227A/W#: 2017A4021601842Date of Offense: 7/19/2017S.C. Code § : 16-03-0029CDR Code #: 3410

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-600(c)(1) of the S.C. Code of Laws, bearing CDR Code # 3412☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor79921
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: Oct 12, 2018☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the SCDOC.15 months☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

\$

§ 14-1-211(A)(1) (Conv. Surcharge)

\$100

\$

§ 14-1-211(A)(2) (DUI Surcharge)

\$100

\$

§ 56-5-2995 (DUI Assessment)

\$12

\$

§ 56-1-286 (DUI Breath Test)

\$25

\$

Proviso (Public Def/Probation)

\$500

\$

§ 14-1-212 (Law Enforce. Funding)

\$25

\$

§ 14-1-213 (Drug Court Surcharge)

\$50

\$

§ 50-21-114 (BUI Breath Test Fee)

\$30

\$

§ 56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$

3% to County (if paid in installments)

\$

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter: [Signature]

SCCA/217 (04/2016)

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender FundOther:

☐ Appointed PD or appointed other counsel,
Proviso requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge [Signature]Judge Code: 2127Sentence Date: Oct 12, 2018

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
STATE VS.James B Kester

AKA:

Race: WHITE Sex: M Age: 66DOB: [REDACTED] SS#: [REDACTED]Address: No PermanentCity, State, Zip: Columbia, SCDL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Assault & Battery 1st degreeINDICTMENT/CASE#: 2017GS4005229A/W#: 2017A4021601844Date of Offense: 7/19/2017S.C. Code § : 16-03-0029CDR Code #: 3410

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-600(c)(1) of the S.C. Code of Laws, bearing CDR Code # 3412☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor79921
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 days/months/years/or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: Oct 12, 2017☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the SCDoc.
15 months☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

\$

§ 14-1-211(A)(1) (Conv. Surcharge)

\$100

\$

§ 14-1-211(A)(2) (DUI Surcharge)

\$100

\$

§ 56-5-2995 (DUI Assessment)

\$12

\$

§ 56-1-286 (DUI Breath Test)

\$25

\$

Proviso (Public Def/Probation)

\$500

\$

§ 14-1-212 (Law Enforce. Funding)

\$25

\$

§ 14-1-213 (Drug Court Surcharge)

\$150

\$

§ 50-21-114 (BUI Breath Test Fee)

\$50

\$

§ 56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$

3% to County (if paid in installments)

\$

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter: [Signature]

SCCA/217 (04/2017)

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel,Proviso requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.Presiding Judge [Signature]Judge Code: 2127Sentence Date: Oct 12, 2018

STATE OF SOUTH CAROLINA

COUNTY OF Richland
 STATE VS.
James B Kester
 AKA: _____
 Race: WHITE Sex: M Age: 66
 DOB: [REDACTED] SS#: _____
 Address: No Permanent
 City, State, Zip: Columbia, SC
 DL#: _____ SID#: _____
 *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017GS4005230A/W#: 2017A4021601845Date of Offense: 7/19/2017S.C. Code §: 16-03-0029CDR Code #: 3410

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0600 (E) (1) of the S.C. Code of Laws, bearing CDR Code # 3414
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
 (CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
 ATTEST: [Signature] 19921

Solicitor

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☒ County Detention Center,
 for a determinate term of 30 (days/months/years) or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: Oct 17, 2018
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the SCDoc.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
 Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$

§ 14-1-206 (Assessments 107.5 %) _____ \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 _____ \$

§ 14-1-211(A)(2) (DUI Surcharge) \$100 _____ \$

§ 56-5-2995 (DUI Assessment) \$12 _____ \$

§ 56-1-286 (DUI Breath Test) \$25 _____ \$

Proviso (Public Def/Probation) \$500 _____ \$

§ 14-1-212 (Law Enforce. Funding) \$25 _____ \$

§ 14-1-213 (Drug Court Surcharge) \$50 _____ \$

§ 50-21-114 (BUI Breath Test Fee) \$50 _____ \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea _____ \$

3% to County (if paid in installments) _____ \$

TOTAL

Clerk of Court/ Deputy Clerk: Jeanette McBride

Court Reporter: Johnson

SCCA/217 (04/2017)

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
 Proviso requires \$500 be paid to Clerk
 during probation and shall be collected before
 any other fees.

Presiding Judge: [Signature]

Judge Code: 3127

Sentence Date: Oct 12, 2018

STATE OF SOUTH CAROLINA

COUNTY OF Richland
STATE VS.
James B Kester

AKA: _____
Race: WHITE Sex: M Age: 66
DOB: [REDACTED] SS#: _____

Address: No Permanent
City, State, Zip: Columbia, SC
DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
TO: Assault & Battery 1st degree

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017GS4005231

A/W#: 2017A4021601846

Date of Offense: 7/19/2017

S.C. Code § : 16-03-0029

CDR Code #: 3410

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-600(c)(1) of the S.C. Code of Laws, bearing CDR Code # 3412

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor

79921
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: Oct 12, 2018

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the SCDOC.

15 months

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$140	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (04/2018)

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
Proviso requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge

Judge Code: 2187

Sentence Date: Oct 12, 2018

STATE OF SOUTH CAROLINA

COUNTY OF Richland
 STATE VS.
James B Kester

AKA:

Race: WHITE Sex: M Age: 66DOB: [REDACTED] SS#: [REDACTED]Address: No PermanentCity, State, Zip: Columbia, SCDL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Assault & Battery 1st degree

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017GS4005232A/W#: 2017A4021601847Date of Offense: 7/19/2017S.C. Code §: 16-03-0029CDR Code #: 3410

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-600(c)(1) of the S.C. Code of Laws, bearing CDR Code # 3412☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

VCA
Solicitor79921
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: Oct 12, 2018☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the SCDOC.
15 months☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
 Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso (Public Def/Probation)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

\$

\$

\$100

\$

\$100

\$

\$12

\$

\$25

\$

\$500

\$

\$25

\$

\$150

\$

\$50

\$

\$40/ea

\$

\$

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (04/2018)

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender FundOther:

☐ Appointed PD or appointed other counsel,
 Proviso requires \$500 be paid to Clerk
 during probation and shall be collected before
 any other fees.

Presiding Judge

Judge Code: 2127Sentence Date: Oct 12, 2018

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

September 17, 2019



Dayne Phillips
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Columbia, SC 29201
(803) 807-0234
Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

Clifton Newman, Circuit Court Judge

Appellate Case No. 2018-001852

Case No. 2017-GS-40-5220; 5223; 5224; 5226-5227; 5229-5232

The State of South Carolina,

Respondent,

v.

James Kester,

Appellant.

FINAL BRIEF OF APPELLANT

Dayne Phillips
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1614 Taylor Street, Ste. D.
Columbia, SC 29201
(803) 807-0234
Attorney for Appellant

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SC Court of Appeals

TABLE OF CONTENTS

Table of Authorities	2
Statement of Issues on Appeal.....	4
Statement of the Case.....	5
Relevant Facts	6
Arguments	
1. THE TRIAL COURT ERRED IN FINDING APPELLANT KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY WAIVED HIS RIGHT TO COUNSEL BY FAILING TO CONDUCT A COMPETENCY TO STAND TRIAL HEARING BEFORE GRANTING APPELLANT'S REQUEST FOR SELF-REPRESENTATION.....	19
2. THE TRIAL COURT ERRED IN FINDING APPELLANT KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY WAIVED HIS RIGHT TO COUNSEL WHEN APPELLANT DID NOT COMPREHEND THE DANGERS OF SELF-REPRESENTATION BASED ON HIS RESPONSES TO THE TRIAL COURT.....	29
3. THE TRIAL COURT ERRED IN ADVISING APPELLANT THAT HE HAD TEN PEREMPTORY STRIKES PRIOR TO JURY SELECTION BECAUSE APPELLANT DETRIMENTALLY RELIED ON THIS ADVICE AND STRUCK A POTENTIAL JUROR BEFORE THE TRIAL COURT INFORMED APPELLANT THAT HE ONLY HAD FIVE STRIKES.....	34
4. THE TRIAL COURT ERRED IN REFUSING TO GRANT A MISTRIAL BECAUSE THE COURT PROVIDED AN UNCONSTITUTIONALLY COERCIVE <i>ALLEN</i> CHARGE TO THE JURY WHEN VIEWED IN ITS CONTEXT AND UNDER ALL CIRCUMSTANCES.....	37
5. THE TRIAL COURT ERRED IN IMPOSING CONSECUTIVE SENTENCES THAT AMOUNT TO A <i>DE FACTO</i> LIFE SENTENCE BECAUSE THE GROSSLY DISPROPORTIONATE AGGREGATE SENTENCE IS CRUEL AND UNUSUAL PUNISHMENT BASED ON COMPARATIVE SENTENCES AND CLOSELY CONNECTED OFFENSES	41
Conclusion.....	44

TABLE OF AUTHORITIES

CASES

<i>Allen v. United States</i> , 164 U.S. 492 (1896)	<i>passim</i>
<i>Dawson v. State</i> , 352 S.C. 15, 572 S.E.2d 445 (2002)	38
<i>Drope v. Missouri</i> , 420 U.S. 162 (1975)	23
<i>Dusky v. United States</i> , 362 U.S. 402 (1960)	23
<i>Faretta v. California</i> , 422 U.S. 806 (1975)	19, 20, 29
<i>Gardner v. State</i> , 351 S.C. 407, 570 S.E.2d 184 (2002)	21, 29, 30, 33
<i>Harris v. Wright</i> , 93 F.3d 581 (9th Cir. 1996)	41
<i>In re Antonio H.</i> , 319 S.C. 395, 461 S.E.2d 825 (Ct. App. 1995)	22, 24
<i>In re Christopher H.</i> , 359 S.C. 161, 596 S.E.2d 500 (Ct. App. 2004)	22, 28, 45
<i>Jeter v. State</i> , 308 S.C. 230, 417 S.E.2d 594 (1992)	22
<i>Lowenfield v. Phelps</i> , 484 U.S. 231 (1988)	37, 38
<i>McMann v. Richardson</i> , 397 U.S. 759 (1970)	33
<i>Pate v. Robinson</i> , 383 U.S. 375 (1966)	22, 23, 25
<i>Powers v. Ohio</i> , 499 U.S. 400 (1991)	34
<i>Prince v. State</i> , 301 S.C. 422, 392 S.E.2d 462 (1990)	27, 29
<i>Sims v. State</i> , 313 S.C. 420, 438 S.E.2d 253 (1993)	23
<i>Solem v. United States</i> , 463 U.S. 277 (1983)	41
<i>State v. Barnes</i> , 407 S.C. 27, 753 S.E.2d 545 (2014)	20, 23, 27, 28
<i>State v. Blair</i> , 275 S.C. 529, 273 S.E.2d 536 (1981)	<i>passim</i>
<i>State v. Brewer</i> , 328 S.C. 117, 492 S.E.2d 97 (1997)	21
<i>State v. Burgess</i> , 356 S.C. 572, 590 S.E.2d 42 (Ct. App. 2003)	22
<i>State v. Cash</i> , 304 S.C. 223, 403 S.E.2d 632 (1991)	22
<i>State v. Colden</i> , 372 S.C. 428, 641 S.E.2d 912 (Ct. App. 2007)	22
<i>State v. De La Cruz</i> , 302 S.C. 13, 393 S.E.2d 184 (1990)	39
<i>State v. Dixon</i> , 269 S.C. 107, 236 S.E.2d 419 (1977)	22
<i>State v. Gordon</i> , 356 S.C. 143, 588 S.E.2d 105 (2003)	43
<i>State v. Hamilton</i> , 251 S.C. 1, 7, 159 S.E.2d 607 (1968)	24
<i>State v. Harrison</i> , 402 S.C. 288, 741 S.E.2d 727 (2013)	41, 42, 43
<i>State v. Johnson</i> , 418 S.C. 587, 795 S.E.2d 171 (Ct. App. 2016)	35
<i>State v. Jones</i> , 343 S.C. 562, 541 S.E.2d 813 (2001)	34
<i>State v. Lee-Grigg</i> , 387 S.C. 310, 692 S.E.2d 895 (2010)	37
<i>State v. Pittman</i> , 373 S.C. 527, 647 S.E.2d 144 (2007)	41
<i>State v. Prince</i> , 279 S.C. 30, 301 S.E.2d 471 (1983)	37
<i>State v. Reed</i> , 332 S.C. 35, 503 S.E.2d 747 (1998)	20, 27
<i>State v. Robinson</i> , 360 S.C. 187, 600 S.E.2d 100 (Ct. App. 2004)	37
<i>State v. Salters</i> , 273 S.C. 501, 257 S.E.2d 502 (1979)	34
<i>State v. Samuel</i> , 422 S.C. 596, 813 S.E.2d 487 (2018)	24, 27, 28
<i>State v. Smith</i> , 276 S.C. 494, 280 S.E.2d 200 (1981)	43
<i>State v. Williams</i> , 386 S.C. 503, 690 S.E.2d 62 (2010)	38, 40
<i>State v. Wilson</i> , 345 S.C. 1, 545 S.E.2d 827 (2001)	22
<i>Tucker v. Catoe</i> , 346 S.C. 483, 552 S.E.2d 712 (2001)	37, 38
<i>United States v. Bush</i> , 404 F.3d 263 (4th Cir. 2005)	19

<i>United States v. Frazier-El</i> , 204 F.3d 553 (4th Cir. 2000)	19, 20
<i>United States v. Lopez-Osuna</i> , 242 F.3d 1191 (9th Cir. 2000).....	19
<i>United States v. Singleton</i> , 107 F.3d 1091 (4th Cir. 1997).....	19, 20, 30, 33

STATUTES

S.C. Code § 14-7-1110.....	34
S.C. Code § 17-25-45.....	43
S.C. Code § 17-25-50.....	43
S.C. Code § 19-1-150.....	42
S.C. Code § 44-23-410.....	23, 24
S.C. Code § 44-23-430.....	24

CONSTITUTIONAL PROVISIONS

S.C. Const. art. I, § 14.....	34
U.S. Const. Amend. V	34, 36, 39
U.S. Const. Amend. VI.....	19, 34, 36
U.S. Const. Amend. VIII	41, 42, 43

STATEMENT OF ISSUES ON APPEAL

- I. DID THE TRIAL COURT ERR IN FINDING APPELLANT KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY WAIVED HIS RIGHT TO COUNSEL BY FAILING TO CONDUCT A COMPETENCY TO STAND TRIAL HEARING BEFORE GRANTING APPELLANT'S REQUEST FOR SELF-REPRESENTATION?
- II. DID THE TRIAL COURT ERR IN FINDING APPELLANT KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY WAIVED HIS RIGHT TO COUNSEL WHEN APPELLANT DID NOT COMPREHEND THE DANGERS OF SELF-REPRESENTATION BASED ON HIS RESPONSES TO THE TRIAL COURT?
- III. DID THE TRIAL COURT ERR IN ADVISING APPELLANT THAT HE HAD TEN PEREMPTORY STRIKES PRIOR TO JURY SELECTION WHEN APPELLANT DETRIMENTALLY RELIED ON THIS ADVICE AND STRUCK A POTENTIAL JUROR BEFORE THE TRIAL COURT INFORMED APPELLANT THAT HE ONLY HAD FIVE STRIKES?
- IV. DID THE TRIAL COURT ERR IN REFUSING TO GRANT A MISTRIAL AFTER THE COURT PROVIDED AN UNCONSTITUTIONALLY COERCIVE *ALLEN* CHARGE TO THE JURY WHEN VIEWED IN ITS CONTEXT AND UNDER ALL CIRCUMSTANCES?
- V. DID THE TRIAL COURT ERR IN IMPOSING CONSECUTIVE SENTENCES THAT AMOUNT TO A *DE FACTO* LIFE SENTENCE WHEN THE GROSSLY DISPROPORTIONATE AGGREGATE SENTENCE IS CRUEL AND UNUSUAL PUNISHMENT BASED ON COMPARATIVE SENTENCES AND CLOSELY CONNECTED OFFENSES?

STATEMENT OF THE CASE

On September 13, 2017, the Richland County Grand Jury indicted Appellant James Kester for twelve counts of Attempted Murder. R. 451 – 468.

On October 4, 2018, Appellant appeared before the Honorable Clifton Newman for a pre-trial hearing based on his request to represent himself and to relieve his retained counsel, John Delgado and Bill Nettles; who were also present at the hearing. Assistant Solicitor Vance Eaton appeared on behalf of the State. The Court granted Appellant's motions to relieve counsel and to represent himself. R. 29, ll. 4-6.

On October 8, 2018, Appellant proceeded to trial *pro se* with standby counsel, John Delgado and Bill Nettles, before the Honorable Clifton Newman and a jury. R. 31. Assistant Solicitors Vance Eaton and Samuel McGlothin prosecuted the case on behalf of the State.

On October 10, 2018, the jury found Appellant guilty on eight counts of Assault and Battery, First Degree, and one count of Assault and Battery, Third Degree. R. 386, l. 13 – 389, l. 10. The jury also found Appellant not guilty on three counts of Attempted Murder. R. 386, ll. 20-24; R. 388, ll. 17-21; R. 389, ll. 3-7.

On October 12, 2018, the Trial Court sentenced Appellant to ten years imprisonment for each conviction of Assault and Battery, First Degree, and thirty days imprisonment on the conviction for Assault and Battery, Third Degree. R. 439, ll. 2-23. The Trial Court further ordered Appellant to serve the sentences consecutively. R. 439, ll. 24-25.

RELEVANT FACTS

Background

The State's theory of the case: Appellant intentionally struck twelve people with his car at a cemetery. Specifically, the State sought to prove that Appellant went to the funeral because of his deceased daughter's prior involvement with the South Carolina Department of Mental Health, and the funeral's connection to a woman who worked at the S.C. Department of Mental Health. Appellant consistently maintained that he "blacked out" and did not intend to hurt anyone.

Pre-Trial Hearing

On October 4, 2018, Appellant appeared before the Honorable Clifton Newman for a pre-trial hearing with his attorneys, John Delgado and Bill Nettles. R. 1. Assistant Solicitor Eaton informed the Trial Court that "[Appellant] is first up next week on twelve counts of attempted murder from July 2017" and that Appellant "intends to represent himself[.]" R. 4, 6-11.

Defense Counsel Delgado acknowledged their representation of Appellant: "We are counsel in this case, and we do think it would be a mistake" for Appellant to represent himself. R. 4, ll. 20-21. Delgado further explained, "We know his case well enough that we'd say he needs counsel and we'd like him to stay with us." R. 5, ll. 3-4.

In response to the Trial Court's questions, Appellant maintained that he wanted to represent himself and that his current lawyers could remain as stand-by counsel. R. 5, l. 22 – 6, l. 14. Appellant informed the Trial Court that he was sixty-six years old, retired/unemployed, and had studied "three years of college at the University of South Carolina." R. 6, ll. 15-24. Appellant also told the Trial Court that he had "several different jobs" during his life: Landscaping, Allen Chemical Company, caretaker for his

mother, and “took care of my daughter [for] about twenty years because she got ruined by the Department of Mental Health.” R. 6, l. 22 – 7, l. 14.

Appellant further maintained that he had never been treated for alcohol, drugs, or mental illness. R. 7, ll. 15-24; R. 8, ll. 12-18. Assistant Solicitor Eaton interjected, “**In this case there was a retained psychiatrist**, Your Honor.” R. 7, l. 25 – 8, l. 1 (emphasis added). The Trial Court then asked Defense Counsel, “Okay, and what was his finding, Mr. Delgado?” Delgado replied, “[Appellant] was competent to give testimony, competent to stand trial.” R. 8, ll. 2-8. The Trial Court asked Appellant if he agreed with Delgado’s statement about the psychiatrist’s findings, and he responded, “Yes, sir.” R. 8, ll. 9-10.

Appellant again denied ever being treated for alcohol, drugs, or mental illness. R. 8, ll. 12-18. Appellant also maintained that he fully understood and comprehended the nature of the hearing. R. 8, ll. 19-21. The Trial Court further explored, “Are you aware of any physical, any emotional or nervous problems, or anything that might affect your ability to understand what we are assessing here today, sir?” and Appellant replied, “I understand completely.” R. 8, l. 22 – 9, l. 1.

The Trial Court next inquired, “Have you ever studied the law before?” and Appellant replied, “I’ve read law books about the law, and **I don’t know too much about it.**” R. 9, ll. 4-12 (emphasis added). The Trial Court continued questioning Appellant, “Have you ever been in criminal court before?” In response, Appellant provided the following explanation of his experience from a Magistrate Court Jury Trial:

No, Sir. I had one small misdemeanor and that’s all.
That was 1990 . . . For some reason, the police arrested me
and charged me with four things and I defended myself,
and they stacked the charges so much that I - - I was

acquitted on two of them and two I was not. I think I had three weekends in jail and that was the extent of it.

R. 9, l. 13 – 10, l. 12 (emphasis added).

The Trial Court then advised Appellant that he was charged with twelve counts of attempted Murder, and Appellant indicated that he understood the charges and maximum possible sentences. R. 10, ll. 15-20. Appellant also told the Trial Court, “I’ve got a Five Million Dollar bond, and I see guys who have been there [Alvin S. Glenn Detention Center] for killing - - I see guys with two or three killings who get out on a Hundred to a Hundred and Fifty Thousand [dollar bond].” R. 11, ll. 8-12. This response prompted the Trial Court to reiterate that his questions were related to the possible punishment for Appellant’s charges. R. 11, ll. 13-20.

The Trial Court continued and asked Appellant if he knew the elements for attempted murder, and Appellant responded, “Yes, sir.” R. 11, ll. 21-24. The Trial Court also broadly reviewed the definition of attempted murder with Appellant. The Trial Court further inquired of Appellant, “How do you want to get rid of [the charges for attempted murder]?” Appellant provided the following response:

Well, you know, to me I’ve been incompetent up to now, and now I’m trying to get the discovery. I’m trying to get from the State a few things. I didn’t get the discovery until a few days ago.

When I called [Defense Counsel,] they never took my call but maybe two times in fifteen months I’ve been incarcerated. You know, so I nodded off on it.

You know, they’ve got a lot of things. They’ve got a Hundred Thousand Dollars which is a lot of money, and I don’t expect to get all if I paid (sic) that much but, I mean, I know I have got no justice from my lawyers.

I think [Defense Counsel] **they have been negligent** and due diligence I know has been fairly minimum, and since there's no due diligence.

R. 13, ll. 2-15 (emphasis added).

The Trial Court noted Defense Counsels' experience as criminal defense lawyers and warned Appellant, "you are charged with crimes for which you can get a lifetime."

R. 13, l. 16 – 14, l. 24. The Trial Court also informed Appellant that hybrid counsel is not allowed: "You will be on your own in trying your case except for being able to consult with [Defense Counsel]." R. 15, l. 25 – 16, l. 1.

The Trial Court continued with the colloquy, "It may be that you are familiar with the rules of criminal procedure" and Appellant interjected, "**I'm not too familiar with that.**" R. 16, ll. 3-7 (emphasis added). The Trial Court then asked, "Are you familiar with the rules of evidence?" Appellant replied, "The rules of evidence in my case would be - - I'm pretty sure I know that, yes, sir." R. 16, ll. 8-10.

The Trial Court further questioned Appellant about "hearsay" and the knowledge required to understand the rules of evidence. R. 16, l. 19 – 17, l. 7. Appellant responded simply, "Well, **I may not be that familiar with it but I know what it is.**" R. 17, ll. 8-9 (emphasis added).

The Trial Court asked, "Do you have any motions that you plan to make concerning anything?" and Appellant stated, "**I might need a little help or something about that.**" R. 17, ll. 10-13 (emphasis added). The Trial Court proceeded to explain that Appellant had the right to decide whether to testify, and if he did testify, the State could ask him questions. R. 17, ll. 17-25.

The Trial Court continued questioning Appellant, "Are you ready to go to trial on

Monday?" In response, Appellant stated:

Like I said, I just got some stuff today that I probably should have got a long time ago or maybe within a few days. [Defense Counsel] said he just got it from the prosecution. I've got to get up to speed on it but I think I am though. I've got to do some preparation but I think I am though.

R. 19, ll. 8-16 (emphasis added).

In discussing the jury selection process, Appellant indicated that he would have ten peremptory strikes, and the Trial Court confirmed, **"you'll have ten."** R. 19, l. 23 – 20, l. 9 (emphasis added). The Trial Court further explained Appellant's constitutional trial right not to testify, the State's burden of proof, Appellant's right to present a defense, and standby counsel's role during the trial. R. 20, l. 8 – 21, l. 11.

The Trial Court reiterated that Appellant had "highly skilled lawyers" who "have given good results to many clients". R. 23, ll. 1-4. In response, Appellant stated that "I didn't see it with me though. **Like I said, I'm playing catch up right now with some stuff they are giving me - - right now.**" R. 23, ll. 5-7 (emphasis added). The Trial Court asked Appellant if he needed more time regarding the decision to represent himself, and Appellant replied, "I've made up my mind, yes." R. 23, ll. 22-25.

After confirming Appellant's request to represent himself and to have stand-by counsel, the Trial Court told Appellant, "[I]f you change your mind and you decide that you want to - - that you are over your head and you better let the lawyers take over just let me know at any point in time[.]" R. 24, ll. 1-15. Notably, Appellant indicated his lack of experience and knowledge of the State's case:

I've been there [in jail] for fifteen months . . . and this is really my first stay in jail, . . . the lawyers know the facts . . . [A]s far as mental, ... I've never had a trial. I've

never been on any anti-psychotic drugs. That's what they demolish my daughter with, and I tried to stop it but they banned me from even seeing her for six hundred days. That is what they did. So when she got out she didn't even know what her name was.

R. 24, l. 23 – 25, l. 8 (emphasis added).

The Trial Court noted the following question regarding whether Appellant was mentally ill:

All right. So with regard to Mr. Kester, to be judged mentally ill a person needs to be in a mental institution until they are judged to be in a condition to be transferred to the general population or transferred from a mental ward or mental place to regular population. Is that your understanding?

R. 25, ll. 20-25 (emphasis added). An “unidentified person” in the courtroom responded,

“Yes, Your Honor. That is a minor step in the whole process.” R. 26, ll. 1-2.

Appellant's provided the following response to the Trial Court about his knowledge of the plea negotiations between Defense Counsel and the State:

Yeah, [Defense Counsel] they tried to get them [the State] to reduce the charges for a plea bargain, and - - and, like I said, my daughter was given so much toxic drugs that she couldn't take it anymore.

So people who have got mental problems, people with poor mental health, I mean, I got - - I got that in writing. One day she drank straight forty glasses of water her brain was cooked so bad. In the middle of the night she'd be hollering, please help. . . . I mean, I tried different things and I got arrested at the time for going to visit her when they denied it, and they threw the case out because they did have a trespass in the Department of Mental Health. They went to the General Assembly and got a (inaudible) and solely because of me.

I mean, after they threw my case out I went to the General Assembly. I don't even think they are allowed to do that to one individual but they did it anyway.

R. 26, l. 12 – 27, l. 13.

After the Trial Court explained that he does not know the specific facts of Appellant's case, Appellant further noted:

With all that's going on, I'm worried I left out something while they were doing this to my daughter. **You said had I been under any stress, and I should have said yes.** I lost my left eye due to this and I've been trying to get them to get those records that they been telling me a year that they did and that is another thing. Like I said, **they've been negligent and that's why I had to do this.**

R. 27, l. 20 – 28, l. 3 (emphasis added). Appellant reiterated, "Well, they rarely took my phone calls over all the time but two times. Maybe they will now, you know." R. 28, ll. 21-22. The Court ultimately ruled, "I am granting your motion to relieve them [Defense Counsel] and for you to proceed to represent yourself. Be sure to be ready to go on Monday at this point." R. 29, ll. 4-6.

Additional Pre-Trial Matters

On October 8, 2018, Assistant Solicitor Eaton called Appellant's case for trial. R. 40, ll. 11-14. The Trial Court asked if there were any additional matters to address before *voir dire* and jury selection, and Assistant Solicitor Eaton listed issues related to the 911 call, the waiver of Appellant's right to counsel, the voluntariness of Appellant's statements, and the seized items related to a search warrant. R. 40, l. 22 – 41, l. 19. Notably, Assistant Solicitor Eaton told the Trial Court, "**There's also the question of . . . whether Mr. Kester knowingly and intelligently waived his right to counsel[.]**" R. 41, ll. 4-6 (emphasis added).

The Trial Court then asked Appellant, "Mr. Kester, what's your position concerning the 9-1-1 call and the statements you made to the police and the search

warrant?”. Appellant responded, “They can play it. I’m not waiving anything on this . . . You know, **I just got discovery a few days ago. I’m having to play catch-up on everything.**” R. 41, l. 20 – 42, l. 1 (emphasis added). Notably, the Trial Court did not address the issue of whether Appellant knowingly and intelligently waived his right to counsel.

Appellant had no questions for the testifying law enforcement officer regarding the voluntariness of his statement and provided no argument to the Trial Court regarding the admissibility of his statements. R. 46, ll. 3-10. The Trial Court subsequently asked Appellant, “Well, do you want the jury to know that you’ve been arrested by the Department of Mental Health before [since it is referenced in Appellant’s recorded statement]?”, and Appellant replied, “Yes, I do.” R. 48, ll. 1-4.

Appellant also had no questions for the testifying law enforcement officer regarding the existence of probable cause for the search warrant and provided no argument to the Trial Court regarding the admissibility of the seized evidence. R. 52, l. 9 – 54, l. 7.

Appellant again had no questions for the testifying witness regarding the authenticity of the 9-1-1 recorded phone calls and provided no argument to the Trial Court regarding the admissibility of the recordings. R. 58, ll. 1-7.

Jury Selection

Appellant had no questions or arguments regarding the Trial Court’s *voir dire* of the venire. R. 76, ll. 11-15. After Appellant had struck one potential juror, the Trial Court interjected, “**The strikes are actually five and five, not five and ten.**” R. 77, l. 4 – 78, l. 3 (emphasis added). After Appellant struck a second potential juror, the Trial

Court reminded Appellant that he had three strikes remaining. R. 78, ll. 22-25. Appellant responded, “I thought I had ten”, and the Trial Court admitted, “**Initially I did as well but not for attempted murder.**” R. 79, ll. 3-14 (emphasis added).

Appellant subsequently argued to the Trial Court, “Your Honor, I might not have struck one of the first for cause thinking I had ten . . . the first couple of ones **I may not have struck if I knew I only had five** [and] [s]ince I’ve only got one more, you can seat the juror.” R. 84, ll. 9-13 (emphasis added). Appellant exhausted his final strike on juror number 176, David McMahan, who knew, John Montgomery, the former Dean at the University of South Carolina School of Law. R. 86, l. 1 – 87, l. 4. At the conclusion of jury selection, Appellant provided no additional arguments to the Trial Court. R. 96, ll. 5-7.

Trial

During the trial, Appellant did not ask a majority of the witnesses any questions on cross-examination and made very few objections to the State’s evidence.

Jury Note I

On October 10, 2018, the Trial Court read aloud a note sent by the jury during deliberations:

We, the jurors, are in a need of a way to assign the pictures to the names of each of the victims. We also need chalk. There’s a couple of asterisks. Can we have the electronic files that have the names assigned. Another asterisk. We only have pictures of nine of the victims, but verdicts needed for twelve.

R. 360, ll. 15-23. The Trial Court allowed the jury to have chalk and heard arguments from the State and Appellant regarding the jury’s request for the electronic files and additional pictures. R. 360, l. 24 – 379, l. 1. Appellant objected, arguing that the

submission of these requests is creating additional evidence. R. 373, l. 16; R. 377, ll. 13-14. The Trial Court ultimately decided to send the indictments to the jury, denied the State's request to attach pictures to the indictments, and instructed the jury based on his rulings. R. 377, l. 15 – 380, l. 6.

Jury Note II / Hung Jury

After continuing to deliberate, the jury sent out a second note stating, “We, the jury, have not come to a unanimous verdict concerning all twelve counts and at this point **we represent a hung jury.**” R. 380, ll. 19-22 (emphasis added). The State indicated that the jury “can render a verdict on some charges and others can mis-try.” R. 381, ll. 2-3. The State also noted, “[I]t’s, of course, in your discretion to give an *Allen* charge.” R. 381, ll. 3-4. Appellant moved for a mistrial and objected to the Trial Court instructing the jury with an *Allen* charge. R. 381, ll. 6-14. The Trial Court then instructed the jury with an *Allen* charge. R. 382, l. 1 – 385, l. 15. Specifically, the Trial Court’s response and instruction to the jury are as follows:

Madam Forelady and Members of the Jury, you sent out a note saying: We, the jury, have not come to a unanimous verdict concerning all twelve counts. At this point we represent a hung jury.

As I stated to you in the jury charge, jury instructions, the verdict of the jury must be a unanimous verdict as to each and every count. Well, not as to each and every count, but as to each and every indictment and each indictment must be considered separately. So you have twelve different indictments for which you can render a verdict on and each is to be considered separately.

When a matter is in dispute, it isn’t always easy for even two people to agree. I’m sure if you’re married you know that. So when twelve people must agree, it becomes even more difficult. In most cases absolute certainty cannot be reached or expected; however, you have a duty to make

every reasonable effort to reach a unanimous verdict as to each indictment. In doing so, you should consult with one another, express your own views and listen to the opinions of your fellow jurors, tell each other how you feel and why you feel that way and you discuss your differences with an open mind.

Although the verdict on each indictment must be unanimous, every one of you has a right to your own opinion. The verdict you reach must be your own verdict, the result of your own convictions, and you certainly should not give up your firmly held beliefs merely to be in agreement with your fellow jurors. The majority should consider the minority's opinion and the minority should consider the majority's opinion. You should carefully consider and respect the opinion of each other and reevaluate your position, if necessary, for reasonableness, correctness and impartiality. You must lay aside all outside matters and reexamine the question before you based on the law and evidence in this case.

As to any particular indictment that you may be able to – unable to agree on, I must declare a mistrial as to that particular indictment. In that case, it does not mean that anyone wins, it just means that at some future time I or another judge will try that particular indictment or this entire case if you do not agree on any indictments with some other jury sitting where you now sit. The same participants will come and the same lawyers will and/or the self-represent Defendant will ask basically the same questions and get basically the same answers and we'll go through the process again. And you were selected from the same source and from the same - - in the same manner that any future jury will be and **there's no reason for me to believe** that the case will ever be submitted to twelve more intelligent, impartial, conscientious and competent jurors than you **or that more or clearer evidence will be produced on one side or the other.**

I, therefore, ask that you return to your deliberations with the hope that you can arrive at a verdict within a reasonable amount of time as to each indictment. If there are indictments that you've reached a unanimous verdict on, we will receive those indictments. If you're a hung jury as to each and every indictment, you will inform

the Court of that. If you're able to reach a verdict on every indictment, inform the Court of that.

So please return to the jury room.

R. 382, l. 3 – 384, l. 16. Appellant renewed his objection. R. 384, l. 17 – 385, l. 15.

Verdict

On the same day, the jury found Appellant guilty on eight counts of Assault and Battery, First Degree and one count of Assault and Battery, Third Degree. R. 386, l. 13 – 389, l. 10. The jury also found Appellant not guilty on three counts of Attempted Murder. R. 386, ll. 20-24; R. 388, ll. 17-21; R. 389, ll. 3-7. After the verdict, the Trial Court noted, “So considering the evidence presented and perhaps in some of your minds a lack of clarity as to what was going on with Mr. Kester there” R. 395, ll. 4-6. The Court delayed sentencing. R. 395, ll. 18-19.

Sentencing

On October 12, 2018, the State requested the Trial Court impose consecutive, maximum potential sentences for each conviction at the sentencing hearing. R. 428, ll. 2-4; R. 433, ll. 15-17. Appellant reiterated to the Trial Court, “**I’ve been under immense stress from my daughter just dying within a year** and all I went through with her, with what they did to her.” R. 429, ll. 1-3 (emphasis added). Appellant also argued, “I believe . . . you aren’t supposed to sentence for separate things if it’s one thing... Aren’t they all sentenced like it’s one so - - and not separate?” R. 429, ll. 7-11. In response, the Trial Court replied, “no”. R. 429, ll. 12-14. Appellant also noted local comparative cases and stated, “[W]e need to compare some of the other cases in the area.” R. 429, ll. 21-23; R. 431, ll. 13-16. Appellant further noted that he blacked out and did not intend for the

incident to occur: “**I have PTSD. That’s what I’ve had over the last twenty years.**” R. 435, ll. 17-18 (emphasis added).

The Trial Court acknowledged Appellant’s possible mental health issue: “**If you needed some type of therapy, mental health for yourself or medication** or whatever you might have needed, if you needed it, it would have been best for you to have taken that course rather than decide to plow into this group of people.” R. 437, ll. 18-24 (emphasis added). Appellant subsequently interjected, “I think the people who did this to my daughter should be brought to justice. They poisoned her, they made malicious lies up about me.” R. 438, ll. 16-18.

The Trial Court ultimately sentenced Appellant to ten years imprisonment for each conviction of Assault and Battery, First Degree, and thirty days imprisonment on the conviction for Assault and Battery, Third Degree. R. 439, ll. 2-23. The Trial Court further ordered Appellant to serve the sentences **consecutively**. R. 439, ll. 24-25 (emphasis added).

ARGUMENT

I. THE TRIAL COURT ERRED IN FINDING APPELLANT KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY WAIVED HIS RIGHT TO COUNSEL BY FAILING TO CONDUCT A COMPETENCY TO STAND TRIAL HEARING BEFORE GRANTING APPELLANT'S REQUEST FOR SELF-REPRESENTATION.

Standard of Review for Waiver of Right to Counsel

Whether a defendant has knowingly, intelligently, and voluntarily waived his right to counsel is a mixed question of law and fact which appellate courts review de novo. *United States v. Lopez-Osuna*, 242 F.3d 1191, 1198 (9th Cir. 2000). Specifically, appellate courts review a circuit judge's findings of historical fact for clear error; however, [appellate courts] review the denial of the right of self-representation based upon those findings of fact de novo. *United States v. Bush*, 404 F.3d 263, 270 (4th Cir. 2005). Accordingly, appellate courts must consider the defendant's testimony, history, and the circumstances of his decision, as presented to the circuit judge at the time the defendant made his request. *United States v. Singleton*, 107 F.3d 1091, 1097 (4th Cir. 1997).

Right to Self-Representation

In *Faretta v. California*, 422 U.S. 806, 819-21 (1975), the United States Supreme Court held that criminal defendants have a fundamental right to self-representation under the Sixth Amendment. See U.S. Const. Amend. VI. To invoke the right of self-representation, the defendant must clearly and unequivocally assert his desire to proceed *pro se* and such request must be made knowingly, intelligently and voluntarily. *United States v. Frazier-El*, 204 F.3d 553, 558 (4th Cir. 2000). Where a defendant invokes his right of self-representation before trial, the only inquiry the circuit judge may undertake

is that required by the *Faretta* opinion. See *State v. Barnes*, 407 S.C. 27, 35, 753 S.E.2d 545, 550 (2014). Thus, the only basis upon which a circuit judge may deny a defendant's pre-trial motion to proceed *pro se* is if the court determines the defendant has not knowingly, intelligently, and voluntarily waived his right to counsel. *State v. Reed*, 332 S.C. 35, 41, 503 S.E.2d 747, 750 (1998).

Whether a defendant has intelligently waived his right to counsel depends upon the particular facts and circumstances surrounding each case, including the background, experience, and conduct of the accused. *Singleton*, 107 F.3d at 1097. The United States Supreme Court has emphasized “the competence that is required of a defendant seeking to waive his right to counsel is the competence to *waive the right*, not the competence to represent himself.” *Godinez*, 509 U.S. at 399 (emphasis in original). In other words, whether a defendant is capable of effectively representing himself has no bearing upon his ability to elect self-representation. *Id.* at 400; see also *Faretta*, 422 U.S. at 836 (holding a defendant's “technical legal knowledge . . . [is] not relevant to an assessment of his knowing exercise of the right to defend himself”).

Although a defendant's decision to proceed *pro se* may ultimately be to his detriment, such requests “must be honored out of that respect for the individual which is the lifeblood of the law.” *Barnes*, 407 S.C. at 35-36, 753 S.E.2d at 550 (internal quotation omitted); see also *Frazier-El*, 204 F.3d at 558 (noting a defendant's right of self-representation generally must be honored, regardless of whether he would benefit from advice of counsel). In other words, “[a] decision can be made intelligently, with an understanding of the consequences, without the decision itself being a wise one.” *Reed*, 332 S.C. at 41, 503 S.E.2d at 750. Notably, our Supreme Court has held:

The ultimate test of whether a defendant has made a knowing and intelligent waiver of the right to counsel is not the trial judge's advice, but the defendant's understanding. A determination by the trial judge that the accused lacks the expertise or technical legal knowledge to proceed *pro se* does not justify a denial of the right to self-representation; the *only* relevant inquiry is whether the accused made a knowing and intelligent waiver of the right to counsel.

State v. Brewer, 328 S.C. 117, 119, 492 S.E.2d 97, 98 (1997) (internal citations omitted)

(emphasis added).

Furthermore, to determine if an accused has sufficient background to comprehend the dangers of self-representation, courts consider a variety of the following factors:

- (1) The accused's age, educational background, and ***physical and mental health***;
- (2) Whether the accused was previously involved in criminal trials;
- (3) Whether the accused knew the nature of the charge(s) and of the possible penalties;
- (4) Whether the accused was represented by counsel before trial and whether that attorney explained to him the dangers of self-representation;
- (5) Whether the accused was attempting to delay or manipulate the proceedings;
- (6) Whether the court appointed stand-by counsel;
- (7) Whether the accused knew he would be required to comply with the rules of procedure at trial;
- (8) Whether the accused knew of the legal challenges he could raise in defense to the charge(s) against him;
- (9) Whether the exchange between the accused and the court consisted merely of *pro forma* answers to *pro forma* questions; and
- (10) Whether the accused's waiver resulted from either coercion or mistreatment.

Gardner v. State, 351 S.C. 407, 412-13, 570 S.E.2d 184, 186-87 (2002) (emphasis added).

“The typical remedy for failing to show a knowing and intelligent waiver of counsel is to remand to the trial court for an evidentiary hearing to determine whether the waiver was, in fact, knowingly and intelligently made.” *In re Christopher H.*, 359 S.C. 161, 596 S.E.2d 500 (Ct. App. 2004) (citing *State v. Dixon*, 269 S.C. 107, 236 S.E.2d 419 (1977)). “However, [appellate] court[s] can grant an appellant a new trial without an evidentiary hearing if it is clear that a hearing on remand would serve no useful purpose.” *Id.* (citing *State v. Cash*, 304 S.C. 223, 225, 403 S.E.2d 632, 634 (1991)).

Standard of Review for Competency to Stand Trial

In *State v. Burgess*, 356 S.C. 572, 575, 590 S.E.2d 42, 44 (Ct. App. 2003), this Court found “[t]he question of whether to order a competency examination falls within the discretion of the trial [court] whose decision will not be overturned on appeal absent a clear showing of an abuse of that discretion.” “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” *State v. Colden*, 372 S.C. 428, 435, 641 S.E.2d 912, 917 (Ct. App. 2007). Notably, “[The appellate court] does not re-evaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the trial [court’s] ruling is supported by any evidence.” *State v. Wilson*, 345 S.C. 1, 6, 545 S.E.2d 827, 829 (2001).

Competency to Stand Trial

Due process prohibits the conviction of a person who is mentally incompetent. *In re Antonio H.*, 319 S.C. 395, 399, 461 S.E.2d 825, 827 (Ct. App. 1995) (citing *Jeter v. State*, 308 S.C. 230, 417 S.E.2d 594 (1992) and *Pate v. Robinson*, 383 U.S. 375 (1966)). In *State v. Blair*, 275 S.C. 529, 532-33, 273 S.E.2d 536, 537 (1981), our Supreme Court

held that the defendant's failure to request a competency hearing did not constitute a waiver of his right to a hearing where the defendant's sanity was the crucial issue.

In *Blair*, 275 S.C. at 533, 273 S.E.2d at 538, our Supreme Court held that “[t]he standard for determining whether an accused is entitled to a competency to stand trial hearing has been set forth in a recent case interpreting *Pate v. Robinson*.” The United States Supreme Court noted, “The import of our decision in *Pate v. Robinson* is that evidence of a defendant's irrational behavior, his demeanor at trial and any prior medical opinion on competence to stand trial are all relevant in determining whether further inquiry is required, but that even one of these factors, standing alone, may, in some circumstances, be sufficient.” *Drope v. Missouri*, 420 U.S. 162, 180 (1975).

In *Barnes*, our Supreme Court “decline[d] to impose a higher competency standard upon an individual who wishes to waive his right to an attorney and represent himself at trial than that required for the waiver of other fundamental constitutional rights afforded a criminal defendant, such as the right against compulsory self-incrimination; the right to trial by jury; and the right to confront one's accusers.” *Id.*, 407 S.C. at 36, 753 S.E.2d at 550. Therefore, the Court held that “[a] defendant who is competent to stand trial is also competent to waive these fundamental rights and plead guilty.” *Id.* (citing *Sims v. State*, 313 S.C. 420, 438 S.E.2d 253 (1993)).

The test for determining whether a criminal defendant is competent to stand trial is “whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational as well as a factual understanding of the proceedings against him.” *Dusky v. United States*, 362 U.S. 402 (1960). Section 44-23-410(A) of the South Carolina Code of Laws provides, in pertinent

part: “Whenever a [trial court] has reason to believe that a person on trial before him, charged with the commission of a criminal offense . . . , is not fit to stand trial because the person lacks the capacity to understand the proceedings against him or to assist in his own defense as a result of a lack of mental capacity, the [court] shall . . . order [an evaluation]” See *Blair*, 275 S.C. 529, 273 S.E.2d 536 (interpreting the language of S.C. Code § 44-23-430 as mandatory, which provides that the court *shall* set a competency hearing after ordering an evaluation of defendant's competency under S.C. Code § 44-23-410)).

In reversing the order of the trial judge and remanding the case for a competency to stand trial hearing, South Carolina appellate courts follow a procedure enunciated in *State v. Hamilton*, 251 S.C. 1, 7, 159 S.E.2d 607 (1968):

There, this Court remanded for a hearing to determine whether the police had probable cause to make the arrest in a murder case. This Court stated if, after the hearing, it was determined probable cause did not exist, an order reversing the conviction should be entered and a new trial granted. If, on the other hand, the hearing revealed the officers did have probable cause, the conviction would be upheld.

Blair, 275 S.C. at 534, 273 S.E.2d at 538.

Discussion

In this case, the Trial Court erred in finding Appellant knowingly, intelligently, and voluntarily waived his right to counsel. R. 29, ll. 4-6; *Cf. State v. Samuel*, 422 S.C. 596, 813 S.E.2d 487 (2018). Specifically, the Trial Court erroneously failed to conduct a competency to stand trial hearing before granting Appellant’s request for self-representation based on Appellant’s “irrational behavior” and the Court’s knowledge of a private psychiatric evaluation. R. 7, l. 25 – 8, l. 10. See *In re Antonio H.*, 319 S.C. at

399, 461 S.E.2d at 827; *Blair*, 275 S.C. at 532-33, 273 S.E.2d at 537; *see generally Pate*, 383 U.S. 375 (finding when evidence of a defendant's mental deficiencies raise doubt as to his competence, due process requires the judge to order a competency hearing).

Although Appellant's retained counsel and subsequent stand-by counsel, John Delgado, informed the Trial Court that the private psychiatric evaluation found Appellant competent to stand trial, the Trial Court failed to obtain a copy of the evaluation for his review, provided no follow up questioning, and did not issue a ruling on this issue. R. 8, ll. 2-8. Notably, the Trial Court ignored the Assistant Solicitor's question on the morning of trial regarding whether Appellant waived his right to counsel: "*There's also the question of . . . whether Mr. Kester knowingly and intelligently waived his right to counsel[.]*" R. 41, ll. 4-6 (emphasis added). The State's uncertainty as to whether this issue had been fully heard and ruled upon at the pre-trial hearing is compelling evidence in Appellant's favor.

However, the Trial Court did previously provide a confusing question regarding Appellant's competency and/or criminal responsibility during the first pre-trial hearing:

[W]ith regard to Mr. Kester, to be judged mentally ill a person needs to be in a mental institution until they are judged to be in a condition to be transferred to the general population or transferred from a mental ward or mental place to regular population. Is that your understanding?

R. 25, ll. 20-25. An "unidentified person" in the courtroom responded, "Yes, Your Honor. That is a minor step in the whole process." R. 26, ll. 1-2.

Appellant's responses regarding the connection between his daughter and the S.C. Department of Mental Health, along with the existence of a private competency to stand trial evaluation requested by Defense Counsel, necessitated more than the Trial Court

simply asking for the result of the evaluation (i.e., requiring an evidentiary hearing). Specifically, the Trial Court failed to review any additional evidence (e.g., the private evaluation), ask any further questions (e.g., no inquiry into the information related to the private evaluation and Appellant's mental health), or rule on Appellant's competency to stand trial.

As further evidence, Appellant's response to the Trial Court about his knowledge of the plea negotiations between Defense Counsel and the State:

Yeah, [Defense Counsel] they tried to get them [the State] to reduce the charges for a plea bargain, and -- and, like I said, my daughter was given so much toxic drugs that she couldn't take it anymore.

So people who have got mental problems, people with poor mental health, I mean, I got -- I got that in writing. One day she drank straight forty glasses of water her brain was cooked so bad. In the middle of the night she'd be hollering, please help. . . . I mean, I tried different things and I got arrested at the time for going to visit her when they denied it, and they threw the case out because they did have a trespass in the Department of Mental Health. They went to the General Assembly and got a (inaudible) and solely because of me.

I mean, after they threw my case out I went to the General Assembly. I don't even think they are allowed to do that to one individual but they did it anyway.

R. 26, l. 12 – 27, l. 13.

After the Trial Court explained to Appellant that he does not know the specific facts of his case, Appellant further noted:

With all that's going on, I'm worried I left out something while they were doing this to my daughter. *You said had I been under any stress, and I should have said yes.* I lost my left eye due to this and I've been trying to get them to get those records that they been telling me a year that they

did and that is another thing. Like I said, *they've been negligent and that's why I had to do this.*

R. 27, l. 20 – 28, l. 3 (emphasis added). Appellant subsequently reiterated to the Trial Court after the jury verdict, “*I’ve been under immense stress from my daughter just dying within a year and all I went through with her, with what they did to her.*” R. 429, ll. 1-3 (emphasis added).

Appellant further noted when explaining that he blacked out and did not intend for the incident to occur, “*I have PTSD. That’s what I’ve had over the last twenty years.*” R. 435, ll. 17-18 (emphasis added). Notably, The Trial Court acknowledged Appellant’s possible mental health issue: “*If you needed some type of therapy, mental health for yourself or medication or whatever you might have needed, if you needed it, it would have been best for you to have taken that course rather than decide to plow into this group of people.*” R. 437, ll. 18-24 (emphasis added). Appellant interjected, “I think the people who did this to my daughter should be brought to justice. They poisoned her, they made malicious lies up about me.” R. 438, ll. 16-18.

In *Samuel*, “[t]he judge noted she found Samuel to be ‘incredibly articulate’ and ‘exceptionally bright’” and there was evidence Samuel was attempting to manipulate the proceeding. *Id.*, 422 S.C. at 600, 813 S.E.2d at 489. Our Supreme Court stated in *Barnes* that Barnes’s “competency to stand trial has never been in question.” *Id.*, 407 S.C. at 31, 753 S.E.2d at 547. In *Reed*, “The judge was convinced by the medical reports and testimony that [Reed] does not have a pervasive paranoia or paranoid behavior that affects his ability to interact and to cooperate.” *Id.*, 332 S.C. at 40, 503 S.E.2d at 749. Whereas in *Prince v. State*, “The record ... indicate[d] petitioner was mentally disturbed at the time of his plea.” *Id.*, 301 S.C. 422, 424, 392 S.E.2d 462, 463 (1990).

Our Supreme Court has also acknowledged the careful nature in which judges must weigh the evidence in deciding whether a defendant has knowingly, intelligently, and voluntarily waived the right to counsel: “We fully recognize the delicate balance a circuit judge must try to achieve in safeguarding a defendant's constitutional right to represent himself and the almost sure disaster that will result from his self-representation.” *Samuel*, 422 S.C. at 605, 813 S.E.2d at 492.

The Trial Court’s response to the jury after rendering their verdict is proof of why courts must “delicate[ly] balance” the waiver of the right to counsel: “*So considering the evidence presented and perhaps in some of your minds a lack of clarity as to what was going on with Mr. Kester there . . .*” R. 395, ll. 4-6. It is undisputed that depending on the evidence presented, one of the factors a presiding judge may have to address in deciding whether a defendant has waived the right to counsel is whether the defendant is competent to stand trial. *See Barnes*, 407 S.C. at 36, 753 S.E.2d at 550.

Unlike the cases cited above, the Trial Court in this case failed to conduct an evidentiary hearing regarding Appellant’s competency to stand trial. Without knowing more information about Appellant’s mental health status, this Court is unable to properly determine whether Appellant was competent to stand trial. Therefore, the Trial Court erred in finding Appellant knowingly, voluntarily, and intelligently waived his right to counsel. *See In re Christopher H*, 359 S.C. 161, 596 S.E.2d 500 (Ct. App. 2004); *Blair*, 275 S.C. at 534, 273 S.E.2d at 538.

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II. THE TRIAL COURT ERRED IN FINDING APPELLANT KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY WAIVED HIS RIGHT TO COUNSEL BECAUSE APPELLANT DID NOT COMPREHEND THE DANGERS OF SELF-REPRESENTATION BASED ON HIS RESPONSES TO THE TRIAL COURT.

To establish a valid waiver of counsel, *Faretta* requires the accused be: (1) advised of his right to counsel; and (2) adequately warned of the dangers of self-representation. See *Prince*, 301 S.C. at 424, 392 S.E.2d at 463 (citing *Faretta v. California*, 422 U.S. at 819-21). Furthermore, to determine if an accused has sufficient background to comprehend the dangers of self-representation, courts consider a variety of the following factors:

- (1) The accused's age, educational background, and *physical and mental health*;
- (2) Whether the accused was previously involved in criminal trials;
- (3) Whether the accused knew the nature of the charge(s) and of the possible penalties;
- (4) Whether the accused was represented by counsel before trial and whether that attorney explained to him the dangers of self-representation;
- (5) Whether the accused was attempting to delay or manipulate the proceedings;
- (6) Whether the court appointed stand-by counsel;
- (7) Whether the accused knew he would be required to comply with the rules of procedure at trial;
- (8) Whether the accused knew of the legal challenges he could raise in defense to the charge(s) against him;
- (9) Whether the exchange between the accused and the court consisted merely of *pro forma* answers to *pro forma* questions; and
- (10) Whether the accused's waiver resulted from either coercion or mistreatment.

Gardner, 351 S.C. at 412-13, 570 S.E.2d at 186-87 (emphasis added). Additionally, Appellant incorporates by reference the case law set forth in issue one of this brief.

Discussion

Even if this Court disagrees with Appellant's argument presented in issue one, the Trial Court also erred in finding Appellant knowingly, intelligently, and voluntarily waived his right to counsel because Appellant did not comprehend the dangers of self-representation based on his responses to the Trial Court's questions at the pre-trial hearing. *See Gardner*, 351 S.C. at 412-13, 570 S.E.2d at 186-87; *see generally Singleton*, 107 F.3d at 1097 (finding appellate courts must consider the defendant's testimony, history, and the circumstances of his decision, as presented to the circuit judge at the time the defendant made his request).

Specifically, the Trial Court did not take in account Appellant's physical and apparent mental health, his lack of legal knowledge and defenses, and his *pro forma* answers to *pro forma* questions. *See Gardner*, 351 S.C. at 412-13, 570 S.E.2d at 186-87. At the pre-trial hearing, Appellant also told the Trial Court that he had "several different jobs" during his life: Landscaping, Allen Chemical Company, caretaker for his mother, and "took care of my daughter [for] about twenty years because she got ruined by the Department of Mental Health." R. 6, l. 22 – 7, l. 14. Appellate also noted at various stages of the trial that he had problems with his eye and ability to hear.

The Trial Court also inquired, "Have you ever studied the law before?" and Appellant replied, "I've read law books about the law, and *I don't know too much about it.*" R. 9, ll. 4-12 (emphasis added). The Trial Court further explored, "Have you ever been in criminal court before?" and Appellant provided the following explanation of his experience from a Magistrate Court Jury Trial:

No, Sir. I had one small misdemeanor and that's all. That was 1990 . . . For some reason, the police arrested me and

charged me with four things and I defended myself, and they stacked the charges so much that I - - I was acquitted on two of them and two I was not. I think I had three weekends in jail and that was the extent of it.

R. 9, l. 13 – 10, l. 12 (emphasis added). The Trial Court also questioned Appellant, “How do you want to get rid of [the charges for attempted murder]?” In response, Appellant stated:

Well, you know, to me I've been incompetent up to now, and now I'm trying to get the discovery. I'm trying to get from the State a few things. I didn't get the discovery until a few days ago.

When I called [Defense Counsel,] they never took my call but maybe two times in fifteen months I've been incarcerated. You know, so I nodded off on it.

You know, they've got a lot of things. They've got a Hundred Thousand Dollars which is a lot of money, and I don't expect to get all if I paid (sic) that much but, I mean, I know I have got no justice from my lawyers.

I think [Defense Counsel] they have been negligent and due diligence I know has been fairly minimum, and since there's no due diligence.

R. 13, ll. 2-15 (emphasis added).

The Trial Court continued with the colloquy, “It may be that you are familiar with the rules of criminal procedure” and Appellant interjected, “*I'm not too familiar with that.*” R. 16, ll. 3-7 (emphasis added). The Trial Court further questioned Appellant about “hearsay” and the knowledge required to understand the rules of evidence. R. 16, l. 19 – 17, l. 7. Appellant responded, “Well, *I may not be that familiar with it but I know what it is.*” R. 17, ll. 8-9 (emphasis added).

The Trial Court also asked, “Do you have any motions that you plan to make concerning anything?” Appellant replied, “*I might need a little help or something about*

that.” R. 17, ll. 10-13 (emphasis added). The Trial Court continued questioning Appellant, “Are you ready to go to trial on Monday?”, and Appellant replied:

Like I said, *I just got some stuff today that I probably should have got a long time ago or maybe within a few days.* [Defense Counsel] said he just got it from the prosecution. *I’ve got to get up to speed on it but I think I am though. I’ve got to do some preparation but I think I am though.*

R. 19, ll. 8-16 (emphasis added).

In response to the Trial Court’s acknowledgement and support of retained counsel’s experience and results in criminal cases, Appellant stated that “I didn’t see it with me though. *Like I said, I’m playing catch up right now with some stuff they are giving me - - right now.*” R. 23, ll. 5-7 (emphasis added). Appellant further noted his lack of experience and knowledge of the State’s case:

I’ve been there [in jail] for fifteen months . . . and this is really my first stay in jail, . . . the lawyers know the facts . . . [A]s far as mental, . . . I’ve never had a trial. I’ve never been on any anti-psychotic drugs. That’s what they demolish my daughter with, and I tried to stop it but they banned me from even seeing her for six hundred days. That is what they did. So when she got out she didn’t even know what her name was.

R. 24, l. 23 – 25, l. 8 (emphasis added). The Trial Court subsequently asked Appellant, “Mr. Kester, what’s your position concerning the 9-1-1 call and the statements you made to the police and the search warrant?”. Appellant responded, “They can play it. I’m not waiving anything on this . . . You know, *I just got discovery a few days ago. I’m having to play catch-up on everything.*” R. 41, l. 20 – 42, l. 1 (emphasis added).

Notably, Assistant Solicitor Eaton raised this issue to the Trial Court on the morning of trial, “*There’s also the question of . . . whether Mr. Kester knowingly and*

intelligently waived his right to counsel[.]” R. 41, ll. 4-6 (emphasis added). The State’s uncertainty after the pre-trial hearing as to whether Appellant waived his right to counsel is compelling evidence when highlighted by the Trial Court’s failure to even acknowledge the Solicitor’s question raising the issue. The Trial Court also failed to follow the advisement of right to self-representation form provided by our Supreme Court titled Faretta Warnings, SCCA 684 (1/14) (found at <https://www.sccourts.org/forms/pdf/-SCCA684.pdf>).

There is also no evidence that Appellant was attempting to manipulate the proceedings, and his sole basis for requesting to proceed *pro se* was his belief that retained counsel was providing ineffective assistance of counsel. *See generally McMann v. Richardson*, 397 U.S. 759 (1970) (finding the right to counsel includes the right to effective assistance of counsel). Therefore, the Trial Court erred in finding Appellant knowingly, intelligently, and voluntarily waived his right to counsel. *See Gardner*, 351 S.C. at 412-13, 570 S.E.2d at 186-87; *see generally Singleton*, 107 F.3d at 1097 (finding appellate courts must consider the defendant's testimony, history, and the circumstances of his decision, as presented to the circuit judge at the time the defendant made his request).

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III. THE TRIAL COURT ERRED IN ADVISING APPELLANT THAT HE HAD TEN PEREMPTORY STRIKES PRIOR TO JURY SELECTION BECAUSE APPELLANT DETRIMENTALLY RELIED ON THIS ADVICE AND STRUCK A POTENTIAL JUROR BEFORE THE TRIAL COURT INFORMED APPELLANT THAT HE ONLY HAD FIVE STRIKES.

A criminal defendant has the right to a fair trial by an impartial jury under the federal and state constitutions. *See* U.S. Const. Amend. VI; *see also* S.C. Const. art. I, § 14; *State v. Salters*, 273 S.C. 501, 257 S.E.2d 502 (1979). This guarantee includes the right to a selection process that is unbiased and fair to the defendant and the jurors. *See Powers v. Ohio*, 499 U.S. 400, 410-16 (1991). Section 14-7-1110 of the South Carolina Code of Laws provides, in pertinent part:

Any person who is arraigned for the crime of murder, manslaughter, burglary, arson, criminal sexual conduct, armed robbery, grand larceny, or breach of trust when it is punishable as for grand larceny, perjury, or forgery is entitled to peremptory challenges *not exceeding ten*, and the State in these cases is entitled to peremptory challenges not exceeding five. Any person who is indicted for any crime or offense other than those enumerated above has the right to peremptory challenges *not exceeding five*, and the State in these cases is entitled to peremptory challenges not exceeding five.

S.C. Code Ann § 14-7-1110 (Peremptory challenges in criminal cases) (emphasis added).

Discussion

In this case, the Trial Court erred in advising Appellant that he had ten peremptory strikes prior to jury selection because Appellant detrimentally relied on this advice and struck a potential juror before the Court informed Appellant that he only had five strikes. *See* U.S. Const. Amend. V and VI; *see also State v. Jones*, 343 S.C. 562, 541 S.E.2d 813 (2001) (finding “Appellant reasonably relied upon the [court’s] representation that [it] intended to give that charge to the jury. The decision to alter the charge, after the argument,

was fundamentally unfair.”); *State v. Johnson*, 418 S.C. 587, 795 S.E.2d 171 (Ct. App. 2016) (finding “the trial court's decision was fundamentally prejudicial to Appellant because Appellant crafted his closing argument in reliance on the trial court's adamancy that it would not charge ‘the hand of one is the hand of all’ during the charge conference.”).

In discussing the jury selection process during the pre-trial hearing, Appellant indicated that he would have ten peremptory strikes, and the Trial Court confirmed, “*you’ll have ten.*” R. 19, l. 23 – 20, l. 9 (emphasis added). After Appellant had struck one potential juror, the Trial Court interjected, “*The strikes are actually five and five, not five and ten.*” R. 77, l. 4 – 78, l. 3 (emphasis added). After Appellant struck a second potential juror, the Trial Court reminded Appellant that he had three strikes remaining. T. 78, ll. 22-25. Appellant responded, “*I thought I had ten*”, and the Trial Court admitted, “*Initially I did as well but not for attempted murder.*” R. 79, ll. 3-14 (emphasis added).

Appellant subsequently argued to the Trial Court, “*Your Honor, I might not have struck one of the first for cause thinking I had ten . . . the first couple of ones I may not have struck if I knew I only had five [and] [s]ince I’ve only got one more, you can seat the juror.*” R. 84, ll. 9-13 (emphasis added). Appellant exhausted his final strike on juror number 176, David McMahan, who knew, John Montgomery, the former Dean at the University of South Carolina School of Law. R. 86, l. 1 – 87, l. 4.

It is fundamentally unfair that Appellant was prejudiced by the Trial Court’s erroneous confirmation that he had ten peremptory strikes. Therefore, the Trial Court erred in advising Appellant that he had ten peremptory strikes prior to jury selection because

Appellant detrimentally relied on this advice and struck a potential juror before the Court informed Appellant that he only had five strikes. *See* U.S. Const. Amend. V and VI.

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IV. THE TRIAL COURT ERRED IN REFUSING TO GRANT A MISTRIAL BECAUSE THE COURT PROVIDED AN UNCONSTITUTIONALLY COERCIVE *ALLEN* CHARGE TO THE JURY WHEN VIEWED IN ITS CONTEXT AND UNDER ALL CIRCUMSTANCES.

In determining whether to grant a mistrial, our Supreme Court has noted that “[t]he less than lucid test is . . . whether the mistrial was dictated by manifest necessity or the ends of public justice, the latter being defined as the public’s interest in a fair trial designated to end in just judgment.” *State v. Prince*, 279 S.C. 30, 33, 301 S.E.2d 471, 472 (1983).

“An *Allen* charge is an instruction advising deadlocked jurors to have deference to each other’s views, that they should listen, with a disposition to be convinced, to each other’s arguments.” *State v. Lee-Grigg*, 374 S.C. 388, 418 n.1, 649 S.E.2d 41, 57 n.1 (Ct. App. 2007) (internal quotation marks omitted), *aff’d*, 387 S.C. 310, 692 S.E.2d 895 (2010) (citing *Allen v. United States*, 164 U.S. 492 (1896) (holding that a trial judge may give a charge urging jurors who appear to be “deadlocked” to reach a verdict)). “The typical judicial mechanism for encouraging an indecisive jury is the *Allen* charge, in which jurors are instructed on, among other things, their duties to approach the evidence with an open mind and consider the opinions of their fellow jurors.” *State v. Robinson*, 360 S.C. 187, 193, 600 S.E.2d 100, 103 (Ct. App. 2004).

“Whether an *Allen* charge is unconstitutionally coercive must be judged ‘in its context and under all the circumstances.’” *Tucker v. Catoe*, 346 S.C. 483, 490, 552 S.E.2d 712, 716 (2001) (quoting *Lowenfield v. Phelps*, 484 U.S. 231, 237 (1988)). In *Tucker*, our Supreme Court adopted the standard set by the United States Supreme Court in *Lowenfield* to determine whether an *Allen* charge is unconstitutionally coercive. The following factors to be considered are as follows:

- (1) The charge did not speak specifically to the minority juror(s);
- (2) The judge did not include in his charge any language such as "You have got to reach a decision in this case;"
- (3) There was no inquiry into the jury's numerical division, which is generally coercive; and
- (4) While the jury returned a verdict shortly after the supplemental charge, which suggests a possibility of coercion, weighing against this is the fact that trial counsel did not object either to the inquiry into whether the jurors believed further deliberation would result in a verdict, nor to the supplemental charge.

Tucker, 346 S.C. at 492, 552 S.E.2d at 716 (citing *Lowenfield*, 484 U.S. at 237).

In *State v. Williams*, our Supreme Court cautioned trial judges "against using the following language:"

‘[W]ith the hope that you can arrive at a verdict.’ Because jurors are not required to reach a verdict after expressing that they are deadlocked, we believe this language could potentially be construed as being coercive. Furthermore, to alleviate problems in future cases where the jury is deadlocked, we would advise trial judges to instruct the jurors not to disclose their numerical division.

Id., 386 S.C. 503, 690 S.E.2d 62 (2010) n.7 (emphasis added); *see also Dawson v. State*, 352 S.C. 15, 20, 572 S.E.2d 445, 447 (2002) (stating an *Allen* charge cannot be unconstitutionally coercive, "but must instead be even-handed, directing both the majority and the minority to consider the other's views").

Discussion

In this case, the Trial Court erred in refusing to grant a mistrial after the Court provided an unconstitutionally coercive *Allen* charge to the jury when viewed in its context and under all the circumstances. *See Williams*, 386 S.C. 503, 690 S.E.2d 62, n.7. Specifically, the Trial Court instructed the jury:

[T]here's no reason for me to believe . . . that more or clearer evidence will be produced on one side or the other. . . I, therefore, ask that you return to your deliberations with the hope that you can arrive at a verdict within a reasonable amount of time as to each indictment.

R. 384, ll. 3-10 (emphasis added). *Id.* (“caution[ing] trial judges against using the following language: ‘with the hope that you can arrive at a verdict.’ Because jurors are not required to reach a verdict after expressing that they are deadlocked, we believe this language could potentially be construed as being coercive.”).

Here, after deliberating for approximately four hours, the jury sent out a second note stating, “*We, the jury, have not come to a unanimous verdict concerning all twelve counts and at this point we represent a hung jury.*” R. 380, ll. 19-22 (emphasis added). The State indicated that the jury “can render a verdict on some charges and others can mis-try.” R. 381, ll. 2-3. The State further noted, “[I]t’s, of course, in your discretion to give an *Allen* charge.” R. 381, ll. 3-4. Appellant moved for a mistrial and objected to the Trial Court instructing the jury with an *Allen* charge. R. 381, ll. 6-14.

The Trial Court then provided the above instruction the jury, and Appellant renewed his objection. R. 382, l. 1 – 385, l. 15. Approximately two hours later, the jury found Appellant guilty on eight counts of Assault and Battery, First Degree and one count of Assault and Battery, Third Degree. R. 386, l. 13 – 389, l. 10. The jury also found Appellant not guilty on three counts of Attempted Murder. R. 386, ll. 20-24; R. 388, ll. 17-21; R. 389, ll. 3-7.

The Trial Court’s response to the jury after rendering their verdict is in direct contradiction of with his prior jury instruction: *Compare* “there’s no reason for me to believe . . . that more or clearer evidence will be produced on one side or the other” *with*

“considering the evidence presented and perhaps in some of your minds a lack of clarity as to what was going on with Mr. Kester there” R. 384, ll. 3-10; R. 395, ll. 4-6. Therefore, the Trial Court erred in refusing to grant a mistrial after the Court provided an unconstitutionally coercive *Allen* charge to the jury when viewed in its context and under all the circumstances. *See Williams*, 386 S.C. 503, 690 S.E.2d 62, n.7.

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V. THE TRIAL COURT ERRED IN IMPOSING CONSECUTIVE SENTENCES THAT AMOUNT TO A *DE FACTO* LIFE SENTENCE BECAUSE THE GROSSLY DISPROPORTIONATE AGGREGATE SENTENCE IS CRUEL AND UNUSUAL PUNISHMENT BASED ON COMPARATIVE SENTENCES AND CLOSELY CONNECTED OFFENSES.

The Eighth Amendment to the United States Constitution, which applies against the States by virtue of the Fourteenth Amendment, provides: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” U.S. CONST. amend. VIII. The Eighth Amendment prohibits not only barbaric punishments, but also sentences that are disproportionate to the crime. *Solem v. United States*, 463 U.S. 277, 284 (1983).

“[I]n analyzing proportionality under the Eight[h] Amendment outside the capital context, South Carolina courts shall first determine whether a comparison between the sentence and the crime committed gives rise to an inference of gross disproportionality.” *State v. Harrison*, 402 S.C. 288, 299-300, 741 S.E.2d 727, 733 (2013). *See also State v. Pittman*, 373 S.C. 527, 565, 647 S.E.2d 144, 164 (2007) (“To establish that evolving standards of decency preclude his punishment, [Appellant] bears the ‘heavy burden[]’ of showing that our culture and laws emphatically and well nigh universally reject it.” (first alteration by court) (quoting *Harris v. Wright*, 93 F.3d 581, 583 (9th Cir. 1996))).

“In the rare instance that this threshold comparison gives rise to such an inference, intrajurisdictional and interjurisdictional analysis is appropriate. Courts may then look to whether more serious crimes carry the same penalty, or more serious penalties, and the sentences imposed for commission of the same crime in other jurisdictions. Courts should use this comparative analysis to confirm the gross disproportionality inference, and not to develop an inference when one did not initially exist.” *Harrison*, 402 S.C. at 299-300,

741 S.E.2d at 733 (citing *Harmelin*, 501 U.S. at 1005 (“The proper role for comparative analysis of sentences, then, is to validate an initial judgment that a sentence is grossly disproportionate to a crime...This conclusion neither 'eviscerates' Solem, nor 'abandons its second and third factors.'”)).

Discussion

In this case, the Trial Court erred in imposing consecutive sentences that amount to a *de facto* life sentence when the grossly disproportionate aggregate sentence is cruel and unusual punishment based on comparative sentences and closely connected offenses. R. 439, ll. 24-25. See U.S. CONST. amend. VIII; *Harrison*, 402 S.C. at 299-300, 741 S.E.2d at 733; see also S.C. Code § 19-1-150 (2019) (“When necessary, in a civil action or other litigation, to establish the life expectancy of a person from any period in his life, whether he is living at the time or not, the table below must be received in all courts and by all persons having power to determine litigation as evidence, along with other evidence as to his health, constitution, and habits, of the life expectancy of the person.”).

During sentencing, Appellant argued, “I believe . . . you aren’t supposed to sentence for separate things if it’s one thing... Aren’t they all sentenced like it’s one so - - and not separate?” R. 429, ll. 7-11. In response, the Trial Court replied, “no”. R. 429, ll. 12-14. Appellant also noted local comparative cases and argued, “[W]e need to compare some of the other cases in the area.” R. 429, ll. 21-23; R. 431, ll. 13-16. According to the life expectancy table in the South Carolina Code of Laws, Appellant’s received a *de facto* life sentence. See S.C. Code § 19-1-150.

When comparing Appellant’s case (i.e., the assault and battery, first degree, convictions and the injuries of the victims) with more serious cases (e.g., convictions for

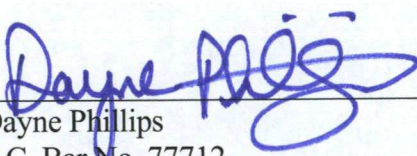
murder; attempted murder, assault and battery of a high and aggravated nature, felony DUI, resulting in death or great bodily injury, etc...), the sentence imposed by the Trial Court is grossly disproportionate. *See Harrison*, 402 S.C. at 299-300, 741 S.E.2d at 733. The same rationale applied to Section 17-25-50 of the South Carolina Code of Laws should apply in the instant case because Appellant is not a repeat offender, the crimes occurred at the same time, and he should not receive a *de facto* life sentence as punishment. *Cf.* S.C. Code § 17-25-50 (2019) (requiring the sentencing court to “treat as one offense any number of offenses which have been committed at times so closely connected in point of time that they may be considered as one offense.”); *see also State v. Gordon*, 356 S.C. 143, 155 S.E.2d 105, 111 n.12 (2003) (holding S.C. Code “§ 17-25-45 and § 17-25-50 must be construed together in determining whether crimes committed at points close in time qualify for a recidivist sentence” and noting “this does not mean Gordon is not subject to separate sentences for these offenses, merely that he is not subject to a recidivist LWOP sentence as a result of his second trafficking conviction.”).

Therefore, the Trial Court erred in imposing consecutive sentences that amount to a *de facto* life sentence when the grossly disproportionate aggregate sentence is cruel and unusual punishment based on comparative sentences and closely connected offenses. *See* U.S. CONST. amend. VIII; *see also State v. Smith*, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981) (“It is apparent here the sentencing judge did not exercise any discretion but based his ruling on an erroneous view of the law. It is an equal abuse of discretion to refuse to exercise discretionary authority when it is warranted as it is to exercise the discretion improperly.”).

CONCLUSION

Based on the foregoing reasons, Appellant James Kester respectfully requests that this Court reverse the circuit court and remand to the Richland County Court of General Sessions for a new trial (Issues II, III, IV, and V). However, if necessary, Appellant respectfully requests that the Court remand to the Richland County Court of General Sessions for a hearing to determine Appellant's competency to stand trial (Issue I). *See Blair*, 275 S.C. at 534, 273 S.E.2d at 538; *In re Christopher H*, 359 S.C. 161, 596 S.E.2d 500 (Ct. App. 2004).

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October 4, 2019

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

Clifton Newman, Circuit Court Judge

Appellate Case No. 2018-001852

Case No. 2017-GS-40-5220; 5223; 5224; 5226-5227; 5229-5232

The State of South Carolina,

Respondent,

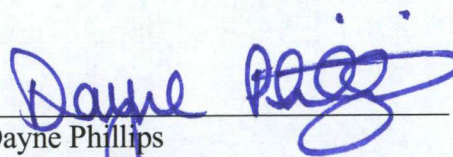
v.

James Kester,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned Counsel certifies that this Final Brief of Appellant complies with
Rule 211(b), SCACR.


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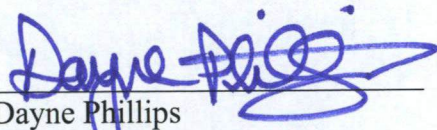
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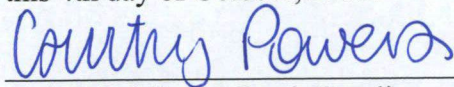
Appellant.

CERTIFICATE OF SERVICE

The undersigned Counsel certifies that a true copy of the Final Brief of Appellant has been served upon Joshua A. Edwards, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and upon Mr. James Kester, at Broad River Correctional Institution, on October 4, 2019.


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SUBSCRIBED AND SWORN TO before me
this 4th day of October, 2019.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: May 2, 2027.

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

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v.

JAMES KESTER,

Appellant.

FINAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUES ON APPEAL	1
STATEMENT OF THE CASE.....	2
ARGUMENT	4
I. The trial court correctly granted Kester’s motion to proceed <u>pro se</u> because Kester’s unequivocal request was made after sufficient warnings and the court had no reason to doubt his competency.	4
II. Kester’s argument that the trial court erred by “advising” him on the number of jury strikes is not preserved for review because the issue was not raised or ruled on by the trial court. Even if preserved, Kester has not shown error because it was his responsibility to know the correct number of strikes. Finally, he suffered no prejudice because the court gratuitously struck a sixth juror for cause, and there is no evidence that any of the seated jurors were biased against him.	9
III. The court’s Allen charge was not coercive because it did not convey that the jurors were required to reach a verdict.	13
IV. The trial court lawfully sentenced Kester within the statutory range.....	16
CONCLUSION.....	21

TABLE OF AUTHORITIES

Cases

<u>Allen v. United States</u> , 164 U.S. 492 (1896)	15
<u>Bryant v. State</u> , 384 S.C. 525, 683 S.E.2d 280 (2009)	17, 18
<u>Dawson v. State</u> , 352 S.C. 15, 572 S.E.2d 445 (2002)	15
<u>Ex parte Klugh</u> , 132 S.C. 199, 128 S.E. 882 (1925).....	18
<u>Faretta v. California</u> , 422 U.S. 806	5, 6
<u>Godinez v. Moran</u> , 509 U.S. 389 (1993).....	5
<u>Green v. State</u> , 351 S.C. 184, 569 S.E.2d 318 (2002).....	15
<u>Indiana v. Edwards</u> , 554 U.S. 164 (2008).....	5
<u>Major v. S.C. Dep't of Prob., Parole & Pardon Servs.</u> , 384 S.C. 457, 682 S.E.2d 795 (2009).....	17
<u>Martinez v. Court of Appeal of California, Fourth Appellate Dist.</u> , 528 U.S. 152 (2000).....	11
<u>Richards v. Crump</u> , 260 S.C. 133, 194 S.E.2d 575 (1973).....	17
<u>Solem v. Helm</u> , 463 U.S. 277, 103 S. Ct. 3001, 77 L. Ed. 2d 637 (1983).....	18
<u>State v. Barnes</u> , 407 S.C. 27, 753 S.E.2d 545 (2014)	5, 7
<u>State v. Barton</u> , 325 S.C. 522, 481 S.E.2d 439 (Ct. App. 1997).....	17
<u>State v. Bradshaw</u> , 269 S.C. 642, 239 S.E.2d 652 (1977)	4
<u>State v. Burton</u> , 356 S.C. 259, 589 S.E.2d 6 (2003)	11
<u>State v. Colden</u> , 372 S.C. 428, 641 S.E.2d 912 (Ct. App. 2007).....	4, 7
<u>State v. Dawson</u> , 402 S.C. 160, 740 S.E.2d 501 (2013)	16
<u>State v. Evins</u> , 373 S.C. 404, 645 S.E.2d 904 (2007)	12
<u>State v. Ezell</u> , 321 S.C. 421, 468 S.E.2d 679 (Ct. App. 1996)	14
<u>State v. Franklin</u> , 267 S.C. 240, 226 S.E.2d 896 (1976).....	16

<u>State v. Gordon</u> , 356 S.C. 143, 588 S.E.2d 105 (2003)	17
<u>State v. Jones</u> , 343 S.C. 562, 541 S.E.2d 813 (2001)	11
<u>State v. Kelly</u> , 331 S.C. 132, 502 S.E.2d 99 (1998)	6
<u>State v. Locklair</u> , 341 S.C. 352, 535 S.E.2d 420 (2000).....	4
<u>State v. Morris</u> , 307 S.C. 480, 415 S.E.2d 819 (Ct. App. 1992).....	10
<u>State v. Motley</u> , 251 S.C. 568, 164 S.E.2d 569 (1968).....	13
<u>State v. Muldrow</u> , 259 S.C. 414, 192 S.E.2d 211 (1972)	17
<u>State v. Nichols</u> , 325 S.C. 111, 481 S.E.2d 118 (1997).....	15
<u>State v. Pittman</u> , 373 S.C. 527, 647 S.E.2d 144 (2007).....	4
<u>State v. Prioleau</u> , 345 S.C. 404, 548 S.E.2d 213 (2001).....	14
<u>State v. Rayfield</u> , 369 S.C. 106, 631 S.E.2d 244 (2006).....	12
<u>State v. Samuel</u> , 422 S.C. 596, 813 S.E.2d 487 (2018)	8
<u>State v. Simmons</u> , 384 S.C. 145, 682 S.E.2d 19 (Ct. App. 2009).....	14
<u>State v. Stukes</u> , 416 S.C. 493, 787 S.E.2d 480 (2016).....	12
<u>State v. Williams</u> , 386 S.C. 503, 690 S.E.2d 62 (2010).....	15, 16
<u>Stephens v. CSX Transportation, Inc.</u> , 400 S.C. 503, 735 S.E.2d 505 (Ct. App. 2012).....	10
<u>Thompson v. S.C. Dep't of Pub. Safety</u> , 335 S.C. 52, 515 S.E.2d 761 (1999).....	18
<u>Tucker v. Catoe</u> , 346 S.C. 483, 552 S.E.2d 712 (2001).....	15
 <u>Statutes</u>	
S.C. Code Ann. § 14-7-1110.....	11
S.C. Code Ann. § 17-25-50 (2014).....	17
S.C. Code Ann. § 24-21-610.....	19
S.C. Code Ann. § 44-23-410(A)	5

STATEMENT OF ISSUES ON APPEAL

I.

Whether the trial court erred by granting Kester's motion to proceed pro se when Kester's unequivocal request was made after sufficient warnings and the court had no reason to doubt his competency.

II.

Whether the trial court erred by agreeing with Kester's pretrial assertion that he would have ten peremptory strikes, when in fact he had five, where the court corrected Kester's mistake when jury selection began, gratuitously struck a sixth juror for cause, gave Kester a clear opportunity to request to select a new jury, and there is no evidence that any of the seated jurors were biased against him.

III.

Whether the court's Allen charge was coercive when it urged the jurors to try to reach a verdict, but made it clear they were not required to do so.

IV.

Whether consecutive sentences violated the Eighth Amendment where Kester intentionally drove his car into a crowd of strangers and the trial court sentenced Kester within the statutory range.

STATEMENT OF THE CASE

On July 19, 2017, mourners gathered at Greenlawn Cemetery in Columbia for the graveside funeral service for Peggy Livingston. Appellant James Kester drove his 4,000 pound Cadillac DeVille to the gravesite, rolled down his window, and spoke to one of the attendees to confirm he was at Livingston's service. (R.p.109; 119; 275). He then deliberately backed up his car, positioned it so he was facing the gravesite, and plowed his car into the mourners. (R.p. 119; 127; 132-33; 180; 194-200; 205; 248). Witnesses described hearing the roar of the engine as the car accelerated into the crowd. (R.p.111; 113; 121; 135; 177-79; 246). The car accelerated so quickly that it left track marks on the pavement. (R.p.233; State's Exhibit #4). Police examined the car's airbag control module and determined the car's throttle was 96% engaged in the seconds leading up to the collision and the brakes were never applied. (R.p.270-80; State's Exhibit #90). Kester struck twelve people, seriously and gruesomely injuring some, including children and senior citizens. (R.p.140; 154; 168-75; 184-85; 210; 222; 238-39; State's Exhibits 32-80). A responding paramedic testified some of the victims would have died without treatment. (R.p.155). Many victims described lingering physical disabilities and mental trauma. (R.p.176-77; 187; 220; 222; 400; 403-07; 412-17; 421-26).

Kester told police he was motivated by a grudge against the South Carolina Department of Mental Health (DMH), where he claimed his daughter was mistreated as a patient years before. (R.p.292-93; State's Exhibit #2). He did not know Peggy Livingston. The only reason he chose to attack her funeral was that he saw in her obituary that she had worked at DMH. (R.p.309; State's Exhibit #91). Kester told police he'd been "thinking about this stuff for a long time." (R.p.307). None of the victims had ever heard of Kester or his daughter. (R.p.128; 133; 137; 143; 175; 212).

A Richland County grand jury indicted Kester for twelve counts of Attempted Murder. Kester proceeded to jury trial before the Honorable Clifton Newman on October 8–10, 2018. Kester represented himself, but attorneys Bill Nettles and John Delgado (who were relieved as counsel pursuant to Kester’s wishes) served as standby counsel. (R.p.4–29). Kester cross-examined witnesses and made legal arguments, but did not present a case. Kester was convicted of eight counts of First Degree Assault and Battery and one count of Third Degree Assault and Battery. He was acquitted of the three other counts. Characterizing the event as an act of terrorism, Judge Newman sentenced Kester to the maximum ten years’ incarceration for each count of First Degree Assault and Battery and thirty days for Third Degree Assault and Battery, with the sentences to run consecutively. (R.p.433–39). This direct appeal follows.

ARGUMENT

I.

The trial court correctly granted Kester's motion to proceed pro se because Kester's unequivocal request was made after sufficient warnings and the court had no reason to doubt his competency.

Kester claims the trial judge erred by allowing him to proceed pro se because his behavior should have prompted the court to take additional steps to ensure he was competent and capable of intelligently waiving his right to counsel. His argument fails because Judge Newman had no reason to doubt Kester's competency. Kester had already been evaluated and found competent, and Judge Newman was required to honor his unequivocal request to exercise his constitutional right of self-representation. This Court should affirm.

Standard of review.

A trial court's decision whether to order a psychiatric examination to assess a defendant's competency to stand trial is reviewed under an abuse of discretion standard. State v. Locklair, 341 S.C. 352, 364, 535 S.E.2d 420, 426 (2000); State v. Bradshaw, 269 S.C. 642, 644, 239 S.E.2d 652, 653 (1977) (explaining the determination whether a defendant requires a competency exam "necessarily requires the exercise of discretion"). Great deference is given to trial judge because he sits in a better position to ascertain the defendant's faculties. State v. Colden, 372 S.C. 428, 441, 641 S.E.2d 912, 920 (Ct. App. 2007). An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support. State v. Pittman, 373 S.C. 527, 570, 647 S.E.2d 144, 166 (2007).

Applicable law.

A criminal defendant has a constitutional right to represent himself at trial. Faretta v. California, 422 U.S. 806, 830 and n.40 (1975) (explaining the history of the right to self-representation and citing Laws of the Province of South Carolina, 518–519 (Trott 1736)). His choice “must be honored” even though it will usually be “to his own detriment.” Faretta, 422 U.S. at 834. The defendant should, however, “be made aware of the dangers and disadvantages of self-representation, so that the record will establish that ‘he knows what he is doing and his choice is made with eyes open.’” Faretta, 422 U.S. at 835. His decision should be made “knowingly and intelligently.” Faretta, 422 U.S. at 835.

When determining whether the decision to waive counsel is knowing and intelligent, the trial court should consider the defendant’s mental capacity. A defendant who is competent to stand trial is competent to waive the right to counsel. Godinez v. Moran, 509 U.S. 389, 399 (1993). This includes the right to serve as one’s own attorney at trial. State v. Barnes, 407 S.C. 27, 36, 753 S.E.2d 545, 550 (2014). A defendant’s legal knowledge or technical “ability to represent himself has no bearing upon his competence to choose self-representation.” Godinez, 509 U.S. at 400. However, a trial court has the discretion “take realistic account of the particular defendant’s mental capacities” and appoint counsel over a defendant’s objection if the court finds the defendant, due to “severe mental illness,” is intellectually incapable of representing himself without the trial turning into a humiliating spectacle. Indiana v. Edwards, 554 U.S. 164, 177 (2008).

When the trial court has “reason to believe” a defendant is not competent to stand trial “because the person lacks the capacity to understand the proceedings against him or to assist in his own defense,” the court should order the defendant to be evaluated by the state Department of Mental Health, or by a private evaluator. S.C. Code Ann. § 44-23-410(A) and (C) (2018).

The defendant bears the burden of proving his incompetence by a preponderance of the evidence. State v. Kelly, 331 S.C. 132, 149, 502 S.E.2d 99, 108 (1998).

Discussion.

The record supports the trial court's decision to grant Kester's motion to proceed pro se. Despite repeated and thorough warnings from Judge Newman, Kester was persistent and unequivocal in his request to represent himself. (R.p.5–29). Particularly given the overwhelming proof that Kester committed the alleged acts, Kester apparently believed he had nothing to lose from representing himself, and stood a better chance at acquittal by personally pleading his case to the jury on the theory that it would be unjust for the jury to convict him. See Fareta, 422 U.S. at 829, n.37 (discussing “William Penn's belief that an accused should go free if he could personally persuade a jury that it would be unjust to convict him”). As he told the court, “if I get ten years that's the same as me getting thirty or forty years at my age” (R.p.12). Kester clearly understood the dangers of self-representation, even paraphrasing (and rejecting) the maxim that “A man that represents himself has a fool for a client.” (R.p.22). Despite his lack of legal knowledge, Kester was confident that he could do a better job than his lawyers. Indeed, Kester achieved an unexpectedly favorable result, escaping conviction for attempted murder and the lesser-included ABHAN.

Kester claims the court erred by “fail[ing] to conduct a competency hearing.” But Judge Newman did conduct a lengthy hearing to address Kester's motion, a great deal of which was spent in a colloquy with Kester during which Judge Newman inquired about Kester's life history, including his mental health. Judge Newman learned that Kester graduated high school, attended three years of college as a math major, held several jobs, and spent years as a caretaker for his disabled daughter. (R.p.6–7). Kester intelligently answered the court's questions and told the

court he completely understood the proceedings against him. (R.p.9). His complaints about his lawyers were rational, centering on his assertion that they had not been communicative with him leading up to trial and had not shared discovery with him in a timely manner. (R.p.13). He indicated he understood the elements of attempted murder. (R.p.12). Kester's responses demonstrated an understanding of the proceedings against him and the mental capacity to defend himself as well as could be expected for a non-lawyer. Judge Newman would have erred if he had denied Kester's request. See State v. Barnes, 407 S.C. 27, 36, 753 S.E.2d 545, 550 (2014).

Furthermore, Kester has not shown prejudice because the end result he asserts should have occurred—a competency exam—*has already occurred*. Kester was evaluated by a medical professional of defense counsel's choosing and found to be competent. (R.p.8). The court was aware of this and neither Kester, his attorneys, or the solicitor requested any further evaluation. Tellingly, Kester's lawyers represented to the court that he was competent and capable of self-representation. John Delgado told the court that he believed Kester had "been responsible enough that he can sit here and act and we can stay here as stand-by counsel for him." (R.p.5). Surely, if either of Kester's eminently qualified and experienced lawyers had any doubts about his competency, they would have informed the court.

This case illustrates the "damned if you do, damned if you don't" nature of pro se representation requests, where the trial court's decision will be raised on appeal no matter how he rules. It also illustrates the wisdom of the highly deferential standard of review in competency cases, because the trial judge sits in a much better position to ascertain the defendant's faculties and evaluate his mental capacity. State v. Colden, 372 S.C. 428, 441, 641 S.E.2d 912, 920 (Ct. App. 2007). Judge Newman had no reason to believe Kester was incompetent, and he did not abuse his discretion by declining to sua sponte order any additional

evaluation. Rather, Judge Newman correctly recognized he was required to honor Kester's unequivocal request to exercise his fundamental constitutional right to represent himself, as our state appellate courts and the United States Supreme Court have repeatedly instructed. See State v. Samuel, 422 S.C. 596, 813 S.E.2d 487 (2018), reh'g denied (May 25, 2018), cert. denied, 139 S. Ct. 791 (2019). Evidence supports the trial court's ruling. This Court should affirm.

II.

Kester's argument that the trial court erred by "advising" him on the number of jury strikes is not preserved for review because the issue was not raised or ruled on by the trial court. Even if preserved, Kester has not shown error because it was his responsibility to know the correct number of strikes. Finally, he suffered no prejudice because the court gratuitously struck a sixth juror for cause, and there is no evidence that any of the seated jurors were biased against him.

Kester claims the trial court erred by "advising" him during the pretrial hearing that he had ten peremptory jury strikes, when in fact he had five. Kester's argument is not preserved for review because he did not raise the issue at trial despite being given a clear opportunity. Furthermore, it is not the trial court's responsibility to "advise" a pro se defendant on the applicable law. Pro se litigants are held to the same standards as attorneys, and it was Kester's responsibility to know the correct number of strikes. Finally, Kester has not shown prejudice because the court gratuitously struck a sixth juror for cause, and there is no evidence that any of the seated jurors were biased against him. This Court should affirm.

Relevant facts.

Towards the end of the pretrial hearing held the week before trial, the court's colloquy with Kester briefly turned to jury selection. Seeking to demonstrate to the court that he understood the jury selection process, Kester asserted the prosecutor would have five strikes and "we'll have ten." (R.p.20). Apparently without giving it much thought, Judge Newman agreed that "you'll have ten," and continued to explain the trial process. At trial the following week, jury selection began but neither Kester, the prosecutor, nor stand-by counsel brought up the number of strikes. After Kester struck the first potential juror, the court interjected that "The strikes are actually five and five, not five and ten." (R.p.50). After Kester struck a second juror, the court reminded him that he had "Two down and three to go." (R.p.50). Kester then

responded, “I thought I had ten,” to which the court responded, “Initially I did as well, but not for attempted murder.” Kester accepted the court’s response and continued with jury selection. (R.p.79).

Error Preservation.

This issue is not preserved for review. Kester’s confusion about jury strikes became apparent after he struck a second juror. The trial court repeated that Kester had five strikes. (R.p.79). Kester indicated he thought he had ten strikes, and the court informed him that “Initially I did as well, but not for attempted murder.” Kester responded only by saying “Okay.” Judge Newman gave Kester a clear opportunity to raise the issue after jury selection, asking the parties whether they had “any matters of law regarding the jury selection.” Kester responded, “No, your honor.” (R.p.96). Thus, Kester both affirmatively accepted the trial court’s ruling and failed to raise the issue when given a clear opportunity. State v. Morris, 307 S.C. 480, 486, 415 S.E.2d 819, 823 (Ct. App. 1992) (affirmatively accepting trial court’s ruling waives issue on appeal); Stephens v. CSX Transportation, Inc., 400 S.C. 503, 514, 735 S.E.2d 505, 511 (Ct. App. 2012) (an issue not raised and ruled on by the trial court is not preserved for appeal because the trial court did not have an “opportunity to exercise its discretion”). Given Kester’s statement that he had no complaints about jury selection, the court was justified in believing Kester was satisfied with the makeup of the jury and did not want to re-do the selection process. Kester should not be allowed to complain now on appeal after explicitly stating he had no objections at trial. Because Kester did not raise this issue at trial or ask the court for relief, he failed to preserve the issue for appeal.

Responsibilities of a pro se litigant.

Even if preserved, Kester has not demonstrated error on the part of the trial judge. While Judge Newman mistakenly agreed with Kester's pretrial assertion that he would have ten strikes, Kester had plenty of time to refer to the relevant statute and confirm this important procedural rule. He failed to do so. A pro se litigant who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the law. State v. Burton, 356 S.C. 259, 266, 589 S.E.2d 6, 9, n. 5 (2003). It was not the trial court's responsibility to advise him of the applicable law before trial began.

In fairness to Judge Newman and the parties, the confusion about the number of strikes in an attempted murder case is an easy mistake to make, evidenced by the fact that neither standby counsel nor the prosecutor caught the mistake. The fact that defendants are given only five strikes instead of ten in attempted murder cases is an anomaly in our law compared to other comparably serious offenses. See S.C. Code Ann. § 14-7-1110. But even if the trial court mistakenly believed Kester was entitled to ten strikes, he did not have the discretion to give Kester more. Accordingly, this case is distinguishable from State v. Jones, 343 S.C. 562, 541 S.E.2d 813 (2001), where the defendant relied on the court's assertion—made during trial—that he would give a certain jury charge. Judge Newman's only option was to start the selection process over again. Judge Newman gave Kester a clear opportunity to request this, asking the parties whether they had "any matters of law regarding the jury selection." Kester responded, "No, your honor." (R.p.96). The trial court was not required to make Kester's motion for him. See Martinez v. Court of Appeal of California, Fourth Appellate Dist., 528 U.S. 152, 162 (2000) ("A trial judge is under no duty to provide personal instruction on courtroom procedure or to perform any legal 'chores' for the defendant that counsel would normally carry out."). Kester has not demonstrated error on the part of the trial court.

Prejudice.

Even if the court erred, Kester suffered no prejudice. A defendant has no right to trial by a particular jury. State v. Evins, 373 S.C. 404, 416, 645 S.E.2d 904, 910 (2007). Kester has not identified any seated juror who had any bias against him. The jurors seated after Kester exhausted his strikes were a car salesman, a school principal, a worker at a pharmaceutical plant, a hospital support specialist, a quality assurance manager at an army hospital, a student, and an employee of Lexington Medical Center. (R.p.79–92). Kester raised no objections to any of these jurors, and there is no reason to believe they were any less favorable to him than others in the jury pool. See State v. Rayfield, 369 S.C. 106, 113, 631 S.E.2d 244, 248 (2006) (holding defendant was not prejudiced by improper Batson challenge because he was not denied legitimate strikes and there was no evidence jury was “tainted” by re-selection), abrogated on other grounds by State v. Stukes, 416 S.C. 493, 787 S.E.2d 480 (2016). The possibility that he “might have” used his strikes differently is not sufficient to show he was denied an impartial jury.

The one juror to whom Kester did object after exhausting his strikes was employed by the Public Safety Division of the Department of Mental Health. (R.p.89). Judge Newman (perhaps sensing the potential for unfairness) struck this juror for cause, even though the juror stated during voir dire that she had formed no opinion about the case and did not stand when the potential jurors were asked if there was any reason why any of them could not be fair and impartial. (R.p.66, line 15; 73–76). The juror did not know any of the witnesses, which included Livingston’s friends and family. (R.p.68). Judge Newman did not strike a similarly situated juror for cause, even though her husband was a psychiatrist at DMH. (R.pp.81–82). Thus, it appears the trial judge essentially gave Kester an extra strike to avoid any danger of unfairness.

The judge also gave Kester extra leeway to conduct voir dire, allowing him to ask specific questions of potential jurors. (R.p.85; 90–91). Accordingly, Kester has not demonstrated prejudice. See State v. Motley, 251 S.C. 568, 575, 164 S.E.2d 569, 572 (1968) (explaining that the burden is on the Appellant to satisfy the court that there was prejudicial error). This Court should affirm.

III.

The court's Allen charge was not coercive because it did not convey that the jurors were required to reach a verdict.

Kester claims the trial court's Allen charge was unconstitutionally coercive. This argument is not preserved for review because Kester did not object to the language of the charge at trial. Even if preserved, the charge was not coercive because it did not instruct the jurors that they were required to reach a verdict and was not directed at minority jurors. Instead, it correctly instructed the jurors to attempt to reach a unanimous verdict while at the same time not relinquishing their firmly-held beliefs merely for the sake of unanimity. This court should affirm.

Standard of review.

In reviewing a trial judge's jury instructions, an appellate court must view the jury charge as a whole and in light of the evidence and issues from trial. State v. Simmons, 384 S.C. 145, 178, 682 S.E.2d 19, 36 (Ct. App. 2009). A jury charge which is substantially correct and covers the law does not require reversal. State v. Ezell, 321 S.C. 421, 425, 468 S.E.2d 679, 681 (Ct. App. 1996).

Error preservation.

Kester did not object at trial on the same specific ground he raises on appeal. At trial, he objected to the court giving an Allen charge at all, urging mistrial was the only proper solution when the jury indicated they had not come to a unanimous verdict "concerning all twelve counts." (R.p.381-84). He never claimed the charge itself was coercive, and never objected to the "hope you can arrive at a verdict" language he cites on appeal (or any other language in the charge). Accordingly, this issue is not preserved for review. State v. Prioleau, 345 S.C. 404, 411, 548 S.E.2d 213, 216 (2001) (explaining a party may not argue one ground at trial and

another on appeal); State v. Nichols, 325 S.C. 111, 120, 481 S.E.2d 118, 123 (1997) (objection must be entered on specific ground at trial to preserve an issue for appeal).

Discussion.

Even if preserved, the argument is meritless. A trial judge has a duty to urge a jury to make every reasonable effort to reach a verdict. Green v. State, 351 S.C. 184, 194, 569 S.E.2d 318, 323 (2002); Allen v. United States, 164 U.S. 492, 493 (1896). As long as he does not coerce them into unanimity, such a charge is proper. When reviewing an Allen charge to determine if it was unconstitutionally coercive, the appellate court must judge the charge in the proper context and under the totality of the circumstances. Dawson v. State, 352 S.C. 15, 20, 572 S.E.2d 445, 447 (2002). Factors that may be considered include: (1) whether the charge was specifically directed at minority jurors; (2) whether the charge included any mandatory language about the necessity to return a verdict; (3) whether the trial judge made any inquiries into the jury's numerical division; and (4) how long the jury's deliberations lasted. Tucker v. Catoe, 346 S.C. 483, 493-494, 552 S.E.2d 712, 717-718 (2001).

None of those factors weigh against the State here. The trial court did not direct its comments towards the minority jurors, and it was not aware of the numerical division between them. Nor did the court instruct the jurors that they "must" arrive at a decision. See State v. Williams, 386 S.C. 503, 515, 690 S.E.2d 62, 68 (2010) (finding no error in the trial judge's charge in part because it did not include language such as "You have got to reach a decision in this case"). On the contrary, the court advised the jurors to "carefully consider and respect the opinion of each other and reevaluate your position, if necessary, for reasonableness, correctness, and impartiality," while also explaining that they "certainly should not give up [their] firmly held beliefs merely to be in agreement with [their] fellow jurors." (R.p.383). This is an appropriate

Allen charge. Finally, the jurors deliberated for another two hours after the charge was given, and gave Kester every benefit of the doubt by acquitting him of Attempted Murder and ABHAN on each charge. There was no coercion.

Kester relies on the Williams case to support his argument that the charge was coercive. However, the Williams court *affirmed* an almost identical charge, finding it “was not coercive.” State v. Williams, 386 S.C. 503, 515, 690 S.E.2d 62, 68 (2010). While the court did express discomfort with the phrase “with the hope that you can arrive at a verdict” because it “could potentially be construed as being coercive,” the court found the charge as a whole was proper. Id., 386 S.C. at 515, 690 S.E.2d at 68, n.7. This Court should affirm.

IV.

The trial court lawfully sentenced Kester within the statutory range.

Kester claims his sentence violates the Eighth Amendment prohibition against cruel and unusual punishment because it was grossly disproportionate to his crime. This contention is has no merit in light of the heinous nature of the crime. This Court should affirm.

Standard of review.

A sentence will not be overturned absent an abuse of discretion when the ruling is based on an error of law. State v. Dawson, 402 S.C. 160, 163, 740 S.E.2d 501, 502 (2013). An appellate court has no jurisdiction to review a sentence, provided it is within the limits provided by statute for the discretion of the trial court, and is not the result of prejudice, oppression or corrupt motive. State v. Franklin, 267 S.C. 240, 246, 226 S.E.2d 896, 898 (1976).

Legality of consecutive sentences.

A trial judge generally has wide discretion in determining what sentence to impose. State v. Franklin, 267 S.C. 240, 246, 226 S.E.2d 896, 898 (1976). Our Supreme Court has “long

recognized the power to impose cumulative sentences on conviction for several offenses.”

Richards v. Crump, 260 S.C. 133, 138, 194 S.E.2d 575, 577 (1973). “A court’s final judgment in a criminal case is the pronouncement of the sentence which includes the ability to designate whether sentences run concurrent or consecutive, subject to statutory restrictions.” Major v. S.C. Dep’t of Prob., Parole & Pardon Servs., 384 S.C. 457, 465–66, 682 S.E.2d 795, 799–800 (2009). Whether multiple sentences should run consecutively or concurrently is a matter left to the sound discretion of the trial judge. State v. Barton, 325 S.C. 522, 531, 481 S.E.2d 439, 444 (Ct. App. 1997).

Kester cites S.C. § 17-25-50 to support his argument that his sentences should have been ordered to run concurrently. That “three strikes” statute provides that, when determining the number of strikes for purposes of imposing a life without parole sentence, a trial court “shall treat as one offense any number of offenses which have been committed at times so closely connected in point of time that they may be considered as one offense” S.C. Code Ann. § 17-25-50 (2014). § 17-25-50 is a component of a multi-part recidivist sentencing statute, and must be construed as such. State v. Gordon, 356 S.C. 143, 153, 588 S.E.2d 105, 110 (2003), overruled by Bryant v. State, 384 S.C. 525, 683 S.E.2d 280 (2009) (adhering to relevant portion of Gordon opinion). It applies only for the purposes of sentencing repeat offenders. Id., citing State v. Muldrow, 259 S.C. 414, 417, 192 S.E.2d 211, 212 (1972) (holding predecessor recidivist statute applies “only for the purposes of sentencing under this statute”).

Kester seems to concede that § 17-25-50 is not applicable to this case when he argues that the statute’s “rationale” should apply “because Appellant is not a repeat offender.” Brief of Appellant at 43. This argument does not make sense because the rationale of the recidivist statute (which encompasses both § 17-25-45 and -50) is to provide enhanced punishment *for*

repeat offenders. Its rationale does not apply to someone who is “not a repeat offender” and whose sentence is not being enhanced due to a prior conviction. Bryant v. State, 384 S.C. 525, 534–35, 683 S.E.2d 280, 285 (2009) (purpose of § 17-25-45 is “to serve as a legislatively sanctioned safeguard to ensure that a *life without parole sentence* is not imposed in cases where the multiple section 17–25–45 offenses are ‘so closely connected in point of time that they may be considered as one offense’”) (emphasis added). The applicable authorities are the above-cited cases which establish that the decision whether to impose concurrent or consecutive sentences is within the discretion of the trial judge.

When Kester decided to attack multiple victims, he committed “separate and distinct violations of law, punishable as separate and distinct offenses.” Ex parte Klugh, 132 S.C. 199, 128 S.E. 882, 885 (1925). This is so “notwithstanding the transaction was one and the same.” Id., 132 S.C. 199, 128 S.E. at 886; See also Thompson v. S.C. Dep’t of Pub. Safety, 335 S.C. 52, 56, 515 S.E.2d 761, 763 (1999) (explaining where drunk driver injured multiple victims in a single car crash, it is “simply incorrect to assert that respondent committed only a single offense—he committed only one *type* of offense. . . . [W]e do not believe respondent is entitled to be rewarded by concurrent suspensions simply because he fortuitously seriously injured three people in one accident rather than injuring each in a separate accident”). Kester was lawfully given distinct sentences for his distinct crimes against distinct victims. It was within the trial court’s discretion to order his sentences to run consecutively.

Proportionality.

Kester claims his sentence was grossly disproportionate to the crime he committed. Reading his brief, one might assume he committed a petty property offense instead of what the trial court accurately described as an act of terrorism. Cf. Solem v. Helm, 463 U.S. 277, 103 S.

Ct. 3001, 77 L. Ed. 2d 637 (1983) (finding life without parole sentence for check fraud violated Eighth Amendment). Just as he did at trial, Kester ignores the harm he caused and speaks exclusively to the punishment imposed. The facts of the case clearly justified the sentence.

Initially, the consecutive sentences imposed in this case are not as severe as Kester portrays them to be. First degree assault and battery is a parole-eligible offense. S.C. Code Ann. § 24-21-610 (providing the parole board may parole a prisoner for any non-violent crime where “the prisoner shall have served at least one-fourth of the term of a sentence”). Although Kester’s sentence theoretically adds up to eighty years, he could end up serving as few as twenty, approximately what he would have served if given the maximum sentence for one count of ABHAN rather than A&B first degree, and substantially less than he would have served if sentenced to the maximum thirty-year sentence for one count of attempted murder.¹

Regardless of his life expectancy, Kester’s age does not mitigate his crimes. Quite the opposite—his age only serves to show he knew better. Kester is not entitled to unwarranted leniency because he committed his crimes as a senior citizen.

If there was ever a case warranting consecutive sentences, it is this one. Kester made an intentional choice to plow his car into a crowd of strangers, knowing he would injure or kill multiple people. Kester was motivated by a years-old grudge against the Department of Mental

¹ While the State recognizes that the jury did not convict Kester of attempted murder (a crime that carries perhaps the most demanding standard of criminal intent of any criminal offense in South Carolina), the facts clearly support the “great bodily injury” requirement for ABHAN, and there is no reason Kester should not have been convicted of ABHAN for those victims that suffered serious injuries. The State respectfully submits that the reason the jury convicted Kester of A&B 1st rather than ABHAN is simply because the solicitor did not devote any time during his closing argument to explain the distinctions between the two crimes, and the jury received only brief definitions of the offenses from the trial court. Some of the jurors were confused about the injuries suffered by the several victims, as evidenced by their first question to the court. (R.p.360; 372–73). If the jurors believed the victims only suffered “moderate bodily injury,” they would have convicted Kester of A&B second degree. In any case, the fact that Kester was only convicted of A&B 1st instead of ABHAN does not change the repulsive nature of his crime.

Health, but he did not know Livingston or any of the victims. His acts resulted in gruesome injuries such as shattered bones and legs “hyper-extended backwards.” (R.p.173; 194–95; State’s Exhibits #32–86). All of his victims, even those that weren’t injured, suffered severe mental trauma, as is laid out in excruciating detail in their victim impact statements during the sentencing hearing. (R.p.398–427). Kester was rightfully punished separately for each victim.

Furthermore, Kester showed an infuriating lack of remorse or concern for the victims, both on the day of the incident and at trial. (R.p.292; 299; 306; 420). At his sentencing hearing, the victims gave lengthy and emotional statements describing their severe physical and emotional injuries. Kester’s first response was to complain that the jail had not provided him with a razor with which to shave. (R.p.428). Kester then cast himself as the victim, minimized his conduct, and asserted that the DMH workers who treated his daughter were the ones who should be “brought to justice.” (R.p.438). He outrageously claimed that he “never harmed anybody in [his] life.” (R.p.432). When Judge Newman confronted him with the fact that he had caused great physical and mental harm to his victims, he again shifted the focus back to himself, asserting that he, too, had PTSD. (R.p.435). He reasoned that no one cared about him or his daughter when she was being treated at DMH, but “now the shoe is on the other foot.” (R.p.438). In his eyes, he didn’t “deserve much time.” (R.p.438). His staggering lack of remorse further justified a stern retributive sentence.

In light of these facts, the suggestion that Kester’s sentence was grossly disproportionate to his crimes is outrageous and offensive to the victims. He was sentenced within the statutory range and Kester has not shown (or even alleged) that Judge Newman’s sentence was motivated by oppression or any improper consideration. This Court should affirm.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

JOSHUA A. EDWARDS
Assistant Attorney General

BYRON GIPSON
Solicitor, Fifth Judicial Circuit

BY: 

For Joshua A. Edwards
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ATTORNEYS FOR RESPONDENT

October 2, 2019

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

Clifton Newman, Circuit Court Judge

Appellate Case No. 2018-001852

THE STATE,

Respondent,

v.

JAMES KESTER,

Appellant.

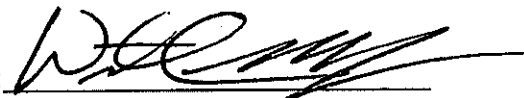
CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

ALAN WILSON
Attorney General

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ATTORNEYS FOR RESPONDENT

October 2, 2019

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions
Clifton Newman, Circuit Court Judge

Appellate Case No. 2018-001852

THE STATE,

Respondent,

v.

JAMES KESTER,

Appellant.

PROOF OF SERVICE

I, Anne Mueller, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his counsel of record, Dayne C. Phillips, Esquire, Price Benowitz LLP, 1614 Taylor St., Suite D, Columbia, SC 29201.

I further certify that all parties required by Rule to be served have been served.
This 2nd day of October, 2019.


Anne A. Mueller
Legal Assistant

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559

The South Carolina Court of Appeals

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July 07, 2021

Mr. Dayne C. Phillips, Esquire
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Mr. Joshua Abraham Edwards, Esquire
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Re: The State v. James Kester
Appellate Case No. 2018-001852

Dear Counsel:

Enclosed is the decision of the Court. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,


CLERK

cc: Alan McCrory Wilson, Esquire
Byron E. Gipson, Esquire
The Honorable Clifton Newman

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

James Kester, Appellant.

Appellate Case No. 2018-001852

Appeal From Richland County
Clifton Newman, Circuit Court Judge

Unpublished Opinion No. 2021-UP-259
Heard May 3, 2021 – Filed July 7, 2021

AFFIRMED

Dayne Phillips, of Price Benowitz, LLP, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson, Assistant
Attorney General Joshua Abraham Edwards, and
Solicitor Byron E. Gipson, all of Columbia, for
Respondent.

PER CURIAM: James Kester appeals his convictions for eight counts of first-degree assault and battery and one count of third-degree assault and battery. We affirm.

1. The circuit court did not abuse its discretion in not ordering a competency evaluation after being informed Kester had been found competent to stand trial in a prior evaluation and after observing Kester in a lengthy colloquy regarding his decision to represent himself. *See State v. White*, 364 S.C. 143, 147, 611 S.E.2d 927, 929 (Ct. App. 2005) ("[T]he decision of whether to order a competency examination is within the discretion of the trial judge, whose decision will not be overturned absent a clear showing of abuse of discretion."); *State v. Barnes*, 407 S.C. 27, 35-36, 753 S.E.2d 545, 549-50 (2014) (holding the required competency to waive the right to counsel is the same as that required to stand trial); *McLaughlin v. State*, 352 S.C. 476, 481, 575 S.E.2d 841, 843 (2003) ("The test for competency to stand trial or continue trial is whether the defendant has the sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational, as well as a factual, understanding of the proceedings against him.").

2. We affirm the circuit court's decision to grant Kester's motion to represent himself as Kester was aware of his right to counsel, chose to have his attorneys remain as standby counsel, and the circuit court repeatedly cautioned Kester about the dangers of self-representation. *See State v. Samuel*, 422 S.C. 596, 602, 813 S.E.2d 487, 490 (2018) ("Whether a defendant has knowingly, intelligently, and voluntarily waived his right to counsel is a mixed question of law and fact which appellate courts review de novo."); *State v. Dial*, 429 S.C. 128, 133, 838 S.E.2d 501, 504 (2020) ("The Sixth Amendment to the United States Constitution guarantees an accused's right to the assistance of counsel. A defendant may waive his right to counsel, but he must do so knowingly and intelligently."); *id.* ("For a knowing and intelligent waiver to occur, the defendant must be '(1) advised of his right to counsel; and (2) adequately warned of the dangers of self-representation.'" (quoting *Prince v. State*, 301 S.C. 422, 423-24, 392 S.E.2d 462, 463 (1990))); *Samuel*, 422 S.C. at 603-04, 813 S.E.2d at 491 ("Although a defendant's decision to proceed *pro se* may ultimately be to his detriment, such requests 'must be honored out of that respect for the individual which is the lifeblood of the law.'" (quoting *Barnes*, 407 S.C. at 35-36, 753 S.E.2d at 550)).

3. Because Kester does not demonstrate he was prejudiced in regards to his use of peremptory strikes, there is no reversible error. *See State v. Patterson*, 367 S.C. 219, 224, 625 S.E.2d 239, 242 (Ct. App. 2006) ("In order for an error to warrant reversal, the error must result in prejudice to the appellant."); *State v. Rayfield*, 369 S.C. 106, 113-14, 631 S.E.2d 244, 248 (2006) (explaining prejudice

may be presumed in certain cases involving *Batson*¹ challenges but generally a defendant has no right to a particular jury), *abrogated on other grounds by State v. Stukes*, 416 S.C. 493, 787 S.E.2d 480 (2016); *Wilson v. Childs*, 315 S.C. 431, 439, 434 S.E.2d 286, 291 (Ct. App. 1993) ("There is no reversible error in the [e]mpaneling of a jury unless it appears that the objecting party was prejudiced."); *Moore v. Jenkins*, 304 S.C. 544, 547, 405 S.E.2d 833, 835 (1991) ("[W]ith regard to errors in the empaneling of juries, this [c]ourt has previously stated in reviewing such errors that, 'irregularities in the empaneling of the jury will not constitute reversible error unless it affirmatively appears that the objecting party was prejudiced thereby.'" (quoting *S. Welding Works, Inc. v. K & S Constr. Co.*, 286 S.C. 158, 162, 332 S.E.2d 102, 105 (Ct. App. 1985))).

4. We find the circuit court's *Allen*² charge was not unconstitutionally coercive as the circuit court was not made aware of the division of jurors and its charge did not impermissibly address the minority jurors. Additionally, the charge did not admonish jurors that they *must* reach a verdict, and the charge cautioned jurors they should not give up their opinions simply in order to arrive at a verdict. *See Green v. State*, 351 S.C. 184, 194, 569 S.E.2d 318, 323 (2002) ("A trial judge has a duty to urge, but not coerce, a jury to reach a verdict."); *Workman v. State*, 412 S.C. 128, 130-31, 771 S.E.2d 636, 638 (2015) ("The four factors adopted by this [c]ourt in *Tucker [v. Catoe]*, 346 S.C. 483, 552 S.E.2d 712 (2001)], to determine whether an *Allen* charge is unconstitutionally coercive are: (1) Does the charge speak specifically to the minority juror(s)? (2) Does the charge include any language such as 'You have got to reach a decision in this case'? (3) Is there an inquiry into the jury's numerical division, which is generally coercive? [and] (4) Does the time between when the charge was given, and when the jury returned a verdict, demonstrate coercion?"); *Green*, 351 S.C. at 195, 569 S.E.2d at 323-24 (2002) (finding an *Allen* charge appropriate when the charge "adequately and correctly told the jurors they should listen to what the other side had to say; to be open to change one's mind; and to not change one's mind if it would do violence to one's conscience"); *but see State v. Taylor*, 427 S.C. 208, 214, 829 S.E.2d 723, 727 (Ct. App. 2019) ("South Carolina approves the use of a modified *Allen* charge, which must be neutral and even-handed, instruct both the majority and minority to reconsider their views, and cannot be directed at the jurors in the minority."); *Id.* at 218, 829 S.E.2d at 729 (finding the *Tucker* factors are not exclusive and the trial court's failure to emphasize jurors "should not surrender their conscientiously held beliefs simply for the sake of reaching a verdict" in addition to its statements

¹ *Batson v. Kentucky*, 476 U.S. 79 (1986).

² *Allen v. United States*, 164 U.S. 492 (1896).

regarding the expense of retrying the case constituted a coercive charge).

5. We conclude the circuit court's sentencing Kester to the maximum amount of time for each conviction to run consecutively was not an unconstitutional de facto life sentence simply because Kester is an older defendant. His sentences are parole eligible and his actions of driving a car into a crowd of innocent people warranted significant punishment. *See State v. Finley*, 427 S.C. 419, 423, 831 S.E.2d 158, 160 (Ct. App. 2019) (stating when considering whether a sentence constitutes cruel and unusual punishment, "this court will not disturb the circuit court's findings absent a manifest abuse of discretion"); *Major v. S.C. Dep't of Prob., Parole & Pardon Serv.* 384 S.C. 457, 465-66, 682 S.E.2d 795, 799-800 (2009) ("A court's final judgment in a criminal case is the pronouncement of the sentence[,], which includes the ability to designate whether sentences run concurrent or consecutive, subject to statutory restrictions."); *Thompson v. S.C. Dep't of Pub. Safety*, 335 S.C. 52, 56-57, 515 S.E.2d 761, 763-64 (1999) (explaining when a drunk driver injured multiple victims in a single car crash, it is "simply incorrect to assert that [the driver] committed only a single offense—he committed only one *type* of offense. . . . [W]e do not believe [the driver] is entitled to be rewarded by concurrent suspensions simply because he fortuitously seriously injured three people in one accident rather than injuring each in a separate accident.").

AFFIRMED.

KONDUROS, GEATHERS, and MCDONALD, JJ., concur.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

Clifton Newman, Circuit Court Judge

Appellate Case No. 2018-001852

Opinion No. 2021-UP-259

The State of South Carolina,

Respondent,

v.

James Kester,

Appellant.

PETITION FOR REHEARING

Appellant James Kester respectfully petitions for rehearing pursuant to Rule 221(a), SCACR, on the basis that this Court overlooked and misapprehended material facts and principles of law in its unpublished per curiam opinion affirming Appellant's convictions and sentences on July 7, 2021. *State v. Kester*, 2021-UP-259 (S.C. Ct. App. filed July 7, 2021). Specifically, Appellant is requesting that this Court rehear all five issues raised on direct appeal because the facts presented in this case are distinguishable from the case law cited in the opinion.

I. *Competency to Stand Trial Evaluation was Reasonable and Necessary Based on the Insufficient Colloquy with Appellant and Inadequate Blair Hearing.*

The Trial Court erroneously failed to order a competency to stand trial evaluation or conduct an adequate *Blair* hearing to determine Appellant's competency to stand trial before granting Appellant's request for self-representation despite Appellant's "irrational behavior" and

the Court's failure to review the private psychiatric evaluation. (R. 7, l. 25 – 8, l. 10). *See In re Antonio H.*, 319 S.C. 395, 399, 461 S.E.2d 825, 827 (Ct. App. 1995); *State v. Blair*, 275 S.C. 529, 532-33, 273 S.E.2d 536, 537 (1981); *see generally Pate v. Robinson*, 383 U.S. 375 (1966) (finding when evidence of a defendant's mental deficiencies raise doubt as to his competence, due process requires the judge to order a competency hearing).

For example, Appellant provided the following response to the Trial Court about his knowledge of the plea negotiations between Defense Counsel and the State:

Yeah, [Defense Counsel] they tried to get them [the State] to reduce the charges for a plea bargain, and - - and, like I said, my daughter was given so much toxic drugs that she couldn't take it anymore.

So people who have got mental problems, people with poor mental health, I mean, I got - - I got that in writing. One day she drank straight forty glasses of water her brain was cooked so bad. In the middle of the night she'd be hollering, please help. . . . I mean, I tried different things and I got arrested at the time for going to visit her when they denied it, and they threw the case out because they did have a trespass in the Department of Mental Health. They went to the General Assembly and got a (inaudible) and solely because of me.

I mean, after they threw my case out I went to the General Assembly. I don't even think they are allowed to do that to one individual but they did it anyway.

(R. 26, l. 12 – 27, l. 13). The Trial Court previously noted the following question regarding the procedure for determining whether Appellant was mentally ill:

All right. So with regard to Mr. Kester, to be judged mentally ill a person needs to be in a mental institution until they are judged to be in a condition to be transferred to the general population or transferred from a mental ward or mental place to regular population. Is that your understanding?

(R. 25, ll. 20-25).

Furthermore, the Trial Court also failed to ask any additional questions or conduct any

colloquy regarding the private evaluation. (R. 8, ll. 2-8). Without knowing more information about Appellant's mental health status, the Trial Court and this Court were unable to properly determine whether Appellant was competent to stand trial. The Trial Court also conducted an insufficient colloquy with Appellant regarding his decision to represent himself. *See In re Christopher H*, 359 S.C. 161, 596 S.E.2d 500 (Ct. App. 2004). Therefore, the Trial Court erred in failing to order a competency to stand trial evaluation when it was reasonable and necessary based on the insufficient colloquy and an inadequate *Blair* hearing.

II. Appellant Did Not Comprehend the Dangers of Self-Representation

Appellant did not comprehend the dangers of self-representation based on his responses to the Trial Court's questions at the pre-trial hearing and the inadequate colloquy with the Trial Court. *See Gardner v. State*, 351 S.C. 407, 412-13, 570 S.E.2d 184, 186-87 (2002); *see generally United States v. Singleton*, 107 F.3d 1091, 1097 (4th Cir. 1997) (finding appellate courts must consider the defendant's testimony, history, and the circumstances of his decision, as presented to the circuit judge at the time the defendant made his request). Specifically, the Trial Court failed to address Appellant's physical and apparent mental health problems, his lack of legal knowledge, and his *pro forma* answers to *pro forma* questions. (R. 9, l. 4 – 10, l. 12; R. 13, ll. 2-15; R. 16, ll. 3-7; R. 17, ll. 8-13; R. 19, ll. 8-16). *See Gardner*, 351 S.C. at 412-13, 570 S.E.2d at 186-87. The Trial Court also failed to follow the procedure set forth in the advisement of right to self-representation form provided by our Supreme Court titled *Faretta Warnings*, SCCA 684 (1/14) (found at <https://www.sccourts.org/forms/pdf/-SCCA684.pdf>).

Notably, Appellant informed the Trial Court regarding his mental and physical health and decision to proceed *pro se*:

With all that's going on, I'm worried I left out something while they were doing this to my daughter. You said had I been under any

stress, and I should have said yes. I lost my left eye due to this and I've been trying to get them to get those records that they been telling me a year that they did and that is another thing. Like I said, they've [Defense Counsel] been negligent and that's why I had to do this.

(R. 27, l. 20 – 28, l. 3).

Furthermore, there is also no evidence that Appellant attempted to manipulate the proceedings, as his sole basis for requesting to proceed *pro se* was his belief that retained counsel was providing ineffective assistance of counsel. *See generally McMann v. Richardson*, 397 U.S. 759 (1970) (finding the right to counsel includes the right to effective assistance of counsel). Therefore, the Trial Court erred in finding Appellant knowingly, intelligently, and voluntarily waived his right to counsel. *See Gardner*, 351 S.C. at 412-13, 570 S.E.2d at 186-87.

III. Appellant Detrimentally Relied on the Trial Court's Erroneous and Prejudicial Confirmation Regarding his number of Available Peremptory Strikes.

Appellant argued to the Trial Court, “*Your Honor, I might not have struck one of the first for cause thinking I had ten . . . the first couple of ones I may not have struck if I knew I only had five [and] [s]ince I’ve only got one more, you can seat the juror.*” (R. 84, ll. 9-13) (emphasis added). Appellant exhausted his final strike on juror number 176, David McMahan, who knew, John Montgomery, the former Dean at the University of South Carolina School of Law. (R. 86, l. 1 – 87, l. 4). It is fundamentally unfair that Appellant was prejudiced by the Trial Court’s erroneous confirmation that he had ten peremptory strikes prior to jury selection, thereby denying his right to intelligently exercise his peremptory strikes (which is akin to a structural error where prejudice is presumed). Therefore, the Trial Court erred in advising Appellant that he had ten peremptory strikes prior to jury selection because Appellant detrimentally relied on this advice and struck a potential juror before the Court informed Appellant that he only had five strikes and could not intelligently use his peremptory strikes. *See U.S. Const. Amend. V and VI.*

IV. *Unconstitutionally Coercive Allen Charge to the Jury*

The Trial Court instructed the jury:

[T]here's no reason for me to believe . . . that more or clearer evidence will be produced on one side or the other. . . I, therefore, ask that you return to your deliberations *with the hope that you can arrive at a verdict within a reasonable amount of time* as to each indictment.

(R. 384, ll. 3-10) (emphasis added). *See State v. Williams*, 386 S.C. 503, 690 S.E.2d 62, n.7 (2010) (“caution[ing] trial judges against using the following language: ‘with the hope that you can arrive at a verdict.’ Because jurors are not required to reach a verdict after expressing that they are deadlocked, we believe this language could potentially be construed as being coercive.”). The Trial Court’s response to the jury after rendering their verdict is in direct contradiction with his prior jury instruction: *Compare* “there’s no reason for me to believe . . . that more or clearer evidence will be produced on one side or the other” *with* “considering the evidence presented and perhaps in some of your minds a lack of clarity as to what was going on with Mr. Kester there . . .” (R. 384, ll. 3-10; R. 395, ll. 4-6). Therefore, the Trial Court erred in refusing to grant a mistrial after the Court provided an unconstitutionally coercive *Allen*¹ charge to the jury when viewed in its context and under all the circumstances. *See Williams*, 386 S.C. 503, 690 S.E.2d 62, n.7.

V. *Aggregate Sentence is Grossly Disproportionate Constituting Cruel and Unusual Punishment Based on Comparative Sentences and as a De Facto Life Sentence.*

When comparing Appellant’s case (i.e., the convictions for assault and battery, first degree, and the victim’s injuries) with more serious cases (e.g., convictions for murder; attempted murder, assault and battery of a high and aggravated nature, felony DUI, resulting in death or great bodily injury, etc...), the sentence imposed by the Trial Court is grossly disproportionate and serves as a *de facto* life sentence. *See State v. Harrison*, 402 S.C. 288, 299-300, 741 S.E.2d 727, 733 (2013);

¹ *Allen v. United States*, 164 U.S. 492 (1896).

see also S.C. Code § 19-1-150 (2019) (“When necessary, in a civil action or other litigation, to establish the life expectancy of a person from any period in his life, whether he is living at the time or not, the table below must be received in all courts and by all persons having power to determine litigation as evidence, along with other evidence as to his health, constitution, and habits, of the life expectancy of the person.”).

Furthermore, the rationale applied to Section 17-25-50 of the South Carolina Code of Laws should apply in this case because Appellant is not a repeat offender, the crimes occurred at the same time, and he should not receive a *de facto* life sentence as punishment. *Cf.* S.C. Code § 17-25-50 (2019) (requiring the sentencing court to “treat as one offense any number of offenses which have been committed at times so closely connected in point of time that they may be considered as one offense.”); *see also State v. Gordon*, 356 S.C. 143, 155 588 S.E.2d 105, 111 n.12 (2003) (holding S.C. Code “§ 17-25-45 and § 17-25-50 must be construed together in determining whether crimes committed at points close in time qualify for a recidivist sentence” and noting “this does not mean Gordon is not subject to separate sentences for these offenses, merely that he is not subject to a recidivist LWOP sentence as a result of his second trafficking conviction.”). Therefore, the Trial Court erred in imposing consecutive sentences that amount to a *de facto* life sentence when the grossly disproportionate aggregate sentence is cruel and unusual punishment based on comparative sentences and closely connected offenses. *See* U.S. CONST. amend. VIII.

[Conclusion and Signature Page to Follow]

CONCLUSION

Based on the forgoing reasons, Appellant respectfully requests that this Court grant the petition to rehear this case, reverse his convictions, and remand to the Richland County Court of General Sessions for a new trial (based on Issues II, III, IV, and V); or if necessary, remand to the Richland County Court of General Sessions for a hearing to determine Appellant's competency to stand trial (based on Issue I).


Dayne Phillips
S.C. Bar No. 77712

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July 22, 2021

Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

Clifton Newman, Circuit Court Judge

Appellate Case No. 2018-001852

Opinion No. 2021-UP-259

The State of South Carolina,

Respondent,

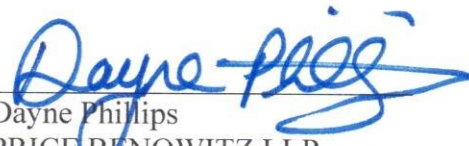
v.

James Kester,

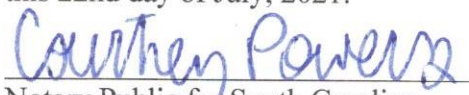
Appellant.

CERTIFICATE OF SERVICE

The undersigned Counsel certifies that a true copy of the Petition for Rehearing has been served upon Joshua Edwards, Esquire, via email and by depositing a true and correct copy of the same via first-class mail, postage prepaid to the S.C. Attorney General's Office, P.O. Box 11549, Columbia, SC 29211, this 22nd day of July, 2021.


Dayne Phillips
PRICE BENOWITZ LLP
1614 Taylor Street, Ste. D.
Columbia, SC 29201
(803) 807-0234
Attorney for Appellant

SUBSCRIBED AND SWORN TO before me
this 22nd day of July, 2021.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: May 2, 2027.

The South Carolina Court of Appeals

The State, Respondent,

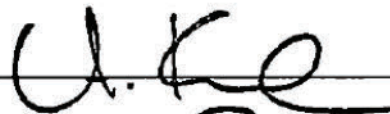
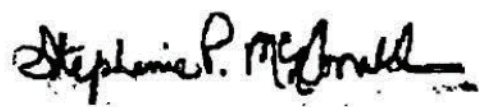
v.

James Kester, Appellant.

Appellate Case No. 2018-001852

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

	J.
	J.
	J.

Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire
 Dayne C. Phillips, Esquire
 Joshua Abraham Edwards, Esquire
 Byron E. Gipson, Esquire
 The Honorable Clifton Newman

FILED
Oct 01 2021