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1 solicitor's office.

2 MR. MITCHELL: Your Honor, at this time, the State
3 would move State's Exhibit No. 1 into evidence.

4 THE COURT: Any objection?

5 MS. BOYD: No.

6 THE COURT: Without objection, so entered.

7 (WHEREUPON, State's Exhibit No. 1 was admitted into
8 evidence.)

9 MR. MITCHELL: Thank you, Your Honor.

10 BY MR. MITCHELL:

11 Q Now, Mr. Talley [sic], let me ask you, I heard a
12 conversation -- or I guess testimony, I should say, from
13 Ms. Boyd concerning a videotape of the actual incident.
14 To your -- I guess to your recollection, do you recall if
15 there -- there was a videotape, if there ever was a
16 videotape?

17 A Yes. What I -- again, I believe it was the evening
18 before this case was scheduled for trial, I sat down. I
19 looked at the file. There was an indication that there
20 was a videotape. I contacted Deputy Holman that night.
21 Deputy Holman was the arresting officer. And I asked him
22 about the videotape.

23 His explanation was that when the original case
24 number was created, which was the allegation of assault
25 and battery, a case number was assigned to that allegation

1 and to that investigation. And that the videotape was
2 matched, or mated, or paired with that case number.

3 Subsequently, when it was determined by Deputy Holman
4 that Ms. Boyd had given false information, that generated
5 a new case number, a second case number. And the original
6 case number was closed out. That was the allegation of
7 assault and battery. That case was closed.

8 Unfortunately, at that point, when evidence is
9 associated with a case that has been administratively
10 closed, it was the policy of property and evidence, at
11 that time, to discard all evidence. So that video was --
12 and I was told this by Deputy Holman. That video was, in
13 fact, destroyed, thrown away, whatever in 2012 when the
14 case involving the allegations of assault and battery were
15 administratively closed by the sheriff's office.

16 Q Okay. And so just for -- just for the record
17 purposes, initial case was opened for the charges that
18 Ms. Boyd filed a report on saying that she had been
19 assaulted?

20 A Yes.

21 Q And so there was a videotape that was -- that
22 accompanied that case?

23 A Correct.

24 Q And so officers investigated the case that was opened
25 that she filed, saw the video. The video was attached to

1 that. They determined that there was no evidence of it.
2 And so they closed the case and then, also, discarded the
3 videotape that was a part of that case; correct?

4 A That is correct.

5 Q And so a new case was opened in which they now
6 charged Ms. Boyd with filing a false police report.

7 But -- but instead of making, I guess, a duplicate copy, I
8 should say, to place in that file, the file was destroyed
9 before that happened?

10 A I don't know the exact timing. I -- I do know that
11 what should have happened is when a new case is opened and
12 if the videotape was valuable evidence, then the videotape
13 should have been attached to the new case number. That
14 would have -- I mean, it's obvious that that is a --

15 THE COURT: Counsel, I'm going to -- I'm going to
16 just ask a question.

17 MR. MITCHELL: Sure. Go right ahead.

18 EXAMINATION

19 BY THE COURT:

20 Q That absolutely makes no sense to me.

21 A Well, Your Honor --

22 Q Let me ask you this question. The charge upon which
23 they are charging Ms. Boyd with, they're basing it upon --
24 one of the pieces of evidence was the videotape. So it
25 makes absolutely no sense to me why the videotape would

1 not be attached to that case number. I understand what
2 you're saying about the first case. I understand that.
3 But the probable cause for the second charge had to be
4 based upon the videotapes.

5 So why in the world -- you're being -- you're working
6 with the -- the solicitor's office. You're -- you're a
7 contract lawyer there. Explain to me -- I don't
8 understand that -- that connection. Is that how they do
9 business over there?

10 A Well, Your Honor, I -- I hope I made it clear at
11 the -- at the front end. I am repeating to the Court
12 what -- Deputy Holman's explanation.

13 Q Well, I -- I'm just -- and I need to be clear, as the
14 trial judge in the matter, as to the process.

15 A Yes, sir.

16 Q And I'm just asking about the process. And, I mean,
17 you're the witness that the State's calling. So I'm just
18 concerned about the process. That the subsequent charge
19 in which this -- Ms. Boyd was charged with was based
20 primarily on -- one of the pieces of evidence was the
21 video. And the video was destroyed?

22 A Yes, Your Honor.

23 Q Is that -- is that what you're telling the Court?

24 A Yes, sir, I am.

25 Q Okay. I'm clear.

1 A And -- and I was told that the procedures and
2 policies of the sheriff's office --

3 Q Who told you that?

4 A Deputy Holman when I questioned him as to how this
5 happened and why this happened.

6 THE COURT: Holman's going to be one of your
7 witnesses?

8 MR. MITCHELL: He -- he's not subpoenaed today, Your
9 Honor.

10 THE COURT: All right.

11 MR. MITCHELL: But I'm happy to hold the record open
12 if Your Honor wants an affidavit or to continue the case.

13 THE COURT: Well, I'll make that determination.

14 Go on.

15 MR. MITCHELL: Okay.

16 CONTINUED DIRECT EXAMINATION

17 BY MR. MITCHELL:

18 Q So you find out that the video is destroyed. So this
19 case proceeds to the day of trial?

20 A Correct.

21 Q Sometime in July, is that -- if memory serves me.

22 A June or July. If -- it's June 25th.

23 Q June 25th. Okay. So the trial starts on June 25th.
24 Ms. Boyd shows up. She -- she's representing herself at
25 this point; correct?

1 A Correct. Now, we've had no contact from Ms. Boyd
2 prior to this point. I say "we," I am now speaking for
3 the solicitor's office. I knew -- I knew that Mr. Talley
4 had been excused. I did not know whether Ms. Boyd would
5 attend or not attend it.

6 EXAMINATION

7 BY THE COURT:

8 Q Did she get her discovery materials on the day of the
9 trial?

10 A Yes, sir.

11 Q All right. And you -- and is it customary to give
12 defendants the discovery material in any case on the day
13 that the trial is being called before the Court? Is that
14 customary?

15 A Yes, sir.

16 Q In all cases -- in all cases that the solicitor's
17 office's prosecutes, they provide -- and I'm talking about
18 all cases because this is the case that's being
19 prosecuted. In all cases in which it's prosecuted by the
20 State, are you telling me that all defendants are given
21 discovery on the day of the trial?

22 A No, sir. I am telling you --

23 Q Why is this one different?

24 A I -- because Ms. Boyd had an attorney. Her attorney
--

1 absolutely no contact from Ms. Boyd until the day of trial.

2 Q Well, my question is, there were two -- two charges.

3 One was the initial charge that it -- was, subsequently,

4 closed. Mr. Talley asked for discovery as it relates to

5 that charge?

6 A No, sir.

7 Q That was --

8 A No, sir. Mr. Talley represented Ms. Boyd on the

9 assault -- I mean, excuse me, on the false information.

10 Q All right.

11 A And -- and so we provided all -- we -- the

12 solicitor's office provided all relevant discovery available.

13 Q But the discovery -- but, in essence, the discovery
14 was given to this Defendant on the day of the trial?

15 A For the second time. It was given to her through her
16 attorney, first, in March. And then, secondly, the first
17 time we actually --

18 Q You gave it to her the day of the trial?

19 A Yes, sir.

20 THE COURT: Go ahead. Go ahead, Mr. Mitchell.

21 MR. MITCHELL: Thank you, Your Honor.

22 CONTINUED DIRECT EXAMINATION

23 BY MR. MITCHELL:

24 Q So she receives the discovery. Does she make a
25 motion for a continuance at all before Judge Ford?

1 A I don't recall. I -- I honestly do not have any
2 recollection of whether she did or did not.

3 Q Okay. So prior to -- normally, it's customary to, I
4 guess -- and I don't practice in magistrate's court. So
5 when is a jury selected for magistrate's court? Is it
6 selected before or -- right before the trial, or is it
7 selected --

8 A Juries are selected for every case scheduled for that
9 week on Tuesday morning of the week of trial.

10 Q Okay.

11 A So in this case -- in this case, the notice that went
12 to Ms. Boyd advised that her trial was scheduled June 25th
13 at 9:00 a.m. And there is -- as part of the notice, it
14 says, Please notice jury selection will be Tuesday,
15 June 24th at 9:30 a.m.

16 Q Okay.

17 A And since I'm reading from a document, we may want to
18 introduce that.

19 MR. MITCHELL: If I can get this marked as State's
20 Exhibit No. 2.

21 THE COURT: Any objection?

22 MS. BOYD: No.

23 THE COURT: State's Exhibit No. 2.

24 (WHEREUPON, State's Exhibit No. 2 was marked for
25 identification only.)

1 BY MR. MITCHELL:

2 Q I'll hand this back to you, Mr. Talley [sic]. And
3 that's a document from --

4 THE COURT: You called him "Mr. Talley." It's
5 Mr. Lyall.

6 MR. MITCHELL: I apologize.

7 Thank you so much.

8 THE WITNESS: I consider it a compliment. I think
9 the world of Mike Talley.

10 THE COURT: You should. You should.

11 THE WITNESS: Yes, sir.

12 BY MR. MITCHELL:

13 Q I apologize, Mr. Lyall.

14 That's a document from the magistrate court's office
15 here in Greenville; correct?

16 A That is correct.

17 Q And it outlines that jury selection is to take place
18 before the actual trial; correct?

19 A That's correct.

20 MR. MITCHELL: Your Honor, at this time, the State
21 would ask that this document be moved into evidence.

22 THE COURT: Any objection?

23 MS. BOYD: No.

24 THE COURT: All right. That's State's Exhibit No. 2
25 or State's Exhibit No. 3?

1 MR. MITCHELL: State's Exhibit No. 2.

2 THE COURT: State's Exhibit No. 2 without objection.
3 (WHEREUPON, State's Exhibit No. 2 was admitted into
4 evidence.)

5 BY MR. MITCHELL:

6 Q So, Mr. Lyall, that notice was sent out. So a jury
7 had been picked by the time Ms. Boyd showed up for her
8 trial that morning?

9 A That is correct.

10 Q Okay. So the trial -- the trial starts. How many
11 witnesses -- do you have any witnesses on your schedule to
12 call or your trial list to call?

13 A I would think that we probably called three
14 witnesses. There were three deputies there. I -- I have
15 nothing to verify that. It's possible there was a fourth.
16 But, again, in the neighborhood of three or four
17 witnesses. Actually, there was a fourth because it was
18 the process server, who initially -- Mr. Crump, who was,
19 initially, investigated for the assault and battery
20 allegation.

21 Q Okay.

22 A So, say, three deputies and a man by the name of
23 Crump.

24 Q Okay. Now, let me ask you if you -- I know it's been
25 a while. If you can recall, do you know if there was any

1 alternate jurors that were selected at all?

2 A There was one alternate.

3 Q Okay. Now, you said Mr. Crump, the -- the man who --
4 the process server was there at trial?

5 A Correct.

6 Q Do you recall a situation where -- where Mr. Crump
7 somehow talked to or engaged a -- a juror? Are you
8 familiar --

9 A I do. I -- I remember it well. There -- I didn't
10 see it, but it was reported either by Ms. Boyd or some
11 of -- there were a couple of women with her, maybe family
12 members. I don't know. But, anyway, there were a couple
13 of women.

14 Somebody brought it to the Court's attention that
15 Mr. Crump was speaking to the alternate juror. Now, the
16 jury was in the process of deliberating is my --
17 deliberating is my recollection. So that was done without
18 anyones knowledge.

19 So Mr. Crump was brought back into the courtroom,
20 under oath -- verified under oath, and asked him, did he
21 know that alternate juror. Because, at that point, the
22 allegation was -- Ms. Boyd's allegation was that Mr. Crump
23 was friends with a juror. And that would have been very
24 improper if that were the case. Even if she was an
25 alternate, it would be very improper.

1 So I put Mr. Crump back on the witness stand and
2 asked him whether he knew that alternate juror. His
3 testimony was, no. He -- and he was still under oath.
4 His testimony was, no, he had never seen that woman in his
5 life. However, because she had sat through the entire
6 trial, he was interested to know what her take was on the
7 trial. And that was the end of it.

8 Because -- and, again, this is important. That
9 alternate juror never once, not even for one second, sat
10 in with the jury during breaks. The alternate juror was
11 treated as all alternate jurors are. They listen to a
12 hundred percent of the testimony, but they are sequestered
13 from the jury. So she was -- this alternate juror was
14 largely just a spectator during the trial because she was
15 never needed.

16 Q Okay. So that -- ultimately, that juror is excused.
17 Now, prior to -- or I guess during deliberations, does the
18 jury send out a note that they have a question, or
19 something to that effect?

20 A I believe they did, yes.

21 Q Okay. What's your recollection of that?

22 A Well, it -- it was an odd question. Because you
23 ought not to even have an issue of probable cause in a
24 trial. Those matters are determined in advance.

25 But Ms. Boyd had repeatedly, during the trial,

1 brought up the issue of probable cause. And so Judge Ford
2 then instructed the jury on probable cause since she had
3 made it an issue during trial. And the jury did have a
4 question about probable cause. I remember the -- I would
5 agree with Ms. Boyd's recollection that the jury was in
6 their deliberation room. And Judge Boyd [sic] wanted
7 to --

8 THE COURT: Judge Ford.

9 THE WITNESS: Judge Ford. Excuse me.

10 Thank you, sir.

11 Judge Ford wanted to -- once he learned what the
12 question was, he wanted to let Ms. Boyd and myself know
13 what the question was. And out of an -- I assume out of
14 an abundance of caution -- I'm not here to speak for Judge
15 Ford. He wanted Ms. Boyd and myself to hear what he was
16 going to tell the jury.

17 So rather than bring them into the courtroom,
18 Ms. Boyd and myself stood next to Judge Ford. And he
19 explained to the jury that he had given them a definition
20 of probable cause as part of the charge to the jury. And
21 he was unable to clarify it in any way. That it would be
22 their duty to interpret the law. That is --

23 EXAMINATION

24 BY THE COURT:

25 Q And this -- this dialogue took place with the Judge

1 and the jury in the jury room with you and Ms. Boyd
2 present?

3 A Yes, sir.

4 Q And -- and in your experience, Mr. Lyall, is that
5 normally how it's conducted with the -- with the attorneys
6 in the jury room with the jury with the question? Is
7 that -- is that --

8 A Your Honor, I -- I -- if you're asking if I've seen
9 that before --

10 Q Yeah. I'm asking -- I'm asking you if you've seen
11 that before. You've been practicing law for 30 years?

12 A Yes, sir.

13 Q And have you ever seen that?

14 A Yes, sir.

15 Q When?

16 A But if you want to ask me what the traditional method
17 is, the --

18 Q I know what the traditional method is. And probably
19 the -- the -- probably the more proper method to do that
20 is the way it's done that you've seen hundreds of times.
21 But for the Judge to go back in the jury room with the two
22 lawyers and ask questions, that's rare and far between,
23 isn't it?

24 A Yes, sir. It's unusual. But he didn't ask
25 questions. He -- he wanted us to hear what he was going

1 to tell the jury.

2 Now, the more standard practice would be to bring the
3 jury into the courtroom.

4 Q Well, you know that and I know that.

5 A Yes, sir.

6 THE COURT: All right. Go ahead.

7 MR. MITCHELL: Thank you, Judge.

8 CONTINUED DIRECT EXAMINATION

9 BY MR. MITCHELL:

10 Q So this happened. Ultimately, the jury comes back
11 with a verdict?

12 A Correct.

13 Q Okay. So the verdict is -- they've determined that
14 they find Ms. Boyd guilty. Now, after that, she appeals
15 the case. Were you involved, at any point, beyond that?

16 A No, sir. The solicitor's office takes over primary
17 responsibility for all appeals in magistrate's court. My
18 boss, Assistant Solicitor Mitchell Byrd, would have
19 handled that.

20 I did attend the appeal hearing -- the scheduled
21 hearing on the appeal. I sat in the back of a courtroom.
22 I had no participation in what was going to be the
23 argument. I -- I was not even involved in the preparation
24 of any argument the solicitor's office was going to
25 advance.

1 MR. MITCHELL: I beg the Court's indulgence, Your
2 Honor.

3 (Pause.)

4 BY MR. MITCHELL:

5 Q And I know you said you weren't involved, so you may
6 not be able to answer this question. Do you know if
7 Ms. Boyd asked for any type of continuance prior -- after
8 she filed an appeal?

9 A I was present in the courtroom when there was some
10 discussion of an e-mail she sent to Judge Hill's clerk.
11 What I heard was that she had not copied Mr. Byrd on the
12 request for a continuance. That's all I remember. But
13 I -- I am aware that she had made a continuance request.

14 MR. MITCHELL: Thank you so much, Mr. Lyall.

15 Please answer any questions Ms. Boyd may have for
16 you.

17 THE WITNESS: Absolutely.

18 THE COURT: Ms. Boyd, do you have any questions?

19 MS. BOYD: Yes.

20 I'm going to step up.

21 CROSS-EXAMINATION

22 BY MS. BOYD:

23 Q Hello, Mr. Lyall.

24 A Ms. Boyd.

25 Q How are you doing today?

1 A I'm doing well.

2 Thank you.

3 Q Okay. You agree that Mr. -- Mr. Talley was relieved;
4 right?

5 A Yes, he was.

6 Q On April the 9 -- on April the 9th?

7 A I -- let me see if I can confirm that date. I know
8 he asked the Court to be relieved on April the 7th. I,
9 also, know that request was granted.

10 I'm unable to tell you what date the request was
11 granted.

12 Q Okay. And when did I appear for court after that?

13 A The day of trial, which would have been --

14 Q Yeah, the day of trial. What's the date of trial?

15 A June 25th.

16 Q Did you attempt to provide discovery to me between
17 those -- between those two dates?

18 A No, ma'am.

19 Q Okay. Did -- do you know of the solicitor's office
20 attempting to provide discovery to me during those dates?

21 A Oh, well, I'm -- I'm responding on behalf of the
22 solicitor's office. At no --

23 Q Okay.

24 A -- have I ever, with the solicitor's office, been in

1 Q Okay. And you said that you sent discovery to
2 Attorney Talley on March the 11th of 2014?

3 A The solicitor's office sent an e-mail containing
4 discovery on March 11th, yes, ma'am.

5 Q Okay. But you couldn't -- you did not confirm
6 receipt, did you?

7 A Yes, ma'am. We do have a piece of paper that said it
8 was delivered. My testimony was I don't have a clue if
9 Mr. Talley or anyone on his staff opened that e-mail.

10 Q Okay. Did you provide a copy of the discovery to me
11 on June the 25th of 2014?

12 A Yes, ma'am.

13 Q Okay. And why did you provide a copy to me?

14 A As a courtesy. Because you, obviously, did not have
15 the discovery from your attorney.

16 Q Okay. And you do agree that I made a written
17 statement to Deputy Holman; right, on November the 16th?

18 A I -- I apologize. I don't have that document in
19 front of me. But, yes, ma'am, I do know you made --

20 Q Okay.

21 A -- a written statement to Deputy Holman.

22 Q Okay. And Deputy Holman -- are you aware of the --
23 the Greenville County Sheriff's policy that all statements
24 must be written by the -- the complainant?

25 A I'm not aware of that policy, but it would be a good

1 one.

2 Q Okay. Well, let me ask you a question. Did Jack
3 Crump make a written statement?

4 A Ma'am, I -- I don't know. I have no idea.

5 Q I was looking at a conversation that -- that Deputy
6 Holman had with Jack Crump on November the 3rd. Now, mind
7 you, I made my complaint on October the 30th. Now, in
8 between October the 30th and November the 3rd, I'm
9 speaking with Deputy Holman. And he told me that he had
10 not spoken -- he did not speak with Jack Crump. But I
11 found --

12 MR. MITCHELL: Judge, is there a question here?

13 THE COURT: All right. You've got -- you can't --
14 you can't testify. You've got to ask a question.

15 So objection sustained.

16 Ask a question.

17 BY MS. BOYD:

18 Q So I'm asking you, are you -- are -- do you know
19 whether or not Jack Crump made a statement?

20 A No, ma'am. I have no idea.

21 Q Okay. In the -- in the warrant -- do you have a copy
22 of the warrant?

23 A I -- I do not. Although, it is part of State's
24 Exhibit No. 1.

25 THE COURT: Do you need to see it?

1 MS. BOYD: Yes. Could you let him see it?

2 THE COURT: Well, you've got to --

3 MS. BOYD: Okay. The warrant.

4 BY MS. BOYD:

5 Q Could you possibly show me in the -- in the warrant
6 how probable cause was established?

7 A May I see it?

8 Q Yes.

9 A On this warrant, as would be the case in --

10 Q Yes. Could you just read it?

11 A To let you know where we are, we're at the bottom of
12 the center of the warrant --

13 Q Excuse me, sir. Could you just, please, read the --
14 the whole -- just read the whole --

15 A Okay. Having found probable cause and the above
16 affiant having sworn before me, you are empowered and
17 directed to arrest the said defendant and bring him or her
18 before me forthwith to be dealt with according to law. A
19 copy of this arrest warrant shall be delivered to the
20 defendant at the time of its execution, or as soon
21 thereafter as is practicable. Sworn to and subscribed
22 before me on November 16, 2012. And then there's a
23 signature of James E. Hudson, who is a judge.

24 Q Okay. Now, could you read in the description how
25 that probable cause was established?

1 A I will be glad to read from the warrant, but I'm
2 unable to tell you --

3 Q No. Just --

4 A -- exactly what was told to Judge Hudson with that
5 clarification.

6 Q Okay. Well, I just want you to read what's in what
7 he stated in the warrant.

8 A Sure. On October 30th, 2012, the Defendant, Donna
9 Boyd, filed a police report against a male subject who
10 served her with civil papers, reference case number
11 12-160032.

12 The investigation revealed the suspect to be Jack
13 Crumpton with Foothills Investigations. Further,
14 investigation revealed video evidence from Greenville
15 County Sheriff's Office deputies at county square
16 unbounding the Defendant's complaint that Mr. Crumpton --
17 now, it's Crumpton -- aggressively approached the
18 Defendant and forcefully shoved papers inside the
19 Defendant's handbag causing her injury to her shoulder,
20 arm, and hand.

21 The affiant has a written statement from the
22 Defendant in her own words and her own handwriting falsely
23 accusing Mr. Crumpton. This offense occurred at county
24 square, 301 University Ridge, Greenville, South Carolina,
25 in Greenville County.

1 Q Okay. Thank you, sir.

2 Now, you -- you saw that word "unfounded"?

3 A Yes.

4 Q You saw the word "unfounded"?

5 A Yes.

6 Q Were there any facts listed -- are there any facts
7 listed as to how it was unfounded, her complaint was
8 unfounded? Are there any facts?

9 A No, ma'am. It just says, Further investigation
10 revealed video evidence from Greenville County Sheriff's
11 Office deputies at county square.

12 Q Okay. Sir, you're well versed in probable cause;
13 right?

14 A I feel as though I'm familiar with it, yes, ma'am.

15 Q Okay. And what -- define probable cause.

16 A It's a reasonable belief that a crime has been
17 committed.

18 Q Okay. And it's based on what?

19 A You'd have to give me a fact situation --

20 Q Based on articulable facts; right? And
21 circumstances; right? Articulable facts and
22 circumstances; right?

23 A Yes.

24 Q It can't be a hunch, or I feel, or whatever. It has
25 to be articulable -- articulable facts; right?

1 A Reasonable belief.

2 Q Exactly. Are there any articulable facts in that
3 warrant?

4 A Based on video evidence is what Deputy Holman said.

5 Q Okay. But, however, on June 25th, the videotape was
6 destroyed?

7 A I don't know the date the videotape was destroyed.

8 Q Okay. And, also, you said based on the videotape;
9 right?

10 A I am reading from the warrant that you requested.

11 Q Exactly. Based on the videotape -- I was trying to
12 find --

13 MS. BOYD: Excuse me, Your Honor.

14 BY MS. BOYD:

15 Q I'm trying to find -- do you have a copy of the
16 property and evidence? Here it is, a copy of the property
17 and evidence.

18 A Yes. That is part of State's Exhibit No. 1.

19 Q Okay. Part of State's Exhibit No. 1.

20 Okay. What is the date the evidence was entered?

21 A It appears November 7th, 2012.

22 Q Okay. And whose signature -- who was it received by?

23 A Wow. I don't know. I mean, I -- it's received by --
24 it looks like Julie Thaxton.

25 Q Okay. And what was entered into evidence?

1 A A Memorex CDR inside a case.

2 Q Okay. Also, go to the bottom -- almost like the
3 bottom of the page. Well, I guess my question is, does it
4 show that this video once it was entered into -- on
5 November the 7th, does it show this video -- this video
6 was ever taken out of property and evidence?

7 A This particular document does not.

8 Q Okay. And you stated earlier that the -- that the
9 evidence was -- was destroyed. And that was an
10 administrative -- what did you say earlier?

11 A I said when the -- when your allegation of assault
12 and battery was administratively closed, the tape was
13 destroyed.

14 Q Okay. It was destroyed. Is there -- is there a
15 record or something showing that it was signed off, that
16 the evidence -- it was signed -- it was signed off to be
17 destroyed?

18 A I have absolutely no idea.

19 Q Okay. Because I'm looking at the authorization for
20 disposition. And it states that it is the authorizing
21 officers responsibility to notify owners to claim property
22 and that when I spoke -- and that -- at the bottom, it
23 says, Type of disposition. And then it has a few boxes
24 clear for destruction, released from, or whatever. Is
25 that box checked off on this -- on this form, that it was

1 cleared for -- for destruction?

2 A No, ma'am. There's nothing filled in at the bottom
3 of the sheet of paper I'm looking at.

4 Q Okay. And on June -- June -- On June the 25th, is it
5 your testimony that you did -- that you informed me of the
6 videotape being destroyed?

7 A Yes, ma'am.

8 Q Okay. Prior to that, did you inform me or Attorney
9 Talley that the videotape had been destroyed?

10 A I previously testified that it was the evening of
11 June 24th that I, first, reviewed the file. At that time,
12 I realized that there should be a video. And I contacted
13 Deputy Holman.

14 Q How long -- okay. How long had -- how long did you
15 have -- how long did you have the file? When were you
16 assigned this particular file?

17 A I would have picked it up the Friday beforehand.

18 Q The Friday beforehand?

19 A Yes.

20 Q Okay. So you said that you reviewed it the day
21 before?

22 A Actually, the evening before, yes, ma'am.

23 Q The evening -- the evening before.

24 Did you inform the Court that the -- the videotape
25 had been destroyed?

1 A I don't recall, but I probably would have, yes.

2 Q You probably would have?

3 A The next morning. I mean, are you asking me did I
4 pick up the phone and call a Judge at 8:00 in the evening?
5 The answer is no.

6 Q That videotape -- when I spoke -- when I spoke to you
7 on June the 25th when you all summoned to meet privately
8 with me in the courtroom, did I ask you when that -- when
9 it was destroyed, that evidence was destroyed?

10 A You may have. I have no recollection of that
11 question.

12 Q And -- okay. Did you -- did you instruct the jury
13 that -- that the -- the evidence was destroyed?

14 A I did not instruct the jury anything. That's the
15 judge's job.

16 Q I -- I apologize. Wrong word.

17 A I did acknowledge to the jury probably in opening
18 statements and, again, in closing argument that this was a
19 case where there was a video that had been inadvertently
20 destroyed. Yes, ma'am.

21 Q Okay. When did you -- when were the officers
22 summoned to appear?

23 A I -- I have absolutely no idea. Again, I don't
24 participate in the issuance of subpoenas for trial, so.

25 MS. BOYD: Okay. Your Honor, I just want to -- I

1 what I know. You -- I'm assuming you got it because you
2 showed up for trial.

3 Q And in regards to the jury, how was the jury chosen?

4 A Can you be a little more specific?

5 Q I mean, what was -- what was the racial make up of
6 the jury?

7 A The jury was all white.

8 Q And when were they chosen?

9 A The day before, which would have been the 24th at --
10 among other juries selected at 9:30 in the morning. I
11 cannot tell you whether that was the first jury, second
12 jury, third jury. I don't know.

13 Q Okay. And what -- what -- what did judge -- what did
14 Judge Ford instruct the jury before they went out to
15 deliberate? What did he instruct them to do?

16 A Gosh, that's a broad question, but return -- return a
17 fair verdict.

18 Q Well, did he -- did he -- did he instruct them to
19 determine probable cause?

20 A No. I think he defined probable cause. Because
21 that, to you, was a very important issue at trial. And so
22 he didn't -- my recollection is because you made it an
23 issue during trial, he felt as though the jury should have
24 the definition of it.

25 Q Okay. But you -- do you agree that we were summoned

1 guess can I put this on the record? That the officers
2 were, actually, summoned on May the 9th.

3 THE COURT: You've -- you've already testified.

4 MS. BOYD: Yes.

5 THE COURT: See, you're representing yourself. So
6 you've already testified.

7 Ms. BOYD: Okay.

8 THE COURT: So your portion -- what -- what you're
9 doing now is you're asking him questions.

10 MS. BOYD: Okay.

11 THE COURT: This is not where you get to testify.

12 MS. BOYD: Okay.

13 BY MS. BOYD:

14 Q Okay. I guess what I'm trying to do is determine
15 when those officers were summoned to appear?

16 A Ms. Boyd, you indicated just a second ago that you
17 seemed to have the answer to that question. But I -- I
18 don't have the answer to that question.

19 Q And, also, in regards to -- you stated earlier -- you
20 stated earlier that -- that I -- that I received notice --
21 I received notice from the Court to appear.

22 A The file contained a copy of a document that was sent
23 to you. I don't have it in front of me. I believe it's
24 now State's Exhibit No. 2. But it was sent to an address
25 on Pelham Road. That's -- that's a hundred percent of

1 to the jury room?

2 A Yes. I've -- I've already described that.

3 Q And what did -- what did the jury -- what was the
4 question the jury -- one of the jurors asked Judge --
5 Judge Ford?

6 A My recollection is they wanted a better definition of
7 probable cause.

8 Q So it's your understanding they had an issue with
9 probable cause?

10 A They had a question, yes, ma'am.

11 Q Okay. You -- you stated earlier -- do you -- would
12 you agree -- you said something earlier that probable
13 cause should have been determined in advance?

14 A Well, probable cause was determined in advance by
15 Judge Hudson when the warrant was issued. A judge will
16 not sign off on a warrant if probable cause is not
17 provided to him or her.

18 Q But we were in a -- but wouldn't you agree, we were
19 in the courtroom without evidence?

20 A We were in the courtroom with testimony as to what
21 deputies had previously viewed on a video.

22 Q Okay. Were -- were those deputies eyewitnesses?

23 A To what happened?

24 Q To the incident.

25 A No, ma'am.

1 Q The incident on October the 30th?

2 A Mr. Crump was an eyewitness and he testified. You
3 were an eyewitness and you testified.

4 Q The three deputies, were they eyewitnesses to the
5 crime?

6 A No, ma'am. There were two eyewitnesses to your
7 allegation of assault and battery. The only witness to
8 the crime for which you were charged was Deputy Holman.

9 Q Who -- who was the eyewitness of -- who were those
10 eyewitnesses?

11 A You and Mr. Crump are the only two people that know
12 from an eyewitness perspective what happened. And you
13 both testified to the jury what happened.

14 Q Okay. And -- and there were three officers; correct?

15 A Three officers who were not eyewitnesses who did
16 testify at trial.

17 Q Okay. Did you see -- have -- have you looked at the
18 magistrate return?

19 A No, ma'am. I've never seen it.

20 Q Okay. I want to pull up the magistrate's return. Do
21 you have a copy of the magistrate's return?

22 A Ma'am, I don't have a copy and I've never seen it.

23 MS. BOYD: Your Honor, I apologize. This is not
24 my -- this is not my original file. I got this from the
25 State's attorney. And it's in a different order than

1 mine. But I want to take a look at the -- the magistrate
2 return.

3 May I step away for a second and just grab it right
4 here?

5 THE COURT: All right. While she's doing that, I'll
6 tell you what, we're going to take a 10-minute break.

7 (WHEREUPON, a break was taken.)

8 THE COURT: All right. Yes, ma'am.

9 BY MS. BOYD:

10 Q I just wanted you to take a look at the magistrate's
11 return. But before I -- I get there, Mr. Lyall, it's your
12 testimony that the officer saw the videotape?

13 A I know Deputy Holman saw the videotape. And my
14 recollection is the other two deputies had, also, seen it.

15 Q Okay. So I'll ask you a question. The videotape was
16 destroyed, what, sometime -- sometime in 2012?

17 A That's correct.

18 Q Okay. When did -- could you tell me when the
19 officers saw the videotape?

20 A He saw it -- his testimony was he looked at that
21 videotape prior to asking you to come down to the LEC and
22 sign a statement.

23 Q Okay.

24 A Once you signed a statement that you were assaulted,
25 forcefully attacked, he then showed that videotape to

1 Judge Hudson, who issued the warrant.

2 Q Okay.

3 A That was Deputy Holman's testimony.

4 Q Okay. Did -- did the officers make sworn statements?

5 A There were no written statements from any law
6 enforcement officer, other than the report, the code five
7 that Deputy Holman wrote in his supplemental report. I
8 don't consider that to be a written statement. I consider
9 that simply to be a report.

10 Q Okay. So is it -- is it standard to -- to --
11 standard procedure to just destroy evidence? I mean, I
12 hadn't had my court appearance yet. However, the -- the
13 evidence was destroyed.

14 THE COURT: Ask a question now. Make sure you ask a
15 question.

16 BY MS. BOYD:

17 Q Is that the standard procedure regarding evidence? I
18 mean, is it a timeframe as to when evidence is -- when
19 it's okay to destroy evidence? Is there, like, a
20 timeframe?

21 A I'm not able to answer that question. I don't work
22 for the sheriff's office. The explanation was that this
23 tape was only attached to one case number and not the
24 other. So I -- I think it's undisputed why it happened.
25 I'm not going to defend the fact that it did happen.

1 Q Did Deputy Holman give you something in writing when
2 he gave you a reason as to why the evidence was destroyed?
3 Did he give you -- did he give you something in writing to
4 support that?

5 A No, ma'am. And I, certainly, didn't ask him for
6 anything in writing.

7 Q Would you agree that the evidence was -- was key to
8 my case?

9 A I think the evidence -- if the evidence showed what
10 the deputy stated it showed, it would be critical to the
11 State's case. And it would have been devastating to your
12 case.

13 Q But the -- but the officers testified; correct?

14 A Yes, ma'am.

15 Q And -- but the -- the video was not submitted into
16 evidence?

17 A The video had been destroyed.

18 Q Okay. So how could they testify -- how could they
19 corroborate their testimony if there's no videotape?

20 A It was a matter of credibility. It was just like
21 Mr. Crump testified as to what happened. He was the man
22 who was the process server. He testified what happened.
23 You had an opportunity to cross-examine him. Because you
24 and he, certainly, had different viewpoints of exactly
25 what happened. And, you know, the -- the very nature of a

1 trial is every witness is subject to attack on their
2 credibility.

3 Q But that credibility -- wouldn't you agree that
4 credibility is -- is based on evidence?

5 A Oh, gosh. I mean --

6 Q I mean, it's established with evidence, credibility?

7 A No, ma'am. I mean, I think a jury is free to access
8 credibility. And, ultimately, it's a jury who decides
9 who's credible and not credible. And the jury can use a
10 number of things, other than evidence, to assess the
11 credibility of a witness.

12 Q Okay.

13 A And, as a matter of fact, in a jury instruction in
14 any case, judges spend several paragraphs worth of
15 instructions to the jury describing for them their duty to
16 access credibility.

17 Q Okay. Are you familiar with Arizona v. Youngblood?

18 A No, ma'am, I'm not.

19 MS. BOYD: Okay. Your Honor --

20 THE WITNESS: I may, but not -- not by -- not by
21 simply the case name.

22 MS. BOYD: Your Honor, may I cite Arizona v.
23 Youngblood?

24 THE COURT: You can do whatever -- you can do
25 whatever you want to. You're -- you're handling your own

1 case.

2 MS. BOYD: Okay.

3 THE COURT: I can't give you any advice.

4 MS. BOYD: It says, In South Carolina, criminal
5 cases -- criminal cases, the issue of spoliation is viewed
6 through the lens of due process.

7 MR. MITCHELL: Your Honor, I'm going to object. Is
8 there a question or --

9 THE COURT: Are you -- is -- what's the question?
10 Are you going to -- because he said he's not --

11 You said you're not familiar with the case?

12 THE WITNESS: No, sir. I may be -- I mean, I'm not
13 real good on remembering about --

14 THE COURT: Are you going to ask him something about
15 the case, or are you -- because if you're just citing the
16 case, I'll let you cite the case. But if you -- if you're
17 going to tell me what -- tell him what's in the case and
18 ask him about it if he indicated he didn't -- he's not
19 familiar with the case, I'm not going to allow you to do
20 that.

21 MS. BOYD: I just wanted to cite the case of -- of --
22 to --

23 THE COURT: But you've got to ask him a question. If
24 you wanted the Court to -- to note -- note for the record
25 a case and the cite, I'll let you do that. But in terms

1 of going into what the case states, if he says he's not
2 familiar with the case, I don't know how you could ask him
3 a question about it.

4 MS. BOYD: Okay. Well, let's note the case of -- of
5 Arizona v. Youngblood.

6 THE COURT: All right.

7 MS. BOYD: And this is in regards to the evidence.

8 THE COURT: All right.

9 MS. BOYD: I guess, Your Honor -- I guess my issue
10 is, I mean, there was no other --

11 THE COURT: Ma'am, I can't answer any questions.

12 MS. BOYD: Yeah. I understand.

13 THE COURT: Do you understand that?

14 MS. BOYD: I understand that.

15 THE COURT: But you've got to ask him a question.

16 You can't ask me.

17 MS. BOYD: Let's see. I'm just trying to word this
18 right.

19 (Pause.)

20 BY MS. BOYD:

21 Q How could the -- how could I establish my case
22 without that -- that videotape?

23 A Well, let's start with -- I assume you're talking
24 about your defense. Because you had absolutely -- I mean,
25 the State has the burden of proof. So you did not have a

1 case to establish whatsoever.

2 However, if you're talking about how could you defend
3 yourself, assuming that you wanted to take the witness
4 stand or, you know, cross-examine witnesses, you had
5 options. For example, making the State look like it had
6 something to hide. And I believe you did argue that to
7 the jury. And I think you pretty much accused Mr. Crump
8 of being a liar because his version of what happened was
9 different than yours.

10 So, you know, I -- I don't think you were without
11 argument. Because you -- you fashioned a number of
12 arguments to defend yourself.

13 Q Was I -- was I given an opportunity to -- to review
14 the discovery before -- before the trial started?

15 A You know, I don't know what you did with your time.
16 I know we spent two hours in pre-trial motions and --
17 before this trial ever began. And that -- during that two
18 hours, you had the discovery packet, which I had provided
19 you.

20 Now, did you look at it? Did you read it? I -- I do
21 not know.

22 Q How soon after -- how soon after -- after you gave me
23 the discovery did the -- did the case start?

24 A A couple of hours.

25 Q And how long did the case take?

1 A Forever. My recollection is you walked into the
2 courtroom that morning at 9:00. And the jury rendered a
3 verdict after 5:00. That -- those are approximate times.

4 Q Okay. Let's see. Was I offered pre-trial
5 intervention?

6 A Judge Ford did suggest to you that that was an
7 option, yes, ma'am. And he did that in my presence.

8 Q Did I request a continuance?

9 A I think I previously answered that question. I
10 don't -- I don't recall you doing it. But I'm not in a
11 position to argue with you if you did or did not.

12 Q Did -- did I ask that the case be dismissed due to
13 the destruction of the evidence?

14 A I believe that was one of your pre-trial motions,
15 yes, ma'am.

16 MS. BOYD: Your Honor, I -- I would like to put the
17 magistrate return --

18 THE COURT: I already have it.

19 MS. BOYD: Can I put it into --

20 THE COURT: I've already got it.

21 MS. BOYD: Yeah. Okay. The magistrate's return into
22 evidence.

23 I think that's all my questions.

24 THE COURT: All right. Any other questions --
25 anything else, Mr. Mitchell?

1 MR. MITCHELL: No, Your Honor.

2 THE COURT: All right. I don't -- I do have one
3 question.

4 THE WITNESS: Yes, sir.

5 EXAMINATION

6 BY THE COURT:

7 Q Do you recall Judge Ford bringing the alternate -- I
8 know you said he brought Mr. Crump in to ask questions
9 about contact with the juror -- alternate juror. Did he
10 ever bring the alternate juror in to ask her or him and
11 question whether or not Mr. Crump had contacted that
12 particular juror? And, if so, what was discussed? I
13 mean, I know you said he brought Mr. Crump in. But did he
14 ever bring that -- that particular juror in and ask some
15 questions?

16 A Your Honor --

17 Q That you recall?

18 A No, sir. I mean, I -- the reason I can recall no is
19 that Mr. Crump apparently approached her. I did not see
20 this. But Mr. Crump apparently approached her while she
21 was in her vehicle leaving.

22 Q This was after she -- she had been dismissed as a
23 juror?

24 A Yes, sir.

25 Q All right. Now, let me go back to something you said

1 earlier. During the deliberations -- now, during the --
2 she never participated -- this particular juror never
3 participated in -- in the deliberations?

4 A She never participated in the deliberations. And she
5 never went back to the jury room when all -- for example,
6 if there was a break during the trial for --

7 Q She -- she was sequestered in a room by herself?

8 A Yes, sir.

9 Q All right. And it was a female?

10 A It was a female, yes, sir.

11 THE COURT: All right. That's all I have.

12 MS. BOYD: Okay. Your Honor, can you -- can I
13 possibly put this into evidence as well?

14 THE COURT: What is -- what is that?

15 MS. BOYD: This is showing the picture of Mr. Crump
16 leaning into the vehicle speaking with the juror.

17 THE COURT: Well, I think there's already been
18 testimony.

19 MS. BOYD: Okay.

20 THE COURT: I don't think there's -- that testimony
21 has been unrefuted. I don't think there's any question
22 that's been not disputed by anyone.

23 All right. Mr. Lyall, you can step down.

24 THE WITNESS: Thank you.

25 Your Honor, may I be released from my subpoena, or --

1 Mr. Mitchell, do you anticipate --

2 MR. MITCHELL: I have no objection to that, Judge.

3 THE COURT: All right. Any objection to Mr. Lyall
4 being released, Ms. Boyd?

5 MS. BOYD: No, sir.

6 THE COURT: All right. Thank you, Mr. Lyall.

7 THE WITNESS: Yes, sir.

8 Thank you.

9 THE COURT: Good to see you.

10 All right. Two questions of you, ma'am.

11 Stand for a second. Two questions.

12 MS. BOYD: Yes, sir.

13 EXAMINATION

14 BY THE COURT:

15 Q Why didn't -- okay. Did you show up -- okay. I
16 think in response to Counsel's question, you said that the
17 jury was chosen when you got there. Did you get the
18 letter telling you when jury selection was going to be?

19 A No, I did not. What happened, I called Judge Ford's
20 office.

21 Q So the -- the document that Mr. Lyall -- that's part
22 of the -- State's Exhibit No. 2, which is a letter
23 addressed to you with your address, 6 Pelham Townes Drive,
24 Greenville?

25 A Yes. That is my address.

1 Q All right. So you're saying that you never -- did
2 you receive the summary court summons that told you when
3 the trial was going to be?

4 A I -- No. I called them. I called Judge Ford's
5 office. And I was told that the case would be on June --
6 on June the 25th. She didn't tell me to report on
7 June the -- on June the 24th.

8 Q All right. So it's your -- your testimony that you
9 never received this summary court summons that's State's
10 Exhibit No. 2?

11 A Yes, Your Honor.

12 Q You never received it?

13 A Yes, Your Honor.

14 Q Yes, you didn't, or, yes, you did?

15 A No, I -- I did not. I was -- I called and was
16 informed that I was to appear.

17 Q All right. And when you did make the call, they did
18 not tell you that they were going to pick the jury the day
19 before?

20 A No. They did not tell me, no. She just told me to
21 report on June the 25th. And that if I did not appear, I
22 would be arrested, a warrant would be issued for my
23 arrest.

24 Q Next -- next question. Why -- what's the reason,
25 again, you didn't appear for your appeal before Judge Hill

1 on the -- whatever date that was?

2 A August the 12th.

3 Q August the 12th, why didn't you appear?

4 A I did --

5 Q First of all, let me -- let me ask you this. Did you
6 know -- were you given notice to appear?

7 A Yes. I was given notice.

8 Q All right. So you knew that you had -- you were
9 supposed to appear?

10 A Yes.

11 Q But you chose not to appear?

12 A I did -- I -- I had reasons. I --

13 Q Well, you know, you can't -- you know, you've got to
14 have reasons for a lot of things. But when the Court says
15 you've got a hearing and you've been invested in this
16 matter as much as you have to this point, don't you think
17 it's important that you show up at every time that you're
18 given notice of -- of an appearance? Don't you think
19 that's important?

20 A Sir, definitely.

21 Q So why didn't you show up on the -- on the date of
22 the -- of the magistrate's court appeal in the circuit
23 court? Why didn't you show up for that?

24 A I requested that they go forward with my case. I --
25 I did not try to delay my case in any way. I timely filed

1 my appeal on July the --

2 Q Okay. That's not what I'm asking you --

3 A I --

4 Q Stop. Here's -- I'm trying to narrow this down. So
5 you told -- you -- you told someone to go forward with the
6 appeal of the magistrate court matter without you being
7 present?

8 A I requested that --

9 Q Is that a -- that's a "yes" or a "no" now.

10 A Yes, yes, Your Honor.

11 Q Who did you -- you told somebody from the clerk's
12 office? Who did you call?

13 A I -- I wrote the -- I sent an e-mail to the chief
14 administrative judge. Weston White, the law clerk for D.
15 Garrison -- for Judge D. Garrison Hill, responded.

16 Q All right. But you sent an e-mail saying you would
17 not be present at that hearing?

18 A I requested that they make a decision. I didn't just
19 flat out say -- I asked if they would make a decision in
20 my absence.

21 Q In your absence?

22 A Yes, I asked.

23 Q And so you were -- you were willing to be bound by
24 whatever decision that was going to be?

25 A Yes. I asked them if they would make a decision

1 without requiring my -- my presence.

2 Q All right.

3 A And I was -- absolutely, Your Honor. I
4 was willing -- I was willing to be bound by whatever
5 decision that was.

6 Q All right. But the decision -- the decision that
7 came out was dismissing the magistrate's court appeal.
8 That's what -- that's what Judge Hill's decision was.

9 Wasn't that right?

10 MR. MITCHELL: That's correct, Your Honor.

11 BY THE COURT:

12 Q That was the decision that came out of that hearing.

13 A The -- the record shows there was no hearing on
14 August the 12th. There was no hearing on August the 12th.
15 And the transcript is void of any -- and -- and as a
16 matter of fact, I noted --

17 Q Well, ma'am, here's -- here's --

18 What do you want to say?

19 MR. MITCHELL: I was just going to say it's my
20 understanding that the Judge dismissed it for failure to
21 prosecute. Ms. Boyd didn't show up.

22 BY THE COURT:

23 Q Well, based on your -- based on your -- you called or
24 you e-mailed the law clerk of the Judge that says you were
25 not going to appear, to make whatever decision the Judge

1 wants to in your absence. Is that what you -- that's what
2 you just said.

3 A Sir, that's --

4 Q Isn't that what you just said?

5 A What I said, I asked that they make a decision --
6 asked if they would make a decision in my absence
7 requesting whether they're going to say "yes" or "no."
8 And I was willing to be bound. If they said "no," I knew
9 I had to appeal.

10 Q But, ma'am -- but, ma'am, here's what I'm asking you.

11 A Yes.

12 Q As invested as you were in this case, here was a -- a
13 hearing that was scheduled on your magistrate court
14 appeal, an appeal that you have been invested in in this
15 matter from day one. Didn't -- don't you think it was
16 incumbent upon you because of your investment to -- to
17 show up at that date and -- just like you argued here
18 today, all these issues.

19 These are some of the same things that you could have
20 argued before Judge Hill on that and you chose not to show
21 up. You gave -- sent a message and asked the Court to
22 make a decision in your absence. And the Court dismissed
23 the case for failure -- failure of you to prosecute the
24 matter. That's -- that's -- so I have two issues here.

25 A Yes, sir.

1 Q One is the fact that you didn't show up that day.
2 And you allege that the -- the jury was all white and
3 the -- if you're familiar with the Batson case, if you
4 showed up for jury selection, at the -- at the time of
5 jury selection, you can make a Batson motion, you know, on
6 the magistrate level, or you can make a Batson motion up
7 here in GS -- or General Sessions.

8 A Yes, sir.

9 THE COURT: You didn't -- you weren't there to do
10 that. And here's the deal. You say you weren't notified
11 of that, of jury selection. And I -- the only thing I've
12 got is -- is State's Exhibit No. 2. And I asked you prior
13 to -- when -- when Counsel moved for the entry of this
14 exhibit, I, specifically, asked you did you have any
15 objection to it. And you said, No.

16 And prior to entering into -- entering this exhibit
17 into evidence, he read -- and I'm talking about
18 Mr. Mitchell. He read on here that tells -- that speaks
19 about, Please note the jury selection will be Tuesday,
20 June the 24th, 2014, at 9:30 a.m. This is on the document
21 that you had no problems entering into evidence. I asked
22 you did you have any objection. You said, No. Those are
23 the two problems I have.

24 After having listened to you today and as much as
25 you're invested into the case -- but those were two

1 critical appearances that you did not participate in, one,
2 jury selection, which you could have at that time
3 challenged any -- the racial makeup of the jury. I'm not
4 saying what the Judge would or would not have done.

5 Secondly, you did not appear at this particular -- at
6 the appeal of your magistrate court matter. Now, those
7 are the two concerns I have.

8 Now, what I do have, on the other hand,
9 Mr. Mitchell -- and this is -- this is what I am grappling
10 with. And, you know, I think that every defendant whether
11 that defendant -- defendant appears in magistrate court,
12 whether that defendant appears in municipal court,
13 whether that defendant appears up here, or whether that
14 defendant appears in federal court, I am a firm believer
15 that every defendant irregardless of race, color, creed,
16 or whatever is afforded a fair trial when they walk in the
17 doors of the tribunals. I'm a firm believer of that.

18 Now, what -- what I'm concerned about is -- is
19 something that I can't come to a decision on as I sit
20 here. And I heard Mr. Lyall's interpretation of it. But
21 it just appears to me -- and I've -- and I've practiced
22 law before I took -- before I took the bench almost
23 some -- almost 11 years ago. I practiced law for 25 years
24 in all the courts in the state, state court, federal
25 court, you name it, I've been there, and magistrate's

1 court and municipal court.

2 I've had jury trials in magistrate court. And I've
3 had jury trials in municipal courts. I've had jury trials
4 in the Court of General Sessions. I've had jury trials in
5 the Court of Common Pleas. I have never in my experience
6 known of any instance where a jury has a question and
7 the -- the sitting judge summons the Defendant, and her
8 family, and the prosecuting attorney into the jury room
9 for the question to be vetted. I've never seen that.

10 And what I'm grappling with is, is that improper? Is
11 that prejudicial? What is that? I've never seen that.
12 And I can't put my -- my cerebrum, and my cerebellum, and
13 everything else around that thought about why that
14 occurred. I've just never seen that. And, certainly, I
15 don't know.

16 You've got -- you know, you've got a Sixth Amendment
17 right to a fair trial. There are components to that,
18 whether it's on the State level or on the federal level.
19 There are components to that. And I think it's incumbent
20 upon all the participants, you know, not just the
21 prosecuting attorney, but the Defense attorney and the
22 trial judge. We've got all roles in that process of
23 fairness.

24 And I don't know -- maybe -- maybe that wasn't
25 anything of any significance. But I've never seen that.

1 Because I am certain that -- and I wasn't there. But --
2 but I don't know what the dialogue was about. But
3 certainly -- and, also, secondly, if there was a
4 conversation with a juror by one of the witnesses in the
5 case, which has -- which has been admitted to by -- it's
6 unrefuted. It was an alternate juror. But for the
7 Court -- the lower court not to make inquiry of some sort
8 as to the dialogue between the alternate juror and the
9 witness in the case -- nothing may have come out of it.
10 It could have very well been. But what I'm hearing is
11 that.

12 Thirdly, the other issue that I have is you've got an
13 initial arrest warrant where some officer found probable
14 cause to issue it on behalf of this -- Ms. Boyd. There
15 was -- there was a determination of probable cause at the
16 issuance of that warrant. And that was based on the
17 officer looking at the video -- because the video was in
18 existence at that time -- looking at the video, talking to
19 the witnesses. And, based upon that, probable cause was
20 issued for that warrant. It was only after that -- and if
21 I'm wrong on the facts, you tell me. Because I'm
22 listening. And I've read this record.

23 Only after that, there was an investigation done.
24 And if you look on the warrant that you -- that the State
25 provided me in this packet, somebody scratched out what

1 was on the original warrant and wrote the word "probable
2 cause," and put a question mark behind it. I don't know
3 who did that. But that's what you gave me.

4 So there was the investigation after that to
5 determine probable cause really didn't exist on the back
6 end when you're supposed to determine probable cause on
7 the front end. And then according to Attorney Lyall's
8 testimony that it's the -- it's the practice of the
9 solicitor's office if they close the case, then if there's
10 any evidence that's -- that's associated with that case
11 and, in this case, being the video, that automatically
12 goes away. And then we open up this new file for giving a
13 false statement. That's the new file. That's the new
14 file.

15 And you're -- you're trying to convince the Court --
16 or whomever that the probable cause for that was not, at
17 least, the video being a possible probable cause for that.
18 But you've destroyed that.

19 So you take the video out of that equation, how in
20 the world do you get the probable cause in the second case
21 for failing -- for -- for filing a false report? How do
22 you get that? You don't get there. And I cannot for the
23 life of me wrap my -- my mind around that logic. You
24 cannot do that.

25 It is incumbent upon the State in these cases on the

1 appellate level, on the trial -- on the state level, and
2 even at the level of post-conviction relief to be fair.
3 And if you tell me how they get there -- Mr. Lyall's
4 argument, fine lawyer, knowing -- knowing George for a
5 long time. He's been out there as long as I have. I know
6 him. I don't have any problem with George, good lawyer.
7 But he can't get there.

8 So I don't -- I've got a -- so I've got this problem
9 over here with -- with Ms. Boyd for her inability or her
10 failure to show up at two critical places in this process
11 that she wasn't there. For whatever reason it was, she
12 wasn't there.

13 But I've, also, got this problem over here. And
14 I've, also, got a -- and I know that the solicitor's
15 office gets a ton of cases. I understand that. But
16 Mr. Lyall himself said he got the case -- he looked at it
17 the day before the trial and figured out it wasn't a big
18 deal. It wasn't a big deal.

19 So if he just looked at it the day before the trial
20 and he's -- he's the lawyer and he didn't -- and he didn't
21 think it was such a big deal to, at least, have some
22 dialogue about the video. He knew that either Mr. Talley
23 or somebody had requested the video in the prior case if
24 he knew about it. He said he didn't know anything about
25 that.

1 But if that's the basis, I've got a hard time getting
2 to the fact that this Defendant is not entitled to that
3 information. And -- and the State has not taken me there.
4 The -- this case -- to cure all of this -- you know,
5 sometimes, cases come before the Court and they could have
6 been cured, you know. Sometimes, we get sores that start
7 out as scabs. And scabs we can take care of. Sores,
8 sometimes, we can't. This case started out as a scab that
9 all that needed to be done was grant the continuance,
10 grant the continuance. Everybody gets a fair shot. Come
11 in, grant the continuance. Everybody gets a fair shot.
12 Try the case. Do all that.

13 And, now, I will say this, that I have not gotten an
14 advisory opinion or I have not gotten any information that
15 can tell me. But if you provide me anything from anyone
16 of -- of -- in some authority that it is proper for the --
17 for the magistrate to take the family -- the Defendant,
18 and some of her family, and the prosecuting attorney back
19 into the jury room and have a conversation about what
20 questions were asked and let them dialogue right in front
21 of the jury, I cannot see how that's not prejudicial. And
22 Mr. Lyall says, well, he's seen it done. And, you know,
23 I've -- I've never seen it done. And I've been around a
24 minute. I've never seen that done.

25 If I did that up here, they'd be running down to

1 Columbia to -- to -- to appeal if I did that. As a matter
2 of fact, they'd get to Columbia before I could get to
3 Laurens if I did that -- if I did that in here. And, you
4 know, so I'm not accepting that -- that rational.

5 So having said all of that, having said all of that,
6 I've got some issues on both sides of the fence. And --
7 and I'm not the kind of Judge that's just going to hide --
8 duck and hide and tell you what I'm going to do. I'm
9 going to tell you exactly what I'm going to do.

10 I'm going to send this matter right back to the
11 magistrate court. I'm going to remand it back there, have
12 it retried, and -- and go through the process. I -- I
13 just think that's the right thing to do. I really think
14 that's the right thing to do.

15 And if the State has a problem with that ruling, you
16 know what you got -- you know what you can do. But I
17 think -- I think fairness is ultimate on both sides. And
18 you can't tell me that this case doesn't -- first, it
19 reeks of some irresponsibility on behalf of Ms. Boyd. She
20 didn't -- there's some things she could have done better.

21 It reeks of some unfairness on -- on -- on the side
22 of the -- the -- the -- and I'm not -- and you notice I'm
23 careful not to use the word prosecutorial misconduct. And
24 I know that was alleged in her application.

25 But what I'm -- what I'm really hanging my hat on,

1 Mr. Mitchell, is the Sixth Amendment right, that Sixth
2 Amendment, which she did put -- she did put in her
3 application. That's in her application.

4 So I'm not -- I'm not hanging my hat on anything
5 about prosecutorial misconduct. I -- I don't have -- I
6 don't have that to hang my hat on. And I think that was
7 one of the allegations. And I'm not hanging -- and I'm,
8 also, not hanging my hat on anything that's got to do with
9 race. And that was in her application. I'm not hanging
10 my hat on any of that. I'm not hanging my hat on any --
11 any racial bias on behalf of the -- the Judge. I'm not
12 hanging my hat on the jury being all white. I'm not
13 hanging my hat on all that.

14 I am hanging my hat on the fact that, in this case,
15 there were some things that were done on both sides that
16 could have been done better. As a matter of fact -- and I
17 don't want to keep repeating this, but I've stated
18 what I -- what I thought.

19 So I don't -- and, Counsel, as you stand there before
20 me, if you can tell me -- give me something that tells me
21 differently from what I saw and what I heard -- you know,
22 sometimes, when the magistrate court -- one of the things
23 that -- that happens in magistrate's court all the time --
24 they've got a ton of cases over there. And I know they're
25 trying to just -- they're trying to turn them out as

1 quickly as they can. But, sometimes, when you do that,
2 you inadvertently step on the toes of not necessarily the
3 Prosecution, but, you know, sometimes, you step on the
4 toes of the other side. So both toes are stepped on on
5 both sides.

6 So, sometimes, you know, you've just got to sit back,
7 take a deep breath and says [sic], okay, what do I need to
8 do with this situation? In my estimation, in this
9 situation, all that needed to be done was to grant the
10 continuance, have the case heard. And then you won't be
11 standing here with this case. Ms. Boyd wouldn't be
12 standing here with this case. And -- and the jury reaches
13 whatever verdict it does. And everybody goes on their
14 merry way. That's where I'm at.

15 MR. MITCHELL: And, Your Honor, I'd be happy to --
16 I -- I just wanted to make sure you were done -- brief any
17 of these issues, if Your Honor would deem it necessary. I
18 do believe -- and I know you didn't say prosecutorial
19 misconduct, so I -- I won't go into that.

20 In terms of the Judge -- I think -- in terms of jury
21 selection, our appellate courts have -- have stated that
22 it's not automatic reversal when a -- when the Judge goes
23 into a jury room. That it's not automatically harmless --
24 harmless error. And I'll be happy to provide the Court
25 with sufficient case law to that effect. In this case,

1 since it's PCR and the equivalent would be whether it's
2 sufficient prejudice that's been found from that.

3 In terms of -- I think the appropriate probably
4 course of action, Your Honor, if -- if you would entertain
5 it, would be the ability to be able to brief these issues
6 for you in written format, if that's suitable for Your
7 Honor.

8 THE COURT: Both sides?

9 MR. MITCHELL: Both sides.

10 THE COURT: It may not change my mind, but you can.
11 What window of time do you need?

12 MR. MITCHELL: I could have it to you probably by
13 next -- next Friday or either the Monday after that, if I
14 could get a week. If I could get until November 5th.
15 That -- not this coming Monday, but the following --

16 THE COURT: All right. Now, keep in mind, the case
17 that you're reading -- and I know the case you just -- you
18 know, you're talking about. But, see, the -- I want
19 you -- when you brief that, I want you to make it clear
20 the testimony was -- is that she, along with her family
21 members, were summoned by the Judge --

22 MR. MITCHELL: I don't recall the family -- I don't
23 recall the family members going back. I thought it was
24 just --

25 MS. BOYD: It was me and Attorney George K. Lyall.

1 THE COURT: I thought you said your family was
2 peeking through the door. Did I miss -- did I --

3 MS. BOYD: I think you --

4 MR. MITCHELL: It was you and --

5 MS. BOYD: It was me and George K. Lyall.

6 THE COURT: All right. Well, you can brief me and
7 send me that.

8 Do you understand what we're doing?

9 MS. BOYD: Yes.

10 THE COURT: He's going to send me a brief, you're
11 going to send me one.

12 MS. BOYD: And -- and, Your Honor, I, also, want to
13 note that Deputy Holman --

14 THE COURT: Okay. You're going to put that in your
15 brief. You know, any -- you know, we've -- we've already
16 concluded the testimony part. We're not going into that.
17 The only thing that's happening right now is I'm allowing
18 Mr. Mitchell -- I'm going to put -- I'm going to put my
19 ruling on pause.

20 MR. MITCHELL: I appreciate that, Judge.

21 THE COURT: I'll put it on pause. And he's going to
22 send me some information for me to look at. And I'll give
23 you more than 10 days. I'll give you 20 days.

24 All right. Because I'm going to -- I'm going to give
25 20 days, ma'am. He's going to send me a brief regarding

1 his prospective positions. Keep in mind, you can send me
2 one as well.

3 MS. BOYD: Okay.

4 THE COURT: But I am closing the door on
5 prosecutorial misconduct. And I'm closing the door on
6 race. Those are things you raised.

7 So when I say you brief -- when you send me the
8 brief, you don't need to address those issues because I'm
9 not -- I'm not going to take those into consideration.
10 I'm closing the door on prosecutorial misconduct. I'm
11 closing the door on race.

12 And what else did I say I was closing the door on?
13 Is that it?

14 MR. MITCHELL: The issues that I have that you were
15 concerned about was, obviously, the jury question with the
16 jurors.

17 THE COURT: Right.

18 MR. MITCHELL: The conversation about the alternate
19 juror.

20 THE COURT: Right.

21 MR. MITCHELL: And then I have the third about --
22 well, I had it down as discovery. But you said you were
23 closing the door on it. I think you framed it as a Sixth
24 Amendment right.

25 THE COURT: Well, I do have -- I do have some issue

1 regarding that whole -- the video, the discovery aspect.
2 Why wouldn't that be a part of the discovery for the
3 second case as well, that video? And that's a crucial
4 issue. And that video was destroyed because of the rule
5 that Mr. Lyall talked about.

6 But that's -- so those are the three areas. And
7 you've really got to get -- I think you're going to have
8 to -- that's your meat and potatoes right there. Because,
9 basically, I still think that the -- the probable cause
10 for the second warrant had to be -- that video had to play
11 a part in that. You can't -- you can't get there without
12 that.

13 And, ma'am, keep in mind, you know, I'm not at -- I'm
14 not in this hearing able to dismiss your case or throw it
15 out, you know. It's like anything else, it's a PCR. So
16 I -- my remedy is granting a new trial. And that's why I
17 said that. So that's where I'm at.

18 And I'm allowing learned Counsel, Mr. Mitchell, and
19 yourself to submit me something that would take the needle
20 off of pause and put it back on go, what I just said. And
21 I'm going to give you 30 -- 20 days to get that to me, not
22 21 days, 20 days. And you've got to get that to me. And
23 then I'll make a decision on that.

24 MR. MITCHELL: Sounds good.

25 Thank you, Judge.