

APPENDIX A

The Supreme Court of South Carolina

The State, Respondent,

v.

Kevin Herriott, Petitioner.

Appellate Case No. 2024-001498

ORDER

Based on the vote of the Court, the petition for a writ of certiorari is denied.

FOR THE COURT

BY 
CLERK

Columbia, South Carolina
January 14, 2025

cc:

Alan McCrory Wilson
Ernest Adolphus Finney III
Andrew Douglas Powell
Kevin Herriott, #T97826, 313862
The Honorable Jenny Abbott Kitchings

**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.

Kevin Herriott, Appellant.

Appellate Case No. 2019-000969

Appeal From Lee County
R. Ferrell Cothran, Jr., Circuit Court Judge

Unpublished Opinion No. 2024-UP-190
Submitted March 1, 2024 – Filed May 29, 2024

AFFIRMED

Kevin Herriott, pro se.

Attorney General Alan McCrory Wilson and Senior
Assistant Attorney General Mark Reynolds Farthing,
both of Columbia; and Solicitor Ernest Adolphus Finney,
III, of Sumter, all for Respondent.

PER CURIAM: Kevin Herriott appeals his convictions for attempted armed robbery and possession of a weapon by an inmate and his concurrent sentences of six years' imprisonment for attempted armed robbery and five years' imprisonment

for possession of a weapon. On appeal, Herriot argues the trial court erred when it (1) failed to grant his motion to quash his indictments, (2) denied his motion for a directed verdict, and (3) found the State did not withhold exculpatory evidence. We affirm pursuant to Rule 220(b), SCACR.

1. We hold Herriott's arguments regarding his indictments are not preserved as to attempted armed robbery and possession of a weapon by an inmate because he did not raise them at trial. *See State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial [court]. Issues not raised and ruled upon in the trial court will not be considered on appeal."); *State v. Prioleau*, 345 S.C. 404, 411, 548 S.E.2d 213, 216 (2001) ("[A] party may not argue one ground at trial and an alternate ground on appeal."). Additionally, we hold the issue is moot as to his indictment for assault and battery of a high and aggravated nature because he was ultimately acquitted of the offense. *See State v. Green*, 337 S.C. 67, 71, 522 S.E.2d 602, 604 (Ct. App. 1999) ("When judgment on an issue can have no practical effect upon an existing case or controversy, the issue is moot.").

2. We hold the trial court properly denied Herriott's motion for directed verdict because the State presented direct evidence that Herriott committed attempted armed robbery and possessed a weapon such that it was appropriate to send the case to the jury. *See State v. Elders*, 386 S.C. 474, 480, 688 S.E.2d 857, 860 (Ct. App. 2010) ("When reviewing the denial of a motion for a directed verdict, an appellate court must employ the same standard as the trial court by viewing the evidence and all reasonable inferences in the light most favorable to the nonmoving party."); *id.* ("This court will reverse a trial court's ruling on a directed verdict motion if no evidence supports the trial court's decision or the ruling is controlled by an error of law."); *State v. Zeigler*, 364 S.C. 94, 101, 610 S.E.2d 859, 863 (Ct. App. 2005) ("When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight."); *id.* ("If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury."). The State presented video evidence showing Herriott armed with a weapon while incarcerated within a South Carolina Department of Corrections facility. *See* S.C. Code Ann. § 24-13-440 (Supp. 2023) (stating when an inmate "carr[ies] on his person or to ha[s] in his possession . . . an object, homemade or otherwise, that may be used for the infliction of personal injury upon another person, or [] wilfully conceal[s] any weapon within any Department of Corrections facility or other place of confinement," he commits possession of a weapon by an inmate.). The State

further presented testimony that Herriott attempted to take an officer's chemical munition while armed with a weapon. *See State v. Bland*, 318 S.C. 315, 317, 457 S.E.2d 611, 612 (1995) ("Robbery is defined as the felonious or unlawful taking of money, goods[,] or other personal property of any value from the person of another or in his presence by violence or by putting such person in fear."); *State v. Hiott*, 276 S.C. 72, 80, 276 S.E.2d 163, 167 (1981) (explaining attempted armed robbery occurs when there have been "acts toward the commission of [armed] robbery, and with such intent," but the acts have "fall[en] short of actual perpetration of the completed offense[,]"; (quoting 77 C.J.S. Robbery § 60)); *State v. Quick*, 199 S.C. 256, 19 S.E.2d 101, 102 (1942) (explaining the "act" towards the commission of the armed robbery "is to be liberally construed, and . . . it is . . . sufficient that the act go far enough toward accomplishment of the crime to amount to the commencement of its consummation."); S.C. Code Ann. § 16-11-330(B) (2015) ("A person who commits attempted robbery while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon . . . is guilty of [attempted armed robbery].").

3. We hold the trial court did not err in finding the State did not suppress exculpatory evidence because Herriott failed to identify any evidence that would have been favorable to him that was withheld. *See Brady v. Maryland*, 373 U.S. 83, 87 (1963) ("[T]he suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment."); *State v. Durant*, 430 S.C. 98, 107, 844 S.E.2d 49, 53 (2020) ("A *Brady* violation occurs when the evidence at issue is: 1) favorable to the accused; 2) in the possession of or known to the prosecution; 3) suppressed by the prosecution; and 4) material to the defendant's guilt or punishment.").

AFFIRMED.¹

GEATHERS, HEWITT, and VINSON, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

CATHERINE S. HARRISON
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

January 15, 2025

The Honorable Teresa A. Brown
PO Box 387
Bishopville SC 29010-0387

REMITTITUR

Re: The State v. Kevin Herriott
Lower Court Case No. 2018GS3100120
Appellate Case No. 2019-000969

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

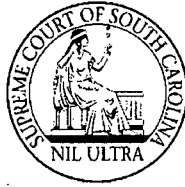
Very truly yours,

Catherine Harrison, deputy
CLERK

Enclosure

cc: Kevin Herriott, #T97826, 313862
Alan McCrory Wilson, Esquire
Ernest Adolphus Finney, III, Esquire
Mark Reynolds Farthing, Esquire

APPENDIX B



The Supreme Court of South Carolina

PATRICIA A. HOWARD
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211

1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE: (803) 734-1080

FAX: (803) 734-1499

www.sccourts.org

September 18, 2024

Kevin Herriott, #T97826, 313862
McCormick Correctional Institution
386 Redemption Way
McCormick, SC 29899

Re: The State v. Kevin Herriott
Appellate Case No. 2024-001498

Dear Mr. Herriott:

This responds to your letter received September 13, 2024 regarding copies being sent from the Court of Appeals in order for you to file the appendix that accompanies your petition for writ of certiorari. The record on appeal, briefs, etc., are pulled from the digital record at the Court of Appeals. If the Court grants your petition for certiorari, only then will copies of the appendix be requested by this office. In view of this, no action will be taken on your letter since you do not need to furnish an appendix at this time.

Very truly yours,

Patricia A. Howard

CLERK

cc: Alan McCrory Wilson
Ernest Adolphus Finney, III
Mark Reynolds Farthing

Kevin E. Herrbott
SCDC # 313862
MacDougal Correctional Institution
1516 Old Gilliard Road
Ridgeville, SC 29472

February 02, 2025

Brenda F. Stealy, Chief Deputy Clerk
South Carolina Supreme Court
Office of The Clerk
1231 Governors Street
Columbia, SC 29201

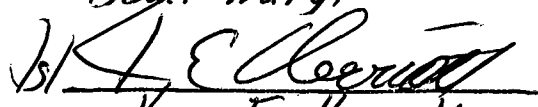
Re: The State of South Carolina v. Kevin E. Herrbott
Appellate Case No.(S): 2024-001428
2019-000969

Dear Clerk:

I am writing this Office for the sole purpose of requesting to receive the papers I submitted to this Court on August 29, 2024, filing Writ of Certiorari and the appendix with attached exhibits and affidavit in which was docketed on September 11, 2024, and assigned. The Petitioner as myself further request to be serve a copy to the Respondent's Reply to the Respondent's Return to petitioner's petition for Writ of Certiorari with attachments on October 24, 2024.

I am a prose indigent petitioner that seeks a Writ of Certiorari with the U.S. Supreme Court and request for the documents to be returned. The Petitioner seek his papers with attachments

and exhibits to present the material to the U.S. Supreme Court to establish the record presenting his application in support of writ of Certiorari. Thank you in advance for your cooperation into this matter and again for your services.

Yours Truly,

Keith E. Herrick
Pro Se. Litigant.

APPENDIX C

STATE OF SOUTH CAROLINA)
COUNTY OF LEE } COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)

STATE,)

v.)

TRANSCRIPT OF RECORD
18-GS-31-0120

KEVIN HERRIOTT)

DEFENDANT.)

June 4, 2019
Bishopville, South Carolina

B E F O R E :

THE HONORABLE R. FERRELL COTHRAN, JR., JUDGE;
AND JURY

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

JOHN R. GENTRY, ESQ.
Assistant Solicitor

TIMOTHY L. GRIFFITH, ESQ.
Attorney for Defendant

FRANCES B. RAY, RPR
Circuit Court Reporter

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EXHIBITS

STATE'S:

No.	Description	I.D./EVD
1	CD	28/28

COURT'S:

1	DMH evaluation and order
2	DMH forensic evaluation

1 MR. GENTRY: Your Honor, the State calls
2 indictment number 2018-GS-31-0120, State versus
3 Kevin Herriott. Mr. Herriott is present in court
4 represented by attorney Tim Griffith.

5 THE COURT: Okay. Ladies and gentlemen of
6 the jury panel, if you will give me your attention.
7 We're about to begin the trial of the State versus
8 Kevin Herriott. Is there any member of the jury
9 panel connected by blood or marriage, close personal
10 friends, or social relations with Mr. Herriott, if
11 so, please stand.

12 (There was no response.)

13 THE COURT: The potential witnesses in
14 this case are Thomas Horne, Sergeant E. Lucky,
15 Lieutenant Mark Bethea, and Saidah Coaxum.

16 THE STATE: She -- we won't be calling
17 her.

18 THE COURT: Okay. Any member of the jury
19 panel connected by blood or marriage, close personal
20 friends, social relations with any of those
21 potential witnesses if so, please stand.

22 (There was no response.)

23 THE COURT: The attorneys in this case
24 representing the State is John Gentry. Tim Griffith
25 is representing the defendant. Any members of the

1 jury panel connected by blood or marriage, close
2 personal friends, social relations to any of these
3 potential witnesses, I mean, either one of these
4 attorneys or have been represented by these
5 attorneys, if so, please stand.

6 (There was no response.)

7 THE COURT: Okay. This incident allegedly
8 occurred on or about May the 10th, 2018. The
9 defendant -- this occurred in Lee Correction? Is
10 that where this occurred?

11 MR. GENTRY: Yes, sir, Lee Correctional
12 Institute.

13 THE COURT: Okay. This occurred at the
14 Lee Correctional Institute. Any member of the jury
15 panel know anything about this case at all, if so,
16 please stand.

17 (There was no response.)

18 THE COURT: Any member of the jury panel
19 formed or expressed an opinion about any of the
20 issues or matters involved in this case, if so,
21 please stand.

22 (There was no response.)

23 THE COURT: Any member of the jury panel
24 aware of any bias or prejudice toward the State of
25 South Carolina or this defendant, if so, please

1 stand.

2 (There was no response.)

3 THE COURT: Any member of the jury panel
4 served on the grand jury here in Lee County that
5 heard this case, if so, please stand.

6 (There was no response.)

7 THE COURT: Any member of the jury panel a
8 member of any law enforcement organization or
9 victims' rights organizations such as MADD, SADD,
10 CAVE, or any other organization, or a financial
11 contributor to any of these organizations, if so,
12 please stand.

13 (There was no response.)

14 THE COURT: Any member of the jury panel
15 due to religious or moral reasons unable to sit in
16 judgment of your fellow man, if so, please stand.

17 (There was no response.)

18 THE COURT: Any member of the jury panel
19 know of any reason whatsoever they can't give the
20 State of South Carolina and this Defendant a fair
21 and impartial trial, if so, please stand.

22 (There was no response.)

23 THE COURT: Any further questions from the
24 State?

25 MR. GENTRY: No, sir.

1 THE COURT: From Defense?

2 MR. GRIFFITH: No, Your Honor.

3 THE COURT: All right. Madam Clerk, if
4 you will give me a jury, five and five.

5 THE CLERK: As I call your name, if you
6 would come up to the center about midways and face
7 back. Bring all your belongings with you because if
8 you're to be seated, we'll seat you from there. If
9 you're not seated as a juror, then you'll just go
10 back to your potential spot where you're sitting at.

11 Juror number 13, Shalawn Brisbon (black
12 female).

13 MR. GENTRY: Please present this juror.

14 MR. GRIFFITH: Please present this juror.

15 THE CLERK: Have a seat over here in the
16 jury box, Ms. Brisbon.

17 109, Harris Peavy (white male).

18 MR. GENTRY: Please present this juror.

19 MR. GRIFFITH: Please present this juror.

20 THE CLERK: Number 7, Bernice Bolden
21 (black female).

22 MR. GENTRY: Please present this juror.

23 MR. GRIFFITH: Please present this juror.

24 THE JUROR: Can I approach —

25 THE CLERK: Pardon me?

1 THE JUROR: I got an appointment today,
2 doctor's appointment.

3 THE CLERK: You have an appointment?

4 THE POTENTIAL JUROR: Uh-huh, at 2:15 in
5 Columbia.

6 THE CLERK: We should have addressed that
7 earlier.

8 THE COURT: How come you didn't tell me
9 that earlier?

10 THE JUROR: Oh, I didn't know that was the
11 time to say anything about that.

12 THE COURT: Can you reschedule it?

13 THE JUROR: I'll call and see. It's a
14 referral. I can call afterwards and find out.

15 THE COURT: Okay.

16 THE CLERK: Number 125, Tristan Shaw
17 (black male).

18 MR. GENTRY: Please present this juror.

19 MR. GRIFFITH: Please excuse this juror.

20 THE CLERK: Have a seat back out there.
21 51, Jennifer Grantham (white female).

22 MR. GENTRY: Please present this juror.

23 MR. GRIFFITH: Please present this juror.

24 THE CLERK: 63, Curtis Hoover (white
25 male).

1 MR. GENTRY: Please present this juror.

2 MR. GRIFFITH: Please excuse this juror.

3 THE CLERK: If you'll have a seat back in
4 the audience please, sir.

5 Number 72, Victoria Joye (black female).

6 MR. GENTRY: Please excuse the juror for
7 this trial.

8 THE CLERK: 147, Morgan Wilson (black
9 female).

10 MR. GENTRY: Please present this juror.

11 MR. GRIFFITH: Please excuse this juror.

12 THE CLERK: 93, Darlene Mickens (black
13 female).

14 MR. GENTRY: Please present this juror.

15 MR. GRIFFITH: Please excuse this juror.

16 THE CLERK: 42, Denefreia Fisher (black
17 female).

18 MR. GENTRY: Please present this juror.

19 MR. GRIFFITH: Please present this juror.

20 THE CLERK: 136, Michael Toney (black
21 male).

22 MR. GENTRY: Please present this juror.

23 MR. GRIFFITH: Please present this juror.

24 THE CLERK: 144, James Williams (white
25 male).

1 MR. GENTRY: Please excuse the juror for
2 this trial.

3 THE CLERK: 49, Thomas Geddings (white
4 male).

5 MR. GENTRY: Please present the juror.

6 MR. GRIFFITH: Please present this juror.

7 THE CLERK: 115, James Reddick (black
8 male).

9 MR. GENTRY: Please present this juror.

10 MR. GRIFFITH: Please present this juror.

11 THE CLERK: Number 73, Sammy Kelhear
12 (white male).

13 MR. GENTRY: Please present this juror.

14 MR. GRIFFITH: Please present this juror.

15 THE CLERK: Number 12, Kacy Brannon (white
16 female).

17 MR. GENTRY: Please present the juror.

18 MR. GRIFFITH: Please present this juror.

19 THE CLERK: 137, Patricia Walker (white
20 female).

21 MR. GENTRY: Please present this juror.

22 MR. GRIFFITH: Please present this juror.

23 THE CLERK: Number 6, Joan Bell (black
24 female).

25 MR. GENTRY: Please present the juror.

1 MR. GRIFFITH: Please present this juror.

2 THE CLERK: How many alternates do we
3 need?

4 THE COURT: How many -- one?

5 MR. GRIFFITH: I would say one, Your
6 Honor.

7 MR. GENTRY: One.

8 THE COURT: Just one and two strikes. You
9 need one alternate?

10 MR. GENTRY: Your Honor, could we do two
11 alternates because of the possibility of the
12 appointment?

13 THE COURT: Okay.

14 MR. GRIFFITH: Oh, that's right.

15 THE CLERK: 105, Kevyon Parrott (black
16 male).

17 MR. GENTRY: Please excuse the juror for
18 this trial.

19 THE CLERK: 43, Codell Fortune (black
20 male).

21 MR. GENTRY: Please present this juror.

22 MR. GRIFFITH: Please present this juror.

23 THE CLERK: 121, Albert Ruben (black
24 male).

25 MR. GENTRY: Please present this juror.

1 MR. GRIFFITH: Please present this juror.

2 THE COURT: Are there any matters of law
3 pertaining to the selection of the jury on behalf of
4 the State?

5 MR. GENTRY: I'm sorry, Your Honor?

6 THE COURT: Are there any matters of law
7 pertaining to the selection of the jury on behalf of
8 the State?

9 MR. GENTRY: No, sir.

10 THE COURT: On behalf of Defense?

11 MR. GRIFFITH: None, Your Honor.

12 THE COURT: Okay. Ladies and gentlemen of
13 the jury, since it's 12:00 the attorneys tell me
14 they think it'd be best if we actually go to lunch
15 and come back at 1:30 and we'll begin the trial of
16 this case. While you're at lunch break don't
17 discuss this case or allow anyone to discuss it with
18 you. Don't do any research, don't Google anybody.
19 Everything you know about this case you got to learn
20 in this courtroom and so I need each one of you back
21 here at 1:30. When you come back you will come in
22 here. You'll come to the jury room. They'll show
23 you when we leave where the jury room is.

24 If you have an emergency over lunch you
25 need to call the Clerk's office and let us know. If

1 I don't hear from you, I can't start till all 13 of
2 you show up, or all 14 of you, I'm sorry. And if
3 you don't, one of you are missing I got to send the
4 sheriff looking for you to bring you in so if you've
5 got an emergency call us. If not, I need everyone
6 back at 1:30. See you at 1:30.

7 (WHEREUPON, the jury was removed from the courtroom
8 at 12:03 p.m.)

9 THE COURT: Ms. Bolden, come up here and
10 let me talk to you.

11 (Juror Bolden approached the Bench.)

12 THE COURT: Can I see both attorneys
13 quick.

14 (WHEREUPON, counsel approached the Bench for an
15 off-the-record discussion.)

16 THE COURT: Juror Bolden was excused.

17 My understanding is a competency hearing
18 evaluation was ordered by the circuit court and he's
19 been for a competency evaluation, and as a result of
20 that evaluation is they find he's competent to stand
21 trial. Do you have any issues as far as your
22 communications with him to make you feel that he's
23 not?

24 MR. GRIFFITH: No, Your Honor, I feel he
25 is competent to stand trial.

1 credibility inside the indictment.

2 THE COURT: Okay. And normally---

3 THE DEPUTY: Just to make sure.

4 THE COURT: Normally an affidavit come
5 from arrest warrant, but not an indictment. The
6 indictment comes from testimony before the grand
7 jury.

8 THE DEFENDANT: Right.

9 THE COURT: And there is no affidavit or
10 anything that, it is live testimony from the grand
11 jury, and the grand jury is the one who true billed
12 this indictment.

13 THE DEFENDANT: Right. So would it be
14 possible for me to receive the minutes from the
15 grand jury pertaining ---

16 THE COURT: No, there are no minutes from
17 the grand jury. The grand jury meetings are
18 secretive and nobody knows -- you know, there's no
19 record of grand jury deliberations. A case is
20 presented to the grand jury and they vote in secret.

21 THE DEFENDANT: Right. I'm not asking for
22 the deliberations, nor the vote. I'm asking for the
23 minutes as the proceeding as it takes place.

24 THE COURT: I understand, but they don't
25 have minutes. They don't take minutes in a grand

1 jury meeting.

2 THE DEFENDANT: I would just like to have
3 that on the record that there is no record.

4 THE COURT: Okay, and it's on the record.

5 THE DEFENDANT: Okay.

6 THE COURT: Okay.

7 THE DEFENDANT: Thank you.

8 THE COURT: Yes, sir.

9 All right, anything before we bring the
10 jury, else before we bring the jury in?

11 MR. GENTRY: Not from the State.

12 MR. GRIFFITH: Nothing from defendant,
13 Your Honor.

14 THE COURT: All right, bring the jury in.
15 We'll have the clerk swear the jury in. I'll make
16 some brief opening remarks. Y'all can make your
17 opening statement and we'll get started.

18 (WHEREUPON, the jury was returned to the
19 courtroom at approximately 1:47 p.m., and the
20 following proceedings commenced in open court.)

21 THE CLERK: Thank y'all for coming back.
22 Hope y'all all had a good lunch. If y'all will
23 stand and raise your right I'm gonna swear you in
24 and then the judge is gonna have a few things to say
25 to you.

1 (WHEREUPON, the jury was sworn.)

2 THE CLERK: Thank you. Y'all can be
3 seated.

4 THE COURT: Ladies and gentlemen, we're
5 about to begin the trial of the State versus Kevin
6 Herriott; and Mr. Herriott has been indicted for
7 assault and battery of a high and aggravated nature,
8 attempted armed robbery, and possession of a weapon
9 by him. Now I'm going to charge you the law that
10 applies to this at the end of the case. At this
11 point he's just been indicted. An indictment is not
12 evidence in this case. It's just a document that
13 brings us into court. Your job is to listen to the
14 evidence that comes into the record in this case and
15 determine what the facts are. Your job is to
16 determine the guilt or innocence of this defendant.
17 He's entered a plea to this indictment of not
18 guilty, therefore, it casts the burden upon the
19 State to prove each and every element of this
20 indictment to you beyond a reasonable doubt.

21 Now you're gonna basically receive
22 evidence in most trials in about three forms. First
23 of all, through sworn testimony. Witnesses will
24 come before you under oath and testify about the
25 things that they have observed, things they know.

1 The other way you may receive evidence is by
2 photographs or documents or those things under our
3 rules that are admissible. And the third way that
4 you may receive evidence in a case is by
5 stipulations of the attorneys. In some cases
6 certain facts are stipulated, both sides agree on
7 fact. And so that's how you're gonna receive
8 evidence.

9 The attorneys are gonna get up in a few
10 minutes and make opening statements to you. That's
11 just to tell you what they think this case is about
12 and what the evidence is going to show. Their
13 opening statements are not evidence. Their
14 questions they ask are not evidence. At the end of
15 trial they're gonna argue to you as to what they
16 think the evidence shows or does not show. I will
17 charge you on the law in this case, and you will go
18 back and deliberate and come back with a verdict.

19 Now it's important that all of you pay
20 close attention. I need an open, fair minded jury
21 who is going to pay attention to the evidence and
22 reach a verdict that's correct in this case. If you
23 make a mistake it's very hard to fix that mistake.
24 If I make a mistake, at some other time, some other
25 place it will be reviewed so it's important that you

1 pay close attention. I will try to take a break
2 every hour or hour-and-a-half and I try to break
3 between witnesses' testimony. Sometimes a witness'
4 testimony is so long we have to stop before that.
5 Having said that, if any of you need a break any
6 time quicker than that, just simply raise your hand
7 because it's important that you all pay attention.
8 If you're uncomfortable in some way you can't pay
9 attention. So if for some reason you're
10 uncomfortable, just raise your right hand and we'll
11 stop and take a break, come back and continue with
12 the trial.

13 Now I want to tell you, too, that you
14 can't discuss this case. You can't even discuss it
15 among yourselves. And I know sometimes that after
16 we've heard from this witness and we take a break,
17 why can't we talk about what that witness said. And
18 the reason that I don't want you to do that, 'cause
19 if you do that at the beginning of the case, at the
20 end of the case you're gonna want to defend the
21 opinion you had at the beginning of the case to your
22 fellow jurors and I don't want you to start forming
23 opinions and expressing those opinions to each other
24 until you've heard all the evidence in this case,
25 till you've heard the entire case as well as the law

1 I'm gonna charge you that you're to apply in this
2 case. And then and only then would it be proper for
3 you to discuss the case.

4 Those rules are important. They have
5 worked for a long time in this country. And when
6 you follow those rules, the juries usually gets
7 right so it's important that you do that and that
8 everything you learn about this case you learn in
9 this courtroom from this witness stand and the
10 evidence that comes in before me. If you will pay
11 close attention, the attorneys are gonna make a
12 opening statement, then we'll get started.

13 Yes, sir.

14 MR. GENTRY: Ladies and gentlemen of the
15 jury, my name is John Gentry. I'm an assistant
16 solicitor here and I'm charged with presenting the
17 evidence in this case. What you're gonna hear and
18 what you're going to see is evidence that the
19 defendant Kevin Herriott committed the offenses
20 which the judge mentioned a minute ago; that is,
21 assault and battery of a high and aggravated nature.
22 This does not mean he had to go and lay somebody out
23 or the person had to be in the hospital. It means
24 if he had connected with a knife or with another
25 weapon it would have been a serious injury. Also

1 he's charged with possession of a weapon by an
2 inmate. Now it doesn't take a whole lot of
3 understanding to understand why inmates can't have
4 weapons. This happened a month after the riot at
5 Lee Correctional Institute and you know a number of
6 people were killed out there. They had those
7 weapons. They can't have weapons, period, that is
8 against the law.

9 The other thing we had to deal with is
10 attempted armed robbery. You will hear the evidence
11 that the officers went to inmate Herriott's cell.
12 There was some dispute going on between him and his
13 roommate. They went to the cell to get one of the
14 other one of them out. He left the cell. He pushed
15 by and left the cell. In the meanwhile they had
16 retrieved at least two shanks, and he had a third
17 one in his hand.

18 You will see the evidence that indicates
19 that at some point Lieutenant Lucky, the gentleman
20 in the blue over there on the far side -- he was
21 then a sergeant -- is propelled through a doorway
22 with force and the defendant is reaching for his
23 chemical munition. That is the only thing those
24 guards have out there to protect themselves, the
25 only thing. If somebody gets in their face, the

1 only thing they can do is either try to diffuse the
2 situation or if it gets too tough, the chemical
3 munition. Now I'm not sure what's in there, whether
4 it's pepper gas or what, but it seems to do the job
5 when it's used. So I'm convinced that after you
6 hear and see -- by the way, we have a video screen
*7 up here. And all of these episodes are recorded on
8 video because South Carolina Department of
9 Corrections puts video cameras at strategic
10 locations through every dormitory. As a matter of
11 fact, one of -- I won't get into that. But you will
12 see those and you will hear the officers describe
13 what was happening in realtime. Thank you very
14 much.

15 MR. GRIFFITH: Please the Court.

16 THE COURT: Yes, sir.

17 MR. GRIFFITH: Thank you very much for
18 coming out to serve today. I know it's an
19 inconvenience, but this is how we try people in the
20 United States, a very good system. Mr. Herriott is
21 an inmate at a South Carolina Department of
22 Corrections facility, and at the time of this
23 incident he was in Lee County Correction during the
24 time of those violent riots in which people were
25 killed. He did not participate in the riots you

SW - T. WARREN - DIRECT

1 will hear, and in fact, he helped the officers
2 during the riots. But for that reason and others he
3 was under threat by other inmates, and in
4 particular, the Bloods. He had asked to be moved
5 out of that yard, but was not moved. He feared for
6 his life. Eleven people were murdered during the
7 riots. His cell mate had informed the Bloods that
8 Mr. Herriott planned to inform on them. He didn't
9 have the required intent to commit a crime. He
10 intended to get moved by any means. The State's
11 video will show the actions, but not the intent.

12 Please look at all the evidence and
13 consider all of the testimony; and of course, the
14 judge will give you the law and you will have to
15 make your decision based on that law. But I hope
16 that you will take the time to listen carefully and
17 decide for yourselves whether or not he meets all
18 the elements of the crime because the elements of
19 the crime are a list and on that list, and in any
20 crime, there has to be an intent to commit a crime.
21 Thank you very much and we're gonna proceed with the
22 trial in a moment.

23 MR. GENTRY: The State calls Thomas
24 Warren.

25 THE COURT: Okay. Come around and place

SW - T. WARREN - DIRECT

1 your left hand on the Bible.

2 WHEREUPON,

3 **THOMAS WARREN,**

4 having been duly sworn by the Clerk, testified
5 as follows:

6 **DIRECT EXAMINATION**

7 BY MR. GENTRY:

8 Q. State your full name please, sir.

9 A. My name is Thomas Warren.

10 Q. And what is your present occupation?

11 A. I'm a criminal investigator for the South
12 Carolina Department of Corrections police service

13 Q. Okay. How long have you been in law
14 enforcement?

15 A. I've been in law enforcement since 2010
16 nine years.

17 Q. And are you a certified law enforcement
18 officer in the State of South Carolina?

19 A. Yes, sir.

20 Q. Did you call upon, or did someone call
21 upon you to investigate an episode that occurred on
22 May the 10th of this last year?

23 A. Yes, sir.

24 Q. That was at Lee Correctional Institute?

25 A. Yes, sir.

SW - T. WARREN - DIRECT

1 Q. What did you do in the course of your
2 investigation?

3 A. I was notified on the 10th that there was
4 a officer, inmate -- was an inmate on officer
5 assault at Lee Correctional Institution. I -- the
6 assault involved the defendant Mr. Herriott and the
*7 victim Mr. Lucky. I went to the institution on the
8 16th of May, I believe, and reviewed the video there
9 in the control room.

10 Q. Okay. These videos, how are they managed
11 or maintained? Well, let me ask you this question
12 first, why do they have videos?

13 A. Because all - criminal activity happens in
14 institutions and it helps with identifying inmates
15 and officers who are involved in.

16 Q. These are limited to public areas; are
17 they not?

18 A. Correct. They're not in the cells of the
19 inmates.

20 Q. Okay, all right. And did you have
21 occasion to retrieve some videos?

22 A. Yes, sir. Once I reviewed the video I
23 contacted our analyst in Columbia, criminal analyst,
24 and asked him to make us a copy of the video.

25 Q. All right. Let me show you what's been

SW - T. WARREN - CROSS

* 1 marked as State's Exhibit Number 1. Is this the
2 video that you received from your analyst in
3 Columbia?

4 A. Yes, sir, I believe so.

5 Q. And that's, as far as you know that's true
6 and accurate ---

7 A. Yes, sir.

8 Q. ---transcription? All right, sir.

9 MR. GENTRY: No further questions for this
10 witness.

11 MR. GRIFFITH: No objection, Your Honor,
12 to the video.

13 MR. GENTRY: Did you --- I'm sorry, what
14 did you say when you stood up?

15 MR. GRIFFITH: I think you just presented
16 that as evidence in the case.

17 MR. GENTRY: And you said no objection.

18 THE COURT: Did you offer that in
19 evidence?

20 MR. GENTRY: I just did, yes, sir.

21 THE COURT: Okay. I didn't hear you offer
22 it so I didn't know.

23 MR. GENTRY: It's offered.

24 THE COURT: You don't have any objection?

25 MR. GRIFFITH: No objection, Your Honor.

SW - T. WARREN - CROSS

1 THE COURT: All right, it's in without
2 objection, I'm sorry.

3 (WHEREUPON, State Exhibit No. 1 was marked
4 for identification and admitted into evidence.)

5 **CROSS-EXAMINATION**

6 BY MR. GRIFFITH:

7 Q. Good morning.

8 A. Yes, sir.

9 Q. Did you have the opportunity to interview
10 the defendant?

11 A. Yes, sir. I interviewed him, I believe,
12 on June 4th. I read him his Miranda rights and he
13 also completed a voluntary statement.

14 Q. And when you interviewed him did he
15 indicate that he had been trying to get out of that
16 yard?

17 A. No, sir.

18 Q. You said you also interviewed Mr. Lucky;
19 is that correct?

20 A. That's correct, yes, sir.

21 Q. Did you interview anybody else?

22 A. No, sir, Mr. Herriott and Mr. Lucky.

23 Q. Did you -- was the phone that was in the
24 cell recovered?

25 A. I cannot tell you that. I didn't go down

SW - T. WARREN - CROSS

1 to the cell to search the cell.

2 Q. Was any weapon recovered?

3 A. Yes, sir. Several weapons were recovered
4 by officers.

5 Q. Were any weapons recovered that were in
6 the possession of Mr. Herriott?

7 A. I couldn't tell you if they were in
8 possession when they were recovered. I did not
9 personally recover the weapon.

10 Q. So you don't know whether any weapons
11 recovered from Mr. Herriott?

12 A. In his possession, no, sir, I do not
13 personally know, no, sir.

14 Q. And he was in a cell with somebody else;
15 isn't that correct?

16 A. That's correct, yes, sir.

17 Q. And those weapons may or may not have
18 his weapons; isn't that right?

19 A. Correct. It can, I mean, his or the cell
20 mate's weapons, yes, sir.

21 MR. GRIFFITH: I have no further questions
22 for this witness, Your Honor.

23 MR. GENTRY: That's it.

24 THE COURT: You can step down.

25 MR. GENTRY: We call Lieutenant Bethea.

SW - M. BETHEA - DIRECT

1 THE COURT: Place your left hand on the
2 Bible, raise your right.

3 WHEREUPON,

4 **MARK BETHEA,**

5 having been duly sworn by the Clerk, testified
6 as follows:

7 THE COURT REPORTER: Can I get your full
8 name.

9 THE WITNESS: Mark Bethea.

10 THE COURT: I assume you're fixing to play
11 this video.

12 MR. GENTRY: Yes, sir.

13 THE COURT: Can y'all ---

14 MR. GENTRY: I'm gonna turn it as far as I
15 can turn it.

16 THE COURT: Can y'all see that? Okay.

17 THE DEFENDANT: Excuse me, Your Honor,
18 before you play the video I never seen that video so
19 I want to make sure, I want to make that clear on
20 the record that I never, never saw the video.

21 THE COURT: Okay, that's on the record.

22 MR. GENTRY: Okay.

23 THE COURT: If you want, if you want to
24 watch it you can move your chair over there by that,
25 other side of that TV. If you want to watch it why

SW - M. BETHEA - DIRECT

1 don't you go on around there. Go sit in that chair
2 back there. Can you see it?

3 (Defendant complies.)

4 **DIRECT EXAMINATION**

5 BY MR. GENTRY:

6 Q. Lieutenant Bethea, I've got three videos
7 I'm gonna show you and I'd like you to tell us
8 please what these videos represent. But first of
9 all, were you on duty that day at the Lee
10 Correctional Institute?

11 A. Yes, I was.

12 Q. And what dormitory were you in?

13 A. F3.

14 Q. F3, that's one of the dormitories housing
15 various prisoners, correct?

16 A. Yes, sir.

17 Q. And that was the dormitory that housed
18 Mr. Herriott?

19 A. Yes, sir.

20 Q. All right now, why, why were — you went
21 to Mr. Herriott's cell; did you not?

22 A. Yes, sir.

23 Q. Why did you go there?

24 A. Because I was called, my officer that two
25 inmates fighting in a cell and one was bleeding so

SW - M. BETHEA - DIRECT

1 went to his cell to check it out and see what was
2 going on and that's when I see Mr. Herriott had a
3 shank tied around his hand trying to stab.

4 Q. How did you see that shank?

5 A. I was -- through the window.

6 Q. Through the window?

7 A. Through the cell door window.

8 Q. All right. And what did you do then?

9 A. I gave Mr. Herriott several directives to
10 slide me the shank.

11 Q. And did he do that?

12 A. Not at first, no, he didn't.

13 Q. What did you do then?

14 A. I then called for more assistance. That's
15 when Lieutenant Lucky was on his way down. And I
16 still was talking to Mr. Herriott trying to get him
17 to give me the shank.

18 Q. Okay. Did the door eventually to
19 Mr. Cell, Mr. Luckey -- excuse me, the door to Mr.
20 Herriott's cell, was it opened?

21 A. It was opened.

22 Q. It was already opened?

23 A. No, it was secure when I was there.

24 Q. Okay, you opened it?

25 A. When once Lieutenant Lucky came down, then

SW - M. BETHEA - DIRECT

1 we opened the cell.

2 Q. And what were you gonna do when you opened
3 that cell door?

4 A. Well, we was gonna put Mr. Herriott in
5 restraints and remove him from the cell.

6 Q. You were gonna put him in what?

7 A. Restraints.

8 Q. Restraints?

9 A. Handcuffs.

10 Q. Handcuffs, okay. And move him out?

11 A. Yes, sir.

12 Q. You -- was any indication that his
13 roommate may have been in trouble also?

14 A. No, sir, because his roommate was trying
15 to defend hisself.

16 Q. Okay.

17 A. He didn't have no weapons in his hand at
18 all.

19 Q. Okay. So then what happened?

20 A. Mr. Herriott, he slid me one shank from
21 underneath the door and I told both inmates to get
22 on their knees while we wait. Then Mr. Herriott, he
23 got impatient and he climbed up to the light fixture
24 and took it down and grabbed two more shanks.

25 Q. Two more shanks?

SW - M. BETHEA - DIRECT

1 A. Yes, sir.

2 Q. So he slid one under the door and then
3 went up to the light fixture and grabbed some more?

4 A. Yes, sir.

5 Q. Then what happened?

6 A. Then that's when Lieutenant Lucky came,
7 and me and him was talking about what we're gonna do
8 and that's when we had opened the door and try to
9 get the roommate out and that's when inmate Herriott
10 came out the room with both shanks in his hand.

11 Q. Okay. So you were gonna get the roommate
12 out and leave Mr. Herriott in there?

13 A. Yeah.

14 Q. Okay. Didn't work out, did it?

15 A. No, sir.

16 Q. Why didn't it work out?

17 A. Because Mr. Herriott pushed his roommate
18 out the way to come out the room.

19 Q. He pushed him out the way and came out
20 himself?

21 A. Yes, sir.

22 Q. Okay. All right, what happened then?

23 A. He then proceeded towards the officer's
24 desk and that's when myself and Lieutenant Lucky and
25 two more officers, well, a sergeant and a officer,

SW - M. BETHEA - DIRECT

1 surrounded inmate Herriott and was talking to him
2 trying to get the other shanks away from him.

3 Q. Okay. Let me play this for you then. You
4 tell me, tell me what this is all about.

5 A. Okay.

6 Q. Can you see that?

7 A. I can see it.

8 Q. Come over here and tell me what it's all
9 about. We have no sound on this by the way.

10 A. (Complies.)

11 (State's Exhibit 1 begins playing.)

12 THE WITNESS: All right. That's the
13 sergeant that was with me at the time and that's —
14 I'm standing right here. And I was talking to him.
15 And I think that's prob-- that's Sergeant Lucky
16 right there.

17 BY MR. GENTRY:

18 Q. Who is this man in the blue coat?

19 A. That was the nurse.

20 Q. Okay.

21 A. I was talking to him trying to get the
22 shanks from him. They coming there to talk to him.
23 That's me right there talking to him.

24 Q. Okay. He's still in his cell?

25 A. Yeah, he's still in the cell. The cell

SW - M. BETHEA - DIRECT

1 door is locked.

2 THE COURT: Can y'all jurors see there
3 'cause he's standing in the way.

4 (Pause while playing of video continues.)

5 BY MR. GENTRY:

6 Q. So this trying to talk to him and talking,
7 this went on for some time?

8 A. Uh-huh, yes, sir.

9 (Pause while playing of video continues.)

10 BY MR. GENTRY:

11 Q. That's when the first shank is coming in
12 here, right?

13 A. Yes (unintelligible).

14 THE COURT REPORTER: Say that again, I
15 didn't hear you.

16 THE WITNESS: I said when I bent down on
17 the video I grabbed, that's when I grabbed the first
18 shank.

19 (Pause while playing of the video continued.)

20 BY MR. GENTRY:

21 Q. Just for the record, what is a shank?

22 A. A homemade knife.

23 Q. I see two female officers. This one is in
24 front of the table and one ---

25 A. Right there, yes, sir.

SW - M. BETHEA - DIRECT

1 Q. Okay.

2 MR. GRIFFITH: Objection, Your Honor.
3 He's leading the witness.

4 THE COURT: Okay. Let him testify, you
5 just ask the questions.

6 MR. GENTRY: Yes, sir.

7 THE WITNESS: And that's Lieutenant Lucky
8 walking forward right there.

9 BY MR. GENTRY:

10 Q. All right. Lieutenant Lucky is the man
11 just walking forward.

12 (Pause while playing of video continued.)

13 BY MR. GENTRY:

14 Q. I notice the female guard in a white shirt
15 had something in her hand. What was that?

16 A. MK-9.

17 Q. What is an MK-9?

18 A. It's a gas can, chemical munition. That's
19 when Mr. Herriott opened the door.

20 Q. So you say you're opening the door just
21 now?

22 A. Yes. See the door is open there. That's
23 when Herriott come up with shanks in his hand.
24 That's Mr. Herriott standing right here.

25 Q. Okay.

SW - M. BETHEA - DIRECT

1 A. Walking towards Lieutenant Lucky.

2 Q. Okay. What is that in his hand there?

3 A. That's a homemade knife, a shank.

4 (Pause while playing of video continues.)

5 BY MR. GENTRY:

6 Q. Who is this person in the middle of the
7 screen there?

8 A. That's me.

9 Q. Okay. I notice no one is in a hurry to
10 close on him. Why is that?

11 A. Because it's for our safety.

12 Q. All right. This is another shot just
13 taken from a different camera, correct?

14 A. Yes, sir. And that's when Lieutenant
15 Lucky was running from him, pushing him out the
16 door.

17 Q. So that's, that is actually the third
18 shot, correct?

19 A. Yes, sir.

20 Q. Okay. This is another shot. And what
21 does that represent?

22 A. That's Mr. Herriott taking Lieutenant
23 Lucky.

24 Q. Okay.

25 A. And that's me. I took the gas can and I

SW - M. BETHEA - CROSS

1 went out to Mr. Herriott.

2 Q. That's you on the screen right there?

3 A. Yes, sir.

4 Q. So now you are all are just trying to find
5 Mr. Herriott?

6 A. Yes, sir.

7 Q. Okay, all right. Thank you very much.
8 Mr. Bethea.

9 A. All right. (Resumes his seat on the
10 witness stand.)

11 Q. Answer any questions that Mr. Griffith may
12 have please.

13 **CROSS-EXAMINATION**

14 BY MR. GRIFFITH:

15 Q. Lieutenant Bethea, no one was actually
16 injured; is that correct? None of the officers.

17 A. Lieutenant Lucky was injured.

18 Q. Lieutenant who was injured?

19 A. Lucky. Well, Sergeant Lucky at the time
20 but.

21 Q. In what way was he injured?

22 A. He had hurt his knee.

23 Q. I'm sorry, I can't hear?

24 A. He had hurt his knee.

25 Q. Oh, okay. So he wasn't stabbed?

SW - E. LUCKY - DIRECT

1 A. No, he wasn't stabbed.

2 Q. So in the fall down he may have been hurt?

3 A. Yes, sir.

4 Q. But he was not stabbed by Mr. Herriott?

5 A. No.

6 Q. So at that time were weapons recovered at
7 that scene right there or were they recovered later?

8 A. I recovered them. I recovered the weapons
9 on the yard when he surrendered.

10 Q. So you found some weapons on the yard?

11 A. No, he tossed them to me after he
12 surrendered on his knees.

13 Q. Okay. And isn't it true that he had
14 talked to you or to your knowledge had asked to be
15 moved out of that facility, out of that yard?

16 A. No, no, sir.

17 Q. I have no further questions for this
18 witness.

19 A. All right.

20 MR. GENTRY: Nothing further for this
21 witness, Your Honor.

22 THE COURT: You can step down.

23 MR. GENTRY: We call Lieutenant Lucky.

24 WHEREUPON,

25 **EDWARD LUCKY,**

SW - E. LUCKY - DIRECT

1 having been duly sworn by the Clerk, testified
2 as follows:

3 **DIRECT EXAMINATION**

4 BY MR. GENTRY:

5 Q. State your full name, sir.

6 A. Edward Lucky.

7 Q. Mr. Lucky, how long have you been a
8 corrections officer?

9 A. Seventeen years.

10 Q. How long -- what were you doing before
11 that?

12 A. Drove for Coca Cola.

13 Q. Okay. Were you on duty on May the 10th
14 2018, at Lee Correctional Institute?

15 A. Yes, sir. Yes, I was.

16 Q. Did you encounter an inmate by the name of
17 Kevin Herriott?

18 A. Yes, sir, I did.

19 Q. And you have seen the videos before; have
20 you not?

21 A. No, I haven't seen the videos.

22 Q. You haven't seen the videos?

23 A. No, sir.

24 Q. Let me show you this one right here.
25 (State's Exhibit No. 1 was played.)

SW - E. LUCKY - DIRECT

1 BY MR. GENTRY:

2 Q. What was just happening there?

3 A. I came out. He pushed me from the back
4 and I fell to the door, and at the time he was
5 trying to retrieve my chemical munition and that's
6 when Sergeant Coaxum gassed him.

7 Q. Okay. Who's on top there?

8 A. That's inmate Herriott.

9 Q. Who's on the bottom there?

10 A. That's me.

11 Q. How did you get there?

12 A. Fell to the door.

13 Q. He -- did he push you or shove you or
14 what?

15 A. Yes, sir.

16 Q. What did he have in his hands?

17 A. He had two shanks tied right there on his
18 hand. It was tied on to it.

19 Q. Okay. And did that give you pause?

20 A. Yes.

21 Q. It scared you?

22 A. Yes, sir.

23 Q. Now what are these shanks used for?

24 A. To maim, kill.

25 Q. Okay. If he had connected with you what

SW - E. LUCKY - CROSS

1 would have been the result you reckon?

2 A. It would have been pretty bad.

3 Q. Depending on where you got hit?

4 A. Yes, sir.

5 Q. Okay. Who is this up here?

6 A. That is Sergeant Coaxum.

7 Q. She's the one administering the chemical
8 munition ---

9 A. Yes, sir.

10 Q. ---on inmate Herriott? All right. Now
11 you heard your earlier testimony. You were not
12 there the entire time, were you?

13 A. No, sir.

14 Q. So did the lieutenant called you to come
15 down to the cell?

16 A. Yes, sir.

17 Q. And you've heard the testimony. Was it
18 much different from what you remember?

19 A. No, sir.

20 Q. Okay. Again, what did you have in your
21 belt or in your hand that he was trying to take?

22 A. The chemical munition I had. I also had
23 MK-9 as did the sergeant, did the sergeant.

24 Q. That was a chemical munition?

25 A. Yes, sir.

SW - E. LUCKY - CROSS

1 Q. And, okay. All right, answer any
2 questions Mr. Griffith may have.

3 **CROSS-EXAMINATION**

4 BY MR. GRIFFITH:

5 Q. Lieutenant Lucky.

6 A. Yes, sir.

7 Q. Are you aware whether there were other
8 videos, other angles of this shot?

9 A. No, I have never seen the video.

10 Q. Okay. Were you injured by the shanks?

11 A. No, sir, I was not.

12 Q. And you say he had them tied in his hand;
13 isn't that correct?

14 A. Yes, sir. Yes, he did.

15 Q. And so his hands were full; isn't that
16 right?

17 A. Yes, sir, full of shanks.

18 Q. So if his hands were full he couldn't
19 really have grabbed anything from you, could he?

20 A. Yes, sir. Yes, he could have.

21 Q. With his hands full, tied ---

22 A. Sir ---

23 Q. ---together?

24 A. The shanks only covers --- he still had his
25 fingers.

SW - E. LUCKY - REDIRECT

1 Q. Did he recover your chemical device?

2 A. He did not, sir. Did not let him.

3 Q. So he was -- he did not take a device from
4 you, did he?

5 A. No, sir, he did not.

6 Q. You were not injured with the shanks, were
7 you?

8 A. No, sir, I was not.

9 Q. Okay. Were you aware that Mr. Herriott
10 had asked to be moved out of the yard?

11 A. No, sir, I have not. No.

12 Q. Were you present during the riots when 11
13 people were killed?

14 A. Yes, sir, I was.

15 Q. Were you aware of actions by Mr. Herriott
16 at that time?

17 A. No, sir, I was not.

18 Q. I have no further questions for this
19 witness.

20 **REDIRECT EXAMINATION**

21 BY MR. GENTRY:

22 Q. While he didn't get your chemical munition
23 he attempted to get it; didn't he?

24 A. Yes, sir. Yes, he did.

25 MR. GENTRY: Nothing further, Judge.

1 THE COURT: You may step down.

2 MR. GENTRY: That is the State's case,
3 Your Honor.

4 THE COURT: Okay. Ladies and gentlemen, I
5 need for you to go to the jury room just a minute.
6 Let me take up a matter of law, then I'll get you
7 back out. Don't discuss the case yet.

8 (WHEREUPON, the jury was removed from the
9 courtroom at 2:33 p.m.)

10 MR. GRIFFITH: Your Honor.

11 THE COURT: Hold on a minute. I don't
12 want to talk to you. I want to talk to her.

13 THE DEFENDANT: Yes, sir.

14 CORRECTIONS OFFICER: Thank you, Your
15 Honor. At this time, I know you've asked him not to
16 be restrained but. At this time I think
17 Mr. Herriott need to be restrained before he come
18 back out, before you finish your case.

19 THE COURT: All right, I need to talk to
20 him a minute first. I'm gonna determine whether he
21 will get on the stand.

22 CORRECTIONS OFFICER: Okay.

23 THE COURT: Mr. Herriott, the State has
24 rested their case. Now you have an opportunity to
25 put up evidence if you want to. You have the

1 opportunity to testify if you want to. You don't
2 have to testify and I will instruct the jury that
3 they cannot consider that against you in any way.
4 But if you do choose to testify you'll be treated
5 like any other witness and you'll be subject to
6 cross-examination and possible impeachment, you
7 understand that?

8 THE DEFENDANT: I understand.

9 THE COURT: And I assume you have a
10 criminal record or you wouldn't be in the Department
11 of Corrections and maybe that could be admissible
12 against you, impeachable, or maybe not. I don't
13 know what it is, I haven't reviewed any of that.
14 You understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: Your decision to testify is
17 your decision. You have a constitutional right and
18 your lawyer can advise you as to what he thinks you
19 should or should not do and you can take his advice
20 or not take his advice; but ultimately it is your
21 decision. You understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: You got any questions you want
24 to ask me concerning your right to testify?

25 THE DEFENDANT: Sir, I would like to ask

1 you the extent, would the Fifth Amendment be
2 appropriate for me during testimony?

3 THE COURT: The Fifth Amendment?

4 THE DEFENDANT: Yes.

5 THE COURT: Well, you're voluntarily
6 getting up on the stand.

7 THE DEFENDANT: Right.

8 THE COURT: Now, I don't know what you
9 would think of exercising the Fifth about. The
10 facts and the video, I mean, as far as your prior
11 record is concerned they can't go into anything in
12 the past on that. But you know, the State's —
13 nobody's called you to the stand and forced you to
14 testify, you understand that?

15 THE DEFENDANT: If I ---

16 THE COURT: So you may not get up and be
17 able to get on the stand just to plead the Fifth.
18 You understand that?

19 THE DEFENDANT: Yeah.

20 THE COURT: I don't know whether that
21 would necessarily deal with it. That stuff that
22 didn't have anything to do with this case or details
23 of prior to the case, you know, I won't let that in
24 any way. You understand that?

25 (There was no response.)

1 THE COURT: If you don't testify I'll
2 instruct the jury they can't consider that in any
3 way against you 'cause you don't have the burden of
4 proof, they do. They got to prove you guilty to
5 these charges beyond a reasonable doubt and I'm
6 gonna tell the jury that. So you don't have to
7 testify and I'll tell them they don't have, they
8 can't consider that against you. You have a right
9 to testify, and if you choose not to testify then
10 you're subject to impeachment. You understand that?

11 (There was no response.)

12 THE COURT: And I'll give you a minute to
13 talk to your lawyer about that if you want to before
14 you make that decision, okay?

15 (Attorney Griffith confers with defendant.)

16 MR. GRIFFITH: Your Honor, I've spoken
17 with my client and advised him of his rights and
18 that he, any testimony he gives here of course could
19 be used against him in any future proceeding where
20 appeal or otherwise. He has chosen that he would
21 like to testify.

22 THE COURT: Is that correct?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Okay. Now does he have a
25 criminal record that under, the State feels like

1 it's entitled to use under State versus Robinson?

2 MR. GENTRY: Your Honor, he has a
3 conviction for voluntary manslaughter in Charleston,
4 out of Charleston, an ABHAN out of Charleston, and a
5 firearm in a violent crime out of Charleston.

6 THE COURT: How long ago?

7 MR. GENTRY: That occurred in, admission
8 date was 2012.

9 THE DEFENDANT: I'm currently fighting,
10 fighting that unlawful conviction inside federal
11 court, federal habeas.

12 THE COURT: I understand that, but right
13 now you've been convicted of it.

14 (Attorney Griffith confers with defendant.)

15 MR. GENTRY: At least those are the
16 reasons listed in the South Carolina Department of
17 Corrections website that he's there.

18 THE COURT: Okay.

19 MR. GRIFFITH: Your Honor, we would object
20 to them bringing up his current status as to why
21 he's in the jail as it's not relevant to the current
22 case in that, and it's not an act of dishonesty to
23 show that he would lie on the stand. It, and so we
24 would ask that it not be admitted.

25 THE COURT: And they occurred allegedly in

1 2012, or when did they occur?

2 MR. GENTRY: I don't know when the events
3 occurred, but he was admitted to the South Carolina
4 Department of Corrections on 9/6/2012.

5 THE COURT: Out of what county?

6 MR. GENTRY: Charleston.

7 THE COURT: I mean...

8 MR. GRIFFITH: If it please the Court,
9 Your Honor, my client informs me that those things
10 occurred in 2010.

11 THE COURT: Okay.

12 MR. GENTRY: One final thing, Your Honor.

13 THE COURT: None of those prior
14 convictions involved dishonesty or false statement,
15 right?

16 MR. GENTRY: That's correct, Judge.

17 THE COURT: So we're dealing under 609(b)
18 State versus Crawford test. So he has a
19 manslaughter conviction, voluntary, that you think
20 is admissible under the Robinson standard?

21 MR. GENTRY: I think voluntary
22 manslaughter for 18 years. The event may have
23 occurred in 2010 because that is the start date, the
24 calculation of sentence as I'm reading the sheet
25 but...

1 THE COURT: Okay, and then what others?

2 MR. GENTRY: He has an assault and battery
3 high and aggravated nature at the same time, 15
4 years out of Charleston.

5 THE COURT: Is it the same incident or is
6 it the same ---

7 MR. GENTRY: It's a different indictment.

8 THE COURT: It's in the same indictment?

9 MR. GENTRY: No, sir, it's a different
10 indictment. The manslaughter is indictment
11 11-GS-10-0043 and the ABHAN is 11-GS-10-044.

12 THE COURT: Those are the only two?

13 MR. GENTRY: Yes, sir.

14 MR. GRIFFITH: Your Honor, my client
15 informs me it was all from the same incident, but
16 ---

17 THE COURT: Okay.

18 MR. GRIFFITH: ---and it doesn't indicate
19 that it was not from the same incident so I would
20 say.

21 THE COURT: The problem is, then he was
22 charged with manslaughter and assault and battery.
23 He's charged with the same thing, assault and
24 battery now.

25 MR. GENTRY: Yes, sir.

1 THE COURT: Attempted armed robbery. And
2 they're not crimes of dishonestly that normally
3 deals with his credibility. And I don't know the
4 impeachment value since it's on video would have
5 that big a impact. I'm trying to deal with both the
6 Crawford steps in light of this new Supreme Court
7 case State versus Robinson. Crimes are similar in
8 the past, but increase the prejudicial effect. I'm
9 not gonna allow them. I think under the Robinson
10 case the prejudicial effect outweighs the probative
11 value and the time between the fact there were
12 similar charges because they're not crimes of
13 dishonesty even though they're crimes, you haven't
14 given any me anything in the least seven years in
15 between that would show a criminal pattern. And
16 he's not presenting an alibi witness in this case,
17 he's simply trying to explain his action. So under
18 the Robinson case and the Crawford case I think the
19 prejudicial effect outweighs the probative value and
20 I'm not gonna allow it.

21 MR. GENTRY: I do note in his inmate
22 search detail report he was also administratively
23 punished for possession of a weapon in 2017 and
24 possession of a weapon again in 2017, two months
25 apart.

1 THE COURT: Okay. That wasn't before me.
2 I ruled and I've certainly been clear. Okay,
3 anything before we bring the jury in?

4 MR. GENTRY: No, sir. A break?

5 THE COURT: You want a break? Okay, we'll
6 take a five minute break.

7 (WHEREUPON, a recess was taken from the
8 proceedings.)

9 MR. GRIFFITH: Your Honor, I would ask the
10 Court for a directed verdict that the State has
11 failed to meet their case.

12 THE COURT: On all counts?

13 MR. GRIFFITH: On all counts, Your Honor.

14 THE COURT: You want to respond to that?

15 MR. GENTRY: No, sir. I think the
16 evidence speaks for itself. I believe the State has
17 proved enough evidence for a reasonable jury to
18 reach a decision.

19 THE COURT: What injury did Lieutenant
20 Lucky describe? How was he injured?

21 MR. GENTRY: I don't think he had anything
22 more than a problem with his hand; but the problem
23 is that the guy had the knife and had he connected
24 with that with him with that knife, he would have
25 caused a serious injury. Or could have caused a

1 serious injury.

2 MR. GRIFFITH: Your Honor, it wasn't clear
3 on the video that Mr. Herriott actually pushed him
4 or whether he fell through the door. It's, it
5 doesn't really show that he actually assaulted him,
6 but rather that there was a connection. And Mr.
7 Lucky was not injured other than by the fall, I
8 believe.

9 MR. GENTRY: Judge, I suggest if you throw
10 somebody off a cliff he's not injured by the throw,
11 he's injured by the impact, and that's the same
12 difference.

13 THE COURT: Do you have a copy of the
14 statute in front of you?

15 MR. GENTRY: On what, sir?

16 THE COURT: The statute.

17 MR. GENTRY: Not with me, but I can have
18 16-23, 16-3.

19 THE COURT: It's 16-3-16(b)(1). They
20 changed the standard of assault and battery high and
21 aggravated nature. I mean, I got a copy.

22 MR. GENTRY: Well, this is not the one I
23 have in my book.

24 THE COURT: Which one do you have in your
25 book?

1 MR. GENTRY: I'll have to go get it.

2 MR. GRIFFITH: Your Honor, I believe one
3 of the elements is physical, violent physical
4 injury.

5 THE COURT: Well, it says in the statute a
6 person commits the offense of assault and battery
7 high and aggravated nature if the person unlawfully
8 injures another person and great bodily injury to
9 another person is accomplished by means likely to
10 produce injury, death, great bodily injury. So what
11 they've done different in the statute, the verdict
12 is they require an injury to under the old law
13 saying didn't have to shoot somebody and missing
14 you're not guilty of this, you may be guilty of
15 attempted murder. I have explained to the
16 legislature about the way they wrote this.

17 (WHEREUPON, counsel approached the
18 Bench for an off-the-record discussion.)

19 THE COURT: Okay, I'll grant your motion
20 on assault and battery high and aggravated nature,
21 but I think assault and battery first degree —

22 MR. GRIFFITH: He's not charged with that,
23 Your Honor.

24 THE COURT: But it's a lesser included
25 offense. Assault and battery by statute is a lesser

1 included offense of ABHAN so I can assume the State
2 -- I can charge that. If it was not a lesser
3 included I couldn't. So I think it's assault and
4 battery first and not -- and then I think there is
5 evidence at least that attempted armed robbery. He
6 has, he's armed with a weapon and attempted to take
7 initiative over. And count three, sufficient
8 evidence he had a weapon inside the Department of
9 Corrections so I grant your motion on assault and
10 battery high and aggravated nature. I will charge
11 first degree and deny your motion on the other two.

12 MR. GRIFFITH: Thank you, Your Honor.

13 THE COURT: Okay, now we're ready to go?

14 MR. GENTRY: Yes, sir.

15 THE COURT: So, and your client is going
16 to testify?

17 MR. GRIFFITH: My client is going to
18 testify.

19 THE COURT: And he's the only witness?

20 MR. GRIFFITH: I'm sorry?

21 THE COURT: Is he the only witness you
22 have?

23 MR. GRIFFITH: Yes, Your Honor.

24 THE COURT: Okay. All right, bring me the
25 jury.

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1 (WHEREUPON, the jury was returned to the
2 courtroom at approximately 3:13 p.m., and the
3 following proceedings commenced in open court.)

4 THE COURT: Okay, ladies and gentlemen,
5 you heard all the evidence the State has. They have
6 rested at this point in the trial. We now turn to,
7 it's the Defense turn if they want to put up any
8 defense.

9 Mr. Griffith.

10 MR. GRIFFITH: If it please the Court.
11 Your Honor, we would call Kevin Herriott to the
12 stand, sir.

13 THE COURT: Okay. If you will come up
14 please, sir. Place your left hand on the Bible and
15 raise your right.

16 THE DEFENDANT: I'd like to invoke my
17 first amendment right. I affirm instead of...

18 THE COURT: Okay, put your hand on the
19 Bible.

20 WHEREUPON,

21 **KEVIN HERRIOTT,**
22 having been duly affirmed by the Court, testified as
23 follows:

24 THE COURT: Thank you, sir. You can sit
25 down.

DW - K. HERRIOTT - DIRECT

DIRECT EXAMINATION

BY MR. GRIFFITH:

Q. Mr. Herriott, could you state your full name?

A. Kevin Herriott.

Q. And you are currently incarcerated where?

A. At Kershaw.

Q. Well, you were formerly incarcerated where?

A. At Lieber, then I was shipped.

Q. And was that during the period when they had some violent riots there?

A. That was in 2014.

Q. Were you -- you were not involved in those riots, were you?

A. No, sir.

Q. Can you tell us what you did to help the corrections officers during those riots?

A. One of the correction officers I helped was at Lee Correctional Institution. On April 15, 2018 she came to the door. She came to my cell door asking me if she can come in and I asked my roommate and he said, you know, go ahead. But it was more so when I asked my roommate it was mostly like a question with a meaning because once she entered

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1 that door, you know, I was accountable for any acts
2 that was going on in that room. So me being that I
3 was the IRC and a head dorm worker, I allowed her to
4 come in the room for her safety.

5 Q. She came in for her safety?

6 A. Yes.

7 Q. Why was she coming in that room for her
8 safety?

9 A. Because one of the, when one of the
10 inmates was dragged across the floor he, he had died
11 through multiple stabbings and she seen it and she
12 had to flee from the desk area. And she didn't went
13 undetected, you know, she just came to the room.
14 And it kind of surprised me because she, out of all
15 the cell rooms she just came to my door.

16 Q. During those riots did you fear for your
17 own safety?

18 A. In a sense, yes, and in a sense, no.
19 During the riots because when it happened it was
20 like, you really have to prepare yourself in a
21 environment like that. And you know, when it goes
22 down like that, you know, at that time it's hard to
23 judge it because, because fear is, is built on the
24 unknown, you know. And knowing that it was gonna
25 happen it wasn't no surprise but, you know, you have

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1 to be prepared for that. Like, you couldn't just, a
2 person just come off the street going in that they
3 would be, they would be terrified, you know.

4 Q. After the riots -- well, were you aware of
5 how many people were killed during that riot?

6 A. Yes, I was.

7 Q. How many?

8 A. Before the National Guard came seven
9 inmates was declared, pronounced dead; and after
10 they came, National Guard, was 11 in total, plus 20
11 plus inmates stabbed.

12 Q. Okay. So after the riots did you have
13 information to give to the corrections officers
14 about?

15 A. I did but, you know, certain, certain
16 those officers was working along corp side with the
17 gang affiliated members so I couldn't trust them.

18 Q. So did you become in fear for your own
19 safety?

20 A. After, after the riot, yes, because my
21 cellmate, he made a call on the cell phone and he
22 attempted to alert two gang members inmates that one
23 was on the side from next door from me and another
24 guy was on top from me and they was beating in the
25 vents and they were saying you next, when the doors

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1 open you next. And you know, seeing what had
2 happened, those fellas was gassed with mace. They
3 also was, fire extinguishers was used during that
4 riot. And you know, the officers, they didn't even
5 bust one canister or mace inside that unit.

6 Q. So did that cause you some kind of anxiety
7 or fear or duress?

8 A. Yes, I did.

9 Q. Did you ask to be moved out of that yard?

10 A. Yes, but Lieutenant Bethea, he, after they
11 take me to lockup he asked me, he was like, who are
12 you running from. You know, 'cause he kind of knew
13 it was, it was a checkout move. And it was, you
14 know, because at the time of that, at the time of
15 that, you know, undergoing that type of threat I
16 wasn't, I wasn't going to go out like that, you
17 know. And the reason why they came to the cell,
18 though, because my mother called, my mother called
19 the institution to have them come down to the unit
20 and seeing the videotape, how long they took to even
21 attempt to break out what was going on inside the
22 room. They was actually sitting down on the
23 benches.

24 Q. Now you watched the videos; didn't you?

25 A. Yeah.

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1 Q. And was it your intention to knock down
2 Officer Lucky?

3 A. No, he, he fell, he fell -- matter of
4 fact, he fell on his own. You know, and it surprise
5 me because the video, the video cameras only showing
6 one side and they got like nine different cameras
7 inside the whole unit. And from the sky point from
8 that angle, you know, it shielded from the stairwell
9 and from the opposite side where the back door at
10 you can get a direct hit on my room. And the
11 cameras are fixed right there whereas you can see
12 what was going on inside the unit because they got,
13 like I said, they got nine different cameras all
14 across the dorm.

15 Q. Did you have a goal in mind when you came
16 running out of the room?

17 A. To get out that yard.

18 Q. So why did you -- I'm not gonna ask you
19 that question. So what were you thinking about you
20 could accomplish with your actions?

21 A. My actions wasn't, wasn't even a really, I
22 didn't -- and Sergeant Lucky knew I wasn't trying to
23 hurt him, he knew that. And it was more so as, you
24 know, forcing -- he could have even bust the
25 canister and that what I was getting him to try to

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1 do; but he didn't even wanted to bust the canister
2 so I don't, it's crazy.

3 Q. Is there anything else you want to tell
4 the Court about the incident and your thoughts
5 during that time?

6 A. During the riot it was a lot of things
7 that took place during that riot, you know. And I'm
8 kind of glad, I thank God that I've been able to
9 make it out because it really, it really, you know,
10 changed my heart to, you know, see what the officers
11 got to go through, you know, in implementing. And
12 you know, you know when inmates they get together,
13 you know, it's kind of intimidating towards the
14 officers there. They go out the officers in
15 intimidating manner and, you know, it's kind of hard
16 for them to judge who was actually, you know,
17 sincere or who is actually put in a certain
18 situation to whereas, oh, he's just acting like the
19 rest of them, you know. So it's kind of hard to
20 determine.

21 Q. I have no further questions.

22 **CROSS-EXAMINATION**

23 BY MR. GENTRY:

24 Q. Inmate Herriott, do you recall an
25 interview you gave with Investigator Horne?

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1 A. Yes.

2 Q. And you gave that in 6/4/18; is that
3 correct?

4 A. I ---

5 Q. You don't remember the date? Let me just
6 show it to you.

7 A. I know what's on the incident, the
8 statement. I know what's on the statement. It's
9 just...

10 Q. Okay.

11 A. I didn't know exact date.

12 Q. And in the statement he had given your
13 article -- your Miranda warnings?

14 A. That statement is incomplete 'cause ---

15 Q. Just answer my question. He'd given you
16 your Miranda warnings; had he not?

17 A. That statement is incomplete for the
18 simple fact is that he asked me to go into the fact
19 of the deadly riot and I refused to because they had
20 accuse me ---

21 Q. The riot has nothing to do with this.

22 A. Yes, it does.

23 Q. What we're talking is what happened that
24 day.

25 A. That's exactly what happened. It was ---

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1 Q. And here's what you said.

2 A. It was the aftermath of me fleeing the
3 unit because after that happened my roommate called
4 and had them to beat on that vent to tell them, you
5 know, he gonna tell on y'all so y'all need to go
6 ahead and get him so when the doors open you next.
7 That's what they told.

8 Q. "So I am his roommate which didn't make
9 any sense so I grabbed my knife and demanded his
10 phone." You're talking about your roommate. To call
11 your mother, to text your mother, who later called
12 up front at Lee and headquarters to let them know I
13 stabbed my roommate. But you didn't really stab
14 your roommate, did you?

15 A. I don't -- no.

16 Q. No, you didn't. "But I didn't know he was
17 actually trying to restrain me." You said that in
18 this statement, correct?

19 A. Not, not those words that you're quoting,
20 but I stated --

21 Q. You wrote those words; didn't you?

22 A. But I stated, what I stated is, is that --
23 I can quote it verbatim what that I said in that
24 statement.

25 Q. Did you write this statement?

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1 A. Yes, I did.

2 Q. All right. "The three officers came to
3 the door at 1110-F3 along with a nurse," is that
4 correct?

5 A. They came ---

6 Q. Did you write that?

7 A. It was ---

8 Q. Did you write that?

9 A. It was actually -- how many officers?

10 Q. You want to answer the question or not?

11 A. There was four -- one nurse.

12 Q. So you wrote down three and one nurse so
13 you're wrong, right?

14 A. I did.

15 Q. They opened the door at which time I
16 flipped out and charged Officer Lucky. Is that --
17 did you write that?

18 A. Yes, I did.

19 Q. All right. "Who then fell. I reached for
20 his canister Mark 9 twice."

21 A. Yes.

22 Q. "When I got sprayed and escorted up
23 front." Is that right?

24 A. Yes.

25 Q. And you saw the video?

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1 A. Right.

2 Q. No doubt about it. You reached for his
3 Mark 9?

4 A. Right.

5 Q. You weren't escorted, you fled ---

6 A. There's testimony ---

7 Q. You left; didn't you?

8 A. In his testimony he stated that I pushed
9 him. I was nowhere near him when he fell.

10 Q. You left the scene, didn't you, after you
11 got gassed?

12 A. Yes, that was the whole intentions.

13 Q. Okay. You were trying to get away from
14 the gas?

15 A. No, I'm trying to get away from them and,
16 from them and the people that was inside that unit.

17 Q. Okay. So those items that you had in your
18 hand when they showed the video ---

19 A. Right.

20 Q. ---that was a shank; wasn't it?

21 A. One.

22 Q. One.

23 A. Uh-huh.

24 Q. But you admitted having a shank?

25 A. Yes.

DW - K. HERRIOTT - REDIRECT

* 1 Q. And how big was that shank?
2 A. I don't know.
3 Q. Well, how long was it you think?
4 A. I don't know; it wasn't my shank.
5 Q. You had possession of it; didn't you?
6 A. Right.
7 Q. All right. Did it have a blade on it?
8 A. I don't know. It was a, it was a pick.
9 Q. Oh, it was something you could stab with?
10 A. Yes.
11 Q. Okay. So it's still something you could
12 hurt somebody with?
13 A. Yes.
14 Q. Okay. It was a weapon. All right, I have
15 no further questions.
16 MR. GRIFFITH: Redirect, Your Honor.
17 THE COURT: Yes, sir.
18 **REDIRECT EXAMINATION**
19 BY MR. GRIFFITH:
20 Q. Mr. Herriott, those are not your shanks,
21 were they?
22 A. No.
23 Q. You knew where they were?
24 A. (No response.)
25 Q. It was not your intention to harm Mr.

1 Lucky, was it?

2 A. No.

3 Q. I have no further questions.

4 THE COURT: Okay, you can step down.

5 Any reply testimony from the State?

6 MR. GENTRY: No, sir.

7 THE COURT: Okay. Anything else from
8 Defense?

9 MR. GRIFFITH: Nothing, Your Honor. Our
10 case, we would conclude our case.

11 THE COURT: Ladies and gentlemen, I need
12 to send you back to the jury room just for a minute.
13 Here's what I need you to do when you're back there.
14 I need you to select a foreperson. I don't know any
15 of you, but that foreperson only will preside over
16 the deliberations and sign the verdict form. It
17 needs to be out of the original twelve. If you'll
18 do that. When you select the foreperson, knock on
19 the door and I'll bring you back out and we'll do
20 clothing argument, I'll charge you on the law in
21 this case, and give you this case to decide. You
22 can go to the jury room.

23 (WHEREUPON, the jury was removed from the
24 courtroom at 3:29 p.m.)

25 THE COURT: Okay. Anything else?

1 MR. GENTRY: Not from the State, Your
2 Honor.

3 MR. GRIFFITH: Nothing from Defense.

4 THE COURT: How long you think y'all are
5 gonna take on closing arguments?

6 MR. GENTRY: It will take me maybe ten
7 minutes. I'm gonna show the videos again, of
8 course.

9 MR. GRIFFITH: It will take me about ten
10 minutes, Your Honor, as well.

11 THE COURT: Okay. And maybe you can fast
12 forward the video.

13 MR. GENTRY: I am going to do that. I'm
14 going to cut 60 minutes off.

15 THE COURT: Okay. As soon as they get the
16 foreperson we'll do closing arguments, I'll charge
17 and see if we can get a verdict this afternoon.

18 MR. GRIFFITH: Okay. Thank you, Your
19 Honor.

20 (WHEREUPON, a recess was taken from the
21 proceedings.)

22 THE COURT: Select me an alternate. We'll
23 select a second alternate since we lost a juror. I
24 had her put both names in a cup, shake them up, and
25 draw it out. And so who will be the alternate?

1 THE CLERK: Albert Reuben, 121.

2 THE COURT: Okay. All right, bring me the
3 jury.

4 (WHEREUPON, the jury was returned to the
5 courtroom at approximately 3:39 p.m., and the
6 following proceedings commenced in open court.)

7 THE COURT: Have y'all selected a
8 foreperson? Who is it?

9 THE JUROR: I am, Your Honor.

10 THE COURT: Okay. Tell me your name.

11 THE FOREMAN: Kacy Brannon.

12 THE COURT: Okay. Now I've had the
13 clerk — I had two alternates. I lost one of my
14 jurors so I had the clerk put your two names in a
15 hat. She drew them out. And Albert Ruben is on the
16 jury so Mr. — where's Mr. Ruben? Okay. You're on
17 the regular panel now, okay.

18 And Ms. Fortune, you're still the
19 alternate. I'm sorry, Mr. Fortune? Where is he?
20 You're the alternate right now, okay. And I'll only
21 use you if somebody gets sick, but I just need you
22 to hang with me till we finish it up, okay. Now if
23 you'd pay close attention you're gonna hear the
24 closing arguments of the attorneys. I will charge
25 you on the law and give you this case to decide.

1 Solicitor.

2 MR. GENTRY: Ladies and gentlemen, thank
3 you for paying very close attention to what happened
4 today. We've heard the testimony. We've seen the
5 video that is right there. I'm gonna play it again
6 for you in a minute so you can see it again. I
7 think there's no doubt in anybody's mind that the
8 defendant had a shank in Lee Correctional Institute.
9 That is unlawful. I think there's no doubt that he
10 said he attempted to take the chemical munition from
11 the officer involved here, Lieutenant Lucky. He
12 also -- there's a question of fact here as to
13 whether he pushed Lieutenant Lucky or whether
14 Lieutenant Lucky fell down; but at any rate,
15 Lieutenant Lucky was propelled out that door. And I
16 do not understand how anybody can be propelled with
17 the speed that Lieutenant Lucky came out that door
18 without being shoved, without being shoved strongly.

19 Let's just take a look here and see what
20 we've got. I'm gonna fast forward to some. We're
21 not gonna sit through the whole thing forever. This
22 is the first one. If you can't see let me know.
23 This, I believe, is when Lieutenant Lucky came
24 through the door.

25 (State's Exhibit No. 1 was played.)

1 MR. GENTRY: So was that a fall or is that
2 a shove? I think it's a shove. What's in the
3 defendant's hand right there? Obviously a shank.
4 Here we go again. What's he trying to do? He's
5 trying to grab for his chemical munition. That's
6 that stuff that gets sprayed in the face and
7 incapacitates somebody. Lucky is on his back. He's
8 pulling forward, he's pulling forward, going again.
9 And now he gets a break and now he leaves. All
10 right, that's that.

11 This is the scene where we're talking
12 about earlier where Lieutenant Bethea and everyone
13 else was going to his cell which was up here.
14 Lieutenant Bethea stated at one point up here he
15 slid a shank out from under the door and he took
16 that shank from him from the cell. There goes
17 Lieutenant Lucky. He turns out of the cell now.
18 What's this in his hand? What's that right there?
19 A shank. All the guards said they were staying away
20 from him because they didn't want to get hurt, they
21 didn't want to get stabbed. All right. There he
22 goes. This is Lieutenant Lucky down here. They
23 were fighting with him and there's him getting
24 sprayed with the chemical munitions. And that is
25 the value of a video. Now I realize it's not on

1 somebody's big screen television and I realize that
2 it's not the best in the world, but is it required?
3 No.

4 We've also heard what the defendant said.
5 He had his statement and he indicated that he
6 flipped out of his cell when the other people came
7 there, Lucky and Bethea came there. He flipped out
8 of his cell. He also indicated he tried twice to
9 get Lucky's chemical munition and he was armed when
10 he did that. He had a shank in his hand. And that
11 is the definition of armed robbery, to take
12 something by force or violence in art. And I'll let
13 the judge give you the full definition of all these
14 cases, on all these definitions. All I can tell you
15 is that the people out there at Lee Correctional do
16 an invaluable service for all of us because if we
17 did not have those guards out there maintaining a
18 vigil, where would we put people like this
19 defendant. We're gonna send him home? We're gonna
20 say, no, do whatever you did again? There has got
21 to be punishment.

22 THE DEFENDANT: Objection, Your Honor.

23 THE COURT: You can't -- go ahead.

24 MR. GENTRY: There has got to be
25 punishment involved, and I suggest to you that the

1 correctional facilities here, while they're not the
2 best in the world -- I'll be the first person to say
3 that. That's been evidenced by the riots out there
4 or the riot out there which occurred a while back.
5 But nevertheless, there has to be a place to put
6 these folk who are dangerous in the society. And I
7 don't think you need to take people and throw them
8 in there and throw away the key. I think you need
9 to rehabilitate them; but by the same token, a guard
10 have got to be protected and they do this by means
11 of these nonlethal force. Chemical munition is a
12 nonlethal force. I mean, Mr. Herriott is here today
13 because he wasn't shot. The reason he wasn't shot
14 is because they don't want guards walking around
15 with guns because inmates have a tendency to want to
16 get out of the place and they want to take hostages
17 and they want to leave. And I, you know, who wants
18 to be inside jail, who wants to be inside. But my
19 point is this, he admitted trying to take Lucky's
20 chemical munition. He admitted he had a shank in
21 his hand when he did that. That's armed robbery,
22 attempted armed robbery. He didn't get away with
23 it. He had a shank inside Lee Correctional
24 Institution and that's unlawful, and he struck
25 Lucky. And he had a shank at the time he struck

1 Lucky and he had the means of inflicting a serious
2 injury on Lucky. The fact he didn't do that is to a
3 large extent due to the fact that he was treated
4 with chemical munitions which made him leave. And
5 that's my story and that's the story that you saw on
6 the video. Thank you very much for your attention.

7 THE COURT: Mr. Griffith.

8 MR. GRIFFITH: May it please the Court,
9 Your Honor. Ladies and gentlemen, again, thank you
10 so much for listening and I hope you did listen
11 carefully. There were videos there. The videos
12 show what, you know, we can assume what is on that
13 video. We can look at it and make speculations and
14 guesses as to what's really going on there. They
15 didn't show every angle. There were nine cameras
16 there. They didn't choose to show every angle. We
17 don't know if some of them may have looked different
18 or may have made it look different. I would have
19 liked to have seen all nine of them. I would have
20 loved to have seen all nine of them.

21 Mr. Herriott was helpful to the officers
22 during the riot and his enemies were aware of that.
23 He felt endangered. It's not clear in the video, in
24 this video from this angle, it's not clear to me —
25 and hopefully not to you — if Lieutenant Lucky fell

1 or was pushed when he came through that door. I
2 mean, he's backing away from the guy. This guy may
3 have something in his hand. The State could have
4 showed all nine, but they didn't. Lieutenant Lucky
5 was not injured. Mr. Herriott had the intent to
6 injure Mr. Lucky, if he's got a knife in his hand,
7 then he would have injured him, I would imagine, if
8 that was his intention. If he intended to with one
9 in each hand, he could have. Mr. Herriott wanted
10 out of the situation; he was in danger. He felt he
11 was in danger. Whether he was truly in danger or
12 not, we, you may not be able to know. But in order
13 for him to be found guilty, of course, he has to
14 have had some intention. And the judge, of course,
15 will explain the law to you. But Mr. Herriott, 11
16 people die just shortly before this occurred in a
17 riot and then you heard him testify that the people
18 below him and the people below saying you're next.
19 That's a dangerous situation, not -- I don't want to
20 be in prison because it's dangerous. We really need
21 to do something about that, but we're not here to
22 talk about that. But it's a dangerous place to live
23 and be because there are people there who are just
24 out of their minds and terribly violent, but Mr.
25 Herriott felt like he was in danger. And so I would

1 ask you to take into consideration all the facts of
2 course, and the law is the law, but also to take
3 into consideration the intent, his intention, and
4 what could have or may have been going on here that
5 we didn't hear testimony about. And if you'll do
6 that, then I'm sure you'll come to a good
7 conclusion.

8 THE COURT: Okay, ladies and gentlemen,
9 now that you've heard all the evidence in this case,
10 both the arguments of the State and the Defendant,
11 I'm going to instruct you on the law that you're to
12 apply to this case. And under our Constitution and
13 Code of Laws only the jury can make a finding of
14 facts in this case. I am not permitted to indicate
15 about how I feel about the facts or if I've said
16 anything or I've done anything throughout this trial
17 that you think I have an opinion about the facts,
18 you're to disregard that 'cause under our law you,
19 the jury, are the only ones that can make a finding
20 of fact based on the evidence that's come before you
21 in this case. And under that same Constitution and
22 Code of Laws that makes you the exclusive judge of
23 the facts it makes me the exclusive judge of the
24 law, so if you have an idea of what you think the
25 law is or what the law should be and it differs from

1 what I now tell you the law is, you will disregard
2 that idea and apply the law exactly as I give it to
3 you.

4 The fact that this defendant was arrested
5 and charged and indicted in this case is not
6 evidence in this case and cannot be considered by
7 you as evidence of guilt in this case, nor does it
8 create any presumption or inference of guilt. The
9 indictment is simply a formal legal document which
10 brings this case to the court system, and it is not
11 evidence in this case. And the defendant has
12 entered a plea of not guilty to this indictment and,
13 therefore, it casts the burden on the State of South
14 Carolina to prove each and every element of this
15 indictment to you beyond a reasonable doubt.

16 A person charged with committing an
17 offense in South Carolina is never required to prove
18 himself or herself innocent. It is an important
19 rule of law in this country that a defendant in a
20 criminal trial will always be presumed innocent of
21 the crime for which he is charged and indicted
22 unless and until his guilt has been proven by
23 evidence that satisfies you of that guilt beyond a
24 reasonable doubt.

25 The presumption of innocence is not a mere

1 legal theory; it is not just a legal phrase. It is
2 a substantial constitutional right to which every
3 defendant is entitled. The presumption of innocence
4 accompanies the defendant from the time he's charged
5 throughout the trial until you reach a verdict based
6 upon the evidence that satisfies you of his guilt
7 beyond a reasonable doubt.

8 A reasonable doubt is a doubt which makes
9 an honest, sincere, conscientious juror in search of
10 the truth to hesitate to act. Proof beyond a
11 reasonable doubt is, therefore, proof of such a
12 convincing character that a reasonable person would
13 not hesitate to rely to act upon it the most
14 important of his or her affairs. Proof beyond a
15 reasonable doubt can also be described as proof that
16 leaves you firmly convinced of the defendant's
17 guilt. Now there are very few things in this world
18 we know with absolute certainty, and in a criminal
19 case the law does not require proof that overcomes
20 every possible doubt. If based on your
21 consideration of evidence you're firmly convinced of
22 the defendant's guilt of the crime charged, you must
23 find him guilty. If on the other hand you think
24 there's a real possibility he's not guilty, you must
25 give him the benefit of that doubt and find him not

1 guilty.

2 Now in determining the facts in a case you
3 must necessarily pass upon the credibility which
4 simply means believability of the witnesses and the
5 value or weight to be given to their testimony.
6 You, alone, must decide the force and effect and
7 truth of that testimony. In making these decisions
8 there are many things that you may and should take
9 into consideration such as the appearance and manner
10 of the witness on the stand, sometimes referred to
11 as the demeanor of the witness. Was the witness
12 forthright or hesitant. Was the witness' testimony
13 consistent or did it contain discrepancies? What
14 was the ability of the witness to know the facts
15 about which he or she testified? Did the witness
16 have a cause or reason to be biased or prejudiced in
17 favor of his or her testimony? Was the testimony of
18 a witness corroborated or made stronger by testimony
19 and evidence of other witnesses, or was it made
20 weaker or impeached by such other testimony or
21 evidence.

22 As a juror you have a right to believe a
23 small portion of a witness's testimony and disregard
24 the larger, or vice versa. You may believe all of a
25 witness' testimony or none. You may believe the

1 testimony of a single witness against that of many,
2 or the other way around.

3 Now in a criminal case there are two types
4 of evidence that are generally presented during a
5 trial, direct evidence and circumstantial evidence.
6 Direct evidence directed to prove existence of a
7 fact and does not require deduction. Circumstantial
8 evidence is proof of a chain of facts and
9 circumstances indicating the existence of a fact.
10 Crime can be proven by circumstantial evidence and
11 the law makes no distinction between the weight or
12 value to be given to either direct evidence or
13 circumstantial evidence. However, to the extent
14 that the State relies on circumstantial evidence,
15 all of the circumstances must be consistent with
16 each other and when taken together point
17 conclusively to the guilt of the accused beyond a
18 reasonable doubt. If these circumstances merely
19 portray the defendant's behavior as suspicious, the
20 proof fails. The State has the burden of proving
21 the defendant guilty beyond a reasonable doubt
22 regardless of whether the State relies on direct
23 evidence, circumstantial evidence, or a combination
24 of the two.

25 Now criminal intent is also a necessary

1 element of each crime. It must be proven to you
2 beyond a reasonable doubt. Criminal intent is
3 always a matter that must be determined by the jury
4 from circumstances surrounding the situation.
5 There's no way to prove intent to a mathematical
6 certainty. There's no way medical science can
7 dissect a person's brain and determine what he or
8 she had in mind so the law states criminal intent
9 can be inferred from circumstances shown to existed
10 both before and after the fact. This is how you,
11 the jury, make a determination of whether or not the
12 elements require intent was present. Criminal
13 intent is a state of mind that operates jointly with
14 an act or omission in the commission of a crime.
15 Criminal intent is a mental state or conscious
16 wrongdoing so it is up to you, the jury, to
17 determine whether the defendant intended based on
18 circumstances shown to have existed. And I tell you
19 that the State must prove criminal intent beyond a
20 reasonable doubt just as the State must prove each
21 element beyond a reasonable doubt.

22 Now the person is charged with assault and
23 battery first degree. A person commits the offense
24 of assault and battery in the first degree if the
25 person unlawfully injures another person and the act

1 occurred during the commission of a robbery,
2 burglary, kidnapping, or theft. A person also
3 committed the offense of assault and battery in the
4 first degree if the person unlawfully offers or
5 attempts to injure another person with the present
6 ability to do so and that the act either is
7 accomplished by means likely to produce death or
8 great bodily injury or occur during the commission
9 of a robbery, burglary, kidnapping, or theft. Great
10 bodily injury means bodily injury which causes a
11 substantial risk of death or which causes serious
12 permanent disfigurement or protracted loss or
13 impairment of such a function of a bodily member or
14 organ.

15 Now he's also charged with the offense of
16 attempted armed robbery. Now attempt, an attempt is
17 an effort to accomplish a crime which does not
18 succeed. An attempt includes a specific intent to
19 do a particular criminal act along with an act
20 falling short of the act intended. The State must
21 show a more than a mere preparation an intent.
22 There must be some overt act committed in the effort
23 to commit the crime. Intent means intending results
24 which actually occur, not accidentally or
25 involuntarily. Intent may be shown by acts and

1 conducts of defendant and other circumstances from
2 which you may naturally and reasonably infer intent.

3 Now the defendant is charged with
4 attempted armed robbery. In order to prove this
5 offense the State must prove beyond a reasonable
6 doubt the defendant attempted to take personal
7 property from a person or the presence of another
8 person. Property is in the presence of a person if
9 it's within a person's reach, inspection,
10 observation, or control, that the person should
11 not -- so that that person should not be overcome by
12 violence or prevented by fear to keep the possession
13 of their property.

14 The State must also prove beyond a
15 reasonable doubt that the defendant attempted to
16 carry property away intending to permanently deprive
17 the owner of the property to keep the property from
18 defendant's own use. The slightest rule of the
19 property or completion of possession of property
20 even for an instant by defendant is sufficient to
21 show a taking and carrying away of the property. In
22 taking and carrying away of the property must have
23 been done with violence or by putting the owner of
24 the property in fear of violence. And finally, the
25 State must prove beyond a reasonable doubt the

1 defendant was armed with a deadly weapon during the
2 robbery. A deadly weapon is any article,
3 instrument, or substance that's likely to cause
4 death or great bodily harm. Whether an instrument
5 has been used as a deadly weapon depends on the
6 facts and circumstances of each case.

7 The following examples of instances which
8 may be deadly weapons. A pistol, a shotgun, a
9 rifle, a dirk, a dagger, a knife, a slingshot, metal
10 knuckles, a razor, gasoline, a fire bomb, Molotov
11 cocktail, lighter fluid, a gun, may be deadly weapon
12 even if it's not operated.

13 Next, the defendant is charged with
14 carrying a concealed weapon by an inmate. It is
15 unlawful for an inmate in a state correctional
16 facility or a local detention facility to carry on
17 his person or to have in his possession a dirk, a
18 slingshot, metal knuckles, razors, firearms, or any
19 object, homemade or otherwise, that may be used for
20 the infliction of personal injury upon another
21 person or to willfully conceal any weapon within any
22 department or correctional facility or other place
23 of confinement.

24 Now Madam Forelady, and ladies and
25 gentlemen of this jury, you're not partisans or

1 advocates for the State of South Carolina or to this
2 defendant. You do not serve as jurors to reward
3 your friends or punish your enemies. Obviously that
4 system of justice would not be tolerated. You have
5 been selected by both the State and this Defendant
6 as fair and impartial jurors. It is your duty by
7 your deliberations to determine the truth in this
8 case, give to this defendant the benefit of every
9 reasonable doubt to each and every issue. And then
10 to the facts you determine to be true, you're to
11 apply the law which I've given to you and reach a
12 verdict in this case. When you have accomplished
13 this you would have discharged your duty to this in
14 court.

15 Now Madam Foreman, I've had my law clerk
16 draw up the verdict form in this case. It is simply
17 the caption of the case, the State of South Carolina
18 versus Kevin Herriott. And it says, one, on the
19 count of assault and battery in the first degree:
20 We, the jury, unanimously find the defendant Kevin
21 Herriott guilty or not guilty. On count two,
22 attempted armed robbery: We, the jury, unanimously
23 find the defendant guilty or not guilty. And on
24 count three, carrying a weapon by an inmate: We,
25 the jury, unanimously find the defendant guilty or

1 not guilty. Now the order we put these in you
2 should draw no conclusions from whatsoever; we just
3 had to put them in some order. When you've reached
4 a verdict, and it must be unanimous which means all
5 12 of you must agree on the verdict -- you're to
6 check the blocks, sign your name and date it, and
7 knock on the door and we'll bring you out to receive
8 the verdict. Now I've got to go over some, my
9 charge with these lawyers to be sure I haven't
10 forgotten anything. If I've left something out I'll
11 bring you back out and charge you further. If I've
12 covered everything I'll send you this verdict form
13 along with the evidence in the jury room and that
14 will be your indication to start your deliberations.
15 If somebody needs to be excused for any reason, they
16 need to go to the restroom or whatever, you got to
17 stop talking about the case 'cause you can only talk
18 about it when all twelve of you are present. And
19 when you've reached a verdict, just simply knock on
20 the door.

21 If you have a question, you to need to
22 write that question down on a piece of paper and
23 give it to the bailiff and then I will bring you
24 back out and attempt to answer it. Having said
25 that, I can only answer questions of law; I can't

1 answer questions of fact. I can't reopen the case
2 and bring in more testimony. Both sides have rested
3 so you've heard all the evidence you're gonna hear
4 so I can't answer factual questions; but if you need
5 further instructions on the law, I can answer that.
6 So as soon as you get it, if you'll go to the jury
7 room, as soon as you get this verdict form and the
8 evidence you can start. And like I say, knock on
9 the door when you've reached a verdict. If I've
10 missed something I'll bring you back out. If you
11 will go to the jury room right now. I'll send this
12 in and bring you back out, okay.

13 Now Mr. Fortune, you stay with me 'cause I
14 only needed you if I was gonna lose somebody. It
15 looks like everybody is going to make it so if
16 you'll just hang with me. The rest of you go to the
17 jury room.

18 (WHEREUPON, the jury was removed from the courtroom
19 at 4:10 p.m.)

20 THE COURT: Any exceptions or deletions?

21 MR. GENTRY: Not from the State.

22 THE COURT: Defense?

23 MR. GRIFFITH: None, Your Honor.

24 THE COURT: All right, if y'all will get
25 the evidence together.

1 Mr. Fortune, I appreciate it. You're free
2 to go now.

3 (Alternate was excused.)

4 (Deliberations began at 4:12 p.m.)

5 (WHEREUPON, a recess was taken from the
6 proceedings.)

7 (WHEREUPON, the jury was returned to the
8 courtroom at approximately 4:26 p.m., and the
9 following proceedings commenced in open court.)

10 THE COURT: Madam Foreman, have you
11 reached a verdict?

12 THE FOREMAN: We have, Your Honor.

13 THE COURT: Is it unanimous?

14 THE FOREMAN: Yes, sir, Your Honor.

15 THE COURT: If you'll pass it up.

16 (Verdict form tendered to the Court.)

17 THE COURT: Okay, Madam Clerk, you may
18 publish the verdict.

19 THE CLERK: On the case of the County of
20 Lee, the State of South Carolina versus Kevin
21 Herriott. On the number one, on count one of
22 assault and battery in the first degree: We, the
23 jury, unanimously find the defendant Kevin Herriott
24 not guilty. Number two, on the count two of
25 attempted armed robbery: We, the jury, unanimously

1 find the defendant Kevin Herriott guilty. Number
2 three, on count three of carrying a weapon by an
3 inmate: We, the jury, unanimously find the
4 defendant Kevin Herriott guilty. And it's signed by
5 the foreman on today's date, June 4, 2019.

6 THE COURT: Anything from the State before
7 I dismiss the jury?

8 MR. GENTRY: No, sir.

9 THE COURT: From Defense?

10 MR. GRIFFITH: Your Honor, I didn't hear
11 the assault and battery first. Was that not guilty?

12 THE COURT: Not guilty.

13 MR. GRIFFITH: Okay. Nothing, Your Honor.

14 THE COURT: Okay. Ladies and gentlemen, I
15 appreciate your service. This is the last case
16 we're gonna try this week so you don't have to do
17 this again for three years. I've been telling you
18 you don't have, couldn't talk about this case. Now
19 you can talk about it to anybody you want to, but
20 you don't have. I hope you have a nice evening. If
21 you need a work excuse you can contact the Clerk's
22 office. They're gonna pay you a huge check. Thank
23 you for your service. Have a great evening.

24 (WHEREUPON, the jury was excused.)

25 THE COURT: Anything you want to tell me

1 about something?

2 MR. GRIFFITH: I have nothing to check,
3 Your Honor.

4 MR. GENTRY: The Court already has heard
5 the evidence of his prior convictions.

6 MR. GRIFFITH: Your Honor, we would ask
7 for directed verdict, a verdict notwithstanding.

8 THE COURT: Okay.

9 MR. GRIFFITH: Notwithstanding the
10 verdict.

11 THE COURT: And I would respectfully deny
12 your motion. What is his current incarceration
13 status?

14 MR. GENTRY: He's incarcerated at Kershaw,
15 Your Honor, and he's due out in 2026.

16 THE COURT: Okay.

17 MR. GRIFFITH: Your Honor, if I may, we
18 would ask the Court to take into consideration what
19 the Court has heard and what occurred in that riot.
20 Eleven people had just died, and Mr. Herriott was in
21 fear for his life as he testified, although he was
22 found guilty of these crimes, two of these crimes.
23 We would ask for leniency and consideration of the
24 factors involved.

25 THE COURT: Okay. All right, on the

attempted armed robbery the sentence of the Court is you're committed to the State Department of Corrections for a term of six years. That's to run concurrent with carrying of a concealed weapon. I'm giving you credit for the time you were serving from the time you were served with the warrants in this case. On the possession of a concealed weapon the sentence is five years to run concurrent with attempted armed robbery and credit for the time you served.

MR. GENTRY: Your Honor, that is consecutive to his current sentence?

THE COURT: If it starts running, if it starts running, he's getting concurrent time, it starts running the date he was served with the warrants in jail. He gets credit back to then. So when -- that was May of 2018.

MR. GENTRY: 2/26. His release date from his current confinement.

THE COURT: It's not consecutive to his concurrent. Well, wait a minute.

MR. GENTRY: I think it is, Your Honor.

THE COURT: Yeah, it will be. It's concurrent to each other. It's consecutive to his current time. Okay, I'm giving him credit for time

1 served on that.

2 MR. GENTRY: Okay.

3 MR. GRIFFITH: Thank you, Your Honor. May
4 it please the Court, Your Honor, the Clerk of Court
5 will be sending that to the facility. He was
6 wanting to know whether he should take them now or
7 not.

8 THE COURT: Yeah, whatever they want to
9 do.

10

11 * * * END OF TRANSCRIPT OF RECORD * * *

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

I, FRANCES B. RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Third Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 18th day of September, 2019.

Frances B. Ray

FRANCES B. RAY, RPR

APPENDIX D

The South Carolina Court of Appeals

The State, Respondent,

v.

Kevin Herriott, Appellant.

Appellate Case No. 2019-000969

ORDER

Appellant filed a motion seeking to relieve counsel and proceed pro se. On February 1, 2020, this court warned Appellant of the dangers and disadvantages of self-representation pursuant to *Faretta v. California*, 422 U.S. 806 (1975). Appellant has now responded, noting he voluntarily, knowingly, and intelligently wishes to waive the right to counsel. Accordingly, the request to relieve counsel is granted. Attorney Laura Mary Caudy is hereby relieved as counsel for Appellant, and Appellant shall proceed pro se.


FOR THE COURT

Columbia, South Carolina

cc:

Kevin Herriott, 313862

Alan McCrory Wilson, Esquire

William M. Blich, Jr., Esquire

Lara Mary Caudy, Esquire

FILED

February 28, 2020