

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Bamberg County

Honorable Courtney Clyburn-Pope, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KELCIE RALPH GILBERT,

APPELLANT.

APPELLATE CASE NO. 2022-000307

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF BAMBERG	)	2021-GS-05-00050
	)	2021-GS-05-00051
	)	
	)	
	)	
STATE OF SOUTH CAROLINA,	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
KELCIE RALPH GILBERT,	)	
DEFENDANT.	)	
_____	)	

March 1-3, 2022
Bamberg, South Carolina

B E F O R E:

THE HONORABLE COURTNEY CLYBURN-POPE, JUDGE.

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

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PENNY M. JOHNSON
Court Reporter III

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All Exhibits were retained by the Clerk of Court for Bamberg County.

P R O C E E D I N G S

1
2 THE COURT: Good morning, ladies and gentlemen. My
3 name is Judge Clyburn-Pope, and I am a circuit court judge
4 here in South Carolina. It is truly my pleasure and
5 privilege to serve with you for this term of court in
6 Bamberg, South Carolina. This term of court is for one week
7 only, therefore, your service as jurors this week will end
8 this Friday.

9 We all understand the inconvenience that jury service
10 causes to your personal lives. We want to thank you all
11 sincerely for you being here today. We will do our best to
12 minimize your inconvenience and, hopefully, make this an
13 enjoyable and educational week for you. Our purpose today
14 is to determine your qualifications and eligibility to serve
15 as jurors.

16 (Jury roll call.)

17 THE COURT: Madam Clerk, at this time, will you
18 administer the oath to the potential juror pool.

19 (Jury was sworn.)

20 THE COURT: All right. Thank you, ladies and
21 gentlemen. At this point, the roll has been called and now
22 the oath has been administered to you.

23 I have certain questions to ask you in order to
24 determine your qualification as jurors in this court. These
25 questions determine your general eligibility to serve.

1 State law requires that I ask you these questions.

2 Some of the questions will be personal and you may not
3 wish to stand openly in front of everyone here and supply
4 your answer. However, after each question, if any juror
5 wants to respond, I will ask you to stand. If you do not
6 wish to stand, that is okay. At the end of this process, I
7 will give you a chance to come forward and speak privately
8 with me and the clerk. If you do not want to stand, make a
9 mental note and remember to come forward at the time that I
10 ask you to do so. It is absolutely essential that we have
11 accurate information.

12 Here are the questions regarding the qualifications to
13 serve as jurors: Number one, is there any member of the
14 jury panel who is not a citizen of the United States? If
15 so, please stand.

16 (No one stands.)

17 THE COURT: Number two, is there any member of the jury
18 panel who is not a resident and citizen of Bamberg County,
19 South Carolina? If so, please stand.

20 Sir, what's your juror number?

21 POTENTIAL JUROR: 52.

22 THE COURT: 52. Do you have your driver's license with
23 you?

24 POTENTIAL JUROR: Yes.

25 THE COURT: All right. Come forward and show it to the

1 clerk.

2 (Potential juror comes forward.)

3 THE COURT: Ma'am, what's your juror number?

4 POTENTIAL JUROR: 83.

5 THE COURT: Juror No. 52, have you legally changed your
6 residence?

7 POTENTIAL JUROR: Yes, ma'am.

8 THE COURT: But you didn't change it on your driver's
9 license?

10 POTENTIAL JUROR: No, ma'am.

11 THE COURT: All right, sir, if you'll sit -- if you'll
12 have a seat for me, I'll be back with you in just a moment.
13 Thank you.

14 Juror No. 52 and Juror No. 83, you are excused. I'm
15 finding that you are not residents of Bamberg County. Thank
16 you.

17 Is there any member of the jury panel who is unable to
18 read, write, speak or understand the English language? If
19 so, please stand.

20 (No one stands.)

21 THE COURT: Number four, does any member of the jury
22 panel have less than a sixth grade education or its
23 equivalent? If so, please stand.

24 (No one stands.)

25 THE COURT: Number five, is there any member of the

1 jury panel because of a physical or mental ailment that is
2 unable to render efficient jury service? For example, does
3 anyone have a medical condition that you believe would
4 prevent you from serving on a jury this week? Court usually
5 runs for about an hour or an hour and a half in between
6 breaks, and you will also have a chance to stand and stretch
7 for those of you who have back and neck issues. However, if
8 you believe that you have a mental or physical ailment that
9 would prevent you from serving, please stand at this time.

10 (No one stands.)

11 THE COURT: Number six, has any member of the jury
12 panel been convicted by guilty plea or trial in a state or
13 federal court of a crime punishable by imprisonment for more
14 than one year? Punishable by more than one year means that
15 you could have received a sentence of more than one year
16 regardless of the sentence that you may have actually
17 received. If that applies to you, please stand at this
18 time.

19 Sir, what's your juror number?

20 POTENTIAL JUROR: 29.

21 THE COURT: Juror No. 29, I am finding that you are
22 ineligible, but thank you, sir, for your service.

23 Number seven, is there any member of the jury panel who
24 is a clerk, a deputy clerk of court, constable, sheriff or
25 any other commissioned law enforcement officer, probate

1 judge, county commissioner, magistrate or any other county
2 officer or employed within the walls of any courthouse? If
3 that applies to you, please stand at this time.

4 Sir, what's your juror number?

5 POTENTIAL JUROR: 195.

6 THE COURT: And what position -- I thought you worked
7 for a painting company?

8 POTENTIAL JUROR: Yeah, I do.

9 THE COURT: Tell me how that applies to you, sir.

10 POTENTIAL JUROR: It's just a paper I want you to see.

11 THE COURT: Let me see it.

12 Juror No. 195, you are excused for the week, sir.

13 POTENTIAL JUROR: Thank you.

14 THE COURT: Thank you.

15 Number eight, is there any member of the jury panel who
16 has previously served on jury duty in circuit court, not
17 city court, not magistrate's court or federal court? If you
18 have served as a member of the jury panel during this
19 calendar year, please stand.

20 (No one stands.)

21 THE COURT: Has any member of the jury panel served as
22 a member of the Bamberg County Grand Jury during the past
23 several years? If that applies to you, please stand.

24 (No one stands.)

25 THE COURT: We will now move to jury exemptions. State

1 law provides for several exemptions to jury service. An
2 exemption does not mean that you are not qualified to serve,
3 it simply means that you now have the right to say I choose
4 not to serve.

5 Number one, those of you who are 65 years of age or
6 older may be exempted from jury service.

7 Is there any member of the jury panel who is 65 years
8 of age or older and wishes to exempt from jury service this
9 week? If so, please stand.

10 (No one stands.)

11 THE COURT: Number two, this exemption concerns prior
12 jury service. No person is required to serve as a juror
13 more often than once every three calendar years. This only
14 applies to circuit court jury duty.

15 If there is any member of the jury panel who has served
16 on jury duty during the last two calendar years, you are
17 exempt if you choose from service this week. If that
18 applies to you and you wish to exert that exemption, please
19 stand.

20 (No one stands.)

21 THE COURT: Persons who have served as grand jurors
22 over the last five calendar years are also exempt. If you
23 have served in the last five calendar years on grand jury
24 service, please stand.

25 (No one stands.)

1 THE COURT: All right. This next exemption deals with
2 those of you who have small children. Please listen very
3 carefully to this exemption. It has several parts and all
4 of those parts must apply in order for you to be exempted on
5 this basis.

6 You may be exempted from jury service if one, you have
7 a small child or children under the age of seven years old;
8 two, you also have legal custody of those children, meaning
9 that you have the principle care, custody and control of the
10 children; and three, you are unable to make arrangements for
11 the adequate care of your children while you are performing
12 jury service this week. Please keep in mind that school is
13 obviously in session, that will be taken into account.

14 If all of those apply to you and you wish to be
15 exempted on this basis, please stand at this time.

16 Yes, ma'am, what's your juror number?

17 POTENTIAL JUROR: 61.

18 THE COURT: And you have a child that is how old?

19 POTENTIAL JUROR: I have a ten-year-old, a
20 four-year-old and a two-year-old.

21 THE COURT: And you have custody of the four and
22 two-year-old?

23 POTENTIAL JUROR: Yes, ma'am.

24 THE COURT: And where are they now?

25 POTENTIAL JUROR: Daycare.

1 THE COURT: So why do you believe that you could not
2 serve as a member of the jury?

3 POTENTIAL JUROR: I have to pick my ten-year-old up
4 from school.

5 THE COURT: What time?

6 POTENTIAL JUROR: 2:55.

7 THE COURT: And you cannot arrange for --

8 POTENTIAL JUROR: I'm a single mom.

9 THE COURT: Juror No. 61, if you'll have a seat for me,
10 I'll get back with you later. Thank you.

11 This next exemption involves those of you who may be
12 attending school at this time or working in some capacity
13 with a school. If this exemption applies to you and you
14 wish to be exempted, we will transfer your service to
15 another term of court that does not conflict with your
16 school responsibilities.

17 Is there any member of the jury panel who is a
18 full-time student, a school teacher, a school bus driver or
19 who serves in any other school-related function that is
20 unable to serve on jury duty this week as a result of that
21 school involvement? If that applies to you, please stand.

22 Ma'am, what's your juror number?

23 POTENTIAL JUROR: My name is Brenda Lee Broughton, I'm
24 a seventh and eighth grade teacher.

25 THE COURT: Tell me your juror number.

1 POTENTIAL JUROR: Oh, 25.

2 THE COURT: And you teach at the local middle school?

3 POTENTIAL JUROR: Yes, in Denmark.

4 THE COURT: Thank you, Juror No. 25. If you'll have a
5 seat, I'll get back with you in just a moment.

6 Sir, what's your juror number?

7 POTENTIAL JUROR: 124.

8 THE COURT: Yes, sir.

9 POTENTIAL JUROR: Does this include part-time, also?
10 I'm a part-time student in college.

11 THE COURT: You're a part-time student in college?

12 POTENTIAL JUROR: Yes, ma'am.

13 THE COURT: What college do you go to?

14 POTENTIAL JUROR: Denmark Tech.

15 THE COURT: So you believe -- this trial is going to
16 last a day and a half --

17 Is that right, gentlemen?

18 MR. MILLER: Right around there, Your Honor.

19 THE COURT: So that means today and tomorrow. You have
20 classes today or tomorrow?

21 POTENTIAL JUROR: Yes, ma'am.

22 THE COURT: And you cannot miss those classes?

23 POTENTIAL JUROR: I can miss them.

24 THE COURT: Are you sure?

25 POTENTIAL JUROR: Yes, ma'am.

1 THE COURT: Thank you, sir.

2 The gamble that you take is we transfer you and you end
3 up on a three-week medical malpractice case. So I give
4 people the right to choose between a day-and-a-half case and
5 another case that we don't know how long it's going to be.
6 So this is a short case. If you can miss that class, I'll
7 keep you on, okay?

8 POTENTIAL JUROR: Yes, ma'am.

9 THE COURT: Thank you, sir.

10 Is there any member of the jury panel who is employed
11 with the Department of Corrections at a penitentiary? If
12 you would like to be exempted, please stand.

13 What's your juror number, sir?

14 POTENTIAL JUROR: 106.

15 THE COURT: And you work at the Department of Justice;
16 is that correct?

17 POTENTIAL JUROR: Correct.

18 THE COURT: Do you wish to be exempted, sir?

19 POTENTIAL JUROR: Yes, ma'am.

20 THE COURT: All right, if you'll have a seat for me,
21 I'll come back to you in just a moment. Thank you, sir.

22 Please listen to this next exemption very carefully.
23 Is there any juror who performs services for a business that
24 is so essential to the operation of that business that if
25 you were required to perform jury duty for the next day and

1 a half that that business would have to close and stop
2 functioning altogether? If you wish to be exempted on that
3 basis, please stand.

4 (No one stands.)

5 THE COURT: Is there any member of the jury panel who
6 is a primary caretaker for someone who is disabled or who is
7 over the age of 65?

8 (No one stands.)

9 THE COURT: All right, ladies and gentlemen. That will
10 conclude the statutory list of qualifications and exemptions
11 for jury service. It may be that you are qualified and no
12 exemption applies to you, but jury service this week would
13 constitute an extreme hardship on you for a particular
14 reason. I cannot permanently excuse a qualified juror from
15 jury service, but under extreme and compelling services, I
16 may excuse a juror from this term of court and transfer you
17 to another term of court, particularly those jurors who have
18 not been transferred before. General inconvenience is not a
19 sufficient reason to transfer you to another term of court.
20 In order to justify a transfer to another term of court,
21 service this week must constitute an extreme hardship to
22 you.

23 All right, ladies and gentlemen, now is the chance for
24 those of you who did not respond earlier to my questions
25 that I asked and those of you who believe that you have a

1 compelling reason to request a transfer of your jury service
2 to another week, now is the time for you to come forward.
3 If you believe that you are disqualified or exempt from jury
4 service, or if you have questions about whether or not you
5 are disqualified or exempt, or if you wish to be transferred
6 to another term of court for a compelling reason, please
7 come forward at this time.

8 POTENTIAL JUROR: Ma'am, I take care of an 85-year-old
9 lady in Norway.

10 THE COURT: What's your juror number?

11 POTENTIAL JUROR: 232.

12 THE COURT: You're the caregiver for her?

13 POTENTIAL JUROR: Yes, ma'am.

14 THE COURT: Why didn't you stand when I asked that?

15 POTENTIAL JUROR: You said that at the end about a
16 caregiver or whatever. She's got Alzheimer's. She's a
17 retired school teacher.

18 THE COURT: You are her full-time caretaker?

19 POTENTIAL JUROR: Yes, ma'am.

20 THE COURT: Who is caring for her now in your absence?

21 POTENTIAL JUROR: Her cousin is there with her and I'm
22 supposed to come time I leave here.

23 THE COURT: Okay. And your juror number is 232.

24 POTENTIAL JUROR: Yes, ma'am.

25 THE COURT: Thank you. Have a seat for me, please.

1 Is there anyone who needs to come forward?

2 You need to come forward and speak with me privately?

3 POTENTIAL JUROR: No, I can stand right here.

4 THE COURT: What's your juror number?

5 POTENTIAL JUROR: 156. I work at Bamberg Job Corp. I
6 work the night shift and I just got off at 8:30. Is there
7 any way -- will that be exempt? It will be kind of hard --

8 THE COURT: You're working the night shift?

9 POTENTIAL JUROR: Yes.

10 THE COURT: And you just got off at 8:30?

11 POTENTIAL JUROR: Yes.

12 THE COURT: And you work that shift tonight?

13 POTENTIAL JUROR: Yes, ma'am.

14 THE COURT: Juror No. 156, have a seat for me. Thank
15 you.

16 All right. If no one needs to come forward, Madam
17 Clerk, the jury panel is now qualified.

18 Gentlemen, can I speak with you?

19 (Bench conference.)

20 THE COURT: Juror No. 25, Juror No. 61 -- if you all
21 will please stand when I call your number.

22 Juror No. 25, Juror No. 61, Juror No. 106, Juror No.
23 156 and Juror No. 232, I'm finding that you all are exempt
24 for this week. Thank you.

25 Does the State have any voir dire?

1 MR. MILLER: No, ma'am, Your Honor.

2 THE COURT: What's your juror number?

3 POTENTIAL JUROR: 249.

4 THE COURT: Yes, ma'am.

5 POTENTIAL JUROR: I don't know exactly how long this
6 will last, but I'm supposed to pick up my kids at 2:00. I
7 can make arrangements, but I'll have to make a phone call.

8 THE COURT: Okay. This trial, we're estimating that it
9 will take about a day and a half, which means we'll finish
10 in the middle of the day tomorrow. And we will allow you
11 some time -- we have a few more things to touch on, but we
12 will allow you some time to make any necessary phone calls.
13 Thank you.

14 POTENTIAL JUROR: I'm Juror No. 96. Is this the last
15 opportunity to ask for an exemption? I wasn't sure if you
16 were through with all that or not.

17 THE COURT: Did you need to come forward?

18 POTENTIAL JUROR: I can.

19 THE COURT: Well, if it's not a private matter, tell me
20 --

21 POTENTIAL JUROR: It's a matter of religious
22 conviction.

23 THE COURT: I understand. Why don't you come forward
24 and we'll take your statement right here. That's your juror
25 number again?

1 POTENTIAL JUROR: 96.

2 THE COURT: Thank you, sir.

3 (Bench conference.)

4 THE COURT: Ladies and gentlemen of the jury panel,
5 we're going to give you a short ten-minute break. If you
6 wish to walk around, stretch, take a bathroom break, now is
7 the time to do that. We will reconvene in ten minutes at
8 11:15.

9 (The jury panel exits the courtroom 11:05 a.m.)

10 (Short recess.)

11 (The jury panel enters the courtroom at 11:20 a.m.)

12 THE COURT: Madam Clerk, there was back in chambers a
13 motion that was argued between the solicitor and defense
14 counsel. I did make a decision on that motion. I've ruled
15 to deny that motion. I will get into the substance of that
16 motion out of the presence of the jury.

17 Ladies and gentlemen of the jury panel, we are about to
18 begin the trial in the case of the State of South Carolina
19 vs. Kelcie Gilbert. Before we select a jury, there are
20 several questions that I will ask you.

21 At this time, I will ask that the defense counsel and
22 the State please stand and introduce themselves.

23 Mr. Hayes, if you will please also introduce your
24 client.

25 Can you approach?

1 (Bench conference.)

2 THE COURT: Ladies and gentlemen of the jury panel, at
3 this time, we will ask the State to introduce themselves and
4 then we will have defense counsel to introduce themselves
5 and his client.

6 MR. MILLER: Thank you, Your Honor, may it please the
7 Court.

8 This is the State of South Carolina vs. Kelcie Ralph
9 Gilbert, indictment number 2021-GS-05-00050, a true billed
10 indictment for attempted murder, and indictment
11 2021-GS-05-00051, a true billed indictment for possession of
12 a weapon during the commission of a violent crime.

13 My name is David Miller. I'm the Deputy Solicitor here
14 in Bamberg County. And I will be prosecuting the case for
15 the State along with Ms. Leigh Staggs. She's an Assistant
16 Solicitor for the 2nd Circuit. And the elected Solicitor
17 for the 2nd Circuit is over here, Mr. Bill Weeks.

18 MR. HAYES: I'm David Hayes, Chief Public Defender of
19 Bamberg County. This is Kelcie Gilbert. And this is Chief
20 Public Defender of Barnwell County, Wallis Alves. My two
21 investigators that may or may not be involved later are Mr.
22 Wayne Martin and Mr. Brian Owens.

23 THE COURT: Thank you.

24 Is there any member of the jury panel who is related by
25 blood or marriage to either member of the State or the

1 defense counsel?

2 (No one stands.)

3 THE COURT: Is there any member of the jury panel who
4 has a close personal or social relationship -- hold on, hold
5 on. Put your hands down.

6 Is there any member of the jury panel who has a close
7 personal or social relationship with any member of the
8 State's team?

9 (No one stands.)

10 THE COURT: Is there any member of the jury panel who
11 has a close personal or social relationship with defense
12 counsel or the Defendant? If so, please stand.

13 Yes, sir, in the green jacket. What's your juror
14 number?

15 POTENTIAL JUROR: 222.

16 THE COURT: Yes, sir, you have a relationship with
17 whom?

18 POTENTIAL JUROR: Mr. Wayne Martin. I've known him
19 since he was a baby.

20 THE COURT: Do you believe that your relationship with
21 him would affect your ability to listen to all of the facts
22 in this case in a fair and impartial way?

23 POTENTIAL JUROR: No, ma'am, it shouldn't.

24 THE COURT: All right. Thank you, sir.

25 Yes, sir, in the denim jacket, what is your juror

1 number?

2 POTENTIAL JUROR: 196.

3 THE COURT: Juror No. 196, you have a relationship with
4 who?

5 POTENTIAL JUROR: The Defendant.

6 THE COURT: And do you believe that your relationship
7 with the Defendant would affect your ability to listen to
8 all of the facts in this case in a fair and impartial way?

9 POTENTIAL JUROR: Yes.

10 THE COURT: You think it would affect that, sir?

11 POTENTIAL JUROR: Yes.

12 THE COURT: All right. Thank you, sir. Please have a
13 seat for me.

14 In the red and black, what's your juror number?

15 POTENTIAL JUROR: 162.

16 THE COURT: And you know whom?

17 POTENTIAL JUROR: The Defendant.

18 THE COURT: Do you believe that your relationship with
19 the Defendant would affect your ability to listen to all of
20 the facts in this case in a fair and impartial way?

21 POTENTIAL JUROR: Yes, ma'am.

22 THE COURT: So you think you could not listen to it
23 fairly and impartially?

24 POTENTIAL JUROR: Yes, ma'am.

25 THE COURT: All right. Thank you, sir.

1 Yes, ma'am, in the khaki jacket.

2 POTENTIAL JUROR: 71.

3 THE COURT: And you know whom?

4 POTENTIAL JUROR: The Defendant.

5 THE COURT: And do you believe that your relationship
6 with the Defendant would affect your ability to listen to
7 all of the facts fairly and impartially?

8 POTENTIAL JUROR: Yes.

9 THE COURT: Thank you, ma'am. Please have a seat for
10 me.

11 Yes, sir.

12 POTENTIAL JUROR: 176.

13 THE COURT: You know whom, sir?

14 POTENTIAL JUROR: The Defendant and the Defendant's
15 mother.

16 THE COURT: And your relationship with them, do you
17 believe that would affect you from listening to the facts of
18 this case in a fair and impartial way?

19 POTENTIAL JUROR: No.

20 THE COURT: Thank you, sir.

21 Yes, sir, what's your number?

22 POTENTIAL JUROR: 119.

23 THE COURT: And you know whom, sir?

24 POTENTIAL JUROR: The Defendant.

25 THE COURT: Do you believe that your relationship would

1 affect your ability to hear all the facts of this case in a
2 fair and impartial way?

3 POTENTIAL JUROR: Yes, ma'am.

4 THE COURT: Thank you, sir.

5 THE SHERIFF: Your Honor, standing is Juror 102.

6 THE COURT: Do you want to come up here and talk to me
7 privately? Come here.

8 (Juror No. 102 approaches.)

9 THE COURT: Is there any member of the jury panel who
10 has ever been represented by, consulted with or been sued or
11 prosecuted by any member of the State or defense counsel?
12 If so, please stand.

13 (No one stands.)

14 THE COURT: Please listen carefully. I'm going to read
15 a list of possible witnesses in this case. If you are
16 related by blood or marriage to any of the people that I
17 list, please stand. If you have a close personal or social
18 relationship with any member of the witness list that I
19 state to you, please stand.

20 Lieutenant Norris Williams, Captain Tammy Williams,
21 Captain Eddie Williams, Deputy Alonzo Jenkins, Rosalyn
22 DeLoach Williams, Iyonna Childs, Brian Owens, Wayne Martin,
23 Tammy Williams, Norris Williams.

24 Is there any member of the jury panel who is aware of
25 any bias or prejudice toward either the State or the

1 Defendant or their attorneys in this case? If you know of
2 any bias or prejudice that you may have, please stand.

3 (No one stands.)

4 THE COURT: Is there any member of the jury panel or
5 any member of your immediate family that has been accused of
6 committing a violent crime? If so, please stand.

7 (No one stands.)

8 THE COURT: Is there any member of the jury panel or
9 any member of your family that has ever been the victim of a
10 violent crime? If so, please stand.

11 You'll be given the opportunity to speak with me
12 privately as you answer these questions.

13 What's your jury number?

14 POTENTIAL JUROR: 108.

15 THE COURT: Do you wish to speak with me privately?

16 POTENTIAL JUROR: No, ma'am.

17 THE COURT: All right. So a member of your family has
18 been the victim of a violent crime?

19 POTENTIAL JUROR: Yes, ma'am.

20 THE COURT: Can you tell me who it was?

21 POTENTIAL JUROR: Grandson.

22 THE COURT: And what was that crime?

23 POTENTIAL JUROR: Murder.

24 THE COURT: All right. Juror No. 108, given what
25 happened to your grandson, do you believe that you could

1 listen to the facts of this case in a fair and impartial
2 way?

3 POTENTIAL JUROR: Yes, ma'am.

4 THE COURT: Thank you, ma'am.

5 Is there anyone else?

6 (No one stands.)

7 THE COURT: Is there any member of the jury panel who
8 has close friends or relatives that are police officers,
9 State Law Enforcement Division officers, or employed with
10 the Solicitor's Office of the 2nd Judicial Circuit, anyone
11 who is employed in the Attorney General's office, in any
12 federal law enforcement agency or any state law enforcement
13 agency or any prosecutor's office? If you have a close
14 friend or relative who falls in any of those categories,
15 please stand.

16 POTENTIAL JUROR: 214, my uncle is a police officer.

17 THE COURT: All right. Given your relationship with
18 your uncle, do you believe that you could listen to the
19 facts of this case in a fair and impartial way?

20 POTENTIAL JUROR: Uh-huh, I can listen.

21 THE COURT: And you're Juror No. 208?

22 POTENTIAL JUROR: 214.

23 THE COURT: 214. Thank you, sir.

24 Yes, ma'am, what's your juror number?

25 POTENTIAL JUROR: 84.

1 THE COURT: Yes, ma'am.

2 POTENTIAL JUROR: My daughter works with the sheriff's
3 department in Spartanburg.

4 THE COURT: All right. Now, given your relationship
5 with your daughter, do you believe that you could listen to
6 the facts and testimony in this case in a fair and impartial
7 way?

8 POTENTIAL JUROR: Absolutely.

9 THE COURT: Thank you.

10 POTENTIAL JUROR: Juror No. 98. My father is retired
11 law enforcement here in Bamberg.

12 THE COURT: All right. And given your relationship
13 with your father, do you believe that you could listen to
14 the facts and testimony in this case in a fair and impartial
15 way?

16 POTENTIAL JUROR: Yes, ma'am.

17 THE COURT: Thank you, ma'am.

18 Yes, sir.

19 POTENTIAL JUROR: I have two cousins in law
20 enforcement.

21 THE COURT: What's your juror number?

22 POTENTIAL JUROR: 67.

23 THE COURT: 67. And you said you have two cousins?

24 POTENTIAL JUROR: Yes, ma'am.

25 THE COURT: And do you believe that your relationship

1 with those cousins would affect your ability to listen to
2 the facts and testimony in this case in a fair and impartial
3 way?

4 POTENTIAL JUROR: Yes.

5 THE COURT: Okay. Thank you, sir.

6 Is there any member of the jury panel or any of your
7 close friends or relatives who are affiliated with or
8 contributors to any auxiliary organization or any citizens
9 groups whose primary aim is the prosecution or pursuant of
10 individuals involved in criminal activity or the pursuant of
11 any victim's rights, such as Students Against Drunk Driving
12 or Mothers Against Drunk Driving? If that applies to
13 anyone, please stand.

14 (No one stands.)

15 THE COURT: Is there any member of the jury panel who
16 has had this case discussed with them or been approached by
17 anyone involved with regard to this case? If so, please
18 stand.

19 (No one stands.)

20 THE COURT: Is there any member of the jury panel who
21 has read anything in the newspaper, seen anything on
22 television, heard anything on social media about this case
23 at all? If that applies to you, please stand.

24 (No one stands.)

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

1 knows of any reason whatsoever why he or she should not be
2 placed to serve as a juror in this case with particular
3 emphasis being on your ability to be fair and impartial to
4 both the State and the Defendant? Is there anyone who knows
5 of any reason?

6 (No one stands.)

7 THE COURT: Does the State have any additional
8 questions that it would like for me to ask?

9 MR. MILLER: No additional questions, Your Honor.

10 THE COURT: Mr. Hayes, do you have any additional
11 questions that you would like for me to ask?

12 MR. HAYES: No, Your Honor, but I would like to mark my
13 voir dire as a Court Exhibit for the record.

14 THE COURT: Yes, sir.

15 MR. HAYES: And I have provided a copy to the court
16 reporter.

17 THE COURT: Will do. Thank you, sir.

18 (Court's Exhibit No. 1 was marked for identification.)

19 MR. MILLER: Your Honor, may we approach?

20 (Bench conference.)

21 THE COURT: Please stand as I call your juror number.
22 Juror No. 196, 162, 71, 176, 119, 102 and 67. You are
23 excused from this trial. Thank you.

24 (Pause.)

25 THE COURT: Ladies and gentlemen of the jury panel, if

1 anyone is related by blood or marriage to Victor Middleton,
2 please stand.

3 (No one stands.)

4 THE COURT: If there is any member of the jury panel
5 who has a close social or personal relationship with Victor
6 Middleton, please stand at this time.

7 (No one stands.)

8 THE COURT: Thank you.

9 When your number is called, please stand and come up
10 the center aisle right here. You'll stand right here in the
11 middle.

12 THE CLERK: Juror No. 63, Joan Dunn.

13 (Juror No. 63, a white female, came forward.)

14 THE CLERK: Juror no. 169 --

15 THE COURT: Hold on. Hold on.

16 Juror No. 63.

17 MR. MILLER: Please present the juror.

18 MR. HAYES: Please seat the juror.

19 THE COURT: All right.

20 THE CLERK: Juror No. 169, Billie Phillips.

21 (Juror No. 169, a white female, came forward.)

22 MR. MILLER: Please present the juror.

23 MR. HAYES: Please seat the juror.

24 THE CLERK: No. 149, Blanche Meeks.

25 (Juror No. 149, a black female, came forward.)

1 MR. MILLER: Please present the juror.
2 MR. HAYES: Please seat the juror.
3 THE CLERK: No. 50, Justin Crosby.
4 (Juror No. 50, a white male, came forward.)
5 MR. MILLER: Please present the juror.
6 MR. HAYES: Please seat the juror.
7 THE CLERK: No. 103, Stephen Hughes.
8 (Juror No. 103, a white male, came forward.)
9 MR. MILLER: Please present the juror.
10 MR. HAYES: Please excuse this juror.
11 THE CLERK: No. 205, Drayton Smoak.
12 (Juror No. 205, a white male, came forward.)
13 MR. MILLER: Please present the juror.
14 MR. HAYES: Please seat the juror.
15 THE CLERK: Juror 98, Carey Herndon.
16 (Juror No. 98, a white female, came forward.)
17 MR. MILLER: Please present the juror.
18 MR. HAYES: Please excuse this juror.
19 THE CLERK: No. 184, Trajan Robertson.
20 (Juror No. 184, a black male, came forward.)
21 MR. MILLER: Please present this juror.
22 MR. HAYES: Please seat the juror.
23 THE CLERK: 226, Barbara Ulmer.
24 (Juror No. 226, a white female, came forward.)
25 MR. MILLER: Please present this juror.

1 MR. HAYES: Please seat this juror.

2 THE CLERK: 207, Alexander Still.

3 (Juror No. 207, a white male, came forward.)

4 MR. MILLER: Please present this juror.

5 MR. HAYES: Please seat the juror.

6 THE CLERK: 164, Gracie Orr.

7 (Juror No. 164, a black female, came forward.)

8 MR. MILLER: Please present the juror.

9 MR. HAYES: Please seat the juror.

10 THE CLERK: 151, Linda Millwood.

11 (Juror No. 151, a black female, came forward.)

12 MR. MILLER: Please present the juror.

13 MR. HAYES: Please seat the juror.

14 THE CLERK: 73, Bernard Garvin.

15 (Juror No. 73, a black male, came forward.)

16 MR. MILLER: Please present the juror.

17 MR. HAYES: Please seat the juror.

18 THE CLERK: 84, Catherine Griffin.

19 (Juror No. 84, a white female, came forward.)

20 MR. MILLER: Please present the juror.

21 MR. HAYES: Please excuse this juror.

22 THE CLERK: 225, Melvina Tyler.

23 (Juror No. 225, a black female, came forward.)

24 MR. MILLER: Please present the juror.

25 MR. HAYES: Please excuse this juror.

1 THE CLERK: 214, Bryton Thomas.

2 (Juror no. 214, a black male, came forward.)

3 MR. MILLER: Please present this juror.

4 MR. HAYES: Please seat the juror.

5 THE CLERK: No. 1, Thurmond Aiken.

6 MR. MILLER: Just to confirm, Your Honor, we're at 12?

7 THE COURT: Yes. At this time, gentlemen, we'll be
8 selecting two alternates.

9 MR. HAYES: Two and one?

10 THE COURT: Yes.

11 MR. MILLER: I'm sorry, this juror's number?

12 THE CLERK: No. 1, Thurmond Aiken.

13 (Juror No. 1, a black male, came forward.)

14 MR. MILLER: Please excuse Mr. Aiken from the trial of
15 this case.

16 THE CLERK: 244, Thomas Williams.

17 (Juror No. 244, a black male, came forward.)

18 MR. MILLER: Please present this juror.

19 MR. HAYES: Please seat the juror.

20 THE CLERK: No. 5, Houston Atkinson.

21 (Juror No. 5, a white male, came forward.)

22 MR. MILLER: Please present this juror.

23 MR. HAYES: Please seat the juror.

24 THE COURT: Thank you, Madam Clerk.

25 Madam Clerk, will you please confirm with counsel?

1 THE CLERK: No. 63, Joan Dunn; No. 169, Billie
2 Phillips; No. 149, Blanche Meeks; No. 50, Justin Crosby; No.
3 205, Drayton Smoak; 184, Trajan Robertson; 226, Barbara
4 Ulmer; 207, Alexander Still; 164, Gracie Orr; 151, Linda
5 Millwood; 73, Bernard Garvin; 214, Bryton Thomas; 244,
6 Thomas Williams; No. 5, Houston Atkinson.

7 THE COURT: Thank you, Madam Clerk.

8 Jurors No. 244 and No. 5 will serve as our alternates.

9 Ladies and gentlemen remaining in the jury pool, I
10 understand that you have been given a number to call.
11 Please call this number Wednesday, tomorrow afternoon, after
12 5:00 p.m. At that time, you will receive instructions as to
13 whether or not we will need you for another trial during
14 this week.

15 At this time, we will excuse the members of the jury
16 panel who were not selected for this jury trial. Ladies and
17 gentlemen, on your way out, you will receive your slips with
18 the number, which is (803) 245-7017. You will receive those
19 on your way out. Thank you.

20 (Remaining jury panel was excused.)

21 THE COURT: Ladies and gentlemen of the jury, and our
22 two alternates, thank you again for your service in this
23 trial you have been selected. At this time, I'm going to
24 give you some instructions and we'll have you come back, but
25 we're going to give you a lunch break. We'll ask you to be

1 back at 2:00 p.m.

2 With that said, if for some reason, some emergency
3 comes up, please notify our clerk of court immediately. If
4 you're having some sort of transportation issue, we will
5 come and pick you up.

6 Again, we're going to give you a break until two
7 o'clock, but I am requiring that you do not try to do any
8 type of research regarding the charges, regarding the
9 Defendant, regarding the victim, regarding anybody involved
10 in this case. We will give you all of the information that
11 you need in order to make an informed, fair and impartial
12 decision.

13 So with that said, we will excuse you until 2:00 p.m.

14 (The jury exits the courtroom at 12:10 p.m.)

15 THE COURT: Are there any motions regarding jury
16 selection?

17 MR. MILLER: None from the State, Your Honor.

18 MR. HAYES: No, Your Honor.

19 THE COURT: All right. So there are a few things that
20 I need to put on the record. Before we started jury
21 selection, I did mention that there was a motion heard in
22 chambers. That motion pertained to the defense's request or
23 motion to allow for five and ten strikes. The motion was
24 based on statutory argument. However, I did deny that
25 motion.

1 Are you in agreement with that, gentlemen?

2 MR. HAYES: Yes, Your Honor. I think specifically my
3 argument is that the statute hasn't been revised since, I
4 think it was 1987, and Ominous Bill Act came into effect in
5 2010. And under the old law, it specifically states murder.
6 We did not have attempted murder on the books at the time,
7 and since then, it has not been changed.

8 THE COURT: Thank you, sir.

9 Mr. Miller.

10 MR. MILLER: Your Honor, very briefly, the State's
11 argument was that this did get -- attempted murder was
12 created by statute some 12 years ago, and if the legislature
13 had intended to change this statute, they certainly have had
14 opportunity to do so.

15 It's also noted that in the statute, there are no
16 attempt offenses. So armed robbery is one of the ones that
17 a Defendant gets ten strikes for, but attempted armed
18 robbery is not. And that was actually a statutory offense
19 at the time in 1987 whenever the statute was last amended.
20 So we would just allege that we should follow the statute.

21 THE COURT: All right. Thank you, sir.

22 Again, for the record, I did deny that motion back in
23 chambers.

24 Additionally, there was an attorney matter that we
25 needed to address?

1 MR. HAYES: Your Honor, Mr. Gilbert has other pending
2 charges for the last shooting with a Mr. Hutto and a Mr.
3 Zissette. I believe at the time, Ms. Alves represented both
4 Mr. Hutto and Mr. Zissette. I believe Mr. Zissette has
5 passed away and Mr. Hutto's case with Ms. Alves was resolved
6 last term of court. She currently does not represent either
7 one of those two individuals, but there may -- we're running
8 close to a conflict. Mr. Gilbert has indicated that he is
9 wanting to waive that potential conflict and allow her to
10 sit second chair with me.

11 THE COURT: Thank you, sir.

12 Mr. Gilbert, is that your understanding, sir? You're
13 willing to waive that potential conflict in order to allow
14 Ms. Alves to help represent you?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Thank you, sir.

17 Any objection from the State?

18 MR. MILLER: No, Your Honor.

19 THE COURT: So that has been placed on the record, Mr.
20 Hayes.

21 Is there any other housekeeping before we get to the
22 hearing?

23 MR. MILLER: Nothing from the State, Your Honor.

24 THE COURT: All right.

25 MR. HAYES: This morning prior to court, the State has

1 indicated that there is an offer that Mr. Gilbert can plead
2 guilty straight up to the attempted murder. He has a
3 pending murder charge that there would be -- the State would
4 forego its right to seek the LWOP if he pled guilty and they
5 would concede to a concurrent sentence. However, if we
6 lose, the State will be seeking an LWOP. I have not been
7 able to sit down and discuss that with him, and I believe in
8 between lunch while we have a few minutes, I want to discuss
9 that. I just wanted to put that on the record.

10 THE COURT: Thank you, sir.

11 Is that your understanding, Mr. Miller?

12 MR. MILLER: That is correct, Your Honor.

13 THE COURT: It is duly noted for the record.

14 Now, we have a Jackson V. Denno hearing?

15 MR. MILLER: We do, Your Honor. I have one thing I
16 need to speak with the officer about before we do that
17 hearing. If we could take two minutes for that.

18 THE COURT: All right. We'll stand down for two or
19 three minutes.

20 (State's Exhibit Nos. 1 and 2 were marked for
21 identification.)

22 (Short recess.)

23 MR. MILLER: Your Honor, the State calls Lieutenant
24 Norris Williams of the Bamberg County Sheriff's Office.

25 NORRIS WILLIAMS, after being duly

1 sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. MILLER:

4 Q Lieutenant Williams, who do you work for?

5 A Bamberg County Sheriff's Office.

6 Q And were you working for the Bamberg County Sheriff in
7 July of 2020?

8 A I was.

9 Q On July the 18th, were you present whenever Kelcie
10 Gilbert turned himself in at the Olar Police Department to
11 Bamberg County officers?

12 A I was.

13 Q When he turned himself in, how did that happen? Did
14 somebody bring him up there, did he come up himself, how did
15 that happen?

16 A He was driven by somebody.

17 Q Okay. Did he have anything with him whenever he came
18 in?

19 A He brought the weapon that was used in the crime.

20 Q Okay. At some point in time while dealing with Mr.
21 Gilbert and getting that weapon, taking him into custody and
22 getting that weapon, was he advised of his rights under
23 Miranda?

24 A He was.

25 Q And at that point, he was in custody, correct?

Norris Williams - Direct by Miller

1 A Yes, he was.

2 Q And he was going to be questioned, correct?

3 A Yes.

4 Q Were you present whenever he was advised of his rights?

5 A I was.

6 Q And were you present whenever he was questioned?

7 A I was.

8 Q Okay. I'm going to show you what's been marked for
9 identification for the purposes of this hearing as State's
10 Exhibit 1. Do you recognize that?

11 A I do.

12 Q And what is that document?

13 A This is a Miranda rights form that was witnessed by
14 myself and Lieutenant Williams.

15 Q Okay. And does that form set forth all of the Miranda
16 warnings as you understand them?

17 A Yes, it does.

18 Q And were those read to Mr. Gilbert?

19 A They were. He signed it.

20 Q Did he indicate at any point in time that he didn't
21 want to waive his rights?

22 A He did not.

23 Q Was he forced by anyone in your presence or have you
24 heard from anybody else that he was forced --

25 A He was not.

Norris Williams - Direct by Miller

1 Q -- to give this statement?

2 A No, sir.

3 Q Was anybody making him any promises in order to get him
4 to give this statement?

5 A No, sir.

6 Q Was anyone threatening him or coercing him to get him
7 to give this statement?

8 A No, sir.

9 Q Approximately how long was he in custody before he gave
10 a statement?

11 A He was actually willing to come to us. As soon as he
12 was in custody, he was given his rights and he started
13 talking.

14 Q Okay. And from the time that he was in custody until
15 the time he was done giving his statement and had been
16 placed in handcuffs, would you estimate that was less than
17 an hour and a half?

18 A Yes.

19 Q I'm going to show you what's been marked for
20 identification as State's Exhibit 2 for the purposes of this
21 hearing only, and ask you if you know what this is?

22 A I do.

23 Q And how do you -- and what is it?

24 A It's a video of my body camera.

25 Q And what are you recording during that?

Norris Williams - Direct by Miller

1 A The Defendant signing the Miranda rights form as well
2 as the interview.

3 Q Okay, that's what I was going to ask you, it's got the
4 interview, too.

5 MR. MILLER: And, Your Honor, I would note for the
6 record at this point, Mr. Hayes and I did discuss a
7 redaction of about 30 to 45 seconds out of the middle of
8 this video because there was something that was highly
9 prejudicial and not relevant.

10 BY MR. MILLER:

11 Q But aside from that redaction, is that a fair and
12 accurate copy of everything that happened that night?

13 A Yes, sir.

14 MR. MILLER: Your Honor, at this time, the State would
15 move to introduce State's 1 and 2 for the purposes of this
16 hearing only.

17 THE COURT: Any objection?

18 MR. HAYES: I just want to make it clear, that's more
19 than one body cam.

20 MR. MILLER: I'm going to ask him about it.

21 MR. HAYES: Okay. I just wanted to make sure it's
22 clear on record.

23 THE COURT: Yes, sir.

24 (State's Exhibit Nos. 1 and 2 admitted into evidence
25 for purposes of Jackson V. Denno hearing.)

1 BY MR. MILLER:

2 Q Now, when you talked about this having the recording of
3 the Defendant's interview, was it all recorded on your body
4 cam?

5 A No, sir.

6 Q Why was it not all recorded on your body cam?

7 A I believe my body cam may have died or something of
8 that nature.

9 Q So when you realized your body cam was dying, what did
10 y'all do?

11 A Swapped out with another officer's body cam.

12 Q But you were in the room the whole time, correct?

13 A Yes, sir.

14 MR. MILLER: Your Honor, that's where I'm at.

15 Please answer any questions Mr. Hayes might have for
16 you.

17 THE WITNESS: Yes, sir.

18 MR. HAYES: I don't have any questions, Your Honor.

19 THE COURT: Thank you, sir.

20 MR. MILLER: Your Honor, that would include the State's
21 witnesses for this hearing.

22 THE COURT: Mr. Hayes, do you have --

23 You're excused.

24 Do you have any witnesses for this hearing?

25 MR. HAYES: No, Your Honor.

1 THE COURT: Any argument, Mr. Miller?

2 Mr. Hayes?

3 MR. MILLER: Your Honor, just very briefly, I don't
4 think there's any real question about this. Mr. Gilbert
5 turned himself in out in Olar that night. He wanted to tell
6 his story. He turned himself in. He had a handgun that he
7 claimed was the gun that was used in this incident. He gave
8 that to law enforcement. Walked inside and sat down -- the
9 Court can view the video if it would like, but he's sitting
10 in the room, obviously, surrounded by law enforcement, but
11 he's not handcuffed and he's telling his story. It was
12 completely consensual and I don't think there's any real
13 disagreement that he was, in fact, voluntarily telling them
14 what he told them that night. It was not an excessive
15 amount of time, no threats or promises were made.

16 And the reason we used Lieutenant Williams for this
17 hearing is he was one of the officers that was actually with
18 him for the duration of the time, from him getting out of
19 the car all the way up -- or, at least, he was there from
20 the time he was getting out of the car until he was into the
21 room talking to him.

22 Ultimately, at the end of the video, you'll see the
23 Defendant stands up and they put handcuffs on him. It
24 wasn't actually Lieutenant Williams who put the handcuffs on
25 him, but, again, he's still standing right in the room. He

1 would have been able to see if anybody had threatened him,
2 attempted to coerce him, force him, promise him something to
3 get him to give his statement, and there's just no evidence
4 of that.

5 THE COURT: Thank you, sir.

6 Mr. Hayes.

7 MR. HAYES: Your Honor, I have nothing.

8 THE COURT: Okay. Gentlemen, based on the testimony
9 and the argument from the solicitor, I am going to allow
10 this video to come into evidence during the course of the
11 trial.

12 MR. MILLER: Thank you, Your Honor.

13 THE COURT: Thank you.

14 MR. MILLER: Your Honor, I don't have anything before
15 we can break for lunch and then be back at 2:00 with the
16 jury.

17 THE COURT: All right. So when we reconvene,
18 obviously, I'll give my charge to the jury and we'll go
19 straight into openings.

20 MR. MILLER: Thank you.

21 THE COURT: Thank you.

22 (Lunch recess.)

23 (The jury enters the courtroom at 2:03 p.m.)

24 THE COURT: Ladies and gentlemen, at this time, we are
25 about to try the case of the State of South Carolina vs.

1 Kelcie Ralph Gilbert. Before we begin this trial, I want to
2 tell you that this trial probably will be different from
3 what you may expect. Many people do not have the chance to
4 attend actual court sessions just as you are doing now and
5 they may think from watching television or movies that
6 trials are full of high drama, intense action and riveting
7 circumstances. While all of those things may be true at
8 times, this trial is not for entertainment. It is a
9 fundamental part of our democracy. It is a search for the
10 truth and an effort to make sure that justice is done
11 between the parties before the Court. Searching for the
12 truth and making sure justice is done is often slow,
13 deliberate and repetitive, which is the opposite of what you
14 may have seen in television or movies.

15 This courtroom is a place of honor that is dedicated to
16 the protection and preservation of citizens' rights through
17 our justice system. The attorneys appearing before you are
18 advocates for the parties that they represent, but, first
19 and foremost, they are officers of the Court. They are
20 sworn to uphold the integrity and fairness of our judicial
21 system and to help you in search for the truth. You should
22 expect them to be professional, competent and ethical in the
23 representation of their client's interest. In just a
24 moment, ladies and gentlemen of the jury, we will give you
25 an oath to try this case and reach a fair and just verdict.

1 And you are also expected to be professional, reasonable and
2 ethical.

3 Thank you all for accepting this important
4 responsibility of jury service and for your contribution
5 today to our justice system. What I will say now is meant
6 to serve as an introduction to the trial of this case.
7 These remarks are not about the law in this case. I will
8 instruct you on the law at the end of the trial before you
9 decide the case. Before the trial begins, I want to explain
10 the procedure that we'll follow so that you can better
11 understand what is happening.

12 INTRODUCTION BY THE COURT

13 THE COURT: You have been selected as fair and
14 impartial jurors whose purpose it is to find and determine
15 the facts. You are the sole judge of the facts. If at any
16 time I make a comment regarding the facts, you must
17 disregard that comment. You, as the jury, are to determine
18 the facts from the testimony that you hear and any other
19 evidence that is presented to you.

20 You should not be influenced by any opinions or
21 statements that you may have heard outside of this
22 courtroom. It is especially important that you perform your
23 duty of determining the facts in a diligent manner. This is
24 because there is no way to fix an incorrect determination of
25 the facts by a jury. When you comply with your oath to

1 impartially determine the facts of this case, you will have
2 fulfilled your duty as jurors, and no one will have the
3 right to criticize your verdict.

4 On the other hand, and with equal emphasis, the same
5 law that makes you the judges of the facts makes me the
6 judge of the law. The law as given by the Court is the only
7 law that you may consider. You must accept it and follow it
8 even though you may disagree with the law. I cannot tell
9 you what the facts are, and you cannot disagree with me
10 about what the law is or should be.

11 Your job is to take the law as I give it to you and
12 apply it to the facts as you find them from the testimony of
13 witnesses and any other evidence that is presented. After
14 doing that, you will render your verdict, a true and just
15 verdict under the solemn oath that you will take in just a
16 moment as jurors.

17 Until I advise you to begin your deliberations, you
18 must not discuss this case with anyone, including your
19 fellow jurors, friends, family members or anyone that is
20 involved in this case. This includes discussions
21 face-to-face and those by telephone, text message, e-mail,
22 blogs, social media or any other method of communication.

23 You may not use a computer, cell phone or any other
24 electronic device with communication capabilities at any
25 time while you are in the courtroom or during your

1 deliberations. During your breaks for meals or overnight,
2 you may use those devices if necessary. However, you may
3 not at any time use those devices to get or to send
4 information about this case. This includes information
5 about a party, a witness, an attorney, a court officer, any
6 news accounts about this case. You cannot conduct any
7 research on any of the topics that will be raised, any
8 topics that you think may be helpful in deciding the case or
9 any testimony presented by any witness.

10 During the trial, do not read, listen to or watch any
11 news reports about this case. This will include anything
12 that may be in the newspapers, on the internet, radio or
13 television. You must not consider anything you may have
14 read or heard about this case outside the courtroom, whether
15 that is before or during this trial.

16 After the case is submitted to you as the jury, you
17 must discuss it only in the jury room with your fellow
18 jurors. The attorneys and the parties in this case have
19 been advised that they are not to talk to you at all. So if
20 you see anyone involved in this case and they don't even say
21 hello to you in the hallway or in the grocery store, they
22 are not being rude, they are just following my instructions.

23 It is important that you keep an open mind and do not
24 decide any issue in the case until all of the evidence has
25 been presented, the parties have made their closing

1 arguments and I have instructed you on the law in this case.

2 In just a moment, the attorney for the State will make
3 what is called an opening statement. The attorney will
4 explain to you the issues in the case or, at least, what he
5 thinks the issues are in this case. The attorney for the
6 Defendant will also make an opening statement. What the
7 attorneys tell you during their opening statements is not
8 evidence in this case. It is only their contention as to
9 what the issues are. The evidence in this case will be
10 presented to you through the testimony of sworn witnesses
11 from this witness stand or by exhibits that will be
12 introduced into evidence.

13 From time to time during the trial, you may hear one of
14 the lawyers say something like Your Honor, I believe we have
15 a question of law or a matter of law to discuss with you or,
16 perhaps, you will hear Your Honor, may we approach the bench
17 or sometimes myself, I will find it necessary to excuse you,
18 the jury, from the courtroom for a short while so that the
19 attorneys and I can discuss a matter of law.

20 The reason that we do this is because you are the
21 judges of the facts in this case. And sometimes when I am
22 discussing matters of law with the attorneys, it may be
23 necessary for me to make some comment about those facts so I
24 can rule whether or not a particular applies. Because I am
25 not supposed to tell you what I think the facts are, I will

1 excuse you from the courtroom while those discussions are
2 taking place so that you will not be influenced by anything
3 that I might say or do in connection with the facts.

4 In determining what the true facts are in this case,
5 you must decide whether or not the testimony of a witness is
6 believable. It will be my responsibility to rule as a
7 matter of law as to whether certain testimony is admissible
8 or not, but once the testimony is admitted, whether or not
9 you believe it is solely for you to determine.

10 In deciding whether to believe a witness, you have the
11 right to consider whether the witness has an interest in the
12 result of the trial, whether the witness is prejudiced
13 toward either party in the case or whether the witness has
14 had an opportunity to have seen the matters and things about
15 which the witness may testify, and you may also consider the
16 way the witness acts on the witness stand.

17 You have a right to consider anything that is in the
18 record that will help you to evaluate the testimony of the
19 witnesses. That means it is your duty to pay close
20 attention to the testimony of the witnesses, to observe the
21 witnesses, to listen to the witnesses and to pay close
22 attention to the attorneys and to the Court. Do not let
23 your mind and your thoughts wander, but pay attention to the
24 testimony so that at the end of the trial, you will be able
25 to determine what the true facts are. You will be able to

1 apply the law to those facts and you will also be able to
2 render a true and just verdict.

3 Juror No. 73, will you stand for me, sir? Juror No.
4 73, you are our Foreperson. You have an added duty, sir.
5 It is also your duty to preside in the jury room and to be
6 the jury spokesperson here in court. If the jury has any
7 concerns or any questions, they will pass a note to you or
8 notify you and you will get that note to one of our
9 bailiffs.

10 In order to preserve everyone's rights, I will give the
11 parties an opportunity to object to anything that I have
12 said.

13 Any exceptions from the State?

14 MR. MILLER: No, Your Honor.

15 THE COURT: Any exceptions from the defense?

16 MR. HAYES: No, Your Honor.

17 THE COURT: Madam Clerk, will you please swear the jury
18 in?

19 (The jury was sworn.)

20 THE COURT: Mr. Foreperson, would you please move seats
21 with this young lady in the blue. If you all would switch
22 seats so you can have access to the bailiff.

23 Thank you, ma'am.

24 Thank you, sir.

25 All right. Ladies and gentlemen of the jury, at this

1 time, we will now begin the trial.

2 OPENING STATEMENT BY MR. MILLER

3 MR. MILLER: Thank you, Your Honor. May it please the
4 Court.

5 Mr. Hayes.

6 Ladies and gentlemen of the jury, I move around a good
7 bit whenever I'm talking, so I hope it isn't too
8 distracting.

9 On July the 18th of 2020, Kelcie Gilbert shot Victor
10 Middleton multiple times. There is not any dispute about
11 that. Kelcie Gilbert claims that he was acting in
12 self-defense. There is a lot of dispute about that.

13 You are going to hear testimony from the witness stand
14 in this case. And that testimony that you hear from the
15 witness stand is evidence. You are actually going to be
16 able to see photographs. If those photographs are entered
17 into the record, then they become evidence. You are going
18 to be able to look at some physical items that we have. And
19 that's evidence once the Judge says it comes in.

20 Now, at the end, after the Judge charges you, tells you
21 what the law is, you're going to go back into that jury room
22 and you're going to have that evidence. And you're going to
23 be able to put all of that evidence together and you're
24 going to be able to determine what happened.

25 Ladies and gentlemen, at the end of the day, it's going

1 to come down to one thing that every single one of you have,
2 and that's common sense. All the questions the Judge asked
3 you, all of the different qualifications, you've been put
4 under oath twice now, all of that is to ensure that this
5 trial process is fair to the Defendant. And we want it to
6 be fair to the Defendant. But nobody ever said is there any
7 particular juror that has common sense? We expect you to
8 have common sense. We expect you to use your common sense
9 whenever you are deliberating.

10 You will have to judge the credibility of the Defendant
11 because you're going to hear a statement from the Defendant
12 that was taken the night of the shooting. And you are going
13 to hear from the three other people that were there at the
14 time: The person who got shot and two women that were in
15 the car and watched it happen.

16 And you're going to have to determine out of those four
17 people which ones are credible and which ones are not. But
18 if you use your common sense, if you listen to the testimony
19 from the witness stand, you're going to find out it's not
20 really hard to determine who's not telling the truth because
21 the evidence, the rest of the evidence and the evidence from
22 the witness stand is going to be interlocking. It's going
23 to support itself.

24 You're going to find -- at the end of the testimony and
25 at the end of the trial before you go back and deliberate,

1 you're going to find out that the Defendant gave the police
2 a gun. It was the gun he used to shoot Mr. Middleton that
3 night. He brought it to the police and said here's the gun.
4 And inside that gun, there was a magazine, and inside that
5 magazine, there were a bunch of bullets. And out there at
6 the crime scene, out there where the shooting occurred,
7 you're going to find out the sheriff's office collected
8 seven shell casings.

9 And you will be able to look at all of those bullets
10 that he handed over to the police and on the bottom of that
11 bullet, you're going to see WIN 9mm Luger. And on the
12 bottom of all seven of the shell casings that were collected
13 out at the scene that night, you're going to see the same
14 thing.

15 You're going to hear testimony that doesn't really seem
16 plausible. It doesn't seem like it makes sense. And keep
17 that in mind. When you hear something that doesn't make any
18 sense, try to determine did it really happen that way? Is
19 that really something that would happen? Or does it not
20 make any sense?

21 There's going to be little clues along the way that are
22 going to tell you whether or not you can believe somebody's
23 testimony. One of the things that can help you in that
24 regard is while that person is testifying, look at them.
25 Look at how they present themselves, their demeanor. What's

1 their motivation not to tell the truth? Why are they
2 testifying the way that they are testifying? Ladies and
3 gentlemen, I submit it's because they put their hand on the
4 Bible and swore to tell the truth, so they get up on the
5 witness stand and that's why they're testifying the way
6 they're testifying. But that's a determination for you to
7 make.

8 At the end of this case, we're going to ask you to
9 return guilty verdicts for the two different charges that
10 Kelcie Gilbert is facing. He had a pistol in his possession
11 whenever he was doing the shooting. That's illegal in South
12 Carolina if he's guilty of a violent crime. So we're going
13 to ask you to find him guilty of attempted murder, which is
14 a violent crime, and we're going to ask you to find him
15 guilty of possession of a weapon, in this case, a firearm,
16 during the commission of that violent crime.

17 There is an allegation, there is a statement that
18 Kelcie Gilbert was acting in self-defense as he shot Victor
19 Middleton. Put that statement to your test. You determine
20 whether that statement is true or not and you answer the
21 question of whether that statement is true or not with your
22 verdict after you deliberate.

23 Thank you very much.

24 OPENING STATEMENT BY MR. HAYES

25 MR. HAYES: May it please the Court.

1 Mr. Miller.

2 Ladies and gentlemen, I absolutely agree with the
3 Solicitor. We're not here saying we didn't shoot him, we
4 shot him. What we're arguing about is was it self-defense.
5 Did Mr. Gilbert believe at the time that it happened that
6 his life was in danger and that if he didn't act that he
7 would be the one shot?

8 As the Judge has already told you, she's going to tell
9 you what the law is, but a boiled down version of it is, in
10 South Carolina, you have a right to defend yourself. And
11 you don't have to wait to let them get the first lick in or
12 get the jump on you or the first shot off. When you believe
13 that you're in danger, you get to act. That is the law.

14 This is going to come down what do you believe from
15 each one of the witnesses. Who's telling the truth? Who
16 has skin in the game? Why would they say what they're
17 saying? The only witness here that's not connected to
18 Victor Middleton is going to be Kelcie Gilbert. Everybody
19 else is Victor Middleton's girlfriend, his family, his
20 friend.

21 Opening statements to me are supposed to be like a
22 roadmap, what to expect. And what I expect is going to come
23 out in this is first, there was a party the weekend before.
24 There were shots fired by both parties in the air, not at
25 each other. Words were exchanged.

1 Later, a week later, they were at another party. Mr.
2 Gilbert goes to leave, Mr. Middleton, he doesn't even know
3 he's there, he turns, as he turns onto Cave, he sees a black
4 Nissan car in front of him and a motorcycle, a dirt bike
5 goes flying by his car. He recognizes who is on the bike.
6 It's Victor. He gets up to the car. They're riding down
7 Cave Avenue.

8 And I don't know if you're familiar with it or not, but
9 Cave Avenue, when you look at it, feels like it's about this
10 wide. There is no room for two cars to pass. If you meet
11 somebody on Cave Avenue, somebody has to get off the road.
12 But at this time, it's not an issue. He's behind him,
13 they're going towards the stop sign at 64.

14 The motorcycle is the one that comes up close to this
15 car. And he says that he sees him talking to the people in
16 the car. And he told the police and I believe he's going to
17 get on the stand and tell y'all, that he believes that he
18 saw somebody hand a black and chrome gun out the window.
19 And when he saw that gun go out the window, he went into
20 I've got to get out of here mode. And it's easy to armchair
21 quarterback Monday morning about what they should have done
22 on Sunday when it comes to a football game. No different
23 here.

24 He sees Highway 64, that's a big highway, it's a way
25 out of town, and he cuts across the grass. He's seen a gun

1 and tells them I reached over in the console and I grabbed
2 my gun. He's a big dude. He's got a little Saturn. He
3 could reach the glove box. He gets his gun, he racks it and
4 gets ready just in case and he's heading across the dirt
5 where an old homestead was because he can't go around the
6 car. He's not going to go at the guy with the gun. The guy
7 with the gun turns onto 64 and they meet in the middle of
8 the highway. And he believes he sees him racking that slide
9 and when he sees that, he goes to shooting to defend
10 himself, and he leaves.

11 He's going to tell you that he went home. He told his
12 momma what happened, and then he calls the police and says
13 I'm coming in. He brings the gun. He brings the magazine.
14 He sits down and he gives them a statement that you're going
15 to watch and tells them this is what happened.

16 Now, we're going to have this roadmap and I want y'all
17 to watch, check off these points. Look at it as we go
18 through. Listen to each one of these witnesses. Listen to
19 what he says. You're going to hear from him I believe twice
20 in this trial. I don't normally say that because in a
21 trial, you have the right to remain silent. You don't have
22 to prove anything. But when it comes to self-defense, he
23 does need to tell you. So I believe he's going to get up
24 there and he's going to tell you his story. Listen to
25 everything that's being said. Listen to each one of the

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1 witnesses. As the Solicitor said, why are they saying what
2 they're saying?

3 And at the end of the trial, I'm going to ask you to
4 return a verdict of not guilty based on the fact that he was
5 trying to defend himself. Thank you.

6 MS. STAGGS: The State calls Iyonna Childs.

7 THE CLERK: Please state your full name, raise your
8 right hand and place your left hand on the Bible.

9 THE WITNESS: Iyonna Childs.

10 IYONNA CHILDS, after being duly
11 sworn testified as follows:

12 THE WITNESS: Yes, ma'am.

13 DIRECT EXAMINATION

14 BY MS. STAGGS:

15 Q Good afternoon, Ms. Childs.

16 A Good afternoon.

17 Q Ms. Childs, how old are you?

18 A 29.

19 Q And where do you live?

20 A Williston.

21 Q Did you grow up in Williston?

22 A No, I grew up in Denmark.

23 Q In Denmark, all right. Are you familiar with Olar,
24 South Carolina?

25 A Not like that, but my Godparents live there.

1 Q Okay. So you visit there on occasion?

2 A Yes, ma'am.

3 Q Were you in Olar on July the 18th of 2020?

4 A Yes, ma'am.

5 Q Do you know what county that's in?

6 A Bamberg.

7 Q What were you doing in Olar on the 18th? I think you
8 said you were visiting.

9 A At my Godparents' house. I take my baby down there
10 every other weekend and just have family time.

11 Q Was your baby with you that day?

12 A Yes, she was.

13 Q What kind of car did you take over there?

14 A A black Nissan Altima.

15 Q When you were visiting, where were you? What was
16 location of your Godparents' house?

17 A Cave Street.

18 Q Cave Street. And as you got ready to leave after your
19 visit, who were you with in the car?

20 A Me, my auntie -- well, Ms. Williams, and my daughter.

21 Q So Ms. Williams is Rosalyn Williams?

22 A Yes, she was on the passenger side.

23 Q Okay. And where was your daughter in the car?

24 A In the back in the middle in her car seat.

25 Q How old is she?

Iyonna Childs - Direct by Staggs

1 A She was one at the time, but she'll be three in June.

2 Q Okay. So just a little bitty thing. And you called
3 Ms. Williams your auntie?

4 A Yes.

5 Q Will you explain how you're related to Ms. Williams?

6 A Well, my mom is her Godsister and my mom made her
7 middle child my Godmother.

8 Q Okay. I gotcha. So y'all were riding together. And
9 where were you going?

10 A I was going to Denmark and she asked to catch a ride.
11 I was going to take my daughter to her Godparents' house.

12 Q Okay. As you're leaving, do you remember what street
13 you were on?

14 A Well, as I leave out the yard, I'm on Cave Street
15 still.

16 Q And what happened as you were leaving?

17 A When I'm leaving out the yard, I made a right turn.
18 It's like three stop signs altogether. I made it to the
19 first stop sign, went across to another stop sign. By the
20 time I made it to the third stop sign, which I never made it
21 to the stop sign, I stopped like before then, Victor was
22 coming out of the yard on his dirt bike. He was on the
23 driver's side of my car. My driver's window don't let down,
24 so he was talking to me and my daughter and my auntie from
25 the back window on the driver's side.

1 We heard a car coming down fast, which it was Kelcie,
2 and he made a U-turn when he saw Victor and came up behind
3 my car. It was like --

4 Q Let me stop you for a second. So he was coming the
5 other -- coming towards you?

6 A When we seen the car -- by the time -- when I made it
7 to the second stop sign, he was coming down that road, but I
8 had enough time to go on across. Okay, now, Victor's coming
9 up. He was about to go on like another direction, but he
10 made a whole U-turn and came back up to where we was. So
11 now his grill is on my bumper. We're bumper to grill. I
12 told Victor, I was like, you know, go ahead and go in case
13 he tries something crazy. They already had words before, I
14 guess.

15 And when Victor left, he went around the driver's side
16 of the car to get in front of me. When he made it to the
17 next stop sign, Kelcie flew across the field. There was a
18 field on the right side of us. He flew across the field.
19 Victor was turning from the stop sign making a right on
20 Highway 64 when Kelcie cut him off, put a gun out the window
21 and shot him.

22 Q Let me back you up for a minute.

23 A Okay.

24 Q Were you with Victor before all this?

25 A All of us was at his -- well, my Godparents is his

1 cousin.

2 Q And y'all were at the house on Cave Avenue and he was
3 there, too?

4 A Right.

5 Q And when did he leave in terms of when you left, before
6 or after?

7 A He left after we left.

8 Q But he caught up to you?

9 A But all of us was in the yard talking as we was loading
10 up in the car. So we left the yard before Victor left the
11 yard.

12 Q And how do you know Kelcie Gilbert?

13 A I just know him from around Denmark. He's not from
14 Denmark, but I know him, of him.

15 Q You know what he looks like?

16 A Yeah.

17 Q Had you seen him at all earlier that day?

18 A Yes.

19 Q And you knew what kind of car he drove?

20 A Yes.

21 Q I'm going to get you to tell me again. After you told
22 Victor to go ahead and turn right, then what happened?

23 A Kelcie drove across -- once Victor went around --
24 because like I said, he was talking to us on the driver's
25 side of my car, but he was at the back window. Once he left

1 and got in front of us and made it to that stop sign, Kelcie
2 went ahead and started taking off across the field. Victor
3 had done made the right turn on Highway 64. Kelcie cut him
4 off.

5 And like I was saying, his bike was bigger than him, so
6 he couldn't just, you know, balance himself on the bike, so
7 he had to kind of lean over a little bit. And Kelcie held
8 the gun out the window and shot him. I know I heard like
9 four times, but I don't know how many altogether.

10 Q You were able to clearly see from your vantage point
11 who did the shooting?

12 A Yes. He didn't step foot out the car or anything, he
13 just shot from his car window, the driver's side.

14 Q And do you see Kelcie Gilbert who shot Victor Middleton
15 in this courtroom today?

16 A I do.

17 Q Will you point him out?

18 A He's right there, black suit.

19 MS. STAGGS: Your Honor, if you would let the record
20 reflect that she has identified Mr. Gilbert.

21 THE COURT: Yes, ma'am.

22 BY MS. STAGGS:

23 Q And what happened after Mr. Middleton got shot?

24 A In the process of Kelcie shooting him, he kind of like
25 slipped off the bike a little bit and he end up, basically,

1 walking up to my car, getting in it and I got on the phone
2 with 911 to see if they could meet me with the ambulance.
3 And Ms. Rosalyn Williams, she got on the phone with her
4 daughter, Keishel (ph), and told her what was going on and
5 told her that Victor's bike was left in the middle of the
6 road. So she ended up driving down there to block that
7 scene off.

8 And the ambulance met us in Denmark by the golf course.
9 And Victor got out the car, walked himself to the ambulance
10 and they went on to the hospital.

11 Q At any time while all this is going on, did you see
12 that Victor had a gun?

13 A No, ma'am.

14 Q So you didn't see him with a gun? You didn't see him
15 shoot?

16 A No, ma'am.

17 MR. HAYES: Objection, leading, Your Honor.

18 MS. STAGGS: I'll rephrase, Your Honor.

19 THE COURT: Thank you.

20 BY MS. STAGGS:

21 Q And what, if anything, did you pass out the window?

22 A Nothing at all.

23 Q And didn't your car -- I believe you mentioned a defect
24 in the window?

25 A Right. The motor was gone out of the driver's window,

1 so you can't let it down at all. And my back window don't
2 even go all the way down, it goes halfway. So we was just
3 talking about of the window.

4 Q And the only person in the back seat --

5 A Was my daughter.

6 MS. STAGGS: Beg the Court's indulgence.

7 (Pause.)

8 BY MS. STAGGS:

9 Q Would you please explain for the jury about the size of
10 Mr. Middleton and the dirt bike.

11 A Well, his dirt bike is way bigger than him. I'm 5-4,
12 we like, basically, the same height. But his dirt bike
13 comes, at least, like this tall. So when he stops, he has
14 to like lean over and put one of his feet on the ground to
15 keep himself from falling. Like, if he at a complete stop,
16 that's how he have to do. The bike is way bigger than him.

17 Q So it's probably, I guess, for somebody about your size
18 a little bit difficult to maneuver?

19 A Yes, ma'am. At a complete stop, yes, it would be very
20 difficult.

21 Q And what did you see Mr. Gilbert do after he shot
22 Victor Middleton?

23 A He drove off to the right, the same direction that
24 Victor was trying to go in.

25 Q And he just kept going?

1 A Yes.

2 MS. STAGGS: No further questions, Your Honor.

3 Ms. Childs, please answer any questions Mr. Hayes has.

4 THE COURT: Mr. Hayes.

5 CROSS-EXAMINATION

6 BY MR. HAYES:

7 Q Ms. Childs, you and Mr. Middleton had been seeing each
8 other for some time, hadn't you?

9 A Yes.

10 Q About six months?

11 A No, less than that.

12 Q Less than that?

13 A We friends, if anything, but we did have relations a
14 couple times.

15 Q And there was people around that believed y'all were
16 dating?

17 A Well, the main people, like his parents -- well, his
18 cousins and all, they knew what was going on, but anybody
19 else, like, off brand, they don't know what we had going on.

20 Q Now, you said that you were on Cave and you had to go
21 through a couple stop signs, so you went straight down Cave?

22 A Uh-huh.

23 Q And you saw Mr. Gilbert when you went through the
24 second stop sign coming up, was that Fourth Street?

25 A I don't know the streets. I'm not familiar with Olar

1 roads. I just know how to get to my Godparents' house and
2 back out.

3 Q And you said about busting a U-turn, but you're saying
4 he turned right behind your vehicle?

5 A No, I said when I was coming up through the second stop
6 sign, he was about to go in a different direction.

7 Q Okay.

8 A So as I was going up, he was about to go cross, but he
9 busted a U-turn and came up behind my car.

10 Q Okay. So you were already on Cave, but he had to turn
11 to get on Cave?

12 A Yes, sir.

13 Q Now, you said your back windows were down?

14 A Yes, sir.

15 Q And Mr. Middleton then came -- caught up to you because
16 you left first?

17 A Uh-huh.

18 Q And he was talking next to your window with you?

19 A The back window on the driver's side.

20 Q And you're saying that Mr. Gilbert pulled up right
21 behind you?

22 A Yes.

23 Q You said right on your bumper?

24 A Yes, sir. And Victor was still right there at the back
25 window.

1 Q And you handed Victor a gun out the window?

2 A I did not.

3 Q And that's when Kelcie Gilbert busted out across the
4 yard?

5 A I did not have a gun.

6 Q Second question, Kelcie Gilbert busted out across the
7 yard?

8 A Yeah, he went across the yard after Victor left.

9 Q You said you weren't quite to that stop sign yet?

10 A No, sir, I was not. I was in the middle of that road.

11 Q In the middle of Cave?

12 A Uh-huh, before I get to the third stop sign where you
13 get on Highway 64.

14 Q Right before 64?

15 A Uh-huh.

16 Q And then Victor went in front of your vehicle?

17 A Yes, sir.

18 Q And he went right on 64?

19 A Uh-huh.

20 Q Now, you talked to Ms. Williams, I believe it's Captain
21 Williams, and gave a statement. And that statement, you
22 knew it was being recorded at the time?

23 A Uh-huh.

24 Q And you were trying to be truthful?

25 A Yeah.

1 Q As descriptive as possible?

2 A Uh-huh.

3 Q You said yes?

4 A Yes.

5 Q And during that interview, do you admit or deny telling
6 Ms. Williams that you heard the guns go off?

7 A Yeah, I heard the gun go off.

8 Q Not gun, guns?

9 A No, one gun.

10 Q I'm saying do you admit or deny that during that
11 conversation, you said --

12 A I deny that.

13 MR. HAYES: May I approach?

14 THE COURT: Yes, sir.

15 BY MR. HAYES:

16 Q Ms. Childs, is that you in the video?

17 A Yes.

18 Q Do you recognize it?

19 A Yeah, that's me.

20 Q That's you?

21 A Uh-huh.

22 MR. HAYES: And I hope it's loud enough for everybody
23 to hear it.

24 (Video was played.)

25 BY MR. HAYES:

1 Q In that statement, you said guns?

2 A Well, I shouldn't have said guns, but yeah.

3 Q And then after this shooting, Mr. Middleton came back
4 to your vehicle?

5 A He got up off the ground, yeah, and came back to my
6 vehicle.

7 Q And you took him off running 120 miles an hour?

8 A I took off running or driving?

9 Q Driving. Driving?

10 A It wasn't doing 120, but yeah, I went the opposite way
11 to get on the main highway back to Denmark.

12 Q And you went and met the ambulance?

13 A Yes, sir.

14 Q And you met the ambulance at the golf course?

15 A Yes, sir.

16 Q And Mr. Middleton got out of your vehicle and got in an
17 ambulance?

18 A Yes, sir.

19 Q At that time, you then left from the golf course and
20 you took your daughter to her babysitter?

21 A Yeah, that's true.

22 Q And then from the babysitter, later --

23 A Straight to the hospital.

24 Q -- you went to the hospital?

25 A Not later, immediately after I dropped my baby off.

1 Q Well, in the order of progression, later, meaning you
2 dropped Mr. Middleton at the ambulance and instead of going
3 straight to the hospital, you took your daughter to the
4 babysitter?

5 A Yes, because she --

6 Q And from the babysitter, you went to the hospital?

7 A Yes, sir.

8 MR. HAYES: Beg the Court's indulgence.

9 (Pause.)

10 MR. HAYES: I don't have any further questions at this
11 time.

12 THE COURT: Any redirect?

13 REDIRECT EXAMINATION

14 BY MS. STAGGS:

15 Q Ms. Childs, did you hand anything out of your car
16 window?

17 A I did not.

18 MR. HAYES: Objection, asked and answered, and beyond
19 the scope.

20 MS. STAGGS: I don't have any further questions, Your
21 Honor.

22 THE COURT: Thank you.

23 All right. This witness may be excused.

24 Thank you. Please watch your step.

25 The State will call its next witness.

~~Rosalyn Williams - Direct by Staggs~~

1 MS. STAGGS: Thank you, Your Honor. The State calls
2 Rosalyn Williams.

3 THE CLERK: Will you please state your full name, raise
4 your right hand and put your left hand on the Bible.

5 THE WITNESS: Rosalyn Williams.

6 ROSALYN WILLIAMS, after being duly
7 sworn, testified as follows:

8 THE WITNESS: Yes.

9 THE CLERK: Thank you.

10 DIRECT EXAMINATION

11 BY MS. STAGGS:

12 Q Good afternoon, Ms. Williams. Would you please remove
13 your mask while you're testifying?

14 A (Witness complies.)

15 Q Thank you. Ms. Williams, how old are you?

16 A 61.

17 Q And where do you live?

18 A I live in Denmark right now. I used to reside in Olar,
19 South Carolina.

20 Q When were you living in Olar?

21 A Back in 2020.

22 Q July the 18th of 2020?

23 A Yes, uh-huh.

24 Q And what were you doing on July 18th of 2020 in Olar?

25 A I was getting ready to go to Denmark with my Godneice,

1 Iyonna. We was headed to Denmark, me, her and her daughter.

2 And we pulled out from the yard --

3 Q Let me stop you for a minute. Who was driving? Tell
4 me where you were in the car.

5 A We was on Cave Avenue.

6 Q Where inside the car, I mean?

7 A I was on the front passenger side.

8 Q And who was driving?

9 A Iyonna.

10 Q And who was in the back seat?

11 A Her baby, one-year-old daughter.

12 Q So you were leaving Cave Avenue. Where did you go?

13 A We came out the yard and made a right turn on Cave
14 Avenue headed out to Highway 64. We went through two stop
15 signs and before we got to the third stop sign, that's when
16 we saw Kelcie. And he passed us, he went and made a U-turn
17 and he came back after he saw Victor coming up beside the
18 car. Victor came up beside the car on the left side of the
19 car and he started talking to Iyonna's one-year-old daughter
20 in the back seat.

21 Q Okay. And had you been with Victor?

22 A No, we left Victor in my yard talking to my daughter
23 and her fiance.

24 Q And how do you know Kelcie Gilbert?

25 A I been knowing Kelcie all his life.

~~Rosalyn Williams - Direct by Staggs~~

1 Q So you'd know him to see him?

2 A Yes.

3 Q And when y'all were stopped before you got to the third
4 stop sign, what happened then?

5 A Just before we got to the third stop sign, that's when
6 Victor came up on the side of the car. He was talking to
7 Iyonna's baby in the back seat. And Kelcie came up behind
8 Iyonna's car on the bumper. And we told Victor, just go
9 head on.

10 Victor pulled out to go onto 64. Kelcie pulled from
11 behind Iyonna's car, cut across the field, cut Victor off in
12 the highway. And that's when he pointed the gun out the car
13 and started shooting.

14 Q You saw that happen?

15 A Yes.

16 Q You saw who shot the gun?

17 A Yes.

18 Q And do you see the person who shot that gun in this
19 courtroom today?

20 A Yes.

21 Q Will you please point him out for me?

22 A Right there sitting in the black suit.

23 Q Thank you. What happened after he shot that gun?

24 A He shot the gun and then he took off and went down 64
25 toward Erhardt way.

1 Q And what happened to Victor?

2 A Victor got up off the ground. He was bleeding and
3 everything. He got in the back seat and he said, Get me to
4 the hospital. I told Iyonna to call 911 and drive. And
5 Victor -- I called my daughter to tell them to come down to
6 -- because his dirt bike was in the middle of the highway.
7 Victor was in the back seat, he said, Get me to the hospital
8 now. And that's what we did, we called 911.

9 And Iyonna really didn't know the name of the street,
10 so I just told her to tell them we was headed to Denmark.
11 The rescue squad met us at the golf course in Denmark.
12 Victor got out, got in the rescue squad. They took him to
13 Urgent Care and we followed.

14 Q At any point while you were stopped and Victor was
15 beside the car, what, if anything, did you see Iyonna hand
16 to Victor?

17 A Nothing.

18 MS. STAGGS: Beg the Court's indulgence.

19 (Pause.)

20 BY MS. STAGGS:

21 Q And what, if anything, did you see --

22 MR. HAYES: Objection.

23 THE COURT: What is your -- I didn't hear the --

24 BY MS. STAGGS:

25 Q I said what, if anything, did you see in Victor's hand?

~~Rosalyn Williams - Cross by Hayes~~

1 A Nothing. He was on a dirt bike. How can you hold
2 anything on a dirt bike? He had a dirt bike, and the dirt
3 bike was bigger than him, taller than him. If he got off
4 it, he had to lean it to the side to get off it. He had
5 nothing in his hand, nothing.

6 THE COURT: Madam Solicitor, just let the record
7 reflect that I've overruled the last objection.

8 MS. STAGGS: Thank you, Your Honor. I don't have any
9 further questions.

10 Thank you, Ms. Williams. If you'll please answer any
11 questions Mr. Hayes has.

12 THE COURT: Mr. Hayes.

13 CROSS-EXAMINATION

14 BY MR. HAYES:

15 Q After Victor got out and went in the ambulance, y'all
16 took Iyonna's child to the babysitter?

17 A We went to Urgent Care behind the rescue squad.

18 Q Okay. So you didn't take Iyonna's child to daycare?

19 A Excuse me?

20 Q Take Iyonna's child to daycare, babysitter?

21 A After all of that was over.

22 Q After you went --

23 A We went to Urgent Care behind the rescue squad, the
24 ambulance with Victor in it.

25 Q Okay. So you followed the ambulance from the golf

1 course straight to the hospital?

2 A Yes.

3 Q And you were in the same car as Ms. Childs?

4 A Yes.

5 MR. HAYES: Nothing further.

6 THE COURT: Any redirect?

7 REDIRECT EXAMINATION

8 BY MS. STAGGS:

9 Q I just want to clarify. How did the child get to the
10 babysitter's house?

11 A If the child went to the babysitter's, it was after all
12 of that, after we got to Urgent Care. Because I went to the
13 back of the Urgent Care to try to see what was going on with
14 Victor.

15 MS. STAGGS: No further questions, Your Honor.

16 THE COURT: Thank you.

17 All right. This witness may now be excused.

18 Thank you, ma'am. Please watch your step.

19 MR. MILLER: Your Honor, the State calls Captain Tammy
20 Williams of the Bamberg County Sheriff's Office.

21 THE CLERK: State your full name, raise your right hand
22 and place your left hand on the Bible.

23 THE WITNESS: Tammy Williams.

24 TAMMY WILLIAMS, after being duly
25 sworn, testified as follows:

~~Tammy Williams - Direct by Miller~~

1 THE WITNESS: Yes, ma'am.

2 THE CLERK: Thank you.

3 DIRECT EXAMINATION

4 BY MR. MILLER:

5 Q Captain Williams, I know it's kind of obvious, but we
6 have to ask. Who do you work for?

7 A Bamberg County Sheriff's Office.

8 Q Can you lower your mask while you're testifying,
9 please?

10 A Yes, sir.

11 Q How long have you worked for Bamberg County?

12 A About 17 years.

13 Q Were you working for Bamberg County back in July of
14 2020?

15 A Yes, sir, I was a lieutenant at the time.

16 Q And in your capacity as a lieutenant, what was some of
17 the things you would do during an investigation of something
18 like this?

19 A Crime scene, talk to witnesses, talk to the subject,
20 just try to get as much information as possible regarding
21 the case.

22 Q Well, let me start you off with crime scene. What kind
23 of things would you do at crime scene?

24 A It varies depending on the case, but in this particular
25 one -- I do certain things differently than probably most

~~Tammy Williams - Direct by Miller~~

1 crime scenes. I use, like, spray paint to try and enhance
2 certain evidence to make it kind of stand out a little more.
3 I just use different techniques for crime scenes, but that
4 is one of the things that I do use.

5 (State's Exhibit No. 1 was marked for identification.)

6 BY MR. MILLER:

7 Q I want to show you what is marked for identification as
8 State's Exhibit 1 and ask you if you can identify -- just
9 tell me what this is.

10 A It's a program that the sheriff's department has, it's
11 called GIS --

12 Q I'm sorry. I'm sorry. What's that piece of paper in
13 your hand?

14 A Oh, it's an aerial view of the so-called crime scene.

15 Q And does that aerial view fairly and accurately depict
16 how the roads appeared that day as far as their placement
17 and where they were? The roads haven't moved, have they?

18 A No, but the trees have.

19 Q Okay. Is that overhead view of the crime scene
20 location, is it a fair and accurate depiction of what the
21 crime scene actually looks like?

22 A Yes.

23 (State's Exhibit Nos. 4 and 5 were marked for
24 identification.)

25 BY MR. MILLER:

~~Tammy Williams - Direct by Miller~~

1 Q I want to show you what's been marked for
2 identification as State's Exhibits 4 and 5, and ask you if
3 you can -- do you know what those are, those two photos?

4 A Pictures that I took of the crime scene, the vehicle,
5 what the victim was driving according to witnesses, and a
6 casing that I observed at the scene that I had spray painted
7 a circle around to enhance it.

8 Q Okay. Does that fairly and accurately represent the
9 scene -- whenever you got there and you approached the
10 scene, does that fairly and accurately represent what those
11 two things looked like?

12 A Yes.

13 (State's Exhibit No. 6 was marked for identification.)

14 BY MR. MILLER:

15 Q I want to show you what's been marked for
16 identification as State's Exhibit 6. The same question, do
17 you know what that is?

18 A Yes, these are also shell casings that were located at
19 the scene that I had circled with spray paint.

20 MR. MILLER: Your Honor, at this time, the State would
21 move to introduce Exhibits 1, 4, 5 and 6.

22 THE COURT: Any objection?

23 MR. HAYES: No.

24 THE COURT: Yes, sir.

25 MR. MILLER: Thank you, Your Honor.

~~Tammy Williams - Direct by Miller~~

1 (State's Exhibit Nos. 1, 4, 5 and 6 were admitted into
2 evidence.)

3 BY MR. MILLER:

4 Q Now, when you circled each one of those things with
5 paint, what are those things that are circled with paint
6 there in the photograph?

7 A Shell casings.

8 Q And what did you do with those shell casings after you
9 circled them and took photos?

10 A Collected them.

11 (State's Exhibit No. 8 was marked for identification.)

12 BY MR. MILLER:

13 Q I want to show you what's been marked for
14 identification as State's Exhibit 8, and ask if you can
15 identify what that is?

16 A Yes, sir. It's going to be an evidence bag where I
17 collected the shell casings from the scene and placed them
18 in an evidence bag.

19 Q Could you explain to the jury about how you go about
20 collecting something and putting it into evidence for the
21 sheriff's office purposes? I mean, you take a picture of
22 it?

23 A Okay, yes. If there's something that appears that it
24 might be important to the case -- in this incident, I had
25 spray painted what was observed on the roadway. After I

Tammy Williams - Direct by Miller

1 spray paint it, I take a photograph where everything is
2 located at. And then once I get the pictures, then I will
3 collect, whatever evidence, in this case, since they were
4 shell casings, I placed them in one bag, but if it was --
5 let's say there was something else there that didn't go
6 inside with the shell casings, then I would have put it in a
7 separate bag.

8 Q What's that on the outside of it? Why do you write all
9 that stuff on the outside for?

10 A Well, at the time, who the evidence personnel was, if
11 you don't put this information, he's not going to know what
12 is inside the bag. So you, basically, the important
13 information as to what's inside, what maybe the offense
14 would be, if there's a subject, if there's a victim, who
15 collected it and the time and date it was collected.

16 Q You put the case number on it?

17 A Oh, yes, sir, the case number, the agency number. And
18 in this case, if there was multiple items, it could be one
19 through, you know, infinity.

20 Q So after you got the shell casings and you put the
21 shell casings in the bag that had been labeled with all the
22 information, how did you seal that bag?

23 A I actually stapled it. Normally, you would put tape
24 around it, but in this case, I had to staple it together.

25 Q Now, that bag is not stapled together now?

Tammy Williams - Direct by Miller

1 A Not now, it isn't, no.

2 Q When was that bag opened?

3 A Today about a quarter after 1:00.

4 Q And who opened it?

5 A I did.

6 Q And when you opened that bag, was it in the same
7 condition as it was the last time you had seen it?

8 A Yes.

9 Q So let's talk about what's inside the bag. Do you know
10 what is inside that bag?

11 A Yes, the shell casings that I collected from the scene.

12 MR. MILLER: Your Honor, at this time, the State would
13 move to introduce State's Exhibit 8.

14 THE COURT: Any objection?

15 MR. HAYES: None, Your Honor.

16 THE COURT: All right. Yes, sir.

17 (State's Exhibit No. 8 was admitted into evidence.)

18 BY MR. MILLER:

19 Q So Lieutenant Williams, those shell casings were
20 collected at the scene. Were there shell casings at the
21 scene that you just said eh, I don't need to collect that
22 one?

23 A No, sir.

24 Q So you collected all of the shell casings?

25 A The ones that I saw, yes.

Tammy Williams - Direct by Miller

1 Q All the ones that you saw?

2 A Yes.

3 Q Now, have you had an opportunity to examine those shell
4 casings?

5 A Yes, when we opened them up earlier today.

6 Q And did you notice anything about the shell casings
7 whenever you looked at them?

8 A They were 9mm Luger shell casings, all of them.
9 There's seven in total.

10 Q Now, you said -- after crime scene, you said talking to
11 witnesses. Did you talk to any witnesses in this case?

12 A The people out at the scene, when -- well, when I
13 arrived, I did not know at that time that the victim or
14 anybody else had left.

15 Q Okay.

16 A So when I got there, the vehicle -- there was a vehicle
17 in front of a motorcycle. And even though they weren't, I
18 would say, witnesses to the scene, they just relayed to me
19 that the victim --

20 MR. HAYES: Objection, hearsay.

21 THE COURT: Sustained. You want to rephrase?

22 BY MR. MILLER:

23 Q All right. Let's do this one piece at a time, okay?

24 A Okay.

25 Q So you come up to the scene, correct?

~~Tammy Williams - Direct by Miller~~

1 A Yes.

2 Q And when you arrived on the scene, was that gray car
3 that's in the photographs already there?

4 A Yes.

5 Q Did you talk to anybody about how that gray car got
6 there?

7 A Yes, the driver.

8 Q As a result of talking to that person, did you consider
9 that gray car to be --

10 A No.

11 Q -- part of the incident itself?

12 A No.

13 Q Okay. Now, ultimately, you ended up speaking to Ms.
14 Childs and Ms. Williams who were in the Nissan Altima,
15 correct?

16 A I'm not sure what car they were in, I don't recall
17 that, but I spoke to them at the emergency room.

18 Q Correct, okay. So that's where you talked to them at?

19 A Originally, yes.

20 Q Okay. And was that before or after you had talked to
21 the Defendant?

22 A That would have been before.

23 Q Okay. And at some point in time that night, you were
24 present whenever the Defendant was interviewed, too, weren't
25 you?

Tammy Williams - Direct by Miller

1 A Yes, sir.

2 Q And during the course of his interview, the Defendant
3 claimed that a gun was handed out the window of the car,
4 correct?

5 A Yes.

6 Q And it was handed out the window to Victor Middleton,
7 correct?

8 A Right.

9 Q Did you ever ask Ms. Childs about that?

10 A At a later date when I re-interviewed her, yes.

11 Q Okay. And what did she do whenever you told her that
12 there was an allegation she had handed a gun out the window?

13 A She claims that she couldn't because --

14 MR. HAYES: Objection, hearsay.

15 MR. MILLER: I'll rephrase that one.

16 BY MR. MILLER:

17 Q Did you talk to her about the allegation that she had
18 handed a gun out the window?

19 A Yes.

20 Q As a result of talking to her about that, what did you
21 do?

22 A We walked outside at her vehicle and she, basically,
23 showed me that her window would not go up or down on the
24 driver's side.

25 Q Okay. Did you try to make the window go up and down

1 using the button?

2 A Yes.

3 Q And what would happen whenever you did that?

4 A It wouldn't move. You could hear it, but it would not
5 go up and down.

6 Q Okay. Did you talk to the victim in this case?

7 A Yes.

8 Q And where was the victim when you talked to him? Did
9 you talk to him in the hospital or some time after that?

10 A Actually, after that. When he got back from surgery, I
11 went to his house in Orangeburg.

12 Q Okay. And so you said that you handled crime scene,
13 talked to witnesses, talked to victims. You did all of that
14 stuff in this case, didn't you?

15 A Yes.

16 Q When you talk about painting around, in this case, they
17 were shell casings. It could have been anything, it could
18 have been a weapon that fell or anything, but you spray
19 paint around it. Now, you don't actually spray the item, do
20 you?

21 A I try not to.

22 Q And when you're handling items, do you wear gloves?

23 A Yes.

24 Q And why do you wear gloves?

25 A So that my DNA or fingerprints don't get on the

1 objects.

2 Q Okay. Now, did you ultimately -- were you the one that
3 put the handcuffs on the Defendant after he was arrested?

4 A I don't believe so, no.

5 Q You were present when the Defendant got arrested,
6 correct?

7 A Yes.

8 Q And at that time, the Defendant asked for a cigarette.
9 Do you recall that?

10 A No, I don't recall that, but I'm sure he did. Like I
11 said, we were all in there together.

12 Q Well, that's what I wanted to ask you about. He had
13 been very cooperative --

14 A Oh, yeah.

15 Q -- with law enforcement, hadn't he?

16 A Yes.

17 Q And he told a story, did he not?

18 A Yes.

19 Q But whenever you started talking about the evidence
20 that didn't match up with his story, how did his demeanor
21 change?

22 A From what I recall, he just kept on saying it was
23 self-defense. So, again, I have to figure that out. So
24 based on his story that he told us, the next day after
25 collecting -- because you can see things better during the

1 day, we went back, myself and, at the time, Captain Williams
2 went back to check out the scene.

3 Q You were trying to see if it matched his story, weren't
4 you?

5 A Yes.

6 Q I mean, that's --

7 A Yes, it could have been possible. That could have been
8 possible, yes.

9 Q And did you ever talk to the Defendant about -- while
10 he was telling you this story, did you ever talk to him
11 about the other things he could have done --

12 A Yes.

13 Q -- instead of cutting across this field?

14 A Yes.

15 Q Okay.

16 A I mean, logically, we all were pretty much saying that.
17 I think a couple of officers had mentioned that.

18 Q Who else was in the room at the time?

19 A Myself, Captain Eddie, who was captain at the time,
20 Lieutenant Norris Williams, Ken Russell, and I think
21 Sergeant Alonzo Jenkins at the time.

22 MR. MILLER: Please answer any questions Mr. Hayes has
23 for you.

24 THE COURT: Cross.

25 CROSS-EXAMINATION

~~Tammy Williams - Cross by Hayes~~

1 BY MR. HAYES:

2 Q Captain, you were the first one on scene?

3 A Yes.

4 Q On 64?

5 A Yes.

6 Q When you pulled up, there was a lot of people out
7 there?

8 A I wouldn't say a lot, but there was several people out
9 there.

10 Q At least, 11 up and down --

11 A I don't recall 11.

12 Q All right. There was the lady standing by the car
13 parked in the middle of the road?

14 A Yes. I mean, there were people out there, yes.

15 Q And there was a line of people down the sidewalk
16 walking back and forth?

17 A Honestly, I was not paying attention to them. I'm
18 trying to work a scene.

19 Q They were in your scene?

20 A Some of those people were, yes.

21 Q Most of those people were friends or family of Victor
22 Middleton?

23 A I do not know. I do know that the owner of the car
24 was, as for other people, I do not know that.

25 Q Okay.

1 A I just know they were out there.

2 Q And you collected those shell casings?

3 A Yes.

4 Q And you bagged them up and stapled them?

5 A Yes.

6 Q Have they been sent off to SLED?

7 A Yes.

8 Q Was there a report done by SLED?

9 A No.

10 Q Let's back up a little bit. SLED, what is SLED?

11 A The South Carolina Law Enforcement Division. They're a
12 law enforcement agency that does a lot of stuff, including
13 evidence examination.

14 Q Why would you send these shell casings to SLED?

15 A To determine if the weapon that was given to us matched
16 the shell casings.

17 Q Was that done?

18 A Not by them, no. It was still up there.

19 Q And I just want to clarify what you mean by that.

20 Y'all sent it to SLED?

21 A Yes, it was sent to SLED.

22 Q But they have not tested it?

23 A None of it, no.

24 Q It is in the exact same state that it was when you
25 turned it over?

Tammy Williams - Cross by Hayes

1 A I didn't turn -- oh, I turned this over, yes.

2 Q Right. When you took it up to SLED and dropped it off,
3 or somebody from your agency --

4 A Yes.

5 Q -- dropped it off --

6 A Yes.

7 Q -- it is in the exact same state right now --

8 A No.

9 Q Well, you opened the bag?

10 A Yes.

11 Q But it hasn't been tested is my point?

12 A No, it has not been tested.

13 Q And you cannot tell me definitively that those shell
14 casings are the shell casings from the gun that Kelcie
15 Gilbert turned in?

16 A No.

17 Q Kelcie Gilbert, afterwards, called and talked to
18 somebody in your agency?

19 A Yes.

20 Q Within the hour?

21 A Wait a minute, you're saying he called them?

22 Q Within about an hour, he called somebody in your
23 agency?

24 A No, a person in our agency called him.

25 Q They got in touch with each other?

- 1 A Yes.
- 2 Q Within about an hour?
- 3 A Okay.
- 4 Q Roughly?
- 5 A I don't know, but okay.
- 6 Q If you don't know, just say I don't know.
- 7 A I don't know.
- 8 Q But he did make arrangements to turn himself in?
- 9 A Yes.
- 10 Q He brought the firearm that is in question?
- 11 A Yes.
- 12 Q He handed it over willingly?
- 13 A Yes.
- 14 Q And he sat down and gave a detailed statement?
- 15 A Yes.
- 16 Q During that statement, he told you he saw Victor
- 17 Middleton hand -- or he believes Ms. Iyonna Childs hand out
- 18 a black and chrome pistol out the window?
- 19 A Yes.
- 20 Q Was that gun found at the crime scene?
- 21 A No.
- 22 Q He said he didn't know if Mr. Middleton actually fired
- 23 a shot?
- 24 A Okay.
- 25 Q Isn't that what he told you?

1 A Yes.

2 Q Was Mr. Kelcie Gilbert's vehicle searched?

3 A No. The vehicle was not present at that time.

4 Q At any time, did anybody get a search warrant and
5 search his vehicle?

6 A No, because the vehicle wasn't located until days
7 later.

8 Q After it was located, did anybody actually go look at
9 it?

10 A Yes, we looked at it. We viewed the vehicle, but we
11 did not search the vehicle.

12 Q Did you collect the motorcycle?

13 A No, sir.

14 Q Now, Ms. Childs' vehicle was at the hospital -- or the
15 emergency care here in -- that's Denmark, I believe?

16 A Yes.

17 Q Was that vehicle searched at the hospital?

18 A No.

19 Q There was some gloves that Mr. Middleton was wearing at
20 the time, were they collected?

21 A I didn't know anything about any gloves.

22 Q Do you know if they were collected?

23 A No.

24 Q Are you familiar with what a GSR or gunshot residue
25 test is?

1 A Yes.

2 Q Can you explain that to the jury, please?

3 A Any time you fire a weapon, the powder from the gun
4 being fired can spray on your hands, your clothes or on
5 objects around you.

6 Q Were the gloves tested?

7 A They weren't collected.

8 Q What about Mr. Middleton's clothing?

9 A He was in there being taken care of at the time.

10 Q They had to take his clothes off of him?

11 A Probably, yes.

12 Q And in your normal course of business, you have taken
13 clothes from somebody at the ER?

14 A In the past, yes.

15 Q Was that done in this case?

16 A No, not that I'm aware of.

17 MR. HAYES: Beg the Court's indulgence.

18 BY MR. HAYES:

19 Q On a GSR test, they can actually take a swab and swab
20 your hands, correct?

21 A Yes.

22 Q Was that done for Mr. Kelcie Gilbert?

23 A No.

24 Q Was that done for Mr. Middleton?

25 A No.

1 Q When you out to the crime scene, were there any other
2 officers there?

3 A No.

4 Q Did any other officers arrive?

5 A Not until later.

6 Q Did anybody get a list of all the names of the people
7 that were present at the crime scene?

8 A At that time, no.

9 Q During the interview, you actually walked out and said
10 you'd go check the crime scene. Where did you go when you
11 were having the interview with Mr. Gilbert?

12 A I'm sorry, say that again.

13 Q During his interview --

14 A Yes.

15 Q -- later that night --

16 A Yes.

17 Q -- you walked out. And I believe when you came back,
18 you said you went and checked the crime scene. Can you tell
19 me what you were doing?

20 A The crime scene was right across the street from the
21 Olar Police Department. And based on what he was telling
22 us, we just went back out there to check it again.

23 Q What were you looking for?

24 A Either more shell casings, another gun. Because like I
25 said, we didn't know at that time his version of events. So

Tammy Williams - Cross by Hayes

1 we were trying to see if we could see anything else based on
2 what he was telling us at the time. And it was at night, so
3 we could only look at the road.

4 Q How much later after the shooting were you having the
5 interview with Mr. Gilbert?

6 A I'm not sure. It had to have been a couple hours.

7 Q Was the crime scene secure?

8 A There's no way to really secure it, but no.

9 Q When you left after picking up the shell casings, was
10 there any other officers there?

11 A No.

12 Q There was just Mr. Middleton's family members and
13 friends?

14 A No, I believe they had already left at that point after
15 I collected what was present at the time.

16 Q What happened with the motorcycle?

17 A The people that were out there took it back to their
18 house.

19 Q On 7/30 of 2020, you actually did another interview of
20 Mr. Gilbert, do you recall that?

21 A Yes, down in Allendale. That's where the car was
22 located.

23 Q On 7/30 of 2020, you had your body cam, which I believe
24 is the device you have right there, and it was on and
25 recording?

Tammy Williams - Redirect by Miller

1 A Yes.

2 Q And you were talking with Mr. Gilbert?

3 A You talking about --

4 Q I'm not sure if that was in Orangeburg or down in
5 Allendale?

6 A No, that's the one in Allendale.

7 Q It was in Allendale?

8 A Yeah, uh-huh. I'm just trying to remember. I've
9 talked to so many people, I'm just making sure we're
10 referring to the same one. So yes, it was down in
11 Allendale.

12 Q During that interview, do you admit or deny that Mr.
13 Gilbert asked you what would you do if someone pulled a gun
14 on you and your answer was I would shoot them?

15 A That's anybody's reaction.

16 MR. HAYES: Nothing further, Your Honor.

17 THE COURT: Any redirect?

18 REDIRECT EXAMINATION

19 BY MR. MILLER:

20 Q So the Defendant, when you interviewed him, tells you
21 this story about there being another gun?

22 A Uh-huh.

23 Q But he says nobody shot the gun, correct?

24 A Yes.

25 Q So when you were out there and you're collecting the

1 evidence, there's the motorcycle?

2 A Yes.

3 Q There's shell casings around?

4 A Yes.

5 Q Did you collect everything that was there?

6 A What I saw, yes.

7 Q Okay. So after he tells you about this other mystery
8 gun, you go back out to the scene?

9 A Yes.

10 Q And try to look again just to make sure?

11 A Yes.

12 Q And then the next morning in the daylight, you went out
13 there again, didn't you?

14 A Yes.

15 Q Is there any piece of physical evidence, is there any
16 piece of physical evidence that would substantiate the claim
17 that Victor Middleton had a gun?

18 A No.

19 Q All of the shell casings matched each other, correct?

20 A Yes.

21 Q Now, Mr. Hayes asked about going out and talking to the
22 Defendant when he was in Allendale, I believe it was?

23 A Yes.

24 Q And you said that was when you got to look at the car?

25 A Yes. He was down there and when we arrived, it was the

Tammy Williams - Redirect by Miller

1 description of the car that was told to us.

2 Q The green Saturn?

3 A Yes.

4 Q Okay. And people at the scene had told you about a
5 green Saturn, correct?

6 A Yes.

7 Q Okay. So did the Defendant say hey, look, here's a
8 bullet hole in my car?

9 A No.

10 Q Did he ever indicate that maybe his car got shot?

11 A No.

12 Q What he told you was he told you that he shot several
13 times at the victim from that car, correct?

14 A Yes.

15 Q So why would you get a search warrant for that car?

16 A Well, I wouldn't due to the fact of the timeframe that
17 we finally located the car, if there was anything in the
18 car, it could have been gone by then.

19 Q Well, I mean, he's told you out of his own mouth that
20 he was shooting from the car?

21 A Yes.

22 Q He allegedly brought you the gun he used to do the
23 shooting?

24 A Yes.

25 Q What would you expect to find in the car?

1 A Well, based on what he initially said, I was trying to
2 see if there was any shell casings that might have been
3 inside the vehicle.

4 Q That would have been what you were looking for?

5 A Yes.

6 Q Would you expect those shell casings to be from the
7 victim's gun?

8 A Not in his car, no.

9 Q Well, if there's no gun, there's no shell casings?

10 A Right.

11 MR. MILLER: No further questions.

12 THE COURT: Recross?

13 RECROSS-EXAMINATION

14 BY MR. HAYES:

15 Q Captain Williams, you cannot definitively tell me that
16 the shell casings on the road came from Kelcie Gilbert's
17 gun, can you?

18 A No, not at this time.

19 Q And you cannot definitively tell me that there was no
20 shell casings somewhere that bounced around inside of Kelcie
21 Gilbert's car at this time either?

22 A No.

23 Q Captain Williams, there was plenty of opportunity and
24 time for someone to take that gun from the crime scene, was
25 there not?

1 A That is possible, yes.

2 MR. HAYES: Nothing further.

3 THE COURT: Thank you. This witness may now be
4 excused.

5 Please watch your step, ma'am.

6 At this time, we'll take a brief ten-minute recess.

7 (The jury exits the courtroom at 3:28 p.m.)

8 MR. MILLER: Your Honor, our next witness -- well, the
9 next witness that we would call today is probably going to
10 be rather lengthy because included in his testimony will be
11 the publication of the video of the Defendant's interview.
12 We really don't have -- we've only got two witnesses left
13 and that's the victim and Lieutenant Norris Williams.
14 There's a lot of Williams in Bamberg County.

15 If we could, I think the most efficient thing to do
16 would be for us to break for the day. We will get the video
17 equipment set up in here so that Mr. Middleton can testify
18 first thing in the morning and then we'll get Lieutenant
19 Williams to testify and we'll be able to publish the video
20 to the jury. It's a pretty time-consuming process to get
21 everything set up, but once it's set up, it's kind of in the
22 way so that's why we haven't done it already.

23 Normally, just for the Court's information, we will put
24 the screen here and a little table with a projector here so
25 all the jurors can see it, but I don't know how that's going

1 to be affected by this glass partition now. We may end up
2 having to put it out here. We've got to figure that out.
3 But that's where we're at, Your Honor. I still think we'd
4 be finished before lunch relatively easily.

5 THE COURT: Mr. Hayes.

6 MR. HAYES: I'm at the Court's leisure, Your Honor.

7 THE COURT: Well, Mr. Miller, I think it would be
8 rather time consuming to try to figure that out this
9 afternoon.

10 MR. MILLER: Well, that's what we're going to do.

11 THE COURT: I mean, with the jury here. So when the
12 jury comes back in, I'll rest for the day, but also give
13 them their overnight instructions.

14 MR. MILLER: Can we start at 9:30 in the morning?

15 THE COURT: Yeah, I can make some arrangements. I
16 think we can start at 9:30 tomorrow morning.

17 MR. MILLER: That would be great, Your Honor.

18 MR. HAYES: In your instruction, I just -- I know
19 you're really thorough on social media and all, but there
20 are some archaic people that still read the newspaper. I
21 would like for them to avoid that just on the potential
22 chance there is an article. I don't see anybody in here,
23 but...

24 THE COURT: I will instruct the jury on that as well.

25 MR. HAYES: Thank you.

1 MR. MILLER: Thank you, Your Honor.

2 (Short recess.)

3 THE COURT: Madam Bailiff, can you escort the jury back
4 in, please?

5 (The jury enters the courtroom at 3:40 a.m.)

6 THE COURT: All right, ladies and gentlemen of the
7 jury, before you get too comfortable, I want to let you know
8 that we are going to adjourn for the day and present the
9 rest of the witnesses and conclude the trial tomorrow.

10 Let me remind you that we will give you all of the
11 information that you need in order to make a fair and just
12 decision in this case. And so, because of that, I'm going
13 to find it necessary to tell you that you cannot take into
14 account anything that you may read in the newspaper, hear on
15 the news, see on social media or hear about from any other
16 person. Do not, do not discuss this case with anyone, not
17 even your fellow jury members.

18 When you get home today, your family will ask you what
19 have you been doing all day, and you certainly can tell them
20 that you've been selected as a member of the jury, but
21 please refrain from telling them any information about this
22 case or any of the testimony or any of the members of the
23 case that you have heard and seen today.

24 So with that being said, I'm going to ask that you all
25 return back to the courthouse promptly at 9:15 a.m., and we

1 will begin the trial at your arrival. If you have any
2 transportation issues, please, again, contact our clerk as
3 soon as possible or any other type of emergency, please
4 contact our clerk as soon as possible so that we can arrange
5 with respect to whatever that emergency may be.

6 Do you all have any questions for me before we adjourn
7 for the evening?

8 (No response.)

9 THE COURT: Very good then. We will adjourn and see
10 you back tomorrow morning at 9:15.

11 (The jury is excused for the day at 3:43 p.m.)

12 THE COURT: So we will start at 9:30 in the morning.
13 Hopefully, the jury gets here right on time, but we will
14 start as soon as everyone is ready at 9:30. Have a good
15 evening.

16 MR. MILLER: Thank you, Your Honor.

17 MR. HAYES: Thank you, Your Honor.

18 (Court was adjourned for the day.)

19 WEDNESDAY, MARCH 2, 2022

20 THE COURT: Is there anything that needs to be handled
21 before we bring the jury back in?

22 MR. HAYES: Judge, I just wanted to put on the record
23 that I did give you as well as the State the Beatty memo and
24 Beatty case as to seeking the truth.

25 THE COURT: Yes.

1 MR. HAYES: I just wanted that on the record for PCR
2 purposes.

3 THE COURT: Anything to add, Mr. Miller?

4 MR. MILLER: No, ma'am.

5 THE COURT: That is reflected on the record. Thank
6 you, Mr. Hayes.

7 MR. HAYES: Thank you.

8 THE COURT: Anything from the State?

9 MR. MILLER: Nothing from the State.

10 THE COURT: Can we bring the jury back in, please?

11 (The jury enters the courtroom at 9:33 a.m.)

12 THE COURT: Good morning, ladies and gentlemen of the
13 jury.

14 Good morning to our two alternates.

15 We will now at this time resume the trial.

16 Solicitor, if you want to present your next witness.

17 MR. MILLER: Thank you, Your Honor. The State calls
18 Victor Middleton.

19 THE CLERK: Mr. Middleton, will you please state your
20 name for the record?

21 THE WITNESS: Victor Middleton.

22 THE CLERK: Place your left hand on the Bible and raise
23 your right hand, please.

24 VICTOR MIDDLETON, after being duly
25 sworn, testified as follows:

Victor Middleton - Direct by Miller

1 THE WITNESS: Yes, ma'am.

2 THE CLERK: Thank you, sir.

3 DIRECT EXAMINATION

4 BY MR. MILLER:

5 Q Good morning, Mr. Middleton. You can have a seat. Mr.
6 Middleton, how old are you?

7 A 39.

8 Q Where are you from?

9 A Olar, South Carolina.

10 Q Were you in Olar, South Carolina on July the 18th of
11 2020?

12 A Yes, sir.

13 Q Do you remember anything significant about that day?

14 A Yes, sir.

15 Q What do you remember about that day?

16 A I got a call from my cousin saying that there was a
17 cookout, so I decided to bring my dirt bike down there to
18 ride while they was cooking on the grill.

19 Q So when you say down there, where are you talking
20 about?

21 A Olar, South Carolina.

22 Q And this was a relative of your's that was having this
23 cookout?

24 A Yes, sir.

25 Q So you're down there and you've got your dirt bike?

Victor Middleton - Direct by Miller

1 A Yes, sir.

2 Q Then what happened?

3 A Well, when I got there, I pulled it off the trailer,
4 you know, talked to a couple guys I knew down there. When I
5 got it off the trailer, went around to my cousin's house,
6 talked to a female that I knew down there that I was dealing
7 with. And I decided to ride on my dirt bike while I was
8 down there.

9 Maybe into 30 minutes of my ride, the girl I was
10 dealing with and my auntie was headed to Denmark, so I was
11 following them as they was leaving out the yard. And as I
12 was riding beside them leaving out the yard, a guy, Kelcie
13 --

14 Q Hold on a second. Let me go back because you're kind
15 of getting a little bit ahead of the story. So you're in
16 the yard and you're on your dirt bike. Which way did you
17 turn out of the yard? Do you know what street you were
18 turning onto?

19 A No, I'm not familiar with the streets.

20 Q Okay. You don't know the street names?

21 A No.

22 Q Okay, that's fine. So you're in the yard, which way
23 did you turn when you were coming out of the yard?

24 A Right.

25 Q Okay. And in front of you, you saw the -- what kind of

1 car was it that was in front of you? You said there was
2 somebody ahead of you.

3 A Yes, it was a green Saturn.

4 Q Okay. And then why were you going in that direction?

5 A Because the girl I was dealing with and my cousin, my
6 auntie, she was headed to Denmark.

7 Q Okay.

8 A So while they was headed to Denmark, I was just riding
9 beside them till they got on the main highway.

10 Q Okay. Did you pass the Saturn?

11 A Yes, we did.

12 Q Okay. What happened whenever you got to -- do you
13 remember what kind of car that was, the car your auntie and
14 the girl you were talking with?

15 A It was a black Nissan Altima.

16 Q Okay. What happened when you got to the Altima?

17 A We was talking.

18 Q Where were you?

19 A I was on my dirt bike.

20 Q Where was your dirt bike?

21 A I was riding it.

22 Q No, I'm saying in relationship to the car, was it on
23 the driver's side, was it on the --

24 A Oh, yes, it was on the driver's side.

25 Q Okay. You said you were talking to them. What were

Victor Middleton - Direct by Miller

1 you talking about?

2 A Nothing, just casually talking, casual conversation.
3 Her baby -- she had a one-year-old daughter who was in the
4 back seat, so I was just -- her window couldn't let down or
5 anything like that, so, basically, I was just doing like
6 little motions, playing with the baby and things like that.

7 Q Showing off for the baby?

8 A Yes, sir.

9 Q Okay. You said that you had seen the green Saturn.
10 When was the next time you saw that Saturn?

11 A It made a U-turn in the road and got behind us.

12 Q Okay. You're talking about a U-turn, did you -- once
13 you turned out onto the street, you made a right turn out of
14 the yard onto the street, did you make any more turns until
15 you got to Highway 64?

16 A No, it was just straight.

17 Q Straight shot?

18 A Yes, sir.

19 Q So you said you saw the green Saturn, was it -- did you
20 -- was it going in the same direction you were going?

21 A No, it was going -- we was going this way, the car was
22 going this way. It whipped around and got behind us on the
23 next road.

24 Q Okay. So I want to make sure this is clear in my mind.
25 The black Nissan Altima with this girl you were talking to

Victor Middleton - Direct by Miller

1 and your auntie is almost to Highway 64 on this street. You
2 are on the dirt bike on the driver's side and the Saturn
3 comes up behind you?

4 A Yes, sir.

5 Q What happens next?

6 A She's -- we was headed this way and the Saturn got
7 behind us, so she said, Victor, that fool's behind us --

8 MR. HAYES: Objection, hearsay.

9 BY MR. MILLER:

10 Q Okay, don't tell me what she said, but as a result of
11 what she said, what did you do? When she said something to
12 you, what did you do?

13 A I proceeded to give the dirt bike a little gas and get
14 in the highway, but by the time I --

15 Q You were leaving?

16 A Yes, sir.

17 Q So talk to me a little bit about this dirt bike. How
18 big is it?

19 A Well, it's a 2020 YZ450. It's a motor cross bike.

20 Q So it's a full-sized dirt bike, it's not one of those
21 little mini bikes?

22 A No, it's a big bike.

23 Q Does it have a kick stand?

24 A No, sir. I have to actually crank it, I give myself a
25 push and jump on the bike. It's way bigger than me.

Victor Middleton - Direct by Miller

1 Q So if you're sitting on this bike -- for sake of
2 argument, if you're sitting on the bike and I was holding it
3 straight up, your feet wouldn't touch the ground?

4 A Oh, no.

5 Q Okay. Now, tell me which handlebar -- or is it on the
6 handlebar, which handlebar is the gas on?

7 A On my right.

8 Q Okay. And is there a clutch on this motorcycle?

9 A Yes.

10 Q It's on the left?

11 A Yes.

12 Q Okay. So now you turn in front of the Nissan Altima,
13 you turn which way onto 64, right or left?

14 A Right.

15 Q You turn right onto 64, what did you see?

16 A A car.

17 Q Which car?

18 A The green Saturn.

19 Q And where was it?

20 A In the grass, like on the sidewalk.

21 Q Was it ahead of you or beside you or behind you?

22 A Yeah, it had done whipped around the Altima.

23 Q Right.

24 A The road is so narrow, like it's nowhere two cars can
25 fit.

Victor Middleton - Direct by Miller

1 Q Okay.

2 A It's one car at a time. There's no way, so you have to
3 go in sequence.

4 Q So what happened next?

5 A I was shot.

6 Q Who shot you?

7 A Kelcie.

8 Q When Kelcie shot you, where was his vehicle?

9 A In the grass on the sidewalk. He whipped his car
10 around, all the way around.

11 Q Do you remember which hand he was holding the gun in?

12 A No, sir.

13 Q Now, you weren't looking at the back of his car, were
14 you?

15 A No.

16 Q He wasn't driving away and shooting out the window like
17 this?

18 A No. He had done came to a complete stop.

19 Q Did you get in front of his car?

20 A I was right here, yes, sir.

21 Q I'm saying the front of his car, like when he's
22 driving, did you --

23 A No, his car never made it directly in the highway. I
24 was in the highway. His car was -- he was like on the
25 sidewalk and the grass area. I was here, like, the highway

Victor Middleton - Direct by Miller

1 and he was here. He was already in position, you know.

2 Q Okay. Do you recall how many times he fired?

3 A Yes, I was gunned down seven times, multiple times in
4 my back.

5 Q Can you show the jury the places that you were hit,
6 point out the places that you were hit for them?

7 A Yes. My arm, my head, multiple times in my back, up in
8 my spine area.

9 Q How many total times were you hit?

10 A Seven.

11 Q Now, when Gilbert is shooting at you, how far away do
12 you think you were on your dirt bike from the car? Were you
13 further than me to you?

14 A No. Maybe to that window.

15 Q So you were close?

16 A Yes, sir.

17 Q By the time he started firing?

18 A Yes, sir.

19 Q Did you have anything in your hands other than the
20 handlebars of that motor bike?

21 A No, sir. If I did, there was no way I could have drove
22 the bike.

23 Q After you started getting shot, what happened next?

24 A I fell off the bike and ran to the car. It never left
25 the stop sign, it was still at the stop sign. My auntie --

Victor Middleton - Direct by Miller

1 Q You're talking about the Altima?

2 A Yes, they never left. It was at the stop sign.

3 Q So it happened that fast that they never --

4 A Yeah, it happened just that fast. They never got time
5 to pull out. Like, instant.

6 Q Where did you get into the car at?

7 A In the back seat next to her one-year-old daughter on
8 the passenger side.

9 Q Where did you go from there?

10 A They was calling 911 instantly, so when I got to -- I
11 think we made up to maybe the golf course here in Denmark
12 and they met us.

13 Q Who met you?

14 A The ambulance met us.

15 Q Okay, the ambulance met you?

16 A Yes.

17 Q Where did you go from there?

18 A They took me to Barnwell Highway, I think there's a
19 little hospital right there.

20 Q The new place on the road between Barnwell and Denmark?

21 A Yes, sir.

22 Q Okay. Where did you go from there?

23 A The next time I woke up, I was in Columbia in surgery.

24 Q Do you recall getting put on a helicopter?

25 A Yes. Yes. Because I was throwing up in the

Victor Middleton - Direct by Miller

1 helicopter.

2 Q Now, are you still suffering any effects from being
3 shot?

4 A Yes.

5 Q What kind of effects are you suffering from?

6 A I'm, basically, handicapped in my right arm. I can't
7 -- my nerve system is -- I pretty much can't hold anything.
8 I constantly have headaches.

9 Q You told the jury and kind of pointed to some places
10 where you got shot across your head. Can you show the jury
11 exactly where you got shot in the head?

12 A Right here.

13 Q So like a grazing shot?

14 A Yes.

15 Q And can you take off your coat and show them where you
16 got shot in the arm?

17 A Here, and it broke my wrist.

18 Q Did the gunshot break your wrist or did you break your
19 wrist when you fell off the motorcycle?

20 A No, the bullet shattered it. It came in through the
21 bone and brushed my bone.

22 Q And when they were doing surgery on you, how did they
23 try to get the bullets out?

24 MR. HAYES: Objection.

25 THE COURT: What's the basis?

Victor Middleton - Direct by Miller

1 MR. HAYES: Speculation and hearsay. There's no way he
2 would know, except for what somebody told him.

3 MR. MILLER: That's fine, Your Honor.

4 THE COURT: Sustained.

5 BY MR. MILLER:

6 Q Can you lift up your shirt?

7 A Yes. All the way up.

8 Q Are those bullet holes in your back?

9 A Yes, sir.

10 Q Can you turn around and show the jury the front of you?

11 A (Witness complies.)

12 Q What's that big long scar that goes from your waistline
13 up to about the bottom of your sternum?

14 A Well, I had internal bleeding, so they had to cut me
15 open.

16 MR. HAYES: Objection.

17 MR. MILLER: There's how he knows what happened to him,
18 Your Honor. He's got that scar.

19 MR. HAYES: He doesn't know about anything that they
20 did. He knows he had surgery.

21 THE COURT: Overruled.

22 BY MR. MILLER:

23 Q You can have a seat, sir.

24 A (Witness is seated.)

25 Q How long have you known Kelcie Gilbert?

Victor Middleton - Cross by Hayes

1 A Since he was a little boy.

2 Q So you're very familiar with him?

3 A Yes, sir.

4 Q Is he here in the courtroom today?

5 A Yes, sir.

6 Q Where is he?

7 A Over there in the black suit, blue shirt.

8 MR. MILLER: Please answer any questions that Mr. Hayes
9 might have for you.

10 CROSS-EXAMINATION

11 BY MR. HAYES:

12 Q Mr. Middleton, how are you doing this morning?

13 A How you doing? I'm doing fine.

14 Q Doing good. Now, you testified just a minute ago that
15 you were dealing with a girl down in Olar. And that would
16 be Ms. Iyonna Childs?

17 A Yes, sir.

18 Q And y'all had a relationship going on, correct?

19 A Yes, sir.

20 Q You testified that this is a 2020 YZ450?

21 A Yes, sir.

22 Q Is that a Yamaha, Kawasaki, I'm not familiar with that?

23 A Yamaha.

24 Q How many horsepower is that?

25 A I don't know exactly -- 450.

1 Q 450 would be the cubic inches, right?

2 A No, you have 125, 250, little 80s.

3 Q So this thing will scat?

4 A Yeah. You can't get no bigger than that unless you go
5 street legal motorcycle.

6 Q So that's the biggest dirt bike you can get racing
7 version, except for going into a non-street legal bike?

8 A Correct.

9 Q It will get with it, won't it?

10 A Yes, sir.

11 Q There's no kick stand on that motorcycle, correct?

12 A No, sir.

13 Q So if you stop, you've got to put a foot down to keep
14 from falling over, right?

15 A It's going to fall, it's heavy.

16 Q So when you come to a stop, downshifting and braking
17 and you actually stop, you take your foot off the peg and
18 put it on the ground to support the bike, right?

19 A I never stopped.

20 Q I didn't ask you that. I'm saying if you stop the
21 bike, you have to put a foot down to keep from falling over,
22 don't you?

23 A Not actually.

24 Q So if you just step off, the bike's going to stay
25 standing upright?

Victor Middleton - Cross by Hayes

1 A No, if I step off --

2 Q It's going to fall, right?

3 A -- the bike will fall.

4 Q So if you're going to stay on the bike, you put your
5 foot on the ground, right?

6 A Yes, sir.

7 Q Are you left-handed or right-handed?

8 A Left-handed.

9 Q Left-handed. Ms. Williams that was in the black
10 Altima, she's your auntie?

11 A Well, she's my cousin, but she's a lot older than me.
12 I've known her all my life. She's up in age with my mother,
13 so I consider her as my auntie.

14 Q Okay. So you're a blood relative to Ms. Williams?

15 A Yes.

16 Q And when you pulled out of this party that we're
17 talking about, you got up on the driver's side of the Altima
18 and rode with it?

19 A Yes.

20 Q You passed Kelcie Gilbert on the dirt bike to get to
21 the Altima, right?

22 A No, me and the Altima was riding along. She was slow
23 driving.

24 Q Okay. And you were --

25 A She wasn't going at a fast pace.

1 Q So you were right there on the driver's side?

2 A Yes.

3 Q And did that car ever come to a stop?

4 A What, the Altima?

5 Q Yes.

6 A Yeah, he came to a stop at the stop sign, when it got
7 to the stop sign.

8 Q Were you right beside it then?

9 A No, it never came to a stop when I was riding with it.
10 We was at a slow pace. We never made a complete stop. It
11 was never at a complete stop at the stop sign yet. We
12 hadn't gotten that far.

13 Q And while you were beside the car, Mr. Gilbert came up
14 behind you, right?

15 A Yes, sir.

16 Q How close was he behind you?

17 A He was right up on the bumper.

18 Q Ms. Childs handed you a black and chrome gun?

19 A No, sir.

20 Q No?

21 A No, sir.

22 Q Mr. Gilbert then cut across that empty lot, right?

23 A Well, it's not an empty lot, a house was there. It was
24 like a house -- well, they old houses, but it's like a
25 residence, like a house on this side, a house on this side.

Victor Middleton - Cross by Hayes

1 Like, this is the road.

2 Q Well, let's talk about the road.

3 A Yes, sir.

4 Q Cave Avenue, that road is narrow, is it not?

5 A Yes, sir.

6 Q If somebody was coming at you coming off of 64,
7 somebody has got to hit the dirt, right? You can't pass
8 each other on that road?

9 A Yes, sir.

10 Q Somebody has got to pull over into the dirt?

11 A Yes, sir. In order to go around the car that's already
12 on that highway, you have to go in the grass, on the
13 sidewalk, yes, sir.

14 Q When I say empty lot -- you're talking about a home.
15 It's an old homestead, but there's not a home there now?

16 A Yes, sir.

17 Q It's just grass growing out of control, right, and
18 maybe pieces of the foundation?

19 A Well, I don't know how it is now, I haven't been down
20 there since the accident.

21 Q Well, about that time, during the accident time?

22 A People cut the grass there.

23 Q But you could drive a car straight across it and get to
24 64, could you not?

25 A Yes, sir.

1 (Defendant's Exhibit Nos. 1 through 4 were marked for
2 identification.)

3 MR. HAYES: May I approach?

4 THE COURT: Yes, sir.

5 BY MR. HAYES:

6 Q Mr. Middleton, I'm going to hand you what has been
7 marked as Defense Exhibit No. 1, No. 2, No. 3 and No. 4.
8 Can you take a look at them and tell me if you recognize
9 them?

10 A Yes, sir. This is where the accident happened at.

11 Q What are the pictures of?

12 A The highway.

13 Q Does it fairly and accurately represent the highway on
14 the day of the accident?

15 A Yes, sir.

16 MR. HAYES: At this time, Your Honor, I would move to
17 enter Defense Exhibits 1, 2, 3 and 4.

18 THE COURT: Any objection?

19 MR. MILLER: No objection.

20 THE COURT: Yes, sir.

21 (Defendant's Exhibit Nos. 1 through 4 were admitted
22 into evidence.)

23 BY MR. HAYES:

24 Q In No. 1, we're looking at Cave Avenue where if you
25 were sitting at the stop sign, it would be on the right-hand

1 side, correct?

2 A Uh-huh.

3 Q And on the right-hand side, you have a stop sign, a
4 street sign, a telephone pole and what looks to be a big oak
5 tree, correct?

6 A Uh-huh.

7 Q On the left-hand side of there, it looks like some kind
8 of small tree bush or crepe myrtle or something like that?

9 A Uh-huh.

10 Q So there's no way on the left or the right to get
11 around it, correct?

12 A Oh, there's a way. You can go around --

13 Q Right there?

14 A -- it just don't show up on the picture. Right there,
15 you can cut across --

16 Q Right, right. Well, that would be No. 2, correct?

17 A No, that's not here. See where the sheriff's car at,
18 that's where you can cut around. You can get around right
19 there, yes, sir.

20 Q So you're saying you can go around between the
21 sheriff's car and the tree?

22 A Oh, yeah. Yeah. Yeah. That's just pictures.

23 Q All right. And No. 3, that's Cave Avenue. That shows
24 how narrow that street is looking back the other direction,
25 correct?

1 A Uh-huh.

2 Q And this is just another angle there, that's the one
3 I'm talking about looking at --

4 A Yeah, but see, you got this space here. That's where
5 the car came round at.

6 Q You're saying that the car can go around --

7 A No, you just -- that's just a picture showing. If you
8 physically there personally, there's space right there where
9 you can -- cars can get right here. See, that's the cut-off
10 part right here. It's before that tree. These pictures
11 here you showing, you saying that the tree right here,
12 that's not the case. The case is cutting straight across
13 here.

14 Q Okay. But this is where Ms. Childs' car would have
15 been sitting at the stop sign, right?

16 A No, she was at the stop sign.

17 Q Right, that's what that is right there, right? Is that
18 right there at the stop sign?

19 A Yeah, but with the road, she was further up.

20 MR. HAYES: Can he stand up so he can point in front of
21 the jury?

22 THE COURT: Yes, sir.

23 BY MR. HAYES:

24 Q This is No. 4. This is the stop sign?

25 A Uh-huh.

Victor Middleton - Cross by Hayes

1 Q Tell me what you --

2 A The car was up, so with the car being up like in the
3 road part, this is the sidewalk where you cut across. So he
4 had enough room to cut around that car to come out, if you
5 get what I'm saying. Her Nissan Altima wasn't here if
6 that's what you getting at, it wasn't here. It was up.

7 Q Okay.

8 A She was more closer to the road.

9 Q Okay.

10 A So she had done bypassed the stop sign before she came
11 to a complete stop. She was letting me get ahead out in the
12 road.

13 Q Okay.

14 A His car had done whipped around here. Her car was
15 never here to the stop sign is what you getting at, no.

16 Q Okay. State's Exhibit 4, that's your motorcycle?

17 A Yes, sir. That's the highway.

18 Q That's the highway. That's the double yellow line
19 right in the middle of the road?

20 A That's where I was at.

21 Q Mr. Middleton, the weekend before this, you were also
22 at a cookout in Olar, were you not?

23 A Yes, sir.

24 Q And that weekend before, the police also were called,
25 correct?

Victor Middleton - Cross by Hayes

1 A Yes, sir.

2 Q And why were they called?

3 A Because there was shooting.

4 Q And you were shooting?

5 A No, sir.

6 Q You didn't shoot?

7 A No, sir.

8 Q Do you admit or deny giving a statement to Officer
9 Tammy that you also shot a Draco off in the air for your
10 niece because she wanted to see the fireworks?

11 A Yes, sir.

12 Q You admit it?

13 A Yes, sir.

14 Q You shot an AK47 pistol called a Draco?

15 A Yes, sir.

16 Q And that was the weekend prior?

17 A That was the weekend prior.

18 MR. HAYES: Nothing further at this time, Your Honor.

19 THE COURT: Any redirect?

20 MR. MILLER: No further questions, Your Honor.

21 THE COURT: Thank you.

22 All right. This witness may be excused.

23 Thank you. If you'll watch your step.

24 MR. MILLER: Your Honor, may the witness be excused?

25 He needs to get to work.

~~Norris Williams - Direct by Miller~~

1 THE COURT: Yes.

2 MR. MILLER: Your Honor, the State calls Lieutenant
3 Norris Williams of the Bamberg County Sheriff's Office.

4 THE CLERK: Will you please state your name?

5 THE WITNESS: Norris D. Williams.

6 THE CLERK: Raise your right hand and place your left
7 hand on the Bible.

8 NORRIS WILLIAMS, after being duly
9 sworn, testified as follows:

10 THE WITNESS: Yes, ma'am.

11 THE CLERK: Thank you, sir.

12 DIRECT EXAMINATION

13 BY MR. MILLER:

14 Q Lieutenant Williams, where do you work?

15 A Bamberg County Sheriff's Office.

16 Q How long have you worked there?

17 A Been there for 17 years, 17 and a half.

18 Q And what do you do for the sheriff's office?

19 A Everything there is to be done in law enforcement.

20 We're a small department. We have a tendency to do
21 everything, patrol, investigation, serve, everything.

22 Q Were you involved in the investigation of the shooting
23 of Victor Middleton?

24 A Yes, sir, I was called out after shots were fired.

25 Q It wasn't your case, though?

1 A No, sir.

2 Q Do you recall the evening of the incident where you
3 were? Once you responded to the call, where were you?

4 A I was off at the time I was called out and we met down
5 in Olar, South Carolina, at the old Olar PD.

6 MR. HAYES: What did he say?

7 MR. MILLER: At the old Olar PD.

8 MR. HAYES: I think it's the microphone.

9 THE COURT: Are you having trouble hearing him?

10 MR. HAYES: Yes.

11 THE WITNESS: I'll speak up.

12 MR. HAYES: Thank you.

13 BY MR. MILLER:

14 Q Do you have any idea how long after the actual incident
15 it was that you arrived?

16 A It was a little while. I would say an hour or two. We
17 were called from home, I was off duty.

18 Q Now, at some point in that evening, the Defendant came
19 up to the police department, didn't he?

20 A Yes, sir.

21 Q Were you there when the Defendant came up?

22 A I was.

23 Q And when the Defendant got out of the vehicle he was
24 in, did he have anything with him?

25 A He did, he brought a pistol.

Norris Williams - Direct by Miller

1 (State's Exhibit No. 9 was marked for identification.)

2 Q I want to show you what's been marked for
3 identification as State's Exhibit 9. Do you recognize what
4 this is?

5 A It's an evidence box we use for handguns.

6 Q Okay. And that's how y'all collect -- when you collect
7 a handgun in an investigation, is that how you store it,
8 inside of a box like that?

9 A Yes.

10 Q Take a look inside of it, please.

11 A (Witness complies.)

12 Q Do you recognize what's inside?

13 A I do.

14 Q And what is that?

15 A It's a handgun, nine millimeter handgun.

16 Q Is that the handgun that Kelcie Gilbert turned over
17 that night?

18 A It is.

19 MR. MILLER: Your Honor, one second, please.

20 (Pause.)

21 MR. MILLER: Your Honor, we have not got -- because of
22 the fact that it was in a bag, we have not got a gun lock
23 for this firearm. But we would move to introduce State's
24 Exhibit 9 subject to the sheriff has said he could get us a
25 gun lock and we will have it secured before it goes back to

1 the jury.

2 THE COURT: Any objection, Mr. Hayes?

3 MR. HAYES: No objection, I'm just kind of concerned
4 about allowing ammunition and a firearm being sent back.

5 MR. MILLER: It won't be sent back without it being
6 locked.

7 THE COURT: It will not be sent back until we have that
8 gun lock.

9 MR. HAYES: Yes, ma'am.

10 (State's Exhibit No. 9 was admitted into evidence.)

11 (State's Exhibit No. 7 was marked for identification.)

12 BY MR. MILLER:

13 Q I want to show you what's been marked for
14 identification as State's Exhibit 7. Do you know what these
15 are?

16 A Yes, sir.

17 Q And what are they?

18 A They're magazines for the handgun.

19 Q Was one of those magazines in the gun whenever it was
20 brought to you?

21 A Yes, sir.

22 Q And the other magazine was just handed over?

23 A Yes, sir.

24 Q Who handed the -- there are two magazines there, who
25 handed those over?

Norris Williams - Direct by Miller

1 A The gun was initially given to Captain Williams, who
2 made contact with the subject in reference to turning
3 himself in and said he was going to be bringing the weapon.
4 Once Captain Williams received it, he gave it to me to clear
5 it and take possession of it.

6 Q So you were present whenever he handed it to Captain
7 Williams?

8 A Yes, sir.

9 Q And just for clarification, because it seems like
10 everybody at the Bamberg Sheriff's Office is named Williams,
11 Captain Williams is Captain Eddie Williams?

12 A Eddie Williams, yes.

13 Q After the gun has been turned over, cleared,
14 everybody's together, what happened next?

15 A We went inside of the PD and Captain Williams
16 Mirandized Mr. Gilbert.

17 Q Now, you say Captain Williams Mirandized him, how did
18 he do that?

19 A We have a standard Miranda form that we read to the
20 subject explaining their Miranda rights, asking them if they
21 understand it clear and have them sign.

22 (State's Exhibit No. 2 was marked for identification.)

23 BY MR. MILLER:

24 Q I want to show you what's been marked for
25 identification as State's Exhibit 4. Do you recognize that

Norris Williams - Direct by Miller

1 document?

2 A I do.

3 Q I'm sorry, is that a 4 or a 2. That's a 2. I can't
4 see. What is that document?

5 A This is the standard Miranda form that I was just
6 discussing.

7 Q And who signed that form?

8 A It's signed by Kelcie Gilbert, myself and Lieutenant
9 Tammy Williams, at the time, as witnesses.

10 Q Another Williams?

11 A Another Williams, yes.

12 Q Or another Captain Williams now.

13 MR. MILLER: Your Honor, at this time, the State would
14 move to introduce State's Exhibit 2 into evidence.

15 THE COURT: Any objection?

16 MR. HAYES: I'd just like to see it first.

17 (Pause.)

18 MR. HAYES: No objection.

19 THE COURT: All right. So entered.

20 (State's Exhibit No. 2 was admitted into evidence.)

21 BY MR. MILLER:

22 Q So you were explaining to the jury a little bit there
23 about how y'all do this. You said that Captain Eddie
24 Williams Mirandized the Defendant utilizing the form. He
25 reads the form to him?

Norris Williams - Direct by Miller

1 A Yes, sir.

2 Q And then after everything is signed -- at some point,
3 did you start recording this interview?

4 A Yes, sir, by body camera.

5 Q And it was your body camera?

6 A I did have my body cam on, yes, sir.

7 Q And at some point, did you switch to another body
8 camera?

9 A I did.

10 Q And why was that done?

11 A My body camera's battery died.

12 Q And so did you -- was there ever a time period when you
13 weren't in the room while this was all going on?

14 A No, I was there the whole time, from the time he turned
15 himself in until we actually turned him over to be
16 transported to the jail. I did leave the room at one point
17 in time to check something that was said.

18 (State's Exhibit No. 3 was marked for identification.)

19 BY MR. MILLER:

20 Q Okay. You've reviewed what's been marked for
21 identification as State's Exhibit No. 3, have you not?

22 A I did.

23 Q And how do you know that's what you reviewed?

24 A Because I put my initials and the date on it when I
25 reviewed it.

1 Q And what is that?

2 A This is a compilation of two body cams that was used
3 for the Miranda as well as the interview.

4 Q And at one point in time, there is -- as you were
5 watching that, there is a place where the video skips,
6 correct?

7 A Right.

8 Q And that is what we call a redaction?

9 A Yes, sir.

10 Q Taking out something that needed to be taken out?

11 A Yes, sir.

12 Q Aside from the redaction, does that video fairly and
13 accurately represent everything that went on that day?

14 A It does.

15 MR. MILLER: Your Honor, at this time, the State would
16 move to introduce State's Exhibit 3, which is the redacted
17 video of the Defendant's statement.

18 THE COURT: Any objection?

19 MR. HAYES: No objection.

20 THE COURT: Yes, sir.

21 (State's Exhibit No. 3 was admitted into evidence.)

22 MR. MILLER: Your Honor, at this time, the State would
23 move to introduce State's Exhibit 7 as well. These are the
24 magazines that Lieutenant Williams testified about.

25 THE COURT: Any objection?

Norris Williams - Cross by Hayes

1 MR. HAYES: Just my prior concern of live ammunition
2 and a gun going back.

3 THE COURT: We'll enter it in once the gun lock is
4 placed on the weapon.

5 MR. MILLER: Thank you. Your Honor, at this time, the
6 State would like to publish State's Exhibit 3 to the jury
7 for them to view.

8 THE COURT: Yes, sir.

9 MR. MILLER: Ladies and gentlemen, I apologize, the
10 speakers will probably be really loud to y'all in the front,
11 but those in the back need to be able to hear.

12 (State's Exhibit 3, a video, was played for the jury.)

13 MR. MILLER: Lieutenant Williams, I don't have any more
14 questions for you. Please answer any questions that Mr.
15 Hayes might have.

16 THE WITNESS: Yes, sir.

17 THE COURT: Cross-examination.

18 CROSS-EXAMINATION

19 BY MR. HAYES:

20 Q Mr. Williams, the weekend before, you were the officer
21 that responded to the block party?

22 A I did.

23 Q And that was for shots fired?

24 A Yes, sir.

25 Q And half of Olar was out there shooting?

1 A That's what the story was. We got there and we asked
2 what happened. They said that somebody came outside and
3 started shooting and five or six different people starting
4 shooting guns. There was probably a hundred people out
5 there. Nobody saw anybody with a gun, they just heard
6 shots. Nobody wanted to say who did what. I did speak to
7 Mr. Gilbert on that day.

8 Q You also spoke to Officer DeLoach from the jail,
9 correct?

10 A I did. It was at her house, the party was at her
11 house.

12 Q And she told you that Victor had shot off the porch?

13 A He came on the porch and shot in the air and everybody
14 in the yard shot.

15 Q After he shot, everybody else went to shooting?

16 A Like the O.K. Corral.

17 Q And the result was everybody go to your respective
18 homes, clear out?

19 A I asked everybody -- Officer DeLoach and everybody to
20 put it in writing because them telling me wasn't quite good
21 enough for me to bring any charges. Nobody wanted to write
22 a statement. Nobody wanted their name to be mentioned.

23 Q And as a result, you just told everybody since nobody
24 would write a statement, clear out?

25 A Disbursed everybody from the party, ended the party,

1 sent everybody home.

2 Q On July 18th, did you actually respond to the crime
3 scene?

4 A After the incident, we met to apprehend Mr. Gilbert.

5 Q So you weren't there when the motorcycle was in the
6 middle of the road?

7 A No.

8 Q You were there only an hour, two hours --

9 A Maybe an hour and a half, two hours later. I don't
10 know the exact time.

11 Q Okay. And I believe the Solicitor has already asked
12 you, Mr. Gilbert showed up willingly at the police
13 department there in Olar?

14 A The reason we got together was because we were going
15 looking for him. Captain Williams has a long-term
16 relationship with the family. He made a call or a call came
17 in, somehow they made contact and he told us to standby,
18 he's supposed to turn himself in to us.

19 Q So y'all were waiting on him to come to you?

20 A So we waited for him to come to us, yes.

21 Q And he did?

22 A And he did.

23 Q And he gave you the gun?

24 A Yes, sir, got out of the car and gave it to Captain
25 Eddie Williams, and then Captain Eddie Williams gave it to

1 me.

2 Q Okay. Now that gun was sent to SLED?

3 A Yes, sir.

4 Q And when it came back, it hasn't been tested, has it?

5 A No. SLED is a busy agency.

6 Q Now, there's some ammunition in the bag, that's
7 Winchester?

8 A I believe so. I didn't look for sure.

9 Q Now, Winchester ammunition, that's what's in your gun
10 now, too, isn't it?

11 A Yes, sir.

12 Q Winchester is one of the three largest companies in the
13 United States that manufacturers ammunition, is it not?

14 A I believe so.

15 Q So it's very common?

16 A Very.

17 Q Did you search Ms. Childs' vehicle at the ER?

18 A I never went to the ER.

19 Q You never went to the Denmark ER?

20 A No, sir.

21 Q So when you got dispatched, the first place and the
22 only place you went was the Olar Police Department?

23 A Yes, sir. We were gathering -- like I said, small
24 county, small unit, so we were called out and we were going
25 to apprehend a subject who just shot somebody, so we met.

~~Norris Williams - Redirect by Miller~~

1 And in the process of us rallying, a phone call was made
2 saying stand by, he's coming to us.

3 MR. HAYES: Nothing further, Your Honor.

4 THE COURT: Redirect?

5 REDIRECT EXAMINATION

6 BY MR. MILLER:

7 Q When you went out the week prior, did anybody that was
8 there give you an indication that somebody had shot at
9 somebody?

10 A No. Nobody was mad at anybody. There was no argument,
11 no altercation. The bottom line was that Mr. Victor came
12 out of the house, fired a gun -- I didn't know what type of
13 gun at the time, I later heard it was a Draco -- in the air
14 and everybody that had a pistol returned fire in the air.
15 Nobody was mad, nobody was arguing. There was no
16 disagreement.

17 MR. MILLER: Thank you. No further questions.

18 THE COURT: Any recross?

19 MR. HAYES: No, Your Honor.

20 THE COURT: Thank you.

21 This witness may be excused.

22 MR. MILLER: Your Honor, we have, thanks to Sheriff
23 Bamberg, procured a gun lock and we will be locking that
24 gun.

25 (State's Exhibit No. 7 was admitted into evidence.)

1 MR. MILLER: The State has nine exhibits in evidence if
2 I can confirm that with the clerk of court.

3 Your Honor at this time, the State rest.

4 THE COURT: Thank you.

5 At this time, we're going to excuse the jury for a
6 break. If you'll excuse them to the jury room. Thank you.

7 (The jury exits the courtroom at 10:50 a.m.)

8 THE COURT: Any motions?

9 MR. HAYES: I've got a couple of things. One, I would
10 make a directed verdict motion. And then we also need to
11 address Mr. Gilbert with his Constitutional right to
12 testify.

13 Judge, at this time, I would move taking the evidence
14 in the light most favorable to the nonmoving party that the
15 State has failed to disprove self-defense beyond a
16 reasonable doubt.

17 THE COURT: Do you have any further argument with that,
18 Mr. Hayes?

19 MR. HAYES: No, Your Honor. And I would ask the Court
20 to grant a directed verdict.

21 THE COURT: Thank you, Mr. Hayes.

22 I'll give you a minute.

23 MR. MILLER: I don't know that we need it, Your Honor.

24 THE COURT: Any response, Mr. Miller?

25 MR. MILLER: No, ma'am.

1 THE COURT: Mr. Hayes, I'm going to deny your motion
2 for a directed verdict at this time.

3 Will Mr. Gilbert be testifying on his behalf?

4 MR. HAYES: Yes, Your Honor.

5 THE COURT: All right. Good morning, Mr. Gilbert.

6 THE DEFENDANT: Good morning.

7 THE COURT: Can we place Mr. Gilbert under oath, Madam
8 Clerk?

9 THE CLERK: Yes, ma'am.

10 KELCIE GILBERT, after being duly
11 sworn, testified as follows:

12 THE DEFENDANT: Yes, ma'am.

13 THE CLERK: Thank you, sir.

14 THE COURT: Mr. Gilbert, at this time, I'm going to
15 explain to you some of your rights. If you do not
16 understand anything that I say to you, you have your
17 attorney, Mr. Hayes, but please let me know and I will try
18 my best to explain it to you, sir.

19 Do you understand that?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Mr. Gilbert, we've reached the stage of the
22 trial where you may present your defense. You have the
23 right to claim the protections given to you under the Fifth
24 Amendment of the Constitution of the United States. That
25 amendment states in part: No person shall be compelled in

1 any criminal case to be a witness against himself. This
2 means that you cannot be required to testify in this case.
3 You have the right to testify on your own behalf, however,
4 no one can make you testify. So this is a personal right
5 and no one can waive this but you, Mr. Gilbert.

6 If you decide to testify, you will be subject to the
7 same rules that govern other witnesses, and you may be
8 examined and cross-examined on any relevant issue in this
9 case. In addition, if you have any convictions that involve
10 dishonesty or false statement for crimes or for crimes that
11 are punishable by imprisonment for more than one year, and
12 if this Court determines that the probative value of
13 admitting this evidence outweighs the prejudicial effect to
14 you, the Solicitor will be able to introduce that record in
15 order to attack your credibility.

16 Do you understand that, sir?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: All right. If you decide to testify, this
19 decision must be on your part freely, voluntarily and
20 intelligently made with knowledge of the protections given
21 to you by that Fifth Amendment and the consequences of your
22 decision to testify. If you decide not to testify, Mr.
23 Gilbert, I will instruct the jurors that they cannot give
24 the fact that you did not testify any consideration
25 whatsoever, and that there is to be absolutely no prejudice

1 to you because you did not testify. It is left entirely up
2 to you whether or not you testify, Mr. Gilbert. You may
3 talk with your attorney, your family and your friends, but
4 the final decision rest with you, Mr. Gilbert.

5 Do you understand, sir?

6 THE DEFENDANT: Yes ma'am.

7 THE COURT: All right. Do you understand everything
8 that I have explained to you regarding the Fifth Amendment,
9 the potential consequences of testifying and your ability to
10 make this decision on your own?

11 THE DEFENDANT: Yes ma'am.

12 THE COURT: Mr. Gilbert, do you have any questions
13 about what I've just told you?

14 THE DEFENDANT: No, ma'am.

15 THE COURT: Have you discussed whether or not you
16 should testify? Have you consulted with your attorney?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Do you wish to speak with him right now
19 about that decision?

20 THE DEFENDANT: No, ma'am.

21 THE COURT: All right. Mr. Gilbert, do you wish to
22 testify in this case?

23 THE DEFENDANT: Yes ma'am.

24 THE COURT: I'm satisfied that he understands the Fifth
25 Amendment as well as the potential consequences of

1 testifying, and I find that this decision has been made
2 freely and voluntarily all on his own, so we will go
3 forward.

4 The State has rested, so you will call your witnesses
5 as soon as we bring the jury back in, Mr. Hayes.

6 MR. HAYES: And we need to address his rap sheet, Your
7 Honor.

8 THE COURT: Yes, sir.

9 MR. MILLER: Your Honor, he has a conviction for giving
10 false information in 2007, which would be a crime of
11 dishonestly, not subject to further analysis. He also has
12 an assault and battery of a high and aggravated nature that
13 he was convicted of September of 2009, but received an
14 active sentence according to this of four years, 11 months
15 and 28 days, which would have put it within the ten-year
16 period. The rest of his convictions do not appear to be
17 applicable for impeachment. And, Your Honor, given the
18 circumstances, I don't plan to ask him about it anyway.

19 THE COURT: Okay. Mr. Hayes --

20 MR. HAYES: You don't plan to ask him about the ABHAN?

21 MR. MILLER: No.

22 MR. HAYES: Judge, the only thing, on the false
23 information to police, that is a 2007 conviction of a
24 magistrate level, that is outside the ten-year limit. Under
25 403 and 404, there has to be notice given to the defense

1 that they would intend to use something that was outside of
2 ten years as well as for a magistrate's charge, and I do not
3 have notice of that.

4 THE COURT: Mr. Miller, do you plan to address the
5 dishonesty charge?

6 MR. MILLER: Well, Your Honor, my understanding is if
7 it's a crime of dishonesty, none of those prohibitions or
8 limitations apply. That's all got to do with whether or not
9 it carries more than a year, as to whether or not it's a
10 ten-year charge, but, regardless, I'm not planning on asking
11 him about it anyway, so I don't want to put the Court in a
12 position of having to chase the rules as they change.

13 THE COURT: Well, Mr. Miller, if you're going to waive
14 your right to use this dishonesty -- and you're not going to
15 use the ABHAN either?

16 MR. MILLER: No, ma'am.

17 THE COURT: Mr. Hayes, if he's going to waive that and
18 he's waived it on the record, then it's a moot point.

19 MR. HAYES: Yes, ma'am.

20 THE COURT: So he's agreed not to that, sir.

21 Do you all need a ten-minute break?

22 MR. HAYES: I would like to use the restroom.

23 THE COURT: We'll stand down for the next ten minutes.

24 (Short recess.)

25 THE COURT: All right. Can we bring the jury in,

1 please?

2 MR. HAYES: Your Honor, I don't know if you want to
3 address housekeeping, but I've only got one witness.

4 THE COURT: You've got one?

5 MR. HAYES: And then I'm going to rest.

6 THE COURT: All right.

7 MR. HAYES: I don't know if you want us to just go
8 right on in or if you want to take a minute in between for
9 closing.

10 THE COURT: We're going to e-mail you our proposed
11 charges. Do you all have any proposed -- I didn't receive
12 any, but --

13 MR. HAYES: Ms. Alves is working on a proposed charge.

14 THE COURT: Okay. So it is not the standard charge for
15 self-defense?

16 MR. HAYES: That, I couldn't answer.

17 THE COURT: We'll wait.

18 Yeah, we'll go right into closing. Some people like to
19 do charging before closing, but I'm assuming you want to do
20 closing before my charge?

21 MR. HAYES: I just wanted to know how you want to do
22 it. I've done both. I wouldn't mind having about five
23 minutes in between.

24 THE COURT: That will be fine. We can do that.

25 You okay with that, Mr. Miller?

~~Kelcie Gilbert - Direct by Hayes~~

1 MR. MILLER: Oh, absolutely. Absolutely. And I do
2 have one request to charge I'll send you.

3 THE COURT: Yes, sir. Thank you.

4 (The jury enters the courtroom at 11:10 a.m.)

5 THE COURT: All right, ladies and gentlemen of the
6 jury, the State has now rested. We will now proceed with
7 the trial. The defense will present its case.

8 MR. HAYES: The defense would call Kelcie Gilbert to
9 the stand.

10 DIRECT EXAMINATION

11 BY MR. HAYES:

12 Q Mr. Gilbert, say your name and spell your last name for
13 the court reporter, please.

14 A Kelcie Gilbert, last name G-I-L-B-E-R-T.

15 THE COURT: Mr. Hayes, we've previously sworn Mr.
16 Gilbert in and that swearing in will carry over.

17 MR. HAYES: Yes, ma'am.

18 BY MR. HAYES:

19 Q Do you understand what she said?

20 A Yes, sir.

21 Q You swore to tell the truth, the whole truth, nothing
22 but the truth?

23 A Yes, sir.

24 Q Mr. Gilbert, do you remember July 18th, 2020?

25 A Yes, sir.

- 1 Q What was going on that day in the morning?
- 2 A In the morning?
- 3 Q Uh-huh.
- 4 A In the morning?
- 5 Q Let me help narrow you down. How did you end up in
- 6 Olar?
- 7 A My little cousin had a birthday party for his daughter.
- 8 Q Okay. Did you go to this party?
- 9 A Yes, sir.
- 10 Q How long were you at the party?
- 11 A Maybe an hour, if that long.
- 12 Q Okay. Why did you leave?
- 13 A Why did I leave?
- 14 Q Uh-huh.
- 15 A I was going to pick my girlfriend up.
- 16 Q What else was going on? Did you have an occasion to
- 17 talk to Lewis Orr?
- 18 A Yes, sir.
- 19 Q Now, without saying what Lewis told you, what did it
- 20 make you think?
- 21 A That I should --
- 22 MR. MILLER: Objection, Your Honor.
- 23 MR. HAYES: I'm asking what he thought at the time of
- 24 why he was leaving, not what Mr. Orr asked him. And I
- 25 believe present impressions are important.

~~Kelcie Gilbert - Direct by Hayes~~

1 MR. MILLER: It's the presence sense impression of the
2 person making the statement, not the presence sense
3 impression of the person the statement's made to. It's
4 hearsay.

5 THE COURT: I'll sustain. Please rephrase your
6 question.

7 BY MR. HAYES:

8 Q Is there more than one reason why you left the party?

9 A Yes, sir.

10 Q Why? What was the other reason?

11 A Go pick my girlfriend up.

12 Q Okay. What was the other reason you were wanting to
13 leave?

14 A That my life might have been in danger if I stayed.

15 Q And that's what you felt?

16 A Yes, sir.

17 Q When you left, how did you leave?

18 A I was on -- the party was on Fourth Street.

19 Q Okay.

20 A I left out on Fourth Street going up Fourth Street, I
21 turned right on Cave. As I turned right on Cave, there was
22 a black Nissan Altima going up the street real slow. So as
23 I'm going up Cave, a dirt bike came out of nowhere. As the
24 dirt bike passed by me, I noticed it was Victor Middleton.
25 He got beside the Nissan Altima, he leaned in --

1 Q Slow down. Take a deep breath. You're talking kind of
2 fast. Victor passed you?

3 A Yes, sir.

4 Q How long was he next to the black Nissan?

5 A I would say maybe halfway of Cave in between Cave and
6 64. Maybe halfway in between.

7 Q What was he doing next to the car?

8 A He was talking to someone on the driver's side inside
9 the car.

10 Q What did you see between the black Nissan and Victor
11 Middleton?

12 A As he leaned his dirt bike over to say something,
13 leaned the dirt bike back over straight, when he leaned back
14 over to the right, there was a black and chrome handgun, I
15 could see it clearly, passed out the driver's side.

16 Q Do you know which side -- what window it came out on?

17 A I'm not sure.

18 Q Just on the driver's side?

19 A Just the driver's side.

20 Q When you saw that, what did you do?

21 A What did I do?

22 Q Uh-huh.

23 A When he got the gun, he sped off to the stop sign and
24 busted right --

25 Q Wait, wait. When you saw the gun, what did you do?

- 1 A Oh, I went across the grass.
- 2 Q Why?
- 3 A Why did I go across the grass? Because my life was in
- 4 danger.
- 5 Q Why did you pick to go across that grass?
- 6 A That's the safest exit, quickest exit.
- 7 Q What was that exit?
- 8 A To the right across the grass to 64.
- 9 Q Highway 64?
- 10 A Yes, sir.
- 11 Q What did you see Victor Middleton do?
- 12 A As he made the right on 64, he stood on his right foot.
- 13 He had the firearm in his left hand, he cocked it. When I
- 14 seen him cock it, I grabbed mine, cocked mine and just
- 15 started shooting.
- 16 Q Where was your gun?
- 17 A It was in the glove box.
- 18 Q When did you reach for your gun?
- 19 A As he had the dirt bike stopped.
- 20 Q Where were you at is what I'm asking?
- 21 A I was in the grass.
- 22 Q You were in the grass?
- 23 A Yes, sir.
- 24 Q And where was your gun at?
- 25 A While I was in the grass?

1 Q No, in the car, where was your gun?

2 A In the glove box.

3 Q So when you saw Victor get the gun, you reached and got
4 your's and busted out through the grass?

5 A Yes, sir.

6 Q Why did you shoot him?

7 A Why did I shoot? If I didn't shoot, he would have shot
8 me and killed me.

9 Q So you shot?

10 A Yes, sir.

11 Q Did you look to see what was going on after?

12 A No, sir. I kept going.

13 Q Why?

14 A Because I'm trying to get to safety. My main concern
15 was getting somewhere safe. I thought he was trying to
16 kill, so the best thing I could do is escape.

17 Q Okay. Where did you go?

18 A Straight to my mother's house.

19 Q What did you do there?

20 A Talked to my mom, let her know what was going on, and I
21 was about to turn myself in. Let her know what happened and
22 I was going to turn myself in.

23 Q All right. Did you call somebody or did they call you?

24 A I think Eddie called me or I called me, or I called him
25 and he called me back.

Kelcie Gilbert - Direct by Hayes

1 Q Okay. So you had a conversation with Eddie Williams?

2 A Yes, sir.

3 Q Who is a sheriff's deputy here?

4 A Yes, sir.

5 Q What did you tell him?

6 A That I was coming to turn myself. He said they was at
7 the Olar Police Department. I said, I'll be there. He
8 said, How long you be? I said, Give me about 30 minutes.
9 We hung up. He called me right back, probably like two
10 minutes, asked me did I still have the firearm. I said,
11 Yes, sir. I'll bring it with me.

12 Q And what did you do?

13 A As I got to Olar, I got out the car. I had the firearm
14 in a tee shirt. I gave it to one of the sheriffs.

15 Q Okay. And then what did you do next?

16 A Walked inside the police department.

17 Q What did you do after that?

18 A We sat down. They was a few of them in there. They
19 read me my rights. I waived my rights or whatever and told
20 them what happened.

21 MR. HAYES: Judge, at this time, I don't have any more
22 questions.

23 Mr. Gilbert, please answer any questions Mr. Miller has
24 for you.

25 THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MR. MILLER:

Q Mr. Gilbert, would you agree with me that if nobody handed a silver or a chrome and black gun out of that car to Victor Middleton that he didn't have a gun?

A Repeat the question.

Q Your statement has been -- well, first, your statement was that it got handed out the driver's window, but now it's the driver's side because now you know that the driver's window doesn't go down. What I'm asking you is, do you agree with me that if a gun didn't come out of that car, then the victim didn't have a gun?

A Yes, sir. If there was no gun passed, he wouldn't have a gun.

MR. MILLER: No further questions.

THE COURT: Any redirect?

REDIRECT EXAMINATION

BY MR. HAYES:

Q You saw Ms. Childs hand -- or somebody hand Victor Middleton a gun?

A Yes, sir.

Q Do you know what window it came out of?

A I'm not sure. I just know it was the driver's side.

MR. HAYES: Thank you.

THE COURT: Any recross, sir?

1 MR. MILLER: No, Your Honor.

2 THE COURT: All right. Thank you.

3 This witness may be excused.

4 Thank you, sir. Please watch your step.

5 MR. HAYES: Your Honor, at this time, the defense would
6 rest.

7 THE COURT: All right. Ladies and gentlemen of the
8 jury, at this time, I'm going to -- I know we just came off
9 of a break, but we have some matters of law that we need to
10 handle outside of your presence, so we're going to escort
11 you back to the jury room at this time.

12 (The jury exits the courtroom at 11:20 a.m.)

13 THE COURT: Any motions?

14 MR. HAYES: Judge, I would renew my motion for directed
15 verdict.

16 THE COURT: Thank you, Mr. Hayes. Any argument, Mr.
17 Hayes, other than the prior argument?

18 MR. HAYES: No, nothing other than the prior argument.

19 THE COURT: Thank you, sir.

20 Mr. Miller, any response, sir?

21 MR. MILLER: No, ma'am.

22 THE COURT: Mr. Hayes, I'm going to deny your motion
23 for a directed verdict.

24 Do we have any other issues prior to closings?

25 MR. MILLER: I apologize, Your Honor, I think this

1 happened a little faster than anybody expected, but I'm
2 printing out now the request to charge. And it only relates
3 to the redaction that was in the video. It doesn't relate
4 to anything else. Everything else, we're fine with the
5 standard charge.

6 THE COURT: All right.

7 MR. MILLER: And I've given a copy to Mr. Hayes.

8 THE COURT: Do you have by any chance, because this is
9 rapidly going by, an electronic version that can be
10 e-mailed?

11 MR. MILLER: I'll e-mail it right now.

12 THE COURT: Do you have one that Ms. Alves could
13 e-mail?

14 MR. HAYES: I believe Ms. Alves could.

15 THE COURT: All right. I don't have any issue with
16 this redaction language.

17 Mr. Hayes, have you had opportunity to see the State's
18 charge?

19 MR. HAYES: Your Honor, I just read it. I do not have
20 an objection.

21 THE COURT: All right. So we will add that in as well.

22 MR. HAYES: Judge, I need just a minute to look at
23 this.

24 THE COURT: Please.

25 MR. HAYES: Judge, may I hand up a copy of our proposed

1 --

2 THE COURT: Yes, sir. Thank you.

3 Mr. Miller.

4 MR. MILLER: Your Honor, the State objects to
5 everything in italics that is in this request to charge.
6 The Court's charge of self-defense is completely adequate.

7 THE COURT: The Defendant does not -- is that what's in
8 italics? The Defendant does not have to show that he was in
9 actual danger?

10 MR. MILLER: It starts there, Your Honor --

11 THE COURT: And it goes through --

12 MR. MILLER: And then it goes to the top of the second
13 page. And then there's the final element of self-defense is
14 that the Defendant had no other probable way to avoid the
15 danger of death or serious bodily injury than to act as the
16 Defendant did in this particular instance. Then there's
17 another italicized portion that we would say is a comment on
18 the facts and is unnecessary to the charge, and we would
19 object to that. And then there's -- I think the rest of it
20 is the standard charge, actually.

21 Your Honor, the State would additionally request a
22 charge on assault and battery of a high and aggravated
23 nature as a lesser included of the attempted murder.

24 MR. HAYES: Judge, I would object to that as a lesser
25 included.

1 THE COURT: All right. So with regards to the
2 self-defense charge, the standard -- so we -- in the
3 standard charge of self-defense, it obviously goes through
4 those same elements that -- it goes through the elements of
5 self-defense, but it also goes on -- did you see the right
6 to act on appearances? The Defendant does not have to show
7 that he was actually in danger. It is enough that if the
8 Defendant believed he was in imminent danger and a
9 reasonably prudent person of ordinary firmness and courage
10 would have had the same belief. The Defendant has the right
11 to act on appearances even though the Defendant's belief may
12 have been mistaken. And it is for you to decide whether the
13 Defendant's fear of the immediate death would have been felt
14 by an ordinary person in the same situation.

15 I think the standard covers what you've written with
16 the exception of the Defendant had no duty to retreat if by
17 doing so the danger of being killed or suffering serious
18 bodily injury would increase.

19 MR. HAYES: Judge, may I approach?

20 THE COURT: Yes, sir.

21 MR. HAYES: I'm wanting to cite State vs. Raymond Day,
22 headnote 5, which is in the text on Page 7 of 11. A
23 self-defense charge is erroneous where the trial court fails
24 to charge --

25 THE COURT: Wait a minute, where are you, Mr. Hayes?

1 MR. HAYES: Page 7 of 11, second paragraph, left-hand
2 side about halfway down, headnote 5.

3 THE COURT: Yes, sir.

4 MR. HAYES: It starts with, A self-defense charge is
5 erroneous where a trial court fails to charge on the
6 elements of the defense which were applicable to the issues
7 raised by the Defendant. The instruction of the case was
8 incomplete. It should have included charging indicating
9 that Day had a right to conduct -- judge the conduct of
10 Renew more harshly than otherwise because of his prior drug
11 consumption.

12 What this is going to say, Judge, and what it's saying
13 is that a self-defense jury instruction has to be tailored
14 to the facts of each individual case when it's being given
15 to the jury.

16 THE COURT: Mr. Miller.

17 MR. MILLER: Your Honor, that case is 22 years old, and
18 I can probably give 22 examples of cases getting overturned
19 by our Supreme Court because the judge improperly charged on
20 the facts. The State submits that the self-defense law as
21 it was provided in the general charge book is completely
22 adequate and perfectly acceptable and it encompasses all of
23 the elements of self-defense that need to be covered.

24 MR. HAYES: Judge, this case is cited by Davis and
25 Jackson. It is still good law as to this issue.

1 THE COURT: And what specifically about your charge is
2 specific to Mr. Gilbert's case? Is it most importantly that
3 duty to retreat, is that what you're saying is specifically
4 his?

5 MR. HAYES: May I have just one moment?

6 THE COURT: Yes.

7 (Pause.)

8 MR. HAYES: Judge, as to -- the standard jury
9 instruction just covered -- I think this hashes it out more
10 as to the fact that the Defendant does not have to actually
11 show that he was in danger, that it was enough for him to
12 reasonably believe that he was in imminent danger.

13 Also, it specifically talks about the prior
14 difficulties that the Defendant and the victim may have had
15 and that they considered those, whether the threat existed
16 or whether the Defendant had a reason to believe that this
17 threat existed and how serious that threat was.

18 Also, Judge, it goes into and hashes out that he does
19 not have to wait for the victim to get the drop on him, and
20 that he has a right to act under the law of self-defense and
21 not have to be -- have an action taken against him first.

22 And we then go into in the second to last paragraph
23 talking about the exact calculation of the degree of the
24 amount of force which may be needed to avoid death or
25 serious bodily harm and that he has a right to use that kind

1 of force to counter back. And that he has a right to use as
2 much force as needed to appear to stop this from happening
3 under the ordinary person's standard.

4 THE COURT: Mr. Miller.

5 MR. MILLER: Your Honor, at the bottom of Page 2, the
6 prior instances of violence by the victim may be considered
7 in deciding whether the Defendant actually believed he was
8 in imminent danger of death or serious bodily injury or was
9 actually in imminent danger. And --

10 Well, first of all, I don't recall there being any
11 testimony of violence by the victim. There was testimony
12 that a week before this, the victim had shot into the air
13 with a gun. And then the officer -- which the victim said
14 he shot into the air. And then the officer got on the stand
15 and said there was nobody fighting, there was no pointing
16 guns at each other. There wasn't any testimony of violence
17 or prior instances of violence by the victim. And if there
18 was, that would be an improper comment on the facts.

19 THE COURT: You mentioned that you were objecting to
20 the italics, what about the last two --

21 MR. MILLER: The last two paragraphs?

22 THE COURT: On Page 3?

23 MR. MILLER: Judge, I think that the Court's charge
24 adequately covers the -- I think that the Court's charge
25 adequately covers the essential elements of self-defense.

1 THE COURT: Mr. Hayes and Mr. Miller, I'm going to add
2 in the last two paragraphs of Page 3, but I think other than
3 that, the standard charge will remain. So what I'm going to
4 do is use this standard charge that I have here and add on
5 -- supplement with these two paragraphs on Page 3, a person
6 cannot be required to make an exact calculation, through the
7 end. Both of your objections are noted on the record.

8 MR. MILLER: Thank you, Your Honor.

9 THE COURT: Mr. Miller, we don't have the requested
10 charge on the redaction. It may have gone -- my e-mail has
11 been disabled for the last week.

12 MR. MILLER: Okay, I will try that again.

13 MR. HAYES: Your Honor, I want to make a copy of the
14 jury instruction request a Court Exhibit for the record. We
15 will have to get a clean one because I've written --

16 THE COURT: I've written on the one that you gave me as
17 well.

18 MR. HAYES: We'll get one printed out.

19 THE COURT: Yes, sir, we'll do that.

20 MR. HAYES: Thank you.

21 THE COURT: Mr. Miller, are you asking that ABHAN be
22 placed on the verdict sheet as well?

23 MR. MILLER: Yes, ma'am. I would think that it would
24 just be if you find the Defendant not guilty of attempted
25 murder as to the charge of assault and battery of a high and

1 aggravated nature, and then just the standard language.

2 THE COURT: Mr. Hayes.

3 MR. HAYES: Judge, I object. The State either proved
4 or it didn't prove attempted murder.

5 MR. MILLER: Judge, that's not the law. The only
6 difference between the attempted murder and the ABHAN is the
7 malice and the specific intent. And if we didn't prove the
8 malice and specific intent, he can still be convicted of
9 ABHAN.

10 MR. HAYES: Judge, unless they're conceding that they
11 didn't prove malice and intent, they're the ones that
12 elected to go forward with the attempted murder charge.
13 They got to choose which charge they moved forward on, and
14 we're objecting to it.

15 THE COURT: Mr. Hayes, it's a lesser included.

16 MR. HAYES: It is. So is assault and battery second or
17 assault and battery first or third. They're all
18 lesser-includes of each other.

19 MR. MILLER: Your Honor, it just doesn't need to be to
20 the point of extreme. There's no way that a jury could find
21 that somebody who was shot seven times, including multiple
22 times in the back was not an injury that was likely to cause
23 death or great bodily injury. There was the requisite
24 battery, so it's ABHAN charge. If he was acting in
25 self-defense, it works the same way.

1 Also, on the possession of a firearm during the
2 commission of a violent crime, that would also -- ABHAN
3 would also be a violent crime. So if you find him not
4 guilty of the attempted murder and you find him guilty of
5 the ABHAN, then if you find him guilty of possessing a
6 firearm while either one, then he would be guilty of
7 possession of a firearm charge. But if you determine he's
8 not guilty of attempted murder or ABHAN, you don't need to
9 consider the possession of a weapon, whether or not he
10 possessed a weapon while he did it.

11 MR. HAYES: Your Honor, if you're inclined -- if you're
12 going to charge the lesser included, I would ask that the
13 Court also charge the assault and battery in the first
14 degree on the same argument as the Solicitor's. As their
15 argument, you could charge assault and battery in the first
16 degree. The person commits the offense of assault and
17 battery in the first degree if the person unlawfully injures
18 a person and the act offers, attempts or injures a person
19 with the present ability to do so and the act is
20 accomplished by means likely to produce death or great
21 bodily injury or occurred during the commission of robbery,
22 burglary, kidnapping or theft. Here under B(1),
23 accomplished by means to produce death or great bodily
24 injury, it would also be included. But I'm still objecting
25 --

1 THE COURT: I understand.

2 MR. HAYES: But if you're going to, I'm asking --

3 THE COURT: In the alternative, I understand.

4 MR. HAYES: Yes.

5 THE COURT: Mr. Miller, any response to the request to
6 add assault and battery one?

7 MR. MILLER: Your Honor, I think that that subsection
8 is only applicable whenever there's no battery resulting.
9 It's the offer or attempt without the battery because you
10 don't have an ABHAN -- if you shoot at somebody with a gun
11 -- and there's case law of this. If you shoot at someone
12 with a gun and for whatever reason, because you didn't have
13 the specific intent, you're not guilty of attempted murder,
14 you don't get an ABHAN charge, it goes straight to assault
15 and battery first. That's what happens when you don't have
16 the resulting battery.

17 If you have the resulting battery, like we have here,
18 there's not any dispute about that, if you have the
19 resulting battery and it's not an attempted murder for
20 whatever reason, it is probably considered whether or not
21 it's an ABHAN. At least, that's our position.

22 THE COURT: I understand.

23 Any response to that, Mr. Hayes, before I make a final
24 decision.

25 MR. HAYES: Well, with no battery, it would be assault

1 and battery second -- with the battery, it would be assault
2 and battery second.

3 THE COURT: Okay. I am going to charge the ABHAN, so
4 we need to alter the verdict form to include the ABHAN. I
5 am not going to charge on the assault and battery second.

6 MR. MILLER: Thank you, Your Honor.

7 THE COURT: Gentlemen, for some reason, the original
8 charge we sent you did not include -- it just didn't save
9 the standard objection charges, the standard statement of
10 counsel charges, but we're going to add them back in and let
11 you take a look at it before we go forward.

12 MR. MILLER: Thank you, Your Honor.

13 Your Honor, may we approach?

14 (Bench conference.)

15 (Court's Exhibit No. 1 marked for identification.)

16 THE COURT: Are you ready, gentlemen?

17 MR. MILLER: Yes, Your Honor.

18 MR. HAYES: Yes, Your Honor.

19 THE COURT: Let's bring the jury back in.

20 (The jury enters the courtroom at 12:04 p.m.)

21 THE COURT: All right. Ladies and gentlemen of the
22 jury, we are now at the stage of the trial where we will
23 have the final arguments by the attorneys. Once they have
24 completed their final arguments, I will instruct you on the
25 law.

1 Now, closing arguments are like opening statements.
2 They are not evidence in the case. Obviously, these
3 attorneys will be arguing the evidence in the light most
4 favorable to their positions, but it is not evidence.

5 You have heard all of the evidence. The testimony and
6 the exhibits are where you will make your decision.
7 However, please pay close attention to their arguments. And
8 once they have completed them, I will instruct you on the
9 law and then, it will be in your hands for deliberation.

10 Mr. Miller.

11 MR. MILLER: Your Honor, the State would waive first
12 closing.

13 THE COURT: Mr. Hayes.

14 CLOSING ARGUMENT BY MR. HAYES

15 MR. HAYES: May it please the Court.

16 Ladies and gentlemen, in the beginning, I asked you in
17 the opening to sit there and think about who's got stake in
18 the game, who's got skin in the game. Well, our position is
19 Ms. Williams, Rosalyn Williams has got skin in the game.
20 She's in the car with Iyonna Childs. Iyonna Childs has got
21 skin in the game because this is her boyfriend. She handed
22 him the firearm. Well, if that was said, I think the roles
23 would be flipped, Mr. Gilbert would be testifying as the
24 victim. Mr. Middleton would be sitting next to me at the
25 defense table. There's skin in the game.

1 Now, let's kind of go through it a little bit
2 person-by-person. I know it's a little out of order, but
3 that's the way they were called, so I'm going to start with
4 Ms. Childs. She is the girlfriend of Victor Middleton. She
5 told you she's taking her baby to the babysitter and Ms.
6 Williams is riding with her, and that Victor passed through,
7 caught up with them and started talking to them.

8 She also said the window doesn't work on the driver's
9 side, but the back window rolled halfway down. It is not a
10 far stretch to believe somebody can lean back and stick a
11 gun out to somebody on a motorcycle who can't reach over and
12 grab it. She also told you there was a beef between those
13 two. She also told you that Kelcie Gilbert was on her
14 bumper.

15 I've put in some pictures as well as the State and you
16 can see the tire tracks. You can see the stop sign. Kelcie
17 Gilbert didn't hit that grass from her bumper at the stop
18 sign. He hit that grass when he saw that gun. And where
19 did he go? To Highway 64. In his mind, a straight line to
20 the main road, I'm going to safety. I'm going to get out of
21 here.

22 He also said something in his interview that I think
23 was important. I'm on four wheels in a slow car, a Saturn,
24 he's on two. Anybody knows anything about any vehicles, if
25 you're in a truck or a car or even a Camero or a Corvette,

1 you don't race a motorcycle. More horsepower per weight,
2 they are faster from the line, they will leave you.

3 So I believe the State is going to argue well, he ran
4 him down. Victor turned on that motorcycle and he cut
5 across the grass and ran him down. That's what the police
6 in the interview that y'all got to watch kept telling him,
7 you ran him down. Why didn't you back up? Well, you know
8 what, Monday morning quarterback, like I told you in the
9 beginning, it's always easier to say what you think you
10 would do Monday after it's done. He's on this little road
11 and he's trying to go somewhere. Ms. Childs is in front of
12 him. Why didn't you go in reverse and back up? Because he
13 might hit something. It's a little short road, there's 64
14 right there, straight line. I can get out.

15 They kept saying well, you went around, you went around
16 the Altima. No, he didn't. He went through the grass. How
17 many times did he tell them? Over and over in the
18 interview. And they kept coming back with, I believe I
19 counted four times, well, there's three of them, one of you.
20 That's not how this works. Three of them, one of you, this
21 is not how the law works. Three to one, huh-uh, skin in the
22 game. All three of them have skin in the game.

23 Now, Victor gets up and he tells you this is the
24 fastest motorcycle you can get other than getting something
25 that his not street legal. It's a 2020 YZ450. I don't know

1 anything about motorcycles models or brands. I know about
2 the general concept how horsepower lightweight makes it
3 fast. But he didn't it would get it, it was fast.

4 Now, they're going to say well, he tried to run him
5 down. I'm going to say, you know what, it doesn't matter.
6 Kelcie Gilbert sees a gun come out the window, he hits the
7 grass. He's trying to get away. The motorcycle is going to
8 run him down and he's going to stop right there and he's
9 going to point a gun at Kelcie. And Kelcie in the video,
10 watch the video again, shows how he racked it in his left
11 hand, right hand working the slide. That's what a lefty
12 does, holds the gun in his left hand, manipulates the gun
13 with the right. Victor told you he was left-handed.

14 Now, the other reason it doesn't matter who left first.
15 Kelcie hits the grass, he's running. Victor can run him
16 down, okay. He can run him down. He can get there before
17 Kelcie can get across and stop and wait on him. If Kelcie
18 left first, the only way that motorcycle was sitting there
19 for Kelcie to even have a shot at him, to be in danger,
20 Victor stopped and waited. Otherwise, if Victor left,
21 Victor's halfway to Allendale before Kelcie gets across the
22 line.

23 And he told the police this over and over and over.
24 They asked him about the gun the night he turned himself in,
25 did you get the black and chrome gun? Did you get it?

1 Nobody got it. They didn't look for it in the car of Ms.
2 Childs when they're at the hospital. They didn't have it at
3 the crime scene. She told you, there was people walking all
4 over that crime scene. There were random people in a couple
5 of the pictures, you look at them. She admitted there was
6 people in her crime scene. She collected what was there.
7 He gets shot, he drops the gun. There's people walking
8 around the crime scene, family all walking around, family
9 pulling up and blocking off so the motorcycle doesn't get
10 ran over by a car. It is not a far fetch that somebody
11 picked that gun up and took it away.

12 He didn't drop the gun and he carries it back to the
13 Nissan. He gets in it and they're going to the ambulance.
14 He gets out of the ambulance and what did Ms. Childs tell
15 you? She didn't go straight to the hospital. She took her
16 child to the daycare. Where else did she go in between?
17 What else did she do? Rosalyn can't get on the same page.
18 No, we followed the ambulance all the way there. None of
19 their stories were exactly the same. Kelcie's story is the
20 same as it was the day he came in.

21 They're going to say well, the casings are the same,
22 same brand. Winchester. They did not test it. There is no
23 scientific testing that says that those shell casings came
24 out of my client's gun. They didn't find my client's car
25 and they did not search it. They couldn't tell you if

1 there's shell casings in his car. But what I can tell you
2 is everybody that testified said Kelcie Gilbert was in the
3 grass or the sidewalk when he shot Victor Middleton.

4 Victor said sitting from that chair that that window is
5 how close they were. Victor's motorcycle was laying on the
6 double yellow line. That is more from that sidewalk than
7 from that window. That is a whole entire lane and a median
8 and a sidewalk from the grass. But Victor told you, he was
9 shot from the grass.

10 And these little orange lines or circles, you'll get it
11 up close, they're shell casings, all in a row. That's not
12 the grass. And then right beside them is the motorcycle.
13 But they're going to say Kelcie said he didn't know. Kelcie
14 don't know if he shot. I don't know, maybe, no, I don't
15 know.

16 I tell you what Kelcie knew, Kelcie knew he saw a gun
17 and he took the fastest route that he thought he could get
18 away. I'm going to 64, I'm going to my momma. I'm getting
19 out of here. Victor pulled that motorcycle around and laid
20 it down or Victor ran him down. Because there's no way a
21 Saturn could have a caught by their theory, not a four-wheel
22 Saturn.

23 And when it happened, Kelcie told you I went home, I
24 told my momma. I was scared. He then called or they called
25 or they called back and forth and he called the police and

1 he says I'm coming. I'm turning myself in. I'm bringing
2 the gun. I'm going to give it to you. He comes back to
3 Olar, comes back to the crime scene, because its across the
4 street, as Ms. Tammy told you. Here's the gun and I'm going
5 to tell you my story. This is what happened. And he told
6 that story and told that story and he's told that story
7 today. But it's not the story they wanted to hear. They
8 kept asking him well, why didn't you back up? A lot of
9 things you could do. He saw a way out and that's the way he
10 went.

11 Ladies and gentlemen, I also asked Tammy, If somebody
12 pulled a gun on you, what would you do? She said, I would
13 shoot, wouldn't anybody?

14 Ladies and gentlemen, it is not a game of three to one.
15 It is who's telling the truth. Three people sat up here for
16 the State and they didn't even get their story straight.
17 And they were the same people that were in the black Nissan
18 and on the motorcycle. The same people that Kelcie told you
19 I saw a gun come out of the window and I hit the grass and I
20 tried to run and I tried to get away. When I come across
21 that grass, he was sitting there and he was racking a gun
22 and a slide and he was pointing it at me. And I shot and I
23 went home.

24 Skin in the game. It's not about who's got three to
25 one or one to three. It's who's telling the truth. And

1 that's what y'all are here for. Who do you believe?

2 Ladies and gentlemen, I'm going to close, but one more
3 thing. Guilty people that do attempted murder don't call
4 the police. They don't come back to the crime scene. They
5 don't bring the gun and hand it over and they don't sit down
6 and tell a 40-minute conversation to the police. But the
7 one thing I do agree with is Lieutenant Williams,
8 self-defense is for court, and that's what we're here for
9 today. And I believe we have established it and I'm going
10 to ask you to find him not guilty. Thank you.

11 THE COURT: Mr. Miller.

12 CLOSING ARGUMENT BY MR. MILLER

13 MR. MILLER: Thank you, Your Honor. May it please the
14 Court?

15 Ladies and gentlemen, I find it pretty remarkable that
16 Mr. Hayes talks about skin in the game, skin in the game.
17 Who's got skin in this game? Who's got a motivation to lie?
18 None of those three people that testified for the State were
19 charged with anything. Kelcie Gilbert was.

20 He says Kelcie's story didn't change. Yeah, it did.
21 You know how it changed? On the video when he's talking to
22 the police, he says she handed him the gun out the driver's
23 window. She handed him the gun out the driver's window.
24 She handed him the gun out the window. She handed him the
25 gun out the driver's window. You can listen to it again if

1 you want to. He was very clear that the driver handed the
2 gun to him out the window. It wasn't oh, I don't know which
3 window, it was something on the driver's side until he found
4 out that the window didn't roll down. Well, when he found
5 out that the window didn't roll down, he had to change his
6 story. So what did he do, he didn't change it there because
7 he didn't know. He changed it right there from that witness
8 stand. Because he had already made up a story, so he had to
9 stick with it.

10 Let's think about logically what has happened here.
11 Kelcie Gilbert says that as he's coming up behind this car,
12 he sees them, they're going slow. By the way, you've heard
13 all about this dirt bike. Here's this guy who's not a large
14 person, who's not a big man, he is supposedly on this dirt
15 bike, clutch, brake and acceleration, okay. He supposedly
16 rides really slowly beside this car, gets something that's
17 now being passed out the back passenger window, not the
18 driver passing it out the driver's window. You think about
19 a Nissan Altima and think about how that happened. As soon
20 as he gets it, he says it's a gun and Kelcie takes off
21 across the field.

22 Here's the problem with that story. First problem,
23 there is the motorcycle. That green car didn't have
24 anything to do with the incident. Y'all heard the testimony
25 about that. That was just somebody that pulled in front of

1 the motorcycle so that it would not get hit by somebody
2 coming down the road. Here are the shell casings. Let's do
3 a little math. If, if he gets this gun -- first of all, how
4 does he gun it? How does he accelerate? The gun is in his
5 right hand, you would assume, if it got passed through the
6 window. The gun is in his right hand. Okay, he moves it to
7 his left hand. Now, he doesn't have a clutch. I think most
8 of y'all have probably driven a car, if not a motorcycle,
9 the clutch is kind of important. You can't really do a
10 whole lot without it. But he accelerates, got the gun in
11 his left hand, okay. That's what the story is.

12 Now, if you have a triangle -- and y'all remember how
13 this works, I need a square, but anyway, if you have a
14 triangle, what's the longest leg of that triangle? It's the
15 diagonal. So if he goes this way down Highway 64, Kelcie
16 Gilbert is going this way to get to Highway 64, Kelcie
17 Gilbert has further to travel than he does. Okay. Kelcie
18 Gilbert doesn't look at him and go down there and see him
19 stopped, that's not what he said. Kelcie Gilbert said he's
20 making this turn, so I'm taking off through the grass.

21 Remember what Mr. Hayes said about oh, yeah, he said
22 he's on two wheels and I'm on four wheels. If you're in a
23 four-cylinder Saturn which has four wheels, why would you
24 try to outrun a dirt bike over the grass? That makes no
25 sense. He took off and he stopped and he waited on the

1 motorcycle to get there, and then he opened fire.

2 You know what this is, ladies and gentlemen, this is
3 the position of the shell casings that were collected at the
4 scene. That's not being fired from a moving car. The
5 motorcycle, the dirt bike hasn't gotten to his position yet.
6 How is that possible? How is it possible that Victor has
7 this huge dirt bike and he's got it and he's sitting there
8 on this huge dirt bike, which by the way, he had to stop it
9 without being able to use the clutch, if you believe that
10 story. And when you stop something that doesn't have a
11 clutch, you know what happens then if it's still in gear.

12 He has to stop the motorcycle, he has to stand there on
13 one leg because he can't sit on top of the motorcycle with
14 it stopped without leaning it over because he's not tall
15 enough. Now, he supposedly is racking the gun. But
16 amazingly, before he can rack that gun, old Kelcie here
17 driving, sees him, which one is it, is it stopped? Because
18 if he's stopped and he's racking the gun, then how did you
19 reach into the glove box, pull out your own gun, chamber a
20 round and then shoot at him without him getting a shot?
21 That's ridiculous. He would have pulled the trigger if he
22 had a gun. But he didn't have a gun. On the other hand, if
23 he didn't stop, then he would have been on down.

24 You know what Kelcie Gilbert could have done to avoid
25 this problem, he could have done nothing. He could have sat

1 right there in his car because he told you he turned in
2 front of the car and turned right and went off down Highway
3 64.

4 Ladies and gentlemen, he said from that witness stand
5 if Ms. Childs did not hand a gun to Victor Middleton that
6 day, then Victor Middleton didn't have a gun. The reason
7 that he had to come up with some story about a gun was
8 because he had just shot a man seven times, including
9 several times in the back.

10 Now, if Victor Middleton had a gun and that was why he
11 shot him, why wasn't he on the phone to the police? Why
12 wasn't he calling them and telling them I just got attacked
13 by Victor Middleton? Why wasn't he telling them he jumped
14 into this black Altima with these other people, you need to
15 make sure that you go and secure that gun?

16 The defense would have you believe that the only people
17 who had any kind of allegiance to anybody in that whole area
18 of Olar were these great friends of Victor Middleton.
19 Kelcie Gilbert has got people there, too. It's not like
20 they're sitting there going hey, let's get everything we can
21 out of the street. Which shell casings do we take? Well,
22 there were seven shell casings collected and there were
23 seven holes in Victor Middleton's body, who else shot?

24 Kelcie Gilbert said I don't think he got a shot on me.
25 You know why? Because he knew there wouldn't be any

1 evidence that he got shot. He was trying to explain why
2 they weren't going to find any evidence that Victor
3 Middleton had a gun. He was trying to explain how Victor
4 Middleton got a gun. He was trying to explain how he knew
5 that Victor Middleton had a gun and he was trying to explain
6 why the police weren't going to find any evidence of that
7 whatsoever. And the best part is, he also started trying to
8 make the people that were in that Altima not credible either
9 by saying they were participating because one of them handed
10 the gun out the window to him so that later on his attorney
11 could stand up and talk about skin in the game.

12 Think about what happened. I asked you before, use
13 your common sense. The Judge is going to charge you in just
14 a few minutes with the law on self-defense. And one of the
15 things the Judge is going to tell you is that to disprove
16 self-defense, the State has to establish beyond a reasonable
17 doubt that one of the elements is not met.

18 Here's the final element of self-defense. The
19 Defendant had no other probable way to avoid the danger of
20 death or serious bodily injury than to act as he did in this
21 particular instance. You can watch the video again if you
22 don't recall, Kelcie throwing his hands up in the air yeah,
23 I should have done something different. He admits it. He
24 says I could have backed up. He says I could have stayed
25 there. He says I couldn't go to the left -- that's what

1 he's telling the police, I couldn't go to the left. I'm not
2 real sure why whenever he got to the highway he couldn't
3 have turned left, but okay.

4 He is trying to set up a story. He is trying to set up
5 a story that explains all of the facts. He's trying to set
6 up a story that explains why there's a guy that was shot in
7 the middle of Highway 64 in Bamberg County seven times.
8 He's trying to make up a story that fits the facts, so he
9 imagines this chrome and black gun and he imagines okay, Ms.
10 Childs hands it out the window to him. Then somehow,
11 someway, he ends up stopped ahead of the motorcycle, because
12 the motorcycle hasn't even gotten to him yet and unloads
13 seven rounds on Victor Middleton. He's got to explain that.

14 And the problem with his story, aside from the fact
15 that Ms. Childs -- what's she got to do with it? What --
16 she doesn't have anything to do with it other than he was in
17 there talking to her a few minutes before, then he pulls out
18 and gets shot in front of her.

19 What does Ms. Williams have to do with it? Do you
20 think that Ms. Williams, really, if you looked at her
21 sitting on that stand, do you think she is the type of woman
22 that would have sat there silent while somebody was playing
23 around with a gun with a one-year-old child in the car seat?
24 No. Grandmas don't play that. Grandmas are the ones
25 telling you what do you have a gun for.

1 Why would Ms. Childs have a gun? Was she just holding
2 it waiting on Victor to ride up next to her so she could
3 pass it out the window? That's ridiculous. How did she
4 hand it out the back window?

5 This all goes back to what we said before. If you use
6 your common sense, you would know that his story is a lie.
7 Why would he lie? Well, he doesn't want to be held
8 responsible for trying to murder Victor Middleton. That's
9 using common sense. That's using logic. That's looking at
10 the evidence in the case and considering the testimony from
11 the stand and saying I know what everybody said, but that
12 story doesn't make sense. That story is not possible. You
13 heard it from Kelcie Gilbert's own mouth, if a gun didn't
14 get passed, then Victor didn't have a gun.

15 Now, they have staked the entire self-defense theory on
16 the fact that Victor pointed this gun and somehow Kelcie was
17 able to get his gun out of the glove box and he was able to
18 shoot Victor before Victor could get off a shot. But you
19 know that Victor never had a gun. You know that he didn't
20 have a gun on that motorcycle that day. Because there was
21 no way he could have gotten the gun the way that Kelcie
22 Gilbert claimed that he got the gun.

23 One of the most difficult things for juries in my
24 experience, having talked to a bunch of them, is sometimes
25 it's really hard just to sit there and say we don't believe

1 you. People don't want to do that. They don't want to call
2 somebody out as not telling the truth, particularly when
3 they sat up there and put their hand on the Bible and swore
4 to tell the truth. Ladies and gentlemen, somebody is not
5 telling the truth. Somebody's story is BS. And it's Kelcie
6 Gilbert.

7 He took two hours because he sitting there trying to
8 figure out how he was going to tell a different story. He
9 took hours because he was thinking to himself well, the only
10 way it's going to be okay for me to shoot somebody in front
11 of two people is if the person that I shot was trying to
12 shoot me. Well, he needs to have a gun. Well, what if they
13 have a whole bunch of people there that's going to testify
14 he didn't have a gun when he got on his motorcycle? He
15 needs to get the gun while he's right there. Good, that's
16 the story I'm going with two hours later when he shows up.

17 But even at that point in time -- you heard from
18 Captain Williams, even at that point in time, the police
19 didn't know that the window didn't roll down. The police
20 just knew that the story was fishy from go, talking about
21 riding over here. If you're riding and you're trying to get
22 away, then why are all the shell casings right there?
23 They're right there because he stopped, he stopped so he
24 could point the gun at him and shoot at him. That's why all
25 the shell casings are right there.

1 If you're running for safety, why do you stop? He
2 wasn't running for safety. He was driving over there to
3 shoot him. And you heard the testimony, Victor started to
4 slow down because he sees this guy. What's he going to do,
5 run into the side of him? He starts slowing down. How he's
6 doing that with no clutch and one hand, I don't know. What
7 makes sense is he didn't have anything in his left hand. He
8 started slowing down when he sees Kelcie. Kelcie comes to a
9 stop, or close to it and he starts shooting at him. So he
10 doesn't return fire because he doesn't have a gun. He turns
11 around and starts running, Kelcie keeps shooting, shooting
12 him in the back.

13 Ladies and gentlemen, this is not a case of
14 self-defense. This is a case of attempted murder. The
15 Judge is going to tell you what the elements of attempted
16 murder are, and then she's going to, I believe, give you her
17 charge so that you can take it back there. And when you
18 look at attempted murder, it's going to say that, in this
19 case, Kelcie Gilbert attempted to murder Victor Middleton
20 with malice aforethought. All that means is hatred, ill
21 will, that's what malice means. And when he stopped that
22 vehicle and shot him and shot him in the back as he was
23 running away, that's hatred and ill will. That's malice.
24 And that's why it's attempted murder.

25 He knew who Victor Middleton was. Victor Middleton

1 knew who he was. He aimed at Victor Middleton with the
2 intent of taking his life. He had the specific intent to
3 take his life. And he tried as hard as he could with seven
4 bullets before he drove away. Keep that in mind, too.

5 His testimony and Victor's testimony and the two
6 women's testimony, all of them said that after being shot
7 multiple times, as he was getting shot multiple times,
8 Victor Middleton is running back to the Altima, he jumps in
9 the Altima and the Altima speeds away. At that point, why
10 didn't Kelcie Gilbert say threat taken care of, I need to
11 call the police? He doesn't do that. He runs. And he only
12 runs for one reason, because he knows what he just did was a
13 crime.

14 Ladies and gentlemen, there is only one true verdict in
15 this case. The true verdict -- and that's what verdict
16 means, it's a Latin word which means to speak the truth.
17 It's one of these old words we use in the law. But your
18 verdict is the truth. That's what it is, the truth as you
19 find it. And the truth is Kelcie Gilbert is guilty of
20 attempting to murder Victor Middleton. Kelcie Gilbert is
21 guilty of having in his possession that pistol that was in
22 evidence because that's what he used to try to commit that
23 crime. We submit to you, ladies and gentlemen, the only
24 true verdict in this case is guilty on both counts. Thank
25 you.

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CHARGE ON THE LAW

THE COURT: Ladies and gentlemen of the jury, I want you to stand up and take a stretch break. Get your blood pumping.

(Jurors stood.)

THE COURT: All right. Have a seat for me. I have a lot to explain to you. I want to make sure you're listening and that you're attentive to what I'm saying to you.

Mr. Foreperson and members of the jury, you have heard the testimony and evidence and arguments of the State and the Defendant. I will now explain to you the law that applies to this case.

Under the Constitution and laws of South Carolina, you are the finders of the facts in this case. I do not have the right to pass upon the facts or even to express any opinion I might have as to them. This is a matter solely for you, the jury, to determine. As jurors, then, it is your duty to determine the effect, the value, the weight and the truth of the evidence presented during this trial.

As the trial judge, it is my responsibility to preside over the trial of this case, and I also have the duty to rule upon the admissibility of the evidence offered during this trial. You are only to consider the testimony which has been presented from the witness stand along with any exhibits which have been made a part of the record in this

1 case and any stipulations of counsel made into the record.

2 I have the additional duty to charge you the law
3 applicable to this case. It is your duty as jurors to
4 accept and apply the law as I state it to you now, and then
5 reach your verdict.

6 Finally, I charge you in this regard that you should
7 not be concerned with what you think the law ought to be,
8 but what I charge you the law to be.

9 Credibility. You are also the judges, the sole judges
10 of the credibility, that is the believability of the
11 witnesses who have testified in this case. And in passing
12 upon their credibility, you may take into consideration many
13 things, such as: The demeanor or manner of testifying,
14 whether the witness has reason to be biased or prejudiced,
15 whether a witness's testimony is contradicted on one hand or
16 supported and corroborated on the other hand. You may
17 believe a small portion of a witness's testimony and
18 disregard the larger, or vice versa. You may believe one
19 witness against many or many witnesses against one. All
20 these things, you will consider, bearing in mind that you
21 should give the Defendant the benefit of any reasonable
22 doubt. It becomes your duty as jurors to analyze and
23 evaluate the evidence and to determine that evidence which
24 convinces you of its truth.

25 There are two types of evidence which are generally

1 presented during a trial: Direct evidence and
2 circumstantial evidence. Direct evidence is the testimony
3 of a person who claims to have actual knowledge of a fact,
4 such as an eyewitness. Circumstantial evidence is proof of
5 a chain of facts and circumstances indicating the existence
6 of a fact.

7 The law makes absolutely no distinction between the
8 weight or value to be given to either direct or
9 circumstantial evidence. Nor is a greater degree of
10 certainty required of circumstantial evidence than of direct
11 evidence. You should weigh all of the evidence in the case.
12 After weighing all of the evidence, if you are not convinced
13 of the guilt of the Defendant beyond a reasonable doubt, you
14 must find the Defendant not guilty.

15 You must not consider as evidence any statement counsel
16 made during the trial. Statements of counsel do not
17 constitute evidence; rather, counsel is articulating the
18 position and contingent of his client. This rule applies to
19 the opening statement of counsel and the closing arguments.

20 Attorneys are officers of the court. Attorneys have
21 the absolute right and duty to bring matters to the
22 attention of the Court by way of objections. Do not
23 inferentially or otherwise become upset or disturbed by
24 counsel by virtue of an objection. Our trial procedure
25 includes the objection process as a means of control of

1 evidence. For example, letting in proper evidence and
2 keeping out improper evidence. Counsel by objecting are
3 simply performing their role in the trial of the case.

4 Once the Court makes a ruling on an objection, the jury
5 is bound by that ruling. If an objection is sustained, the
6 question is improper. If the objection is overruled, the
7 question is proper. In that regard, the jury must not under
8 any circumstances derive any inference from any ruling made
9 by the Court on objections as to any opinion the Court may
10 have in the case. The Judge does not have an opinion on the
11 evidence and is not entitled to an opinion under the law.
12 The Judge is performing her duty in the trial of the case.
13 As to any questions to which an objection was sustained, you
14 must not speculate to what the answer might have been or as
15 to the reason for the objection.

16 Mr. Foreman and members of the jury, I told you at the
17 beginning of the trial, you and I have certain duties to
18 perform. As the trial judge, it is my responsibility to
19 preside over the trial of this case and I also have the duty
20 to rule on the admissibility of the evidence offered during
21 the trial.

22 The State has entered a recorded statement of the
23 Defendant into evidence for your consideration. I will
24 charge you more fully regarding this statement a little bit
25 later, but I now advise you that prior to the statement

1 being offered into evidence, the State and the defense held
2 a hearing before me where I ordered certain portions of the
3 recorded statement to be redacted or edited out. Those
4 redactions were the result of my prior determinations on the
5 admissibility of statements made on the recording.

6 Both the State and the defense reviewed the redacted
7 video prior to it being submitted into evidence and they
8 have agreed the redactions to the video have been done in
9 accordance with the previous ruling. I now charge you that
10 you are not to consider the fact that portions of the video
11 may appear to be edited in any way during your
12 deliberations.

13 The fact that the Defendant was arrested, charged and
14 indicted in this case is not evidence in this case. It
15 cannot be considered by you as evidence of guilt in this
16 case, nor does it create any presumption or inference of
17 guilt. This document is simply the formal written
18 instrument which contains the charges made against the
19 Defendant. It is a formal document by which this case is
20 brought into this court.

21 The Defendant is presumed to be innocent unless and
22 until the State has established guilt beyond a reasonable
23 doubt. It is a vital and important rule of the law that the
24 Defendant in a criminal trial, no matter how grave or
25 serious may be the offense with which he is charged must

1 always be presumed innocent unless and until his guilt has
2 been proven beyond a reasonable doubt.

3 A person charged with committing a criminal offense in
4 South Carolina is never required to prove himself innocent.
5 This presumption of innocence is legal proof of innocence.
6 This presumption of innocence remains with the Defendant at
7 all times from the moment of his arrest, throughout the
8 trial proceeding and goes into your jury room and remains
9 with the Defendant even then unless and until you, the jury,
10 reach a verdict of guilt based on the evidence which the
11 State has presented satisfying you of the Defendant's guilt
12 beyond a reasonable doubt.

13 Proof beyond a reasonable doubt is proof that leaves
14 you firmly convinced of the Defendant's guilt. There are
15 very few things in this world that we know with absolute
16 certainty. In criminal cases, the law does not require
17 proof that overcomes every possible doubt. The law does not
18 require that. If, based on your consideration of the
19 evidence, you are firmly convinced that the Defendant is
20 guilty of the crime charged, you must find him guilty. If,
21 on the other hand, you conclude that there is a real
22 possibility that he is not guilty, you must give the
23 Defendant the benefit of the doubt and find the Defendant
24 not guilty.

25 I charge you, ladies and gentlemen of the jury, if you

1 have a reasonable doubt, not a substantial doubt, but a
2 reasonable doubt about the Defendant's guilt, you must
3 resolve that doubt in favor of the Defendant and find him
4 not guilty. Just as a defendant may be found guilty beyond
5 a reasonable doubt due to the evidence presented, a
6 defendant may be found not guilty due to a lack of evidence
7 against him.

8 I charge you that suspicion, however strong, is not
9 enough to sustain a conviction. The law imposes the burden
10 of proof on one party or the other. In all cases, in the
11 present case, the burden of proof is upon the State to
12 establish every element of the crime charged beyond a
13 reasonable doubt. And if as to any element of the crime,
14 you are left with a reasonable doubt, the Defendant is
15 entitled to the benefit of the doubt and must be acquitted.

16 The indictments in this case allege two different
17 offenses against the Defendant. The charges are:
18 Indictment number one, attempted murder; indictment number
19 two, possession of a weapon during the commission of a
20 weapon during the commission of a violent crime.

21 Each indictment is charged as a separate and distinct
22 offense. You must decide each indictment separately on the
23 evidence and the law applicable to it uninfluenced by your
24 decision as to any other indictment. The Defendant may be
25 convicted or acquitted on any or all of the offenses

1 charged. You will be asked to write a separate verdict of
2 guilty or not guilty for each indictment.

3 South Carolina Code of Laws Section 16-3-29 states the
4 following: A person who with intent to kill attempts to
5 kill another person with malice aforethought either
6 expressed or implied, commits the offense of attempted
7 murder. The Defendant is charged with attempted murder.
8 Murder is the killing of another person with malice
9 aforethought.

10 Malice is hatred, ill will or hostility towards another
11 person. It is the intentional doing of a wrongful act
12 without just cause or excuse and with the intent to inflict
13 an injury or under circumstances that the law will infer an
14 evil intent. Malice aforethought does not require that
15 malice exist for any particular time before the act is
16 committed, but malice must exist in the mind of the
17 Defendant just before and at the time of the act committed.
18 Therefore, there must be a combination of the previous evil
19 intent and the act.

20 Malice aforethought may be expressed or inferred.
21 These terms expressed and inferred do not mean different
22 kinds of malice, but merely the manner in which malice may
23 be shown to exist, that is either by direct evidence or by
24 inference from the fact and circumstances which are proved.

25 Expressed malice is shown when a person speaks words

1 which express hatred or ill will for another or when the
2 person prepared beforehand to do the act which was later
3 accomplished. For example, lying in wait for a person or
4 any other act of preparation going to show that the deed was
5 within the Defendant's mind would be expressed malice.
6 Malice may be inferred from conduct showing a total
7 disregard for human life.

8 An attempt is an effort to accomplish a crime which
9 does not succeed. An attempt includes a specific intent to
10 do a particular criminal act along with an act falling short
11 of the act intended. The State must show more than mere
12 preparation and intent. There must be some overt act
13 committed in an effort to commit the crime.

14 Intent means intending the result which actually
15 occurred, not accidentally or involuntarily. Intent may be
16 shown by acts and conduct of the Defendant and other
17 circumstances from which you may naturally and reasonable
18 infer intent.

19 To prove attempted murder, the State must prove beyond
20 a reasonable doubt that the Defendant attempted to kill
21 another person with malice aforethought.

22 All right. I want y'all to stand up and get your blood
23 flowing. Stretch a little bit. Move around.

24 (Jurors stood.)

25 THE COURT: All right. There's no requirement that

1 malice must exist for any appreciable length of time before
2 the commission of an act. It may be conceived at the very
3 moment the act occurs. There must be a combination of the
4 intent and the act producing the result.

5 Indictment number two, possession of a weapon during
6 the commission of a violent crime. The Defendant is charged
7 with possession of a firearm during the commission of a
8 violent crime. Section 16-23-490 of the South Carolina Code
9 of Laws provides if a person is in possession of a firearm
10 or visibly displays what appears to be a firearm during the
11 commission of a violent crime and is convicted of committing
12 or attempting to commit a violent crime as defined in
13 Section 16-1-60, he is guilty of a crime.

14 Firearm is defined as any machine gun, automatic rifle,
15 revolver, pistol or any weapon which will or is designed to
16 or may readily be converted to expel a projectile. Section
17 16-1-60 of the South Carolina Code of Laws provides that
18 attempted murder is a violent crime.

19 For you to find the Defendant guilty of the separate
20 offense of possession of a firearm during the commission of
21 a violent crime, you must first find the Defendant guilty of
22 either committing a violent crime or attempting to commit a
23 violent crime. In this case, the crime of attempted murder.
24 If you find the Defendant guilty of attempted murder, you
25 must then determine whether the State has proved beyond a

1 reasonable doubt that the Defendant was in possession of a
2 firearm or visibly displayed what appeared to be a firearm
3 during the commission of the violent crime.

4 Possession means more than simply having an object in
5 one's possession. Conviction of possession requires proof
6 of possession, either actual or constructive, coupled with
7 knowledge of the firearm's presence. Possession can be
8 shown by either actual possession or constructive
9 possession. Actual possession occurs when the firearm is in
10 actual physical custody of the person charged with
11 possession. Proof of constructive possession along with
12 knowledge of the presence of the firearm is sufficient to
13 provide a conviction of possession of a firearm.

14 To prove constructive possession, the State must show
15 the Defendant had dominion or control or the right to
16 exercise dominion or control over the firearm. Constructive
17 possession may be established through either direct or
18 circumstantial evidence. And possession may be shared.
19 Possession requires more than mere presence. Possession may
20 be inferred from the circumstances and may be imputed to
21 anyone who has the power and intent to kill with deposition
22 and use of the firearm.

23 Assault and battery of a high and aggravated nature. A
24 person commits the offense of assault and battery of a high
25 and aggravated nature if the person unlawfully injured

1 another person and A, great bodily injury to another person
2 results; or B, the act is accomplished by means likely to
3 produce death or great bodily injury.

4 Assault and battery of a high and aggravated nature is
5 a lesser-included offense of attempted murder as defined in
6 Section 16-3-29. To prove assault and battery of a high and
7 aggravated nature, the State must first prove beyond a
8 reasonable doubt that the Defendant unlawfully injured
9 another person. Next, the State must prove beyond a
10 reasonable doubt that either great bodily injury resulted or
11 that the act was accomplished by means likely to produce
12 death or great bodily injury.

13 Great bodily injury is defined as bodily injury which
14 causes a substantial risk of death or which causes serious
15 permanent disfigurement or protracted loss or impairment of
16 the function of a bodily member or organ.

17 Self-defense. Self-defense is a complete defense. If
18 established, you must find the Defendant not guilty. There
19 are four elements required by law to establish self-defense.
20 First, the Defendant must be without fault in bringing on
21 the difficulty. Second, the Defendant must have been in
22 actual imminent danger of losing his life or sustaining
23 bodily injury, or he must have actually believed he was in
24 imminent danger of losing his life or sustaining serious
25 bodily injury. Third, if his defense is based upon his

1 belief of imminent danger, a reasonably prudent person of
2 ordinary firmness and courage would have entertained the
3 same belief.

4 If y'all need to stand up or stretch, you just go on
5 your own accord.

6 If the Defendant actually was in imminent danger and
7 the circumstances were such as to warrant a person of
8 ordinary prudence, firmness and courage to take the
9 necessary action in order to save himself from serious
10 bodily harm or losing his own life. Fourth, the Defendant
11 had no other probable means of avoiding the danger of losing
12 his own life or sustaining serious bodily injury than to act
13 as he did in this particular instance. These are the
14 elements of self-defense.

15 A Defendant in a self-defense case has the right to act
16 on appearances. A Defendant must have believed he was in
17 imminent danger, not that he was actually in such danger
18 because he had the right to act on appearances, and under
19 the circumstances as they appeared to him, he believed he
20 was in such danger, and a reasonable prudent man of ordinary
21 firmness and courage would have entertained the same belief.

22 Words accompanied by hostile acts may, depending on the
23 circumstances, establish a plea of self-defense.

24 Self-defense is not available to one who uses language that
25 a reasonable person would expect it to bring on a physical

1 encounter and which did actually contribute to bring it on.

2 There's no burden upon the Defendant to prove
3 self-defense. The Defendant is not required to prove any
4 element of self-defense. The burden is on the State to
5 disprove self-defense beyond a reasonable doubt.

6 If you have a reasonable doubt of the Defendant's guilt
7 after considering all of the evidence, including the
8 evidence of self-defense, then you must find the Defendant
9 not guilty. On the other hand, if you have no reasonable
10 doubt of the Defendant's guilt after considering all of the
11 evidence, including the evidence of self-defense, then you
12 must find the Defendant guilty.

13 A person cannot be required to make an exact
14 calculation as to the degree or amount of force which may be
15 needed to avoid death or serious bodily harm. Therefore, in
16 self-defense, the Defendant has the right to use the force
17 needed to avoid death or serious bodily harm. The force
18 used in self-defense does not have to be limited to the
19 degree or amount of force used by the victim. The Defendant
20 has the right to use so much force as appears to be
21 necessary for complete self-protection and which a person of
22 ordinary reason and firmness would have believed to be
23 needed to prevent death or serious bodily harm.

24 If the Defendant is justified in defending himself or
25 others in firing the first shot, then the Defendant is also

1 justified in continuing to shoot until it is apparent that
2 the danger of death or serious bodily injury has completely
3 ended.

4 The Defendant does not have to show that he was
5 actually in danger. It is enough if the Defendant believed
6 he was in imminent danger and a reasonably prudent person of
7 ordinary firmness and courage would have had the same
8 belief. The Defendant has the right to act on appearances
9 even though the Defendant's beliefs may have been mistaken.
10 It is for you to decide whether the Defendant's fear of
11 immediate danger of death or serious bodily injury was
12 reasonable and would have been felt by an ordinary person in
13 the same situation.

14 Ladies and gentlemen, you have been chosen and sworn to
15 give the parties a fair and impartial trial. When you have
16 done so, you will have complied with your oath and no one
17 will have the right to criticize your verdict. You must not
18 be influenced by opinions or expressions of opinions you may
19 have heard outside the courtroom, but, rather, should base
20 your verdict solely on the testimony of the sworn witnesses
21 who took the stand, the exhibits received into evidence and
22 the law which I have stated.

23 Passion, prejudice or improper sympathy for or against
24 anyone should not sway you. Remember, you have no friends
25 to reward or enemies to punish and all parties are entitled

1 to a fair and impartial trial. It is your duty as jurors to
2 consult with one another and to deliberate in an effort to
3 reach an agreement. Each of you must decide this case for
4 yourselves, but only after impartial consideration of all
5 evidence with your fellow jurors.

6 In the course of your deliberations, do not hesitate to
7 reexamine your own view and change your opinion if you
8 become convinced that it is erroneous. However, do not
9 surrender your honest conviction solely because of the
10 opinion of your fellow juror or for the mere purpose of
11 returning a verdict. As I stated earlier, you are the
12 judges, judges of the facts. Your verdict must represent
13 the considerate judgment of each juror. In other words,
14 your verdict must be unanimous.

15 Now, you may have noticed that I've read you these
16 instructions. And I do so to give you the law as accurately
17 as possible. I will give you a copy of these instructions
18 to have in the jury room. You may refer to these
19 instructions as a whole and may not follow some and ignore
20 others.

21 Mr. Foreman, it will be your duty to preside over the
22 deliberations of the jury. If during your deliberations,
23 you should desire to communicate with the Court, please
24 reduce your message or question to writing and it is to be
25 signed by you and you only, Mr. Foreman, and pass the note

1 to the bailiff, who will bring it to my attention. I will
2 then respond as promptly as possible either in writing or by
3 having you all return to the courtroom. I caution you,
4 however, with regard to any message or question that you
5 might send, that you should never state or specify your
6 numerical division at that time.

7 Now, you have heard the evidence and you have heard the
8 law. Whatever your verdict, Mr. Foreman, you will indicate
9 the verdict on the back of the indictment and will then sign
10 and date your verdict.

11 Remember that although the Foreman is the only juror
12 who writes the verdict, it is not his alone. The verdict
13 has to be unanimous.

14 Mr. Foreman, you are not authorized to write the
15 verdict until all of you have agreed on the verdict.

16 Now, ladies and gentlemen, I will send you to the jury
17 room, but do not begin discussing this case until you have
18 received a copy of this jury charge and the exhibits. Once
19 you receive those things, that will be your signal to begin
20 your deliberations. Once you begin deliberations, you will
21 deliberate until you have reached a verdict, at which time,
22 you will knock on the door, advise the bailiff and we will
23 bring you out to receive your verdict.

24 Additionally, we have provided lunch for you.

25 Where are my two alternates?

1 (Alternates raised hands.)

2 THE COURT: I'm going to send you back in the jury room
3 for lunch and you may begin eating, but I'll talk to you a
4 little bit later.

5 (The jury exits the courtroom at 1:07 p.m.)

6 THE COURT: Are there any objections to the jury charge
7 other than the prior objections?

8 MR. MILLER: Your Honor, I did send an e-mail as soon
9 as I was able to see it. I didn't think that the charge
10 made it clear that the jury was only to consider the ABHAN
11 as a lesser-included if they found the Defendant not guilty
12 of the attempted murder, but I think the verdict form fixed
13 that.

14 The only concern I really have is that the Court, I
15 think, properly said in the charge that attempted murder is
16 a violent crime under 16-1-60, but so is assault and battery
17 of a high and aggravated nature. But after conferring with
18 co-counsel, we'll waive any objections.

19 THE COURT: So it's placed on the record that it was
20 not specifically mentioned that ABHAN is also a violent
21 crime.

22 MR. MILLER: Your Honor, obviously, if the jury
23 believes he's not guilty of attempted murder, then I don't
24 know what good it would do us to get a five-year (***) .

25 THE COURT: Well, I believe the verdict form --

1 MR. MILLER: The verdict form is very clear, I believe.

2 THE COURT: Mr. Miller, is there anything else, sir?

3 MR. MILLER: No, ma'am.

4 THE COURT: Mr. Hayes.

5 MR. HAYES: Section 3 under the assault and battery of
6 a high and aggravated nature says that assault and battery
7 of a high and aggravated nature is a lesser-included offense
8 of attempted murder as defined in Section 16-3-29.

9 I would object to that part going back with the jury.
10 I understand why you read it to them and I expect that is
11 correct, but I think Section 3 going back to them is all
12 it's telling -- it's letting them know that it's a
13 lesser-included, and I don't think it's necessary to define
14 what assault and battery of a high and aggravated nature is.
15 It's just telling them what -- that section is just saying
16 what the status is, and I think that would be improper to
17 have.

18 Also, Judge, you read it to them, and I don't know if
19 it was necessarily required that a jury know that it is a
20 lesser included offense, just that it was another option.

21 THE COURT: So you want it removed from the copy that
22 is --

23 MR. HAYES: Yes.

24 THE COURT: You think that's confusing for the jury?

25 MR. HAYES: Yes. And I don't think they need to know

1 that it's actually a lesser-included. It's telling them the
2 status of it, not an element. And letting the jury know the
3 status of what attempted murder versus ABHAN is is not an
4 element of the charge for them to consider.

5 MR. MILLER: If it makes it easier, Your Honor, I'd
6 consent to having it removed.

7 THE COURT: Mr. Miller, I am going --

8 David, I am going to -- Davids, I am going to remove
9 that section. I do see how that, perhaps, could be
10 confusing written for the jury.

11 MR. MILLER: Yes, ma'am.

12 THE COURT: But it did explain, I think, why we were
13 even bringing ABHAN in, but I'll remove it.

14 MR. HAYES: Judge, the only other thing is in the last
15 section of your instructions, you tell them that you're
16 going to send back the indictments and that they're to write
17 the information on that, but we're not using the
18 indictments. My understanding is we're sending back a jury
19 verdict form, and we might want to clear that up with them.

20 THE COURT: Okay. So we're not going to send back the
21 indictments at all? We don't have to.

22 MR. HAYES: I thought we were sending a jury verdict
23 form.

24 THE COURT: Sure. I've done -- I've sent both of them
25 back, but I can certainly clear that up with them. Would

1 you like for me to just walk back there and clear it up or
2 you want me --

3 MR. MILLER: Yes, ma'am. And I think if you just give
4 them the verdict form, then we could have the Foreman fill
5 out the indictments after the fact. I really do think that
6 the verdict form is so clear that it kind of helps work
7 through that lesser-included stuff.

8 THE COURT: Okay. So we'll do that, Mr. Hayes. I'll
9 make sure that I clear that up with them.

10 MR. HAYES: On the verdict form, Your Honor, Section 1
11 and 2, you say we, the jury, by unanimous consent find the
12 Defendant, Kelcie Gilbert, on the charge of attempted
13 murder, guilty or not guilty. And below that, you say, if
14 guilty, then proceed to question three. If not guilty, then
15 go to number two. And then you have assault and battery of
16 a high and aggravated nature. And then it says proceed to
17 question three. I think it needs to specifically --

18 THE COURT: If guilty, proceed --

19 MR. HAYES: -- clear up that if not guilty on one and
20 two, then there is no three.

21 THE COURT: Okay.

22 MR. HAYES: Or if not guilty on -- only if guilty,
23 proceed to question three.

24 MR. MILLER: Your Honor, what it should say at the end
25 of question two is, if you find the Defendant not guilty,

1 stop your deliberations. If you find the Defendant guilty,
2 go to question three.

3 THE COURT: I'm okay with that. We'll correct that.

4 MR. HAYES: Thank you, Your Honor.

5 THE COURT: Gentlemen, if you'll make sure you have the
6 exhibits together that you want back, we'll go ahead and
7 make these corrections simultaneously.

8 (Pause.)

9 MR. MILLER: Your Honor, we have agreed on the
10 exhibits.

11 THE COURT: Okay.

12 MR. HAYES: Are you going to pull the alternates?

13 THE COURT: I was going to let them eat and then --

14 MR. HAYES: I understand. And I'm sure they appreciate
15 it.

16 THE COURT: They've got pizza and wings, so we'll let
17 them eat and I'll pull them back out and thank them.

18 MR. MILLER: As long as they don't start --

19 THE COURT: Before we even send that back there, we'll
20 pull them out.

21 (Pause.)

22 THE COURT: Gentlemen, I just wanted to tell you thank
23 you for your service this week. You are no longer necessary
24 for deliberations. You're very necessary during the
25 process. A lot of times, we may lose a member of the jury,

1 but that has not happened. Thank you all for your service.
2 You are released for the rest of the week.

3 Now, I will invite you, certainly, it's just an
4 invitation. You do not have to stay to hear the verdict,
5 whatever that may be. I do not know how long the jury will
6 deliberate. But I do often invite our alternates to stay
7 and listen to the verdict if they wish to do so. It's
8 completely up to you. But thank you for your service.

9 (The jury began deliberations at 1:29 p.m.)

10 THE COURT: We'll be in recess awaiting a verdict.

11 (Court was in recess awaiting a verdict.)

12 THE COURT: The jury has indicated they are ready.
13 Please bring in the jury.

14 (The jury enters the courtroom at 2:53 p.m.)

15 THE COURT: Mr. Foreperson, the bailiff indicated that
16 you all said you are ready. Have you all reached a verdict?

17 THE FOREPERSON: Well, we're finished.

18 THE COURT: So you've reached a verdict?

19 THE FOREPERSON: Yes.

20 THE COURT: Have you signed the verdict form?

21 THE FOREPERSON: Yes.

22 THE COURT: Will you please give that to the bailiff?
23 Madam Clerk.

24 Mr. Foreman, before she reads the verdict, I want to
25 make sure this is a unanimous verdict, sir?

1 THE FOREPERSON: Yes, ma'am.

2 THE CLERK: The State of South Carolina vs. Kelcie
3 Gilbert, indictment number 2021-GS-05-00050 and 00051. We,
4 the jury, by unanimous consent find the Defendant, Kelcie
5 Gilbert, on the charge of attempted murder guilty.

6 We, the jury, by unanimous consent find the Defendant,
7 Kelcie Gilbert, on the charge of possession of a firearm
8 during the commission of a violent crime guilty.

9 Foreman signature, Bernard Garvin, March 2nd, 2022.

10 THE COURT: Thank you, Madam Clerk.

11 Does anyone wish to poll the jury?

12 MR. HAYES: Yes, please.

13 THE COURT: Madam Clerk, at this time, would you please
14 poll the jury?

15 THE CLERK: Yes, ma'am.

16 MR. HAYES: Your Honor, may I see the verdict form?

17 THE COURT: Yes.

18 THE CLERK: As I call your name, please answer the
19 following question.

20 Juror No. 1, Joan E. Dunn, do you still agree?

21 THE JUROR: I do.

22 THE CLERK: No. 2 --

23 MR. HAYES: Your Honor, that's not the proper question.
24 (Bench conference.)

25 THE CLERK: Okay, let's try it again.

1 No. 1, Joan Dunn, is this your verdict -- will you
2 please stand? Is this your verdict?

3 THE JUROR: Yes.

4 THE CLERK: Do you still agree?

5 THE JUROR: Yes, I do.

6 THE CLERK: Thank you.

7 Juror No. 2, Billie Phillips. Is this your verdict?

8 THE JUROR: Yes.

9 THE CLERK: Do you still agree?

10 THE JUROR: Yes.

11 THE CLERK: Juror No. 3, Blanche Meeks. Is this your
12 verdict?

13 THE JUROR: Yes.

14 THE CLERK: Do you still agree?

15 THE JUROR: Yes.

16 THE CLERK: Juror No. 4, Justin Crosby. Is this your
17 verdict?

18 THE JUROR: Yes.

19 THE CLERK: Do you still agree?

20 THE JUROR: Yes.

21 THE CLERK: No. 6, Drayton Smoak. Is this still your
22 verdict?

23 THE JUROR: Yes.

24 THE CLERK: Do you agree?

25 THE JUROR: Yes.

1 THE CLERK: Thank you.

2 No. 8, Trajan Robertson. Is this your verdict?

3 THE JUROR: Yes.

4 THE CLERK: Do you still agree?

5 THE JUROR: Yes.

6 THE CLERK: No. 9, Barbara Ulmer. Is this your
7 verdict?

8 THE JUROR: Yes.

9 THE CLERK: Do you still agree?

10 THE JUROR: Yes.

11 THE CLERK: Thank you.

12 No. 11, Gracie Orr. Is this your verdict?

13 THE JUROR: Yes.

14 THE CLERK: Do you still agree?

15 THE JUROR: Yes.

16 THE CLERK: No. 12, Linda Millwood. Is this your
17 verdict?

18 THE JUROR: Yes.

19 THE CLERK: Do you still agree?

20 THE JUROR: Yes.

21 THE CLERK: No. 16, Bryton Thomas. Is this your
22 verdict?

23 THE JUROR: Yes.

24 THE CLERK: Do you still agree?

25 THE JUROR: Yes.

1 THE CLERK: Has anyone been omitted?

2 THE JUROR: Yes.

3 THE CLERK: What's your name?

4 THE JUROR: Alexander Still.

5 THE CLERK: Alexander Still, okay. Is this your
6 verdict?

7 THE JUROR: Yes, ma'am.

8 THE CLERK: Do you still agree?

9 THE JUROR: Yes, ma'am.

10 THE CLERK: No. 13, Bernard Garvin. Is this your
11 verdict?

12 THE JUROR: Yes.

13 THE CLERK: Do you still agree?

14 THE JUROR: Yes.

15 THE CLERK: Thank you.

16 THE COURT: Gentlemen, the jury has been polled.

17 At this point --

18 Go ahead.

19 MR. MILLER: Your Honor, I was just going to ask in the
20 absence of any objection if we could withhold sentencing
21 until the morning so that we can give the victim time to get
22 back?

23 THE COURT: Yes, we will do that, Mr. Miller.

24 Ladies and gentlemen --

25 Do you have any objection to that, Mr. Hayes?

1 MR. HAYES: No, Your Honor.

2 THE COURT: Mr. Miller, we will withhold sentencing
3 until tomorrow morning at ten o'clock.

4 MR. MILLER: Thank you, Your Honor.

5 THE COURT: Ladies and gentlemen of the jury, at this
6 time, we have concluded the trial. I want to thank all 12
7 of you for your jury service these past two days. At this
8 time, you will not be needed for the rest of the week, so
9 your jury service ends today.

10 Again, thank you for your service. You're going to
11 follow the bailiff out here and she will give you further
12 instructions. If you need work notes or school notes, the
13 clerk of court will provide you with that. Thank you again.

14 (The jury is released.)

15 THE COURT: Gentlemen, are there any post-trial
16 motions?

17 MR. MILLER: Nothing from the State, Your Honor.

18 MR. HAYES: Your Honor, can I have tonight to think
19 about it?

20 THE COURT: Yes, sir.

21 At this juncture, we will reconvene court for
22 sentencing at 10:00 a.m. So we will adjourn for the day.

23 MR. MILLER: Thank you, Your Honor.

24 THE COURT: Thank you.

25 (Court was adjourned for the day.)

1 THURSDAY, MARCH 3, 2022

2 THE COURT: Mr. Miller.

3 MR. MILLER: Thank you, Your Honor. Before the Court
4 is Kelcie Gilbert. We are here today for the sentencing
5 following the trial that concluded yesterday. Mr. Gilbert
6 was convicted by the jury of attempted murder and possession
7 of a weapon during the commission of a violent crime. I
8 have his prior criminal history and would like to address
9 the Court at the appropriate time.

10 The victim in the case, Mr. Middleton, is not here this
11 morning, but his mother is here and would like to address
12 the Court.

13 THE COURT: All right. Mr. Hayes, would you like to
14 make your presentation first or would you like me to hear
15 from the State and you close in full?

16 MR. HAYES: The only thing I was worried about is
17 first, I wanted to get the motion for a new trial on the
18 record.

19 THE COURT: Yes, sir, we'll handle that first, Mr.
20 Hayes.

21 MR. HAYES: Your Honor, taking the evidence most
22 favorable to the State, the jury had insufficient to no
23 evidence that the Defendant in this case acted with malice.
24 The courts have negated malice when a sufficient showing of
25 self-defense is put forth.

1 In this case, there was no evidence of malice or of
2 intent. And I believe that the State conceded that when the
3 State asked for the Court to consider adding in the
4 lesser-included offense of ABHAN. In this situation, I
5 believe the State's argument was that if the jury felt that
6 the State failed to prove the malice or intent, they would,
7 at least, have the ABHAN. And I believe that was their
8 argument to the Court.

9 Judge, because of that reason and all my prior motions
10 and objections, I would say that the jury had insufficient
11 to no evidence to find as it did to attempted murder, and I
12 would move for a new trial.

13 THE COURT: Thank you, Mr. Hayes.

14 Mr. Miller, any response, sir?

15 MR. MILLER: Your Honor, first of all, the State didn't
16 concede anything relative to malice. The argument was that
17 the jury could find that the State had failed to prove
18 malice or the jury could have found that the State failed to
19 prove specific intent to commit murder. That's why we were
20 arguing for the ABHAN as a lesser-included because if the
21 jury had found that we had failed to meet our burden on
22 either one of those, it would have justified them finding
23 him guilty of the ABHAN instead.

24 So as far as the argument about those two elements of
25 attempted murder, obviously, we believe and the jury

1 believes that we did prove those beyond a reasonable doubt.

2 The other issue that was mentioned by Mr. Hayes was
3 this showing of self-defense negating a -- it doesn't negate
4 malice. What it does is number one, it tells the Court
5 don't charge implied malice based on the use of a deadly
6 weapon or any other way. You didn't charge that. You
7 charged them with the standard malice charge, which was
8 appropriate. And, certainly, we can prove malice and we did
9 offer the proof of malice as to the facts and circumstances
10 we described to the jury that we believed were in evidence,
11 and, apparently, the jury did, too.

12 So we think there was a sufficient showing of malice.
13 Certainly, it was not so lacking to overturn the verdict of
14 the jury and we would say that the motion for a new trial
15 should be denied.

16 THE COURT: Mr. Hayes, any response, sir?

17 MR. HAYES: No more, Your Honor.

18 THE COURT: Mr. Hayes, at this time, I am going to deny
19 that motion for a new trial, sir.

20 MR. HAYES: Yes, ma'am.

21 THE COURT: Are there any other motions from the
22 defense?

23 MR. HAYES: No, ma'am.

24 THE COURT: So, again, Mr. Hayes, now that we've
25 concluded that portion, would you like for the State to

1 present their -- make their presentation?

2 MR. HAYES: It doesn't matter to me. That will be
3 fine.

4 THE COURT: I'm going to let them, so that way you will
5 have a chance to respond.

6 MR. HAYES: Thank you.

7 THE COURT: Mr. Miller.

8 MR. MILLER: Thank you, Your Honor. Obviously, you are
9 very familiar with the facts of this case. I will tell you
10 that Mr. Gilbert has a prior record that includes juvenile
11 adjudications of delinquency for malicious injury to
12 personal property in 2005, assault and battery of a high and
13 aggravated nature in 2006. That would have been before the
14 ABHAN was changed to a violent, most serious offense. This
15 is the old common law ABHAN. As an adult, he has a 2007
16 conviction for disorderly conduct, a 2009 conviction for
17 ABHAN, that would have been the misdemeanor common law
18 ABHAN, and a 2012 conviction for assault and battery in the
19 third degree and entering premises after warning.

20 Significantly, though, Your Honor, I would point out to
21 the Court, at the time of this incident, the Defendant was
22 out on bond for unlawful carrying of a pistol and a pointing
23 and presenting, that's a gun violation. He was out on bond
24 for assault and battery in the first degree times three,
25 where he shot at some people at a house. And he told law

1 enforcement he shot at them, but he claimed they shot at him
2 first.

3 Then there was this charge where he was charged with
4 the attempted murder and possession of a weapon during the
5 commission of a violent crime. You've heard about all of
6 that. And then in July of 2021, last year, he was arrested
7 for murder. Again, he admitted to the police I shot into
8 the vehicle. I killed the woman who got killed, but
9 somebody was shooting at me, too.

10 So I don't think that -- certainly, nothing that went
11 on before being arrested for the murder and locked up for
12 the murder convinced Mr. Gilbert that he shouldn't be
13 carrying around a gun and he shouldn't be putting himself in
14 situations where he alleges people are shooting at him.

15 He was out on bond on these charges, a bond of \$50,000
16 that he had posted for this set of offenses he was just
17 tried on at the time of the murder and the attempted murder
18 charges.

19 So, Your Honor, a very smart judge told me one time,
20 Judge Newman, that people should not be sentenced because
21 the Court's mad at them. Don't sentence somebody because
22 you're mad at them, sentence somebody because you're scared
23 of them. And this Court and this community should be scared
24 of Kelcie Gilbert. He is a menace. He is violent. He is
25 unpredictable. And he has, by his own admission, on three

1 separate occasions that we know of shot at people. This
2 time, fortunately, he was not successful in killing Victor
3 Middleton, but he shot him seven times in the middle of the
4 highway.

5 So, Your Honor, we would take the position that a
6 substantial sentence is warranted in this case. We are
7 noticing Mr. Gilbert for life without parole on the pending
8 murder and attempted murder charges that are still left over
9 after this and we believe that would be appropriate at that
10 time. But just for what he has done in this instance, just
11 for the shooting of Victor Middleton, we think that he has
12 earned a substantial length prison sentence from this Court.

13 Ms. Middleton would like to address the Court. She is
14 Victor Middleton's mother.

15 THE COURT: Good morning, Ms. Middleton.

16 MS. MIDDLETON: Good morning, how are you?

17 THE COURT: I'm well. Thank you. You wanted to
18 address the Court?

19 MS. MIDDLETON: I'm Feeberry Middleton.

20 THE COURT: Tell me your name one more time.

21 MS. MIDDLETON: Feeberry Middleton.

22 THE COURT: Can you spell that for me for the court
23 reporter?

24 MS. MIDDLETON: Okay. F, as in Frank, E-E-B-E-R-R-Y.
25 And that's one word.

1 THE COURT: Thank you, Ms. Middleton.

2 MS. MIDDLETON: You're welcome.

3 THE COURT: Yes, ma'am.

4 MS. MIDDLETON: On behalf of my son, my only forgotten
5 son that God give me, Victor Middleton, I was so hurt when I
6 received that phone call that Saturday. I was at work in
7 Columbia when my cousin called me. At first, I had to pull
8 on the side of the road because I just talked to my son a
9 couple hours before that happened. No mother should have to
10 go through something like that, especially seven times in my
11 child's body.

12 I stayed in Columbia all those days that he was at the
13 hospital in Richland. I prayed before this accident
14 happened. I prayed while the accident was going on when my
15 son was in the hospital. My daughter-in-law and I, we
16 waited by the phone everyday for the doctors to call us.
17 There's so many things that they had to do to repair my
18 son's body back. But only God knows and feel what I went
19 through, especially when you don't have but one child that
20 you can turn to and talk to.

21 I kept praying and I said, God, you give me this son.
22 He is your child. I need you to heal him. I need you to
23 take care of him. I need you to bring him back to me with
24 life, not a vegetable, but life.

25 Everybody loves their son or their child. I really do

1 love my son, Victor Middleton. He brought me life in my
2 life that I grew up. I watched him as he was a child. I
3 prayed for him as he was a child. I teach him how to go out
4 there and work for what he want, an honest dollar.

5 After he was released and investigators and all talked
6 to him, I was still hurt because the system let me down when
7 they let him out. I bathed my son and I see where the
8 bullet holes was in my son's body. I still pray. I didn't
9 let him see me cry because he was already going through with
10 himself how he was. He would ask himself if I'm able to go
11 back to work, the work like I used to. I said God said yes.
12 I believe in God. I trust in God. And I know he will stick
13 by us. He's not going to leave us in this ocean and let us
14 drown.

15 But as the months went, a year went, I still was
16 praying because as I say, the Court need to see justice done
17 on my child, on anybody's child if this were to happen to
18 them.

19 I just want justice to be served on my son, Victor
20 Middleton. And y'all be blessed.

21 THE COURT: Ms. Middleton, thank you.

22 MS. MIDDLETON: You're welcome.

23 MR. MILLER: Nothing further from the State, Your
24 Honor.

25 THE COURT: Thank you, Mr. Miller.

1 Mr. Hayes.

2 MR. HAYES: May it please the Court, Your Honor. Mr.
3 Gilbert is 32 years of age, Your Honor. He worked for three
4 years for the company Hotel Partner Service, which is a
5 security firm, doing private security for the clubs and
6 bars. He worked for three different other companies as well
7 doing the same thing over this three-year period. He also
8 worked at the shipyard down in Charleston on and off for the
9 last four years.

10 He attended Denmark-Olar through the 11th grade. He
11 tells me that he passed and actually went into the 12th
12 grade, but during that summer, he moved down to Florida with
13 his older brother. And when he got down there, he felt like
14 he was grown and didn't enroll himself and he said that's
15 the dumbest thing he's ever done. Direct quote. He
16 realizes now it was a mistake not to have had an education.
17 In 2012, he started trying to work on getting his GED. He
18 ended up missing it by two points. And then I believe the
19 program stopped and he didn't try to find another location
20 where the GED was given.

21 He has two girls, a ten-year-old and a three-year-old,
22 of which the ten-year-old lives in Barnwell and the
23 three-year-old lives in Columbia. And he has two boys, a
24 14-year-old and a 12-year-old, both of them live in Govan,
25 which is between here and Barnwell.

1 He has a brother who is in the Navy and I've talked
2 with him several times. He's very well-spoken, thinks a lot
3 of his brother and very concerned about him. He's served
4 for the last ten years. He tells me that he was planning on
5 doing the Navy when he was in high school and that was part
6 of his plan, but then he started having this, you heard some
7 issues of getting in trouble and that sealed the deal and he
8 put on a bunch of weight. After that, the Navy wasn't
9 something that -- I don't think the Navy was interested in
10 him even though he was still interested in it.

11 At the time of this incident, Your Honor, he tells me
12 that he was looking for other ways to try to better himself
13 and try to support his family. He was looking at the CDL
14 classes that Denmark Tech has started offering. It's a new
15 offering, a new class. And he was wanting to try to enroll,
16 however, this incident happened and it didn't bear any
17 fruit, he was incarcerated.

18 Your Honor, his mother and his girlfriend are here.
19 They said they would like to try to address the Court, but
20 they didn't know if they could get through it. I'd ask you
21 to hear from them if they're willing still.

22 THE COURT: Certainly, if they would like to try. And
23 if at any point they feel they are overwhelmed, they can
24 stop.

25 Are you mom?

1 MS. TAYLOR: Yes, ma'am.

2 THE COURT: Tell me your name, please.

3 MS. TAYLOR: Carrie Taylor.

4 THE COURT: Spell Carrie for me.

5 MS. TAYLOR: C-A-R-R-I-E.

6 THE COURT: Thank you. Yes, ma'am, Ms. Taylor.

7 MS. TAYLOR: I'm Kelcie Gilbert's mother. I don't
8 claim him to be a saint, but as a single mother, I worked
9 hard and tried to provide for my children. I only have two
10 sons. My oldest son is in the Navy. He's on his 22 years
11 in the Navy.

12 I try everything in my power to do everything in my
13 power for my children, and I love my two sons. And I don't
14 claim either one of them to be a saint, but I try hard. And
15 I always want the best for my children.

16 And I'm not here to say that he was wrong and I'm not
17 here to say that he was right because I wasn't there. But I
18 pray and I ask God to shield him and to shield me and let me
19 feel what I think is right. I don't think in my power that
20 he would have just did something without anybody doing any
21 harm or trying to harm him, but I can't swear to that
22 because I wasn't there.

23 I already lost -- not really lost, one of my sons not
24 with me by being in the Navy doing what he sees fit to do.
25 I just pray that you be lenient with my child. They're the

1 only two children I have. One is already away from me in
2 the Navy and I ask if you see fit just be lenient with him.
3 That's all I have.

4 THE COURT: Yes ma'am. I want to thank you for being
5 here in support of your son with the understanding that,
6 obviously, I have -- you know, the jury has made their
7 decision and as a result, I have to make a decision
8 regarding Mr. Gilbert.

9 I will say this, that as a parent, I understand that
10 you -- just as the victim's mother has tried very hard. And
11 no one is proclaiming that any child will ever be perfect or
12 will always do right. And we pray over our children. I'm
13 sure you prayed over Mr. Gilbert the way that she's prayed
14 over her son. So we cannot be responsible and hold their
15 hands every single day. I don't hold you responsible, okay,
16 but the jury has made their decision. Do you understand?

17 MS. TAYLOR: Yes, ma'am.

18 THE COURT: But I do thank you for being here and I
19 believe every word that you've said.

20 I want you to tell me your name.

21 MS. SUMMERS: Jacqueline Summers.

22 THE COURT: Jacqueline?

23 MS. SUMMERS: Yes, ma'am.

24 THE COURT: Summers?

25 MS. SUMMERS: Yes, ma'am.

1 THE COURT: Ms. Summers, what you want to tell me this
2 morning?

3 MS. SUMMERS: I've known Kelcie since we were kids. He
4 had problems and stuff like that, you know, growing up and
5 everything like that, but I've watched him grow. I've
6 watched him, like, you know, be into a better person.

7 And when -- this past eight months since he's been
8 locked up, I've talked to him and everything. Before
9 that -- he changed a lot. It's just that he would always be
10 around people that was just steady, constantly picking on
11 him. Like I said, I've known him since he was little, and
12 this was always something that was always going on since we
13 was kids. People would always pick at him and stuff. And
14 he always been the type person that wants to defend himself.
15 And I used to always tell him, you know, you don't have to
16 defend yourself to nobody. You know, with people bothering
17 you and stuff all the time, it's hard.

18 But at the same time, you know, I'm not saying that
19 what happened was right or wrong because I don't know what
20 happened, I wasn't there, but I do know that the type of
21 person he is, he don't bother anyone unless they bother him.
22 He never been that type of person that just goes and pick at
23 somebody. They have to bother him first.

24 THE COURT: Do y'all have children together, Ms.
25 Summers?

1 MS. SUMMERS: Yes, ma'am.

2 THE COURT: The three-year-old, ten-year-old?

3 MS. SUMMERS: No, ma'am. Our daughter passed and I
4 have a 12-year-old, 14-year-old.

5 THE COURT: Yes ma'am. Anything else you want to tell
6 me, Ms. Summers?

7 MS. SUMMERS: Only thing just that my kids, my family
8 miss him. Our house is not the same without him. That's
9 all.

10 THE COURT: Thank you for being here. I know Mr.
11 Gilbert is glad for the both of you all to be here in
12 support of him. And your input is important as well. Thank
13 you.

14 Mr. Hayes.

15 MR. HAYES: Judge, first, the solicitor told you about
16 the pending charges. I think that may have been
17 inappropriate. Those aren't convictions yet and I'd ask you
18 not to consider them when it comes to sentencing. Those
19 will come in their due time.

20 Judge, you presided over the trial. And I believe that
21 he believes he saw a gun. His story from day one till now
22 is he believes he saw a gun. They had had issues the week
23 prior, everybody was shooting guns. Lewis Orr, which I was
24 trying to get into, and I understand that's hearsay, had
25 been putting information into his ear as well as Victor's

1 ear that they were out for each other. Both of them were
2 confused and didn't understand why this was going on. So it
3 started the paranoia that somebody was out to get somebody.

4 When he was at the birthday party, Lewis Orr came up
5 and said Victor's going to come down and handle his
6 business. He waited a few minutes, got in his car and went
7 to leave. And when he went to leave, here comes Victor
8 Middleton on a motorcycle screaming past him and he sees
9 them at the car and he believes he saw a gun come out that
10 window. And at that point, he tried to get away and he
11 believes that he took the only option that he had, which was
12 to defend himself.

13 Your Honor, he went and told his momma what happened.
14 He called the police. He turned himself in and he gave them
15 the gun. There's not a whole lot more I would say that
16 somebody who believes that they did wrong would do. I mean,
17 that's just completely the opposite. It's 180 degrees of
18 what I'm normally up here trying to argue. He called the
19 police. He took the gun back. He turned it in. He gave it
20 to them. I believe he believes what he did was justified.

21 Now, the jury has spoken. You're in a situation now,
22 Judge, where you've got a wide breath of sentencing options
23 here. We absolutely understand there has to be a mandatory
24 minimum five years. That's possession of a weapon during a
25 violent crime, that's a five year day-for-day. And then the

1 attempted murder is from zero to 30, and that's 85 percent.
2 It is going to be the most serious strike. The solicitor
3 has handed me the notice for LWOP and I believe that they're
4 going to serve Mr. Gilbert after sentencing with his copy.
5 So we've got a long road ahead of us as well.

6 I would ask the Court to consider as much leniency as
7 it can muster for Mr. Gilbert. I know we're not looking at
8 anything less than five, and that's probably even
9 unrealistic as a minimum, but I'd had the Court to muster as
10 much leniency as it could for Mr. Gilbert and do what it
11 feels to be fair and just.

12 THE COURT: Thank you, Mr. Hayes. Does your client
13 wish to address -- he certainly doesn't have to, but does --
14 You wish to address the Court?

15 THE DEFENDANT: Yes ma'am.

16 THE COURT: Yes, sir, I'll hear from you, Mr. Gilbert.

17 THE DEFENDANT: How you doing, Judge?

18 THE COURT: I'm well. Thank you, sir.

19 THE DEFENDANT: I just wanted to speak on before this
20 incident. Before this incident, I looked at Mr. Victor
21 Middleton as somebody -- when I was coming up, he was the
22 guy in the neighborhood I had wanted to be more like. You
23 know, he was the first young man in the neighborhood with
24 four-wheelers and stuff. I looked up to him.

25 So when he started coming back to Olar, you know,

1 people tried to put us against each other. Most of the
2 times when issues was addressed to us -- addressed to me
3 about Mr. Middleton, I would say to him hey, man, this is
4 what was going on. He was like nah, I don't get in no
5 trouble. I got no problem with you. We didn't have no
6 problems. We never had any problems, like, even though
7 people trying to put us against each other, you know, a lot
8 of people, really, besides Lewis Orr.

9 That day, Lewis Orr had came to me like he gave me the
10 heads up, like, hey, man, you better leave. Mr. Middleton
11 about to come and do something to you. As I'm leaving -- it
12 shocked me and it hurt me at the same time that all this
13 took place because all this could have been avoided. All
14 this could have been avoided. All this could have been
15 avoided if Mr. Middleton wouldn't have got that gun. If he
16 had a problem with me, somebody came to him about something,
17 came to him about something, he could have just pulled me to
18 the side.

19 I don't hate nobody. I don't hate nobody in this
20 situation, I really don't. I just wish that when you got
21 laws -- you got laws, I wish that the laws look at us as we
22 follow the laws, too. The laws should be more than for the
23 officers of the law to follow. Me, I feel like I haven't
24 done anything wrong. I just wish things would have been
25 different. I just wish it never happened like that because

1 when we have a set of laws, we have a right to follow those
2 laws, too, not to justify and say why did you do it or why
3 did you do that.

4 In the heat of the moment, wouldn't nobody think that
5 somebody's got a gun and let somebody shoot them. I took
6 what I thought was the safest route. I went toward Highway
7 64. I wish it would have never happened, but I can't take
8 that back. And I just apologize for everything that
9 happened on my behalf. I'm sorry.

10 THE COURT: All right, Mr. Gilbert.

11 Mr. Hayes, anything further, sir?

12 MR. HAYES: No, Your Honor.

13 THE COURT: Anything further from the State?

14 MR. MILLER: No, Your Honor.

15 THE COURT: Mr. Hayes, can you tell me how much time
16 Mr. Gilbert is going to get credit for?

17 MR. HAYES: I can't, Your Honor. He's been in multiple
18 jails. There was a security issue and he was sent to
19 Orangeburg, then he was bounced to -- I had him moved to
20 Barnwell so I could get prepared. And I don't have a
21 running list. He's been incarcerated since --

22 THE COURT: What I'll do is I will check that he
23 receives time served and then DOJ will have to calculate
24 that.

25 MR. HAYES: I would ask that he get the time from the

1 time he was arrested on the murder as well because he's not
2 been out. And I don't know if they actually did a bond off
3 bond motion.

4 Do you remember what the date was on the murder?

5 MR. MILLER: He was arrested on the murder on July 5th,
6 2021. He's been incarcerated since that time. On this
7 charge, he spent four days. So, essentially, to ensure that
8 he got credit for everything, if the Court wanted to run the
9 time served from July 1st of 2021, that would incorporate
10 the four days he had already spent and the time since July
11 5th of 2021. I think that would be everything.

12 MR. HAYES: I'd ask the Court to consider doing that.
13 I don't recall them doing any bond off bond motion.

14 MR. MILLER: I can actually figure out what the number
15 of days if you'd rather do it that way.

16 THE COURT: I think I would rather do it that way
17 because I want to ensure that they don't miscalculate what
18 the intent is and then there's confusion on the back end.
19 If you don't mind, Mr. Miller, I'll wait for that.

20 (Pause.)

21 MR. MILLER: He should get credit for -- I said four
22 days, actually, it was three more days before he bonded out.
23 So he should get credit for seven days from his arrest on
24 the charges that he's being sentenced on and then an
25 additional 241 days since his arrest on July 5th of 2021.

1 So he should get credit for 248 days total.

2 THE COURT: All right. Thank you, Mr. Miller.

3 Let me first say that I'm going to give anyone the
4 opportunity if they think they cannot handle the sentencing,
5 we'll give them the opportunity to exit the courtroom, but I
6 do not want any type of outburst in the courtroom. You need
7 to remember to maintain the decorum of the courtroom.

8 With that said, Mr. Gilbert, I'm sentencing you on the
9 attempted murder for indictment number 2021-GS-05-00050 to
10 the State Department of Corrections for a term of 17 years.
11 You will receive credit for the time that you've served in
12 the amount of 248 days.

13 With regards to the possession of a weapon during a
14 violent crime, indictment number 2021-GS-05-00051, I'm
15 sentencing you to the State Department of Corrections for a
16 term of five years. You will receive credit for the 248
17 days that you've served on that one as well, Mr. Gilbert.
18 The statute requires that you do serve that consecutive to
19 the prior sentence.

20 MR. HAYES: I don't believe it is required. It is the
21 Court's discretion, if that is your intent.

22 THE COURT: Let me verify that, Mr. Hayes.

23 Mr. Miller, is that your understanding? I believe the
24 statute says it must follow the sentence.

25 MR. HAYES: I believe it says it can run consecutively

1 or concurrently, however, it must be a day-for-day five
2 years. And it will be assumed -- let's say if the sentence
3 is longer, it will be ran, if it ran concurrently, during
4 that time.

5 MR. MILLER: I need to look it up, Your Honor.

6 THE COURT: All right. The code reads -- I just want
7 to put it on the record so that we are clear and there's no
8 confusion. Under 16-23 -- oh, this is not the right
9 statute. Wait a minute. Wait a minute.

10 The statute reads under 16-23-490: If a person is in
11 possession of a firearm or visibly displays what appears to
12 be a firearm or visibly displays a knife under the
13 commission of a violent crime and is convicted of committing
14 or attempting to commit a violent crime as defined in
15 16-1-60, he must be in prison five years in addition to the
16 punishment provided for the principle crime.

17 MR. MILLER: Your Honor, on Subsection B, it says:
18 Service of the five-year sentence is mandatory unless a
19 longer mandatory minimum term of imprisonment is provided
20 for the violent crime. The court may impose this mandatory
21 sentence, five-year sentence to run consecutive or
22 concurrently.

23 THE COURT: All right.

24 MR. MILLER: So they seem to contradict each other, but
25 I think B is probably controlling.

1 THE COURT: So B does control --

2 MR. HAYES: Yes, ma'am. I don't know if that was your
3 intent or not. I just --

4 THE COURT: Certainly. The Court takes no issue. We
5 want to make sure that everyone is treated fairly. And so,
6 I do not mind, but my intent was for that length of time, a
7 total of 22. So I am going to remain with my original
8 sentencing. And I will repeat that just to be clear on the
9 record.

10 With regards to the attempted murder, I'm sentencing
11 Mr. Gilbert to a term of 17 years in the State Department of
12 Corrections, and he will receive credit for that 248 on that
13 sentence.

14 With regards to the weapons charge, I'm sentencing Mr.
15 Gilbert to a five-year sentence, which will run consecutive
16 to the first sentence. He will also receive 248 days on
17 that sentence as well.

18 MR. HAYES: Thank you, Your Honor.

19 THE COURT: Thank you, Mr. Hayes.

20 Mr. Miller.

21 Good luck to you, Mr. Gilbert. Mr. Hayes will explain
22 to you.

23

24

25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF BAMBERG)

I, PENNY M. JOHNSON, Official Court Reporter for the
Second Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate, and
complete Transcript of Record of the proceedings had and the
evidence introduced in the hearing of the captioned case,
relative to appeal, in General Sessions Court for Bamberg
County, South Carolina, on the 1st day of March, 2022.

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

May 16, 2022

Penny M. Johnson
Penny M. Johnson
Court Reporter III

WITNESSES

Bamberg County Sheriffs Office

Kenneth H Russell

Law Enforcement Case #: BCSO 2020-0454

Jannie C. Johnson CMA

ARREST WARRANT NUMBER

2020A0510100215

ACTION OF GRAND JURY

True Bill

Randy

Foreperson of Grand Jury

Date: 5/6/21

VERDICT

Foreperson of Petit Jury

Date: 7

DOCKET NO. 2021GS0500050

The State of South Carolina

County of Bamberg

COURT OF GENERAL SESSIONS

MAY TERM 2021

THE STATE

vs.

KELCIE RALPH GILBERT

CDR #: 3410

Indictment for

ATTEMPTED MURDER

§ 16-03-0029(A)

BILL WEEKS, SOLICITOR

FILED
BAMBERG COUNTY

2022 MAR -3 AM 10:57

JANNIE C. JOHNSON
CLERK OF COURT
BAMBERG, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF BAMBERG)
)

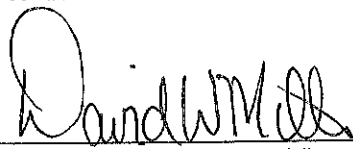
INDICTMENT FOR
ATTEMPTED MURDER

§ 16-03-0029(A)

At a Court of General Sessions, convened on May 31, 2021, the Grand Jurors of Bamberg County present upon their oath:

That **KELCIE RALPH GILBERT** did in Bamberg County on or about July 18, 2020, feloniously and with malice aforethought, attempt to murder Victor Middleton by means of shooting the victim multiple times with a firearm. All in violation of Section 16-3-29 of the South Carolina Code of Laws (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



BILL WEEKS, SOLICITOR

WITNESSES

Bamberg County Sheriffs Office

Kenneth H Russell

Law Enforcement Case #: BCSO 2020-0454

Stamice Lkh

CMA

ARREST WARRANT NUMBER

2020A0510100216

ACTION OF GRAND JURY

True Bill

Ray B

Foreperson of Grand Jury

Date: 5/6/21

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2021GS0500051

The State of South Carolina

County of Bamberg

COURT OF GENERAL SESSIONS

MAY TERM 2021

THE STATE

vs.

KELCIE RALPH GILBERT

CDR #: 0549

Indictment for

POSSESSION OF WEAPON DURING
VIOLENT CRIME

§ 16-23-0490

BILL WEEKS, SOLICITOR

FILED
BAMBERG COUNTY

2022 MAR -3 AM 10:57

JANNIE C. JOHNSON
CLERK OF COURT
BAMBERG, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF BAMBERG)
)

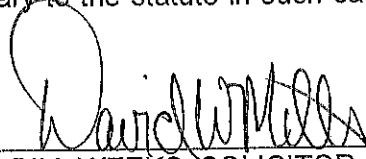
INDICTMENT FOR
POSSESSION OF WEAPON DURING
VIOLENT CRIME

§ 16-23-0490

At a Court of General Sessions, convened on May 31, 2021, the Grand Jurors of Bamberg County present upon their oath:

That **KELCIE RALPH GILBERT** did in Bamberg County on or about July 18, 2020, possess or visibly display a firearm during the commission of a violent crime, to wit: Attempted Murder, all in violation of Section 16-23-490, Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

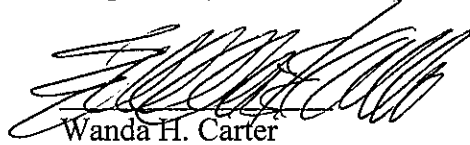

BILL WEEKS, SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

RECEIVED**Jul 15 2022****SC Court of Appeals**

Respectfully Submitted,



Wanda H. Carter

Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 15th day of July, 2022.