

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Appeal from Sumter County
The Honorable Howard P. King, Circuit Court Judge
Appellate Case No. 2021-001493

THE STATE,

Petitioner,

v.

JAMES CALEB WILLIAMS,

Respondent.

APPENDIX

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INDEX

RECORD ON APPEAL	1
FINAL BRIEF OF APPELLANT	319
FINAL BRIEF OF RESPONDENT	337
COURT OF APPEALS OPINION (No. 5835).....	361
RESPONDENT’S PETITION FOR REHEARING	389
ORDER DENYING PETITION FOR REHEARING	400

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County

The Honorable Howard P. King, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMES CALEB WILLIAMS,

APPELLANT

APPELLATE CASE NO. 2017-001601

RECORD ON APPEAL

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MICHELLE EICHENMILLER	
Direct Examination by Mr. Brown	110
Cross Examination by Mr. Hastie	122
Redirect Examination by Mr. Brown.....	124
NATHALIE KELLY	
Direct Examination by Mr. Brown	125
Cross Examination by Mr. Hastie	146
Redirect Examination by Mr. Brown.....	155
Recross Examination by Mr. Hastie	158
MOTION FOR DIRECTED VERDICT.....	159
RULING BY THE COURT.....	161
QAWIYY MCFADDEN	
Direct Examination by Mr. Hastie	164
Cross Examination by Mr. Brown	168
Redirect Examination by Mr. Hastie	170
Recross Examination by Mr. Brown.....	171
AMANDA SNAPP	
Direct Examination by Mr. Hastie	173
JAMES WILLIAMS	
Direct Examination by Mr. Hastie	178
Cross Examination by Mr. Brown	187
Redirect Examination by Mr. Hastie	202
Recross Examination by Mr. Brown.....	205
NATHALIE KELLY	
Redirect Examination by Mr. Brown.....	208
Recross Examination by Mr. Hastie	209
RENEWED MOTION FOR DIRECTED VERDICT	212
RULING BY THE COURT.....	213
CLOSING ARGUMENT BY MR. BROWN.....	222
CLOSING ARGUMENT BY MR. HASTIE.....	245
CHARGE ON THE LAW	274
VERDICT	303

SENTENCING	304
STATE’S EXHIBIT #38 (WILLIAMS WRITTEN STATEMENT)	306
STATE’S EXHIBIT #40 (MYERS WRITTEN STATEMENT)	308
INDICTMENTS	310
CERTIFICATE OF COUNSEL	313

STATE OF SOUTH CAROLINA	)	GENERAL SESSIONS
	)	
County of Sumter	)	2015-GS-43-00639
	)	2015-GS-43-00655
	)	
State of South Carolina,	)	
	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
James Caleb Williams.	)	
	)	
	)	

July 17th - 19th, 2017
Sumter, South Carolina

BEFORE:

THE HONORABLE HOWARD KING, JUDGE; and a jury.

APPEARANCES:

TYLER BROWN, ASSISTANT SOLICITOR
Attorney for the State

CALVIN HASTIE, ESQ.
Attorney for the Defendant

MARYANN S. NEVERS, CVR-M-CM
Official Court Reporter

1 your deliberations by either me or the bailiff.

2 Are there any objections to my opening remarks on
3 behalf of the state, Mr. Brown.

4 MR. BROWN: No, sir, Your Honor.

5 THE COURT: On behalf of the defense?

6 MR. HASTIE: None, Your Honor.

7 THE COURT: All right. The first order of the trial,
8 ladies and gentlemen, will be the matter of opening
9 statements. For that purpose, the state -- the Court will
10 recognize the assistant solicitor, Mr. Brown.

11 MR. BROWN: Thank you, Your Honor. May it please the
12 Court.

13 THE COURT: Yes, sir.

14 OPENING STATEMENT

15 BY MR. BROWN:

16 Ladies and gentlemen, good morning. We're here
17 because on May 2nd, 2015, Club Cream, now Club Rose'
18 right beside the mall, had a theme party. We're here
19 because on May 2nd, 2015, Club Cream had a whole bunch
20 of teenagers over at the club, and two of them got in an
21 argument. We're here because those two individuals, Malik
22 Myers and the defendant, James Williams, bumped into each
23 other and decided that wasn't enough. Ladies and
24 gentlemen, we submit to you that what you're going to hear
25 through this trial is we're here today and this week

1 because on May 2nd, 2015, in the early morning hours, as
2 the club was letting out, James Williams and Malik Myers
3 decided to settle their differences by getting into a
4 gunfight in the parking lot of Club Cream, where three
5 people were struck with bullets.

6 Good morning. My name is Tyler Brown. I have the
7 pleasure of introducing myself to you yesterday as we were
8 calling the case, but it's a pleasure to be here today.
9 You're going to hear Mr. Hastie and I disagree about a lot
10 of things throughout the trial, but I can go ahead and
11 tell you right now, one of the first things I do want to
12 tell you and one of the first things that I tell any jury
13 is the one thing that Mr. Hastie and I agree on. That's
14 how much we appreciate you being here. You see, we know
15 that y'all have lives outside of here. I listened as
16 y'all did jury qualifications. I've heard some of you are
17 teachers and enjoying your summer break. Some of you are
18 working in factories. Some of you are working hourly
19 jobs, and every single one of you probably has somewhere
20 else you wanted to be other than sitting in a jury room in
21 the courtroom of the South Carolina Sumter county judicial
22 complex listening to an attempted murder trial, listening
23 to facts about two kids getting into a gunfight and almost
24 killing each other.

25 But our justice system works because y'all are here.

1 Our justice system works because even though y'all are
2 inconvenienced, y'all come in and y'all served a vital and
3 important role that goes to a fundamental part of how our
4 constitution works, how our criminal justice system works,
5 a jury of our peers. We're here thanking you because this
6 job, the justice system, would not work without you.
7 Calvin and I may not be able to agree on anything else
8 about this trial, but I think I can speak on both mine and
9 his behalf in telling you how much I appreciate and we
10 appreciate y'all being here.

11 We appreciate y'all being here because this case is
12 important. We appreciate you being here because lives
13 were put at risk on May 2nd, 2015. Senselessly, I might
14 add. And we're here because James William, by the state's
15 contention and the state's belief -- and we hope by the
16 end of this trial will have proven it to you beyond a
17 reasonable doubt for y'all's belief -- that on May 2nd,
18 2015, James Caleb Williams put multiple individual's lives
19 at risk for no reason, without self-defense claims,
20 without any legal justification, and that he's guilty.

21 I want to start out by giving y'all a little bit of a
22 road map of kind of what to expect. That's a big thing
23 for me. Whenever I get in the car and go anywhere with my
24 wife, a lot of the times one of the first things I do is I
25 pop the GPS system up, because I kind of like to know the

1 direction where the turns are coming, what to expect, what
2 is am I looking for, how much further. So the reason
3 y'all are here is we have two counts of attempted murder.
4 So I want to tell y'all what that is so y'all know what to
5 look for. I will talk to you much more in depth in my
6 closing argument about that. But we're here because we
7 have two counts of attempted murder that Mr. Williams is
8 charged with. And the indictments that we read to you
9 yesterday -- and that's just simply charging document.
10 That's simply so we can get here. I still have to prove
11 the case. But what that says is that on May 2nd, James
12 Williams did, with intent to kill, attempt to kill Malik
13 Myers and Ashley R. by firing a bullet. He fired the
14 gun at Malik Myers, is what the state contends.

15 He's also charged with possession of a weapon during
16 the commission of a violent crime. And what that means is
17 the state contends that he had a gun and he committed a
18 violent crime, which I'll tell you attempted murder is.
19 We're going to be offering numerous witnesses throughout
20 this case to prove these facts. You're going to hear from
21 multiple witnesses. Some of them will be shorter
22 witnesses; some of them will be longer, but you're going
23 to hear from three people who were at the club that night.
24 You're going to hear from Ashley R., who is sitting here
25 today. She's right there in the lime green shirt.

1 Ashley R., if you could just stand up for just one second.

2 Ashley R. was shot. She was hit in the leg on
3 May 2nd, 2015 as she was leaving the club, as it was
4 closing down sometime between one and 2:00.

5 Thank you, Ashley R. You can sit back down.

6 She wasn't armed. She wasn't shooting back. She was
7 just in the parking lot and got hit. And we contend that
8 you're going to hear evidence throughout this trial that
9 links James William as the one who shot the gun that hit
10 her. That might be something that Mr. Hastie and I
11 disagree on. I submit to you we'll have evidence of that.

12 You'll hear from Malik Myers in this case. Malik is
13 not in the courtroom right now, but Malik was shot in the
14 leg as well. And I'll tell you, I'm not going to try to
15 hide anything from you. Malik is not going to be wearing
16 a lime green shirt or any other street clothes. Malik has
17 already been convicted for his role in this. Malik will
18 be coming out that door over there, which is our holding
19 cells. Malik is now in this South Carolina Department of
20 Corrections. Malik is not innocent in this case, and I
21 will not present to you for one second during this trial
22 that he is. But Malik is also a victim, and James is also
23 equally responsible for this is what the state contends.

24 You'll hear from Malik, and you'll hear how on that
25 night there was a disagreement in the club. He and James

1 bumped into each other, and I'll submit to you you won't
2 hear -- they had never gotten in any physical
3 altercations, but they had a little bit of a beef. And
4 I'll submit to you that you're going to hear that when
5 Malik came out of the club, he saw James was still there
6 out by his car. And Malik armed himself. He got -- I
7 believe he's going to tell you he got a 38 revolver. And
8 you're going to hear that he then went to go leave or to
9 go towards his girlfriend, and that point, he heard
10 gunshots. He looks up, James was shooting at him, and
11 Malik starts shooting back.

12 I submit you'll also hear from Ashley R. that she
13 saw Malik and she saw -- she heard gunshots before Malik
14 ever started shooting. She didn't see who was shooting.
15 She didn't see if it was James or not. But you're also
16 going to hear from one other person who was at the club
17 that night. That is Ms. Chelsea Rogers. She'll be in the
18 courtroom in just a little while. Ms. Chelsea Rogers was
19 actually Malik's girlfriend at the time. I don't think
20 they're together anymore, but she was there that night.
21 She saw Malik come out of the club. She saw him stop for
22 a second, come to a -- she never saw him with a gun, but
23 we're not contending Malik didn't have one. And then she
24 heard gunshots. She turned around, and then saw Malik
25 start shooting back after there were gunshots.

1 Ladies and gentlemen, we submit to you those are the
2 facts you're going to hear. You'll hear from other
3 people. You're going to hear from the first officer on
4 the scene. He'll be one of the second witnesses here.
5 You're going to hear 911 tapes. You're going to hear
6 (sic) crime scene pictures and all that, but you're also
7 going to hear from Detective Nathalie Kelly, who is here
8 sitting at the table with me.

9 You're going to hear about Detective Kelly sitting
10 down with James Williams. You're going to hear how he
11 identified the gun he was shooting, which, by the way, was
12 recovered that night. You're going to see it. It's
13 actually I think state's Number 34. You'll see the gun.
14 And you're going to hear how James acknowledged that he
15 shot a gun that night, albeit he claims in self-defense,
16 and he claims -- and you'll hear this -- that he only shot
17 into the back of his car to scare someone off that he
18 claims came at him with a gun. I submit to you that
19 you're going to hear it and you're probably going to find
20 it to be a little preposterous, but we'll talk on that
21 more later.

22 And finally, you're going to hear from SLED agent who
23 took the bullet that was recovered from Ashley's leg, and
24 tested that bullet against rounds fired from the gun from
25 James Williams' leg, and you're going to hear about

1 consistencies that existed between the bullet pulled out
2 of Ashley's leg and the test fired round fired from that
3 same gun that's sitting right there.

4 Ladies and gentlemen, this is serious. People's
5 lives are put at risk. One person that you also might
6 hear from -- I'm not sure -- there's a Qawwiyy McFadden
7 you'll hear from him as well, or potentially hear from
8 him. He got his ear shot off. Now, we submit to you and
9 Malik Myers pled guilty to being the one who shot that
10 gun. But there was an open shootout in a parking lot full
11 of kids on May 2nd, 2015, because of petty, stupid
12 arguments. And that's why we're here. This is serious.
13 This is deadly serious. And what I'm asking you to do now
14 is listen. Listen to each witness. Watch each piece of
15 evidence that comes in. Analyze the facts. Keep mental
16 notes about it. Don't deliberate until the very end. I'm
17 going to ask you at the end of this case, after you've
18 heard all the facts, after you've seen all the evidence,
19 after you've listened to all the testimony, after you've
20 heard cross-examination, direct-examination of every
21 single witness, to go back and deliberate. And I submit
22 to you that after you hear all of the testimony, see all
23 the evidence, see all the pictures, the gun, hear from the
24 SLED analysts over the next day and a half, after you get
25 all of the evidence in this case, you will see that

1 Mr. James Caleb Williams is guilty for two counts of
2 attempted murder and one count of possession of a weapon
3 during a violent crime. Thank you.

4 THE COURT: Mr. Hastie, does the defendant care to
5 make an opening statement?

6 MR. HASTIE: He does, Your Honor.

7 THE COURT: You may.

8 MR. HASTIE: May it please the Court.

9 THE COURT: Yes, sir.

10 MR. HASTIE: Counsel?

11 MR. BROWN: Yes, sir.

12 OPENING STATEMENT

13 BY MR. HASTIE:

14 Ladies and gentlemen, good morning. As I said
15 yesterday, I'm Calvin Hastie. I represent Mr. Williams,
16 who is sitting at my table. Often times, I waive the
17 opening statement for the defense, because as you heard,
18 what lawyers say really isn't evidence. Okay. So you're
19 going to have to really listen to the evidence and make
20 the decision for yourself.

21 But I thought I would come here and talk to you about
22 something that -- my client asked me to make sure I thank
23 you all for your presence here today. Because as the
24 judge said yesterday, I think the only higher calling than
25 being on a jury is serving in our military. And I served

1 20 years in the military so we would have this kind of a
2 situation. This isn't Russia where you're accused of a
3 crime and then all of a sudden the person just disappears
4 and the family members never see them again. In our
5 country -- I want you to think about two important
6 principles as we go forward today. One is the presumption
7 of innocence. The Constitution of this country, the
8 constitution of the state of South Carolina says that we
9 are all presumed innocent, innocent until proven guilty.
10 And that presumption of innocence is like a robe of
11 righteousness that we all wear. And the defense -- and
12 the prosecutor can't just come here and present all kinds
13 of stuff to you, can't tug on the robe, pull on the robe,
14 see threads hanging from the robe. The robe must be
15 removed. It's a presumption of innocence. It's like a
16 robe of righteousness.

17 Second point I want you to remember. The burden of
18 proof, burden of proof. The constitution is very clear on
19 who has the burden of proof. As the judge has already
20 said, Mr. Williams doesn't even have to say a word. He
21 doesn't even have to testify. Because the law says the
22 burden of proof is on the prosecutor. On the solicitor's
23 side. It's the burden of proof. And it's not just some
24 little small burden that maybe he did it. We have that a
25 lot in magistrate court. They call it the preponderance

1 of the evidence. Maybe 51 percent, he could have done it.
2 But no. In general sessions court, it's up here. It's
3 beyond a reasonable doubt. So those two things, I want
4 you to remember as we go forward here today and possibly
5 tomorrow. Presumption of innocence, burden of proof.

6 Two young men -- from what I understand, they've been
7 having problems since they were in middle school. And
8 it's kind of ridiculous, because I'm concerned about a
9 city like Sumter. We have a teen party where several of
10 the teens have had weapons at this party. These aren't
11 adults. These are teenagers, and they got weapons. And
12 you hear about the shooting at the -- at this club that
13 night. The club that's out behind the mall. You'll see
14 pictures of that today. They called it Club Cream then.
15 It must change its name every two or three months. But we
16 got our young people out there, we got a birthday party,
17 and all of a sudden, this shootout takes place. Thank God
18 that no one was killed. But as Mr. Brown said, this is a
19 very serious, dangerous situation.

20 I ask that you that you wait until you hear all of
21 the evidence, because you're going to hear a lot of stuff
22 today. But I want you to listen, use your common sense.
23 Mr. Malik Myers, he will come in here today, but this all
24 started with him, and that's why he's in his orange
25 jumpsuit today. He's paying the price for it. He just

1 said he had -- he admitted to his role in this event.
2 Mr. Williams was there. This man is coming towards him,
3 shooting at him. He has a weapon. He's shooting into his
4 car. He wants to just scare him away and stop the -- him
5 approaching him. We have evidence of that, and you will
6 see that.

7 My mother-in-law is from Spartanburg. She passed
8 away a couple of years ago. I'm going to ask y'all not to
9 be like my mother-in-law. She would tell me, she would
10 say, "Calvin, I love serving on a jury," she said,
11 "because I can tell if a person is guilty or innocent the
12 moment they walk in the courtroom." And we don't want
13 that, okay. That's my mother-in-law, I love her dearly,
14 but that's not the way a juror should act. You should
15 wait until you hear all of the evidence, then you make
16 your decision. I submit to you after you hear all of the
17 evidence today, you will find Mr. Williams not guilty of
18 this offense. Thank you very much.

19 THE COURT: All right, Mr. Brown, you may call your
20 first witness.

21 MR. BROWN: State would call Sherlene Skipper.

22 SHERLENE SKIPPER, after having first being duly
23 sworn, testified under oath as follows:

24 THE CLERK: Please state your full name and spell
25 your last name for the record.

1 THE WITNESS: Sherlene Skipper, S-K-I-P-P-E-R.

2 MR. BROWN: May it please the Court?

3 THE COURT: Yes, sir.

4 DIRECT EXAMINATION

5 BY MR. BROWN:

6 Q. Good morning, Ms. Skipper.

7 A. Good morning.

8 Q. For these ladies and gentlemen, let them know who you
9 are, Ms. Skipper. Tell them who you are and where you
10 work and what you do for a living.

11 A. My name is Sherlene skipper, and I'm the director of
12 the 911 center here in Sumter.

13 Q. So you were -- your employees are the ones we get if
14 we call 911?

15 A. We are the true first responders to the first
16 responders.

17 Q. Yes, ma'am, you are. How long you been there?

18 A. I started in 1977.

19 Q. Started with 911 at that point?

20 A. Yes.

21 Q. And you've been working with 911 dispatch ever since
22 then?

23 A. I took a stint at the South Carolina Criminal Justice
24 Academy teaching highway patrol troopers and came back to
25 Sumter.

SHERLENE SKIPPER - DIRECT EXAMINATION BY MR. BROWN

1 Q. Fair to say y'all work pretty closely with law
2 enforcement?

3 A. Yes, very.

4 Q. And as part of y'all's role with Sumter county 911
5 dispatch, is it part of your role to receive 911 calls?

6 A. Yes, sir, it is.

7 Q. Are these recorded?

8 A. Yes, sir, everything is recorded.

9 Q. Can you tell these ladies and gentlemen of the jury
10 how that all works?

11 A. We have a recording system that's capable of
12 recording 164 different items at one time. We record
13 actually from the dispatcher's handset, her headset, and
14 the telephone trunk.

15 Q. Does this record any 911 call that comes in?

16 A. Everything.

17 Q. From a lost cat to a shooting?

18 A. Yes.

19 Q. At our request -- or actually at law enforcement
20 request, did y'all pull up the 911 tapes from a law
21 enforcement case number that occurred on May 2nd, 2015?

22 A. Yes, sir. I had a request from Detective Kelly.

23 Q. And that was Detective Kelly right here?

24 A. Yes.

25 Q. Y'all know each other?

SHERLENE SKIPPER - DIRECT EXAMINATION BY MR. BROWN

1 A. Yes.

2 Q. And at my request yesterday, did you listen to the
3 911 tape you provided Detective Kelly to ensure it was the
4 same 911 tape that you provided to us?

5 A. Yes, sir, we did.

6 Q. When did that 911 call come in, or those 911 calls
7 come in?

8 A. At approximately 1:36 a.m. on May 2nd.

9 MR. BROWN: Permission to approach?

10 THE COURT: Yes.

11 Q. Show you what's been marked -- and I think already in
12 evidence -- as state's Exhibit Number 33. Is this the
13 same 911 tape you provided to us?

14 A. Yes, sir. It is. If you see, I initialed it and
15 dated it.

16 Q. And you dated it for yesterday when you listened to
17 it to ensure that?

18 A. Correct, and this is my handwriting from when I gave
19 it to Detective Kelly back in 2015.

20 Q. And this is a true and accurate copy of the 911 call
21 that came in on May 2nd, 2015, around 1:30 in the
22 morning?

23 A. Yes, sir.

24 MR. BROWN: Your Honor, permission to publish?

25 THE COURT: Permission granted.

SHERLENE SKIPPER - DIRECT EXAMINATION BY MR. BROWN

1 As I told you, ladies and gentlemen, the lawyers will
2 publish the exhibits to you while you're in the courtroom,
3 but you also have the opportunity to take any exhibits
4 with you to the jury room when you retire to deliberate
5 your verdict.

6 You may proceed, Mr. Brown.

7 MR. BROWN: Yes, Your Honor.

8 (Audiotape was played in open court.)

9 Q. Ms. Skipper, is that an accurate reflection of the
10 911 call provided by your office to us?

11 A. Yes, sir.

12 Q. And did you ever go out on the scene or anything?

13 A. No, sir.

14 Q. All right. But you provided those tapes to us?

15 A. Yes, sir.

16 MR. BROWN: No further questions. Please answer any
17 that Mr. Hastie has for you.

18 THE COURT: Cross-examination, Mr. Hastie?

19 MR. HASTIE: Yes, I do, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. HASTIE:

22 Q. Good morning.

23 A. Good morning.

24 Q. Thank you for your service to the city.

25 A. Thank you.

SHERLENE SKIPPER - CROSS-EXAMINATION BY MR. HASTIE

1 Q. We heard that there were four or five shots. Someone
2 said that, right, out of a car? You don't know any names
3 of anyone that got shot because that wasn't said?

4 A. No.

5 Q. And you don't know of anyone that did the shooting
6 because that wasn't mentioned?

7 A. No, sir.

8 MR. HASTIE: No further questions, Your Honor.

9 THE COURT: Redirect?

10 MR. BROWN: None, Your Honor.

11 THE COURT: All right. Thank you, Ms. Skipper. You
12 may step down. May the witness be excused?

13 MR. BROWN: Please, Your Honor.

14 THE COURT: Any objection?

15 MR. HASTIE: None at all, Your Honor.

16 THE COURT: The witness is excused.

17 THE WITNESS: Thank you, sir.

18 MR. BROWN: Your Honor, the state would call officer
19 Joseph Randy Jones.

20 JOSEPH JONES, after having first being duly sworn,
21 testified under oath as follows:

22 THE CLERK: Please state your full name and spell
23 your last name for the record.

24 THE WITNESS: Randy Jones, J-O-N-E-S.

25 MR. BROWN: May it please the Court, Your Honor.

SHERLENE SKIPPER - CROSS-EXAMINATION BY MR. HASTIE

1 THE COURT: Yes, sir.

2 DIRECT EXAMINATION

3 BY MR. BROWN

4 Q. Is your official name Joseph Jones?

5 A. It is.

6 Q. And your middle name is Randall?

7 A. Yes, sir.

8 Q. But you go by Randy?

9 A. I go by Randy, yes, sir.

10 Q. And it's actually Lead Corporal Randy Jones, correct?

11 A. Yes, sir.

12 Q. Lead Corporal, can you please for these ladies and
13 gentlemen, let them know who you are? Let them know where
14 you grew up, let them know what you do for a living. I
15 guess we can kind of see that, but how long have you been
16 with the force, where you went to school? Just let them
17 know who Randy Jones is?

18 A. Okay. My name is Randy Jones. I'm originally -- I
19 was born in West Virginia. Came to Sumter when I was
20 three with my parents, so I've grown up here. Went to
21 public school. Went to college in the state. I've been
22 at the Sumter police department for almost six years.
23 Prior to that, I worked at the Sumter fire department full
24 time, was a fireman. So I've grown up here, been around
25 Sumter pretty much my entire life. I'm 36 now.

JOSEPH JONES - DIRECT EXAMINATION BY MR. BROWN

1 Q. And you've been with the police department for six
2 years?

3 A. Uh-huh. It will be six years I think
4 December 11th.

5 Q. You rose through the ranks to lead corporal now?

6 A. Uh-huh.

7 Q. What is your role with the police department?

8 A. I'm a -- one of the patrol supervisors. I'm assigned
9 to B shift. So really, my priority I got officers under
10 me that answer calls for service. I also answer calls for
11 service if we get tied up or backed up on calls. Pretty
12 much any major scene that happens, whether it be a
13 shooting scene, major collision, anything major, I'm one
14 of the first supervisors that shows up.

15 Q. What's B shift, by the way?

16 A. It's just -- we have four shifts at the police
17 department, A, B, C, and D, and I'm just assigned to B
18 shift right now.

19 Q. Does that kind of rotate through night shifts and day
20 shifts?

21 A. We rotate every two months nights and day shifts.
22 Currently right now on night shift.

23 Q. So when you leave here, you're probably going to go
24 get some rest?

25 A. I'm actually off today.

JOSEPH JONES - DIRECT EXAMINATION BY MR. BROWN

1 Q. All right.

2 THE COURT: Always works out that way.

3 Q. Thanks for being here, then.

4 A. No problem.

5 Q. Lead Corporal, were you working on the night of
6 May 2nd, 2015?

7 A. I was.

8 Q. And were you still with B shift at that time, or were
9 you on a different shift at that time? Do you remember?

10 A. At this time, I was currently assigned to A shift.

11 Q. Okay.

12 A. I had recently got promoted a couple months prior to
13 May 2nd, and had to go to A shift.

14 Q. And you were shift supervisor at that time as well,
15 correct?

16 A. I was.

17 Q. Were you working at night shift?

18 A. We were.

19 Q. And at some point during that night, did you receive
20 dispatches or notifications you needed to respond to the
21 location we know is Club Cream?

22 A. I did.

23 Q. Do you know the address of Club Cream?

24 A. I know it's on Rast Street. I don't know the exact
25 number on Rast Street.

JOSEPH JONES - DIRECT EXAMINATION BY MR. BROWN

1 Q. If I were to offer to you it was 330 Rast Street,
2 would you have a reason to disagree with that?

3 A. No, sir, that seems pretty close.

4 Q. And so these ladies and gentlemen of the jury know
5 where Club Cream is, what is it in proximity to? What is
6 nearby?

7 A. Bultman Drive, and also really in close proximity to
8 Sumter Mall.

9 Q. From the back parking lot of Club Cream, can you
10 actually see the mall?

11 A. You can.

12 Q. And we're kind of looking towards the back parking
13 lot towards where Belk's and Sykes is?

14 A. Yes, sir. I think there's a mall entrance over there
15 as well.

16 Q. So you're working on that May 2nd, 2015. How did
17 you first become aware that something was going on at Club
18 Cream?

19 A. One of our reserve officers, Reserve Officer Steve
20 Bickford, happened to be in that area right there on the
21 Rast Street, Bultman Street Area of Club Cream. And he
22 came across where he was staying at and saw a bunch of
23 people running from the parking lot. And so immediately
24 after that, came out, I believe we received a call in
25 reference to the shooting.

JOSEPH JONES - DIRECT EXAMINATION BY MR. BROWN

- 1 Q. And this was from dispatch?
- 2 A. It was.
- 3 Q. All right. And dispatch would be the same people who
- 4 work underneath Ms. Skipper, who testified this afternoon?
- 5 A. Yes, sir.
- 6 Q. Y'all got a call in reference to a shooting?
- 7 A. Uh-huh.
- 8 Q. At Club Cream?
- 9 A. We did.
- 10 Q. Is Club Cream in Sumter?
- 11 A. It is.
- 12 Q. Sumter city?
- 13 A. City of Sumter, yes, sir.
- 14 Q. And the county of Sumter?
- 15 A. Yep.
- 16 Q. What did you do next?
- 17 A. Myself along with other officers immediately
- 18 responded to the scene. I was one of the first
- 19 supervisors there, so being the first -- being a
- 20 supervisor there, my job is to secure the scene, make sure
- 21 to secure any witnesses to what happened, locate any
- 22 victims that had -- that had been shot, and making sure
- 23 that the full scene is secured so we can preserve any
- 24 evidence.
- 25 Q. When you arrived on scene, do you recall whether or

JOSEPH JONES - DIRECT EXAMINATION BY MR. BROWN

1 not any victims were still there?

2 A. There was --

3 Q. Okay.

4 A. -- a female, crying, 15 years old.

5 Q. Was it Ashley R. ?

6 A. Yes, sir. That would be her.

7 Q. You recognize her here today?

8 A. I do.

9 Q. And did -- you said she was a victim. Did you

10 observe any injuries to her at that time?

11 A. Yes, sir. She had -- she had been shot in the left

12 leg right above the knee.

13 Q. Okay. What else did you observe when you got there?

14 A. There's a large group of people, so I told my

15 officers, hey, look, let's secure what we have. EMS was

16 on the way to pick up Ashley R., treat her for her

17 injuries, and we needed to get -- secure any witnesses,

18 see if we can find any shell casings, see if a weapon was

19 possibly still there.

20 Q. And is that what y'all did?

21 A. We did.

22 Q. In securing the scene -- y'all did that, correct?

23 A. We did.

24 Q. Y'all kind of tape off the area like we see on TV?

25 A. We do. We put up crime scene tape, especially for a

JOSEPH JONES - DIRECT EXAMINATION BY MR. BROWN

1 scene that's -- you have a parking lot, which is somewhat
2 pretty big in size.

3 Q. Uh-huh.

4 A. So if we tape it off, we secure the whole parking lot
5 and post officers so nobody comes into our crime scene.

6 Q. If y'all locate any potential evidence, y'all also
7 post officers near it so that it's not disturbed?

8 A. We do.

9 Q. When y'all got there on May 2nd, 2015, about what
10 time did y'all get there? Do you recall?

11 A. Somewhere -- I want to say between around 1:00, 1:30,
12 1:45 in the morning.

13 Q. Pretty -- pretty dark out?

14 A. It was at that time.

15 Q. Did y'all locate any evidence once y'all got there
16 that seemed potentially important and that y'all put
17 officers on?

18 A. We located some shell casings and also a black
19 Springfield XD pistol.

20 Q. Where did you -- if I show you a map, an aerial map
21 of this location, could you show us where you located
22 those items, roughly?

23 A. I can show you where the pistol was. I do know that
24 for a fact. But the shell casings I think were kind of
25 spread out -- were spread out a little bit.

JOSEPH JONES - DIRECT EXAMINATION BY MR. BROWN

1 MR. BROWN: Permission to approach?

2 THE COURT: Yes, sir.

3 Q. I'm going show you the close-up version, and this is
4 defense Exhibit Number 1 right here. Do you recognize
5 this overhead shot of Sumter? Can you see this?

6 A. Yeah, that would be the mall right there. Club Cream
7 is right here.

8 Q. And it says 330 right there?

9 A. Yes, sir, it does.

10 Q. And this is the parking lot we're talking about?

11 A. It is.

12 Q. About where did you find the pistol?

13 A. If I recall, the pistol was over here, somewhat in
14 this tree line grassy area behind this group of businesses
15 right there.

16 Q. Okay. And this is a business right here?

17 A. It is. I call it a strip mall. I think it's got
18 three or four different businesses in there. I don't
19 recall any names, but I do know there's businesses in
20 there.

21 Q. So when you located the pistol back in this area back
22 here, y'all posted an officer on it?

23 A. We did.

24 Q. And how long did y'all post an officer there?

25 A. An officer has to stay there until somebody -- one of

JOSEPH JONES - DIRECT EXAMINATION BY MR. BROWN

1 our crime scene detectives come.

2 Q. Uh-huh.

3 A. And they -- they're going to get there, they're going
4 to photograph the scene, and then collect any evidence.
5 So once that evidence is collected and is in custody of
6 crime scene, that officer is free to go.

7 Q. And when you're talking about a crime scene, you're
8 talking about someone like Jacob Mitchell back then?

9 A. Yeah.

10 Q. Is he the one that responded to the scene here?

11 A. Detective Mitchell did.

12 Q. I can't remember if you could or could not. Do you
13 remember about where you found any of the shell casings?

14 A. I --

15 Q. And if you don't, that's fine?

16 A. I don't, to be honest with you?

17 Q. But you do remember finding some shell casings while
18 at this location and putting an officer on those as well?

19 A. Yeah, there was shell casings. I believe we marked
20 them for Detective Mitchell.

21 Q. Okay. And y'all kept an officer on those as well
22 until Detective Mitchell arrived to collect them?

23 A. Yes, sir.

24 Q. And photograph them?

25 A. Uh-huh.

JOSEPH JONES - DIRECT EXAMINATION BY MR. BROWN

1 Q. About how long were you out there that night?

2 A. I know I was on that scene for probably an hour and a
3 half or so, maybe. And also the whole scene between that
4 and Tuomey, it went on for a couple hours.

5 Q. What was the -- what was the mood at Club Cream when
6 you arrived on it?

7 A. I mean, it's -- from what I recall, it was kind of
8 heavy. I mean, they had just had a shooting occur, so
9 people were running around. I use the analogy like a
10 chicken with its head cut off. So it's -- you know,
11 trying to get everybody calmed down, trying to talk with
12 Ashley R. to get her calmed down, rest assure her that, you
13 know, everything that's going to be okay, EMS was coming
14 to treat her. Get everything calmed down.

15 Q. And EMS did pick up Ms. Ashley R. that night?

16 A. They did.

17 Q. And she was taken to Tuomey?

18 A. Uh-huh.

19 Q. Were you able to get -- find any witnesses who really
20 saw very much that night? Do you remember?

21 A. I don't --

22 Q. You can't say what they said, but --

23 A. Yeah, yeah. I don't recall. One of my other
24 officers said they had talked to some people, but I -- you
25 know, I said get their statement, get their information so

JOSEPH JONES - DIRECT EXAMINATION BY MR. BROWN

1 we can just add it to the report. When you have a big
2 scene like that, it's kind of hard to -- to talk to
3 everybody, you know, as one person. So just got to get
4 all the information best you can.

5 Q. And after y'all secure the scene and you have
6 officers posted on the gun and the shell casings and all
7 that, at the point in time when Detective Mitchell gets
8 there and investigators with y'all's division get there,
9 do y'all then turn the case over to them?

10 A. Yeah, they start doing what they have to do as far as
11 investigating why this occurred, who did it, why -- you
12 know, the reasons why they did it. We also remain on
13 scene until they get done completing what they have to do,
14 and then the scene is ultimately released to how it was.

15 Q. So Detective Kelly would have been one of the people
16 y'all might have turned the case over to, or Sean Gill?

17 A. Yeah, one of those -- Detective Kelly or Detective
18 Gilmar (phonetic) violent crime investigators.

19 Q. Thank you very much.

20 A. Okay.

21 Q. Please answer any questions that Mr. Hastie has for
22 you.

23 THE COURT: Cross-examination, Mr. Hastie?

24 MR. HASTIE: Yes, Your Honor.

25 CROSS-EXAMINATION

JOSEPH JONES - CROSS-EXAMINATION BY MR. HASTIE

1 BY MR. HASTIE:

2 Q. Good morning.

3 A. Good morning, sir. How are you?

4 Q. I'm fine. How are you doing?

5 A. Good, good.

6 Q. Did you file an incident report on this matter that
7 night?

8 A. Yes, sir, I did.

9 Q. Okay. Now, I have your incident report. Should be
10 in front of you. The incident report is signed --

11 A. That's fine.

12 MR. HASTIE: Your Honor, may I approach the witness?

13 Q. Is this your incident report?

14 A. Yes, sir, that would be my...

15 Q. Okay. Good. Not to repeat all that we've -- we've
16 already heard, but in your incident report, you said that
17 officer arrived on the scene and were able to locate
18 Ashley R. [REDACTED], Number 1, who was shot in the left leg just
19 above the knee on the outside of the leg. [REDACTED] said that
20 she was --

21 MR. BROWN: Your Honor, if I may, please. I don't
22 think publishing it to the jury in that fashion is the
23 appropriate --

24 THE COURT: Objection sustained.

25 MR. HASTIE: Okay. Your Honor, I would like for him

JOSEPH JONES - CROSS-EXAMINATION BY MR. HASTIE

1 to -- question him about this.

2 THE COURT: No, sir. You can ask him to read his
3 incident report, if it refreshes his memory, and take it
4 back and ask him questions about it. However, the
5 incident report itself is not admissible.

6 Q. Just read that report to refresh your memory. It's
7 been a good while ago. Do you recall -- do you recall
8 writing this report that you spoke to Ashley R. on that
9 night and that she said --

10 MR. BROWN: Your Honor, I'm going to object to any
11 hearsay --

12 THE COURT: Again, ask him in the form of there's
13 line by 803.8 -- ask him if that refreshes his
14 recollection, and then if he says yes, then you can ask
15 the question. But it's got to be based on his
16 recollection or refreshing of his recollection.

17 MR. BROWN: Your Honor, can we briefly approach real
18 quick?

19 THE COURT: Yes, sir.

20 (A bench conference was held in the presence but not
21 within the hearing of the jury.)

22 Q. Thank you very much. Did the victim, Ashley R.,
23 describe to you that an unknown person shot her that
24 night?

25 A. Yes, sir.

JOSEPH JONES - CROSS-EXAMINATION BY MR. HASTIE

1 Q. Do you recall that in your report?

2 A. Yes, sir, I do.

3 Q. Okay. Did you know any information about this
4 unknown person, did you ask her about that?

5 A. Yes, sir.

6 THE COURT: Now, that's beyond what I'm allowing at
7 this time.

8 MR. HASTIE: Yes, sir. Okay.

9 THE COURT: Objection sustained. Is.

10 Q. Were there any other victims that night that you were
11 able to speak with?

12 A. There were two more victims that actually were at
13 Tuomey Hospital.

14 Q. Did you go to Tuomey Hospital?

15 A. Yes, sir, I did go to Tuomey.

16 Q. Who did you see at Tuomey Hospital?

17 A. I believe there was a -- a Myers subject up there --

18 Q. Malik Myers?

19 A. And I don't remember -- I don't recall his first
20 name. I just know his last name is Myers. And then
21 McFadden I believe was the other one.

22 Q. Do you recall where Myers was shot?

23 A. Myers I believe was shot in his thigh area on the
24 left leg.

25 Q. Okay. And Mr. McFadden?

JOSEPH JONES - CROSS-EXAMINATION BY MR. HASTIE

1 A. Want to say the -- his left ear, yes, sir.

2 Q. Did either one of them say who shot them or anything
3 like that that you recall?

4 MR. BROWN: Objection.

5 THE COURT: Sustained.

6 Q. Do you know how this came about, from their testimony
7 to you?

8 A. The shooting?

9 Q. Yes, sir.

10 A. How the shooting --

11 MR. BROWN: Your Honor, I think that's just a
12 roundabout way to get to hearsay testimony. Asking you
13 to --

14 THE COURT: How is that not hearsay, Mr. Hastie, for
15 this witness?

16 MR. HASTIE: Because he told it directly to him. He
17 knows what they were -- what they said that night.

18 THE COURT: Sure, he knows what they said, but it
19 still doesn't make -- that's not -- that's not an
20 exception to the hearsay rule. Objection sustained.

21 MR. HASTIE: Okay.

22 Q. Any other evidence found by you that night? Any
23 other evidence besides the gun? Were you involved in this
24 gun?

25 A. Yes, sir, I saw where the gun was.

JOSEPH JONES - CROSS-EXAMINATION BY MR. HASTIE

1 Q. Were there any other guns involved, to your
2 knowledge?

3 A. No, sir.

4 Q. Do you know how many shots were fired?

5 A. I believe there were -- we found six shell casings.

6 Q. Six shell casings?

7 A. On the scene.

8 MR. HASTIE: Thank you, Your Honor. No further
9 questions.

10 THE COURT: Redirect?

11 MR. BROWN: Briefly.

12 REDIRECT EXAMINATION

13 BY MR. BROWN:

14 Q. You were asked if there were any other guns involved.
15 Do you know for a fact whether any other guns were
16 involved?

17 A. No, sir, I don't.

18 Q. You were saying you didn't find any other guns other
19 than the one you did find?

20 A. Uh-huh. That is correct.

21 Q. The Springfield .40 pistol that we have right here in
22 evidence?

23 A. Uh-huh.

24 Q. So you didn't find any other weapons?

25 A. No, sir.

JOSEPH JONES - REDIRECT EXAMINATION

1 Q. I mean, you carry a gun every day, right?

2 A. I do. Several.

3 Q. Several. You're familiar with revolvers?

4 A. I am.

5 Q. If a revolver were shot, would it leave shell

6 casings?

7 A. No, it would not.

8 Q. And tell the jury why?

9 A. Simply because a revolver is a pistol which has a

10 cylinder in the middle of it and the bullets would go into

11 the cylinder. When the pistol was fired, it fires the

12 projectile down to the barrel of the pistol and rotates

13 that cylinder, which, in turn, would put the next round

14 into the chamber and leave the spent round or the fired

15 round in the cylinder of the gun.

16 Q. So your testimony when he asked -- when defense

17 counsel asked you if you knew if there were any other guns

18 involved and how many spent shell casings, that's just

19 based on what was left on the scene?

20 A. Yes.

21 Q. All right. You don't necessarily know what might

22 have been taken off the scene?

23 A. No, I don't.

24 MR. BROWN: No further questions.

25 THE COURT: Recross?

JOSEPH JONES - REDIRECT EXAMINATION

1 MR. HASTIE: None, Your Honor.

2 THE COURT: All right. Thank you, sir. You may step
3 down.

4 THE WITNESS: Yes, sir. Thank you, Your Honor.

5 MR. BROWN: And Your Honor, we'd ask that he be
6 excused.

7 THE COURT: Any objection?

8 MR. HASTIE: None at all.

9 THE COURT: All right. Witness is excused.

10 MR. BROWN: Your Honor, the state would call Chelsea
11 Rogers. She is outside.

12 May it please the Court?

13 THE COURT: Yes.

14 MR. BROWN: State would call Chelsea Rogers.

15 CHELSEA ROGERS, after having first being duly sworn,
16 testified under oath as follows:

17 THE CLERK: Please state your full name, spell your
18 last name for the record.

19 THE WITNESS: Chelsea Rogers. R-O-G-E-R-S.

20 MR. BROWN: May it please the Court.

21 THE COURT: Yes, sir.

22 DIRECT EXAMINATION

23 BY MR. BROWN:

24 Q. Good morning, Ms. Rogers.

25 A. Good morning.

CHELSEA ROGERS - DIRECT EXAMINATION BY MR. BROWN

- 1 Q. I'll ask you the same question I ask everybody. Can
2 you please let these ladies and gentlemen of the jury know
3 who you are, where you live, where you're from, where you
4 went to school, what you do for a living now.
- 5 A. My name is Chelsea Rogers. I went to school at Lee
6 Central High School in Bishopville. I am from
7 Bishopville, graduated in 2016. Started college. I'm
8 currently now working at a plant job in Camden, but I will
9 be returning back to school soon.
- 10 Q. When did you graduate high school?
- 11 A. When?
- 12 Q. When did you say you graduated high school?
- 13 A. May 28, 2016.
- 14 Q. Congratulations.
- 15 A. Thank you.
- 16 Q. You live in Bishopville now?
- 17 A. Uh-huh.
- 18 Q. And what plant do you work at?
- 19 A. Invista, Lee County.
- 20 Q. Invista?
- 21 A. Uh-huh.
- 22 Q. What y'all do there?
- 23 A. Make yarn.
- 24 Q. How old are you now, Chelsea?
- 25 A. 19.

CHELSEA ROGERS - DIRECT EXAMINATION BY MR. BROWN

- 1 Q. Do you come to Sumter sometimes? Do you come to
2 Sumter sometimes?
- 3 A. Yes, sir.
- 4 Q. Did you come to Sumter on May 2nd, 2015?
- 5 A. Yes, sir.
- 6 Q. And you know why we're here today, correct?
- 7 A. Correct.
- 8 Q. You don't necessarily want to be here today, correct?
- 9 A. Correct.
- 10 Q. But I made you be here, right?
- 11 A. Correct.
- 12 Q. Ms. Chelsea, on May 2nd, 2015, did you to the club
13 here in Sumter that at the time was known as Club Cream?
14 I think sometimes it's known as Club Rose', but the club
15 right behind the Sumter Mall?
- 16 A. Yes, sir.
- 17 Q. And what was going on there that night?
- 18 A. They had a teen party.
- 19 Q. What's a teen party?
- 20 A. I guess where a lot of teens get together, you know,
21 have fun, but something always bad ends up happening.
- 22 Q. And this is what they were having that night at Club
23 Cream?
- 24 A. Correct.
- 25 Q. They were letting teenagers into the club that night?

CHELSEA ROGERS - DIRECT EXAMINATION BY MR. BROWN

- 1 A. Correct.
- 2 Q. Playing music?
- 3 A. Correct.
- 4 Q. Were they serving alcohol?
- 5 A. No, sir.
- 6 Q. That's good. What time did this party start?
- 7 A. Around -- it started at around ten, but I got there
- 8 around 11:30, 12:00.
- 9 Q. Who were you with that night?
- 10 A. Me and a couple of my friends.
- 11 Q. All right. Was Malik one of those friends?
- 12 A. No, sir. He -- he didn't come with me.
- 13 Q. Y'all met there later?
- 14 A. Yes, sir.
- 15 Q. So you were there with a couple of friends at Club
- 16 Cream, and you got there around 11:00?
- 17 A. Yes, sir.
- 18 Q. What was going on when you got in the club?
- 19 A. Dancing, having fun. And then I looked over and saw
- 20 something going on. And I was on the other side of the
- 21 club.
- 22 Q. Tell me what you mean by something going on.
- 23 A. People, young boys, you know, were having problems
- 24 over there, whatever the case may be. And me and my
- 25 friends, we just started going back to what we was doing

CHELSEA ROGERS - DIRECT EXAMINATION BY MR. BROWN

1 and sitting there dancing, watching everybody.

2 Q. Did you recognize any of the -- as you described
3 them, young boys doing what young boys do.

4 A. No, sir.

5 Q. Okay. So it wasn't Malik or James Williams or
6 anything like that?

7 A. Not at the time.

8 Q. So you go back to dancing at that point?

9 A. Correct.

10 Q. With your friends?

11 A. Correct.

12 Q. And how much longer were you there at the club?

13 A. I left when it was over about -- between 1:00 and
14 2:00, I was leaving.

15 Q. Were there any other issues that arose while you were
16 in the club that you saw?

17 A. No, sir.

18 Q. Did you know Malik at this time?

19 A. Correct. Yes, sir.

20 Q. And how?

21 A. Long story short, I mean, we was together. On and
22 off.

23 Q. Are y'all now off?

24 A. Yes, sir.

25 Q. Y'all been off for how long now?

CHELSEA ROGERS - DIRECT EXAMINATION BY MR. BROWN

1 A. A while.

2 Q. Months or years?

3 A. Couple of months, almost a year.

4 Q. Okay. So when you were leaving the club sometime

5 between 1:00 and 2:00 in the morning, who was leaving with

6 you?

7 A. Me and my friends and I talked to Malik, and he said

8 he was going to leave with me.

9 Q. Okay. So y'all walk out the club?

10 A. Me and my friends, uh-huh, and he was behind me.

11 Q. But he walked out behind you?

12 A. Not correctly (sic) behind me, but he was behind me.

13 Q. So following --

14 A. Like people --

15 Q. Two or three minutes behind?

16 A. Yeah.

17 Q. So you're out the club. Are you going over to your

18 car at this point?

19 A. Uh-huh.

20 THE COURT: Yes?

21 THE WITNESS: Yes.

22 THE COURT: This lady has got to take down everything

23 you say, so she can't take uh-huh and unh-unh. So we'll

24 ask yes and no.

25 THE WITNESS: Yes.

CHELSEA ROGERS - DIRECT EXAMINATION BY MR. BROWN

1 Q. If it makes you feel better, I had to learn that too.
2 So you're coming out of the club, you're going to
3 your car. About where were you parked in the parking lot?

4 A. On the other side of the club, like it's trees and
5 trash can, all that on the other side.

6 Q. If I were to show you a map of Club Cream, an
7 overhead view of it, would you be able to point out about
8 where you parked?

9 A. Correct.

10 MR. BROWN: Permission to approach, Your Honor?

11 THE COURT: Yes.

12 Q. I'm going to show you what's marked as -- I think
13 this is defense Number 2, or Number 1. I'm sorry. If I
14 were to tell you that this is Club Cream right here, you
15 recognize that from overhead?

16 A. Yes.

17 Q. Okay. And you're kind of coming away from the
18 microphone, so just make sure to speak up so that the
19 juror in the very back can hear you. Okay?

20 A. Okay.

21 Q. So you recognize this as Club Cream?

22 A. Uh-huh.

23 THE COURT: Yes.

24 THE WITNESS: Yes.

25 Q. This as 330?

CHELSEA ROGERS - DIRECT EXAMINATION BY MR. BROWN

- 1 A. Yes.
- 2 Q. Where were you parked in the parking lot?
- 3 A. Over here.
- 4 Q. And you're showing kind of --
- 5 A. Right about over here.
- 6 Q. You're showing about 10:00 from the entrance to the
- 7 door?
- 8 A. Uh-huh.
- 9 Q. So you're coming out walking to your car, Malik
- 10 follows about two minutes later?
- 11 A. Uh-huh.
- 12 Q. Tell me what happens next.
- 13 A. After that, we was walking to the car and I told him
- 14 to come on, let's go. When we got over there to the car,
- 15 I heard a gunshot from over here.
- 16 Q. So over in this area over here, or where?
- 17 A. On this grass.
- 18 Q. Okay.
- 19 A. And then he ran over there to where -- to where his
- 20 friends were, I guess, and that's when I -- I heard
- 21 another gunshot, and then I heard another one come back
- 22 from where everybody was at.
- 23 Q. All right. So let's break all that down. Malik is
- 24 walking towards you, and you hear a gunshot. Sounds like
- 25 it comes from over here?

CHELSEA ROGERS - DIRECT EXAMINATION BY MR. BROWN

- 1 A. Uh-huh.
- 2 Q. Were you looking at Malik to make sure he wasn't
- 3 shooting yet or anything like that?
- 4 A. Yes. He was behind me, still.
- 5 Q. And you didn't see him with a weapon --
- 6 A. No, I did not.
- 7 Q. Did you ever see Malik with a gun?
- 8 A. No, I did not.
- 9 Q. Okay. But you're not saying you didn't see him not
- 10 with a gun. You didn't know --
- 11 A. Right. I didn't know if he had one or not, but I did
- 12 not see him with one.
- 13 Q. Okay. So you hear gunshots from this area. Where
- 14 was Malik when that gunshot started?
- 15 A. After that, he -- he was behind me. And then after
- 16 that, he ran to where his friends were.
- 17 Q. He ran towards the gunfight?
- 18 A. No. The opposite way to where his friends were.
- 19 Q. Okay. Where were his friends? Just show us on the
- 20 map, please.
- 21 A. Over here in the corner.
- 22 Q. Okay. So he's over here?
- 23 A. Yes, in the other part of the grass.
- 24 Q. Okay. So he runs over here. You heard gunshots from
- 25 over here?

CHELSEA ROGERS - DIRECT EXAMINATION BY MR. BROWN

- 1 A. Uh-huh. Then shot back and then another gunshot.
- 2 Q. So you heard about how many gunshots that night?
- 3 A. Three or four.
- 4 Q. And are you positive of how many gunshots were fired?
- 5 A. No, sir.
- 6 Q. Tell me, when you start to hear gunshots, what did
- 7 you do?
- 8 A. Got in my car.
- 9 Q. And you were already pretty close to it?
- 10 A. Yes. Got in my car.
- 11 Q. Did you stick around for when law enforcement got
- 12 there or anything?
- 13 A. No, sir, I left.
- 14 Q. Did you see Malik any more that night?
- 15 A. No, sir.
- 16 Q. Did you see the person who was shooting from this
- 17 area over here?
- 18 A. No, sir.
- 19 Q. Did you ever see Malik shooting a gun?
- 20 A. No, sir.
- 21 Q. But you did see Malik when the first gunshot rang out
- 22 and it was not him firing?
- 23 A. Correct.
- 24 Q. All right. Were you hit that night?
- 25 A. No, sir. No, sir.

CHELSEA ROGERS - DIRECT EXAMINATION BY MR. BROWN

1 Q. And did you see anything else you haven't already
2 told this jury about?

3 A. No, sir.

4 Q. Did you ever see any disagreements between James and
5 Malik or anything like that?

6 A. Didn't hear none, no, nothing.

7 Q. All right. Please answer any of Mr. Hastie's
8 questions.

9 THE COURT: Cross-examination, Mr. Hastie?

10 MR. HASTIE: Yes, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. HASTIE:

13 Q. Good morning, how are you doing?

14 A. I'm good.

15 Q. Good. Let's go back to the club. You said you
16 arrived at the club around 11:00 or so?

17 A. Correct.

18 Q. And you stayed there until between 1:00 or 2:00?

19 A. Correct.

20 Q. You and Malik did not go to the club together; is
21 that correct?

22 A. No, sir.

23 Q. How many of you and your friends -- all girls or?

24 A. Girls.

25 Q. All girls? How many of y'all were together?

CHELSEA ROGERS - CROSS-EXAMINATION BY MR. HASTIE

1 A. Three.

2 Q. Three. You mentioned about an incident in the club.

3 What happened -- did something happen in the club?

4 A. I just saw people, you know, people gathering around
5 and that's when I went to the opposite side with me and my
6 friends.

7 Q. Because you knew something was about -- sorry. Go
8 ahead.

9 A. Back on the dance floor.

10 Q. Back on the dance floor. As if something was about
11 to happen when you said people gathering around?

12 A. I don't know if it was or not.

13 Q. Couldn't have been too threatening because you went
14 back on the dance floor; is that right?

15 A. Right.

16 Q. Okay. And you and Malik were dating at this time or
17 boyfriend and girlfriend?

18 A. Correct.

19 Q. Did you ever go to the police department and reported
20 you saw where the shots were coming from?

21 A. No, sir.

22 Q. Did anyone ever contact you about being a witness to
23 this serious incident?

24 A. Not until last week.

25 Q. Last week? Who contacted you last week?

CHELSEA ROGERS - CROSS-EXAMINATION BY MR. HASTIE

1 A. That -- somehow they got in contact with my mother
2 and my job.

3 Q. Who is "they?" This gentleman right here, Mr. Brown?

4 A. Yes. He got in contact with my mother and my mother
5 called me and told me that they were looking to get in
6 contact with me. And she gave me the number, and I called
7 them, and he told me to come to the courthouse to see him.

8 Q. Okay.

9 A. And that's when I came over here.

10 Q. You came to the courthouse to meet with him. What
11 date was that?

12 A. That was --

13 Q. Last week?

14 A. Yes.

15 Q. Sometime last week?

16 A. I think it was -- it had to be Monday or Tuesday.

17 Q. Monday or Tuesday of last week?

18 A. I was off.

19 Q. Okay. Did you ask what they wanted with you about
20 this matter?

21 A. I came.

22 Q. And what did they say?

23 A. They wanted me to be a witness to something that
24 happened at the club that night.

25 Q. And you know you were at the club, and you were --

CHELSEA ROGERS - CROSS-EXAMINATION BY MR. HASTIE

- 1 somewhat of a witness, right?
- 2 A. Uh-huh.
- 3 Q. So you had no problems coming here today?
- 4 A. I didn't want to be a part of it, but I had to.
- 5 MR. HASTIE: Judge, may I approach? I would like to
- 6 go over this one more time.
- 7 Q. All right. So let's go -- this here is the club,
- 8 correct?
- 9 A. Correct.
- 10 Q. And this is the front of the club?
- 11 A. No.
- 12 Q. This is the front of the club? Right here?
- 13 A. Yeah, I think so.
- 14 Q. And where was your car? You and the girls were
- 15 walking -- you're on the other side of the club, right?
- 16 A. Uh-huh.
- 17 Q. Right?
- 18 A. I'm in the back --
- 19 Q. You can't really tell --
- 20 A. Yes, sir.
- 21 Q. So you and your girlfriends were parked on the other
- 22 side of the club?
- 23 A. Yes.
- 24 Q. Away from everything?
- 25 A. Yes.

CHELSEA ROGERS - CROSS-EXAMINATION BY MR. HASTIE

- 1 Q. Okay. And you said that the shots appeared to from
2 where?
- 3 A. Over here.
- 4 Q. On the opposite side --
- 5 A. On the grass.
- 6 Q. From this grassy area right here somewhere?
- 7 A. Correct.
- 8 Q. Okay. And Malik is with you on the opposite side of
9 the club at this time?
- 10 A. Correct.
- 11 Q. Correct? Were there any other males with him?
- 12 A. No, sir.
- 13 Q. So when you heard the gunfire, Malik turns and runs
14 towards --
- 15 A. Correct.
- 16 Q. The gunfire?
- 17 A. Over there where his friends were. On the opposite
18 side.
- 19 Q. How does he know his friends are over here?
- 20 A. I guess that's where they parked at when -- I mean,
21 when they came?
- 22 Q. But you don't know where they parked, do you?
- 23 A. No.
- 24 Q. You don't know where Malik parked?
- 25 A. No.

CHELSEA ROGERS - CROSS-EXAMINATION BY MR. HASTIE

1 Q. So you didn't know where Malik was parking, but you
2 believe his friends were over there?

3 A. Correct.

4 Q. Okay. And you said you heard how many shots?

5 A. Three or four.

6 Q. Three or four shots? And you're pretty sure they
7 came from the opposite side of this club?

8 A. Correct.

9 Q. Did Malik contact you about testifying for him when
10 this happened, because he was injured?

11 A. No, sir.

12 Q. He never did?

13 A. No, sir.

14 Q. And you are boyfriend and girlfriend at this time?

15 A. Correct.

16 Q. Right? And when did y'all stop being boyfriend and
17 girlfriend? Can you recall?

18 A. It was a couple months ago.

19 Q. Just a couple month ago? Okay?

20 A. I mean, we were on and off so --

21 Q. Just on and off?

22 A. Yes.

23 Q. And you been knowing him all your life too?

24 A. Five years.

25 Q. About five years. Are you all from the same area?

CHELSEA ROGERS - CROSS-EXAMINATION BY MR. HASTIE

1 A. No, sir.

2 Q. You're from Bishopville; he's from the Sumter area,
3 isn't he?

4 A. Correct.

5 Q. But you're pretty sure that the gunfire that you
6 heard came from over here. Is that your testimony?

7 A. Correct.

8 Q. Over here?

9 A. Correct.

10 Q. Thank you.

11 MR. HASTIE: Let me check one more thing out and I'm
12 done.

13 THE COURT: Yes, sir.

14 Q. You also said he was behind you. Y'all didn't come
15 out the club together?

16 A. No, sir.

17 Q. When you say behind, how far behind from -- from you
18 to me or closer or further away?

19 A. Like a little further.

20 Q. Little further back?

21 A. Uh-huh.

22 Q. You don't know whether he had a weapon him at all, do
23 you?

24 A. No, sir.

25 Q. Have you ever seen him with a weapon?

CHELSEA ROGERS - CROSS-EXAMINATION BY MR. HASTIE

1 A. No, sir, not that night.

2 Q. No, sir what?

3 A. No, sir.

4 Q. Not at all, right?

5 A. Unh-unh.

6 MR. HASTIE: Court's indulgence one last time, Your
7 Honor.

8 THE COURT: Yes, sir.

9 Q. One more question. Before this happened, did you
10 know James Williams at all?

11 A. No, sir.

12 Q. You had no idea who he is?

13 A. I mean, I heard of him.

14 Q. Don't know him?

15 A. I don't know --

16 Q. You heard of him but you don't know him --

17 A. -- know him personally.

18 Q. Okay. Thank you.

19 MR. HASTIE: No further questions, Your Honor.

20 THE COURT: Redirect?

21 MR. BROWN: None, Your Honor.

22 THE COURT: All right. You may step down.

23 All right, ladies and gentlemen of the jury, you've
24 been in the courtroom now for about an hour and a half.
25 And I think it's appropriate that we take our mid-morning

DIRECT EXAMINATION

Q. Good morning, Mr. Myers.

Q. Good, how are you?

Q. Mr. Myers, we had a conversation yesterday. Do you remember me telling you that all these people have to be able to hear you and this nice lady right here has to be able to write down everything you say, so let's keep our voices up and make sure to give clear answers okay?

Q. Mr. Myers, where do you currently live?

Q. And are you at Turbeville Correctional Institution at least in part because of the events that occurred on May 2nd, 2015?

Q. Did you plead guilty to two counts of assault and battery of a high and aggravated nature?

Q. Did you only plead guilty to one?

Q. You might be right about that. I just can't recall.
Did you pleading guilty assault and battery of a high and

MALIK MYERS - DIRECT EXAMINATION BY MR. BROWN

1 aggravated nature?

2 A. . Yes, sir.

3 Q. Along with I think two or three B and E autos you had
4 out there?

5 A. Yes, sir.

6 Q. And you were sentenced by the Honorable Roger Young
7 out of Charleston county to a seven year prison sentence,
8 correct?

9 A. Yes, sir.

10 Q. And that assault and battery high and aggravated
11 nature came from the event that occurred on May 2nd,
12 2015?

13 A. Yes, sir.

14 Q. Let's just cut right to it. You were there that
15 night?

16 A. Yes, sir.

17 Q. Mr. Myers, for these ladies and gentlemen of the
18 jury, let them know just kind of where you're from. Did
19 you grow up here in Sumter?

20 A. Yes, sir.

21 Q. Where did you go to school?

22 A. Crestwood.

23 THE COURT: Speak up, please.

24 A. Crestwood High School.

25 Q. I have to get used to talking pretty loud in this

MALIK MYERS - DIRECT EXAMINATION BY MR. BROWN

1 courtroom too. But just make sure to keep your voice up.
2 So you went to Crestwood High?
3 A. Yes, sir.
4 Q. Did you graduate from there?
5 A. No, sir.
6 Q. Have you gotten your GED or anything?
7 A. No, sir.
8 Q. When were you at Crestwood?
9 A. 2013.
10 Q. When you were at Club Cream on May 2nd, 2015, were
11 you still a student at Crestwood or had you already left
12 the school?
13 A. No, sir.
14 Q. I'm sorry, what was that?
15 A. No, sir.
16 Q. You were -- you had already left the school or --
17 just which one?
18 A. I wasn't there.
19 Q. How old were you on May 2nd, 2015?
20 A. 17.
21 Q. Why did you go to Club Cream that night?
22 A. For a party.
23 Q. What kind of party?
24 A. A teen party.
25 Q. It's been described by some people as a teen party.

MALIK MYERS - DIRECT EXAMINATION BY MR. BROWN

- 1 Is that an accurate description of it?
- 2 A. Yes, sir.
- 3 Q. And who all did you go to Club Cream on May 2nd,
- 4 2015 with?
- 5 A. Jaquell Myers, Kendall Dow, Shelton Benjamin, and
- 6 Isaac Nelson.
- 7 Q. You all just going there to hang out?
- 8 A. Yup.
- 9 Q. Pardon?
- 10 A. Yes, sir.
- 11 Q. About what time did you get to Club Cream that night?
- 12 A. 10:00.
- 13 Q. Pretty good party?
- 14 A. I guess. I ain't know it end bad.
- 15 Q. Certainly it did. But up until the end, were you
- 16 having a pretty good time?
- 17 A. I guess.
- 18 Q. Tell me what was going on at the party.
- 19 A. Chilling, party.
- 20 Q. Music is playing?
- 21 A. Yeah.
- 22 Q. I already asked one person. Was there alcohol at the
- 23 club?
- 24 A. Nah.
- 25 Q. It was a true teen party?

MALIK MYERS - DIRECT EXAMINATION BY MR. BROWN

1 A. Yeah.

2 Q. At some point in that night, did you see James Caleb

3 Williams?

4 A. Yes, sir.

5 Q. And that's the gentleman seated right here in between

6 Mr. Hastie and Mr. Webb?

7 A. Yes, sir.

8 Q. Do you know James Williams?

9 A. I know him.

10 Q. Did you know him before this?

11 A. Yeah.

12 Q. Fair to say that y'all's relationship wasn't great?

13 A. I really ain't had no problem with him. Don't really

14 have no problems.

15 Q. Had y'all ever had disagreements, though? Maybe not

16 physical but just disagreements?

17 A. Nah, not really.

18 Q. Tell me what happened on May 2nd, 2015. Did

19 something happen in the club that night between you two?

20 A. No, sir.

21 Q. No? Do you remember giving a statement to law

22 enforcement?

23 A. Yes, sir.

24 Q. Do you remember giving a statement specifically to I

25 believe it was Mark Moses, possibly Nathalie Kelly?

MALIK MYERS - DIRECT EXAMINATION BY MR. BROWN

- 1 A. Yes, sir.
- 2 Q. Do you remember telling them in that statement that
- 3 there was an altercation between the two of you?
- 4 A. Man, I just came from a hospital, man. I wasn't
- 5 thinking right when I writing my statement.
- 6 Q. So tell me what happened. Y'all didn't have any
- 7 altercation in the club?
- 8 A. Yes, sir. We -- I mean, it wasn't no altercation.
- 9 It was just some words. It wasn't --
- 10 Q. Malik, you know what I'm asking about?
- 11 A. Man...
- 12 Q. Please tell these ladies and gentlemen of the jury
- 13 about what happened in the club on May 2nd, 2015,
- 14 between you and James Williams?
- 15 A. I can tell you what happened. I came...
- 16 Q. Did y'all bump into each other?
- 17 A. I don't remember.
- 18 Q. You don't remember?
- 19 A. Nope.
- 20 Q. Okay. Did Mr. Williams make any hand signals at you
- 21 that night?
- 22 A. Nope.
- 23 Q. He didn't?
- 24 A. Nope.
- 25 Q. Did Mr. Williams shoot you that night?

MALIK MYERS - DIRECT EXAMINATION BY MR. BROWN

1 A. Nope. I don't know.

2 Q. Okay.

3 A. Can't tell.

4 MR. BROWN: Your Honor, permission to treat the
5 witness as a hostile witness?

6 THE COURT: Well, you can use prior statements for
7 impeachment. You don't have to declare him as a hostile
8 witness under the rules as amended. There is --

9 MR. BROWN: Permission to approach the witness.

10 THE COURT: -- no necessity. You don't vouch for a
11 witness anymore. Yes, sir.

12 Q. Do you remember giving Detective Kelly -- actually
13 two days later, so you would have already been done with
14 the hospital stuff. Do you remember giving Detective
15 Kelly a statement on May 4th, 2015?

16 A. Yup.

17 Q. In fact, it was a handwritten statement. Do you
18 recognize this document right here?

19 A. Yes, sir.

20 Q. Is that your handwriting or did someone write that
21 for you?

22 A. That's my handwriting.

23 Q. Okay. So you wrote out on that particular night what
24 happened?

25 A. Yes, sir.

MALIK MYERS - DIRECT EXAMINATION BY MR. BROWN

1 Q. And in that statement, isn't it true that you told
2 law enforcement that on May 2nd, 2015, James Caleb
3 bumped into you that night?

4 A. That's what it says right here, but I can't really
5 tell you that. I mean, I really didn't see his face, but
6 I kind of figured it was James.

7 THE COURT: All right. That wasn't the question.
8 The question was: Does that statement say that?

9 THE WITNESS: Yes, sir.

10 Q. And, in fact, did you actually specifically identify
11 James Williams as the person who then made hand just
12 gestures at you, which you described as a gun pointed at
13 you and pulling the trigger?

14 A. Yes, sir.

15 Q. That's what you told law enforcement on May 4th,
16 2015, correct?

17 A. That's what he got in his statement, so I guess I
18 told him that.

19 Q. Your handwritten statement, correct?

20 A. Yes, sir.

21 Q. And on May 4, 2015, isn't it true that you sat down
22 with Detective Kelly and gave her a statement about what
23 happened outside the club after that altercation inside?

24 A. Yup.

25 THE COURT: Move up to the microphone so you --

MALIK MYERS - DIRECT EXAMINATION BY MR. BROWN

1 THE WITNESS: Yes, sir.

2 Q. When you left the club, who were you leaving with?

3 A. The same people I came with.

4 Q. And when you were leaving the club, didn't you put in

5 the statement that you got a gun?

6 A. Yes, sir.

7 Q. Is that true?

8 A. Yes, sir.

9 Q. And, in fact, you armed yourself because of the

10 altercation with you and James William inside the club?

11 A. I armed myself because anything could have happened

12 after the club.

13 Q. When you got outside the club, what kind of gun did

14 you get?

15 A. 38 revolver.

16 Q. 38 revolver?

17 A. Yup.

18 Q. Who did you get it from?

19 A. I ain't get it from nobody. It was my gun.

20 Q. It was your gun?

21 A. Yup.

22 Q. So you did not tell law enforcement that you got it

23 from someone else?

24 A. Yup, I did, but it was my gun.

25 MR. BROWN: Court's indulgence?

MALIK MYERS - DIRECT EXAMINATION BY MR. BROWN

1 THE COURT: Yes, sir.

2 Q. Rodriguez Bell. Does that name ring a bell?

3 A. Yup.

4 Q. In fact, isn't it true you told law enforcement you

5 got that gun from Rodriguez Bell?

6 A. I told them the first name. I don't think I told

7 them his last name.

8 Q. So you've given two statements, correct? Sir? You

9 gave two statements, correct?

10 A. Yes, sir.

11 Q. And in the second statement -- or one of the

12 statements you provided -- oh, I'm sorry.

13 THE COURT: Go ahead. You okay?

14 Q. In one of the statements you provided that Rodriguez

15 Bill gave you that gun?

16 A. Yup. Yes, sir.

17 Q. And you told them that you got that gun before the

18 shooting occurred that night; isn't that true?

19 A. Yes, sir.

20 Q. Are you now saying that didn't happen?

21 A. Yes, sir.

22 Q. And you told law enforcement on that particular

23 night -- actually, on May 4, 2015, that James William

24 began shooting at you; isn't that true?

25 A. Yes, sir.

MALIK MYERS - DIRECT EXAMINATION BY MR. BROWN

1 Q. Are you now saying that's not true?

2 A. I'm saying that -- I'm saying I really ain't see his
3 face.

4 Q. Are you saying you didn't see his face?

5 A. Nope.

6 Q. The same person you identified in the club as the
7 person making hand gestures at you?

8 A. Yes, sir.

9 Q. The same person that inside the club bumped into you?

10 A. Yes, sir.

11 Q. The same person you've identified to law enforcement
12 on multiple occasions that y'all had prior bad dealings
13 with each other?

14 A. Yes, sir.

15 Q. You said you didn't see his face now?

16 A. Yes, sir.

17 Q. Okay. And on May 4, 2015, you told law enforcement
18 that after James started shooting at you, you shot back.

19 A. Yes, sir.

20 Q. How many shots did you fire?

21 A. Whole six shots.

22 Q. Fired all six from the revolver?

23 A. Yes, sir.

24 Q. Did you get the chance to count how many shots James
25 Williams fired at you?

MALIK MYERS - DIRECT EXAMINATION BY MR. BROWN

1 A. No, sir.

2 Q. Do you have any reason to dispute however many it is
3 in terms of how many shell casings they found?

4 A. I know it was one, because I got shot.

5 Q. James Williams shot you?

6 A. I didn't know whether James Williams was shooting or
7 not. I'm just saying -- I -- you telling me -- I just
8 know I got shot. You're saying he's the shooter. I'm
9 telling you I didn't know he was shooting. That's what
10 this statement said. I mean...

11 Q. So you're saying that you did not identify in your
12 first statement, and I'll approach you with that one --

13 A. I told you on several occasions I said in the
14 statement that I didn't see his face.

15 Q. Did we sit in that room right back there yesterday?

16 A. Man, this and that -- man, I don't know what you
17 talking about, man. Yeah, we sat in that room.

18 Q. And it was me and Detective Kelly and we sat there?

19 A. Yup.

20 Q. What was my one rule about --

21 THE COURT: Whoa, whoa. Don't ever put yourself in
22 the position of being a witness, Mr. Brown.

23 Q. Isn't it true that you told Detective Kelly that day
24 that it was James Williams that shot you?

25 A. Man -- nope.

MALIK MYERS - DIRECT EXAMINATION BY MR. BROWN

1 Q. You didn't say that?

2 A. Nope.

3 Q. You got shot that night, right?

4 A. Yup.

5 Q. You got shot in the leg?

6 A. Yes, sir.

7 MR. BROWN: Permission to approach?

8 THE COURT: Yes.

9 Q. Showing you what's marked as state's Exhibit numbers

10 5 through 8. Did you -- is that a picture of the bullet

11 wound that came in your leg?

12 A. Yes, sir.

13 Q. From getting shot?

14 A. Yes, sir.

15 Q. That one right there?

16 A. Yes, sir.

17 Q. That one right there?

18 A. Yes, sir.

19 Q. That one right there?

20 A. Yes, sir.

21 Q. And now for the first time, you're saying you don't

22 actually know it was James Williams?

23 A. Yes, sir.

24 MR. BROWN: Court's indulgence.

25 No further questions.

MALIK MYERS - DIRECT EXAMINATION BY MR. BROWN

1 THE COURT: All right. Mr. Hastie,
2 cross-examination?

3 MR. HASTIE: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. HASTIE:

6 Q. Hey, Malik, how you doing?

7 A. How you doing?

8 Q. All right. You just testified that you don't know
9 who shot you; is that fair?

10 A. Yes, sir.

11 Q. You just testified that you don't know whether James
12 Williams or anybody else shot you; is that correct?

13 A. Yes, sir.

14 MR. HASTIE: Your Honor, I have no further questions.

15 THE COURT: Redirect?

16 MR. BROWN: Nothing, Your Honor.

17 THE COURT: I'm sorry, no further questions.

18 MR. BROWN: No further questions.

19 THE COURT: All right. Thank you. You may step
20 down.

21 All right, Mr. Brown, you can call your next witness.

22 MR. BROWN: State would call Ashley R. [REDACTED].

23 Ashley R. [REDACTED], after having first being duly sworn,
24 testified under oath as follows:

25 THE CLERK: Please state your full name and spell

MALIK MYERS - CROSS-EXAMINATION BY MR. HASTIE

1 your last name for the record.

2 THE WITNESS: Ashley R. .

3 MR. BROWN: May it please the Court.

4 THE COURT: Yes, Mr. Brown.

5 DIRECT EXAMINATION

6 BY MR. BROWN:

7 Q. Good morning, Ashley R. .

8 A. Good morning.

9 Q. How are you?

10 A. Good.

11 Q. I'll tell you the same thing I ask everybody. Be
12 sure to speak up, okay?

13 A. Yes, sir.

14 THE COURT: Move up to the microphone a little bit
15 closer.

16 Q. Ashley R., how old are you?

17 A. 17.

18 Q. 17?

19 A. Yes, sir.

20 Q. I need to hear you right back here, okay?

21 A. Yes, sir.

22 Q. Where do you go to school?

23 A. Sumter High.

24 Q. What grade are you in?

25 A. 11.

Ashley R. - DIRECT EXAMINATION BY MR. BROWN

- 1 Q. Going up to 11th?
- 2 A. Yes, sir.
- 3 Q. How long you lived here in Sumter?
- 4 A. All my life.
- 5 Q. You go through the Sumter school district your entire
- 6 life?
- 7 A. Yes, sir.
- 8 Q. Where do you live?
- 9 A. [REDACTED].
- 10 Q. Live with your mom?
- 11 A. Yes, sir.
- 12 Q. Were you -- how old were you on May 2nd, 2015.
- 13 A. Just turned 15.
- 14 Q. Just turned 15?
- 15 A. In April.
- 16 Q. Were you out at Club Cream on May 2nd, 2015?
- 17 A. Yes, sir.
- 18 Q. And what time did you get there?
- 19 A. About -- between 10:00 or 11:00.
- 20 Q. Between 10:00 and 11:00?
- 21 A. Yes, sir.
- 22 Q. What was the purpose of going out there that night?
- 23 A. Teen party, birthday party.
- 24 Q. What's a teen party?
- 25 A. Teens having fun.

Ashley R. - DIRECT EXAMINATION BY MR. BROWN

- 1 Q. They open up the club just for teens?
- 2 A. Yes, sir.
- 3 Q. You were 15 at the time?
- 4 A. Yes, sir.
- 5 Q. And you got there between -- what time you say?
- 6 A. Between 10:00 and 11:00.
- 7 Q. Between the hours of 10:00 and 11:00 at night, when
- 8 you got to Club Cream, how long did you end up staying
- 9 there?
- 10 A. 12:00.
- 11 Q. What time does Club Cream close down?
- 12 A. For the teens?
- 13 Q. Yes.
- 14 A. About 2:00.
- 15 Q. You got to speak up. I'm sorry.
- 16 A. About 2:00, 2:30.
- 17 Q. Okay. So about 2:00, 2:30 that club closes down?
- 18 A. Yes, sir.
- 19 Q. And you were still there when the club was closing
- 20 that night?
- 21 A. Yes, sir.
- 22 Q. When you were in the club, did you ever see any
- 23 altercations or anything like that?
- 24 A. No, sir.
- 25 Q. What did you do when you came out of the club?

Ashley R. - DIRECT EXAMINATION BY MR. BROWN

- 1 A. Was going to another location.
- 2 Q. All right. And we're going to talk about that.
- 3 Where were you headed?
- 4 A. To McDonald's.
- 5 Q. Were you going there to eat?
- 6 A. No, sir.
- 7 Q. Tell me what was going on.
- 8 A. Going to see a fight.
- 9 Q. Do you remember who it was going to be fighting?
- 10 A. Not sure.
- 11 Q. And you're talking about the McDonald's down on Broad
- 12 Street, correct?
- 13 A. Yes, sir.
- 14 Q. So y'all were all about to start walking that way to
- 15 go watch a fight at McDonald's?
- 16 A. Yes, sir.
- 17 Q. You were in the parking lot?
- 18 A. Yes, sir.
- 19 Q. Was it a pretty crowded parking lot?
- 20 A. No, not really. I was just the odd one walking in
- 21 the parking lot. The rest was walking on the sidewalk.
- 22 Q. How many people would you say where in the parking
- 23 lot about the time you were about to start leaving?
- 24 A. Can't remember.
- 25 Q. More than 20?

Ashley R. - DIRECT EXAMINATION BY MR. BROWN

1 A. I don't know.

2 Q. Okay. So on May 2nd, 2015, you were about to leave
3 from McDonald's. You were about to leave for McDonald's
4 to go watch a fight. Tell these ladies and gentlemen of
5 the jury what happened next.

6 A. Walking out the club, going to see a fight.

7 THE COURT: Speak up.

8 A. Walking out of Cream, going to a fight at McDonald's,
9 walking in the parking lot. Soon as I got in the parking
10 lot up to a car, they said fight, gun, shooting. That's
11 when -- by the time I could duck down, feel like a bee
12 sting. I touched my leg, and started to panic.

13 Q. All right. So let's pause there. You heard
14 gunshots?

15 A. Yes, sir.

16 Q. Tell me about what you were seeing around you when
17 you started hearing gunshots.

18 A. Sure. I seen -- when I walked -- I seen Tubby --

19 Q. Who is Tubby?

20 A. Myers.

21 Q. The guy who was just now on the stand?

22 A. Yes, sir.

23 Q. You seen Tubby?

24 A. Yes, sir. But I seen him shoot after -- I seen the
25 other like two -- two shots before he shoot, that's when I

Ashley R. - DIRECT EXAMINATION BY MR. BROWN

1 ducked down. That's when...

2 Q. Let's back up, and you got to speak up, okay? Did
3 you see Malik Myers shoot first?

4 A. No, sir.

5 Q. Okay. So tell these ladies and gentlemen of the jury
6 about how that progressed in terms of Malik Myers shooting
7 his gun.

8 A. I seen Malik with a gun. That's when I heard the --
9 before he shoot, I heard like two more, two or three
10 gunshots before he shoot. He shoot.

11 MR. BROWN: Your Honor, permission to approach the
12 witness?

13 THE COURT: Yes, sir.

14 Q. I'm going to show you what's marked defense Exhibit
15 Number 1.

16 THE COURT: State's.

17 MR. BROWN: This one is a defense exhibit.

18 THE COURT: Oh, okay.

19 MR. BROWN: It's the close up.

20 Q. You recognize this picture right here?

21 A. Cream?

22 Q. Yes?

23 A. Yes, sir.

24 Q. That's Club Cream right there?

25 A. Yes, sir.

Ashley R. - DIRECT EXAMINATION BY MR. BROWN

1 Q. Okay. Where were you when you started hearing
2 gunshots fired?

3 A. Right there in that little parking lot.

4 Q. Right here, this area?

5 A. Yes, sir.

6 Q. And where was Malik Myers around this time?

7 A. He was like around there.

8 Q. He was up in this area?

9 A. Yes, sir.

10 Q. And you could see Malik Myers and he was not shooting
11 when you heard two other gunshots get fired?

12 A. Yes, sir.

13 Q. Where did you hear those gunshots coming from?

14 A. I'm not sure.

15 Q. Okay. And that's fine. If you don't know, that's
16 fine. But you heard two other gunshots ring out, and then
17 you saw Malik start shooting?

18 A. Yes, sir.

19 Q. How many gunshots were fired before you felt yourself
20 get hit by a bullet?

21 A. About four, five.

22 Q. You got to speak up. I'm sorry.

23 A. About four or five. That's when I ducked, I ducked.
24 Felt like a bee sting. I touched my knee, I touched the
25 blood, with that blood I started to get paranoid. When I

Ashley R. - DIRECT EXAMINATION BY MR. BROWN

1 run back, by the time I could run back, I blacked out. I
2 woke back up, seen security and a man picked me up, took
3 me back in Club Cream.

4 Q. Ms. Ashley, were you armed that night?

5 A. Sir?

6 Q. Were you armed that night?

7 A. No, sir.

8 Q. Were you shooting at anybody that night?

9 A. No, sir.

10 Q. Other than trying to go to watch a fight at
11 McDonald's?

12 A. Yes, sir.

13 Q. I mean, were you being wild or watching any violence
14 that night?

15 A. No, sir.

16 Q. After you were shot in the leg, you said the security
17 guard took you back into Club Cream?

18 A. Yes, sir.

19 Q. Was there a point in time following that that some
20 type of emergency medical vehicle or in some way somebody
21 came and took you to Tuomey Hospital?

22 A. They picked me up, took me back in Cream. That's
23 when a man took off his T-shirt and put it on my leg.
24 About -- less than ten minutes, the ambulance came. They
25 put me in a -- in an ambulance and took me.

Ashley R. - DIRECT EXAMINATION BY MR. BROWN

1 Q. They took you?
2 A. Yes, sir.
3 Q. And were you treated there?
4 A. Yes, sir.
5 MR. BROWN: Permission to approach the witness?
6 THE COURT: Yes.
7 MR. BROWN: Show you what's marked state's 2, 3, and
8 4. Do you recognize these pictures right here?
9 A. Yes, sir.
10 Q. All right.
11 MR. BROWN: Permission to publish, Your Honor.
12 THE COURT: Yes.
13 Q. This picture up here, is this you sitting at Tuomey
14 Hospital?
15 A. Yes, sir.
16 Q. And that's you in the hospital gown right there?
17 A. Yes, sir.
18 Q. Looking right here, is that where the bullet struck
19 you?
20 A. Yes, sir.
21 Q. Showing you state's Number 3, is this a close up
22 picture of that same bullet wound?
23 A. Yes, sir.
24 Q. Of your leg?
25 A. Yes, sir.

Ashley R. - DIRECT EXAMINATION BY MR. BROWN

1 Q. Finally showing you state's Number 4, is that an
2 angle measuring it from the bottom part right there?

3 A. Yes, sir.

4 Q. Did the bullet pass all the way through your leg?

5 A. No, sir.

6 Q. Did you have to have surgery following this?

7 A. No, sir.

8 Q. Was a doctor able to remove the bullet from your leg?

9 A. Yes, sir.

10 Q. And to your knowledge, was that turned over to law
11 enforcement? If you don't know, that's fine.

12 A. I'm not sure.

13 Q. But the doctor did remove the bullet from your leg?

14 A. Yes, sir.

15 Q. You still have a scar from that injury?

16 A. Yes.

17 Q. Can you sit down here and show it to the -- with the
18 judge's permission --

19 THE COURT: Yes.

20 Q. -- show it to the jury? You can just stand right
21 here so they can see you. And right there is where you
22 were shot?

23 A. Yes, sir.

24 Q. Did you have to receive any rehab or anything
25 following that?

Ashley R. - DIRECT EXAMINATION BY MR. BROWN

- 1 A. No, sir.
- 2 Q. Okay. They were able to get you back up and walking?
- 3 A. Yes, sir.
- 4 Q. All right. You saw Malik Myers up here a second ago,
- 5 right?
- 6 A. Yes, sir.
- 7 Q. You told law enforcement on the night all this
- 8 happened that you didn't know who it was, but that there
- 9 was an unknown black male and you described his clothes as
- 10 one of the people involved in the shooting. I think you
- 11 even said he was the one that shot you?
- 12 A. Yes, sir.
- 13 Q. Did you know Malik at that time?
- 14 A. No, sir.
- 15 Q. Have you since met Malik?
- 16 A. He came to me and apologized to me afterwards.
- 17 That's how I get to know him.
- 18 Q. Did he also, at some point, try getting you to forget
- 19 what happened?
- 20 A. Not sure, but...
- 21 Q. If you don't remember, that's fine.
- 22 A. All right.
- 23 Q. But you did not know Malik on May 4th, 2015?
- 24 A. No, sir.
- 25 Q. And it was after he came and apologized to you for

Ashley R. - DIRECT EXAMINATION BY MR. BROWN

1 shooting that you then knew his name?

2 A. Yes, sir.

3 Q. You knew him as Tubby?

4 A. Yes, sir.

5 MR. BROWN: Please answer any questions from Counsel.

6 THE COURT: Cross-examination, Mr. Hastie?

7 MR. HASTIE: Yes, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. HASTIE

10 Q. He apologized to you, you said?

11 A. Yes, sir.

12 Q. He came to your home?

13 A. No, sir.

14 Q. Where did he meet you at?

15 A. He called me.

16 Q. He didn't come anywhere. He called you on the phone?

17 A. Yes, sir.

18 Q. Oh, okay. I was just wondering because he was in
19 jail after this.

20 A. Yes, sir.

21 Q. That's what kind of threw me. Okay. Thank you.

22 Now, you said that night, you were leaving the club
23 because you were going to see a fight.

24 A. Yes, sir.

25 Q. Who was fighting?

Ashley R. - CROSS-EXAMINATION BY MR. HASTIE

- 1 A. I don't know they name, but I know it was two
2 females.
- 3 Q. Two females?
- 4 A. Yes, sir.
- 5 Q. And why were they going to McDonald's to fight? Do
6 you know that?
- 7 A. No, sir.
- 8 Q. You were going to McDonald's for some reason?
- 9 A. Yes, sir.
- 10 Q. How do you know they were going to McDonald's to
11 fight?
- 12 A. No, they had already said it.
- 13 Q. Oh, they said it?
- 14 A. Yes, sir.
- 15 Q. And did you know the two females?
- 16 A. No, sir.
- 17 Q. But you were going to follow two females you didn't
18 know to see a fight?
- 19 A. No, sir.
- 20 Q. Were you going to participate in the fight?
- 21 A. No.
- 22 Q. Not going to fight, just going to watch?
- 23 A. Yes, sir.
- 24 Q. All right. Now, you came out the club -- and
25 Mr. Brown asked you about something. Now, let's talk --

Ashley R. - CROSS-EXAMINATION BY MR. HASTIE

- 1 let's talk about -- were you at Poplar Square earlier that
2 day?
- 3 A. Yes, sir.
- 4 Q. And you were at Poplar Square?
- 5 A. Yes, sir.
- 6 Q. Were you playing dice with someone earlier that day?
- 7 A. There was a couple -- there was a couple of us?
- 8 Q. A couple of people -- you all were playing dice? How
9 many is a couple? Because when I think of a couple, I
10 think of two, might be. How many?
- 11 A. Four.
- 12 Q. Four?
- 13 A. Four or five.
- 14 Q. Four or five playing dice at Poplar Square?
- 15 A. Yes, sir.
- 16 Q. Did you not tell the police -- I think you might have
17 went over there already -- that an unknown suspect started
18 shooting and he -- he -- you know him because you were
19 playing dice with him at Poplar Square. Is that right?
- 20 A. No, we wasn't -- he wasn't -- he wasn't rolling with
21 us. I told -- I told -- I told Mr. Brown --
- 22 Q. Okay?
- 23 A. -- I seen him out there, but he wasn't rolling dice
24 with us. He was over there. He wasn't rolling with us.
- 25 Q. He wasn't really playing dice, but you saw him at

Ashley R. - CROSS-EXAMINATION BY MR. HASTIE

- 1 Poplar Square?
- 2 A. Yes, sir.
- 3 Q. And you identified him as the man that started the
- 4 shooting was the one you saw at Poplar Square. Is that
- 5 what you told the police officer?
- 6 A. Yes, but I heard he shot after -- after I heard the
- 7 two shots shooting.
- 8 Q. You heard he shot after?
- 9 A. Yes, sir. I seen him first.
- 10 Q. You saw him? Okay. I'm trying to figure -- you told
- 11 the police -- you didn't mention to the police at all that
- 12 someone else had shot first. But now you're in the
- 13 courtroom, you're saying someone else had shot first?
- 14 A. I wrote it?
- 15 Q. Pardon?
- 16 A. I had write it.
- 17 Q. You had write it?
- 18 A. Yes, sir.
- 19 Q. But it's not in the police statement?
- 20 A. I wrote it.
- 21 Q. You wrote it down. Okay. So now you're saying you
- 22 heard two shots maybe?
- 23 A. Yes, sir.
- 24 Q. Before Malik, the guy who was not rolling with y'all
- 25 at the square, Poplar Square, but he was there when y'all

Ashley R. - CROSS-EXAMINATION BY MR. HASTIE

1 were playing dice.

2 A. Yes, sir.

3 Q. So you know -- you know Malik, you just didn't quite
4 know his name. Y'all call him Tubby? That was Tubby?

5 A. Yes, sir.

6 Q. So you --

7 A. I had known him, like when he came to me, like called
8 me, and told me like -- I didn't really know him when I
9 seen him at Poplar Square. Like I didn't know him at all.

10 Q. Okay. But -- okay. But now you're saying -- you're
11 saying you wrote the statement and told the police officer
12 there was some other shots prior to Malik shooting, but
13 you wrote that in a statement, but it's not in your
14 statement and not in the police report.

15 A. About what.

16 Q. About the earlier shots before Malik started
17 shooting. Because your -- in the police statement, you
18 said that -- you said that Malik started shooting first.

19 A. No, I said that I heard two gunshots before Malik
20 started shooting.

21 Q. You got any idea where these gunshots came from?

22 A. No, sir.

23 Q. Can you -- you can't testify to that?

24 A. No, sir.

25 Q. You're in front of the club, right?

Ashley R. - CROSS-EXAMINATION BY MR. HASTIE

- 1 A. Yes, sir.
- 2 Q. I know you've done there already, but show me where
3 you were again. I apologize.
- 4 A. Where I got shot?
- 5 Q. No, wherever you were standing -- yeah, when you got
6 shot. You came out the club. This is the front of the
7 club; is that right?
- 8 A. Yes, sir.
- 9 Q. You came out and got about how far?
- 10 A. Right there.
- 11 Q. Right there. And you -- you don't know where the
12 shots came from, those first two shots?
- 13 A. Not sure.
- 14 Q. Whether they came from the right or the left,
15 straight ahead?
- 16 A. Not sure.
- 17 Q. Now, you got shot, then, in the leg here?
- 18 A. Yes, sir.
- 19 Q. On the left side?
- 20 A. Yes, sir.
- 21 Q. Right?
- 22 A. Yes, sir.
- 23 Q. If you were standing here, and you got shot on the
24 left side, you couldn't run into something. I was
25 thinking, you know, someone had to shoot you from this

Ashley R. - CROSS-EXAMINATION BY MR. HASTIE

1 angle, but I'm not the expert. But you can't testify
2 today where the shots were coming from?

3 A. No, sir.

4 Q. You can't testify today who was shooting the shots,
5 who was actually shooting, can you?

6 A. Not the first two shots.

7 Q. Right. I'm talking about the first -- you don't know
8 who might have shot?

9 A. No, sir.

10 Q. Shot the first two shots?

11 A. No, sir.

12 Q. And the shot that hit you, you pretty sure who shot
13 you?

14 A. Like when it first happened?

15 Q. Uh-huh.

16 A. Since I seen Malik, I thought he shot me, but that's
17 when -- because after that, because he came to me, he
18 apologized --

19 THE COURT: Excuse me. Speak up.

20 MR. HASTIE: Yeah, you got to lean into that
21 microphone. Everybody got to hear you.

22 Q. Why would he apologize if he did not shoot you? What
23 is he apologizing for?

24 A. I'm not sure.

25 Q. He apologized for shooting you?

Ashley R. - CROSS-EXAMINATION BY MR. HASTIE

1 A. I'm not sure. After he said that, I said, "You good.
2 I'm not mad at you." He said, "Okay."

3 Q. Okay. But you don't know what he was apologizing
4 for?

5 A. No, sir.

6 Q. You don't think he was apologizing for shooting you
7 in your leg?

8 MR. BROWN: Your Honor, speculation.

9 THE COURT: It's cross-examination. I'll give him
10 some leeway.

11 MR. HASTIE: Thank you, Your Honor.

12 Q. And you don't have any -- you can't tell the jury --
13 let me ask you this -- where the shot came from. Came
14 behind the club, the left side of the club?

15 A. Not sure.

16 Q. Not sure. We can only assume it had to be on maybe
17 the left side. Did you see Malik out here when you all
18 walked out? When you got shot, did you see Malik?

19 A. Yes, sir.

20 Q. Where was he again?

21 A. Right there.

22 Q. Malik was way over there?

23 A. Right over there.

24 Q. Uh-huh. Okay. Okay. thank you.

25 MR. HASTIE: Court's indulgence.

Ashley R. - CROSS-EXAMINATION BY MR. HASTIE

1 THE COURT: Yes, sir.

2 Q. One more question. You said you gave a written
3 statement -- you gave a written statement to the police
4 department?

5 A. Yes, sir.

6 Q. You did? Who did you give that statement to?

7 A. I forgot.

8 Q. You forgot who you gave the written statement to?

9 A. Yes, sir.

10 Q. What did he look like? Do you recall that? Black or
11 white?

12 A. It was -- I think it was like last -- last year. It
13 was December when -- yeah.

14 Q. Okay. So you can't remember even what race this guy
15 was that you gave the police -- your statement to.

16 A. I gave -- I gave one to behind you, Ms. Kelly.

17 Q. You gave one to Ms. Kelly? Okay. All right, then.
18 I'll ask Ms. Kelly about your statement.

19 MR. HASTIE: Thank you very much, Your Honor. No
20 further questions.

21 THE COURT: Redirect?

22 MR. BROWN: Briefly, Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. BROWN

25 Q. You were asked about whether or not it was Malik that

Ashley R. - REDIRECT EXAMINATION BY MR. BROWN

1 shot you. Did you see the bullet leave the gun that hit
2 your leg?

3 A. No, I didn't see it.

4 Q. And you heard other gunshots before James -- or
5 before Malik started shooting; is that correct?

6 A. Yes, sir.

7 Q. You heard at least two shooters that night?

8 A. Two shooters?

9 Q. You heard at least two people shooting guns that
10 night, correct?

11 A. Yes, sir.

12 Q. Malik and someone else. You didn't see who it was?

13 A. Yes, sir.

14 Q. But you didn't see the bullet leave the gun that hit
15 your leg?

16 A. No, sir.

17 Q. You don't know definitively who fired the gun that
18 hit your leg, correct?

19 A. No, sir.

20 Q. But we have the bullet, correct?

21 A. I guess.

22 MR. BROWN: Nothing further.

23 THE COURT: Redirect -- recross?

24 MR. HASTIE: Nothing, Your Honor.

25 THE COURT: All right. Thank you. You may step

Ashley - REDIRECT EXAMINATION BY MR. BROWN

1 Negative response, and that's good.

2 All right. Ready to go forward. All right,

3 Mr. Brown, call your next witness.

4 MR. BROWN: Yes, Your Honor, may it please the Court.

5 State would call Lead Corporal Steven Miller.

6 STEVEN MILLER, after having first being duly sworn,

7 testified under oath as follows:

8 THE CLERK: State your full name and spell your last

9 name for the record.

10 THE WITNESS: Steven Forest Miller, M-I-L-L-E-R.

11 MR. BROWN: May it please the Court.

12 THE COURT: Yes, sir.

13 DIRECT EXAMINATION

14 BY MR. BROWN:

15 Q. Corporal Miller, how are you this morning?

16 A. Afternoon.

17 Q. Good afternoon. You're right. Okay. Lead corporal
18 Miller, you work with the Sumter police department?

19 A. I do.

20 Q. How long you been there?

21 A. Four years.

22 Q. For these ladies and gentlemen of the jury, just kind
23 of let them know a little bit about yourself. Are you
24 from Sumter here originally?

25 A. No, I retired out of the Air Force here in issue,

STEVEN MILLER - DIRECT EXAMINATION BY MR. BROWN

1 made Sumter my home.

2 Q. Was that about four years ago, or was that before
3 then?

4 A. About -- about four years ago, yes, sir.

5 Q. How long were you in the Air Force?

6 A. 24 years.

7 Q. What did you do for the Air Force?

8 A. I was a -- security forces, basically military
9 policeman.

10 Q. And when you left the Air Force, your last station
11 was here in Sumter?

12 A. Shaw Air Force base, yes.

13 Q. Where were you originally from?

14 A. I'm originally from Tiffin, Ohio, but I never lived
15 there.

16 Q. You military child as well?

17 A. I am, yes.

18 Q. Were you with the police force two years ago?

19 A. I was.

20 Q. And at that point in time, were you working on the
21 night of May 2nd, 2015?

22 A. I was.

23 Q. Can you tell us what your role was that night, what
24 your job was with the police department that night?

25 A. Yes, I was on patrol. Received a call that -- was

STEVEN MILLER - DIRECT EXAMINATION BY MR. BROWN

1 dispatched basically to the Tuomey Hospital. While en
2 route, I was told there was a victim there and I had to go
3 there and basically had to guard the victim, who had a
4 gunshot wounds?

5 Q. And did you go out to Tuomey Hospital at that point
6 in time?

7 A. I did, yes, sir.

8 Q. We're talking about Tuomey Hospital, which I guess
9 about two blocks this way?

10 A. Yes.

11 Q. Did you have the chance to make contact with a doctor
12 or with the victim in the particular case?

13 A. I did, yes, sir.

14 Q. Who did you make contact with?

15 A. I made contact with the head nurse, I don't remember
16 her name, but basically told me they had a **Ashley R.** in the
17 emergency room with a gunshot wound to her leg.

18 Q. Ms. **Ashley R.**?

19 A. Yes.

20 Q. Once you arrived and you made contact with this
21 nurse, was it brought to your attention that a bullet that
22 had been fired into her leg had been successfully removed
23 by doctors?

24 A. Yes.

25 Q. And based on them giving you this information, did

STEVEN MILLER - DIRECT EXAMINATION BY MR. BROWN

1 you collect that bullet?

2 A. I did.

3 MR. BROWN: Permission to approach?

4 THE COURT: Yes.

5 Q. Do you recognize this item right here?

6 MR. BROWN: And I'm showing him state's Number 35,
7 Your Honor. I think it's already in evidence.

8 A. Yes.

9 Q. And how do you recognize that item?

10 A. This container I collected and put in evidence at the
11 Sumter police department.

12 Q. So contained within here, there's a bullet right
13 here. Is that the bullet you collected from the doctors
14 at Tuomey Hospital on that particular evening, May 2nd,
15 2015?

16 A. It looks like the bullet, yes, sir.

17 Q. All right. And this was removed from the gun box
18 over there, but you took it over to the evidence room at
19 the Sumter police department?

20 A. I put it in evidence, yes.

21 Q. And from there, it was taken over to SLED for
22 testing?

23 A. I believe so. We have evidence lockers that are put
24 in, sealing, and we have evidence technicians that take it
25 out of the lockers.

STEVEN MILLER - DIRECT EXAMINATION BY MR. BROWN

1 Q. Do you have any other involvement with the
2 investigation of this case?

3 A. No, sir.

4 Q. Did you take any statements or anything like that?

5 A. No, sir. I don't recall taking any of the statements
6 or giving -- taking any statements.

7 Q. Did you ever meet Ashley R. during that night?

8 A. Yes, I met her in the emergency room.

9 Q. Okay. But this is the bullet you recovered from the
10 doctor on May 2nd, 2015?

11 A. Looks like it, yes, sir.

12 Q. All right. Please answer any questions from defense
13 counsel.

14 THE COURT: Cross-examination, Mr. Hastie?

15 MR. HASTIE: None, Your Honor.

16 THE COURT: All right. Thank you, sir, you may step
17 down.

18 MR. BROWN: Your Honor, we'd ask that the witness be
19 excused.

20 THE COURT: Any objection?

21 MR. HASTIE: No objection, Your Honor.

22 THE COURT: Witness excused.

23 All right, Mr. Brown.

24 MR. BROWN: Your Honor, we would call Jacob Mitchell,
25 formerly of the Sumter police department.

STEVEN MILLER - DIRECT EXAMINATION BY MR. BROWN

1 JACOB MITCHELL, after having first being duly sworn,
2 testified under oath as follows:

3 THE CLERK: State your full name and spell your last
4 name for the record.

5 THE WITNESS: Jacob Ian Mitchell, M-I-T-C-H-E-L-L.

6 MR. BROWN: May it please the Court.

7 THE COURT: Yes, sir.

8 DIRECT EXAMINATION

9 BY MR. BROWN:

10 Q. Formerly Detective Jacob Mitchell, correct?

11 A. Yes, sir.

12 Q. You used to work with the Sumter police department?

13 A. I did.

14 Q. How long did you work with them?

15 A. About seven years.

16 Q. For these ladies and gentlemen of the jury, if you
17 can just let them know the standard question: Where
18 you're from, where you grew up, where you went to school,
19 what you do for a living?

20 A. I was born in Texas, originally. Didn't live there
21 for very long. Moved to Sumter towards family. Grew up
22 in Sumter, Sumter High, graduated St. Leo University,
23 computer information. Got into law enforcement, made my
24 way up to evidence and processing crime scene
25 investigations. Currently I work at the Safe Federal

JACOB MITCHELL - DIRECT EXAMINATION BY MR. BROWN

1 Credit Union as a network support technician.

2 Q. Did you leave the Sumter Police Department -- I guess
3 it was about a year and a half ago to take the job with
4 Safe?

5 A. I did.

6 Q. And -- but you still come back and testify in cases
7 like this?

8 A. We're on good terms.

9 Q. Can I still call you Detective?

10 A. Sure.

11 Q. Detective, what was your role in May of 2015 with the
12 police department? What was your general job description?

13 A. Crime scene investigator.

14 Q. What is that?

15 A. I was -- we were on call, so we would get -- we get a
16 time, and it was my week of call. Any major crime, things
17 like that, those happen, we get called out. We have a
18 special skill set to where we respond and collect
19 evidence, prepare, package it for them to process.

20 Q. That take extra training to learn how to do that?

21 A. It does.

22 Q. You do that through the Criminal Justice Academy?

23 A. We did do some through the Criminal Justice Academy,
24 other law enforcement agencies around the same area, and
25 also in-house training.

JACOB MITCHELL - DIRECT EXAMINATION BY MR. BROWN

1 Q. And you are a crime scene investigator or detective
2 with the police department in May of 2015?

3 A. Yes.

4 Q. Does that include pretty much everything from
5 collecting evidence, taking pictures, mapping out the
6 crime scene, all that type stuff?

7 A. Yes, sir.

8 Q. Were you working on the evening or the weekend where
9 May 2nd, 2015, arose?

10 A. I was.

11 Q. And you know which case we're here about today?

12 A. I do.

13 Q. And was there a point in time where you received a
14 phone call to go out to a location on May 2nd, 2015?

15 A. Yes.

16 Q. Do you know what that location was?

17 A. I do.

18 Q. Club Cream?

19 A. Club Cream, 330 Rast Street.

20 Q. And that's in Sumter, right?

21 A. It is.

22 Q. About what time did you get called to go out to Club
23 Cream?

24 A. It was very early. I think three in the morning.

25 Q. Were you in bed?

JACOB MITCHELL - DIRECT EXAMINATION BY MR. BROWN

1 A. I was.

2 Q. You had to get up?

3 A. I did.

4 Q. But you came?

5 A. Of course.

6 Q. Tell me about -- and tell these ladies and gentlemen

7 of the jury about what you observed when you arrived on

8 the scene. Kind of how were things already set up for

9 y'all?

10 A. By the time we get called out, an investigator is

11 usually there, detectives are already there, and law

12 enforcement, they -- patrol is usually there. They

13 already set up a perimeter, tape, section everything off

14 to make sure no one can disturb any evidence that would be

15 there or could be there. So when I arrived that night,

16 that section -- it's like the overflow parking of Club

17 Cream was already sectioned off when I got there. I just

18 had to search for evidence and package.

19 Q. When you say sectioned off, you mean like a crime

20 scene photo tape they always have up on TV?

21 A. Yes.

22 Q. The bright yellow tape?

23 A. Yes.

24 Q. When you arrived, that was already up?

25 A. It was.

JACOB MITCHELL - DIRECT EXAMINATION BY MR. BROWN

1 Q. So what do you do -- for both me and the jury, what
2 do you do when you walk on to a crime scene like this?
3 What -- how do you start working?

4 A. First thing we do, just get on scene, talk to the
5 investigator, talk to patrol, see what's going on. After
6 that would be photograph the area very thoroughly. And
7 then while we're photographing, we'll mark certain pieces
8 of evidence, and we'll collect those pieces of evidence,
9 photograph them further, package them, bring them to the
10 department for processing and put them in the evidence
11 room.

12 Q. And if that's there, send stuff off to SLED or
13 whatever you have?

14 A. Yes.

15 Q. Is that what you did in this case?

16 A. It is.

17 Q. I'm going to --

18 MR. BROWN: Permission to approach, Your Honor?

19 THE COURT: All right.

20 Q. I'm going to show you some pictures. These are
21 pictures that have already been premarked. Just -- do you
22 recognize -- flip through those. Do you recognize these
23 particular pictures?

24 A. I took these photograph.

25 Q. So you were the actual photographer for these?

JACOB MITCHELL - DIRECT EXAMINATION BY MR. BROWN

1 A. Uh-huh.

2 Q. And do those reflect your work on the night of
3 May 2nd, I guess early morning hours of May 2nd, 2015?

4 A. Yes, sir.

5 MR. BROWN: Your Honor, permission to publish these
6 and go through them?

7 THE COURT: Permission granted.

8 Q. Mr. Mitchell, if you can just look at your screen,
9 I'm going to pop them up on this fancy device. What are
10 we looking at here in this picture right here.

11 MR. BROWN: And for the record, Your Honor, this is
12 state's Number 9.

13 A. This was taken in the parking lot facing Club Cream.
14 That's the front of the building, front entrance.

15 Q. And you're talking about right here is the entrance?

16 A. Yes, sir.

17 Q. I don't really have them in front of me turned that
18 way. That is a picture from the parking lot looking in
19 towards cream club -- Club Cream?

20 A. Yes, sir.

21 Q. Thank you. What are we looking at in this picture?

22 A. This is the overflow parking area. You see --
23 there's a lot of little yellow tents. Those are evidence
24 markers where some shell casings were. And you saw the
25 tape that I was talking about, that was sectioned off in

JACOB MITCHELL - DIRECT EXAMINATION BY MR. BROWN

1 the background, and that was Sumter Mall behind.

2 Q. So just so we're clear, when you're talking about
3 these yellow tents, we're talking about here, here, here,
4 here, here, and here?

5 A. Yes, sir.

6 Q. And yellow crime scene tape, you're talking about is
7 here? That's what you're describing?

8 A. Yes, sir.

9 Q. And this is back here where the mall is?

10 A. Yes, sir.

11 Q. Is that -- where is Club Cream in proximity to this
12 picture?

13 A. From this photo, it would be to -- if you were
14 standing looking at the mall, it would be to your left.

15 Q. Okay?

16 MR. BROWN: That was state's Number 10, Your Honor.
17 Showing state's Number 11.

18 Q. What are we looking at here?

19 A. This would have been -- there's another building
20 that's right -- slightly right behind the area that the
21 last photo was. If you were to -- if you were looking at
22 the mall from the parking lot and turned to your right,
23 there's another building there. It's the back of that
24 building. That's -- the back of that building is facing
25 the front of Club Cream.

JACOB MITCHELL - DIRECT EXAMINATION BY MR. BROWN

1 Q. If I approached you with a map, would you kind of
2 show on that map exactly where we're looking?

3 A. Yes, sir.

4 MR. BROWN: Permission to approach, Your Honor?

5 THE COURT: Yes, sir.

6 Q. Show you what's been marked as state's Number 1, I
7 think. So this is an overhead view, and if I represent to
8 you this is where Club Cream is, where is the building we
9 were just now looking at?

10 A. This building right here.

11 Q. This right here, Number 340?

12 A. Yes, sir.

13 Q. And we also just now saw all those tents, the
14 evidence markers. About where were they located in
15 proximity to all this?

16 A. In this area right here.

17 Q. Okay. So the crime scene tape would have been also
18 back in this area here?

19 A. Yes, sir.

20 Q. And this would be the mall we were looking at?

21 A. Yes, sir.

22 Q. And of course, that's in proximity to the entrance to
23 Club Cream right here?

24 A. Yes, sir.

25 Q. Is it standard practice when you're taking pictures

JACOB MITCHELL - DIRECT EXAMINATION BY MR. BROWN

1 of all these evidence -- I think you called them tepees or
2 little yellow cones to take close ups of what they
3 actually are?

4 A. We take three photos, generally. One far away, one
5 midrange, and one up close.

6 Q. And if I show you up close pictures, you'll be able
7 to tell us where that was, or what that was?

8 A. Yes, sir.

9 Q. I'll show you state's Number 12. Is this picture of
10 marker Number 1 that was in that picture?

11 A. Yes, sir.

12 Q. And what are we looking at there?

13 A. We're looking at a shell casing.

14 Q. Did y'all collect that afterwards?

15 A. Yes, sir, after all the photographs were taken, we
16 went through and collected those.

17 Q. So y'all do that with every one of those shell
18 casings?

19 A. Yes, sir.

20 Q. Showing you state's Number 2 here. Is that the same
21 thing, another shell casing?

22 A. Yes, sir, a shell casing.

23 Q. And these aren't the same shell casings, are they?

24 A. No, each one is different.

25 Q. And that was state's Number 13. Showing you state's

JACOB MITCHELL - DIRECT EXAMINATION BY MR. BROWN

1 Number 14 marker Number 3. That also have shell casing?

2 A. Yes, sir.

3 Q. Showing you state's Number 15, marker Number 4. Is
4 that also a shell casing?

5 A. Yes, sir.

6 Q. And this is one you recovered from the scene that
7 night?

8 A. Yes, sir.

9 Q. In the area you just now identified in that picture?

10 A. Yes, sir.

11 Q. Showing you state's Number 16 marker Number 5. Is
12 that a shell casing?

13 A. Yes, sir.

14 Q. And state's Number 17, marker Number 6. Again, the
15 same thing?

16 A. Yes, sir.

17 Q. And the picture that we showed earlier, which is
18 state's Number 10, is this a picture that shows all of
19 those markers from far to show where they all are in
20 proximity?

21 A. Yes, sir.

22 Q. In fact, is that number one right there? Can you see
23 that close?

24 A. It does look like a one, yeah.

25 Q. You might be getting a little bit of a glare, but if

JACOB MITCHELL - DIRECT EXAMINATION BY MR. BROWN

1 I were to show you this is Number 2 and 3, would you have
2 a reason to contest that?

3 A. I would not.

4 Q. And then Number 4, looks like this is five and this
5 is six?

6 A. Yes, sir.

7 Q. All right. So they were all taken pretty close
8 together to one another?

9 A. Yes, sir.

10 Q. And they were all recovered from that same general
11 area right there?

12 A. Yes, it is.

13 Q. I showed you a picture a moment ago of the building
14 that was besides there on state's Number 11. Showing you
15 state's Number 18. Is that a different angle of that same
16 building?

17 THE COURT: Remove the... okay.

18 A. Yes, sir, that's a different angle of that back
19 building.

20 Q. And taking a close up, was this area of particular
21 importance specifically down here where the kid's toy is?

22 A. Yes, sir, we covered that area and collected these
23 evidence.

24 Q. All right. Showing you state's Number 19. When you
25 arrived on scene, was there an officer standing over or

JACOB MITCHELL - DIRECT EXAMINATION BY MR. BROWN

1 making sure no one messed with a gun that was besides that
2 child's toy?

3 A. Yes, sir.

4 Q. And did you put a marker down for Number 7 to
5 identify that?

6 A. Yes, sir.

7 Q. And is that a picture of it?

8 A. It is.

9 MR. BROWN: That's state's Number 19, Your Honor.

10 THE COURT: All right.

11 Q. And showing you state's Number 20, is that a close up
12 view of that?

13 A. Yes, sir.

14 Q. And finally turn to this, state's Number 21. Was
15 this a picture taken in your lab of the rounds that were
16 left still inside the gun?

17 A. Yes, sir.

18 Q. Can you zoom that real quick. The rounds inside the
19 gun right there?

20 A. Yes, sir.

21 Q. Mr. Mitchell, as you were going through all the crime
22 scene evidence and after you took pictures, you said you
23 collect all the evidence?

24 A. Yes.

25 Q. And you turned those in to the evidence room of the

JACOB MITCHELL - DIRECT EXAMINATION BY MR. BROWN

1 Sumter police department?

2 A. Yes, sir.

3 Q. So they can then be brought up to this courtroom?

4 A. Yes, sir.

5 MR. BROWN: Permission to approach?

6 Q. Sir, I'm showing you what's marked as state's

7 Number 34. Do you recognize this box?

8 A. It's a SLED handgun storage box.

9 Q. Now, when y'all send handguns off to SLED, do they

10 send them back in boxes like this?

11 A. They do, yes, sir.

12 Q. Do they send them back as secured weapons, so they

13 can't be fired without putting a lot of effort into it?

14 A. Yes, sir.

15 Q. Do you recognize this gun right here?

16 A. Yes, sir.

17 Q. Was this the same gun that y'all recovered from the

18 crime scene?

19 A. Not at the point we saw it, but --

20 Q. The same gun you recovered from the crime scene on

21 May 2nd, 2015?

22 A. Yes, sir.

23 Q. And this was the clip that was with it?

24 A. Yes, sir.

25 Q. And it had four live rounds of ammunition in it

JACOB MITCHELL - DIRECT EXAMINATION BY MR. BROWN

1 still?

2 A. Yes, sir.

3 Q. Do you know if that's kept or if SLED keeps that or
4 how that's done? And if you don't know, that's fine.

5 It's been a little while.

6 A. I believe we only send the spent rounds to SLED for
7 analysis and we keep the other ones in evidence.

8 Q. And showing you state's Number 36, you said y'all do
9 collect shell casing as you find them. Is that's what's
10 depicted here in state's Number 36?

11 A. Yes, sir.

12 Q. The recovered spent shell casings that were
13 recovered -- the markers one through six in your pictures?

14 A. Yes, sir.

15 Q. Once you collect all this evidence, tell me about the
16 process of actually turning it in to evidence and how all
17 that goes.

18 A. Yes, sir. There are several of us that are evidence
19 technicians as well as crime scene investigators. So on
20 the chain of custody, I would sign from myself to myself
21 and I'd place it into evidence. And then from there, it
22 would make its way to SLED or any other processing area it
23 needed to go to.

24 Q. And after that, you're pretty much done with the
25 evidence?

JACOB MITCHELL - DIRECT EXAMINATION BY MR. BROWN

1 A. Yes, sir.

2 Q. Until we call you in to come to court?

3 A. Yes, sir.

4 Q. Were you present during the shooting?

5 A. Was I there, no, sir.

6 Q. Did you take any statements from anybody?

7 A. I did not.

8 Q. So your job was exclusively limited to making sure

9 the evidence was collected and that it was photographed

10 and it was processed so we could bring it here today?

11 A. Yes, sir.

12 Q. All right. Please answer any questions defense

13 counsel has.

14 THE COURT: All right. Before Mr. Hastie does that,

15 Mr. Brown, I'd ask you to give the witness back Number 34

16 and let him look at that and make sure that he testifies

17 the weapon is safe, because it is in evidence and would be

18 going to the jury.

19 MR. BROWN: Permission to approach?

20 THE COURT: Yes.

21 Q. Mr. Mitchell, can you please just look at this gun,

22 make sure it is a secured weapon that cannot be fired, and

23 it is safe to go back to the jury room?

24 A. I'll have to check it.

25 Q. By all means.

JACOB MITCHELL - DIRECT EXAMINATION BY MR. BROWN

1 A. It is safe.

2 Q. Thank you.

3 THE COURT: All right, Mr. Hastie.

4 Cross-examination?

5 MR. HASTIE: Yes, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. HASTIE:

8 Q. During an investigation, is there any way to tell how
9 long those shell casings may have been on the ground?

10 A. No, sir. No, sir.

11 Q. Can't do that?

12 A. How long they've been on the ground? No, sir.

13 Q. So you don't know if they were there that night, or
14 they could have been a week ago or month ago?

15 A. It's possible, yes, sir.

16 Q. It's possible?

17 MR. HASTIE: Thank you, Your Honor. No further
18 questions.

19 THE COURT: Redirect?

20 MR. BROWN: Nothing further, Your Honor.

21 THE COURT: All right. Thank you, sir. You may step
22 down. Would you like to have Mr. Mitchell excused,
23 Mr. Brown?

24 MR. BROWN: Please, Your Honor. I think he has to go
25 back to Safe.

JACOB MITCHELL - CROSS-EXAMINATION BY MR. HASTIE

1 MICHELLE EICHENMILLER, after having first being duly
2 sworn, testified under oath as follows:

3 MR. BROWN: May it please the Court?

4 THE COURT: Yes.

5 DIRECT EXAMINATION

6 BY MR. BROWN:

7 Q. Good afternoon.

8 A. Hello.

9 Q. For these ladies and gentlemen of the jury, please
10 tell them where you work.

11 A. I work for the South Carolina Law Enforcement
12 Division, commonly known as SLED. I work in the forensics
13 lab in the firearms department.

14 Q. So what exactly do you do for a living? What exactly
15 does that entail?

16 A. A firearms examiner examines any fired evidence and
17 firearms that are found at crime scenes. Evidence is
18 submitted to the lab, I examine it in my office and issue
19 reports, and the final step is testifying in court.

20 Q. Ms. Eichenmiller, tell these ladies and gentlemen of
21 the jury how you become a firearms expert?

22 A. In order to work at SLED, you need a bachelor's
23 degree. I have a bachelor's degree in biology. I also
24 have a master's degree in forensic science. There's no
25 school you can go to, though, to become a firearms

MICHELLE EICHENMILLER - DIRECT EXAMINATION BY MR. BROWN

1 examiner. You have to learn with agents that are already
2 doing the job. So once I got to SLED, I did a three or
3 four year training program. I sat in the offices of the
4 trained firearms examiners. I learned how they did
5 casework. I did a lot of examination on my own. I wrote
6 lots of essays and exams. I did a competency exam at the
7 end, mock court, and then they deemed me competent to do
8 casework on my own.

9 Q. How long have you been doing this?

10 A. I've been at SLED 11 years.

11 Q. Okay. And you've been with ballistics the entire
12 time, or in the last little bit or how does that work?

13 A. The whole time.

14 Q. And you've testified in the past?

15 A. Yes.

16 Q. In regards to firearms or ballistics evidence?

17 A. Yes.

18 Q. Approximately how many times?

19 A. About 50 times.

20 Q. And have you been qualified as an expert in the past
21 in the field ballistics or firearms testimony?

22 A. I have.

23 Q. Have you ever not been qualified as an expert in
24 that?

25 A. No.

MICHELLE EICHENMILLER - DIRECT EXAMINATION BY MR. BROWN

1 MR. BROWN: Your Honor, at this time we would offer
2 Ms. Eichenmiller as an expert witness in the field of
3 ballistics and forensics evidence.

4 THE COURT: Any voir dire with regard to
5 qualification, Mr. Hastie?

6 MR. HASTIE: No, sir.

7 THE COURT: All right. The Court would find that the
8 witness is an expert and would qualify the witness as an
9 witness in ballistics and firearm examination. Ladies and
10 gentlemen of the jury, let me tell you what that means.
11 Ordinarily, if a witness is not testifying as an expert,
12 the witness's testimony in the form of opinions or
13 inferences is limited to those opinions or inferences
14 which are rationally based on the perception of the
15 witness or are helpful to a clear understanding of the
16 witness's testimony or the determination of affect in
17 issue, and do not require special knowledge, skill,
18 experience, or training. However, if scientific,
19 technical, or other specialized knowledge will assist the
20 trier of fact -- and that's you in this case -- to
21 understand the evidence or determine a fact at issue, a
22 witness qualified as an expert by knowledge, skill,
23 experience, training, education, or otherwise, may testify
24 in the form of an opinion. So basically, the difference
25 between an expert witness and a nonexpert witness is that

MICHELLE EICHENMILLER - DIRECT EXAMINATION BY MR. BROWN

1 an expert witness is allowed to give an opinion whereas a
2 nonexpert is normally not allowed to give an opinion.

3 All right, Mr. Brown.

4 MR. BROWN: May it please the Court?

5 Q. Ms. Eichenmiller, when you work at SLED, do y'all
6 receive evidence to test from all over the state?

7 A. Correct.

8 Q. Is that including Sumter county?

9 A. Yes.

10 Q. And the city of Sumter police department?

11 A. Yes.

12 Q. In your line of work, if it is alleged that one gun
13 possibly fired a bullet, is that sent over to y'all to
14 test to see whether that is true or to look and see
15 whether or not it could be matched?

16 A. Yes. It -- either way. If they -- if they receive a
17 gun that they think was used, then we'll test it. Or if
18 they just have a bunch at the scene and they want them all
19 tested, we can do it either way.

20 Q. Can you please explain to these ladies and gentlemen
21 of the jury the process you use to test, say, a recovered
22 bullet in comparison to a pistol you might have received
23 or a rifle or some other firearm?

24 A. In general, I will take pictures and document how it
25 came. We also fill out worksheets as for safeties and

MICHELLE EICHENMILLER - DIRECT EXAMINATION BY MR. BROWN

1 other identifying characteristics like, you know, it's
2 .40, its serial number, to make. Once that's all done and
3 I'm sure it's safe to test fire, I'll test fire it into
4 our water tank, which is a two-story, vertical water tank
5 that recovers perfect specimen for bullets for comparison.
6 So I know they came out of that firearm and they won't be
7 too damaged for me to use for comparison. I also recover
8 the cartridge cases. I take those back to my office and I
9 compare them to each other to make sure that the firearm
10 is reproducing marks I can use, and then I compare them to
11 any evidence that I have. And evaluate the marks that I
12 see, see if they're individual or not to form an opinion
13 if they were fired by that firearm.

14 Q. And you also said you also recover the cartridge
15 casing?

16 A. Yes.

17 Q. And you test that as well?

18 A. Yes.

19 Q. So y'all's science can actually go so far as to match
20 a casing that is kicked out from the side of the pistol to
21 the pistol itself?

22 A. Correct.

23 Q. Can you tell these ladies and gentlemen of the jury
24 when you're looking -- we'll start with the casing -- what
25 you're looking for to try to comparing it to maybe a known

MICHELLE EICHENMILLER - DIRECT EXAMINATION BY MR. BROWN

1 casing that you knew came out of a gun, what y'all are
2 looking for to match the two.

3 A. There are characteristics -- a firearm will make
4 marks on a cartridge case in several different areas.
5 Some of those we use as individual characteristics
6 specific to that firearm. Others could be general
7 characteristics that it has an ejector mark at the
8 9:00 position. So I'll evaluate ejector marks and
9 extractor marks. Those are not individual, usually.
10 Usually we use firing pin impressions or breach face
11 marks. So the firing pin is what makes the cartridge
12 fire. And the mark that's left by the firing pin has the
13 individual characteristics I can look for. Or the breach
14 face is where the cartridge will hit against the back of
15 the firearm and leave impressions there for me to
16 evaluate.

17 Q. Let's go on to the actual bullets, how you compare
18 the two of those so that jury can understand the process.
19 How do you look at, say, a bullet that is sent in from the
20 field saying we believe this might have come from this
21 gun, how you compare that to a known spent round that you
22 actually recover from your water tank?

23 A. I'll evaluate the bullet for its characteristics as
24 well. Bullets have caliber, which is the size. They have
25 lands and grooves which is made by the firearm, so there's

MICHELLE EICHENMILLER - DIRECT EXAMINATION BY MR. BROWN

1 different numbers depending on which manufacture, and
2 there's also direction of twist. The lands and grooves
3 can also have different sizes. So I'll evaluate all of
4 that versus the firearm I have to see if it could have
5 even been fired by that firearm. Once I determine that it
6 might have been fired by that firearm, then I put it on my
7 microscope and examine the individual characteristics that
8 are microscopic that I can't see just by looking at it.
9 If I see those marks, then I can form an opinion as if it
10 was fired by that firearm or not.

11 MR. BROWN: Your Honor, permission to approach the
12 witness?

13 THE COURT: Yes.

14 Q. Ms. Eichenmiller, I'm going to show you what's marked
15 state's 34, 35, and 36. If I were to represent to you
16 that this box right here, which is 34, was opened in the
17 presence of both me and Mr. Hastie by our evidence
18 custodian about two or three hours ago and these came out
19 of it, would you say you are able to recognize these three
20 individual items?

21 A. Yes.

22 Q. Okay. And how do you know these are the ones you
23 were testing in a particular case?

24 A. Whenever evidence comes into SLED, we'll examine it
25 for tape from the submitting agency. When I'm finished

MICHELLE EICHENMILLER - DIRECT EXAMINATION BY MR. BROWN

1 with it, I'll also put tape on it. It has a date and my
2 initials on it. So even internal packaging has the dates
3 and my initials, so I know these weren't opened or
4 tampered with. And then the box has my tape on it, which
5 was opened?

6 Q. So when it says "me" right here, that's not me.
7 That's Michelle Eichenmiller?

8 A. Those are my initials.

9 Q. And that was tested on February 1st, 2016, that's
10 when you bagged this up?

11 A. Yeah, that's when -- yeah, when I was finished.

12 Q. And the same with the gun right here?

13 A. Correct.

14 Q. Were these items sent to you for testing?

15 A. Yes.

16 Q. Okay. And did you have an opportunity to test these
17 items against one another to see whether or not you could
18 form any opinions about whether or not this gun produced
19 these shell casings and this bullet?

20 A. I did test them.

21 Q. Let's start out with the casings. Did you have a
22 chance to test the casings that were provided against a
23 known casing that you recovered at the SLED laboratory?

24 A. I did.

25 Q. All right. And can you please tell us what your

MICHELLE EICHENMILLER - DIRECT EXAMINATION BY MR. BROWN

1 findings were from that testing?

2 A. Sure. I physically examined and microscopically
3 compared them to each other. And then also to the items
4 that have been test fired. I found matching individual
5 identifying characteristics, and in my opinion, those
6 cartridge cases were fired by the firearm.

7 Q. So the Springfield model XD .40 Smith and Wesson we
8 have right here, it is your expert opinion that it fired
9 all the rounds that were produced right here?

10 A. All the fired cartridge cases, yes.

11 Q. Okay. Let's talk about the bullet. Was a bullet
12 provided that was reported to have been removed from a
13 victim's leg?

14 A. I just received it in a container. I think it was
15 just labeled with the victim's name.

16 Q. Okay. But you received this bullet right here?

17 A. Correct.

18 Q. And were you able -- first off, was this gun
19 operational so you could get a test round out of it?

20 A. Yes.

21 Q. Okay. Was it in good, working condition?

22 A. Let me refer to my notes to make sure, but... yes.
23 It was in good overall condition. It didn't have any
24 damage or perceivable wear.

25 Q. And did you successfully fire a test round from the

MICHELLE EICHENMILLER - DIRECT EXAMINATION BY MR. BROWN

1 Springfield model XD .40 Smith and Wesson pistol into your
2 water barrel?

3 A. I did.

4 Q. Did you recover that?

5 A. I did.

6 Q. And did you test it in comparison to the bullet that
7 was sent that was -- I think it actually has Ashley R.
8 name on here -- that was sent to y'all for testing?

9 A. I did.

10 Q. Tell these ladies and gentlemen of the jury about
11 what you found in comparing those two bullets.

12 A. When I compared the evidence bullet to the test
13 fires, they are rifled the same. They have six lands and
14 grooves, approximately the same size, and they're also all
15 to the right twist. So that meant I could compare it to
16 that gun; it has the possibility. I put it on my
17 microscope and tried to evaluate the characteristics I
18 saw. In firearms, we have four answers that we can give
19 you: Yes, it was the firearm; no, it wasn't the firearm;
20 it's too damaged for me to tell you if it was the firearm
21 or not; and then the last answer is inconclusive, which is
22 I couldn't tell you one way or the other. I didn't see
23 enough individual characteristics to form an opinion as if
24 it was fired by that firearm.

25 Q. So was yours the fourth answer, inconclusive?

MICHELLE EICHENMILLER - DIRECT EXAMINATION BY MR. BROWN

1 A. I found that the -- I -- yes. The comparisons were
2 inconclusive with the test fired bullet from the
3 Springfield and the evidence bullet that was submitted?

4 Q. The bullet that was submitted, do y'all also test to
5 see if you can make any conclusions about what caliber of
6 gun it was fired from, what the measurements of the
7 bullets you're receiving are, and what it could possibly
8 be fired from?

9 A. Yeah, that's my first step is I'll evaluate to see
10 the caliber, the rifling, if it's consistent with what I
11 received in the firearm. So both the Springfield XD and
12 the bullet I received were six right, conventional rifling
13 with approximately the same land and groove width.

14 Q. And the bullet is also the same size and dimension to
15 be fired from a .40 pistol in and of itself?

16 A. Yes.

17 Q. And in fairness, it could have also possibly been
18 fired from a 10-millimeter, I believe it was?

19 A. It's the same diameter bullet, so it could have been
20 a 10-millimeter firearm or a 40 S & W.

21 Q. I'm going to ask, is there any way it could have been
22 fired from a .38?

23 A. It's a little bit larger than a .38. Depending on
24 the firearm, I have seen some that have worn barrels that
25 it could have been fired from, but not usually.

MICHELLE EICHENMILLER - DIRECT EXAMINATION BY MR. BROWN

1 Q. So it's your expert opinion is that all six of these
2 cartridges that were kicked out right here, all are kicked
3 out by this Springfield XD model .40 Smith and Wesson
4 pistol?

5 A. That's correct.

6 Q. And that it is inconclusive as to whether or not this
7 bullet was fired from there?

8 A. Correct.

9 Q. But it had similar markings?

10 A. Correct.

11 Q. It had similar grooves?

12 A. Yes.

13 Q. It was both six twist to the right?

14 A. Correct.

15 Q. Ms. Eichenmiller, is it -- is that uncommon to not be
16 able to match two guns?

17 A. Unfortunately, it happens more times than we like to
18 admit. I can watch someone shoot a firearm and then take
19 the firearm from them and still not be able to match the
20 bullet to conclusively say it came from that firearm. It
21 just happens in the manufacturing process if the gun is
22 really -- well-produced firearm or if it's well-cared for,
23 it might not have enough individual marks for me to form
24 an opinion.

25 Q. All right. A Springfield gun, is it typically a

MICHELLE EICHENMILLER - DIRECT EXAMINATION BY MR. BROWN

1 better manufactured gun?

2 A. It's a little bit better.

3 Q. Than, say, a Hi-Point?

4 A. Yes.

5 Q. Please answer any questions from defense counsel.

6 THE COURT: Cross-examination, Mr. Hastie?

7 MR. HASTIE: Yes, Your Honor. Just a few questions.

8 CROSS-EXAMINATION

9 BY MR. HASTIE:

10 Q. Good afternoon.

11 A. Hello.

12 Q. So at the end of the day, as far as the bullet that's
13 in question here today, you say it's inconclusive as to
14 whether it was fired from this particular .45?

15 A. It's a .40, but, yes. I couldn't tell. It was
16 inconclusive.

17 Q. Okay. On the other weapons that fire the same
18 caliber of bullet out there, you mentioned 10-millimeter.
19 Are there ones that fire out that still -- that fire that
20 .40 round?

21 A. There are many firearm manufacturers that make guns
22 with .40 firearms -- with .40?

23 Q. Are you familiar with the Walther PPQ? Are you
24 familiar with that weapon?

25 A. I don't think I'm -- I've seen that one.

MICHELLE EICHENMILLER - CROSS-EXAMINATION BY MR. HASTIE

- 1 Q. Okay. What about Smith and Wesson M&P?
- 2 A. I have seen that.
- 3 Q. That fires a similar round as well, doesn't it?
- 4 A. The M&P in .40 will fire a .40 round.
- 5 Q. Fires that .40, you familiar with that one?
- 6 A. Yes.
- 7 Q. That's an Heckler & Koch .40. You familiar with that
- 8 one?
- 9 A. That one doesn't sound familiar.
- 10 Q. How about the Glock 22?
- 11 A. Yes.
- 12 Q. That fires a .40 as well?
- 13 A. It does.
- 14 Q. Okay. And I had to go through that, but my point is
- 15 that there are other weapons out here that fires that same
- 16 .40 rifle?
- 17 A. Yes, there are, but those firearms have different
- 18 rifling than what we saw on the Springfield and the bullet
- 19 that we had.
- 20 Q. And in your testimony, you're saying as far as the
- 21 record we have in court today, you cannot
- 22 conclude conclusively that that was fired from that
- 23 particular bullet?
- 24 A. Correct.
- 25 Q. Thank you.

MICHELLE EICHENMILLER - CROSS-EXAMINATION BY MR. HASTIE

1 THE COURT: Redirect.

2 MR. BROWN: Very briefly, Your Honor.

3 DIRECT EXAMINATION

4 BY MR. BROWN:

5 Q. Every one of the shell casings that were recovered,
6 every single one of them that were sent to you, you tested
7 against this gun, and every one of them tested positive
8 for being fired from this gun?

9 A. Correct.

10 Q. Every .40 round recovered, every shell casing
11 recovered from the scene was tested by you and it came
12 back to this gun?

13 A. Every cartridge case, yes.

14 MR. BROWN: No more questions.

15 THE COURT: Recross?

16 MR. HASTIE: None, Your Honor.

17 THE COURT: All right. Thank you, Agent
18 Eichenmiller. You may step down.

19 May the witness be excused, Mr. --

20 MR. BROWN: Yes, Your Honor.

21 THE COURT: All right.

22 MR. HASTIE: No objection.

23 THE COURT: No objection. Witness is excused. Thank
24 you for your time. All right, Mr. Brown, you can call
25 your next witness.

MICHELLE EICHENMILLER - REDIRECT EXAMINATION BY MR. BROWN

1 MR. BROWN: Your Honor, the state would call
2 Detective Nathalie Kelly.

3 THE COURT: All right.

4 NATHALIE KELLY, after having first being duly sworn,
5 testified under oath as follows:

6 THE CLERK: Please state your full name, spell your
7 last name for the record.

8 THE WITNESS: Nathalie Kelly, K-E-L-L-Y.

9 MR. BROWN: May it please the Court, Your Honor?

10 THE COURT: Yes.

11 DIRECT EXAMINATION

12 BY MR. BROWN:

13 Q. Deputy Kelly, how are you?

14 A. I'm good.

15 Q. For these ladies and gentlemen of the jury, standard
16 starting question. Can you please let them know who you
17 are, where you're from, where you grew up, where you went
18 to school, and what you do for a living now?

19 A. My name is Nathalie Kelly. I grew up here in Sumter,
20 educated in the public schools here. I graduated from St.
21 Leo University with a masters in forensic psychology.
22 That's my...

23 Q. You lived here all your life?

24 A. I did.

25 Q. Went to St. Leo's and got your master's.

NATHALIE KELLY - DIRECT EXAMINATION BY MR. BROWN

1 A. I did.

2 Q. What do you do in law enforcement?

3 A. I am a lead detective in the violent crimes unit.

4 Q. And how long have you been a police officer?

5 A. I've been with the Sumter police officer for about
6 ten years.

7 Q. Okay. Did you work in some other law enforcement
8 agency prior to that?

9 A. I did. I was in law enforcement since the age of 21.

10 Q. All right. You're a career person?

11 A. Yes.

12 Q. So you've been with the Sumter police department for
13 ten years, you said?

14 A. That's correct.

15 Q. Did you have to start on the streets, being a patrol
16 officer, or did you immediately come in as an investigator
17 with them?

18 A. I was a patrol officer for about two years. And then
19 I did another two years as a school resource officer, and
20 then I went to the detective division.

21 Q. Did you start out in the violent crime unit of the
22 detectives division, or did you start out doing property
23 crimes and work your way up there, too?

24 A. I started out in property crimes and then I
25 transitioned over to violent crimes unit.

NATHALIE KELLY - DIRECT EXAMINATION BY MR. BROWN

- 1 Q. And how long have you been with violent crimes?
- 2 A. About four years.
- 3 Q. You like it?
- 4 A. Love it.
- 5 Q. What all counts as a violent crime? Like what all do
6 you investigate?
- 7 A. I investigate homicides, assault and batteries,
8 attempted murders, kidnapping. I investigate crimes
9 against children, domestic violence, things of that
10 nature.
- 11 Q. Were you investigator with the Sumter police
12 department on May 2nd, 2015?
- 13 A. Yes, I was.
- 14 Q. And were you the first investigator that was involved
15 in this case, or was there another investigator before
16 you?
- 17 A. There was another investigator.
- 18 Q. For these ladies and gentlemen of the jury, explain
19 how that works. Who was the other investigator, first of
20 all?
- 21 A. That was Detective Mark Moses.
- 22 Q. And tell these ladies and gentlemen of the jury why
23 there would have been one investigator starting off and
24 why he took it over?
- 25 A. We have what we call on call investigators,

NATHALIE KELLY - DIRECT EXAMINATION BY MR. BROWN

1 particularly during the week or on the weekend. And on
2 this particular day, Mark Moses was the detective that was
3 on call for the weekend. So he did the preliminary
4 investigation on this case, and then on that following
5 Monday, the case was assigned to me.

6 Q. And that's when you took over the investigation of
7 it?

8 A. That's correct.

9 Q. When you took over the investigation, had suspects
10 already been developed?

11 A. Yes, they had.

12 Q. And had one of them been the defendant, Mr. James
13 Caleb Williams?

14 A. Yes.

15 Q. Did you have an occasion at some point following you
16 taking over the investigation to meet with James Caleb
17 Williams?

18 A. I did.

19 Q. And tell these ladies and gentlemen of the jury how
20 that came about.

21 A. He was arrested, of course. He got arrested that
22 weekend, and he was at the Sumter Lee Regional Detention
23 Center. And I went out and asked did he want to talk
24 about what happened, and he agreed.

25 MR. BROWN: Permission to approach? Permission to

NATHALIE KELLY - DIRECT EXAMINATION BY MR. BROWN

1 approach the witness, Your Honor?

2 THE COURT: Yes, sir.

3 MR. BROWN: Actually, if I could just walk this...

4 Permission to approach, Your Honor?

5 THE COURT: Yes, sir.

6 (State's Exhibit Number 37 was marked for
7 identification.)

8 Q. Detective Kelly -- and I might call you Investigator,
9 because I'm switching between sheriff's department and
10 police department, but do you recognize this document
11 right here, marked as state's Exhibit Number 37? I think
12 for ID at this time.

13 A. I do. This is our Sumter Police Department form.
14 Basically your Miranda rights.

15 Q. Is that something that y'all read to every defendant
16 at the beginning of a statement to make sure they know
17 what their rights are?

18 A. That's correct.

19 Q. And is that what you did in Malik Myers -- I'm sorry,
20 in James Williams' case?

21 A. I did.

22 Q. And is this Mr. Williams' Miranda form?

23 A. It is.

24 Q. Informing him of his rights?

25 A. That's correct.

NATHALIE KELLY - DIRECT EXAMINATION BY MR. BROWN

1 MR. BROWN: Your Honor, I offer state's Number 37
2 into evidence.

3 THE COURT: Any objection?

4 MR. HASTIE: No, no.

5 THE COURT: All right. State's Number 37 admitted
6 into evidence without objection.

7 (State's Exhibit Number 37 was admitted into evidence.)

8 Q. Detective Kelly, for these ladies and gentlemen of
9 the jury, walk us through how you Mirandize somebody.
10 Tell us what the process is, how you would sit someone
11 down and Mirandize them and let them know what their
12 rights are?

13 A. Well, before we talk to anyone that has been accused
14 of a crime, we always let them know what their rights are.
15 So they'll know they don't have to talk to us and talking
16 to us is voluntarily and free without coercion or
17 anything. So basically what I'll do is read this form
18 here to the defendant, and at the top you can see it says
19 Sumter Police Department interview form.

20 Q. Would it help if I actually put that on the screen so
21 you -- so they can see it with you?

22 A. You got to let me hold on to this one.

23 Q. Sure. That's fine.

24 A. So basically what I would say is, you know, before we
25 ask you any questions, you must understand your rights.

NATHALIE KELLY - DIRECT EXAMINATION BY MR. BROWN

1 The first bubble here says you have the right to remain
2 silent. Anything you say against you could be used in
3 court -- anything said can be used against you in court.
4 You have the right to talk to a lawyer for advice before
5 we ask you any questions and to have him or her present
6 with you during any questions. If you cannot afford a
7 lawyer, one will be appointed for you before any questions
8 if you wish. In deciding to answer any questions now
9 without a lawyer present, you will still have the right to
10 stop answering at any time until you've talked with a
11 lawyer. And then at the bottom here, it says waiver of
12 rights. Before any questions, I was furnished the above
13 question statement of my rights -- and here it's a block
14 for the time that I'm giving Miranda to the individual --
15 and then it says on, that would be the date -- on that
16 Miranda was given, and then the year, and then it says at.
17 And LEC is law enforcement center, the place that we're
18 actually interviewing the individual. By officer, that
19 would be the officer that's giving him Miranda, him or her
20 Miranda. The Sumter Police Department.

21 Then at the bottom, it goes in and says I have read
22 or I have read to me this statement of my rights. I
23 understand what my rights are. I am willing to answer
24 questions at this time without a lawyer present. No
25 promises or threats have been made to me and no pressure

NATHALIE KELLY - DIRECT EXAMINATION BY MR. BROWN

1 has been used against me. Then I would ask the
2 individual, Do you understand your rights as I have given
3 them to you? They would say yes or no. If they say yes,
4 then they will sign here, in which Mr. Williams he signed,
5 he dated and he put the current time. And then once he
6 signs, then I will witness his signature by his hand, sign
7 here, which is the witness log?

8 Q. Now, you indicated that there's a spot where the date
9 and time that all this happens is. What were the dates
10 and times you sat down with Mr. Williams to Mirandize him
11 and give him an opportunity to give a statement?

12 A. This is May 6th, 2015.

13 Q. So four days after the events that we're here about
14 today?

15 A. That's correct.

16 Q. All right. And does that say -- is that Lead
17 Detective Kelly right there?

18 A. It does.

19 Q. Okay. And that was -- you were the person actually
20 administering this Miranda?

21 A. That's correct.

22 Q. And he indicated he wished to give you a statement at
23 that time?

24 A. He did.

25 Q. I'll take that from you. How do y'all take

NATHALIE KELLY - DIRECT EXAMINATION BY MR. BROWN

1 statements at the Sumter Police Department?

2 A. Normally, we would talk to the individual, just
3 basically get some preliminary information about them,
4 where they live, you know, name, stuff of that nature.
5 And then we'll ask, would you like to put your statement
6 in writing? And they'll say yes or no.

7 Q. Is that what you did with Mr. Williams?

8 A. That's correct.

9 Q. And do you recognize this document here, which is
10 marked for ID as state's Number 38?

11 A. Yes, this is the suspect statement form?

12 Q. Let's not show it to them quite yet until it's in
13 evidence. But that's the suspect witness -- or the
14 suspect statement form?

15 A. That's correct.

16 Q. Is that the standard one that y'all use for the
17 Sumter Police Department?

18 A. That's correct.

19 Q. And does that have a name on it that indicates whose
20 statement that was?

21 A. It does.

22 Q. Is it Mr. James Williams?

23 A. It is.

24 Q. And are you the one who signed as a witness down here
25 as being present when this was presented?

NATHALIE KELLY - DIRECT EXAMINATION BY MR. BROWN

1 A. Yes.

2 Q. And does this appear to be a true and accurate copy
3 of the statement he provided to y'all on May 6, 2015?

4 A. It is.

5 Q. All right?

6 MR. BROWN: Your Honor. I'd offer state's Number 38
7 into evidence.

8 THE COURT: Any objection.

9 MR. HASTIE: No, Your Honor.

10 THE COURT: All right. State's Number 38 is admitted
11 into evidence without objection.

12 (State's Exhibit Number 38 was marked and admitted
13 into evidence.)

14 Q. Now -- and I'll hand this back to you. Detective
15 Kelly, I see there's a lot of information at the top
16 before we get to statement. Do y'all continue to go
17 through and make sure that before they are giving a
18 statement, that it is free and voluntary, make sure that's
19 really what they want to do?

20 A. We do.

21 Q. And is that documented up here in this little passage
22 up here?

23 A. It is.

24 Q. All right. Can you please tell the ladies and
25 gentlemen of the jury about that?

NATHALIE KELLY - DIRECT EXAMINATION BY MR. BROWN

1 A. This is the suspect statement form. On the top here
2 has the date, the time, and the location of where the
3 statement is given. And then it goes to the date of
4 birth, social security number, and their phone number.
5 Then the next block goes I, and then the defendant's name
6 would go here, in which James Williams' name went here, O,
7 which would be his address, which he put his address here.
8 Then it goes into, "Having been advised of my
9 constitutional rights and having signed a waiver of those
10 rights, do hereby give the following statement, freely and
11 voluntarily, without fear or threat -- fear or threat or
12 promise or reward to Detective Kelly, who has identified
13 him or herself as a police officer."

14 Q. And it says free and without threat. I mean, is that
15 accurate? Were y'all threatening that day?

16 A. No.

17 Q. Were y'all coercing him in any way to give this
18 statement?

19 A. No.

20 Q. Were y'all holding out any hope, promise, or reward
21 that if you gave this statement, nothing would happen to
22 him or no charges would be used?

23 A. No.

24 Q. In fact, y'all actually told him anything he said
25 could be used against him in court?

NATHALIE KELLY - DIRECT EXAMINATION BY MR. BROWN

1 A. That's right.

2 Q. That's here on state's Number 37?

3 A. That's correct.

4 Q. Did he appear to know what was going on that day?

5 A. He did.

6 Q. And be aware that -- who you were, what you did, and
7 why you were taking his statement?

8 A. Yes.

9 Q. And did he still give a statement?

10 A. He did.

11 MR. BROWN: And Your Honor, I'd request permission
12 for Detective Kelly to publish the statement.

13 THE COURT: All right. Has been admitted into
14 evidence and permission is granted to publish the
15 statement.

16 Again, ladies and gentlemen of the jury, you may
17 recall that I told you that the lawyers may ask to publish
18 an exhibit to you. That simply means show or read an
19 exhibit to you. But do not be concerned if you do not
20 have the time to digest everything while you're sitting
21 here in court. Anything that's admitted into evidence can
22 go with you to the jury room when you retire to reach your
23 verdict.

24 All right. You may publish the statement.

25 Q. Please.

NATHALIE KELLY - DIRECT EXAMINATION BY MR. BROWN

1 A. May it please the Court. Your Honor. I got to Club
2 Cream at like 11:00 in my green Mustang. I went in the
3 club and danced around until the party was over. When I
4 got out, I was sitting in my car about to leave. I seen
5 Malik about to walk up to my car, so I got out and went to
6 the back, opened my car, and by the time I got to the back
7 to open my car, Malik had his gun and I had a gun. So he
8 started shooting, so I started shooting, but I was
9 shooting in the back of my car so the bullets wouldn't hit
10 nobody. And I didn't want him to think I was shooting in
11 the air. And when I was inside the club, Malik bumped
12 into me, so I already knew he was up to something.

13 I was behind my car shooting into my car so my gun
14 looked like it was pointing at him. He was in the front
15 of my car shooting and threw my gun under the tree because
16 I seen a security.

17 Q. Thank you. What I call it the tail end, he indicated
18 that he threw his gun under a tree?

19 A. That's correct.

20 Q. Did he -- outside of his written statement but inside
21 your investigative notes and report, did he also indicate
22 that the gun that we recovered, you believe that was the
23 gun that was used on this night?

24 A. That's correct.

25 Q. And to be clear, that's the gun that we just now

NATHALIE KELLY - DIRECT EXAMINATION BY MR. BROWN

1 talked about?

2 A. That's correct.

3 Q. That end your interview with Mr. Williams?

4 A. That's correct.

5 Q. Now, Detective Kelly, I want to address a couple
6 other points. First off, you were present today when

7 Ashley R. was in the courtroom, right?

8 A. That's correct.

9 Q. And you heard the tail end of Mr. Hastie's
10 cross-examination where it was talking about the statement
11 she gave when she said that she gave you a statement,
12 correct?

13 A. That's correct.

14 Q. I think we need to clarify that a little bit. Did
15 Ashley R. ever give you a statement regarding this
16 matter here today?

17 A. No, she did not.

18 Q. All right. And a separate investigation that we're
19 not -- that's not in front of this jury, was she a witness
20 or have information that she -- you took a statement from
21 her last week on a completely separate matter?

22 A. That's correct.

23 Q. And is that your understanding as to the statement
24 that we were talking about this morning?

25 A. That's correct.

NATHALIE KELLY - DIRECT EXAMINATION BY MR. BROWN

1 Q. Did you ever take a statement from Ashley R. -- did
2 you ever from her in any way, shape or form, regarding
3 this incident -- Ashley R. perspective of what
4 happened at Club Cream?

5 A. I did not.

6 Q. Detective Kelly, you were also present today when
7 Malik Myers came to the courtroom?

8 A. I did.

9 Q. And you heard Malik Myers' testimony?

10 A. I did.

11 Q. When Malik Myers testified, was that inaccurate to
12 the statement that you had taken from him in the past?

13 A. Yes.

14 MR. BROWN: Permission to approach opposing counsel?
15 Permission to approach the witness, Your Honor.

16 THE COURT: Yes.

17 Q. Detective Kelly, did you -- in the same way that you
18 had an opportunity to interview James Williams, did you
19 also have an opportunity to interview Malik Myers as a
20 part of the investigation into this case?

21 A. I did.

22 Q. Was he a defendant too?

23 A. He was.

24 Q. So did you Mirandize him as well?

25 A. I did.

NATHALIE KELLY - DIRECT EXAMINATION BY MR. BROWN

1 Q. I want to show you what's marked as state's
2 Number 39. Do you recognize that document?

3 A. I do.

4 Q. And is that the same type Miranda form as what we had
5 with James Williams, but the one pertaining to Malik
6 Myers?

7 A. It is.

8 MR. BROWN: Your Honor, I'd offer state's 39 into
9 evidence.

10 THE COURT: Any objection?

11 MR. HASTIE: No objection, Your Honor.

12 THE COURT: All right. State's Number 39 admitted
13 into evidence without objection.

14 (State's Exhibit Number 39 was marked and admitted
15 into evidence.)

16 Q. And I'm not going to ask you to read all of the
17 rights, but is it the same rights that were reflected on
18 James Williams' statement? Is it the exact same thing,
19 just Malik Myers signature on this one?

20 A. That's correct.

21 Q. And is that your witness signature that you witnessed
22 this statement?

23 A. It is.

24 Q. Is that -- in fact, is that your badge number right
25 there?

NATHALIE KELLY - DIRECT EXAMINATION BY MR. BROWN

- 1 A. It is.
- 2 Q. And when -- what was the date and time you took Malik
- 3 Myers' statement from him?
- 4 A. This one is on May 4, 2015.
- 5 Q. And did you take a statement not long thereafter from
- 6 Malik Myers?
- 7 A. That's correct.
- 8 Q. All right. I'll show you what's marked as state's
- 9 Exhibit Number 40. Do you recognize this document?
- 10 A. I do.
- 11 Q. And tell us how you recognize that document.
- 12 A. This is the statement I collected from Malik Myers.
- 13 Q. Is that your signature down there as the witness to
- 14 this?
- 15 A. It is.
- 16 Q. Is that Malik Myers' signature or handwriting up
- 17 here?
- 18 A. It is.
- 19 Q. Is -- in fact, is this his handwriting filling out
- 20 this statement?
- 21 A. It is.
- 22 Q. All right.
- 23 MR. BROWN: Your Honor, I'd offer state's Number 40
- 24 in evidence.
- 25 THE COURT: Any objection?

NATHALIE KELLY - DIRECT EXAMINATION BY MR. BROWN

1 MR. HASTIE: No, Your Honor.

2 THE COURT: All right. State's Number 40 is admitted
3 into evidence without objection.

4 (State's Exhibit Number 40 was marked and admitted
5 into evidence.)

6 Q. And in the same way --

7 MR. BROWN: May it please the Court, Your Honor, I'm
8 sorry.

9 Q. And in the same way that you further advised James
10 Williams of his rights after you went through the Miranda
11 form to advise him of his rights to give a statement, did
12 you do the same thing with Malik Myers?

13 A. I did.

14 Q. And again, I'm not going to ask you to read that, but
15 with the permission of the Court, could you please publish
16 Malik Myers' statement?

17 A. He --

18 THE COURT: Yes, she may publish it.

19 A. May 1st, 2015, I went to a party at Club Cream. I
20 was in the club chilling when I see this boy by the name
21 of James. And when a song came on, he pointed finger at
22 me like he had a gun that whole night. So when the party
23 was over, he leave before me. So when I got outside, I
24 seen his car was not gone yet, so I walk over to the car,
25 I was in and got a .38 gun. So we was about to go when

NATHALIE KELLY - DIRECT EXAMINATION BY MR. BROWN

1 the car would not cut on. So that -- that's when I heard
2 shooting. So I looked behind me and I see it was James
3 that was doing the shooting. That's when he pointed the
4 black gun at me and shoot -- he shoot me. So I pull out
5 the 38 gun I had and shoot back. I shoot his car about
6 five times and the gun -- and the gun got into a -- got
7 into a white car. I got my gun out of my friend's car,
8 Shelton Benjamin. James shoot me in the left leg. I was
9 talking to the hospital by a friend, no name, in an SUV.
10 James had beef with me in the past. He done said things
11 to me and tried to fight me. The girl I was playing dice
12 on Poplar Square, she got shot by James' gun. I lied
13 about taking the gun out of somebody's hand because I was
14 afraid. I was in the car with Shelton Benjamin, Jaquan
15 (sic) Myers, and Kendall Dow."

16 Q. And just so we're clear, he lied about taking a gun
17 out of a friend's hand. Did he also give another
18 statement prior to that where he told law enforcement that
19 someone else started doing the shooting and he took the
20 gun from them?

21 A. That's correct.

22 Q. But this is his -- the last statement he ever gave
23 law enforcement right there?

24 A. That's correct.

25 Q. Was Malik Myers charged in this?

NATHALIE KELLY - DIRECT EXAMINATION BY MR. BROWN

1 A. He was.

2 Q. Charged with shooting at James?

3 A. That's correct.

4 Q. Was there also an individual named Qawwiyy McFadden
5 who had his ear shot off?

6 A. It was.

7 Q. Who -- it's my understanding was sitting in the car,
8 in James' car?

9 A. That's correct.

10 Q. And was Malik charged in that as well?

11 A. That's correct.

12 Q. No disputes that the green Mustang that belonged to
13 James Williams, it took some bullets?

14 A. It did.

15 MR. BROWN: Permission to approach, Your Honor?

16 THE COURT: Yes.

17 Q. And I'm showing you 24 through 32. These will all go
18 back to the jury so they can look at it. Is this the
19 green Mustang?

20 A. That is the car.

21 Q. And that's showing you state's Number 24. And just
22 kind of a -- that a bullet hole right there on state's
23 Number 26?

24 A. That is.

25 Q. Looks like there's two right there on state's

NATHALIE KELLY - DIRECT EXAMINATION BY MR. BROWN

1 Number 28?

2 A. That is.

3 Q. And did you take these pictures yourself?

4 A. I did not.

5 Q. Were they investigated by someone else?

6 A. It was.

7 Q. But you did see the car and you do know these bullet

8 holes are there?

9 A. I do.

10 Q. And all of these are evidence that the jury can look

11 at them. In fact, that appear to be a bullet hole inside

12 of one of the armrests or something?

13 A. That is.

14 THE COURT: State's what.

15 MR. BROWN: I'm sorry, Your Honor. You're right.

16 State's Number 32.

17 Q. And is all that part of the reason that Malik Myers

18 got charged in all this?

19 A. That's correct.

20 Q. And ultimately pled guilty to all of this?

21 A. That's correct.

22 MR. BROWN: Court's indulgence.

23 Q. Was Mr. Williams already arrested when you took this

24 statement from him?

25 A. That's correct.

NATHALIE KELLY - DIRECT EXAMINATION BY MR. BROWN

1 Q. And it was freely and voluntarily given that he
2 acknowledged that being his gun?

3 A. He acknowledged that he had a gun and that he tossed
4 it, but he didn't say per se that that was the gun. He
5 said that he do believe that law enforcement recovered his
6 gun.

7 Q. Okay. And he freely and voluntarily told you he had
8 a gun and he was shooting?

9 A. That's correct.

10 Q. He claimed he was shooting in the back of his car?

11 A. That's correct.

12 MR. BROWN: No further questions.

13 THE COURT: Cross-examination, Mr. Hastie?

14 MR. HASTIE: Yes, sir, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. HASTIE:

17 Q. Good afternoon.

18 A. Good afternoon, Mr. Hastie.

19 Q. Let's just back up to Malik and his statement.
20 Because in that statement I read, he said that there were
21 some other people with him.

22 A. That's correct.

23 Q. That's correct? He said the names were Rodriguez
24 Bell, Shelton Benjamin, Jaquell Myers, and even still, he
25 mentioned Isaac Nelson. That's a new name that I hadn't

NATHALIE KELLY - CROSS-EXAMINATION BY MR. HASTIE

1 heard before. Do those names sound familiar to you?

2 A. Sounds accurate.

3 Q. Sounds accurate?

4 A. Yes, sir.

5 Q. Did you all investigate those names that you knew
6 were with him that night?

7 A. I did not talk to them. I wasn't the initial
8 detective, but no, I did not. I believe that detective
9 Mark Moses did.

10 Q. You think he did? You have no evidence of any report
11 or statements by any of those other guys in the record at
12 this time, do you?

13 A. No.

14 Q. On Ashley R. situation, the only reason I was
15 asking her a question I think the -- Tyler mixed it up and
16 I want to be perfectly clear -- I was just asking her did
17 she make a statement to you that she heard two previous
18 shots? And I just want to make sure that was a yes or no.
19 Did she make clear to you that she heard two prior shots
20 before Malik started shooting?

21 A. She did not.

22 Q. She did not. That's all I wanted to know.

23 Now, we have two statements by Malik, right?

24 A. That's correct.

25 Q. Two statements. One by Detective Moses -- I guess

NATHALIE KELLY - CROSS-EXAMINATION BY MR. HASTIE

1 that's the first one?

2 A. That's correct.

3 Q. And in that statement, I think that -- the one by
4 you?

5 A. That's correct.

6 Q. Right? One was on the second and one was on the
7 fourth?

8 A. That's correct.

9 Q. Then he comes into the courtroom and makes another
10 statement today. Are all three statements different?

11 A. The first two are similar. He -- the only thing that
12 he changed from statement one and statement two is the
13 fact of where he got the handgun from.

14 Q. He said his homeboy was shooting first?

15 A. That's correct.

16 Q. So he -- in the statement to y'all, he said somebody
17 else, my homeboy -- what's his name? Shelton -- one of
18 them.

19 A. One of his homeboys.

20 Q. One of his homeboys was shooting, so pulled out a .38
21 weapon, right?

22 A. That's correct.

23 Q. And then he grabbed the gun from him and shot one
24 time?

25 A. That's correct, in the first statement.

NATHALIE KELLY - CROSS-EXAMINATION BY MR. HASTIE

1 Q. First statement. In the second statement, how did he
2 clarify that?

3 A. That he was shooting back.

4 Q. That he was the one shooting back?

5 A. Initially. That's correct.

6 Q. And his home boy was not shooting?

7 A. That's correct.

8 Q. And he said I was shooting with a .38?

9 A. That's correct.

10 Q. Of course, with a .38, there are no shells?

11 A. That's correct.

12 Q. You wouldn't find any with a .38?

13 A. We did not.

14 Q. So we were going on the fact that this young man said
15 he had a .38 by his sworn testimony?

16 A. By his own admission.

17 Q. His own admission, right? Okay. And he's admitted
18 to three -- at least versions of that so far?

19 A. That's correct.

20 Q. And each one of those versions you read us that he
21 was supposed to be telling the truth, right? He knew he
22 was supposed to be telling the truth, the whole truth?

23 A. That's correct.

24 Q. Right? And he admitted that he lied on the first
25 statement?

NATHALIE KELLY - CROSS-EXAMINATION BY MR. HASTIE

1 A. That's correct.

2 Q. Right? He admitted that he -- he comes into court
3 and -- on his statement. Before he got into court, he
4 admitted he lied on his statement; is that correct?

5 A. That's correct.

6 Q. And I guess you -- it's hard to determine when
7 someone else is lying. You don't have any special
8 training in that area, do you?

9 A. Of -- no.

10 Q. All right. Did you tell -- you interviewed Mr.
11 Williams, did you not?

12 A. I did.

13 Q. Did you tell him in private that if he cooperated
14 with you, the charges would be dropped down to some lesser
15 charge?

16 A. No, sir.

17 Q. You did not?

18 A. Unh-unh.

19 MR. HASTIE: Your Honor, Court's indulgence just one
20 moment.

21 (A discussion was held off the record.)

22 Q. There were several pictures of holes in the back of
23 Mr. Williams' car; is that correct?

24 A. That's correct, in the canopy portion of it.

25 Q. In the canopy portion of it. And do you know how the

NATHALIE KELLY - CROSS-EXAMINATION BY MR. HASTIE

1 car was parked that particular night? Was it backed in,
2 front end, or how was that --

3 A. No, sir, I do not.

4 Q. So it appears that y'all's testimony here today is
5 that all the holes --

6 MR. HASTIE: Your Honor, can I show the ones that are
7 marked, the ones that are marked Number 25, states?

8 THE COURT: Yes, they're in evidence.

9 Q. These are just some of the bullet holes that have
10 been marked, and who marked the bullet holes for your
11 office?

12 A. That would be Detective Amanda Snapp, who is our --
13 on our forensics team.

14 Q. Okay. Here are more. Can you just -- how many holes
15 you think you see there as a detective?

16 A. You want me to talk about the marked bullets?
17 There's two that's actually marked by her evidence taking.

18 Q. There seem to be others that are unmarked, right?

19 A. That's correct.

20 Q. Wonder why she would mark some and not mark others.
21 Any idea?

22 A. No, sir.

23 Q. So if -- we may get testimony from her later. But if
24 the car was backed in facing the club, Williams' car, and
25 Malik came from the front of the car shooting at him --

NATHALIE KELLY - CROSS-EXAMINATION BY MR. HASTIE

1 and these bullets are only in the rear of the car; is that
2 correct?

3 MR. BROWN: Your Honor, I think he might be calling
4 for expert testimony.

5 THE COURT: I'm sorry.

6 MR. BROWN: I think he might be reaching for expert
7 testimony at this point.

8 THE COURT: He's asking about the packets. She can
9 testify of her own knowledge, she can testify to it. If
10 you don't have any knowledge of it, you can't testify to
11 it.

12 Proceed.

13 Q. So if the car was backed in and these bullet holes
14 are from the back of the car, would you have any idea how
15 the bullets could come from the front of the car, go
16 around the back, and come to the back of the car?

17 THE COURT: All right. I'm going to sustain that
18 objection. That requires an opinion she's not qualified
19 to give.

20 MR. HASTIE: I have -- I want to show another
21 picture, Your Honor, and I'll be done.

22 Q. These are some more pictures that are in evidence?

23 THE COURT: Identify them, please.

24 MR. HASTIE: The first one is Number 10, Your Honor.

25 THE COURT: State or defense.

NATHALIE KELLY - CROSS-EXAMINATION BY MR. HASTIE

1 MR. HASTIE: Defense.

2 THE COURT: Defense Number 10.

3 MR. HASTIE: Yes, sir.

4 THE COURT: All right. Hold them up and let me see

5 them, hold them up.

6 MR. HASTIE: Sure. 11.

7 THE COURT: Defense 11.

8 MR. HASTIE: Yes, sir.

9 THE COURT: Okay.

10 MR. HASTIE: And 13.

11 THE COURT: And defense -- 10, 11, and 13? All

12 right. Previously, the parties had agreed that these are

13 admitted into evidence without objection. You may

14 proceed.

15 Q. So I suppose this is part of y'all's process, snatch

16 process to show where the holes -- the bullet -- the

17 direct of the bullet?

18 A. Yeah, those are trajectory rod?

19 Q. So from this picture, it seems to show me -- and I'm

20 not the expert -- that --

21 THE COURT: Nor is she.

22 MR. HASTIE: Nor is she, but I want to see if she

23 agrees if me, Your Honor, or not. Doesn't have to be an

24 expert.

25 THE COURT: No, sir. No. She can't testify -- you

NATHALIE KELLY - CROSS-EXAMINATION BY MR. HASTIE

1 can't ask whether she agrees with you. You're making
2 yourself a witness. You can ask her about the pictures,
3 but she can't testify as to her opinions about the
4 pictures.

5 MR. HASTIE: Tell us about --

6 THE COURT: She can testify to what she sees.

7 Q. Tell us about this picture. What do you see as far
8 as trajectory is concerned?

9 A. Well, I wasn't there when those rods was inserted.

10 Q. Right.

11 A. I did see the car on -- you know, initially. So
12 those pictures were taken by Detective Amanda Snapp and
13 those rods was inserted by her. So I'm unsure at what
14 point, was that the middle or the side, where that rod is
15 coming in at?

16 Q. You said you're not sure of the entry point?

17 A. That's correct.

18 Q. And that's what I'm trying to get to. And I guess
19 this would be the same here, just want to show the entry
20 point. We see that it hits the -- the driver's seat?

21 A. That's correct.

22 Q. It hit the driver's seat; is that right?

23 A. Right here steering wheel, so, yes, that's the
24 driver's seat.

25 Q. That's the driving seat. Steering wheel is right

NATHALIE KELLY - CROSS-EXAMINATION BY MR. HASTIE

1 there. On the trajectory is going down --

2 THE COURT: Now, don't testify, Mr. Hastie.

3 MR. HASTIE: Yes, sir.

4 Q. And I don't know what this one is.

5 A. I do not --

6 Q. I'll have to call Ms. Snapp, who took the pictures to
7 testify --

8 THE COURT: All right.

9 MR. HASTIE: Thank you very much. No further
10 questions.

11 THE COURT: Redirect?

12 DIRECT EXAMINATION

13 BY MR. BROWN:

14 Q. Did you make Malik Moses' -- I'm sorry. Did you take
15 Malik Myers first statement, the one that he then later
16 gave a second statement saying he lied during a portion of
17 it?

18 A. I did not.

19 Q. Okay. Did Mark Moses take that?

20 A. He did.

21 Q. Who is the on call investigator?

22 A. That's correct.

23 Q. It was taken by your office?

24 A. That's correct.

25 MR. BROWN: And this is without objection by defense

NATHALIE KELLY - REDIRECT EXAMINATION BY MR. BROWN

1 counsel, but can we just go ahead post that statement as
2 well? I'm going to offer it as evidence.

3 THE COURT: Is it in evidence?

4 MR. BROWN: We're -- I'm going to offer it as
5 evidence right now, Your Honor.

6 THE COURT: All right. Let's get her numbered and
7 then I'll find out.

8 MR. BROWN: I thought she was telling me --

9 THE COURT: No, no.

10 MR. BROWN: Show you what's marked 41 and 42.

11 THE COURT: State's Number 41 and 42 for ID only.

12 (State's Exhibit Numbers 41 and 42 were marked for
13 identification.)

14 Q. So looking at these, are these Malik Myers' first
15 statement that was taken by Mark Moses?

16 A. It is.

17 Q. And he was Mirandized in that as well?

18 A. He was.

19 Q. And that's the statement right there at Number 42?

20 A. It is.

21 MR. BROWN: I offer both of those as evidence.

22 THE COURT: Any objection?

23 MR. HASTIE: None, Your Honor.

24 THE COURT: All right. State's 41 and 42 admitted
25 without objection.

NATHALIE KELLY - REDIRECT EXAMINATION BY MR. BROWN

1 (State's Exhibit Number 41 and 42 were admitted into
2 evidence.)

3 Q. Can you just publish Number 42 for us?

4 THE COURT: Yes.

5 A. I was in the club chilling when they played and song
6 and this boy named James, who I had beef with, look at me
7 and did his finger in a gun way and pointed at me. So I
8 was walking in the club and he bumped me and he gave me a
9 look. So when the party was over, me and my homeboy was
10 walking to the car and we heard gunshots. So when we
11 turned and looked to see who it was, it was James. So he
12 pointed a black gun at me and shoot it, so my homeboy shot
13 back with a .38 gun. So when he was done shooting, I took
14 the .38 gun from him and shoot one time at him. So when I
15 was done shooting, I put the gun down right then, and my
16 homeboy pulled me in a car and took me to get some help."

17 MR. BROWN: Permission to approach?

18 THE COURT: Yes, sir.

19 Q. And that was the first statement that he later gave
20 another one on May 4th, changed whether or not his
21 homeboy started shooting the first rounds?

22 A. That's correct.

23 Q. All those pictures of all the rounds -- what's going
24 on in the car showing bullet trajectory and direction and
25 all that, Ms. Snapp would be available to testify if we

NATHALIE KELLY - REDIRECT EXAMINATION BY MR. BROWN

1 need her?

2 A. That's correct.

3 Q. And she'll be the better person to testify about
4 that?

5 A. That's correct.

6 MR. BROWN: No further questions.

7 THE COURT: Recross?

8 MR. HASTIE: One more, Your Honor. Yes, Your Honor.

9 RECROSS-EXAMINATION

10 BY MR. HASTIE:

11 Q. This statement May the 2nd, then there's a statement
12 May the 4th, then there's a statement today, and all of
13 them somewhat differ from this young man; is that correct?

14 A. Yeah, there's some variations.

15 Q. Some variations. Okay. Thank you very much.

16 THE COURT: All right. Thank you. You may step
17 down.

18 All right, Mr. Brown, call your next witness.

19 MR. BROWN: Your Honor, the state rests.

20 THE COURT: Did I understand you to say the state
21 rested?

22 MR. BROWN: Yes, sir, Your Honor.

23 THE COURT: Okay. All right, ladies and gentlemen.

24 You have heard the state announce that they have rested
25 their case. That means that you have heard all of the

NATHALIE KELLY - RECROSS-EXAMINATION BY MR. HASTIE

1 testimony that you will hear from the state at this time.
2 There are certain matters of law I now need to take up
3 with the attorneys involved in the case, and I have to do
4 that on the record and outside of your presence. So I'm
5 going to ask that you go to your jury room. It's time for
6 an afternoon recess anyhow, and relax for a few minutes
7 while we take care of these matters of law, and then take
8 a break for the court personnel, and then we will bring
9 you back to your courtroom -- back to the courtroom. I'll
10 tell you again as I have told you throughout the trial of
11 this case, any discussion of this matter is still
12 premature. You should not discuss this matter because you
13 have not heard everything that you will hear in connection
14 with it, and any discussions would be improper at this
15 time. But if you would go to your jury room, relax for a
16 few minutes and we'll see you shortly -- send for you
17 shortly when we've taken care of these matters of law.
18 Thank you. You may go with the bailiff.

19 (The jury left open court at 3:39 p.m.)

20 THE COURT: All right, Mr. Hastie. Any motions on
21 behalf of the defendant?

22 MR. HASTIE: Yes, Your Honor, Your Honor at this time
23 I would move for a directed verdict on behalf of my
24 client. I certainly don't think the state has met its
25 burden beyond a reasonable doubt. From its own witness

NATHALIE KELLY - RECROSS-EXAMINATION BY MR. HASTIE

1 testimony today, it was very difficult for Malik. Said
2 he's not sure who shot him. Of course, we sort of heard
3 from him, it's sort of hard to believe what he says. But
4 even some of the other testimony, even the expert witness
5 they had, she couldn't say conclusively that that bullet
6 that was pulled out of Ashley's leg was shot by this
7 weapon that we have here in court.

8 THE COURT: She didn't said it was not, either.

9 MR. HASTIE: Yeah, but she didn't say it was, either.
10 Anyway, I'm making that motion here on -- on those
11 grounds, Your Honor.

12 THE COURT: All right. Mr. Brown?

13 MR. BROWN: Your Honor, there's testimony on the
14 record from multiple witnesses, some through impeachment
15 purposes, but for multiple witnesses that James Caleb
16 Williams shot first. Mr. Williams himself admitted that
17 there had been bad blood between them in the club. Malik
18 Myers through his statement under impeachment acknowledged
19 they had bad blood in the club. They both armed
20 themselves, and started a shootout. I think this becomes
21 a jury question. I certainly think we've established
22 malice aforethought. As it pertains to Ashley R. [REDACTED], Your
23 Honor, I think there is strong evidence that the bullet
24 did come from the gun. The barreling, the rifling is all
25 the same. It was not able to be conclusive, but there's

NATHALIE KELLY - RECROSS-EXAMINATION BY MR. HASTIE

1 plenty for me to argue, and I think it's a jury question
2 at this point. And also just specifically because he was
3 not shooting directly at Ashley, I would point out that
4 we're proceeding under transferred intent and we do
5 believe that he was firing his gun with malice and the
6 bullet struck Ashley R. .

7 THE COURT: All right.

8 MR. BROWN: And Your Honor, the other thing, these
9 are violent crimes and he's admitted he had a gun.

10 THE COURT: All right. Rule 19 of the South Carolina
11 rules of criminal procedure provides that upon the motion
12 of the defendant or on its own motion, the Court should
13 direct a verdict for defendant -- in the defendant's favor
14 on any offense charged in indictment after the evidence on
15 either side is closed if there's a failure of competent
16 evidence tending to prove the charges in the indictment.
17 I've always thought the use of the word "competent" in the
18 rule is inadvised, because that implies believable
19 evidence, when that's really not what the phrase means at
20 all. It means evidence in the record or that was admitted
21 in the record. In fact, the rule goes on to say that in
22 ruling on this motion, the trial judge shall consider only
23 the existence or nonexistence of the evidence and not its
24 weight.

25 My recollection of the testimony was that -- whether

NATHALIE KELLY - RECROSS-EXAMINATION BY MR. HASTIE

1 it's believable or not does not matter, but my
2 recollection of the testimony is that the defendant, Mr.
3 Williams, fired first and was firing at both Mr. Malik
4 Myers and that by transferred intent, at the other victim
5 in this case. And my job is to determine the existence or
6 nonexistence of the evidence and not its weight. That is
7 a matter solely for the jury to determine, and it would be
8 improper for me to interpose my opinion of the evidence or
9 to weigh the evidence and grant a verdict -- directed
10 verdict if there is any evidence in the record. And there
11 is evidence in the record, both direct and circumstantial
12 that would support the charges in this case. The motion
13 is respectfully denied.

14 All right. Mr. Hastie, is your client ready to
15 address the 5th Amendment and whether he wishes to testify
16 in this case?

17 MR. HASTIE: Could we have a moment?

18 THE COURT: What we'll do, we need to take a recess.
19 We'll take about -- this time -- we've been in the
20 courtroom now since about three -- about 215. It's been
21 an hour and a half. Let's take ten minutes, be ready to
22 start back at five minutes to 4:00, at which time I need
23 to have a decision from the defendant as to whether he
24 does or does not wish to testify in the matter. And also
25 a decision from you, Mr. Hastie, as to whether or not the

NATHALIE KELLY - RECROSS-EXAMINATION BY MR. HASTIE

1 defense will offer any other testimony.

2 MR. HASTIE: Yes, sir.

3 THE COURT: All right. Thank you. We'll take ten
4 minutes.

5 (A recess was taken from 3:44 p.m. to 3:58 p.m.)

6 THE COURT: All right, back on the record with regard
7 to the matter of the state versus James Caleb Williams.
8 Mr. Williams is present with his attorney, Mr. Hastie.
9 State is present and represented by Mr. Tyler Brown. We
10 have concluded the state's case, and motions have been
11 ruled upon and now we need to go forward with the defense
12 case. In connection with that, let me, again, Mr. Hastie,
13 speak with your client just a moment. If you would rise,
14 please, Mr. Williams.

15 Mr. Williams, before lunch today, I advised you of
16 your 5th Amendment rights under the 5th Amendment of the
17 constitution of the United States, advising you that you
18 could not be compelled in any criminal case to -- or in
19 this criminal case to be a witness against yourself. At
20 this time, you indicated that you understood what I had
21 told you, but I indicated I would also give you an
22 opportunity to talk with your lawyer about whether you
23 should or should not testify. Have you had a chance to
24 talk with your lawyer about this?

25 THE DEFENDANT: Yes, sir.

NATHALIE KELLY - RECROSS-EXAMINATION BY MR. HASTIE

1 QAWIYY MCFADDIN, after having first being duly sworn,
2 testified under oath as follows:

3 THE CLERK: Please state your full name and spell
4 your last name for the record.

5 THE WITNESS: Qawiyy McFadden, M-C-F-A-D-D-E-N.

6 DIRECT EXAMINATION

7 BY MR. HASTIE:

8 Q. Good afternoon, Mr. McFadden, how are you doing?

9 A. I'm all right.

10 Q. You doing all right? Just to get back to the chase
11 (sic) of this issue, you were at Club Cream on the night
12 of May the 2nd, 2015; is that correct?

13 A. Yes, sir.

14 THE COURT: Speak up, please.

15 THE WITNESS: Yes, sir.

16 Q. Who did you go there with?

17 A. I rode there with Merle and me and James got together
18 in the club.

19 THE COURT: Speak up.

20 Q. You rode there with who? Merle?

21 A. Yes.

22 Q. Who is Merle?

23 A. That's my best friend, childhood friend.

24 Q. Childhood friend. But you hooked up with Mr. James
25 Williams, correct?

QAWIYY MCFADDEN - DIRECT EXAMINATION BY MR. HASTIE

- 1 A. Uh-huh. Uh-huh.
- 2 Q. All right. What time did you leave the club? Did
3 you and James leave together? When did you all leave the
4 club, approximately?
- 5 A. I left out from the club before anybody.
- 6 Q. You did?
- 7 A. I left out the club maybe around 1:00 something.
- 8 Q. 1:00 something? Where did you go?
- 9 A. I was sitting in the car.
- 10 Q. Whose car?
- 11 A. In James's Mustang.
- 12 Q. In James's Mustang.
- 13 MR. HASTIE: Your Honor, may I approach? I want him
14 to show us where exactly he was parked in the car.
- 15 THE COURT: Okay.
- 16 Q. Let me ask you, can you show us, the jury, where were
17 you sitting in this car -- by yourself at this time?
- 18 A. Uh-huh.
- 19 Q. Where were you parked?
- 20 A. In this area right here.
- 21 Q. That area right there? Okay. And then so you're
22 parked in this area right there. Where's the front of the
23 club again?
- 24 A. Here.
- 25 Q. That's the club right here?

QAWIYY MCFADDEN - DIRECT EXAMINATION BY MR. HASTIE

1 A. This is in front of the club?

2 Q. Were there a lot of cars in that parking lot that
3 night?

4 A. Yes, sir.

5 Q. Is it crowded?

6 A. Yes, sir.

7 Q. Okay. So you're sitting in the car, and what
8 happened?

9 A. When it was over, we -- I seen everybody coming out
10 the club, so I got out the car to see what was the next
11 move for the night. And then mix up -- the shots starting
12 going off when I was out of the club. I seen James go
13 like towards the back of his car and by maybe the first
14 five shots, I was already hit. And I didn't know who else
15 happened.

16 Q. Were you in the car --

17 A. I got up --

18 Q. Excuse me. Let me finish right quick. Were you
19 inside the car when you got hit, or you were outside the
20 car?

21 A. I was outside of the car.

22 Q. So you weren't sitting in the car?

23 A. I wasn't sitting in the car.

24 Q. What direction was the car facing when you all --
25 when you got to the car? Was it --

QAWIYY MCFADDEN - DIRECT EXAMINATION BY MR. HASTIE

1 A. It was backed into -- like the front of the car was
2 facing towards the club.

3 Q. It was backed in and facing towards the club?

4 A. Uh-huh, yes, sir.

5 Q. Okay. Did you see -- you got shot -- where did
6 you -- point to which ear you got shot?

7 A. My left ear.

8 Q. You got shot on the left side?

9 A. Yes, sir.

10 Q. It's backed in, so the passenger side, which you were
11 sitting, I assume?

12 A. Uh-huh.

13 Q. Is on the right side of the car?

14 A. Yes, sir.

15 Q. If it's backed in. And when the shooting started you
16 got out the car?

17 A. I was getting out of the car and when the shooting
18 started, I was already out the car.

19 Q. Okay. How long after that you actually felt
20 something, you got shot?

21 A. Maybe five to 10 seconds.

22 Q. Seconds later. Did you see who was shooting?

23 A. No, sir.

24 Q. Okay.

25 A. It was mostly shots -- lot of people, like it was

QAWIYY MCFADDEN - DIRECT EXAMINATION BY MR. HASTIE

1 just mostly shots from them.

2 Q. The shots going off, you couldn't tell where they
3 were coming from?

4 A. No, sir.

5 Q. Okay. But did you see James shooting?

6 A. No, sir.

7 Q. Did you see James shooting at all?

8 A. No, sir.

9 Q. Okay. You got shot; what happened?

10 A. I hit the ground.

11 Q. Uh-huh.

12 A. And I leave on the ground for a while, and then when
13 it was silent, I got up, got in the car, and James took me
14 to -- drove me to the hospital.

15 Q. James drove you to the hospital?

16 A. Yes, sir. Yes, sir.

17 Q. Thank you very much. Answer any questions Mr. Brown
18 may have for you.

19 MR. BROWN: Briefly, Your Honor.

20 THE COURT: All right. Cross-examination, Mr. Brown?

21 MR. BROWN: Permission to approach?

22 THE COURT: Yes.

23 CROSS-EXAMINATION

24 BY MR. BROWN:

25 Q. Just to be clear -- how are you doing, by the way?

QAWIYY McFADDEN - CROSS-EXAMINATION BY MR. BROWN

- 1 A. I'm all right, how are you?
- 2 Q. I'm good. Just to be clear, you said that you and
- 3 James were parked over in this area right here?
- 4 A. Yes, sir.
- 5 Q. All right.
- 6 A. It was in here.
- 7 Q. Right in this area?
- 8 A. Yes, sir.
- 9 Q. And that was where James' green Mustang was?
- 10 A. Yes, sir.
- 11 Q. You were shot in the ear that night, right?
- 12 A. Yes, sir.
- 13 Q. I'm sorry. But just to summarize your testimony, I
- 14 just want to make sure. You didn't see who was shooting
- 15 that night?
- 16 A. No, sir.
- 17 Q. You don't know -- you didn't see James shooting that
- 18 night?
- 19 A. No, sir.
- 20 Q. You don't know if he was or wasn't shooting that
- 21 night?
- 22 A. No, sir.
- 23 Q. You don't know who was shooting first or who was
- 24 shooting second or anything?
- 25 A. No, sir.

QAWIYY McFADDEN - CROSS-EXAMINATION BY MR. BROWN

1 Q. You just know that on May 2nd, 2015, you were at
2 the club, right?

3 A. Yes, sir.

4 Q. You came out early?

5 A. Yes, sir.

6 Q. You got in the car?

7 A. Yes, sir.

8 Q. You started hearing a whole bunch of gunshots?

9 A. Yes, sir.

10 Q. You saw James moving around out there. You don't
11 know where he went or whether he was shooting or anything?

12 A. Correct.

13 Q. And you got shot in the ear?

14 A. Yes, sir.

15 Q. And then James took you to the hospital?

16 A. Yes, sir.

17 Q. I'm sorry that you got hit. I'm sorry. Take care.

18 THE COURT: Redirect?

19 MR. HASTIE: Just one question.

20 DIRECT EXAMINATION

21 BY MR. HASTIE

22 Q. You may not know the answer, but could you recognize
23 that night whether you were shot from behind on this ear
24 or you were shot from the front?

25 A. It came from the front.

QAWIYY MCFADDEN - REDIRECT EXAMINATION BY MR. HASTIE

1 Q. It came from the front of the car?

2 A. It came from the front.

3 Q. Picture it going this way?

4 A. Like (indicating).

5 Q. Okay. Thank you.

6 MR. HASTIE: No further questions.

7 THE COURT: Recross?

8 RECROSS-EXAMINATION

9 BY MR. BROWN:

10 Q. And Malik Myers was charged with shooting you,
11 correct?

12 A. I'm not sure.

13 Q. You talked with me on the phone one day. I called
14 you before Malik pled guilty and I talked to you about
15 that case. Do you remember that?

16 A. Yes, sir.

17 Q. And Malik Myers --

18 A. Because he never -- I never spoke with you since.

19 Q. Right. But Malik Myers was charged with you shooting
20 you, right? Did you know that Malik Myers pled guilty to
21 shooting you?

22 A. No, sir, I didn't.

23 THE COURT: All right. Thank you. You may step
24 down.

25 All right, Mr. Hastie, you may call your next

QAWIYY MCFADDEN - RECROSS-EXAMINATION BY MR. BROWN

1 witness.

2 MR. HASTIE: I would like to call Detective Snapp to
3 the stand, Your Honor. Amanda Snapp for the record.

4 AMANDA SNAPP, after having first being duly sworn,
5 testified under oath as follows:

6 THE CLERK: State your name and spell your last name
7 for the record.

8 THE WITNESS: Amanda Snapp, S-N-A-P-P.

9 DIRECT EXAMINATION

10 Q. Good afternoon, Amanda, how are you doing?

11 A. Very well, sir.

12 Q. What's your job with the police department?

13 A. I'm a crime scene investigator with the Sumter Police
14 Department.

15 Q. Okay. How long have you been doing that job?

16 A. This particular job I've been doing for three years.
17 I was a police officer prior to that as a patrolman for a
18 year and a half.

19 Q. So how long have you been with the police department?

20 A. Five years.

21 Q. Five years. Okay. Now -- and what is at the time of
22 this job, you said --

23 A. Crime scene investigator.

24 Q. Crime scene investigator? So you get called out to
25 crime scenes.

AMANDA SNAPP - DIRECT EXAMINATION BY MR. HASTIE

1 A. Yes, sir.

2 Q. And what is your role when you get to a crime scene?

3 A. When I get to a crime scene, my job is to take
4 photographs and collect evidence of the crime.

5 Q. Okay. On this particular night, of course you know
6 what this case is about, May the 2nd, 2015, did you have
7 an opportunity to take some pictures of the crime scene?

8 A. I did not. I was not called to the scene.

9 Q. When were you involved with that? I noticed that you
10 took some pictures of the car. When was that done? Do
11 you recall?

12 A. I believe it was May 18th.

13 Q. May 18th?

14 A. Or 19th.

15 Q. May 18th or 19th. That's fine?

16 A. Yes.

17 Q. And I want to ask you about some pictures that you
18 took that night?

19 A. Uh-huh.

20 MR. HASTIE: Your Honor, may I approach?

21 THE COURT: Yeah. I'm sorry, I'm not sure I heard
22 her testimony. Did she say that she did not take pictures
23 that night, and these pictures were made later?

24 MR. HASTIE: Yes, sir.

25 THE COURT: Okay.

AMANDA SNAPP - DIRECT EXAMINATION BY MR. HASTIE

1 MR. HASTIE: That's what she said, yes, sir.

2 Q. Any reason why this picture were made May 18th and

3 not immediately after the incident.

4 A. That's when the search warrant was written, provided

5 to me.

6 Q. Okay. So they told you -- where was this car that

7 you took pictures of when you took --

8 A. Where I took pictures of it?

9 Q. Yeah, where was it?

10 A. It was in the city impound.

11 Q. City impound? Okay. I know that there are some --

12 THE COURT: Before we go on, are they in evidence?

13 MR. HASTIE: Yes, sir.

14 MR. BROWN: I think those pictures are.

15 MR. HASTIE: Those are.

16 THE COURT: Identify them.

17 MR. HASTIE: Yes, sir. The first one I'm showing

18 her, Your Honor, is defense's Exhibit Number 10.

19 THE COURT: All right. Okay.

20 Q. Now, is it your practice to put these -- what are

21 those calls?

22 A. That's a trajectory rod.

23 Q. A trajectory rod?

24 A. Uh-huh.

25 Q. And what do you do when you do that? What are you

AMANDA SNAPP - DIRECT EXAMINATION BY MR. HASTIE

1 doing?

2 A. Attempting to determine the direction of a
3 particular -- a path of travel of a bullet.

4 Q. How are you trained to do that, to show the travel
5 path?

6 A. I was trained by -- actually Detective Mitchell, who
7 you saw earlier. He was my trainer on the job.

8 Q. Okay. But you're not an expert --

9 A. No, sir.

10 Q. -- in this area, right?

11 A. No, sir.

12 Q. So you can't really testify to the trajectory path;
13 is that correct?

14 A. I cannot specifically say, no.

15 Q. Not specifically?

16 A. No. Just based on the information that -- provided
17 that's my determination.

18 Q. Your determination?

19 A. Yeah.

20 Q. Okay. Does this mean that there was a bullet hole in
21 the seat here?

22 A. Yes.

23 Q. That's why you're doing that?

24 A. Yes.

25 Q. I notice there are two rods in this seat?

AMANDA SNAPP - DIRECT EXAMINATION BY MR. HASTIE

- 1 A. Uh-huh.
- 2 Q. Why is that?
- 3 A. It's just showing that the one pink colored one --
- 4 Q. Uh-huh --
- 5 A. -- hit that first area, and then the bullet likely
- 6 traveled down and exited below there.
- 7 Q. And the bullet probably traveled down -- okay. And
- 8 this is very confusing to me, and maybe to you.
- 9 A. Okay. If you flip it that way, that's the back
- 10 window.
- 11 Q. This is the back window?
- 12 A. Yes.
- 13 Q. And this is the floor, I guess?
- 14 A. No, that would be the ceiling.
- 15 Q. The ceiling?
- 16 A. Yes. The roof.
- 17 Q. The roof. Okay. And again, you're not an expert, so
- 18 you can't talk to the trajectory into that, can you?
- 19 You're not an expert, I mean?
- 20 A. I'm not an expert, no.
- 21 Q. Okay. Were you able to determine -- take pictures of
- 22 how many bullets were in this car that night?
- 23 A. Based on what I saw of the vehicle, it appeared that
- 24 there was five holes in the roof line of the vehicle.
- 25 Q. Five holes in the roof line?

AMANDA SNAPP - DIRECT EXAMINATION BY MR. HASTIE

1 A. Yes.

2 Q. But it's your testimony that you can't determine
3 which direction they're coming from?

4 A. Well, there was no bullet holes in the front of the
5 vehicle, so I can only imagine that they came from the
6 back of the vehicle, most likely.

7 Q. Okay. Thank you very much.

8 MR. HASTIE: No further questions.

9 THE COURT: Cross-examination, Mr. Brown?

10 MR. BROWN: No questions.

11 THE COURT: All right. Thank you. You may step
12 down.

13 MR. BROWN: Your Honor, we'd ask that Investigator
14 Snapp, or Lieutenant Snapp be excused.

15 THE COURT: May the witness be excused?

16 MR. HASTIE: Yes, sir.

17 THE COURT: All right. You're excused.

18 All right. Mr. Hastie, you may call your next
19 witness.

20 MR. HASTIE: Your Honor, I would call James Williams
21 to the stand.

22 THE COURT: All right. Mr. Williams, come around,
23 please.

24 JAMES WILLIAMS, after having first being duly sworn,
25 testified under oath as follows:

AMANDA SNAPP - DIRECT EXAMINATION BY MR. HASTIE

1 THE CLERK: State your name and spell your last name
2 for the record.

3 THE WITNESS: James Williams, W-I-L-L-I-A-M-S.

4 DIRECT EXAMINATION

5 BY MR. HASTIE:

6 Q. Okay. Mr. Williams, how old are you now?

7 A. 19 years old.

8 Q. You're 19. And this happened when you were how old?

9 A. 17 years old.

10 Q. 17. Did you finish school?

11 A. Yes, sir.

12 Q. Do you take any college courses?

13 A. Yes, sir.

14 Q. Where are you going to college or do you go to
15 college?

16 A. I go to Central Carolina, but I'm on summer break
17 right now.

18 Q. What do you study at Central Carolina?

19 A. I was trying to get my associate of arts, but I'm
20 just taking general study classes right now until I figure
21 out whether I want to get into business or not.

22 Q. Let's go back to this night in question. You were at
23 Club Cream, right?

24 A. Yes, sir.

25 Q. What time did you arrive?

JAMES WILLIAMS - DIRECT EXAMINATION BY MR. HASTIE

- 1 A. Around 11:00, around 11:00.
- 2 Q. Who did you go with?
- 3 A. I walked around and I came by myself.
- 4 Q. You drove by yourself?
- 5 A. Yes, sir.
- 6 Q. Let's talk about what happened inside the club, okay?
- 7 A. Okay. I came inside the club, the music was playing.
- 8 Everybody dancing, having fun. And that's when -- I was
- 9 by myself because I wanted to get a water because they
- 10 sell water. So I went to get a water, and by the time I
- 11 came back down, like they got these little three steps.
- 12 By the time came back down the three steps, Malik bumped
- 13 me. He was by hisself. We didn't say nothing to each
- 14 other or anything, but I already knew like something was
- 15 going to happen, like once I left. That's why I was
- 16 already in my car getting ready to go ahead and leave.
- 17 Q. Excuse me. How did you know something was going to
- 18 happen when all he did was just bump you?
- 19 A. Because we had problems since we was in middle
- 20 school, like we always had words. But I know it was
- 21 probably going to end up coming to something one day.
- 22 Q. Okay.
- 23 A. Yes, sir.
- 24 Q. So you felt something was about to happen?
- 25 A. Yes, sir.

JAMES WILLIAMS - DIRECT EXAMINATION BY MR. HASTIE

- 1 Q. What time was this?
- 2 A. Probably about 1:00. About 1:00.
- 3 Q. You were in the club having a good time from 11:00 to
- 4 now it's two hours later to 1:00, and now there's a
- 5 problem?
- 6 A. Yes, sir.
- 7 Q. Was there something else going on in the club? We
- 8 heard testimony today about some girls were about to
- 9 fight. Did you see any of that?
- 10 A. No, sir.
- 11 Q. You didn't see --
- 12 A. No, sir.
- 13 Q. -- girls that were about to fight?
- 14 A. No, sir.
- 15 Q. So you exited the club. When did you exited the
- 16 club?
- 17 A. Around about -- when everybody was coming out and it
- 18 was closing. That's when I exited the club.
- 19 Q. Okay.
- 20 A. Around about 1:30.
- 21 Q. All right. And where did you go after the club?
- 22 A. You say -- what now?
- 23 Q. Where did you go?
- 24 A. To my car.
- 25 Q. And where was your car parked?

JAMES WILLIAMS - DIRECT EXAMINATION BY MR. HASTIE

1 A. It was parked --

2 Q. Let me just show you this diagram because we want to
3 be clear about this, how it was parked. Show the jury and
4 the judge now. Here's the front of the club. Where was
5 your car parked?

6 A. Over in this area right here.

7 Q. Right over there?

8 A. Yes.

9 Q. In that circle. And it's very important. Were
10 you -- did you drive in front first or did you back in?

11 A. No, I backed up.

12 Q. You backed up?

13 A. Yes, sir.

14 Q. Do you normally do that, you back up?

15 A. Because I mean, I always do that every -- every time
16 I park. I normally just back up.

17 Q. So you can easily get out?

18 A. Yes, sir.

19 Q. So you're backed into the car parking space. Now
20 you're going back to your car. It's 1:00 something in the
21 morning, and what happened?

22 A. Okay. I seen -- I seen when Malik was coming to my
23 car, and I seen he had a gun. So I got out my car and
24 when I got to the back of my car, he started shooting. So
25 that's when I started shooting, and that's when I ran off

JAMES WILLIAMS - DIRECT EXAMINATION BY MR. HASTIE

1 when I seen the security guard coming, and I threw my gun
2 up under -- up under the tree. But when I was shooting, I
3 was shooting into the back of my car so he would think I
4 was shooting back at my car.

5 Q. Yeah, that's what I wanted to clarify now. He's got
6 a gun, he's shooting at you?

7 A. Yes, sir.

8 Q. And why would you shoot in the back of your own car?

9 A. Because he -- he would have thought I was shooting at
10 him, and he would have been -- he would have tried to run
11 off.

12 Q. Did he run off?

13 A. No, sir.

14 Q. What did he do?

15 A. He came close to shooting me.

16 Q. Okay. Well, when did he leave?

17 A. I'm not even sure. I know I ran off and I came back.
18 By the time I came back and saw Qawiyy, then we got in my
19 car and we went to the hospital.

20 Q. Did you see Qawiyy get shot?

21 A. No, sir.

22 Q. You didn't know he was shot?

23 A. No, sir.

24 Q. Because it's dark out there, I assume?

25 A. No, sir. Because he got in the car, like blood just

JAMES WILLIAMS - DIRECT EXAMINATION BY MR. HASTIE

1 going everywhere around my car, and that's when I find out
2 he got shot, yes, sir.

3 Q. Okay. And you took him to where?

4 A. Tuomey Hospital.

5 Q. Took him to the hospital?

6 A. Yes, sir.

7 Q. Did you have a gun when you were in the club?

8 A. No, sir.

9 Q. So you --

10 A. They search you down.

11 Q. They search you. Is that common practice to search
12 everybody that go in the club?

13 A. Yeah, they search everybody.

14 Q. The women, their bags and all?

15 A. Yes.

16 Q. So --

17 A. Most of the times people don't even take like bags or
18 anything in there. So...

19 Q. They search everything?

20 A. Yeah, they search everything, though.

21 Q. This is a teen party. Do they have a lot of teen
22 parties at this club?

23 A. Yes, sir. It usually be one almost -- probably like
24 every weekend, every Friday or something like that.

25 Q. And what's the lowest age that you know of that are

JAMES WILLIAMS - DIRECT EXAMINATION BY MR. HASTIE

- 1 allowed to go in this teen club?
- 2 A. 14.
- 3 Q. 14?
- 4 A. I seen people in they 25. They don't check ID or
- 5 anything.
- 6 Q. They don't check ID?
- 7 A. I seen people in there 25, 28, everything.
- 8 Q. But they do search you?
- 9 A. Yes, sir.
- 10 Q. And so that would -- did you see Malik with anybody
- 11 else?
- 12 A. I seen -- before he started walking towards my car, I
- 13 seen he was with some of his friends, but that's when
- 14 he -- he cut it off from them and was coming to my car.
- 15 Q. What do you mean cut it off?
- 16 A. Like they kept walking straight, and then he was
- 17 starting toward my car. Like they must was going towards
- 18 their car or something. I'm not sure.
- 19 Q. Why did he want to shoot you, though?
- 20 A. I'm not sure. I'm not sure. I knew we had beef
- 21 like -- like had problems, but I didn't know it was going
- 22 to be that -- that serious or anything.
- 23 Q. How did you get to your gun?
- 24 A. It was in my car.
- 25 Q. You were in the car?

JAMES WILLIAMS - DIRECT EXAMINATION BY MR. HASTIE

- 1 A. Yes, sir.
- 2 Q. So you said you saw him?
- 3 A. Yes, I saw him when he was come up to my car with a
- 4 gun.
- 5 Q. And you jumped out of the car?
- 6 A. Yes, sir.
- 7 Q. Let's be clear about this. Did you shoot at him
- 8 first?
- 9 A. No, sir.
- 10 Q. This is in court; you must tell the truth.
- 11 A. Yes, sir.
- 12 Q. Did you shoot at Malik first?
- 13 A. No, sir. No, sir.
- 14 Q. Who shot first?
- 15 A. Malik Myers.
- 16 Q. How many times did he shoot?
- 17 A. I'm not even sure.
- 18 Q. More than one time?
- 19 A. Yeah, it was more than -- yes, yes. It was more than
- 20 one time.
- 21 Q. Was your car hit in the front?
- 22 A. No. No, sir.
- 23 Q. But there were several bullet holes in the rear. You
- 24 heard the testimony?
- 25 A. Yes. Yes, sir.

JAMES WILLIAMS - DIRECT EXAMINATION BY MR. HASTIE

1 Q. There were several bullet holes in the rear of your
2 car where you was standing behind the car; is that right?

3 A. Yes, sir.

4 Q. So it your testimony that Malik shot several times
5 and did not hit you, but he did hit Malik. He pled to
6 that. He hit Malik, but they did hit your car?

7 A. Qawiyy.

8 Q. Qawiyy. Hit Qawiyy. Right. Did not hit you?

9 A. No, sir.

10 MR. HASTIE: Court's indulgence, Your Honor.

11 Q. Okay. Let's be clear about something. Did you shoot
12 Malik that night?

13 A. No, sir.

14 Q. Did you shoot Ashley R. that night?

15 A. No, sir.

16 Q. Did you intend to shoot anybody that night?

17 A. No, sir.

18 Q. It was your testimony, the reason while you were
19 shooting, you didn't want to shoot anybody. That's why
20 you had those holes in the back of your car where you
21 were?

22 A. Yes, sir.

23 Q. Is that your testimony?

24 A. Yes, sir.

25 Q. Thank you. Answer any questions that counsel may

JAMES WILLIAMS - DIRECT EXAMINATION BY MR. HASTIE

1 have for you.

2 THE COURT: Cross-examination?

3 MR. BROWN: May it please the Court? Permission to
4 approach?

5 THE COURT: Yes.

6 CROSS-EXAMINATION

7 BY MR. BROWN:

8 Q. Good afternoon.

9 A. Good afternoon.

10 Q. How are you doing, Mr. Williams?

11 A. Good.

12 Q. I just want to make sure, because this is the first
13 time we're getting to talk about this. So I kind of want
14 to hear from you exactly where everybody was when all of
15 this was going on, so when we ask questions, we kind of
16 know we're on the same page. Where did you say exactly
17 your car was parked?

18 A. Over here.

19 Q. And you're talking about this dirt lot over here?

20 A. Yes.

21 Q. And what time did you today you left the club?

22 A. Talking about after -- out the building?

23 Q. Yeah, when you --

24 A. About 1:30, when everybody was coming out?

25 Q. So you walked out the club around 1:30?

JAMES WILLIAMS - CROSS-EXAMINATION BY MR. BROWN

- 1 A. Yes.
- 2 Q. Y'all had beef around like what, 1:00, you said?
- 3 A. Yes.
- 4 Q. And you walk over to your car to leave?
- 5 A. Yes, sir.
- 6 Q. All right.
- 7 A. But it was over here more because the tree is --
- 8 Q. Okay, so but ---
- 9 A. It was in the area, yes.
- 10 Q. But this dirt area right over here?
- 11 A. Yes, sir.
- 12 Q. Kind of I guess like a gravel parking lot, if you
- 13 will?
- 14 A. Yes, sir.
- 15 Q. Dirt parking lot? Was Mr. McFadden already in the
- 16 car?
- 17 A. When I was walking to the car, yes, he was in the
- 18 car.
- 19 Q. Okay. And he got out after that?
- 20 A. Yes, because he was going to see what we was going to
- 21 do after the party.
- 22 Q. Okay. Did he come up and talk to you, or did he go
- 23 talk to someone else?
- 24 A. He was going -- he was going -- just getting out the
- 25 car. I don't know where he went?

JAMES WILLIAMS - CROSS-EXAMINATION BY MR. BROWN

1 Q. I got you. But did he stay close by the car, or did
2 he go way over here somewhere?

3 A. I know he was going to get close by the car, because
4 the person he was going to talk to was near the car.

5 Q. Okay. So you come over to your car?

6 A. Yes.

7 Q. About how long was it -- so you're leaving at 1:30.
8 About how long was it that you saw Malik Myers in the
9 parking lot. We'll get to him walking towards your car in
10 a second. But how long after that was it when you saw
11 Malik Myers in the parking lot?

12 A. It -- probably about -- maybe like three minutes,
13 something like that.

14 Q. All right. And you said on direct that you first saw
15 him walking with a group of guys?

16 A. Yes.

17 Q. Where were they walking?

18 A. It was over here somewhere.

19 Q. They're way over here somewhere?

20 A. Yes, yes, over here somewhere.

21 Q. All right. And what direction -- you said the whole
22 group was walking together and then he broke off at some
23 point?

24 A. Yes.

25 Q. All right. So which direction were they walking?

JAMES WILLIAMS - CROSS-EXAMINATION BY MR. BROWN

- 1 A. They was coming this way and he broke off this way.
- 2 Q. So he broke off around right here --
- 3 A. Yes, yes.
- 4 Q. -- moving your way?
- 5 A. Yes.
- 6 Q. And you're in your car at this point?
- 7 A. Yes, sir.
- 8 Q. When you came out of the club, you were unarmed?
- 9 A. Yes, sir.
- 10 Q. You had the gun in your car?
- 11 A. Yes, sir.
- 12 Q. And you start seeing Malik walk towards you?
- 13 A. Yeah, with the gun.
- 14 Q. And y'all had had beef in the club?
- 15 A. Yes, we bumped into each other.
- 16 Q. In fact, y'all had had beef from way back when?
- 17 A. Middle school.
- 18 Q. Middle school?
- 19 A. Yes, sir.
- 20 Q. And that's the point where you decided to get out of
- 21 the vehicle and start shooting into the back of your
- 22 vehicle?
- 23 A. Yes, when he came -- he was walking to my car with a
- 24 gun, then he started shooting so I started shooting.
- 25 Q. Why didn't you just drive off?

JAMES WILLIAMS - CROSS-EXAMINATION BY MR. BROWN

1 A. It was -- parking -- parking lot was packed. It was
2 even cars coming down the line.

3 Q. Answer me this.

4 MR. BROWN: Permission to approach again?

5 Q. You're -- you're sitting right here. You said you
6 got your car backed in?

7 A. Yes.

8 Q. You got the exit over here?

9 A. Yes.

10 Q. You got him way over here?

11 A. Yes.

12 Q. You're telling me that a man is walking towards you
13 with a gun, and you can't put your car in drive and just
14 drive away?

15 A. Yes, sir. It was cars coming down here, cars parked
16 right here, cars parked right here. So if I had tried to
17 shoot it, I wouldn't be able to get my car. My car would
18 have been stuck right here. Only thing I could do is just
19 come out right here and be stuck right here.

20 Q. So this car, this car, this car, and this car, did
21 they have anybody with guns walking towards them?

22 A. No, sir. But I'm saying the cars -- the car could
23 not -- I could not get through because the cars was trying
24 to leave through here.

25 Q. But you could have -- if you thought it was someone

JAMES WILLIAMS - CROSS-EXAMINATION BY MR. BROWN

1 driving with a gun towards you, you could have backed up
2 and gone out this way?

3 A. You cannot go out --

4 Q. Or gone back up here.

5 A. -- it's rails, there's trees, so you cannot go out
6 that way.

7 Q. You see this little grass patch right here?

8 A. Yes. My car couldn't fit through there.

9 Q. Couldn't?

10 A. No, sir.

11 Q. I guess the more important question is, y'all bumped
12 into each other at 1:00. And you just now said on direct
13 examination that you -- you knew something was going to go
14 down.

15 A. Yes.

16 Q. So much so that you went out to your car with a gun?

17 A. I was going to my car to leave. I did not go out to
18 start no trouble or anything.

19 Q. Why didn't you leave at 1:00?

20 A. Why didn't I leave at 1:00?

21 Q. Yes, sir.

22 A. What if he had followed me outside while nobody else
23 was out there? Then nobody would have seen anything.

24 Q. But you could have walked away from the situation
25 right then, had a clean path to drive away, and you knew

JAMES WILLIAMS - CROSS-EXAMINATION BY MR. BROWN

- 1 he wasn't armed in the club, don't you?
- 2 A. Yes, sir.
- 3 Q. So he wasn't armed, you weren't armed, no weapons
4 were involved. You could have walked to your car and
5 drove off. Why didn't you do that at 1:00 if you knew
6 there was going to be problems?
- 7 A. I thought something was going to happen when I go out
8 there by myself.
- 9 Q. From what? He's not armed.
- 10 A. But he could have came outside.
- 11 Q. And so your testimony is that at that point, you get
12 out of your car, you go to the back of your car?
- 13 A. Yes, sir.
- 14 Q. And you pointed to the back of your car and you start
15 shooting to scare him away?
- 16 A. Yes, after he started shooting.
- 17 Q. And this was after he started shooting?
- 18 A. Yes, sir.
- 19 Q. And it's fair to say that these shell casings, they
20 were found right around your car. Those shell casings
21 came from your gun, right?
- 22 A. Yes, sir.
- 23 Q. And that's your gun right here that we've been
24 parading around ---
- 25 A. I'm not sure that's the exact one.

JAMES WILLIAMS - CROSS-EXAMINATION BY MR. BROWN

1 Q. We just now had a guy testify that these -- or lady
2 testify that these shell casings came from that gun.

3 A. Okay. I'm not sure that's the right gun. I have --
4 I haven't seen it, so I'm not sure.

5 MR. BROWN: Permission to approach?

6 THE COURT: Yes, sir.

7 Q. Showing you state's Number 34. This gun.

8 A. It could be, but I'm not sure.

9 Q. That look like your gun?

10 A. It could be.

11 Q. Did you have a black .40 that night?

12 A. I said it could be, yes, sir.

13 Q. But my question is: Did you have a black .40 that
14 night?

15 A. Yes, sir.

16 Q. Springfield black .40 that night?

17 A. Yes, sir.

18 Q. And this is a Springfield black .40 that was found in
19 the bushes just like you said that's where you dropped it.

20 A. Okay.

21 Q. There were six shell casings found?

22 A. Yes, sir.

23 Q. Right? And you're saying you fired every single one
24 of your rounds directly into the car?

25 A. I'm not sure if every one went into the car, but I

JAMES WILLIAMS - CROSS-EXAMINATION BY MR. BROWN

1 know I shot most of them into the car.

2 Q. Where were you standing? How far back were you
3 standing from your car?

4 A. I was standing pretty close.

5 Q. Pretty close?

6 A. Yes.

7 Q. Like from me to you, or closer?

8 A. No, closer than that.

9 Q. Me to you, or closer?

10 A. Probably about -- no, a little bit up. Come up a
11 little -- come up a little, and probably about right
12 there.

13 Q. You're standing from here to the car, and you're not
14 sure if every round went into the car?

15 A. Yeah, I'm not sure.

16 Q. You can't --

17 A. But I know I tried to get all of them in the car, the
18 ones that I did shoot.

19 Q. You're pointing a gun from me to you, and you're not
20 sure if you managed to shoot every one into the car?

21 A. I'm not sure. But I -- I tried my best to have them
22 be inside the car.

23 Q. And you fired six rounds that night. How many bullet
24 holes you find in the top of your car? Did you ever look?

25 A. Yes, I looked. It was five. Yes, sir.

JAMES WILLIAMS - CROSS-EXAMINATION BY MR. BROWN

- 1 Q. What happened to the sixth bullet?
- 2 A. I probably shot it into the ground.
- 3 Q. Into the ground?
- 4 A. Yes, sir.
- 5 Q. From here?
- 6 A. Well, that's what I'm thinking that it was from right
- 7 there. That's what -- that's how.
- 8 Q. I mean, you were there. I wasn't?
- 9 A. Yeah, yeah, yeah.
- 10 Q. From here, you miss your car and you shot into the
- 11 ground?
- 12 A. I mean, it -- it wasn't I was just standing there
- 13 (indicating). I moved, so I probably did shoot one into
- 14 the ground.
- 15 Q. Why are you moving if you're just shooting into the
- 16 back of the car?
- 17 A. I wasn't -- I don't know. I -- I'm not sure.
- 18 Q. And I'm just trying to understand --
- 19 A. It's just that everything was happening too fast and
- 20 I know that I was shooting the back of my car so I
- 21 wouldn't hit anybody.
- 22 Q. Was Malik walking towards you during this whole
- 23 process and shooting his gun?
- 24 A. Yes, sir.
- 25 Q. Then why would --

JAMES WILLIAMS - CROSS-EXAMINATION BY MR. BROWN

- 1 A. But I know -- I know --
- 2 Q. Oh, go ahead.
- 3 A. He turned around, so. He turned around, I guess
- 4 after everything -- I don't know.
- 5 Q. He turned around after he shot?
- 6 A. I guess. I didn't see him any more before I ran off.
- 7 I didn't see him any more, so I don't know.
- 8 Q. But Malik Myers, you said he shot at you first?
- 9 A. Yes, sir.
- 10 Q. And he fired -- do you know how many rounds at you?
- 11 A. No, sir.
- 12 Q. More than one?
- 13 A. Yeah, I know it was more than one.
- 14 Q. More than three?
- 15 A. I'm not sure.
- 16 Q. Okay. Did it sound more than two or three?
- 17 A. I'm not sure. Everything was happening too fast.
- 18 Q. I mean, you were the only two shooters out there that
- 19 night?
- 20 A. No. It was other shooters out there because I --
- 21 yeah. It was other shooters out there.
- 22 Q. Why didn't you say that to Mr. Hastie just now?
- 23 A. I told Mr. Hastie.
- 24 Q. Why didn't you tell that to Detective Kelly at any --
- 25 A. I did. I told Detective Kelly that.

JAMES WILLIAMS - CROSS-EXAMINATION BY MR. BROWN

1 Q. Mr. Williams, I want to show you your statement. I
2 want you to show me anywhere --

3 A. Before I --

4 THE COURT: Wait just a minute. Wait on the
5 question.

6 THE WITNESS: I'm sorry.

7 Q. Do you recognize this statement? I want you to
8 show --

9 A. Yes, sir.

10 Q. -- anywhere in this statement where it says for even
11 a single second that there was shooters other than you and
12 Malik?

13 A. Before I wrote this statement, we didn't have a
14 conversation --

15 THE COURT: That wasn't the question. Listen to the
16 question.

17 A. No, sir. It's nothing in there.

18 Q. You were advised of your rights that this could be
19 used against you?

20 A. Yes, sir.

21 Q. You were advised you had the right to tell them
22 anything you wanted to -- which, by the way, included
23 stuff that you're trying to help yourself with, like
24 shooting in the back of the car. I want you to show me is
25 there anywhere in here where you even once said there was

JAMES WILLIAMS - CROSS-EXAMINATION BY MR. BROWN

1 more than you and Malik shooting?

2 A. No, sir.

3 Q. In fact, you specifically said it was you and Malik
4 shooting?

5 A. Yes, sir.

6 Q. And you acknowledged that you two were the two that
7 were shooting at each other in the middle of a parking lot
8 full of kids?

9 A. Yes, sir.

10 Q. There wasn't another shooter, was there?

11 A. Yes, it was.

12 Q. So you were lying in your statement?

13 A. I didn't -- okay, I didn't remember putting it there
14 the statement, so I guess it wasn't.

15 Q. Were you lying in this statement, or are you lying
16 now?

17 A. No, I thought I put it in the statement.

18 Q. So you're telling me a statement you gave two days
19 after the statement, you forgot something, but now you
20 suddenly remember --

21 A. I thought I put it in there. I thought I put it in
22 there.

23 MR. HASTIE: Objection, Your Honor. I think he's
24 asked that question about three times already.

25 THE COURT: Overruled. Cross-examination.

JAMES WILLIAMS - CROSS-EXAMINATION BY MR. BROWN

1 Q. Then where is it?

2 A. Excuse me?

3 Q. Then where is it?

4 A. No, I said I thought I put it in, so I guess I
5 didn't.

6 Q. And you were just now on direct examination with Mr.
7 Hastie where, if you were going to now remember that there
8 was another shooter, a third shooter, or fourth or
9 fifth or sixth shooter, you could have brought that out
10 then?

11 A. You right.

12 Q. But you didn't bring it out then?

13 A. I didn't remember answering no question about that,
14 so I would have said it if I did.

15 Q. It was your direct examination. You can tell us
16 anything.

17 THE COURT: No. Make it a question.

18 Q. Isn't it true you had an opportunity to tell, at any
19 point in this statement or in your direct-examination that
20 there was more than one shooter other than you and Malik?

21 A. Yes, sir.

22 Q. And you didn't take that?

23 A. No, sir.

24 Q. In fact, there are only seven shell -- or six shell
25 casings found in this, and they're from the gun that you

JAMES WILLIAMS - CROSS-EXAMINATION BY MR. BROWN

1 identified?

2 A. Yes, sir.

3 Q. And we know Malik was shooting a revolver; isn't that
4 correct?

5 A. Yes, sir.

6 Q. Which would explain why we don't have shell casings
7 from him?

8 A. Yes, sir.

9 Q. And there is not a single bullet hole in your car
10 from any side or anything like that. Was Malik shooting
11 at you when you were near your car?

12 A. Yes, sir.

13 Q. He fired six rounds and he didn't hit your car one
14 single time?

15 A. I'm not sure when they took pictures, they ain't see
16 anything, so I'm not sure.

17 Q. Mr. Williams, isn't it true you never shot in the
18 back of your car?

19 A. I shot in this back of my car, yes, sir. I shot in
20 the back of my car.

21 Q. Then where is the sixth bullet?

22 A. I'm not sure.

23 Q. So your testimony here today -- and this will be my
24 last question. Your testimony here today is that you had
25 a man actively walking towards you and firing six rounds

JAMES WILLIAMS - CROSS-EXAMINATION BY MR. BROWN

1 from a deadly weapon at your person. Your defense was to
2 shoot into the back of a car in hopes that you'll scare
3 him?

4 A. Yes, sir.

5 Q. All right.

6 MR. BROWN: No further questions.

7 THE COURT: Redirect?

8 MR. HASTIE: Yes, sir.

9 DIRECT EXAMINATION

10 BY MR. HASTIE:

11 Q. You were in here when Malik testified that he was
12 shooting his gun at you?

13 A. Yes, sir.

14 Q. And you were here when he testified he shot all the
15 rounds that he had in this gun?

16 A. Yes, sir.

17 Q. You heard that, right?

18 A. Yes, sir.

19 Q. Okay. Now, the question is: Well, why didn't you
20 drive away? But you testified there were cars parked at
21 the exit, people coming and still going --

22 A. Yes, sir.

23 Q. -- into the club. So it wasn't no easy exit for you?

24 A. No, sir.

25 Q. Was there?

JAMES WILLIAMS - REDIRECT EXAMINATION BY MR. HASTIE

1 A. No, sir.

2 Q. But you do know that Malik was shooting at you --

3 THE COURT: He's your witness now, Mr. Hastie.

4 MR. HASTIE: Yes, sir.

5 THE COURT: Can't lead.

6 Q. So you -- Malik rushing at you, you testified that --

7 A. Yes, sir.

8 Q. All right. Why didn't you jump your car and run?

9 A. Where was it to run to in an open parking lot?

10 Q. In an open parking lot.

11 A. Yes, sir.

12 Q. So it made no sense to run. You thought -- and it

13 may have been a bad decision that night --

14 A. Yes, sir.

15 Q. That you would get your gun, try to shoot -- try to

16 scare him off?

17 A. Yes, sir.

18 Q. Did you scare him off?

19 A. Yes, sir.

20 Q. He never did come to you face-to-face, did he?

21 A. No, sir.

22 Q. Did you see him any more after that night?

23 A. No, sir. Well, I seen him at the -- the hospital.

24 Q. Did you see him run away?

25 A. I'm not sure, but I think he ran away. I'm not sure.

JAMES WILLIAMS - REDIRECT EXAMINATION BY MR. HASTIE

1 Q. You heard the testimony of Mr. McFadden; is that
2 right?

3 A. Yes, sir.

4 Q. And you heard him testify -- that's okay. You heard
5 his testimony where he talked about a lot of things when
6 he testified. But he was with you. You didn't see him
7 that night at first?

8 A. No, sir.

9 Q. Was he -- he wasn't at the car when you got there?

10 A. He was at the car when I got there.

11 Q. You did see him when you got to the car.

12 A. Yes, sir.

13 Q. Okay. Wasn't much going on, because he walked off to
14 talk to someone else?

15 A. Yes, sir.

16 Q. So you were sitting in your car; is that right?

17 A. Yes, sir.

18 Q. And you see Malik coming?

19 A. Yes, sir.

20 Q. And the big question of the day -- and you've been
21 asked a few times here by the prosecutor, why didn't you
22 just leave? Why didn't you just get out and run or try to
23 exit? When did Malik start shooting at you?

24 A. When he started walking to my car.

25 Q. When he started walking to the car. So why didn't

JAMES WILLIAMS - REDIRECT EXAMINATION BY MR. HASTIE

1 get in your car and plow your driving when a man is
2 shooting a gun at you?

3 A. Yeah.

4 Q. Thank you, Your Honor.

5 THE COURT: Recross?

6 MR. BROWN: Briefly, Your Honor. Permission to
7 approach?

8 THE COURT: Yes.

9 RECROSS-EXAMINATION

10 BY MR. BROWN:

11 Q. I'll show you state's Exhibit Number 1 here. You
12 were asked a very interesting question, and I'm very
13 interested by your answer. You were asked why didn't you
14 run, and you said where could I run?

15 A. It was in an open parking space.

16 Q. Okay. So it was an open parking space. Now, this is
17 a little different angle than the one that you saw
18 earlier. So this is where you were saying you were
19 parked, this is the entrance to the club, okay?

20 A. Uh-huh.

21 Q. Isn't it true, you could have run here and hidden
22 behind this building?

23 A. No, that building -- it just seem like it was far
24 away for all that.

25 Q. Now, we've actually got a legend. I have it upside

JAMES WILLIAMS - RECROSS-EXAMINATION BY MR. BROWN

1 down.

2 A. Okay.

3 Q. 1 inch is about 50 feet.

4 THE COURT: Identify it for the record.

5 MR. BROWN: State's Number 1, Your Honor.

6 THE COURT: At the top.

7 MR. BROWN: Yes, sir.

8 THE COURT: Okay.

9 Q. You're parked right here. You're talking about
10 50 feet, 15, 20 yards. You're telling me that you
11 couldn't run over and just get behind this building?

12 A. It wasn't nothing that you would think about someone
13 walking to your car with a gun, so I didn't think about
14 anything like that when he was walking to my car to a gun,
15 shooting.

16 Q. So you were met with the decision as a man was
17 walking towards you a gun, that you can either arm
18 yourself and stand still and shoot into the back of a car,
19 or you can run away. And your testimony is that you
20 decide to stand ---

21 A. Yes.

22 Q. --- and shoot in the back of a car.

23 A. Yes, because it happened so fast.

24 Q. Because it happened so fast?

25 A. Yes.

JAMES WILLIAMS - RECROSS-EXAMINATION BY MR. BROWN

1 Q. And you chose not to run over here behind this
2 building or run over to the mall parking lot and call
3 police?

4 A. No, that was the open parking space.

5 Q. This parking lot right here?

6 A. Yes, sir.

7 Q. You're telling me you couldn't have made it over to
8 Sykes right here?

9 A. No, sir.

10 Q. All right. You chose to stay and fight, correct?

11 A. Yes, sir.

12 THE COURT: Anything further, Mr. Brown?

13 MR. BROWN: No, sir, Your Honor.

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

16 All right, Mr. Hastie, you may call your next
17 witness.

18 MR. HASTIE: Your Honor, defense rests at this time.

19 THE COURT: All right.

20 All right, defense rests. Anything in reply,
21 Mr. Brown?

22 MR. BROWN: Court's indulgence.

23 State would call Nathalie Kelly in reply, Your Honor.

24 THE COURT: All right. You have already been sworn,
25 so you need not be sworn again. You're still under oath.

JAMES WILLIAMS - RECROSS-EXAMINATION BY MR. BROWN

1 MR. BROWN: May it please the Court, Your Honor?

2 THE COURT: Yes.

3 REDIRECT EXAMINATION

4 BY MR. BROWN:

5 Q. Detective Kelly, you were just now present when Mr.
6 Williams was on the stand. Do you recall that?

7 A. Yes.

8 Q. And during Mr. Williams' cross-examination, he was
9 asked about whether or not there were any more shooters
10 other than just him and Malik. Do you remember that
11 question?

12 A. I do.

13 Q. All right. He indicated in some degree that he had
14 told you, but it just didn't make it into his written
15 statement; is that correct?

16 A. That's correct.

17 Q. Did that ever happen?

18 A. It did not.

19 Q. Did Malik Myers -- I'm sorry. Did James Williams
20 ever, when you were meeting with him prior to this
21 statement being given or in any conversations ever
22 indicate to you, even once, that there was any other
23 shooter other than him and Malik Myers?

24 A. He did not.

25 Q. In fact, if he had told you that, would you have

NATHALIE KELLY - REDIRECT EXAMINATION BY MR. BROWN

1 encouraged him to put that in his written statement?

2 A. I would have, yes.

3 Q. And let's just say from a practical standpoint, as a
4 law enforcement officer, had there been other shooters,
5 would you have wanted to have been able to investigate
6 that?

7 A. Yes, sir.

8 Q. Would you want to just leave it out there, oh, we
9 arrested two, I'm not worried about the rest?

10 A. No.

11 Q. So if he told you there were other shooters out there
12 and you had leads on who they might be, or even if you
13 knew that it existed, would we know about that?

14 A. Yes. It would have been investigated.

15 Q. Did he ever tell you that?

16 A. He did not.

17 MR. BROWN: No further questions.

18 THE COURT: Cross-examination?

19 RECROSS-EXAMINATION

20 BY MR. HASTIE:

21 Q. Okay. When you heard Ashley R. get on the stand
22 today and said she too made a statement to you about
23 something and you said that did not happen; is that right?

24 A. She had made -- well, the question was did she make a
25 statement to me in regards to this case. I think Ashley

NATHALIE KELLY - RECROSS-EXAMINATION BY MR. HASTIE

1 was a little bit confused. She did make a statement, but
2 it wasn't in regards to this case. And that was the most
3 recent statement, and yes. She did give me a statement,
4 but it wasn't in regards to this case. So she was right
5 in saying that she gave me a statement.

6 Q. My question was: Did she tell you that she heard
7 these two rounds shot in this parking lot before Malik
8 shot me --

9 MR. BROWN: Your Honor, this goes outside of the ---

10 A. No, she did not ---

11 THE COURT: Objection is sustained. It's outside of
12 the scope of direct examination.

13 MR. HASTIE: Okay. She was asked a question --

14 THE COURT: No, objection sustained.

15 Q. Okay. Now, he also asked you about your recollecting
16 this situation about Mr. Williams about your investigating
17 the young men that were with Malik that night. And he
18 said his friend shot bullets. And that was not
19 investigate by you, was it?

20 MR. BROWN: Objection ---

21 A. Not by me ---

22 THE COURT: Wait a minute. Wait a minute. What's
23 the objection?

24 MR. BROWN: Again, I think we're going outside of the
25 scope of the ---

1 THE COURT: Ask the question again, but don't answer
2 it. I'm not sure I understood the question.

3 MR. HASTIE: Yes, sir. I was just asking was it true
4 that there were things happened with her investigation
5 that were not investigated. And I asked about he
6 mentioned -- Malik mentioned four boys in the written
7 statement that were with him in this car, said one was
8 actually shooting that night. I'm asking did he
9 investigate it.

10 A. And like I said earlier ---

11 MR. HASTIE: Judge got to decide whether ---

12 THE COURT: Wait a minute. She can testify with
13 regards to what -- only thing she was asked about was what
14 Mr. Williams told her. What somebody else told her would
15 not be in response to the direct testimony.

16 MR. HASTIE: Okay. No further questions, Your Honor.

17 MR. BROWN: And I have nothing further, Your Honor.

18 THE COURT: All right.

19 MR. BROWN: And the state rests.

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

21 Anything else in reply, Mr. Brown?

22 MR. BROWN: No, sir, Your Honor. The state rests.

23 THE COURT: All right. Ladies and gentlemen, you
24 have heard all of the testimony in connection with this
25 matter. There are only two things that remain to be done.

1 to try to find out any information about this case on your
2 own. Do not make any investigation into the matter on
3 your own. You're not to try to find out anything about
4 this case on your own, but must decide this case based on
5 the evidence you have in this courtroom. With those
6 admonitions, then, I'm going to excuse you and ask you to
7 be back tomorrow morning at 9:20. We'll try to be ready
8 to start promptly at 9:30 in the courtroom. Thank you.
9 You're all free to go.

10 (The jury left open court at 4:51 p.m.)

11 THE COURT: All right. Mr. Hastie, motions on behalf
12 of the defendant?

13 MR. HASTIE: Your Honor, just move again for a
14 directed verdict in this matter for the reasons I stated
15 earlier.

16 THE COURT: All right. Again -- I don't need to hear
17 from you, Mr. Brown. I think the test is whether there's
18 evidence in this record, not the weight or believability
19 of the evidence under Rule 19. The rule specifically
20 provides that in ruling on the motion, the trial judge can
21 consider only the existence or nonexistence of the
22 evidence and not its weight. Just as it was at the end of
23 the state's case, there is evidence in the record by which
24 the jury could conclude that the offenses occurred -- the
25 offenses charged in this indictment were -- occurred and

1 the believability of those witnesses will be a matter for
2 the jury to determine. And I would respectfully deny the
3 motion.

4 All right. Counsel, let's talk about proposed
5 charges, and I will tell you first of all that my general
6 felony charge contains the presumption of innocence,
7 reasonable doubt, and burden of proof. We need to talk
8 about the subsidy charges. Of course, the subsidy charges
9 by the indictment are attempted murder. I think in order
10 to define attempted murder, I basically got to go into
11 murder to some degree and explain what malice is as well.

12 MR. BROWN: Yes, sir.

13 THE COURT: What's your position with regard to the
14 instruction with regard to the implied matters, Mr. Brown?

15 MR. BROWN: Your Honor, I think I've heard your
16 standard charge in this. It's fine by me. But I would
17 agree with you that essentially with attempted murder,
18 you're going to be charging the same as you would with
19 murder, and just saying it wasn't a successful murder.

20 THE COURT: The only difference is that the
21 defendant -- the victim did not die.

22 MR. BROWN: Yes, sir Your Honor. That's our
23 understanding of the law. That still -- intent to kill,
24 malice aforethought. I mean, it's all the same basic
25 language. It's just attempt, not successful.

1 THE COURT: Well, I'll ask about implied malice. You
2 think that it's appropriate to charge the inference of
3 malice from the presence of a deadly weapon?

4 MR. BROWN: Yes, sir, I think that's suitable, your
5 Honor. I'll check on that tonight, but I would ask for
6 you to charge that, sir.

7 THE COURT: All right. What do you think, Mr.
8 Hastie? Attempted murder charge basically the same as a
9 murder charge except the defendant did not die?

10 MR. HASTIE: That's correct.

11 THE COURT: The victim did not die.

12 MR. HASTIE: Yes, sir.

13 THE COURT: What about the inference of malice from
14 the presence of a deadly weapon? Do you believe that's
15 appropriate?

16 MR. HASTIE: It may be appropriate. I too haven't
17 checked on that in a while.

18 THE COURT: Sir?

19 MR. HASTIE: It may be appropriate. I haven't
20 checked on that in a while. I would just like to take a
21 look at that tonight.

22 THE COURT: I need to know. I need to get ready.

23 MR. HASTIE: Well, he gave you the same answer, said
24 he was ---

25 MR. BROWN: I'm 99 percent sure it's the law, Your

1 Honor.

2 MR. HASTIE: Right.

3 MR. BROWN: I'll tell you in the morning if I find
4 out different, but I think it is.

5 THE COURT: Also, I'll testify as to direct and
6 circumstantial evidence, and I think that is appropriate
7 in this case. Of course, I'm going to strike the note I
8 had made about the defendant not testifying because he, in
9 fact, did testify. And I believe that there are no issues
10 with regard to the voluntariness of the statement, so I
11 don't need to charge the jury with regard to voluntariness
12 of the statement. You agree with that, Mr. Hastie?

13 MR. HASTIE: I agree, Your Honor.

14 THE COURT: All right. Any other -- of course, I'll
15 charge the murder and the attempted murder and the
16 possession of a weapon during the commission of a violent
17 crime. Direct and circumstantial. Any other matters you
18 think ought to be charged, Mr. Brown?

19 MR. BROWN: Your Honor, I think we need
20 clarification. It's two attempted murders and one...

21 THE COURT: Two attempted murders and one possession.
22 And what I'll tell the jury in the verdict form is set up
23 that they would only go to the possession of a weapon
24 during the commission of a violent crime if they find him
25 guilty of one of the two attempted murders.

1 MR. BROWN: Yes, sir.

2 THE COURT: If they find him not guilty of both of
3 the attempted murders, then they wouldn't even consider
4 the possession of a weapon during a violent crime.

5 MR. BROWN: Yes, sir. Your Honor, we additionally --
6 and I'll prepare a proposed charge, and I can e-mail it to
7 Your Honor in probably the next 20 minutes or so, but we
8 will request a charge on transferred intent.

9 THE COURT: Okay.

10 MR. BROWN: And I can -- I'll e-mail you and Mr.
11 Hastie as soon as I get downstairs and just type one up
12 real fast. But...

13 THE COURT: I think it is appropriate, don't you, Mr.
14 Hastie, in view of the testimony with regard to the
15 testimony of witness Ashley R. [REDACTED], transferred
16 intent because basically she was shot in a shootout and
17 didn't have anything to do with it, but the transferred
18 intent would -- would apply in that case.

19 MR. HASTIE: Yes, sir. I guess I'm a little
20 concerned. Malik was charged with shooting Ashley.

21 MR. BROWN: James was charged with shooting Ashley.
22 Malik is not charged with shooting Ashley.

23 MR. HASTIE: Malik shot Qawiyy.

24 THE COURT: All right. Y'all, if you're going to
25 discuss it, don't -- this lady has got to either take it

1 down or not take it down. If y'all want to discuss it,
2 get together. If you don't, convey it to me so that she
3 can make it part of the record.

4 (A discussion was held off the record.)

5 MR. BROWN: Thank you, Your Honor.

6 THE COURT: All right. Anything else that the state
7 would request besides transferred intent?

8 MR. BROWN: Your Honor, that's all the state would be
9 requesting.

10 THE COURT: Okay.

11 MR. BROWN: But the defense is requesting
12 self-defense, we would want to be heard on that. But I
13 don't know if they're requesting it or not. But we would
14 want to be heard on that.

15 THE COURT: All right. That's not one you're
16 requesting. I'll hear from you, Mr. Hastie. Anything --
17 any additional charges you would request.

18 MR. HASTIE: Yes, I did in my opening statement did
19 talk about self-defense to the jury, so I think they
20 should be told about the law on self-defense.

21 THE COURT: All right. You said you'd like to be
22 heard, Mr. Brown. I'll hear from you.

23 MR. BROWN: Your Honor, two fast points on that.
24 First off, if the defendant's statement is believed to be
25 true, then he never shot at him, so he wasn't even

1 Just a few matters before we bring the jury in.
2 First of all, I have been advised by the bailiff that the
3 jurors have elected juror Number 87, Ms. Lyles, as the
4 foreperson of this jury. And I will recognize her, say
5 something to her when she comes into the courtroom. Next,
6 with regard to proposed charges in this matter, we have
7 discussed the matter in chambers as well as yesterday
8 afternoon. I have decided that the -- there is enough --
9 there is evidence in the record that would justify an
10 instruction of self-defense. The question of whether the
11 jury buys that is a factual question for the jury's
12 determination, but my decision is based upon whether there
13 is any evidence in the record that would justify or that
14 would require or allow a self-defense charge. I have to
15 confess I think it's a close question. I debated about it
16 over the evening, went back and forth and one time was not
17 going to allow a charge on self-defense, and then later
18 on, decided I should, and finally concluded that is it
19 appropriate in this case. Based on the -- the any
20 evidence standard. I did do some research last night and
21 have come to that conclusion, so the Court will charge as
22 requested by the defense the defense of self-defense.

23 The Court will also charge as requested by the state
24 the transferred intent charge that was given to me, and --
25 so the parties will be able to argue that as well. So the

1 charges will consist of the general felony charge, which
2 is a presumption of innocence, reasonable doubt, burden of
3 proof. The subsidy charge of attempted murder without the
4 inference of malice as -- from the use of a deadly weapon.
5 Under the Belcher case, I believe that the inference of
6 malice falls by the wayside when the self-defense is at
7 issue in the case, and so I will not charge that there's
8 an inference of malice arising from the use of a deadly
9 weapon.

10 I will also make the subsidy charge on the possession
11 of a weapon during the commission of a violent crime. As
12 I said, transferred intent will also be charged. Direct
13 and circumstantial evidence will be charged, and a short
14 charge on expert witnesses. Other than that, are there
15 any additional matters that need to be taken up as far as
16 potential charges or concerns on behalf of the state,
17 Mr. Brown.

18 MR. BROWN: No, sir, Your Honor.

19 THE COURT: Mr. Hastie?

20 MR. HASTIE: None, Your Honor.

21 THE COURT: Okay. All right. That being the case --
22 oh, also, after conferring with counsel, and I believe
23 that everybody agrees to this, that under the recent
24 Supreme Court case, and the name of that case is Beaty,
25 Mr. Brown, and I think it's probably up for

1 reconsideration before the Supreme Court from what I
2 understand, it's going to be reconsidered. But under the
3 Beaty case, when the defendant takes the stand and the
4 state is obligated to open in full, then the defense will
5 present their argument, and then the state would have the
6 right to rebut the defense argument. Do you agree with
7 that procedure?

8 MR. BROWN: I agree with that.

9 THE COURT: You agree with that?

10 MR. HASTIE: Yes, sir.

11 THE COURT: Okay. All right. Bring the jury in,
12 please.

13 THE BAILIFF: Yes, sir.

14 (The jury entered the courtroom at 9:52 p.m.)

15 THE BAILIFF: Your Honor, we have all the jurors
16 present.

17 THE COURT: All right. Good morning, ladies and
18 gentlemen, and I appreciate your promptness in being back
19 here. We did have some more legal matters that we had to
20 deal with that I had not anticipated, and that's the
21 reason for being somewhat delayed in getting started this
22 morning. But we are now ready to get started. I will ask
23 you now as I have every time you've been away from the
24 courthouse if anyone has approached you or attempted to
25 talk with you about this matter over the evening recess, I

1 would need to know about now, and please signify by
2 raising your hand if anybody has been contacted or tried
3 to contact. Has any juror learned anything about this
4 case or anyone involved in the case from any source other
5 than in this courtroom? If so, please indicate by raising
6 your hand. Again, negative response, and that's good.

7 Has any juror done any research or consulted any
8 internet through Google, Bing, or any other means, or done
9 any investigation into the case on your own? If so,
10 please raise your hand. All right, negative response, and
11 that's good. That means we're ready to go forward.

12 Ms. Lyles, I understand that the jury has elected you as
13 the foreperson of the jury, so you should continue to sit
14 in that seat where you are seated, and, of course, the
15 alternate would sit where she is seated.

16 As I told you yesterday, you have now heard all of
17 the testimony in this case, and there are only two things
18 that remain to be done. Those are the arguments of
19 counsel and the instructions on the law by the Court. I
20 will tell you now as I did at the beginning of this case
21 that the arguments of counsel are not evidence in this
22 case. They are simply the lawyers' views of what they
23 think the evidence shows. You will decide that case based
24 upon the evidence you have heard from this witness stand
25 and from any exhibits which are introduced into evidence.

1 But the lawyers do have the duty and not only the right
2 and the duty to address you now, and to give you their
3 views of what they think the evidence shows. After they
4 have concluded their arguments to you, I will then
5 instruct you on the law of South Carolina as it applies to
6 the facts of this case as you find those facts to be, and
7 then you will be allowed to go to your jury room to
8 deliberate your verdict. You will hear first from
9 Mr. Brown on behalf of the state, and then from Mr. Hastie
10 on behalf of the defense, and then Mr. Brown will have the
11 final argument -- the right of final argument of a
12 rebuttal of Mr. Hastie's closing summation. And for that
13 purpose, I will recognize Mr. Brown. You may proceed.

14 MR. BROWN: Thank you, Your Honor. May it please the
15 Court?

16 THE COURT: Yes, sir.

17 CLOSING ARGUMENTS

18 BY MR. BROWN:

19 Madame Forelady, ladies and gentlemen of the
20 jury, good morning. Same way -- and y'all probably picked
21 up by now, I always have to start everything the same way.
22 It's my routine. And so in the same way I started my
23 opening, I want to start with the most important thing,
24 and the same way I started my opening statement, and that
25 is to thank y'all for being here. We know -- every one of

1 us in this room knows this isn't where y'all wanted to be
2 in July. I know we have some teachers on there. I know
3 y'all are doing lesson plans right now. I know we have
4 some people who work in jobs and businesses, and y'all are
5 having to your opportunities at work, use sick days or
6 miss paid time, and we know this isn't convenient for you.
7 But that doesn't mean that we don't have to do this. This
8 is the bedrock of how our justice system works. And quite
9 frankly, how our government works in making sure that when
10 we try cases and when defendants are charged with
11 offenses, that it's done the right way, that it's made
12 sure that it's held to the right standard. Made sure that
13 the citizens decide guilt or innocence. Without this, we
14 would not have what I believe to be the best justice
15 system in the in the country, in the world. And without
16 y'all, we wouldn't have that. So thank you for being
17 here. I think this might be the only thing I speak on
18 behalf of Mr. Hastie and myself, but on behalf of both of
19 us, thank y'all for being here

20 This case is important. This case is important.
21 Because on May 2nd, 2015, over on Rast Street, 330 Rast
22 Street, right here in Sumter about 3 miles from where we
23 sit right now, a shootout happened between kids at a club
24 as they're getting off at 1:30 at night. This is
25 important. People could have been killed. Multiple

1 people could have been killed. Fortunately, only three
2 people were hit, but this is important. And that's why
3 we're here.

4 Mr. Williams is charged today and in a short bit of
5 time, you are going to have the obligation -- and it's a
6 heavy obligation, and I understand that -- but the
7 obligations of deciding whether or not he's guilty of the
8 offenses with which he is tried. As you know by now, he
9 is charged with two counts of attempted murder, and one
10 count of possession of a weapon during a violent crime.
11 Just by way of explaining the law to you a little bit, the
12 defendant, when he's charged with attempted murder, it's
13 my obligation as the state, through the witnesses you've
14 seen, through the testimony you've heard, through the
15 pictures you've seen, through the bullets and ballistics
16 testing and all the evidence that's been coming through
17 this case to try showing you beyond a reasonable doubt
18 that the defendant, with malice aforethought, attempted to
19 kill someone. And that there was some type of attempt to
20 kill that person with malice aforethought.

21 The two people he's charged with is Malik Myers and
22 Ashley R. . Ladies and gentlemen, I submit to you that
23 the one with Malik is rather straightforward. He has beef
24 in the club. They go outside, and they get in a shootout.
25 They're both trying to kill each other. With Ashley, I

1 did tell you earlier that I was going to want to talk to
2 you about what we call the doctrine of transferred intent,
3 because that is the reason he's charged with shooting at
4 Ashley. Under the doctrine of transferred intent, one of
5 the things that we have to establish to establish
6 attempted murder is what we call the malice, the malice
7 aforethought. And what that is, malice is a state of
8 mind. Malice in our law is recognized as a state of mind
9 where you have the desire to cause harm, to kill someone.
10 Where you take actions because you have that desire. That
11 is what malice is. You don't have to have it for a long
12 time. You can only have it for a second, but malice is
13 what we have to establish. And through the doctrine of
14 transferred intent, which the judge will charge you on,
15 malice isn't necessarily directed at the individual person
16 who is hit. Malice is where your state of mind was when
17 you fired. And, you know, there's this old adage that
18 malice follows the bullet. And that's kind of a simple
19 analogy to it, but when you shoot a gun and you have the
20 state of mind to kill someone, whoever it hits under the
21 doctrine of transferred intent, you are responsible for
22 that.

23 And ladies and gentlemen, I'm going to talk to you
24 about the facts in depth about Ashley and that bullet and
25 how we believe that that showed that the bullet that hit

1 Ashley was fired by James and that gun sitting right
2 there. But that's why he's charged with that under the
3 doctrine of transferred intent. He's also charged, as you
4 know, with possession of a weapon during the commission of
5 a violent crime. Attempted murder is a violent crime
6 under South Carolina law. I think the code section is 16.
7 160. They have just a list of violent crimes that are
8 defined, and attempted murder is in that list. It's that
9 simple. So the question for you, if you determine that
10 the defendant is responsible, he is guilty for attempted
11 murder, then you, at that point, decide whether he had a
12 weapon during it, a gun, a Springfield XD model .40 Smith
13 and Wesson. I think it's a double stack. You'll see it
14 back there.

15 And that's the question on that, but what's the
16 facts? You've heard. You've been here. You heard from
17 numerous witnesses yesterday about James Williams'
18 responsibility in this, his role. Some of them didn't
19 know it was shooting, some of them didn't. But we're
20 going to go witness by witness and talk about the
21 testimony you heard, and what the state believes we've
22 shown to establish that James Williams is responsible for
23 this.

24 You heard -- and I'm just going to group them
25 together. Chelsea and Ashley. They both came in, and

1 let's just go on and be blunt. They didn't see James
2 shooting. They didn't see James. They didn't. They
3 heard gunshots off in the distance. They see Malik is not
4 shooting yet, and they see Malik start shooting back in
5 that direction. They never saw who was shooting over
6 here, but they had one person who shoot first, then they
7 have Malik shooting back, and Ashley gets in this way.
8 She gets taken to Tuomey. Fortunately, it wasn't as
9 serious as it could have been. She got hit in the leg, so
10 missed any femoral arteries or anything like that. Thank
11 goodness. But she survived. She's fine.

12 They were shooting a gun. She got hit by a bullet.
13 They didn't see who started the first shooting, but we
14 know that -- we know James was shooting. We know he was.
15 He admits to shooting. And you heard from their testimony
16 that Malik started returning fire after that point.

17 You heard from Malik too. And I've been told that my
18 poker face isn't incredibly great. Y'all probably saw
19 that I was a little surprised when he took the stand and
20 how he responded to my questions. I'd offer to you that
21 he probably doesn't like me too much. The jumpsuit that
22 he's wearing is because of me. I sent him to prison for
23 his responsibility in this. And I told you in the
24 beginning, and I'll tell you again, I am not going to try
25 to excuse for even half a second Malik Myers'

1 responsibility in this. Malik Myers was responsible for
2 his part in this. Malik Myers was convicted for his
3 responsibility and his part in this, and Malik Myers --
4 respectfully, he's exactly where he belongs to be because
5 of his role in opening up fire in a parking lot full of
6 kids. I don't like sending people to prison, but there's
7 times when that stuff has to happen?

8 I suspect Malik doesn't like me too much, but that
9 being said, I don't know if it was because he doesn't like
10 me or some street code that he thought he was following or
11 some prison code he thought he was following, but he tried
12 changing his story up when he got up here. But ladies and
13 gentlemen, I offer to you that you heard through his
14 cross-examination and you also heard when we put Detective
15 Kelly on the stand, and we actually -- we gave you the
16 statements that he gave, so you would know exactly what he
17 said. What he said the day that it happened, and two days
18 later, which were very, very close. And Detective Kelly
19 appropriately pointed out the only real difference between
20 the first statement and the second was in the first one he
21 tried saying, oh, I took the gun from my buddy after the
22 shooting started, and the second one, he armed himself
23 first. And his buddy, I think he said shot off one of the
24 rounds first.

25 But they were very similar. Malik acknowledged in

1 his statements that he and James had beef in the club. He
2 provided that James was making hand signals, like he's
3 shooting at him. He said they bumped into each other.
4 There was some words, which, by the way, James also
5 provided. They bumped into each other in the club. He
6 knew stuff was going to go down. And then when they get
7 out in the club -- out of the club in the parking lot,
8 they both arm themselves and that's when things get out of
9 control. I suspect -- well, actually, I'll just tell you.
10 I -- you know, I think what you saw from Malik yesterday
11 shows the mentality that was held by more than just him
12 the night of this incident. And that's unfortunate. But
13 I still want to bring him up here, still wanted to hear
14 from him, wanted to give him an opportunity to say his
15 side of it. But I wanted to you to hear the truth too,
16 and that's what you heard from Detective Kelly about what
17 his original statement was. Because y'all are the jury
18 and I'm not hiding stuff from y'all. I want y'all to know
19 everything. I want y'all to know the truth. I want y'all
20 to know what happened in that parking lot on May 2nd,
21 2015, as best as I can provide it for you.

22 You heard from Detective Kelly too. Detective Kelly,
23 who has been a career law enforcement person. Been with
24 Sumter police department, I think she said for ten years.
25 Been working investigations it sounded like about eight,

1 worked her way up the ranks. She did it the hard way.
2 She did it the right way. And she moved up to about as
3 high of a level of an investigator or detective -- I get
4 those mixed up, sheriff's investigators, police
5 detectives -- but she's made her way up to the highest
6 ranked detective you can pretty much make, other than
7 supervisor. She's a lead detective, and she's good at
8 what she does.

9 You heard from her as she talked about the
10 investigation as a whole. You heard from her as she
11 talked about the statement from James. The statement that
12 James provided about what his role in this was. The
13 statement I submit to you is absurd. It makes absolutely
14 no sense that just -- just absolutely does not gel in any
15 way, shape, or form with what happened out there, with
16 what the facts show about what happened out there. But
17 you heard about how he told them, yeah they bumped each
18 other in the club. He knew stuff was going to go down.
19 They come out of the club. He goes for his car, gets his
20 gun. When he sees Malik approach him with a gun, he gets
21 out of his car, walks to the back of it, and starts
22 shooting in the back of his car to scare him off. I mean,
23 that doesn't even make sense, but that's -- that's what he
24 told her from the start. Pretty similar to what he said
25 up there. Although we'll talk about what he said in just

1 a minute.

2 You heard from her about Malik's statements. We went
3 through those. And you also heard from her in rebuttal
4 about things that James said on his direct examination
5 that just flat out weren't true. You heard from Jacob
6 Mitchell, who came in from Safe, where he now works in
7 security. You heard from him as he came in and he talked
8 about the crime scene. He talked about how he recovered
9 shell casings. Recovered six shell casings, all in one
10 area. All right here on defense Number 2, in this area
11 right here. Same place that James Williams said he was
12 standing. Six shell casings from a .40. You heard how he
13 recovered a gun from right here, the gun that similar to
14 the one described and the same one that James claims, and
15 the same one that matches the shell casings found all
16 around James' car. You saw the pictures he took, and you
17 all will have those back there with you. You're going to
18 have the gun back there, you're going to have the shell
19 casings back there, and you're going to -- you heard how
20 he recovered all these items, took them to evidence so
21 they could be sent off to SLED.

22 And you also heard from Officer Miller as he got the
23 bullet from Ashley's leg. I hate she got shot and we got
24 a bullet. Because that's how we know that James was
25 responsible for the shooting of Ashley.

1 Who else did you hear from? You heard from Michelle
2 Eichenmiller from the South Carolina Law Enforcement
3 Division. SLED. She couldn't make a conclusive finding
4 that that bullet came from that gun, but she did know what
5 she could conclude. That bullet came out of that gun --
6 that or that bullet that came out of Ashley was a .40 or a
7 10-millimeter, Smith and Wesson if it's 40. You heard
8 that it was fired from a conventionally barrel pistol.
9 You heard that it was fired from a conventionally barreled
10 pistol that shoots six twists to the right. And you heard
11 that that Springfield model XD .40 Smith and Wesson
12 pistol, sitting right there in that box that you'll get to
13 have right back there with you, that it was in good
14 operational condition, that she was able to fire a test
15 round into her water tank where they could get a clean
16 copy of it. And when she looked at it, that gun, that
17 conventionally barreled, .40 Smith and Wesson pistol that
18 fires six twists to the right. I'm telling you what, she
19 may not be able to make very final conclusions, but that's
20 good evidence. That's good evidence.

21 There were two shooters out there that night. One
22 was firing a .38 and one was firing a .40. We got the
23 .40. I don't know what happened to the .38. It's
24 probably on the streets. I hope it doesn't cause any more
25 harm. But we know what guns were fired. We know what gun

1 he was firing. We have the gun he was firing. You're
2 going to have the gun he was firing. We've got the report
3 about what he was firing. And it matches the bullet that
4 came out of Ashley R. . I submit to you that's what the
5 evidence shows. It might not be conclusive, it might not
6 be to the exact scientific level they have to be able to
7 reach where they can say absolutely, 100 percent I can say
8 this. Come on. That's good evidence.

9 What did the defense put up? We put up Mr. McFaddin.
10 Well, ladies and gentlemen of the jury, honestly, I agree
11 with everything he said. He didn't see whether James was
12 or wasn't shooting. All he saw was James gets out of the
13 car, and then a whole bunch of guns start. He didn't see
14 if James was shooting or not. He didn't see who else was
15 shooting. He didn't know anybody that was shooting. He
16 just knows there was a bunch of gunshots, and then James
17 gets back in the car, he's got his earshot off. Thank
18 goodness that bullet didn't go 1 inch over to the right,
19 two-inches over to the right, whatever it would have been,
20 and then he drives him off.

21 You heard from Ms. Snapp as she talked about that she
22 took pictures of the car. You heard she couldn't
23 determine the direction the bullets came in. She just
24 simply can't, and she's not trained to do that. We don't
25 know which direction they came in. We know the car got

1 hit five statements. It was a straight up gunfight. And
2 then we heard from James. We heard from James a pretty
3 similar story to what his original statement was. He
4 changed some of it. He gets up and he tells you that he's
5 got an armed man who he had beef with in the club, which
6 he knew things were going down, who he stuck around the
7 club in that same club with this man for another 30
8 minutes. He leaves the club, and when he sees someone
9 walking towards him, not blocking his exit to leave the
10 parking lot, walking towards him from the other direction,
11 his decision is, well, I'm going to get my gun. I'm going
12 to get out. And then what's he's going to do? He's going
13 to stand at the back of his car and shoot into the back of
14 his car to scare him away. Does that even make sense?
15 Who does that? I'll tell you James Williams doesn't do
16 that. I'll tell you that story is utterly absurd. No one
17 does that. No one shoots six rounds into their car, and I
18 don't know how you shoot six rounds in your car and only
19 get five bullet holes, but no one shoots six rounds in
20 their own car when they're getting shot at by Malik. You
21 just don't do that. It's absurd.

22 What else did he say? Well, he tried adding for the
23 very first time today, or yesterday that there was some
24 third, fourth, he never said how many, but multiple other
25 shooters involved in this whole event. He tried claiming

1 that he told people that. You'll have his written
2 statement back there. He never told that to any law
3 enforcement. Tried saying he told it to Detective Kelly,
4 Nathalie before he wrote his written statement. You heard
5 from Detective Kelly, he never said that. She would have
6 wanted to know that. If he would have told Detective
7 Kelly that -- we want to get the people who were shooting
8 in parking lots with a bunch of kids running around. We
9 want to get them off the streets. We want to make this
10 town safer. If he would have told her that, I'll tell you
11 right now, we wouldn't have heard it for the first time
12 sitting right here. You wouldn't have heard it for the
13 first time sitting right here. Because you probably would
14 have had those other people sitting up here in yellow
15 jumpsuits too.

16 There weren't other shooters. He lied. But ladies
17 and gentlemen of the jury, he did that because -- I don't
18 know, maybe he realized halfway up there, this whole
19 notion of I was shooting in the back of my car from what
20 he described is about 6 inches away from it and somehow
21 missed one time, and that is what he was really doing when
22 another man is shooting directly at him. Maybe he
23 realized the absurdity of that and he just had to throw
24 something else in there. I don't know. But he lied. I
25 submit to you pretty much everything he said in there was

1 a lie. He had opportunities to retreat. He had
2 opportunities to leave. He had opportunities to let this
3 not happen.

4 Now, one thing you're going to hear from the judge is
5 a charge on what's called self-defense, and I'm sure you
6 all know that. I'm sure at some point, at least one of
7 you have thought the word self-defense, because you heard
8 that Malik was shooting. I'm not pretending for a second
9 that Malik wasn't. Malik was shooting. That's why Malik
10 is in prison. Ladies and gentlemen, this isn't a
11 self-defense case, bottom line. And you're going to hear
12 the judge charge about self-defense, and the judge is the
13 law. He is the law that you follow. Not your
14 interpretation of it. Quite frankly, it's not
15 interpretation or Calvin's interpretation of the law. His
16 Honor is the law, and he's going to tell you what the law
17 is, and y'all get to decide the facts based on that law.

18 But what he's going to tell you is that the law on
19 self-defense, what it provides is you have to meet four
20 elements. If you want a charge of self-defense, if you
21 want to succeed on a defense of self-defense, you have to
22 show four things, or y'all have to believe four things
23 happened. You have to believe, first off, the person
24 asking for self-defense isn't at fault for bringing on
25 this. Is that true in this case? When he's -- he's

1 making hand gestures in the club like he's shooting at
2 James, is he not at fault -- or Malik? Is he not at fault
3 when at least two witnesses, three if you count Malik's
4 statement, all say that he's the one that started shooting
5 first, is he not at fault in bringing on this incident?
6 When he goes out to his car and he gets a gun when he
7 knows there's about to be trouble, instead of driving off,
8 is he not without fault in bringing on this incident?

9 I submit to you no, absolutely not. He is absolutely
10 at fault in bringing this incident. That's why he's
11 sitting right there right now. He's at fault. He caused
12 this. We're here because of him. We're here because he
13 decided this is how we act. He's at fault.

14 Second thing, if you're going to find for
15 self-defense that you have to find is that he was in -- he
16 was in fear for his life. You know what, I submit to you
17 that once Malik starts shooting back, I probably would
18 have been fear for my life. I'm not going to argue that.
19 If someone is shooting at you, you're probably going to be
20 afraid. Now, it didn't all have to happen. If he
21 wouldn't have armed himself and he would have just drove
22 off when he thought there was going to be trouble, if he
23 would have drove off, he wouldn't be here. I'm not going
24 to argue point 2. I'm just not going to. I promised from
25 the start I'm going to be honest with you. I promised you

1 from the start I'll be straightforward with you, and I'm
2 not going to sit there and argue something that we all
3 know if someone is shooting, you're going to be worried.
4 And we know Malik was shooting. He shot six rounds off
5 from his .38.

6 Now the other one, though, is that a reasonably
7 prudent person would be in fear. And I agree also that a
8 reasonably prudent person would be. But I find it curious
9 and just quite frankly strange, that they're asserting A)
10 that he's in fear, and that a reasonably prudent person
11 would be in fear, but then they also are asserting that
12 James and his fear and in his worry, didn't shoot back but
13 he shot in the back of the car, which again, is absurd. I
14 submit to you, he never did that. But the fact that
15 that's what their explanation is, that's what his
16 explanation that he built in from day one with Nathalie,
17 the fact that that's what they built in, you know, quite
18 frankly, it calls into question how much fear he really
19 was in. If that's what his story is, how much fear was he
20 really in if he's shooting the back of his car? I submit
21 he wasn't shooting the back of his car. He was shooting
22 directly back. I submit that the facts would show he shot
23 first.

24 But the final thing -- and this one is important,
25 y'all, listen -- final thing is that he has a duty to

1 retreat. I wasn't asking these questions just to be
2 silly. I wasn't asking those questions just to poke
3 around. I was asking those questions, because that's
4 important. James Williams, on May 2nd, 2015, has a duty
5 to retreat. He can only start shooting if he feels he has
6 no ability to retreat any further, if retreating puts him
7 in great risk. So let's talk about his ability to
8 retreat.

9 At 1:00 when they run into each other in the club,
10 and by his own words, he knew stuff was about to go down,
11 he has a duty to retreat. He had a duty to get in his car
12 and go home. Quite frankly, at 16, he probably had a
13 personal duty to go home about five hours earlier. But
14 regardless, he knew stuff was about to go down. When he
15 knew after that bumping into each other that it was about
16 to get real and they know the beef they have. They've
17 been enemies since middle school, and he's bumping into
18 this guy and he knows it's about to go down, he has a duty
19 to retreat right then and there. What would have happened
20 if he would have left right there? No one is armed. He
21 walks out to his car, he gets in, he drives home. None of
22 y'all are here right now. Or y'all probably are. You're
23 on another case. But none of y'all are here right now
24 with me, which y'all might appreciate.

25 But he didn't leave, and then instead, he goes out to

1 his car. And he gets in his car, and he gets his gun.
2 And he sees Malik walking with his buddies, if we believe
3 his story. And then he sees Malik break off and start
4 walking towards him. And from way over here to here,
5 which is what looks like about 50 to 100 yards -- you've
6 got a little scale down here -- you saw that he was around
7 here when he saw him break off -- I'm sorry. Around here
8 when he saw him break off, and he's up here. About 50 to
9 100 yards, he sees already that he's got a gun, he's
10 coming at him. Well, he had a duty to retreat. Turn the
11 car on, drive off. It's simple. That's what cars do.
12 They get you to different places quickly. You drive off.
13 It's that easy. The defendant -- he said there was a line
14 of cars out the door, there's no way he could have left
15 quickly. But I submit to you that's -- that's about as --
16 the same type lie he's been telling from the start,
17 because I want you to pay attention. This is a nuance
18 that I almost didn't catch until last night. I couldn't
19 sleep, and I was thinking about this case, and it came to
20 me.

21 After Qawiyy got shot, he didn't seem to have any
22 trouble leaving quickly. He didn't have any trouble
23 leaving then. After this shootout, after it's done, after
24 the dust settles, after the gun smoke clears, oh, yeah,
25 now I can drive. It's fine. No big deal. Drives right

1 off. He's gone before the police get there. He could
2 have left, he lied.

3 He lied to you when he said he couldn't leave. Okay,
4 let's just buy his lie for a second. And let's say
5 instead that he can't get out. He can't drive away. He
6 can't do the basic function that cars are designed to do.
7 He gets out his car and walks to the back of it. Why
8 didn't he just walk another 25 yards? Then he's behind a
9 building. A building that provides shelter. From there,
10 he can go to the mall with Malik back there. He can go
11 call police if he sees Malik coming at him with a gun.
12 Pick up a cell phone and call the police. He -- there
13 were so many other places he could have gone, so many
14 different directions, that did not put -- A, his life, and
15 B, every single life in that parking lot at risk, had he
16 just followed his duty. And it is a duty, and it's a duty
17 he has to follow if he's going to get self-defense, and
18 that's something you have to remember when you go back in
19 that room. Don't forget.

20 A comparison a colleague of mine has used when he's
21 talking about self-defense and it's right on point,
22 self-defense is like a chair, a chair that has four
23 different legs. And if you miss a single one of those
24 legs, what happens with the chair? It falls over. This
25 too. It falls over quickly. Self-defense is the same

1 way. It's like a chair. You're missing one of those,
2 you're missing his duty to retreat, you recognize he
3 doesn't have that duty, that back right leg is gone.
4 You're just tipping over. He's missing that duty not to
5 be at fault in bringing on the incident. You knock out
6 one of the legs, he's falling over. Ladies and gentlemen,
7 I submit to you the self-defense claim that he's relying
8 on is really not something y'all should even consider.
9 Just throw that out the door. This isn't self-defense.
10 This is self-interest. This is -- this is not personal
11 defense, this is not self-defense. This is -- this is his
12 self-ego trying to make sure he's the biggest and baddest
13 guy on the block.

14 I love courthouses. I cut my teeth prosecuting out
15 in Williamsburg County. I was moved over to Sumter, I was
16 already doing some stuff. I had an office in the old
17 courthouse. But I've been prosecuting now for seven years
18 in these courtrooms. And I love these buildings. They
19 mean the world to me. They are a place of reverence. A
20 place where disputes are decided, civilly, peacefully.
21 They're a place where the law is upheld. Ladies and
22 gentlemen of the jury, on May 2nd, 2015, James Williams,
23 because of a very petty issue, decided to make the parking
24 lot of 330 Rast Street his courthouse. He decided along
25 with Malik, that they were going to be their own judges,

1 their own juries, their own executioners. Fortunately,
2 they're not very good executioners. Thank God for that.

3 It is now about to be your obligation to preside over
4 this case and to decide the facts. It's about to be your
5 opportunity, your chance to consider all the facts, to
6 consider everything you're heard, the testimony, the
7 testimony of Ms. Eichenmiller, the testimony of James, the
8 testimony of Malik, the testimony of Ashley, the testimony
9 of Chelsea, the testimony of Nathalie, the testimony of
10 every other person who came up here and testified, and
11 determine guilt or innocence. I submit to you that this
12 case is one he needs to be found guilty.

13 Ladies and gentlemen, we cannot let the parking lot
14 of 330 Rast Street be the courthouse. If we do that, then
15 we need to go tell James Campbell he wasted \$50 million on
16 this place. Instead, he probably could have spent about
17 ten grand, built a dirt road, put this building on the
18 side of bell tower, and when it strikes high noon, we just
19 have shootouts. That seems to be the law that James
20 Williams wants. He wants shootouts, not law. We are
21 going to let this stuff happen, we need to tell James
22 Campbell he doesn't need to start looking for a nice name
23 put on top of the Sumter county judicial complex. We
24 don't need to be looking for these legal luminaries that
25 have helped our city so well. The Ramon Schwartzes, Chief

1 Justice Finney. We just now sent one of our judges,
2 Justice Buck James up there, all of whom would be great to
3 go up there. But if this is the law, the one that James
4 Williams wants to imply, we just need to put his name on
5 the courthouse, because he runs this town.

6 James Williams is guilty of two counts of attempted
7 murder. He got into an outright shootout in a parking lot
8 full of kids, and now he wants to say he was justified.
9 Self-defense doesn't apply here, and it's because we don't
10 want people getting into shootouts and saying, well, no
11 one can be held responsible. They're at fault in bringing
12 on this incident; they both are. They had a duty to
13 retreat. They didn't do it. Instead, they decided to
14 shoot it out. And now is the time where they need to be
15 told that's not how it works. That's not what you get to
16 do. We don't get to do that in this town and walk away
17 scot-free. I ask you to find Mr. Williams guilty of both
18 counts of attempted murder, ask you to find him guilty of
19 possession of a weapon during a violent crime. Ask you to
20 pay attention to Mr. Hastie and then after that, I'll ask
21 you to pay attention to me one for time. I thank you for
22 your time, and I thank you for your service. Thank you.

23 THE COURT: Mr. Hastie?

24 MR. HASTIE: May it please the Court.

25 THE COURT: Yes, sir.

1 MR. HASTIE: Mr. Brown.

2 CLOSING ARGUMENTS

3 BY MR. HASTIE:

4 Okay. Y'all heard a lot this morning. I'm
5 going to try not to repeat everything that you heard, but
6 there are some things I do want to talk about. However,
7 before I make any statements, I want to, just once again,
8 thank you all for your time here this week. It's been
9 very interesting. Oftentimes I like to watch the jurors
10 during the testimony because I've been in trial where
11 jurors fell asleep and started snoring. And the judge had
12 to wake them up. But you guys were on your toes,
13 listening to every one of these defendants. And that's
14 what we want to just go over again today.

15 We realize that you may have wanted to be other
16 places, but you sacrificed your time and some businesses
17 and you wanted to be in the courtroom because it's a duty.
18 Now, Judge King mentioned to you all earlier that other
19 than military service -- and I think I told you, I served
20 20 years in the military, so we have something like this
21 going on, where folks that come in, you get to choose that
22 you must have a jury of your peers to decide whether
23 you're guilty or innocent. I might have mentioned about
24 Russia, people just disappear. You're accused of
25 something, you're just gone. Family don't know where you

1 are. But let's hope that you're here today because you
2 want to make sure justice is administered in this
3 courtroom.

4 I mentioned to you about two things I want you to
5 keep in mind throughout this whole ordeal, this testimony.
6 One was burden of proof. Burden of proof. What I love
7 about this state and this country, they say that burden of
8 proof is upon the prosecutor. It's not upon the
9 defendant. It's not upon the lawyer, it's not upon the
10 judge. The burden is on them to prove beyond a reasonable
11 doubt that for a fact James shot Malik and Ashley R. ,
12 and that's what I want you to focus on. Did he meet his
13 burden? The burden is not down here that he's talking
14 about Judge Finney and Schwartz and this courthouse name
15 and all of that. It's not about none of that. It's about
16 whether or not he proved to you beyond a reasonable doubt
17 that this happened the way that he described. And I
18 submit to you he did not meet that burden, yesterday, the
19 day before, or even today.

20 It's a very high standard. But it's a high standard
21 for a purpose. In this country, we're concerned about
22 innocent people being accused of crimes and going to jail.
23 So we say, no, we have a jury, we're going to have a
24 trial, and the solicitor -- and the -- you must prove. It
25 doesn't say -- never does the burden change to the

1 defendant. It never changed to James that you got to
2 prove anything. Even though he took the stand yesterday,
3 the burden didn't change. The burden is still with the
4 prosecutor.

5 I mentioned the second other thing, I wanted you to
6 just keep in mind now, is the presumption of innocence.
7 We are presumed innocent when we are charged with a crime.
8 That's the wonderful thing about America. We are presumed
9 innocent. And I mentioned to you and the judge may
10 mention later that this innocence is like a robe of
11 righteousness that you all -- we all wear. The
12 prosecutors can't come up here and start talking about I
13 think, maybe, I'm sure he did, pull at the robe, tug on
14 the robe. He can't do that. He can't. And he did. But
15 that doesn't work. It says this presumption of innocence
16 is like a robe of righteousness that we all wear, and he
17 must remove that robe beyond a reasonable doubt. He,
18 well, maybe he did, oh, he's lying. Robe of
19 righteousness, everybody.

20 Let's now look at some of the evidence that you all
21 have heard about, and see why the prosecutor has failed to
22 prove that James Williams is guilty beyond a reasonable
23 doubt. Now, we do not contest the fact that Malik and
24 Ashley were shot. That's unfortunate, it did happen, they
25 were shot, and there's nothing that any of us can do about

1 it. The fact, however, is -- that fact is not the issue.
2 The issue here is did James Williams shoot Malik and
3 Ashley? One answer, ladies and gentlemen, is that the
4 evidence that these shows is that the state failed to
5 prove that James shot both of them, and we're going to get
6 into some detail about that a little later. And it really
7 comes down to -- which version of the story do you
8 believe? Do you believe the prosecutor, or do you believe
9 the defendant?

10 Now, I want to just look at some of their witnesses.
11 I won't go through all the witnesses that you've already
12 heard about. I'm only going to talk about a few. I'm not
13 going to talk about the 911 operator and the young deputy
14 that came up and said he just collected the evidence, but
15 I do want to start with what we call occurrence witnesses.
16 Chelsea Rogers. Chelsea Rogers. We never heard of
17 Chelsea Rogers a week before this trial. This happened
18 two years ago. Solicitor said, oh, I got a witness that
19 can put your client at the scene. Where has she been? No
20 statement from her. She appears in this courtroom. Very
21 reluctantly, as you all remember. Chelsea Rogers, the
22 girlfriend of Malik. I said, Oh, God, we in trouble now.
23 He brings the dang girlfriend in here.

24 So she comes in and says no, there was real no
25 disturbance at the club. Did you see a bumping into? No.

1 I didn't see any of that. Did you go there with Malik.
2 No, no, I went with my girlfriends. What time did you
3 leave the club? Well, I left the club around 1:00 or
4 1:30 in the morning? Was Malik with you? No, he wasn't
5 really with me. He was following behind me with his
6 friends. Okay. Then I heard gunfire, saw Malik run to
7 the other side of the club, where he was parked. She said
8 she was over here. When the gunfire started she said
9 Malik ran to the other side of the club. The front is
10 here. This is the front of the club. She went over here,
11 about 10:00. She said when the gunfire started, Malik ran
12 here to this grassy area where he was parked. No one ever
13 else testified that Malik was over in this area but
14 Chelsea. I don't understand that, because we've heard no
15 one else say that Malik was over in that area. But if she
16 said -- and she was there on the scene, ran to the other
17 side where he was parked and his friends were parking.
18 Remember, now, Malik said -- one of his stories -- he said
19 my friend was shooting. My friend started shooting first,
20 and then I grabbed the gun from him and I shot one time.
21 Then he changed that, no, I didn't shoot one time. My
22 friend didn't do any shooting. I did all the shooting. I
23 emptied my gun, my .38 into the area where Williams was.
24 Then she said -- well, the question was asked, well,
25 then do you know who was doing the shooting then, young

1 lady. Her answer was no. I heard it, but I don't know
2 who was shooting. So they brought her in here to try to
3 nail down the case a little tighter, and she ends up
4 saying I don't know who was shooting that night. Not very
5 helpful.

6 Okay. Then the next person I want to just talk about
7 is Ashley R. . One of the victims. Now, in the police
8 report, she said that she saw Malik the same day at Poplar
9 Square. But she didn't really know his name at that time.
10 She said he came with some friends who she was shooting
11 dice with. Was he shooting dice too? No. He wasn't
12 shooting the dice, but he was there at Poplar Square. So
13 he know -- she knows what clothes he has on, what kind of
14 sneakers he has on, everything. She can describe Malik to
15 a T. She said he started shooting in the police
16 statement. Now, isn't that interesting. She said Malik,
17 the guy I saw at Poplar Square started the shooting. Two
18 years ago. This is her statement. The guy I saw at
19 Poplar Square started the shooting.

20 Then after she had her meeting with the
21 prosecution -- prosecutor, her story somewhat changed.
22 She said, no, no, I made a mistake. I heard -- now, in
23 two years, she never said to anyone that she heard two
24 shots. She meets with the prosecutor's office, all of a
25 sudden she comes to us and no, there were two other shots

1 before Malik started shooting. Okay? Okay. Did you ever
2 tell the police that in the two years. She was a little
3 confused, well, let's see. I think I told that lady over
4 there. Oh -- Detective Kelly? Yeah, yeah, that's the one
5 I told. We asked Detective Kelly on the stand under oath
6 did Ashley ever tell you anything about she heard two
7 shots prior to Malik shooting? What was her answer? No.
8 Never. Not one time. This is two years later.

9 Now, another one of their witnesses I think is very
10 important was their -- Ms. Eichenmiller. Ms. Eichenmiller
11 came in and said -- she was their expert. And normally
12 experts come in, the case is pretty much closed, because
13 they can get on that stand, they're good at experts,
14 they're the professionals. And we asked her, okay, we got
15 the weapon, we got the bullet that came out of Ashley
16 [REDACTED] leg. Can you say for sure that this bullet came
17 out of this weapon? And what did she say? No. It's
18 inconsistent. I can't determine that. I -- their expert
19 said I can't determine that. I'm sure there was -- I'm
20 sure it came out of there. I can prove that. She said
21 no, I can't. Then I said, well, are there other weapons
22 that fire this caliber of bullet? Sure, there are plenty
23 of them. And we went through a few of them. But their
24 expert says it's inconsistent -- it's inconclusive that
25 the bullet that shot Ashley, it's why we're here, came

1 from this particular weapon. She said there are other
2 weapons that fire that .40 round, and there are plenty of
3 them.

4 And then I thought what was really interesting then,
5 if you believe their theory, there are five bullets that
6 their Detective Snapp said went into the back of this car,
7 so there's only one bullet that remains. Let's -- just
8 one bullet that remains. This one bullet, I call it the
9 magic bullet because this one bullet had to shoot Malik,
10 go through Malik, make a right turn, go around Ashley, hit
11 Ashley on the other side on her left leg. Come on, now.
12 One bullet. That's one bullet outstanding here. We're
13 not talking about five bullets here. One bullet. They've
14 got one bullet. And they can account for five shots for
15 supposedly Williams, but this is a very magical bullet if
16 it went through Malik, turns a corner, and goes around and
17 hits Ashley in her leg.

18 These are things I think you need to just consider.
19 What I thought was the most interesting and damaging to
20 the prosecutor was their star witness. Malik was their
21 star witness. Malik comes in here, gets on the stand.
22 Now, Malik is supposed to close this case out. You all
23 heard -- I won't go through that testimony. I asked
24 Malik, did Mr. Williams shoot you? And he's the guy that
25 got shot. He said no. Now, they should be in this, so I

1 wouldn't think that there's no collusion between the two
2 of them. He said I did not even see the face of the
3 shooter. I don't know who shot me. And we here all this
4 stuff about different statements but he admitted to
5 shooting -- we know he shot because he's in jail for
6 shooting Qawiyy. And he's in jail for the attempt to
7 shoot Mr. Williams.

8 But I've been doing this about 20 years, but this is
9 the first time that I've heard a prosecutor say maybe my
10 star witness didn't like me. Maybe Malik just didn't like
11 him for whatever reason. Maybe his tie or something was
12 not right. His star witness comes in here, gets on that
13 stand and disagrees with everything he said. He said,
14 well, didn't we meet yesterday in the back room? Didn't I
15 talk to you about what you saw? He comes out here
16 yesterday and said no, I don't know who really shot me. I
17 can't say that Williams shot me. He wanted him to say
18 that. He did not say that. Well, what about all those
19 other statements. You were shot on the second. You made
20 a statement. He said, yeah, but I was under a lot of
21 medicine then. I was -- had a -- bullet hole went through
22 my leg. I'm in the hospital, you all are questioning me.
23 But he said now I'm clear. And he didn't shoot me.
24 Williams did not shoot me. I thought that was very, very
25 interesting.

1 McFadden, got on the stand, this is the guy that got
2 shot in the ear. He says shots were coming from
3 everywhere. Shots were coming from everywhere. Now, we
4 heard testimony that the friends of Malik were over here.
5 One of the statements said his friend was shooting. I
6 grabbed the gun from my friend -- and you got all that
7 you'll see it -- and I shot one time. Said, no, no, no, I
8 shot all of the .38 at Williams. So that's why we have a
9 jury. You all have to determine -- I'm glad I'm not on
10 this jury. You got to determine what you're going to
11 believe here today. Whatever you believe, it must be
12 beyond a reasonable doubt. It must be beyond a reasonable
13 doubt.

14 McFadden. He said the car was backed in, not driven
15 in. He's sitting in the car. The car is backed in.
16 Don't know who was shooting. Gunshot in the air. So
17 let's figure out -- let's look at these different
18 theories. So if you believe what the prosecutor said --
19 well, no, the car wasn't backed in. The car was pulled
20 right in. And he said Williams is lying about shooting
21 into his car. So let's suppose he's lying and that Malik
22 shot the five bullets. Remember, Detective Snapps said
23 five bullets we can account for there the back of this
24 car. So that means Malik would have to come to the car
25 with his .38, shoot five times in the back of the car.

1 Why would you shoot -- Williams is standing right there.

2 Why would you shoot in a downward trajectory?

3 I didn't ask for that information. Detective Snapps
4 said that, and I'm going to get to that next. She said
5 that. Does it make any sense that Malik would be
6 shooting?

7 Let's turn the car around. Williams said he's coming
8 towards him firing. He jumps out, he gets his gun, jumps
9 out his car behind his car. Now, everybody said well,
10 this whole business about self-defense, well, if he really
11 was fearing for his life, he would have shot and killed
12 Malik. Is that a good ending? Is that what we want? He
13 could have gotten self-defense easily because -- he -- no,
14 he chose, said I'm not going to kill him. I'm going to
15 scare him away. He's shooting. So he shot in the back of
16 his own car. And it worked, because Malik turned away and
17 ran. But it seems to be consensus of well, that kind of
18 shows that he wasn't in no imminent danger. Look, the man
19 is coming towards him, he has a gun, he's shooting a gun.
20 I don't want to hurt him. I don't want to hurt anybody.
21 So I shoot in the back of my own car, bam, we got the --
22 and look at all the rounds the detective showed. All them
23 around not in the front of the car, because it was that
24 way, the rounds in the grass back here, as if the car is
25 backed in. Just look at the information. And you will

1 get to see all of that.

2 Snapp showed us the bullets. She said there were
3 five holes in this car. Where were the hole, Detective
4 Snapp. She said I'm not an expert, but this is what I do.
5 I go to scenes like this, and I try to determine what's
6 going on. There were five holes in the back of this car.
7 And without me asking her, she said -- and all of them had
8 this downward trajectory.

9 MR. BROWN: And Your Honor, I'm going to object to
10 that.

11 THE COURT: What's the objection?

12 MR. BROWN: The objection is that she was not
13 qualified as an expert to form an opinion like that, and
14 he's now --

15 THE COURT: Objection sustained. Reasonable
16 inference based on the pictures. She can testify what she
17 observed and what she did, but not an opinion.

18 MR. HASTIE: Which is what we told her yesterday.

19 But anyway, y'all have the pictures. And you can
20 determine what the trajectory was. Okay? Just take a
21 look at the pictures because you'll have them back there
22 with you.

23 She did say that it appears that the bullets entered
24 the rear of the car, the rear of the car. Not the front
25 of the car. Again, we're back to who do you believe? Was

1 the car backed in? The bullet holes are coming through
2 the back of the car. You determine the trajectory. You
3 got the pictures. You will have the pictures. You
4 determine the trajectory. They got these sticks in here
5 like that. You determine. You don't need to be an
6 expert. You determine the trajectory.

7 Backing in versus pulling in. There's pulling in
8 facing this way. Why in the world are all the bullets
9 that we found for that gun right here is in the front of
10 the car? Makes no sense. Makes no sense.

11 Well, we talked about self-defense. We spent a lot
12 of time, well, you know, the main thing, he could have ran
13 away. He could have ran over to the mall and contacted
14 security. It's 1:30 in the morning. What kind of
15 security we got at the mall? Who is going to contact
16 security at 1:30 in the morning? Well, he could have
17 drove off. A man is shooting at you.

18 I was in the Army 20 years. I was with the Rangers.
19 Let me tell you something: If someone is shooting at you,
20 you're not thinking clearly. You're trying to do
21 something to stop the shooting. And if he thought he
22 could stop the shooting by saying I got a gun, I'm going
23 to -- I don't want to kill him. But he could have really
24 gotten self-defense if he had killed him. But I didn't
25 want to kill him. And now they say well, he really wasn't

1 in imminent danger because he didn't kill him. No. He
2 didn't want to kill him, but I'll shoot in the back of my
3 car. Maybe the noise will scare him away.

4 Have you ever been where rounds are going off? I
5 live on the south side of Sumter. We got rounds going off
6 almost every day, especially on Fridays. And you want to
7 hear rounds, that could be two blocks away and sound like
8 they're in your house. This guy is shooting at him. He
9 said, well you could have just run out back. Why didn't
10 you just get your car and drive away? The guy is shooting
11 at me. Drive away? Well, everybody when this was over,
12 everybody else left. Yeah, everybody was running from
13 that place. He joined and took Qawiyy to the hospital.

14 Reasonable doubt. I'm so glad you're going to get a
15 chance to look at the photos. They'll probably talk about
16 circumstantial evidence can sometimes lead to -- I'm a
17 strong believer in circumstantial evidence because it can
18 lead to long conclusions. I guess that's the other
19 saying, if it walks like a duck and quacks like a duck, it
20 must be a duck. Just as many years ago when I bought my
21 new car, and that was a long time ago, I just washed it
22 up. And I came out there and my son made a smudge on the
23 window. And I just washed the car. And I jumped on him
24 and chewed him out. Why would you do that, and he was
25 just quiet because he know how I can be sometimes. Then

1 my daughter came and said, Dad, I'm sorry. I did it. But
2 I looked up and I assumed, the circumstantial evidence,
3 that he did it.

4 The law, whether it's self-defense, whatever,
5 attempted murder, Judge King is the expert. He's going to
6 charge you on the law. So it's not what I say. It's not
7 what Mr. Brown says. It's what the judge says. Although
8 we presented evidence in this case, we are not required to
9 prove anything. You remember that. This young man is not
10 required to prove anything. The law is clear. It's
11 Mr. Brown's responsibility. Beyond a reasonable doubt,
12 now. Don't forget that. Who among you can't say you have
13 reasonable doubt from the evidence you heard in this
14 courtroom? Just unbelievable that James shot Malik or
15 Ashley, unless you believe in the magic bullet. Of course
16 you'd have doubt. You got to have doubt. If nothing
17 else, the evidence you heard is filled with doubt.

18 This case now rests in your hands. When this case is
19 over, I and probably some of you and others from time to
20 time will reflect back upon this case. It may be in the
21 early morning hours when you're drinking a cup of coffee.
22 Let's hope not when you're having a cold beer. This case
23 could suddenly come back to you late at night when you
24 fall asleep. Whenever you think about this case, you'll
25 probably going to ask one thing: Did I do this defendant

1 justice? Did I do him justice? Don't be like my
2 mother-in-law I told you about when she said I can just
3 look at people and tell whether they're guilty or not.
4 No, you got to listen to the evidence, and you all have.
5 If you have doubts about this case, have them now. Don't
6 wait until this afternoon when you're home and say, you
7 know, what, I got some concerns about this case. There is
8 no tomorrow. There is no second chance for Mr. Williams.
9 This case is filled with doubt, Malik's testimony. This
10 case is filled with doubt, Ashley's testimony. This case
11 is filled with doubt, Chelsea's testimony. This case is
12 filled with doubt, Ms. Eichenberger (sic) that's her
13 name -- said I don't know. I can't say. Their expert.
14 Ask yourself those hard questions because for him,
15 tomorrow is too late. If you bring your deliberations,
16 you keep in mind, we are sure that you will return a
17 not-guilty verdict. There's just too much doubt in this
18 particular case here. And that's what you're looking at
19 here. Your job is not to help the prosecutor. Your job
20 is to look at the evidence where the judge is going to
21 tell you, and you make the determination.

22 Now, ladies and gentlemen, I only have this one
23 chance to talk with you. When I'm finished, the
24 prosecutor will come back and make a rebuttal to the
25 things I've said. I don't have a chance to talk with you

1 after this. And he can rebut anything he wants to. But
2 I'm confident that since you heard this evidence the last
3 day, you are able to come up with the answer for anything
4 he might tell you. When he gets up, ladies and gentlemen,
5 ask him to explain to you how and why.

6 The 13th and 15th -- the 5th and 14th amendment
7 of this constitution of the United States, the founders
8 felt so strongly, felt so strongly about it, they would
9 prefer to let a guilty man go free than convict an
10 innocent person. Beyond a reasonable doubt, you must have
11 beyond a reasonable doubt. Ladies and gentlemen, the
12 prosecutor has not proved beyond a reasonable doubt that
13 James shot Malik or Ashley. The prosecution has utterly
14 failed to prove the issue beyond a reasonable doubt.
15 Because of their failure, we ask you to return only the
16 verdict this evidence demands. Let James go free. Let
17 him return back to Central Carolina. He's not there this
18 summer; he starts back in the fall. Let him return to his
19 family. Let him return to his friends, and find him not
20 guilty. Thank you for your time.

21 THE COURT: All right. Mr. Brown?

22 MR. BROWN: May it please the Court, Your Honor?

23 THE COURT: Yes, sir.

24 CLOSING ARGUMENTS

25 BY MR. BROWN:

1 Madame Forelady, ladies and gentlemen. I've got a
2 lot to say about what he just now said, and maybe this
3 isn't what I need to start with, but I'm just going to put
4 it out there, because you need to know this. It was
5 implied by the defense counsel on two or three separate
6 witness occasions that their stories changed after they
7 met with me. What that would be called is being a knowing
8 party to perjury, which is an ethical violation, could
9 cost me my law license, and would be grounds for me to be
10 written up by ODC, office of disciplinary counsel. I'm
11 going to telling you right now, that never happened. My
12 rule with witnesses is to tell the truth. Every single
13 witness, that's the one thing I tell them. Whether or not
14 it's Officer Miller who just collected the bullet, whether
15 it's Nathalie, the lead detective, whether it's Malik,
16 whether it's Ashley, whether it's Chelsea, whether it's
17 anybody who is going to take the stand, my rule is just
18 tell the truth. That's all I want. That's all I want you
19 to hear is the truth. I'm not bringing lies in the
20 courtroom.

21 Defense counsel thinks I'm doing that, he knows who
22 to write. But that didn't happen. Quite frankly, I
23 resent the implication. It bothers me that he's going to
24 get up here and tell y'all that's what happened in this
25 case. That I'm sitting here telling people to change

1 their story to lie to you. That didn't happen. This case
2 is about the truth. This case is about what happened at
3 Rast Street on May 2nd, 2015. It's not about what my
4 version of it, it's about what the truth is. I'm not
5 bringing lies in here.

6 James Williams is bringing lies in here. He's the
7 one sitting there trying to add third shooters to it,
8 acknowledging from the beginning that he's always said it
9 was two shooters, but trying to bring in a third shooter
10 here at the tail end. He's the one sitting there trying
11 to tell you that he's shooting all of his rounds in the
12 back of a car. He's the one bringing lies in here, not
13 me. And I don't appreciate that one bit.

14 Ladies and gentlemen, I want to talk to you about all
15 the things defense counsel just now brought up to you.
16 And I'm just going to go witness by witness the same way
17 he did. I'm going to start out with Malik Myers. I think
18 he referenced him as my star witness. I don't think I
19 would have ever, and never did, even in my opening
20 statement, classify him as my star witness. I don't think
21 it's probably much of a surprise to you that he might not
22 like me. Malik Myers, what you saw was likely him abiding
23 by some type of street code that you don't snitch. It
24 doesn't take even half a second for y'all to understand
25 that's where it is. Ladies and gentlemen, you know what

1 Malik's real story was. Yeah, he got up there and sat
2 there for the first time and said I didn't know anything,
3 I never saw James' face. Nothing happened inside the
4 club. You got two statements over here. You got the
5 first one and the second one. Y'all can have them back
6 there. I ask you to read them. Letter by letter. Word
7 by word. Y'all have them. Read them as many times as you
8 want. You can find out what Malik's story is. He's not
9 my star witness. He was one of my defendants. But ladies
10 and gentlemen of the jury, he provides context to what the
11 overarching issues in this case is. And that is that him
12 and James Williams, they have beef. It dated back for --
13 since they were in middle school, which unfortunately,
14 hadn't been too long ago.

15 Defense counsel wants to discount they ever had beef,
16 ignoring the fact that to do that discounts James
17 Williams' story. The same one he provided to you. James
18 Williams even told you they bumped each other in the club
19 and that they had beef since they were in middle school.
20 Now he wants you to believe Malik's side where they don't
21 have beef, and also say that James is being honest when
22 they did.

23 Ladies and gentlemen, present witnesses, presenting a
24 trial, presenting facts to a jury, it can be a laborious
25 process. It can be a very tough thing to do, because

1 sometimes people see things from different perspectives.
2 Sometimes people have motives. Malik's motive is he
3 probably doesn't like me, and Malik's motive is he's got
4 some street code, some prison code, whatever it is that
5 he's not going to snitch. You saw that. And I think you
6 saw it with your own eyes when he was up there, how Malik
7 is. He's not my star witness. He's a context witness.
8 He's who I'm going to bring in because I'm not hiding
9 anything from you. He provided the context to their
10 fights. He provides the context to who it was shooting
11 over there, which, by the way, James acknowledges.
12 Everything I wanted from Malik -- by the way, James
13 acknowledges. We know it's true. Don't let them tell you
14 he's my star witness. He's not. He's exactly where he
15 needs to be.

16 Ashley and Chelsea, you know, defense counsel tried
17 to make you a big deal that Chelsea popped up for the
18 first time a week ago. I'd offer to you that's called
19 investigating. My job as prosecutor is to do the best job
20 I can finding witnesses, getting them here for you, people
21 who know something. They don't know something, I'm not
22 going to bring them to you, because that's wasting your
23 time. But Ashley, you saw it. She didn't want to be
24 here. I put a subpoena on her. We do that with witnesses
25 all the time. We have a investigator, Tom Miller. He

1 helped me track her down. That's how it goes.

2 But she knew something. She knew what happened. She
3 knew that Malik shot back -- actually, I don't think she
4 did know that. But she knew Malik wasn't shooting when
5 the first shots were fired. And she knows when Malik ran
6 off, and then she didn't see Malik the rest of that night,
7 but she knows that Malik wasn't the first shooter.
8 Ashley, they like to suggest that I changed her story, but
9 ladies and gentlemen, I submit to you that when we're
10 talking about Ashley's statement and they're saying that
11 she said that James shot first -- or I'm sorry, Malik shot
12 first, that wasn't testimony. The testimony that came out
13 when they were asked about it was that yeah, Malik shot.
14 He was the guy that shot. She didn't see who the other
15 shooter was. There were gunshots, and she identifies
16 Malik as one of the shooters. They're trying to twist
17 that, they're trying to turn it. That's not the
18 testimony. That's not what you heard. That's not what I
19 heard.

20 And what I heard from Ashley, when she took the stand
21 was a much more expanded version than anything she had
22 told the police, because we talked to her. We asked her
23 questions. We told her we wanted the truth. She came in,
24 she was under subpoena, and she told you. She told each
25 and every single one of you what happened. She saw a guy

1 that she knew from earlier that day in Poplar Square. She
2 knew him as Tubby, I think it was. She saw after some
3 gunshots started, she saw him start shooting back. I want
4 you to ask yourself something. If I were trying to
5 persuade witnesses to change their stories, if I were
6 trying to get them to lie from that stand, don't you think
7 I would have had her and Chelsea say we saw James do it?
8 Am I that dumb of a prosecutor? Am I that bad of a
9 prosecutor that I'm not actually going to put the gun in
10 his hand with every single witness I got? No. I would
11 like to think I actually have some common sense. If I'm
12 going to do that, I'm going to do it big. No. They told the
13 truth. They didn't see if it was James or not. They
14 didn't know it was James or not. They're not the
15 witnesses who prove that it was James or not. James
16 admits he's the one that shot. Malik says albeit
17 reluctantly and through his statements that James is the
18 one shooting. Michelle Eichenmiller, she gets up here and
19 testifies what I think is pretty convincing evidence that
20 it was his bullet that hit Ashley. They didn't say that.
21 If I was planting evidence, they would have said that.
22 I'm not planting evidence.

23 You heard from Michelle Eichenmiller. I have to
24 respectfully disagree with Mr. Hastie about his summation
25 of her argument. First off, he said the bullets were

1 inconsistent. I don't think the word "inconsistent" was
2 ever used up there. It was inconclusive. And the
3 scientists out there will know that to draw scientific
4 conclusions, you have to have a pretty high burden. It
5 just is what it is. And you heard her testify about that.
6 You heard that they even got to the point where they ruled
7 that the two were suitable for looking at each other
8 because they were both .40. The one that came out of
9 Ashley could have been .40 or 10-millimeter. But it was
10 consistent with a .40. It was fired from a conventionally
11 barreled -- or conventionally barreled pistol. It was six
12 twists to the right. Bullet came out of this Smith and
13 Wesson fired at that water tank. Was a conventionally
14 barreled pistol, six twists to the right. .40 Smith and
15 Wesson fired from a Springfield XD.

16 Calvin wants to kind of -- Mr. Hastie, I'm sorry.
17 Mr. Hastie wants to discount that. He wants to say, oh,
18 there's tons of .40s. Yeah, there is. Go to Simpson's.
19 Bet you'll probably find about 50 there. You're probably
20 going to find Forests, you're probably going to find
21 Hi-points if you really want to go real cheap.
22 Springfields, Sig Sauer. I could name off dozens of guns
23 you could find over there.

24 But in the same sense, every single one of us has
25 fingerprints. And what I'm paying attention is much less

1 the .40, yeah, that will corroborate. What I'm paying
2 attention to is conventional barrel, six twists to the
3 right, both the gun, this one, shoots the -- this one
4 shoots as well as this bullet that was pulled out of
5 Ashley R. both match. I wish they could have taken that
6 extra step. I really do. But you heard from her.
7 There's bullets she's seen where people -- she's watched
8 them shoot the gun and then she's fired another one and
9 she still can't compare them. Sometimes that just
10 happens. I can tell you what they could match. Every
11 single one of these, every single .40 shell casing that
12 was fired on that night on May 2nd, was fired from that
13 gun. Every single one. They can conclusively under
14 scientific certainty say this gun is shooting all the .40
15 rounds we're finding. And they're shooting it at six
16 twists to the right, conventional barreling. Just like
17 the bullet that came out of Ashley.

18 It's not that there's not other .40s. Her brother
19 probably has three at his house. It's about the barrel.
20 It's about that. That's the fingerprint of the gun.
21 That's how we know. That's good evidence.

22 Mr. Hastie wants y'all to draw a lot of inferences
23 about trajectories. Amanda Snapp is a very, very good
24 investigator. I've seen her on multiple cases. She is
25 good at what she does. She is not an expert on

1 trajectory. Calvin Hastie is a good lawyer. I've seen
2 him on many, many cases. He is not an expert on
3 trajectory. Trajectory is a fine science. Trajectory has
4 to factor in all sorts of things, whether or not things
5 bounce off of things, all sorts of stuff like that that we
6 did not have a single person here who could talk about
7 that. I don't know that we have a single person in Sumter
8 that knows how to talk about that.

9 He wants you to draw a bunch of inferences about it,
10 but I'll tell you what, I just don't think you can. But
11 what you do know is that car got hit up by five -- about
12 five times and we also know that Malik Myers fired six
13 rounds, and we know one of them hit Qawiyy.

14 But that does beg the question about I think a star
15 part of his argument is the magic bullet. I want y'all to
16 remember the magic bullet is inherently reliant on the
17 fact that five of the rounds got shot into the back of the
18 car, which I'm going to say it again, is absurd. No one
19 does that. Mr. Hastie comes up here and tells you about
20 how he was a ranger, and I thank him for his service. But
21 I submit to you that any time they were having gunfights,
22 I bet know one was shooting in the back of their own
23 vehicle. I bet you won't find a single case of that in
24 the military. I bet that would probably get you a good
25 bit of trouble, if not killed. No one does that. No one

1 shoots in the back of cars to scare someone off. That is
2 absolutely absurd.

3 And for this whole magic bullet theory of Mr.
4 Hastie's, it relies on the fact that he shot five of his
5 rounds in the back and the sixth one was this magic
6 bullet. No, he shot six rounds at Malik Myers, and he did
7 what we call the pray and spray. And he shot as quickly
8 he could, shot off six rounds, he hit Malik Myers with one
9 of the bullets and Ashley with the other. And we know it
10 was -- he hit Ashley because it was the bullet that was
11 six twists to the right, conventional barrel. We know he
12 hit Malik because there was only two shooters and Malik
13 didn't shoot himself. It just doesn't make sense. His
14 entire argument doesn't make sense.

15 And there's a point where we talk about the law, we
16 talk about the facts, and we talk about your job as a
17 jury. The reason we don't give y'all training, the reason
18 we don't show you some big video about how to be a juror,
19 is because y'all have life training. Y'all use common
20 sense. That's what this is about, it's about common
21 sense. Nothing in the defense's case has any level of
22 common sense. The common sense is that on the night of
23 May 2nd, 2015, at 330 Rast Street, those two, James and
24 Malik, got into a little dispute at the club, and they
25 decided they were going to take it out in the parking lot.

1 They decided they were going to have a shootout. No one
2 was shooting in the back of the car, other than Malik,
3 because he's bad at aiming. James was not shooting in the
4 back of his car to scare someone off. James was shooting
5 at Malik, and he hit Chelsea -- not Chelsea. He hit
6 Ashley. He hit Malik, he hit Ashley, and he's on trial
7 for that now.

8 Just one second.

9 In just a moment you're going to get the case, and
10 you're going to get the opportunity to deliberate. I want
11 you to deliberate long and hard. This is an important
12 case. I agree with defense counsel. There isn't a chance
13 to reconsider, but what they're inviting you to do is
14 ignore common sense and feel bad for James. Yes, there is
15 a robe of righteousness, and we do have a burden beyond a
16 reasonable doubt. I love that burden. I welcome it. I
17 deal with it every single day. And sometimes that mean I
18 cut cases loose because I know I can't prove it.
19 Sometimes that means that, you know, we take cases to
20 trial because they're really strong and we know how strong
21 our case is. We level those out all the time and we look
22 at our burden. Ladies and gentlemen, we've proven it. He
23 talks about us tugging on the robe. At this moment, we've
24 taken it off of him. And he needs to have it taken off of
25 him. He's not innocent. Not any longer. In just a

1 moment when y'all go back there and decide that.

2 James Williams isn't innocent in this. James
3 Williams pulled a .40 Smith and Wesson Springfield model
4 XD pistol that shoots a conventionally barreled round six
5 twists to the right, and he fired six rounds off, and one
6 of them went into Ashley's leg, and one of them went into
7 James' leg (sic). The fact that nobody got killed is an
8 absolutely miracle. And it's time for his robe to be
9 taken off. He's worn it long enough. He's had it for two
10 years and two months. But that doesn't erase what he did,
11 that he hasn't done anything bad since then.

12 What we're dealing with today is the fact that on
13 May 2nd, 2015, he put every single person in that
14 parking lot's lives at risk. On May 2nd. 2015, at
15 1:30 in the morning, he hit two people with his bullets
16 because he decided that petty squabbles are worth
17 shootouts, are worth the risking of people's lives. On
18 May 2nd, 2015, he decided that instead of being the
19 bigger man and walking away, instead of saying I don't
20 need to get in a shootout, he decided he was going to do
21 that. And Ashley R. got shot and Malik Myers got shot.
22 And Malik Myers did the same thing, and that's why Malik
23 is where he is. Not as my star witness, but as an inmate
24 at the South Carolina Department of Corrections.

25 Ladies and gentlemen, I ask you to deliberate long

1 and hard on this. This is an important case. This is a
2 deadly important case. And it's time now for Mr. Williams
3 to be held accountable. Thank you.

4 JURY CHARGE

5 All right. Ladies and gentlemen of the jury and
6 Madame Forelady. If you would give me your attention.
7 You have followed very patiently and listened very
8 attentively to the presentation of the evidence in this
9 case and to the able arguments made by the solicitor,
10 Mr. Brown on behalf of the state and Mr. Hastie on behalf
11 of the defendant. And I thank you for that. It now
12 becomes the duty of the trial judge under the constitution
13 of this state to charge and instruct you on the law
14 applicable to this case. And it is your duty as jurors to
15 accept and apply the law as the Court will now state it to
16 you. As jurors, it is your exclusive duty to decide all
17 of the issues of fact in this case, and for that purpose,
18 to determine the effect, the value, and the weight of the
19 evidence presented. Both the state and the defendant have
20 a right to expect that you will conscientiously consider
21 and evaluate the evidence and apply the law of the case
22 thereto, to the end that both the state of South Carolina
23 and the defendant will receive and obtain a fair and
24 impartial trial.

25 Now, when I use the word "defendant," I refer, of

1 course, to Mr. James Caleb Williams. The state of South
2 Carolina, by the bill of indictment in the case, charges
3 the defendant, Mr. Williams, with three offenses. He is
4 charged in one offense or one charge is that he did, in
5 Sumter county on or about May the 2nd of 2015 attempt to
6 kill, with malice aforethought, one Malik Raekwon Myers.
7 The charge is one of attempted murder. He's also charged
8 that on May the 2nd 2015, that he did attempt to charge --
9 he did attempt to kill Ashley R. by firing a gun
10 numerous times at Malik Raekwon Myers and actually
11 striking Ashley R. with a bullet in her thigh. And that
12 is the second charge of attempted murder.

13 He is also charged with the crime of possession of a
14 weapon during the commission of a violent crime, and
15 charges that on May 2nd, 2015, while possessing a
16 firearm or visibly displaying what appeared to be firearm,
17 he did -- during the commission of a violent crime, and
18 this is a separate charge in that case.

19 The charges are contained in this indictment. Now,
20 to these charges, the defendant has pled not guilty. And
21 as a result, it is your duty to weigh the evidence in this
22 case and to determine the guilt or innocence of the
23 defendant. This plea of not guilty by the defendant
24 places the burden of proof on the state to prove by
25 evidence that guilt of the defendant beyond a reasonable

1 doubt before you, the jury, can find him guilty. The
2 defendant, Mr. Williams, is presumed in the law innocent
3 of the charges contained in the indictment. It is a
4 cardinal and fundamental rule of the law of evidence that
5 a defendant, irrespective of the enormity of the charges
6 against him, will always be presumed innocent for the
7 crimes for which he is indicted unless and until the guilt
8 of the defendant has been proven by evidence which
9 satisfies you, the jury of his guilt beyond a reasonable
10 doubt. The presumption of innocence is not a mere legal
11 theory. It is not just a legal phrase. The presumption
12 of innocence is a substantial right to which every accused
13 is entitled. Our Supreme Court has declared that the
14 presumption of innocence is like a robe of righteousness
15 placed about the shoulders of this defendant, and it
16 remains with him and assigns to him the class of the
17 innocence until that presumptive robe of righteousness has
18 been stripped from his person by evidence satisfying you
19 the jury of the guilt of the defendant beyond a reasonable
20 doubt.

21 The presumption of innocence accompanies the
22 defendant from the time of his arraignment and appearance
23 in the court and continues with the defendant after you
24 retire to the jury room to deliberate your verdict. The
25 presumption of innocence remains with the defendant and

1 continues in existence to his benefit until you, the jury,
2 reach the conclusion that the defendant has -- that the
3 state has proven the guilt of the defendant beyond a
4 reasonable doubt.

5 Now, what is a reasonable doubt? The state is not
6 required to prove the guilt of the defendant beyond all
7 doubt or beyond every doubt, but beyond a reasonable
8 doubt. As I said, what is a reasonable doubt? Well, a
9 reasonable doubt is not an imaginary or fanciful doubt or
10 a weak doubt. It is a substantial doubt. It is a doubt
11 which the words imply, a doubt from which you can give or
12 assign a reason based on the testimony and the evidence in
13 the case. A reasonable doubt is not any sort of a doubt.
14 You and I know from every day life experiences that you
15 may have a sort of a doubt about any matter that arises,
16 no matter how serious it may be or how trivial it may be.
17 A reasonable doubt is a doubt which makes an honest,
18 sincere, conscientious juror hesitate to act. Proof
19 beyond a reasonable doubt is guilt that leaves you firmly
20 convinced of the defendant's guilt. If you have a doubt
21 for which you can assign a reason as to the guilt of the
22 defendant, then he is entitled to a verdict of not guilty.

23 Reasonable doubt may arise from the evidence which is
24 in the case or from the lack of evidence in the case.
25 You, the jury, must make the determination of whether or

1 not reasonable doubt exists as to the guilt of this
2 defendant. The very fact, however, that the jury engages
3 in a full and free discussion of the issues of guilt or
4 nonguilt in the case with the normal conversational ebb
5 and flow on these issues, does not mean that reasonable
6 doubt exists in this case or in any case.

7 Now, I charge you that the defendant is entitled to
8 every reasonable doubt arising in the whole case or any
9 defenses asserted by the defendant. If, upon any issue of
10 fact essentially to conviction and a verdict of guilty,
11 you have a reasonable doubt as to how that issue should be
12 resolved, it would be your duty to resolve that doubt in
13 favor of the defendant. A defendant, ladies and gentlemen
14 of the jury, is not required to prove his innocence, but
15 the state is required by law to prove every essential
16 element of the offenses charged against the defendant by
17 evidence which satisfies you the jury of the guilt of the
18 defendant beyond a reasonable doubt before you can convict
19 the defendant and find him guilty. If then, upon the
20 whole case, you have a reasonable doubt as to the guilt or
21 innocence of the defendant, he is entitled to that
22 reasonable doubt, and would be entitled to an acquittal
23 and a verdict of not guilty.

24 But on the other hand, if upon the whole case, you
25 find that the state has proven by evidence which satisfies

1 you the jury of the guilt of the defendant beyond a
2 reasonable doubt, then in such circumstances, it would
3 equally be your duty to convict the defendant and find him
4 guilty.

5 Now, I instruct you on the indictment in the case,
6 which I hold in my hand, is not evidence and cannot be
7 considered by the jury as evidence. The indictment is
8 simply the formal written instrument which contains the
9 charges against the defendant, and serves as the document
10 by which this matter is brought to trial. During this
11 trial, each of us, you and I, have certain duties to
12 perform. As the trial judge, it is my responsibility to
13 preside over the trial, and I also had the duty to rule
14 upon or pass upon the admissibility of evidence offered
15 during the progress of the trial. You are to consider
16 only the competent evidence before you, and you are to
17 disregard and disabuse from your mind any testimony
18 ordered stricken from the record, if there be any, and you
19 are to consider only the testimony which has been
20 presented from the witness stand, together with any
21 exhibits admitted into the record of this case.

22 I have the additional duty to charge you with the
23 applicable law in this case. As the presiding judge, I am
24 the sole judge of the law. It is your duty to accept the
25 law as I now state it to you. If you have any

1 preconceived idea on what the law is or what the law ought
2 to be, and it does not agree with what I tell you the law
3 is, you are obligated under your oath to abandon this
4 preconception on your part because you are sworn to accept
5 the law precisely as I now state it to you.

6 In every case tried in this court before a jury, the
7 judge becomes the sole and exclusive judge of the facts.
8 You, the jury, are the judge of the facts in this case.
9 The Court is the judge of the law. The constitution of
10 this state has declared that the trial judge shall not
11 intimate, state, comment upon, or make any statement to a
12 trial jury about the facts in the case. Since you are the
13 sole judge of the facts, you're not to infer from anything
14 I have said during the progress of this trial and ruling
15 upon the admissibility of evidence or otherwise, or
16 anything I say to you now during the course of this
17 trial -- course of this charge that I have any opinion
18 about the facts of this case. The law does not permit me
19 to have an opinion about the facts of the case. That is a
20 matter solely for you, the jury, to determine.

21 As jurors, then, it is your duty to determine the
22 effect and the value and the weight of the evidence
23 presented during the course of the trial. Necessarily,
24 then, you must assess the credibility of the witnesses who
25 have testified in this case. "Credibility" is simply a

1 legalistic terms which means believability. it becomes
2 your duty, then, to analyze and evaluate the evidence and
3 to determine that evidence which convinces you of its
4 believability. I charge you that in determining the
5 question of credibility or believability of the witnesses,
6 you may believe one witness as against several witnesses
7 or several witnesses as against one witness. You may
8 believe a part of the testimony of a witness and reject
9 the remaining part of the testimony of that same witness.
10 You may believe the testimony of a witness in its entirety
11 or reject the witness of a witness in its entirety.

12 You may consider whether any witness has exhibited
13 any interest, any bias, or any prejudice in the case, and
14 you may consider the demeanor of the witness; that is, the
15 appearance of the witness from the witness stand. And you
16 may consider the opportunity for knowledge concerning
17 those things about which the witness testified. These
18 considerations you do not exercise arbitrarily, but if in
19 your good judgment there is sound reason for so doing --
20 because your objective ladies and gentlemen is to fairly
21 weigh the evidence, whether it comes from a witness or
22 witnesses from the state or a witness or witnesses from
23 the defendant. And in doing so, in exercising your mental
24 processes and in considering what you consider to be
25 believable, the law simply requires that you exercise your

1 good judgment, your common sense, your sense of logic and
2 reason, and your experiences in life.

3 You then apply these attributes of ability to the
4 evidence and determine what you consider to be the
5 credible and believable evidence. And to these facts, as
6 determined by you the jury, you take and apply the law as
7 the Court will now state it to you, and thus arrive at a
8 verdict in this case.

9 Now, ladies and gentlemen, I want to define the
10 offenses in this case. And I will start first with the
11 charge of attempted murder, which the defendant is charged
12 with in two counts. South Carolina code section 16-3-29
13 provides that a person who, with intent to kill, attempts
14 to kill another person with malice aforethought, either
15 expressed or implied, commits the offense of attempted
16 murder. The defendant is charged with attempted murder.
17 Murder is the killing of another person with malice
18 aforethought. Malice is hatred, ill will, or hostility
19 toward another person. It is the intentional doing of a
20 wrongful act without just cause or excuse, and with the
21 intent to inflict an injury -- or under circumstances that
22 the law will infer an ill intent. Malice aforethought
23 does not require that malice exist for any particular time
24 before the act is committed. But malice must exist in the
25 mind of the defendant just before and at the time of the

1 act committed.

2 There must be a combination of the previous ill
3 intent and the act. Malice aforethought may be expressed
4 or inferred. The terms "expressed" and "inferred" malice
5 do not mean different kinds of malice, but merely the
6 manner in which malice may be shown to exist. That is
7 either by direct evidence or by inference from the facts
8 and circumstances which are proven.

9 Express malice is shown when a person speaks words
10 which express hatred or ill will for another, or when the
11 person prepared beforehand to do the act which was later
12 accomplished. For example, lying in wait for a person or
13 any other acts of preparation going to show that the deed
14 was within the defendant's mind and the express malice.
15 Malice may be inferred from conduct showing the total
16 disregard for human life.

17 An attempt is an effort to accomplish a crime which
18 does not succeed. An attempt inflicts a specific -- an
19 attempt includes a specific intent to do a particular
20 criminal act with an act failing short of the act
21 intended. Let me read that again. An attempt includes a
22 specific intent to do a particular criminal act along with
23 a falling short of the act intended. The state must show
24 more than mere preparation in intent. The act must be
25 some overt act committed in the effort to commit the

1 crime.

2 "Intent" means intending the result which actually
3 occurred, not accidentally or involuntarily. Intent may
4 be shown by acts and conducts of the defendant, and other
5 circumstances from which you may naturally and reasonably
6 infer intent.

7 To prove attempted murder, the state must prove
8 beyond a reasonable doubt that the defendant attempted to
9 cull another person with malice aforethought. Of course,
10 those instructions on attempted murder would apply to two
11 charges in this case of attempted murder.

12 Now, in addition to that, the defendant is charged
13 with the crime of possession of a weapon during the
14 commission of a violent crime. South Carolina law
15 provides that if a person is in possession of a firearm or
16 visibly displays what appears to be a firearm during the
17 commission of a violent crime and is convicted of
18 committing or attempting to commit the violent crime, that
19 person is guilty of the crime -- separate crime of
20 possession of a firearm during the commission of that
21 crime.

22 "Firearm" is defined as any machine gun, automatic
23 rifle, revolver, pistol, or any weapon which will or is
24 designed to or may readily be converted to expel a
25 projectile. South Carolina law further provides that

1 attempted murder is a violent crime.

2 For you to find the defendant guilty of the separate
3 offense of possession of a firearm during the commission
4 of a violent crime, you must first find the defendant
5 guilty of either committing or attempting to commit a
6 violent crime; in this case, attempted murder. If you
7 find the defendant guilty of attempted murder, you must
8 then determine whether the state has proven beyond a
9 reasonable doubt that the defendant was in possession of a
10 firearm or visibly displayed what appeared to be a firearm
11 during the commission of a violent crime.

12 Now, ladies and gentlemen, I want to instruct you on
13 the doctrine known in the law as transferred intent. The
14 law of transferred intent provides that an actor's intent
15 to kill an intended victim does transfer to an actual
16 victim. Under South Carolina law, all that is required
17 for attempted murder is the mental state of malice
18 provided by the intent to kill a human being coupled with
19 an act that caused the injury of another person. If there
20 is malice in the defendant's intent or in the defendant's
21 heart, he is guilty of the crime charged. It matters not
22 whether he killed or injured his intended victim or a
23 third person through mistake.

24 Now, ladies and gentlemen, there are two types of
25 evidence which are generally presented during a trial,

1 direct evidence and circumstantial evidence. Direct
2 evidence is -- proves the existence of a fact and does not
3 require deduction. Circumstantial evidence is prove of a
4 chain of facts or circumstances indicating the existence
5 of a fact. Crimes may be proven by circumstantial
6 evidence. The law makes no distinction between the weight
7 or value to be given to either direct or circumstantial
8 evidence. However, to the extent that the state relies on
9 circumstantial evidence, all of the circumstances must be
10 consistent with each other, and when taken together, point
11 conclusively to the guilt of the accused beyond a
12 reasonable doubt. If these circumstances portray the
13 defendant's defendant behavior as suspicious, the proof
14 has failed.

15 The state has the burden of proving the guilty -- the
16 defendant guilty beyond a reasonable doubt and this burden
17 rests with the state regardless of whether the state
18 relies on direct evidence, circumstantial evidence, or a
19 combination of both.

20 Now, ladies and gentlemen, there has been testimony
21 in this case from witnesses -- a witness qualified as an
22 expert. Although lay witnesses are limited to testifying
23 about things within their knowledge and are not allowed to
24 give opinions, certain witnesses who, by their training,
25 education, and experience, are considered experts in a

1 particular field, may give their opinions in that field
2 based upon the facts of a matter and their conclusions.
3 These opinions constitute evidence to be considered by you
4 in connection with all of the testimony in evidence in
5 this case. You may consider the expert's opinion just as
6 you do all other evidence in this case, and it is for you
7 the jury to determine how much weight to be given to the
8 expert's testimony. You must weigh such evidence and
9 accept or reject it in the same manner that you treat all
10 other evidence in this case.

11 Now, ladies and gentlemen, the issue of self-defense
12 has arisen in this case. Self-defense is a complete
13 defense. If established, you must find the defendant not
14 guilty. There are four elements required by the law to
15 establish self-defense. First, the defendant must be
16 without fault in bringing on the difficulty. Secondly,
17 the defendant must have been in actual imminent danger of
18 losing his life or sustaining serious bodily injury, or he
19 must have actually believed he was in imminent danger of
20 losing his life or sustaining serious bodily injury.
21 Third, if his defense is based upon the belief of imminent
22 danger, a reasonably prudent person of ordinary firmness
23 and courage would have entertained the same belief. If
24 the defendant was actually in imminent danger, then the
25 circumstances were such as would warrant a person of

1 ordinary prudence, firmness, and courage to take the same
2 action. Fourth, the defendant has no other probable means
3 of avoiding the danger or losing his own life or
4 sustaining serious bodily injury failing to act as he did
5 in this particular instance. These are the elements of
6 self-defense.

7 A defendant in a self-defense case has the right to
8 act on appearances. A defendant must have believed he was
9 in imminent danger, not that he was actually in such
10 danger, because he had the right to act on appearances and
11 under the circumstances as they appeared to him, he
12 believed that he was in such danger, and a reasonably
13 prudent man of ordinary firmness and courage would have
14 entertained the same belief.

15 There is no burden upon the defendant to prove
16 self-defense. The defendant is not required to prove any
17 element of self-defense. The burden is on the state to
18 disprove self-defense beyond a reasonable doubt.

19 Now, ladies and gentlemen, I have about finished my
20 instructions to you, but I will tell you you are not
21 partisans or advocates of the state of South Carolina or
22 for this defendant. Obviously such a perverted system of
23 justice would be intolerable. You have been selected by
24 both the state and this defendant and fair and impartial
25 jurors. It is your duty, then, by your joint

1 deliberations to arrive at a verdict in the case giving to
2 the defendant the benefit of every reasonable doubt on
3 each and every issue, and then to the facts which you
4 determine to be credible, you then take and apply the law
5 which has been given to you by this Court, and thus arrive
6 at a verdict.

7 The word "verdict" has a Latin derivative, and it
8 means true saying, and when you have accomplished these
9 responsibilities you will have satisfied your oath as
10 jurors, and you will have discharged your duties to this
11 Court.

12 Now I want to instruct you on your forms of verdict
13 in the case. And each charge would have a separate
14 verdict. If the state has failed to prove the guilt of
15 the verdict on any charge, your verdict would be two
16 words, not guilty. If the state has proven the guilt of
17 the defendant beyond a reasonable doubt, your verdict on
18 each charge would be guilty. The verdict that you render
19 in this case must be the verdict of each and every juror.
20 It must be your unanimous verdict. All 12 of you must
21 agree on the verdict which you authorize your forelady to
22 write.

23 Now, Madame Forelady, I have prepared a form for you
24 to use as a verdict in this case, and I will tell you that
25 the order in which I have put the possible verdicts on

1 this form has no significance whatsoever. You should not
2 infer from the order in which I have put the possibility
3 verdicts on here as inferring that I have any opinion as
4 to what your verdict should be. I do not. The law does
5 not allow me to have an opinion, but obviously with
6 putting something down on paper, I had to put something
7 down first and something down second.

8 But across the state up here, we have the state of
9 South Carolina, and the formalities, the name of the
10 court, the case number and name, and the word verdict.
11 And the first is we, the jury by unanimous consent, find
12 the defendant, James Caleb Williams Number 1 on the charge
13 of attempted murder of Malik Myers either guilty or not
14 guilty. And you would signify your verdict by putting a
15 checkmark or an X mark by the verdict that you find.
16 Secondly, on the charge of attempted murder of Ashley
17 [REDACTED], we find the defendant guilty or not guilty, and you
18 would either check or X whichever one you found on that
19 count.

20 If you find the defendant not guilty of both charges,
21 stop and go no further. Sign the verdict form and inform
22 the bailiff. If you find the defendant guilty of either
23 of the attempted murder charges, consider the separate
24 charge of possession of a weapon during the commission of
25 a violent crime. On that charge, we find the defendant

1 either guilty or not guilty. And you would notify the
2 bailiff, and we would return you to the courtroom.

3 Now, ladies and gentlemen, I'm going to send you to
4 your jury room now. I'm going to ask you not begin your
5 deliberations just yet. The law does require I take up
6 certain matters with the lawyers that are involved. It
7 may be necessary for me to return you to the courtroom for
8 the -- for additional instructions. If that is not
9 necessary, I will send you the verdict form and the
10 bailiffs will bring you the exhibits, and will tell you to
11 begin your deliberations. The stations will be stationed
12 outside your jury room door for security during your
13 deliberations. When you have reached a verdict, simply
14 knock on the door, notify the bailiff, and we will return
15 you to the courtroom as promptly as possible.

16 At this time, then, I would ask you to go to your
17 jury room, but please do not begin any deliberations just
18 yet. Thank you. You may go with the bailiff.

19 (The jury left open court at 11:42 a.m.)

20 THE COURT: Any additions or exceptions to the charge
21 on behalf of the state, Mr. Brown?

22 MR. BROWN: None, Your Honor.

23 THE COURT: On behalf of the defense?

24 MR. HASTIE: No, Your Honor.

25 THE COURT: All right. Counsel, let's check the

1 exhibits make sure -- I don't think there were any that
2 were just IDed. I think everything that was offered
3 was -- everything that was marked was admitted into
4 evidence. Is that what you show Madame Reporter?

5 THE COURT REPORTER: Yes, Your Honor.

6 THE COURT: Okay. And tell the jury to begin their
7 deliberations and let me talk to counsel as soon as y'all
8 examine the exhibits.

9 THE BAILIFF: What you want me to do with the
10 alternate, Judge?

11 THE COURT: Bring her back.

12 (The alternate juror entered the courtroom.)

13 THE COURT: This is the alternate? Madame Juror, the
14 law does not permit me to have but 12 jurors. The purpose
15 of drawing an alternate is in the event one of the jurors
16 becomes ill or for some other reason is unable to serve,
17 in which the alternate would be substituted for the
18 principal juror. But the law does not permit me to have
19 but 12 jurors as far as the decision is concerned. You've
20 heard all of the evidence in this case, but you're not
21 going to participate in the decision.

22 I will tell you that -- and I am going to excuse you,
23 and I will tell you that once you have been excused as a
24 juror in the case, there's nothing illegal about your
25 talking with anybody about your service in this case.

1 number tonight after 6:00, and you can call at any time
2 all night long, and your instructions for tomorrow will be
3 on that machine. Okay? Thank you. You are excused.

4 All right. Mr. Bradley, if you'll get the exhibits
5 and tell the jury to begin their deliberations and let me
6 see counsel.

7 (The jury began deliberations at 11:42 a.m.)

8 THE COURT: Back on the record with regard to the
9 matter of the state versus James Caleb Williams. Mr.
10 Williams is present with his counsel, Mr. Hastie. State
11 is present and represented by Mr. Brown of the Third
12 Circuit Solicitor's Office. As I indicated when we sent
13 the jury out and talked to counsel, I thought we would
14 give the jury until 1:00. They've been out about an hour
15 about 15 minutes. I think they went out about quarter to
16 12. And I indicated that there were two options. We
17 could order lunch for them, and bring it in, or if they
18 had not indicated they had reached a verdict by 1:00, that
19 we could send them to lunch and bring them back. Counsel
20 has agreed as I understand it, to let the jury go for
21 about an hour to get lunch and then come back and resume
22 their deliberations. And then they are not -- they have
23 no objection to that procedure, is that correct, on behalf
24 of the state, Mr. Brown?

25 MR. BROWN: Yes, Your Honor.

1 THE COURT: On behalf of the defense?

2 MR. HASTIE: That is correct, Your Honor.

3 THE COURT: All right. Bring the jury in, please.

4 Well, let me ask you this -- before we do this, do you
5 think it would be worthwhile, Mr. Brown and Mr. Hastie,
6 just to bring the forelady in and tell her that's what we
7 plan to do if they don't think they're going to reach a
8 verdict right away, or to just bring them in and go ahead
9 and send them out. What would be your preference?

10 MR. BROWN: I think the forelady coming in would be
11 just fine and would save a little time. I think that
12 would be certainly within the rules and everything like
13 that.

14 THE COURT: Do you have any objection of me bringing
15 in and inquiring of her?

16 MR. HASTIE: No, Your Honor.

17 THE COURT REPORTER: Bring the forelady in and tell
18 the others to suspend their deliberations while she's out
19 of the room.

20 THE BAILIFF: Yes, sir, Your Honor.

21 (The jury temporarily suspended deliberations.)

22 (The forelady entered the courtroom at 1:03 p.m.)

23 THE COURT: Ms. Lyles, if you could just stand right
24 there for a moment. I just wanted to tell you that we
25 want the jury to feel like they have as much time as they

1 need to deliver a verdict in this case and we're not
2 trying to starve you into a verdict, and it is lunchtime.
3 We -- if you think that -- your sense -- and I don't want
4 you to tell me where you are or anything of that nature,
5 but if you sense is that you're not going to reach a
6 verdict in the next short period of time, we'll recess for
7 lunch and let you go to lunch and come back. Do you think
8 that is a good policy, or do you think there's a chance
9 y'all may be able to reach a verdict in a short period of
10 time?

11 JUROR: I believe the lunch recess would be
12 appropriate.

13 THE COURT: Okay. All right. Good. That's what we
14 need to know. We'll send you to lunch. Thank you.

15 Bring the whole jury back in.

16 THE BAILIFF: Oh, okay. Yes, sir, Your Honor.

17 THE COURT: You can just stay in here, Ms. Lyles, and
18 we'll bring the whole jury back and we'll send everybody
19 for lunch.

20 (The jury entered the courtroom at 1:04 p.m.)

21 THE BAILIFF: Your Honor, all jurors are present.

22 THE COURT: All right. Thank you very much. Ladies
23 and gentlemen, I appreciate your diligence to this matter.
24 We have reached the lunch hour, and I want you to feel
25 like that you have as much time as you would like to

1 deliberate all the issues in this case. And so I think it
2 is appropriate that we break for lunch at this time, and
3 then have you come back after lunch and resume your
4 deliberations, so that's what we're going to do. It is
5 now about seven minutes after 1:00. I'm going to recess
6 until 2:15. Ask you to be back in the jury room, please,
7 at 2:15. Allow you to go and get your lunch and come back
8 at 2:15.

9 Several admonitions before I dismiss you. First of
10 all, again, do not talk with anybody about the case or
11 anybody who has anything to do with the case. Do not talk
12 with anyone about the case at all. If you see your family
13 or your friends during the lunch recess, don't discuss the
14 matter with them. you've got to decide the case based on
15 what you heard in this courtroom. Don't allow anyone to
16 talk with you about the case and do not do any research,
17 make any investigation, or consult printed materials,
18 newspapers, internet, Facebook, YouTube, Twitter, or any
19 social media and just forget about the matter for about an
20 hour while you get your lunch and come back to your jury
21 room and do not begin your deliberations again in the jury
22 room until all 12 people are in the jury room. It will
23 not be appropriate for small groups to discuss it --
24 discuss this matter without everybody being present. So
25 if you would be back at 2:15 and resume your deliberations

1 at that time. Get your lunch and come on back at that
2 time, and take as much time as you need to address all of
3 the issues in this matter. Thank you. You're free to go
4 to lunch.

5 (The jury left open court at 1:07 p.m.)

6 THE COURT: Any objection to the procedure or
7 instruction to the jury on behalf of the state, Mr. Brown?

8 MR. BROWN: None, Your Honor.

9 THE COURT: On behalf of the defense?

10 MR. HASTIE: None, Your Honor.

11 THE COURT: All right. Off the record, Madame
12 Reporter.

13 (A recess was taken from 1:07 p.m to 2:18 p.m.)

14 THE COURT: All right. We're back on the record with
15 regard to the matter of the state versus Williams -- Mr.
16 Williams is present with his counsel. The state is also
17 present and represented by Mr. Brown. I'm advised that
18 the jury is back. I wanted to bring them in and inquire,
19 make sure that no one has made any contact with them over
20 the lunch recess, and then tell them to resume their
21 deliberations. All right. Bring the jury in, please.

22 (The jury entered the courtroom at 2:18 p.m.)

23 THE BAILIFF: Your Honor, all the jurors are present.

24 THE COURT: All right. Thank you very much ladies
25 and gentlemen. I appreciate your promptness in being back

1 here and again, as I have done every time you've been away
2 from the courthouse, I need to ask you if anyone has tried
3 to talk with you or contact you about this matter in any
4 way over the lunch recess. I would need to know about it
5 now. Negative response, and that's good.

6 If anyone at all -- if you've talked to anyone at all
7 about this case, family or friends or anyone else or read
8 any news stories or had any media contact with regard to
9 this matter in any manner whatsoever, I would need to know
10 about that now. Again, negative response, and that's
11 good. All right, ladies and gentlemen, since you are all
12 assembled now and you have heard the instructions on the
13 law by the Court, it is appropriate for you to begin your
14 deliberations, so you may go to your jury room and resume
15 your deliberations. Let us know when you have reached a
16 verdict. Thank you.

17 (The jury left open court at 2:20 p.m.)

18 THE COURT: Any objection to the matter in which we
19 handled the lunch recess and the instructions to the
20 Court, Mr. Brown?

21 MR. BROWN: No, sir, Your Honor.

22 THE COURT: Mr. Hastie?

23 MR. HASTIE: No, sir, Your Honor.

24 THE COURT: We'll be at ease, until we hear from the
25 jury on this case.

1 (The jury resumed deliberations at 2:20 p.m.)

2 (Court's Exhibit Number 1 was marked for
3 identification.)

4 THE COURT: All right, Counsel, we have a note from
5 the jury. The question is what does the law say about
6 malice. And I think it's appropriate for me just to
7 charge basically that the defendant is charged with
8 attempted murder and murder is the killing of another with
9 malice aforethought and the same definitions of malice I
10 gave in the initial charge. Any objection to that,
11 Mr. Brown?

12 MR. BROWN: No, sir, Your Honor.

13 THE COURT: Mr. Hastie?

14 MR. HASTIE: No, sir, Your Honor.

15 THE COURT: Bring the jury in, please.

16 (The jury entered the courtroom at 2:25 p.m.)

17 THE BAILIFF: All the jurors are present.

18 THE COURT: All right. Thank you. Madame Forelady
19 and members of the jury, I have your note, and the
20 question was what does the law say about malice? So I
21 will again try to define that term for you.

22 As you know, the defendant is charged with attempted
23 murder. Murder is the killing of another person with
24 malice aforethought. Malice is hatred, ill will, or
25 hostility toward another person. It is the intentional

1 doing of a wrongful act without just cause or excuse and
2 with the intent to inflict an injury or under
3 circumstances that the law will infer an evil intent.
4 Malice aforethought does not require that malice exists
5 for any particular time before the act is committed. But
6 malice must exist in the mind of the defendant just before
7 and at the time that the act is committed. Therefore,
8 there must be a combination of the previous evil intent
9 and the act.

10 Malice aforethought may be expressed or inferred.
11 These terms, "expressed" or "inferred" do not mean
12 different kinds of malice but merely the manner in which
13 malice may be shown to exist. That is either by direct
14 evidence or by inference from the facts and circumstances
15 that are proven. Express malice is shown when a person
16 speaks words which express hatred or ill will for another,
17 or when the person prepared beforehand to do the act which
18 was later accomplished. For example lying in wait for a
19 person, or any other acts of preparation going to show
20 that the deed was within the defendant -- within the
21 defendant's mind would be express malice.

22 Malice may be inferred from conduct showing a total
23 disregard for human life. An attempt -- an attempt -- you
24 didn't ask about this, but it is, if you will recall, an
25 attempted murder case. An attempt is an effort to

1 accomplish a crime which does not succeed.

2 So these are the definitions of malice as I gave them
3 to you the first time, and I hope that will help you in
4 determining the meaning of malice to arrive at a verdict
5 in the case. All right? Thank you. You may return to
6 your jury room.

7 (The jury left open court at 2:28 p.m.)

8 THE COURT: Any objection to the instructions given
9 to the jury in response to the inquiry, Mr. Brown?

10 MR. BROWN: No, sir, Your Honor.

11 THE COURT: Mr. Hastie?

12 MR. HASTIE: No, Your Honor.

13 THE COURT: Be at ease until we hear from the jury.

14 (The jury resumed deliberations at 2:29 p.m.)

15 THE COURT: All right. Back on the record with
16 regard to the matter of the state versus Williams. Mr.
17 Williams is present in court with his attorney. And the
18 state is present and represented by the Solicitor's
19 Office. Counsel, I've been advised that the jury has
20 reached a verdict in this case. Here we go. I was trying
21 to find the indictment. I found it.

22 Anything before we bring the jury?

23 MR. BROWN: No, sir.

24 THE COURT: On behalf of the defense?

25 MR. HASTIE: Nothing, Your Honor.

1 THE COURT: All right. Bring the jury in, please.
2 Before we do, hold up a just a minute. I just want to say
3 to all of the spectators in the courtroom, and anybody in
4 the courtroom that the Court does not know what the
5 verdict in this case is going to be. No one knows what
6 the verdict is going to be. But I will tell you that I do
7 require that order and decorum be maintained in the
8 courtroom regardless of what the verdict is. If it is
9 anybody who thinks they cannot sit quietly and accept the
10 verdict of the jury without any shows of emotion or any
11 celebration or anything else, then I would ask that you
12 leave now. If there is any disturbance of the courtroom,
13 I will treat that as contempt of court, and handle it
14 accordingly. All right. Appears everyone is staying in
15 the courtroom, so I expect there to be complete order in
16 the courtroom. All right. Now you can bring them in.

17 (The jury entered the courtroom at 4:33 p.m.)

18 THE BAILIFF: Your Honor, have all jurors present in
19 the courtroom.

20 THE COURT: All right. Thank you very much. And
21 thank you, ladies and gentlemen, and I have been advised
22 that you have reached a verdict. Is that correct, Madame
23 Forelady?

24 JUROR: Yes, Your Honor.

25 THE COURT: Would you hand it up to the bailiff,

1 please.

2 From the standpoint of form, the verdict appears to
3 be correct. Mr. Bailey, you may publish the verdict. Mr.
4 Hastie, would you and your client stand, please.

5 VERDICT

6 THE CLERK: For the state of South Carolina, county
7 of Sumter, in the Court of General Sessionsdocket
8 Number 2015-GS-43-0655. State of South Carolina versus
9 James Caleb Williams, defendant. We, the jury, by
10 unanimous consent find the defendant, James Caleb
11 Williams, on the charge of attempted murder of Malik
12 Myers, not guilty. On the charge of attempted murder of
13 Ashley R. [REDACTED], guilty. On the charge of possession of a
14 weapon during the commission of a violent crime, we find
15 the defendant guilty. Signed, Diane Lyles, dated July the
16 19th, 2017.

17 Ladies and gentlemen of the jury, if this is your
18 verdict, so say you all by raising your right hands.

19 Thank you.

20 THE COURT: All right. Thank you, Mr. Hastie, you
21 may be seated. Mr. Williams, you may be seated. Anything
22 before the jury is discharged, Mr. Hastie?

23 MR. HASTIE: Yes, Your Honor, I would like to poll
24 the jury.

25 THE COURT: All right. Mr. Bailey, if you would poll

1 control I have over here it in this community.

2 You got a long life ahead of you, and you're still
3 going to have a long life ahead of you when you get
4 released from prison, but you're going to have to do a
5 substantial term in prison.

6 SENTENCE OF THE COURT

7 On the charge of attempted murder, sentence of the
8 Court is the defendant is committed to the state
9 Department of Corrections for a determinate term of 15
10 years provided upon the service of ten years, the balance
11 is suspended and placed on probation for five years.
12 Probation to begin after release from incarceration. No
13 credit for time served spent on -- with electronic
14 monitoring device while out on bond.

15 Sentence of the Court with regard to the possession
16 of a weapon during the commission of a violent crime is
17 five years to run concurrent with the other charges. So
18 when you're released and -- then because this is a
19 no-parole offense, Mr. Williams, you're going to have to
20 serve 85 percent of the sentences imposed by the Court.
21 And then when you are released on community supervision,
22 you're going to be on community supervision and have to
23 report to the probation department to be on probation.
24 But you're going to have a total of about 15 years of
25 obligation to the state of South Carolina from now if you

1 do everything right. But then you will be out -- and out
2 from under either the incarceration or supervision of the
3 state at the age of about 35, and will still have -- can
4 make a productive citizen out of yourself, and I hope
5 you're able to do that.

6 And once again, I am distressed in this case, the
7 facts of this case, not only from Mr. Williams' standpoint
8 but the other defendant in this situation, and the entire
9 family of what I perceive to be an abdication of
10 responsibilities on the part of the parents of these young
11 people.

12 This will conclude the sentencing hearing. The
13 jurors may be excused.

14 MR. HASTIE: Your Honor, may I ask a question for
15 clarification? He spent four months in the jail. Would
16 he get credit for that time or no time?

17 THE COURT: If he spent time in jail, you'll get
18 credit for that time, yes.

19 MR. HASTIE: Okay. Thank you, Your Honor.

20 (Whereupon, the proceedings were concluded.)
21
22
23
24
25

SUSPECT STATEMENT

5/6/15 11:56 LEC
 DATE TIME PLACE
 [REDACTED] 198 [REDACTED] 1700
 DOB SSN PHONE

I, James Williams OF: [REDACTED]

Having been advised of my Constitutional rights and having signed a waiver of those rights do hereby give the following statement, freely and voluntarily without fear of threat or promise of reward to Detective Kelly who has identified him/herself as a police officer.

Case# 15061639

JW I got to club creme at 11:56 11:00 in my green mustang. I went in the club and dance around until the party was over. When I got out I was sitting in my car about to leave I seen malik about to walk up to my car so I got out and went to the back over my car and by the time I got to the back over my car malik had his gun and I had a gun so he start shooting so I start shooting but I was shooting in the back of my car so the bullets wouldnt hit nobody and I didn't want him to think I was shooting in the air. JW

JW JW and when I was inside the club malik bump into me so I already knew he was up to something. JW

I have read, or had read to me the above statement consisting of 2 pages(s) and attest that it is a true and accurate account, to the best of my knowledge, of the events which took place on or about or during the above given time. I have received a copy of this statement from Detective Kelly 11694.

Signed: James Williams

Date: 5/6/2015

Witness: [Signature] 11694

Witness: _____

140 800-431-6985

STATE'S
EXHIBIT
38

SUSPECT STATEMENT

(Continued)

Case# 15061639
JW

I was ~~behind~~ behind my car shooting into my car so my gun ^{look} like it was pointed at him. He was in front of my car shooting. And threw my gun up under the tree ~~because~~ cause I seen a security.

Signed: James WilliamsDate: 5/6/2015Witness: [Signature] 11694

Witness: _____

Pg. 2 of 2

SUSPECT STATEMENT

5-4-15 2:33 LEC
 DATE TIME
 -97 [REDACTED] 0209
 DOB SSN PHONE
 I, Malik Myers OF: [REDACTED] Moxesville

Having been advised of my Constitutional rights and having signed a waiver of those rights do hereby give the following statement, freely and voluntarily without fear of threat or promise of reward to Detective Kelly who has identified him/herself as a police officer.

Case# 15061639

5-4-15 I went to a party at culb cars i was in the culb Chilling when i see this boy by the name of James and when a song come on he keep pointing his finger at me like he had a gun the hold night so when the party was over he leave before me so when i got outside i see his car was not gone yet so i walk over to the car i was in, and got a 38 gun so we was about to go when the car would not start so that when i heard shooting so i look behide me in i see it was James that was doing the shooting that's when he point the Black gun at me in shoot he shoot me so i pull out the 38 gun i had in shoot back i shoot his car about 5 time in the the gun in got into a friend car. i got my gun out of my friend car to Shelton Benjamin James shoot me in the left leg. I was talking to the

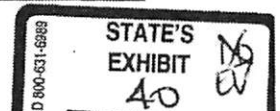
I have read, or had read to me the above statement consisting of 2 pages(s) and attest that it is a true and accurate account, to the best of my knowledge, of the events which took place on or about or during the above given time. I have received a copy of this statement from Detective Kelly.

Signed: Malik Myers

Date: 5-4-15

Witness: [Signature]

Witness: [Signature]



SUSPECT STATEMENT

(Continued)

Case# 15061639

M.M

~~James~~ hospital by a friend nophone in a SUV.
 James had Beef with me in the pass he done say
 thing to me and try to fight me a girl i was playing
 discs on poplar squares she got shoot by James
 gun i lie about taking the gun out of somebody as
 hand & cus i was afraid. i was in the car with Shelton
 Benjamin, Joquell Myers, Kendall Dow,

M.M

M.M

M.M

M.M

Signed: Malik MyersDate: 5-4-15Witness: [Signature] K.C.14Witness: [Signature] 1788Pg. 2 of 2

WITNESSES

Mark Moses
Sumter Police Dept.

ARREST WARRANT NUMBER

2015A4320100370 2015A4320100369
2015A4320100372 DIRECT PRESENTMENT
2015A4320100376 DIRECT PRESENTMENT

ACTION OF GRAND JURY

True Bill

Robert E. Halloran
Foreperson of Grand Jury
Date: 3/17/16

VERDICT

Foreperson of Petit Jury
Date:

**AMENDED INDICTMENT
DOCKET NO. 2015-GS-43-0656**

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

MARCH TERM 2016

THE STATE

vs.

MALIK RAEKWON MYERS

JAMES CALEB WILLIAMS

Indictment for

**Attempted Murder (X 2)
Attempted Murder (X 2)
Possession of a Weapon during the Commission of a
Violent Crime**

Ernest A. Finney III

ERNEST A. FINNEY, III, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

AMENDED INDICTMENT FOR

Attempted Murder (x2)
Attempted Murder (x2)
Possession of a Weapon during the Commission of a
Violent Crime

At a Court of General Sessions, convened on March 17, 2016 the Grand Jurors of SUMTER County present upon their oath:

COUNT ONE - ATTEMPTED MURDER

That Malik Raekwon Myers did in Sumter on or about May 2, 2015, violate §16-3-29 of the Code of Laws of South Carolina (1976), as amended, in that he did with intent to kill, attempt to kill another person, James Caleb Williams, with malice aforethought, either express or implied, by firing a gun numerous times at the victim.

COUNT TWO - ATTEMPTED MURDER

That Malik Raekwon Myers did in Sumter on or about May 2, 2015, violate §16-3-29 of the Code of Laws of South Carolina (1976), as amended, in that he did with intent to kill, attempt to kill another person, Qwaiyy McFadden, with malice aforethought, either express or implied, by firing a gun numerous times at James Williams, and striking Qwaiyy McFadden with a bullet in the ear.

✓ **COUNT THREE - ATTEMPTED MURDER**

That James Caleb Williams did in Sumter on or about May 2, 2015, violate §16-3-29 of the Code of Laws of South Carolina (1976), as amended, in that he did with intent to kill, attempt to kill another person, Malik Raekwon Myers, with malice aforethought, either express or implied, by firing a gun numerous times at the victim.

312

ATTACHED TO AND BECOMING PART OF THE ORIGINAL INDICTMENT FOR 2016-GS-43-0655 WITH THE AFORESAID NAMES OF MALIK RAEKWON MYERS AND JAMES CALEB WILLIAMS SHOWN THEREON:

✓ COUNT FOUR - ATTEMPTED MURDER

That James Caleb Williams did in Sumter County on or about May 2, 2015, violate §16-3-29 of the Code of Laws of South Carolina (1976), as amended, in that he did with intent to kill, attempt to kill another person, **Ashley R.**, with malice aforethought, either express or implied, by firing a gun numerous times at Malik Raekwon Myers, and striking **Ashley R.** with a bullet in her thigh.

COUNT FIVE - POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That Malik Raekwon Myers did in Sumter County, on or about May 2, 2015, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime, in violation of §16-23-490, S. C. Code of Laws, 1976, as amended.

✓ COUNT SIX - POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That James Caleb Williams did in Sumter County, on or about May 2, 2015, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime, in violation of §16-23-490, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

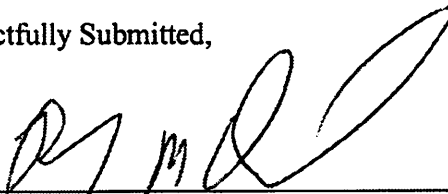
Solicitor

Edward A. Finner III

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Robert M. Dudek
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 6th day of August, 2018.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County

Honorable Howard P. King, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMES CALEB WILLIAMS,

APPELLANT

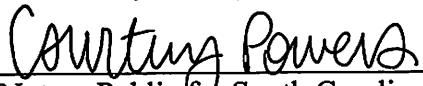
CERTIFICATE OF SERVICE

I certify that a copy of the Record on Appeal in the above-referenced case has been served upon William F. Schumacher, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 6th day of August, 2018.



Tyler Cheney
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 6th day of August, 2018.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: May 2, 2027.

S.C. ATTORNEY GENERAL'S OFFICE

CRIMINAL APPEALS SECTION

DATE RECEIVED: 8/8/18

RECEIVED BY: _____

ADMINISTRATIVE INSTRUCTIONS

FILE _____ OPEN NEW _____ CLOSE

_____ ORDER: _____ TRANSCRIPT

_____ CLERK RECORDS

_____ SOLICITOR'S FILE

_____ OTHER: _____

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County

Honorable Howard P. King, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMES CALEB WILLIAMS,

APPELLANT

APPELLATE CASE NO. 2017-001601

FINAL BRIEF OF APPELLANT

ROBERT M. DUDEK
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUE ON APPEAL.....	1
STATEMENT OF THE CASE.....	2
STANDARD OF REVIEW	3
ARGUMENT	
The court erred by refusing to direct a verdict on attempted murder counts where the state failed to present any direct or substantial circumstantial evidence appellant specifically intended to shoot anyone, since the judge’s reasoning that appellant was guilty if anyone was shot in the parking lot that night, because he admitted he shot a gun, was erroneous as to the charge of attempted murder that appellant was ultimately convicted of committing	4
Introduction.....	4
Relevant Facts.....	4
Discussion.....	10
CONCLUSION.....	13

TABLE OF AUTHORITIES

Cases

<u>State v. Bostick</u> , 392 S.C. 134, 708 S.E.2d 774 (2011)	3
<u>State v. Hepburn</u> , 406 S.C. 416, 753 S.E.2d 402 (2013)	3
<u>State v. Hinton</u> , 227 Conn. 301, 630 A.2d 593 (1993)	11
<u>State v. Horne</u> , 282 S.C. 444, 319 S.E.2d 703 (1984)	11
<u>State v. King</u> , 422 S.C. 47, 810 S.E.2d 18 (2017)	11
<u>State v. Mitchell</u> , 341 S.C. 406, 535 S.E.2d 126 (2000)	3
<u>State v. Williams</u> , Op.No. 5540 (Filed February 28, 2018)	12

Rules

Rule 19, SCRCrimP	8, 10, 11, 12

STATEMENT OF ISSUE ON APPEAL

Whether the court erred by refusing to direct a verdict on attempted murder counts where the state failed to present any direct or substantial circumstantial evidence appellant specifically intended to shoot anyone, since the judge's reasoning that appellant was guilty if anyone was shot in the parking lot that night, because he admitted he shot a gun, was erroneous as to the charge of attempted murder that appellant was ultimately convicted of committing?

STATEMENT OF THE CASE

Appellant was indicted by the Sumter County Grand Jury for the offenses of two counts of attempted murder, and possession of a weapon during a violent crime. R. 310 – 312. Appellant's case was called to trial on July 17, 2017, before the Honorable Howard King, and a jury. Calvin Hasty represented appellant. Tyler Brown was the assistant solicitor.

On July 19, 2017, the jury found appellant guilty of the attempted murder of Ashley R., but not guilty of the attempted murder of Malik Myers. The jury also found appellant guilty of possession of a weapon during a violent crime. R. 303, ll. 6-16. Judge King sentenced appellant to fifteen years imprisonment, suspended upon the service of ten years, and five years probation. R. 304, ll. 7-14.

This appeal follows.

STANDARD OF REVIEW

“A case should be submitted to the jury when the evidence is circumstantial ‘if there is any substantial evidence which reasonably tends to prove the guilt of the accused or from which his guilt may be fairly and logically deduced.’” State v. Bostick, 392 S.C. 134, 139, 708 S.E.2d 774, 776 (2011) (quoting State v. Mitchell, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000)). “Evidence must constitute positive proof of facts and circumstances which reasonably tends to prove guilt.” Id. “Unless there is a total failure of competent evidence as to the charges alleged, refusal by the trial judge to direct a verdict of acquittal is not error.” Id. at 139, 708 S.E.2d at 776-777. “On appeal of the denial of a directed verdict of acquittal, this Court must look at the evidence in the light most favorable to the state.” Id. at 139, 708 S.E.2d at 777; see also State v. Hepburn, 406 S.C. 416, 429 753 S.E.2d 402, 409 (2013). If the state failed to present any direct evidence or any substantial circumstantial evidence reasonably tending to prove guilt of the accused, the appellate court must reverse the lower court’s denial of the directed verdict motion. Hepburn, 406 S.C. at 416, 429 S.E.2d at 409.

ARGUMENT

The court erred by refusing to direct a verdict on attempted murder counts where the state failed to present any direct or substantial circumstantial evidence appellant specifically intended to shoot anyone, since the judge's reasoning that appellant was guilty if anyone was shot in the parking lot that night, because he admitted he shot a gun, was erroneous as to the charge of attempted murder that appellant was ultimately convicted of committing.

Introduction

There was no substantial circumstantial evidence that appellant shot Ashley R., or that he specifically intended to attempt to murder her. The same was true of Malik Myers, and the jury acquitted appellant of that attempted murder. R. 303, ll. 6-16. Given this record, if appellant did not intend to shoot Malik Myers, it is hard to fathom how the judge thought there was substantial circumstantial evidence appellant attempted to shoot and kill Ashley R. Malik Myers, after all, had already been sentenced for him shooting a gun at the May 2, 2015, teen party at the Club Cream in Sumter and seemingly attempting to kill Ashley R. Further, Malik essentially refused to implicate appellant in any manner in his testimony before the jury in this case.

Ashley R. would testify that Malik apologized to her after she was shot -- almost all inferences from the record being that she was shot -- accidentally. If appellant discharged his gun that night in a negligent or irresponsible manner, the correct charge was not attempted murder. The proper charge fitting the facts of this case was likely ABHAN.

Relevant Facts

Lead Corporal Joseph Jones was dispatched to a shooting in the area of the Club Cream in Sumter -- at a "teen party" -- in the early morning hours of May 2, 2015. R. 19, l. 4 -- 23, l. 24. Jones remembered that reserve officer Steve Bickford "happened to be in the area right there

on Rast Street, Bultman Street area of Club Cream. And he came across where he was staying at and saw a bunch of people running from the parking lot. . . .” R. 22, ll. 16-26. Fifteen-year-old Ashley R. was crying. She had been shot in the leg. R. 23, l. 26 – 24, l. 8.

Jones remembered seeing a large “group of people” outside, and “EMS was on the way to pick up Ms. R. . . .” R. 24, ll. 13-19. Jones remembered finding six shell casings at the scene. Only one gun, a Springfield .40 caliber pistol was found in the area, even though it was undisputed there was more than one shooter. R. 34, ll. 4-23.

As will be seen infra, it was undisputed that Malik Myers was also shooting his gun that night. Appellant would later testify that Malik and appellant were not the only persons who fired a gun that evening in the parking lot at the teen club. R. 194, l. 23 – 197, l. 21. Defense counsel renewed his motion for a directed verdict at the conclusion of the defense case following appellant’s testimony. R. 212, l. 13 – 213, l. 19.

Chelsea Rogers was nineteen-years-old at the time of appellant’s trial. R. 37, l. 24 -- 38, l. 5. Chelsea admitted she did not want to testify during appellant’s trial. R. 38, ll. 8-11.

Chelsea stated on May 2, 2015, that she went to the Club Cream for a teen party in Sumter. Describing a teen party, Chelsea said: “I guess it’s where a lot of teens get together, you know, have fun, but something bad always ends up happening.” R. 38, ll. 18-21.

Chelsea said that Malik Myers was a friend but he did not go with her to the teen party that night. Chelsea and her friends arrived at the teen party at about eleven o’clock, They were “dancing and having fun” when she saw there was a problem on the other side of the club. R. 39, l. 18 – 40, l. 4.

Chelsea remembered talking to Malik, “and he said he was going to leave with me.” They all walked out of the club. Chelsea was walking to her car, and Malik was a behind her.

“When we got over there to the car, I heard a gunshot from over there . . . I heard another gunshot, and then I heard another one come back from where everybody was at.” Chelsea said she did not see Malik with a gun that night, and Malik ran in the opposite direction of the gunfire “to where his friends were.” R. 40, l. 18 – 44, l. 18.

Chelsea said that the solicitor’s office eventually contacted her mother, and they asked her to come to the courthouse to see the solicitor. Chelsea remembered, “They wanted me to be a witness to something that happened at the club that night.” R. 48, ll. 3-24. Chelsea again said she wanted no part in this trial. R. 49, ll. 3-4. Chelsea offered that she had never met Appellant James Williams. R. 53, ll. 9-17.

Ashley R. was fifteen-years-old at the time of the teen party at the Club Cream on May 2, 2015. R. 68, l. 11 – 69, l. 15. She arrived at the teen party between ten and eleven o’clock. She was still at the club when it was closing at two a.m. R. 69, l. 16 – 70, l. 21.

Ashley remembered after leaving the club she was going to the nearby McDonalds to “see a fight” between two girls. R. 71, l. 7 – 72, l. 6.

When she was walking into the parking lot “up to a car, they said fight, gun, shooting. That’s when -- by the time I could duck down, feel (sic) like a bee sting. I touched my leg, and started to panic.” R. 72, ll. 2-12. Ashley said she looked around and saw Malik Myers. “But I seen him shoot after -- I seen the other like two -- two shots before he shoot (sic), that’s when I duck down . . .” “I seen Malik with a gun, that’s when I heard the -- before he shoot (sic), I heard like two more, two or three gunshots before he shoot. (sic). He shoot. (sic).” R. 72, l. 2 – 73, l. 10.

Ashley estimated four or five shots were fired before she realized she had been shot in the leg, and was bleeding. R. 74, l. 9 – 76, l. 4. Ashley was treated at Tuomey Hospital in Sumter.

The bullet was removed from her leg. R. 75, l. 19 – 77, l. 14. Ashley told the police that she was shot by an unknown black man. She said Malik Myers “came to me and apologized to me afterwards. That’s how I get (sic) to know him.” R. 78, ll. 7-17.

On cross-examination, Ashley repeated that Malik Myers apologized to her. Ashley said she was not sure whether Malik was apologizing because he shot her, but Ashley said after Malik apologized, “I said, ‘You good, I’m not mad at you.’ He said, ‘Okay.’” R. 85, l. 12 – 86, l. 7. Ashley said she heard there were at least two people shooting guns that evening. R. 88, ll. 9-13.

Malik Myers testified that he pled guilty to ABHAN for the shooting incident in this case. He was seventeen-years-old at the time of the May 2, 2015 teen party. R. 54, l. 3 – 56, l. 20. Myers essentially disavowed his statement to the police, telling the solicitor, “Man, I just came from a hospital, man. I wasn’t thinking right when I was writing my statement. . . . it wasn’t no altercation. It was just some words.” R. 59, ll. 2-9.

Malik said he had his .38 revolver with him that evening “because anything could have happened after the club.” R. 62, ll. 2-19. As for appellant, Malik Myers said: “I don’t know whether James Williams was shooting or not. I’m just saying -- I -- you telling me -- I just know I got shot. You’re saying he’s the shooter. I’m telling you I didn’t know he was shooting. That’s what this statement said.” R. 65, ll. 2-14. Myers testified he was shot in the leg, and he repeated he did not know if appellant was the person who fired the gun where the bullet ultimately wounded his leg. R. 66, ll. 5-23.

SLED agent Michelle Eichenmiller was qualified as an expert in ballistics and firearms. R. 112, ll. 1-9. She testified “in my opinion, those cartridge cases [found at the scene] were fired by the firearm.” The firearm was a Springfield model XD .40 Smith and Wesson. R. 117, l. 25 – 118, l. 10.

As to the bullet removed from Ashley R.'s leg, the SLED agent could only say that "the comparisons were inconclusive with the test fired bullet from the Springfield and the evidence bullet that was submitted. R. 118, l. 11 – 120, l. 3; R. 122, ll. 12-22. Inconclusive does not rise to the level of substantial circumstantial evidence, and there was no evidence appellant intended to shoot and kill Ashley.

Detective Nathalie Kelly testified that Malik Myers told her that appellant shot at him and hit him in the leg. Malik said: "I pull out the .38 gun I had and shot back." R. 142, l. 19 – 143, l. 15.

Defense counsel moved for a directed verdict, arguing Malik Myers was not sure who shot him and the same was true for Ashley R. Defense counsel said the state had not carried its burden of proof. R. 159, l. 22 – 160, l. 7.

The solicitor argued that the impeachment evidence of Malik Myers and other witnesses revealed appellant shot first. He also claimed there was "strong evidence" that appellant shot Ashley R. "And also **just specifically because he was not shooting directly at Ashley**, I would point out that we're proceeding **under transferred intent** and we do believe that he was firing his gun with malice and the bullet struck Ashley R." R. 160, l. 13 – 161, l. 6. (emphasis added).

The judge said his duty under Rule 19, SCRCrimP, when ruling on a directed verdict was to determine whether there was "competent" evidence mandating that the case should go to the jury. The judge ruled that his recollection of the testimony was that "Mr. Williams, fired first and was firing at both Mr. Malik Myers **and that by transferred intent**, at the other victim in the case." (emphasis added). The judge said there was both direct and circumstantial evidence, and he was therefore not going to direct a verdict. R. 161, l. 10 – 162, l. 13.

During the defense case, Qawiyy McFadden testified that he went to the teen party on May 2, 2015, and he got together with appellant there. R. 164, l. 8 – 165, l. 12.

They left the club at about one a.m., and went to appellant's Mustang. R. 165, ll. 2-24. McFadden said it was crowded at the club when the shooting occurred. McFadden testified: "I seen everybody coming out of the club, so I got out of the car to see what was the next move for the night. And then mix up -- the shots started going off when I was out of the club. I seen James go like towards the back of his car and by maybe the first five shots, I was already hit. And I didn't know what else happened." McFadden said he did not see appellant shooting when these bullets were flying. R. 166, l. 7 – 169, l. 19.

McFadden was shot in the ear near appellant's green Mustang. R. 166, l. 7 – 169, l. 19. McFadden stated he was not sure if Malik Myers was charged with shooting him. R. 171, ll. 10-12.

Crime scene investigator Amanda Snapp testified that there appeared to be "five bullet holes in the roof line of [appellant's] vehicle." Snapp said there were no bullet holes in the front of appellant's car, so "I can only imagine that they came from the back of the vehicle, most likely." R. 174, l. 17 – 177, l. 10.

Appellant testified in his own defense. He was nineteen-years-old, and he was only seventeen at the time of the teen party. He was attending Central Carolina University at the time of his trial. R. 178, l. 6 – 180, l. 1. Appellant left the club about one a.m. that morning. He remembered seeing Malik Myers coming towards his car, and Malik had a gun. Malik began shooting at appellant, "So that's when I started shooting, and that's when I ran off when I seen the security guard coming, and I threw my gun under the tree." Appellant said that Mailk Myers almost shot him, and McFadden was actually shot. He drove McFadden to Tuomey Hospital

early that morning. R. 181, l. 19 – 184, l. 9. Appellant specifically said he did not shoot Ashley R. that night, and he did not intend to shoot anyone. R. 186, ll. 14-24.

Appellant testified on cross-examination that he fired into his own car so that whomever was shooting would think he was serious, and he was not shooting in the air. Appellant admitted he had a black forty caliber Springfield gun that night. R. 194, l. 13 – 195, l. 5. Appellant said he found five bullet casings on top of his car, and the sixth one “I probably shot it into the ground.” R. 195, l. 19 – 197, l. 7.

Appellant repeated that Malik Myers shot at him first and he told the solicitor there were more than two people shooting at the time of the incident. R. 197, ll. 8-21. As stated, defense counsel renewed his motion for a directed verdict, and the judge -- again citing Rule 19, SCRCrimP -- said it was his duty to send the attempted murder charges to the jury. R. 212, l. 16 – 213, l. 19.

Discussion

Defense counsel moved for a directed verdict, given the lack of evidence that appellant shot Ashley R., the only victim still at issue on appeal given the jury’s verdict. The judge, citing Rule 19, SCRCrimP, stated his view of the evidence was that there was not a failure of “competent evidence” tending to prove the charge in the indictment. See Rule 19, SCRCrimP. The judge reasoned, siding with the solicitor, that he found the state had carried its burden at the directed verdict stage because appellant could be guilty by reason of *transferred intent*. That was error.

In State v. King, 422 S.C. 47, 810 S.E.2d 18 (2017), our Supreme Court, in affirming this Court as modified, held that the charge of attempted murder required the state to prove that the defendant had the specific intent to kill. Transferred intent by its nature involves an accidental

shooting victim. See State v. Home, 282 S.C. 444, 319 S.E.2d 703 (1984). Our Supreme Court noted that the legislature -- when it enacted the attempted murder statute -- intended for it to have a specific intent to kill element.

This case illustrates the error in the trial judge's Rule 19, SCRCrimP reasoning. The state's case was generally that appellant irresponsibly or negligently fired his gun that night. The state contended that appellant meant to shoot Malik Myers, but did not make any assertion that appellant intentionally shot Ashley R.

The jury found appellant not guilty in the attempted murder of Malik Myers, but found him guilty of attempted murder as to Ashley R. It definitely appears that whomever shot Ashley R., that she was a random or accidental victim.

In State v. Hinton, 227 Conn. 301, 630 A.2d 593 (1993), the Supreme Court of Connecticut noted that the crime of attempted murder requires a specific intent to kill. The Court noted that the doctrine of transferred intent that applies to murder, is not needed for the crime of attempted murder, and it does not apply. The Court reasoned that a person could be prosecuted for the attempted murder of a specific person regardless of the fact that that intended victim was not shot or even injured. An unintended or third party victim is irrelevant to the crime of attempted murder. ABHAN would have been the correct charge in this case.

Here, there was no substantial circumstantial evidence that appellant intended to kill or murder Ashley R. Therefore, the trial court erred in denying appellant's motion for a directed verdict, since there was no substantial circumstantial evidence appellant intended to kill Ashley R.

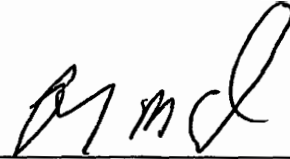
Further, under the trial judge's Rule 19, SCRCrimP, reasoning, the judge incorrectly found that this was a jury issue, because appellant could be found guilty of the attempted murder of Ashley R. given the doctrine of transferred intent.¹ That, as explained above, was error.

For these reasons, this Court should issue an order of acquittal for the attempted murder of Ashley R. Because such a correct order would in effect exonerate appellant of both attempted murder charges, his conviction for possession of a weapon during a violent crime should also be vacated.

¹ Appellant is aware of State v. Williams, Op.No. 5540 (Filed February 28, 2018) in which a panel of this Court held transferred intent was properly charged in an attempted murder case. Williams will be challenged on certiorari to the Supreme Court

CONCLUSION

By reason of the foregoing arguments, a verdict of acquittal should issue on appellant's conviction for attempted murder, and for reasons consistent with that order, a verdict of acquittal for appellant's conviction for possession of a weapon during a violent crime should also be issued.

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Robert M. Dudek
Chief Appellate Defender

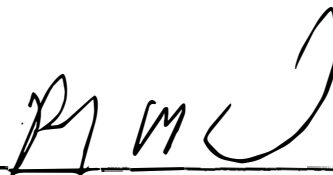
ATTORNEY FOR APPELLANT

This 21st day of August, 2018.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

August 21, 2018

A handwritten signature in black ink, appearing to read 'R M Dudek', written over a horizontal line.

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County

Honorable Howard P. King, Circuit Court Judge

THE STATE,

RESPONDENT,

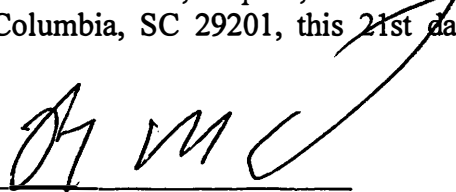
V.

JAMES CALEB WILLIAMS,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon William F. Schumacher, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 21st day of August, 2018.



Robert M. Dudek
Chief Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 21st day of August, 2018.

 (L.S)
Notary Public for South Carolina
My Commission Expires: May 2, 2027.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SUMTER COUNTY
Court of General Sessions
Howard P. King, Circuit Court Judge

Appellate Case No. 2017-001601

THE STATE, ...RESPONDENT,

v.

JAMES CALEB WILLIAMS, ...APPELLANT.

FINAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

	Page
Table of Contents	i
Table of Authorities	ii
Respondent's Statement of Issue on Appeal.....	1
Statement of the Case.....	2
Statement of Facts.....	3
Standard of Review.....	8
Argument:	
The trial judge properly denied Appellant's motion to direct a verdict on attempted murder for both victims because there was direct and substantial circumstantial evidence Appellant intended to shoot and kill victim Malik Myers which, combined with the substantial circumstantial evidence that Appellant shot victim Ashley R. and the doctrine of transferred intent, also supported the denial of the motion as to Ashley R.....	12
Conclusion	18

TABLE OF AUTHORITIES

Cases

<u>People v. Bland</u> , 48 P.3d 1107 (Cal. 2002).....	14
<u>State v. Brandt</u> , 393 S.C. 526, 713 S.E.2d 591 (2011)	17
<u>State v. Brown</u> , 360 S.C. 581, 602 S.E.2d 392 (2004)	17
<u>State v. Bryant</u> , 372 S.C. 305, 642 S.E.2d 582 (2007)	8
<u>State v. Cherry</u> , 361 S.C. 588, 606 S.E.2d 475 (2004)	8
<u>State v. Cooley</u> , 342 S.C. 63, 536 S.E.2d 666 (2000).....	16
<u>State v. Copeland</u> , 278 S.C. 572, 300 S.E.2d 63 (1982)	13
<u>State v. Fennell</u> , 340 S.C. 266, 531 S.E.2d 512 (2000)	8, 9, 14, 15
<u>State v. Hinton</u> , 630 A.2d 593 (Conn. 1993)	13, 15
<u>State v. King</u> , 422 S.C. 47, 810 S.E.2d 18 (2017)	15
<u>State v. Odems</u> , 395 S.C. 582, 720 S.E.2d 48 (2011)	8
<u>State v. Sutton</u> , 340 S.C. 393, 532 S.E.2d 283 (2000).....	10
<u>State v. Weston</u> , 367 S.C. 279, 625 S.E.2d 641 (2006)	8
<u>State v. Williams</u> , 422 S.C. 525, 812 S.E.2d 917 (Ct. App. 2018)	passim

Statutes

Conn. Gen. Stat. Ann. § 53a-49 (1985)	14
Conn. Gen. Stat. Ann. § 53a-54a (1985).....	14
Conn. Gen. Stat. Ann. § 53a-59 (1985)	15
S.C. Code Ann. Section 16-13-10(B)(1)(2003)	17
S.C. Code Ann. § 16-3-10 (2015)	10, 15
S.C. Code Ann. § 16-3-29 (2015)	10, 15

STATEMENT OF ISSUE ON APPEAL

The trial judge properly denied Appellant's motion to direct a verdict on attempted murder for both victims because there was direct and substantial circumstantial evidence Appellant intended to shoot and kill victim Malik Myers which, combined with the substantial circumstantial evidence that Appellant shot victim Ashley R. and the doctrine of transferred intent, also supported the denial of the motion as to Ashley R.

STATEMENT OF THE CASE

On March 17, 2016, the Sumter County Grand Jury indicted Appellant for two counts of attempted murder and one count of possession of a weapon during the commission of a violent crime. On July 17–19, 2017 Appellant proceeded to a jury trial before the Honorable Howard King. Calvin Hastie, Esquire, represented Appellant; Assistant Solicitor Tyler Brown, Esquire, represented the State. The jury found Appellant guilty of one count of attempted murder and possession of a weapon during the commission a violent crime, but acquitted him of the remaining charge. The trial judge sentenced to fifteen years' incarceration, suspended upon the service of ten years' imprisonment and five years' probation.

Appellant filed a timely Notice of Appeal and subsequently submitted a Brief in support of his appeal. This Brief of Respondent follows.

STATEMENT OF FACTS

The State's Evidence

On May 2, 2015, fifteen-year-old Ashley R. (Victim) attended a teenager-friendly party at Club Cream in Sumter County. Around 2:00 a.m., she exited the club and was walking to a car in the parking lot when she heard people say “fight, gun, shooting.” Victim then heard gunshots. As she looked around, she noticed Malik Myers return gunfire after the unknown gunman fired his first two or three shots. Around the time she heard a fifth gunshot, Victim felt a bullet enter her leg. She started to flee, and blacked out. When she woke, she discovered club security and another man had placed her in the club until medical help arrived. Victim was taken to the hospital and the bullet was removed from her leg. Victim described Myers to investigating officers and told them he was one of the men involved in the shooting. A few days later, Myers contacted Victim and apologized for the shooting. (R.p.68, line 7–R.p.88, line 21).

Chelsea Rogers, Myers's then-girlfriend, was also at Club Cream the night of the shooting. Rogers exited the club with Myers following behind her. As she got to her vehicle, she heard a gunshot erupt from a nearby grassy area. At the moment, she saw Myers and observed he was not holding a gun. He ran away from the gunfire but towards a nearby group of his friends. Shortly thereafter, she heard several gunshots erupt from the area to which Myers ran. (R.p.36, line 24–R.p.53, line 18).

Myers, who pled guilty to assault and battery of a high and aggravated nature (ABHAN) for his actions in that night's shooting, also testified. He admitted he submitted a written statement to police on May 4, 2015, in which he described the events of that night. According to Myers, he had a longstanding feud with Appellant. When he ran into Appellant that night, the latter made gun gestures with his hands, implying he was going to shoot Myers. As Myers left the club, he retrieved his gun, a .38 revolver, from his friend because he expected “anything”

could happen. After hearing the initial gunfire and realizing Appellant was the culprit shooting at him, Myers returned fire, emptying all six rounds of his revolver. Myers claimed five of his bullets hit the car Appellant was using at the time. A friend drove Myers to the hospital where he received treatment for a gunshot wound to his leg. Myers noted a girl, later identified as Victim, was shot by Appellant. (R.p.54, line 3–R.p.66, line 23; R.pp.308–09).

Officer Joseph Jones with the Sumter Police Department was one of the first officers to arrive at scene of the shooting. A Springfield XD pistol and several shell casing were located in a grassy area near the club, which were photographed and marked for investigating detectives. Officer Jones noted officers did not find any revolver shell casings that night, but that was to be expected because revolvers do not discharge spent shell casings. Former Detective Jacob Mitchell collected evidence at the club that night, including the Springfield pistol and the spent bullet casings. (R.p.19, line 4–R.p.35, line 23; R.p.94, line 10–R.p.107, line 23).

Michelle Eichenmiller, a firearms examiner with SLED, analyzed the Springfield pistol and the other ballistics evidence collected by law enforcement. She determined: (1) the Springfield was a .40 gun manufactured by Smith and Wesson; (2) the Springfield pistol produced all the shell casings found at the scene of the crime; (3) the bullet found in Victim could have been fired by the Springfield pistol because it had similar markings and grooves to a test round fired by Eichenmiller, but the physical results of her testing were not clear enough that she could definitively claim it was; and (4) a .38 weapon could likely not have fired the bullet that hit Victim because the type of ammunition was too large for that caliber of weapon. (R.p.110, line 7–R.p.124, line 13).

Detective Nathalie Kelly, another officer with the Sumter Police Department, spoke with Appellant after the time and received his written statement. In both his written statement and his

conversation with her, Appellant claimed: (1) he bumped into Myers in the club and knew a physical confrontation was going to occur; (2) both men were armed; (3) he fired his gun, but stated he fired the weapon into the back of his own vehicle so that it would “look like” he was shooting at Myers; and (4) he threw his gun under a tree when he saw security. During his interview, he admitted to Detective Kelly the Springfield pistol recovered by police was the gun he used that night. Detective Kelly also testified she was the officer who received Myers’s written statement, the same one presented during his trial testimony. (R.p.125, line 15–R.p.158, line 17; R.pp.306–09).

Appellant’s Evidence

Qawiyy McFadden, the person shot by Myers, testified he and another friend were hanging out with Appellant the night of the incident. He claimed that when the shooting started, he was standing outside the vehicle and was hit in the ear by one of the first five shots fired, within the first ten seconds of the incident. He did not see Appellant shooting, but admitted he did not see anyone who was shooting. (R.p.164, line 8–R.p.171, line 22).

Amanda Snap, a crime scene investigator with the Sumter Police Department, testified she searched and photographed Appellant’s vehicle a few weeks after the crime. She noted that five bullets hit the rear vehicle, all of which travelled diagonally downwards from a heightened position, entering around the roof line of the car. (R.p.172, line 12–R.p.177, line 6).

Appellant’s testimony largely corroborated the State’s case. He admitted to attending the event at Club Cream that night and bumping into Myers, with whom he had a long-standing feud which originated in middle school. He knew something was “about to happen” with him and went to his vehicle upon exiting the club and retrieved his gun. He claimed Myers began shooting first and he responded by shooting into his own vehicle to make it appear as if he was

shooting at Myers. When Appellant saw a security guard approaching, he ran off and threw his Springfield pistol under a nearby tree. (R.p.178, line 6–R.p.186, line 24).

On cross-examination, Appellant admitted all the shell casing founds came from his weapon, and that he was not sure whether every shot he fired from his gun went into his car; he conceded he fired six bullets that night, at least one of those bullets did not enter the car, and that Myers used a revolver that night. Appellant, for the first time, also claimed there was at least one additional shooter at the scene, despite making no assertions of such in his prior statements to police or during his direct examination. (R.p.187, line 12–R.p.209, line 16).

Directed Verdict Motion

After the State presented its case-in-chief, trial counsel moved for a directed verdict on all charges, claiming the State could not conclusively prove Appellant shot Myers or Victim because neither witness testified, with certainty, as to who shot them nor did the ballistics evidence guaranty Appellant's gun fired the bullet which hit Victim. In response, the State argued: (1) Appellant admitted to carrying and using his gun that night; (2) multiple witnesses testified Appellant was the initial shooter; (3) in his statement to police, Appellant admitted there was bad blood between him and Myers; (4) Appellant's decision to arm himself after his confrontation in the club with Myers showed malice aforethought; the evidence showed the bullet which hit Victim likely came from Appellant gun and most likely could not have been fired by Myers's weapon; and (5) Appellant's intent to kill Myers transferred to Victim. The trial judge denied the motion, finding "competent" evidence in the record, consisting of both direct and circumstantial evidence, that: (1) Appellant fired first, and (2) Appellant intended to kill Myers. He further found Appellant's intent to kill Myers transferred to Victim. (R.p.159, line 22–R.p.162, line 13).

At the close of the defense's case, trial counsel renewed his motion for a directed verdict. Again, the trial judge denied the motion because there was ample evidence in the record from which a jury could find Appellant's guilt. (R.p.212, line 11–R.p.213, line 3).

STANDARD OF REVIEW

“In criminal cases, an appellate court reviews errors of law only and is bound by the factual findings of the trial court unless clearly erroneous.” State v. Bryant, 372 S.C. 305, 312, 642 S.E.2d 582, 586 (2007). “The conduct of a criminal trial is left largely to the sound discretion of the trial judge, who will not be reversed in the absence of a prejudicial abuse of discretion. Id. “An abuse of discretion occurs when a trial court’s decision is unsupported by the evidence or controlled by an error of law.” Id.

“When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight.” State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. Id. When reviewing a denial of a directed verdict, the appellate court must view the evidence and all reasonable inferences in the light most favorable to the State. State v. Cherry, 361 S.C. 588, 593–94, 606 S.E.2d 475, 477–78 (2004). “If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury.” Id. (emphasis added): A circuit judge should grant a directed verdict motion when the evidence merely raises a suspicion the accused is guilty. State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011).

The courts of South Carolina recognize the doctrine of transferred intent and use this legal principle to criminalize a defendant’s harm against unintended victims. In State v. Fennell, 340 S.C. 266, 531 S.E.2d 512 (2000), the South Carolina Supreme Court found a defendant who killed his intended target but also injured an unrelated third party in his shooting spree was guilty

of murder of the intended victim and, using the doctrine of transferred intent, ABWIK of the third party. The court explained:

The defendant's mental state, or mens rea, whatever it may be at the time he allegedly commits a criminal act, is contained within the defendant's brain when he commits the act. That mental state never leaves the defendant's brain; it is not "transferred from the defendant's brain to another person or place. A more apt description might be that the mental state is like a spotlight emanating from its source—the defendant's mind—to its target—the intended victim.

Nor is that mental state in limited supply. The mental state "spotlight" is not extinguished at the moment a bullet strikes and kills the intended victim, such that there is no mental state left upon which to convict an unintended victim who also is injured or killed.

340 S.C. at 271, 531 S.E.2d at 515.

More recently, the doctrine of transferred intent was applied to South Carolina's successor to ABWIK, attempted murder, in State v. Williams, 422 S.C. 525, 812 S.E.2d 917 (Ct. App. 2018). In Williams, the defendant was charged with three counts of attempted murder after he and codefendant fired numerous shots at a home, intending to kill Al Young. However, Young was joined by Ycedra Williams and Joseph Wrighton, in the home that night and the two defendants ended up focusing their shots on Wrighton. None of the home's occupants were injured in the attack. Id. at 529–32, 812 S.E.2d at 919–20.

At trial, Williams objected to several of the circuit court's jury charges, including the transferred intent charge. He argued that the evidence showed, at most, he attempted to harm Young and because attempted murder is a specific intent crime, he could not have had a specific intent to harm the unknown persons in the home. The trial judge refused his request and the jury ultimately convicted Appellant of all three attempted murder charges. Id. at 532, 812 S.E.2d at 920.

Citing to this Court’s opinion in King, the Court agreed attempted murder under South Carolina law requires proving a defendant had the specific intent to commit murder. However, the Court found the circuit court properly charged the jury on the doctrine of transferred intent because “South Carolina’s criminal laws **require** the imposition of the doctrine of transferred intent.” Id. at 540–41, 812 S.E.2d at 925 (emphasis added). The Court further found Williams misconstrued the attempted murder statute when he argued S.C. Code Ann. § 16-3-29 (2015) requires specific intent to murder specific victims, noting the statute “states a ‘person who, with the intent to kill, attempts to kill another person’ is guilty of attempted murder.” Id. at 542, 812 S.E.2d at 925 (emphasis in original). Thus, like murder, attempted murder does not require a specific victim be killed. Id. at 542, 812 S.E.2d at 925–26; see also S.C. Code Ann. § 16-3-10 (2015) (defining “murder” as “the killing of any person with malice aforethought, either express or implied” (emphasis added))). Further, the Court found the specific intent to kill can be inferred by the surrounding circumstances of the case, including the use of a deadly weapon and the character of the attack. Id. at 542, 812 S.E.2d at 926 (citing State v. Sutton, 340 S.C. 393, 397 n.5, 532 S.E.2d 283, 285 n.5 (2000)).

Applying these standards to Williams, the Court found the evidence presented at trial, including: (1) testimonial and forensic evidence showing Williams and his codefendant fired multiple shots into the walls and doors of the home and at the silhouetted figure represented an attempt to kill another person with malice aforethought; (2) evidence also indicated codefendant was aware Young did not live alone at the residence. Id. at 542–43, 812 S.E.2d at 926. Accordingly, the Court determined “Williams’ use of deadly force in attempting to kill Young would warrant the transferred intent charge as to Ycedra and Wrighton because it was

foreseeable that Young would not be alone, especially when considering Young lived at the [r]esidence with several other people.” Id. at 543, 812 S.E.2d at 926.

ARGUMENT

The trial judge properly denied Appellant's motion to direct a verdict on attempted murder for both victims because there was direct and substantial circumstantial evidence Appellant intended to shoot and kill victim Malik Myers which, combined with the substantial circumstantial evidence that Appellant shot victim Ashley R. and the doctrine of transferred intent, also supported the denial of the motion as to Ashley R.

Appellant argues the trial judge erred in denying trial counsel's motion for directed verdict on his attempted murder charges,¹ claiming the State failed to present any direct or substantial circumstantial evidence of his guilt. The State disagrees with this allegation of error. At trial, the State presented substantial evidence of Appellant's guilt, showing Appellant initiated the shooting, he intended to kill Myers, and Appellant was the individual who shot Ashley R. Thus, Appellant's intent to kill Myers transferred to Ashley R.

Analysis

First and foremost, the State notes that it is undisputed in the record that Appellant was armed and fired at least six bullets from his gun during the incident. Appellant himself admitted such in his written statement to police and during his trial testimony. The only questions at trial were who initiated the attack, whether Appellant intended to murder Myers, and whether Appellant was the individual who shot Victim. The State presented a combination of direct and circumstantial evidence answering each of these questions in the affirmative.

Victim, Rogers, and Myers all testified Myers did not initiate the shooting and only fired his own weapon after hearing several gunshots. Myers identified Appellant as the shooter and claimed the latter acted in response to a longstanding feud confirmed by Appellant. Further, Appellant's threatened Myers via hand gesture—forming his hand into a gun and “firing” it at

¹ In his brief, Appellant alleges error in the denial of his directed verdict motion as to **both** attempted murder charges. Because the jury acquitted Appellant of the charge pertaining to Myers, the State's argument will focus on the charge relating to Victim.

Myers—and did, in fact, shoot Myers shortly thereafter. These testimonies, along with Myers’s written statements to police, were direct evidence that Appellant initiated the shooting and intended to murder Myers that night. See State v. Copeland, 278 S.C. 572, 581, 300 S.E.2d 63, 69 (1982) (stating a prior inconsistent statement may be admitted as substantive evidence when the declarant testifies at trial and is subject to cross-examination).

Further, there is substantial circumstantial evidence indicating Appellant, not Myers, was the individual who shot Victim. Victim, who saw Myers during the exchange of gunfire, did not see him fire in her direction. Further, McFadden, who was next to Appellant’s vehicle and not near Victim, testified he was hit in the ear by one of the shots fired from the “front” of the vehicle, which were from Myers’s gun. Most importantly, Eichenmiller testified: (1) the ballistics evidence indicated the bullet which hit Victim had characteristics matching other bullets fired from Appellant’s Springfield pistol; and (2) the bullet which hit Victim most likely could not have been fired by Myers’s weapon because it was too large for Myers’s .38 caliber gun. Considered in tandem, this evidence indicates Appellant, not Myers’s, was the shooter who injured Victim.

Finally, there is some evidence Appellant intended to kill Victim. In State v. Hinton, 630 A.2d 593 (Conn. 1993), the Supreme Court of Connecticut found a defendant could not be convicted of both attempted murder and assault for harming a surviving victim, Jason Diaz, when he fired a shotgun into a crowd of people. Notably, the court found that although the evidence showed Appellant only had a “beef” with one of the victims killed by the shotgun, the act of firing it into a crowd of people could be interpreted as evidence that Hinton attempted to kill Diaz. Id. at 595–96, 600–02. Similarly, in the instant case, Appellant’s act of firing his gun

at crowd of people which included Myers and Victim, could be evidence of his concurrent intent² to kill both because it was reasonable and foreseeable anyone in the crowd he was intentionally firing into would be hit and killed by one of his bullets.

Transferred Intent

Appellant claims the trial judge erred in finding the above-discussed evidence justified the denial of his directed verdict motion as to the attempted murder charge for Victim, claiming South Carolina law requires a specific intent to kill to be proven in murder cases and there is no evidence Appellant specifically intended to harm Victim. Assuming arguendo the doctrine of transferred intent is necessary to find Appellant guilty of his charge, the trial judge's use of the doctrine was not error.

In his brief, Appellant cites Hinton for the proposition that transferred intent should not apply to the crime of attempted murder. (Br. of Appellant p.11). However, Appellant's arguments ignore the facts of that case and contradict South Carolina law. First and foremost, the Supreme Court of Connecticut based its opinion on the specific language of Connecticut's murder,³ attempt,⁴ and assault⁵ statutes: Connecticut's murder and assault statutes had specific

² Other jurisdiction which do not apply transferred intent to specific intent crimes recognize that in certain situations, a defendant's actions, although directed at a primary victim, are such that the defendant created a "zone of harm" intended to ensure harm to his target by harming everyone in that victim's vicinity. This legal theory is referred to as the doctrine of concurrent intent. See, e.g., People v. Bland, 48 P.3d 1107 (Cal. 2002) (finding that a defendant created a "kill zone" by firing a flurry of bullets at a car and justified the charge of attempted murder for each of the car's passengers, even those who were not the intended target of his attack). In South Carolina, "concurrent intent" is a variation of transferred intent. See Fennell, 340 S.C. at 271, 531 S.E.2d at 515 (describing a defendant's mental state as a "spotlight" which targets a victim and those in his vicinity).

³ Conn. Gen. Stat. Ann. § 53a-54a (1985) provided, in relevant part: "(a) A person is guilty of murder when, with intent to cause the death of another person, he causes the death of such person or of a third person"

⁴ Conn. Gen. Stat. Ann. § 53a-49 (1985) provided, in relevant part: "(a) A person is guilty of an attempt to commit a crime if, acting with the kind of mental state required for commission of the crime, he: (1) intentionally engages in conduct which would constitute the crime if attendant circumstances were as he believes them to be; or (2) intentionally does or omits to do anything which, under the circumstances as he believes them to be, is an act or omission constituting a substantial step in a course of conduct planned to culminate in his commission of the crime."

provisions allowing for the transfer of intent to unintended victims; however, the Connecticut code does not contain a specific attempted murder statute, but a general attempt statute which states an attempt has been made if a defendant acts “with the kind of mental state required for commission of the crime” Hinton, 630 A.2d at 601. Because of this vague language, the Connecticut Supreme Court felt constrained by the rule of lenity to conclude the doctrine of transferred intent should not be applied to attempted murder. Id. at 602. In South Carolina, unlike Connecticut, our criminal code includes a specific statute proscribing attempted murder. Admittedly, the Supreme Court of South Carolina has found that the crime of “attempted murder” requires a specific intent to kill. State v. King, 422 S.C. 47, 55, 810 S.E.2d 18, 22 (2017). Yet, “attempted murder” does not require that specific intent be directed at a specific individual. S.C. Code Ann. § 16-3-29 (2015) (“A person who, with the intent to kill, attempts to kill another person with malice aforethought, either expressed or implied, commits the offense of attempted murder.”); Williams, 422 S.C. at 542, 812 S.E.2d at 925–26 (emphasis added)); see also S.C. Code Ann. § 16-3-10 (2015) (defining “murder” as “the killing of any person with malice aforethought, either express or implied” (emphasis added)); Williams, 422 S.C. at 542, 812 S.E.2d at 926 (noting “murder” does not require a specific victim be killed); Fennell, 340 S.C. at 276, 531 S.E.2d at 517 (finding that, in a homicide prosecution, a defendant’s state of mind is more important than the identity of the victim). In fact, as explained by this Court, “South Carolina’s criminal laws **require** the imposition of the doctrine of transferred intent.” Williams, 422 S.C. 540–41, 812 S.E.2d at 925 (emphasis added).

⁵ Conn. Gen. Stat. Ann. § 53a-59 (1985) provided, in relevant part: “(a) A person is guilty of assault in the first degree when: (1) With intent to cause serious physical injury to another person, he causes such injury to such person or to a third person by means of a deadly weapon or dangerous instrument; or (2) with intent to disfigure another person seriously and permanently, or to destroy, amputate or disable permanently a member or organ of his body, he causes such injury to such person or to a third person; or (3) under circumstances evincing an extreme indifference to human life he recklessly engages in conduct which creates a risk of death to another person, and thereby causes serious physical injury to another person.”

As noted supra, the State presented a combination of direct and substantial circumstantial evidence of Appellant's specific intent to kill Myers and that he was the shooter who injured Victim. Through the doctrine of transferred intent, Appellant's actions constituted the attempted murder of Victim. Accordingly, the trial judge did not err in denying Appellant's motion for a directed verdict.

Retrial

Finally, the State notes Appellant's requested remedy, acquittal for attempted murder and an exoneration of his possession of a weapon during a violent crime charge, is improper in this situation. Assuming arguendo the Supreme Court of South Carolina grants certiorari on Williams and finds the doctrine of transferred intent is improper under current State law, the correct remedy would be retrial of Appellant on the charge of ABHAN and possession of a weapon during the commission of a violent crime.

In State v. Cooley, 342 S.C. 63, 536 S.E.2d 666 (2000), the Supreme Court of South Carolina found the trial judge erred in granting defendant's request to charge voluntary manslaughter in a murder trial because it was not supported by the evidence presented. It further ruled the defendant could not be retried on the murder charge because conviction of the voluntary manslaughter charge was an implicit acquittal of murder and thus retrial on murder would violate the constitutional prohibition against double jeopardy. Id. at 69–70, 536 S.E.2d at 669–70. However, the court found Cooley could be retried on involuntary manslaughter because the charge was supported by some evidence at trial, and the voluntary manslaughter conviction was not an acquittal of that charge. Id.

Similarly, in State v. Brandt, 393 S.C. 526, 713 S.E.2d 591 (2011), the Supreme Court of South Carolina reversed a defendant's conviction for felony forgery.⁶ Notably, the court found there was enough evidence of the offense to survive Brandt's motion for a directed verdict and submit the charge to the jury. However, because the State failed to prove the value of the forged item was \$5,000 or more—a requisite element of the offense—the court remanded the case to the circuit court so the trial judge could sentence him for misdemeanor forgery, a lesser-included offense which did not require the State to prove the value of the forged item. Id. at 548–49, 713 S.E.2d at 602–03 (citing State v. Brown, 360 S.C. 581, 597–98, 602 S.E.2d 392, 401 (2004)).

Should the Supreme Court of South Carolina reverse Williams and find the doctrine of transferred intent improper under South Carolina law, the proper remedy would be, similar to Cooley, a remand for a retrial. Appellant concedes in his brief that the evidence presented at trial supported, at a minimum, ABHAN: Appellant admitted to firing his gun that night and a combination of direct and circumstantial evidence indicated Appellant was the individual responsible for Victim's injury. Even without the doctrine of transferred intent, Appellant's actions constitute a cognizable crime under South Carolina law.

⁶ Under S.C. Code Ann. Section 16-13-10(B)(1)(2003), a person convicted of forgery was guilty of felony if the amount of the forgery was five thousand dollars or more; if the forgery did not include a dollar amount, the person was guilty of a misdemeanor.

CONCLUSION

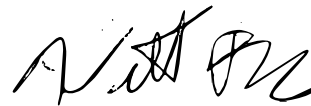
For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

August 21, 2018



STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM SUMNER COUNTY
Court of General Sessions
Howard P. King, Circuit Court Judge

ALAN WILSON
ATTORNEY GENERAL

Appellate Case No. 2017-001601

THE STATE, ...RESPONDENT,

v.

JAMES CALEB WILLIAMS, ...APPELLANT.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled “Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.”

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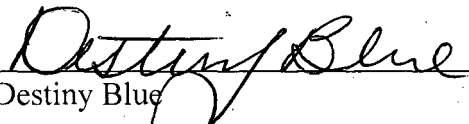
JAMES CALEB WILLIAMS, ...APPELLANT.

PROOF OF SERVICE

I, Destiny Blue, certify that I have served the within Final Brief of Respondent on Appellant by sending two copies of the same to:

Robert M. Dudek, Esquire
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I further certify that all parties required by Rule to be served have been served this 21st day of August, 2018.


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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

James Caleb Williams, Appellant.

Appellate Case No. 2017-001601

Appeal From Sumter County
Howard P. King, Circuit Court Judge

Opinion No. 5835
Heard May 27, 2021 – Filed July 14, 2021

REVERSED AND REMANDED

Chief Appellate Defender Robert Michael Dudek, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General William Frederick Schumacher, IV,
both of Columbia, and Third Circuit Solicitor Ernest
Adolphus Finney, III, of Sumter, all for Respondent.

MCDONALD, J.: James Caleb Williams appeals his convictions for attempted murder and possession of a weapon during the commission of a violent crime, arguing the circuit court erred in denying his motion for a directed verdict because no direct or substantial circumstantial evidence supports a finding that Williams had a specific intent to kill the victim. We find the doctrine of transferred intent

inapplicable to this charge of attempted murder; thus, we reverse Williams's convictions.¹

Facts and Procedural History

In the early morning hours of May 2, 2015, Corporal Randy Jones of the Sumter Police Department (SPD) was dispatched to a shooting outside Club Cream in Sumter. In the club parking lot, Corporal Jones found Ashley R., a fifteen-year-old female who had been shot in the leg. Law enforcement subsequently recovered six shell casings and a black Springfield model XD .40 Smith and Wesson from the parking lot area.

On March 17, 2016, the Sumter County Grand Jury indicted Williams for two counts of attempted murder and one count of possession of a weapon during the commission of a violent crime. Williams pled not guilty, and his jury trial began on July 17, 2017.

Chelsea Rogers reluctantly testified that on May 2, 2015, she went to Club Cream for a teen party. She explained a "teen party" is "where a lot of teens get together, you know, have fun, but something bad always ends up happening." Rogers and her friends arrived around 11:30 p.m. or 12:00 a.m. and were "dancing and having fun" when she saw "something going on" on the other side of the club; however, when nothing materialized, the group went back to dancing.

Sometime between 1:00 and 2:00 a.m., Rogers left the club to go home. Her then-boyfriend, Malik Myers, exited a few minutes later. Rogers recalled, "After that, we [were] walking to the car and I told [Myers] to come on, let's go. When we got over there to the car, I heard a gunshot." At that point, Myers "ran over there—to where his friends were, I guess, and that's when I—I heard another gunshot, and then I heard another one come back from right where everybody was at." She further stated, "I didn't know if [Myers] had [a gun] or not, but I did not see him with one."

Ashley R. arrived at the party between 10:00 and 11:00 p.m., and was leaving Club Cream as it closed at 2:00 a.m. When Ashley R. reached the parking lot, she heard "fight, gun, shooting. That's when—by the time I could duck down, [it felt] like a

¹ With respect to Williams's conviction for possession of a weapon during the commission of a violent crime, we reverse and remand.

bee sting. I touched my leg, and started to panic."² She heard gunshots and saw Myers, whom she had met earlier that day. Ashley R. testified, "I [saw] him shoot after—I [saw] the other like two—two shots before he [shot], that's when I ducked down." After initially answering that she did not see Myers shoot first, Ashley R. explained, "I [saw Myers] with a gun, that's when I heard the—before he [shot], I heard like two more, two or three gunshots before he [shot]." On the night of the incident, Ashley R. told law enforcement she was shot by an "unknown black man" and recalled at trial that she did not really know Myers until he "came to me and apologized to me afterwards. That's how I [got] to know him."

On cross-examination, Ashley R. admitted that in her written statement to police, she identified Myers as the man who started the shooting and her statement did not include that she heard shots before Myers fired his weapon. Defense counsel asked her on cross-examination:

Q: You can't testify today who was shooting the shots, who was actually shooting, can you?

A: Not the first two shots.

....

Q: And the shot that hit you, you pretty sure who shot you?

A: Like when it first happened?

Q: Uh-huh.

A: Since I [saw Myers], I thought he shot me, but that's when—because after that, because he came to me, he apologized—

...

Q: Why would he apologize if he did not shoot you? What is he apologizing for?

² Ashley R. estimated four or five shots were fired before she realized she had been shot in the leg and was bleeding.

A: I'm not sure.

Q: He apologized for shooting you?

A: I'm not sure. After he said that, I said, "You good. I'm not mad at you." He said, "Okay."

Q: Okay. But you don't know what he was apologizing for?

A: No sir.

Myers pled guilty to one count of assault and battery of a high and aggravated nature (ABHAN) for his involvement in the Club Cream incident. Despite his prior written statement to the police indicating he and Williams "had beef" in the past, Myers testified at trial: "Man, I just came from a hospital, man. I wasn't thinking right when I was writing my statement. . . . [I]t wasn't no altercation. It was just some words." Myers also contradicted his written statement—in which Myers claimed Williams shot him in the leg—by denying Williams made any hand gestures toward him while inside the club. Myers admitted he had his .38 revolver that night "because anything could have happened after the club," and repeatedly denied any knowledge of whether Williams was the person who shot him. Myers testified, "I didn't know whether James Williams was shooting or not. I'm just saying—I—you telling me—I just know I got shot. You're saying he's the shooter. I'm telling you[,] I didn't know he was shooting. That's what this statement said."

At the conclusion of the State's case, Williams moved for a directed verdict, arguing neither Ashley R. nor Myers could identify their shooter and the State's expert could not conclusively connect the bullet removed from Ashley R.'s leg with Williams's weapon.³ The circuit court denied the motion, finding "there is

³ SLED ballistics and firearms agent Michelle Eichenmiller testified that in her opinion, cartridge cases found at the scene "were fired by [the Springfield model XD .40 Smith and Wesson]." As to the bullet removed from Ashley R.'s leg, Eichenmiller "didn't see enough individual characteristics to form an opinion as [to whether] it was fired by that firearm." However, she noted "both the Springfield XD and the bullet [she] received were six right, conventional rifling with approximately the same land and groove width." The bullet removed from the victim's leg "could have been [fired from] a 10-millimeter firearm or a 40 S&W."

evidence in the record, both direct and circumstantial that would support the charges." The circuit court explained its "recollection of the testimony [was] that the defendant, Mr. Williams, fired first and was firing at both Mr. Malik Myers and that by transferred intent, at the other victim in this case."

Williams testified in his own defense. He arrived at the club alone around 11:00 p.m. and, at some point during the party, Myers bumped into him. Williams explained, "We didn't say nothing to each other or anything, but I already knew like something was going to happen, like once I left. That's why I was already in my car getting ready to go ahead and leave." Williams knew something was going to happen with Myers "[b]ecause we had problems since we [were] in middle school, like we always had words. But I [knew] it was probably going to end up coming to something one day."

Williams stated he was walking to his car when he saw Myers approaching. As Myers had a gun and began shooting at him, Williams "started shooting, and that's when I ran off when I [saw] the security guard coming, and I threw my gun under—up under the tree." Williams testified, "But when I was shooting, I was shooting into the back of my car so he would think I was shooting back at my car." Williams claimed he shot into the back of his own car so that Myers "would have thought I was shooting at him, and he would have been—he would have tried to run off." However, Myers did not run. Instead, Myers "came close to shooting [Williams]" and shot Qawiyy McFadden in the ear. Williams then left the parking lot to drive McFadden to the hospital.⁴

On cross-examination, Williams admitted he had a black .40 caliber Springfield with him in the parking lot and that he fired shots into his own car in an effort to scare Myers. He found five bullet casings on top of his car, and regarding the sixth, testified, "I probably shot it into the ground." Williams reiterated that Myers

Eichenmiller explained, "It's a little bit larger than a .38. Depending on the firearm, I have seen some that have worn barrels that it could have been fired from, but not usually." On cross-examination, Eichenmiller admitted a Glock 22 also fires a .40 bullet.

⁴ Myers, who was initially charged with two counts of attempted murder, pled guilty to one count of ABHAN for shooting McFadden in the left ear. McFadden testified Myers's shot hit him from the front, and there is no evidence in the record to the contrary.

shot at him first and claimed there were more than two shooters in the parking lot.⁵ He testified he did not shoot Ashley R., and he did not intend to shoot anyone. McFadden was sitting in Williams's car when he saw "everybody coming out the club." Williams's car was backed into the parking space, with the front of the car facing the club. McFadden testified, "I got out the car to see what was the next move for the night. And then mix-up—the shots starting going off when I was out of the club. I [saw Williams] go like towards the back of his car and by maybe the first five shots, I was already hit." On cross-examination, McFadden admitted he did not know if Williams did any of the shooting, nor did he know who fired the first shot.

At the end of his case, Williams renewed his motion for a directed verdict. The circuit court denied the motion, finding, "there is evidence in the record by which the jury could conclude that the offenses occurred . . . and the believability of those witnesses will be a matter for the jury to determine."

The jury found Williams guilty of the attempted murder of Ashley R., but not guilty of the attempted murder of Myers. The jury also found Williams guilty of possession of a weapon during the commission of a violent crime. The circuit court sentenced Williams on the attempted murder conviction to fifteen years' imprisonment, suspended upon the service of ten years, and five years' probation. As to his conviction for possession of a weapon during the commission of a violent crime, the court sentenced Williams to a concurrent five years' imprisonment.

Standard of Review

"In ruling on a motion for directed verdict in a criminal case, a trial court must view the evidence in the light most favorable to the State." *State v. James*, 362 S.C. 557, 561, 608 S.E.2d 455, 457 (Ct. App. 2004). "The trial court is concerned with the existence or nonexistence of evidence, not its weight." *Id.* "The accused is entitled to a directed verdict when the State fails to present evidence on a material element of the offense charged." *State v. Brannon*, 388 S.C. 498, 503, 697 S.E.2d 593, 596 (2010).

⁵ SPD crime scene investigator Amanda Snapp testified during the defense's case. Based on her examination, "it appeared that there [were] five bullet holes in the roof line of the vehicle." Snapp further stated "there [were] no bullet holes in the front of [Williams's] vehicle, so I can only imagine that they came from the back of the vehicle, most likely."

Law and Analysis

Williams argues the circuit court erred in failing to direct a verdict on the attempted murder charge because the State failed to present any direct or substantial circumstantial evidence that he had the specific intent to kill anyone—either Myers or Ashley R. He asserts the circuit court erroneously applied the doctrine of transferred intent because the offense of attempted murder requires a specific intent to commit murder. We agree.⁶

⁶ Our dissenting colleague urges us to decline to consider the applicability of the doctrine of transferred intent to this charge of attempted murder. The dissent would find the matter unpreserved for our review on the basis that the trial court "was not given the opportunity to consider all the relevant facts, law, and argument and rule on this issue." (Huff, J., dissenting). Our review of the record, however, reveals the trial judge had such opportunity when defense counsel moved for a directed verdict on the basis that the State had not met its burden of proof beyond a reasonable doubt. In response, the State argued, "And also just specifically because he [Williams] was not shooting directly at Ashley, I would point out that we're proceeding under transferred intent and we do believe that he was firing his gun with malice and the bullet struck Ashley R." The circuit court ruled immediately—giving defense counsel no chance to reply to the State's argument—citing Rule 19 of the South Carolina Rules of Criminal Procedure and recollecting its understanding of the testimony that "the defendant, Mr. Williams, fired and was firing at both Mr. Malik Myers and that by transferred intent, at the other victim in this case."

While we acknowledge the defense could have better articulated the precise question of transferred intent at trial, like the dissent, we recognize "a party need not use the exact name of a legal doctrine in order to preserve it, but it must be clear that the argument has been presented on that ground." *State v. Carmack*, 388 S.C. 190, 200–01, 694 S.E.2d 224, 229 (Ct. App. 2010) (quoting *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 94 (2003)). Notably, the State did not raise preservation as an issue in its respondent's brief. See *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 418 n.6, 526 S.E.2d 716, 722 n.6 (2000) ("Under present rules, the appellant receives notice of the respondent's additional sustaining grounds through the respondent's brief. The appellant may address those additional grounds in a reply brief." (citing Rule 208(a)(3), SCACR.)); *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 332–33, 730 S.E.2d 282, 287 (2012) ("When the opposing party does not raise a preservation issue on appeal, courts are not precluded from finding the issue unpreserved if the error is clear.

In *State v. King*, our supreme court affirmed this court's opinion that "the Legislature intended to require the State to prove specific intent to commit murder as an element of attempted murder." 422 S.C. 47, 55, 810 S.E.2d 18, 22 (2017) (quoting *State v. King*, 412 S.C. 403, 411, 772 S.E.2d 189, 193 (Ct. App. 2015)); S.C. Code Ann. § 16-3-29 (2015) ("A person who, with intent to kill, attempts to kill another person with malice aforethought, either expressed or implied, commits the offense of attempted murder."). The supreme court explained, "Because the phrase 'with intent to kill' in section 16-3-29 does not identify what level of intent is required, the Court of Appeals properly looked to the legislative history of section 16-3-29 and appellate decisions holding that 'attempt crimes require the State to prove the defendant had specific intent to complete the attempted crime.'" *Id.* (quoting *King*, 412 S.C. at 409, 772 S.E.2d at 192). Although the supreme court agreed with the State that certain language referenced from *State v. Sutton*, 340 S.C. 393, 532 S.E.2d 283 (2000), was dicta, it found *Sutton's* definition of "specific intent" to be an accurate statement of the law. *King*, 422 S.C. at 55–56, 810 S.E.2d at 22 ("Attempted murder would require the specific intent to kill,' and 'specific intent means that the defendant consciously intended the completion of acts comprising the [attempted] offense.'" (quoting *Sutton*, 340 S.C. at 397, 532 S.E.2d at 285)).

In *State v. Gerald Williams*, our supreme court considered a case in which one of the issues raised involved "whether and to what extent the common law doctrine of transferred intent applies to the newly-codified crime of attempted murder." 427 S.C. 148, 149, 829 S.E.2d 702, 702 (2019). There, the petitioner was convicted of three counts of attempted murder related to his alleged shooting into an occupied mobile home where he knew his intended victim was present, but did not realize two other individuals were in the trailer as well. *Id.* at 150, 829 S.E.2d at 702. The court explained:

Under the common law, transferred intent makes a whole crime out of two halves by joining the intent to harm one victim with the actual harm caused to another. Normally, transferred intent applies to general-intent crimes. However, attempted murder is a specific-intent crime in

However, the silence of an adversary should serve as an indicator to the court of the obscurity of the purported procedural flaw." (Toal, C.J., concurring in result in part and dissenting in part)).

South Carolina, and we have not yet addressed whether transferred intent may supply the requisite mens rea for such a crime.

Because this case was tried without objection as a general-intent crime, we find the doctrine of transferred intent applies in this instance. We therefore decline to address the applicability of transferred intent to a specific-intent crime such as attempted murder and vacate the portion of the court of appeals' opinion dealing with this issue.

Id. at 150, 829 S.E.2d at 702–03.⁷

Although not directly on point, our supreme court's more recent opinion in *State v. Smith*, 430 S.C. 226, 845 S.E.2d 495 (2020), is helpful to our analysis here. *Smith* involved an attempted murder conviction resulting from the accidental shooting of an innocent victim in the vicinity of a dispute among rival gang members. *Id.* at 228, 845 S.E.2d at 496. There, the court explained, "[i]t was undisputed Smith did not intend to harm [the victim]. Rather, Smith claimed he was acting in self-

⁷ As in *Gerald Williams*, this case was tried before our supreme court's decision in *King*, but after the General Assembly's 2010 codification of the crime of attempted murder. See 427 S.C. at 153 n.4, 829 S.E.2d at 705 n.4. However, unlike the attempted murder charge in *Gerald Williams*, Williams's attempted murder charge was not tried as a general intent crime. In the charge to the jury here, the circuit court instructed that "an attempt includes a specific intent to do a particular criminal act with an act falling short of the act intended." The court's instructions on transferred intent and self-defense followed, without objection. Although a brief charge conference was held on the record prior to closing arguments, and defense counsel initially expressed concern about the transferred intent charge, the remainder of the charge discussion was omitted from the record on appeal. Williams has not appealed any error related to the circuit court's jury instructions and argues only that the circuit court erred in denying his motion for a directed verdict because "there was no substantial circumstantial evidence that appellant intended to kill or murder Ashely R." Given the facts of this case and these distinctions—including the unsettled status of the application of the doctrine of transferred attempt to statutory attempted murder—we disagree with our good colleague that any failure by Williams to challenge the circuit court's "transferred intent" jury instruction forecloses our review of the legal issue raised here.

defense by shooting at a group of men who had threatened him. *Id.* Smith missed his intended target and hit the victim by accident." *Id.* In conceding guilt to a felon-in-possession possession charge, but denying the attempted murder charge and asserting a claim of self-defense, "Smith implicitly acknowledged he had an express intent to kill the men at whom he was shooting, but asserted his actions were justified given his belief that he faced an imminent threat to his own life." *Id.* at 229, 845 S.E.2d at 496. Perhaps recognizing "[t]he law at the time of trial precluded an implied malice jury charge (based on the use of a deadly weapon) when a viable self-defense claim existed . . . the State sought to create a new category of implied malice for 'felony attempted-murder,' with the predicate felony being the felon-in-possession charge." *Id.* The supreme court reversed Smith's conviction, addressing both the question of whether South Carolina recognizes the charge of felony attempted murder (finding that, like the majority of states, we do not) as well as the State's request for the erroneous implied malice charge. *Id.* at 230, 845 S.E.2d at 496–97.

As these issues were dispositive, the court declined to address Smith's additional argument that "the court of appeals erred in finding the doctrine of transferred intent applied to attempted murder because it is a specific-intent crime. *Id.* at 234 n. 9, 845 S.E.2d at 499 n. 9. In particular, Smith argue[d] the requisite specific intent necessary to support an attempted murder conviction must be the specific intent to kill *a specific person*." *Id.* The court's footnote then referenced the State's plan—if the court were to reverse Smith's convictions—to "charge Smith with three counts of attempted murder for shooting at the rival group, and one count of assault and battery of a high and aggravated nature (ABHAN) for shooting the victim" and noted that because ABHAN is a general-intent crime, "there would be no question on remand as to the applicability of the doctrine of transferred intent." *Id.*; see also *Gerald Williams*, 427 S.E.2d at 157, 829 S.E.2d at 707 ("It is well-settled in South Carolina that the doctrine of transferred intent applies to general-intent crimes.").

Considering this footnote along with our supreme court's recent pronouncements in *King* and *Gerald Williams*, along with Williams's acquittal here of the attempted murder of Malik Myers, we find the doctrine of transferred intent inapplicable in the context of the current indictment charging Williams with the attempt "to kill another person, Ashley R., with malice aforethought, either express or implied, by firing a gun numerous times at Malik Raekwon Myers, and striking Ashely R. with a bullet in her thigh." While it is undisputed that Williams was armed and fired his weapon in the parking lot, we cannot reconcile the jury's acquittal of Williams on the attempted murder charge for the shooting of Myers with its guilty verdict for an

attempted murder of Ashley R. The language of the indictment and the State's contention that it was "proceeding under transferred intent and we do believe that [Williams] was firing his gun with malice and the bullet struck Ashely R." are incongruous with such a result.

At oral argument, the State reiterated it was proceeding under the doctrine of transferred intent and admitted Williams did not possess a specific attempt to kill Ashley R. with malice aforethought. This was a reasonable position in light of our case law at the time of trial; however, we do not understand how the specific intent for an attempted murder for which Williams was acquitted (shooting at Myers) could be transferred for purposes of establishing a specific intent to kill Ashley R.—even if the doctrine of transferred intent were applicable to South Carolina's codification of attempted murder, a specific-intent crime.

Conclusion

We find the doctrine of transferred intent inapplicable to this charge of attempted murder. The circuit court erred in denying Williams's directed verdict motion because § 16-3-29 requires proof of a specific intent to kill. The jury acquitted Williams of the attempted murder of Myers, and no evidence in the record suggests Williams possessed *any* intent to kill Ashley R. *See Gerald Williams*, 427 S.C. at 150, 829 S.E.2d at 702–03 (holding attempted murder is a specific-intent crime in South Carolina); *Brannon*, 388 S.C. at 503, 697 S.E.2d at 596 (explaining a defendant "is entitled to a directed verdict when the State fails to present evidence on a material element of the offense charged."). Thus, we reverse Williams's conviction for attempted murder. Given that we reverse Williams's conviction for attempted murder, "we must also reverse and remand his conviction for possession of a weapon during the commission of a violent crime." *Smith*, 430 S.C. at 230 n.4, 845 S.E.2d at 497 n.4. Williams "must be reconvicted of committing a violent crime before he can properly be found to have illegally possessed a weapon during that crime."⁸ *Id.*; *see also* S.C. Code Ann. § 16-23-490(A) (2015) (requiring where a person is in possession of a firearm "during the commission of a violent crime and is convicted of committing or attempting to commit a violent crime as defined in Section 16-1-60, he must be imprisoned five years, in addition to the punishment provided for the principal crime.").

⁸ As the State notes in its brief, a proper remedy on remand "would be retrial of Williams on the charge of ABHAN and possession of a weapon during the commission of a violent crime."

REVERSED and REMANDED.

THOMAS, J., concurs.

HUFF, J., dissenting in a separate opinion.

HUFF, J.: I respectfully dissent. First, and most importantly, whether the doctrine of transferred intent was properly applied in this attempted murder case was never an issue raised to the trial court, and was certainly not a basis of Appellant's motions for directed verdict before the trial court. Accordingly, this argument is not preserved for our review. The only preserved issue is whether the State presented sufficient evidence that Appellant shot Ashley R. Because, viewing the evidence in a light most favorable to the State, I find the trial court properly submitted this case to the jury and denied Appellant's directed verdict motions, the inquiry should end here. However, further addressing the majority opinion, I also note Appellant never raised an issue to the trial court in regard to any inconsistencies with the verdicts and does not appear to have done so on appeal. Rather, the majority latches on to this, at least in part, as an underlying basis for reversing Appellant's convictions. Nonetheless, even assuming there is no error preservation problem in this regard as well, given the evidence and arguments presented at trial, I do not have the same problem the majority does in "reconcil[ing] the jury's acquittal of [Appellant] on the attempted murder charge for the shooting of Myers with its guilty verdict for an attempted murder of Ashley R." As more fully set out below, based upon the evidence presented at trial—particularly that by Appellant—as well as the argument of defense counsel, the jury could have concluded that Appellant fired the bullet that struck Ashley R. but that a third person fired the bullet that struck Myers. Finally, I disagree with the majority's conclusion that—based upon our supreme court's recent pronouncements in this area of law—the doctrine of transferred intent is inapplicable in this attempted murder case. Accordingly, I would affirm Appellant's convictions.

I. FACTUAL/PROCEDURAL BACKGROUND

Around 1:30 a.m. on May 2, 2015, gunfire broke out in the parking lot of Club Cream in Sumter, where a teen party had just taken place. Three individuals suffered gunshot wounds during the incident: Ashley R., a then fifteen-year-old female who was shot in her left leg; Malik Myers, a then seventeen-year-old male who was shot in his left leg and admitted he fired a .38 revolver during the incident; and Qawiyy McFadden, who was outside Appellant's car at the time of

the shooting and suffered a gunshot wound to his ear. Upon securing the scene, officers located a Springfield model XD .40 Smith and Wesson pistol in a grassy area, as well as six spent shell casings. All six of the fired cartridge cases were later determined to have been fired from the recovered Springfield Smith and Wesson—a gun Appellant admitted he fired and abandoned at the scene on the night in question. No other weapon was found at the scene and it was noted that if a revolver had been shot, it would not have left any shell casings, as such would have remained in the cylinder of the gun.

Appellant was indicted on two counts of attempted murder: one for the attempted murder of Myers, based upon his firing a gun at Myers, and the second for the attempted murder of Ashley R., based upon his firing a gun at Myers but striking Ashley R. Appellant was also charged with possession of a weapon during the commission of a violent crime. Myers was likewise indicted on two counts of attempted murder: one for the attempted murder of Appellant, based upon his firing a gun at Appellant, and the second for the attempted murder of McFadden, based upon his firing a gun at Appellant and hitting McFadden. He was also charged with possession of a weapon during the commission of a violent crime stemming from this incident. Myers thereafter entered a guilty plea in regard to this matter and was serving his sentence at the time of Appellant's trial.

On May 4, 2015, Myers gave a statement to law enforcement indicating that on the night in question Appellant bumped into him while in the club and also made a hand gesture, pointing his finger at Myers as if he had a gun, pulling a trigger. Myers indicated in his statement that Appellant left the club first and, when Myers went outside and saw Appellant's car, he walked to his own car and retrieved a .38 gun. He was attempting to leave when he heard shooting and looked behind him to see that it was Appellant pointing a black gun at him and shooting. Myers stated he pulled out the .38 and shot back, "shoot[ing] [Appellant's] car about 5 time[s]." Myers indicated he had been shot in his left leg and was taken to the hospital by a friend. He stated Appellant "had beef with [him] in the pas[t]," saying things to him and trying to fight him. Myers also noted in his statement that there was "a girl [he] was playing dice[] [with] on Poplar Square[] [and] she got shot by [Appellant's] gun." Myers's statement was published to the jury.

While on the stand in Appellant's trial, Myers was less than cooperative, denying that he and Appellant had ever had disagreements, denying anything happened between him and Appellant at the club that night, and denying that there was an altercation between them. When confronted with his written statement, Myers claimed he had "just come from the hospital" when he gave his statement and he

"wasn't thinking right." He denied that he and Appellant bumped into each other that night, and when asked if Appellant shot him that night, Myers replied, "Nope. I don't know." He agreed that he told law enforcement that Appellant bumped into him that night, but testified he really did not see his face and only "figured it was [Appellant]." He acknowledged, however, that he had identified Appellant as the person who made the hand gestures at him and told law enforcement that Appellant began shooting at him and he shot back. He testified that once he was outside the club, he armed himself with a .38 revolver, not because of an altercation inside the club with Appellant but "because anything could have happened after the club." When asked on the stand how many shots he fired at Appellant, Myers stated he fired all six shots from the revolver. Myers testified he did not know if Appellant was shooting or not, and he just knew that he got shot and he did not know who shot him.

Ashley R. testified she exited the club and was in the parking lot when she heard "fight, gun, shooting." By the time she could duck down, she felt something akin to a bee sting, touched her leg, and began to panic. She heard two or three gunshots and saw Myers begin to shoot after those gunshots. She specifically testified she did not see Myers shoot first.⁹ About four or five gunshots were fired before she felt herself get hit by a bullet. She told law enforcement she did not know who it was, but there was an unknown black male—and she described his clothing—who was one of the people involved in the shooting that night. She did not know Myers at the time of the shooting, but he later apologized to her about the incident and that was how she got to know him. Ashley R. testified she had been at Poplar Square earlier on the day of the incident playing dice, and she had seen one of the unknown suspects there at that time. This person at Poplar Square was the person she identified as the one who started shooting *after* she heard the two

⁹ The majority indicates Ashley R. "admitted in her written statement to police, she identified Myers as the man who started the shooting and her statement did not include that she heard shots before Myers fired his weapon." My reading of the record is not in accord. On cross-examination, Ashley R. was asked if she identified to the police the man who started the shooting as the one who she saw at Poplar Square. She responded, "Yes, *but . . . after I heard the two shots shooting.*" Thus, she clearly indicated she had identified the person she saw at Poplar Square as one of the shooters, but not as the first shooter. Further, when challenged as to whether she mentioned to the police that someone else had shot first, Ashley R. twice insisted that she did write that, and she thereafter continued to maintain that she heard two shots before Myers began shooting. Ashley R.'s written statement is not included in the record.

shots, i.e., Myers. Ashley R. did not know who fired the first two shots. Asked why Myers would apologize to her if he had not shot her, Ashley R. stated she was not sure. She clarified that she heard at least two people shooting guns that night, and she did not know who fired the gun that resulted in her injury. Myers's then girlfriend, Chelsea Rogers, testified that she exited the club with Myers following behind her that night; as she got to the car she heard gunshots; when the gunshots started, Myers who had been behind her, began running toward his friends on the opposite side of the gunfire; and she saw Myers when the first gunshot rang out and he was not firing.

South Carolina Law Enforcement (SLED) Agent Michelle Eichenmiller, qualified as an expert witness in ballistics and firearm examination, testified that she tested the six cartridge cases found at the scene, the bullet recovered from Ashley R., and a bullet test fired from the gun recovered at the scene. The agent opined all the fired cartridge cases found at the scene were fired by the Springfield model XD .40 Smith and Wesson. When she compared the test fired bullet to the bullet recovered from Ashley R., however, there were not enough individual characteristics to form an opinion as to whether the bullet recovered from Ashley R. was fired from that gun. Agent Eichenmiller observed they "rifled the same," they had "six lands and grooves" that were approximately the same width, and both had six twists to the right, but the comparison was deemed inconclusive. Agent Eichenmiller testified it was not uncommon to be unable to make a conclusive match, even when she has observed a bullet shot from a firearm, explaining that a well-produced or well-cared for firearm may not have enough individual marks from which to form an opinion, and a Springfield is typically a little bit better manufactured gun. She testified the recovered bullet could have been fired from a 10-millimeter firearm or a .40 Smith and Wesson. When asked if it could have been fired from a .38, the agent stated it was a little bit larger than a .38 and, depending on the firearm, she had seen some that had worn barrels that it possibly could have been fired from, "but not usually." Agent Eichenmiller also agreed there were other weapons that would fire a .40 round, but observed those firearms have different rifling than what they saw in the Springfield and in the bullet they had. Notably, the State presented no evidence concerning ballistics or the bullet wound in regard to Myers other than he sustained an injury to his left leg.

Detective Nathalie Kelly testified Appellant gave a statement on May 6, 2015, following his arrest. Appellant's statement was admitted without objection and published to the jury, providing as follows:

I got to Club Cream at like 11:00 in my green Mustang. I went in the club and danced around until the party was over. When I got out, I was sitting in my car about to leave. I seen [Myers] about to walk up to my car, so I got out and went to the back, opened my car, and by the time I got to the back to open my car, [Myers] had his gun and I had a gun. So he started shooting, so I started shooting, but I was shooting in the back of my car so the bullets wouldn't hit nobody. And I didn't want him to think I was shooting in the air. And when I was inside the club, [Myers] bumped into me, so I already knew he was up to something.

I was behind my car shooting into my car so my gun looked like it was pointing at him. He was in the front of my car shooting and threw my gun under the tree because I seen a security.

Detective Kelly testified that, outside of his written statement, Appellant indicated that the gun they recovered was the gun he referred to in his statement as being thrown under a tree that he used that night. Detective Kelly testified that Myers was charged with shooting at Appellant and with shooting McFadden, who had been in Appellant's car, and that Appellant's Mustang sustained bullet holes. She further stated that Appellant claimed he shot into the back of his car. Law enforcement had several pictures depicting holes in the canopy portion of Appellant's car.

Following Detective Kelly's testimony, the State rested, at which point Appellant moved for a directed verdict. The following colloquy occurred:

[Defense Counsel]: . . . Your, Honor, at this time I would move for a directed verdict on behalf of my client. I certainly don't think the State has met its burden beyond a reasonable doubt. From its own witness testimony today, it was very difficult for [Myers]. Said he's not sure who shot him. Of course, we sort of heard from him, it's sort of hard to believe what he says. But even some of the other testimony, even the expert witness they had, she couldn't say conclusively that that bullet that

was pulled out of Ashley's leg was shot by this weapon that we have here in court.

[The Court]: She didn't say it was not, either.

[Defense Counsel]: Yeah, but she didn't say it was, either. Anyway, I'm making that motion here on — — on those grounds, Your Honor.

. . .

[Solicitor]: Your Honor, there's testimony on the record from multiple witnesses, some through impeachment purposes, but [from] multiple witnesses that [Appellant] shot first. [Appellant] himself admitted that there had been bad blood between them in the club. [] Myers through his statement under impeachment acknowledged they had bad blood in the club. They both armed themselves, and started a shootout. I think this becomes a jury question. I certainly think we've established malice aforethought. As it pertains to Ashley R., Your Honor, I think there is strong evidence that the bullet did come from the gun. The barreling, the rifling is all the same. It was not able to be conclusive, but there's plenty for me to argue, and I think it's a jury question at this point. And also just specifically because he was not shooting directly at Ashley, I would point out that we're proceeding under transferred intent and we do believe that he was firing his gun with malice and the bullet struck Ashley R.

. . .

And Your Honor, the other thing, these are violent crimes and he's admitted he had a gun.

[The Court]: All right. Rule 19 of the South Carolina rules of criminal procedure provides that upon the motion of the defendant or on its own motion, the Court should direct a verdict for defendant — — in the defendant's

favor on any offense charged in [an] indictment after the evidence on either side is closed if there's a failure of competent evidence tending to prove the charges in the indictment. . . . [T]he rule goes on to say that in ruling on this motion, the trial judge shall consider only the existence or nonexistence of the evidence and not its weight.

My recollection of the testimony was that — — whether it's believable or not does not matter, but my recollection of the testimony is that the defendant, [Appellant], fired first and was firing at both [] Myers and that by transferred intent, at the other victim in this case. And my job is to determine the existence or nonexistence of the evidence and not its weight. That is a matter solely for the jury to determine, and it would be improper for me to interpose my opinion of the evidence or to weigh the evidence and grant a . . . directed verdict if there is any evidence in the record. And there is evidence in the record, both direct and circumstantial that would support the charges in this case. The motion is respectfully denied.

Thereafter, Appellant presented witnesses on his own behalf. First, McFadden testified he left Club Cream around 1:00 a.m. and was sitting in Appellant's Mustang¹⁰ when he saw everyone coming out of the club, at which time he exited the car to see what everyone was planning for the night. Then, "shots started going off" and he saw Appellant go toward the back of his car. By about the first five shots, McFadden had been shot in his left ear. He did not see who was shooting, and he did not see Appellant shooting. After he was shot, Appellant drove him to the hospital.

Appellant also presented Crime Scene Investigator Amanda Snapp as his witness. Investigator Snapp took pictures of Appellant's car several days after the incident. Investigator Snapp stated she was not an expert and could not testify concerning

¹⁰ McFadden testified Appellant's car had been backed into the parking space with his car facing toward the club.

the trajectory of a bullet. However, she did state she found what appeared to be five holes in the roof line of Appellant's vehicle. Additionally, when asked about the direction of the bullets, she stated, "there [were] no bullet holes in the front of the vehicle, so I can only imagine that they came from the back of the vehicle, most likely."

Lastly, Appellant testified in his own defense. Like Myers, he was seventeen years old at the time of the incident. Appellant testified that on the night in question, Myers bumped into him while inside the club, and he knew "something was going to happen" once they left the club because the two of them "had problems since [they were] in middle school." Appellant stated he exited the club around 1:30 and went to his car, which he had backed into a parking space. He saw Myers coming toward his car and observed Myers had a gun. According to Appellant, he then got out of his car and when he got to the back of his car, Myers started shooting. That's when Appellant started shooting and then ran off and threw his gun under a tree when he saw a security guard. Appellant explained that when he was shooting, he shot into the back of his car so Myers would think he was shooting at him and he would run off, but Myers did not run. Rather, Myers came close to shooting Appellant and Appellant ran. When Appellant returned to the car, he found out McFadden had been shot and took him to the hospital. Appellant stated he was not sure why Myers wanted to shoot him but he knew they "had beef" since middle school. He denied shooting first, claiming Myers shot first, Myers shot more than one time, and there were no bullet holes in the front of his car but several in the rear where Appellant was standing. Appellant denied shooting Myers or Ashley R. that night.

On cross-examination, Appellant admitted the shell casings found at the scene came from his black Springfield .40 that he dropped in the bushes. Appellant stated he was not sure if he fired every round directly into his car, but he tried to get all of them in the car, and there were five holes in the top of his car. When asked what happened to the sixth bullet, Appellant stated that he "probably shot it into the ground." He stated "everything was happening too fast" but that he knew that he "was shooting the back of [his] car so [he] wouldn't hit anybody." When questioned about how many rounds Myers fired at him, Appellant stated it was more than one but he was not sure if it was more than two or three. When the solicitor then asked if he and Myers were the only two shooters out there that night, Appellant replied, "No. It was other shooters out there because I — — yeah. It was other shooters out there." When the solicitor challenged Appellant as to why he had not stated that during questioning by defense counsel or told Investigator Kelly, Appellant maintained he had told both defense counsel and the

investigator, and continued to maintain in his testimony that there was another shooter that night.

The defense rested and the State called Investigator Kelly in reply, who testified Appellant never indicated to her that there was any other shooter in this matter besides him and Myers. After the State again rested, defense counsel stated, "Your Honor, just move again for a directed verdict in this matter for the reasons I stated earlier." The trial court again noted it was to consider only the existence or nonexistence of evidence, not its weight, found there was evidence in the record from which the jury could conclude that the offenses occurred, and denied Appellant's motion.

During the solicitor's closing argument, he argued Appellant was guilty of the attempted murder of Ashley R. based upon the doctrine of transferred intent. Defense counsel argued in closing that the defense did not contest the fact that Myers and Ashley R. were shot, but argued the State failed to prove that Appellant shot both of them. Counsel also argued the evidence showed that five bullets entered the back of Appellant's car, which left one remaining bullet, and suggested this one "magic bullet" would have had to hit Myers, "make a right turn, go around Ashley, [and] hit Ashley on the other side on her left leg" to fit the State's theory.

During a discussion on jury charges, the solicitor requested an instruction on transferred intent, which the court indicated it intended to charge with no objection from the defense.¹¹ The trial court thereafter instructed the jury on the doctrine of transferred intent without objection. The jury was instructed that if it were to find Appellant not guilty of both the attempted murder of Myers and Ashley R., it was to go no further in its deliberations, but if it found Appellant "guilty of either of the attempted murder charges," it was to then consider the separate charge of possession of a weapon during the commission of a violent crime. Accordingly, the jury was implicitly instructed that permissible verdicts included guilty verdicts as to only one of either of the attempted murder charges. Following deliberations,

¹¹ We note the trial court asked defense counsel if he believed a charge on transferred intent was appropriate, to which counsel replied, "Yes, sir," but he then noted some hesitancy because he mistakenly believed—as verified by review of the indictments—that Myers had been charged with shooting Ashley R. When it was clarified that Myers had not been charged with shooting Ashley R. but had been charged with shooting McFadden and Appellant had been charged with shooting Ashley R., defense counsel raised no objection to a transferred intent charge.

the jury found Appellant not guilty of the attempted murder of Myers, guilty of the attempted murder of Ashley R., and guilty of possession of a firearm during the commission of a violent crime.

II. STANDARD OF REVIEW

"When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight." *State v. Prather*, 429 S.C. 583, 608, 840 S.E.2d 551, 564 (2020) (quoting *State v. Hernandez*, 382 S.C. 620, 624, 677 S.E.2d 603, 605 (2009)). "In an appeal from the denial of a directed verdict motion, the appellate court must view the evidence in the light most favorable to the State." *Id.* (quoting *State v. Cope*, 405 S.C. 317, 348, 748 S.E.2d 194, 210 (2013)). "When the evidence presented merely raises a suspicion of the accused's guilt, the trial court should not refuse to grant the directed verdict motion." *State v. Phillips*, 416 S.C. 184, 192, 785 S.E.2d 448, 452 (2016). "However, the trial court must submit the case to the jury if there is 'any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced.'" *Id.* at 192-93, 785 S.E.2d 448 (quoting *State v. Mitchell*, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000)).

III. LAW/ANALYSIS

On appeal, Appellant argues there is no substantial circumstantial evidence that he shot Ashley R. or that he specifically intended to attempt to murder her. He argues the same was true of Myers, the jury acquitted him of that attempted murder, and if he did not possess the intent to shoot Myers, it is hard to fathom how the trial court thought there was substantial circumstantial evidence he attempted to shoot and kill Ashley R. Appellant points to the testimony of the SLED expert that the comparison of the bullet removed from Ashley R.'s leg to that of one test fired from the Springfield .40 caliber weapon yielded an inconclusive result. He maintains that such an inconclusive result does not rise to the level of substantial circumstantial evidence, and further argues "there is no evidence [he] intended to shoot and kill Ashley." Appellant contends the trial court committed error in reasoning that the State carried its burden at the directed verdict stage because he could be guilty by reason of transferred intent. I disagree.

A. Preservation of Transferred Intent Argument

It is well settled that, in order to be preserved for appellate review, an issue must be raised to and ruled upon by the trial court. *State v. McKnight*, 352 S.C. 635,

646, 576 S.E.2d 168, 174 (2003). "The general rule of issue preservation is if an issue was not raised to and ruled upon by the trial court, it will not be considered for the first time on appeal." *State v. Porter*, 389 S.C. 27, 37, 698 S.E.2d 237, 242 (Ct. App. 2010). "Imposing this preservation requirement is meant to enable the trial court to rule properly after it has considered all the relevant facts, law, and arguments." *Id.* at 38, 698 S.E.2d at 242. An appellate court is limited by appellate rules that allow the court to consider *only the precise question* that was before the trial court and ruled upon by the court. *State v. Whitten*, 375 S.C. 43, 47, 649 S.E.2d 505, 507 (Ct. App. 2007). "[E]rror preservation has been a critical part of appellate practice in this State for a long time, serving to ensure . . . that we do not reach issues which were not ruled upon by the trial court." *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012). "Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide us with a platform for meaningful appellate review." *Id.* (quoting *Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006)). "[T]hese rules must . . . be applied consistently and not selectively." *Id.* "[T]his is not a 'gotcha' game aimed at embarrassing attorneys or harming litigants, but rather is an adherence to settled principles that serve an important function." *Id.* at 329-30, 730 S.E.2d at 285. "While it may be good practice for us to reach the merits of an issue when error preservation is doubtful, we should follow our longstanding precedent and resolve the issue on preservation grounds when it clearly is unpreserved." *Id.* at 330, 730 S.E.2d at 285. "A party need not use the exact name of a legal doctrine in order to preserve it, but it must be clear that the argument has been presented on that ground." *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003). "[T]he issue must be sufficiently clear to bring into focus the precise nature of the alleged error so that it can be reasonably understood by the [trial court]." *Herron v. Century BMW*, 395 S.C. 461, 466, 719 S.E.2d 640, 642 (2011).

As noted, the only basis for Appellant's directed verdict motion was that the State failed to meet its burden to prove he shot Myers or that the bullet that struck Ashley R. was shot by Appellant's weapon. Because Appellant was acquitted of the attempted murder of Myers, the only preserved issue on appeal is whether the trial court erred in denying his motion for directed verdict as related to the charge concerning Ashley R., i.e., whether there was sufficient evidence Appellant's bullet struck Ashley R. The Solicitor specifically addressed the argument actually raised by Appellant, asserting there was "strong evidence" that the bullet which hit Ashley R. did come from Appellant's gun. Although the solicitor included in his response that the State was proceeding under the theory of transferred intent in

regard to Ashley R., the mere fact that he noted this as the State's theory of the case, and the trial court recognized this as the State's theory, did not raise to the trial court that Appellant contested the applicability of that theory. Notably, when the solicitor specifically stated during the directed verdict motion that the State was proceeding on this basis, Appellant raised no objection and made no argument that he was entitled to a directed verdict because transferred intent could not be applied to a specific intent crime. Further, the trial court charged transferred intent to the jury without objection, thereby evidencing Appellant's acquiescence to the theory in his trial. Indeed, as observed by the State in oral argument, the solicitor made clear from the outset of the case the State was proceeding with the attempted murder of Ashley R. charge—through the theory of transferred intent—based upon Appellant's firing a gun at Myers, and at no time during the trial did Appellant object to that theory. Accordingly, at a minimum, the theory of transferred intent was tried by consent, and Appellant should not now be allowed to grasp onto it as a basis for his directed verdict motion simply because it was mentioned by the solicitor as the State's theory of the case when presenting the State's case in response. I do not believe that in any manner the trial court could have possibly understood from Appellant's directed verdict motion that he was challenging the sufficiency of the evidence on the attempted murder charge in relation to Ashley R. on the basis that Appellant was required to have a specific intent to shoot her and could not be guilty by virtue of transferred intent. While the trial court clearly recognized—and restated—that the State was proceeding under the theory of transferred intent in this attempted murder, specific-intent crime, Appellant did not raise to the court that such was improper, and neither did the trial court consider "all the facts, law, and arguments" regarding the same and make a ruling on such. *See Porter*, 389 S.C. at 37-38, 698 S.E.2d at 242 ("Imposing [the preservation requirement that an issue be raised to and ruled upon by the trial court] is meant to enable the trial court to rule properly after it has considered all the relevant facts, law, and arguments."). Because the trial court was not given an opportunity to consider all the relevant facts, law, and argument and rule on this issue, I would find it is not preserved for appellate review.¹²

¹² I acknowledge the State did not challenge Appellant's preservation of this issue in its appellate brief. It is well settled, though, that an appellate court is "not precluded from finding an issue unpreserved even when the parties themselves do not argue error preservation to us." *Lewis*, 398 S.C. at 329, 730 S.E.2d at 285 (2012). As aptly observed by the majority, an adversary's silence may "serve as an indicator to the court of the obscurity of the purported procedural flaw." *Id.* at 333, 730 S.E.2d at 287 (Toal, C.J., concurring in result in part and dissenting in part). I note, however, at the time of the filing of its brief, the State relied on this court's

As to Appellant's argument that the evidence was insufficient to rise to the level of substantial circumstantial evidence that he shot Ashley R., I also disagree. Though the evidence was inconclusive as to whether the bullet recovered from Ashley R.'s leg was fired from Appellant's weapon, it is undisputed that all six of the cartridges at the scene were fired from Appellant's Springfield model XD .40 Smith and Wesson. Further, the SLED expert testified a comparison of the bullet fired from that weapon and the bullet retrieved from Ashley R.'s leg showed they were rifled the same, they had "six lands and grooves" that were approximately the same width, and they had six twists to the right. Though a .38 caliber weapon could fire a .40 round if the barrel was worn enough, the expert testified that was not usually the case. Further, while there were other weapons that could fire a .40 round, those other weapons did not have the same rifling as seen on a Springfield. Additionally, aside from the ballistic evidence, Ashley R. identified Myers as the person she had seen earlier on the day of the shooting when she was at Poplar Square playing dice, and in his written statement to law enforcement, Myers indicated that a girl he was playing dice with on Poplar Square "got shot by [Appellant's] gun" that night. Thus, there is additional evidence Appellant shot Ashley R. that night. Accordingly, viewing the evidence in the light most favorable to the State, I would find no error in the trial court's determination of the sufficiency of evidence to send the matter to the jury. *See Prather*, 429 S.C. at 608, 840 S.E.2d at 564 ("When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight." (quoting *Hernandez*, 382 S.C. at 624, 677 S.E.2d at 605)); *id.* ("In an appeal from the denial of a directed verdict motion, the appellate court must view the evidence in the light most favorable to the State." (quoting *Cope*, 405 S.C. at 348, 748 S.E.2d at 210)); *Phillips*, 416 S.C. at 192-93, 785 S.E.2d at 452 ("[T]he trial court must submit the case to the jury if there is 'any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced.'" (quoting *Mitchell*, 341 S.C. at 409, 535 S.E.2d at 127)).

B. Verdict Inconsistencies

Appellant argues the jury acquitted him of the attempted murder of Myers, and if he did not intend to shoot Myers, "it is hard to fathom how the [trial court] thought

recent case law—discussed further below—in which this court unwaveringly applied the doctrine of transferred intent to the crime of attempted murder. Further, at oral argument, the State left no doubt that it was, in fact, challenging the preservation of this issue on appeal.

there was substantial circumstantial evidence [he] attempted to shoot and kill Ashley R." The majority notes it "cannot reconcile the jury's acquittal of [Appellant] on the attempted murder charge for the shooting of Myers with its guilty verdict for an attempted murder of Ashley R.," maintaining the indictment language and the State's contention it was proceeding under the doctrine of transferred intent whereby Appellant was firing his gun with malice and struck Ashley R. were "incongruous with such a result." In effect, Appellant and the majority are maintaining Appellant's convictions should be reversed, in part, based upon the inconsistencies in the verdicts. I disagree. First, Appellant has not set forth any inconsistency in the verdict in his issues on appeal. *See* Rule 208(b)(1)(B), SCACR ("Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal."). At any rate, I have no problem reconciling the jury's verdict of acquittal on the charge in regard to Myers and the guilty verdict in regard to Ashley R. I readily concede the jury could have returned guilty verdicts of the attempted murder of Myers and Ashley R. based on its belief that Appellant shot six bullets, five hit his car, and one hit Ashley R., with his intent that a bullet strike Myers but did not. Whether a bullet he aimed at Myers actually struck him is of no consequence, for attempted murder does not require an injury to the person. *See* S.C. Code Ann. § 16-3-29 (2015) ("A person who, with intent to kill, attempts to kill another person with malice aforethought, either expressed or implied, commits the offense of attempted murder."). However, it is understandable that the jury did not appreciate this nuance, especially given the fact that (1) Myers discouraged the jury from holding Appellant responsible for shooting him; (2) the defense introduced evidence there was a third shooter present; (3) the State presented evidence the bullet that struck Ashley R. could have been fired from the gun used by Appellant that night but presented no evidence concerning the bullet that struck Myers; (4) the defense argued to the jury that five of the six bullets shot by Appellant hit Appellants car and it would have had to have been a "magic bullet" to have hit both Ashley R. and Myers, implying to the jury that Appellant could not be guilty of shooting both of them; and (5) the jury was implicitly instructed a permissible verdict included one in which Appellant could be found guilty on either count of attempted murder without being found guilty on the other. Notably, Appellant raised no exception to the jury instruction in this regard, nor did he raise any argument to the trial court that the verdicts were inconsistent. Further, while Appellant argues it is hard to fathom how the trial court could think there was substantial circumstantial evidence he attempted to shoot and kill Ashley R. if he did not intend to shoot Myers—as evidenced by Appellant's acquittal of the attempted murder of Myers—what Appellant fails to appreciate is that the trial court was not looking at the evidence through the lens of what the jury would eventually, in fact, determine. Rather, the

trial court was looking at the evidence through the lens of what the jury could, based upon the evidence, determine. *See Phillips*, 416 S.C. at 193, 785 S.E.2d at 452 ("[T]he lens through which a [trial] court considers circumstantial evidence when ruling on a directed verdict motion is distinct from the analysis performed by the jury." (quoting *State v. Bennett*, 415 S.C. 232, 236, 781 S.E.2d 352, 354 (2016))). In short, I believe any perplexities in the jury's verdict result, not from the trial court's proper denial of Appellant's succinct directed verdict motion, but from the manner in which the case was tried and the successful argument of trial counsel that Appellant could not be responsible for both bullets that hit Ashley R. and Myers.

C. Transferred Intent and Attempted Murder

Finally, I disagree with the majority's determination that, given Appellant's acquittal of attempted murder as relates to Myers, the recent pronouncements by our supreme court in *State v. King*, 422 S.C. 47, 810 S.E.2d 18 (2017), *State v. Gerald Williams*, 427 S.C. 148, 829 S.E.2d 702 (2019) (*Gerald Williams II*), and *State v. Smith*, 430 S.C. 226, 845 S.E.2d 495 (2020) (*Smith II*) mandate a determination that the doctrine of transferred intent is inapplicable to the attempted murder charge as relates to Ashley R. As noted, the fact that Appellant was acquitted of the attempted murder of Myers is understandable based upon the manner in which the case was tried before the jury. Whether certain arguments and motions should have been raised by defense counsel at trial is a matter perhaps to be addressed in a post-conviction relief action, but matters not addressed to the trial court should not be the basis for reversal on appeal.

Undoubtedly, *King* provides the crime of attempted murder is a specific-intent crime which requires proof of specific intent to commit murder. 422 S.C. at 55, 810 S.E.2d at 22. However, what remains to be resolved by our supreme court is whether the doctrine of transferred intent applies to attempted murder. This court, however, has twice addressed the issue, and on both occasions has answered the question in the affirmative.

In the first case, *Gerald Williams I*, this court found the doctrine of transferred intent applied to that attempted murder case, finding the statute governing the crime did not require the specific intent to murder a specific victim; rather, the requisite specific intent for attempted murder is the specific intent to commit murder. *State v. Gerald Williams*, 422 S.C. 525, 542, 812 S.E.2d 917, 925-26 (Ct. App. 2018), *aff'd in part as modified, vacated in part*, 427 S.C. 148, 829 S.E.2d 702 (2019). However, our supreme court granted certiorari and ultimately vacated

the portion of this court's opinion in *Gerald Williams I* concerning the application of transferred intent in an attempted murder scenario. *Gerald Williams II*, 427 S.C. at 158, 829 S.E.2d at 707. There, our supreme court noted this court had found the doctrine of transferred intent applied to the specific-intent crime of attempted murder; however, inasmuch as Williams failed to challenge the trial court's jury instruction that specific intent to kill was not an element of attempted murder, but there must be a general intent to commit serious bodily injury, that unappealed ruling became the law of the case. *Id.* at 157, 829 S.E.2d 706-07. Accordingly, Williams's attempted murder case was tried, without objection, as a general-intent crime. *Id.* at 158, 829 S.E.2d 707. Because this court had erroneously "treated the case as if it had been tried as a specific-intent crime," our supreme court vacated that portion of our opinion dealing with the issue of transferred intent and, pointedly, decided to "*leave for another day* the determination of whether the doctrine [of transferred intent] applies to attempted murder." *Id.* at 157-58, 829 S.E.2d 707 (emphasis added).

In the second instance, *Smith I*, this court addressed numerous issues raised by Smith following his conviction for attempted murder. In particular, Smith argued three separate bases for reversal: (1) he was entitled to a directed verdict based on the State's failure to prove he had the specific intent to kill the victim; (2) he was entitled to a mistrial based upon improper statements made by the prosecution in closing arguments; and (3) the trial court erred in instructing the jury it could infer malice based upon the "felony murder rule." *State v. Smith*, 425 S.C. 20, 24, 819 S.E.2d 187, 189 (Ct. App. 2018), *rev'd and remanded*, 430 S.C. 226, 845 S.E.2d 495 (2020). This court affirmed Smith's conviction finding (1) a mistrial was not warranted based upon the solicitor's improper remarks, 425 S.C. at 39, 819 S.E.2d at 197, and (2) no error under any of the several bases argued by Smith concerning the "felony murder rule." 425 S.C. at 39-47, 819 S.E.2d at 197-201. Further, we disagreed with Smith's argument that "he was entitled to a directed verdict on the attempted murder charge because the State was required to show his specific intent to kill [the victim] and the State could not rely on the transferred intent doctrine to make this showing." 425 S.C. at 28, 819 S.E.2d at 191. After examining, among other things, our law on transferred intent, this court concluded "the State properly relied on the transferred intent doctrine to show specific intent as to [the victim]" and affirmed the denial of Smith's directed verdict motion. 425 S.C. at 32-34, 819 S.E.2d at 193-94. Our supreme court granted certiorari and issued an opinion reversing and remanding Smith's attempted murder and possession of a weapon during the commission of a violent crime convictions. *Smith II*, 430 S.C. at 230, 845 S.E.2d at 496-97. The basis for the reversal was solely on improper jury instruction because (1) "felony attempted-murder is not a recognized crime in

South Carolina, and, therefore, any jury charge to that effect [is] error" and (2) "trial courts may no longer give an implied malice charge when there has been evidence presented that the defendant acted in self-defense." 430 S.C. at 230, 845 S.E.2d at 496. Although Smith also argued that this court erred in finding the doctrine of transferred intent applied to attempted murder because it was a specific-intent crime—which required the specific intent to kill a specific person—our supreme court specifically declined to reach the issue, finding resolution of the other issues dispositive and noting the State indicated its intent, on retrial, to charge Smith with a general intent crime for the shooting of the victim in that matter. 430 S.C. at 234 n.9, 845 S.E.2d at 499 n.9.

In sum, I find nothing in *King*, *Gerald Williams II*, and *Smith II* to indicate our courts have concluded the doctrine of transferred intent is inapplicable to a charge of attempted murder. Further, I can discern no analysis from the majority as to why transferred intent should not apply in such a case. Inasmuch as our supreme court chose not to address the issue, I would decline to depart from the well-reasoned analysis as set forth by Judge Geathers in *Smith I*. However, as I expressed from the outset, I do not believe we should reach this issue. Appellant failed to raise this as a basis for his motion for directed verdict. Further, even assuming the mention of the theory by the State and the trial court during discussion of the motion was sufficient to encompass the theory as a basis of Appellant's directed verdict motion, I do not believe the question of whether the doctrine of transferred intent applied to the specific-intent crime of attempted murder here should be addressed, as Appellant never challenged the trial court's instruction to the jury on transferred intent. See *Gerald Williams II*, 427 S.C. at 157-58, 829 S.E.2d at 707 (vacating the portion of this court's decision dealing with the issue of transferred intent and a specific-intent crime because Williams failed to challenge the trial court's instruction to the jury that specific intent to kill was not an element of the crime of attempted murder, but there must be a general intent to commit serious bodily injury and, accordingly, Williams's attempted murder case was tried, without objection, as a general-intent crime).

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SUMTER COUNTY
Court of General Sessions
Howard P. King, Circuit Court Judge

Appellate Case No. 2017-001601

THE STATE, ...RESPONDENT,

v.

JAMES CALEB WILLIAMS,.....APPELLANT.

RESPONDENT’S PETITION FOR REHEARING

On July 14, 2021, this Court issued a published opinion in which it reversed Appellant’s convictions for attempted murder and possession of a weapon during the commission of a violent crime. State v. Williams, Op. No. 5385 (S.C. Ct. App. Filed July 14, 2021). In reversing Appellant’s conviction, this Court found the trial judge erred in refusing to direct a verdict in Appellant’s favor on his charge after determining transferred intent is inapplicable to the crime of attempted murder. Notably, the majority’s opinion based its conclusion on two critical findings: (1) the specific intent for Appellant’s intended victim could not transfer to the unintended victim because Appellant was acquitted by the jury of the intended crime; and (2) the issue of transferred intent was preserved for appellate review. Pursuant to Rule 221(a), SCACR, Respondent, the State, respectfully petitions for rehearing because this Court appears to have misapprehended two critical points: (1) the issue of transferred intent was not preserved for

appellate review because Appellant did not object to its applicability at trial; and (2) the acquittal on Appellant's attempted murder charge pertaining to his intended victim was an inappropriate not only because Appellant failed to raise this "inconsistent verdict" to this Court, but because the jury's verdicts were not inconsistent and, even if they were, had no impact on the trial judge's evaluation of Appellant's charges at the directed verdict stage of trial.

Issue Preservation

The question of issue preservation looms large in this Court's opinion. As noted by the dissent, the only issue preserved on appeal is whether the trial court erred in denying Appellant's motion for directed verdict as related to his charge of attempted murder of Ashley R. When making his directed verdict motion, trial counsel argued "[he] certainly d[id]n't think the [S]tate had met its burden beyond a reasonable doubt" because both Myers and Ashley R. could not say "conclusively" who shot them. (R.p.159, line 20–R.p.160, line 11). The State responded by explaining there was "strong evidence" the bullet which hit Ashley R. was fired from Appellant's gun and added the State was proceeding under the theory of transferred intent in regard to the attempted murder charge for Ashley R. (R.p.160, line 12–R.p.161, line 6). The trial judge acknowledged this was the State's theory of the case and Appellant failed to contest the applicability of transferred intent to that charge. (R.p.161, line 7–R.p.163, line 2). Later, when the trial judge charged transferred intent to the jury, Appellant again failed to challenge the applicability of the doctrine. (Tr.p.212, line 11–R.p.219, line 20). At no point did Appellant object to the use of transferred intent doctrine on the basis that transferred intent could not be applied to a specific intent crime. Thus, as noted by the dissent, Appellant's current challenge to the applicability of transferred intent is not preserved for appellate review. See State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003). ("A party need not use the exact name of a legal

doctrine in order to preserve it, but it must be clear that the argument has been presented on that ground.”)

Although the majority opinion acknowledges Appellant failed to argue the impropriety of transferred intent at trial, it brushes the issue aside by noting the State did not raise the issue of preservation in its brief and this omission by the State somehow implies the “obscurity” of the issue. (*citing Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 332–33, 730 S.E.2d 282, 287 (2012)) (“When the opposing party does not raise a preservation issue on appeal, courts are not precluded from finding the issue unpreserved if the error is clear. However, the silence of an adversary should serve as an indicator to the court of the obscurity of the purported procedural flaw.”) (Toal, C.J., concurring in result in part and dissenting in part)). In *Lewis*, then-Chief Justice Toal observed this finding was based on two aspects of the case: (1) her belief the majority “scour[ed] the records before [it]” for the purpose of finding a preservation issue; and (2) “the question of preservation [was] subject to multiple interpretations,” and in such a situation “doubt should be resolved in favor of preservation.” However, this issue is not one of obscurity: as noted above, Appellant never challenged the doctrine of transferred intent at trial. Because the trial judge was never given any facts, law, or even arguments challenging the propriety of transferred intent to his case, the issue was waived. *See State v. Porter*, 389 S.C. 27, 37–38, 698 S.E.2d 237, 242. (Ct. App. 2010). As noted by the **majority** in *Lewis*, “While it may be good practice for us to reach the merits of an issue when error preservation is doubtful, we should follow our **longstanding precedent** and resolve the issue on preservation grounds when it clearly is unpreserved.” *Lewis*, 398 S.C. at 330, 730 S.E.2d at 285 (emphasis added).

Further, the State's failure to raise preservation in his brief is a product of the length of time between the filing of briefs in this case and this Court's opinion. The State filed its Final Brief of Respondent on August 21, 2018, almost three years before this Court issued its opinion. At that time, this Court had issued its opinions in State v. Gerald Williams, 422 S.C. 525, 812 S.E.2d 917 (Ct. App. 2018) ("Gerald Williams I"), and State v. Smith, 425 S.C. 20, 819 S.E.2d 187 (Ct. App. 2018) ("Smith I"), finding, unequivocally, the doctrine of transferred intent applied to the crime of attempted murder. Id. at 542, 812 S.E.2d at 925–26.

Subsequent to those opinions (and the filing of the State's brief in this case), the supreme court granted certiorari and vacated the portion of this Court's opinion in Gerald Williams I concerning the application of transferred intent, noting that because Williams failed to challenge the trial court's jury instruction that specific intent to kill was not an element of attempted murder, only a general intent to commit serious bodily injury, **that unappealed ruling was the law of the case** and this court had erroneously reached the question of whether transferred intent applied to a specific intent crime. State v. Gerald Williams, 427 S.C. 148, 157–58, 829 S.E.2d 702, 706–07 (2019) ("Gerald Williams II"). Thus, the court decided to "leave for another day" the question of whether transferred intent applied to attempted murder. Id. at 157–58, 829 S.E.2d at 707. Later, the supreme court issue its opinion in State v. Smith, 430 S.C. 226, 230, 845 S.E.2d 495, 496 (2020) ("Smith II"), reversing Smith's conviction for attempted murder due to improper jury instructions. Like in Gerald Williams II, the supreme court declined to determine whether the doctrine of transferred intent applied to the specific intent crime of attempted murder, finding resolution of other issues dispositive. Id. at 234 n.9, 845 S.E.2d at 499 n.9.

As indicated above, at that time briefing occurred in this case, there was no question transferred intent applied to the specific intent crime of attempted murder and Appellant was unable to cite to any South Carolina cases contradicting the State's authority. Issue preservation was discussed by the State during oral argument because of Gerald Williams II and its finding that, regardless of the applicability of transferred intent to specific intent crimes, the failure to properly object to the issue at trial renders it improper for appellate review. (Oral Argument at 10:02–14:43). Appellant failed to object to the theory of transferred intent during his directed verdict motion and again when the trial judge declared he was charging it to the jury.

Accordingly, it was error for this Court to ignore issue preservation and issue an opinion addressing the merits of Appellant's transferred intent argument which, notably, was never raised or ruled upon at any point prior to the appellate proceedings.

Verdict Inconsistencies

The foundation of the majority's opinion focuses on the fact that the jury acquitted Appellant for the attempted murder of Myers, explaining it could not "reconcile the jury's acquittal of Williams on the attempted murder charge for the shooting of Myers with its guilty verdict for an attempted murder of Ashley R." However, the perceived inconsistency between these verdicts was, for several reasons, an inappropriate ground upon which to reverse Appellant's convictions.

First, and most significant, is the fact that the issue of the inconsistent verdicts was not briefed by Appellant nor articulated in his issues on appeal. Thus, it is entirely improper to reverse Appellant's conviction on this ground. See Repko v. Cty. of Georgetown, 424 S.C. 494, 503–04, 818 S.E.2d 743, 748–49 (2018) ("In I'On, L.L.C. v. Town of Mt. Pleasant, we ... clarified that while an appellate court may affirm a lower court judgment for any reason

appearing in the record, ‘[a]n appellate court may not, of course, reverse for any reason appearing in the record.’ The [C]ourt of [A]ppeals sua sponte raised and ruled upon an issue Repko never presented to the trial court. Therefore, we reverse the court of appeals' holding that a jury issue exists as to whether subsection 15-78-60(12) applies to the facts of this case”); also State v. Freiburger, 366 S.C. 125, 135, 620 S.E.2d 737, 742 (2005) (“The rule is *well established* that if asserted errors are not presented to the lower Court, the question cannot be raised for the first time on appeal.” (emphasis added)). Moreover, reversing Appellant’s convictions for an issue not raised in the briefs is inconsistent with the majority’s opinion in this very case and its refusal to affirm Appellant’s convictions based on the issue preservation issues acknowledged by both the majority and dissent. Thus, both precedent and internal inconsistency demand rejection of the inconsistent verdict issue. See id.

However, even if that preservation problem could be ignored, the State asseverates that any alleged inconsistency with the verdicts does not justify reversal of Appellant’s conviction. First and foremost, the jury’s ultimate verdict has no bearing on a trial judge’s grant or denial of a directed verdict. When ruling on a motion for a directed verdict, the trial court is concerned with the existence or non-existence of evidence, not its weight. State v. Curtis, 356 S.C. 622, 633, 591 S.E.2d 600, 605 (2004). “[I]f there is **any direct** or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury.” State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011) (emphasis added). A jury’s later evaluation of the facts has **no** bearing on whether a trial judge abused her discretion in denying a defendant’s motion for a directed verdict: a trial judge properly submits a case to a jury when there is any direct or substantial circumstantial evidence justifying submission. As explained by the United States Supreme Court:

[A] criminal defendant already is afforded protection against jury irrationality or error by the independent review of the sufficiency of the evidence undertaken by the trial and appellate courts. This review should not be confused with the problems caused by inconsistent verdicts. Sufficiency-of-the evidence review involves assessment by the courts of whether the evidence adduced at trial could support any rational determination of guilty beyond a reasonable doubt. This review should be independent of the jury's determination that evidence on another count was insufficient. The Government must convince the jury with its proof, and must also satisfy the courts that given this proof the jury could rationally have reached a verdict of guilty beyond a reasonable doubt. We do not believe that further safeguards against jury irrationality are necessary.

United States v. Powell, 469 U.S. 57, 67 (1984) (citations omitted). Importantly, South Carolina courts have explicitly adopted the rationale of Powell and rejected the prohibition against inconsistent verdicts. See State v. Alexander, 303 S.C. 377, 382–83, 401 S.E.2d 146, 149–50.¹

Juries may at times acquit defendants of at least some portion of their charged crimes, and their reasons for doing so—assuming they are even legitimate considerations—are not revealed in any way by a general verdict of guilty or not guilty; for example, a jury may reach a unanimous agreement that a defendant is guilty of a charged offense but may issue a verdict of not guilty for the purpose of jury nullification. See State v. Banko, 861 A.2d 110, 117 (N.J. 2004) (“An inconsistent verdict may be the product of jury nullification. We permit inconsistent verdicts to be returned by a jury because it is beyond our power to prevent them. We do not speculate why a jury acquits.” (citations and internal quotations omitted)). Importantly, because a jury may issue a verdict for a myriad of reasons, a jury's acquittal does not invariably mean the trial judge abused his discretion in denying a directed verdict on that charge. The majority's inability to cite to any precedent finding error in the denial of a directed verdict based upon a jury's later acquittal only strengthens this point.

¹ In fact, the State believes the likely reason Appellant failed to raise the inconsistent verdict issue in his brief was due to the supreme court's rejection of the prohibition against inconsistent verdicts in Alexander.

Further, the majority's opinion misconstrues what, in fact, an acquittal means. Acquittal on criminal charges does not prove that a defendant is innocent, only that the factfinder found the defendant not guilty of the charged crime in a legal—not necessarily factual—sense. United States v. Watts, 519 U.S. 148, 155 (1997). Thus, an acquittal on the attempted murder charge related to Myers cannot be interpreted as it finding Appellant on the charge. In fact, as noted by the dissent, the jury's acquittal of the attempted murder of Myers but conviction for the attempted murder of Ashley R. can readily be reconciled. As explained by the dissent:

. . . [I]t is understandable that the jury did not appreciate this nuance, especially given the fact that (1) Myers discouraged the jury from holding Appellant responsible for shooting him; (2) the defense introduced evidence there was a third shooter present; (3) the State presented evidence the bullet that struck Ashley R. could have been fired from the gun used by Appellant that night but presented no evidence concerning the bullet that struck Myers; (4) the defense argued to the jury that five of the six bullets shot by Appellant hit Appellant's car and it would have had to have been a "magic bullet" to have hit both Ashley R. and Myers, implying to the jury that Appellant could not be guilty of shooting both of them; and (5) the jury was implicitly instructed a permissible verdict included one in which Appellant could be found guilty on either count of attempted murder without being found guilty on the other.

The State cannot emphasize these points enough: based on the evidence, arguments, and instructions provided to the jury, it believed it could find Appellant guilty of Ashley R.'s attempted murder independent of the charge pertaining to Myers. At no point did Appellant challenge the trial judge's instructions or argue the verdicts were inconsistent. Thus, it is inappropriate to reverse Appellant's conviction based on the inconsistency perceived by the majority. See Powell, 469 U.S. at 67; Alexander, 303 S.C. at 382–83, 401 S.E.2d at 149–50; Duncan v. Record Pub. Co., 145 S.C. 196, 143 S.E. 31, 74 (1927) ("We are only judges of the law. **We are not advocates of either of the parties to the cause.**" (emphasis added)); also Econ. Folding Box Corp. v. Anchor Frozen Foods Corp., 515 F.3d 718, 721 (7th Cir. 2008) ("It is not the court's responsibility to research the law and construct the parties' arguments for

them.”); State v. Hill, 632 S.E.2d 777, 789 (N.C. Ct. App. 2006) (explaining it is “not the duty of the appellate courts to supplement an appellant’s brief with legal authority or arguments not contained therein”).

Transferred Intent and Attempted Murder

Finally, the State believes the majority erred in finding that supreme court’s opinions in State v. King, 422 S.C. 47, 810 S.E.2d 18 (2017), Gerald Williams II, and Smith II indicate the doctrine of transferred intent is inapplicable to the attempted murder charge for Ashley R. In Gerald Williams I and Smith I, this Court found the doctrine of transferred intent applies to attempted murder. Gerald Williams I, specifically, reached this conclusion by viewing the long-established precedent of transferred intent explained in State v. Fennell, 340 S.C. 266, 531 S.E.2d 512 (2000), which itself explains South Carolina law views a defendant’s mental state as never leaving his brain: instead, it “is like a spotlight emanating from its source—the defendant’s mind—to its target—the intended victim.” Fennell, 340 S.C. at 271, 531 S.E.2d at 515. Nothing in Gerald Williams II or Smith II repudiates this analysis or states transferred intent is inapplicable to the crime attempted murder. Because the supreme court has declined to address the issue in its opinions, this Court should defer to the logic of Gerald Williams I and Smith I along with the precedent of Fennell and affirm Appellant’s conviction.

Conclusion

For the reasons stated above, Respondent petitions for rehearing pursuant to Rule 221(a), SCACR, and requests this Court reinstate Petitioner's conviction for voluntary manslaughter.

Respectfully submitted,

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July 29, 2021

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SUMTER COUNTY
Court of General Sessions
Howard P. King, Circuit Court Judge

Appellate Case No. 2017-001601

THE STATE, ...RESPONDENT,

v.

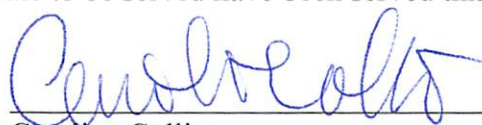
JAMES CALEB WILLIAMS, ...APPELLANT.

PROOF OF SERVICE

I, Caroline Collins, certify that I have served the within Petition for Rehearing on Appellant via electronic email to the address listed by the attorney in AIS for:

Robert M. Dudek, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211-1589

I further certify that all parties required by Rule to be served have been served this 29th day of July, 2021.



Caroline Collins
Administrative Coordinator
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

The South Carolina Court of Appeals

The State, Respondent,

v.

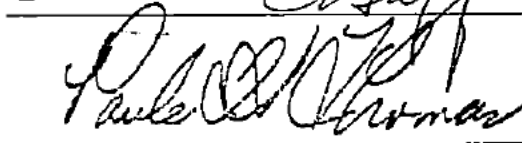
James Caleb Williams, Appellant.

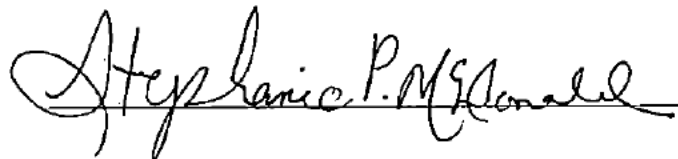
Appellate Case No. 2017-001601

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 J.

 J.

 J.

Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire

Robert Michael Dudek, Esquire

William Frederick Schumacher, IV, Esquire

Ernest Adolphus Finney, III, Esquire

FILED
Nov 18 2021

William M. Blitch, Jr., Esquire
The Honorable Howard P. King