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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Florence County

Honorable William H. Seals, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOSHUA A. KELLY,

APPELLANT.

APPELLATE CASE NO. 2021-000600

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1 STATE OF SOUTH CAROLINA

2 GENERAL SESSIONS

3 COUNTY OF FLORENCE

4 -----x

5 STATE OF SOUTH CAROLINA,)

6)

7 Plaintiff,)

8)

9 vs.) Transcript of Record

10) 2020-GS-40-00253

11 JOSHUA KELLY,)

12)

13 Defendant.)

14 -----x

15 May 26, 2021

16 BENCH TRIAL

17 B E F O R E:

18 The Honorable William H. Seals, Presiding Judge

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

20 Ryan White, Esq.

21 Jaynie Leftridge

22 Attorney for the State

23 Christie Henderson, Esq.

24 Attorney for the Defendant

25

25 Court Reporter: Bobbi Fisher, RPR

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1	E X H I B I T S			
2	(Exhibits on file in the Clerk's Office.)			
3	EXHIBIT		ID.	ADM.
4	ST-1	9-1-1 Report	43	43
5	ST-2	Photo of Truck	22	22
6	ST-3	Photo of Truck	22	22
7	ST-4	Photo of Truck	22	22
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11	ST-8	Map	55	55
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13				
14				
15	COURT REPORTER LEGEND			
16	Dash (--)	Indicates an interruption in speech		
17	Ellipses (...)	Indicates trailing off in speech		
18	(ph)	Indicates phonetic word		
19	[Verbatim]	Indicates the word is said as written		
20	(Indiscernible)	(DCRP only) Indicates word(s) is not known		
21		due to audio recording quality		
22				
23				
24				
25				

1 P R O C E E D I N G S

2 (Whereupon, the following proceedings started at 10:04 a.m.)

3 THE COURT: All right. Do we have any pretrial motions
4 or anything we need to take up before?

5 MR. WHITE: Judge, the only two pretrial motions that we
6 need to address are, first, the *Jackson v. Denno* and then the
7 *Neil v. Biggers*. The State is prepared to go forward on both
8 and then anything the defense needs to take up.

9 THE COURT: All right. How about from the defense?

10 MS. HENDERSON: Thank you, Judge. Before we do those
11 pretrial motions, Mr. Kelly advised us, when he was brought
12 into the courtroom this morning, that he has concerns with my
13 representation. He would like to address this Court as to him
14 representing himself for today.

15 THE COURT: Sure.

16 And, Mr. Kelly, anything you want to tell me?

17 THE DEFENDANT: No, Your Honor. Well, yes, one thing is
18 I have certain points that I want to hit on here. I had a
19 long lengthy time to go over my evidence and I've done the day
20 in and day out, and there's certain points I want brought up,
21 certain things I don't understand as far as some things, like,
22 the indictment. I know the court proceedings, and I'd ask how
23 some of the charges come about with what I can do. I just
24 want to bring up those charges. I'll bring it up as the case
25 goes along. There's just certain points I want to hit. Time

1 and time again, I just -- but I'm not -- there's a lack of
2 communication, I think through no one's fault. I just want to
3 be sure that I hit the points I want to hit because this is my
4 life. This is my everything, you know, to go to jail or
5 something. It's been devastating. So I want to make sure
6 that I get my point across because it matters to me more than
7 everything else.

8 THE COURT: Sure. I don't have any problem with that.
9 Do you?

10 MS. HENDERSON: Judge, I do not. And we have tried to
11 communicate with Mr. Kelly. I certainly want to make sure I
12 address all points that he wants the Court to be made aware
13 of.

14 THE COURT: That will be fine. And we are in no rush.
15 You take your time.

16 THE DEFENDANT: Thank you.

17 THE COURT: You talk to your lawyers, they'll talk to
18 you. This is your day, and we'll give you your chance.

19 THE DEFENDANT: Yes, sir. That's why I asked for a bench
20 trial. I wanted to talk to you and them instead of a group of
21 people.

22 THE COURT: Okay. That sounds good. Anything else?

23 THE DEFENDANT: No, sir.

24 THE COURT: All right. Good.

25 MR. WHITE: Let's proceed with whichever hearing you want

1 first.

2 JACKSON V. DENNO MOTION

3 MR. WHITE: Thank you, Judge. At this time, pursuant to
4 Jackson v. Denno, the State would call Investigator Worsley.

5 INVESTIGATOR ALVIN WORSLEY,
6 the witness, after having been duly sworn, was examined and
7 testified to as follows:

8 THE CLERK: You can be seated on the witness stand and
9 state your full name for the record.

10 THE WITNESS: Investigator Alvin Keith Worsley.

11 DIRECT EXAMINATION

12 BY MR. WHITE:

13 Q Investigator Worsley, where are you employed?

14 A The Florence County Sheriff's Office --

15 Q And what -- I'm sorry; go ahead.

16 A -- assigned to the Investigation Division.

17 Q You beat me to it.

18 And were you similarly situated back in 2019?

19 A Yes, I was.

20 Q You were in Investigations?

21 A Yes.

22 Q And specifically on September 18th, 2019, did you respond
23 to [REDACTED] Road here in Florence?

24 A Yes, Florence County.

25 Q And were you responding to that location for shots fired

1 at individuals who were present on scene?

2 **A** Yes.

3 **Q** Now, we're going to get into all the specifics of the
4 investigation, but I want to ask you now, for purposes of this
5 hearing, did you have occasion to make contact with the
6 defendant in this case, Joshua Kelly, after he was taken into
7 custody?

8 **A** Yes, very briefly.

9 **Q** And when he was taken into custody and you approached
10 him, was he handcuffed?

11 **A** He was handcuffed.

12 **Q** Was he inside or outside the vehicle?

13 **A** Outside the vehicle.

14 **Q** Okay. And what, if anything, did you tell him?

15 **A** The only thing I told him was he was going to be charged
16 with counts of attempted murder, and his response was, "If I
17 wanted to kill them, I could easily have done it."

18 **Q** Now, did you ask him any questions?

19 **A** I did not.

20 **Q** Did you conduct any sort of interrogation?

21 **A** I did not.

22 **Q** And all this was out in the open; correct?

23 **A** Yes.

24 **Q** Did you speak to him at all prior or after that comment
25 that was made?

1 **A** I did not.

2 **Q** Please answer questions defense may have.

3 THE COURT: All right. Defense?

4 MS. HENDERSON: Defense has no questions for Investigator
5 Worsley.

6 THE COURT: Do you have any questions?

7 THE DEFENDANT: No, sir.

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

9 I find that the statement was made voluntary.

10 MR. WHITE: Thank you, Judge.

11 And, now, the State would call Mr. Jeff Martin to the
12 stand pursuant to *Neil v. Biggers*.

13 JEFFREY MARTIN,

14 the witness, after having been duly sworn, was examined and
15 testified to as follows:

16 THE CLERK: Please state your full name for the record.

17 THE WITNESS: Jeffrey D. Martin.

18 DIRECT EXAMINATION

19 BY MR. WHITE:

20 **Q** Mr. Martin, back in September, specifically September
21 18th, 2019, where were you employed?

22 **A** Buford Tree.

23 **Q** And, on that date, did you arrive at Sand Pit Road in
24 Florence?

25 **A** Yes, I did.

- 1 Q What were you doing there?
- 2 A I'm the safety supervisor. I was there checking on my
- 3 crews that were marking trees for Duke Energy.
- 4 Q So you were meeting another crew?
- 5 A That's correct.
- 6 Q And the individuals in this crew, how many were there?
- 7 A There were three.
- 8 Q Were you approached sometime after your arrival by the
- 9 defendant in this case, Joshua Kelly?
- 10 A Yes, I was.
- 11 Q And what time of day was that?
- 12 A Around 3:00, somewhere around there.
- 13 Q What was the weather like?
- 14 A It was clear, hot.
- 15 Q When he approached you, what did he do?
- 16 A When he approached, he had a weapon drawn, pointed the
- 17 whole time.
- 18 Q How close did he get to you?
- 19 A He had it -- it was stuck in my face.
- 20 Q And how close did the barrel get to your face?
- 21 A It was inches away.
- 22 Q Okay. And would it be fair to say that he -- his body
- 23 was a shotgun away from your body?
- 24 A That's correct.
- 25 Q And did you get a good look at his face?

- 1 **A** Yes, I did.
- 2 **Q** Was it covered?
- 3 **A** He had glasses on.
- 4 **Q** About how long did you get a look at his face in its
5 entirety?
- 6 **A** In the whole entirety? About a good five minutes.
- 7 **Q** Now, at any given -- now, at one time, how long did you
8 fixate upon his face?
- 9 **A** When he had the gun stuck in my face, it was a good
10 minute or so.
- 11 **Q** Okay. And, at some point, did law enforcement pick you
12 up and take you to his residence?
- 13 **A** They didn't take me to his residence. They drove me by
14 after they apprehended him.
- 15 **Q** Okay.
- 16 **A** Leaving his residence.
- 17 **Q** And were you able to identify the person they had in
18 custody as the person who stuck that gun in your face?
- 19 **A** Yes, sir.
- 20 **Q** Were you certain then that Joshua Kelly is the one who
21 stuck that gun in your face?
- 22 **A** Yes, sir.
- 23 **Q** Are you certain now?
- 24 **A** I'm positive.
- 25 **Q** Were you present at a bond hearing that was held maybe

1 like a day or two after this?

2 **A** Yes, sir.

3 **Q** Was Joshua Kelly present?

4 **A** Yes, sir.

5 **Q** Were you able to see his face?

6 **A** Yes, sir.

7 **Q** Was he the same person who pulled a gun on you on
8 September 18th and stuck it in your face?

9 **A** Yes, sir.

10 **Q** Is he the same person that fired that gun at your truck
11 as you were leaving?

12 **A** Yes, sir.

13 **Q** What, if anything, did he say at that hearing that stood
14 out to you?

15 **A** When the judge asked if he had anything to say, he said
16 I'm ex-military, ex-police, if I wanted them shot, they would
17 have been shot.

18 **Q** Thank you, Your Honor. I have nothing further. Please
19 answer any questions defense may have.

20 THE COURT: Any questions?

21 CROSS-EXAMINATION

22 BY MS. HENDERSON:

23 **Q** Thank you, Mr. Martin. You testified that law
24 enforcement officer drove you to Mr. Kelly's -- outside of his
25 residence after they picked him up; correct?

1 **A** Yes.

2 **Q** You identified him; correct?

3 **A** Mm-hmm.

4 **Q** You were in law enforcement's vehicle when you identified
5 him?

6 **A** That's correct.

7 **Q** Mr. Kelly was handcuffed; correct?

8 **A** That's correct.

9 **Q** He was the only non-law enforcement out there; correct?

10 **A** That's correct.

11 **Q** I think that's it. Thank you, sir.

12 THE COURT: Any questions?

13 CROSS-EXAMINATION

14 BY MR. KELLY:

15 **Q** So, what were you driving that day?

16 **A** What was I driving?

17 **Q** Yes, sir.

18 **A** I was driving a 2018 white Chevrolet 1500 pickup.

19 **Q** Okay. The crew company that works for you, tree company,
20 they are issued for the truck?

21 **A** Mm-hmm.

22 **Q** You have no logo on the door; right?

23 **A** Mm-hmm.

24 THE COURT: You need to say yes or no.

25 THE WITNESS: Yes, sir.

1 BY MR. KELLY:

2 Q You say you're a supervisor --

3 A That's correct.

4 Q -- for a company. You don't drive those trucks -- you
5 don't have a logo on your door?

6 A No, I don't have to have one on my door.

7 Q Okay. The truck -- at the door of the cab, even though
8 it's a South Carolina company. Why is that?

9 A Because our company is out of Georgia -- I mean, out of
10 Alabama. It's not a Georgia tag.

11 Q All right. And you said in your statement that, when you
12 pulled up, I shot your truck; correct?

13 A No. You shot at our truck and hit the one behind me.
14 Hit my crew's truck.

15 Q Okay. Nothing further.

16 THE COURT: All right. Thank you.

17 I'm going to find that the identification was reliable.
18 It was made shortly after the crime. It was near the scene of
19 the crime. The witness's memory was still fresh and the
20 defendant did not have time to alter his looks, and the
21 witness had looked at the defendant for, he said, about five
22 minutes and had the gun stuck directly in his face. I'm going
23 to find that the identification was reliable.

24 MR. WHITE: Thank you, Judge.

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

1 Any other pretrial matters?

2 MR. WHITE: I don't believe so, Judge. At this time, the
3 State is ready to move on with its case in chief.

4 THE COURT: Anything else from the defense?

5 MS. HENDERSON: Yes, Judge. I would just like to place
6 on the record one more time the defense being here today
7 opting for a bench trial. Mr. Kelly received an offer from
8 the State. Should he wish to plead guilty, the State's
9 recommendation was a cap of six years to an assault and
10 battery in the first degree, a nonviolent offense carrying a
11 maximum of ten years, as well as a pointing and presenting a
12 firearm, a nonviolent offense carrying a maximum of five
13 years.

14 I have spoken with Mr. Kelly in detail, reviewed his
15 rights with him, reviewed all of his potential options,
16 including a trial either by jury or a bench trial before Your
17 Honor, as well as resolving this case via guilty plea,
18 included with that is an Alford plea.

19 Mr. Kelly has acknowledged that he understands all of
20 those options. He appears before you today wishing to proceed
21 on this bench trial. This is against my advice. He wishes
22 still to go forward. He understands that he's being tried
23 before Your Honor and Your Honor alone on an attempted murder
24 charge; that it's a violent offense carrying up to 30 years; a
25 discharging a firearm into an occupied vehicle offense, that

1 carries up to ten years, as well as a pointing and presenting
2 that carries up to five years.

3 THE COURT: All right. And, Mr. Kelly, do you understand
4 what your lawyer just said?

5 THE DEFENDANT: I do, Your Honor. I'd like to go ahead
6 with the bench trial.

7 THE COURT: That's fine. We just want to make sure you
8 understand that you are potentially facing up to 45 years in
9 jail if convicted on all of these charges.

10 THE DEFENDANT: I understand that.

11 THE COURT: Okay. And if you would like to plead guilty,
12 the State has recommended a cap of six.

13 THE DEFENDANT: I would not plead guilty.

14 THE COURT: That's fine. I just want --

15 THE DEFENDANT: I want to plead my case here today with
16 you as a bench trial.

17 THE COURT: That's fine. I just want to make sure you
18 understand.

19 All right. Anything else from the defense?

20 MS. HENDERSON: Not at this time, Judge.

21 THE COURT: All right. Good. Thank you.

22 Call your first witness.

23 MS. LEFTRIDGE: The State would call Jawuan McWhite, Your
24 Honor.

25 SGT. JAWUAN McWHITE,

1 the witness, after having been duly sworn, was examined and
2 testified to as follows:

3 THE CLERK: Please state your full name for the record.

4 THE WITNESS: Sergeant Jawuan McWhite.

5 DIRECT EXAMINATION

6 BY MS. LEFTRIDGE:

7 Q Good morning, Sergeant McWhite. Can you tell the Court
8 where you're currently employed?

9 A Florence County Sheriff's Office.

10 Q Were you employed there on September 18th, 2019?

11 A Yes, ma'am.

12 Q On September 18th, 2019, were you working in your
13 capacity as a law enforcement agent?

14 A Yes, ma'am.

15 Q Do you recall an incident that occurred at [REDACTED]
16 Road in Florence?

17 A Yes, ma'am.

18 Q And is [REDACTED] Road located in Florence County?

19 A It is.

20 Q Why did you respond to that location?

21 A In reference to a man with a gun, shots fired.

22 Q Can you tell the Court what you observed upon arriving at
23 that address?

24 A When I arrived on scene, I met with the victims,
25 Mr. Martin, along with the other three, Mr. Oakley and

1 Mr. Parker. They told me what happened, and we called the
2 investigator and went from there.

3 Q You said there were four people on scene when you
4 arrived?

5 A It was three to five people on the scene.

6 Q Were you the first law enforcement on the scene?

7 A Yes, ma'am.

8 Q Did other law enforcement officers respond?

9 A Yes, ma'am.

10 Q And you said you made contact with some of the witnesses
11 there?

12 A Yes, ma'am.

13 Q Did you speak with anyone?

14 A I did.

15 Q And who did you speak with and what did they say?

16 A I spoke with Mr. Martin and he stated that --

17 MS. HENDERSON: Objection, Your Honor.

18 THE COURT: Hold on, hold on. Yeah, don't say what
19 somebody else said.

20 MS. LEFTRIDGE: Your Honor, we're offering this not for
21 the truth of the matter but as corroboration. All the
22 witnesses are here today, and they will be testifying, and
23 they're available for cross-examination.

24 MS. HENDERSON: Judge, I don't believe that falls within
25 an exclusion or exception under the hearsay.

1 THE COURT: Why don't we let the witnesses themselves
2 testify as to what they saw.

3 MS. LEFTRIDGE: Yes, sir.

4 BY MS. LEFTRIDGE:

5 Q Did law enforcement receive a description of the suspect?

6 A Yes, ma'am.

7 Q And was that description -- did that end up being
8 accurate?

9 A Yes, ma'am.

10 MS. LEFTRIDGE: Your Honor, I beg the Court's indulgence
11 for one moment.

12 BY MS. LEFTRIDGE:

13 Q One more question, Officer McWhite. Did you convey what
14 was told to you on the scene to the investigator?

15 A Yes.

16 Q Thank you. No further questions. Please answer any
17 questions the defense may have.

18 THE COURT: All right. Cross-examination.

19 MS. HENDERSON: Thank you, Judge.

20 CROSS-EXAMINATION

21 BY MS. HENDERSON:

22 Q Good morning, Officer McWhite.

23 A Good morning.

24 Q You filled out an incident report in conjunction with
25 this incident; correct?

1 **A** Yes, ma'am.

2 **Q** Do you have a copy of that in front of you?

3 **A** I do.

4 **Q** All right. Would you mind pulling that out for me? I

5 want to walk through some of that.

6 **A** Okay.

7 **Q** All right. You stated that, on September 18th, 2019, you

8 were dispatched and responded to Sand Pit Road; correct?

9 **A** Yes.

10 **Q** You stated that you spoke with Mr. Jeff Martin; correct?

11 **A** Yes, ma'am.

12 **Q** Further down on that incident report on that first

13 page -- this is a three-page report; correct?

14 **A** Yes, ma'am.

15 **Q** Yes, sir. You note that -- you reported, excuse me, that

16 Mr. Kelly fired two shots, one hitting the front left driver's

17 side of Mr. Martin's vehicle; correct?

18 **A** Yes, ma'am.

19 **Q** Okay. Moving on to the second page of that report, you

20 reported that Mr. Martin had two other employees in his

21 vehicle, Mr. Parker Jarvis and Ashlyn Duplisea; correct?

22 **A** Yes, ma'am.

23 **Q** Moving on to that third page of the report, you report

24 that there was one vehicle involved: A Chevy Silverado with

25 Alabama plates; correct?

1 **A** Yes, ma'am.

2 **Q** And you report that Mr. Jeff Martin was the owner of that
3 vehicle; correct?

4 **A** Yes, ma'am.

5 **Q** Did you take pictures in this incident?

6 **A** I did.

7 MS. HENDERSON: Judge, may I have one moment, please?

8 THE COURT: Sure.

9 BY MS. HENDERSON:

10 **Q** Mr. McWhite, do you have copies of those pictures in
11 front of you?

12 **A** I don't.

13 **Q** I'm going to show you photographs that I have. Is
14 this --

15 MS. HENDERSON: Judge, may I approach?

16 BY MS. HENDERSON:

17 **Q** Is this a photograph that you took?

18 **A** Yes, ma'am.

19 MS. HENDERSON: And, Judge, I apologize; I have not
20 labeled these as exhibits. I didn't think about that.

21 BY MS. HENDERSON:

22 **Q** Is this a photograph that you took?

23 **A** Yes, ma'am.

24 **Q** Is this a photograph that you took?

25 **A** Yes, ma'am.

1 MS. HENDERSON: Your Honor, I'm going to mark these
2 respective photographs as Defense Exhibits 1, 2, and 3
3 respectively.

4 THE COURT: All right. Any objection from the State?

5 MR. WHITE: No.

6 THE COURT: Are they being moved into evidence?

7 MS. HENDERSON: Judge, I believe he's already marked them
8 for his. May I go ahead and --

9 THE COURT: Are you moving them into evidence?

10 MS. HENDERSON: I am.

11 THE COURT: All right. Any objection?

12 MR. WHITE: Judge, they're marked as State's Exhibit I
13 think 2 through 7, I believe. I will stipulate to those. We
14 plan on moving those in through Investigator Worsley, but I'll
15 stipulate to them coming in at this current juncture.

16 MS. HENDERSON: Perfect. Thanks. I apologize for that.

17 THE COURT: State's 2 through 7 are into evidence without
18 objection.

19 (State's 2 through 7 were marked for identification and
20 received into evidence.)

21 BY MS. HENDERSON:

22 Q Officer McWhite, I'm showing you State's Exhibit 2.

23 That's a photograph of Mr. Martin's Chevy Silverado; correct?

24 A Mm-hmm.

25 Q State's 3, a full photo of Mr. Martin's Silverado?

1 **A** Mm-hmm.

2 **Q** State's Exhibit 4, that's a close-up photograph, it looks
3 like, of Mr. Martin's vehicle. There is a dent on the front
4 driver's side; correct?

5 **A** Yes, ma'am.

6 **Q** And I'm assuming State's Exhibit 5 is a close-up of that
7 dent?

8 **A** Yes, ma'am.

9 **Q** You reported that Mr. Martin claimed that Mr. Kelly shot
10 his vehicle; correct?

11 **A** Yes, ma'am.

12 **Q** Yet, in these photographs, we don't see any evidence of
13 this vehicle being shot by a shotgun, do we?

14 **A** No, ma'am.

15 MS. HENDERSON: May I beg the Court's indulgence?

16 THE COURT: Yes.

17 BY MS. HENDERSON:

18 **Q** Mr. McWhite, were these photographs taken at the scene?

19 **A** It was -- no, ma'am.

20 **Q** Okay. And you took no photographs of any other vehicles
21 allegedly involved in this incident; correct?

22 **A** No, ma'am.

23 **Q** So we have no documentation of those.

24 **A** No, ma'am.

25 **Q** Officer McWhite, in your training in law enforcement, you

1 deal with weapons handling; correct?

2 **A** Yes, ma'am.

3 **Q** Are you familiar with a shotgun?

4 **A** Yes, ma'am.

5 **Q** Are you familiar with the various types of ammunition

6 used in a shotgun: Buck shot? Bird shot? Slugs?

7 **A** Somewhat.

8 **Q** We don't know what was used in this case; correct?

9 MR. WHITE: Objection.

10 THE COURT: What grounds?

11 MR. WHITE: Calls for speculation.

12 THE COURT: Well, he's law enforcement. He's been

13 trained by law enforcement. I'm assuming he's familiar with

14 firearms.

15 MR. WHITE: Yes, sir.

16 THE COURT: Go ahead and answer it.

17 **A** Can you repeat the question?

18 BY MS. HENDERSON:

19 **Q** Certainly. We don't know what sort of ammunition was

20 used in this case -- used? We don't -- there's no indication

21 of any ammunition being shot in this case; correct?

22 **A** No, ma'am.

23 **Q** We don't know if it was bird shot?

24 **A** No, ma'am.

25 **Q** Buck shot?

1 **A** No, ma'am.

2 **Q** A slug?

3 **A** No, ma'am.

4 **Q** No evidence of any pattern of the shot; correct?

5 **A** No, ma'am.

6 **Q** No further questions, sir. Thank you.

7 THE COURT: Redirect?

8 MS. LEFTRIDGE: Yes, Your Honor.

9 REDIRECT EXAMINATION

10 BY MS. LEFTRIDGE:

11 **Q** Sergeant McWhite, you're not an investigator?

12 **A** I'm not.

13 **Q** And you are just responsible for reporting everything you
14 know at the time?

15 **A** Repeat your question.

16 **Q** You're just responsible for reporting what you know at
17 the time?

18 **A** Yes, ma'am.

19 **Q** Do you leave the ultimate investigation to the
20 investigators that are assigned the case?

21 **A** Yes, ma'am.

22 **Q** And when you took the pictures of the vehicle, what was
23 the weather like that day?

24 **A** Cloudy.

25 **Q** Cloudy. What color is the truck?

1 **A** White.

2 **Q** White. Was it difficult to capture the damage done
3 because of the color of the vehicle?

4 **A** No, ma'am.

5 **Q** Did you observe damage to the vehicle?

6 **A** Yes, ma'am.

7 **Q** Thank you. No further questions.

8 THE COURT: Any anything else?

9 RE CROSS-EXAMINATION

10 BY MS. HENDERSON:

11 **Q** Officer McWhite, again, you didn't take photographs of
12 that damage, though; correct?

13 **A** Yes, ma'am.

14 THE COURT: Why don't you check with Mr. Kelly and see if
15 he has anything he wants you to ask.

16 (Ms. Henderson confers with the defendant.)

17 MS. HENDERSON: No, sir.

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

19 And if you would, move that mic a little bit closer to
20 Mr. Kelly so, when he talks, we can hear him as well.

21 MS. HENDERSON: I didn't know we had the mic on. I
22 apologize.

23 THE COURT: Call your next witness.

24 MR. WHITE: Thank you, Judge. At this time, the State
25 would call Jeff Martin.

1 THE CLERK: Place your left hand on the Bible and raise
2 your right hand.

3 JEFFERY MARTIN,
4 the witness, after having been duly sworn, was examined and
5 testified to as follows:

6 THE CLERK: Please be seated on the witness stand and
7 state your full name for the record.

8 THE WITNESS: Jeffrey Lee Martin.

9 DIRECT EXAMINATION

10 BY MR. WHITE:

11 Q Thank you, Mr. Martin.

12 Mr. Martin, if you could, tell us where you're from.

13 A I'm from Mullins, South Carolina.

14 Q How long have you lived over there?

15 A All my life. 48 years.

16 Q 48 years. And you look a young 48, I can tell you that.

17 A Thank you, sir.

18 Q Where are you employed?

19 A Employed with Buford Tree.

20 Q How long have you been employed with them?

21 A Eight years.

22 Q In what capacity? What do you do for them?

23 A I am the regional safety supervisor.

24 Q And what are your roles as regional safety supervisor?

25 A I go around, check crews, keep them in compliance, make

1 sure they're working safe and have all their credentials that
2 they to have to be out on the job.

3 **Q** Were you safety supervisor employed with the same company
4 back on September 18th of 2019?

5 **A** Yes, I was.

6 **Q** And were you aware that a tree crew was doing work on
7 Sand Pit Road in Florence?

8 **A** Yes, sir.

9 **Q** Did you have occasion to stop out there and chat with
10 them for a bit?

11 **A** Yes, sir.

12 **Q** What were you doing, stopping there and checking up on
13 them? What was your role?

14 **A** It was a crew I hadn't seen in a while, so I was stopping
15 in to check on them, make sure they had what they needed.

16 **Q** Now, let me ask you something: As part of your business,
17 do you run across unsavory individuals?

18 **A** Yes, sir.

19 **Q** And are you trained and is your crew trained in
20 de-escalation techniques?

21 **A** Yes, sir.

22 **Q** On this occasion, did you have an opportunity to use some
23 of these techniques?

24 **A** Yes, sir.

25 **Q** And if you could, tell the Court what happened to you and

1 your crew after you arrived on the scene.

2 **A** Upon arrival, I walked to where they were at. They come
3 to my truck. We were talking --

4 MS. HENDERSON: Objection, hearsay.

5 THE COURT: He just said they were talking, not what they
6 said.

7 Don't say what they said.

8 BY MR. WHITE:

9 **Q** And her objection is just -- just don't say what anybody
10 else said and you're good to go.

11 **A** We were going over what they were doing, what they
12 needed, any issues they had. And then we were approached by
13 Mr. Kelly. As I seen him coming with the gun, I told them to
14 go to their truck, which was across the right-of-way.

15 As he was coming, I tried to de-escalate him, "Hey, we're
16 leaving. We'll leave. We don't want trouble." But he
17 wasn't -- he wasn't hearing any of that.

18 **Q** Did he have the gun raised the entire time?

19 **A** The entire time.

20 **Q** And where was he headed? Where is the first place --

21 **A** Straight to me.

22 **Q** Okay. And where did he point that gun?

23 **A** Right between my eyes.

24 **Q** Okay. What, if anything, did he say to you?

25 **A** He said, "You're on private property. You need to get

1 off my effing property. You don't need to be here. I'm
2 fixing to kill you."

3 Q Okay. Now, I'll stop you right there. I know you said
4 you're trained in de-escalation and you've dealt with people
5 before. Have you dealt with anything like that?

6 A Nothing that irate, no.

7 Q At that time, were you afraid that he was, in fact, about
8 to pull the trigger?

9 A Oh, that's the closest I ever felt to being shot, yeah.

10 Q And I also want to ask you about something that he said.
11 He said it was private property and asked you to leave. Did
12 you have or did y'all permission from the property owner?

13 A Oh, yes, sir. That's part of the process. Before we go
14 on any property, we have contact -- people that contact the
15 property owner, let them know what's going to be going on,
16 what we're going to do. So before our crews are even there,
17 they have a permission slip to be there.

18 Q And you had permission from the property owner on this
19 occasion; correct?

20 A That's correct.

21 Q And Joshua Kelly is not the property owner; is that
22 right?

23 A He is not the property owner.

24 Q Okay. I want you to pick up right from when he shoves
25 that barrel of that shotgun in your face and tells you he's

1 going to kill you. What happened next?

2 **A** I'm getting in my truck at this time. And as I sit in
3 the truck -- my particular truck won't go in gear until you
4 have the seatbelt on. So he comes in between the door and the
5 threshold of the windshield with the gun again, and he says,
6 "You have got three seconds; I'm fixing to kill you."

7 And I said, "Well, give me three more so I can put my
8 seatbelt on."

9 So as I'm leaving, shut the door, I back in between him
10 and my crew, which are just now getting in their truck.

11 **Q** And I'm going to stop you right there. You're the safety
12 supervisor; right? I mean, why did you do that?

13 **A** I wanted to try to deter him to give them time to get
14 out.

15 **Q** And I'm sorry for interrupting. I just wanted to ask you
16 that. You can pick up.

17 **A** So, as I'm backing out, he takes his gun barrel and hits
18 the front of my left front fender of my truck, which was in
19 the pictures.

20 **Q** And I'm going to show you that. I'm going to stop you
21 right there, and I apologize. This is a better photograph.
22 This is State's Exhibit 4 I'm showing the witness.

23 **A** That's it.

24 **Q** Is that a particular damage to the vehicle -- you said
25 that was caused by what?

1 **A** He hit it with the gun itself. Not shot it there. He
2 hit it with the barrel of the gun.

3 **Q** Let me ask you this: When you saw him, the entire time
4 that he's waving that gun around, pointing it at your face and
5 pointing it in the face of some other members of your crew,
6 did you see him with anything else in his hands other than
7 that gun?

8 **A** No, sir.

9 **Q** Thank you, Mr. Martin, if you'll just keep going from
10 right where you left off.

11 **A** Well, as I backed up, I back in between his direction of
12 travel and my crew, of course. That's when he makes it back
13 to my truck again and hits my windshield, driver's side
14 window, with the butt of the gun and says again, "You need to
15 get out of here; I'm fixing to kill you."

16 **Q** Did it do any damage to the windshield?

17 **A** No, it did not, luckily.

18 **Q** Okay. If you'll keep going.

19 **A** So, then, I'm looking across to them. They're getting in
20 the truck. As they're going to leave, he makes it over to
21 their vehicle. And I see him point the gun inside of their
22 vehicle as well. And they started to leave. And they get in
23 behind me, as we're leaving the vicinity.

24 As I'm turning out of the grassy area and onto the road,
25 I hear the first shot, and as I turn and look, I see him pull

1 the trigger with the second shot.

2 Q Now, I'm from Darlington, you're from Mullins. Are you
3 familiar with a shotgun?

4 A Yes, sir.

5 Q Was that what he was holding?

6 A Yes, sir.

7 Q The sound that you heard, that first shot -- because you
8 didn't see the first shot; right?

9 A Didn't see it. Just heard it.

10 Q Was that the sound of a shotgun shell?

11 A Yes, sir.

12 Q And the second shot, you saw him fire?

13 A Yes, sir.

14 Q And in what direction was he firing?

15 A Towards us.

16 Q Okay. Now, if you could keep just walking us through it.

17 A At this point, I'm on the phone with my DM, which is the
18 guy with Duke Energy, to notify the guys that are on the line
19 to get them off. And then I called 9-1-1. And after that is
20 when the law enforcement showed up.

21 Q So even before calling 9-1-1 -- you're safety supervisor
22 again -- your primary concern at that time was getting other
23 people on the line out of harm's way; is that right?

24 A That's correct.

25 Q And is that because of the demeanor of this individual?

- 1 **A** Yes, sir. Yes, it is.
- 2 **Q** Describe his demeanor.
- 3 **A** That's the thing, you know, there was only five people in
4 this courtroom there to know how irate this man was. I mean,
5 he was -- he was just jacked out on something or whatever. He
6 wasn't hearing anything. He was just loud, cussing, shoving
7 the gun around. I mean, like I said before, I honestly
8 thought I was fixing to be shot.
- 9 **Q** Did he scream profanities?
- 10 **A** Oh, yes.
- 11 **Q** Did he scream derogatory comments towards the female
12 members of your crew?
- 13 **A** I guess all that could be considered derogatory.
- 14 **Q** Okay. About how many times -- and I ain't asking you to
15 guess. About how many times do you think he threatened to
16 kill you and your crew?
- 17 **A** I know he threatened to kill me myself four to five
18 times. And once they got -- he got over to them, everything
19 else is what they say.
- 20 **Q** Now, at some point, were you asked to see if you could
21 identify the individual they had taken into custody?
- 22 **A** Yes, sir.
- 23 **Q** And did you do that?
- 24 **A** Yes, sir.
- 25 **Q** Were you certain at that time that the individual they

1 had in custody was the person who threatened to kill you,
2 shoved the gun in your face, and fired shots at your car as
3 you were trying to get away?

4 **A** Yes, sir.

5 **Q** And is that person -- I'm going to ask you if you could,
6 look around the courtroom. Is that person in the courtroom
7 here today?

8 **A** Yes, sir.

9 **Q** And, if you could, point him out to us.

10 **A** Right here. (Indicating)

11 **Q** Are you pointing out the individual who's in the orange
12 jumpsuit?

13 **A** Yes, sir.

14 **Q** Seated at defense table?

15 **A** Yes, sir.

16 MR. WHITE: Judge, at this time, I'd like the record to
17 reflect Mr. Martin has identified the defendant in this case,
18 Mr. Kelly, as the individual who shot at his vehicle, pointed
19 the gun in his face, and threatened to kill him.

20 THE COURT: Yes, sir.

21 BY MR. WHITE:

22 **Q** Now, Mr. Martin, it's my understanding that, at some time
23 after he's taken into custody, that you were present at the
24 bond hearing down in Effingham; is that right?

25 **A** That's correct.

1 Q And were you able to get a good look at him then?

2 A Yes, sir.

3 Q Were you certain then that the same person was the one
4 who perpetrated those acts on September 18th?

5 A Absolutely.

6 Q What, if anything, did he say at that bond hearing that
7 stood out to you?

8 A What stood out to me was when the judge asked him, "Do
9 you have anything to say," he said, "Your Honor, I'm
10 ex-military, I'm ex-police. If I wanted them shot, they would
11 have been shot."

12 MR. WHITE: Beg the Court's indulgence.

13 BY MR. WHITE:

14 Q I think I asked you this before but let me just
15 double-check. How close was the barrel of that gun to your
16 face?

17 A I could see the choking end of it. It was within inches.

18 Q Thank you. I have nothing further. Please answers any
19 questions the defense may have.

20 THE COURT: Cross?

21 CROSS-EXAMINATION

22 BY MS. HENDERSON:

23 Q Mr. Martin, you spoke to Officer McWhite; correct?

24 A Yes, ma'am, along with others.

25 Q Yes, sir. And you told him that Mr. Kelly approached you

1 and put the gun in your face; right?

2 **A** That's correct.

3 **Q** As you were leaving, you said he put the gun in your face
4 again; correct?

5 **A** That's correct.

6 **Q** You said that he fired two shots; correct?

7 **A** That's correct.

8 **Q** You said that one hit your left front driver's side,
9 causing damage; correct?

10 **A** I did not say that.

11 **Q** Did not say that.

12 You said two other individuals were also in your vehicle,
13 employees Mr. Jarvis and Ms. Dupreis -- Duplisea. I apologize
14 for mispronouncing that.

15 **A** No, ma'am.

16 **Q** You did not say that. Okay.

17 This was your personal vehicle; correct?

18 **A** No, ma'am. This is a company truck.

19 **Q** So you do not own it?

20 **A** No.

21 **Q** You spoke with Investigator Worsley; correct?

22 **A** Mm-hmm. Yes, ma'am.

23 **Q** You reported to him this was a single-barrel shotgun
24 involved; correct?

25 **A** That's correct.

1 Q You said to him that Mr. Kelly struck the left front side
2 of the hood with the gun and caused minor damage; correct?

3 A That's correct.

4 Q All right. You also provided a written statement in this
5 matter; correct?

6 A That's correct.

7 Q In that statement, you refer to Mr. Kelly as a POI;
8 correct?

9 A Person of interest, yes.

10 Q Okay. You said that the POI approached, shoved the gun
11 in your face, and threatened; correct?

12 A That's correct.

13 Q You said that you got in the truck, he shoved the gun in
14 your face again; correct?

15 A That's correct.

16 Q You said he hit the left front fender with the gun;
17 correct?

18 A That's correct.

19 Q Hit the door; correct?

20 A Mm-hmm, yes, ma'am.

21 Q Went over to the crew's truck; correct?

22 A That's correct.

23 Q Fired two shots; correct?

24 A Yes.

25 Q Hit the back of the crew's truck; correct?

1 **A** That's correct.

2 **Q** And you said, once, he threatened to kill you; correct?

3 **A** Yes, several times.

4 **Q** All right. In the statement you say just once; correct?

5 MS. HENDERSON: One moment, please.

6 BY MS. HENDERSON:

7 **Q** Mr. Martin, did you give your statement to law
8 enforcement in conjunction with anyone else?

9 **A** Yes, ma'am.

10 **Q** Were you with other individuals on scene when you gave
11 that statement?

12 **A** I was with other law enforcement officers, yes.

13 **Q** Any of your crew, were they with you when you gave
14 that --

15 **A** They were there, yes, sir. They were filling out their
16 own statements.

17 **Q** At the same time?

18 **A** Yes, ma'am.

19 MS. HENDERSON: One moment, please. I'm sorry, Judge.

20 THE COURT: Take your time. Take your time.

21 CROSS-EXAMINATION

22 BY MR. KELLY:

23 **Q** During the incident, Mr. Martin, you stated that, when
24 you were trying to get into your truck and the incident was
25 happening, the crew members were behind you getting in their

1 truck or about to do so?

2 **A** That's correct.

3 **Q** So they would have seen me hitting your truck or at least
4 put it in your face possibly, but you're the only one that
5 that had that in your statement.

6 **A** I can't answer for what they seen.

7 **Q** Okay. I just wanted to ask.

8 MS. HENDERSON: No further statements. Thank you,
9 Mr. Martin.

10 THE COURT: All right. Redirect?

11 MR. WHITE: Briefly.

12 REDIRECT EXAMINATION

13 BY MR. WHITE:

14 **Q** Were you rattled when all this was going on?

15 **A** Sure, yes.

16 **Q** Were the individuals on your crew, were they rattled?

17 **A** Yes, sir.

18 **Q** And specifically the two females, were they particularly
19 upset?

20 **A** Yes, sir.

21 **Q** Now, you put -- from what I can see, you put almost every
22 single thing you testified to here today in your statement
23 except for one thing. You said, "He threatened to kill me,"
24 but now you're saying, "Well, I mean, it was multiple times."
25 But it wouldn't have been important to put how many times he

1 said that; right?

2 **A** Right.

3 **Q** So you told law enforcement then and you're telling us
4 now how many times that he threatened to kill you.

5 **A** Four to five times within the whole process.

6 **Q** Okay. Thank you. I have nothing further.

7 THE COURT: Anything further?

8 MS. HENDERSON: Nothing further, Judge.

9 RECROSS-EXAMINATION

10 BY MR. KELLY:

11 **Q** Could you identify the kind of gun I was supposedly
12 using?

13 **A** I have no idea.

14 **Q** In your statement, you said -- I believe it was you
15 identified it as single-shot shotgun?

16 **A** I know it was a shotgun. I couldn't tell you what brand
17 or how many shells it could hold because the barrel was too
18 close to my face.

19 **Q** Okay. And would you agree that, while you were at the
20 scene, that you agreed it was a single-shot shotgun; that
21 that's indeed what it was, but you claimed there was two shots
22 fired back to back: Bang, bang?

23 **A** No, I did not say they were back to back. I just said
24 two shots fired.

25 **Q** Okay.

1 THE COURT: Anything else? All right. You may step
2 down.

3 Call your next witness.

4 MS. LEFTRIDGE: Your Honor, the State would call Levi
5 James.

6 THE CLERK: Sir, please place your left hand on the Bible
7 and raise your right hand.

8 LEVI JAMES,
9 the witness, after having been duly sworn, was examined and
10 testified to as follows:

11 THE CLERK: Please be seated on the witness stand and
12 state your full name for the record.

13 THE WITNESS: Levi James.

14 DIRECT EXAMINATION

15 BY MS. LEFTRIDGE:

16 Q Mr. James, can you please tell the Court where you're
17 currently employed.

18 A I'm employed with the Florence County Emergency
19 Management 9-1-1 center.

20 Q And how long have you been employed there?

21 A Five years.

22 Q What's your job title?

23 A I'm the public information and also public specialist.

24 Q And what are your some your responsibilities?

25 A Court appearances. So pull CAD reports, get 9-1-1 calls

1 for the solicitor's office, public entities.

2 **Q** And what is a CAD report?

3 **A** A CAD report is a computer-aided dispatch. It's a report
4 that it details the time and date of the incident occurred,
5 who called, what type of incident. It also keeps track of our
6 officers that goes to the incident.

7 **Q** Thank you.

8 Is that report made for every call that comes in to
9 9-1-1?

10 **A** Yes.

11 **Q** And they're all typically the same? They contain the
12 same information?

13 **A** Yes.

14 **Q** Do you have access to those reports?

15 **A** Yes.

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

17 BY MS. LEFTRIDGE:

18 **Q** I'd like you to look at what is marked as State's No. 1.
19 Do you recognize this?

20 **A** Yes.

21 **Q** And what is this?

22 **A** This is a CAD report from the incident we're discussing
23 today.

24 **Q** And this is typical of what all the reports look like?

25 **A** Yes.

1 Q To your knowledge, does it seem that there have been any
2 alterations, changes, anything made to this report?

3 A No.

4 Q Thank you.

5 MS. LEFTRIDGE: Your Honor, we would offer this -- offer
6 State's 1 into evidence.

7 THE COURT: Any objections?

8 MS. HENDERSON: No objection, Judge.

9 THE COURT: State's No. 1 is in evidence without
10 objection.

11 (State's Exhibit No. 1 was received into evidence.)

12 MS. LEFTRIDGE: Thank you. Beg the Court's indulgence,
13 Your Honor.

14 No further questions. Thank you.

15 THE COURT: Cross?

16 MS. HENDERSON: Nothing from the defense attorney.

17 THE COURT: Anything, Mr. Kelly?

18 CROSS-EXAMINATION

19 BY MR. KELLY:

20 Q Levi, are you still a fire fighter with the county?

21 A I am.

22 Q All right. Do you remember me being a police officer?

23 A I do.

24 Q Any time there -- do you ever remember any situation or
25 hear any --

1 MR. WHITE: Objection as to relevance.

2 THE COURT: I'm going to overrule that. Go ahead.

3 BY MR. KELLY:

4 Q Any time, you ever hear about me being unprofessional? I
5 spoke with you many times. Was I ever an irate person about
6 anything or off edge?

7 A I can't recall. It's been quite a few years.

8 Q All right. Thank you.

9 THE COURT: Anything further?

10 MR. WHITE: No, sir, Judge.

11 THE COURT: You may step down.

12 If you'll call your next witness.

13 MS. LEFTRIDGE: Your Honor, the State would call Ashlyn
14 Duplisea.

15 ASHLYN DUPLISEA,
16 the witness, after having been duly sworn, was examined and
17 testified to as follows:

18 THE CLERK: Please be stated on the witness stand and
19 state your full name for the record.

20 THE WITNESS: Ashlyn M. Duplisea.

21 DIRECT EXAMINATION

22 BY MS. LEFTRIDGE:

23 Q Thank you. Can you please tell the Court where you are
24 employed.

25 A I'm employed at Buford's Tree Service.

- 1 Q And how long have you been with them?
- 2 A Almost four years.
- 3 Q What are some of your duties as an employee?
- 4 A Well, currently, I'm a bucket truck operator and a
- 5 groundsman.
- 6 Q Okay. Did you have those same responsibilities on
- 7 September 18th, 2019?
- 8 A No, ma'am. I was on the marking crew.
- 9 Q Okay. And what were some of your responsibilities?
- 10 A We just measured the lines and marked the trees.
- 11 Q Do you recall having a job at [REDACTED] Road in
- 12 Florence on September 18th, 2019?
- 13 A Yes, ma'am.
- 14 Q You do. Why were y'all at that location?
- 15 A To mark the trees there.
- 16 Q Okay. Is that typical of what you normally would do?
- 17 A Mm-hmm, yes, ma'am.
- 18 Q About how long were you there?
- 19 A Maybe an hour or so.
- 20 Q Who else was with you?
- 21 A Parker Jarvis and Shanice Stokely.
- 22 Q Can you tell the Court a little bit about what happened
- 23 while you were there.
- 24 A From start to finish?
- 25 Q Yeah.

1 **A** We showed up on the job location, took our fire equipment
2 off, just in case there's a fire. And we had started
3 measuring the lines out so that we could mark them, and that's
4 when our safety supervisor showed up, so we went to speak with
5 him.

6 **Q** Okay. And did anything happen while you were speaking
7 with the safety supervisor?

8 **A** Yes. The defendant came out of the woodline with a gun.

9 **Q** Okay. And when he came out of the woodline, what was his
10 demeanor?

11 **A** He was very angry and he was yelling.

12 **Q** Was he holding anything?

13 **A** Mm-hmm. He had a gun.

14 **Q** He had a gun. Did he -- was he threatening to you?

15 **A** Yes, ma'am.

16 **Q** About how many times did he threaten you?

17 **A** Several times.

18 **Q** Several times. So you said he came out of the woodline.
19 What happened -- what did y'all do next? What did you do
20 next?

21 **A** Our safety supervisor told us to go to our vehicles.

22 **Q** And you had got in your vehicle?

23 **A** Yes, ma'am. We had to walk across the right-of-way.

24 **Q** Were you the driver or passenger?

25 **A** I was the passenger.

1 Q Okay. When you were in the vehicle, did you -- were you
2 still able to see Mr. Joshua Kelly?

3 A Yes.

4 Q And what was he doing while you were in the vehicle?

5 A He put the gun in our foreman's face.

6 Q Did y'all -- were you able to drive away?

7 A Eventually, yes.

8 Q And what happened when you were driving away? What was
9 Mr. Kelly doing?

10 A As we drove off, I turned around and looked, and he was
11 loading his shotgun.

12 Q He was loading his shotgun.

13 Did you hear any shots?

14 A I did.

15 Q Did you see him fire both shots?

16 A I saw him fire the first one. I heard the second one.

17 Q Let's back up a little bit to the threats. When he was
18 threatening you, did he use profanities?

19 A Yes.

20 Q Did you believe those threats to be true?

21 A At the time, yes.

22 Q Were you scared?

23 A Uh-huh, yes, ma'am.

24 Q And you feared for your safety?

25 A Yes, ma'am.

1 **Q** And you stated he was carrying a shotgun. Was he
2 carrying anything else?

3 **A** No, ma'am.

4 **Q** Are you familiar with weapons?

5 **A** Yes, I grew up around them.

6 **Q** So you recognized the type of gun he had?

7 **A** Yes.

8 **Q** And what type of gun was that?

9 **A** It was a shotgun.

10 **Q** A shotgun. Thank you.

11 Did you receive any injuries to your person or to the
12 property?

13 **A** There was a shot that I heard hit the back of the truck.

14 **Q** Did you say anything to the defendant?

15 **A** No, I didn't.

16 **Q** On that day, what was the weather like?

17 **A** It was clear at the time.

18 **Q** Were you able to clearly see Mr. Kelly?

19 **A** Yes.

20 **Q** About how long did you look at him?

21 **A** I mainly looked at him whenever he had the gun in my
22 foreman's face because he was on that side of the truck.

23 **Q** And about how close was that to you?

24 **A** Maybe about five feet. I was sitting behind the
25 passenger side.

1 Q Okay. Do you see the man who shot at you and threatened
2 you that day in this courtroom?

3 A Yes, ma'am.

4 Q Could you please point him out?

5 A The defendant in the orange jumpsuit.

6 Q Thank you.

7 MS. LEFTRIDGE: Let the record reflect that Ms. Duplisea
8 has identified Joshua Kelly as the man who shot at her and
9 threatened her that day, Your Honor.

10 THE COURT: Yes, ma'am.

11 MS. LEFTRIDGE: Beg the Court's indulgence for one
12 moment, Your Honor.

13 BY MS. LEFTRIDGE:

14 Q Just a few more questions. So you stated that he did
15 threaten you; correct?

16 A Yes, ma'am.

17 Q What exactly did he say to you?

18 A That he would kill us.

19 Q And he said that he would kill you multiple times?

20 A Mm-hmm.

21 THE COURT: Is that a yes or no?

22 THE WITNESS: That was a yes. Yes, Your Honor.

23 BY MS. LEFTRIDGE:

24 Q Thank you. No further questions. Please answer any
25 questions the defense might have.

1 THE COURT: Cross-examination?

2 MS. HENDERSON: The defense attorney doesn't have any
3 questions.

4 THE COURT: All right. Mr. Kelly, do you have any?

5 MR. KELLY: Yes, sir.

6 CROSS-EXAMINATION

7 BY MR. KELLY:

8 Q Ma'am, after the incident and y'all pulled over to park
9 or whatever you did and called law enforcement or whatnot, in
10 that time, did you forget to show law enforcement that your
11 tailgate had been shot?

12 A I don't recall.

13 Q You don't recall? It just kind of slipped your mind?

14 MR. WHITE: Asked and answered, Judge.

15 THE COURT: What was the question? I'm sorry; I didn't
16 even hear it.

17 THE DEFENDANT: The question was, did she forget to show
18 the tailgate that she was shot. She described that she saw
19 the first shot hit the tailgate or knew it hit the tailgate,
20 heard it. Didn't show law enforcement or forgot to show law
21 enforcement.

22 THE COURT: Why don't you go ahead and answer it.

23 THE WITNESS: I don't recall.

24 THE COURT: Anything else?

25 THE DEFENDANT: No, sir.

1 THE COURT: You may step down.

2 THE WITNESS: Thank you.

3 THE COURT: Call your next witness.

4 MR. WHITE: At this time, the State would call
5 Investigator Worsley.

6 THE CLERK: Please place your left hand on the Bible and
7 raise your right hand.

8 INVESTIGATOR ALVIN WORSLEY,
9 the witness, after having been duly sworn, was examined and
10 testified to as follows:

11 THE WITNESS: Investigator Alan Keith Worsley.

12 DIRECT EXAMINATION

13 BY MR. WHITE:

14 Q Investigator Worsley, I asked you before: You're
15 employed at the sheriff's office; correct?

16 A Yes, assigned to the investigation division.

17 Q And you were similarly employed September 18th of 2019?

18 A Yes, I was.

19 Q And did you respond to a call out on Sand Pit Road in
20 Florence?

21 A Yes.

22 Q Is that in Florence County?

23 A In Florence County.

24 Q Now, did you speak to the Officer McWhite who testified
25 before?

1 **A** Yes, I made contact with him when I arrived on the scene.

2 **Q** Did he convey to you what the witnesses had said to him
3 on the scene?

4 **A** Yes, he did.

5 **Q** And did he also -- did you have an opportunity to review
6 the written statements that they completed?

7 **A** No. At the time, they was in the process -- well, I
8 advised Sergeant McWhite to make sure he gets statements, and
9 that's when they were administered the forms where they could
10 write what happened.

11 **Q** Okay. Very good. But you have reviewed them since then;
12 correct?

13 **A** Yes.

14 **Q** And I want to ask you: The statements as they gave
15 McWhite, the statements as they wrote them, and the statements
16 so far they have given here on the witness stand, are they
17 consistent?

18 **A** Yes.

19 **Q** All right. Now, did you have occasion to take into
20 custody the defendant in this case, Joshua Kelly? But not you
21 specifically but law enforcement.

22 **A** Law enforcement did arrest him, yes.

23 **Q** And did you speak briefly to Mr. Kelly?

24 **A** Very briefly.

25 **Q** What did you say to him?

1 **A** I just advised him what he was going to be charged with,
2 and his response was, "If I wanted to kill them, I could have
3 easily done it."

4 **Q** Are you aware or were you aware at that time -- I'll ask
5 you, are you aware now that he told the victims in this case
6 that, you know, at least feigned that he was the owner of the
7 property?

8 **A** Yes.

9 **Q** Did you learn that that was incorrect?

10 **A** Yes.

11 **Q** And did you actually -- I'm going to show you -- I
12 believe this thing is on -- I'm going to show you State's
13 Exhibit 9. Well, first, I have got to move these evidence.

14 State's Exhibit 9 and 10, tell me if you recognize these
15 photographs.

16 **A** Yes. That's the overhead picture of Sand Pit Road and
17 Creekside Drive in Florence County.

18 **Q** Does it show the incident location where you guys
19 responded, as well as the residence of Mr. Kelly?

20 **A** Yes, it shows the area.

21 **Q** And I'm going to show you the next picture, if you could.
22 Is that kind of a zoomed-out picture of the same location?

23 **A** Yes, it is.

24 MR. WHITE: Judge, at this time, I'd move State's Exhibit
25 9 and -- or 8 and 9 into evidence.

1 THE COURT: Any objection?

2 MS. HENDERSON: No objection, Judge.

3 THE COURT: 8 and 9 are in evidence without objection.

4 (State's Exhibit Nos. 8 and 9 were marked for
5 identification and received into evidence.)

6 BY MR. WHITE:

7 Q Now, he said, you know, get off of his property or, you
8 know, whatever he said, but if I could direct you where my
9 finger is, Creekside Drive, are those trailers there?

10 A Yes, they're mobile homes.

11 Q Is that where you apprehended Mr. Kelly?

12 A The SWAT team did.

13 Q And is that where you learned that he was residing at the
14 time?

15 A Yes.

16 Q Do you see the red dot down there on Sand Pit Road?

17 A Yes.

18 Q Is that near where the incident location occurred?

19 A I think so. I wasn't taken to the incident location --

20 Q Now --

21 A -- where it actually happened.

22 Q Is it surrounded by trees?

23 A It's surrounded by trees, yes, sir.

24 Q You know, they said they're a tree company. There's
25 plenty of trees to mark; is that right?

1 **A** Yes.

2 **Q** I want to show you State's Exhibit No. 7. Is this the
3 back of the tailgate of one of the vehicles?

4 **A** Yes, it is.

5 **Q** Is this the vehicle that was shot by Mr. Kelly?

6 **A** Yes.

7 **Q** Now, let me ask you: I'm not sure if Mr. McWhite quite
8 understood what we were trying to ask him, but was it
9 difficult to capture the damage because it was so bright and
10 this was a white car?

11 **A** Yes. I think this picture was the only photograph that
12 showed the tag and back of the vehicle that had damage. Just
13 a general picture.

14 **Q** Did you observe with your own eyes --

15 MR. WHITE: And, Madam Clerk, I'm trying to switch this
16 over to the lectern laptop, if we could.

17 Will you send that to all the screens, Ms. Lane?

18 BY MR. WHITE:

19 **Q** I'm going to show you on my computer, Investigator
20 Worsley, and I'll do it the best I can so Judge Seals and his
21 clerk can see, but is this a closeup photograph of State's 7?

22 **A** Yes.

23 **Q** Now -- and, again, you said you could see the damage to
24 the back of the vehicle; right?

25 **A** Yes.

1 Q Did it seem consistent with that of, you know, spray from
2 a shotgun shell?

3 A Yes.

4 Q I'm going to zoom in. And, again, it was very difficult
5 to capture but is that the damage that you observed?

6 A Yes, that's the same damage.

7 Q And does that look like little divots from pellets?

8 A Little black BBs.

9 MR. WHITE: Beg the Court's indulgence.

10 BY MR. WHITE:

11 Q Well, I'll ask you, Was that consistent with what the
12 victims had said to you?

13 A Yes, it was.

14 Q Was all the evidence in this particular case consistent
15 with what the victims told you?

16 A Yes.

17 Q And did it all point to Mr. Kelly as the perpetrator?

18 A Yes.

19 Q Investigator Worsley, I have nothing further. Please
20 answer any questions defense may have.

21 MS. HENDERSON: One moment, please. I'm looking for
22 State's Exhibit 7, the photo of the vehicle.

23 MR. WHITE: I think so.

24 CROSS-EXAMINATION

25 BY MS. HENDERSON:

1 Q State's Exhibit 7. We were just looking at this. This
2 is the picture that Mr. White zoomed in on; correct?

3 A Yes.

4 Q You're telling me that this is the vehicle that was shot;
5 correct?

6 A Yes.

7 Q Explain for me, the alleged victim just said that this
8 was his vehicle that was not shot.

9 A Well, that's the vehicle that had the damage on it.

10 Q Because the testimony we have heard today is that the
11 crew's vehicle was the vehicle that was shot; correct?

12 A Yes.

13 Q This is not the crew's vehicle. These have Alabama
14 plates; correct?

15 A Yes.

16 Q This is the Chevy Silverado belonging to the alleged
17 victim, Mr. Jeff Martin; correct?

18 A Correct.

19 Q Which he testified did not have damage to it from a shot.

20 A Right.

21 Q You testified that you detained Mr. Kelly; correct?

22 A Yes, the SWAT team apprehended him.

23 Q And you assisted in the identification procedure;
24 correct?

25 A No, but when we got on the scene, the people that live in

1 the area on Sand Pit Road, a lot of them was outside like,
2 "What's going on?" And they was advised them, go get in your
3 house, they're out here responding to a man in the area with a
4 gun that was shooting at a crew that was working on the -- a
5 power company. And they said -- well, I don't want to say
6 hearsay, but it was noted that "Y'all must be talking about
7 Josh." I didn't know him at the time --

8 Q And I think I might have confused with you my question
9 and I apologize. What I was asking is, you assisted
10 Mr. Martin in the identification process; correct?

11 A No. I didn't drive them back to identify. I did not
12 assist in that.

13 Q Okay. You were present on scene, though, when Mr. Kelly
14 was detained; correct?

15 A Yes.

16 Q You reported -- you testified, though, that you did not
17 report -- respond to the scene itself; correct?

18 A Right.

19 Q In your investigation of this case, no weapon was
20 recovered; right?

21 A No. No weapon was recovered.

22 Q No ballistics recovered; correct?

23 A No, ma'am.

24 Q You didn't send anything to SLED; correct?

25 A No, ma'am.

1 Q No ammunition?

2 A No.

3 Q You conducted no gunshot residue test; correct?

4 A No, we did not.

5 MS. HENDERSON: May I beg the Court's indulgence?

6 BY MS. HENDERSON:

7 Q Investigator Worsley, I have no further questions.

8 THE COURT: All right. Yes, sir?

9 MR. WHITE: Just briefly.

10 FURTHER REDIRECT EXAMINATION

11 BY MR. WHITE:

12 Q Showed you that wooded picture. It looks like plenty of
13 place to hide a gun, doesn't it?

14 A Yes.

15 Q And you guys didn't catch up to him right away, did you?

16 A No, we did not.

17 Q So he would have had plenty of time to hide that gun?

18 A Yes.

19 Q Let me ask you this: The vehicles that were involved in
20 this case, they were pretty much virtually identical; were
21 they not?

22 A They looked the same.

23 Q And they both had Alabama plates; right?

24 A Yes.

25 MR. WHITE: Judge, I have nothing further.

1 MS. HENDERSON: Judge, if I may ask a few follow-up
2 questions.

3 RECROSS-EXAMINATION

4 BY MS. HENDERSON:

5 Q You only took pictures, though, of one vehicle; correct?

6 A I think there's only one vehicle, yes, ma'am.

7 Q My apologies. You only have pictures in your file of one
8 vehicle; correct?

9 A Yes.

10 Q So we don't know which vehicle is which; correct?

11 A Correct.

12 THE COURT: Mr. Kelly?

13 CROSS-EXAMINATION

14 BY MR. KELLY:

15 Q That picture in Question No. 7, the tailgate was supposed
16 to be Jeff Martin's truck; correct?

17 A Yes.

18 Q The altercation Jeff Martin described is supposed to be
19 at point-blank range. Do you understand what point-blank
20 range means?

21 A What was your question?

22 Q The altercation Jeff Martin described with the barrel
23 hitting him in the face is classified as point-blank range.
24 You understand what that means?

25 A Yes.

1 Q That tailgate being shot by that shotgun, does that look
2 like point-blank range from a shotgun at all?

3 A This picture right here?

4 Q Yes, sir.

5 A No, not looking at it from this picture.

6 Q If it was point-blank range like he was talking about,
7 would you be able to tell any kind of shotgun shells?

8 A I'm not sure.

9 Q All right. Thank you, sir.

10 MR. WHITE: Just briefly, Judge.

11 REDIRECT EXAMINATION

12 BY MR. WHITE:

13 Q You didn't take those pictures?

14 A I did not.

15 Q So you don't know -- you know, other than that
16 identifying mark on the front, Mr. Martin testified that that
17 mark on the front, that's his car; right?

18 A Yes.

19 Q And then the marks on the damaged car on the back, they
20 say that's the other car; right?

21 A Yes.

22 Q But you don't know really how many cars were in the
23 pictures because you didn't take the pictures?

24 A I didn't take the pictures.

25 Q Okay. Nothing further.

1 THE DEFENDANT: Objection, Your Honor. I want to object
2 to that.

3 MR. WHITE: Go for it.

4 THE DEFENDANT: Without a second picture of the truck,
5 there's no way to tell if that closeup is part of the truck
6 he's trying to say it is or if that's the Picture No. 7,
7 tailgate correct. I mean, that's the way I see it. If you
8 don't have a match to match it to, there's nothing to compare
9 it to; correct?

10 THE COURT: I understand.

11 THE DEFENDANT: Thank you.

12 THE COURT: You may step down.

13 Call your next witness.

14 MR. WHITE: Thank you, Judge. At this time, the State
15 would call Mr. Parker Jarvis.

16 THE CLERK: Please place your left hand on the Bible and
17 raise your right hand.

18 PARKER JARVIS,
19 the witness, after having been duly sworn, was examined and
20 testified to as follows:

21 THE CLERK: Please be seated on the witness stand and
22 state your full name for the record.

23 THE WITNESS: Parker D. Jarvis.

24 DIRECT EXAMINATION

25 BY MR. WHITE:

- 1 **Q** Mr. Jarvis, how old are you?
- 2 **A** I'm 21.
- 3 **Q** A little bit nervous about being on the stand for the
- 4 first time? You all right?
- 5 **A** Yeah, in front of people.
- 6 **Q** Okay. Listen, you were with the tree crew on September
- 7 18th, 2019; were you not?
- 8 **A** Yes, sir.
- 9 **Q** Were you there when the individual came out of the woods?
- 10 **A** Yes, sir.
- 11 **Q** And I'm going to ask you if you recognize that individual
- 12 in the courtroom today.
- 13 **A** The gentleman right there in the orange suit.
- 14 **Q** How sure are you that that's individual that came out of
- 15 the woods with the gun drawn?
- 16 **A** Hundred percent.
- 17 **Q** Did he point the gun at you?
- 18 **A** He pointed it at the driver beside me.
- 19 **Q** Okay. What was his demeanor?
- 20 **A** Kind of like an attitude, you know, demanding.
- 21 **Q** Was he yelling?
- 22 **A** Yes, sir.
- 23 **Q** Was he yelling profanities?
- 24 **A** Yes, sir.
- 25 **Q** Was he yelling derogatory remarks at the female occupants

1 of that vehicle?

2 **A** Yes, sir.

3 **Q** And I know derogatory, you know, kind of can be
4 open-ended but did he call those female occupants a bitch?

5 **A** Yes, sir.

6 **MR. WHITE:** Judge, I have nothing further. Please answer
7 any questions the defense may have.

8 **THE COURT:** All right. Cross?

9 **MS. HENDERSON:** Defense counsel doesn't have any
10 questions.

11 **THE COURT:** Mr. Kelly?

12 All right. You may step down.

13 Call your next witness.

14 **MR. WHITE:** At this time, the State will call Shanice
15 Stokely.

16 **THE CLERK:** Ma'am, please place your left hand on the
17 Bible and raise your right hand.

18 **SHANICE STOKELY,**
19 the witness, after having been duly sworn, was examined and
20 testified to as follows:

21 **THE CLERK:** Please be seated on the witness stand, and
22 state your full name for the record.

23 **THE WITNESS:** My name is Shanice Stokely.

24 **DIRECT EXAMINATION**

25 **BY MR. WHITE:**

1 Q Ms. Stokely, is the mask -- do you need to wear that?

2 A I can take it off.

3 Q Okay. Thank you so much. That way, we can hear you nice
4 and loud.

5 Ms. Stokely, where are you from?

6 A I'm originally from Baltimore.

7 Q And where do you live in this area?

8 A I live in Nichols now.

9 Q How long have you been living over there?

10 A About five years. A little bit more.

11 Q And where are you employed?

12 A Buford's Tree Service.

13 Q And how long have you been employed there?

14 A Five years.

15 Q Back on the incident date, September 18th, 2019, were you
16 employed with Buford Tree Service?

17 A Yes, sir.

18 Q And what was your role? In what capacity were you
19 employed?

20 A On that day, my job title was Wilkerson (ph) of the
21 Buford Tree Service marking crew.

22 Q Okay. And were you on Sand Pit Road in Florence on that
23 day?

24 A Yes, sir, that's correct.

25 Q And what were you guys doing out there?

1 **A** We were marking the transmission right-of-way, measuring
2 for Duke Energy.

3 **Q** Did you have permission from the property owner to be
4 there?

5 **A** Yes, sir. That is part of our policy.

6 **Q** Was Mr. Kelly the property owner?

7 **A** No, sir.

8 **Q** Now, I want you, if you could -- and I know it's
9 upsetting for you, but if you could tell us -- now, you were
10 in here when the other members of your crew testified;
11 correct?

12 **A** Yes, sir.

13 **Q** As well as Mr. Martin, your safety supervisor?

14 **A** Yes, sir.

15 **Q** He arrived on scene?

16 **A** Yes.

17 **Q** Did you begin to speak to him?

18 **A** Yes, sir.

19 **Q** What, if anything, happened as you were speaking to
20 Mr. Martin?

21 **A** Nothing really happened during our conversation that was
22 noteworthy until the defendant came out of the woods.

23 **Q** Okay. And what was he holding in his hands?

24 **A** He was holding a shotgun.

25 **Q** Did it startle you?

- 1 **A** Yes, very much.
- 2 **Q** And from the moment you laid eyes on him, what kind of
3 things was he saying?
- 4 **A** "I'll kill you." Over and over again. He was calling me
5 derogatory names and making threats, just consistently.
- 6 **Q** What was his overall demeanor?
- 7 **A** Very irate. Like you mentioned earlier, we are trained
8 in de-escalation techniques, and we tried to employ some of
9 those, but nothing was going to de-escalate the situation.
- 10 **Q** I'm going to ask you -- and I should have asked
11 Mr. Martin because he's the safety supervisor, but there
12 wouldn't be any reason why anybody, you included, would be
13 armed? You didn't have any weapons on you?
- 14 **A** Oh, no, sir. No, we're not allowed to.
- 15 **Q** But you said that de-escalation failed; correct?
- 16 **A** Right.
- 17 **Q** And once you realized it was all for not, what, if
18 anything, did you try to do?
- 19 **A** We tried to leave.
- 20 **Q** Did he remain, you know, agitated?
- 21 **A** Yes.
- 22 **Q** But he was asking you to leave; right?
- 23 **A** Yes, that's correct.
- 24 **Q** So, really, you were following his commands; right?
- 25 **A** To the best of our ability, yes, sir.

1 **Q** And if you could, if you'll take me from the time he gets
2 within, I don't know, 10 feet of you, if you'll just walk us
3 through what happened.

4 **A** Okay. By the time he had gotten within 10 feet of us, we
5 had made up our minds that it was best for us to leave. So
6 Jeff was going towards his truck and I was getting my crew
7 towards our truck on the other side of the transmission
8 right-of-way, maybe 100 feet away.

9 As we're going towards our truck, I can hear the gun
10 hitting Jeff's truck, and I can still hear him yelling, "I'll
11 kill you," things of that nature.

12 So I have got equipment in my hands and I'm throwing them
13 in the bed of the truck, trying to do everything I can to --
14 at this point, I didn't know what he was mad about. Maybe, I
15 thought, that it was our equipment or something like that. So
16 I was throwing everything in the truck as fast as I could,
17 trying to get the crew out of there.

18 By the time I got into my driver's seat, he was coming up
19 on the driver's side of my truck, and he put the shotgun into
20 the window, next to my cheek.

21 **Q** When you say next to your cheek, I mean, how close was
22 it?

23 **A** Within an inch.

24 **Q** And, at that point, you know, what did you think was
25 about to happen?

- 1 **A** I thought I was going to die.
- 2 **Q** Now, if you could, what happened after that?
- 3 **A** I started the truck and put it into drive and I
- 4 accelerated away and towards the left towards the road that
- 5 would get us out of there.
- 6 **Q** Okay. And while you were leaving, did you hear him fire
- 7 shots?
- 8 **A** Yes, sir.
- 9 **Q** How many?
- 10 **A** Two.
- 11 **Q** Did you see him holding the gun as the shots were fired?
- 12 **A** Yes, sir.
- 13 **Q** All right. And I want to make sure I'm correct on these
- 14 threats. I mean, he was threatening to kill you; right?
- 15 **A** Yes, sir.
- 16 **Q** How many times did he threaten to kill you or members of
- 17 your crew or Jeff?
- 18 **A** Several. He was repeating it.
- 19 **Q** Okay. And what kind of -- and, I'm sorry, but what kind
- 20 of derogatory comments was he making towards you?
- 21 **A** He called me a bitch several times.
- 22 **Q** Now, you get out and y'all call law enforcement and you
- 23 gave a statement; correct?
- 24 **A** Yes, sir.
- 25 **Q** And is that statement consistent with what you testified

1 to today?

2 **A** Yes, sir.

3 **Q** Were you present at a bond hearing for Joshua Kelly?

4 **A** Yes, sir.

5 **Q** And, at that time, did he say anything that stood out to
6 you?

7 **A** Yes, sir.

8 **Q** What, if anything, did he say?

9 **A** "If I wanted to kill them, they'd be dead."

10 **Q** Now, you got a good look at him on scene; right?

11 **A** Yes, sir.

12 **Q** I mean, he's got that shotgun, you know, right on your
13 cheek?

14 **A** Yes, sir.

15 **Q** Were you kind of tunnel vision? Were you zoned in on his
16 face?

17 **A** Yes.

18 **Q** Did you see that same person at the bond hearing?

19 **A** Yes, sir.

20 **Q** Do you see that same person in the courtroom today?

21 **A** Yes.

22 **Q** If you could, would you point him out?

23 **A** He's right there, sitting at the table in the orange
24 jumpsuit.

25 **MR. WHITE:** Judge, let the record reflect that

1 Ms. Stokely has identified Joshua Kelly as the perpetrator on
2 that particular incident.

3 THE COURT: Yes, sir.

4 MR. WHITE: Beg the Court's indulgence.

5 BY MR. WHITE:

6 Q Now, when he shot, was that your vehicle that received
7 damage from the back?

8 A Yes, sir.

9 Q Okay. And did you hear it making contact with your
10 vehicle?

11 A Yes, sir.

12 Q I have nothing further. Please answer questions defense
13 may have.

14 THE COURT: All right. Cross?

15 MS. HENDERSON: One moment, please, Judge.

16 CROSS-EXAMINATION

17 BY MS. HENDERSON:

18 Q Ms. Stokely, the truck you were driving this day, did it
19 have a logo on it identifying your company?

20 A No, ma'am, it did not. My new logo was being ordered.
21 It was being shipped. I did not have it yet.

22 MS. HENDERSON: That's it from defense counsel, Judge.

23 THE COURT: Mr. Kelly?

24 CROSS-EXAMINATION

25 BY MR. KELLY:

1 Q You said when the truck -- shots, you heard the rounds
2 hit the truck?

3 A Yes, that's correct?

4 Q When you got to where the called the police, when you
5 talked to them and gave a report, did you get out and look at
6 the gunshots or the damage to the tailgate at all?

7 A No. I didn't inspect the truck. I was busy giving my
8 statement.

9 Q It's a pretty big deal to get shot at.

10 A Yeah, it absolutely is.

11 Q You just didn't think to show the police at all?

12 A I was a bit overwhelmed at the time. There was so much
13 going on that I was not involved in the evidence collection,
14 no.

15 Q Thank you, ma'am.

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

17 Thank you. Let's take a ten-minute break. We'll come
18 back and keep going.

19 MR. WHITE: Yes, sir, Judge.

20 (A recess was taken from 11:47 a.m. to 12:02 p.m.)

21 MR. WHITE: The State rests.

22 THE COURT: All right. Any motions from the defense?

23 MOTION FOR DIRECTED VERDICT

24 MS. HENDERSON: We would move on a directed verdict on
25 the charges of attempted murder, pointing and presenting, and

1 discharging a firearm into an occupied vehicle. I don't
2 believe that we have heard competent evidence today to
3 substantiate these charges. I believe, at most, we have heard
4 a suspicion on guilt, specifically to the intent necessitated
5 in the attempted murder.

6 THE COURT: All right. I think, at this point in time,
7 we do have a question of fact. I'm going to respectfully deny
8 those motions.

9 MS. HENDERSON: Thank you, Judge.

10 THE COURT: Anything else?

11 THE DEFENDANT: I'd just like to kind of reiterate. I
12 lost my train of thought, Judge. I'm sorry.

13 THE COURT: All right. Let's go over his rights to
14 testify. Have you explained that to him?

15 MS. HENDERSON: I have, Judge.

16 THE COURT: All right. And if you would stand up. I
17 want to let you know that you do have a right to come over
18 here and testify. You can be sworn in. You can tell your
19 story as you and your lawyer see fit; however, I do want to
20 warn you and let you know that, if you do testify, you may be
21 cross-examined on any and all relevant issues in connection
22 with this case.

23 Furthermore, if you have a criminal record and it
24 involves any dishonesty or false statements or crimes where
25 the punishment could be more than one year, then your criminal

1 record could be introduced to attack your credibility. Do you
2 understand the dangers in testifying?

3 THE DEFENDANT: Yes, Your Honor, I do.

4 THE COURT: All right. Now, I want to go one step
5 further and I want to let you know that you have the right to
6 remain silent. And you don't have to testify and nobody can
7 make you testify. If you chose to exercise that right, I
8 would not use that against you in any way. I wouldn't think
9 about it or discuss it with my law clerk when we deliberate.
10 Do you understand that as well?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: All right. Have you talked with your lawyers
13 about whether you wish to testify or not?

14 THE DEFENDANT: I did. They advised me against that.

15 THE COURT: Okay.

16 THE DEFENDANT: In your opinion, would it hurt my case?
17 I mean, you're my juror, and anything to ask as far as --

18 THE COURT: I understand, and I cannot give you my
19 opinion. You can do whatever you'd like. If you want to take
20 a few more minutes and you want to talk with your lawyers, you
21 can talk with them, think it over, and then do what you want
22 to do. Take your time.

23 THE DEFENDANT: (Indiscernible) testify, Your Honor. I
24 think I made no progress in the interviews.

25 THE COURT: What did he say?

1 MS. HENDERSON: He said he did not want to testify, Your
2 Honor.

3 THE COURT: Okay. All right. Thank you.

4 And I'll make the finding he did so freely,
5 intelligently, and with the advice of competent counsel.

6 Would you like to call your first witness?

7 MS. HENDERSON: Judge, defense has no witnesses.

8 THE COURT: All right. Any motions at this time before
9 we go forward with the closing statements?

10 MR. WHITE: Nothing from the State.

11 THE COURT: Anything from the defense?

12 MS. HENDERSON: Defense rests and we renew our previous
13 motion.

14 THE COURT: I'll respectfully deny those.

15 Would the State like to give a closing statement?

16 CLOSING ARGUMENT ON BEHALF OF THE STATE

17 MR. WHITE: Yes, sir, Judge. Now, you've heard all the
18 evidence, and in my mind, you have heard from four witnesses
19 who were there. All the witnesses would have no reason to
20 lie, no reason to make this up, very credible, hard-working
21 individuals who live in the area. They have not wavered in
22 their testimony. They did not give any inconsistent
23 statements. They have stuck by the truth. And the truth is
24 that, on September 18th, 2019, they were working, hard at
25 work, when an individual, angered, agitated, yelling,

1 approached them with a shotgun, threatened to kill them.

2 In fact, I think all but one -- and I didn't even ask
3 him, but all but one testified that they thought that they
4 were going to die. And I just would like for you to, Judge,
5 keep that in mind. Just imagine being at work thinking, you
6 know, counting down the seconds until you get off, and to go
7 from that extreme to the extreme of thinking that your life is
8 about to end.

9 Throughout this case -- well, and I'll back up, Judge.
10 And then the defendant twice admitted his guilt. I believe
11 wholeheartedly it's tantamount to a confession. He tells
12 Investigator Worsley and then the magistrate judge that "if I
13 wanted to kill, I would have killed them."

14 He -- you know, malice that's shown here, Judge, the
15 derogatory comments, telling them that he's going to kill him.
16 But I want to first start with the kind of lesser charges,
17 Judge, first: Discharging firearm at or into an occupied
18 vehicle; that the law is 16-23-440. It is unlawful for a
19 person to discharge or cause to be discharged unlawfully
20 firearms at or into any vehicle, aircraft, watercraft, or
21 other conveyance.

22 Judge, there is evidence that the car was struck, not
23 only with the gun, you know, as he physically brought it down
24 on the left fender, but also -- and I know you have to kind of
25 zoom in on that picture, but there is evidence of the tailgate

1 being peppered.

2 Furthermore, two witnesses testified to seeing him shoot
3 in that direction and also hearing the shotgun shells and the
4 contents therein hit the tailgate. Be that as it may, the law
5 under discharging firearm at or into an occupied vehicle does
6 not require contact with the vehicle at all. We have contact
7 here, but it's not required under the statute.

8 Judge, and then's pointing a firearm at another person.
9 It's a quite simple statute. It's unlawful for a person to
10 present or point at another person a loaded or unloaded
11 firearm. Judge, first, Mr. Martin testified that that gun got
12 pointed. I mean, he was quite emphatic. Said it was less
13 than an inch from between his eyes. And not only that, every
14 other witness testified that they saw that occur.

15 And then it was pointed again at the cheek of Ms. Shanice
16 Stokely. She said that it was as close as close could get
17 without actually touching, and it was accompanied with
18 threats. And, again, that was witnessed by every member of
19 the crew, so I think that that is satisfied.

20 Where this becomes an issue is when we get to attempted
21 murder and the lesser included. Obviously, Judge, attempted
22 murder is a specific-intent crime. I would argue that
23 specific intent is shown here. He obviously says on several
24 occasions -- I count as many as six -- that "I am going to
25 kill you." I mean, there is not a better way to express

1 intent and I'm not sure what is.

2 Also, Judge, you have to show malice aforethought. One
3 of the elements of malice is reckless disregard for human
4 life, and I don't know what's more reckless than running out
5 of a woodline at strangers, at people you have never seen
6 before in your life, pointing a gun at their face, telling
7 them you're going to kill them, and then stepping back and
8 actually firing at the vehicle.

9 Now, I do want to focus on what he said to Investigator
10 Worsley and then at the magistrate level at the bond hearing.
11 He said, "If I wanted them dead or if I wanted to kill them, I
12 would have killed them." Now, that cuts one way, and I think
13 the defense will argue that he didn't have any intent to kill
14 because, if he wanted them dead, when the gun was pointed at
15 their face, he would have shot them. I have a different
16 outlook of that.

17 He steps back and allows the car to go on ahead. He's
18 building in a defense. In that moment -- and it echoes when
19 he tells Investigator Worsley -- but he's already got that in
20 his head: "If I wanted to kill him, I'da killed him." So
21 that shotgun shell would have gone through the window and
22 killed him, that's what he said, "Oh, I'm sorry; it was an
23 accident. I was just shooting just to scare them." And I
24 think that that alone shows intent to kill. I mean, he's
25 thinking about it. He's ruminating over it, and ultimately,

1 he pulls that trigger.

2 Furthermore, Judge, he's former military, he's former law
3 enforcement. He knows exactly what a handgun, a shotgun, any
4 gun is capable of, and despite all that, he's still firing on
5 unarmed hard-working citizens of this county and Marion County
6 who were doing nothing more than minding their own business.

7 Then you go to ABHAN, Judge, that's the next lesser
8 included. I would consent and agree that those elements do
9 not present here. You have to have an injury to a person.
10 There simply just is not an injury. There could have been.
11 Thankful that it wasn't, but there's not.

12 Then you get to first degree -- assault and battery first
13 degree. There's been a case recently, Judge. I'm going to
14 pass it up. It is a little bit perplexing. I have to admit,
15 I'm not sure exactly what the Court of Appeals is getting at
16 here, but they have defined -- and it's a really different
17 fact pattern than we have here, but they have defined assault
18 and battery first degree as a specific intent crime.

19 Now, assault and battery in the first degree -- I'll find
20 it here for you, Judge. Subsection A is injury to another
21 person; obviously, we don't have that here. So we're just
22 dealing with subsection B, offers or attempts to injure
23 another person with a present ability to do so. Now, you
24 know, I don't know how they find that as a specific intent,
25 but regardless, I think you have specific intent here. He is

1 100 percent offering or attempting to injure these
2 individuals, and obviously, a shotgun could have caused great
3 bodily injury.

4 So I would say I believe fervently that this meets the
5 elements of attempted murder. I do think it's complicated by
6 the specific intent aspect of attempted murder, but again,
7 Judge, I have looked at it a million times. I have looked at
8 it every which way, and I think that this meets attempted
9 murder. However, if you find that it doesn't, I believe that
10 it does, in fact, meet assault and battery in the first degree
11 and would lie for assault and battery first degree as well.

12 But I would ask you to stop there because a shotgun would
13 have caused, you know, great bodily injury, and there's no
14 denying that it could have resulted in great bodily injury or
15 death. I mean, this is a guy who was bent on death, he
16 expressed it in no uncertain terms, and then, you know,
17 followed through with it. And I'd ask you, if you find him
18 guilty of discharging a firearm into a vehicle, pointing and
19 presenting a firearm, attempted murder. But if Your Honor
20 feels that attempted murder is not appropriate, I'd ask that
21 you find him guilty of assault and battery in the first
22 degree. Thank you, Judge.

23 THE COURT: Yes, ma'am.

24 CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

25 MS. HENDERSON: Thank you, Judge. I believe the defense

1 and State have a little bit interpretations of the evidence
2 that was presented today as well as the facts. Your Honor, I
3 do not believe from what we have heard today that Mr. Kelly
4 is, as the State claims, was bent on death, and I say that
5 because, as you're aware, Mr. Kelly, a former law enforcement
6 officer, former military veteran, who, obviously, is familiar
7 with firearms handling, is accused of shooting a shotgun in
8 some capacity at these individuals and being charged with
9 attempted murder.

10 Judge, relying solely upon that, based upon the evidence
11 that we heard today, the range of which this alleged shooting
12 occurred, the vicinity in which this alleged shooting
13 occurred, this individual, as Mr. White said, was trained in
14 weapons handling. He knows anyone with knowledge of shooting
15 a gun, the manner in which the State reported that he fired
16 that gun could not have caused the great bodily injury, the
17 death that Mr. White relies upon. It doesn't mesh up.

18 A few things that I ask you to consider. I believe that
19 there was a lot of inconsistencies in the State's case today.
20 We heard testimony as to these pictures of these vehicles that
21 were taken showing this alleged damage. I'm having difficulty
22 seeing this alleged damage.

23 We heard inconsistencies in the type and severity of the
24 damage. What I understand is that we heard testimony today
25 that Mr. Kelly hit one of the trucks with the butt of his gun.

1 We heard testimony at one point that he hit one individual's
2 truck. We then heard testimony that he hit another
3 individual's truck. There's discrepancies in that testimony.

4 The issue is that I'm not seeing damage consistent with
5 that testimony and the photographs that we saw. My limited
6 knowledge and understanding of weapons, of shotguns, when a
7 shotgun is fired, it's going to have some sort of shot pattern
8 in the vicinity of the target, dependent upon that range. The
9 farther away he is, the larger that range. We heard no
10 evidence of that today, Judge.

11 Going to the intent that the State relies upon saying
12 that this is an individual bent on death, again, let me tell
13 you, as crass as this is, if we rely upon the statements that
14 the State relies upon in arguing that Mr. Kelly had this
15 intent, his statements to law enforcement the day of the
16 incident saying, "If I wanted them dead, they would have been
17 dead," his statement at the bond hearing, "If I wanted them
18 dead, they would have been dead," as crass and as offensive as
19 that is, if that is, in fact, the truth, take away any intent
20 for any attempted murder charge, they show that he did not
21 intend to kill someone.

22 With that being said, Your Honor, I believe that the
23 inconsistencies that we have heard in the evidence today
24 further do not prove him guilty beyond a reasonable doubt.

25 A few of the other inconsistencies that I want to point

1 out; we heard Mr. McWhite testify that Kelly fired two trucks.
2 One hit Mr. Martin's front left driver's side. This is
3 compared to Investigator Worsley's report, reporting that
4 Kelly struck the front left side of Mr. Martin's hood with the
5 gun, causing damage, compared to Mr. Martin's statement that
6 Kelly hit the left front fender of Mr. Martin's truck, not
7 shooting that truck.

8 Your Honor, I would also like you to consider the reports
9 that we heard of the individuals in each vehicle, their
10 inconsistencies in those. Your Honor, I also would like for
11 you to consider the lack of evidence that was not presented to
12 us today. Defense maintains that there is no physical
13 evidence of these shots being fired. There was no ammunition
14 recovered. There was no damage to the vehicle consistent with
15 being shot by a shotgun, no spreading effect of the buckshot,
16 no shot spread. There were no physical injuries alleged to
17 the victims. No gunshot residue tests were performed. No
18 firearms were recovered. Nothing was sent to SLED for
19 testing.

20 Your Honor, the crux of an attempted murder charge, as
21 you're well aware, is specific intent. I believe that the
22 evidence that we have heard today does not substantiate
23 specific intent so to raise this charge to an -- go to raise
24 the facts that accuse him of -- to find him guilty of
25 attempted murder.

1 Likewise, the case that Mr. White presented to you sets
2 forth that assault and battery first is a specific intent
3 crime. I maintain that we don't have the specific intent here
4 today to substantiate an assault and battery first. I would
5 ask that you consider an assault and battery second degree
6 should you be so inclined to do so.

7 Your Honor, I think the evidence we have heard just
8 frankly does not substantiate an attempted murder charge. I
9 think it is something that's been driven by fear but the facts
10 don't mesh up to the charge. And Mr. Kelly may have something
11 to add on to that.

12 THE COURT: Mr. Kelly?

13 THE DEFENDANT: Kind of speak real fast on that. From
14 what I kind of look at it, I kind of wish I had testified now,
15 but nonetheless, it's proof beyond a reasonable doubt. That's
16 one reason I kept bringing up the picture of what's there and
17 is not there. There's a close -- it looks like a thumb smudge
18 to me. They said it was a shotgun blast, but there's no
19 zoom-out of it saying that that's a Toyota Tacoma pickup
20 truck. It's just a white sheet.

21 All of them say I shot the truck but no one text their
22 friends on their phones saying, "Hey, this guy shot my truck
23 up" or, you know, "Check this out" or the truck insurance.
24 You know, you've got the supervisors, you've got the
25 employees. Where is the truck insurance pictures it? I mean,

1 I don't think -- it's that smudge.

2 Another thing would be they say that two of them said I'd
3 shoot them in face with a shotgun. Where are the pictures of
4 it? We know you're calling the police. Your face would at
5 least be red, even if it didn't leave the imprint of the
6 barrel. It would be red.

7 There were just several discrepancies in the statements
8 and all six pictures. I believe it shows doubt. I know for
9 firing into a vehicle, not having a gunshot shows doubt, but I
10 see that tied in with attempted murder is that they were in
11 the vehicle. It was a vehicle borne in the event for the most
12 part. So there's no evidence for firing into a vehicle; I
13 think that would be an attempted murder.

14 Again, as far as no marks on them or anything like
15 that -- one of my things is, everybody has smart phones. We
16 have talked to five to six people today that work together and
17 they're close coworkers. No one tried taking pictures. No
18 one tried to videotape this. No one took any after action
19 pictures or reports of anything that happened, and that raises
20 doubt. That raises doubt.

21 And the assault, that definitely raises doubt. You know,
22 Judge, I kind of took offense to the pictures saying that was
23 a gunshot. I find myself or think of my myself as a subject
24 matter expert when it comes to weapons. I was an expert
25 marksman in the Army. I was an NCO police officer. I hunted

1 my whole life up here and carried weapons my whole life. This
2 whole altercation said it happened at point-blank range. I
3 was close enough to hit his truck with the shotgun, poke him
4 in the face, and her -- close enough to poke her in the face
5 and shoot her truck as it went by, but you're going to show me
6 a fingerprint smudge that's supposed to be a shotgun blast. I
7 mean, I hope you've hunted and maybe shot a piece of tin or a
8 tree or a barrel and see the effect of it. So I think that
9 raises doubt. That's my one point.

10 The other one is one alleviates the other. The vehicle
11 borne in the event. So firing into a vehicle, if I can
12 alleviate or prove doubt on it, should alleviate or prove
13 doubt on the attempted murder, seeing that they go hand and
14 hand.

15 That's where I'm at. Again, I'm a peaceful person. I
16 got a good background. NCO in the military, law enforcement.
17 I was a county firefighter, two counties. I get along with
18 everybody. I have never had a violent anything on my criminal
19 record. Nothing whatsoever.

20 So I'm just trying to speak on my character. I was
21 fishing. I was. I was fishing. I do carry a little shotgun
22 with me because there's snakes everywhere, but I didn't attack
23 anybody. I can prove it. There's no proof whatsoever. It's
24 proof beyond a reasonable doubt, and I'm here to tell the
25 truth today.

1 I'm not mad at anybody. I'm trying to say there's five
2 people and there's cameras and there's videos and there's
3 injury and gunshots, and there's no evidence of any of this.
4 There's no pictures of any of this. There's no videos of any
5 of this. Can't find shell casings on the ground. It doesn't
6 matter. I mean, I didn't hurt anybody. I wasn't there to
7 hurt anybody. I was on property I had permission to be on.
8 That's just what I'm saying. I think I have raised certain
9 doubt.

10 THE COURT: All right. Thank you.

11 We'll take a short break and we'll come back with a
12 verdict.

13 MR. WHITE: Thank you, Judge.

14 MS. HENDERSON: Thank you, Judge.

15 THE COURT: Thank you.

16 (A brief recess was taken at 12:22 p.m. to 12:42 p.m.)

17 RULING

18 THE COURT: After hearing all of the evidence today and
19 hearing closing statements from both parties, the Court has
20 reached a decision and the decision is as follows:

21 On the charge of attempted murder, the Court finds the
22 defendant not guilty.

23 On the charge to the assault and battery first degree,
24 not guilty.

25 Assault and battery second degree, not guilty.

1 Pointing and presenting, guilty.

2 Discharging a firearm into a vehicle, guilty.

3 Any motion from any of the parties at this time?

4 MS. HENDERSON: Nothing from the defense, Judge.

5 THE COURT: Got sentencing sheets?

6 MR. WHITE: Yes, sir, just need a signature.

7 THE DEFENDANT: Judge, is any of these --

8 (The defendant and his counsel confer off the record.)

9 THE COURT: All right. Anything the State would like to
10 say before sentencing?

11 MR. WHITE: Yes, sir, Judge. Beg the Court's indulgence.

12 Judge, obviously, the victims are present; they don't
13 wish to address the Court.

14 Your Honor, I made an offer of a cap of six in this case,
15 and as soon as it left my lips, I regretted it, and I have had
16 second thoughts about it ever since. I know the defense is
17 going to say this individual, Mr. Kelly, is a product of a
18 failed system, and I disagree. This is someone who went into
19 the military, came back, was given an opportunity to serve in
20 law enforcement, had several incidents in the Department that
21 he was at, was removed from that particular position, and I
22 see him as someone who looks for trouble, and then, when
23 trouble comes, he tries to manipulate and get himself out of
24 it.

25 The evaluations came back. He was competent as to Blair.

1 He was competent as to McNaughton. In fact, Judge, we had him
2 evaluated. It took us about a year, maybe more, to get him
3 evaluated for McNaughton because he simply refused to do it.
4 And he sat here, Judge, and he participated in his defense. I
5 don't think you heard somebody who is crazy. I mean, he
6 sounds put together to me. I just think you're dealing with
7 somebody who likes to seek out trouble, and when he finds it,
8 I think, in that moment, he's a very dangerous individual.

9 I understand the Court's ruling on the attempted murder
10 and lesser included. We appreciate your decision, Judge, as
11 to the discharging a firearm and presenting a firearm. If
12 we're just looking at those, then that is the most severe case
13 of discharging a firearm into a vehicle and pointing and
14 presenting a firearm case that I have ever had.

15 He left these folks in absolute fear. I have neglected
16 to ask her on the witness stand, but Ms. Shanice Stokely has
17 been in therapy for this incident since this has occurred.
18 She's still traumatized by this and rightfully so, Judge. I
19 cannot imagine having to be put through that, to have to go to
20 therapy every week for it, and then have to come in here and
21 get questioned by the perpetrator. I think that shows a level
22 of courage that we don't often see in this courtroom. So I'd
23 like you to take that into consideration.

24 Respectfully, Judge, with the attempted murder and lesser
25 included removed and with him facing a maximum of 15, I would

1 respectfully ask for the max. I think that's appropriate. I
2 would ask for ten on the discharging and five on the
3 firearms -- pointing and presents firearms, and I'd ask you to
4 please run those consecutively.

5 THE COURT: All right. Let me hear from the defense.

6 MS. HENDERSON: Thank you, Judge. Judge, in the
7 defense's opinion, Mr. Kelly is a prime example of the system
8 failing someone. This is an individual who, in 2004, upon his
9 graduation from Hartsville High School, enlisted in the Army.
10 He served in the Army for nearly five years as a military
11 police officer. He served two tours: One deployment in
12 Afghanistan and one deployment in Iraq, each a year.

13 Your Honor, what Mr. Kelly witnessed in those
14 deployments, I can't even speak to because I can't imagine.
15 He was blown up by an IED. He witnessed, as I understand it,
16 one of his closest friends die, and he suffered from a lot of
17 issues from that, Judge.

18 Mr. Kelly exited the military in 2009. He told me he
19 wanted to marry his high school sweetheart. He joined the
20 Bishopville Police Department. He served there for a period
21 of years. He was a patrolman. While on patrol one night, he
22 was attacked by a pit bull. He drove himself to the hospital,
23 he was air-lifted to Columbia, and suffered traumatic injuries
24 from that, Judge.

25 This is an individual who dedicated his life to public

1 service, and unfortunately, that public service has caused
2 mental traumas that I have no doubt has led us before you
3 today. Despite what Mr. White may say, this is not someone
4 who is out looking for trouble. This is someone who, I
5 understand, wanted to live a recluse, secluded life.

6 Your Honor, he's been in the detention center 617 days on
7 these charges. I would ask that you consider that.

8 He's not crazy, as Mr. White said. Unfortunately, I
9 think he's someone who needs help, and the system has failed
10 him. He might like to address this Court at the appropriate
11 time.

12 THE COURT: Anything you want to say?

13 THE DEFENDANT: Yes, sir. I have been incarcerated now
14 about two years, and in Effingham, the Coronavirus has been
15 rough. It's overpopulated. You see more of it in there, in a
16 confined space, than you would out in the real world. I would
17 like you to take that two years into consideration.

18 I have lost everything in this event. I was taken to
19 jail. My father was working out of town. I lost everything I
20 own. Been trying to put myself together to present myself
21 today. I haven't heard from my father in awhile due to the
22 Coronavirus.

23 Again, I have done two years, and I'm asking if it's
24 possible that I maybe get probation. I have never been in
25 trouble before in my life for anything like this. I'm just

1 worried about my family. I want to rebuild my life. I
2 thought I did a decent job. Please take into account the time
3 I have been in.

4 THE COURT: All right.

5 MR. WHITE: Judge, and I hate to interrupt, he does have
6 a criminal history. It is not major, but I just wanted to put
7 that on the record.

8 I do take one exception to that dog bite story. I
9 believe that that's how he presented it at the hospital, but
10 unless I'm mistaken, that's not the -- the injury is not
11 consistent with a dog bite, and they had some suspicions that
12 that might be something else entirely and that brought about,
13 you know, some disciplinary actions. That's my understanding
14 of it, but I just wanted to put it on the record.

15 MS. HENDERSON: Judge, I have a news article discussing
16 the dog bite.

17 SENTENCING

18 THE COURT: All right. In regards to discharging a
19 firearm into a vehicle, the sentence of the Court is nine
20 years. I'll give him credit for 617 days.

21 In reference to the pointing and presenting, the sentence
22 of the Court is five years. He gets 617 days.

23 I'm going to run both consecutive.

24 MS. HENDERSON: Thank you, Judge.

25 MR. WHITE: Thank you, Judge.

1 (At 12:51 p.m., the above trial concluded.)
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1 CERTIFICATE OF COURT REPORTER

2

3 State of South Carolina)
4 County of Florence)

5

6 I, Bobbi J. Fisher, Registered Professional Reporter
7 (RPR) and Official Court Reporter for the State of South
8 Carolina, do hereby certify that the foregoing is a true,
9 accurate and complete Transcript of Record of the proceedings
10 had and evidence introduced in the bench trial of the
11 captioned case in the General Sessions for Florence County,
12 South Carolina, on the 26th of May, 2021.

13

14

15 July 22, 2021

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19

Bobbi J. Fisher, RPR

20

Official Court Reporter

21

22

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Call Taker CFS Report
 01 DMT CFS # - 2019-108916

Base Information

Call When 09/18/2019 14:53:15 Create When 09/18/2019 14:55:02 Close When 09/18/2019 19:04:02 Disposition AR

Priority MEDIUM Call Disciplines L, Assigned Disciplines E,L,O, Assigned Disciplines NP E,L.

EMS Code Fire Code Law Code 135D02-G Primary Unit S218

Location of Occurrence

Address [REDACTED] RD, FLORENCE

Zip County

Landmark

ESN 411 Map Grid

EMS/Rescue EMS 1 Fire WINDY HILL FR BOX 21 Law FLO COUNTY SHERIFF DEPT

Area District EMS Tract Fire Tract

Grid Law Tract Report Tract Work Area

Cross Street High NENA LN

Cross Street Low TRIANGLE LN

From-To Directions

Location of Caller

Address [REDACTED] FLORENCE

Landmark

Caller Name JEFF MARTIN

Caller Phone [REDACTED]

How Received 911

Agency Defined

OCA Numbers

Department	OCA Number	Unit	Note	Department	OCA Number	Unit	Note
100	2019-09-0443	S218					

Dispositions

Disposition	Assigned When	User	InActive	While Closed
AR	09/18/2019 19:04:02	JKM	☐	☐
RF	09/18/2019 19:04:02	JKM	☐	☐

Call Types

Call Type	Assigned When	User	Assigned While Closed	InActive
GUN(MAN WITH) 1059 GUN	09/18/2019 14:55:02	DMT	☐	☐

Unit Times

Unit	Department	Unit Type	When	Status Notes	User
S218 (MCWHITE, JAWUAN)	100	SHERIFF	09/18/2019 14:55:48	DSP	CJR
S249 (JONES, AMBER)	100	SHERIFF	09/18/2019 14:55:48	DSP	CJR
S218 (MCWHITE, JAWUAN)	100	SHERIFF	09/18/2019 14:56:23	ENR	CJR

Call Taker		CFS Report			
01 DMT		CFS # - 2019-108916			
S249 (JONES, AMBER)	100	SHERIFF	09/18/2019 14:56:25	ENR	CJR
S121 (DRIGGERS, WILLIAM)	100	SHERIFF	09/18/2019 14:56:29	DSP	CJR
S121 (DRIGGERS, WILLIAM)	100	SHERIFF	09/18/2019 14:56:31	ENR	CJR
S185 (ODOM, WILLIAM)	100	SHERIFF	09/18/2019 14:56:34	DSP	CJR
S185 (ODOM, WILLIAM)	100	SHERIFF	09/18/2019 14:56:38	ENR	CJR
S121 (DRIGGERS, WILLIAM)	100	SHERIFF	09/18/2019 15:03:06	1088	CJR
S121 (DRIGGERS, WILLIAM)	100	SHERIFF	09/18/2019 15:05:58	ONS	CJR
S218 (MCWHITE, JAWUAN)	100	SHERIFF	09/18/2019 15:21:13	ONS	CJR
S165 (REID, CHAD)	100	K9 UNIT	09/18/2019 15:39:53	DSP	LMF
S165 (REID, CHAD)	100	K9 UNIT	09/18/2019 15:39:58	ENR	LMF
S212 (MCDANIEL, MATT)	100	SHERIFF	09/18/2019 15:42:33	DSP	CJR
S208 (SPANN, SHELDON)	100	SHERIFF	09/18/2019 15:42:38	DSP	CJR
S251 (TAYLOR, JUSTIN)	100	SHERIFF	09/18/2019 15:42:46	DSP	CJR
S109 (BROWN, SCOTT)	100	SHERIFF	09/18/2019 15:42:53	DSP	CJR
S173 (WORLSEY, ALVIN K)	100	SHERIFF	09/18/2019 15:43:33	DSP	LMF
S173 (WORLSEY, ALVIN K)	100	SHERIFF	09/18/2019 15:43:36	ONS	LMF
EMD	EMD	EMERGENCY MANAGEMENT	09/18/2019 15:47:18	DSP	DMT
SCHP	SCHP	L	09/18/2019 16:03:51	DSP	ASC
S165 (REID, CHAD)	100	K9 UNIT	09/18/2019 16:46:21	LOG	CJR
S209 (URQUHART, BROOKS)	100	K9 UNIT	09/18/2019 16:48:09	DSP	CJR
S209 (URQUHART, BROOKS)	100	K9 UNIT	09/18/2019 16:48:19	ONS	CJR
S209 (URQUHART, BROOKS)	100	K9 UNIT	09/18/2019 16:53:05	LOG ADV DOGS ON THE GROUND	CJR
S249 (JONES, AMBER)	100	SHERIFF	09/18/2019 16:53:09	COMP	CJR
S193 (BEANE, ANDERSON)	100	SHERIFF	09/18/2019 17:04:45	DSP	CJR
S193 (BEANE, ANDERSON)	100	SHERIFF	09/18/2019 17:04:53	ONS	CJR
S193 (BEANE, ANDERSON)	100	SHERIFF	09/18/2019 17:04:57	1069 X1	CJR
S124 (FULEIHAN, MARK)	100	SHERIFF	09/18/2019 17:11:31	DSP	CJR
S124 (FULEIHAN, MARK)	100	SHERIFF	09/18/2019 17:11:37	ONS	CJR
S124 (FULEIHAN, MARK)	100	SHERIFF	09/18/2019 17:11:52	1067 X1 TURNING HIM OVER TO INVESTIGATION	CJR
S218 (MCWHITE, JAWUAN)	100	SHERIFF	09/18/2019 17:13:50	DEP 42044.00 S15	LMF
S218 (MCWHITE, JAWUAN)	100	SHERIFF	09/18/2019 17:13:59	LOG 420404.00	LMF
S124 (FULEIHAN, MARK)	100	SHERIFF	09/18/2019 17:18:46	LOG ADV THEY ARE HAVING K9 DOING ARTICLE SEARCH	CJR
RAP1	100	HELICOPTER	09/18/2019 17:18:55	DSP	CJR
RAP1	100	HELICOPTER	09/18/2019 17:18:59	ONS	CJR
RAP1	100	HELICOPTER	09/18/2019 17:19:15	LOG ADV HE IS BACK ON THE GROUND	CJR
RAP1	100	HELICOPTER	09/18/2019 17:19:19	COMP	CJR
S121 (DRIGGERS, WILLIAM)	100	SHERIFF	09/18/2019 17:34:25	COMP	LMF
S185 (ODOM, WILLIAM)	100	SHERIFF	09/18/2019 17:34:33	COMP	LMF
SCHP	SCHP	L	09/18/2019 17:35:49	COMP	JWM
S218 (MCWHITE, JAWUAN)	100	SHERIFF	09/18/2019 17:43:22	ARR 4241.00 S15	LMF
S251 (TAYLOR, JUSTIN)	100	SHERIFF	09/18/2019 17:49:58	COMP	CJR
S212 (MCDANIEL, MATT)	100	SHERIFF	09/18/2019 17:50:05	COMP	CJR
S209 (URQUHART, BROOKS)	100	K9 UNIT	09/18/2019 17:50:10	COMP	CJR

Call Taker

01 DMT

CFS Report

CFS # - 2019-108916

1)	S208 (SPANN, SHELDON) 100	SHERIFF	09/18/2019 17:51:10	COMP	CJR
	S193 (BEANE, ANDERSON) 100	SHERIFF	09/18/2019 17:51:20	COMP	CJR
	S173 (WORLSEY, ALVIN K) 100	SHERIFF	09/18/2019 17:51:22	DEP S15	LMF
	S165 (REID, CHAD) 100	K9 UNIT	09/18/2019 17:51:25	COMP	CJR
	S124 (FULEIHAN, MARK) 100	SHERIFF	09/18/2019 17:51:34	COMP	CJR
	S109 (BROWN, SCOTT) 100	SHERIFF	09/18/2019 17:51:37	COMP	CJR
	S173 (WORLSEY, ALVIN K) 100	SHERIFF	09/18/2019 18:16:21	ARR S15	CJR
	S218 (MCWHITE, JAWUAN) 100	SHERIFF	09/18/2019 18:35:06	COMP	CJR
	EMD EMD	EMERGENCY MANAGEMENT	09/18/2019 18:50:33	COMP	ENW
	S173 (WORLSEY, ALVIN K) 100	SHERIFF	09/18/2019 19:04:02	COMP	JKM

Incident Locations

Address: [REDACTED] FLORENCE

User: DMT

When: 09/18/2019 14:55:02

Latitude: 34.2470918754274

Longitude: -79.7176630182222

Source: MapLine

InActive: ☐

Vehicle/Person Information

Name	Eye	Hair	Hgt	Wgt	155	Race	W Sex	M Discipline	L
DOB	OLN	SSN	OID	Unit					
Location		Description	Clothes: TAN HAT GLASSES DARK SHIR				Phone		

Tag	Tag Year	Tag Type	Type	Suspect	User	DMT	When	09/18/2019 14:57:23
Make/Model/Year/Color/VIN/Desc	/ / / / /						Searched	☐ Consented ☐

Caller Phones

Caller Phone	When	User	Caller Phone	When	User
[REDACTED]	09/18/2019 14:55:02	DMT			

Caller Names

Caller Name	When	User	Caller Name	When	User
JEFF MARTIN	09/18/2019 14:55:02	DMT			

Comment

09/18/2019 14:55:02 09/18/2019 15:15:00

WORKS FOR TREE SERVICE. WAS MARKING TREES WAS APPROACHED BY A SUBJ WITH A GUN MAKING THREATS AND SHOOTING THE GUN. ONE DID HIT THE TRUCK

Notes

DMT 09/18/2019 14:55:10 L,

Chief Complaint: Weapons / Firearms

Problem: WORKS FOR TREE SERVICE. WAS MARKING TRUCKS WAS APPROACHED BY A SUBJ WITH A GUN MAKING THREATS AND SHOOTING THE GUN. ONE DID HIT THE TRUCK

DMT 09/18/2019 14:55:59 L,

Chief Complaint: Weapons / Firearms

Problem Desc: WORKS FOR TREE SERVICE. WAS MARKING TRUCKS WAS APPROACHED BY A SUBJ WITH A GUN MAKING THREATS AND SHOOTING THE GUN. ONE DID HIT THE TRUCK

Dispatch Level: 135D02 (SHOTS FIRED (suspect seen))

Suffix: G (Gun)

Response: Delta

CADCode: 1075

Call Taker

CFS Report

01 DMT

CFS # - 2019-108916

1. The caller's current location is: PULLED DOWN THE ROAD
2. This incident just happened (minutes ago): 254
3. This is not a referral call.
4. A gun is involved: SHOTGUN
5. The weapon is in suspect's possession.
6. Shots have been fired.
7. The number of shots fired is: 2
8. The caller saw the person who fired the shots.

DMT 09/18/2019 14:56:36 E,F,L,R,O,

WAS ON DUKE RIGHT AWAY

DMT 09/18/2019 14:57:23 L,

Person 1 (Suspect)

Race: W

Gender: M

Clothes: TAN HAT GLASSES DARK SHIR

Height: 5'10

Weight: 155

DMT 09/18/2019 14:57:47 L,

9. The suspect/person is on scene: WENT BACK TO HIS HOUSE
10. The suspect's description is:
11. The suspect arrived on foot.
12. No one is reported to be in danger.
13. No one needs medical attention.

DMT 09/18/2019 15:00:31 E,F,L,R,O,

WILL MEET THE DUMP ON ASHBY RD.

WORKS FOR BURFORD TREE

WAS MAKING TREES FOR DUKE WHEN WAS SUBJ CAME OUT AND SHOT GUN

DMT 09/18/2019 15:15:14 E,F,L,R,O,

SAID HE WAS BEATING ON THE TRUCKS

DMT 09/18/2019 15:15:39 E,F,L,R,O,

WAS MARKING TREES FOR DUKE

ASC 09/18/2019 16:02:50 E,F,L,R,O,

SCHP WAS ADVS

ASC 09/18/2019 17:51:44 E,F,L,R,O,

WANTS LE TO GIVE THEM A PHONE CALL- CANDACE PARKER WITH DUKE ENERGY 919-410-3212

Florence County E911
1221 Justice Way Effingham , SC 29541

Alt911.Phone = '8439920126' AND Alt911.CallWhen Between '2019/09/17 00:00'
 And '2019/09/20 00:00:59'

911 History With ALI Report

Log ID	Pos	PSAP	Phone	Call When	Address	Phone Name	ESN
Comments					CallTaker	Transfer Parse ID CFS Count	Class LEC
ALI							
5888350	01		[REDACTED]	09/18/2019 14:59:39	[REDACTED] T RD, Florence	VERIZON	404
					DMT	False 3 0	WPH2 VZW

201

[REDACTED] 14:59 09/18
 [REDACTED] RD

Florence SC 404 WPH2
 P# 511-8429

VERIZON

LEC:VZW

WIRELESS CALL

QUERY CALLER FOR LOCATION

QUERY CALLER FOR PHONE #

-079.730637 +34.229354

5888349	01		[REDACTED]	09/18/2019 14:59:09	[REDACTED] RD, Florence	VERIZON	404
					DMT	False 3 0	WPH2 VZW

201

[REDACTED] 14:59 09/18
 [REDACTED]

Florence SC 404 WPH2
 P# 511-8429

VERIZON

ALT# [REDACTED] LEC:VZW

WIRELESS CALL

QUERY CALLER FOR LOCATION

QUERY CALLER FOR PHONE #

-079.730637 +34.229354

All911.Phone = [REDACTED] AND All911.CallWhen Between '2019/09/17 00:00'
And '2019/09/20 00:00:59'

911 History With ALI Report

Log ID	Pos	PSAP	Phone	Call When	Address	Phone Name	ESN
Comments					CallTaker	Transfer Parse ID CFS Count	Class LEC
ALI							
5888348	01		[REDACTED]	09/18/2019 14:58:46	[REDACTED] RD, Florence	VERIZON	404
					DMT	False 3 0	WPH2 VZW

201

[REDACTED] 14:58 09/18
[REDACTED] RD

Florence SC 404 WPH2

VERIZON P# 511-8429

ALT# [REDACTED] LEC:VZW

WIRELESS CALL

QUERY CALLER FOR LOCATION

QUERY CALLER FOR PHONE #

-079.719994 +34.229976

5888347	01		[REDACTED]	09/18/2019 14:58:09	[REDACTED] Florence	VERIZON	404
					DMT	False 3 0	WPH2 VZW

201

[REDACTED] 14:58 09/18
[REDACTED] RD

Florence SC 404 WPH2

VERIZON P# 511-8429

ALT# [REDACTED] LEC:VZW

WIRELESS CALL

QUERY CALLER FOR LOCATION

QUERY CALLER FOR PHONE #

-079.719994 +34.229976

Alt911.Phone = '8439920126' AND Alt911.CallWhen Between '2019/09/17 00:00'
And '2019/09/20 00:00:59'

911 History With ALI Report

Log ID	Pos	PSAP	Phone	Call When	Address	Phone Name	ESN
Comments					CallTaker	Transfer Parse ID	CFS Count
						Class	LEC
ALI							
5888346	01			09/18/2019 14:57:39	RD, Florence	VERIZON	404
					DMT	False 3	0
						WPH2	VZW

201

14:57 09/18

Florence SC 404 WPH2

VERIZON P# 511-8429

ALT# LEC:VZW

WIRELESS CALL

QUERY CALLER FOR LOCATION

QUERY CALLER FOR PHONE #

-079.719994 +34.229976

5888345	01			09/18/2019 14:57:16	Florence	VERIZON	404
					DMT	False 3	0
						WPH2	VZW

201

14:57 09/18

Florence SC 404 WPH2

VERIZON P# 511-8429

ALT# LEC:VZW

WIRELESS CALL

QUERY CALLER FOR LOCATION

QUERY CALLER FOR PHONE #

-079.722934 +34.241928

911 History With ALI Report

Log ID	Pos	PSAP	Phone	Call When	Address	Phone Name	ESN
Comments	CallTaker	Transfer	Parse ID	CFS Count	Class	LEC	
ALI							
5888344	01		[REDACTED]	09/18/2019 14:56:39	[REDACTED], Florence	VERIZON	404
				DMT	False	3	0
						WPH2	VZW

201

[REDACTED] 14:56 09/18
[REDACTED] RD Florence SC 404 WPH2
VERIZON P# 511-8429
ALT# [REDACTED] LEC:VZW
WIRELESS CALL
QUERY CALLER FOR LOCATION
QUERY CALLER FOR PHONE #
-079.722934 +34.241928

5888343	01		[REDACTED]	09/18/2019 14:56:09	[REDACTED], Florence	VERIZON	404
				DMT	False	3	0
						WPH2	VZW

201

[REDACTED] 14:56 09/18
[REDACTED] RD Florence SC 404 WPH2
VERIZON P# 511-8429
ALT# [REDACTED] LEC:VZW
WIRELESS CALL
QUERY CALLER FOR LOCATION
QUERY CALLER FOR PHONE #
-079.722934 +34.241928

All 911 Phone = [REDACTED] AND All 911 Call When Between '2019/09/17 00:00'
And '2019/09/20 00:00:59'

911 History With ALI Report

Log ID	Pos	PSAP	Phone	Call When	Address	Phone Name	ESN		
Comments	CallTaker				Transfer Parse ID	CFS Count	Class	LEC	
ALI									
5888341	01			09/18/2019 14:55:46		Florence	VERIZON	404	
				DMT	False	3	0	WPH2	VZW

201

[REDACTED] 14:55 09/18

[REDACTED] RD

Florence SC 404 WPH2

P# 511-8429

VERIZON

ALT# [REDACTED] LEC:VZW

WIRELESS CALL

QUERY CALLER FOR LOCATION

QUERY CALLER FOR PHONE #

-079.717526 +34.247861

5888340	01		[REDACTED]	09/18/2019 14:55:09	[REDACTED] Florence	VERIZON	404
				DMT	False 3 0	WPH2	VZW

201

[REDACTED] 14:55 09/18

[REDACTED] RD

Florence SC 404 WPH2

P# 511-8429

VERIZON

ALT# [REDACTED] LEC:VZW

WIRELESS CALL

QUERY CALLER FOR LOCATION

QUERY CALLER FOR PHONE #

-079.717526 +34.247861

Alt911.Phone: [REDACTED] AND Alt911.CallWhen Between '2019/09/17 00:00'
And '2019/09/20 00:00:59'

911 History With ALI Report

Log ID	Pos	PSAP	Phone	Call When	Address	Phone Name	ESN		
Comments	CallTaker				Transfer Parse ID	CFS Count	Class	LEC	
ALI									
5888339	01			09/18/2019 14:54:39		Florence	VERIZON	404	
				DMT	False	3	0	WPH2	VZW

201

[REDACTED] 14:54 09/18

[REDACTED] Florence SC 404 WPH2

VERIZON P# 511-8429

ALT# [REDACTED] LEC:VZW

WIRELESS CALL

QUERY CALLER FOR LOCATION

QUERY CALLER FOR PHONE #

-079.717526 +34.247861

5888338	01		[REDACTED]	09/18/2019 14:54:16	[REDACTED], Florence	VERIZON	404
				DMT	False 3 0	WPH2	VZW

201

[REDACTED] 14:54 09/18

[REDACTED] Florence SC 404 WPH2

VERIZON P# 511-8429

ALT# [REDACTED] LEC:VZW

WIRELESS CALL

QUERY CALLER FOR LOCATION

QUERY CALLER FOR PHONE #

-079.717569 +34.248301

All 911 Phone - [REDACTED] AND All 911 Call When Between '2019/09/17 00:00'
And '2019/09/20 00:00:59'

911 History With ALI Report

Log ID	Pos	PSAP	Phone	Call When	Address	Phone Name	ESN
Comments				CallTaker	Transfer Parse ID	CFS Count	Class
ALI							LEC
5888337	01		[REDACTED]	09/18/2019 14:53:39	[REDACTED], Florence	VERIZON	404
				DMT	False	3	0
						WPH2	VZW

201

[REDACTED] 14:53 09/18

[REDACTED] Florence SC 404 WPH2

VERIZON P# 511-8429

ALT# [REDACTED] LEC:VZW

WIRELESS CALL

QUERY CALLER FOR LOCATION

QUERY CALLER FOR PHONE #

-079.717569 +34.248301

5888336 01 [REDACTED] 09/18/2019 14:53:10 [REDACTED], Florence VERIZON 404

DMT False 3 1 WPH2 VZW

201

[REDACTED] 14:53 09/18

[REDACTED] Florence SC 404 WPH2

VERIZON P# 511-8429

ALT# [REDACTED] LEC:VZW

WIRELESS CALL

QUERY CALLER FOR LOCATION

QUERY CALLER FOR PHONE #

-079.717569 +34.248301

All 911 Phone: [REDACTED] AND All 911 Call When Between '2019/09/17 00:00'
And '2019/09/20 00:00:59'

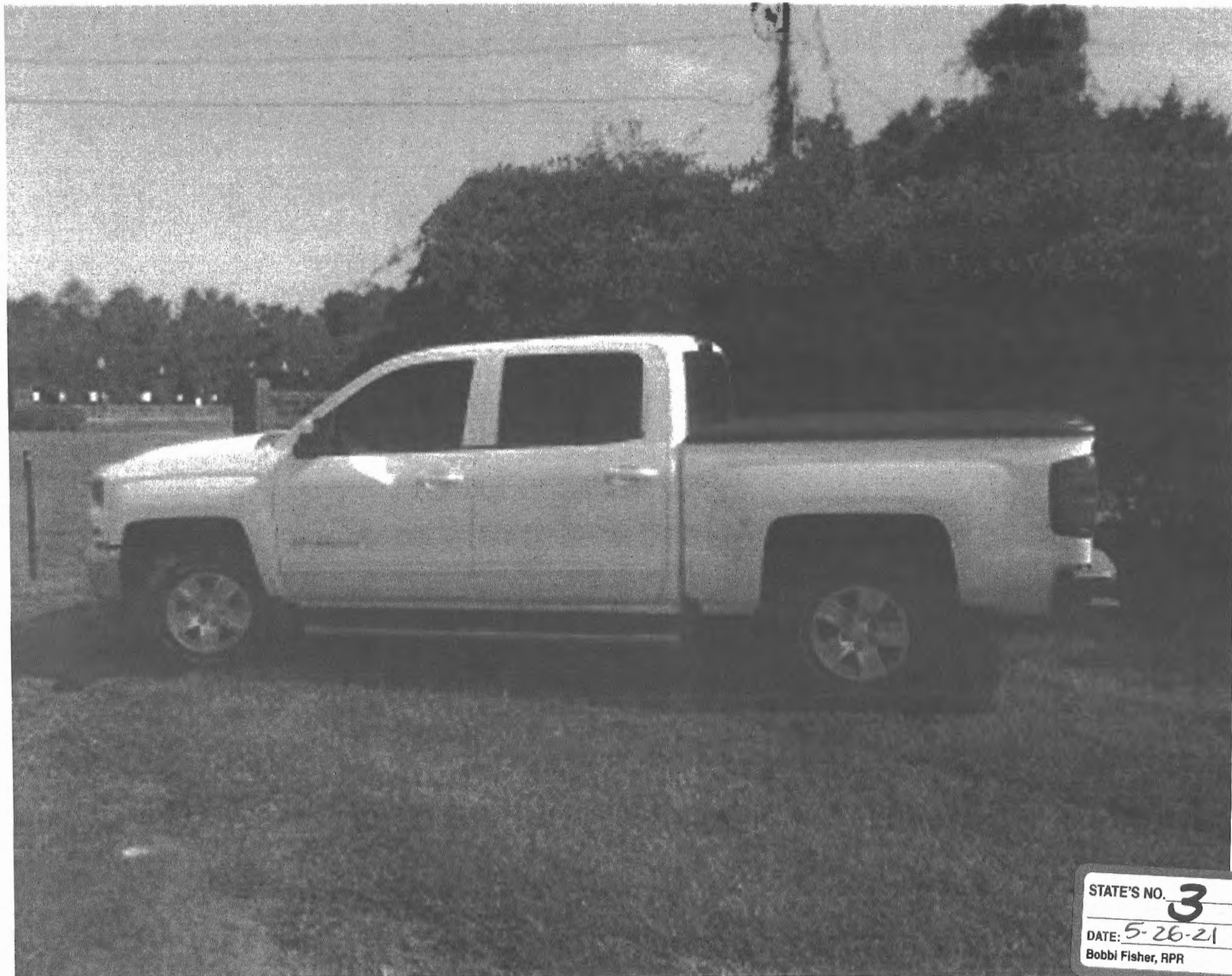
911 History With ALI Report

Log ID	Pos	PSAP	Phone	Call When	Address	Phone Name	ESN
Comments					CallTaker	Transfer Parse ID CFS Count	Class LEC
ALI							
5888335	01		[REDACTED]	09/18/2019 14:52:53	[REDACTED], Florence	VERIZON	404
					DMT	False 2 0	WRLS VZW
201							
[REDACTED] 14:52 09/18							
[REDACTED]							
VERIZON							
ALT# [REDACTED] LEC:VZW							
WIRELESS CALL							
QUERY CALLER FOR LOCATION							
QUERY CALLER FOR PHONE #							
-079.743340 +34.261379							

Total: 15



STATE'S NO. 2
DATE: 5-26-21
Bobbi Fisher, RPR



STATE'S NO. **3**
DATE: **5-26-21**
Bobbi Fisher, RPR

STATE'S NO. 4
DATE: 5-26-21
Bobbi Fisher, RPR

STATE'S NO. 5
DATE: 5.20.21
Bobbi Fisher, RPR



STATE'S NO. 6
DATE: 5.26.21
Bobbi Fisher, RPR



STATE'S NO. 7
DATE: 5-26-21
Bobbi Fisher, RPR

$$c_{ijk}(\mathbf{x}) = c_{ijk}(\mathbf{x}_0) + \mathbf{J}^T \mathbf{z}^{ijk}$$

2014 2015

Black Creek

2000-01-01

Circle size 14

Sang Eun Lee

2000

Verdugo

10

Ashby-Branch

1. *المحكمة العليا*

Beck's L

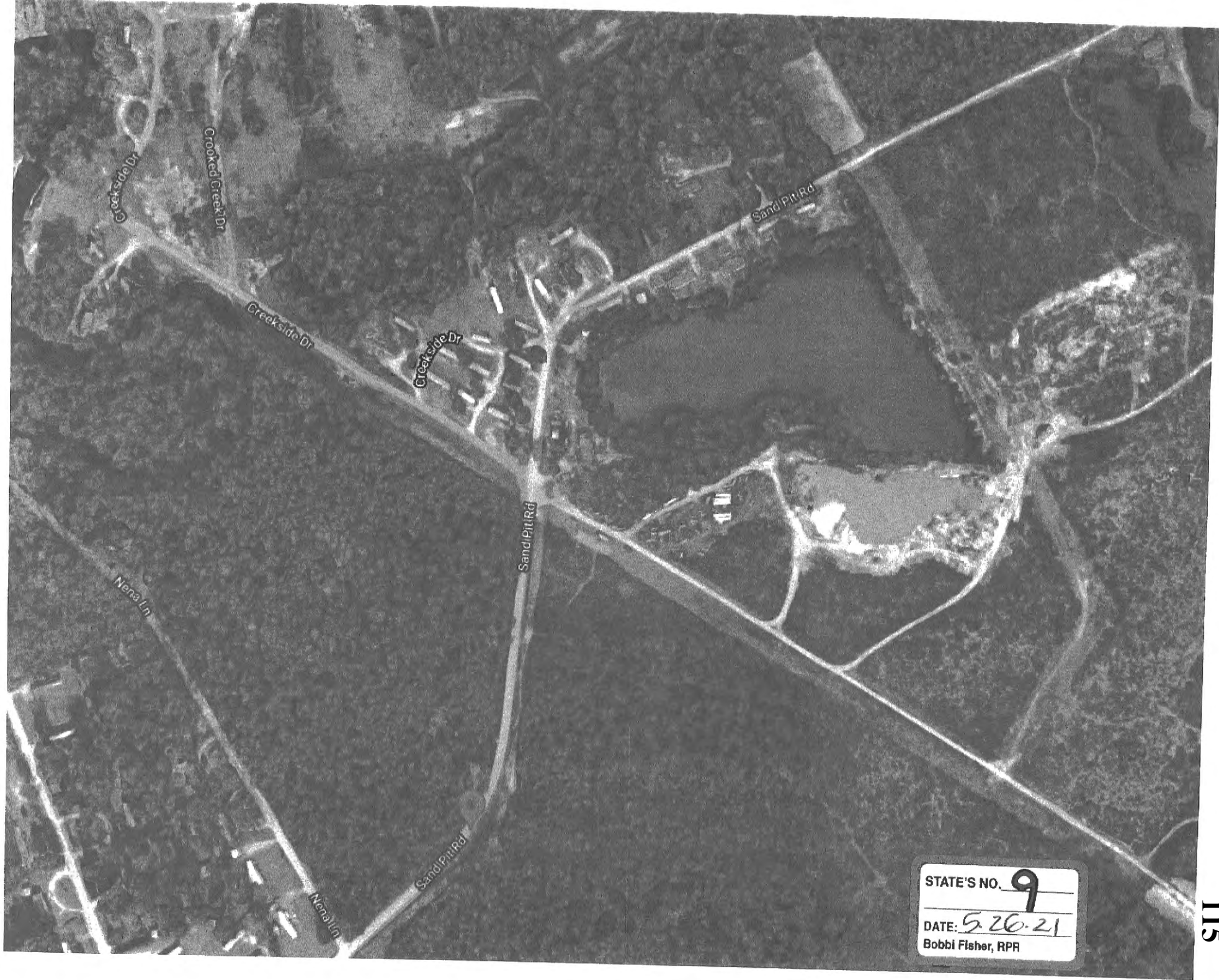
Sanc. Pop. Reg.

Creel Rental Properties

May 2005

Asliby Branch

STATE'S NO. **8**
DATE: **5.26.21**
Bobbi Fisher, RPR



STATE'S NO. **9**
DATE: **5.26.21**
Bobbi Fisher, RPR

WITNESSES

Alvin K. Vorsley

Florence County Sheriff

DOCKET NO. 2020-GS-21-00253

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

JANUARY

TERM

2020

THE STATE

vs.

JOSHUA ANTHONY KELLY

Ryan White

ARREST WARRANT NUMBER

2019A2110200634

2019A2110200637

2020GS2100253A

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

Indictment for

ATTEMPTED MURDER;
POINTING AND PRESENTING A FIREARM;
DISCHARGING A FIREARM INTO A
VEHICLE

FILED

2020 JAN -2 PM 3:14

CLERK OF COURT
COURT OF GENERAL SESSIONS
FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)

INDICTMENT FOR
 ATTEMPTED MURDER:
 POINTING AND PRESENTING A FIREARM;
 DISCHARGING A FIREARM INTO A VEHICLE

At a Court of General Sessions, convened on JANUARY 2, 2020 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- ATTEMPTED MURDER

CDR: 3410 16-03-0029

That JOSHUA ANTHONY KELLY did in Florence County on or about September 18, 2019 with intent to kill Shanice Stokely, attempt to kill the victim with malice aforethought, in violation of Section 16-3-29, S. C. Code of Laws, 1976, as amended.

COUNT TWO- POINTING AND PRESENTING A FIREARM

CDR: 0122 16-23-0410

That JOSHUA ANTHONY KELLY did in Florence County on or about September 18, 2019, point or present a loaded or unloaded firearm at one Shanice Stokely, in violation of Section 16-23-0410, S. C. Code of Laws, 1976, as amended.

COUNT THREE - DISCHARGING A FIREARM INTO A VEHICLE

CDR: 2907 16-23-0440

That JOSHUA ANTHONY KELLY did in Florence County on or about September 18, 2019, discharge or cause to be discharged unlawfully, firearms at or into a dwelling house or other building or enclosure regularly occupied by persons; or into a vehicle, aircraft, watercraft or other conveyance or equipment while it was occupied, in violation of Section 16-23-0440, 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.



E.L. Clements, III
 TWELFTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Florence
 STATE VS.
Joshua Anthony Kelly
 AKA:
 Race: White Sex: M Age: 34
 DOB: [REDACTED] SS#: [REDACTED]
 Address: [REDACTED]
 City, State, Zip: Florence, SC 29505
 DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Weapons / Pointing and presenting firearms at a person

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2020-GS-21-00253

A/W#: 2019A2110200637

Date of Offense: 9/18/2019

S.C. Code §: 16-23-0410

CDR Code #: 0122

SENTENCE SHEET

in violation of § 16-23-0410 of the S.C. Code of Laws, bearing CDR Code # 0122
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
 (CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature] Solicitor 102584 SC Bar# [Signature] Defendant [Signature] Attorney for Defendant 160799 SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 60 days/months/years or ☐ under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation. Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: today
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the SCDoc.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine: \$

§ 14-1-206 (Assessments 107.5%) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 100.00 \$

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso (Public Def. Probation) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 25.00 \$

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114 (BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

3% to County (if paid in installments) 375 \$

TOTAL 12875 \$

Clerk of Court Deputy Clerk E Rasin

Court Reporter: B Fisher

SCCA 217 (04/2018)

PTUP days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W.E. beginning

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel.

§ Proviso requires \$500 be paid to Clerk
 during probation and shall be collected before
 any other fees.

Presiding Judge [Signature]

Judge Code: 3157

Sentence Date: May 06, 2021

STATE OF SOUTH CAROLINA

COUNTY OF Florence
STATE VS.

Joshua Anthony Kelly

AKA:

Race: White Sex: M Age: 34

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Florence, SC 29505

DL#: [REDACTED] SID#: [REDACTED]

*CDI Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Weapons / Discharging firearm into vehicle, aircraft, etc. while occupied

IN THE COURT OF GENERAL SESSIONS

INDICTMENT CASE#: 2020-GS-21-00253

A/W#: 2020GS2100253A

Date of Offense: 7/19/2019

S.C. Code §: 16-23-0440(B)

CDR Code #: 2907

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

(0-10)

in violation of § 16-23-0440(B) of the S.C. Code of Laws, bearing CDR Code # 2907

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45

(CSC winner 1st or CSC winner 3rd)

The charge is: ☒ As Indicted. ☐ Lesser Included Offense. ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence. ☐ Recommendation by the State.
ATTEST:

Solicitor

102584
SC Bar#

Defendant

Attorney for Defendant

100799
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 9 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: today☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the SCDOP.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso (Public Def. Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BLI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40 ea	\$
3% to County (if paid in installments)	\$	\$ 3.75

TOTAL

\$ 128.75

Clerk of Court: Deputy Clerk

Court Reporter: B. Fisher

SCCA 217 (04/2018)

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,§ Proviso requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge

Judge Code: 2157

Sentence Date: May 26, 2021

Feb 03 2022

CERTIFICATE OF COUNSEL FOR APPELLANT

SC Court of Appeals

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,

s/ Victor R. Seeger

Victor R Seeger

Appellate Defender

South Carolina Commission on Indigent Defense

Division of Appellate Defense

PO Box 11589

Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 3rd day of February, 2022.