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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Aiken County

Honorable Courtney Clyburn-Pope, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DAE'KWON JAHEEM SIMMONS,

APPELLANT.

APPELLATE CASE NO. 2021-000802

RECORD ON APPEAL

ROBERT M. DUDEK
Chief Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

MELODY J. BROWN
Senior Assistant Deputy Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201
(803)734-3727

ATTORNEY FOR APPELLANT

J. WILLIAM WEEKS
Solicitor, Second Judicial Circuit
109 Park Avenue SE
Aiken, SC 29801
(803) 642-1557

ATTORNEYS FOR RESPONDENT

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[STATE’S EXHIBIT #3 (OFF DA CHAIN VIDEO), STATE’S EXHBIT #4 (ZOOMED IN VIDEO OF ARGUMENT), AND STATE’S EXHIBIT #5 (ZOOMED IN VIDEO OF SMILE) ARE ON FILE WITH THIS COURT]

STATE OF SOUTH CAROLINA	)	GENERAL SESSIONS
	)	
County of Aiken	)	2019-GS-02-02112
	)	2019-GS-02-02113
	)	
State of South Carolina,	)	
	)	
	)	
vs.	)	PARTIAL
	)	TRANSCRIPT OF RECORD
Dae'Kwon Jaheem Simmons,	)	
	)	
Defendant.	)	
	)	
_____	)	

April 13-14 & July 13, 2021
Aiken, South Carolina

BEFORE:

THE HONORABLE COURTNEY CLYBURN-POPE, JUDGE; and
a jury.

APPEARANCES:

CASSIE WEATHERSBEE HALL, ESQ.
SAMUEL BRIAN GRIMES, JR., ESQ.
Attorneys for the State

BARRY L. THOMPSON, ESQ.
WILLIAM THOMAS McKELLAR, ESQ.
Attorneys for the Defendant

Maryann S. Nevers, CVR-M-CM, RVR, RVR-M
Circuit Court Reporter
Certified Verbatim Reporter - Master
Certificate of Merit
Realtime Verbatim Reporter-Master

1 before a trigger is pulled. The defendant is also charged
2 with possession of a weapon during the commission of a
3 violent crime. And that is exactly what it sounds like.
4 In South Carolina, murder is classified as a violent
5 crime.

6 In criminal cases, the state has the burden to prove
7 the defendant's guilt beyond a reasonable doubt. You can
8 give yourself doubt in just about anything. But in the
9 courtroom, that doubt has to be reasonable. Has to be
10 rational. Logical. You're going to hear from a lot of
11 witnesses, see video, see a lot of pictures, and I ask
12 that you pay close attention as all the evidence is
13 presented in this case. And at the conclusion of this
14 trial, the only rational, logical, reasonable verdict is
15 that Dae'Kwon Simmons is guilty of murder and possession
16 of a weapon during a violent crime. Thank you.

17 THE COURT: Thank you, Madam Solicitor.

18 MR. THOMPSON: Your Honor, may it please the Court,
19 Madam Prosecutor?

20 OPENING STATEMENT

21 BY MR. THOMPSON:

22 Let me go ahead and let you know ahead of time, I've
23 got terribly bad allergies. I am not patient zero. I do
24 not have coronavirus. I got vaccinated very early in
25 January and finished all that by the end of February, and

1 I'm very, very unlikely to get you sick. I would have
2 taken a lot of medicine this morning. My wife says to me,
3 sweet heart, can you please, your clearing your throat is
4 annoying the mess out of me. And I told her, look, I can
5 do two choices. I can either leak like a sieve, or I can
6 be awake for this trial. And it's probably the right
7 thing to do to be awake. So again, I apologize to you,
8 but I'm not going to get you sick.

9 Appreciate your time and attention this morning. I
10 appreciate your time and attention during this trial. I
11 also want to ask you to pay very close attention to the
12 evidence in this case. I think that when you pay close
13 attention to the evidence in this case, a verdict that
14 speaks the truth is that Dae'Kwon is not guilty of murder.

15 This is a homicide case. You're going to hear a
16 terrible, terrible, terrible story today. There is a man
17 who is dead. And that's tragic. He shouldn't be dead
18 right now. He's dead, and that's a tragedy. There's a
19 little girl who has lost her father, and that is a
20 tragedy. For what it's forth, I would extend my sincerest
21 condolences to the Swearingen family. Also, there are two
22 young men, Dae'Kwon, who was 17 at the time this all
23 happened, and another little fellow who I believe was 14
24 at the time this all happened, who had been thrust into
25 the deep end of the criminal justice system, and their

1 lives had also been irrevocably changed, and it's tragic
2 all the way around.

3 Yesterday, the judge made reference to -- and
4 apologize, I should have taken notes -- a document called
5 an indictment. A indictment looks like this, that's kind
6 of the second part of it. An indictment is just a
7 charging paper. There is a separate group of people
8 called the grand jury who the defense attorneys are not
9 there, judge is not there. They -- and they follow a
10 completely different set of laws. They're not looking at
11 whether or not someone is guilty or innocent. They're
12 looking at whether or not there's enough evidence for us
13 to even talk about this in the courtroom. And if there
14 is, they send this true bill, it goes on down the line,
15 and that's why we're here today. And part of the reason
16 is so that (inaudible) videotape shows all that happened.
17 And a man is dead. It's right and proper for us to be
18 talking about this in court. But it doesn't have anything
19 to do with guilt or innocence because they're following a
20 different set of rules. This is not social media. This
21 is not vigilante justice. This is court. And in
22 courtrooms there are rules about how we do this.

23 The rules are a person is to be presumed innocent
24 unless and until they are proven guilty beyond a
25 reasonable doubt. That's the rules. The state has the

1 burden of proof. Nobody's guilty because somebody says
2 they're guilty. I'm going to tell you right now, you can
3 look at this video and say, oh, well, (inaudible).
4 Nobody's guilty because they say he's guilty. You're
5 guilty once the facts are proven beyond a reasonable
6 doubt. The state has the burden of proof not just to
7 prove that someone was shot, not just to prove the
8 mechanism or how that happened, but in this case, there's
9 multiple kinds of homicide. Okay? I'm not going to get
10 into all the different variations of homicide, but there
11 are multiple different kinds of homicide, only one of
12 which is murder. And in murder, one of the elements of
13 the crime is malice aforethought. That's probably what
14 we're going to be arguing about for the next couple of
15 days, is malice aforethought. I'm going to tell you right
16 now, I don't plan on arguing about whether Mr. Swearingen
17 is deceased. And I don't plan on arguing about how
18 Mr. Swearingen died. Mr. Swearingen was shot and killed
19 by (inaudible).

20 There are very fine doctors and coroners and medical
21 examiners. They will present evidence to that. They have
22 to, that is part of the element of this crime. They have
23 to present some of these -- (inaudible). They have to
24 talk about some of this. And I don't -- I'm probably not
25 going to ask any questions about this. Because that's not

1 really something that's at issue. I believe there will be
2 a lot of evidence to prove that Mr. Swearingen is dead and
3 he was killed by a gunshot wound.

4 She mentioned this video. You're going to see this
5 video. I would like for you to pay close attention to it.
6 There's going to be, without a doubt, there's going to be
7 evidence that Dae'Kwon shot and killed this man. That's
8 absolutely true. The question is why? That's what we
9 need to talk about today. Why did he do this? I believe
10 you're going to hear evidence that these people don't know
11 each other. They've never met in their entire lives.
12 First time they ever see each other is right there on the
13 side of the road. And this whole encounter -- you'll get
14 the video, play it in the back, probably get to see it,
15 run through a couple of times -- is 40 seconds long. This
16 whole encounter happens in 40 seconds.

17 There are a group of kids that come across the
18 road -- sorry, I apologize. He was very kind and he put
19 this over here so I wouldn't trip over this cone, and now
20 tripping over these wires. I'm so sorry.

21 The Swearingens are walking down the road and they're
22 walking on the sidewalk where they're supposed to walk.
23 You'll see that. Only one side of the street has a side
24 walk on it. The reason why all these people are kind of
25 packed in together is because there's not a side walk on

1 the other side of the street. You'll look at the video
2 and you'll see this yourself. They're walking towards
3 each other. As they're walking towards each other,
4 something happens. They're -- there's a question of fact
5 here. I would submit to you that it may not make a whole
6 lot of difference what actually happened.

7 There's an allegation that maybe the 14 year old,
8 Reggie, either -- as he was walking, he either bumps into
9 the little girl. There's also -- you're going to hear
10 evidence that what actually happened is Mr. Swearingen
11 thinks Reggie is looking at his wife, and as a 14 or 15
12 year old is looking at her breasts or whatever. And as
13 they separate, Mr. Swearingen, he says something. You'll
14 hear testimony about that. On the video, it's fairly
15 obvious, though, that as these people separate, the
16 Swearingens are kind of going this way, Reggie and
17 Dae'Kwon and a couple of the girls are here, and they
18 stop. They kind of look back. There were probably words
19 exchanged. I don't know exactly what the evidence is
20 going to be, exactly what was said. There's probably a
21 little bit of harder language that's exchanged. And then
22 Reggie comments back, like hey, mind your own business or
23 no, I didn't bump into your wife, or I didn't look at your
24 wife, nobody's doing anything. You'll see in the video
25 Mr. Swearingen, then he comes off the rails. He steps up

1 fast, and goes from hard language to probably very harsh
2 language.

3 The video it's that you're going to look at, the
4 video is going to look like from left to right, but the
5 camera is actually focused on the -- the Off Da Chain
6 Seafood place. Because it's a security camera for the
7 business. And a lot of what happens is in the far upper
8 right hand corner. You can't see it tremendously clearly
9 because that's not where the camera is focused. But the
10 conflict happens kind of upper right hand corner. And
11 you're going to see -- pardon me -- (inaudible). The
12 action happens kind of in this upper corner. And you
13 can't really tell what may or may not be in
14 Mr. Swearingen's hand, whether he presents a firearm or
15 whether he points a firearm. You can't really tell from
16 the picture. There will probably be a witness who will
17 talk to you about how (inaudible). I'm expecting Reggie
18 to testify, and I'm expecting him to tell you that man
19 pulled a gun. These are 17 year old and 14 year old boys
20 who are stepped up aggressively by this middle-aged man
21 with a handgun.

22 There's circumstantial evidence the man has a gun,
23 because you'll see Reggie go whoa, hands up. It's on
24 video. Whoa, whoa, whoa. Dude, no, whoa, whoa, whoa,
25 slow down. And then they start to separate. At this

1 point in time, state is going to argue that Dae'Kwon comes
2 up with a plan and decides to murder this guy. I want you
3 to ask yourself, this is a 14- and 17-year-old boy who had
4 just been very aggressive confronted by a man with a gun.
5 Y'all can probably all remember back to people's ages and
6 stuff. The law allows you to take into account where you
7 consider reasonableness of behavior. It allows you to
8 take into account people's ages. These are freaked out
9 kids. They're mad. They're terrified. And you're going
10 to see on the video Reggie -- I haven't asked him exactly
11 what he said. I don't really know what he's going to say
12 about this, but he starts waving his hands, and he's kind
13 of fanning this. And then Dae'Kwon pulls out a gun and
14 steps across the thing and shoots three times in the
15 middle (inaudible).

16 It makes a big difference about whether or not there
17 is malice aforethought or whether or not this is heat of
18 passion. Whether or not these boys are all jacked up and
19 scared and angry to the point where they react instead of
20 actually thinking think through. If you had to weigh
21 these things 50/50, maybe these things would be harder.
22 But I'm going to suggest to you that case is a little bit
23 easier than that, because I want to go back to the law.
24 The law says, and the judge will tell you, that the
25 defendant is presumed innocent, that all ties go to the

1 defendant. If you can't figure out well, is it malice
2 aforethought, or is it heat of passion? If we can't
3 figure that out, we have to rule in favor of the
4 defendant. All ties go to the defendant. I'll submit to
5 you there is -- you're going to see and hear in the
6 courtroom evidence that not only is it reasonable that
7 this -- that these boys are acting in the heat of passion,
8 but it's probably probable they're acting in the heat of
9 passion. And if they are, that's a terrible tragedy. It
10 is way beyond what people ought to be doing. It's
11 homicide, and it's probably a crime, but it's not murder.
12 Not murder.

13 I'm not going to argue about things we don't need to
14 argue about. But I'm arguing to you at the end of this
15 case, is that because of the burden of proof, because of
16 the reasonable doubt -- if you think to yourself, well,
17 (inaudible) that is reasonable doubt and you should find
18 this man not guilty. The word "verdict" comes from Latin,
19 *veredictum*. It means to speak the truth. I think once
20 you've get all of the evidence and once you've analyzed
21 this, applying the facts to the law, the truth is that
22 this man is not guilty, and I would call upon you
23 (inaudible).

24 THE COURT: Thank you, Mr. Thompson.

25 Is the state ready to go forward?

1 MS. HALL: Yes, Your Honor.

2 THE COURT: (inaudible).

3 MS. HALL: State calls Jessica Swearingen.

4 JESSICA SWEARINGEN, after having first being duly
5 sworn, testified under oath as follows:

6 DIRECT EXAMINATION

7 BY MS. HALL:

8 Q. Jessica, you can bend that microphone down in front
9 of you. That might help everyone to hear you.

10 All right. Tell me your name. See if we can hear
11 you.

12 A. Jessica Swearingen.

13 Q. Little bit louder, okay? I know this is hard. That
14 person all the way in the back has to be able to hear you.

15 A. Jessica Swearingen.

16 Q. One more time, Ms. Swearingen?

17 A. Jessica Swearingen.

18 MS. HALL: Can y'all hear that?

19 Q. Jessica, who are you married to?

20 A. Larry Swearingen.

21 Q. And how long have y'all been married?

22 A. Since June 2010.

23 Q. And were both of y'all from Aiken?

24 A. Yes.

25 Q. Where are you from?

JESSICA SWEARINGEN - DIRECT EXAMINATION BY MS. HALL

1 A. I'm from Grantville.

2 Q. And Larry is from Aiken?

3 A. Yes.

4 Q. And did you and Larry have any children together?

5 A. We have one daughter, [REDACTED]. She's ten now.

6 Q. She's ten now?

7 A. Now.

8 Q. Jessica, I want to turn your attention to
9 August 6th of 2019. Can you tell me what you and your
10 family were doing that afternoon?

11 A. We had walked -- we had been dropped off at Pruitt
12 Nursing Home on Laurens Street to visit my sister. So we
13 were walking home from Pruitt to go back home.

14 Q. What time -- about what time did y'all leave Pruitt
15 Health?

16 A. We left Pruitt around 5:20, 5:15.

17 Q. And you said you were walking?

18 A. Yes.

19 Q. Where were you walking?

20 A. We were walking down Laurens Street from Pruitt
21 Health towards downtown Aiken.

22 Q. Okay. You said "we." Tell me who was walking with
23 you on the sidewalk.

24 A. It was me, my husband, and my daughter.

25 Q. And Pruitt Health is on the opposite side of the

JESSICA SWEARINGEN - DIRECT EXAMINATION BY MS. HALL

1 sidewalk. Did y'all cross Laurens Street to get on the
2 sidewalk?

3 A. Yes.

4 Q. And then walking back into downtown Aiken. And so
5 when y'all left, you were on Laurens Street; is that
6 correct?

7 A. Yes, ma'am.

8 Q. Were all three of y'all walking together?

9 A. We were, yes.

10 Q. You know who is standing next to who as y'all left?

11 A. Larry was the one on the side by the road ---

12 Q. How did he do that ---

13 A. --- and me and S.S. [REDACTED] were on the other side.

14 Q. How was Larry on the side of the road?

15 MR. THOMPSON: Objection, Your Honor. Calls for
16 speculation.

17 MS. HALL: I'll reword, Your Honor.

18 MR. THOMPSON: Thank you.

19 Q. Jessica, I'm going to show you what's been marked as
20 State's Exhibit 1. Do you recognize this map?

21 A. Yes.

22 Q. Okay. Was this the area y'all were working in that
23 afternoon?

24 A. Yes.

25 Q. Is it a fair and accurate depiction of that?

JESSICA SWEARINGEN - DIRECT EXAMINATION BY MS. HALL

1 A. Yes.

2 MS. HALL: Your Honor, at this time, state moves to
3 introduce State's Exhibit 1 into evidence.

4 THE COURT: Any objection?

5 MR. THOMPSON: No objection.

6 THE COURT: So admitted.

7 (State's Exhibit 1 was admitted into evidence.)

8 Q. Jessica, what is the marker at the top right?

9 A. Pruitt Health of Aiken.

10 Q. What is that main road running down the middle of
11 this map?

12 A. Laurens Street.

13 Q. And that's the road y'all were walking on?

14 A. Yes.

15 Q. Heading down towards the bottom of the map?

16 A. Yes.

17 Q. And as y'all were walking -- Off Da Chain Seafood
18 restaurant, which side of the road is that on?

19 A. It's on the left side.

20 Q. I'm sorry?

21 A. It's on the left side, opposite of Pruitt Health.

22 Q. Okay. And was that the side of the road y'all were
23 walking on?

24 A. Yes.

25 Q. So to your right?

JESSICA SWEARINGEN - DIRECT EXAMINATION BY MS. HALL

1 A. Yes.

2 Q. And the In and Out convenience store, that would have
3 been on what side of the road?

4 A. To our left.

5 Q. As y'all were walking in front of the restaurant, at
6 any point, did y'all stop?

7 A. We stopped kind of towards the mailbox because my
8 daughter was pointing out something behind the restaurant.

9 Q. What was it near the mailbox?

10 A. It was a fish.

11 Q. All right. After y'all stopped and looked at the
12 mailbox, can you tell me what happened?

13 A. After we stopped and looked at the mailbox, we talked
14 for a moment and then we continued on. But there was a
15 group of people crossing with street?

16 Q. Can you just generally describe that group of people?

17 A. There were two females and two males. They looked
18 young.

19 Q. Okay. And where they coming from?

20 A. I believe they were coming from the store.

21 Q. Okay. And they -- which direction were they walking?

22 A. They were walking away from downtown, so the opposite
23 direction of us.

24 Q. And what happened when y'all crossed paths?

25 A. When we crossed paths, I believe someone bumped into

1 S.S. because my husband turned around and confronted
2 them.

3 Q. Okay.

4 A. I kept walking with S.S. .

5 Q. So you kept walking with S.S. when your husband
6 stopped to talk to the boys?

7 A. Yes.

8 Q. Okay. And did you hear exactly what was said?

9 A. I did not.

10 Q. Okay. You just heard them talking?

11 A. Yes.

12 Q. When you and S.S. kind of kept walking, did you
13 look back at any point to see what was going on?

14 A. I briefly glanced back, but I didn't just turn around
15 and watch.

16 Q. Why did you glance back?

17 A. Just to make sure everything was okay, I guess.

18 Q. And can you describe generally the two boys that your
19 husband was talking to, can you just describe them or what
20 they were wearing?

21 A. I don't recall what they were wearing. I do know one
22 of them had a backpack.

23 Q. One of the guys had a backpack on?

24 A. Yes.

25 Q. Okay. Which one of the boys was your husband talking

JESSICA SWEARINGEN - DIRECT EXAMINATION BY MS. HALL

1 to?

2 A. The shorter -- the shorter boy.

3 Q. And did he have a backpack?

4 A. Yes.

5 Q. And as they were talking, was Larry facing you or was
6 his back to you?

7 A. Larry's back was to me at the time.

8 Q. Jessica, did Larry have a gun on him that day?

9 A. He did.

10 Q. And where did he carry this gun?

11 A. He carried his gun in the back waistband of his pant.

12 Q. Whose gun was that?

13 A. It was mine.

14 Q. But he was carrying it that day?

15 A. Yes.

16 Q. Is Larry right or left-handed?

17 A. He's right-handed.

18 Q. Always right-handed?

19 A. Yes, ma'am.

20 Q. Always his right hand?

21 A. Yes.

22 Q. When you had walked on with [REDACTED], the time that
23 you did look back, did you ever see Larry pull his gun
24 out?

25 A. No.

1 Q. What did you see when you turned and looked back?

2 A. I saw them face-to-face to each other. I could tell
3 they were exchanging words, and at one point, Larry was
4 standing with his hand behind his back, but he never
5 removed the gun.

6 Q. You saw his hand behind his back?

7 A. Uh-huh.

8 Q. You never saw his gun?

9 A. No, ma'am.

10 Q. Did you ever see Larry's gun out ever?

11 A. No.

12 Q. After Larry got done talking to the boys, what
13 happened?

14 A. After they, I guess, argued for a moment, he turned
15 around and started to walk back towards us.

16 Q. And at some point, did he meet back up with you and

17 S.S. ?

18 A. He did.

19 Q. Where were y'all at that point?

20 A. By then, we were right towards the end of the
21 sidewalk where Lauren -- or where Columbia Avenue crosses
22 Laurens Street.

23 Q. The end of the block?

24 A. Yes, ma'am.

25 Q. At that point, when Larry is walking with you at the

JESSICA SWEARINGEN - DIRECT EXAMINATION BY MS. HALL

1 end of the block, did Larry have his gun out?

2 A. No.

3 Q. Could you see what the boys were doing at that point?

4 A. I could not. I did not look back. I glanced back,
5 like once, before Larry got to us ---

6 Q. Did you see ---

7 A. --- but I didn't look back then.

8 Q. I'm sorry. Did you see where they went?

9 A. I did not. I know they turned around and started to
10 walk away also, so...

11 Q. You just knew that they walked off?

12 A. Yes.

13 Q. You said that y'all were at the intersection of
14 Columbia and Laurens. Did y'all have to wait there?

15 A. Yes, there was traffic so we had to wait to cross?

16 Q. While y'all were waiting on traffic, what happened?

17 A. We said something to each other, and waited. Next
18 thing I know, Larry is on the ground and **S.S.** is on
19 the head covering her head, and I hear gunshots.

20 Q. Do you remember how many gunshots you heard?

21 A. Three.

22 Q. And you said **S.S.** dropped down. Where was she?

23 A. Somehow she had ran off the sidewalk, kind of into
24 the middle of Columbia Avenue, not quite across the street
25 yet.

1 Q. She was on the ground?

2 A. Yes.

3 Q. What did you do?

4 A. I immediately -- I dropped and started giving Larry
5 first-aid, what I knew to do.

6 Q. Let me stop you. Where was Larry? Was he --

7 A. He was on the ground, kind of in the road in Laurens
8 Avenue, or Laurens Street.

9 Q. And you started what you described as first-aid.

10 Tell me exactly what you did?

11 A. I was putting pressure on the wound, trying to find
12 something I could hold over it ---

13 Q. Where was the wound?

14 A. The back of his head.

15 Q. And when you did that, did you get his blood on your
16 hands?

17 A. Yes.

18 Q. How much of his blood was on your hands?

19 A. My hands were real red. They were covered in blood.

20 Q. Covered? When you were checking on your husband,
21 where was **S.S. [REDACTED]**?

22 A. She had come back across the street to the side we
23 were on, but a car had pulled in to Columbia Avenue and
24 stopped and she was -- the driver of the car had kind of
25 herded her over with her children. So she was standing

JESSICA SWEARINGEN - DIRECT EXAMINATION BY MS. HALL

1 nesting to the car in Columbia Avenue.

2 Q. So someone stopped?

3 A. Yes.

4 Q. And got [REDACTED] S.S. [REDACTED]'s attention away from what was going
5 on?

6 A. Yes.

7 Q. I'm going to show you what's previously been marked
8 as State's Exhibit 2. See if you recognize this map?

9 A. Yes.

10 Q. Does this map accurately depict the block y'all are
11 talking about with Laurens Street and Columbia Avenue?

12 A. Yes.

13 MS. HALL: Your Honor, at this time, the state moves
14 to enter State's Exhibit 2 into evidence.

15 MR. THOMPSON: Without objection.

16 THE COURT: Thank you.

17 (State's Exhibit 2 was admitted into evidence.)

18 Q. Jessica, what is the road running down the middle of
19 this map?

20 A. Laurens Street.

21 Q. And that top road to the left?

22 A. That's Plunkett Avenue.

23 Q. And the bottom road there on the left?

24 A. Columbia Avenue.

25 Q. And what intersection were y'all at when Larry was

1 shot?

2 A. We were at Laurens Street and Columbia Avenue.

3 Q. So right there in the center bottom of this map?

4 A. Yes, ma'am.

5 Q. After you were rendering aid yourself, at some point
6 did law enforcement arrive?

7 A. Yes.

8 Q. How quickly did they get there?

9 A. It had to be within minutes.

10 Q. What happened once they got there?

11 A. Law enforcement arrived. I remember two female
12 officers kind of taking over and telling me they were
13 going to -- they could take over from here. So I turned
14 around to tend to **S.S.**.

15 Q. And did you provide information to the officers?

16 A. Yes. When they first arrived, I told him that he had
17 a gun in the waistband of his pants.

18 Q. Was Larry's gun out at that point?

19 A. It was not.

20 Q. Jessica, after Larry was shot, was he responsive at
21 all?

22 A. No.

23 Q. He was never able to respond to your efforts?

24 A. No.

25 Q. Did he move at all?

JESSICA SWEARINGEN - DIRECT EXAMINATION BY MS. HALL

1 A. He did not.

2 Q. Once law enforcement got there and took over
3 first-aid, what did you do?

4 A. I turned to tend to S.S. [REDACTED], who was still with the
5 lady who had stopped.

6 Q. At some point, did EMS arrive?

7 A. Yes.

8 Q. Was Larry taken to the hospital?

9 A. He was.

10 Q. By ambulance?

11 A. He was transported to Augusta University by
12 ambulance.

13 Q. Did you go with him?

14 A. I did. Me and S.S. [REDACTED] rode in the ambulance.

15 Q. Were you able to see him at the hospital?

16 A. After several hours, yes.

17 Q. After you saw him, was he ever responsive?

18 A. He was not.

19 Q. At some point, he was -- was he put on life support?

20 A. He was, yes.

21 Q. How long was he on life support?

22 A. From the sixth to the tenth of August.

23 Q. And what happened on the tenth?

24 A. On the tenth, we were pulled aside and told he was
25 that he was pronounced brain dead and given the time of

JESSICA SWEARINGEN - DIRECT EXAMINATION BY MS. HALL

1 death.

2 Q. Jessica, after you were given that information, did
3 you make any other decisions as to what was to be done
4 with his body?

5 A. Yes. He was an organ donor, so we signed and went
6 over the paperwork to donate organs.

7 MR. THOMPSON: Objection, Your Honor, relevance.

8 THE COURT: Let's move on.

9 MS. HALL: I have no further questions. Please
10 answer any the defense may have.

11 CROSS-EXAMINATION

12 BY MR. THOMPSON:

13 Q. Ms. Swearingen, the gun found on Mr. Swearingen was
14 your gun?

15 A. Yes.

16 Q. And the police at the time, they kept the gun as part
17 of this case?

18 A. Yes, they did.

19 Q. Pardon me just a minute. Bear with me just a moment.

20 Ms. Swearingen, I'm going to go ahead and represent
21 to you that I just got this box, the detectives' evidence
22 box and I'd like to mark -- can we mark the box,
23 Ms. Davis, or do you need to actually mark the gun itself?
24 Can we mark the box, or do you need me to mark the gun
25 itself?

JESSICA SWEARINGEN -- CROSS-EXAMINATION BY MR. THOMPSON

1 (A sotto voce discussion was held.)

2 MR. THOMPSON: I'd like to mark this as Defense
3 Exhibit Number 1.

4 (Defense Exhibit 1 was marked for identification.)

5 Q. Ms. Swearingen, I'm going to show you --

6 MR. THOMPSON: May I approach, Your Honor.

7 THE COURT: Yes.

8 Q. Defense Exhibit 1. Here's the ammunition associated
9 with it. Can you tell me what this is?

10 A. This is my gun.

11 Q. That's your gun? And this is the gun that found on
12 Mr. Swearingen?

13 A. Yes.

14 Q. Okay.

15 MR. THOMPSON: Your Honor, at this point in time, I'd
16 like to admit into evidence Defense Exhibit Number 1, the
17 handgun of Larry Swearingen and the ammunition.

18 THE COURT: Any objection?

19 MS. HALL: No, Your Honor.

20 MR. THOMPSON: And Your Honor, with the Court's
21 permission, I'd like to publish this to the jury.

22 THE COURT: Any objection?

23 MS. HALL: No, Your Honor.

24 (Defense Exhibit 1 was admitted into evidence.)

25 Q. Ms. Swearingen, to your knowledge, these are the

1 bullets that were in the clip ---

2 A. To my knowledge, yes.

3 Q. Okay. And he was carrying your gun because he had
4 more training than you did with firearms, correct?

5 A. Yes.

6 Q. He had actually been in the Army?

7 A. Yes.

8 Q. Okay. He had been in the Army, and, in fact, he was
9 in the process of getting disability from the VA?

10 A. Yes.

11 Q. And he was in a good bit of pain?

12 A. Yes.

13 Q. He struggled with some mental health issues?

14 A. Yes.

15 Q. Do you remember -- I know the map is not up there
16 now, but I'm sure that -- do you remember the number of
17 buildings that were in between -- as you walked past Off
18 Da Chain Seafood, do you remember like the number of
19 houses or buildings or whatever that's in between Off Da
20 Chain and the corner where you stopped across the street?

21 A. I believe there's one other business there.

22 Q. So there's just one ---

23 A. Yes.

24 Q. --- business on (inaudible). He'll probably
25 introduce himself later, but can you identify this

JESSICA SWEARINGEN -- CROSS-EXAMINATION BY MR. THOMPSON

1 gentleman right here?

2 A. That is Detective Colindres.

3 Q. And do you remember making a statement to Detective
4 Colindres that was recorded on August the 16th of 2019
5 at 1:37 in the afternoon?

6 A. Yes.

7 Q. And do you remember or deny that at the time that you
8 gave your statement to Detective Colindres, that you told
9 him that you never looked back and you did not know
10 whether or not Larry had pulled a gun or not?

11 A. I honestly don't recall.

12 MR. THOMPSON: No further questions.

13 MS. HALL: No further questions, Your Honor.

14 THE COURT: All right. Is this witness released for
15 the day?

16 MS. HALL: Yes, Your Honor.

17 MR. GRIMES: Your Honor, our next witness is coming
18 up from downstairs. It's Windell Davis. If we could
19 approach real quick while he's on his way.

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

22 THE COURT: Ladies and gentlemen of the jury, while
23 we wait for the next witness to come, let's have every
24 member of the jury and the gallery as well can do so as
25 well. Let's have everyone stand up and take a stretch

1 break.

2 MS. HALL: Your Honor, if it's okay, I'm going to go
3 ahead and put this evidence back up.

4 (A discussion was held off the record.)

5 WINDELL DAVIS, after having first being duly sworn,
6 testified under oath as follows:

7 DIRECT EXAMINATION

8 BY MR. GRIMES:

9 Q. Good morning, Mr. Davis. I'm going to show you
10 what's been marked as State's Exhibit 3. Do you recognize
11 this?

12 A. Yes.

13 Q. And did you put your initials on this CD?

14 A. Yes.

15 Q. And is this the CD -- on the CD is there a video from
16 Off Da Chain Seafood surveillance camera?

17 A. Yes.

18 MR. GRIMES: At this time, state would move to
19 introduce State's Exhibit 3 into evidence.

20 MR. THOMPSON: No objection.

21 THE COURT: Your Honor, if I may very briefly.

22 (WHEREUPON, a bench conference was held in the
23 presence but not within the hearing of the jury.)

24 MR. THOMPSON: No objection.

25 (State's Exhibit Number 3 was admitted into

WINDELL DAVIS - DIRECT EXAMINATION BY MR. GRIMES

1 evidence.)

2 MR. GRIMES: Judge, I'd like to publish that in just
3 a moment, but just going back a second...

4 Q. Mr. Davis, is that building your building, Off Da
5 Chain seafood?

6 A. Yes.

7 Q. It's not called Off Da Chain seafood anymore, is it?

8 A. No.

9 Q. Is someone else running a business out of there?

10 A. Correct.

11 Q. Is that seafood Station?

12 A. Yes.

13 Q. Okay. But it's right there on the corner of Laurens
14 Street and Plunkett?

15 A. Yes.

16 Q. All right. And do you recall back in August of 2019,
17 the police coming and asking you for video?

18 A. Yes.

19 Q. And this video is the video that you gave them; is
20 that correct?

21 A. Correct.

22 MR. GRIMES: All right. At this time, we'd like to
23 publish the video.

24 THE COURT: Ladies and gentlemen of the jury, if you
25 cannot see, please indicate that to us.

WINDELL DAVIS - DIRECT EXAMINATION BY MR. GRIMES

1 MR. THOMPSON: While the video is loading, may we
2 approach?

3 (WHEREUPON, a bench conference was held in the presence
4 but not within the hearing of the jury.

5 (Videotape played in open court.)

6 MR. THOMPSON: Your Honor for the record, we started
7 that over after it paused, so it played all the way
8 through. I don't have any further questions for this
9 witness.

10 THE COURT: Thank you, Mr. Grimes.
11 Counsel?

12 MR. THOMPSON: Your Honor, very briefly. May it
13 please the Court, solicitors?

14 CROSS-EXAMINATION

15 BY MR. THOMPSON:

16 Q. Sir, you really -- you don't have any firsthand
17 knowledge of any of the events we're talking about today,
18 correct? You're the Off Da Chain seafood and more
19 security camera guy?

20 A. Yes.

21 Q. You weren't there when this happened, you weren't
22 watching when this happened? This is just a video from
23 your property?

24 A. Correct.

25 Q. And the camera system was put in place to do

WINDELL DAVIS -- CROSS-EXAMINATION BY MR. THOMPSON

1 surveillance for the restaurant? It wasn't to look up and
2 down the street or anything like that, correct?

3 I'll rephrase the question, how about that. Why did
4 you put the camera system up?

5 A. To see what was happening around the building?

6 Q. Okay. To see what was happening around the building.
7 You had a surveillance system to watch what was happening
8 around the building?

9 A. Correct.

10 Q. And because of the focus of the lens and the -- and
11 where the camera is looking, that's why it's a little
12 harder to see way down the street is because the camera is
13 really not looking way down the street. It's looking
14 around by the restaurant, correct?

15 A. Yes?

16 Q. Okay. I have no further questions. Please answer
17 any questions they may have.

18 THE COURT: Any redirect?

19 MR. GRIMES: None, Your Honor.

20 THE COURT: Thank you. Is this witness excused?

21 MR. GRIMES: Yes, Your Honor.

22 THE COURT: Thank you, Mr. Davis. Next witness?

23 MS. HALL: Your Honor, state calls investigator
24 Stacey Coleman.

25 STACEY COLEMAN, after having first being duly sworn,

1 testified under oath as follows:

2 DIRECT EXAMINATION

3 BY MS. HALL:

4 Q. Investigator Coleman, where do you work?

5 A. I'm employed with the solicitor's office, second
6 judicial circuit.

7 Q. What is your role there?

8 A. I'm an investigator, and I manage the worthless check
9 unit.

10 Q. Do you also assist from time to time in the IT
11 department?

12 A. About 90 percent of my time is dedicated to our
13 operations.

14 Q. And did you have an opportunity to work with the
15 video we just saw to crop certain portions of that video
16 so that we could get a better look at certain portions of
17 it?

18 A. I did.

19 Q. And did you change or alter the contents of that
20 video in any way?

21 A. I did not.

22 Q. Investigator Coleman, I'm going to show you what's
23 been marked State's Exhibit 4 and 5. Are these two videos
24 that you cropped for purposes of this trial?

25 A. Yes.

STACEY COLEMAN - DIRECT EXAMINATION BY MS. HALL

1 MS. HALL: Your Honor, at this time, the state moves
2 to enter exhibits 4 and 5 into evidence.

3 MR. THOMPSON: No objection.

4 THE COURT: All right. So admitted.

5 (State's Exhibits 4 and 5 were admitted.)

6 MS. HALL: Your Honor, at this time, we would ask
7 permission to publish.

8 THE COURT: Yes, ma'am.

9 (Videotape played in open court.)

10 MS. HALL: State's 5.

11 (Videotape played in open court.)

12 Q. Investigator Coleman, I have no further questions for
13 you. Please answer any questions the defense may have?

14 A. Thank you.

15 THE COURT: Mr. Thompson?

16 MR. THOMPSON: Your Honor, may it please the Court,
17 solicitors?

18 CROSS-EXAMINATION

19 BY MR. THOMPSON:

20 Q. Investigator Coleman -- I'm sorry. I'm never going
21 to get used to this.

22 Investigator Coleman, if you would, I'm going to talk
23 to you about state's Number 4 very briefly. You've looked
24 into this case. You're familiar with the people in the
25 video, know who they are, that kind of thing?

STACEY COLEMAN - CROSS-EXAMINATION BY MR. THOMPSON

1 A. Vaguely.

2 Q. Vaguely?

3 A. My first experience was last week with this video.

4 Q. Okay. Fair enough.

5 A. So I don't know anything about the case.

6 Q. I'll wait until the video starts and then I'll ask
7 you a question about the beginning of the video.

8 MR. THOMPSON: Can you put it up to the very
9 beginning. Back it up to the very beginning, hit play,
10 and then just pause it.

11 (Videotape played in open court.)

12 Q. All right. In this video, this gentleman -- that's
13 the defendant, right? That guy?

14 A. I don't know who he is?

15 MS. HALL: The witness has indicated he wasn't
16 familiar necessarily with the case prior to working on the
17 video.

18 MR. THOMPSON: In your --

19 MS. HALL: I think he might have to speculate as to
20 who is in the video.

21 A. I don't know who is in --

22 MR. THOMPSON: And Your Honor, he's welcome -- if he
23 doesn't know who the people are, I'll move on.

24 THE COURT: I'll allow that.

25 Q. Do you know who this gentleman is?

STACEY COLEMAN - CROSS-EXAMINATION BY MR. THOMPSON

1 A. I do not.

2 Q. Do you know who that gentleman is?

3 A. I do not.

4 Q. Do you know who that gentleman is?

5 A. I don't know who anybody in the video is.

6 Q. Okay. And in the video, why did you start it here?

7 A. The only thing I was trying to capture was the
8 conclusion of the ---

9 Q. Okay ---

10 A. --- incident.

11 Q. So you were focused on the incident?

12 A. Right.

13 Q. You weren't focused at all on the beginning of what
14 happened. The 40 second long period these people were at,
15 you weren't focused on the beginning. You were focused on
16 the end?

17 A. Correct.

18 Q. Fair enough. No further questions.

19 THE COURT: Any redirect?

20 REDIRECT EXAMINATION

21 BY MS. HALL:

22 Q. Investigator Coleman, you didn't actually work on the
23 investigation of this case, correct?

24 A. I did not.

25 MS. HALL: No further questions, Your Honor.

KEITH DILL - DIRECT EXAMINATION BY MR. GRIMES

DIRECT EXAMINATION

1
2 BY MR. GRIMES:

3 Q. Good morning, Mr. Dill. Morning. Barely morning?

4 A. Good morning.

5 Q. Did you live in Aiken county?

6 A. Yes, I do now.

7 Q. You been around this area for a while?

8 A. About a year and a half. I just moved from Augusta,
9 Georgia.

10 Q. Did you -- in August of 2019, did you have a reason
11 to go to the Pruitt Health building?

12 A. Yes, sir, I did. I went to go visit my more than. I
13 usually visit her every day at Aiken Pruitt.

14 Q. You visit her every day?

15 A. Yes, sir.

16 Q. On August 6th, 2019, were you visiting her there?

17 A. Yes, sir.

18 Q. Do you recall about what time you left there?

19 A. It was around 4:23, somewhere in there, 4:24.

20 Q. Sometime in the afternoon, evening?

21 A. Afternoon.

22 Q. And did something catch your attention that day?

23 A. It did, as I left, you know, Pruitt, as I came out to
24 the front entrance, I took a left, you know, because I was
25 coming back into town in Aiken. I think I had to stop by

KEITH DILL - DIRECT EXAMINATION BY MR. GRIMES

1 the post office as well. And as I drove by, you know, you
2 had people walking along the sidewalk and as I came by --
3 I think -- at that time, I kind of glanced at the kids.
4 They were standing at the corner of where Hahn Village
5 apartments are. Aiken Housing Authority, I think. And as
6 I passed them, I think I was doing like 34, 35 miles per.
7 And as I passed them, I was about five, six feet from
8 them, and at the same time when I passed them, one of the
9 young men turned around and commit fire, and fired four
10 times. And as I looked to see what he was firing at, and
11 I kind of like swerved over in the incoming lane
12 because -- well, it wasn't anybody there in the incoming
13 lane, because I thought he was shooting at me and stuff,
14 you know. And when I pulled back in the right lane, I saw
15 in front of me the -- a family of three, little girl, a
16 lady, and a man. And as he turned around, facing the
17 shooter, he grabbed his neck and fell back on to the
18 ground. And, you know, it was -- and then I pulled over,
19 I was like oh man, oh, my God, he just shot this guy. You
20 know, it was a pretty odd time and I -- this is my first
21 time ever seeing something like that, you know. For --
22 you know, such a short distance. So I pulled over a
23 hundred feet in front of this two story house. And then I
24 come in, call 911.

25 Q. I want to -- I want to back you up just a little bit.

KEITH DILL - DIRECT EXAMINATION BY MR. GRIMES

1 When you said that one of the boys -- I believe you said
2 one of the boys began to fire.

3 A. Right.

4 Q. Shoot a gun?

5 A. Yes, sir.

6 Q. Is that what you meant?

7 A. You know, shooting firing, discharging a firearm.

8 Q. And do you recall that happening as you were right
9 next to that person or as your vehicle was right next to
10 that person?

11 A. Yes, sir. When I was driving along, time I got even
12 with them, you know, on -- when he was on the sidewalk and
13 I think it was two -- at that time, I seen like two or
14 three other people with him. And they looked like kids
15 and stuff, and as I drove by, that's when he turned around
16 and discharged the firearm.

17 Q. And sir, you were driving the same direction that he
18 was shooting; is that correct?

19 A. That's correct.

20 Q. And so -- in front of -- ahead of where you were was
21 the person who was struck by the bullet?

22 A. Right. That's correct.

23 Q. And what direction was that person facing?

24 A. Well, when -- I think when I heard like two -- two
25 shots from the firearm, that's when the guy turned --

KEITH DILL - DIRECT EXAMINATION BY MR. GRIMES

1 because at first they were walking away from them. They
2 were walking in opposite directions. And when the second
3 fire -- if I -- yeah, I did remember that. The guy turned
4 around and I guess -- I don't know whether it was a third
5 or fourth shot, that's when I saw the guy grab his neck
6 and fell back. Then I turned around and looked back to --
7 you know, to see who was firing at him and it was the kids
8 and at that time, they fled. They all ran together
9 towards the Aiken Housing Authority apartments.

10 Q. If I understand what you're saying correctly, the
11 person who was shot was facing away from you and then
12 turned around to where you could see their front?

13 A. Right. That is correct.

14 Q. I guess so when you first noticed them, they were
15 facing the other direction?

16 A. Right.

17 Q. And you indicated that he turned around and grabbed
18 his neck?

19 A. Right. After the second -- I think after the second
20 or third -- yeah. It was like a second fire -- when he
21 turned around, the third or fourth fire, I don't know
22 which -- you know, which. But at that time he grabbed his
23 neck and fell back to the ground.

24 Q. And how did he grab his neck, if you can --

25 A. He just did like this and he slowly just went -- went

KEITH DILL - DIRECT EXAMINATION BY MR. GRIMES

1 down.

2 Q. And you ---

3 A. He fell backwards.

4 Q. With both hands?

5 A. Yes, sir.

6 Q. Prior to -- prior to the shooting, had you noticed
7 anything that was going on?

8 A. No. Everything seemed like it was a normal day.
9 Like I said, everything happened so quickly during the
10 time I drove by them.

11 Q. And how close -- at the time -- well, from what you
12 described, you noticed the person that was shot and the
13 lady and the child just before he was shot? Is that fair
14 to say, or is that ---

15 A. What are you saying now?

16 Q. If -- you were able to see the person that was shot
17 ---

18 A. Right.

19 Q. And the lady that was next to him ---

20 A. Right.

21 Q. And the child right before he was shot?

22 A. Yes, yes.

23 Q. And what were they doing?

24 A. They were walking opposite directions. During the
25 time I was coming -- driving towards them.

KEITH DILL - DIRECT EXAMINATION BY MR. GRIMES

1 Q. They were walking the opposite direction of the
2 person that was shooting?

3 A. Right.

4 Q. Okay. And so it would be the same direction you were
5 traveling correct?

6 A. Yes. That is correct.

7 Q. And did you see the person who shot -- did you see
8 his face before he turned around and grabbed his neck?

9 A. I saw the side -- you talking about -- are you
10 referring to the shooter or the ---

11 Q. The person who was shot?

12 A. The person who was shot?

13 Q. Uh-huh.

14 A. I did, but at the same time, like I said everything
15 happened so quickly when I was driving by him, all I saw
16 was that he grabbed his neck with both hands and fell
17 slowly down. But at the same time, you know, you can't
18 really see a true image, you know, of him. All I knew it
19 was a Caucasian guy, little girl, and a looks like his
20 wife or someone.

21 Q. Yes, sir. And I'm not asking you to identify
22 anybody.

23 A. Yeah.

24 Q. Maybe I'll phrase the question a little differently?

25 A. Okay.

KEITH DILL - DIRECT EXAMINATION BY MR. GRIMES

1 Q. Well, when you saw him turn and grab his neck, did he
2 interpret he had been struck?

3 A. Oh yeah.

4 Q. And prior to him being struck, he was facing away
5 from the person that was shooting?

6 MR. THOMPSON: Objection, leading, asked and
7 answered.

8 THE COURT: Overruled.

9 Q. Prior to the moment that you noticed he was struck,
10 did you see him facing away from the person that was
11 shooting?

12 A. No. He turned around.

13 Q. All right. All right?

14 A. He got struck ---

15 Q. When he -- when he was struck, I think you said when
16 he was struck, he kind of turned around towards your
17 direction and fell down; is that correct?

18 A. No, he turned around then he got struck.

19 Q. Okay.

20 A. Right.

21 Q. And I'm going to show you a video in just a moment.
22 And you can show us which one of the vehicles in this
23 video is your vehicle.

24 A. Okay.

25 MR. GRIMES: This is State's Exhibit 3.

KEITH DILL - DIRECT EXAMINATION BY MR. GRIMES

1 (Videotape played in open court.)

2 Q. Can you see it up on the wall good, well?

3 A. I think I can manage.

4 (Videotape played in open court.)

5 A. Right there. Yeah.

6 Q. So ---

7 A. I think that's it right there.

8 Q. Is that your vehicle pretty much right beside the
9 person who is shooting?

10 A. Yes, sir.

11 Q. And just to clarify, when you first noticed those
12 shots, the person who was shot had his back to the person
13 who was shooting; is that correct?

14 A. The person...

15 Q. The person who was shot ---

16 A. Right.

17 Q. --- had his back to the person who was shooting?

18 A. No.

19 Q. Okay. I just want to make this very clear.

20 A. Okay.

21 Q. So describe that for me, please.

22 A. Well, as you can see, that's -- when I saw -- when I
23 passed them, when I heard the gunfire shots, I think after
24 the second shot, that's when I looked forward to see --
25 whom the shooter was shooting at. And I saw the family of

KEITH DILL - DIRECT EXAMINATION BY MR. GRIMES

1 three, and by the third shot, he was turned around towards
2 me, towards the shooter and that's when he grabbed his
3 neck and fell back to the ground.

4 Q. And prior to that point where you saw him grab his
5 neck ---

6 A. Right.

7 Q. --- he was facing the other direction; is that
8 correct?

9 A. He was facing the shooter's direction.

10 Q. Before he grabbed his neck?

11 A. That's -- that's after he grabbed his neck he was
12 facing the shooter.

13 Q. After he grabbed his neck, he was facing the shooter?

14 A. Right.

15 Q. So before he grabbed his neck, he was facing the
16 other direction?

17 A. Right. They were walking, you know, in the opposite
18 direction.

19 Q. They were walking away from where ---

20 A. Before the shooting.

21 Q. --- the shooter was? Okay. I think -- I think maybe
22 I confused you or me more.

23 MR. GRIMES: Beg the Court's indulgence.

24 Q. Please answer any questions Mr. Thompson has for you,
25 okay?

KEITH DILL - DIRECT EXAMINATION BY MR. GRIMES

1 A. Okay.

2 THE COURT: Mr. Thompson.

3 MR. THOMPSON: May it please the Court.

4 CROSS-EXAMINATION

5 BY MR. THOMPSON:

6 Q. Mr. Dill, I'm assuming you're a fairly decent driver.

7 At least some of your attention is on the road as you're
8 driving down the road. You weren't expecting any of this,
9 correct?

10 A. That is correct.

11 Q. You were driving down the road towards -- I believe
12 you said the post office?

13 A. Yes, sir.

14 Q. And when the gun went off -- well, you're driving
15 about 34, 35 miles an hour?

16 A. Right. That's correct.

17 Q. That's about the speed limit?

18 A. Yup.

19 Q. And when the gun goes off, did you instantly -- a gun
20 goes off, I got to know exactly what happened?

21 A. Basically after the -- the second shot, when you
22 first hear a gun goes off -- goes off, you know, it's
23 going to startle you ---

24 Q. Yup?

25 A. --- it's going to scare you. I had my windows lined

KEITH DILL - CROSS-EXAMINATION

1 up and the AC on.

2 Q. You were startled, the windows were up. You can't
3 really hear what's outside until the gun goes off?

4 A. Until the gun goes off.

5 Q. And it startled you and I believe you said earlier
6 you swerved into ---

7 A. I swerved over because I didn't know at the time --
8 whom the shooter was shooting at.

9 Q. Like oh, my God, a gun just went off?

10 A. Right.

11 Q. And -- like you said, this happened super quick?

12 MR. THOMPSON: I don't think I have any further
13 questions, I don't believe. Beg the Court's indulgence.

14 Q. And you're just now driving up. You don't know
15 anything about what happens before the shooting, correct?

16 A. Well, if -- yeah, like a few seconds before the
17 shooting, I wasn't aware of it until I came to that, you
18 know, this conclusion there.

19 Q. Okay.

20 MR. THOMPSON: I have no further questions.

21 THE COURT: Redirect?

22 MR. GRIMES: We don't have anything else for
23 Mr. Dill.

24 THE COURT: Thank you, Mr. Dill, you may be excused.

25 Madam Solicitor, for housekeeping purposes, can you

KEITH DILL - CROSS-EXAMINATION

1 and counsel approach?

2 THE COURT: State will call its next witness.

3 MS. HALL: State calls Millie Cummings.

4 MILLIE CUMMINGS, after having first being duly sworn,
5 testified under oath as follows:

6 DIRECT EXAMINATION

7 BY MS. HALL:

8 Q. Ms. Cummings, are you from Aiken?

9 A. Yes.

10 Q. How long have you lived in the Aiken area?

11 A. All my life.

12 Q. What were you doing on the afternoon of August 6th,
13 2019?

14 A. I was visiting my niece over in Hahn Village.

15 Q. And what time did you leave your niece's house?

16 A. Around five something.

17 Q. And when you left Hahn Village, what road did you go
18 on?

19 A. I came out of Hahn Village and made a left on
20 Plunkett Avenue, and stopped there at the stop sign and I
21 made a right turn on the Laurens Street.

22 Q. At the stop sign at Plunkett and Laurens?

23 A. Right.

24 Q. And which way were you heading? Into downtown Aiken
25 or away from Aiken?

MILLIE CUMMINGS -- DIRECT EXAMINATION BY MS. HALL

1 A. Downtown Aiken.

2 Q. Was anyone else in the car with you?

3 A. Yes, me and my grand kids.

4 Q. And what did your car look like?

5 A. It's a gray four door Impala, Chevy.

6 Q. And when you were sitting at the stop sign on
7 Plunkett Avenue, what first caught your attention?

8 A. I seen my niece and two young -- young guys. As I
9 proceeded on ---

10 Q. Let me stop you there. What's your niece's name?

11 A. Shammondria (phonetic).

12 Q. Did you know the name of the guy?

13 A. I just know their nicknames.

14 Q. And what was that?

15 A. Dae.

16 Q. And when you saw them, what did you notice?

17 A. I noticed they was arguing -- I mean, I seen words
18 was exchanged, but what was said, I don't know.

19 Q. Who was arguing?

20 A. Dae and Mr. Swerling (phonetic).

21 Q. I'm sorry?

22 A. Mr. Larry.

23 Q. Okay.

24 A. Yes. They was exchanging words. So then Mr. Larry
25 turned away to walk down towards downtown Aiken.

MILLIE CUMMINGS -- DIRECT EXAMINATION BY MS. HALL

1 Q. So he -- Larry turned and walked away?

2 A. Yes.

3 Q. From Dae Dae?

4 A. Right. Uh-huh.

5 Q. When you were at the stop sign, were your windows
6 down?

7 A. Yes.

8 Q. So you said you could hear something?

9 A. I could hear some, you know, words being exchanged
10 but I didn't hear exactly what was said.

11 Q. Okay. And if you could just kind of describe
12 everyone that you saw. You mentioned Larry. Did you see
13 anyone with him?

14 A. I seen Larry and his wife and his daughter.

15 Q. Okay. And you mentioned Dae Dae and Shammondria.
16 Was there anyone else with them?

17 A. Yes, it was another young man with them and another
18 young lady.

19 Q. Okay.

20 A. Yes.

21 Q. And that other young man and lady were with Dae Dae
22 and Shammondria?

23 A. Right. Yes.

24 Q. And when you were at the stop sign, who was closest
25 to you?

MILLIE CUMMINGS -- DIRECT EXAMINATION BY MS. HALL

1 A. Dae Dae and Shammondria and the other two.

2 Q. And did they have their back to you or were they
3 facing you?

4 A. First they was walking towards -- going towards Hahn
5 Village and then they turned -- the two guys turned
6 around. And just like I said, they was changing words
7 with Larry, and they was exchanging words. Then I looked,
8 I seen gunfire fire. I seen Dae Dae shoot.

9 Q. Okay. And when you saw this argument with Dae Dae,
10 his friends, and Larry, did you ever see Larry with a
11 handgun?

12 A. No, I did not.

13 Q. And you said that you heard the shots when Dae'Kwon
14 actually shot the gun?

15 A. I was just passing Off Da Chain restaurant on Laurens
16 street. I was -- like I said about a hundred feet away
17 when I seen the gunfire.

18 Q. And when you saw the gunfire, did you see where Larry
19 and his wife was?

20 A. Yes, they was at the corner of Columbia Avenue and
21 Laurens Street.

22 Q. Which way were they walking?

23 A. They was heading downtown Aiken.

24 Q. All right. So, Larry and his wife had their backs to
25 Dae'Kwon when he was shooting?

MILLIE CUMMINGS -- DIRECT EXAMINATION BY MS. HALL

1 A. Yes.

2 Q. Ms. Cummings, I'm going to show you what's been
3 marked State's Exhibits 6, 7, and 8. Do you recognize
4 those photographs?

5 A. Yes.

6 Q. And do those photographs fairly and accurately depict
7 what you saw that afternoon?

8 A. Yes.

9 MS. HALL: Your Honor, at this time, I would ask to
10 move State's Exhibits 6, 7, and 8 into evidence.

11 (State's Exhibits 6-8 were admitted into evidence.)

12 THE COURT: Any objection?

13 MR. THOMPSON: No objection.

14 MS. HALL: Your Honor, permission to publish.

15 THE COURT: Yes.

16 (Videotape played in open court.)

17 Q. This is state's six, Ms. Cummings. Do you recognize
18 the person in the blue shirt?

19 A. Yes.

20 Q. And who is that?

21 A. Dae Dae.

22 Q. And you were familiar with him prior to this
23 shooting?

24 A. Yes.

25 Q. And you didn't know the other people involved?

MILLIE CUMMINGS -- DIRECT EXAMINATION BY MS. HALL

1 A. No.

2 Q. You knew Chemondria and Dae'Kwon prior?

3 A. Yes.

4 Q. State's 7. Again, who is the individual in the blue
5 shirt?

6 A. Dae Dae.

7 Q. State's 8. And again, the gentleman in the blue
8 shirt, you recognize as who?

9 A. Dae Dae.

10 Q. Ms. Cummings, after the shots were fire, did you
11 actually see Larry get shot?

12 A. Yes.

13 Q. What happened once he was shot?

14 A. I seen when he -- like I said, he fell to the ground.

15 Q. Okay. And when you saw him get shot as he got shot,
16 did you see a gun in his hand?

17 A. No, I did not.

18 Q. Do you remember what his wife and daughter did after
19 he was shot?

20 A. Well, his wife, she ran -- when he fell to the
21 ground, she ran to him. Her and the baby, and the baby
22 was screaming, please don't let my daddy die. By that
23 time, I whipped around and I got the little girl.

24 Q. Okay. And when you said you got the little girl,
25 where did you take the little girl?

MILLIE CUMMINGS -- DIRECT EXAMINATION BY MS. HALL

1 A. I took her to my car.

2 Q. Why did you do that?

3 A. Because I didn't want her seeing, you know, what was
4 happening. Didn't want her to see her daddy laying down
5 like that?

6 Q. At some point, did you call 911?

7 A. Yes, I did.

8 Q. Once you got over there, before you pulled S.S.
9 in the car with you, where was Jessica? What was she
10 doing? What was the wife doing?

11 A. Jessica was tending to her husband, and like I said,
12 she was down on the ground over him, you know, trying to
13 stop the bleeding and all, and stuff.

14 Q. He was visibly bleeding when you saw him?

15 A. Yes.

16 Q. When you got out of your vehicle to help, did you
17 ever see a gun on the ground or anywhere near the victim?

18 A. No, I did not.

19 Q. And when you got there, was the victim responsive at
20 all?

21 A. No. He was just shaking a little, but he wasn't --
22 you know, he was just.

23 Q. No voluntary movement?

24 A. No. No.

25 Q. Ms. Cummings, I'm going to play this video again,

MILLIE CUMMINGS -- DIRECT EXAMINATION BY MS. HALL

1 State's Exhibit 3. And while this is playing, I'll just
2 kind of get you to let us know the point at which you
3 noticed this argument, like when it got your attention?

4 A. Okay.

5 (Videotape played in open court.)

6 Q. If you'll just tell me at what point you noticed the
7 argument?

8 A. I noticed the argument right up in there.

9 Q. Okay.

10 A. And Mr. Larry and them was walking past. And I
11 noticed the arguing.

12 Q. Okay. So before they backed away, you saw the
13 arguing?

14 A. Yes.

15 Q. You saw them kind of split up?

16 A. Right. Uh-huh.

17 Q. And then the next thing we'll get you to point out is
18 your car driving by.

19 A. Okay.

20 Q. If you'll let us know when your car drives by?

21 A. Right there.

22 Q. That's your car right there?

23 A. Yes. Uh-huh.

24 Q. And the windows are down?

25 A. Yes.

MILLIE CUMMINGS -- DIRECT EXAMINATION BY MS. HALL

1 Q. Ms. Cummings, I've shown you pictures of State's
2 Exhibits 6, 7, and 8 that are still right up there besides
3 you?

4 A. Uh-huh.

5 Q. You identified that person as Dae Dae?

6 A. Yes.

7 Q. The shooter in this case. Is that Dae'Kwon Simmons,
8 the defendant in this case?

9 A. Yes.

10 Q. I have no further questions for you. Please answer
11 any the defense may have.

12 THE COURT: Mr. Thompson.

13 MR. THOMPSON: Beg the Court's indulgence.

14 CROSS-EXAMINATION

15 BY MR. THOMPSON:

16 Q. Good afternoon, Ms. Cummings. I'm going to be very
17 brief. I just have a couple of questions for you?

18 A. Okay.

19 Q. Ms. Cummings, I'm going to get right here and if you
20 recall, this is Mr. Larry?

21 A. Uh-huh.

22 Q. Right?

23 A. Right.

24 Q. And that's Ms. Jessica?

25 A. Right.

MILLIE CUMMINGS - CROSS-EXAMINATION BY MR. THOMPSON

1 Q. And that's S.S.?

2 A. Right.

3 Q. Did you know them before this happened?

4 A. No.

5 Q. Did not?

6 A. No.

7 Q. Did not who they were?

8 A. No.

9 Q. Okay.

10 (Videotape played in open court.)

11 MR. THOMPSON: Push pause.

12 Q. And Ms. Cummings, you were down here, right?

13 A. Right.

14 Q. Kind of on the corner looking down the street starts
15 this group of people?

16 A. Right.

17 Q. And the first person is -- is that Chemondria?

18 A. Uh-huh.

19 Q. And that's Dae Dae, then there's more people, then
20 there's Mr. Larry and then over there.

21 A. Right.

22 MR. THOMPSON: Push play. And push pause.

23 THE COURT: Ms. Cummings, make sure you speak loudly
24 so the jury can hear you.

25 THE WITNESS: Okay.

MILLIE CUMMINGS - CROSS-EXAMINATION BY MR. THOMPSON

1 Q. And Ms. Cummings, you were listening to this
2 argument?

3 A. Yes.

4 Q. Okay. And can you tell us some of the words that
5 were said? Can you tell us ---

6 A. I couldn't hear what words was said, but I seen them
7 arguing.

8 Q. So you -- you just looked down and kind of saw people
9 and heard voices ---

10 A. Right.

11 Q. But you couldn't tell what was said?

12 A. No, I couldn't tell what was said.

13 Q. Were they kind voices?

14 A. No. It was like a ---

15 Q. Angry voices?

16 A. Yes.

17 Q. Loud voices? And do you know this person?

18 A. Who was it? I can't see that far.

19 Q. Okay. Can't see that.

20 A. Unh-unh.

21 Q. Can you stand?

22 MR. THOMPSON: Push pause.

23 Q. Were you able to see the point in this confrontation
24 where Mr. Larry pushes?

25 A. Yes, I was because when you get at the stop sign, the

MILLIE CUMMINGS - CROSS-EXAMINATION BY MR. THOMPSON

1 stop sign is clear. You can see ---

2 Q. Okay. So you saw him push the other gentleman?

3 A. No, I didn't see no pushing. No.

4 MR. THOMPSON: Back it up a second.

5 Q. Okay. So you didn't see --

6 MR. THOMPSON: Hold for a second.

7 Q. When you say you couldn't see, can you not see right
8 now, or did you not see at the time?

9 A. I can't see right now.

10 Q. Right now.

11 A. Right.

12 MR. THOMPSON: Your Honor, if I may.

13 Q. Ms. Cummings, can you see a little bit better now?

14 A. Yes, I can see it.

15 Q. And this is Dae'Kwon over here?

16 A. Right.

17 Q. And Chemondria?

18 A. Uh-huh.

19 Q. And Dae'Kwon is arguing with the man?

20 A. Right.

21 Q. Do you know who this person is, the person with the
22 white shirt on?

23 A. That's Mr. Larry.

24 Q. No, Mr. Larry is the white man behind him, right?

25 A. Yes. Yes.

MILLIE CUMMINGS - CROSS-EXAMINATION BY MR. THOMPSON

1 Q. Okay. Do you know who this person is with the white
2 shirt and the dark ---

3 A. (inaudible) my niece, that's -- what's his name?

4 MR. THOMPSON: Can you back it up a little bit more
5 and start it where the people start walking up?

6 Q. Mr. Larry comes up and he pushes him in the head.
7 You see that?

8 A. Yes, yes.

9 Q. And the guys got his hands up, and Mr. Larry's hands
10 behind his back. Do you see that?

11 A. Okay.

12 MR. THOMPSON: Back that up one more time to.

13 Q. So this one is Dae Dae, right?

14 A. Right.

15 Q. And that's Mr. Larry, and Mr. Larry pushes him ahead
16 and he's got his hands up and Mr. Larry has got his hand
17 back, right?

18 A. Right. Okay.

19 Q. And is Dae Dae -- he's over here, right?

20 A. Yes.

21 Q. Are they still jawing and arguing with him and
22 cursing each other?

23 A. Yes.

24 Q. So they're -- even now, they're arguing and F you and
25 all this other kind of stuff?

MILLIE CUMMINGS - REDIRECT EXAMINATION BY MS. HALL

1 A. Yeah.

2 Q. Okay. And then -- then shot comes ---

3 A. I heard the shots.

4 Q. Thank you very much, and I apologize.

5 MR. THOMPSON: I have no further questions of this
6 witness.

7 THE COURT: Redirect?

8 MS. HALL: Briefly, Your Honor.

9 REDIRECT EXAMINATION

10 BY MS. HALL:

11 Q. Ms. Cummings, Mr. Thompson told you that Larry pushed
12 someone. Did you actually see Larry push anyone?

13 A. No, I didn't see no pushing. I just, you know, seen
14 them arguing, you know. Before I came to the stop sign,
15 it could have happened, but I didn't see that. I just
16 seen the arguing.

17 Q. And you told Mr. Thompson that these -- Dae Dae and
18 Reggie were still arguing when they were kind of walking
19 off?

20 A. Yes.

21 Q. Was it Dae'Kwon and Reggie that were arguing and
22 yelling stuff?

23 A. They was yelling at Mr. Larry and then that's when I
24 seen the gunfire.

25 Q. Okay. So the people you heard yelling when Dae'Kwon

MILLIE CUMMINGS - RECROSS-EXAMINATION BY MR. THOMPSON

1 and Reggie walked off were Dae'Kwon and Reggie?

2 A. Yes. Yeah.

3 MS. HALL: No further questions.

4 MR. THOMPSON: Briefly, Your Honor.

5 RECROSS-EXAMINATION

6 BY MR. THOMPSON:

7 Q. Ms. Cummings, when you said you didn't see any of
8 the -- did you not see it on the video or did you not see
9 ---

10 A. I seen it on the video.

11 Q. --- or at the time?

12 A. I seen it on the video.

13 Q. You seen it on the video?

14 A. Yeah, I seen it on the video, but just like I said, I
15 didn't see no pushing, no hands ---

16 Q. You didn't see it at the time?

17 A. I didn't see the pushing. I just seen the arguing.

18 Q. Okay. Thank you very much.

19 THE COURT: All right. Ms. Cummings, you're excused.

20 All right, at this time, we'll break for lunch. It's
21 12:30 now, and we'll reconvene court at 1:30. Ladies and
22 gentlemen of the jury, as well as my alternates, please
23 follow the bailiffs. We have provided lunch for you.

24 (The jury left open court at approximately 12:37
25 p.m.)

1 alternate to an actual juror member. So you're allowed to
2 take notes, everything is exactly the same, with the
3 exception you'll now go back with the jury during
4 deliberations. You can remain in that seat as long as
5 you're able to hear and to see. If, for some reason,
6 you're having any issue with that issue, please let one of
7 the bailiffs know and we'll make accommodations. Jurors
8 in the back, can you hear me? All right.

9 Madam Solicitor, you're ready to proceed be your next
10 witness?

11 MR. GRIMES: Thank you, Your Honor. State calls
12 Bhavesh Panchal.

13 BHAVESH PANCHAL, after having first being duly sworn,
14 testified under oath as follows:

15 DIRECT EXAMINATION

16 BY MR. GRIMES:

17 Q. Mr. Panchal, while you're in that witness box, we
18 just ask that you take your mask off so we can all hear
19 you real clearly okay?

20 A. Okay.

21 Q. Thank you, sir. Mr. Panchal --

22 THE COURT: Mr. Grimes?

23 (A discussion was held off the record.)

24 THE COURT: Mr. Panchal, can you repeat slowly and
25 loudly? It was not picked up on the record, the spelling

BHAVESH PANCHAL - DIRECT EXAMINATION BY MR. GRIMES

1 of your last name, sir.

2 THE WITNESS: P-A-N-C-H-A-L.

3 Q. Thank you. You run the In and Out store on Laurens
4 Street; is that correct?

5 A. Yes.

6 Q. And is that kind of right at the intersection of
7 Laurens and Columbia Avenue?

8 A. Yes.

9 Q. Were you -- that's your store. Were you running that
10 on August 6th of 2019?

11 A. Yep.

12 Q. And do you recall a shooting happening that day
13 outside of the store?

14 A. It was not happen right outside the store, but it was
15 a little bit out, you know, away from the store.

16 Q. Across the street?

17 A. Across the street.

18 Q. Right. But -- did -- you didn't see any of that,
19 correct?

20 A. No.

21 Q. Do you recall the police coming to get a video from
22 you?

23 A. Yes.

24 Q. And is that the surveillance video from your store?

25 A. Yes.

1 Q. Okay. I'm going to show you what's been marked as
2 State's Exhibit 28.

3 A. Yep.

4 Q. Did you recognize that exhibit?

5 A. Yes.

6 Q. That CD?

7 A. Yes.

8 Q. And I think did you put your initials on there?

9 A. Yes.

10 Q. All right. And is that the video from inside your
11 store on that day that the shooting happened?

12 A. Yes.

13 Q. Okay.

14 MR. GRIMES: At this time, the state would move to
15 introduce State's Exhibit 28 and also publish that exhibit
16 for the jury.

17 THE COURT: Any objection?

18 MR. THOMPSON: I don't have an objection to its
19 authentication, but I do have an objection to its
20 relevance if he says he didn't see anything and this is a
21 video from inside the store where the -- where the -- the
22 Swearingens never were.

23 MR. GRIMES: We may need to take it up.

24 THE COURT: I think it's better to take that issue
25 up. Bailiff, if you can remove the members of the jury at

BHAVESH PANCHAL - IN CAMERA EXAMINATION

1 this time.

2 (The jury left open court at approximately 1:51 p.m.)

3 MR. GRIMES: Judge, the defendant -- the other --
4 other -- the defendant and the other male and the two
5 females were inside the store just prior to this
6 happening. The testimony is that they actually left that
7 store right before they encountered the victim and his
8 family in this case. I think Jessica testified to that
9 fact. They were leaving In and Out store when they
10 encountered the victim in this case, and I can show on the
11 map which we'll get to just momentarily is that the In and
12 Out store is across the street from where all this
13 occurred. The defendant is on the video in the In and Out
14 store, and one of the things he does on that video --
15 actually, why don't we just play it so the judge can see
16 it.

17 (Videotape played.)

18 IN CAMERA EXAMINATION

19 BY MR. GRIMES:

20 Q. Mr. Panchal, did you tell them to leave that store?

21 A. Yes.

22 Q. And why did you tell them to leave?

23 A. One of them has the gun in the pocket. So as soon as
24 I seen it, I asked them to please leave the store.

25 Q. So you told them to leave because you saw the gun in

1 his pocket?

2 A. Uh-huh.

3 MR. GRIMES: Judge, the reason that this video is
4 relevant and this testimony in relation to the video is
5 this is where the defendant was immediately before this
6 happened. And as the defense has already argued to the
7 jury, intent, criminal intent is pretty much the center
8 issue of this case. The state intends to prove intent
9 several different ways. This is one of those ways because
10 what the defendant was doing with this firearm just before
11 this interaction that led to the victim's death is
12 evidence of his intent with that firearm that day. So he
13 comes into the store with this firearm and instead of
14 having it concealed on his person, he lifts up his shirt,
15 he dances around, he makes sure everybody sees it.
16 Mr. Panchal sees it immediately and kicks him out. The
17 fact that he was showing off with this firearm just before
18 this deadly interaction occurs is evidence of what he
19 intended to do with that firearm that day, which is let
20 everybody knows he has it. It's a big and bad attitude of
21 I've got this gun and people are going to know it.
22 They've indicated that he was -- that they hoped to pursue
23 a self-defense charge and we're obligated to disprove
24 self-defense.

25 In addition to as I indicated in the opening, they're

1 hoping to pursue a voluntary manslaughter charge from the
2 court and one of the things -- because of both of those,
3 how the defendant behaves with this firearm that Dae is
4 relevant in this case. It's -- as Your Honor is going to
5 charge the jury at the end of the case, we don't have
6 direct evidence of a defendant's intent. It always has to
7 be proven through circumstantial evidence. And
8 circumstantial evidence of how he was behaving with a
9 deadly weapon just before he used the deadly weapon to
10 kill somebody is evidence of his intent of how to behave
11 with that weapon that day.

12 His behavior on this video, that speaks for itself,
13 but he's showing off with this firearm. He could have
14 gone in this store and not lifted up his shirt and danced
15 around and showed off the gun, which Mr. Panchal saw, and
16 nobody would have known he had it. But that wasn't his
17 goal. He had this gun. He wanted to make sure that
18 people knew he had it, and this is evidence of that, and
19 as you recall from State's Exhibit 3, you can actually see
20 them walking across the street from this store when this
21 deadly interaction occurs. So potentially there's going
22 to be testimony from the defense in regards to
23 self-defense or in regards to a momentary inability to
24 control his actions, but his -- his actions just before
25 this occurred were him showing off with this gun and a big

1 and bad attitude to make sure everybody knows he has it.

2 THE COURT: Mr. Thompson?

3 MR. THOMPSON: May it please the Court. Relevant
4 evidence, as the Court is well aware, is the existence of
5 any fact that is of consequence in the determination of
6 the action to make it more probable or less probable than
7 it would be without the evidence. And I would argue the
8 following. First of all, he's charged with murder and
9 possession of a weapon during the commission of a violent
10 crime. And I want to do the possession of a weapon during
11 the commission of a violent crime first. Whether or not
12 he -- whether or not Dae'Kwon has a weapon in this store
13 or not has nothing to do with whether or not he has a
14 weapon during the shooting event. There's video evidence
15 to show that he has a weapon during the shooting event,
16 but whether or not he has a weapon inside the store or
17 whether or not he gets the weapon from somebody else when
18 he leaves the store, him having a weapon inside the store
19 has nothing to do with whether or not he's possessing a
20 weapon during a violent crime.

21 It also -- I would argue has nothing to do with
22 intent to murder. There are plenty of people that carry
23 around weapons all the time that don't express any type of
24 intent to commit any kind of violence. And I would
25 further argue, his actions in the store to me look less of

1 a display of hey, I got a firearm, and more of a 17 year
2 old horniness towards the girl who is slightly bent over
3 at the counter. Your Honor, I just -- I absolutely think
4 this is on its threshold not relevant evidence that tends
5 to prove any fact that's related to the crimes for which
6 Dae'Kwon is charged. He's not charged with unlawful
7 carrying of a pistol. He's charged with murder and
8 possession of a weapon during a violent crime, two things
9 that do not happen inside this store.

10 In addition to that, under 403 analysis, whether or
11 not he has a weapon in this store is, frankly, more
12 prejudicial than it is probative because it's not that
13 probative. It is also subject to confusion and -- Your
14 Honor I would move that under 403 analysis, it's also not
15 relevant. I also would submit that it looks to me like
16 the that his friend is like being accused of some sort of
17 shoplifting, has to empty his pockets to show he's not
18 stealing anything and again, I would argue that this video
19 is much more prejudicial than it is probative, because
20 the -- the prejudice value is not terribly high, the
21 probative value is very, very low. Because frankly, I
22 would argue that it's not relevant in its entirety.

23 THE COURT: Mr. Thompson, you don't believe that this
24 goes towards the argument against manslaughter, crime of
25 passion.

1 MR. THOMPSON: He's clearly not, during this video,
2 the defendant has not been challenged, not been
3 confronted. The events that have to do with the -- the
4 provoking of a heat of passion haven't occurred. This
5 video happens before the -- before the events leading up
6 to the crime occurring. I don't -- I just don't see how
7 it's relevant.

8 THE COURT: Mr. Grimes, anything further?

9 MR. GRIMES: Judge, I think you've heard the state's
10 ideas towards this case. Of course not all of the
11 arguments we intend to make, but just the idea that the
12 defendant was confronted in a verbal argument and decided
13 to retaliate with a firearm, the defense intends to argue
14 from everything we've seen so far that one, he was either
15 acting in self-defense or two, as they stated already, he
16 was acting in the heat of passion. But they've so much as
17 told the jury that his intent is the central issue in this
18 case. And I don't disagree that it is, and that makes our
19 evidence of his intent that much more relevant. And
20 that's the central issue of the case. But our theory of
21 this video is that he is showing off to other people with
22 this firearm, not really anything else. And --

23 THE COURT: And so the showing off at this moment in
24 time ---

25 MR. GRIMES: Translates to ---

1 THE COURT: --- and it's right before the actual
2 event, the alleged showing off is relevant to the event.
3 How are you trying to wrap that up?

4 MR. GRIMES: He's showing off to the victim, well,
5 you can't -- you can't talk to us that way and retaliates
6 with the firearm he was showing off with just earlier.

7 THE COURT: Mr. Thompson?

8 MR. THOMPSON: Your Honor, this video I would submit
9 is actually very much in line with our current
10 jurisprudence of sufficient legal provocation. In the
11 store, Mr. Panchal -- I haven't heard his testimony so I
12 don't know what type of language he may have used or not
13 used with him, but he says something apparently to
14 Dae'Kwon and Dae'Kwon says okay, no problem, and leaves.
15 It's not sufficient legal provocation. State's Exhibit
16 Number 3, though, is completely different. Because
17 State's Exhibit Number 3 not only --

18 THE COURT: That's the (inaudible).

19 MR. THOMPSON: Yes, ma'am, that's the video from the
20 front of the Off Da Chain Seafood that shows the argument
21 between Mr. Swearingen and the boys, is not -- is not only
22 much more of a verbal altercation, it's also a more close
23 contact physical altercation and there are allegations
24 that a firearm was produced. It's sufficient legal
25 provocation to induce heat of passion. I would argue that

1 this is not sufficient legal provocation to induce heat of
2 passion. It's just a interaction that Dae'Kwon has with
3 somebody before the crime -- before the crime for which
4 we're here to answer the questions alleged to have
5 everyone occurred. It really is not logically connected
6 to the events that happened outside on the sidewalk. It
7 is not relevant to proving one way or the other what type
8 of intent someone had during -- during an event that
9 happens later on in the day. If this had happened -- the
10 fact that it happens very near in time has nothing to do
11 with whether or not it's connected. If it had happened
12 five hours before this, we probably wouldn't be having
13 this conversation because we would also realize, oh, that
14 has nothing to do with it. If it happened a day and a
15 half before this, we wouldn't be arguing about this. The
16 only reason why in the mind of the state this is somehow
17 connected is because it happens right before. But it
18 literally has nothing to do with the actions of the
19 parties once they get outside.

20 THE COURT: Mr. Grimes, the state's intent or the
21 state's -- attempt to use the video is to show that -- to
22 show his intent of showing off.

23 MR. GRIMES: Showing off with the firearm.

24 THE COURT: Play the video one more time.

25 MR. THOMPSON: And Your Honor, I just ---

1 THE COURT: I'm listening, Mr. Thompson.

2 MR. THOMPSON: I would argue that any intent to show
3 off with the firearm is just not relevant to the charge
4 for which Mr. Simmons is charged. He's not charged with
5 showing off with a firearm. In fact, there's no evidence
6 at all that Mr. Swearingen knows that he has a firearm
7 until Mr. Swearingen is shot.

8 (Videotape played.)

9 THE COURT: All right. That's enough. Thank you.

10 All right. Mr. Thompson -- Mr. Thompson, I am going
11 to allow the introduction of the video, introduction and
12 the publication of the video. Do you want his testimony
13 to be proffered to you? Do you believe that ---

14 MR. THOMPSON: Yes, ma'am. I think that's probably
15 appropriate in the -- depending on what he testifies to, I
16 would further argue if there are other allegations of some
17 kind of other crimes, that I ---

18 THE COURT: I'm going to let him proffer --
19 Mr. Grimes, I'm going to ask that you do a quick proffer.

20 MR. GRIMES: Judge, I don't intend to ask him
21 anything else. Substantively -- I mean, I may have done
22 it in fewer questions just now, but...

23 THE COURT: You're asking if he was in the store and
24 that he asked him to leave the store.

25 MR. GRIMES: Uh-huh.

1 THE COURT: Mr. Thompson, I'm going to allow that
2 video in, and Mr. Grimes say the basis of his question is
3 those two elements; is that correct?

4 MR. GRIMES: I'd be happy to ask him or Mr. Thompson
5 can ask him, there's no accusation I'm aware of
6 shoplifting or anything like that.

7 THE COURT: Mr. Thompson, you wish to -- you want to
8 bring the jury back in or you want to have him proffer
9 that testimony, but he's saying he doesn't believe there's
10 any other allegations.

11 MR. THOMPSON: And I would love to get a chance to
12 cross-examination him in proffer if ---

13 THE COURT: We can cross in proffer, if you want to
14 go ahead and do that, Mr. Thompson.

15 IN CAMERA EXAMINATION

16 BY MR. THOMPSON:

17 Q. Mr. Panchal, good morning, or afternoon. Can you
18 tell us what's happening in this video?

19 A. Basically, they just walked in and I was basically
20 saw with that customer, as soon as they're done, I just
21 told them hi, how are you guys? And when I was saying hi,
22 how are you, I just saw the one in the pocket has the
23 little -- like pistol thing. I don't know actually which
24 arm but like there was a -- I can see. So I told him to
25 get out and he walked out, and that's it.

BHAVESH PANCHAL - IN CAMERA EXAMINATION

1 Q. So he didn't flash a gun at you ---

2 A. No, no, no.

3 Q. --- or point a gun at you ---

4 A. No, no, no.

5 Q. --- or pull a gun at you ---

6 A. No, no, no.

7 Q. --- he just -- you noticed that he had a gun in his
8 waistband?

9 A. In a pocket.

10 Q. In a pocket. So you asked him, hey, would you please
11 leave?

12 A. Yeah.

13 Q. And he left?

14 A. Yeah.

15 MR. THOMPSON: I have no further questions. I would
16 again renew my objection. If he's not showing off with a
17 gun, if he just goes in the store and the store owner
18 notices that he has a pistol and asks him to leave and he
19 says okay, fine, I'll leave. I don't see how that's
20 relevant or probative of anything. But I -- I mean -- I
21 certainly defer to the Court and I would -- I don't
22 withdraw the objection, but I understand there's a point
23 at which I need to stop arguing.

24 THE COURT: Mr. Grimes, you want to recross him?

25 Because you've got his testimony that merely noticed. You

BHAVESH PANCHAL - IN CAMERA EXAMINATION

1 want to recross him?

2 IN CAMERA EXAMINATION

3 BY MR. GRIMES:

4 Q. Did you notice the firearm when he lifted his shirt
5 up, or was it at some other time?

6 A. No, it was -- I can see it -- I mean -- it's not
7 like -- I mean, it was just like hanging like that, yeah.
8 So I seen it.

9 Q. Well, let me ask you this way.

10 A. Uh-huh.

11 Q. He came in front of the counter and kind of danced
12 around a little bit, correct?

13 A. I mean, yeah. He was right there hanging, and the
14 two girl was sopping (phonetic).

15 Q. All right. Was it at that point you noticed
16 (inaudible) ---

17 A. Yeah, that's the point I noticed. As soon as after I
18 done with that customer, then I just tell them, hi, guys,
19 how are you? At that time I noticed that one of the --
20 had a firearm.

21 MR. GRIMES: One moment, Your Honor, please.

22 MR. THOMPSON: Your Honor, if I may, I truly again,
23 do not wish to stretch the Court's patient. But I would
24 also that even were Mr. Panchal to testify, I'm not sure
25 that the video is relevant because he says he sees the

1 gun -- you can't see the gun on the video.

2 THE COURT: Mr. Grimes, Mr. Thompson, I do think that
3 after hearing what he's proffered -- the testimony that
4 he's going to give, I do think his testimony is relevant.
5 I do not believe that the video, use of the video is
6 relevant with regards to his testimony. And so I'm going
7 to not allow this video, but I'm going to allow the
8 testimony of Mr. Panchal.

9 MR. GRIMES: Thank you, Your Honor. May we have just
10 another moment.

11 THE COURT: Absolutely.

12 MR. GRIMES: Your Honor, I think we're just going to
13 discontinuing questioning this witness entirely with the
14 jury. I think at this point the only thing he's testified
15 to in front of the jury is that he runs the store and we
16 attempted to enter the video. It's unsuccessfully in. He
17 didn't testify in front of the jury about any behavior.

18 THE COURT: My notes have him as being the owner of
19 In and Out. Mr. Thompson, did he -- to your
20 recollection -- I don't remember that but I don't believe
21 he testified to anything else.

22 MR. THOMPSON: Your Honor, I believe that's correct.
23 I don't believe he was discussing behavior or anything
24 inside the store at the point of which the videos.

25 THE COURT: All right. So it's the state's desire

1 relieve Mr. Panchal.

2 MR. GRIMES: Yes, I think we'll just discontinue
3 questioning him. We'll start with the next witness when
4 the jury comes back in.

5 THE COURT: So before the jury comes back in, I don't
6 find it necessary that I instruct them to disregard. All
7 he testified to was that he owned the store.

8 MR. THOMPSON: Yes, ma'am.

9 THE COURT: Do you find any need to instruct the jury
10 on anything?

11 MR. GRIMES: Judge, I don't see the harm in it
12 anyway.

13 THE COURT: Just to disregard his prior testimony?

14 MR. GRIMES: He didn't testify to anything other than
15 owning the store, really.

16 MR. THOMPSON: Your Honor, we would stipulate to the
17 fact that Mr. Simmons was in the area and he was in the In
18 and Out store before the events that are on State's
19 Exhibit 3.

20 THE COURT: All right. All right, Mr. Panchal.
21 Thank you very much for your services.

22 THE WITNESS: Can I go ahead?

23 THE COURT: You're relieved. Thank you.

24 Mr. Bailiff, if you can bring the jury back in.

25 (The jury entered the courtroom at 2:20 p.m.)

1 THE COURT: All right. Ladies and gentlemen of the
2 jury, we'll allow the state to proceed with their next
3 witness. The witness that testified earlier, you are to
4 disregard that testimony. If you took any notes, please
5 strike that from your notes. That testimony is not to be
6 considered in your deliberations.

7 Mr. Solicitor?

8 MR. GRIMES: State calls Detective Celenia Dobbs.

9 CELENIA DOBBS, after having first being duly sworn,
10 testified under oath as follows:

11 DIRECT EXAMINATION

12 BY MR. GRIMES:

13 Q. Detective Dobbs, you work at Aiken Public Safety,
14 correct?

15 A. I do.

16 Q. And you've been there for a while?

17 A. Yes.

18 Q. About how long is that?

19 A. Six years in law enforcement.

20 Q. Okay. And on August 6th of 2019, were you a
21 detective with Aiken Public Safety?

22 A. Yes.

23 Q. And did you respond to the scene at Laurens and
24 Columbia Avenue?

25 A. Yes.

CELENIA DOBBS - DIRECT EXAMINATION BY MR. GRIMES

1 Q. What was going on when you got there?

2 A. There was several investigators on the scene, and we
3 were all getting our assignments to help with the scene.

4 Q. And did you end up speaking with some folks in
5 relation to this investigation?

6 A. Yes.

7 Q. All right. Do you recall speaking to somebody in
8 particular at that scene?

9 A. Yes.

10 Q. All right. Who was that?

11 A. I spoke with the mother of one of the juveniles
12 there.

13 Q. All right. And whose mother was that?

14 A. Chemondria Douglas.

15 Q. As a result of speaking to her mom, did you have a
16 conversation with Chemondria later?

17 A. Yes.

18 Q. And did you have a conversation with any of the other
19 people involved?

20 A. Yes.

21 Q. And what was that person's name?

22 A. Zamiyah Thompson.

23 Q. Zamiyah Thompson. And did that happen on
24 August 6th?

25 A. Yes.

CELENIA DOBBS - DIRECT EXAMINATION BY MR. GRIMES

1 Q. It wasn't there at the scene, though, right?

2 A. No. It was at our Public Safety headquarters.

3 Q. All right. And so when I say that I talked them, did
4 you meet with them in an interview room or anything like
5 that?

6 A. I did.

7 Q. Okay. And was the goal of that interview to kind of
8 find out about what happened?

9 A. Yes.

10 Q. All right. Well, we got -- we can't say what anybody
11 else said, right, but just as a result of that meeting,
12 did you go to a particular Facebook page to try to find
13 out more about what happened?

14 A. I did.

15 Q. All right. And when you went to that Facebook page,
16 did you recognize a person on that Facebook page?

17 A. Yes.

18 Q. All right. And who -- I guess when you recognized
19 that person, did you immediately know their name?

20 A. I did not.

21 Q. So you recognized them from photographs?

22 A. Yes.

23 Q. And did you work to find out the name of the person
24 that you recognized?

25 A. Yes.

CELENIA DOBBS - DIRECT EXAMINATION BY MR. GRIMES

1 Q. All right. And what was that name?

2 A. Dae'Kwon Simmons.

3 Q. Dae'Kwon Simmons? At the time you recognized him in
4 the photographs, you didn't know his name?

5 A. Correct.

6 Q. Or you didn't -- maybe you knew his name but you
7 didn't know his name, but you recognized him?

8 A. Yes.

9 Q. And did you later have an opportunity to view the
10 video footage from Off Da Chain Seafood in this case?

11 A. Yes.

12 Q. And did that occur after you located the name of the
13 person that you recognized from the Facebook page?

14 A. Yes.

15 Q. All right. Just to be clear, that Facebook page
16 doesn't have anything to do with this event, correct?

17 A. Correct.

18 Q. Okay. So you were familiar with Dae'Kwon Simmons
19 name and you recognized him from the pictures before you
20 watched the Off Da Chain Seafood video; is that correct?

21 A. Correct.

22 Q. And I'm going to show you some still images.

23 MR. GRIMES: State's Exhibits 6, 7, and 8, please.

24 Q. I'm going to show you State's Exhibit 6, 7, and 8.

25 Did you recall those from the video?

CELENIA DOBBS - DIRECT EXAMINATION BY MR. GRIMES

1 A. Yes.

2 Q. And is that the video that you looked at to determine
3 who the person was in the video?

4 A. Yes. I was actually given some still shots.

5 Q. Okay. Maybe not those exact ones but are those
6 similar?

7 A. Yes.

8 Q. Okay. And were you able to recognize the person in
9 those still shots?

10 A. Yes.

11 Q. All right. And who was that person?

12 A. Dae'Kwon Simmons.

13 Q. All right. And is he the defendant in this case?

14 A. Yes.

15 Q. Okay. Please answer any other questions defense
16 counsel has for you?

17 THE COURT: Mr. Thompson?

18 MR. THOMPSON: No questions, Your Honor.

19 THE COURT: All right.

20 MR. THOMPSON: No questions.

21 THE COURT: Thank you. You're relieved, Ms. Dobbs.

22 MS. HALL: State calls Dixie Busbee.

23 DIXIE BUSBEE, after having first being duly sworn,
24 testified under oath as follows:

25 DIRECT EXAMINATION

DIXIE BUSBEE - DIRECT EXAMINATION BY MS. HALL

1 BY MS. HALL:

2 Q. Sergeant Busbee, I'm going to ask you to speak up
3 just a little bit more for us?

4 A. Okay.

5 Q. That's better. Where are you employed?

6 A. Aiken Public Safety.

7 Q. And what is your position there?

8 A. Sergeant in the fire division.

9 Q. And how long have you worked for Aiken Public Safety?

10 A. It will be nine years in June.

11 Q. Were you working with the department of Aiken Public
12 Safety August 6th of 2019?

13 A. Yes, ma'am.

14 Q. What was your position at the time?

15 A. I was corporal on patrol.

16 Q. How did you become involved in this case?

17 A. I was actually heading to an event that the city was
18 helping put on for the community, and the tones dropped
19 for the call, and I headed to the location of the
20 incident.

21 Q. Where did you go?

22 A. I went to Columbia Avenue and Laurens Street.

23 Q. Is that in Aiken county?

24 A. Yes, ma'am, it is.

25 Q. And were you the first to arrive on the scene?

DIXIE BUSBEE - DIRECT EXAMINATION BY MS. HALL

1 A. Yes, ma'am, I was.

2 Q. And from the time you got the call, about how long
3 did it take you to get there?

4 A. A minute, if that. It did not take me long because
5 where my location was when the call came out, it was near
6 the sheriff's office.

7 Q. So you were very close that day?

8 A. Yes, ma'am.

9 Q. And what did you observe when you first got on scene?

10 A. When I first arrived on scene, I noticed the victim
11 laying on his back, his wife was over him, very hysterical
12 and crying and she was trying to stop the wound on the
13 back of his neck.

14 Q. And can you describe how the victim was lying in
15 the -- on the sidewalk along the roadway?

16 A. Yes, he was laying on his back. His hands were down
17 by his -- to his side. He was lifeless. He had no -- his
18 eyes were not moving. He was unresponsive and he was very
19 lifeless.

20 Q. And which way was his head facing? Back into
21 downtown Aiken or out?

22 A. His head was towards the city or downtown Aiken.

23 Q. Towards the In and Out store?

24 A. Yes.

25 Q. Lying on the sidewalk?

DIXIE BUSBEE - DIRECT EXAMINATION BY MS. HALL

1 A. Yep.

2 Q. And was he bleeding when you got there?

3 A. Yes, ma'am, he was.

4 Q. And you stated -- I'm sorry. Did you say whether or
5 not his eyes were open?

6 A. Yes, his eyes were open but there was no movement.

7 They were just ---

8 Q. He wasn't able to track?

9 A. Oh, no. Not at all.

10 Q. Were you able to get a pulse?

11 A. Not at that moment, no, ma'am, I was not.

12 Q. You stated that his wife was there?

13 A. Yes, ma'am.

14 Q. Who else was there on scene?

15 A. The only -- I remember there was a vehicle parked on
16 Columbia Avenue, and I remember the wife stating that the
17 daughter was in the vehicle at that time by the time I had
18 gotten there.

19 Q. Okay.

20 A. And I remember the car being there parked and Ms. --
21 the wife over the body when I first got there.

22 Q. What was the first thing that you did once you kind
23 of figured out who all was there and what was going on?

24 A. First thing I did was provided first-aid and then
25 started asking questions about what had happened and for

DIXIE BUSBEE - DIRECT EXAMINATION BY MS. HALL

1 the other officers that were coming in, you know, to set
2 up a perimeter.

3 Q. Okay. At some point, were you made aware the victim
4 had a gun on him?

5 A. Yes, I was.

6 Q. What did you do?

7 A. I was informed by his wife that he did have a weapon,
8 and that weapon was tucked into the back of his pants in
9 his back and the shirt was over the gun.

10 Q. Okay. And prior to the victim's wife, Jessica,
11 letting y'all know that gun was there, had you seen the
12 gun at all?

13 A. No, ma'am.

14 Q. And where was it located?

15 A. It was in the small of his back in his waistband in
16 the back.

17 Q. Was he laying on top of it?

18 A. Yes. He was.

19 Q. Was the shirt over that gun?

20 A. Yes, the shirt was over the gun.

21 Q. At some point while you were tending to Larry, did
22 EMS show up?

23 A. Yes, ma'am.

24 Q. And where did you go after they showed up?

25 A. After they showed up and they packaged the victim, I

DIXIE BUSBEE - DIRECT EXAMINATION BY MS. HALL

1 followed EMS to Augusta University.

2 Q. Sergeant Busbee, I'm going show you what's been
3 marked State's Exhibit 2. Do you recognize the map on
4 exhibit 2?

5 A. Yes.

6 Q. What is that a map of?

7 A. That is a map of Laurens Street and Columbia Avenue.

8 Q. And what's the road going right down the middle?

9 A. Laurens Street.

10 Q. And the road on the bottom left, what is that?

11 A. Columbia Avenue.

12 Q. And where -- where was the victim lying when you
13 responded?

14 A. Right here. The corner of Laurens Street and
15 Columbia Avenue.

16 THE COURT: Sergeant Busbee, I'm just going to ask
17 you to speak in that mic.

18 A. Yes. He was on the corner of Laurens Street and
19 Columbia Avenue.

20 Q. So the intersection at the very bottom middle of that
21 screen?

22 A. Yes.

23 Q. Sergeant Busbee, I have no further questions for you.
24 Please answer any that the defense may have.

25 THE COURT: Mr. Thompson?

DIXIE BUSBEE - CROSS-EXAMINATION BY MR. THOMPSON

CROSS-EXAMINATION

BY MR. THOMPSON:

Q. You were essentially the first officer to the body, correct?

A. Yes, sir.

Q. Did Mr. Swearingen have a holster on him?

A. I do not remember. All I know is where the gun was.

Q. You remember where the gun was, but you don't remember whether it had a holster on it?

A. No. I did not remove the gun.

Q. Who did remove the gun?

A. Officer Hanson.

Q. Thanks. No further questions.

THE COURT: Redirect?

MS. HALL: No, Your Honor.

THE COURT: All right. This witness is excused.

Thank you.

Call your next witness.

MS. HALL: State calls Officer Katherine Breeden.

KATHERINE BREEDEN, after having first being duly sworn, testified under oath as follows:

DIRECT EXAMINATION

BY MS. HALL:

Q. That was going to be my first question. Your last name now is Breeden?

KATHERINE BREEDEN - DIRECT EXAMINATION BY MS. HALL

1 A. Yes, ma'am.

2 Q. Back when this incident occurred, what was your last
3 name?

4 A. Hanson.

5 Q. You've been married since?

6 A. Yes, ma'am.

7 Q. Where are you currently employed?

8 A. Greenville County Sheriff's Office.

9 Q. And how long have you been there?

10 A. Since January.

11 Q. And where were you employed prior to that?

12 A. Aiken Department of Public Safety.

13 Q. How long did you work at the Aiken Department of
14 public Safety?

15 A. I started in October of 2017.

16 Q. And what was your position August 6th, 2019?

17 A. I was on Charlie shift in the patrol position.

18 Q. And how did you become involved in this case?

19 A. I was one of the first responding officers. I was
20 right in front of the sheriff's office whenever tones
21 dropped, about to change shift.

22 Q. And where did you go once you got the call?

23 A. Directly to the scene, which was at the corner of
24 Laurens Street and Columbia.

25 Q. And is within Aiken county?

KATHERINE BREEDEN - DIRECT EXAMINATION BY MS. HALL

1 A. Yes, ma'am.

2 Q. Do you know about how long it took you to get there?

3 A. It -- maybe a minute or two. It wasn't long. It's
4 less than a mile, probably.

5 Q. And what did you see once you arrived on scene?

6 A. When I first arrived on scene, I saw Sergeant Busbee
7 providing first-aid to the victim. There was a couple of
8 other officers behind me. We all started staggering our
9 cars, making sure there wasn't an active shooting scene.
10 I directly went to Sergeant Busbee to try to assist her in
11 any way that I could.

12 Q. Was the -- was the victim's wife with him?

13 A. She was. She was laying on his left side, kind of
14 sitting on her knees. Her hands were covered in what I
15 believed his blood?

16 Q. Was she rendering aid to him?

17 A. She wasn't at the time. Sergeant Busbee had already
18 taken that over by the time I made it to her.

19 Q. Officer Breeden, I'm showing you what's been marked
20 State's Exhibit 9. Do you recognize this image?

21 A. Yes, it's from my body camera footage.

22 Q. Okay. And is this a fair and accurate depict of what
23 your body camera recorded?

24 A. Yes.

25 Q. Everything?

KATHERINE BREEDEN - DIRECT EXAMINATION BY MS. HALL

1 A. That was probably right whenever I went up to
2 Sergeant Busbee and asked her what she needed.

3 MS. HALL: Your Honor, at this time, state moves to
4 introduce State's Exhibit 9 into evidence.

5 THE COURT: Any objection?

6 MR. THOMPSON: Objection to relevance.

7 MS. HALL: This may be a matter we need to take up
8 outside the jury, Your Honor.

9 THE COURT: All right. Ladies and gentlemen of the
10 jury, I'm going to ask that you exit one more time.

11 Mr. Bailiff, can you escort the jury. you.

12 (The jury left open court at approximately 2:41 p.m.)

13 THE COURT: All right, Madam Solicitor. There's a
14 objection to relevance.

15 MS. HALL: Yes, Your Honor. This photo depicts the
16 victim's wife, Larry Swearingen's wife, Jessica,
17 immediately when law enforcement gets there, her hands are
18 covered in his blood. We also have photographs that we
19 intend to introduce showing Larry Swearingen's pants that
20 do not have any blood on them. Your Honor, the defense
21 has indicated they're going to raise self-defense as a
22 defense. That being said, we have to disprove
23 self-defense beyond a reasonable doubt. If Larry
24 Swearingen's gun was out at the time he was shot, there
25 would potentially be some argument that Jessica could have

KATHERINE BREEDEN - DIRECT EXAMINATION BY MS. HALL

1 hid the gun in his waistband before law enforcement got
2 there. The fact her hands are covered in blood and his
3 genes are not, there's not blood on the gun, that would be
4 an indication that would not be possible. So it's the
5 state's burden to prove the defense -- of self-defense did
6 not exist beyond a reasonable doubt. And that is the
7 basis.

8 THE COURT: Mr. Thompson?

9 MR. THOMPSON: Your Honor, I would stand on my
10 earlier objection to relevance, especially since it is a
11 person with blood on their hands. It potentially goes to
12 inflame passions of the jury and again I would -- I would
13 argue it's more prejudicial than it is probative, but I
14 understand the state's argument.

15 THE COURT: All right. Thank you Mr. Thompson. I'll
16 allow it.

17 MS. HALL: Thank you, Your Honor.

18 THE COURT: You can bring the jury back in.

19 (The jury entered the courtroom at 2:44 p.m.)

20 THE COURT: Madam Solicitor?

21 MS. HALL: Thank you, Your Honor.

22 Q. Officer Breedon, I think where we left off, you
23 indicated that the victim's wife was rendering aid to her
24 husband and did she have blood on her hands?

25 A. Yes, her hands were soaked.

KATHERINE BREEDEN - DIRECT EXAMINATION BY MS. HALL

1 Q. I'm going to show you State's Exhibit 9. Is this a
2 photograph of your body camera from the day of the
3 incident?

4 A. Yes, it is.

5 Q. Is it a fair and accurate depiction of that?

6 A. Yes, it is.

7 Q. Your Honor, at this time, state moves to enter
8 State's Exhibit 9 into evidence?

9 MR. THOMPSON: We renew our prior objection.

10 THE COURT: Objection overruled. Will allow it.

11 MS. HALL: Permission to publish, Your Honor?

12 THE COURT: Yes.

13 (State's Exhibit 9 was admitted into evidence.)

14 Q. Officer Breedon, is this an image from your body
15 camera?

16 A. Yes, it is.

17 Q. From when you were responding and aiding the victim?

18 A. Yes, ma'am.

19 Q. And who is pictured to the right of that picture in
20 the right?

21 A. That's Jessica Swearingen, the victim's wife.

22 Q. And what is that on her hands?

23 A. His blood.

24 Q. And who is that on the left side?

25 A. That's Sergeant Busbee rendering aid.

KATHERINE BREEDEN - DIRECT EXAMINATION BY MS. HALL

1 Q. Officer Breedon, what was the victim's condition when
2 you arrived?

3 A. He was laying lifeless in the roadway right next to
4 the sidewalk. His eyes were open, his pupils weren't
5 responsive, his face was already turning blue. He never
6 moved whenever I was there.

7 Q. No response?

8 A. No response, and I couldn't obtain a pulse.

9 Q. Okay. Just so we're clear, you said you could not?

10 A. No, I could not feel for one. If there was one, it
11 was faint.

12 Q. Could not feel a pulse?

13 A. Uh-huh.

14 Q. And while you were there rendering aid, did Larry's
15 wife provide you information about his weapon?

16 A. She did, as well as some suspect information.

17 Q. Okay. And did you locate the gun on Larry
18 Swearingen?

19 A. I did. It was located on his right side. He was
20 actually laying on it so it was kind of difficult for me
21 to obtain from his waistband.

22 Q. Okay. Was it tucked in the back of his pants?

23 A. Yes, it was, and I actually had to tug on his shirt a
24 few times to be able to access it.

25 Q. So it was in his pants and his shirt was pulled over

1 it?

2 A. Yes, it was.

3 Q. So it was in there secure? It didn't fall out
4 easily. It wasn't laying there when you got there?

5 A. No, it was not.

6 Q. When you pulled the gun from Larry's pants, what did
7 you do with it?

8 A. I passed it off to Lieutenant Faulkner.

9 Q. At some point while you were there, did EMS respond?

10 A. They did. They were there fairly quickly.

11 Q. What did you do once EMS arrived?

12 A. I assisted with taking his shirt off so they could
13 apply leads. Once they realized he had a pulse, they
14 loaded him on a stretcher and I rode in and assisted the
15 EMT until a paramedic could get onboard.

16 Q. And what was Larry's condition going into the
17 balance?

18 A. It remained the same. We actually ended up putting
19 on a thumper machine, which does C P R for you on the way
20 because they lost the pulse on the way to the ambulance --
21 on the way to the hospital?

22 Q. So he was still lifeless in the ambulance?

23 A. He was.

24 Q. And you actually went to the hospital?

25 A. Yes, ma'am.

KATHERINE BREEDEN - DIRECT EXAMINATION BY MS. HALL

1 Q. Okay. And did you collect any items of evidence?

2 A. The nursing staff had bagged his clothes at the time.

3 And I took them back to headquarters and dropped them off.

4 Q. Okay. You took those clothes back to headquarters.

5 Did you do anything other than transport those clothes?

6 A. No. I never even opened the bag.

7 Q. Never tampered with them, never did anything?

8 A. No, ma'am.

9 Q. I have no further questions for you. Please answer
10 any defense may have.

11 THE COURT: Mr. Thompson?

12 CROSS-EXAMINATION

13 BY MR. THOMPSON:

14 Q. I don't want to call you by the wrong name. It's
15 Officer Breedon?

16 A. Yes, sir.

17 Q. And you have no firsthand knowledge of the events at
18 the scene prior to your arrival?

19 A. No, sir.

20 Q. No knowledge of when Ms. Swearingen may have started
21 any first-aid?

22 A. No, sir.

23 Q. No knowledge of the condition or placement of
24 Mr. Swearingen's effects prior to you getting on the
25 scene?

1 A. Aside from what I found when I was there, no.

2 Q. You removed the gun from the body?

3 A. Correct.

4 Q. You had to tug on his shirt because he was lying on
5 top of it?

6 A. Yes.

7 Q. Did you remove any other items from his body?

8 A. No, except for his shirt, his clothing when we cut
9 them off, but that was it.

10 Q. Did he have a holster?

11 A. Not that I could see. Like I said, it was -- he was
12 laying on the gun itself so it was very difficult to get
13 out from underneath.

14 Q. And to your knowledge, there is no holster in
15 evidence?

16 A. Not that I know of.

17 Q. Fair?

18 MR. THOMPSON: Beg the Court's indulgence.

19 I have no further questions. Thank you.

20 THE COURT: Redirect?

21 MS. HALL: No, Your Honor.

22 THE COURT: All right. This witness is excused.
23 Thank you.

24 MS. HALL: State calls Dr. Kelly Rose. and Your
25 Honor, I believe she's outside the room, so it may take

1 state rests, we'll hear motions in the morning again.

2 MR. THOMPSON: We have a couple motions and then our
3 witness is being transported. That should be -- I will
4 inform the Court, I still don't know yet whether or not my
5 client is going to testify or not, but I hope to determine
6 that very soon.

7 THE COURT: All right. I will -- normally I ask
8 before you present.

9 MR. THOMPSON: Yes, ma'am.

10 THE COURT: And we'll cross that bridge when we get
11 it to.

12 MR. THOMPSON: Yes, ma'am.

13 THE COURT: All right. Bring the jury back in.

14 (The jury entered the courtroom at 3:11 p.m.)

15 THE COURT: All right, ladies and gentlemen of the
16 jury. Madam Solicitor, are you ready to proceed?

17 MS. HALL: Yes, ma'am. State calls Dr. Kelly Rose.

18 KELLY ROSE, M.D., after having first being duly
19 sworn, testified under oath as follows:

20 DIRECT EXAMINATION

21 BY MS. HALL:

22 Q. Dr. Rose, where are you employed?

23 A. Newberry Pathology Group, in Newberry, South
24 Carolina.

25 Q. And what is your position there?

KELLY ROSE, M.D. - DIRECT EXAMINATION BY MS. HALL

1 A. I'm the forensic pathologist but I also own the
2 business.

3 Q. And how long have you been in that position?

4 A. Since November of 2018.

5 Q. And can you explain what a forensic pathologist is?

6 A. Yes. So you can understand forensic pathology, I
7 want to explain pathology to begin with. Pathology is the
8 study of diseases. There's two main types, anatomical and
9 clinical. Anatomical diagnoses disease looking at
10 tissue -- you can look at a liver with your eyes and then
11 you can look at it under a microscope. Clinical is
12 concerned with diagnosing disease through fluids, so like
13 blood. Those are the main fundamental branches of
14 pathology. Once you're board certified in that and have
15 trained in that, you go on and pick a specialty, and
16 forensic pathology is a subspecialty of pathology that the
17 main goal is to determine cause and manner of death, so
18 you basically diagnose the diseases, but then you
19 determine what it was that led to someone's death.

20 Q. And can you describe your educational background and
21 training?

22 A. Yes, I went to college at College of Charleston, then
23 I went to medical school at the Medical University of
24 South Carolina. I went to med school there four years,
25 then I began my pathology residency. I started it there

KELLY ROSE, M.D. - DIRECT EXAMINATION BY MS. HALL

1 and then transferred to Emory in Atlanta and finished
2 residency and that was the anatomical and clinical part.
3 And then from there, I stayed on through Emory to do a
4 forensic fellowship at Fulton County Medical Examiner's
5 office in Atlanta.

6 Q. Dr. Rose, about how many autopsies do you perform in
7 a year?

8 A. Last year, I performed 1,074, and the year before it
9 was 780, and -- yeah.

10 Q. Plenty of autopsies?

11 A. Yes.

12 Q. And have you testified before in courts of South
13 Carolina as an expert witness?

14 A. I have.

15 Q. How many times?

16 A. Five, more than five, less than ten.

17 MS. HALL: Your Honor, at this time, the state moves
18 to introduce Dr. Rose in as an expert in the field of
19 forensic pathology.

20 MR. THOMPSON: No objection, Your Honor.

21 THE COURT: All right. I will find that subject
22 matter is beyond the ordinary knowledge of the jury and
23 that this expert has the requisite knowledge and skill in
24 order to be qualified (inaudible) testimony she is
25 (inaudible) and will deem her as an expert witness.

KELLY ROSE, M.D. - DIRECT EXAMINATION BY MS. HALL

1 MS. HALL: Thank you, Your Honor.

2 Q. Dr. Rose. While at Newberry Pathology, did you
3 report an autopsy on Larry Swearingen?

4 A. I did.

5 Q. And what was the date of that examination?

6 A. It was August 14th, 2019.

7 Q. And where was that autopsy performed?

8 A. It was performed in the morgue at Newberry Memorial
9 Hospital in Newberry, South Carolina.

10 Q. Can you describe how you received his body?

11 A. The Aiken county coroner gets a call about a death.
12 They have transport that will bring the body to us. We
13 receive them in the morgue and -- in plastic body bags
14 that are secured and labeled with proper identifiers.

15 Q. And is that how you received Larry Swearingen body in
16 this case?

17 A. Yes.

18 Q. And did you perform an autopsy in this case as you
19 ordinarily do?

20 A. I did.

21 Q. And could you please explain the difference between
22 the manner of death and cause of death?

23 A. Yes. Cause of death is determining the what. What
24 killed this person? The disease, the injury, the
25 accident, et cetera. The manner involves the how. So we

1 know what killed them, now how did this occur?

2 Q. And did you reach a conclusion to a reasonable degree
3 of medical certainty as to the manner of Larry
4 Swearingen's death?

5 A. I did.

6 Q. And what was that?

7 A. Homicide.

8 Q. And as to the cause of his death?

9 A. It was perforation of the spine due to a gunshot
10 wound.

11 Q. And can you describe the gunshot wound, location and
12 pathway?

13 A. Sure. In this instance, the bullet entered the back
14 of the neck on the right, very high up. Traveled through
15 the soft tissues, musculature, vessels back there,
16 encountered the first and second cervical vertebra, which
17 enclose the spinal cord. Continued through the cervical
18 vertebra, the first and second -- those are the first and
19 second highest, right under the head. And went through
20 the oral cavity, all the spaces that are back there. Then
21 it went through the cheek and came out over here.

22 Q. And when you perform autopsies, do you take
23 photographs of those injuries?

24 A. I do.

25 Q. And would reviewing those photographs help you in

KELLY ROSE, M.D. - DIRECT EXAMINATION BY MS. HALL

1 describing these injuries?

2 A. It would be a good visual aid.

3 Q. Dr. Rose, I'm showing you what's been previously
4 marked as state's 21, 22, and 23?

5 A. Okay.

6 Q. Do you recognize these photos?

7 A. I do.

8 Q. Were these photos taken during your autopsy?

9 A. They were.

10 MS. HALL: Your Honor, at this time, state moves to
11 introduce state's 21, 22, and 23 into evidence.

12 MR. THOMPSON: Your Honor, I would like to see those.
13 No objection, Your Honor.

14 THE COURT: All right. So admitted.

15 (State's Exhibits 21, 22, and 23 were admitted into
16 evidence.)

17 MS. HALL: Your Honor, permission to publish the
18 photos to the jury?

19 THE COURT: Yes, ma'am.

20 Q. Dr. Rose, this is State's Exhibit 21. You can
21 explain what this is an image of?

22 A. This is an image of the entrance wound on the back of
23 the neck. You see the hole and the margins are clean. It
24 almost looked punched out. That's a classic entrance
25 gunshot wound.

1 Q. And this is -- that bullet wound is to the right of
2 his neck?

3 A. Sure is.

4 Q. And state's 22?

5 A. Okay. It's hard for me to see from here.

6 Q. I'm sorry. I'll give you the actual ---

7 A. I can come down, if that's allowed?

8 Q. I can show you -- I'll let you hold these pictures.

9 A. Or I can walk down there if that's allowed. Okay.
10 Yes, this was the exit wound, and exit wounds instead of
11 round and circular, in general have several shapes. Slit
12 like is one. Stellate, kind of looks like a star. In
13 this case, it was a slit-like exit wound, and that's what
14 you're seeing right above the second five on that number
15 below the ear.

16 Q. State's 23?

17 A. Okay. This is a lateral x-ray of the head and neck
18 and this image is good to explain, you know, you think of
19 a neck, here's your neck and here's your head. However,
20 the upper aspect of your neck, the vertebra, are up here
21 by your teeth. You don't really think of it that way. So
22 this is a good picture to explain how those upper vertebra
23 are so close to the head. And that's what you see here.
24 I could point out ---

25 Q. If I could get you to step down ---

KELLY ROSE, M.D. - DIRECT EXAMINATION BY MS. HALL

1 A. I'd love that. That would be a lot easier for me.

2 Q. You can go up on the wall and just point generally
3 where (inaudible) entered?

4 A. Okay. Here is the skull. Your first and second
5 vertebra, the second vertebra has the (inaudible)
6 projection. The first vertebra fits on top of it like
7 that. So this gunshot, this bullet, entered right in this
8 area, hitting both. Because they're interconnected where
9 they're up there. And it continues and hits the
10 epiglottis which is the funny thing down your throat that
11 keeps you from choking. So it injured the epiglottis,
12 continued through this region and out. And it came out
13 higher down here, right down here. That's -- to me it
14 looks like where your ear is, because you have your ear
15 here, it's coming out around there. Right in here.

16 Q. You can go ahead and have a seat.

17 A. Okay.

18 Q. Thank you, Dr. Rose. Now that we know the location
19 of the bullet entry, were you able to determine the
20 direction of travel?

21 A. Uh-huh, uh-huh. It went in the back, came out the
22 front, so it's moving back to front and right to left. It
23 didn't go up significantly or go down significantly.

24 Q. But it entered from behind?

25 A. It entered from behind and exited out here.

KELLY ROSE, M.D. - DIRECT EXAMINATION BY MS. HALL

1 Q. And can you explain the difference between contact,
2 intermediate, and distance (inaudible)?

3 A. They all have to do with the distance of the barrel
4 of the gun to the object that it shoots. So a close --
5 well, you'll have contact first. That's when the gun is
6 held directly in contact with the object. And in those
7 cases, you get soot, but it's down in the wound. You get
8 a really good muzzle imprint so you see what the tip of
9 the gun looked like on the skin. And it sears the
10 margins. It's so fast and so hot that it actual sears the
11 margins of the wound. Close range is just -- not in
12 contact, but it's a little bit further back and it -- a
13 lot of soot will be deposited. Depending on the ammo, it
14 can be a ton of soot gets deposited on the skin, which is
15 just gunshot residue. After that, you go to intermediate
16 range, and intermediate range gunshots are a little bit
17 further away but they're still close enough that some of
18 the gunshot residue can actually hit the skin and abrades
19 it. So you get a tiny little flex. It looks like little
20 hemorrhagic flex and you can't wipe it off. So that's
21 intermediate. Then we go to distance. Distance is far
22 enough away that it doesn't show stippling. It doesn't
23 show soot and it doesn't show contact -- a muzzle imprint.

24 Q. And what was it in this case?

25 A. In this case I did not see soot, I did not see

KELLY ROSE, M.D. - DIRECT EXAMINATION BY MS. HALL

1 stippling, and I did not see a muzzle imprint. So it was
2 consistent with a distant wound.

3 Q. And Dr. Rose, can you explain how this gunshot wound
4 explained Larry Swearingen's death?

5 A. The cervical vertebra are very close to the brain
6 stem, so you have brain stem and it turns into the
7 cervical spinal cord. And the higher up you go, the more
8 damage it can cause to the body. You take a shot through
9 the brain stem, they're uniformly lethal and you drop
10 immediately. So we're only a little bit farther down than
11 the brain stem, this shot. So what happens is, some of
12 the nerves that innervate the vital organs of the body
13 come out higher so they would have been okay, but the
14 nerves that take care of your diaphragm being able to
15 breathe, regulating your heart rate are immediately
16 incapacitated ---

17 Q. Is that what happened in this case?

18 A. That's what happened in this case. So his heart
19 stopped beating, he wasn't able to breathe on his own.
20 When you can't breathe and your heart can't pump,
21 you're -- immediately your brain needs oxygen. It becomes
22 starved for oxygen. It starts to swell and then you reach
23 a point of no return.

24 Q. And how quickly would all of this start to shut down?

25 A. It depends on the individual and the wound, but in

1 this case, when EMS responded, he had already stopped
2 breathing and had no pulse. So this was instant -- well,
3 this was very fast, I'll say.

4 Q. And you talked about his heart and breathing. What
5 else would have been affected by this shutting down?

6 A. So if you can't breathe because your diaphragm is
7 paralyzed, you can't move your arms, you can't move your
8 legs. 70 percent of spinal cord injuries this high result
9 immediately in a complete spinal cord injury, which means
10 you can't feel and you can't move below the level of
11 injury. Christopher Reeves had an injury at this spot.
12 Now, he didn't have a bullet fly through his neck up
13 there, he just fractured it. And he was -- there was
14 immediate help available for him. He had lots of money at
15 his disposal. He had all kinds of experimental
16 treatments, but you saw him go from Superman to being in a
17 wheelchair having to blow his way around and then dying
18 anyway. So that's the best case scenario in a cervical
19 neck at this level.

20 Q. Anything below the injury would have been paralyzed?

21 A. Yes.

22 Q. Within seconds?

23 A. In this case, yes. Sometimes it takes 30 minutes,
24 but in this case it was faster.

25 Q. Okay. And was this injury fatal?

1 A. Yes.

2 Q. Was there any sort of medical intervention, surgery,
3 anything that could have reversed the damage that was done
4 by this gunshot wound?

5 A. No, not at this point.

6 Q. And did you have an opportunity to review Larry
7 Swearingen's medical records prior to his death?

8 A. During and after.

9 Q. The medical records that were accumulated prior to
10 his death?

11 A. Before I finalized my -- yes, I have had access to
12 them.

13 Q. Okay. So you were aware that he was on life support?

14 A. Uh-huh.

15 Q. And if you could generally explain the function of
16 life support for someone who sustains this type of injury?

17 A. So the diaphragm is not working. You're not able to
18 breathe, so you have to be ventilated. So you have to
19 have a machine breathe for you. Regarding the heart, if
20 they're able to get a heartbeat started again, it can't
21 regulate itself, and it tends to be really slow and stop.
22 So they would have been able to give medicines, however,
23 that might make the heart beat more regularly. You can't
24 maintain your blood pressure. They would have had to
25 treat them with pressors is what we call them to maintain

1 blood pressure. So it's complete artificial process to
2 keep basically oxygen and oxygenated blood flowing through
3 the body, usually to give the family time to, you know,
4 come to terms with things and in a case of an organ donor,
5 to keep those organs alive long enough to get it into a
6 transplant person.

7 Q. So it's considered normal for someone to stay on life
8 support so that they can then have their organ donated?

9 A. Yes. Yes. Or else the organs are not going to work.

10 Q. I have no further questions. Please answer any
11 defense may have?

12 A. Okay. Thanks.

13 THE COURT: Mr. McKellar?

14 MR. McKELLAR: Yes, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. McKELLAR:

17 Q. Good afternoon, Dr. Rose. How are you?

18 A. Good.

19 Q. From the entrance and the exit wound, you were able
20 to determine which way the victim was turned the moment he
21 was shot?

22 A. No.

23 Q. No?

24 A. Unh-unh.

25 Q. Okay. So you don't know his position in relation to

1 the shooter?

2 A. I know that the bullet went in here (indicating) and
3 came out here (indicating). If he was doing a cartwheel,
4 I would not know what position he was in.

5 Q. Okay. You don't know why he was shot?

6 A. I don't.

7 Q. Okay. You don't know the state of mind of the victim
8 or the defendant at the time of the shooting?

9 A. I sure don't.

10 MR. McKELLAR: I have no further questions.

11 THE COURT: Any redirect.

12 MS. HALL: No further questions, Your Honor.

13 THE COURT: All right. Thank you.

14 THE WITNESS: Thank you.

15 THE COURT: This witness is excused. Thank you,
16 Dr. Rose.

17 THE WITNESS: Thank you.

18 MR. THOMPSON: Your Honor, before Dr. Rose is --

19 THE COURT: You need a sidebar.

20 MR. THOMPSON: Yes, ma'am.

21 THE COURT: Dr. Rose, if you could wait one moment.

22 (WHEREUPON, a bench conference was held in the
23 presence but not within the hearing of the jury.)

24 THE COURT: All right. The witness is excused at
25 this time.

TRACEY THROWER - DIRECT EXAMINATION BY MR. GRIMES

1 MR. GRIMES: State calls Lieutenant Tracey Thrower.

2 TRACEY THROWER, after having first being duly sworn,
3 testified under oath as follows:

4 DIRECT EXAMINATION

5 BY MR. GRIMES:

6 Q. Lieutenant Thrower -- it is lieutenant, correct?

7 A. Correct.

8 Q. Where are you employed?

9 A. I'm employed by the South Carolina Law Enforcement
10 Division also known as SLED in the forensic services
11 building in the firearm and tool mark department.

12 Q. And how long have you been there?

13 A. Just over 22 years.

14 Q. And in that time period, have you trained and studied
15 in tool marks analysis and investigation?

16 A. Yes, sir.

17 Q. And have you testified before in circuit courts in
18 South Carolina as a tool marks examiner expert?

19 A. Yes, sir, I believe around 62 times.

20 MR. GRIMES: At this time, the state would move to
21 admit Lieutenant Thrower as an expert in tool marks
22 examination.

23 MR. THOMPSON: No objection.

24 THE COURT: All right. At this time, I will rule
25 that the subject matter is beyond the ordinary scope and

TRACEY THROWER - DIRECT EXAMINATION BY MR. GRIMES

1 knowledge of the jury, and that the expert has the
2 requisite knowledge and skills in order to qualify and I
3 will also find that the substance of the testimony is
4 deemed (inaudible) and so for those reasons I will deem
5 him an expert witness.

6 MR. GRIMES: Thank you.

7 Q. If you could explain to us what toolmarks analysis is
8 and specifically about toolmarks analysis for bullet shell
9 casings?

10 A. Essentially toolmark analysis or firearms analysis
11 deals with when two objects come into contact with each
12 other, the harder object will leave markings of itself on
13 the softer object. So for like a crowbar versus a piece
14 of wood in a door frame, for instance. In the role of
15 firearms, the firearm itself is the harder object which is
16 the tool and the piece of ammunition, whether it's a
17 bullet or cartridge case is the softer object that will
18 receive the markings.

19 Q. And did you do a toolmarks examination with regard to
20 shell casings in -- in the case we're here about today?

21 A. Yes, sir, I did.

22 Q. All right.

23 MR. GRIMES: Just a moment, Your Honor.

24 Q. I'm going to show you State's Exhibits 24, 25, and

25 26. Do you see the number on the outside of the

TRACEY THROWER - DIRECT EXAMINATION BY MR. GRIMES

1 envelopes?

2 A. State's Exhibit 24, yes, sir, is SLED item L 19,
3 20180, item two. State's Exhibit 25 is SLED lab number L
4 19, 20180, item one. State Exhibit 26 is SLED lab number
5 L 19, 20180, item three.

6 Q. All right. Is that the SLED lab number for this
7 case?

8 A. Yes, it is.

9 Q. And are those the shell casings that you would have
10 compared in this case?

11 A. Yes, sir, they are.

12 Q. And the shell casings that you compared in this case,
13 what is significant to know about those shell casings?

14 A. Based on the microscopic comparisons of the firing
15 pin impressions, all three of these cartridge cases,
16 State's Exhibit 24, 25, and 26 were fired by the same
17 firearm.

18 Q. Let me ask you with regard to -- there are revolver
19 firearms and there are semiautomatic firearms; is that
20 correct?

21 A. Yes, sir.

22 Q. For pistols, and will a semiautomatic firearm -- what
23 does it do with the shell casing after the bullet's been
24 fired?

25 A. During firing, when you pull the trigger, firing pin

TRACEY THROWER - DIRECT EXAMINATION BY MR. GRIMES

1 strikes the primer, which is the ignition component. When
2 it crushes the primer, sparks and flames will ignite the
3 gun powder. The gun powder causes the -- the powder
4 starts to burn, which creates gas and pressure inside the
5 cartridge case, which then pushes the bullet down the
6 barrel. Basic physics, for every action, there's an equal
7 but opposite reaction. The pressure pushing the bullet
8 down the barrel is also putting equal pressure trying to
9 shove the slide of the gun, the top piece, backwards. As
10 the slide comes back, the extractor removes the cartridge
11 case from the chamber. The cartridge case strikes the
12 ejector, which causes the cartridge case to pivot and it
13 is thrown out of the ejection port. As the slide comes to
14 the rear, the magazine will force the next round up into
15 the chamber in front of the slide. The recoil spring is
16 fully compressed. The firing mechanism being a hammer or
17 a striker will be cocked. The slide then, under pressure
18 from the recoil spring, moves forward. It strips the next
19 cartridge from the magazine, loads it into the chamber,
20 releasing the trigger resets the -- resets the trigger and
21 pulling the trigger a second time will cause it to fire
22 and this process repeats every time the trigger is pulled
23 until the firearm is out of ammunition.

24 Q. So when a semiautomatic handgun is fired, the shell
25 cartridge casing, which is what those are, correct?

TRACEY THROWER - DIRECT EXAMINATION BY MR. GRIMES

1 A. Correct.

2 Q. Leaves the gun into the air and then -- where would
3 it generally go?

4 A. Generally is found in close proximity to where the
5 gun was fired.

6 Q. And so if -- if a bullet was in the chamber of that
7 gun, a semiautomatic gun and did not fire, what would
8 happen if you pulled that slide back?

9 A. If an unfired cartridge or a misfired cartridge was
10 in the chamber after the trigger was pulled, in order to
11 fire again, you must get that cartridge out of the
12 chamber, reset the firing mechanism, and load a new
13 cartridge into the chamber. The way you do this is you
14 pull the slide to the rear, which compresses the recoil
15 spring, resets the hammer or the striker, the extractor
16 pulls the unfired or misfired cartridge out of the
17 chambers, ejects it, and throws -- drops the cartridge on
18 the ground. Letting go of the slide, recoil slide --
19 recoil spring pushes the slide forward, strips the next
20 round from the magazine, loads it into the chamber,
21 releasing the trigger and pulling again, it's ready to
22 fire a second time.

23 Q. So in that instance, would an unfired bullet be
24 laying on the ground?

25 A. Yes, sir.

TRACEY THROWER - DIRECT EXAMINATION BY MR. GRIMES

1 Q. And just for clarity, the only thing that you
2 examined in this case were -- I guess what we refer to as
3 spent cartridge casings, but these are the fired cartridge
4 casings; is that correct?

5 A. Correct. The three fired cartridge cases is all I
6 examined.

7 MR. GRIMES: Please answer any questions the defense
8 counsel has for you.

9 MR. McKELLAR: Your Honor, we have no questions.

10 THE COURT: All right. May this witness be excused?
11 Are you done with this witness, Solicitor?

12 MR. GRIMES: I'm sorry, Your Honor, yes.

13 THE COURT: You may call your next witness.

14 MS. HALL: State calls Detective Colindres.

15 CARLOS COLINDRES, after having first being duly
16 sworn, testified under oath as follows:

17 DIRECT EXAMINATION

18 BY MS. HALL:

19 Q. Detective Colindres, where are you currently
20 employed?

21 A. With the Aiken Department of Public Safety.

22 Q. And what's your position there?

23 A. I'm a detective. My primary duty is narcotics
24 investigations, but I'm also a general crimes
25 investigator. And that consistent of financial crimes,

1 property crimes, violent crimes, and I'm also a member of
2 the ATF's regional anti -- gang task force where I'm a
3 deputized federal agent with the ATF.

4 Q. And how long have you held your position with Aiken
5 Public Safety?

6 A. This position was for seven years.

7 Q. And total years in law enforcement?

8 A. After I was honorably discharged from the Army in
9 2003, I joined the department in 2004. Spent my first ten
10 years in the patrol division. I was a field training
11 officer, a defense tactics instructor, special response
12 team member, and I did a very short stint with the Aiken
13 County bloodhound tracking team.

14 Q. And how did you become involved in this case?

15 A. I was the on call investigator for that Dae.

16 Q. And when you received the call, where did you go?

17 A. To the intersection of Laurens Street and Columbia
18 avenue.

19 Q. Is that within Aiken county?

20 A. Yes.

21 Q. And what did you do once you arrived on scene?

22 A. Very chaotic situation. You've got officers trying
23 to find witnesses and possible suspects. We had Detective
24 Dobbs conducting some interviews. We received some
25 assistance from the ATF task force in Aiken county,

1 sheriff's office. I had been advised the victim was on
2 the way to the hospital.

3 Q. So the victim was not there on the scene once you
4 arrived?

5 A. No.

6 Q. Okay. And after you kind of assessed the scene, what
7 was your next step as the investigator on the case?

8 A. Crime scene processing where I'm processing,
9 collecting evidence and taking photographs of the crime
10 scene.

11 Q. At some point, did you look into getting video
12 surveillance for the surrounding businesses?

13 A. Yes, I did.

14 Q. Which businesses were those?

15 A. The Off Da Chain Seafood restaurant and the In and
16 Out store.

17 Q. And were you given the videos for the Off Da Chain
18 Seafood restaurant?

19 A. Yes.

20 Q. And when did you receive that?

21 A. I believe later that night.

22 Q. The same day?

23 A. Yes.

24 Q. Later that night? You mentioned that you had
25 photographed the scene. What all did you photograph?

CARLOS COLINDRES - DIRECT EXAMINATION BY MS. HALL

1 A. I photographed the immediate area. There was blood
2 on the pavement where the victim was lying. We searched
3 the area for any other kind of evidence.

4 Q. Did you locate any other evidence of value there?

5 A. No. Not in that area, no.

6 Q. Did you locate any shell casings in the area where
7 the victim's body was?

8 A. No. I was advised that there were shell casings over
9 by the restaurant itself, the Off Da Chain Seafood
10 restaurant.

11 Q. And did you observe those shell casings?

12 A. Yes. They were marked with Lieutenant Faulkner's
13 business cards. I put our evidence markers on them and
14 photographed in those areas and then collected the shell
15 casings. And during that time, I was also advised there
16 was a -- what we call a live round that was in the ground.
17 The shell casings and the live round were .22 caliber.

18 Q. Detective Colindres, I'm showing you what's
19 previously been marked as state's 24 through 27. If you
20 could look at the markings on those packages and tell me
21 what they are?

22 A. Yes, these are the three shell casings, the spent
23 shell casings, and this is the live round, the bullet.

24 Q. And that -- the live round is Exhibit 27?

25 A. Yes.

CARLOS COLINDRES - DIRECT EXAMINATION BY MS. HALL

1 Q. And how do you know that these are the shell casings
2 that you collected?

3 A. That's my handwriting on the envelopes.

4 Q. State's 24 through 26 are the shell casings that you
5 recovered?

6 A. Yes.

7 Q. From the crime scene?

8 A. Yes.

9 MS. HALL: Your Honor, at this time, the state moves
10 to introduce state's 24, 25, and 26 into evidence.

11 MR. THOMPSON: Without objection.

12 THE COURT: Yes, ma'am.

13 (State's Exhibits 24, 25, and 26 were admitted into
14 evidence.)

15 Q. And Detective Colindres, if you could tell me state's
16 27 based on those markings, what is that?

17 A. That is the live round.

18 Q. And is that the live round that you collected from
19 the crime scene?

20 A. Yes.

21 MS. HALL: Your Honor, at this time, state moves to
22 introduce state's 27 into evidence.

23 THE COURT: Any objection.

24 MR. THOMPSON: No objection, Your Honor.

25 THE COURT: Yes, ma'am.

1 (State's Exhibit 27 was admitted into evidence.)

2 Q. Detective Colindres, did you recover any other
3 evidence on scene?

4 A. Yes, the victim's pistol.

5 Q. And where did you recover that gun from?

6 A. That was in Lieutenant Faulkner's vehicle.

7 Q. And what caliber was that gun?

8 A. 9-millimeter.

9 Q. And did you have an opportunity to look at that gun?

10 A. Yes.

11 Q. Was there any blood on that gun?

12 A. No.

13 Q. At some point during your investigation, did y'all
14 look into the identity of the shooter in this case?

15 A. Yes, we did.

16 Q. And as a result of that investigation, who did you
17 get warrants for?

18 A. Dae'Kwon Simmons.

19 Q. And what was his age at the time of this incident?

20 A. He was 17 years old.

21 Q. After leaving the scene, at some point did you
22 collect the clothing from Larry Swearingen -- of Larry
23 Swearingen?

24 A. Yes, I did.

25 Q. And did you photograph his clothing prior to putting

1 it into evidence?

2 A. Yes, I did.

3 Q. After you collected all this evidence, and you -- you
4 said you got the video surveillance from the seafood
5 restaurant, did you have the opportunity to review that
6 video surveillance?

7 A. Yes.

8 Q. And after watching that video, were you able to
9 determine the proximate location of the defendant at the
10 time of the shooting?

11 A. Yes, I was.

12 Q. And the proximate location of the victim at the time
13 of the shooting?

14 A. Yes.

15 Q. Okay. And based on your observation and going out to
16 the crime scene, what was the distance between where
17 Dae'Kwon Simmons was standing when he fired that round and
18 where Larry Swearingen was standing when he was shot?

19 A. Where the defendant was standing to where
20 Mr. Swearingen was standing, it was proximately 145 feet,
21 which is about 48 yards?

22 Q. And the distance from where Dae'Kwon Simmons was
23 standing when he was in front of the Off Da Chain Seafood
24 restaurant out to the sidewalk, what would that distance
25 have been?

CARLOS COLINDRES - DIRECT EXAMINATION BY MS. HALL

1 A. That distance is approximately 17 feet, which is
2 about 5 yards.

3 Q. Detective Colindres, I'm going to show you what's
4 previously been marked as State's Exhibits ten through 20
5 State's Exhibit 20. If you will take a look at these
6 photographs for me.

7 Detective Colindres, do you recognize all of these
8 photos as photos you took at the crime scene or items you
9 collected in your investigation?

10 A. Yes.

11 MS. HALL: Your Honor, at this time, state moves to
12 introduce state's ten through 20 into evidence.

13 THE COURT: I'll allow it, you can look through
14 those.

15 MR. THOMPSON: No objection, Your Honor.

16 THE COURT: All right. Yes, ma'am. Those are in.

17 MS. HALL: Your Honor, permission to publish to the
18 jury.

19 (State's Exhibits 10-20 were admitted into evidence.)

20 THE COURT: Yes.

21 Q. State's ten, Detective Colindres, can you tell me
22 what's in this picture?

23 A. Yes. That is the area where Mr. S was located after
24 the shooting, if you can see the bloodstain kind of on the
25 blacktop there. There's some bandages and some latex

1 gloves that are on the street there.

2 Q. That's looking down the sidewalk where this occurred?

3 A. Yes, that's looking towards the Off Da Chain Seafood
4 restaurant.

5 Q. And Off Da Chain Seafood restaurant is on the left
6 there?

7 A. It is. From that angle you can't really see the
8 restaurant that well, you would have to -- it's off to the
9 left pretty much all the way down.

10 Q. And Plunkett Avenue, where is that?

11 A. That would be the next block. It's straight ahead
12 where the sidewalk would end is where Plunkett Avenue is.

13 Q. Where the -- that dark-colored truck is parked?

14 A. Yes.

15 Q. State's 11? What is photographed here?

16 A. This is the area where we found the shell casings,
17 the .22 caliber shell casings right next to the Off Da
18 Chain restaurant and Plunkett Avenue, you can see the
19 street sign there and the stop sign is right there just
20 straight up.

21 Q. What are the orange markers?

22 A. The orange markers are just evidence markers that we
23 have that we carry with us.

24 Q. And what those depicting?

25 A. Those are depicting the location of each shell

1 casing, how they were found?

2 Q. Okay. State's 12?

3 A. And that is -- that indicates the first shell casing
4 that I had marked.

5 Q. That's just a close up image of what we just looked
6 at?

7 A. Yes.

8 Q. State's 13?

9 A. And that's the second shell casing.

10 Q. State's 14?

11 A. That is the third shell casing.

12 Q. State's 15?

13 A. That's the grassy area where the live round was
14 located.

15 Q. So the pictures we just looked at were fired shell
16 casings?

17 A. Yes.

18 Q. And this photograph is the live round?

19 A. Yes.

20 Q. State's 16?

21 A. That's actually a picture of the live round next to
22 the marker.

23 Q. State's 17?

24 A. This is a picture of the live round, and if you look
25 at that back area of the bullet itself, you see there is

1 no strike point indicating that firing pin did not make
2 contact.

3 Q. State's 18?

4 A. That's the approximate -- the closest cone that's
5 closest down at the bottom is the approximate area where
6 Mr. Swearingen's body was located and there's a cone
7 that's going towards Plunkett Avenue. This -- from this
8 viewpoint, I'm standing near Columbia Avenue looking
9 towards Plunkett that -- if you see that orange cone way
10 down by that blue flag, there's Off Da Chain restaurant
11 will be off to the left. That orange cone there is the
12 approximate area where Mr. Simmons was standing where he
13 fired.

14 Q. State's 19?

15 A. This is pictures of Mr. Swearingen's up and downs at
16 the very top, the flip-flops he was wearing and the items
17 in his pockets.

18 Q. And state's 20?

19 A. That is a picture of Mr. Swearingen's pants.

20 Q. And those photographs of Mr. Swearingen's clothing,
21 do those depict how you received the clothing?

22 A. Yes.

23 Q. They have not been altered in any way?

24 A. No.

25 Q. Detective Colindres, in the photographs where the

1 shell casings were marked, is that standard for a shooting
2 investigation? I'm sorry, is marking them standard,
3 marking and photographing them, is that standard for a
4 shooting investigation?

5 A. Yes.

6 Q. And at the time that that was done, did you have the
7 video from the seafood restaurant?

8 A. We did not. We were in the process of trying to get
9 the video.

10 Q. So this was investigated before any video
11 surveillance was obtained?

12 A. Yes.

13 Q. Please answer any questions the defense may have.

14 THE COURT: Mr. Thompson?

15 CROSS-EXAMINATION

16 BY MR. THOMPSON:

17 Q. Detective Colindres, during the course of your
18 investigation, there were allegations that Mr. Swearingen
19 had a gun, correct?

20 A. Yes.

21 Q. And there were allegations that Mr. Swearingen had
22 pointed the gun at Dae'Kwon and Reggie?

23 MS. HALL: Objection, Your Honor. Hearsay. No one
24 has testified to that.

25 MR. THOMPSON: Your Honor, (inaudible).

1 THE COURT: You want to rephrase the question,
2 Mr. Thompson?

3 Q. During the course of your investigation, did you
4 become aware of any allegations that Mr. Swearingen had
5 pointed or presented a firearm?

6 A. Yes.

7 Q. And if he had lived, he could have been charged with
8 a crime ---

9 MS. HALL: Objection, Your Honor. This is -- this
10 line of questioning, we may need to take up outside the
11 presence of the jury.

12 THE COURT: I think we do.

13 Bailiff, can you please remove the jury?

14 (The jury left open court at approximately 4:06 p.m.)

15 THE COURT: Madam Solicitor?

16 MS. HALL: Your Honor, the last question was
17 absolutely speculation based entirely off of hearsay and
18 no part of it was appropriate.

19 THE COURT: Mr. Thompson, repeat your question for
20 me.

21 MR. THOMPSON: I believe I asked the detective if
22 Mr. Swearingen had lived, he could have been charged with
23 a crime. I believe I said it like that.

24 THE COURT: All right.

25 MS. HALL: And I guess the hearsay is whether or not

1 Mr. Swearingen pointed a firearm or presented a firearm.
2 No one in this courtroom has testified that that has
3 occurred.

4 MR. THOMPSON: He's already answered that there were
5 allegations that Mr. Swearingen pointed or presented a
6 firearm. This is frankly also not really different from
7 Mr. Grimes' line of questioning of the officer when he
8 asked, well, did you become aware of a suspect during your
9 investigation? I'm not asking him what the allegations
10 were. I'm just asking him were there any allegations.

11 MS. HALL: Allegations don't always rise to the level
12 of a charge. So we are still -- the fact that one person
13 may have said a gun was pulled doesn't rise to the level
14 of a warrant being pulled. So we're still speculating a
15 lot in there, still based off of hearsay. No one has
16 testified that Larry Swearingen pulled his handgun.

17 THE COURT: Mr. Thompson, no one -- Mr. Thompson?

18 MR. THOMPSON: I disagree that I can't ask him in the
19 course of his investigation did he become aware of any
20 allegations? I don't mind reserving the right to call him
21 as a witness during the defense case in chief. We can ---

22 MS. HALL: I'm sorry, if I may ask, what charge are
23 you going to ask if there's a charge for?

24 MR. THOMPSON: Pointing and presenting a firearm.
25 This is relevant because it goes to the state of mind of

1 the defendant. These boys at the end of this -- of
2 state's Number 3, at the end, they are the aggressors.
3 But in the begin and in the middle, they're actually
4 victims of a crime. And it goes to the state of mind of a
5 17 year old and a 14 year old boy who are the victims of
6 crime during the beginning of this video.

7 MS. HALL: Your Honor ---

8 THE COURT: All right, Mr. Thompson. No one has yet
9 testified -- this is the state's case at this point. No
10 one has yet testified that anyone has presented or pulled
11 a gun out at this moment. No one has -- there's no
12 testimony to that effect.

13 MR. THOMPSON: And Your Honor, I -- I'll withdraw and
14 it I would like to reserve the right to call Detective
15 Colindres during our case-in-chief. I don't mind doing it
16 at that time.

17 THE COURT: I'll allow you call Detective Colindres.
18 This line of question, I won't allow that at this
19 juncture. But I will allow you to reserve the right to
20 call him later on.

21 MS. HALL: I will just ask if there are any other
22 further questions that might be objectionable we just go
23 ahead and handle it now before we bring the jury in.

24 THE COURT: Any more towards that line of questioning
25 at this point? I understand you may do so later in the

1 trial.

2 MR. THOMPSON: I don't think there's anything that
3 objectionable. Without the ---

4 THE COURT: Towards the allegation of pointing and
5 presenting at this point. No more questioning along that
6 specific line.

7 MR. THOMPSON: No more along the lines of pointing
8 and presenting a firearm.

9 MS. HALL: Allegations against the victim that have
10 not been put into evidence or is hearsay?

11 MR. THOMPSON: I'm going to ask the detective about
12 State's Exhibit 19 and whether or not the victim had a
13 permit to carry a concealed weapon.

14 THE COURT: Okay.

15 MR. THOMPSON: But I'm not going to ask any more
16 questions about ---

17 THE COURT: I'll allow it. I'll allow that. Do you
18 have an objection to that at this point?

19 MS. HALL: No, Your Honor.

20 THE COURT: But again, we will reserve your right ---

21 MR. THOMPSON: Yes, ma'am.

22 THE COURT: --- to call Detective Colindres later on.
23 Anything else?

24 MR. GRIMES: Just briefly, Your Honor. Unrelated
25 matter but while the jury is out, the pathology walked off

1 with her exhibit, our exhibit, so Detective --
2 Investigator Owens from our office went and retrieved them
3 from her. I just wanted to make the court aware ---

4 MR. THOMPSON: I have no objection.

5 THE COURT: No objection?

6 MR. THOMPSON: None at all.

7 THE COURT: And we'll allow you to inspect them
8 before -- prior to being given to the jury.

9 MR. THOMPSON: Very fine, Your Honor.

10 THE COURT: Will we get those back today?

11 MS. HALL: They're back, Your Honor.

12 THE COURT: All right. Thank you. Mr. Thompson,
13 Madam Solicitor, we'll sustain the objection, but allow
14 you to proceed.

15 MR. THOMPSON: Your Honor, I have other questions for
16 the witness.

17 THE COURT: All right. Please bring the jury back
18 in.

19 (The jury entered the courtroom at 4:13 p.m.)

20 THE COURT: All right, Mr. Thompson?

21 MR. THOMPSON: May it please the Court, may I
22 approach the witness?

23 Q. Mr. -- I'm sorry, Detective Colindres. This is
24 the -- what I refer to as the unfired round that you
25 believe is from the defendant's gun, correct?

1 A. Yes.

2 MR. THOMPSON: Your Honor, permission to publish to
3 the jury? I believe they already got that.

4 THE COURT: I believe so, yes, sir.

5 Q. Officer, I'm not going to bring the weapon up, but
6 I'll just put this (inaudible). And we've established
7 from the sheer events that everybody has seen in the video
8 that this cartridge obviously has the range to be fired
9 over the distance from Off Da Chain seafood to the spot
10 where Mr. Swearingen was hit and killed, correct?

11 A. Yes.

12 Q. This is a clip from Mr. Swearingen's gun, correct?

13 A. Yes.

14 Q. When you saw the clip from Mr. Swearingen's gun, were
15 the bullets in the clip, or all in a pile to the side?

16 A. I really can't remember if they were in the clip or
17 if I took them out.

18 Q. Were they in the clip when the gun was taken from
19 Mr. Swearingen?

20 A. I didn't ask anybody if they were.

21 Q. Okay. You had no reason, though, to allege that
22 Mr. Swearingen was walking around with a pistol and the
23 clip and the bullets all separate though, right?

24 A. No.

25 Q. No basis for that? From your investigation, did you

1 have any reason to believe that the range for
2 Mr. Swearingen's 9-millimeter bullets is any less than the
3 range for the .22?

4 A. No.

5 Q. And Mr. Swearingen did not have a concealed weapons
6 permit, based on Exhibit 19, the cards in his pocket? He
7 didn't have a CWP. He didn't have a driver's license,
8 correct?

9 A. We did not locate one.

10 Q. All right. Earlier, Ms. Swearingen testified that
11 fairly close to the events that happened, that she gave an
12 interview with you. Do you remember interviewing
13 Ms. Swearingen?

14 A. Yes.

15 Q. I'm going to show you what I'm going to mark as
16 Defense Exhibit Number 2.

17 (Defense Exhibit 2 was marked for identification.)

18 Q. I'm going to show you what's been marked as Defense
19 Exhibit Number 2 and...

20 (A sotto voce discussion was held between Mr.
21 Thompson and the court reporter.)

22 MS. HALL: Your Honor, while he's doing that, I think
23 we can go ahead and take up a matter of law.

24 THE COURT: Is this regarding an objection?

25 MS. HALL: Yes, Your Honor.

1 Q. I'll represent I got this in discovery as the case
2 materials for this case. Are you familiar with the
3 interview that you gave -- I'm sorry, that you took from
4 Ms. Swearingen?

5 A. Yes.

6 Q. During your interview with Ms. Swearingen, did she
7 tell you ---

8 MS. HALL: Objection, Your Honor. This is going to
9 be hearsay?

10 THE COURT: All right.

11 MS. HALL: We need to take up a matter of law outside
12 the presence of the jury, I believe.

13 THE COURT: Solicitor has indicated there's a matter
14 of law. Mr. Thompson, we will remove the jury at this
15 time and discuss the evidence.

16 (The jury left open court at approximately 4:22 p.m.)

17 THE COURT: All right, Madam Solicitor?

18 MS. HALL: Your Honor, it's my understanding that
19 Mr. Thompson intends to introduce an interview of Jessica
20 Swearingen that's conducted by Detective Colindres. That
21 in and of itself is hearsay. I imagine what he's trying
22 to get at is impeaching Jessica Swearingen, but that
23 wasn't done while she was on the stand. What he's trying
24 to do is impeach Jessica Swearingen through Detective
25 Colindres, without Ms. Swearingen being on the stand to

1 further ask -- answer his questions or respond to the
2 issue.

3 THE COURT: Mr. Thompson?

4 MR. THOMPSON: I asked Ms. Swearingen if during her
5 interview with Detective Colindres if she had made any
6 statement about whether or not she had looked back or not
7 and wasn't it true that she had told deputy -- I'm sorry
8 not deputy -- detective Colindres that she did not look
9 back and her response was, "I don't remember," after I
10 asked her to admit or deny it. I'm going to ask Detective
11 Colindres does he remember whether or not Ms. Swearingen
12 told him during their interview whether or not she looked
13 back or not. If he says he doesn't remember, I'm going to
14 ask to refresh his memory with her statement.

15 THE COURT: Madam Solicitor.

16 MS. HALL: Your Honor, I believe it would be
17 appropriate for Mr. Thompson to ask Detective Colindres if
18 Ms. Swearingen said a very specific statement, but to
19 enter the CD of her entire interview would not be
20 appropriate. The rest of that would be hearsay. I think
21 the question could be asked of Detective Colindres if he
22 is able to answer that, there is no need for an interview
23 to be entered into evidence.

24 MR. THOMPSON: And I have -- I have no problem with
25 that, Your Honor, if he is going to answer that, which I

1 believe he probably would. I have no objection.

2 THE COURT: All right.

3 MS. HALL: And otherwise we're going to, you know,
4 spend more than 30 minutes trying to redact an hour long
5 interview to get a 22nd clip.

6 THE COURT: If Detective Colindres does not have the
7 ability to recall that portion of the interview, you plan
8 on playing that portion?

9 MR. THOMPSON: Your Honor, I believe that the rules
10 of evidence would allow me to play it for him to refresh
11 his memory. We may have to take the jury out of the
12 courtroom again, but I believe that if he were to not
13 remember, I realize it's been a long time. If he were to
14 not remember this interview, I don't mind trying to
15 refresh his memory, Your Honor. We may be able to solve
16 this by proffering his testimony here before you now and
17 if, for whatever reason, he doesn't remember what she
18 said, then I -- I going to try to treat it in the same
19 anything she did or didn't say. I was just going to ask
20 him was he or was he not aware that she did not look back,
21 that she -- she was not able to answer his question about
22 whether or not there was a gun or not.

23 THE COURT: Okay. So I'll -- let's proffer his
24 testimony on that right now just so we don't have -- the
25 jury is not up and down, back and forth.

CARLOS COLINDRES - IN CAMERA EXAMINATION

1 MR. THOMPSON: Very fine, Your Honor.

2 IN CAMERA EXAMINATION

3 BY MR. THOMPSON:

4 Q. Detective Colindres, do you remember giving an
5 interview -- I'm sorry. Not giving an interview. Getting
6 an interview from Ms. Swearingen on -- I believe it was
7 August the 16th at 1:37 p.m.?

8 A. Yes.

9 Q. And during your interview with her, you were being
10 very thorough in your investigation and you asked her
11 whether or not during the course of this whole
12 interaction, whether or not she had looked back to see
13 whether or not Mr. Swearingen had a gun, correct?

14 A. I do not remember that question.

15 Q. Fair enough. Would it help your memory if you were
16 able to see a portion of your statement with -- not
17 statement. Of your interview with Ms. Swearingen so that
18 you could be able to recall?

19 A. Yes.

20 Q. Okay.

21 MR. THOMPSON: Your Honor, at this point in time, I
22 would ask to be able to allow the detective to watch at
23 least a portion of this video about the interview that he
24 conducted with Ms. Swearingen. I would represent to the
25 Court it's a very short interview. It's not very long.

CARLOS COLINDRES - IN CAMERA EXAMINATION

1 THE COURT: Any objection?

2 MS. HALL: No, Your Honor.

3 THE COURT: Mr. Thompson, how long is this video?

4 MR. THOMPSON: Couldn't have been more than five
5 minutes.

6 THE WITNESS: I don't really recall exactly.

7 MR. THOMPSON: But it was a very, very short
8 interview. We're not on the record at this point?

9 JUROR: We are.

10 MR. THOMPSON: We are? Okay. I don't want to say
11 anything to cloud the record, but she really didn't know
12 much, so there wasn't a whole lot that Detective Colindres
13 could ask her about.

14 THE COURT: All right. All right. Let's go ahead
15 and play that, then.

16 (Videotape played.)

17 Q. Detective, this is -- that's you?

18 A. Yes, that's me.

19 Q. That's Ms. Swearingen?

20 A. Yes.

21 THE COURT: I can't hear. Can you hear?

22 THE WITNESS: Barely.

23 MR. McKELLAR: We don't have external speakers?

24 MR. THOMPSON: Where is the sound coming from?

25 THE COURT: Okay.

1 (A discussion was held off the record.)

2 MR. THOMPSON: It does say it's 12 minutes long if we
3 let it play all the way through.

4 (A discussion was held off the record.)

5 (Technical difficulties.)

6 MR. GRIMES: Your Honor, we need to do it now because
7 he's on the stand, we're not going be able to talk to him
8 over night break. I'll just grab the laptop and we'll
9 play the video for him and he can refresh his
10 recollection, if we can have just a few moments.

11 THE COURT: We'll take about a ten-minute break.

12 (A recess was taken from 4:37 p.m. to 4:42 p.m.)

13 (Videotape played.)

14 MR. THOMPSON: Your Honor, as a proffer, after he's
15 had a chance to see this portion of the interview, I'll
16 ask --

17 Q. You were told she had her back turned the entire
18 time? She didn't see anything else.

19 A. Yes.

20 MR. THOMPSON: No further questions.

21 THE COURT: All right. Do you have anything, Madam
22 Solicitor, before I bring the jury back in?

23 MS. HALL: I guess the way I understand once we bring
24 the jury in, we've made a record of refreshing his
25 recollection now. When the jury is brought in,

1 Mr. Thompson will ask the question that will be answered
2 by Detective Colindres, and we will move on without
3 entering the interview, correct.

4 MR. THOMPSON: And Your Honor, I will proffer to you
5 that what I'm -- what I'm planning to do when the jury
6 comes in, I plan to ask him right before the jury was
7 dismissed, you had a chance to view your interview with
8 Ms. Swearingen, correct.

9 THE WITNESS: Yes.

10 MR. THOMPSON: And I'm going to ask him during your
11 interview with Ms. Swearingen, she told you that she --
12 that after contact with a group of -- group of two boys
13 and two girls, that she kept walking, correct.

14 THE WITNESS: Yes.

15 MR. THOMPSON: And that she did not look back.

16 THE WITNESS: She did not look back.

17 MS. HALL: I feel like maybe if we can stick to, I
18 mean, what he says is that she had her back turned and
19 she's not sure what else was said or done. If you could
20 just stick to that just so we don't miss ---

21 MR. THOMPSON: No objection that at all.

22 THE COURT: All right. Mr. Thompson. You proffered
23 that, and Ms. Hall, that's how I assume that will play
24 out.

25 MR. THOMPSON: Yes, ma'am. I will ask -- after

1 having a chance to review this interview, it's your
2 understanding that Ms. Swearingen had her backed turned
3 and she was not able to see anything else that happened.

4 THE COURT: Yes, sir.

5 MS. HALL: No problem with that, Your Honor.

6 THE COURT: Thank you. Can we bring the jury back
7 in, please.

8 MR. THOMPSON: And Your Honor, I don't plan on
9 admitting exhibit 2 into evidence. I think it's marked on
10 the record, but I don't think...

11 THE COURT: Sure.

12 (The jury entered the courtroom at 4:46 p.m.)

13 THE COURT: All right, ladies and gentlemen of the
14 jury, we're ready to proceed.

15 Mr. Thompson.

16 MR. THOMPSON: Your Honor, may it please the Court?

17 Q. Detective Colindres, after the jury left, you had a
18 chance to review your interview with Ms. Swearingen
19 shortly after the shooting, correct?

20 A. Yes.

21 Q. And during her interview with you, she told you that
22 she had her -- that after the initial contact, that she
23 kept walking and she had her back turned and was not sure
24 of what else was said or done, correct?

25 A. Yes.

1 MR. THOMPSON: I have no further questions for this
2 witness at this time.

3 THE COURT: Thank you. Does the state have any
4 redirect?

5 MS. HALL: No, Your Honor.

6 THE COURT: All right. This witness is excused for
7 today.

8 All right, Madam Solicitor, any further witnesses for
9 today?

10 MS. HALL: Not for today, Your Honor.

11 THE COURT: Does the state rest its case, or do you
12 have further direct witnesses for tomorrow?

13 MS. HALL: Beg the Court's indulgence one moment,
14 Your Honor.

15 THE COURT: Yes.

16 MS. HALL: Your Honor, at this time, the state rests.

17 THE COURT: Thank you, madame Solicitor.

18 All right. Ladies and gentlemen of the jury, it's
19 4:45 right now. That will conclude court for today. I'm
20 going to dismiss you and ask that you be back in the
21 building at 9:00 a.m. Bailiffs will provide you -- I
22 believe we'll get you some breakfast for in the morning.

23 While you are out tonight, you are not to discuss
24 this case with anyone in your family, any of your friends,
25 any social media, et cetera. Do not discuss this case

1 evidence of malice in this case. Namely -- probably the
2 best possible evidence is the defendant's actions on this
3 video. You can -- you can pretty much watch him think on
4 this video. You can watch the argument that led to the
5 creation of the hostility that he had, and then you can
6 watch him act out that hostility towards the victim. So
7 there is definitively evidence of malice in this case.

8 And then in regards to the other blanket motion,
9 there is evidence for all of the elements of murder in the
10 record against the defendant. This type of motion is
11 always considered in the light most favorable to the
12 nonmoving party, which is the state, and so as
13 Mr. Thompson indicated, it's not a weight of the evidence
14 issue, it's just an existence of the evidence, and there
15 is evidence in the record that would allow the jury to
16 find the defendant guilty on both of the charges?

17 THE COURT: Thank you, Mr. Grimes. Mr. Thompson, any
18 response.

19 MR. THOMPSON: No, Your Honor. I do have separate
20 motion for a witness tomorrow for the Court to take up.

21 THE COURT: All right. Mr. Thompson, Mr. Grimes,
22 thank you for your arguments. Mr. Thompson, I am denying
23 that motion for directed verdict. I'm denying that motion
24 for a directed verdict. Mr. Thompson, you had a second
25 motion?

1 MR. THOMPSON: Your Honor, the defense intends to
2 call as a witness in this case Mr. Reginald Young.
3 Mr. Reginald Young is -- was I believe either 14 or 15 at
4 the time this occurred, which makes him either 16 or 17 at
5 this point in time. He is still a minor. At the time
6 that this all happened, he was very -- as Your Honor is
7 aware, the family court system sometimes moves at light
8 speed compared to general sessions. At the time that all
9 this happened, he was very expeditiously moved through the
10 family court system and was -- pled guilty to attempted
11 murder for the events in this case, not for -- he's not in
12 DJJ custody for a separate type of offense. He's in DJJ
13 custody for a plea in family court to the events
14 specifically referenced in this case. I would move that
15 any reference to his conviction by pleading to attempted
16 murder in this case -- attempted murder in events related
17 to this case be disallowed and not allowed to be able to
18 be questioned about his DJJ record. I -- I say DJJ
19 record. I don't necessarily think it would be -- I don't
20 know what his -- what his full juvenile record is. I
21 don't have an objection to -- if he's got shoplifting on
22 his record ---

23 THE COURT: (inaudible).

24 MR. THOMPSON: Yes, ma'am, I think it is so
25 prejudicial to the outcome of this case for him to be able

1 to be questioned about whether he pled guilty to events
2 related to this case as to not be appropriate and not be
3 allowed under 403 analysis. I cannot imagine something
4 more prejudicial, even if it's probative, I can't imagine
5 something that's more prejudicial and in the weighing of
6 those two interests, I would rule -- I would ask that it
7 be ruled not relevant and not admissible in this trial.

8 THE COURT: All right, Mr. Thompson.

9 Mr. Grimes?

10 MR. GRIMES: Judge, it's hard to tell you why it
11 would be relevant, having not heard what this person is
12 going to say. But I think we generally know the purpose
13 for this testimony is to either establish a self-defense
14 claim or establish voluntary manslaughter, so Reginald
15 Young, from what I understand -- and we had the
16 transcript, was adjudicated delinquent and took a plea for
17 attempted murder. And as Mr. Thompson indicated, it's my
18 understanding of that situation -- I wasn't involved in
19 that prosecution, his office was and my office was but
20 neither of us were -- that it was -- it was done even
21 before the victim in this case was removed from life
22 support. And he ---

23 MR. THOMPSON: That's correct, Your Honor. I believe
24 he pleads to attempted murder because at the time, the
25 victim was not deceased.

1 THE COURT: So within five or six days.

2 MR. GRIMES: Judge, the point I'm making is one, he
3 had a defense attorney when that occurred. He had
4 knowledge of what the law was. His case was attempted
5 murder in that you intended to kill somebody. And the
6 purpose of this testimony in this case would be either a
7 lesser included voluntary manslaughter, which is a lower
8 intent than his plea. He's not even the shooter, but it's
9 a lower intent of his plea, or self-defense, which would
10 mean his plea was a lie. If he was acting in
11 self-defense, then why did you plead to attempted murder?
12 So it couldn't be -- if the purpose of his testimony is to
13 establish that sort of defense for the defendant, the
14 person who actually fired the gun in the case, then how is
15 it not relevant. It's infinitely relevant.

16 And so it can't be more prejudicial than probative
17 because he would be establishing why this defendant
18 shouldn't be guilty of the thing he pled for. And we
19 don't usually have a codefendant's case resolved before
20 the trial case is resolved. I mean, it happens from time
21 to time that one defendant in the case, if they want to
22 plead guilty and that may not happen until after the other
23 case goes to trial. But it doesn't come up all that often
24 in practice that one case is resolved by as a plea before
25 the other is resolved as a trial. And then for that plea

1 defendant to then come into court and try to establish
2 some sort of testimony in favor of their friend, their
3 codefendant, their companion in this crime and then have
4 protection from cross-examination about the motive for
5 this testimony in the first place, it's just a -- it's a
6 ridiculous notion that they would have this protection for
7 the very thing that's going to cause them to have the
8 motive for the untruthful testimony.

9 And it's true that this doesn't come up a lot, and
10 this is one of the reasons it doesn't come up a lot, you
11 know, the state sometimes anticipates that a codefendant
12 may testify for the state or that the codefendant may
13 testify for the defense, and those cases aren't often
14 resolved before a case where a trial -- we don't often do
15 a plea before a trial. That's not a creation -- this is
16 not a burden on the state to prevent somebody from
17 testifying -- from pleading, getting the benefit of their
18 bargain, and then trying to come back and save the
19 codefendant. This isn't a problem that the state created.
20 The family court system moves at lightning pace compared
21 to what we do in general sessions. I don't -- I don't
22 practice in family court. It's been a long time since
23 I've even been in family court with the juvenile
24 prosecution. I think we all understand that that's not a
25 likely possible that case would have been held open for a

1 year and a half in family court while we're waiting on the
2 general sessions court case to go to trial.

3 So I would say one, it's not -- it's not a state
4 created problem. It's not a defense created problem, but
5 what it is is a situation where the defendant can come in
6 here without any repercussions in his case. You know, in
7 his case, his case is resolved and just be free to create
8 whatever story he wants to create, truthful, untruthful,
9 you know, in favor of the defendant, who still has the
10 risk and then the state wouldn't be able to inquire to the
11 actually motive for creating that testimony or it's
12 truthfulness or untruthfulness. It's just -- it couldn't
13 be more probative as to whether or not he's telling the
14 truth.

15 And quite frankly, if his -- like I said, I don't
16 know what his testimony is going to be so it may be
17 premature for the Court to rule on it in general,
18 particularly if it's a self-defense based testimony. His
19 case would have had a self-defense claim -- presumably if
20 this defendant does because the victim in this case had an
21 argument with Reginald Young. And you can watch the
22 video. That's the people who are arguing. The defendant
23 is the person who shot the victim.

24 So presumably, it's going to be a self-defense,
25 defense of others type charge or a -- I don't know if it's

1 a -- I don't know if you can even transfer voluntary
2 manslaughter, but I presume you can't, but whatever his
3 testimony is going to be is either going to be to
4 establish self-defense, which would apply in his case, why
5 would you plead guilty if the self-defense evidence
6 existed? Right? If that was going to be your version of
7 events, why would you plead guilty to attempted murder if
8 you were not guilty because it was actually self-defense?

9 And then in regards to voluntary manslaughter,
10 it's -- a similar type of inquiry as to it -- if you
11 didn't have that intent to kill, why did you plead guilty
12 to attempted murder? So as I said, I don't know what he's
13 going to testify for, I just -- because on what -- and I
14 don't have any reason to suspect Mr. Thompson hasn't been
15 forthright to the Court. He was hopeful to present, you
16 know, a potential voluntary manslaughter case and hopeful
17 to present a potential self-defense case, that's going to
18 be their only witness. I can only imagine it's going to
19 come out through him, so those two things are completely
20 incongruent with a plea to attempted murder. So if those
21 two -- if either of those two situations existed, then he
22 shouldn't have been pleading to attempted murder if he
23 believed those cases existed.

24 THE COURT: All right. Mr. Thompson, any response,
25 sir?

1 MR. THOMPSON: Your Honor, I may be arguing against
2 myself because I'll have to look at this more thoroughly,
3 but there may be case law on this. I'll ask possibly
4 until ---

5 THE COURT: Mr. Thompson, this is what I think is
6 appropriate in this case. I do have some research pulled
7 up at this point, but what I'm going to do is hold up on
8 ruling on this at this moment.

9 MR. THOMPSON: Yes, Your Honor.

10 THE COURT: Or Mr. Grimes or the state or
11 Mr. Thompson and Mr. McKellar, that if you have any case
12 law, if you'll give that to me before 8:00 p.m. tonight.

13 MR. THOMPSON: Fair enough.

14 THE COURT: I'll have a chance to do my own research
15 too, look over anything you have, and I'll make my ruling
16 first thing ---

17 MR. THOMPSON: Very fine, Your Honor.

18 THE COURT: --- in the morning.

19 MR. THOMPSON: Thank you.

20 THE COURT: Any other motions, Mr. Thompson?

21 MR. THOMPSON: No, ma'am.

22 THE COURT: Any motions from the state?

23 MS. HALL: No, Your Honor.

24 THE COURT: All right. We will adjourn court for the
25 day and we will meet back here tomorrow morning at

1 9:30 a.m.

2 (Court was adjourned at 5:12 p.m. on April 13th, 2021
3 and resumed at 9:39 a.m. on April 14th, 2021.)

4 THE COURT: All right, good morning. Mr. Thompson,
5 are you ready to proceed, sir?

6 MR. THOMPSON: Yes, ma'am.

7 THE COURT: And Madam Solicitor, you are ready to
8 proceed?

9 MS. HALL: Your Honor, the only issue we may need to
10 take up, and I guess it will be based on how you want to
11 rule it. We need a ruling on whether or not we'll be able
12 to cross examine Reggie on his adjudication for this
13 offense. Do you want to handle that now or when we
14 cross-examine him?

15 THE COURT: My intent was to handle that now. We had
16 taken the arguments yesterday afternoon, and I didn't have
17 to opportunity to do my own research. So Mr. Thompson, I
18 just want to make sure, is there anything further from the
19 defense in that regard, or do you want to just reiterate
20 your argument from yesterday?

21 MR. THOMPSON: Your Honor, we would argue this is
22 much, much, much, much more prejudicial than it is
23 probative. We would concede that in most jurisdictions
24 that the record of the testifying witness is allowed to
25 for purposes of impeaching his credibility. My

1 understanding is that it's specifically banned and not
2 allowed for purposes of determining the defendant's
3 guilt -- substantive guilt or innocence. So it can be
4 offered -- you can offer this testimony to try to say hey,
5 you pled guilty to attempted murder and doesn't that prove
6 that you're lying about things today. But they can't
7 offer it to say hey, you pled guilty to attempted murder,
8 and doesn't that mean that Dae'Kwon is also guilty of
9 murder some how. There's a difference ---

10 THE COURT: Where's the authority for that, Mr.
11 Thompson.

12 MR. THOMPSON: It's the -- Your Honor, it's the *State*
13 *v Moore* case ---

14 THE COURT: Is that what I was sent last night?

15 MR. THOMPSON: Yes, ma'am. And the general -- in
16 footnote 2 on page 3, the general rule that codefendant's
17 guilty plea is neither relevant nor admissible as
18 substantive evidence of the defendant's guilt or innocence
19 but instead is admissible only on the issue of the
20 credibility of the testifying codefendant. And we would
21 concede it's probably admissible for credibility of the
22 testifying codefendant, but that is completely not
23 management as substantive evidence of the accused's guilt
24 or innocence. And I would ask that if and when whatever
25 point in this trial the state decides they're going to go

1 into that, that the -- or I decide to go into it, that the
2 state -- the Court give a limiting instruction that this
3 type of evidence, this type of testimony can be used to
4 determine -- can be used to -- as evidence of a testifying
5 witness's credibility, but that it can't be used in terms
6 of substantive guilt or innocence.

7 And this kind of bleeds back to my 403 argument in
8 that if we end up having to explain that to a jury, if we
9 end up having to get that technical with a jury as to what
10 they can and can't use this testimony for, which I think
11 in order to not commit error, I think that would be
12 required, that that's going to be so fraught with danger
13 of confusion as to be absolutely more prejudicial than it
14 is probative. I don't really know how we would do this in
15 a way that doesn't end up being more prejudicial than
16 probative, and that's why I would argue it probably ought
17 to be -- it probably ought to be excluded. But if it is
18 allowed, I would ask that the Court issue a -- a
19 instruction -- a limiting instruction from the bench on
20 it, and I would also ask that it be included as a jury
21 charge at the conclusion of the trial and I believe
22 Mr. McKellar is preparing a jury charge on ---

23 THE COURT: Let me just briefly turn your attention
24 to Rule Number 609. That rule specifically states that
25 juvenile -- in the notes section of Rule 609, juvenile

1 adjudications are admissible in this state to impeach any
2 witness, including the accused if the conduct would be
3 criminal if it were committed by an adult. And that's
4 *Mallory, State v. Mallory*. Do you see that note, Mr.
5 Thompson.

6 MR. THOMPSON: Yes, ma'am, but I believe this is
7 still talking about impeachment of -- impeachment of a
8 witness, and it's still talking about the credibility of a
9 witness, that if you had done this as a juvenile -- I'm
10 sorry, if you had done this as an adult, but you get
11 convicted of it as a juvenile, we can still determine --
12 we can still look at this as if you had done it as an
13 adult. We can use it to affect the credibility of the
14 witness, but I don't think it's allowable as evidence of
15 the accused's substantive guilt or innocence.

16 THE COURT: Okay. Mr. Grimes?

17 MR. GRIMES: Judge, I agree with Mr. Thompson that
18 it's not substantive evidence of the defendant's guilt.
19 In other words, we couldn't call a codefendant and say
20 isn't it true you pled guilty and take him off the stand
21 and this be our evidence that the codefendant is guilty.
22 But the rule regarding 609 regarding impeaching with their
23 prior record addresses all that traditional method of
24 impeaching a witness based on their prior record, could
25 say, well, isn't it true you were convicted of forgery or

1 whatever it was they were convicted of in the past. And
2 so that's obviously the impeachment issue. But we
3 additionally are concerned with the fact that his
4 testimony today may be ---

5 THE COURT: You're concerned with the self-defense or
6 defense of a third-party?

7 MR. GRIMES: We're concerned his testimony today may
8 be inconsistent with his guilty plea under oath in family
9 court, so more than isn't it true you've been convicted of
10 X Y Z in the past, it's you're testifying today because
11 these are the facts and circumstances; however, that's
12 inconsistent with your guilty plea in family court to
13 attempted murder, which is a under oath statement to the
14 Court that you were an accessory before the fact to
15 attempted murder, which includes the intent to kill
16 somebody.

17 THE COURT: All right.

18 MR. GRIMES: So -- and I don't know what he's going
19 to testify to today, but I agree with Mr. Thompson it's
20 not substantive evidence of the defendant's guilt. We, of
21 course, wouldn't argue that. I have no issue with a
22 limiting instruction to that. But to the extent that it
23 is important to determine credibility of his testimony
24 today, more than just isn't it true you had prior
25 conviction for this accessory before the fact to attempted

1 murder, if what he testifies today is inconsistent with
2 his guilty plea in family court, then we believe that's
3 relevant and permissible.

4 THE COURT: Mr. Thompson?

5 MR. THOMPSON: Your Honor, I would only add that
6 while I understand Mr. Grimes' argument, I don't really
7 think other than the logical questions about well, what
8 does this offense that you plead to mean versus what your
9 testimony is today, other than that, Mr. Thomas -- I'm
10 sorry, Mr. Young -- doesn't make -- frankly, if you read
11 the transcript of his guilty plea, he doesn't really say
12 much. It's just yes, ma'am, yes, ma'am, yes, ma'am, and
13 then he gets adjudicated delinquent and that's kind of the
14 end of the matter. And I don't think he'll be -- I don't
15 think that he will be -- he will be given inconsistent
16 statements. He may be taking possibly a position on the
17 evidence that could be questioned about his credibility at
18 his guilty plea, but I don't think he'll be taking -- I
19 don't think he'll be saying anything than he would have
20 said ---

21 THE COURT: Mr. Thompson, I'm going to allow the
22 state to question him with regard to his guilty plea and
23 to bring up -- allow them to bring up that adjudication.
24 I will (inaudible) I will limit and so if you can get --
25 if you can -- you know what to do. Send me that ---

1 MR. THOMPSON: Yes, ma'am.

2 THE COURT: Send me that limiting ---

3 MR. THOMPSON: Yes, ma'am.

4 THE COURT: Mr. McKellar, if you have an electronic
5 version, that's always easier for me to copy and edit in.
6 If you will send that on over, we'll take a look and
7 discuss the exact verbiage during the charging conference.

8 All right. Mr. Grimes, Ms. Hall? Before we move any
9 further, are there any other matters to be taken before
10 the jury is brought back in?

11 MS. HALL: No, Your Honor.

12 THE COURT: Thank you. Anything from you, Mr.
13 Thompson?

14 MR. THOMPSON: No, Your Honor.

15 THE COURT: Okay. And Mr. Thompson, just for
16 housekeeping purposes, your witness is coming in today.
17 Witness is not cuffed.

18 MR. THOMPSON: Your Honor, we tried to discuss all
19 this and where he might be placed and that kind of stuff.
20 I ultimately decided I didn't want get in the bailiwick of
21 whatever the court security folks wanted to do and I -- I
22 truly don't know that I have an opinion about where we put
23 him. I will inform the Court that at this point in time,
24 he is in the back. If the Court wishes him to come out
25 that door, that's fine. If the Court wishes him to sit --

1 or maybe ---

2 THE COURT: I don't know, we'll do whatever court
3 security has determined is appropriate and just so that
4 you know, I'm not going to require -- I don't think he's
5 cuffed anyway, but we're not going to require -- we don't
6 have those issues.

7 MR. THOMPSON: Yes, ma'am. The only other issue I
8 think we could probably take outside the presence of the
9 jury, I believe we were at the point in the case where you
10 had denied our motion for directed verdict, and it would
11 probably be appropriate if you want to question Mr. Thomas
12 about his position on taking the witness stand.

13 THE COURT: Yes. All right, Mr. Simmons -- you said
14 Thomas.

15 MR. THOMPSON: I am so sorry.

16 THE COURT: Mr. Simmons?

17 MR. THOMPSON: Your Honor, my problem is I
18 represented his father before.

19 THE COURT: I understand. So Mr. Simmons, good
20 morning.

21 Can you swear in Mr. Simmons, please.

22 DAE'KWON SIMMONS, after having first being duly
23 sworn, testified under oath as follows:

24 THE COURT: Mr. Simmons, remain standing for me so we
25 make sure we can hear you, okay.

1 are your own?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Have you been honest and truthful with
4 me, sir.

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Mr. Simmons, have you had any illegal
7 drugs or alcohol in the last 72 hours?

8 THE DEFENDANT: No, ma'am.

9 THE COURT: So you're making a clear and conscious
10 decision?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: Okay. Mr. Simmons, do you have any
13 questions for me?

14 THE DEFENDANT: No, ma'am.

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

16 Let the record reflect that at this moment, the
17 defendant has indicated to the Court and I find he's made
18 a truthful and honest decision, knowing decision that he
19 is not going to take the stand at this time.

20 All right.

21 MR. THOMPSON: Your Honor, only one other item, just
22 so that there's no allegations that Mr. Young's testimony
23 was induced in any way. When I spoke to Mr. Young this
24 morning he asked me if his mother was here. And I told
25 him that his mother was -- she was here I believe

1 yesterday and she is here today. He asked me would I ask
2 the Court if he could speak with his mother. The
3 restrictions of DJJ have been recently fairly severe due
4 to COVID protocols and my understanding is there haven't
5 been a whole lot of opportunities for visits. I told him
6 that I would ask you. I have no position or opinion on
7 that.

8 THE COURT: I understand.

9 MR. THOMPSON: I told him that I would ask you.

10 THE COURT: So Mr. Thompson what I'm going to do
11 is -- I'm not denying it outright. What I'm going to do
12 is talk court security and with whoever is here -- whoever
13 his escort is. I don't know the protocol on that.

14 MR. THOMPSON: Yes, ma'am.

15 THE COURT: Let him know the Court will look into
16 that. It may be no, but let me determine what the
17 protocols are first.

18 MR. THOMPSON: Yes, ma'am.

19 THE COURT: And then we'll see from there.

20 MR. THOMPSON: Yes, ma'am.

21 THE COURT: All right. Bailiff, can you bring our
22 jury in, please?

23 (The jury entered the courtroom at 9:57 a.m.)

24 THE COURT: All right, ladies and gentlemen of the
25 jury and good morning to the two alternates. Did you all

1 have a little bit of doughnuts this morning?

2 JUROR: Yes, thank you.

3 THE COURT: All right. So we get the sugar pumping
4 and the blood flowing. We will take a few breaks as I
5 mentioned depending on where the testimony and how the
6 trial proceeds. We'll try to get you some stretch breaks
7 in there, every hour, every hour and a half. Okay. All
8 right. At this time, the state has rested, and so it is
9 now the portion of the trial where the defense presents
10 their case.

11 Mr. Thompson, I'm here ready to proceed, sir.

12 MR. THOMPSON: Yes, ma'am.

13 THE COURT: Would you like to call your first
14 witness?

15 MR. THOMPSON: Defense calls Reginald Young.

16 REGINALD YOUNG, after having first being duly sworn,
17 testified under oath as follows:

18 DIRECT EXAMINATION

19 BY MR. THOMPSON:

20 Q. Reggie, I'm going to go ahead and tell you you are a
21 somewhat soft-spoken fellow, and I'm going to need to you
22 to speak up because these gentleman in the back have to
23 hear what you say, okay? So I need you to speak up and
24 try to speak in the microphone if you can?

25 A. My name is Reginald Young. You all right?

REGINALD YOUNG - DIRECT EXAMINATION BY MR. THOMPSON

1 Q. That's better?

2 A. Reginald Dwayne Tracey Young my whole name.

3 Y-O-U-N-G Young.

4 Q. And people call you Reggie?

5 A. Yes, sir.

6 Q. Okay. Reggie ---

7 THE COURT: Hold on, Mr. Thompson.

8 Can you hear in the back?

9 Q. I don't want you to shout, but I do need you to ---

10 A. My name is Reginald Young, Reginald Dwayne Tracey
11 Young, Y-O-U-N-G, Young.

12 Q. Perfect. That's perfect. And again, I'll tell you
13 what, I'm going to do this to try to help train your mind
14 about this. Reggie, where are you from?

15 A. Aiken county.

16 Q. You're from Aiken county? What part of Aiken county.
17 Where did you used to live?

18 A. Off exit 22, I think.

19 Q. Okay. And where do you live now?

20 THE COURT: Mr. Thompson, just hold on one second.
21 The problem is not Mr. Young. The microphone is not
22 working.

23 (A discussion was held off the record.)

24 Q. Reggie, where do you stay at now?

25 A. DJJ.

REGINALD YOUNG - DIRECT EXAMINATION BY MR. THOMPSON

- 1 Q. You're in DJJ? And are you in school at DJJ?
- 2 A. Yes, sir.
- 3 Q. How you doing in school?
- 4 A. I make all As.
- 5 Q. Awesome. And you're how old now?
- 6 A. 15.
- 7 Q. And you were -- you're in what grade now?
- 8 A. Tenth.
- 9 Q. Okay. And at the time that all this happened, how
- 10 old were you?
- 11 A. 14.
- 12 Q. I'm going to ask a somewhat tricky question. Were
- 13 you in school at the time?
- 14 A. It was summertime. We was fixing to go back to
- 15 school.
- 16 Q. That's what I was going to ask you. So you had been
- 17 a student but it was summertime and you just hadn't gone
- 18 back to school yet?
- 19 A. Yes, sir.
- 20 Q. Okay. And do you know the defendant?
- 21 A. Yes, sir.
- 22 Q. And what do you call him?
- 23 A. Dae Dae.
- 24 Q. Dae Dae. Y'all were friends?
- 25 A. Yes, sir.

REGINALD YOUNG - DIRECT EXAMINATION BY MR. THOMPSON

1 Q. You had known him for at least several months?

2 A. Yes, sir.

3 Q. Hung out in the summertime?

4 A. Yes, sir.

5 Q. Okay. The day that all this happened, what were
6 y'all doing?

7 A. We was with females, two females.

8 Q. How -- do you remember their names?

9 A. No, no, sir.

10 Q. You didn't even know them, you ---

11 A. I knew them. I just don't remember their names.

12 Q. Okay. And about how long had you known the girls?

13 A. About 30 minutes.

14 Q. How long had you hung out?

15 A. About 30 minutes before everything happened.

16 Q. Okay. So you had met them down the street about 30
17 minutes before. And why did you go to the In and Out
18 store.

19 A. One of the females wanted something to drink.

20 Q. Okay. So y'all went to the store, and then after you
21 went in the store, you -- all four of y'all came back
22 across the street, correct?

23 A. Yes, sir.

24 Q. Why did you -- why did you cross the street?

25 A. So I could get on the sidewalk where to walk.

REGINALD YOUNG - DIRECT EXAMINATION BY MR. THOMPSON

1 Q. Because the sidewalk is on this side of the street?

2 The sidewalk is not on the other side of the street?

3 A. Yes, sir.

4 Q. Okay. Not in any kind of effort to confront anybody?

5 A. No, sir.

6 Q. When you and Dae Dae got together that -- earlier
7 that morning, did he talk to you about any kind of plan to
8 go out and do anything?

9 A. No, sir.

10 Q. Talk to you about Mr. Swearingen?

11 A. No, sir.

12 Q. Did y'all know Mr. Swearingen before?

13 A. No, sir.

14 Q. Never met him before?

15 A. No, sir.

16 Q. First time you ever saw him was when y'all
17 encountered him in the video?

18 A. Yes, sir.

19 Q. Okay. I want to -- let's do this because it will
20 make it a little bit easier. I want to go through the
21 video with you. The video doesn't have any sound. So I
22 want you to come and I want you to watch the video. I'm
23 going to ask you questions about this. I want you to tell
24 me if we were there, what we would have heard?

25 A. Yes, sir.

REGINALD YOUNG - DIRECT EXAMINATION BY MR. THOMPSON

1 (A brief discussion was held off the record.)

2 Q. We're going to be looking at what I believe -- not
3 defense. State's Exhibit Number 3. Okay.

4 MR. THOMPSON: And Your Honor with Court's
5 permission, kind of like with did with Ms. Cummings, if I
6 could get him to come sit down here, he could probably see
7 the video a little bit better.

8 THE COURT: Mr. Thompson, are you going to have him
9 as the video plays to tell you ---

10 MR. THOMPSON: Yes, ma'am. I'd like to be able to
11 point to things on the video and for him to tell me what's
12 happening on the video.

13 THE COURT: All right. Mr. Young, you're going to go
14 down here, but I want you to make sure you project your
15 voice so we can hear.

16 (A discussion was held off the record.)

17 (Videotape played in open court.)

18 Q. Do you recognize this scene?

19 A. Yes, sir.

20 Q. And you've seen this video before?

21 A. Yes, sir.

22 Q. Tell me what this is?

23 A. (inaudible) front the restaurant.

24 THE COURT: Mr. Thompson, the court reporter can't
25 hear and just a little bit slower.

REGINALD YOUNG - DIRECT EXAMINATION BY MR. THOMPSON

1 A. That's in front of the Off Da Chain restaurant.

2 Q. Okay. These people right here, had you ever met them
3 before this Dae?

4 A. No, sir.

5 Q. Okay. Did you see yourself yet in this video?

6 A. Yes, sir, I'm walking all the way in the back closer
7 to (inaudible).

8 Q. So this guy?

9 A. (inaudible).

10 Q. This one?

11 A. (inaudible).

12 Q. Okay. All right.

13 A. Before we even crossed the street (inaudible)
14 anticipated like stopped, before we even crossed the
15 street (inaudible) it's like me (inaudible).

16 Q. Okay. All right. Pause it. Is anybody talking at
17 all yet?

18 A. No, sir. Still in the street.

19 Q. Okay. And play. Pause it. Tell me what happens
20 there. Because you looked like you kind of --
21 (inaudible)?

22 A. Yes, sir.

23 Q. And you look like you're kind of sort of looking back
24 a little bit. Tell me what happened?

25 A. (inaudible).

REGINALD YOUNG - DIRECT EXAMINATION BY MR. THOMPSON

1 Q. Okay. And play. Pause it. What about that up
2 there?

3 A. The dude told me ---

4 MR. GRIMES: Objection. Hearsay.

5 A. He said ---

6 MR. GRIMES: Objection.

7 Q. Hold on, hold on.

8 THE COURT: Sustained. You need to ask him --
9 sustained.

10 Q. Don't tell me what anybody said. Tell me what
11 happened?

12 A. As I walked past the -- I don't know his name, but
13 the dude, he was like ---

14 Q. You can't tell me what was said.

15 A. Oh. I just walked by him. I just walked by him.

16 Q. Okay. When you walked by him -- I'm not asking you
17 what he said. Did he say anything to you?

18 A. Yes, sir. Yes, sir.

19 Q. Okay. Was it a kind thing?

20 A. No, sir.

21 Q. Describe it for me.

22 A. Okay. It was aggressive.

23 Q. Aggressive. Okay. Push play for me. What's
24 happening now? This looks like ---

25 A. He's approaching me.

REGINALD YOUNG - DIRECT EXAMINATION BY MR. THOMPSON

- 1 Q. Okay. He steps up on you?
- 2 A. Yes, sir.
- 3 Q. Play. Pause. What happened there?
- 4 A. I think that's when he pulled a gun out. I put my
- 5 hands in the air (inaudible) put it down.
- 6 Q. He pulled a gun out?
- 7 A. Yes, sir.
- 8 Q. You're sure?
- 9 A. Yes, sir.
- 10 Q. You remember that?
- 11 A. Yes, sir.
- 12 Q. Very clearly?
- 13 A. Very clearly.
- 14 Q. Okay. Push play again. Pause.
- 15 What were you doing here?
- 16 A. Telling him (inaudible) just trying to walk away.
- 17 Q. Okay. What was that like?
- 18 A. It was ---
- 19 Q. He had just pulled a gun on you?
- 20 A. Yes, sir.
- 21 Q. For no reason at all?
- 22 A. Scary, sad, confused.
- 23 Q. Okay. Push play. And pause.
- 24 He's still there. Still talking.
- 25 A. Yes, sir. (inaudible).

REGINALD YOUNG - DIRECT EXAMINATION BY MR. THOMPSON

1 Q. Steady antagonizing, steady going on. Again, you
2 can't tell me what he said, but steady antagonizing with
3 what kind of language?

4 A. Inappropriate racial language.

5 Q. Okay. Again, you can't tell me what he said. But
6 he's using racial epithets?

7 A. Yes, sir.

8 THE COURT: Mr. Young, a little bit louder.

9 A. Yes, sir.

10 Q. He's making threats?

11 A. Yes, sir.

12 MR. GRIMES: Objection.

13 THE COURT: What's the objection?

14 MR. GRIMES: Hearsay.

15 THE COURT: Overruled.

16 Q. He's making threats?

17 A. Yes, sir.

18 Q. He has a gun?

19 A. Yes, sir.

20 Q. Which is why you got your hands up?

21 A. Yes, sir.

22 Q. There may be some distance opening up, but there's
23 still words going on, right?

24 A. Yes, sir.

25 Q. Push play.

REGINALD YOUNG - DIRECT EXAMINATION BY MR. THOMPSON

1 I want to look at -- this is you, right?

2 Pause it.

3 You went up pretty quick over to Dae'Kwon, right?

4 A. Yes, sir.

5 Q. You can't tell me what Dae'Kwon said. What kind of
6 thing were you saying to Dae'Kwon.

7 A. I was just -- I was just like -- he's scary
8 (inaudible). He just like he ---

9 Q. Oh, my God, this guy pulled a gun?

10 A. I was confused. That's (inaudible).

11 Q. Okay. And you told that to him, what's Dae'Kwon say
12 about it?

13 A. (inaudible).

14 Q. Push play. Pause.

15 And you're steady talking to Dae'Kwon, right? We can
16 see you kind of waiving your hands. You're still excited.

17 A. I wasn't excited at all.

18 Q. You weren't excited at all. Tell me what you were
19 feeling.

20 A. Unsafe.

21 Q. Unsafe?

22 A. Unsafe.

23 Q. And there's still talking going on back and forth?

24 A. Yes, sir.

25 Q. Okay. Push play.

REGINALD YOUNG - DIRECT EXAMINATION BY MR. THOMPSON

1 And you're steady doing your arms and saying
2 something to Dae'Kwon, right?

3 A. No, sir. When we crossed to Off Da Chain, I was
4 still talking to the dude.

5 Q. Still talking to the dude?

6 THE COURT: A little bit louder, Mr. Young. I'm
7 sorry. We can't hear you.

8 A. When I crossed to Off Da Chain, I still was talking
9 to the dude.

10 Q. You were hollering to the dude down the road.

11 A. Yes, sir, I was.

12 Q. And he's hollering back at you?

13 A. Yes, sir.

14 Q. Okay. I don't have any more questions about the
15 video. Why don't you go ahead and sit back on the stand.

16 MR. THOMPSON: Beg the Court's indulgence. Your
17 Honor, at this point in time before finishing this
18 witness's testimony, I have a matter of law I need to take
19 up with the Court, outside the presence of the jury.

20 THE COURT: All right. Mr. Thompson.

21 Mr. Bailiff, can you please escort the jury to the
22 jury room.

23 (The jury left open court at approximately 10:19
24 p.m.)

25 THE COURT: Mr. Thompson?

REGINALD YOUNG - DIRECT EXAMINATION BY MR. THOMPSON

1 MR. THOMPSON: I plan on asking him when he used
2 these words, how did that make you feel? What was your --
3 what was your response to this?

4 THE COURT: (inaudible).

5 MR. THOMPSON: He said this to you.

6 THE COURT: But nothing further regarding more ---

7 MR. THOMPSON: Nothing further regarding statements
8 of any other witness.

9 THE COURT: All right. Mr. Thompson, I'll allow it.

10 All right. Bailiff, if you can please bring the jury
11 back in.

12 (The jury entered the courtroom at 10:24 a.m.)

13 THE COURT: Mr. Thompson?

14 MR. THOMPSON: Thank you, Your Honor.

15 Q. Reggie, I want to circle back around to what was said
16 when you were passing the man. When you first came up and
17 y'all were walking past Mr. Swearingen, first thing out of
18 his mouth, what did he say to you? And I understand --
19 but if there's curse words, go ahead and use them.

20 A. "Why you looking at my fucking wife?"

21 Q. Okay. Did he say it really quietly?

22 A. No, sir.

23 Q. It was confrontational?

24 A. Yes, sir.

25 Q. "You looking at my fucking wife?"

1 A. Yes, sir.

2 Q. Okay. What did you think about that?

3 A. At first I didn't know he was talking to me until I
4 turned, turn around. And I was like, "You can't be
5 talking to me because I wasn't looking at your wife." and
6 he was like, "What the fuck you want to do?"

7 Q. Okay. So you didn't curse him back?

8 A. No, sir.

9 Q. You were kind of shocked?

10 A. Yes, sir.

11 Q. And you turned back, "are you talking to me?"

12 A. Yes, sir.

13 Q. And then what happened next?

14 A. He pulled a gun out and I threw my hands up in the
15 air, and he told me to get my black, ghetto ass on.

16 Q. I want to slow down. When you turned around and you
17 asked him, "Are you talking to me?" what did he say next?

18 A. Yes, sir. He was like, "What you want, what the fuck
19 you want to do?"

20 Q. Okay. And that's when he stepped up on you?

21 A. Yes, sir.

22 Q. And pulled out a gun?

23 A. Yes, sir.

24 Q. What did he say next?

25 A. "Get your black, ghetto ass on."

1 Q. And after that, still making threats?

2 A. Yes, sir.

3 Q. Still -- y'all were both back and forth, everybody's
4 talking trash?

5 A. No, sir, I just threw my hands up in the air like,
6 you got it, I don't want no problems with you.

7 Q. Okay. But later on, you're still talking to him?

8 A. Yes, sir, telling him the same thing.

9 Q. Talking in front of Off Da Chain seafood. He's still
10 talking back at y'all?

11 A. Yes, sir.

12 Q. These are not kind words?

13 A. He wasn't using kind words towards me. I was just
14 like you got it, you got it, I don't want no problems with
15 you. I don't want no problems with you.

16 Q. Because you were scared?

17 A. Yes, sir.

18 Q. Was all this real quiet? Dae'Kwon couldn't hear?

19 A. No. It was loud enough he probably heard it.

20 Q. Loud enough where people down the street could
21 probably hear some of this stuff?

22 A. Yes, sir.

23 Q. As a part of all this, you ended up being taken into
24 custody, right?

25 A. Yes, sir.

REGINALD YOUNG - DIRECT EXAMINATION BY MR. THOMPSON

1 Q. Okay. And you were how old?

2 A. 14.

3 Q. So you weren't arrested and taken to the Aiken County
4 jail?

5 A. No, sir.

6 Q. You were put into juvenile custody?

7 A. Yes, sir.

8 Q. Okay. And in juvenile custody, they assigned you a
9 lawyer?

10 A. Yes, sir.

11 Q. This happened pretty fast?

12 A. Yes, sir.

13 Q. Okay. You were in court before the man died?

14 A. Yes, sir.

15 Q. About how many days -- after -- after the -- the
16 events, after Mr. Swearingen got shot, about how many days
17 was it before you're in family court?

18 A. August 8th.

19 Q. Okay.

20 A. That was two days after.

21 Q. Two days after?

22 A. Yes, sir.

23 Q. So 48 hours after this happens, you're in family
24 court in front of a judge?

25 A. Yes, sir.

1 Q. And you talked to your lawyer?

2 A. Yes, sir.

3 Q. And you basically had a pretty terrible choice,
4 right?

5 A. Yes, sir.

6 Q. What was your choice?

7 A. Either I just hold it, wait, take it to trial, and I
8 knew they was going to hold me, and try to try me as an
9 adult, or I just take another -- take an accessory right
10 before the fact and get two to four years.

11 Q. And if you had taken it to trial, you were going to
12 get waived up to general sessions court?

13 A. Yes, sir.

14 MR. GRIMES: Objection, that's speculation.

15 THE COURT: Sustained.

16 Q. You and your lawyer talked about the possible ---

17 A. Yes, sir.

18 Q. --- consequences of what might happen, right?

19 A. Yes, sir.

20 Q. And you decided to plead guilty in family court?

21 A. Yes, sir.

22 Q. How much longer you got to be in -- inmate at the
23 DJJ?

24 A. Three more months.

25 Q. Three months, you'll be out?

REGINALD YOUNG - DIRECT EXAMINATION BY MR. THOMPSON

1 A. Yes, sir.

2 Q. Won't have a record?

3 A. I still be on parole.

4 Q. But you won't have an adult record?

5 A. No, sir.

6 Q. Won't be a felon?

7 A. No, sir.

8 Q. Pretty easy decision to make?

9 A. Yes, sir.

10 Q. Reggie, I have no further questions for you. Please
11 answer whatever questions the state has for you?

12 A. Yes, sir.

13 THE COURT: Thank you, Mr. Thompson.

14 From the state?

15 MR. GRIMES: One moment, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. GRIMES:

18 Q. Reggie, you said y'all just met these two girls; is
19 that correct?

20 A. Yes, sir, we had just met them like 30 minutes before
21 it all happened.

22 Q. You ever saw them before, or just weren't friends
23 with them or ---

24 A. I just wasn't -- I wasn't friends. I knew of them, I
25 just wasn't friends with them.

REGINALD YOUNG - CROSS-EXAMINATION BY MR. GRIMES

1 Q. All right. And y'all saw them walking down the road,
2 or what was going on there?

3 A. What, with the girls? How did we meet up with them?
4 We had planned to meet up with them.

5 Q. You planned to meet up with them?

6 A. Yeah.

7 Q. That's fine. You just said you didn't know them, so
8 when did you plan to meet up with them?

9 A. That -- that day.

10 Q. So you saw them earlier in the day?

11 A. No. Just text or whatever.

12 Q. Okay. You just texted them. What was the point of
13 meeting up with them, I guess?

14 A. Chill. Have something to do.

15 Q. Because they were girls or, like --

16 A. It wasn't nothing else to do, so we had to find
17 something to do.

18 Q. And so were you hoping to have some sort of
19 relationship with these girls, or --

20 A. Um...

21 Q. Don't make this hard on me. Why did you want to talk
22 to them?

23 MR. THOMPSON: Objection.

24 A. I just wanted to chill with them.

25 THE COURT: Hold on.

REGINALD YOUNG - CROSS-EXAMINATION BY MR. GRIMES

1 MR. THOMPSON: Objection. Relevance.

2 THE COURT: You have more of this line of
3 questioning.

4 MR. GRIMES: Judge, just the relationship of the
5 people we see on this video that were all together, why
6 they're together, why everybody knows each other.

7 THE COURT: All right. I'll allow it.

8 Q. Attraction to these girls?

9 A. We just wanted to chill with them, like I said. In
10 my head, I wasn't thinking about none of that. To be
11 honest, I barely talked to them when we met up with them.

12 Q. And y'all went down to the In and Out store with
13 them?

14 A. It was one of the females idea. Mr. Dae'Kwon didn't
15 even want to go. I asked him to come.

16 Q. You asked him to come. He didn't want to go?

17 A. No, sir.

18 Q. Do you usually call him Mr. Dae'Kwon?

19 A. No, sir.

20 Q. Okay. So y'all go down to the store and what all is
21 going on? Y'all are all happy?

22 A. We was just -- we was just walking to the store. It
23 wasn't -- one of the females walking way ahead and me and
24 Dae'Kwon was in the back with the other female, just
25 walking.

REGINALD YOUNG - CROSS-EXAMINATION BY MR. GRIMES

1 Q. And when y'all left the store, everybody still happy?

2 A. If that's what you want to call it, yes, sir.

3 Q. Nobody's mad?

4 A. No, sir.

5 Q. Where were y'all headed?

6 A. Back to where we met the girls at?

7 Q. You were just going to hang there or what?

8 A. I guess so.

9 Q. Is that inside, outside, what?

10 A. It was outside.

11 Q. Okay. So y'all crossed the road. When -- you when
12 sat down here and talked to Mr. Thompson, you talked about
13 what you thought I guess Larry and his wife and his
14 daughter were doing when they stopped there at that
15 mailbox.

16 A. Yes, sir.

17 Q. You -- you said that you thought that he wanted to
18 say something to you?

19 A. That's when ---

20 Q. What would make you say that?

21 A. When you first requested to talk to me and my social
22 worker, and that was my very first time actually seeing
23 the video, and that thought came when I seen the video,
24 and I was like dang. Because I never was paying him no
25 attention. I was crossing the street.

REGINALD YOUNG - CROSS-EXAMINATION BY MR. GRIMES

1 Q. So you didn't come up with that idea that Dae ---

2 A. No, sir.

3 Q. You came up with that idea after seeing this video?

4 A. Yes, sir. That's when I talked to you.

5 Q. So the Dae this all happened, you didn't look across
6 the street and say, that person is going to want to talk
7 to me?

8 A. No, sir.

9 Q. Okay. That's just what you think today based on
10 watching this video?

11 A. Yes, sir. That's how I feel.

12 Q. Okay. I'm going to show you a little bit more of
13 State's Exhibit 3. I guess not any more but kind of the
14 middle of State's Exhibit 3.

15 Go ahead and press play. All right. Press stop.

16 Here in this video, who is on the -- you see this --
17 I'm going to point to it ---

18 A. I can't really see.

19 Q. Okay. Well, lean little bit for me. You see this
20 tree right up here?

21 A. No, sir.

22 Q. You don't see a tree?

23 A. I can't -- I can't see it from back here.

24 Q. All right. Well, come on down here.

25 What's that look like? You're on this side of that

REGINALD YOUNG - CROSS-EXAMINATION BY MR. GRIMES

1 tree, so that's not you in the blue shirt. Are you over
2 there?

3 A. (inaudible).

4 Q. And who is this?

5 THE COURT: Mr. Young, just a little bit louder.

6 Okay?

7 Q. That's the females? You don't remember their names?

8 A. No, sir.

9 Q. That's the two females are on the right side -- on
10 the left side of that tree, and you and the defendant are
11 on the right side of that tree; is that right?

12 A. Yes, sir.

13 Q. Okay. Have a seat back up there.

14 Play this video a little bit more.

15 Are you waiving your arms around a little bit?

16 A. Yes, sir.

17 Q. And you're standing right next to the defendant when
18 he shoots the gun?

19 A. Yes, sir.

20 Q. You were in family court in this building, right,
21 downstairs?

22 A. Downstairs.

23 Q. Is that where juvenile cases are heard?

24 A. I guess. I think so.

25 Q. And you were 14 at the time this happened?

1 A. Yes, sir.

2 Q. Do you remember during that hearing the judge asking
3 you whether you wanted to plead guilty?

4 A. Yes, sir.

5 Q. And you had a lawyer; is that correct?

6 A. Yes, sir.

7 Q. And you pled guilty to -- what was that?

8 A. Accessory to attempted murder before the fact.

9 Q. Accessory before the fact to attempted murder?

10 A. Yes, sir.

11 Q. And you said -- why were you pleading so early again?

12 A. Because I didn't want to get hold -- because I know
13 the system -- well, I don't know it, but I got an idea of
14 how the system run. And I didn't want to be waiting in
15 county for two, three years and then have to come to
16 general sessions.

17 Q. Did you know anything about the victim at that point?
18 Did you know about this case?

19 A. After that, after all that, I didn't -- after I
20 pleaded to all that, I didn't ---

21 Q. No, no, at the time you took -- at the time you took
22 the plea, you had a lawyer right?

23 A. Yes, sir.

24 Q. So you knew what was going on?

25 A. Yes, sir.

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1 Q. And your lawyer could tell you, advise you about the
2 law, right?

3 A. Yes, sir.

4 Q. And you didn't have any question about the law?

5 A. Not really.

6 Q. And y'all talked about what happened on that Dae at
7 family court at the time of your plea, right?

8 A. Yes, sir. Well, I talked to him -- with my lawyer.
9 I ain't say too much (inaudible) the solicitors just like
10 telling me what was -- the solicitor did most of the
11 talking.

12 Q. So during your guilty plea, Detective Colindres was
13 there?

14 A. I don't remember his name, but whoever he is. I
15 don't remember his face from seeing his face, but I guess
16 so.

17 Q. And the prosecutor was there, the solicitor, right?

18 A. Yes, sir.

19 Q. And they told the judge what happened so you could
20 plead guilty to it, right?

21 A. Yes, sir.

22 Q. So they told the judge the story about what happened
23 and then you agreed to it; is that correct?

24 A. They -- they told the judge my part. My part in it.

25 Q. Right. That you were egging on the defendant going,

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1 do it, do it.

2 A. Well, I wasn't ---

3 Q. That's what you agreed to in family court, right?

4 A. No, sir.

5 Q. You want to look at a transcript?

6 MR. THOMPSON: Objection, Your Honor.

7 THE COURT: What's the objection? Need to come up.

8 MR. THOMPSON: Yes, ma'am.

9 (WHEREUPON, a bench conference was held in the
10 presence but not within the hearing of the jury.)

11 Q. He's egging him on, do it, do it. That's what the
12 solicitor told the judge, right?

13 A. I don't know because when I got locked up, they
14 had -- the officers that locked me up exact question was,
15 "do you know (inaudible)?" I don't remember signing
16 anything, writing anything down. That didn't come out my
17 mouth, so I never did it. I never said ---

18 Q. All right. I'm not asking you about when you got
19 locked up. I'm talking about at your guilty plea in
20 court, the solicitor told that to the judge, and you pled
21 guilty on those facts.

22 A. My lawyer never told me that was what was said or
23 none of that. I just -- she was telling me about the
24 charges.

25 Q. I'm telling you -- I'm talking to you about what

1 happened in court, the solicitor said that.

2 A. And I'm telling you that my lawyer told me about the
3 charges, not what the solicitor was saying, all that. She
4 was talking to me about what was going on with my charges.
5 How can I get lesser charges. I didn't know what was
6 written or -- because I never said anything. When I got
7 in the interrogation room, never said anything, never
8 signed anything. When I was in court, never -- I didn't
9 say anything about I said do it or none of that.

10 Q. I'm having a little difficulty, because you're a
11 straight A student. And I'm not asking a confusing
12 question. The solicitor said that and you pled guilty on
13 those facts.

14 A. I don't remember the solicitor saying that. That's
15 all I'm saying.

16 Q. Okay. Would you like to look at the transcript?

17 A. No, sir. I believe whatever you're saying is on that
18 paper.

19 Q. You believe what I'm saying, right?

20 A. I believe what you -- whatever you're saying, asking
21 me on that paper because you're reading it. I just
22 telling you that I don't remember saying anything like
23 that. I don't remember anything like that being said. I
24 never wrote anything down, never came out my mouth.
25 That's what I'm trying to get you to understand.

REGINALD YOUNG - CROSS-EXAMINATION BY MR. GRIMES

1 Q. Sir, you went to court. You remember the solicitor
2 telling the judge what happened, right?

3 A. On my part.

4 Q. Yes or no?

5 A. I remember her saying what happened on my part. But
6 I don't remember her saying I said that. Because I never
7 said that.

8 Q. You were sworn in in family court when you did your
9 plea?

10 A. Yes, sir. You supposed to get sworn in.

11 Q. Right. And you told the judge truthful answers; is
12 that correct?

13 A. Yes, sir, I don't remember the questions that the
14 judge asked me.

15 Q. If the judge asked you a question, the answer you
16 gave her was truthful, right?

17 A. I would have to give a truthful answer, but I
18 remember being asked a question where I said that was my
19 answer.

20 Q. This whole transcript is questions of you.

21 A. Well, I don't remember saying that.

22 Q. Okay.

23 A. Is the transcript saying that they asked me did I egg
24 it on? That's what the transcript is saying ---

25 Q. No, I'm telling you when the solicitor told the judge

REGINALD YOUNG - CROSS-EXAMINATION BY MR. GRIMES

1 what happened, that's what she said and you pled guilty to
2 it.

3 A. So you just answered your own question. That's what
4 the solicitor said. And I said I never said it. That
5 wasn't my answer. I never told him none of that. You
6 just answered your own question, sir.

7 Q. So when you -- so when you pled guilty on those
8 facts, that wasn't true? That's what you're saying?

9 A. That's not what I remember being said.

10 Q. Do you remember talking to me and Solicitor Hall on a
11 Zoom computer call?

12 A. Yes, sir, with my social worker.

13 Q. What's that?

14 A. Yes, sir, with my social worker.

15 Q. I didn't hear that second part.

16 A. Yes, sir, with my social worker present.

17 Q. With your social worker?

18 A. Yes, sir.

19 Q. And do you remember talking to us about what Larry
20 did while you were out there on the day this happened?

21 A. Yes, sir.

22 Q. Do you remember saying that Larry was waiving the gun
23 around?

24 A. Yes, sir.

25 Q. Do you remember asking -- do you remember Ms. Hall

REGINALD YOUNG - CROSS-EXAMINATION BY MR. GRIMES

1 and I asking you a lot of questions about what happened
2 that day?

3 A. Y'all asked me a bunch of questions. Some questions
4 I told y'all if y'all wanted information for, that if
5 y'all looking from me, tell y'all (inaudible) them type of
6 questions y'all asked me. I told you to do your job. You
7 and the police go find information for the questions,
8 because I'm not giving you none on concern of Dae'Kwon
9 Smith (sic) part. Only on my part.

10 Q. I asked you questions about what happened. Do you
11 remember why we said we wanted to know what happened that
12 day?

13 A. Y'all just trying to make sure the story ---

14 MR. THOMPSON: Objection. Hearsay?

15 THE COURT: Rephrase.

16 MR. GRIMES: I'll move on, Judge.

17 Q. You had the opportunity to clear it all up with us
18 when we talked to you on that call, right?

19 A. Yes, sir. It was the question that y'all asked me
20 though that gave me -- why I said certain answers that I
21 said. It was the questions that you asked, not nobody
22 else asked me.

23 Q. You didn't want to answer our questions, right?

24 A. I did answer your questions. I answered all of them.
25 I just didn't answer in the way y'all wanted me to answer

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1 or expect me to answer.

2 Q. You're saying today that you answered all our
3 questions. Just a minute ago, you told me that you told
4 us that we were the police and the prosecutors, we need to
5 go do our job. If we wanted to find out answers to the
6 questions, we need to go do our job. That's what you told
7 us, right?

8 A. That was on a couple questions you asked me. You
9 asked me like two or three questions where I told you that
10 answer.

11 Q. I asked you what happened and you told me to go do my
12 job; is that correct?

13 MR. THOMPSON: Objection, Your Honor. Objection. I
14 have a matter I need to take up outside the presence of
15 the witness -- the jury.

16 THE COURT: All right, Mr. Bailiff, you can escort
17 the jury out.

18 (The jury left open court at approximately 10:54
19 a.m.)

20 THE COURT: Mr. Thompson?

21 MR. THOMPSON: Your Honor, I would have the following
22 objections. There's several of these questions that have
23 been asked and answered. They may not have been answered
24 in a manner that's acceptable to Mr. Grimes, but they've
25 been asked and answered and we're getting to the point

1 it's just badgering the witness. The second thing is
2 there are several of these -- there's several of these
3 questions that are being asked where Mr. Grimes says and I
4 told you such and such, isn't that right? He's asking for
5 the witness to talk about hearsay that Mr. Grimes said.
6 And thirdly, I would object to the relevance of all of
7 this in that it doesn't seem to have any concrete
8 impeachment goal in mind in that he's not -- he's not
9 attacking any of the witness's previous statements because
10 the witness has testified that he didn't answer his
11 questions. He's essentially trying to impeach the fact
12 that he didn't answer a question put to him by the
13 solicitor's office in a Zoom call. And I just don't think
14 that's relevant.

15 THE COURT: Mr. Grimes?

16 MR. GRIMES: Your Honor, the witness didn't answer
17 our questions when we asked them. He said as much before
18 I even asked him about it. He's the one that brought up
19 telling me to go do my job. He made that statement -- it
20 wasn't even responsive to a question I asked, I don't
21 believe. I circled back to it, because his willingness to
22 cooperate with the defendant and unwillingness to
23 cooperate with the state investigating this case goes to
24 his credibility, to whether he's telling the truth. The
25 fact that he wouldn't tell it to one party and wouldn't

1 tell it to another party goes to whether he's
2 manufacturing testimony in favor of the party he's
3 cooperating with. And additionally, Judge, he first said
4 that he told me to go do my job and he wouldn't answer any
5 questions, and then probably not ten seconds later, he
6 just testified that he answered every single question we
7 asked, which is inconsistent with what he said just a
8 couple answers before. So I quite frankly, all of it goes
9 to his credibility -- to the extent that I asked him one
10 thing and asked him again, I got a different answer, so I
11 don't know how that goes to Mr. Thompson's objection that
12 it was asked and answered. It was asked and answered in
13 different ways.

14 I don't have any intention of continuing that line of
15 questioning.

16 THE COURT: So Mr. Thompson, your objection really is
17 three fold.

18 MR. THOMPSON: Yes, ma'am. Essentially, you can
19 impeach with prior inconsistent statement, but there's no
20 evidence of any prior inconsistent statement. He's didn't
21 make a statement.

22 THE WITNESS: Um, could I ---

23 MR. GRIMES: And that was not the intent of my -- Mr.
24 Thompson to say what the intent of my line of questioning
25 is and then object to that intent, that didn't have

1 anything to do with where we were headed.

2 THE COURT: All right. And so Mr. Grimes, you plan
3 on continuing or you plan on -- is that the end of that
4 line of questioning?

5 MR. GRIMES: Yeah, I don't have anything past that.

6 THE COURT: Okay. All right.

7 Mr. Thompson, I'm going to rule in three parts on
8 your three part objection.

9 MR. THOMPSON: Thank you, Your Honor.

10 THE COURT: All right. In terms of asked and
11 answered, I'm going to overrule. In terms of the hearsay,
12 Mr. Grimes, what was your question? Do you remember the
13 question?

14 MR. GRIMES: I believe if I remember correctly, the
15 witness brought up or approached the subject of us asking
16 the questions ---

17 THE COURT: Was it discussion in interview?

18 MR. GRIMES: My questioning was to the -- to the
19 point that he had the opportunity to provide that story to
20 the state and chose not to. So any hearsay involving that
21 was just the basis of the question was that he was aware
22 we were giving him the opportunity to tell us what
23 happened, and he chose not to do it.

24 THE WITNESS: Am I allowed to say anything?

25 THE COURT: No.

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1 So I'm going to rule that that is not hearsay, Mr.
2 Thompson, and in terms of the relevance, I do think -- I
3 don't really believe that that question was -- that last
4 question was relevant, so I'll sustain that one. However,
5 Mr. Grimes is moving on from that line of questioning.

6 MR. THOMPSON: Very fine, Your Honor.

7 THE COURT: So when the jury comes back in, you're
8 still on cross. You still have further questions,
9 correct?

10 Mr. Young, if he has further questions, you'll be
11 able to answer those questions and then we'll move on to
12 Mr. Thompson.

13 THE WITNESS: Yes, ma'am.

14 THE COURT: Mr. Thompson, any further objections.

15 MR. THOMPSON: No, Your Honor.

16 THE COURT: Bring the jury in.

17 (The jury entered the courtroom at 11:03 a.m.)

18 THE COURT: At this time, we'll proceed with
19 questioning from the state.

20 Q. At the end of this video, we see you and the
21 defendant run away, right?

22 A. Yes, sir.

23 Q. Where did you go?

24 A. That's one of the questions you asked me. I told
25 you -- because you wanted to interview me ---

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1 Q. Where did you go? That's it.

2 A. That's one of the questions I told you ---

3 Q. Where did you go?

4 A. --- prosecutor to do your job, police. That's
5 exactly I told you when you asked me that question before.

6 Q. Where did you go?

7 A. I told you the same answer I gave you answer last.

8 THE COURT: Mr. Young, please answer the question at
9 this time.

10 A. We left the scene. We walked -- we ran away from the
11 scene.

12 Q. Where did you go?

13 A. I don't know specifically.

14 Q. You don't know where you went?

15 A. No, sir.

16 Q. Okay. No further questions.

17 THE COURT: Mr. Thompson?

18 MR. THOMPSON: Nothing further, Your Honor.

19 THE COURT: The witness is now excused.

20 All right, Mr. Thompson, any further witnesses?

21 MR. THOMPSON: Your Honor, defense rests.

22 THE COURT: All right. Ladies and gentlemen of the
23 jury, I know you've been up and down today. At this
24 moment, the state has rested and so there are some matters
25 we do have to have -- handle outside of your presence. It

1 something I haven't thought up.

2 THE COURT: Mr. McKellar, that was a bit of my
3 concern too, but I'm more than willing to hear from you.

4 MR. McKELLAR: Yes, Your Honor. Thank you. Your
5 Honor, it is our position that there is some evidence that
6 meets every element. The question is whether there's any
7 evidence as to each element of manslaughter. Your Honor,
8 the first element of sudden heat of passion -- I beg the
9 Court's indulgence one second.

10 THE COURT: Sure.

11 MR. McKELLAR: Your Honor, to prove manslaughter, the
12 state has to prove beyond a reasonable doubt that the
13 defendant took the life of another person in the sudden
14 heat of the passion based on sufficient legal provocation
15 and also without time to cool. If there's a cooling off
16 period, then voluntary manslaughter is not appropriate,
17 and we would posit that the ten seconds between the
18 shooting and the confrontation is not a long enough for
19 cool off.

20 As to whether there was a sudden heat of passion --
21 sudden heat of passion must make an ordinary person unable
22 to coolly reflect on actions that produce an
23 uncontrollable impulse. It is our opinion that the
24 confrontation on the road was a confrontation of words
25 combined with conduct. It wasn't just words, it was words

1 with an overt act of violence, or potential violence. We
2 heard the confrontational words were, according to the
3 state's -- defense witness, Reginald, that the decedent in
4 this case called him ---

5 THE COURT: I remember the language.

6 MR. McKELLAR: Okay. And not only did that happen,
7 but he pulled a gun, waved a gun around, and I believe he
8 also said pushed Reginald. If he didn't say it, at least
9 one witness came down here and said she saw on video --
10 I'm sorry -- I forgot her name. It was the lady that came
11 down and just told the jury what she saw on the video.
12 She saw Reginald being pushed with Reginald's hands in the
13 air. So that an act -- words and an act that can create
14 sudden heat of passion.

15 THE COURT: This is the neighbor?

16 MR. McKELLAR: Yes.

17 THE COURT: The driver of the car, the white vehicle?
18 Is that who -- Cummings.

19 MR. McKELLAR: Thank you, Ms. Cummings.

20 THE COURT: All right.

21 MR. McKELLAR: Ten seconds, Your Honor, is not time
22 to cool off. I've never been in an argument with somebody
23 or I've never had feelings personally of hostility that
24 were gone within ten seconds of the event that created it.
25 I would be surprised if anyone has.

1 THE COURT: Let me look through Hernandez.
2 Mr. Grimes, is that your argument based on -- are you
3 actually arguing against voluntary manslaughter or not?

4 MR. GRIMES: Judge, the -- here's the situation. We
5 have the Simmons case, and it essentially put us in a
6 precarious situation because if -- it doesn't really
7 matter whether we argue against it, enforce it, if the
8 Court rules that the voluntary manslaughter charge is
9 appropriate, and the defendant's convicted of voluntary
10 manslaughter and if the appellate court disagrees with the
11 trial court, then they're not convicted of anything and
12 can't be retried. So it's a -- you know, we have a
13 conditioned response in criminal court. I know both sides
14 are entitled to a fair trial, but it seems like all the
15 parties in the courtroom are -- not maliciously but just
16 kind of conditioned to -- that the idea that where it's a
17 close question or where there's some uncertainty, it kind
18 of gets erred in favor of the defendant, but that can
19 produce the wrong result in this case.

20 And so I just -- if there's an argument from the
21 defense as, you know -- there's a viable argument that
22 voluntary manslaughter should apply, I would -- I would
23 like to hear it. There are two things I would like to
24 contradict from what I've heard so far. I don't think Mr.
25 McKellar was finished, but he indicated that -- he

1 indicated that Millie Cummings said that Larry pushed
2 Reggie Young, or what would have had to have been Reggie
3 Young, the person raising his arms in the video. And I
4 don't think that's accurate based on the testimony,
5 because Mr. Thompson tried really hard to get her to say
6 that, and led her in that direction and she kind of
7 continuously refused to affirm that, despite the fact that
8 he was approaching that question over and over again. And
9 then he asked her -- you know, he said that she didn't see
10 it, and he said did you not see it in the video, or did
11 you not see it that day, and she said she didn't see it
12 that day, and then he kind of redirected her through the
13 video, I believe. And we never got -- from what I
14 recall -- I don't think there was ever any affirmation
15 from her of pushing from the victim to the person with his
16 arms raised. I just don't think that's clearly supported
17 by her testimony.

18 And then in regards to waving a gun around, I asked
19 Reggie Young if he had told us that before. His testimony
20 to the defense as to what happened was not the
21 defendant -- the victim that Larry pulled his gun out and
22 waved it around. It's just that he pulled it out. And so
23 just that clarification. So I would like to hear -- I
24 guess seems like he may not have done it, but I would like
25 to hear their position with that.

1 So the cooling off period I think the Hernandez case,
2 it's not a bright line rule. And I realize it's a short
3 amount of time in this case, but the actions of the
4 defendant during that separation are clearly visible to
5 the court. So the facts and circumstances are what are
6 supposed to be taken into consideration. And the facts
7 and circumstances are that they were I think 145 feet
8 apart at the time the shooting occurred, that they were
9 separating from each other, that the victim had his back
10 turned towards the defendant at the time just before the
11 shooting and at the time of the shooting, that they had
12 separated.

13 So I think the distance, the fact that he was in a
14 position of relative cover compared to where he moved to
15 to get a clear shot should be taken into consideration by
16 the Court as to whether he had the ability to cool off.
17 And then his actions, which are visible to the Court.
18 This is not somebody who is apparently shoving any
19 physical signs of being in distress or rage other than
20 shooting the gun. But as far as -- he's walking, he's not
21 running, he's not yelling, his arms aren't in the air.
22 He's not behaving erratically. He appears to be calmly
23 moving towards his clean shot, clear shot in this video.
24 So I guess it goes to whether he had cooled off and I
25 think the Hernandez case pretty much says the Court makes

1 that determination, I guess whether that's sufficient.

2 And then -- and here's the other situation. The
3 testimony in this case and the video in this case is -- is
4 not that the victim, that Larry approached, addressed,
5 threatened the defendant. And even Reggie's testimony was
6 that when he said these statements like we had during the
7 proffer, it was to Reggie. And the video is clear on that
8 too. The two of them are talking, so defendant is there
9 but he's not -- he's 7 feet away. We can put it back up,
10 but this -- in fact, maybe pull up State's Exhibit 3. Is
11 5 the closer version of this? Let's try State's Exhibit
12 5. You can see the video --

13 THE COURT: I don't --

14 MR. GRIMES: --- to this degree it's pretty clear
15 that Larry and Reggie are in this verbal altercation, and
16 Reggie confirms that with his testimony where he says --
17 he's talking to Reggie, that Larry is talking to Reggie
18 when he says these things, not that he's talking to
19 Dae'Kwon. So first of all, that would go to the
20 provocation, is it going to be that Larry's words to
21 someone else, to Reggie are a sufficient legal provocation
22 to the defendant? It's kind of a transferred legal
23 provocation argument that, quite frankly, I don't -- I
24 don't know that's afforded in the law. If it is, I
25 haven't seen it. But I think the testimony is that the

1 significant parts of statements that would evoke really
2 any significant response were to Reggie, not to the
3 defendant.

4 And so the legal provocation I think is problematic.
5 The cooling off period is problematic, and then -- I guess
6 I'm kind of going backwards, but to the heat of passion,
7 we really didn't hear any testimony as to the state of
8 mind of the defendant. Reggie didn't testify that the
9 defendant was behaving enraged or acting enraged or seemed
10 to be acting uncontrollable or there's no way that he
11 could possibly cool off, or he'd never seen him act that
12 mad before or anything like that. I mean, Reggie talked
13 about what Reggie thought. And Mr. Thompson asked him
14 pretty specifically, he said, "Were you excited?" And he
15 said he wasn't excited. He said he felt unsafe and he
16 felt unprotected, but he didn't say he felt excited.

17 And so the person to whom the threat -- and I don't
18 want to characterize it as a threat, the person to whom
19 the statements from Larry were made to -- didn't feel
20 excited. It's just hard to believe that that created a
21 sudden heat of passion when the person who received the
22 statements directly said he wasn't excited. And it
23 caused -- he did say he was shocked and confused, and he
24 felt unsafe and unprotected. And so I don't know there's
25 testimony -- so we're in a situation where it can't merely

1 be speculative that the defendant was acting in the heat
2 of passion. If there's some reasonable inferences from
3 the testimony that could be had in that regard, that's one
4 thing. But if it's just speculation based on, you know --
5 if it's just speculation based on the fact that somebody
6 might be mad if they heard what Larry said to Reggie, if
7 some third-party might be mad they heard what Larry said
8 to Reggie, you know, is that a reasonable inference from
9 the -- is that a reasonable inference from the facts or is
10 that just speculation that somebody is going to be mad
11 when they hear one person say something to another person.
12 So I'm trying not to -- I would like to hear their
13 position on it because if they have a -- if they have a
14 sustainable position on this, then it's important that the
15 Court charge the applicable law. And if they don't, it's
16 a -- it's just a very important decision that I don't see
17 how the evidence supports at this point, but ---

18 THE COURT: Mr. McKellar, now, the main concern that
19 I'm having is regard to the real provocation.

20 MR. McKELLAR: Yes, Your Honor.

21 THE COURT: There's some concern about the cooling
22 off period, but the legal provocation is what ---

23 MR. McKELLAR: Your Honor, legal provocation is not
24 only as Reginald, a black man (inaudible). When he hears
25 that racial epithet directed at his younger black friend,

1 his younger friend, he -- it is an insult upon -- not only
2 his friend but himself.

3 THE COURT: I think I understand that part of your
4 motion.

5 MR. McKELLAR: I'm sorry.

6 THE COURT: But what I'm concerned about is not just
7 the words.

8 MR. McKELLAR: Okay.

9 THE COURT: It's the action, something other than
10 just the words.

11 MR. McKELLAR: And what his mental mind state was?

12 THE COURT: Well, you know, legal provocation
13 requires more than words.

14 MR. McKELLAR: Yes, Your Honor. Okay. And the overt
15 act is at least brandishing a weapon.

16 THE COURT: Okay.

17 MR. McKELLAR: He brandished a weapon to not just
18 Reginald, but everybody was there. Everybody would feel
19 threatened by that act, not just the person that is
20 standing directly in front of the decedent in having this
21 conversation with the decedent.

22 THE COURT: Mr. Young's testimony was that he saw the
23 gun.

24 MR. McKELLAR: Yes, Your Honor.

25 THE COURT: Was there testimony Mr. Simmons saw the

1 gun?

2 MR. McKELLAR: Well, Mr. Simmons would have to
3 testify to that, but he did not testify. Only Mr. Simmons
4 would know what he saw and did not see. And we only have
5 circumstantial evidence of what his state of mind was at
6 the time. He did not testify. As Mr. Grimes pointed out
7 previously regarding malice, malice is hard -- it's hard
8 to get inside the head of a defendant. If the defendant
9 doesn't testify, you have to go to circumstantial
10 evidence. So we have to look at the circumstantial
11 evidence what was going through his mind at the time. So
12 we look at the events that surround the incident to
13 determine what an ordinary person would do under the
14 circumstance. How an ordinary person would feel in that
15 situation.

16 Your Honor, I do want to -- if I may, circle back to
17 Sims.

18 THE COURT: Certainly.

19 MR. McKELLAR: Because Sims, the defense did not want
20 a voluntary manslaughter charge. They objected to a
21 voluntary manslaughter charge. The Court wanted it and
22 then the state joined in on the request. We have the
23 complete opposite situation here. Well, we have the
24 opposite situation in that the state is opposing it. We
25 are asking for it. And in that case, there was no

1 evidence of voluntary manslaughter.

2 Regarding the cooling off period, a period is a
3 duration of time, not a distance between one street and
4 another street. Mr. Grimes said there was 140 feet or
5 something like that between the decedent and the
6 defendant. But that's not the test. The test is period
7 of, period of time ---

8 THE COURT: How much time elapses?

9 MR. McKELLAR: I'm not sure exactly, Your Honor, but
10 I think the whole incident took 45 seconds.

11 THE COURT: Anything further, Mr. McKellar?

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

13 No further argument.

14 MR. GRIMES: Judge, I would say -- just in regard --
15 I just want to make a clear record. And to Mr. McKellar's
16 position about which party is asking, which party is
17 opposing, I don't know I've clearly opposed anything at
18 this point. But the way the result would be in a similar
19 situation to Sims, it doesn't matter which party asked for
20 it because, quite frankly, even if the Court charged
21 voluntary manslaughter over both parties' objection, we
22 could still end up in the same result as the Sims court
23 ended up. So as far as who is asking for it and not
24 asking for it, I don't know that that really bears on the
25 outcome.

1 I would say this -- and what was said is not on this
2 video. What was done is on the video, and so the words
3 accompanying that and overt act. And so the overt act to
4 the extent there is one on this video, I don't think could
5 produce an uncontrollable impulse to do violence in an
6 ordinary person. So is it going to be the words that
7 create an ordinary person unable to coolly reflect on his
8 actions and would produce an uncontrollable impulse to do
9 violence? So we have the words, Your Honor. They amount
10 to the three sentences. So ---

11 THE COURT: All right. Mr. Grimes, Mr. Thompson.
12 This is what I'm going to do. It's 11:50 now at this
13 point, so I'm going to allow the jury to have lunch and
14 allow you all to have lunch. At 1:00 p.m, I'm back and
15 let you all know what my decision is. And at that point
16 we'll have closing. How long do you anticipate in your
17 closing.

18 MR. GRIMES: (inaudible).

19 MS. HALL: That's a low --

20 THE COURT: I always add about 15 minutes on.

21 MS. HALL: I mean, five minutes?

22 THE COURT: Okay. So we'll -- all right. And Mr.
23 Thompson, does your closing depend on my decision?

24 MR. THOMPSON: No, ma'am.

25 THE COURT: So how long do you anticipate, Mr.

1 Thompson?

2 MR. THOMPSON: Probably about 30 minutes, probably.

3 THE COURT: All right. So it will take me -- I would
4 imagine 30 to -- the charge will take about 30 to 40
5 minutes. So we'll break until 1:00 and I'll let you know
6 my decision before the jury comes back in.

7 MR. GRIMES: Just one matter briefly before we break.
8 We don't have the -- well, I think it's -- the caption is
9 defendant's request for voir dire. This is their -- this
10 is their jury charge or jury instruction with regard to
11 Reginald Young's adjudication of delinquency and we didn't
12 have an objection to that?

13 THE COURT: Okay. All right. But I do take out ---

14 MR. GRIMES: Except it's actually accessory before
15 the fact to attempted murder is what the actual ---

16 THE COURT: We changed it.

17 MR. GRIMES: Okay.

18 THE COURT: His argument changed. But we will give
19 you all, both of you all a final document and give you ten
20 or 15 minutes to look at that, your client, and for you
21 all to look at it, okay? All right. We'll see you back
22 at 1:00. Do you have something else, Mr. Grimes?

23 MR. GRIMES: Just one other thing. If Your Honor is
24 considering sudden heat of passion on their request for
25 voir dire, there is some italicized words written -- there

1 is -- there is not a citation?

2 THE COURT: I think you said that was from Black's
3 dictionary?

4 MR. GRIMES: We would not -- if Your Honor does
5 decide to charge voluntary, we would not want that
6 addition to, I guess, a standard charge for voluntary.

7 THE COURT: All right.

8 MR. GRIMES: And there is a there is a definition, I
9 think, in the law from *State v. Long* (phonetic)
10 (inaudible) in the actual standard charge describing crime
11 of passion.

12 THE COURT: All right. I'll take a look at that and
13 make my determination if we even include that.

14 (A recess was taken from 11:50 a.m. to 1:07 p.m.)

15 THE COURT: All right Mr. Thompson and Madam
16 Solicitor, I have decided to include voluntary
17 manslaughter in the charges and you'll receive a copy of
18 those like I promised, and I'll give you a few minutes to
19 look over those. Will you explain to Mr. Simmons ---

20 MR. THOMPSON: I will, Your Honor.

21 THE COURT: Yes, sir?

22 MR. GRIMES: Do you have a copy of the verdict form
23 for me?

24 THE COURT: We do. You'll receive that draft in just
25 a moment.

1 MR. GRIMES: Thank you.

2 THE COURT: Have you all had a chance to review
3 those?

4 MR. THOMPSON: No objections to the jury form.

5 MR. GRIMES: We object to the language in the charge,
6 and no objection to the verdict form.

7 THE COURT: Okay. All right. At this time, I'll
8 bring the jury back in. I assume both parties are ready
9 with closing.

10 MS. HALL: Yes, Your Honor.

11 MR. THOMPSON: Yes, Your Honor. Can we approach?

12 THE COURT: Yes, sir.

13 (A bench conference was held outside the presence of
14 the jury.

15 THE COURT: Okay. Mr. Bailiff, can you please bring
16 the jury back? Can you bring the jury back?

17 (The jury entered the courtroom at 1:14 p.m.)

18 THE COURT: Ladies and gentlemen of the jury, we are
19 now at the stage of the trial where we will have -- where
20 we will hear final arguments by the lawyers. Once they
21 have completed that, I will give you my instructions on
22 the law. The state will go first, followed by the defense
23 counsel, and then the state has the right to reply to
24 anything that the defendant may have said in their
25 closing. Closing arguments are like opening statements.

1 They are not evidence in the case. Though these attorneys
2 will arguing the evidence in the light most favorable to
3 their position, but it is not evidence. You've heard all
4 the evidence. The testimony and exhibits are where you
5 will make your decisions. However, please pay very close
6 attention to their arguments and once they have completed
7 them, I will instruct you on the law and then it will be
8 in your hands for deliberations. State ready?

9 MS. HALL: Yes, Your Honor. Thank you.
10 Mr. Thompson, Mr. McKellar.

11 CLOSING ARGUMENT

12 BY MS. HALL:

13 Ladies and gentlemen, you've heard from all the
14 witnesses and seen all of the evidence in this case. And
15 now it's my turn to kind of go through all of that with
16 you because all of it is important. So bear with me.
17 You've seen a lot. I'll walk you through this.

18 So let's start with the elephant in the room, Larry's
19 gun. We've all seen the video multiple times. No one
20 disputes Reggie throws his hands up. Why did he throw his
21 hands up? Well, what you also see in that video is that
22 when Reggie turns around, he pulls that backpack off.
23 He's ready to go. He's ready to fight. Those are
24 fighting words. Larry gets in his face. That's all,
25 never mind, man, never mind. Maybe Larry did pull his gun

1 out. But you can see in that video. Jessica testified
2 Larry is right-handed. His right hand stays by his side
3 the entire time. Maybe Reggie pulls that backpack off and
4 is ready to go, Larry has his gun. His wife and daughter
5 are behind him. He's there by himself with four other
6 people. Maybe (inaudible). He never points it, and he
7 doesn't use it.

8 The only person that talks about this gun -- there's
9 only one person, one person that tells you that Larry had
10 a gun. And I think it's very clear from his testimony
11 what his purpose was. He was here to come testify for his
12 buddy. And we'll talk about that a little more later.
13 Regardless, it doesn't matter. It doesn't matter if Larry
14 had a gun out there, because you see what happened after.
15 The argument is over. Everybody walks off. No further
16 problem. Everybody's going about their business.

17 But Dae'Kwon is not willing to let it go. Did Larry
18 have the gun out when he was shot? Well, this is
19 definitely clear. You heard from Dr. Rose, the
20 pathologist, who told you that when Larry was struck in
21 the back of the neck, almost immediately he would have
22 lost control of everything below. He wouldn't have had
23 range of motion to put that gun back in his pants where
24 law enforcement found it. Who else was out there?
25 Jessica, his wife? It's entirely unreasonable to think

1 that Jessica went and grabbed Larry's gun and secured it
2 behind his back before she ever checked on her husband.
3 Before she ever grabbed that and went to check on him.

4 You saw what her hands looked like. After she was
5 checking on her husband, after watching him being shot,
6 her hands are covered in blood. And you heard testimony
7 that gun didn't have blood on it. And you saw pictures of
8 Larry Swearingen pants. His pants didn't have blood on
9 them. Jessica didn't put that gun back in his pants. The
10 gun was in Larry's pants. That's where it was when he was
11 shot from behind by Dae'Kwon Simmons.

12 You heard from three other witnesses about that gun.
13 Keith Dill, who said when Larry was shot from behind, he
14 saw his head turn. (inaudible) his hands. Never saw a
15 gun in his hands. Millie Cummings told you she actually
16 saw some of this argument going on. She was clear. Never
17 saw a gun then. She was very clear that Larry was walking
18 off with his back turned to Dae'Kwon. Didn't see a gun
19 then. She pulled over immediately after seeing him fall
20 to the ground. Didn't see a gun then. Because Larry's
21 gun wasn't out. Because he wasn't (inaudible).

22 If Larry had his gun out when he was shot, Dae'Kwon
23 wouldn't have stood out on that sidewalk with no cover for
24 as long as he did, fired a gun, clear the jam, and fire
25 again. He knew Larry (inaudible) because Larry didn't

1 have a gun on him and Larry's back was to him.

2 I'm going to go through this video with you. Bear
3 me, I imagine there's going to be technical difficulties.

4 (Videotape played in open court.)

5 MS. HALL: Up here in the top of the screen is day
6 Kwan and his friends walking across the street. Right
7 here. (inaudible). Watch **S.S.**. He reaches up to
8 that mailbox (inaudible). Larry was ready to fight with
9 us. He was waiting at that mailbox. This was a giant
10 fish mailbox that **S.S.** thought was cool. You see her
11 hand touch the mailbox. That's why they stopped, because
12 an eight-year-old thought a fish mailbox was cool.

13 You see up here Reggie takes his backpack off. Why
14 does he take his backpack off because he turned around to
15 talk to Larry? Reggie didn't tell you why he did that.
16 He didn't want to talk about that. Larry gets in his face
17 (inaudible). Walked off. Reggie wants you to believe
18 this man just pulled a gun on him. He immediately turns
19 his back to him. He turns his back to a man who just
20 pulled a gun on him. Is that reasonable?

21 Dae'Kwon is over here. You don't see him jump,
22 react, be scared of this gun. React to the awful things
23 that Larry -- that they want you to believe Larry said.
24 He's walking off cool, calm, and collected. Go back one
25 more time so we can look at something else. You see Larry

1 throw his hands up. And Mr. Thompson tried as best he
2 could to get Millie Cummings to say that Larry pushed
3 Reggie right there. But she wouldn't say it. She told
4 you she didn't see Larry push Reggie. He tried and tried
5 and tried. "Don't you see it?" Millie never told you
6 that. Millie didn't see Larry push Reggie.

7 What Larry is doing right there is telling him to go
8 on. And you know that that's what he's telling him to do,
9 because you see his hand go up, his left hand go up and he
10 points. What does Reggie do immediately after? He walks
11 off just like Larry told him to do. (inaudible). The
12 whole time, Larry's right arm is down by his side. You
13 heard from Reggie today, and he told you that when he
14 initially talked to myself and Mr. Grimes, he told us that
15 Larry was waving a gun around, waving it around. But
16 after he had a chance to watch the video again, that
17 testimony wasn't going to fly. So today, he told you he
18 pulled it out. He's clearly in here to help his buddy.

19 Let's switch to Exhibit 5.

20 THE COURT: Ms. Hall (inaudible)?

21 MS. HALL: Yes, ma'am.

22 (Videotape played in open court.)

23 MS. HALL: I had the wrong number. State's four.

24 He backs up. Everybody's walking off. Dae'Kwon,
25 right here, turns his back to Larry. The person who was

1 just so hateful, said those nasty things and pulled a gun
2 on him, turns his back on him and walks off coolly. I'm
3 going to pause right here. Once you -- I know Mr. Grimes
4 pointed out this tree here. Larry is behind that tree at
5 this point. (inaudible) that tree kind of defines these
6 spaces. When Dae'Kwon is over here, he doesn't have a
7 clear shot at Larry. Larry is still turned around at this
8 point. There's a sign here, brush. He doesn't have a
9 clear shot right here.

10 Right here, you see Dae'Kwon waiting, watching. Pay
11 attention, this is Larry's arm right here. He's turning,
12 turning back to check. His arm is poked out of that tree
13 because he hadn't completely turned around at that point.
14 Dae'Kwon is watching. Dae'Kwon sees he hasn't turned
15 completely around at this point. Waiting and then there
16 he goes. He's completely turned his back. Dae'Kwon
17 watches, yup, Larry's got his back to him, yup. And that
18 is when Dae'Kwon makes his move. When Larry completely
19 turns his back -- Larry is not checking back over his
20 shoulder any more. Larry has completely turned his back
21 to Dae'Kwon and that's what Dae'Kwon is waiting for.
22 That's when Dae'Kwon sees his moment. His clear shot at a
23 target who has no idea what's coming.

24 He tries to take the first shot -- I'm going to go
25 back. Watch Dae'Kwon after Larry is turned around.

1 Dae'Kwon is not jumping over that fence in a fit of range
2 to go take a shot. He's not so mad at what he has seen
3 and heard that he just can't control himself. It's cool,
4 it's calm, and it's calculated. He raises the gun and
5 fires once. Reggie is right there by his side. Look at
6 Dae'Kwon's face right there. We can play this video over
7 and over. Reggie and Dae'Kwon are smiling right there.
8 They're laughing. Larry is down there at the other end
9 with his back turned and his wife and eight-year-old
10 daughter. He has no idea what's coming. This is funny to
11 them. He's smiling because he's proud of what he's about
12 to do. He's proud of the fact he's about to take
13 someone's life in front of his buddies. He doesn't care
14 about shooting Larry, whether that bullet hits Jessica or
15 **S.S.**. He doesn't care if that bullet strikes Millie
16 Cummings and her car full of grand kids as she's driving
17 by. He doesn't care if that bullet strikes Keith Dill
18 while he's just trying to go home from visiting his
19 grandmother -- his mother at the nursing home. He doesn't
20 care about anyone but himself in that moment.

21 These aren't the actions of someone who feels
22 threatened or scared or someone who is acting in a sudden
23 heat of passion and he can't control his emotions because
24 of the awful things that Larry has said and done. That's
25 not what you see in this video. He's deliberate. He's

1 eager to pull the trigger. He's smiling in this video.
2 But he wants to come in here today and play victim. Larry
3 was mean to them, Larry pulled a gun on them. He's the
4 victim. But what he wasn't counting on was the fact that
5 this video surveillance is going to capture it all. It
6 was supposed to just be his buddy and Jessica -- it was
7 supposed to be his buddy's word against Jessica what
8 happened when he pulled the gun and what happened that
9 day. He wasn't counting on you being able to see exactly
10 what he was thinking before he pulled the trigger. It's
11 almost as if you can actually see every thought that runs
12 through his head as he's standing in front of the
13 restaurant, watching -- not making a move while Larry is
14 walking away. Not making a move when Larry turns around
15 and you see that arm come around the tree. He's not doing
16 anything then. He's waiting. He's waiting for Larry to
17 completely turn his back so that he can have a clear shot
18 (inaudible).

19 Watch what his friends do when the gun misfires.
20 They're not scared. They're not so enraged. He fires off
21 three more shots. You can watch this video as many times
22 as you want to in the jury room. But after these two
23 groups of people separate, you're not going to see a
24 single one of the defendant's friends look scared. Act
25 mad and enraged, so much that they can't control their

1 emotions. They're walking off like nothing happened,
2 going about their business. Going to go chill, they're
3 going to go hang out. You don't see them scared. You
4 don't see them act excited one bit until Dae'Kwon shoots,
5 until Dae'Kwon makes an act.

6 If you want to know what three reasonable people do
7 when they're scared? They book it. They book it just
8 like they did right there. After Dae'Kwon fires a shot.
9 They have no idea of knowing that Larry is immediately --
10 is unable to move. All they know is that their friend has
11 shot a gun at someone who may have been armed. They're
12 scared right there. They're scared and it takes them no
13 time to run because they're scared. This video shows you
14 exactly what Dae'Kwon and his friends do when they're
15 scared, and they aren't scared until Dae'Kwon fires his
16 gun. They're scared of being caught or they're scared of
17 what Larry might do. But it doesn't happen until Dae'Kwon
18 fires his gun.

19 Let's talk a little bit about Reggie, the defendant's
20 friend the judge is going to tell you in her charge, which
21 is basically an explanation of the law, that you get to
22 take into consideration the witness's demeanor. How he
23 acts on the witness stand. He was pretty calm when he was
24 talking to Mr. Thompson, testifying for his buddy. He was
25 fine talking about the details, speculating that Larry was

1 going to pick a fight with them at the mailbox when it was
2 just S.S. looking at a cool fish head box. But he
3 wouldn't answer simple questions for the state. Where did
4 you go after the shooting? Your friend just killed
5 someone and you don't know where you ran? He didn't want
6 to tell us anything. He told you that. He said we can
7 just go find out what happened ourselves. He wasn't going
8 to tell us what happened. But he wants you to believe his
9 story that helps his buddy.

10 Now, he was under oath in court and he had his day in
11 court and when the attorney got up in court, the solicitor
12 got up in court and said what he was pleading guilty to,
13 they said he was egging Dae'Kwon on. Let's look at it.
14 Egging him on, saying do it, do it. Right there. Do it,
15 do it. Come on. He told you that he was scared. He was
16 scared of what Larry said. That they were arguing, they
17 were jawing back and forth. When he was under oath in
18 court, when it was his day in court, he didn't have any
19 objection to it being that he was egging him on. Today,
20 it's a different story.

21 The defendant in this case is charged with murder.
22 Murder is the unlawful killing of another person with
23 malice aforethought. You're also going to hear the judge
24 charge you on the lesser included of voluntary
25 manslaughter. But you don't even get to that if you find

1 he's guilty of murder. So we're going to talk about
2 murder first. (inaudible) malice aforethought. Malice,
3 like I told you at the beginning, hatred, ill will,
4 hostility towards another person. And it is very rare
5 that someone yells out their intent to kill someone in
6 front of a bunch of witnesses. That doesn't happen. So
7 we have to look at the circumstances surrounding what did
8 happen to find malice, to know there's malice.

9 The use of a deadly weapon is evidence of malice.
10 You don't pull a deadly weapon on someone unless there's
11 hostility. When Dae'Kwon is watching Larry, watching and
12 waiting for him to turn around, that's malice. When
13 Dae'Kwon clears the jam in his gun and makes the decision
14 to shoot three more times, that's malice. When he smiles
15 before he takes another life, that's malice. He shoots
16 three shots after an argument on the sidewalk. Someone
17 said something that made him mad, that's malice.

18 The malice aforethought doesn't mean malice has to
19 exist for a set period of time. Malice can exist in the
20 spit second before the trigger is pulled. You can watch
21 that video. There are plenty of examples of malice before
22 the trigger is pulled.

23 The other charge that you're going to be instructed
24 on is voluntary manslaughter. I want you to pay close
25 attention to the elements of voluntary manslaughter. The

1 unlawful killing of another in the sudden heat of passion,
2 soon after sufficient legal provocation without malice.
3 We just talked all about the malice in the video. Malice
4 existed in this case, but I'll go through these elements
5 with you anyway. Sufficient legal provocation. It has to
6 be that an ordinary person would have been provoked by
7 this thing, by what happened. An ordinary reasonable
8 person. Words alone are never sufficient legal
9 provocation someone saying something you don't like,
10 something that's nasty doesn't make a murder manslaughter.
11 Someone making you mad with what they say doesn't make
12 murder a manslaughter. Murders happen because people are
13 mad, because people are hostile. That's malice, and
14 that's murder. An argument on the sidewalk doesn't
15 justify murder. And it doesn't make a murder a
16 manslaughter.

17 So maybe it wasn't just Larry's words. Maybe Larry
18 had a gun on him. Maybe he had it out. Not just words,
19 so it's an act. The law says that an ordinary person --
20 ordinary prudent person would have also had to have been
21 so provoked by these things. You see two girls out there
22 and Reggie. They're cool as they can be after this
23 interaction. Walking off, they're ready to go chill like
24 nothing happened. They're not so provoked. You can watch
25 this video as many times as you want, and you're not going

1 to see either of these girls look scared, provoked,
2 insulted, angry. You're not going to see it. That's what
3 reasonable people do. One in four of these people chose
4 to act the way they did. That's not reasonable.

5 Heat of passion. The kind of passion that renders a
6 reasonable person incapable of cool reflection, produces
7 an uncontrollable impulse to do violence. Everything
8 about this video after the two groups separate says this
9 was controlled. It was thought out. Every decision was
10 calculated. He sees that his shot isn't clear when he's
11 in front of the seafood restaurant. That tree is in the
12 way. So he waits. He waits for Larry to turn around and
13 he goes -- he has to go on the sidewalk to make a shot.
14 You don't see him angrily clearing that gun to get a new
15 shot so he can fire at Larry. Because he's not so
16 overcome in this heat of passion that he can't control his
17 actions. He smiles. Quite frankly, it looks like he's
18 having a great time up there. He's not mad. He's not
19 overcome with anger. Nothing says cool reflection quite
20 like a smile, and that's exactly what you see on that
21 video. That's not voluntary manslaughter, that is murder.

22 Reggie testified about some awful things Larry said.
23 They don't want you to like Larry. We don't actually know
24 what Larry said. One person came in here and told you
25 what he said, but Larry is not here to tell you what he

1 said. Reggie was clearly here to help out his buddy.
2 That was evident by the way he answered Mr. Thompson's
3 questions and the way he answered Mr. Grimes' questions.
4 But the thing about it is, you don't have to like Larry
5 for this to be murder. Even if you believe he said awful,
6 nasty things to these kids, it doesn't make a murder a
7 manslaughter. You don't have to be citizen of the year to
8 be murdered. Drug dealers are murdered all the time.
9 People say nasty, vile things, cuss, say awful cuss words.
10 They're murdered all the time. Saying nasty things
11 doesn't make this a manslaughter.

12 The most important thing that happened in this trial
13 occurred today and yesterday, when you took an oath, the
14 jury oath. An oath to decide this case based on the facts
15 and the evidence presented in this courtroom and to apply
16 the law of the state to that evidence. Your verdict isn't
17 about who you like more, whether Larry was a jerk, how
18 much older Larry was than Dae'Kwon. That oath means the
19 defendant doesn't get a pass. He doesn't get a lesser
20 charge because they made you not like Larry or because
21 he's only 17. He doesn't get a pass. Your oath means if
22 he committed a murder, you are obligated to convict him of
23 murder. That's what your oath was. What happened on
24 August 6th, 2019, that was murder. What happened in
25 that video, that's murder. Find him guilty.

1 THE COURT: Mr. Thompson?

2 MR. THOMPSON: Your Honor, may it please the Court,
3 solicitors?

4 CLOSING ARGUMENT

5 BY MR. THOMPSON:

6 I told you at the beginning of this case this is not
7 about what happened, it's why. It's a big deal. You've
8 seen it a dozen times now. It's very clear the actions of
9 the parties and what actually happens. The question again
10 is why. There's no evidence that there's any kind of
11 scheme or plan. These people don't know each other.
12 There's not some kind of crime -- it's not like there's a
13 robbery or something that happens or that there was any
14 kind of preset intention of doing anything where people
15 come out that morning, there's no evidence of that. This
16 whole thing happens in 40 seconds, and when you go back,
17 you'll have this video again. I invite you to time it.
18 From the time that -- that the teenagers intersect where
19 the Swearingens are walking, from that time until the time
20 Larry Swearingen is killed, about 40 seconds. I may be
21 off one or two seconds, but it's not by much.

22 The question again then is why. They don't know each
23 other. Why is he dead? I will submit to you that
24 Mr. Swearingen is tragically dead from a 402nd encounter
25 that he initiated, that escalated into an argument, that

1 went from there to a confrontation with a middle-aged man
2 with a gun who struggled all his life with mental health
3 issue, who pulled a gun on 14 and 17 year old boys.
4 They're freaked out. They're still arguing with the
5 man -- (inaudible) cooling period thing. When does it
6 start? They're still arguing with this man even as their
7 separating and ultimately Larry is shot. It's tragedy.
8 It's terrible, terrible, terrible. But it's not murder.

9 I want to talk very briefly about some of the
10 witnesses. Ms. Cummings, nice lady. She hears a loud
11 argument. She tells you there's a lot of aggressive
12 language. She initially talks about how she doesn't see a
13 gun. But I think if you'll look at the video and you'll
14 think about where she is in the video, if you can imagine
15 the video up there, she's kind of down and to the left.
16 If you think about where she is in the video, her
17 inability to see the gun is probably a matter of
18 perspective and she's kind of having to look through all
19 of the people in order to be able to see what happens and
20 she -- she did not even see the confrontation. But she
21 admits when she gets down and looks at the video, she
22 admits there is a confrontation.

23 Mr. Dill, he really only sees the end. He's driving
24 by about 35 miles an hour with the windows rolls up. He
25 hears a shot and kind of reacts. He does see Dae'Kwon

1 shoot the man with a gun. He does see that. But he
2 doesn't know anything at all about the why.

3 Jessica Swearingen, she says on the stand that she is
4 walking and she looks back and she doesn't see Larry pull
5 out his gun. I would submit to you she really doesn't
6 know what happened. Because she also gave an interview to
7 Detective Colindres, and in her interview, which you won't
8 have, she says she doesn't look back and I -- politely,
9 she doesn't know what happened. Her statement on the
10 stand is probably not accurate.

11 A little bit more instructive witnesses in this case
12 is Investigator Stacey Coleman. The guy who made --
13 there's three videos. One of them is kind of the --
14 Number 3 is the source video that kind of shows the whole
15 thing. The videos four and five, I invite you to look at
16 them. They're interesting in that they don't show the
17 confrontation at all, which is -- they clearly accurately
18 show you the end of the 40 second source video. They're
19 correct and accurate. They're just focused on a piece of
20 the timetable that's after the confrontation happens.
21 Which I think is instructive because it -- these
22 completely discount the whole concept of why did this
23 happen? The why is an essential element of the crime of
24 murder. The state has to prove why this happened. They
25 can't do it through assumptions. They have to prove it.

1 Now we'll talk about Reggie. Reggie is the only
2 witness who is in a position to tell you everything that
3 happened. If you boil his testimony down, I think you'll
4 find two things are relatively clear. Number one, he's
5 adamant that there was a gun, and Number 2, he really
6 doesn't like Mr. Grimes very much. He's a tough kid.
7 He's (inaudible). He's confronted by an angry,
8 middle-aged man with a gun. There's aggressive
9 conversations, threats follow.

10 The boys are 14 and 17 and the state talked a little
11 bit about okay, is this reasonable, is that reasonable?
12 You're not required to jettison your common sense and any
13 of your experiences with the world when you come in this
14 courtroom. It is not a question of would this be
15 reasonable actions for me to take, for Mr. Grimes to take,
16 for Mr. McKellar to take, for the judge to take. Would it
17 be reasonable action for a 17 year old boy to take. You
18 can take -- the law allows you to take into account when
19 you're looking and thinking about reasonable behavior
20 and -- what logic would follow, allows you to take into
21 account someone's age, the various differences in sizes
22 between the parties and people's life experiences. You
23 get to determine whether or not you think people are
24 thinking at all or whether they're idiot teenagers who are
25 just reacting.

1 I want to talk for just a minute about Reggie's
2 record. The fact that Reggie actually pleads guilty to
3 something in family court, the judge is going to instruct
4 you on this, legally. That is absolutely not evidence of
5 substantive guilt of the accused. It's not to be
6 considered for that. You can consider it for whether or
7 not somebody's testimony is credible or not, but it's not
8 about whether Dae'Kwon is guilty or not. Frankly, it's
9 more evidence that Reggie had a good lawyer and a brain.
10 If he pleads guilty, he stays in family court. And as he
11 told you, frankly, he's about to get out of confinement
12 and won't even have an adult record.

13 I'm not arguing that no crimes were committed here.
14 I think I told you that at the very beginning. Not
15 arguing that. Not arguing that at the end of this 40
16 second disaster that Larry is a threat to the boys. Not
17 arguing that. Not arguing self-defense, not arguing
18 defense of others. I haven't even talked to you at all
19 about two of the three possible verdicts that you're going
20 to have to give on the verdict form. I'm only arguing
21 about murder. This thing is a lot of things, but it's not
22 murder.

23 And at the end of the day, it's not Dae'Kwon's burden
24 to prove what happened. He doesn't have to prove
25 anything. The state has to burden to prove every element

1 of this case beyond a reasonable doubt. They don't get to
2 rely on assumptions. First bring up in close about if you
3 freeze the camera and it looks like they're smiling or
4 whatever -- if you freeze anybody talking, their face is
5 going to look kind of weird. I don't know whether he's
6 smiling or not, to be perfectly honest with you. But it's
7 not about whether he -- or whether or not people, if
8 they're -- notice she said smiling is circumstantial
9 evidence of cool reflection. That's argument. That's not
10 evidence. I would submit to you there are just as many
11 people who, when they get nervous, smile like that. But
12 the state has the burden to prove this beyond a reasonable
13 doubt each and every element of this crime. They can't
14 prove it by assumptions. They can't guess what's
15 happening in the video and decide somebody's guilty of
16 murder.

17 And for just a second, I want to talk about
18 reasonable doubt. The question you're being asked is not
19 whether or not Dae'Kwon committed murder. The question
20 you're asked is beyond a reasonable doubt did Dae'Kwon
21 commit murder. So if you answer this question, you think
22 to yourself it might be murder, that's a not-guilty
23 verdict. If you answer the question, he probably
24 committed murder but he might not have, your verdict
25 should be not guilty. Because the state has to prove this

1 beyond a reasonable doubt.

2 This is a terrible, terrible, terrible tragedy. It's
3 probably a crime. But it's not murder. I would ask that
4 you render a verdict that speaks the truth and find him
5 not guilty.

6 THE COURT: Ms. Thompson, any response from the
7 state?

8 MS. HALL: Beg the Court's indulgence, Your Honor.
9 May it please the Court?

10 REPLY ARGUMENT

11 BY MS. HALL:

12 I'm just going to touch on a few quick points. I
13 know y'all have heard a lot today. But one thing Mr.
14 Thompson said that we have to prove why it happened. I
15 don't have to tell you what Dae'Kwon's motive was. I have
16 to prove intent. I have to prove he had malice. I don't
17 have to prove his exact reason why he did it. Mr.
18 Thompson also talked about taking into account the age of
19 the defendant, he was 17. What's reasonable for a 17 year
20 old when he's confronted by a 40 year old man? Well, you
21 know what a reasonable teenager would do because there's
22 three other teenagers in that video. Three other people
23 his age that aren't so enraged they need to kill someone.
24 Not so in fear that they have to do something about it
25 immediately. What a reasonable 17 year old would do is

1 what the other three people in that video did.

2 Mr. Thompson also talked about me freezing the video
3 talking about Dae'Kwon smiling. He also told you to bring
4 your common sense into the courtroom. You can watch the
5 context clues in that video. You can see what Reggie is
6 doing. You can see what Dae'Kwon is doing. He's smiling.
7 They're laughing. He's not saying some word that just
8 happens to show all his teeth right before he pulls the
9 trigger.

10 Also want to explain reasonable doubt a little bit
11 more. Reasonable doubt is just that, has to be
12 reasonable. You can have doubt about just about anything,
13 but that doubt in a courtroom has to be reasonable,
14 logical, rational, not just maybe (inaudible). Has to be
15 reasonable. After hearing all the evidence in this case,
16 hearing the witnesses, if you're firmly convinced the
17 defendant is guilty of murder, we've met our burden. The
18 defendant is guilty of murder. Thank you.

19 CHARGE OF THE COURT

20 THE COURT: Thank you to the state and thank you
21 Mr. Thompson. At this time, ladies and gentlemen, I'm
22 going to go through the jury charge, the instruction on
23 the law. However, as I prepare to do that, I want you all
24 to stand up, take a stretch, because I need you to pay
25 close attention to what I'm about to say.

1 All right. You may be seated. Mr. Foreman and
2 ladies and gentlemen of the jury, you have heard the
3 testimony and the evidence and arguments of the state and
4 the defense. I will now explain to you the law that
5 applies to this case. Under the Constitution and laws of
6 South Carolina, you are the finders of fact in this case.
7 I do not have the right to pass upon the facts or even to
8 express any opinion I might have as to them. This is a
9 matter solely for you, the jury, to determine.

10 As jurors, it is your duty to determine the effect,
11 the value, the weight, and the truth of the evidence
12 during this trial. As the trial judge, it is my
13 responsibility to preside over the trial of the case, and
14 I also have the duty to rule upon or pass upon the
15 admissibility of the evidence offered during the trial.
16 You are to consider only the testimony which has been
17 presented from this witness stand together with any
18 exhibits which have been made part of the record and any
19 stipulations of counsel made into the record.

20 I have the additional duty to charge you the law
21 applicable to this case. And as the presiding judge, I am
22 the sole judge of the law on this case. It is your duty
23 as jurors to accept and apply the law as I state it to you
24 now. You will then reach your verdict. And finally, I
25 charge you in this regard that you should not be concerned

1 with what you think the law ought to be, but what I charge
2 you the law to be.

3 You are also the judges, the sole judges of the
4 credibility, that is the believability of the witnesses
5 who have testified in this case. And in passing on their
6 credibility, you may also take into consideration many
7 things such as the demeanor or manner of testifying,
8 whether the witness has reasons to be biased or
9 prejudiced, whether a witness's testimony was contradicted
10 on the one hand or supported and corroborated on the
11 other. You may believe a small portion of a witness's
12 testimony and disregard the larger, or vice versa. You
13 may believe one witness against many, or many witnesses
14 against one. All these things you will consider, bearing
15 in mind that you should give the defendant the benefit of
16 any reasonable doubt. It becomes your duty as jurors to
17 analyze and to evaluate the evidence and determine that
18 evidence which convinces you of its truth.

19 Ladies and gentlemen, you've heard the testimony of a
20 codefendant who was adjudicated delinquent of accessory
21 before the fact to attempted murder for the events leading
22 to the death of Larry Swearingen. The codefendant's
23 adjudication of delinquency may be considered by you only
24 on the matter of assessing the codefendant's credibility.
25 Under no circumstances may it be considered by you as

1 evidence of Dae'Kwon Simmons' guilt or innocence.

2 The rules of evidence ordinarily do not permit
3 witnesses to testify as to opinions or conclusions. An
4 exception to this rule exists for witnesses we call expert
5 witnesses. A witness who, by education and experience,
6 has become expert in some art, science, profession, or
7 calling may state an opinion as to relevant and material
8 matters in which the witness claims to be an expert and
9 may also the reasons for the opinion. You should consider
10 any expert opinion received in evidence in this case and
11 like any other evidence, give it the weight that you think
12 it deserves. If you decide that the opinion of an expert
13 witness is not based on sufficient education or
14 experience, or if you conclude that the reasons given in
15 support of the opinion are not sound, or that the opinion
16 is outweighed by other evidence, you may disregard that
17 opinion entirely. An expert's witness is to be given no
18 greater weight than that of other witnesses simply because
19 the witness is an expert. Further, you are not required
20 to accept an expert's opinion, even though it is not
21 contradicted.

22 There are two types of evidence which are generally
23 presented during a trial, direct evidence and
24 circumstantial evidence. Direct evidence is the testimony
25 of a person who claims to have actual knowledge of a fact,

1 such as an eyewitness. Circumstantial evidence is proof
2 of a chain of facts and circumstances indicating the
3 existence of a fact. The law makes absolutely no
4 distinction between the weight to be given to either
5 direct or circumstantial evidence, nor is a greater degree
6 of certainty required of circumstantial evidence than of
7 direct evidence. You should all -- you should weigh all
8 of the evidence in the case. After weighing all the
9 evidence, if you are not convinced of the guilt of the
10 defendant beyond a reasonable doubt, you must find the
11 defendant not guilty.

12 The fact that the defendant was arrested, charged and
13 indicted in this case is not evidence in this case and
14 cannot be considered by you as evidence of guilt in this
15 case, nor does it create any presumption or inference of
16 guilt. This document is simply the formal written
17 instrument which contains the charges made against the
18 defendant. It is a formal document by which this case is
19 brought into this court.

20 The defendant has pled not guilty to this indictment
21 and that places the burden on the state to prove the
22 defendant guilty. A person charged with committing a
23 criminal offense in South Carolina is never required to
24 prove himself innocent. I charge you that is an important
25 rule of the law that a defendant in a criminal trial, no

1 matter what the seriousness of the charge may be, will
2 always presumed to be innocent of the crime for which the
3 indictment is issued unless guilt has been proven by
4 evidence satisfying you of that guilt beyond a reasonable
5 doubt. This presumption of innocence does not end when
6 you begin your deliberations, but it accompanies the
7 defendant throughout the trial until you reach a verdict
8 of guilt based on evidence satisfying you of that guilt
9 beyond a reasonable doubt.

10 The presumption of innocence is like a robe of
11 righteousness placed about the shoulder of the defendant,
12 which remains with the defendant until it has been
13 stripped from the defendant by evidence satisfying you of
14 the defendant's guilt beyond a reasonable doubt. The
15 presumption of innocence is not a mere legal theory. It
16 is not just a legal phrase. It is a substantial right to
17 which every defendant is entitled unless you, the jury,
18 are satisfied of the evidence of the defendant's guilt
19 beyond a reasonable doubt.

20 The state has the burden of proving the defendant
21 guilty beyond a reasonable doubt. Some of you may have
22 served as jurors in civil cases where you were told it is
23 only necessary to prove that a fact is more likely true
24 than not true, such as by the greater weight or the
25 preponderance of the evidence. In criminal cases, the

1 state's proof must be more powerful than that. It must be
2 beyond a reasonable doubt.

3 Proof beyond a reasonable doubt is proof that leaves
4 you firmly convinced of the defendant's guilt. There are
5 very few things in the world that we know with absolutely
6 certainty, and in criminal cases the law does not require
7 prove that overcomes every possible doubt. If, based on
8 your consideration of the evidence, you are firmly
9 convinced that the defendant is guilty of the crime
10 charged, you must find the defendant guilty. If, on the
11 other hand, you think that there is a real possibility
12 that the defendant is not guilty, you must give the
13 defendant the benefit and find him not guilty.

14 The indictments in this case allege two defendant
15 offenses against the defendant. The charges are
16 indictment Number 1, murder. Indictment Number 2,
17 possession of a weapon during the commission of a violent
18 crime. Each indictment charges a separate and distinct
19 offense. You must decide each indictment separately on
20 the evidence (inaudible) uninfluenced by your decision as
21 to the other offense. The defendant may be convicted or
22 acquitted on all or all -- on any or all of the offenses
23 charged. You will be asked to write a separate verdict,
24 guilty or not guilty, for each indictment.

25 The defendant is charged -- indictment Number 1, the

1 defendant is charged with murder. The state must prove
2 beyond a reasonable doubt that the defendant killed
3 another person with malice aforethought. Malice is
4 hatred, ill will, or hostility towards another person. It
5 is the intentional doing of a wrongful act without just
6 cause or excuse, and with an intent to inflict an injury,
7 or under circumstances that the law would infer an evil
8 intent. Malice aforethought does not require that malice
9 exist for any particular time before the act was
10 committed, but malice may exist in the mind of the
11 defendant just before and at the time the act is
12 committed. Therefore, there must be a combination of the
13 previous evil intent and the act.

14 Malice aforethought may be expressed or inferred.
15 These terms expressed or inferred do not mean different
16 kind of malice, but merely the manner in which malice may
17 be shown to exist. That is either by direct evidence or
18 by inference from the facts and circumstances which are
19 proved. Express malice is shown in a person's words,
20 which express hatred or ill will for another or when a
21 person prepared beforehand to do the act which was later
22 accomplished. For example, lying in wait for a person or
23 any others acts in preparation going -- or any other acts
24 of preparation going to show that the deed was within the
25 defendant's mind would be express malice. Malice may be

1 inferred from conduct showing a total disregard for human
2 life.

3 Voluntary manslaughter. If you find that the state
4 has failed to prove beyond a reasonable doubt that the
5 defendant committed murder, you may consider whether the
6 state has proved beyond a reasonable doubt that the
7 defendant committed voluntary manslaughter. To prove
8 voluntary manslaughter, the state must prove beyond a
9 reasonable doubt that the defendant took the life of
10 another in the sudden heat of passion based upon
11 sufficient legal provocation. Both heat of passion and
12 sufficient legal provocation must be present at the time
13 of the killing to constitute voluntary manslaughter.

14 Sudden heat of passion may, for a time affect a
15 person's self-control and temporarily disturb a person's
16 reason. The sudden heat of passion must be the type that
17 would make an ordinary person unable to coolly reflect on
18 his actions and would produce an uncontrollable impulse to
19 do violence. Sufficient legal provocation must be the
20 type that would make a person of ordinary reason and
21 caution become enraged and to lose control temporarily.
22 The provocation needed for voluntary manslaughter must
23 come from some act of or relate to the victim. Words
24 alone, however vulgar or insulting, are not enough to be
25 legal provocation where death is caused by the means of a

1 deadly weapon. The words must be accompanied by some
2 overt, threatening act which could have produced the heat
3 of passion.

4 The exercise of a legal right, no matter how
5 offensive it is to another, is never sufficient legal
6 provocation for voluntary manslaughter. If the heat of
7 passion had (inaudible) or if there was enough time
8 between the provocation, if any, and the killing for the
9 passion of a reasonable person's cool, the killing would
10 not be voluntary manslaughter. In deciding whether a
11 reasonable person would have had enough time to cool off,
12 you should consider all the circumstances around the
13 killing. You may consider the nature of the provocation,
14 if any, the defendant's mental and physical state, and the
15 circumstances and relationships between the parties.

16 At this time, I'll let you all stand up, stretch one
17 more time. All right. Be seated for me?

18 Indictment Number 2. Possession of a weapon during
19 the commission of a violent crime. The defendant is
20 charged with the possession of a weapon during the
21 commission of or attempt to commit a violent crime. The
22 state must prove beyond a reasonable doubt that the
23 defendant was in the possession of a firearm or visibly
24 displayed what appeared to be a firearm during the
25 commission of a violent crime. A firearm means any

1 machine gun, rifle, pistol or any weapon which will, is
2 designed to, or may ready be converted to expel a
3 projectile. In order to find the defendant guilty of
4 possession of a weapon during the commission of a violent
5 crime, you must first find that the defendant -- you must
6 first find the defendant guilty of either committing a
7 violent crime or attempting the commission of a violent
8 crime. Murder is a violent crime. The state must prove
9 beyond a reasonable doubt that the weapon furthered,
10 advanced, or helped in the commission of the crime.

11 I instruct you and emphasize the fact that the
12 defendant did not testify is not a factor to be considered
13 by you in any way in your deliberations and in your
14 consideration on the question of the guilt or innocence of
15 the defendant. It must not be considered by you in any
16 manner whatsoever. A defendant has a constitutional right
17 to remain silent and the expression of this right must not
18 be considered by you in your deliberations. I repeat,
19 under your oath, you are to draw no conclusion whatsoever
20 from the fact that the defendant in this case did not
21 testify. The fact that this defendant did not testify
22 should not even be discussed in the jury room. The burden
23 of proof as I have stated to you is on the state. The
24 defendant is not required to prove his innocence. The
25 burden of proof remains on the state to prove guilt beyond

1 a reasonable doubt.

2 Now, you have been chosen and sworn to give the
3 parties a fair and impartial trial. When you have done
4 so, you will have complied with your oath, and no one will
5 have a right to criticize your verdict. You must not be
6 influenced by opinions or expressions of opinion you may
7 have heard outside the courtroom, but rather should base
8 your verdict solely on the testimony of the sworn
9 witnesses who took the stand, the exhibits received into
10 evidence, and the law which I have stated. Caprice,
11 passion, prejudice, or improper sympathy for or against
12 anyone should not sway you. Remember, you have no friends
13 to reward or enemies to punish, and all parties are
14 entitled to a fair and impartial trial.

15 It is your duty as jurors to consult with one other
16 and deliberate in an effort to reach an agreement. Each
17 of you must decide the case for yourself, but only after
18 impartial consideration of all the evidence with your
19 fellow jurors. In the course of your deliberations, do
20 not hesitate to re-examine your own views and change your
21 opinion if you become convinced that is erroneous.
22 However, do not surrender your honest conviction as to the
23 weight or effect of the evidence solely because of the
24 opinion of your fellow jurors or for the mere purpose of
25 returning a verdict. As I said earlier, you are the

1 judges, the judges of facts. Your verdict must represent
2 and consider the considered judge of each juror. In other
3 words, your verdict must be unanimous.

4 Now, you may have noticed that I have heard the
5 instructions. I do so to give you the law as accurately
6 as possible. I will give you a copy of these instructions
7 to have in the jury room. You may refer to these
8 instructions as a whole and may not follow some and ignore
9 others.

10 Mr. Foreman, it will be your duty to preside over the
11 deliberations of the jury. If, during the deliberations
12 you should desire to communicate with the Court, please
13 reduce your message or question to writing, signed by you,
14 and by you only, and pass a note to the bailiff who will
15 bring it out. I will then respond as quickly as possible,
16 either in writing or by having you return to the
17 courtroom. I caution you, however with regard to any
18 message or question that you might send, that you should
19 never state or specify your numerical division of juror
20 numbers at that time.

21 Now, you have heard the evidence and you have heard
22 the law. Whatever your verdict, Mr. Foreman, you will
23 annotate the verdict on the back of the indictment and
24 then sign and date the verdict. Remember that all though
25 the foreman is the only juror who writes in the verdict,

1 it is not his verdict alone. The verdict has to be
2 unanimous. Foreman, you are not authorized to write the
3 verdict until all of you have agreed on the verdict.

4 Now ladies and gentlemen, I will send you to your
5 jury room, but do not begin discussing this case until you
6 receive a copy of this jury charge and the exhibits. Once
7 you receive these things, that will be your signal to
8 begin your deliberations. Once you begin deliberations,
9 you will deliberate until you have reached a verdict, at
10 which time you will knock on the door, advise the bailiff,
11 and he will bring you out.

12 Bailiff, will you take the jurors to the jury room.

13 (The jury left open court at approximately 2:35 p.m.)

14 (A discussion was held off the record.)

15 THE COURT: All right, Mr. Thompson and the state, I
16 did read the jury charges and I -- I'm not sure if this
17 was on the record or off the record, but there was an
18 issue with indictment Number 2 for failure to mention
19 voluntary manslaughter as a violent crime as well as
20 murder. So I will remedy that by instructing the jury on
21 that singular charge.

22 MR. GRIMES: We would ask that the Court, in making
23 that addition, instruct the jury that both murder and
24 voluntary manslaughter are violent crimes so as not to
25 influence the jury that the Court has some particular

1 position on whether it should be a murder conviction or a
2 voluntary manslaughter position.

3 THE COURT: Okay. I will instruct that.

4 MR. THOMPSON: I have no objection.

5 THE COURT: Now, with regards to anything I said
6 during the jury charge, is there any objection to any
7 other portion of the jury charge?

8 MR. McKELLAR: No objection, Your Honor.

9 MR. GRIMES: None from the state.

10 THE COURT: Okay.

11 MR. GRIMES: One other matter. While we were broke
12 there, both parties reviewed the evidence and I believe
13 we're in agreement that it's all present and the bailiffs
14 have taken it to ---

15 THE COURT: Taken it to the jury room?

16 MR. GRIMES: (inaudible) deliberations.

17 MR. THOMPSON: I completely agree. I would also --
18 for what it's worth, I would move on the record that the
19 Court recognize Investigator Walker. He was a complete
20 gentleman and was a tremendous IT help not just to the
21 state but also to the defense during the pendency of this
22 trial. I would move for that.

23 THE COURT: He was. Thank you, sir.

24 All right. Can we bring the jury back in, please.

25 (The jury entered the courtroom at 2:43 p.m.)

1 THE COURT: All right. Ladies and gentlemen of the
2 jury. There is a correction that I need to make regarding
3 one of the instructions that I gave you. I gave you a
4 copy of the instructions and the copy that I have given to
5 the foreman is the corrected version.

6 During my first reading of indictment Number 2, I did
7 not include an offense -- both offenses are considered
8 violent, so I will read the corrected version of the law.
9 Indictment Number 2, the possession of a weapon during the
10 commission of a violent crime, the defendant is charged
11 with a possession of a weapon during the commission of or
12 attempt to commit a violent crime. The state must provide
13 beyond a reasonable doubt that the defendant was in
14 possession of a firearm or visibly displayed what appeared
15 to be a firearm during the commission of a violent crime.
16 A firearm means a machine gun, automatic rifle, revolver,
17 pistol or any weapon, which will, is designed to, or has
18 been converted to expel a projectile.

19 In order to find the defendant guilty of possession
20 of a weapon during the commission of a violent crime, you
21 must first find that the defendant -- you must first find
22 the defendant guilty of either committing a violent crime
23 or attempting to commit a violent crime. Murder is a
24 violent crime. Voluntary manslaughter is also a violent
25 crime. The state must prove beyond a reasonable doubt

1 that the weapon furthered, advanced, or helped in the
2 commission of the crime.

3 Let the record reflect we changed the jury charge and
4 read that off to the members of the jury. Mr. Foreman, at
5 this time, I'm going to give you a copy of the charge of
6 the judge and jury to share in the deliberations. Also
7 give you a copy of the verdict form which you will
8 complete and it will require your signature on that second
9 page. You also have a copy of both indictments which you
10 will write the verdict form.

11 Who are our two alternates? All right. Alternates,
12 at this time your service has concluded. I will say that
13 you are permitted to stay if you wish to see the outcome
14 of the trial; however, you are not required to stay. It
15 is your option. We will ask that you sit in the same
16 seats should you choose to stay. So at this time, we will
17 ask the jury -- if you'll take the jury to the grand jury
18 room so they can begin their deliberations.

19 (The jury left open court at approximately 2:50 p.m.)

20 THE COURT: Mr. Thompson, did you have a matter to
21 take up before the jury began their deliberations?

22 MR. THOMPSON: Only the recognize of Mr. Walker.

23 THE COURT: Okay. At this time, we'll stand down
24 until we receive any questions or receive the verdict.

25 (A recess was taken from 2:50 p.m. to 4:54 p.m.)

1 (The jury began their deliberations at 2:50 p.m.)

2 THE COURT: Can we have the jury brought back in,
3 please.

4 MS. HALL: Your Honor, I think we're still waiting
5 for the victim's family.

6 (The jury entered the courtroom at 4:55 p.m.)

7 THE COURT: All right. Mr. Foreperson, have you
8 reached a verdict?

9 JUROR: Yes, Your Honor.

10 THE COURT: Can you please hand that verdict to the
11 bailiff.

12 Madam Clerk, the foreperson has signed and dated the
13 verdict form.

14 VERDICT OF THE JURY

15 THE CLERK: Your Honor, we have the state of South
16 Carolina, county of Aiken versus Dae'Kwon Jaheim Simmons,
17 indictment number 2019-GS-02-02112, for the charge of --
18 we, the jury, find -- unanimous consent, find the
19 defendant Dae'Kwon Jaheim Simmons on the charge of murder
20 guilty. As to the indictment 2019-GS-02-02113, we the
21 jury, by unanimous consent find the defendant, Dae'Kwon
22 Jaheim Simmons on the charge of possession of a deadly
23 weapon during the commission of a violent crime, guilty.
24 Dated April 14, 2021, signed by foreperson Michael --
25 sorry, Matthew S. Cramer.

1 Mr. Foreperson, ladies and gentlemen of the jury, is
2 this your verdict?

3 JUROR: Yes, it is.

4 THE CLERK: All jurors indicate by raising the right
5 hand. All hands are raised, Your Honor.

6 THE COURT: Thank you, madame clerk. All right.
7 Does the state or the defense wish to poll the jury?

8 MS. HALL: No, Your Honor.

9 MR. THOMPSON: No, Your Honor.

10 THE COURT: All right.

11 MR. THOMPSON: Thank you.

12 THE COURT: All right. At this time, Mr. Thompson, I
13 am not going to enter a sentencing. I'm going to request
14 a presentence report. Are you available to give that to
15 me in the next few weeks?

16 MR. THOMPSON: Yes, ma'am. I -- if the presentencing
17 report, would this be a -- normally there's one of two
18 ways this is done. Either -- I can -- if we're talking
19 about a potential life sentence on *Aiken v. Byars* factors,
20 I can request funds for an expert and we can have a social
21 investigation done. If that's not the case, then normally
22 presentencing report is done -- it's my understanding done
23 by the Department of Probation and Parole.

24 MR. GRIMES: That's correct, Your Honor. If Your
25 Honor orders it, then Probation and Parole will conduct

1 the presentence investigation.

2 MR. THOMPSON: Yes, ma'am. That's my understanding.

3 THE COURT: I want that done by probation.

4 MR. THOMPSON: Very fine, Your Honor.

5 THE COURT: By the department of PPPS.

6 All right. Ladies and gentlemen of the jury, I want
7 to thank you for your service during these past three
8 days, our clerk has compiled work excuses for you all. If
9 you all will retire to the jury room one more time, we're
10 going to make sure that we collected all of the notes --
11 we're going to make sure we collected and answer any
12 questions you may have. Bailiff, please take the jury to
13 the jury room. You will only be there very briefly.

14 (The jury left open court at approximately 5:01 p.m.)

15 THE COURT: Mr. Thompson, are there any post-trial
16 motions you need to make at this time?

17 MR. THOMPSON: Your Honor, at this time, we would
18 renew all previous motions and objections and we would
19 also move for a new trial.

20 THE COURT: Statement's position.

21 MR. GRIMES: I don't think there's a basis for a new
22 trial. I think the same response on the prior objections.

23 THE COURT: All right. Mr. Thompson, that motion is
24 denied. All right. At this time, we're going to adjourn.

25 (Court was adjourned at 5:06 p.m. on April 14th, 2021)

1 Mr. Simmons, the Court does recognize that you did
2 apologize to the family members of the victim that day.
3 And I think that you understand that this is caused quite
4 a great deal of pain for the victim's family, but it has
5 also caused quite a bit of pain for your family. I can't
6 imagine the pain that Mrs. Swearingen has gone through to
7 lose her husband and have to raise her child alone. I
8 also can't imagine the pain that your mother has gone
9 through as a mother to have had this horrible incident
10 happen. All the way around this is a tragic -- tragic
11 does not hold the amount of weight. This is a horrible,
12 horrible circumstance for your family and for the victim's
13 family and for this community. This occurred in broad
14 daylight.

15 I have taken into consideration in sentencing the
16 presentencing report, but also the statements of the
17 victim's family, but also the silence of your family
18 because they're too hurt to speak, okay. All of that was
19 taken into consideration. Mr. Simmons, at this time you
20 are 19 years old. You were 17 when this occurred. And so
21 you must take responsibility for those actions.

22 SENTENCE OF THE COURT

23 THE COURT: I'm going to sentence you with regards to
24 the possession of a weapon to a five year sentence in the
25 state Department of Corrections. You will receive credit

1 for the time you served in the amount of 711 days for that
2 sentence.

3 MR. THOMPSON: And Your Honor, I'm told that the jail
4 that Lieutenant Callahan is an even 700.

5 THE COURT: An even 700, and Lieutenant Callahan
6 verified that number.

7 MS. HALL: Yes, Your Honor.

8 MR. THOMPSON: That's my understanding.

9 THE COURT: All right. Mr. Simmons, the correct
10 number of days for time served will be 700, so that's a
11 five year sentence with credit for 700 days on the
12 possession of a weapon.

13 With regards to the murder, I'm sentencing you to the
14 state Department of Corrections for a term of 38 years.
15 You'll receive credit for the time that you've served in
16 the amount of 700 days. Mr. Simmons, I wish you luck,
17 sir, and hope that you will use that time wisely, sir.
18 Good luck to you.

19 MR. THOMPSON: Your Honor, are these sentences to
20 consecutively or concurrently?

21 THE COURT: Concurrently.

22 MR. THOMPSON: Thank you, Your Honor.

23 (Whereupon, the proceedings were concluded.)
24
25

WITNESSES

Aiken Department Of Public Safety

Carlos Colindres

Law Enforcement Case #: 19-03906

CWH

ARREST WARRANT NUMBER November 7 20 19

2019A0220100709

C.C.P. & G.S.

Deputy Clerk

ACTION OF GRAND JURY

TRUE B.II

Foreperson of Grand Jury
Date: November 7, 2019

VERDICT

Guilty

Foreperson of Petit Jury
Date: 4/14/21DOCKET NO. 2019GS0202112

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2019

THE STATE

vs.

DAE'KWON JAHEEM SIMMONS

CDR #: 0116

Indictment for

MURDER

§ 16-03-0010; 16-03-0020

J. STROM THURMOND, SOLICITOR

RECEIVED

JUL 26 2021

SC Court of Appeals

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Robert J. Harte, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

19 day of July 20 21

C.C.P. & G.S. Aiken County, S.C.

Deputy Clerk

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

INDICTMENT FOR
MURDER

§ 16-03-0010; 16-03-0020

At a Court of General Sessions, convened on November 11, 2019, the Grand Jurors of Aiken County present upon their oath:

That **DAE'KWON JAHEEM SIMMONS** did in Aiken County on or about August 6, 2019, feloniously, wilfully, and with malice aforethought, murder Larry Swearingen by means of shooting the victim on or near Laurens Street and the victim did die as a proximate result thereof on August 10, 2019. All in violation of Section 16-3-10 of the South Carolina Code of Laws (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. STROM THURMOND, SOLICITOR

WITNESSES

Aiken Department Of Public Safety

Carlos Colindres

Law Enforcement Case #:

CWH

ARREST WARRANT NUMBER

FILED November 7 20 19

19-DI02-0032

C.C.P. & G.S.

Deputy Clerk

ACTION OF GRAND JURY

TRUE Bill

Foreperson of Grand Jury
Date: November 7, 2019

VERDICT

Guilty

Foreperson of Petit Jury
Date: 4/14/21

DOCKET NO. 2019GS0202113

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2019

THE STATE
vs.

DAE'KWON JAHEEM SIMMONS

CDR #: 0549

Indictment for

POSSESSION OF A FIREARM OR KNIFE
DURING THE COMMISSION OF A
VIOLENT CRIME

§ 16-23-0490

J. STROM THURMOND, SOLICITOR

RECEIVED

JUL 26 2021

SC Court of Appeals

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Robert J. Harte, Clerk of Court of Common Pleas and General
Sessions for Aiken County, South Carolina do hereby certify
that the foregoing constitutes a true and correct copy of the
original documents which have been filed in my office this
19 day of July 20 21
Robert J. Harte
C.C.C.P. & G.S., Aiken County, S.C.
Deputy Clerk

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

INDICTMENT FOR
POSSESSION OF A FIREARM OR KNIFE
DURING THE COMMISSION OF A VIOLENT
CRIME

§ 16-23-0490

At a Court of General Sessions, convened on November 11, 2019, the Grand
Jurors of Aiken County present upon their oath:

That **DAE'KWON JAHEEM SIMMONS** did in Aiken County on or about August
6, 2019, possess or visibly display a firearm during the commission or attempted
commission of a violent crime, to wit: Murder, all in violation of Section 16-23-490,
Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and
provided.

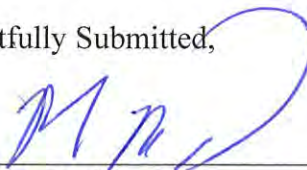

J. STROM THURMOND, SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

RECEIVED**Apr 26 2023****SC Court of Appeals**

Respectfully Submitted,



Robert M. Dudek
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 26th day of April, 2023.