

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM UNION COUNTY
COURT OF COMMON PLEAS
Hon. Walton J. McLeod, IV, Circuit Judge

Appellate Case No.: 2023-000643

RECEIVED

Jul 12 2023

S.C. SUPREME COURT

Najm Ahmad Thomas, #377500, ... Appellant,

v.

State of South Carolina, ... Respondent.

APPENDIX

Zachary William Jones
S. C. Attorney General's Office
PO Box 11549
Columbia, SC 29211
zacharyjones@scag.gov
(803) 734-1680
Attorney for Respondent

J. Falkner Wilkes, 12893
248 Deerwood Park Drive
Oakland, MS 38948
jfalknerwilkes@gmail.com
(864) 421-4618

Counsel for Petitioner

July 11, 2023.

INDEX

ORDER OF DISMISSAL	1
Transcript of Rule 29 Motion hearing.	21
Transcript of PCR Hearing	47
Transcript of Criminal Trial	103
Application for Post Conviction Relief.	569
Sentencing Sheet.	576
Incitement	577
Arrest Warrant	578
Motion for Relief in Support of Defendant’s Motion for a New Trial (Rule 29 Motion)	579
State’s Response to New Trial Motion	585
ORDER DENYING DEFENDANT’S POST-TRIAL MOTIONS.	588
Statement to Make More Definite and Certain (PCR case)	591

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF UNION	)	FOR THE SIXTEENTH JUDICIAL CIRCUIT
	)	
Najm Ahmad Thomas, #377500,	)	
Applicant,	)	Case No.: 2019-CP-44-00222
	)	
v.	)	ORDER OF DISMISSAL
	)	
State of South Carolina,	)	
Respondent.	)	
	)	

This matter comes before the Court by way of an application for post-conviction relief filed by Najm Ahmad Thomas (“Applicant”) on July 15, 2019, and amended on August 22, 2022. The Court convened an evidentiary hearing into the matter on December 8, 2022, at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and represented by J. Falkner Wilkes, Esquire. Assistant Attorney General Zachary W. Jones, of the South Carolina Attorney General’s Office, represented Respondent. The Court permitted the parties to submit additional memoranda concerning the issues addressed at the hearing.

The Court has before it Applicant’s records from the South Carolina Department of Corrections, a copy of the original trial transcript, the records of the Union County Clerk of Court regarding the subject conviction, the pleadings, and the additional memoranda submitted in this case. After reviewing all records and evidence before this Court, this Court finds Applicant cannot meet his requisite burden of proof of establishing he is entitled to post-conviction relief and, therefore, denies and dismisses this application with prejudice. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. In May 2017, the Union County Grand Jury indicted Applicant for Attempted Murder (2017-GS-44-0845). Michael Brown, Esquire (“Trial Counsel”), represented Applicant at trial. Deputy Solicitor John

Anthony, of the Sixteenth Circuit Solicitor's Office, prosecuted the case. On August 20, 2018, Applicant proceeded to a jury trial before the Honorable William A. McKinnon. On August 23, 2018, the jury found Applicant guilty of the lesser included offense of Assault and Battery of the High and Aggravated Nature (ABHAN). On August 23, 2018, Judge McKinnon sentenced Applicant to sixteen years of imprisonment. Applicant did not appeal his conviction or sentence.

II. FACTS GIVING RISE TO THE CONVICTION

On August 28, 2016, Applicant drove his black PT cruiser to Munro Street in Union County near a gas station. There he encountered the victim, Elizawon "Malik" Gray, while the latter was walking down the street; Gray had had a conflict with Applicant on a prior occasion. Applicant fired thirteen shots at Gray, striking him ten times. Applicant left the scene in his vehicle and drove to the nearby gas station, where he attempted unsuccessfully to sell the firearm used in the shooting to an acquaintance, Travis Duncan. (Trial Tr. pp. 320–28; pp. 168–72). Applicant told Duncan that "police were going to be hot" because "he had heard there had been a shooting." (Trial Tr. p. 172, lines 1–2).

After first responders arrived at the scene of the shooting, the injured Gray gave a description of Applicant and his vehicle. He said he knew Applicant by the nickname "Ghost," and he believed he was shot because Applicant "assumed I took something from him." (State's Exhibit #2). Shortly thereafter, Applicant returned to Munro Street, and officers recognized him and his car from Gray's description. (Trial Tr. p. 127). They questioned Applicant, who initially denied any involvement in the shooting. When asked if he had a gun, Applicant told investigators about a gun he kept at his parents' house but did not mention the gun used in the shooting, which Applicant kept in his car. (Trial Tr. pp. 198–99).

Investigators located a video from the gas station that showed Duncan getting into Applicant's car shortly after the shooting. When they questioned Duncan about that interaction, Duncan explained Applicant had shown him a gun he kept behind his glove box that he wanted to sell. Based on this information, investigators searched that part of Applicant's car and found the gun hidden behind a removable glove compartment. (Trial Tr. pp. 172–73; p. 184; p. 251). The gun found behind the glove box matched the spent casings found at the scene of the shooting. (Trial Tr. pp.308–10).

Applicant was arrested and charged with attempted murder. Prior to trial, Gray, who survived the shooting, told the solicitor he did not want to participate in Applicant's trial. (Rule 29 Tr. pp. 11–12). Applicant testified in his own defense at trial, stating that on the night of the shooting he was driving down Siam Street toward the Munro Street intersection when his car started having problems. He pulled over “at the stop sign at the bottom of Siam street . . . like in front of the house where you make the right on Siam Street.” (Trial Tr. p. 321). Applicant testified he got out of his car and was checking on it when Gray appeared from the bushes behind him. (Trial Tr. p. 322). Applicant stated Gray emerged near a house on the left side of Siam Street. (Trial Tr. p. 351).¹

Applicant stated he recognized Gray as having robbed him a few weeks prior to the shooting. (Trial Tr. p. 325). Applicant claimed he shot Gray in self-defense because Gray threatened him with something in his hand. (Trial Tr. p. 322). However, no weapon was found

¹ However, Gray was found by first responders a substantial distance to the right of the Siam Street intersection—two driveways away—and the spent shell casings from Applicant's gun were found farther still. (Trial Tr. pp. 264–67; State's Exhibit #3).

near Gray at the scene. (Trial Tr. p. 127, lines 1–2). Applicant also stated he thought Gray ran away, and he testified “he was still running when I shot.” (Trial Tr. p. 329).²

III. CURRENT PCR ACTION

Applicant timely filed his initial post-conviction relief (“PCR”) application on July 15, 2019. He later, through counsel, filed a “Statement to Make More Definite and Certain,” raising the following allegations:

1. Trial counsel failed to investigate the potential reasons behind Gray’s reluctance to testify and his absence at trial;
2. Trial counsel failed to subpoena Gray to provide exculpatory evidence for the “stand your ground” hearing held prior to trial;
3. Trial counsel failed to subpoena the alleged victim at trial to provide exculpatory evidence relating to Gray’s prior armed robbery of Applicant and his attempt to rob Applicant on the date of the shooting;
4. Trial counsel failed to subpoena Gray to the Rule 29,³ SCRCrimP, hearing or to move to continue the hearing upon learning Gray was not in court to testify;
5. Trial counsel failed to call the prosecutor as a witness at the Rule 29 hearing to give evidence regarding his interactions with Gray or any other potentially exculpatory evidence in the State’s possession that should have been turned over to the defense;
6. Trial counsel failed to preserve the following issues for direct appeal:
 - a. Court’s error in admitting evidence of an alleged confession,
 - b. Court’s error in failing to direct a verdict,
 - c. Admission of inadmissible hearsay attributed to Gray,
 - d. Improper closing argument by the prosecutor,
 - e. Court’s error in proceeding with the Rule 29 hearing without the presence of Gray.
7. The prosecution failed to disclose all discoverable information to the defense regarding Gray’s reluctance or refusal to cooperate with the prosecution.

² At trial, Dr. Brian Whitfield, who treated Gray, testified Gray had sustained multiple gunshot wounds on both the front and back of his body, although he could not say whether any of them were entrance or exit wounds. (Trial Tr. pp.226–28; State’s Exhibit #8).

³ In his filing, Applicant refers to this hearing as a “Rule 59” hearing.

Prior to the evidentiary hearing on December 8, 2022, Applicant agreed to drop the allegations relating to the prosecution's alleged failure to disclose discoverable information and to proceed on the allegations of ineffective assistance of Trial Counsel. At the hearing, Applicant supplemented his prior filings with a "Trial Memorandum," clarifying some of the remaining issues on which he intended to go forward. After the hearing, with the Court's permission, Respondent submitted a "Memorandum in Opposition to Amended Post-Conviction Relief Application," and Applicant subsequently submitted a "Post-Trial Memorandum of Applicant."

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented:

Ineffective Assistance of Counsel, Generally

In a PCR action, Applicant bears the burden of proving the allegations in his application by a preponderance of the evidence. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985); Rule 71.1(e), SCRPC. Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*.

First, Applicant must prove that counsel's performance was deficient. *Strickland*, 466 U.S. at 687; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the

court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing *Strickland*, 466 U.S. at 690). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, therefore, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109–10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." *Yarborough*, 540 U.S. at 6; *see also* *Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable.").

Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 694). "This does not require a showing that counsel's actions 'more likely than not altered the outcome,' but the difference between *Strickland*'s prejudice standard and a more-probable-than-not standard is slight and matters 'only in the rarest case.'" *Harrington*, 562 U.S. at 111–12 (quoting *Strickland*, 466 U.S. at 697). "The likelihood of a different result must be substantial, not just conceivable." *Id.* at 112.

In sum, the standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696–97.

1. Allegations regarding Trial Counsel's Failure to Produce Gray's Testimony

Applicant raises multiple allegations of ineffective assistance of counsel relating to Trial Counsel's failure to ensure Gray appeared at trial to testify for the defense. The Court finds these allegations to be without merit.

Applicant called Gray at the evidentiary hearing, who testified that he had robbed Applicant prior to the shooting by threatening him with a pellet gun. Gray also testified that, on the night of the shooting, he had tried to rob Applicant, although Gray did not have a weapon. Applicant contends this testimony would have strengthened his self-defense claim if it was presented at trial and would have supported his motion for a new trial at the subsequent Rule 29 hearing. Without corroboration by Gray, Applicant was left with only his own self-serving testimony to support his claim of self-defense. Consequently, Applicant claims, Trial Counsel was ineffective for failing to subpoena Gray to testify.

At the evidentiary hearing, Trial Counsel testified that it was difficult to get any information out of Gray. Trial Counsel explained that, in his conversations with Gray, Gray never told him he had been trying to rob Applicant on the night of the shooting until after the trial. Before the trial, Gray had only told Trial Counsel that he had an altercation with Applicant *prior to* the night of the shooting and that he did not want to cooperate with the prosecution. This testimony

was consistent with Trial Counsel's position at the Rule 29 hearing. (Rule 29 Tr. p. 4, lines 4–20; p.7, lines 5–21). Trial Counsel testified that, had he known Gray was going to say he tried to rob Applicant on the night of the shooting, he would have attempted to call him to testify at Applicant's trial; however, at the time of trial he had seen no indication Gray was going to admit that on the stand.

At the Rule 29 hearing, Trial Counsel attempted to obtain a new trial based on his post-trial communication with Gray regarding Gray's purported attempt to rob Applicant on the night of the shooting. Trial Counsel, however, was not able to locate Gray in time for him to provide an affidavit or to testify at the Rule 29 hearing. (Rule 29 Tr. p.15, line 25–p.16, line 14). Contrary to the allegation in Applicant's "Statement to Make More Definite and Certain," Trial counsel *did* move for a continuance and requested additional time to locate Gray. (Rule 29 Tr. p. 16, lines 15–19). The court denied the motion for a continuance but granted Applicant leave to re-file his new trial motion within the one-year deadline, i.e. by August 24, 2019. (Rule 29 Tr. p. 18, lines 1–20).

At the evidentiary hearing, Trial Counsel testified he attempted to locate Gray but was unsuccessful. The solicitor also testified, stating he attempted to subpoena Gray to testify at trial, but Gray could not be located. The only subsequent record of Gray's involvement is an affidavit dated April 12, 2021—long after the one-year deadline for filing a Rule 29(b) motion had expired. Due to Gray's admitted reluctance to participate in the criminal proceedings against Applicant, and both parties' inability to locate him, there is no evidence that Trial Counsel had any opportunity to produce Gray's testimony, either at trial or at any other time within the one-year period for filing a Rule 29(b) motion. In addition, Trial Counsel had no way of knowing prior to trial that Gray's testimony would be consistent with Applicant's self-defense claim; all he knew was that the victim refused to cooperate with the prosecution, which is normally *favorable* to the

defense. Applicant has not shown that Trial Counsel's conduct fell below an objective standard of reasonableness. Therefore, Applicant has not met his burden to prove Trial Counsel's failure to produce Gray's testimony was deficient.

In addition, Applicant has not met his burden of proving prejudice from Gray's failure to testify. The account of the incident that Gray presented at the evidentiary hearing did not describe the event in any detail. In his April 12th, 2021, affidavit, he merely states that he saw Applicant on the side of a street and approached him in an "aggressive manner," at which point Applicant "started to defend himself [*sic*]." He does not explain what about his "manner" was "aggressive," and he admits he did not have a weapon. Contrast this barebones account with Gray's statements to first responders shortly after he was shot, in which—despite his life-threatening wounds—he is able to articulate that he was shot by a young male with dreadlocks, nicknamed "Ghost," driving a black PT cruiser. Gray's statement to first responders was sufficiently accurate that police were able to apprehend Applicant that same night based on his description. However, on the night of the shooting, Gray told police Applicant shot him because he "assumed I took something from him," instead of saying Applicant was defending himself from Gray's aggression. Put simply, the detailed and accurate account given by Gray on the night of the incident is inconsistent with the cursory account he gave at the evidentiary hearing.

Furthermore, even if Gray had testified at trial, most of the State's case *disproving* self-defense would not be disturbed by Gray's testimony: that Applicant admitted Gray was running away while he shot him; that Gray was unarmed; that Applicant shot Gray numerous times; and that Applicant's efforts to conceal his involvement in the shooting by selling the gun and lying to investigators showed consciousness of guilt.

In addition, Applicant's story was not consistent with objective evidence found at the scene. To wit, Applicant claimed to have pulled over to the right of the Siam Street stop sign, at which point Applicant approached from the house on the left side of Siam Street and "threatened" him. As was shown at trial, however, the spent shell casings matching Applicant's gun were found a substantial distance down Munro Street, as was Gray himself and his various personal effects. If Gray had testified consistently with Applicant, this evidence would discredit both their stories equally. As such, for the reasons described above, Applicant has not shown that the result of his trial would likely be different if Gray had testified.

The Court, therefore, finds Applicant has failed to prove either deficiency or prejudice from Trial Counsel's failure to procure Gray's testimony in his defense.

2. Trial Counsel's Alleged Failure to Advise Applicant of the Right to Appeal

Applicant also claims Trial Counsel failed to advise him of the right to appeal. However, Applicant failed to present evidence at the hearing to substantiate this claim. Therefore, the Court finds Applicant has failed to meet his burden of proving Trial Counsel was ineffective as to this issue.

3. Trial Counsel's Failure to Object

Applicant claims trial counsel failed to properly object to inadmissible evidence and to certain prejudicial comments by the solicitor. The Court finds these allegations to be without merit.

First, Applicant alleges Trial Counsel failed to object when the court excluded evidence of Gray's statement explaining his prior difficulties with Applicant. (Trial Tr. pp. 97–99). Presumably, Applicant is referring to the June 2017 affidavit in which Gray states he had an

altercation with Applicant prior to the night of the shooting. Applicant, however, neglects to explain what was improper about the court's ruling.

Affidavits generally constitute inadmissible hearsay. *Ex Parte Morris*, 367 S.C. 56, 64, 624 S.E.2d 649, 653 (2006). In addition, Applicant does not explain how he was prejudiced by the exclusion of that statement. By itself, the fact that a defendant had prior difficulties with a victim is not inconsistent with guilt of a charge of ABHAN. The burden is on Applicant to show how the result of his trial would have been different had Trial Counsel acted differently, but this burden has not been met with respect to this allegation.

Second, Applicant claims Trial Counsel failed to object when the solicitor referred to Gray's identification of Applicant during opening statements as being both hearsay and outside the record. Similarly, Applicant claims Trial Counsel should have raised hearsay and confrontation clause objections to the introduction of the body-cam video wherein Gray identifies Applicant as the shooter. Since there was substantial other evidence implicating Applicant as the shooter, including Applicant's own testimony, there is no possibility that this statement by the solicitor or the body-cam video prejudiced Applicant.

Third, Applicant claims Trial Counsel failed to object "to the solicitor's comments about defense calling of witnesses," citing page 113 of the transcript. There, the solicitor states to the jury, "Mr. Thomas is not under any obligation to call any witnesses, but if he calls witnesses, listen to the questions that his lawyer asks of the witnesses, but listen to the questions that I ask those witnesses, too." (Trial Tr. p. 113, lines 5–9). This sentence is the only reference to "witnesses" on the cited page. Applicant has not explained what was allegedly objectionable about that sentence or how the result of the trial would have been different had Trial Counsel objected to it.

Finally, Applicant claims Trial Counsel should have objected on hearsay grounds when one of the State's witnesses, Investigator Scott Ruby, testified to statements made by Gray shortly after the shooting when Ruby was dispatched to the incident location. Ruby testified Gray identified the shooter as "Ghost" and said he was shot because Ghost "thought [Gray] owed him something." (Trial Tr. pp. 123–24).

At the time Gray made those statements, he was lying in the road "bleeding from obvious injuries." (Trial Tr. p. 123, line 4). Another first responder was performing first aid on Gray while the ambulance was on its way. (Trial Tr. p. 124). The body-cam video recorded Ruby's interactions with Gray. (State's Exhibit #2). It is plain from these facts that Gray made the statements while under extreme stress due to the shooting, and the topic of his statements was related to the shooting—explaining who shot him and why. Under the circumstances, Gray's statements were clearly admissible under the "excited utterance" exception to the rule against hearsay. *See* Rule 803(2), SCRE. There was, therefore, no ground for an objection.

4. Solicitor's Closing Argument and Trial Counsel's Failure to Object

Applicant raises multiple claims regarding Trial Counsel's failure to object to certain allegedly inappropriate comments made by the solicitor during closing arguments. The solicitor made this statement:

I want just to address something that was said by Mr. Thomas's attorney in his opening statement a few days ago. Nothing requires me or the solicitor's office to prosecute this case. Mr. Brown said that we can't stop this prosecution because the sheriff's office made a quick judgment and they charged Mr. Thomas. Well, that's completely wrong. The solicitor's office decides not to prosecute cases made by the sheriff's office all the time. And we get along pretty well, but sometimes they don't like that too much. But that is our prerogative. That is the solicitor's office's decision.

So the indictment in this case that charged Mr. Thomas with attempted murder, that was signed by me and—not the sheriff's office. It was signed by me. And that means that I thought there was

enough evidence in this case to prove that Mr. Thomas committed this crime. And if I didn't think that, I wouldn't have spent what amounts to a whole week of court time presenting this case to y'all and prosecuting this case. Because what gets brought to court is my responsibility, not anybody else's.

And y'all, as long as I'm doing this, when these cases arise and somebody is getting gunned down in the middle of a street here in this county, I'm going to try and do something about it, you know, whether the victim is here or not. If there's evidence, I'm going to present that evidence. And that's what I did this week. And that doesn't have anything to do with what anybody thinks or what anybody wants. It's a decision that I make as a solicitor working here in this county.

(August 23 Trial Tr. pp. 37–38).

Applicant argues the above statement was improper because the solicitor conveyed to the jury his own personal impression that Applicant was guilty. Applicant characterizes the solicitor's comment as "essentially the same type of argument" held to be improper in *Fortune v. State*, 428 S.C. 545, 837 S.E.2d 37 (2019). The Court disagrees.

The following arguments were held to be improper in *Fortune*:

Ladies and gentlemen of the jury, thank you so much for your time throughout the course of this trial. I want to start by telling you that we both have jobs here. My job is to present the truth. In fact if you look in the South Carolina Code of Laws which mandates what a solicitor's job is we can't be like a normal attorney is.

A normal lawyer has to advocate on behalf of his client. But on the other hand the Solicitor can't. We have to say what the truth is . . . And [if] I know the person has done something that I think the facts show they're guilty of, then I can't nolle prosequere it. I have to go forward with it. And as I said my job is to show the truth. On the other hand, the defense attorneys' jobs are to manipulate the truth. Their job is to shroud the truth. Their job is [to] confuse jurors. Their job is to do whatever they have to—without regard for the truth—to get a not guilty verdict.

Id. at 550–51, 837 S.E.2d at 40.

The statements by the solicitor in *Fortune* are dissimilar to the statements made by the solicitor in Applicant's case. The solicitor in *Fortune* stated his "job is to present the truth" and

he “had to go forward with” the case because “I know the person has done something.” The Supreme Court condemned the solicitor’s comment because it “convey[ed] the impression that evidence not presented to the jury, but known to the prosecutor, supports the charges against the defendant.” *Id.* at 552, 837 S.E.2d at 41.

At Applicant’s trial, however, the solicitor’s statements in closing did not assert the personal belief or knowledge that Applicant was guilty, as condemned in *Fortune*; rather, he “thought there was enough evidence in this case to prove Mr. Thomas committed this crime. . . . If there’s evidence, I’m going to present that evidence.”

Furthermore, the solicitor in Applicant’s case never “invoke[d] his duty to dismiss unfounded cases,” as *Fortune* also condemned. *Id.* at 553, 837 S.E.2d at 41. The closest he came to that impropriety was his explanation that, contrary to Trial Counsel’s opening statement, he was *not* required to prosecute the case just because the sheriff’s office charged Applicant. This was a response to the opening statement made by Trial Counsel:

You've heard from the Assistant Solicitor why we're here, they brought charges. He didn't bring the charges, he's prosecuting them. Law enforcement brought the charges . . . But I understand they have to follow this case because, unfortunately, Mr. Thomas was arrested. Unfortunately, a case was immediately made against him based upon the shooting. Rush to judgment. Rush to assumption. That's what the prosecution has done. . . . I want to make an argument that, clearly, this case had to start somewhere and it started with the sheriff's office. . . . So once you get this train rolling, you can't just automatically say oh, we're sorry, we want to stop the prosecution.

(Trial Tr. pp. 113–16). Trial Counsel’s opening statement suggested that, once the sheriff’s office brought charges against Applicant, the solicitor had no choice but to continue to prosecute Applicant. Therefore, the solicitor’s comments about his ability to interrupt the prosecution and his decision to sign the indictment were made in order to refute this suggestion.

Even arguments that would otherwise be improper may be excused under the “invited reply” doctrine if those arguments were an appropriate response to statements or arguments made by the defense. *See Vaughn v. State*, 362 S.C. 163, 169, 607 S.E.2d 72, 75 (2004); *see also State v. Mazique*, 419 S.C. 282, 296–97, 797 S.E.2d 730, 737 (Ct. App. 2016) (holding a solicitor’s comments referring to his belief that the defendant was guilty were made in response to the defendant’s closing argument that the solicitor did not investigate before charging and misled the jury).

Applicant argues that the purpose of the “invited reply” doctrine is “not to excuse improper comments, but to determine their effect on the trial as a whole.” *Fortune*, 428 S.C. at 556, 837 S.E.2d at 43 (citing *Vaughn*, 362 S.C. at 169, 607 S.E.2d at 75). The Supreme Court in *Fortune* held that the defense attorney’s argument was *not* improper and that there was “no argument a defense attorney could make that would justify the improper remarks by the assistant solicitor” in that case. *Id.* As pointed out above, the comments made by the solicitor in this case are a far cry from the “inexcusable” comments at issue in *Fortune*. Therefore, in order “to determine their effect upon the trial as a whole,” this Court applies the invited reply doctrine and views the solicitor’s arguments as an appropriate response to the misleading suggestion by Trial Counsel that the State “rushed to judgment” and then could not “stop the prosecution.”

Applicant also contends there was no overwhelming evidence of guilt in this case, again citing *Fortune* where the State “pointed to no element of self-defense where it presented overwhelming evidence the element did not exist.” *Id.* However, the Supreme Court’s overwhelming evidence analysis came *after* it had rejected the application of the “invited reply” doctrine to the solicitor’s “inexcusable” comments. The analysis was only relevant because overwhelming evidence is a categorical bar to a finding of prejudice, which would otherwise be

necessitated based on the solicitor’s outrageous misconduct. Generally, overwhelming evidence is sufficient, but not necessary, to defeat a claim of ineffective assistance. *See, e.g., Smalls v. State*, 422 S.C. 174, 195, 810 S.E.2d 836, 847 (2018) (“Because we find the evidence is *not overwhelming*, Smalls’ individual claims of deficient performance must be analyzed separately to determine whether either of them gives rise to a reasonable probability the result of the trial would have been different without counsel’s error.”) (emphasis added).

In this case, the evidence showed that Applicant shot an unarmed man ten times before driving away in his car to sell the weapon so that it would not be found by law enforcement. According to Applicant’s own testimony, he shot at Gray multiple times and was still firing while Gray was running away from him. (Trial Tr. p. 329, lines 7–9). This was corroborated by the evidence of two gunshot wounds in Gray’s back. (Trial Tr. pp. 226–28; State’s Exhibit #8). Therefore, unlike in *Fortune*, there was arguably overwhelming evidence in this case that one of the elements of self-defense—a reasonable belief that Applicant was in imminent danger of losing his life or sustaining serious bodily injury—did not exist. *See State v. Jones*, 416 S.C. 283, 301, 786 S.E.2d 132, 142 (2016) (setting forth the elements of self-defense); *State v. Rosenbaum*, Op. No. 5928 (S.C. Ct. App. filed August 3, 2022) (holding the trial court properly rejected a defendant’s self-defense claim where the victim was killed after he tried to flee and was admittedly no longer a threat).

Whether or not the State’s evidence rose to the level of “overwhelming evidence” as that term was used in *Fortune*, it was still sufficiently strong that the result of the trial would not have changed, even if Trial Counsel had kept out those portions of the solicitor’s closing argument. Applicant, therefore, has failed to show he was prejudiced by Trial Counsel’s alleged error.

Applicant next takes issue with this portion of the solicitor’s argument:

There's a lot of people who need to know the truth in this case. Najm Thomas needs to hear the truth. He is a young man but he's going down a very bad, very scary path. And he needs to be told that you just can't go around shooting people. The sheriff's office needs to be told that when they work on a case that's this hard and they respond to a scene and they collect their evidence and they do their job the best they can and they gather enough evidence to convict somebody of a serious, violent crime, when they do their job, they need to know that a jury will do something about it and will hold the person that is being proven guilty responsible.

But the real group that needs to hear the truth in this case are the people of Union County. Because this case is really not about justice for Malik Gray. It's about justice for the people of the Union County. Because your verdict will say a lot about the kind of county you want to have. Do you want have a county where it's okay to go around gunning people down in the middle of the road? Do you want to have the kind of county where somebody like Mr. Thomas can just come in here with some trumped-up story that flies in the face of all the evidence? All the evidence in the case and tell a bunch of—bunch of lies to people and get out of it after shooting a man 10 times? You want to have that kind of county?

Well, I think that y'all are smarter than that. And I think you want a Union County where people like Najm Thomas can't go around gunning people down. And I will ask when you go back to that jury that you consider this evidence that has been presented to you and you render a verdict that tells Najm Thomas, that tells the Sheriff's office, and that tells all the people in Union that there is law here and that people will be held responsible for the crimes they commit and that we're not the Wild West. I ask that you find Najm Thomas guilty of attempted murder. Thank you.

(August 23 Trial Tr. pp. 39–40.)

Applicant contends this argument appealed to the jury's passions and prejudices, played on their fear, and appealed to the jury's sympathy for law enforcement, likening this argument to that held improper by *State v. Liberte*, 336 S.C. 648, 521 S.E.2d 744 (1999). In that case, the solicitor argued that the reasonable doubt standard "is . . . being used as a sword to attack law and order, to attack law enforcement, to attack people who are trying to keep drugs off our streets." *Id.* at 652, 521 S.E.2d at 746. The *Liberte* court held those comments improper because they "invited the jury to convict the Defendants, even if the evidence did not prove their guilt beyond a

reasonable doubt, in order to keep the streets safe from the scourge of drugs.” *Id.* at 653, 521 S.E.2d at 747.

The solicitor’s comments in the present case came nowhere near the outrageous comments condemned in *Liberte*. In this case, the solicitor repeatedly emphasized the jury’s duty to base its decision on the evidence and whether the State had proven Applicant’s guilt. His discussion of the evidence against Applicant occupies more than ten pages of the transcript. (August 23 Trial Tr. pp. 25–36). He also accurately explained that the State had to prove Applicant’s guilt beyond a reasonable doubt. (August 23 Trial Tr. p.37). When he brought up the sheriff’s office, it was only to say that, if the sheriff’s office “gather[ed] *enough evidence to convict* somebody,” the jury should “hold the person *that is being proven guilty* responsible.” He urged the jury to dismiss Applicant’s story because it “flies in the face of all the evidence.” He concluded by reminding the jury to “consider the evidence that has been presented to you.” Not once did he suggest that the jury should base its decision on anything other than the evidence or apply any standard lower than the reasonable doubt standard. While he did rhetorically invite the jury to consider the other salutary or pernicious effects its verdict might have, the ultimate thrust of his argument was that the evidence proved Applicant guilty of the crime beyond a reasonable doubt and that the jury should find him guilty for that reason. *See State v. Cain*, 297 S.C. 497, 508–09, 377 S.E.2d 556, 562 (1988) (holding an argument asking the jury to “send a message” that “you don’t do [murder] in Chesterfield County,” when viewed in the context of the entire argument, “certainly did not rise to the level of arousing juror passion or prejudice”).

In addition, Trial Counsel testified at the evidentiary hearing that he believed the solicitor’s praise for the efforts of the sheriff’s office worked in the defense’s favor because the sheriff at the time was unpopular. He testified that he watched the jury’s reactions during the solicitor’s closing

arguments and saw disdain and disbelief on their faces when the solicitor tied the case to the sheriff's office. Even if some portions of the solicitor's closing arguments had been objectionable, Trial Counsel articulated a valid strategic reason for not objecting to those portions of the solicitor's closing arguments. Furthermore, as already discussed, the strength of the State's case in disproving self-defense militates against any claim of prejudice based on cherry-picked portions of the solicitor's closing argument.

Finally, Applicant takes issue with a portion of the solicitor's closing argument where he clarifies that, if jurors disagree as to whether Applicant is guilty or not guilty, or whether he was guilty of attempted murder or ABHAN, the jury does not need to find Applicant not guilty but should inform the judge so he can give appropriate instructions. Applicant appears to concede that there is no precedent expressly disapproving such a comment by the solicitor. Nevertheless, he contends Trial Counsel was ineffective for failing to object to it. This argument is without merit: Trial Counsel had no duty to make an objection that was not grounded in any existing law at the time of Applicant's trial. *See, e.g., Thornes v. State*, 310 S.C. 306, 309–10, 426 S.E.2d 764, 765 (1993)

V. CONCLUSION

For the reasons discussed above, the Court finds Applicant has failed to meet his burden of proving that Trial Counsel's representation fell below an objective standard of reasonableness. In addition, Applicant has not proved how the result of his trial would have been different but for the alleged errors of Trial Counsel. Therefore, the Court finds and concludes that Applicant's allegations of ineffective assistance of counsel are without merit and that this post-conviction relief application must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty

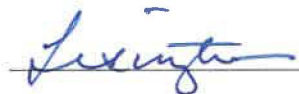
(30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on Applicant's behalf. Applicant's attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief be denied and dismissed with prejudice; and
2. That Applicant be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 17 day of APRIL, 2023.


Walton J. McLeod, IV
Presiding Judge
Third Judicial Circuit

, South Carolina

1 STATE OF SOUTH CAROLINA

2 -----x

3 STATE,

4 Plaintiff,

5 Case No.

6 -against- 2017-GS-44-00848

7 NAJM THOMAS,

8 Defendant.

9 -----x

10 October 26, 2018

11 Union, S.C.

12

13 B E F O R E:

14 HONORABLE WILLIAM MCKINNON

15

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

17 JOHN ANTHONY,

18 Attorney for the State

19

20 MICHAEL D. BROWN

21 Attorney for the Defendant

22

23

24 Aileen Butler

25 Official Court Reporter

1	<u>E X H I B I T S.</u>			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVD.</u>
3	State			
4	1	DVD		23
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

1		<u>I N D E X</u>	
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u> <u>REDIRECT</u> <u>RECROSS</u>
3	David Russell Vincent		
4	Mr. Anthony	20	
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

1 MR. BROWN: This is the defense's motion. We
2 previously filed a motion for relief in support of Mr.
3 Thomas's request for a motion for a new trial.

4 As the Court is well aware, we did conduct a trial
5 before Your Honor. It began on August 20th of this
6 year. Concluded on August 24th. At the time the jury
7 found Mr. Thomas not guilty on the initial charge, the
8 overriding charge of attempted murder, but the jury
9 did come back with a verdict of guilty as it relations
10 to the ADHAN charge.

11 Your Honor, some time after that we were contacted
12 by the person who was presented during the course of
13 the trial as being the alleged victim, Mr. Malik Grey.
14 As had been at the outset back in June of 2017 when
15 Mr. Grey contacted my office and he did provide an
16 affidavit to the prosecution in regards to the
17 information that we had at that time. It was very
18 straightforward. Very matter of fact and said to me
19 directly, it was reduced to writing that he had no
20 intention of participating in the trial. Subsequent
21 to that, Your Honor, which I did not know was the fact
22 that he had a direct conversation with the prosecutor
23 and I didn't want to reduce it to writing.

24 I advised Mr. Grey that, number one, I was not his
25 attorney. Number two, he did have certain rights and

1 that he would have to come to Court. I thought it was
2 in all parties best interest that he would come to
3 court and state directly what he was saying to me as
4 opposed to it yet again being reducing to writing and
5 presented in the form of an affidavits.

6 Subsequent to that June 2nd conversation an
7 affidavit that he submitted to my office he did speak
8 with the assistant solicitor in this case, Your Honor,
9 and based upon that conversation he will be the person
10 I would feel would be best to come to the court, give
11 the information that he gave to me in relations to
12 what he told the prosecutor in regards to his conduct
13 during the time period in which he was shot by my
14 client what was going on and in particular what he
15 expressed to the prosecution and what he feels or felt
16 at that time period that was related to him by the
17 prosecutor.

18 My contention would be that that conversation
19 should have been exculpatory because based upon that
20 it openly has turned out that he was not available for
21 trial. I understand from what he is relaying to me
22 why he didn't come to trial. I would not want to
23 speak on his behalf, state to the Court what he was
24 telling me, but it did in my opinion based upon what
25 was discovered after the fact, Your Honor, it would

1 have prevented or caused problems for me trying my
2 case.

3 Mr. Grey will be the best witness that would be
4 able to --

5 THE COURT: I am sorry to interrupt. You said if
6 you had brought him in to Court it would have caused
7 problems for you?

8 MR. BROWN: No, if I had known. But now, after
9 the trial, I can understand now why Mr. Grey didn't
10 come to Court, Your Honor.

11 THE COURT: Okay.

12 MR. BROWN: Based upon the conversation that he
13 had with the prosecution after he initially contacted
14 me.

15 THE COURT: Now, Mr. Brown, I mean, I understand
16 that you're asking for a continuance in this case.

17 MR. BROWN: Yes, sir, that's the basis of my
18 continence.

19 THE COURT: I need you to make more of a showing.
20 I need to know what you say he is going to say for me
21 decide whether to give you a continuance. Because
22 I'll be honest reading the written submission I don't
23 see anything warranting a new trial. If you tell me
24 that he is going to say something more, what is he
25 going to say that warrants a new trial?

1 MR. BROWN: Your Honor, I think he will come and
2 tell the Court that he felt that he was under some
3 kind of duress based upon potential prosecution by the
4 solicitor's office.

5 Its been established, Your Honor, both with what
6 has been supplemented in terms of the reply by the
7 prosecution with the incident report that was given to
8 the Court in the prosecution's reply motion, that
9 during the time period in which these incidents that
10 involved my client as well as Mr. Grey, in particular
11 August 29th of 2016 Investigator Germain Smith when
12 they spoke to the victim, Mr. Malick Grey, they asked
13 Mr. Grey why Mr. Thomas would have shot him he said he
14 had robbed him of some marijuana a few months back.
15 Mr. Grey stated he and Mr. Thomas had some
16 altercations in the past but nothing to make him
17 believe that he would shoot him.

18 In regards to my conversation with him he directly
19 told me about what happened on the night of the
20 shooting. That he did in fact act aggressively
21 towards Mr. Thomas. That information should have been
22 relaid to the prosecutor and in that regard a response
23 was given by the prosecutor that he felt as he relaid
24 to me was a bit intimidating and at that point he
25 decided that he knew he was not coming to court based

1 upon the response that he received from the assistant
2 solicitor.

3 THE COURT: Mr. Brown, let's take one at time.
4 From reading your motion it seems like there's an
5 allegation that there is a Brady violation and there's
6 an allegation of after discovered evidence.

7 MR. BROWN: Yes, sir.

8 THE COURT: Are you making a third allegation of
9 prosecutorial misconduct?

10 MR. BROWN: No, Your Honor. I wouldn't reduce
11 that to writing and I'm not suggesting that. I am
12 saying based upon the conversation he had with Mr.
13 Grey, Mr. Grey felt intimidated potentially which
14 would be the prosecutor's right if he decided to bring
15 charges against Mr. Grey for robbing my client.

16 THE COURT: Yes, sir. So the two basis for the
17 the motion are still a Brady violation and then an
18 after discovered evidence.

19 MR. BROWN: Yes, sir.

20 THE COURT: So let's take them one at a time.
21 What is the information that you believe should
22 have been disclosed by the prosecutor?

23 MR. BROWN: The fact that the prosecutor had a
24 direct conversation with Mr. Grey. What I was led to
25 believe during the course of the case was that Mr.

1 Grey talked with investigators. Never had a direct
2 conversation with the prosecutor. In fact what was
3 said to me was an investigator contacted Mr. Grey on
4 on behalf of the prosecutor's office during the time
5 period in which they were going to trial. What was
6 disclosed to me was that Mr. Grey had a direct
7 conversation with the prosecutor himself and from that
8 that they had a conversation about that merits of the
9 case as well as what Mr. Grey felt could potentially
10 happen to him.

11 THE COURT: Doesn't it have to be exculpatory
12 under Brady to be disclosable. The mere fact of a
13 conversation I don't think is a Brady violation.

14 MR. BROWN: If he was going to be a potential
15 witness obviously, Your Honor, for the prosecution.
16 During that time period, Your Honor, I had no
17 difficulties in terms of Mr. Grey being able to be
18 contacted. I had no difficulties in terms of if I
19 needed him I knew I could call him as a witness. In
20 fact, I think I listed him as a witness. But because
21 of that conversation and what he disclosed to me I
22 understand now why not only was it difficult for him
23 to come and testify the reason why he didn't. And
24 that wasn't on my end, Your Honor. So it made it
25 completely impossible for me to be able to call him

1 based upon the conversation that he had after the fact
2 that I did not know about.

3 THE COURT: Yes, sir. Again, my understanding of
4 the law is as the prosecutor he is fully able to talk
5 with the victim in the case.

6 MR. BROWN: Yes, sir.

7 THE COURT: Unless that victim is represented by a
8 lawyer and in order for something to be a Brady
9 violation it has got to be exculpatory evidence. So
10 what is the exculpatory evidence that you believe is
11 in the possession of the State that wasn't turned
12 over?

13 MR. BROWN: The nature of the conversation itself,
14 Your Honor, it was exculpatory in which he related to
15 the prosecutor what happened that evening as opposed
16 to what was presented by the prosecution prior to
17 trial. Not saying it's prosecutorial misconduct but
18 if he told him directly that I was acting aggressively
19 towards Mr. Thomas on that evening before I got shot,
20 I don't have the ability to ascertain that, Your
21 Honor. He's no longer a person I could get in contact
22 with after he spoke with the prosecution.

23 The prosecution spoke with him in June after he
24 initially contacted my office. After that it made it
25 impossible for me to be able to even communicate with

1 him, Your Honor.

2 THE COURT: All right. But did you attempt to
3 subpoena him to trial?

4 MR. BROWN: Your Honor, he could not located. I
5 had no place to subpoena him to, Your Honor.

6 THE COURT: All right, Mr. Brown. Let me hear
7 from Mr. Anthony.

8 MR. ANTHONY: I'm not clear when Mr. Brown says he
9 had his conversation with Mr. Grey. The affidavit
10 does not have a date on it, so I don't know when. I
11 don't have any way to know.

12 MR. BROWN: It's at the top of the affidavit, Your
13 Honor.

14 MR. ANTHONY: Oh, I see. Okay. I see it is on
15 here, June 2, 2017. Well, all I can tell the Court is
16 basically what I put in my motion, or in my response
17 to his motion. I had -- I've two conversations with
18 Mr. Grey. I had a conversation with Mr. Grey on
19 February the 8th, 2017. That was a conversation
20 relatively short meeting. It was in person. On that
21 occasion we had not had any discussion of the
22 particulars of the events leading up to the shooting.
23 And then he made a phone call to me and it would have
24 been after Mr. Brown took this affidavit from him. He
25 called me in July of 2017 and this was a very short

1 phone call. I would guess not more than one or two
2 minutes. He told me he didn't want to prosecute the
3 case. I told him I understood that but I felt like
4 the State would go forward anyway.

5 I can tell the Court just as an officer of the
6 Court that on no occasion did Mr. Grey ever tell me
7 anything that would lend to a self-defense argument by
8 Mr. Thomas. We never discussed anything about what
9 Mr. Grey was doing that evening before Mr. Thomas shot
10 him. Any behavior on his part that would lend itself
11 to a self defense. So there was no conversation about
12 anything like that in my two rather brief discussions
13 with Mr. Grey. And the last time I talked to Mr. Grey
14 was in July of 2017 and we never -- I've never spoken
15 to him since and as I said that conversation in July
16 2017 was a very brief phone call conversation.

17 THE COURT: Okay. Mr. Brown, the struggle that I
18 have here is, this motion was filed five -- almost six
19 weeks ago now. I don't have an affidavit from you. I
20 don't have any evidence in support of this motion six
21 weeks after it was filed.

22 MR. BROWN: Your Honor, that's why I say Mr. Grey
23 based upon my request for a continuance would have
24 been the best person that could clear up some of this.

25 THE COURT: I understand Mr. Brown but it has

1 already been six weeks since the motion was filed and
2 have you been able -- why would you not have affidavit
3 from him or anything? It's your motion.

4 MR. BROWN: Your Honor, I presented an affidavit
5 prior during the course of this case. I presented an
6 affidavit that went towards the fact that Mr. Grey did
7 not want to participate. The fact that he didn't want
8 Mr. Thomas prosecuted.

9 THE COURT: But that's not exculpatory. There's
10 case on that. It has got to go beyond that.

11 MR. BROWN: I understand, Your Honor, and based
12 upon presenting affidavit it was ineffective in terms
13 of mitigating any type of sentencing he received and I
14 felt that Mr. Grey would have been the best party to
15 provide direct information that obviously I can't say
16 what he talked with the prosecutor about. The
17 prosecutor has relaid to the Court that he had a brief
18 conversation. What was relaid to me was the forceable
19 nature that Mr. Grey felt that conversation, the last
20 one entailed. I can't say what he said. I'm not
21 saying it was intimidation based upon what Mr. Grey
22 told me. Mr. Grey would be the better party. I'm
23 simply asking because it is my motion that at least I
24 should have one term for this to be continued because
25 this is a matter that was scheduled by the Court, four

1 weeks later, five weeks later, this is the first time
2 we had a chance to come before Your Honor and argue
3 this. I'm simply asking for leave to allow this to be
4 continued and if the Court is asking for either Mr.
5 Greys' appearance or supplemental information that I
6 can get by way of a sworn affidavit from him I
7 certainly will seek to do that in the interim, Your
8 Honor.

9 If the Court is inclined to make a ruling I can
10 only say that I am not able to present what I want to
11 offer to the Court without the direct testimony of Mr.
12 Grey or that affidavit for that matter. That's the
13 reason why I'm asking for this continuance today, Your
14 Honor.

15 THE COURT: I am a next going to be in Union the
16 week of the December 17th. That is almost two months.

17 MR. ANTHONY: May I just be heard before the Court
18 rules?

19 THE COURT: Yes, sir.

20 MR. ANTHONY: I think just also just so the record
21 is clear, I did not put this in my response because I
22 don't think this is alleged in Mr. Brown's motion
23 specifically, but I never said anything in the two
24 conversations I had with Mr. Grey about he could
25 possibly be prosecuted for robbing Mr. Thomas. That

1 was never discussed in any of our conversations
2 either. I'll also will say as far as exculpatory
3 information goes the only exculpatory information I've
4 ever been given about this case came from law
5 enforcement's interview with Mr. Grey which was
6 documented. I made it an attachment to the response
7 where Mr. Grey did tell law enforcement that he had
8 robbed Mr. Thomas some time before the shooting
9 incident that was turned over to Mr. Brown.

10 The Court ordered or you you sent an email to Mr.
11 Brown and myself saying you wanted to hear the motion
12 this week on October the 8th. I would just argue that
13 this whole motion is basically premised on Mr. Grey
14 being willing to come in and make some allegation that
15 would provide a basis for it. Obviously, I put in my
16 response that I don't think that's going to pass
17 mustard because of the prior contact he already had
18 with Mr. Brown. It just seems to me, Your Honor, that
19 18 days is enough time for him to get someone who is
20 suppose to be a cooperative witness here in court and
21 I just don't think that anything is served by delaying
22 this. I would ask the Court to go ahead and hear the
23 motion today.

24 THE COURT: Mr. Brown.

25 MR. BROWN: And what I will say, Your Honor,

1 because of the different potential days that it could
2 have been heard -- I understand the week -- this being
3 the week that it could have been heard, Mr. Grey if he
4 were to be a favorable witness obviously we're trying
5 to get him here, Your Honor. I know he is very
6 concerned about his work schedule. Very concerned
7 about maintaining his job. And his information has
8 changed. He is not at the original location when this
9 case began and because of that Your Honor I think if I
10 knew with a little bit more time if I could locate him
11 and have him brought to court. I know the court sent
12 this out on the 8th but I think if I had the next term
13 of court this motion would either fail on his
14 appearance or would be supported, Your Honor.

15 So I'm simply asking you give me at let's one term
16 of court to do that. And I don't think the ends of
17 justice is being violated because obviously Mr. Thomas
18 has already been sentenced and he can simply make an
19 appearance.

20 THE COURT: Mr. Brown, typically when you file a
21 motion you have the evidence to back it up. So, I
22 guess my question, if you tell me as an officer of the
23 court that you have information from this witness that
24 you need to present saying that if he gave exculpatory
25 evidence to the solicitor's office I will give you

1 some time to present that. Do you have that
2 information?

3 MR. BROWN: Your Honor, I would have to have Mr.
4 Grey say that. I can't speak on his behalf. I said
5 at the outset I am not casting dispersions on the
6 solicitor's office. No accusations. I simply would
7 want him to be able to come and either verify, deny
8 it, present it, just so this motion can be heard.

9 THE COURT: Mr. Brown, isn't that the same thing
10 as you're not sure whether the motion is grounded in
11 fact or not?

12 MR. BROWN: Your Honor, I can only state to you in
13 terms of the nature of the conversation when he came
14 to my office after the trial. What he wanted to say.
15 He gave his feelings in terms of his conversation with
16 the prosecutor. He didn't say it was a short
17 conversation. He didn't think it was a pleasant
18 conversation. I didn't know anything about a February
19 conversation.

20 THE COURT: Did he tell you he gave exculpatory
21 evidence to the solicitor's office?

22 MR. BROWN: I couldn't say that, Your Honor. He
23 would have to say that Your Honor. I can't say that
24 Your Honor. As an officer of the court I couldn't say
25 that.

1 THE COURT: Okay. In that case I am going to deny
2 the motion without prejudice. If it does turn out
3 there is additional evidence out there that we have
4 not heard you can re-file it. The deadline for that
5 is a year for you to file a motion based on new
6 evidence. But as it is right now I don't see evidence
7 before the Court. I will deny the motion without
8 prejudice.

9 MR. BROWN: Just to be consistent, that is both
10 the denial of the motion for continuance and you deny
11 the motion for a new trial?

12 THE COURT: Yes, sir. I am denying the motion for
13 the continuance and I am denying the the motion for a
14 new trial on the basis as we sit here today there is
15 is no evidence warranting go a few trial. There is no
16 additional evidence. But I'm denying it without
17 prejudice and the rule provides a one year deadline
18 for the filing of a motion for a new trial based on
19 after discovered evidence. If it there is something
20 out there then you can re-file it.

21 MR. BROWN: And in alternative, obviously, he does
22 have the right to appeal.

23 THE COURT: That is correct.

24 MR. BROWN: Thank you, Your Honor.

25 MR. ANTHONY: And Your Honor, I would ask today

1 since this Court is making a ruling and since there is
2 possibility that this ruling could be appealed, I have
3 a tape of a conversation that Mr. Thomas had at the
4 jail on a phone call with his mother the day after he
5 was sentenced and I think that phone call needs to be
6 made part of the record because it hints that
7 interference with Mr. Grey and the possibility of some
8 improper influence being placed --

9 THE COURT: With the victim in the case?

10 MR. ANTHONY: Yes, sir. Yes, sir. Mr. Brown has
11 heard that this morning. If he opposes it being made
12 part of the record I would like to proffer it and ask
13 the Court to include it in the record since there is I
14 guess a possibility Mr. Brown could just go ahead and
15 appeal this ruling. I think this conversation needs
16 to be in the record if it goes up.

17 THE COURT: Okay, Mr. Brown.

18 MR. BROWN: I object, Your Honor.

19 THE COURT: Okay. Well, let's make a proffer.

20 MR. ANTHONY: We call Investigator Vincent.

21 DAVID RUSSELL VINCENT, called as a witness, having
22 been duly sworn by the clerk, was examined and
23 testified as follows:

24 DIRECT EXAMINATION

25 BY MR. ANTHONY

1 Q Would you state your name please?

2 A David Russell Vincent.

3 Q Mr. Vincent, how are you employed?

4 A Employed as an investigator with the Union County
5 Sheriff's Office.

6 Q And were you the case agent on the case against Mr.
7 Thomas?

8 A I was.

9 Q All right.

10 Q And after Mr. Thomas was sentenced on August 23rd, did
11 you monitor any of his activity at the jail?

12 A I did.

13 Q And what particular kind of activity did you monitor?

14 A Phone calls that he placed at the jail.

15 Q All right. And how are you able to monitor those phone
16 calls?

17 A We have access to all jail calls that people that call
18 out make phone calls.

19 Q All right. And is that the practice at the jail that
20 when an inmate makes a call that it's recorded?

21 A Yes.

22 Q Is that done for all inmates?

23 A Yes.

24 Q And is there a system that allows you to go back and
25 review those recorded calls?

1 A There is.

2 Q And did you do that in regards to Mr. Thomas?

3 A I did.

4 Q And did you, after reviewing those calls, did you do
5 anything to preserve them?

6 A I did. I saved them and made a copy.

7 Q Okay. And I am going to show you State's Exhibit One
8 for identification. I would ask if you have seen that DVD
9 before?

10 A I have.

11 Q All right. And what does that contain?

12 A This CD contains files of a phone conversation from Mr.
13 Thomas at the jail.

14 Q Okay. And have you -- the file that you and I have
15 discussed is actually the first file on the CD, is that correct?

16 A That's correct.

17 Q And have you reviewed that phone call?

18 A Yes.

19 Q And does that fairly and accurately reflect the call
20 that you heard when you listened to Mr. Thomas's conversation on
21 the system?

22 A Yes.

23 Q All right.

24 MR. ANTHONY: We move exhibit one into evidence.

25 MR. BROWN: Your Honor, I object. I renew my

1 previous objection.

2 As I understand it I think the prosecution is
3 planning on playing the entire message, 16 minutes and
4 11 seconds. There's a reference directly that I heard
5 that is made about Your Honor or the Court's ruling in
6 regard to this and that may influence the Court's
7 ability to favorably either way to hear the
8 information that is being shared. I don't know if
9 that is going to subject any kind of prejudice from
10 what Your Honor would hear, so for that reason I would
11 have to object.

12 THE COURT: Okay. Well let me hear it and then I
13 will make a ruling on whether it is admissible. I
14 will hear it as a proffer.

15 (WHEREUPON, the CD was played.)

16 Q The the only other question I have as part of my
17 proffer, Investigator Vincent, that call was made when?

18 A The day after he was sentenced.

19 Q The day after the conviction?

20 A Correct.

21 Q All right. Thank you. That's everything for
22 Investigator Vincent.

23 THE COURT: Mr. Brown, any questions?

24 MR. BROWN: I don't have any questions Your Honor.

25 THE COURT: Thank you, sir.

1 (Whereupon, the witness was excused.)

2 MR. ANTHONY: And would I just move that in. I
3 think the Court wanted to hear it first, so at this
4 time would I move it in.

5 THE COURT: I will admit it into evidence.

6 (WHEREUPON, State Exhibit One was received in
7 evidence.)

8 THE COURT: Mr. Brown I appreciate your concern
9 for the Court, but I think the accusation I heard was
10 that I was bias. I was not bias at the trial. I
11 certainly understand the defendant probably doesn't
12 hold me in great esteem after the trial but I'm
13 certainly not going to hold it against him.

14 MR. ANTHONY: And Your Honor, I don't want to
15 belabor the hearing and I don't want to argue with the
16 Court's ruling but I would just like to say I think
17 after hearing that it's pretty clear what you have
18 here is a situation where you have a family that's
19 basically trying to get --

20 MR. BROWN: Your Honor, I think you've already
21 ruled Your Honor.

22 THE COURT: Mr. Brown, let me hear from the State.

23 MR. ANTHONY: I would just like to be heard in
24 light of that tape. I think what you have here is a
25 family that's basically trying to get a victim to come

1 to court and say what as Mr. Thomas says on the tape,
2 what he is suppose to say. What they want him to say.
3 And I will just ask the Court to go ahead and rule on
4 this with prejudice because if you rule on it without
5 prejudice you're essentially just giving them another
6 ten months to continually try to get this man to say
7 what they want him to say. And they had 18 days to
8 get him here to say what they think they want him to
9 say this morning. And once again, I don't mean to
10 belabor this or argue with the ruling but I just think
11 that's enough time, Your Honor.

12 THE COURT: I appreciate that Mr. Anthony. I
13 still -- Mr. Brown tells me that there maybe evidence
14 out there. My understanding of what you you said Mr.
15 Brown as of right now you don't have any after
16 discovered evidence but you believe it may be out
17 there?

18 MR. BROWN: Based upon my conversation with him.
19 And I don't know. I didn't know either party before
20 coming in this case.

21 THE COURT: I understand. I will deny the motion
22 without prejudice and I will deny the request for a
23 continuance.

24 Thank you counsel.

25 MR. ANTHONY: Thank you, Your Honor.

1 MR. BROWN: Thank you, Your Honor.

2 (END OF TRANSCRIPT)

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATION

I, the undersigned Aileen Butler, Official Court Reporter for the 16TH Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings in the captioned case, in the Circuit Court for York County, South Carolina, on the 16th day of November, 2017.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

March 16, 2018

S/ *Aileen Butler*

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
CASE NO. 2019-CP-46-00222

NAJM AHMAD THOMAS,)
)
Plaintiff,)
)
-vs-)
)
STATE OF SOUTH CAROLINA,)
)
Defendant.)
_____)

TRANSCRIPT OF RECORD

December 8, 2022
York, South Carolina

B E F O R E:

Honorable Walton J. McLeod, IV, Judge.

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

Mr. J. Falkner Wilkes
Attorney at Law
Attorney for the Plaintiff
Greenville, South Carolina

Mr. Zachary Jones
Assistant Attorney General
Attorney for the Defendant
Columbia, South Carolina

Shannon E. McGilberry, CVR-M
Court Reporter

1			<u>I</u> <u>N</u> <u>D</u> <u>E</u> <u>X</u>	
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u> <u>RECROSS</u>
3	ELIZAWAN MALIK GRAY			
4	Mr. Wilkes	5		
5	Mr. Jones		10	
6	MICHAEL D. BROWN			
7	Mr. Wilkes	16		
8	Mr. Jones		37	
9	JOHN ANTHONY			
10	Mr. Jones	43		
11	Mr. Wilkes		49	
12	Certificate	56		
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

E X H I B I T S

<u>ITEM NO.</u>	<u>DESCRIPTION</u>	<u>ID/AD</u>
S-1	Affidavit of Malik Gray	14
S-2	Affidavit of Malik Gray	14
C-1	Memorandum	24

(Reporter's Note: All exhibits admitted into evidence during this proceeding were duly filed with the York County Clerk of Courts Office.)

1 THE COURT: All right. Mr. Attorney General.

2 MR. JONES: Thank you, Your Honor. May it please the
3 Court. This is the matter of *Najm Thomas versus the State*
4 *of South Carolina*, case number 2019-CP-44-222. My name is
5 Zachary Jones for the State of South Carolina. Mr. Thomas
6 is here as is his attorney, Mr. Jeff Wilkes.

7 In May 2017, the Union County Grand Jury indicted Mr.
8 Thomas for attempted murder, case number 2017-GS-44-845. He
9 was represented by Michael Brown at trial and Deputy
10 Solicitor John Anthony of the Sixteenth Circuit Solicitor's
11 Office prosecuted the case.

12 He proceeded to a jury trial on August 20th, 2018
13 before the Honorable William McKinnon. On August 23rd, 2018
14 he was found guilty of the lesser-included offense of
15 assault and battery of a high and aggravated nature and
16 Judge McKinnon sentenced him to sixteen years of
17 imprisonment. He did not appeal his conviction or sentence.

18 This matter concerns the post-conviction relief
19 application filed on July 15th, 2019 by Mr. Thomas and with
20 that, I'll turn it over to Mr. Wilkes.

21 THE COURT: Okay. Mr. Wilkes, good afternoon. I was
22 about to say good morning. Good afternoon.

23 MR. WILKES: Good afternoon, Your Honor. We'll call
24 our first witness, if that's okay.

25 THE COURT: Yes, sir.

1 MR. WILKES: Mr. Elizawan Gray.

2 THE COURT: And, Mr. Wilkes, just before you start, I
3 think this is your amended application from August 15th of
4 2022. Is that correct?

5 MR. WILKES: I believe so, Your Honor, and there's also
6 a statement to make more definite and certain.

7 THE COURT: Yeah. Okay.

8 MR. WILKES: It has that.

9 THE COURT: Well, I think it's both.

10 MR. WILKES: Okay.

11 THE COURT: Looks like you got the -- yeah.

12 MR. WILKES: The statement to make more definite and
13 certain is titled that way.

14 THE COURT: Okay. Thank you.

15 (ELIZAWAN GRAY, being first duly sworn, was examined
16 and testified as follows):

17 DIRECT EXAMINATION

18 ELIZAWAN GRAY BY MR. WILKES:

19 Q. State your name for the record, please, sir.

20 A. Elizawan Gray.

21 Q. Mr. Gray, were you the victim of a shooting in this
22 case?

23 A. Yes, sir.

24 Q. Okay. Did you testify at Mr. Thomas's trial?

25 A. No, sir.

1 Q. Now, let me take you back. Before the incident
2 involving this case with Mr. Thomas, was there an occasion
3 where you had previously approached Mr. Thomas before,
4 asking him on an occasion if he had any goods?

5 A. Yes, sir.

6 Q. And did he reply no?

7 A. I'm not really sure.

8 Q. But did he reply something?

9 A. Yes, sir.

10 Q. Okay. And at that time did you take it upon yourself,
11 seeing that he had money on him, to actually rob Mr. Thomas?

12 A. Yes, sir.

13 Q. And at that time you had a gun?

14 A. A pellet gun.

15 THE COURT: I'm sorry. I can't -- I just need him to
16 speak up a little. I can't hear.

17 THE WITNESS: I'm sorry. A pellet gun.

18 Q. And did Mr. Thomas -- you obtained money from him that
19 way?

20 A. Yes, sir.

21 Q. Okay. And then on another occasion, which is the one
22 that -- had you known Mr. Thomas before or encountered him
23 before?

24 A. Yes, sir.

25 Q. And had he been bullied even before that by either you

- 1 or your friends?
- 2 A. You mean on the first occasion or the --
- 3 Q. Even before the first occasion.
- 4 A. No, sir.
- 5 Q. So the first occasion when you robbed him was the first
- 6 one?
- 7 A. Yes, sir.
- 8 Q. Okay. And then on the second occasion, did you see him
- 9 on the side of the road?
- 10 A. Yes, sir.
- 11 Q. And did you approach him at that time in an aggressive
- 12 manner?
- 13 A. Yes, sir.
- 14 Q. And did you believe at that time that you might be able
- 15 to get some money out of him?
- 16 A. Yes, sir.
- 17 Q. Was it dark?
- 18 A. Yes, sir.
- 19 Q. And did you have a weapon that time?
- 20 A. No, sir.
- 21 Q. Okay. But you approached him aggressively?
- 22 A. Yes, sir.
- 23 Q. And he shot you about how many times?
- 24 A. I'm really not sure, but they said it was multiple.
- 25 Q. It was a lot?

- 1 A. Yeah, appeared to be.
- 2 Q. But you survived,---
- 3 A. Yes, sir.
- 4 Q. ---thankfully.
- 5 A. Yes, sir.
- 6 Q. Now, you were not completely cooperative with the
- 7 solicitor in the case?
- 8 A. No, sir.
- 9 Q. And you did not appear to testify?
- 10 A. No, sir.
- 11 Q. Did the solicitor know why you didn't want to
- 12 cooperate?
- 13 A. Yes, sir.
- 14 Q. And what did you -- what had you told the solicitor in
- 15 your meetings with the solicitor or the solicitor's
- 16 investigators as to why you didn't want to cooperate?
- 17 A. I told them that I really wanted to make -- you know,
- 18 make a change to try to get the case dropped or whatever and
- 19 I had a change of heart, so I really didn't want to go, you
- 20 know, further along with the case.
- 21 Q. But you didn't tell them that y'all had -- did you tell
- 22 the solicitor or their -- the solicitor's investigators that
- 23 y'all had had prior altercations?
- 24 A. No, sir. I never told them about the first incident.
- 25 Q. Okay. And later on you spoke to the defense lawyer,

- 1 Mr. Thomas's lawyer?
- 2 A. Yes, sir.
- 3 Q. When did you first talk to Mr. Thomas's lawyer? Do you
- 4 remember? Before the trial?
- 5 A. I don't want to give you a guess. Maybe, but --
- 6 Q. Okay. And what did you tell the defense lawyer?
- 7 A. I told him only about the second incident.
- 8 Q. Okay. He didn't know -- did he know -- did you tell
- 9 the defense lawyer about prior altercations?
- 10 A. No, sir.
- 11 Q. Okay. And later, after the trial, did you speak to the
- 12 defense lawyer again?
- 13 A. Yes, sir.
- 14 Q. And at that time did you tell him that there had been
- 15 some prior altercations?
- 16 A. I don't want to give the wrong answer, but I'd say most
- 17 likely.
- 18 Q. Okay. Did you write out a statement?
- 19 A. Yes, sir.
- 20 Q. And in that would you have written that there were some
- 21 prior altercations?
- 22 A. Most likely. I don't want to give you a wrong answer.
- 23 Q. Okay. Did you ever receive a subpoena from the defense
- 24 attorney? Not me, but Mr. Thomas's trial lawyer.
- 25 A. No, sir, not of my knowledge.

1 Q. Do you know if you ever received a subpoena from the
2 State for the trial?

3 A. No, sir, not to my knowledge.

4 MR. WILKES: If I can have one second, Your Honor.

5 No further questions, Your Honor.

6 THE COURT: Cross-examination.

7 CROSS-EXAMINATION

8 ELIZAWAN GRAY BY MR. JONES:

9 Q. Thank you, Mr. Gray. Do you recall one of the officers
10 responding to the scene of the shooting asking you why you
11 had been shot?

12 A. No, sir.

13 Q. All right. Do you recall that evidence -- well, never
14 mind. I'll withdraw that. Do you -- do you recall the
15 first -- the affidavit that you prepared and swore to, dated
16 June 2nd, 2017?

17 A. Yes, sir.

18 Q. All right. And in that affidavit do you state that you
19 were trying to rob Mr. Thomas?

20 A. Yes, sir.

21 Q. Well, I'm specifically talking about the June 2nd, 2017
22 affidavit. Would it help if I pass that up to you?

23 A. Yes, sir.

24 Q. All right.

25 (Whereupon, Mr. Jones handed the referenced document to

- 1 the witness for review.)
- 2 Q. And if you could just use that to refresh your memory.
- 3 Do you recognize that affidavit?
- 4 A. Yes, sir.
- 5 Q. All right. Do you recognize your signature there?
- 6 A. Yes, sir.
- 7 Q. All right. And on this affidavit do you explain that
- 8 you were trying to rob him at the time he shot you?
- 9 A. Yes, sir.
- 10 Q. Could you read that again, point that out to me?
- 11 A. Which one? The whole thing?
- 12 Q. Well, just if there's anywhere in there that says that
- 13 you were trying to rob him.
- 14 A. I, Elizawan Malik Gray, have previously had a physical
- 15 dispute with Najm Thomas.
- 16 Q. And that previous dispute you, I believe, testified
- 17 was the time that you presented the pellet gun and tried to
- 18 -- and robbed him at that point. Is that correct?
- 19 A. Can you repeat that again?
- 20 Q. Would that be the time you presented the pellet gun to
- 21 rob him?
- 22 A. Yes, sir.
- 23 Q. All right. But does this state that you were trying to
- 24 rob him at the time you shot him -- sorry -- at the time he
- 25 shot you?

1 A. That was the second incident.

2 Q. The second affidavit?

3 A. (Nods head affirmatively)

4 Q. Okay. Do you remember the date of the second
5 affidavit?

6 A. No, sir, not to my knowledge.

7 Q. Does the 12th of April, 2021 sound about correct?

8 A. Yes, sir.

9 Q. Why did you wait until the second affidavit to say that
10 on the night you were shot you were trying to rob him?

11 A. Because I feared that maybe I would be in some type of
12 trouble.

13 Q. All right. Did you tell the investigating officers at
14 any point that you were trying to rob him -- or sorry --
15 that -- yes, that you were trying to rob him on the night
16 you were shot?

17 A. I'm really not sure because during the time I spoke
18 with them I was actually in the hospital and I probably was
19 under medication.

20 Q. Do you remember ever telling, and prior to the trial,
21 did you ever tell Mr. Thomas's lawyer, Mr. Brown, that you
22 had been in the process of robbing him at the time he shot
23 you?

24 A. Yes.

25 Q. You told him that prior to the trial?

1 A. Yes, sir.

2 Q. Mr. Gray, how did you get here today?

3 A. A friend.

4 Q. All right. And how did you come to testify today?

5 A. A mutual friend.

6 Q. All right. When you say a mutual friend, you mean
7 mutual with who?

8 A. A friend of both sides.

9 Q. Okay. Would that be a friend of you and a friend of
10 Mr. Thomas?

11 A. (Nods head affirmatively)

12 COURT REPORTER: Sir, please answer verbally.

13 A. Yes. I'm sorry.

14 Q. Have you had contact with Mr. Thomas's family?

15 A. No, sir.

16 Q. With Mr. Thomas's friends?

17 A. The one mutual friend.

18 Q. Have you spoken to them about coming to court today?

19 A. Yeah. I spoke with the mutual friend.

20 MR. JONES: Beg the Court's indulgence.

21 Q. Would you mind if I passed up your affidavit from the
22 2021?

23 A. No, sir.

24 MR. JONES: And I'll just introduce these as -- this is
25 State's Exhibit 1 and this is State's Exhibit 2.

1 THE COURT: All right. You going to admit them?

2 MR. JONES: Yes, Your Honor.

3 THE COURT: Any objection?

4 MR. WILKES: None, Your Honor.

5 THE COURT: All right. State's Exhibits 1 and 2 will
6 be admitted into evidence without objection.

7 (Whereupon, the court reporter marked the referenced
8 documents as State's Exhibits Number 1 and 2.)

9 Q. And in this second affidavit you state that the first
10 time you asked Mr. Thomas if he had any goods?

11 A. Yes, sir.

12 Q. What kind of goods were talking about?

13 A. Recreational goods.

14 Q. Can you be more specific?

15 A. Marijuana.

16 Q. Could you repeat that and speak up, please?

17 A. Marijuana.

18 Q. All right. And why did you ask him for marijuana?

19 A. 'Cause I knew he had some for recreational use.

20 Q. All right. Now, then you saw cash?

21 A. Yes.

22 Q. Why did he take his cash out or how did you see his
23 cash?

24 A. It was in view.

25 Q. All right. And at that point you decided to rob him at

1 -- it says here at gun point?

2 A. Yes, sir.

3 Q. But really it was a pellet gun?

4 A. Yes, sir.

5 Q. On the second occasion in this affidavit you say that
6 you had no gun or weapon.

7 A. No, sir.

8 Q. You mean no, you didn't have them or no, that's not
9 what it says?

10 A. No, I didn't have them.

11 Q. Okay. In the second affidavit you state that you
12 didn't attend court at Mr. Thomas's trial?

13 A. No, sir. I didn't attend court.

14 Q. All right. And then it says to help Mr. Thomas not be
15 incarcerated. So was that your intention of why you didn't
16 show up to court was because you wanted to help him not be
17 incarcerated?

18 A. Yes, and I really didn't want to be a part of the case
19 anymore because, you know, I just wanted him to be, you
20 know, released.

21 Q. All right.

22 MR. JONES: Thank you, Mr. Gray. I believe that's all
23 I have for you at the moment.

24 THE COURT: Any redirect?

25 MR. WILKES: None, Your Honor.

1 THE COURT: All right. The witness may step down.
2 Next witness. I'm sorry.

3 MR. WILKES: Thank you, Your Honor. We'll call Michael
4 Brown, Your Honor.

5 THE COURT: All right.

6 (MICHAEL BROWN, being first duly sworn, was examined
7 and testified as follows):

8 DIRECT EXAMINATION

9 MICHAEL BROWN BY MR. WILKES:

10 Q. Mr. Brown, state your name for the record, please.

11 A. Michael Brown, Spartanburg.

12 Q. Mr. Brown, were you the attorney at Mr. Thomas's trial
13 wherein he was alleged to have and convicted for shooting
14 Mr. Gray?

15 A. Yes, I was.

16 Q. And during your representation, did Mr. Thomas advise
17 you --

18 THE COURT: Hold on a second. Your sheet of paper is
19 bumping against the mic and it's creating --

20 MR. WILKES: Oh. I'm so sorry. I can't hear and I'm
21 deaf on this side anyway. I'm sorry.

22 THE COURT: That's okay. I hear it. So thank you.

23 Q. Did Mr. Thomas advise you that he had had previous
24 encounters with Mr. Gray?

25 A. Yes.

1 Q. And did he tell you that Mr. Gray had robbed him on a
2 prior occasion?

3 A. Yes.

4 Q. And that that was the basis for fear, causing him to
5 act in self-defense?

6 A. Yes.

7 Q. Now, had you had some corroboration of that fact prior
8 to the trial by way of a incident report? And I can show it
9 to you if you --

10 A. Yeah. If you can show it to me.

11 MR. WILKES: May I approach, Your Honor?

12 THE COURT: Yes, sir.

13 (Whereupon, Mr. Wilkes handed a document to the witness
14 for review.)

15 Q. I think it's right down here in this section
16 (indicating on document), if I'm not mistaken.

17 (Whereupon, the witness reviewed the referenced
18 document.)

19 Q. Is there an entry on the bottom of that sheet that says
20 0830, 2016?

21 A. Yes.

22 Q. Okay. In that incidental report supplemental police
23 report, does that indicate in there that there had been some
24 witness, other than Mr. Thomas, that had indicated prior
25 hostilities?

1 A. Yes. They had spoken with a girlfriend and was
2 descriptive in terms of the actions that was -- were taken
3 against Mr. Thomas, including being beat up, pistol-whipped
4 and ultimately robbed.

5 Q. Okay. And so did you subpoena Mr. Thomas -- or Mr.
6 Gray to trial?

7 A. No.

8 Q. Were you able to speak to Mr. Gray prior to the trial?

9 A. Yes.

10 Q. And what did he inform you of prior to the trial?

11 A. That there had been a prior issue. I think that's --
12 that was the reference that was made in the affidavit that
13 was provided to my office.

14 Q. Okay. And that was your office that recorded what he
15 had told you?

16 A. That's correct.

17 Q. And did he expound on the prior -- did the affidavit
18 say prior altercation, something like that?

19 A. He -- yes. It did say something about prior physical
20 interaction.

21 Q. Okay. And Mr. Thomas testified at trial to the basis
22 of his acting in self-defense being fear arising from that
23 prior robbery. Correct?

24 A. Yes.

25 Q. Okay. And so would it not have been reasonable to

1 subpoena Mr. Gray to court for the trial and attempt to have
2 him testify to that prior physical altercation to back up
3 what Mr. Thomas had said?

4 A. Well, at the time when Mr. Gray came to my office he
5 didn't expound upon what the physical altercation was. It
6 was consistent with what I thought at the time some form of
7 bullying from what he was sharing. It was very difficult to
8 get any information out of him.

9 Q. But still, even if it were bullying and he were on the
10 witness stand, that would be something that would have
11 supported---

12 A. Yes.

13 Q. ---Mr. Thomas's -- all right. Would it have been
14 reasonable to subpoena him to court?

15 A. It would have been.

16 Q. And did you?

17 A. No.

18 Q. Okay. And why not?

19 A. Again, he speaks of the mutual friend. By him coming
20 to my office wasn't by an appointment that he set. He
21 showed up with someone that brought him to the office. When
22 I inquired about if he had a consistent address that was
23 previously not given, it was told to me that he had moved
24 out of the area, did not want to participate and could not
25 be found and so based upon that I inquired of his location

1 through the means of contact I had and it was shared with
2 me that they didn't know where he was at.

3 Q. But you did not attempt to place a subpoena in the
4 hands of the sheriff?

5 A. No.

6 Q. Okay. And if you had, that would have, essentially,
7 stopped the trial from proceeding potentially. Correct?

8 A. I don't know. I know I'd spoken with the solicitor's
9 office about his whereabouts as well because, as you know,
10 that was one of the contentions that I had,---

11 Q. Right.

12 A. ---potentially, against the solicitor's office if they
13 had a conversation and knew where he was at. That would
14 have caused some concern on my part, but again, there was no
15 indication that there was an address to be shared.

16 Q. So you're saying that the solicitor couldn't find him
17 either or couldn't -- or wouldn't help you find him?

18 A. The information I had at the time coming from the
19 solicitor's office was what was given to me and there was no
20 address that was shared by anyone.

21 Q. All right. All right. But it's not uncommon for
22 witnesses to be reluctant to come to court?

23 A. That's correct.

24 Q. And not uncommon to have to have them hunted down by
25 the sheriff and served,---

1 A. That's correct.

2 Q. ---compelled to come to court under the Sixth
3 Amendment.

4 A. No, sir.

5 Q. Okay. Do you believe that if Mr. Gray had come to
6 court and testified as he has indicated today, do you think
7 that could have effected the outcome of the trial?

8 A. If he had -- if he would have testified with the
9 clarity he provided today, yes.

10 Q. Okay. Now, when he came to your office and gave you
11 that affidavit, after which you immediately filed a Rule 29
12 motion?

13 A. Yes, sir.

14 Q. And stated to the Court that there was important
15 information that might make a difference and require a new
16 trial?

17 A. Yes.

18 Q. At the hearing did you subpoena Mr. Gray to the
19 hearing?

20 A. No.

21 Q. And any reason for not subpoena -- having him testify
22 at the hearing?

23 A. Again, Mr. Gray's presentation in communicating with me
24 was not a direct way. He didn't contact me. He didn't
25 provide any type of direct method for me to contact him and

1 his appearance was one that was of reluctance.

2 Q. Okay. But through the subpoena power, if the sheriff
3 would have located him, he could have been there and
4 testified---

5 A. That's correct.

6 Q. ---at the Rule 29 motion as well?

7 A. Yes.

8 Q. Okay. Very good. Do you believe that the solicitor
9 talked to him, to Mr. Gray, prior to the trial?

10 A. Yes.

11 Q. Did the solicitor indicate that he would be reluctant
12 to come to court?

13 A. I think there was an initial indication that Mr. Gray
14 was not easy to talk to, but in terms of him not coming to
15 court, I don't know if that was shared directly with me from
16 the solicitor's office.

17 Q. When did you first discover Mr. Gray wasn't going to be
18 at court and testify as the victim in the shooting?

19 A. When he came to my office.

20 Q. But that was before or after the trial?

21 A. Well, before the trial, I mean, he clearly indicated he
22 didn't want to participate.

23 Q. Before the trial?

24 A. Yes.

25 Q. Okay. And after the trial he came in and gave you that

1 statement?

2 A. Yes.

3 Q. Okay. When did you know that Mr. Gray would not be
4 called by the State as a witness? That's unusual, isn't
5 it,---

6 A. It --

7 Q. ---to not have a victim at a --

8 A. It is; it is.

9 Q. And when did you first discover that Mr. Gray would not
10 be called as a witness by the State?

11 A. I don't know if it was the day of trial or the initial
12 opportunity to select a jury from the jury pool, but I think
13 it was on that day.

14 Q. Okay.

15 A. Yes.

16 Q. Now, I'd like to move on to did you file a notice of
17 appeal in this case?

18 A. I didn't.

19 Q. And did you discuss that decision with Mr. Thomas?

20 A. Not after the trial. No.

21 Q. Okay. And why not file a notice of appeal?

22 A. I hadn't had a conversation with him. I know the
23 conversation that we had prior to going to trial and during
24 the course of trial.

25 Q. But after the conviction, did you have a conversation

1 with him about the decision to file an appeal?

2 A. No.

3 Q. I had given you earlier a trial memorandum that --

4 MR. WILKES: If I may approach and pass upon one for
5 the Court.

6 THE COURT: Okay.

7 MR. WILKES: Your Honor, I -- and I've given this to
8 the Attorney General previously so that they would be able
9 to see these issues.

10 (Whereupon, Mr. Wilkes handed the referenced document
11 to the Court.)

12 THE COURT: Okay. Thank you.

13 MR. WILKES: And if -- can we maybe have it marked or
14 entered into the -- maybe marked as an exhibit? I'm not
15 sure how to do that.

16 THE COURT: How about a Court exhibit?

17 MR. WILKES: A Court exhibit would be great. I just
18 want it to be clear that --

19 THE COURT: It's not testimony, it's not evidence, but
20 it's going---

21 MR. WILKES: Correct.

22 THE COURT: ---to be made a Court exhibit and it will
23 be Court's Exhibit---

24 COURT REPORTER: Number 1. Yes, sir.

25 THE COURT: ---1. Court's Exhibit 1.

1 MR. WILKES: Thank you, Your Honor.

2 Q. Did you have a few minutes to review that?

3 A. Yes.

4 Q. Okay.

5 MR. WILKES: I'll just go through them summarily rather
6 than to read them out in great detail or any of the
7 argument, Your Honor, since I've given them to you in
8 writing, if that's okay.

9 Q. I've raised a couple issues as far as the failure to
10 make timely objections and I'll ask you about those. All
11 right. On page 2 of that memorandum at the bottom, number
12 1, there was testimony involving the victim's statement to
13 the police about prior difficulties that failed, I believe,
14 to receive an objection and there were several of those
15 through the course of the trial where the State offered
16 evidence as far as what the victim, Mr. Gray, said either
17 through officers or through body-cams or other things, that
18 did not receive an objection under the hearsay rule.

19 A. I don't know if there's any specific objection that
20 you're saying I should have made---

21 Q. All right.

22 A. ---based upon any potential testimony.

23 Q. All right. Well, if you'll look at -- let's start with
24 the one on page three and we'll go through the closing
25 arguments of the solicitor.

1 THE COURT: You're on page 33 of the transcript?

2 MR. WILKES: No. On my memorandum. I'm sorry.

3 There's a -- I think the sentencing transcript is separate
4 from the trial transcript. I'm not sure if they were
5 transcribed together. I say sentencing. I'm sorry. The
6 closing argument. Should be at the end of the trial
7 transcript, but I have it as a closing transcript. I think
8 I was given it in parts.

9 THE COURT: All right. So you're on page three of the
10 memorandum you just marked as Court's Exhibit 1?

11 MR. WILKES: Yes, sir. And in my transcript it's the
12 closing transcript on page 37 to 38 and I've quoted it in
13 the memorandum.

14 THE COURT: Very well.

15 Q. If you'll look at that. You want to read that for a
16 second?

17 A. In paragraph A?

18 Q. Yes, sir. The solicitor's closing that's in quotes and
19 italics, if you'd read that. Not out -- you don't have to
20 read it out loud.

21 A. Okay.

22 Q. If you'll just take a look at it---

23 A. I read it.

24 Q. ---and tell me when you're good.

25 A. I read it.

1 Q. Okay. That did not receive an objection. Do you
2 believe that that language in the closing was objectionable?

3 (Whereupon, the witness reviewed the referenced
4 document.)

5 A. I believe it would have potentially been objectionable
6 if Mr. Thomas didn't have a defense.

7 Q. Okay. And if the solicitor is indicating a personal
8 impression that the defendant is guilty, you would agree
9 that's objectionable?

10 A. I would agree that it could be objectionable.

11 Q. Okay. Would there be a reason not to object to an
12 improper argument if it is object- -- I can't even say it --
13 objectionable?

14 A. In the course of the trial, clearly there was no victim
15 present. The only thing that could be offered was the
16 prosecutor attempting to point out that Mr. Thomas would
17 have been guilty of something. Mr. Thomas was the person
18 that would directly be able to offer testimony about what
19 happened, not based upon what the solicitor thought, coupled
20 with the fact that the solicitor tied himself to a very
21 unpopular sheriff and a very unpopular sheriff's office. So
22 in the course of trial, we felt that it wouldn't have been
23 contrary to our opportunity for Mr. Thomas to present his
24 side based upon self-defense and any of the prior things
25 that may have happened between Mr. Thomas and Mr. Gray.

1 Q. So if the solicitor in closing argument says that the
2 indictment in this case that charged Mr. Thomas with
3 attempted murder, it was signed by me and not the sheriff's
4 office. It was signed by me and that means I thought
5 there's enough evidence in this case to prove Mr. Thomas
6 committed this crime and if I didn't think that, I wouldn't
7 have spent what amounts to a whole week of court time
8 presenting this case to y'all and prosecuting this case,
9 because what gets brought to court is my responsibility and
10 nobody else's. You don't think that that is clearly
11 improper argument and objectionable?

12 A. I think in abstract it is -- it could be arguable to be
13 objectionable, but based upon the events of the trial that
14 happened prior to the closing argument, I did not see the
15 merits of that to raise an objection based upon what was
16 being said at the time.

17 Q. Okay. Okay. And the rest of that paragraph that says,
18 And, y'all, as long as I'm doing this, when these cases
19 arise and somebody's getting gunned down in the middle of
20 the street in this county, I'm going to try to do something
21 about it, you know, whether the victim is here or not. If
22 there's evidence, I'm going to present the evidence and
23 that's what I did this week. It doesn't have anything to do
24 with what anybody thinks or anybody wants. It's a decision
25 that I make as the solicitor working here in the county.

1 Interjecting the solicitor's own belief and this high duty
2 that the solicitor has and a belief that Mr. Thomas is
3 guilty, you're saying is -- there was a strategy that
4 supported not objecting to that?

5 A. Some I could have objected -- I could have objected to
6 what he was saying, but again, tying in the strategy of
7 what Mr. Thomas presented as the only person that was there
8 that can provide testimony clarity, coupled with the fact of
9 what we were suggesting as self-defense, in addition to, I
10 know there was some other language that you captured in your
11 memorandum of the prosecutor tying himself to the sheriff's
12 office and seeking to please the sheriff's office. So it
13 was not a point in which I felt, via trial strategy, should
14 have been objected to.

15 Q. Okay. You're familiar with case law that says when the
16 prosecutor injects his own opinion with the weight of the
17 government behind it, that's likely to induce the jury to
18 trust his judgment on the issue of guilt. You're familiar
19 with the case law on that?

20 A. I'm familiar that there is case law that could suggest
21 that, but again, very different fact patterns.

22 Q. Okay. Would you agree with me that there is definitely
23 not overwhelming evidence in this case or do you think there
24 is overwhelming evidence? What do you think?

25 A. Well, it's definitely questionable and definitely based

1 upon the testimony of my client and of the history between
2 the two, I think, what was presented to me by my client
3 definitely should have raised reasonable doubt with a jury
4 based upon what he was charged.

5 Q. If you'll flip over, if you have that in front of you,
6 page six of that memorandum and at the bottom in italics
7 there's another section, it's actually a long section that
8 carries on to page seven. Have you had an opportunity to
9 look that over or do you want to do that now?

10 (Whereupon, the witness reviewed the referenced
11 document.)

12 A. Okay. I've read it.

13 Q. All right. In particular, do you find all of it
14 objectionable, I guess? Do you find any of that argument
15 objectionable?

16 A. I think it's a argument that shows great disdain of the
17 prosecution for Mr. Thomas at the time based upon the
18 prosecution's opinion.

19 Q. And when the solicitor says, do you want -- tells the
20 jury in closing arguments, asks them, Do you want to have a
21 county where it's okay to go around gunning people down in
22 the middle of the road? Do you want the kind of county
23 where somebody -- somebody like Mr. Thomas can just come
24 here with some trumped up story that flies in the face of
25 all evidence? Do you see that as playing on the jury's

1 passion of keeping the county safe from---

2 A. Certainly.

3 Q. ---people?

4 A. Certainly.

5 Q. Other people? People like Mr. -- not just Mr. Thomas,
6 but people like Mr. Thomas? In other words, if they don't
7 convict, it's going to be the Wild Wild West, basically. Is
8 that not objectionable?

9 A. I think that the words that you point out that was used
10 was the Wild Wild West.

11 Q. But is that not objectionable?

12 A. I think you could object to that.

13 Q. And why would you not object to argument that plays on
14 the passion of the jury to convict on something other than
15 specifically the facts about Mr. Thomas?

16 A. 'Cause I was watching the jury.

17 Q. And?

18 A. And there was one young lady in particular that stood
19 out and had great disdain for John Anthony and what he was
20 saying and at the time period she would shake her head, look
21 off in the distance and had a great disbelief and I knew in
22 the course of this trial, based upon our strategy, what Mr.
23 Thomas had presented and the fact that John Anthony had tied
24 himself at that time, was attempted to please an unpopular
25 situation with the sheriff's office that was under

1 investigation, that it wouldn't bode well for them receiving
2 a conviction of attempted murder.

3 Q. But there's eleven -- how many other jurors? Eleven
4 other jurors that are being swayed by such passion and
5 prejudicial statements. Right?

6 A. Not what we found out at the end of the trial. No.

7 Q. So you did not -- specifically, not your strategy
8 during the trial, but what would be the strategy behind not
9 objecting to improper, prejudicial argument, not just this
10 one, but any of them?

11 A. Well, if there's other specific ones that you want to
12 point out, I can talk about those. This one in particular,
13 for me, it didn't rise to a certain level and I know Mr.
14 Thomas and I were -- we were communicating during the course
15 of what the solicitor was saying. I don't know if this is a
16 portion of this that we may have heard, but again, from
17 what we were noticing, what I noticed, again, John Anthony
18 had tied himself to the sheriff's office and it wasn't a
19 favorable reflection that we were getting at the time from
20 the jury.

21 Q. Mr. Thomas was advised that it was objectionable and he
22 told you he didn't want you to object?

23 A. No. We didn't discuss any objections. Not this one in
24 particular. No.

25 Q. Okay. And on page nine of the memorandum under C, when

1 the solicitor says in closing argument, if some of all
2 -- and I'm reading just part of it -- if some of all voted
3 attempted murder and some of y'all voted assault and battery
4 high and aggravated nature and you can't agree, just tell
5 the judge. He'll give you instructions and then tells the
6 jury it doesn't mean that you have to find Mr. Thomas not
7 guilty if you can't agree on a charge. Does that sound
8 objectionable, telling the jury that if -- that they don't
9 have to find Mr. Thomas not guilty for anything?

10 A. I mean, I've heard it said that way at the time.
11 Certainly, that could be objectionable.

12 Q. Okay. Strategy involved in not objecting?

13 A. Yeah. I mean, I've heard it that way at the time.

14 Q. Okay.

15 A. No strategy involved, though.

16 MR. WILKES: If I can have just a second, Your Honor.
17 I'm going to flip some pages.

18 Q. All right. I'm going to go back to page two and go
19 down a couple of these at the bottom of the page. On number
20 1, the Court allowed testimony about prior difficulties with
21 the defendant, which apparently came from a police officer,
22 I think, statement of what the victim had said -- what Mr.
23 Gray had said. Mr. Gray was not there. Would that not be
24 hearsay? That's a double negative. Is that hearsay?

25 A. Yes.

1 Q. Okay. And is that not objectionable to allow -- I
2 mean, what would be the trial strategy to let officers or
3 any evidence of an alleged victim come in that's damaging to
4 your case? What would be a strategy for allowing that?

5 A. It would only be damaging if the alleged victim said
6 Mr. Thomas did something against him.

7 Q. Okay.

8 A. It would be complimentary and potentially bolstering of
9 any self-defense.

10 Q. Prior difficulties. Okay.

11 A. Yes.

12 Q. What about the object- -- what about the solicitor
13 arguing in opening statement, talking about hearsay
14 testimony of the victim's identification of Mr. Thomas?

15 A. There had been a, I guess, a previous attempt to
16 circumvent any potential inclusion of a video that was going
17 to be shown,---

18 Q. Uh-huh.

19 A. ---that the Court ultimately did allow that showed Mr.
20 Malik Gray talking with the paramedics---

21 Q. Uh-huh.

22 Q. ---and with him in particular identifying Mr. Thomas by
23 name and what happened to him, that he got shot ten times,
24 but he didn't say ten.

25 Q. Right. But that came in during the trial without an

1 objection, which would have been necessary to preserve that
2 issue for appeal. Correct? Regardless of any prior rulings
3 or anything else, once it comes in at trial, it requires an
4 objection to preserve it for appeal.

5 A. If that's the case, and if I had objected that
6 particular time as opposed to the outset of that, 'cause if
7 you're taking up the entire chain of events, I did object to
8 that, but if that was brought up again at a separate time in
9 which I guess that's what you pointed out.

10 Q. Yes, sir.

11 A. I did object to that.

12 Q. Okay. And that, obviously, you had thought -- if you
13 had thought that issue, that would be just an oversight not
14 to preserve it contemporaneously with it coming in?

15 A. Clearly, 'cause we fought that,---

16 Q. Right.

17 A. ---because that was the whole crux of even allowing any
18 type of testimony alleged by the victim.

19 Q. Again, on page 123 of the testimony there was some
20 hearsay about the victim identifying Mr. Thomas as the ghost
21 that did not receive an objection and, again, that's
22 hearsay. Do you agree it's objectionable, anything that
23 anybody says Mr. Gray said?

24 A. I mean, I would agree that it would be objectionable if
25 it was about anything anybody had said that Mr. Gray said,

1 but I don't know what the reference is to ghost.

2 Q. Okay. Was there any trial strategy as far as any
3 testimony, to allow any testimony in---

4 A. No.

5 Q. ---that Mr. Gray said something?

6 A. No.

7 Q. Okay. There was a DVD, the body-cam footage that came
8 in with Mr. Gray on it---

9 A. Yes.

10 Q. ---making statements. That did not receive an
11 objection contemporaneously. Again, same thing. That would
12 be hearsay. Correct?

13 A. It was a issue that clearly was argued---

14 Q. Right.

15 A. ---heavily about prior to that coming in as an excited
16 utterance---

17 Q. Right.

18 A. ---or present sense impression. So I did---

19 Q. Right.

20 A. ---argue against it at the outset of the case.

21 Q. But --

22 A. If there was an additional reference, even with a one-
23 liner, if I didn't, then that objection was not made.

24 Q. Okay.

25 MR. WILKES: If I can have just a second, Your Honor.

1 No further questions, Your Honor.

2 THE COURT: Cross-examination.

3 MR. JONES: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 MICHAEL BROWN BY MR. JONES:

6 Q. Good afternoon, Mr. Brown. Thank you.

7 A. Hello.

8 Q. You -- regarding Mr. Gray, I'm just trying to pin down
9 the time line here of what you were told and when. So prior
10 to trial, what, if anything, had Mr. Gray told you about his
11 relationship with Mr. Thomas?

12 A. When he came to my office he expressed the fact that
13 he did know him. What he was very articulate about was the
14 fact that he did not want to participate in a trial and it
15 was difficult trying to get him to talk from that moment on.

16 Q. All right.

17 A. And so I had to ask certain things and try to get him
18 to indicate that he at least understood and that was the
19 sense of where he wanted to go. So that, ultimately, that's
20 how his statement came to be produced.

21 Q. All right. And then after trial, but -- or between the
22 trial and the post-trial motion, did he communicate with you
23 again?

24 A. Didn't hear -- didn't hear from him, didn't know
25 anything about if he wanted to come to court. Again, as I

1 indicated, when seeking his whereabouts, it was told to me
2 that he had moved from his location and did not want to be
3 found.

4 Q. What is the first time that you heard from him anything
5 about that -- on the night of the shooting as opposed to any
6 previous time, that on the night of the shooting he had
7 tried to rob Mr. Thomas?

8 A. I didn't hear that prior to trial.

9 Q. All right. You stated that he was reluctant to
10 communicate with you and did you hear his testimony about
11 the mutual friend of his and Mr. Thomas?

12 A. Yes.

13 Q. Is that -- were you always only able to get in contact
14 with Mr. Gray through Mr. Thomas's associates?

15 A. Yes.

16 Q. At some point did you get the impression that Mr. Gray
17 was experiencing some kind of pressure?

18 A. I knew he didn't want to be in my office and I knew
19 that he didn't come alone. I can't say if he was -- he felt
20 like he was being forced to communicate, but I knew there
21 was some form of duress and I don't know where it was coming
22 from. Clearly, this was a situation, as it was relayed to
23 me, of two separate sides. I mean, if you're from certain
24 neighborhoods, we know that I may not like the people from
25 the west side, I may be from another part, and there may be

1 difficulties just between where we live geographically. In
2 terms of problems that he'd had with Mr. Thomas, to the
3 extent that he was willing to share those, he may have
4 feared anything he put in writing for me was going to be
5 potentially prosecuted, so he didn't indicate to me that
6 there had been a previous robbery. He just said they just
7 had a previous dispute and that's the best that he would
8 tell me, but he wasn't comfortable.

9 Q. All right. And the -- you stated that it's unusual not
10 to have a victim at an attempted murder or assault and
11 battery of a high and aggravated nature trial. Is it
12 usually advantageous for the victim to --

13 A. Clearly not. Based upon the fact of what I heard today
14 that came out of his mouth, I don't know if it would have
15 been the type of testimony he would have wanted to give,
16 because if -- and I can't say again what was in the head of
17 the prosecutor -- if that information had been shared prior
18 to the trial, I don't -- you know, I don't understand what
19 would have been the basis of it so I never heard that
20 shared.

21 Q. All right. Do you recall your opening statement?

22 A. No.

23 Q. No? Okay.

24 A. You'll have to refresh my memory.

25 Q. Let's see if I can find that here.

1 MR. JONES: Beg the Court's indulgence here.

2 It begins on page 113 of the transcript for the Court's
3 information.

4 THE COURT: Say again.

5 MR. JONES: This begins on page 113 of the transcript,-
6 --

7 THE COURT: Thank you.

8 MR. JONES: ---Mr. Brown's opening statement.

9 Q. Do you remember saying the assistant solicitor didn't
10 bring the charges, he's prosecuting them and that ultimately
11 the case was made upon him based on a rush to judgment and a
12 rush to assumption?

13 A. Yes.

14 Q. All right.

15 A. From the outset.

16 Q. You stated that this case had to start somewhere and it
17 started with the sheriff's office?

18 A. That's correct.

19 Q. And that at some -- later in that paragraph and that's
20 -- I'm looking at page 115, lines 14 through 16. So once
21 you get this train rolling, you just can't automatically
22 say, oh, we're sorry, we want to stop the prosecution?

23 A. That's correct.

24 Q. And then later on when Mr. Anthony talks about how the
25 -- that he's the one who chose to go forward with this

1 prosecution, not just because the sheriff's office brought
2 the charges initially, that -- did you interpret that as
3 somewhat of an invited reply to your statement?

4 A. Yes. And, again, sticking with our theory of the case,
5 most definitely.

6 Q. All right. The theory of the case was self-defense.
7 Correct?

8 A. Yes.

9 Q. Was it always going to be the theory of the case?

10 A. Yes.

11 Q. In other words, was it prejudicial to the self-defense
12 claim to hear any testimony that Mr. Thomas was in fact the
13 one who shot Mr. Gray? Wasn't that a necessary --

14 A. Well, that was necessary based upon the fact that Mr.
15 Thomas did want to testify. Yes.

16 Q. All right. And ultimately he did testify?

17 A. Yes.

18 Q. And he did testify, I believe, that he felt intimidated
19 by Mr. Gray at that moment?

20 A. That's correct.

21 Q. Now, you were watching the jury as Mr. Anthony made his
22 closing argument?

23 A. I always try to get the pulse of the jury throughout
24 the course of a trial. Yes.

25 Q. All right. And ultimately the jury acquitted Mr.

1 Thomas of attempted murder, but convicted him of the lesser-
2 included offense of assault and battery of a high and
3 aggravated nature. Correct?

4 A. Yes.

5 Q. All right.

6 MR. JONES: Mr. Brown, I think that's the main things I
7 wanted to cover with you. Thank you.

8 THE COURT: Redirect?

9 MR. WILKES: None, Your Honor.

10 THE COURT: Witness may step down.

11 THE WITNESS: Thank you, Your Honor.

12 THE COURT: Next witness.

13 MR. JONES: Mr. Wilkes?

14 MR. WILKES: Sir?

15 MR. JONES: Do you have another witness?

16 MR. WILKES: I'm sorry, Your Honor. Once again, I
17 plead deafness.

18 THE COURT: Next witness, please.

19 MR. WILKES: No further witnesses.

20 THE COURT: Thank you. All right. Petitioner rests.

21 Is the State --

22 MR. JONES: Beg the Court's indulgence one moment.

23 THE COURT: All right. Yeah. Take a moment.

24 MR. JONES: Your Honor, the State calls John Anthony.

25 THE COURT: Very well.

1 (JOHN ANTHONY, being first duly sworn, was examined and
2 testified as follows):

3 DIRECT EXAMINATION

4 JOHN ANTHONY BY MR. JONES:

5 Q. Good afternoon, Mr. Anthony.

6 A. Good afternoon.

7 Q. You were the solicitor in this case. Correct?

8 A. I was. Yes.

9 Q. Do you recall if a subpoena was ever sent for Mr. Gray?

10 A. My best recollection is this case was originally set
11 for trial in June of 2018. Mr. Brown, the morning that we
12 were planning on starting the trial, said he wanted to have
13 a Stand Your Ground hearing, so in June, instead of having a
14 trial, we had a Stand Your Ground hearing and my best
15 recollection is that we did issue a subpoena for Mr. Gray
16 the week -- that week because we anticipated it being a
17 trial and the sheriff's office was unable to locate him.

18 Q. All right. You heard the snippets of your closing
19 argument that were read by Mr. Wilkes?

20 A. Yes.

21 Q. Just very briefly, do you believe those were given in
22 their proper context by Mr. Wilkes' recitation of them?

23 A. Well, some of the things I said weren't given quite
24 their accurate context. Yes.

25 Q. All right.

1 A. I'll just say specifically, like, in the part of the
2 closing argument where I talked about the decision to make
3 the charge being my decision, that was in response to what
4 Mr. Brown said in his opening, because in Mr. Brown's
5 opening he said that the prosecution couldn't be stopped,
6 once the charge had been made, it couldn't be stopped and
7 then he also said that it was unfortunate that the
8 prosecution had decided to go forward with the case. So at
9 that point the State was entitled to explain that, first of
10 all, the prosecution could be stopped and it wasn't
11 something that was just a train that had to keep rolling
12 down the track and, second of all, he said that it was
13 unfortunate we decided to go forward with the case and at
14 that point I felt like the State was entitled to explain why
15 it had decided to go forward with the case.

16 Q. The absence of a victim was somewhat of a complicated
17 matter for the State. Is that correct?

18 A. Yes; yes. It was. If you go back to the Rule 29
19 hearing that we had, I went through on the record in some
20 detail the dealings I had with Mr. Gray, which were really
21 quite brief. I mean, I talked to Mr. Gray one time in
22 person for a fairly short amount of time and one time on the
23 phone. So I knew that he was not going to be cooperative.
24 I never knew -- I never heard anything like what he said
25 today from him. Mr. Gray and I never really had any kind of

1 discussion about the details of the incident, but at the
2 same time this is a case, had Mr. Gray been deceased, we
3 would have prosecuted Mr. Thomas for murder. The State,
4 quite often, goes forward on cases where it doesn't have a
5 victim, either because it's a homicide or otherwise and we
6 had a strong case. I mean, just forensically, you know, we
7 had a man who was shot ten times and left in the middle of
8 the road and we had thirteen shell casings and the evidence
9 we had in this case was very consistent with Mr. Thomas
10 driving down the road firing guns out of his PT Cruiser and
11 shooting Mr. Gray multiple times and I think that that
12 evidence really flew in the face of what Mr. Thomas said at
13 trial and I think the jury agreed.

14 Q. So even if there had been some prior
15 unfriendliness between Mr. Thomas and Mr. Gray, was that
16 consistent also with the State's theory of the case?

17 A. Yes. It would have been a reason why Mr. Thomas,
18 having found Mr. Gray walking down the road in the dark,
19 might decide to whip out a pistol and shoot him multiple
20 times.

21 Q. Was there any gunshot residue found inside the PT
22 Cruiser?

23 A. There was and there was -- there was gunshot residue,
24 as I recall, on Mr. Thomas. I'd have to -- I'm a little un-
25 -- you know, unsure about the specifics of that part of the

1 forensic, but I know there was gunshot residue located in
2 the case. Yes.

3 Q. All right.

4 MR. JONES: And I'll just submit that the record
5 contains --

6 Q. You wouldn't dispute anything in the record if that's
7 part of the forensics?

8 A. No. Oh, no. No.

9 Q. All right. Now, Mr. Gray, I believe you mentioned at
10 the Rule 29 hearing that there was a phone call made from
11 the jail and that gave you some concern. Can you explain
12 what that concern was?

13 A. Well, we put -- that call that was put in the record at
14 the Rule 29 hearing, that's Mr. Thomas talking, I believe,
15 to his mother, trying to arrange contact with Mr. Gray,
16 because the trial had obviously not gone the way he thought
17 it should, so the plan now was to go get Mr. Gray and get
18 Mr. -- Mr. Gray to go see Mr. Brown.

19 MR. WILKES: I'm going to object to his interpretation
20 of what's on the DVD. Whatever's on the DVD is on the DVD.
21 Otherwise, it's hearsay.

22 THE COURT: Well, I haven't seen the DVD, but it's in
23 the record? Is that correct?

24 MR. JONES: Well, Your Honor, we can put the --

25 Q. Is it a CD or DVD?

1 A. It was a -- it's a DVD or CD one. It was put in the
2 record at the Rule 29 hearing.

3 MR. JONES: We can get a copy of that for Your Honor.

4 THE COURT: Well, was the Rule 29 hearing in --

5 MR. JONES: I believe that's --

6 MR. WILKES: The Rule 29 hearing, I believe, was three
7 -- three days maybe after the -- it was very close, I think,
8 --

9 THE COURT: Okay. It was very contemporaneous?

10 MR. WILKES: Very close afterwards.

11 MR. JONES: I believe it was -- my record says October
12 26, 2018 and the trial concluded on August 23rd, 2018.

13 THE COURT: Well, just to be clear, the Rule 29 hearing
14 itself, is that one of your bases for seeking the post-
15 conviction relief?

16 MR. WILKES: It is, Your Honor. It absolutely is
17 because Mr. Gray could have -- he -- counsel did not, and I
18 believe we've included that in all our documentation,
19 counsel --

20 THE COURT: I'm not saying it's not there, I'm just --

21 MR. WILKES: It is. Counsel did not, even after
22 learning more, still did not bring Mr. Gray to the Rule 29
23 hearing, which ultimately led to the denial of the Rule 29
24 relief.

25 THE COURT: But he had the affidavit, though?

1 MR. WILKES: He had an affidavit that was, as he said,
2 somewhat vague—

3 THE COURT: Okay.

4 MR. WILKES: ---and he didn't compel him to come and
5 give the testimony.

6 THE COURT: And I'm -- your objection, frankly, I've
7 forgotten what the original question and response was at
8 this point, but --

9 MR. JONES: It was the characterization of the phone
10 call.

11 THE COURT: Why don't you ask -- I'm sorry to make you
12 do it again, but ask the question again.

13 MR. JONES: Okay.

14 Q. What concerned you about the phone call from the jail
15 cell?

16 A. Well, I mean, the call does speak for itself, but the
17 call was Mr. Thomas trying to make arrangements for people
18 he -- in his family to have contact with Mr. Gray and get
19 Mr. Gray to see Mr. Brown.

20 Q. All right. And that was after the trial?

21 A. Yes.

22 Q. And after the conviction?

23 A. Yes.

24 Q. All right. And subsequent to that, that was in 2018,
25 the trial and the Rule 29 hearing?

1 A. Yes.

2 Q. And then we have this -- have you seen the --

3 A. I have.

4 Q. -- this affidavit dated 2021?

5 A. I have.

6 Q. And this one states that Mr. Gray was attempting to rob
7 Mr. Thomas on the night of the shooting. As far as you're
8 aware, was there any prior evidence or statement from Mr.
9 Gray that on the night of the shooting he was trying to rob
10 Mr. Thomas?

11 A. No. I'm not aware of any kind of evidence like that.

12 Q. So the first time that evidence was brought up was --
13 would have been after this phone call in which Mr. Thomas
14 instructed his associates to communicate with Mr. Gray and
15 have him go back to Mr. Brown?

16 A. Yes. That's correct. It would have been two or three
17 years after that phone call.

18 Q. All right.

19 MR. JONES: Mr. Anthony, I think that's all the
20 questions I have for you.

21 THE COURT: Cross-examination.

22 CROSS-EXAMINATION

23 JOHN ANTHONY BY MR. WILKES:

24 Q. Mr. Anthony, if you had needed Mr. Gray at the trial
25 and he was an essential witness to the State's case and the

1 sheriff had difficul- -- or any case, and the sheriff had
2 difficulty locating that person right away, would you just
3 dismiss a serious case or would you hold off on the case and
4 locate an essential witness, meaning the State?

5 A. Well, first of all, in this case he wasn't essential,
6 but if -- you know, just addressing that hypothetical,---

7 Q. Uh-huh.

8 A. ---really, I mean, at some point if you have a witness
9 that you absolutely have to have, you have to just
10 acknowledge that you can't find them, if you can't find
11 them. You know, you have to make reasonable efforts to find
12 them and then if you can't find them, you have to
13 acknowledge that fact and then you just can't go forward
14 with your case.

15 Q. Okay. And what would reasonable efforts be to find a
16 witness? What -- would you consider sending the sheriff out
17 one time and not finding them to be exhaustive?

18 A. No. I would not consider that exhaustive. I think
19 more effort than that as I recall, we -- more effort than
20 that went into trying to find Mr. Gray.

21 Q. And you would put more effort into it if it was really
22 necessary?

23 A. Well, obviously if a case hinges on finding that one
24 person, you have to do everything you reasonably can to find
25 them.

1 MR. WILKES: Thank you. No further questions.

2 THE COURT: All right. Any redirect?

3 MR. JONES: Nothing further, Your Honor.

4 THE COURT: All right. Witness is excused. Any other
5 witnesses?

6 MR. JONES: Nothing further from the State, Your Honor.

7 THE COURT: All right. Mr. Wilkes?

8 MR. WILKES: Yes, sir.

9 THE COURT: Brief summation from you or --

10 MR. WILKES: Yes, sir. I have provided --

11 THE COURT: Of course, you did give me a memo. That's
12 a pretty good summation.

13 MR. WILKES: I have provided a memo which I would stand
14 on. Anything I say would probably be nonsensical and I
15 write better than I talk, but if you want me to go through
16 it, I will.

17 THE COURT: No; no. I said it just to make sure I was
18 giving you the right to, but --

19 MR. WILKES: Thank you. The only thing I would say,
20 just standing on all of the argument in it and all of that
21 would be my response, but in particular, there was some
22 testimony that I think some argument by the solicitor was
23 invited and I think State -- *Fortune versus State* addresses
24 that, as you -- the State has the option to object to
25 defense counsel's argument, but not retaliate and *Fortune*

1 deals with that. Invited is not really a valid defense;
2 open the door, not a valid defense to improper argument by
3 the State and that's *Fortune* and I've got that brief in
4 detail.

5 THE COURT: I'm going to ask this question and I --

6 MR. WILKES: Yes, sir

7 THE COURT: -- and I don't have my binder in front of
8 me, so I'm -- does all improper argument need to result in a
9 new trial if we were -- just from a trial basis alone? PCR.

10 MR. WILKES: Well, from the standpoint improper
11 argument isn't per se reversible. There has to be a
12 prejudicial element of it and I've addressed that in each
13 one of these and I think that the prejudice in something
14 like the --

15 THE COURT: I believe it has to do with denying a fair
16 trial is one.

17 MR. WILKES: Well, it does, but it -- for instance, if
18 you play on the passion of the jury, right,---

19 THE COURT: Okay.

20 MR. WILKES: ---and ask them to convict somebody so
21 that other people like Mr. Thomas know they can't do that,
22 that's calling on the jury to convict a person outside of
23 the facts of his case.

24 THE COURT: Considered to be passion.

25 MR. WILKES: Completely -- I mean, it's just -- I put

1 the case law in here, that's -- you can't do that and to
2 some extent some of those are -- I don't know that you get
3 to weighing the evidence in the case as far as whether
4 that's prejudicial or not.

5 THE COURT: Okay.

6 MR. WILKES: I think some of that can be just blanket
7 reversible, but in this case, there's not overwhelming
8 evidence. There's no victim testimony. The testimony that
9 did come in that the victim said something was objectionable
10 hearsay, which wasn't objected to. So there's clearly not
11 overwhelming evidence, so if there is a prejudicial
12 analysis, we'd have to win on that.

13 THE COURT: Okay.

14 MR. WILKES: And I tried to brief it carefully in my
15 brief for the Court.

16 THE COURT: All right.

17 MR. WILKES: And --

18 THE COURT: Thank you.

19 MR. WILKES: Thank you, Your Honor.

20 THE COURT: Anything else from the State?

21 MR. JONES: Your Honor, first of all, I'd just like to
22 clarify if the State will have an opportunity to submit a
23 counter brief or --

24 THE COURT: Be fine. Well, you did a return, but based
25 on the hearing today, I would like you to submit it sooner

1 rather than later. Ten days suitable?

2 MR. JONES: In ten days?

3 THE COURT: Not an order, just a memo.

4 MR. JONES: Just a memo?

5 THE COURT: Just what your thoughts are on the hearing
6 and why.

7 MR. JONES: All right. Thank you, Your Honor.

8 THE COURT: You don't have to cite from the record for
9 it, just give me something. Okay?

10 MR. JONES: All right.

11 THE COURT: And I'll try to get that out and reach out
12 to the lawyers. Okay?

13 MR. JONES: And can I also clarify that -- could we
14 leave the record open? There was some issue about the phone
15 call from the jail, that if another -- Mr. Wilkes raised
16 some issues about the DVD that was admitted at trial.

17 THE COURT: Or admitted at the Rule 29 hearing. Right?

18 MR. JONES: The phone call was at the Rule 29 hearing.
19 The DVD was at the trial.

20 THE COURT: Can y'all provide that to me?

21 MR. JONES: We can, Your Honor.

22 THE COURT: All right. Anything else for the record?

23 MR. JONES: Your Honor, with the -- ultimately, I think
24 I'll just communicate everything I feel---

25 THE COURT: That's fine.

1 MR. JONES: ---like I need to indicate in a brief, but

2 --

3 THE COURT: Okay. All right. Well, we'll be in recess

4 'til tomorrow morning and this matter is under advisement.

5 Thank you.

6 (END OF REQUESTED TRANSCRIPT)

7 * * * * *

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

In witness whereof, I have hereunto subscribed my name,
this 10th day of June, 2023.

Shannon E. McGilberry, CVR-M

April 26, 2027

STATE OF SOUTH CAROLINA)
COUNTY OF UNION) COURT OF GENERAL SESSIONS
) 2017-GS-44-0845
)
)
)
)
)
)
STATE OF SOUTH CAROLINA,)
PLAINTIFF,)
) PARTIAL
vs.) TRANSCRIPT OF RECORD
) NAJM AHMAD THOMAS,)
DEFENDANT.)
_____)

August 20 - 22, 2018
Union, South Carolina

B E F O R E:

THE HONORABLE WILLIAM A. MCKINNON, JUDGE.

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

JOHN ANTHONY, ESQ.
Attorney for the Plaintiff

MICHAEL D. BROWN, ESQ.
Attorney for the Defendant

Penny M. Johnson
Certified Court Reporter

I N D E X

(PW) - Denotes Plaintiff's Witness

(DW) - Denotes Defense Witness

Page No.

<u>(PW) SCOTT RUBY (IN-CAMERA):</u>	
Direct Examination by Mr. Anthony.....	49
<u>(PW) JAMES MCNEIL (IN-CAMERA):</u>	
Direct Examination by Mr. Anthony.....	59
Cross-Examination by Mr. Brown.....	66
Redirect Examination by Mr. Anthony.....	71
<u>(DW) NAJM THOMAS (IN-CAMERA):</u>	
Direct Examination by Mr. Brown.....	72
Cross-Examination by Mr. Anthony.....	77
Redirect Examination by Mr. Brown.....	80
Recross-Examination by Mr. Anthony.....	82
Opening Statement by Mr. Anthony.....	108
Opening Statement by Mr. Brown.....	113
<u>(PW) MEGHAN HAMES:</u>	
Direct Examination by Mr. Anthony.....	116
Cross-Examination by Mr. Brown.....	120
<u>(PW) SCOTT RUBY:</u>	
Direct Examination by Mr. Anthony.....	121
Continued Direct Examination by Mr. Anthony.	143
Cross-Examination by Mr. Brown.....	143
Redirect Examination by Mr. Anthony.....	157
Recross-Examination by Mr. Brown.....	158
<u>(PW) MARK JOHNSON:</u>	
Direct Examination by Mr. Anthony.....	159
Cross-Examination by Mr. Brown.....	164
Redirect Examination by Mr. Anthony.....	166
<u>(PW) TRAVIS DUNCAN:</u>	
Direct Examination by Mr. Anthony.....	167
Cross-Examination by Mr. Brown.....	173
<u>(PW) AUDREY FROST:</u>	
Direct Examination by Mr. Anthony.....	176
<u>(PW) RUSSELL VINSON:</u>	
Direct Examination by Mr. Anthony.....	179
Cross-Examination by Mr. Brown.....	186

Page No.

<u>(PW) DAVID EAVES:</u>	
Direct Examination by Mr. Anthony.....	189
<u>(PW) JAMES MCNEIL:</u>	
Direct Examination by Mr. Anthony.....	191
Cross-Examination by Mr. Brown.....	204
<u>(PW) JERMAINE SMITH:</u>	
Direct Examination by Mr. Anthony.....	210
<u>(PW) BRYAN WHITEFIELD, M.D.:</u>	
Direct Examination by Mr. Anthony.....	220
Cross-Examination by Mr. Brown.....	230
<u>(PW) DAWN CLAYCOMB:</u>	
Direct Examination by Mr. Anthony.....	231
Voir Dire Examination by Mr. Brown.....	233
Continued Direct Examination by Mr. Anthony.	233
Cross-Examination by Mr. Brown.....	263
Redirect Examination by Mr. Anthony.....	266
Recross-Examination by Mr. Brown.....	268
<u>(PW) JESSICA STOWE:</u>	
Direct Examination by Mr. Anthony.....	269
<u>(PW) ILA SIMMONS:</u>	
Direct Examination by Mr. Anthony.....	274
Cross-Examination by Mr. Brown.....	282
<u>(PW) JENNIFER NATES:</u>	
Direct Examination by Mr. Anthony.....	283
Cross-Examination by Mr. Brown.....	298
Redirect Examination by Mr. Anthony.....	299
<u>(PW) CHAD SMITH:</u>	
Direct Examination by Mr. Anthony.....	301
Cross-Examination by Mr. Brown.....	311
<u>(DW) NAJM ADMAD THOMAS:</u>	
Direct Examination by Mr. Brown.....	320
Cross-Examination by Mr. Anthony.....	336
Redirect Examination by Mr. Brown.....	363

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
	(Plaintiff's Exhibits)		
1	Advice of Rights	46	196
2	DVD	53	54
3	Diagram of Evidence Markers	131	132
4	Copy of Photo	133	134
5	Copy of Photo	118	119
6	GSR Kit	197	289
7	Diagram	202	259
8	Copy of Photo	227	227
9	Copy of Photo	237	237
10	Copy of Photo	237	237
11	Copy of Photo	237	237
12	Copy of Photo	237	237
13	Copy of Photo	237	237
14	Copy of Photo	237	237
15	Copy of Photo	237	237
16	Copy of Photo	237	237
17	Copy of Photo	237	237
18	Copy of Photo	237	237
19	Copy of Photo	237	237
20	Copy of Photo	237	237
21	Copy of Photo	237	237
22	Copy of Photo	237	237
23	Copy of Photo	237	237
24	Copy of Photo	237	237
25	Copy of Photo	237	237
26	Copy of Photo	237	237
27	Copy of Photo	248	249
28	Copy of Photo	248	249
29	Copy of Photo	248	249
30	Copy of Photo	248	249
31	Copy of Photo	248	249
32	Copy of Photo	248	249
33	Copy of Photo	248	249
34	Copy of Photo	248	249
35	Copy of Photo	248	249
36	Copy of Photo	248	249
37	Copy of Photo	248	249
38	Copy of Photo	248	249
39	Copy of Photo	248	249
40	Cartridge Case	242	305
41	Cartridge Case	242	305
42	Cartridge Case	242	305
43	Cartridge Case	242	305
44	Cartridge Case	242	305

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
45	Cartridge Case		
46	Cartridge Case	242	305
47	Cartridge Case	242	305
48	Cartridge Case	242	305
49	Cartridge Case	242	305
50	Cartridge Case	242	305
51	Cartridge Case	242	305
52	Cartridge Case	242	305
53	Unfired Cartridge	242	305
54	Projectile from Marker 20	305	306
55	Projectile from Marker 19	305	306
56	Projectile from cell phone battery	305	306
57	Black Holster	252	253
58	Pair of Black Pants	260	280
59	Gun	253	255
60	GSR - Front Passenger	255	288
61	GSR - Rear Passenger	255	288
62	GSR - Driver's Compartment	255	288
63	GSR - Rear Driver's Compartment	255	288
64	Box of Particle Lifts - Jogging Pants	281	290
65	Diagram	355	

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

P R O C E E D I N G S

2 THE COURT: Ladies and gentlemen, this may be the first
3 time some of you folks have been in a courtroom like this,
4 so I'm just going to real briefly explain who everybody is.
5 My name is Bill McKinnon, I'll be the presiding judge for
6 this case. This is my law clerk sitting here with me. He's
7 an attorney who helps me make judicial decisions. These
8 gentlemen in the red over here are the courtroom bailiffs.
9 They're in charge of the courtroom. They will be the ones
10 if you are selected for the jury that will be talking with
11 you. You need to obey whatever instructions they give you.
12 They are enforcing what I like done in the courtroom. Ms.
13 Lawson and these ladies in front of me here are the clerk of
14 court staff. Our court reporter is down here. She's taking
15 down everything that's said in the courtroom. This is
16 called a court of record. That means everything said in
17 court is taken down. This is Sheriff Taylor over here to my
18 right, your left, and some of his officers. And then the
19 two tables in front of you, the table to your right, my left
20 here is the prosecution, the solicitor's office. And over
21 here to my right and your left is the Defendant and his
22 counsel.

23 So ladies and gentlemen, I'm not going to ask certain
24 questions to determine your qualifications as jurors. These
25 questions are required by State law. Some of these

1 questions may be personal. One of the questions I'm going
2 to ask is about if you have a criminal record. What I
3 prefer you do is stand up if the answer is yes for you. If
4 it's a question -- I don't want to embarrass anyone, so if
5 you don't want to stand up, that's okay. When I get to the
6 end of the questions, I'm going to ask anyone who answered
7 yes, but didn't want to stand to please come forward, okay?

8 So yeah, I'm going to ask some questions. If it
9 applies to you, please, stand up and I'll talk to you. If
10 it's an embarrassing question and you don't want to stand
11 up, that's okay. When I get to the end, I'll invite
12 everyone to come up here who should have stood, but did not.

13 My first question is, is any member of the jury panel
14 not a citizen of the United States? Repeat, is anyone not a
15 citizen of the United States?

16 (There was no response.)

17 THE COURT: Okay. No responses.

18 Second question, is any member of the jury panel not a
19 resident and citizen of Union County, South Carolina?
20 Again, is anyone not a resident and citizen of Union County,
21 South Carolina?

22 (There was no response.)

23 THE COURT: No responses.

24 Next question, is any member of the jury panel unable
25 to read, write, speak and understand the English language?

1 Again, is anyone not able to read, write, speak and
2 understand the English language?

3 (There was no response.)

4 THE COURT: Next question, does any member of the jury
5 panel have less than a sixth grade education or its
6 equivalent? In other words, did anyone not finish the sixth
7 grade and also not do further education that would be the
8 equivalent? If so, please stand.

9 (There was no response.)

10 THE COURT: No responses.

11 Number five, is any member of the jury panel unable
12 because of a mental or physical infirmity to render
13 efficient jury service? For example, that might be a
14 medical condition that would prevent you from sitting for
15 long periods of time or a problem with your hearing where
16 you could not hear the witnesses testify.

17 So does anyone have a mental or physical problem that
18 would prevent you from serving on the jury? During a trial,
19 there may be two hours or more between breaks, so it does
20 involve a lot of sitting. Please stand up if you have a
21 medical or physical problem which prevents your service.

22 Yes, sir.

23 POTENTIAL JUROR: My back.

24 THE COURT: Sir, if you could give me your juror
25 number.

1 POTENTIAL JUROR: 27.

2 THE COURT: Yes, sir, what's your name?

3 POTENTIAL JUROR: Gary Boykin.

4 THE COURT: And Mr. Boykin, you have a physical problem
5 that prevents your service?

6 POTENTIAL JUROR: Yes, sir. My back. I can't sit for
7 a long period of time and I can't stand for a long period of
8 time.

9 THE COURT: Do you have a diagnosis from a physician
10 about a back problem?

11 POTENTIAL JUROR: I don't have it with me, no.

12 THE COURT: I know, but has the doctor told you --

13 POTENTIAL JUROR: Yes.

14 THE COURT: What is the issue, sir?

15 POTENTIAL JUROR: My issue is I have some degenerative
16 disks.

17 THE COURT: Mr. Boykin, you're excused, sir.

18 I thought I saw another gentleman stand up.

19 Yes, I'm sorry, ma'am. In the yellow shirt, yes,
20 ma'am.

21 POTENTIAL JUROR: I'm No. 17, Barbara Beheler. I had a
22 fusion in my neck, a metal plate and it's hard for me sit
23 and hold my head up straight for a long period of time. And
24 I can't hear too good.

25 THE COURT: Ma'am, you'll be excused.

1 Yes, sir, the gentleman in the gray shirt.

2 POTENTIAL JUROR: I have a back problem.

3 THE COURT: What is your back problem, sir?

4 POTENTIAL JUROR: I can't sit for a long time.

5 THE COURT: How long can you sit, sir?

6 POTENTIAL JUROR: About an hour.

7 THE COURT: What's your juror number, sir?

8 POTENTIAL JUROR: 45.

9 THE COURT: I'm going to excuse you, sir.

10 My next question, has any member of the jury panel been
11 convicted, which means you either pled guilty or you went to
12 trial and the jury found you guilty of a crime in federal or
13 state court punishable by more than one year in jail? I
14 need you to listen carefully. It doesn't mean you served a
15 year or more in jail, it means you were convicted of a crime
16 where you could have served a year or more in jail. If that
17 applies to anyone, please stand.

18 (There was no response.)

19 THE COURT: No responses.

20 Next question, is any member of the jury panel a clerk
21 of court or a deputy clerk of court, or a constable, a
22 police officer, a deputy sheriff or any other commissioned
23 law enforcement officer, a probate judge, a county
24 commissioner, a magistrate judge, a county officer or
25 employed within a courthouse walls? In other words, do you

1 work in the courthouse?

2 I'm going to ask it one more time. Is any member of
3 the jury panel a clerk of court, a deputy clerk of court, a
4 constable, sheriff's deputy, police officer or other
5 commissioned law enforcement officer, or a probate judge, a
6 county commissioner, a magistrate judge, or any other county
7 officer or in some other way employed within a courthouse?
8 If that applies to you, please stand.

9 Yes, ma'am.

10 POTENTIAL JUROR: No. 44, Jessica Burdine. I work with
11 the police department.

12 THE COURT: So you're a state certified law enforcement
13 officer?

14 POTENTIAL JUROR: Yes, sir.

15 THE COURT: Yes, ma'am, you're excused.

16 Next question, has any member of the jury panel served
17 as a member of the Union County Grand Jury during the past
18 several years? And if you don't know, the grand jury is a
19 different process and they look at the charges that people
20 have been arrested for and decide if there's enough evidence
21 to make them go to trial.

22 Has anyone served on the grand jury in Union County in
23 the last five years?

24 Yes, ma'am.

25 POTENTIAL JUROR: I'm No. 73, Lisa Dean.

1 THE COURT: And, ma'am, when did you serve on the Union
2 County Grand Jury?

3 POTENTIAL JUROR: I can't remember the year, but, at
4 least, between two and three.

5 THE COURT: Okay. Mr. Anthony, is there a way that you
6 can confirm whether she was serving on the grand jury at the
7 time this case was presented?

8 MR. ANTHONY: I think the clerk of court will probably
9 be able to do that more easily than I can.

10 THE CLERK: I'll have to check.

11 THE COURT: All right. Ma'am, what was your juror
12 number again?

13 POTENTIAL JUROR: 73.

14 THE COURT: Ma'am, just hold on. You cannot serve on
15 this juror panel if this case was presented to the grand
16 jury that you served on. So the clerk's office is going to
17 check on that. If you don't mind just having a seat. Thank
18 you, ma'am.

19 Oh, I'm sorry, sir. I didn't see you back there.

20 POTENTIAL JUROR: Did you say five years or three
21 years?

22 THE COURT: Within the last five.

23 POTENTIAL JUROR: I think the last time I served was in
24 2014.

25 THE COURT: And you served on the grand jury where you

1 looked at the charges and decided if there was enough
2 evidence to make people go to trial?

3 POTENTIAL JUROR: Yes.

4 THE COURT: Sir, did you meet across the hall?

5 POTENTIAL JUROR: Oh, no, sir.

6 THE COURT: Thank you.

7 All right. My next question, has any member of the
8 jury panel previously served in a circuit court jury during
9 this year? In other words, in 2018, has anyone served on a
10 circuit court jury in Union County?

11 (There was no response.)

12 THE COURT: All right, ladies and gentlemen, those are
13 the statutory disqualifications. Now, I'm going to ask
14 anyone who would like to speak with me privately to come
15 step forward, any folks who thinks those questions may apply
16 to them and want to speak to me privately.

17 (Court held off-the-record discussion with Juror No.
18 59.)

19 THE COURT: Juror No. 59 is excused.

20 (Court held off-the-record discussion with Juror No.
21 72.)

22 (Court held off-the-record discussion with Juror No.
23 268.)

24 (Court held off-the-record discussion with Juror No.
25 18.)

1 THE COURT: Ladies and gentlemen, let me say one thing,
2 the only people who are coming up now are people who would
3 have answered yes to a question I've asked so far and want
4 to discuss with me privately. I'll have other questions to
5 ask about childcare issues. Now is just for questions I've
6 asked already.

7 (Court held off-the-record discussion with Juror No.
8 65.)

9 (Court held off-the-record discussion with Juror No.
10 33.)

11 (Court held off-the-record discussion with Juror No.
12 87.)

13 THE COURT: Juror No. 87 is excused.

14 (Court held off-the-record discussion with Juror No.
15 215.)

16 THE COURT: Juror No. 215 is excused.

17 (Court held off-the-record discussion with Juror No.
18 218.)

19 THE COURT: Anybody else?

20 (There was no response.)

21 THE COURT: Thank you, folks.

22 The next phase is what's called exemptions. These are
23 things that if they apply to you, you don't have to take
24 them.

25 For example, number one, my first question is, is

1 anyone in the jury pool 65 years of age or older? These
2 people represent a tremendous talent and I urge you to
3 serve, but South Carolina law allows you to be exempt if you
4 are 65 years or older. You do not have to serve if you
5 don't want to, but you can.

6 So is there anyone who is 65 years or older and wants
7 to use the exemption to get out of jury service?

8 (There was no response.)

9 THE COURT: Thank you, folks.

10 The second one, this is about prior jury service. No
11 person is required to serve on a jury more than once every
12 three calendar years. So if you have been a General
13 Sessions juror or a Common Pleas juror, in this case
14 courtroom, basically, in the last three years, which would
15 be 2018, 2017 or 2016.

16 Has anyone served as a juror and wants to use that
17 exemption not to serve?

18 Yes, sir.

19 POTENTIAL JUROR: No. 223, Donald Rector. I was here
20 last year.

21 THE COURT: You'd like to take that exemption?

22 POTENTIAL JUROR: Yes, sir.

23 THE COURT: Thank you, sir. You're excused.

24 Similarly, if you have served as a grand juror within
25 the last five years, you may use that exemption if you want.

1 If you have been on the Union County Grand Jury within the
2 last five years, you may use that as an exemption to not
3 serve on the jury today. Does that apply to anyone?

4 (There was no response.)

5 THE COURT: The next exemption deals with custody of
6 young children. Listen carefully. You may be exempted from
7 jury service if you have a child under the age of seven,
8 meaning six years or younger, and you are the principle
9 caregiver of your children and you are unable to make
10 arrangements for the adequate care of your child or children
11 if you had to perform jury duty. If all these requirements
12 apply to you and you want to use this exemption, please
13 stand. Again, the child must be six years of age or
14 younger, you must be the principle caretaker or guardian and
15 you cannot make alternate arrangements if you are serving on
16 jury duty.

17 Yes, ma'am.

18 POTENTIAL JUROR: I have a baby --

19 THE COURT: What's your juror number?

20 POTENTIAL JUROR: 181. I have a baby eight months old,
21 a three-year-old and a seven-year-old.

22 THE COURT: Where are the kids right now?

23 POTENTIAL JUROR: There with my fiance's mom.

24 THE COURT: Is she not able to look out for them this
25 week if you got called for jury duty?

1 POTENTIAL JUROR: I'm not sure.

2 THE COURT: I'm going to exempt you, ma'am.

3 The gentleman in the Under Armor shirt.

4 POTENTIAL JUROR: 167. I have a three-year-old and a
5 two-month old. My wife teaches full time. Her grandmother
6 normally keeps them, but she's got doctors' appointments all
7 week.

8 THE COURT: And you don't have any other person who can
9 take --

10 POTENTIAL JUROR: No, sir.

11 THE COURT: Okay. I'm going to excuse you, sir.

12 Yes, ma'am, in the striped shirt.

13 POTENTIAL JUROR: No. 29. I have a one-year-old and
14 she has a doctor's appointment at 2:00.

15 THE COURT: She has a doctor's appointment when?

16 POTENTIAL JUROR: At two o'clock today.

17 THE COURT: Your only conflict is today at two o'clock?

18 POTENTIAL JUROR: Yes.

19 THE COURT: How far is the doctor's appointment?

20 POTENTIAL JUROR: It's at Upstate Pediatrics.

21 THE COURT: Ma'am, I think we'll be done. All we're
22 going to do is select the jury today. The trial will start
23 tomorrow, so I believe we'll be done in time for you to take
24 your child to the appointment today.

25 POTENTIAL JUROR: Okay.

1 THE COURT: Thank you, ma'am.

2 POTENTIAL JUROR: 75, I have a one-year old. My
3 grandmother has him right now, but she won't be able to
4 watch him all week.

5 THE COURT: Thank you, ma'am. You're excused.

6 Ladies and gentlemen, the next question is the very
7 same --

8 Oh, I'm sorry. Yes, sir.

9 POTENTIAL JUROR: I have a one-month old and my mom
10 usually watches him, but she's just starting a new job.

11 THE COURT: And your juror number, sir?

12 POTENTIAL JUROR: 79.

13 THE COURT: And you said your mom usually watches him
14 and she just started a new job and she can't?

15 POTENTIAL JUROR: Yes, sir.

16 THE COURT: You're excused, sir.

17 Ladies and gentlemen, the next question is the same
18 question, but if you're responsible or the caretaker of a
19 person 65 years of age or older or someone unable to provide
20 for themselves. In other words, you are the caretaker for
21 an elderly person or a disabled person who can't provide for
22 themselves and you've the person principally responsible for
23 them and you are unable to make any other arrangements. If
24 that applies to you, please stand up.

25 Yes, ma'am.

1 POTENTIAL JUROR: I'm 197, Paula Moore, and my mom has
2 poor blood circulation in her legs and she's not able to get
3 around by herself.

4 THE COURT: You're saying she can't get around, is she
5 able to look after herself in the house?

6 POTENTIAL JUROR: Not really. She can get back and
7 forth to the bathroom and stuff.

8 THE COURT: Okay. So she needs significant assistance
9 and there's no one else available to care for her?

10 POTENTIAL JUROR: No, sir.

11 THE COURT: Thank you. You're excused, ma'am.

12 One more question, anyone the caretaker of a disabled
13 person or someone 65 years old or older?

14 (There was no response.)

15 THE COURT: The next exemption is a timing exemption.
16 If anyone here is attending school or teaching school. I
17 know school started today for most folks. We can move you
18 to another term of court that does not conflict with school.
19 So is there anyone here today who is a full-time teacher or
20 full-time student that because of their school schedule does
21 not what to serve this week? This is not an exemption, but
22 the clerk's office can reschedule you for a term when there
23 is no school.

24 Yes, ma'am.

25 POTENTIAL JUROR: My number is 11. I am a full-time

1 student and my classes start Thursday.

2 THE COURT: And you would like to be scheduled for a
3 term of court when there's no conflict?

4 POTENTIAL JUROR: Yes, sir.

5 THE COURT: Okay. We will reschedule you and you're
6 excused for today.

7 The next one, is there any member of the jury panel who
8 is currently employed with South Carolina Department of
9 Corrections at a penitentiary?

10 (There was no response.)

11 THE COURT: My next question is, is there any juror who
12 performs services for a business or agricultural or
13 commercial enterprise which are so essential to the
14 operation of the business that if you're required to perform
15 jury duty, the enterprise would have to close?

16 Let me ask that again, ladies and gentlemen. This is
17 you're either the owner of a business or you work for a
18 business and it's a very small business and you are so
19 critical to the business that if you had to serve jury duty,
20 the business would have to close.

21 Yes, ma'am.

22 POTENTIAL JUROR: I'm Juror No. 220, Ashley Rainwater.
23 I own my own business.

24 THE COURT: And you want to take that exemption?

25 POTENTIAL JUROR: Yes, sir.

1 THE COURT: Yes, ma'am. You're excused.

2 Yes, sir.

3 POTENTIAL JUROR: 157, I work out of town. I have
4 three people that ride with me. I'm the sole driver. So if
5 I stay, they're going to miss a lot of work.

6 THE COURT: So they will not be able to work this week
7 without you?

8 POTENTIAL JUROR: Well, I drove an hour and 20 minutes
9 and took them to work this morning and now I've got to go
10 back and pick them up. They don't have transportation.

11 THE COURT: I will excuse you.

12 POTENTIAL JUROR: Thank you.

13 THE COURT: Yes, sir, in the back.

14 POTENTIAL JUROR: I work for a small company and if I
15 don't work -- I'm the main one in the shop. So if I'm not
16 there, nothing gets done this week in that shop.

17 THE COURT: What's your juror number, sir?

18 POTENTIAL JUROR: 179.

19 THE COURT: And you'd like to use that exemption, sir?

20 POTENTIAL JUROR: If I can.

21 THE COURT: You're excused, sir.

22 Ladies and gentlemen, that excludes the statutory
23 reasons. If there's anyone else that has an extreme
24 hardship -- and I caution you, jury duty is one of the
25 obligations of living in a free country like ours, okay?

1 There's not many times the government calls on you, you need
2 to pay your taxes and things like that, but this is one of
3 the times we have a duty as citizens. But if anyone thinks
4 they have an extreme hardship that's not been covered by the
5 questions that I've asked, please stand up.

6 One more time, is there anyone who believes that jury
7 service this week would cause them an extreme hardship such
8 that they would like to be exempted?

9 (There was no response.)

10 THE COURT: Then my last question is, is there any one
11 who this particular week is an extreme hardship on you?
12 That you can serve on a jury, but for some reason, this
13 particular week is a terrible week for you. If that applies
14 to you, you can stand up and the clerk's office may be able
15 to move you to another term of court.

16 Yes, sir.

17 POTENTIAL JUROR: No. 16, I have an orientation. I'm
18 starting a new job. I have tomorrow and Wednesday as well
19 that I'm supposed to go to orientation.

20 THE COURT: Sir, I'm going to go ahead and excuse you
21 from this term of court. The clerk's office will send you
22 notice for what term of court for you to report to. So this
23 week is the only week you have an issue with?

24 POTENTIAL JUROR: Yes, sir.

25 THE COURT: Okay. We're going to excuse you from

1 service this week.

2 POTENTIAL JUROR: Thank you.

3 THE COURT: Yes, sir.

4 POTENTIAL JUROR: I work for S & M Grading and I'm the
5 only welder they have. We're interviewing welders Friday,
6 but if I'm not there, they're not going to be able --

7 THE COURT: And what you're telling me is assuming
8 you're going to be hiring another welder at the end of the
9 week and --

10 POTENTIAL JUROR: Yes, sir.

11 THE COURT: What's your number, sir?

12 POTENTIAL JUROR: 65.

13 THE COURT: And you'd like to be scheduled for a
14 different term of jury service?

15 POTENTIAL JUROR: Yes, sir.

16 THE COURT: Okay. We'll do that.

17 POTENTIAL JUROR: Thank you.

18 THE COURT: Ladies and gentlemen, those last questions
19 were less personal. They're not as intrusive, but is there
20 anyone -- that second set of questions, is there anyone who
21 did not want to answer publically who wants to come forward
22 and speak to me privately about that second set of
23 questions?

24 Yes, sir.

25 POTENTIAL JUROR: I wanted to ask you, my daughter is

1 over seven, she's seven years -- I mean, she's over six,
2 Your Honor. And I am her main caretaker when my wife is
3 gone.

4 THE COURT: So she's seven years old, sir, and your
5 wife is not available to look after her?

6 POTENTIAL JUROR: My wife has to travel with work, Your
7 Honor.

8 THE COURT: Where is she right now?

9 POTENTIAL JUROR: Right now, she's in school.

10 THE COURT: But when she gets out of school?

11 POTENTIAL JUROR: I pick her up from school, I take her
12 home, give her a bath, get her supper and everything else if
13 my wife is not there. I also have to take care of my dad.
14 I mean, I feed him supper and everything else.

15 THE COURT: Sir, what I can do is I'll transfer you to
16 another term of court --

17 POTENTIAL JUROR: Excuse me, Your Honor, I'm sorry, I
18 didn't mean to interrupt you. The thing is I've already
19 been moved twice because of the fact my wife was going to be
20 out of town both times. She has to travel for her job. A
21 lot of times, she's, at least, overnight. Sometimes for a
22 week or more or up to a week. And it's hard -- my mother
23 and father-in-law can help out sometimes, but it's hard for
24 them because she still works for the hospital up here in
25 Union.

1 THE COURT: Well, I'm going to transfer you to the
2 summer term. That's what I can do today, sir. You're
3 excused today.

4 Counsel, any objections to jury qualification?
5 From the State?

6 MR. ANTHONY: No, Your Honor.

7 THE COURT: From the Defense?

8 MR. BROWN: No, Your Honor.

9 THE COURT: Okay. Ladies and gentlemen, thank you very
10 much. I find the remaining members of the panel are
11 qualified as jurors in this matter.

12 Counsel, any objection to moving on to jury selection?

13 MR. ANTHONY: No, sir. I just ask for a second to move
14 my chair.

15 THE COURT: Absolutely.

16 Mr. Brown.

17 MR. BROWN: No, sir. What number of strikes did you
18 decide?

19 THE COURT: Yeah, hold on one second and let me double
20 check.

21 (Pause.)

22 THE COURT: I have five and five.

23 Is that correct, Mr. Anthony?

24 MR. ANTHONY: Yes, sir.

25 THE COURT: Ladies and gentlemen, we're going to move

1 on to the second part of the process. And just so you
2 understand what's going on, all of you sitting out there now
3 have been qualified to serve as jurors.

4 Now, we move on to the second part of the process,
5 which is actually choosing the 12 folks who are going to sit
6 in the jury box in this case. It probably will take about
7 45 minutes to an hour. Is there anyone who needs to use the
8 restroom?

9 Okay, folks, we're going to take a 15-minute break.
10 Please be back here by 12:45.

11 (WHEREUPON, a short break was taken.)

12 THE COURT: Yes, sir, Mr. Anthony.

13 MR. ANTHONY: Your Honor, at this time, the State would
14 call the case of The State of South Carolina vs. Najm
15 Thomas, indictment 2017-GS-44-845. This is an indictment
16 for attempted murder and has been true billed by the grand
17 jury. I hand the indictment up to the Court at this time.

18 THE COURT: Thank you, sir.

19 Ladies and gentlemen, we're about to begin the trial of
20 The State of South Carolina vs. Najm Thomas. And I'm going
21 to read you the indictment in the case just so you know a
22 little about what's allegedly happening. And I want to
23 caution you, the indictment is not evidence. It's not
24 proof. All it is is what the government said the Defendant
25 did. It's not proof, it's what he's accused of doing. And

1 I'm going to read it to you.

2 The State alleges that in Union County, South Carolina,
3 on or about August the 28th, 2016, Najm Ahmad Thomas did
4 with intent to kill attempt to kill one Elizawon Gray with
5 malice aforethought by shooting the victim with a handgun in
6 violation of South Carolina Code of Laws. So this is an
7 attempted murder case.

8 Madam Clerk, if you would swear the pool in, please.

9 (WHEREUPON, the jury panel was sworn.)

10 THE COURT: Ladies and gentlemen, I have some questions
11 for you now. It's a similar process. If it applies to you,
12 please stand up, okay?

13 The first question is, is anyone in the jury pool
14 related by blood or marriage to the Defendant, Najm Thomas,
15 who is the gentleman here in the white shirt and the dark
16 vest?

17 (There was no response.)

18 THE COURT: Is anyone related by blood or marriage to
19 the alleged victim, whose name Elizawon Malik Gray?

20 (There was no response.)

21 THE COURT: Next question, does anyone have a close
22 personal or social relationship with either the Defendant,
23 Najm Thomas?

24 Yes, sir.

25 POTENTIAL JUROR: I'm friends with --

1 THE COURT: What's your juror number?

2 POTENTIAL JUROR: 90.

3 THE COURT: Yes, sir.

4 POTENTIAL JUROR: I know the Defendant.

5 THE COURT: Is that going to prevent you from being
6 fair and impartial in this case?

7 POTENTIAL JUROR: Yes, sir.

8 THE COURT: You believe it will?

9 POTENTIAL JUROR: Yes, sir.

10 THE COURT: Sir, tell me, why do you believe it will
11 prevent you from being fair and impartial?

12 POTENTIAL JUROR: Because that's one of my friends.

13 THE COURT: Okay. I'm going to excuse you.

14 My next question, does anyone have a close personal or
15 social relationship with the alleged victim, Elizawon Malik
16 Gray?

17 (There was no response.)

18 THE COURT: Ladies and gentlemen, the next thing I'm
19 going to do is I have a long list of possible witnesses in
20 this case, okay? If you are related by blood or marriage or
21 if you have a close personal or social relationship with the
22 person -- I'm going to read it one at a time, okay -- please
23 stand up.

24 So again, please stand if either you have a close
25 personal or social relationship or you're related by blood

1 or marriage.

2 First name is Megan Hames, H-A-M-E-S; Mark Johnson;
3 Travis Duncan; Audrey Frost; Sheriff David Taylor;
4 Investigator Scott Ruby from the Union County Sheriff's
5 Office; James McNeil from the Union County Sheriff's Office;
6 Investigator Jermaine Smith from Union County Sheriff's
7 Office; Investigator Russell Vinson from the Union County
8 Sheriff's Office; Investigator Wendy Childers from the Union
9 County Sheriff's Office; David Eaves from the Union County
10 Detention Center; Sergeant Dell Mitchell from Union Public
11 Safety; Dr. Bryan Whitfield from Spartanburg Regional
12 Medical Center; Agent Spike McCraw from the South Carolina
13 Law Enforcement Division, also known as SLED; Dawn Claycomb
14 from SLED; Jessica Stowe from SLED; Chad Smith from SLED;
15 Ila, that's I-L-A, Ila Simmons from SLED; Jennifer Nate from
16 SLED; Tom Darnell from SLED; Sara Goodman from SLED;
17 Christopher Johnson from SLED; Jennifer Miller from SLED;
18 Anna Tankersley from SLED.

19 (There was no response.)

20 THE COURT: Ladies and gentlemen, the attorneys from
21 the case, I'm going to ask them to stand, are Mr. John
22 Anthony from the Sixteenth Circuit Solicitor's Office, the
23 prosecution, and Mr. Michael Brown, Law Office of Ramey &
24 Brown from Spartanburg.

25 Has any member of the jury panel ever been represented,

1 meaning they were your lawyer, been represented by Mr.
2 Anthony or Mr. Brown? If so, please stand.

3 (There was no response.)

4 THE COURT: Has anyone in the jury panel been related
5 by blood or marriage or ever had a close personal or social
6 relationship with either Mr. Anthony, the prosecutor, or Mr.
7 Brown, the Defense lawyer, or their law firms? If so,
8 please stand.

9 (There was no response.)

10 THE COURT: Has any member of the jury panel already
11 formed or expressed an opinion about any issue or matter
12 involved in this case? In other words, has anyone read
13 something about this case, seen something on TV or the
14 internet and already formed an opinion about this case?

15 Yes, sir, what's your juror number?

16 POTENTIAL JUROR: I think it's 259.

17 THE COURT: Why don't you double check it, sir.

18 POTENTIAL JUROR: 259.

19 THE COURT: Okay. You've already formed an opinion
20 about this case?

21 POTENTIAL JUROR: Well, I done heard about it and I
22 seen it and I've got my own opinion about it. I done seen
23 it a bunch of times.

24 THE COURT: Sir, would you be able to put the
25 information you've heard aside and make your decision solely

1 on the evidence that you hear in the courtroom?

2 POTENTIAL JUROR: Could you repeat that?

3 THE COURT: Yes, sir. I said if you served as juror,
4 would you be able to put out of your mind what you've heard
5 from other places and make your decision solely based on the
6 evidence that you hear in the courtroom?

7 POTENTIAL JUROR: What I heard was right, but it out of
8 the courtroom.

9 THE COURT: Okay. I think I'm going to excuse you,
10 sir. What's your name to make sure we have the right juror?

11 POTENTIAL JUROR: Ricky Thompson.

12 THE COURT: Ladies and gentlemen, does any member of
13 the jury panel have any bias or prejudice, either towards
14 the government or the Defendant in this case? If so, please
15 stand.

16 (There was no response.)

17 THE COURT: Is there any member of the jury panel who
18 was a member of the grand jury who issued the indictment in
19 this case?

20 (There was no response.)

21 THE COURT: Is there any member of the jury panel who
22 is a member of, or a contributor to any group which has as
23 its primary concern the promotion of law enforcement or
24 victims' rights? These groups would include, but not
25 limited to groups like Mothers Against Drunk Driving,

1 Students Against Drunk Driving or Citizens Against Violent
2 Crime. Is anybody a member of or contributor to any of
3 those groups? If so, please stand. Or similar groups.

4 (There was no response.)

5 THE COURT: Does any member of the jury panel know of
6 any reason why you should not serve as a juror in this case,
7 with a particular emphasis being placed on your ability to
8 be fair and impartial to both the State and the Defense? Is
9 there anyone who believes they would not be able to be fair
10 and impartial to both sides in this case?

11 (There was no response.)

12 THE COURT: Have you, any member of the jury panel, or
13 any of your immediate family or close friend ever been
14 prosecuted by Mr. Anthony or the Sixteenth Circuit
15 Solicitor's Office or are you currently being prosecuted?

16 (There was no response.)

17 THE COURT: Have you or any member of your immediate
18 family or a close friend ever been represented, in other
19 words, he has been your attorney, ever been represented by
20 Mr. Michael Brown or are you currently being represented by
21 Attorney Michael Brown?

22 (There was no response.)

23 THE COURT: Have you or any member of your immediate
24 family or any close friend ever been charged with the crime
25 of murder, attempted murder, assault and battery with intent

1 to kill, high and aggravated assault and battery, robbery,
2 burglary, kidnapping or any other violent crime? That
3 doesn't mean convicted, that means have you ever been
4 arrested, any family or close friends arrested for those
5 crimes?

6 Yes, ma'am, your juror number?

7 POTENTIAL JUROR: 150.

8 THE COURT: And is it someone in your family or a close
9 friend?

10 POTENTIAL JUROR: Cousin.

11 THE COURT: What was your cousin arrested for?

12 POTENTIAL JUROR: Murder.

13 THE COURT: Thank you, ma'am.

14 Yes, ma'am.

15 POTENTIAL JUROR: My son for running from the police.

16 THE COURT: Your son was arrested for failing to stop
17 for a blue light or evading police?

18 POTENTIAL JUROR: Yes.

19 THE COURT: And what's your juror number, ma'am?

20 POTENTIAL JUROR: 163.

21 THE COURT: Thank you.

22 MR. ANTHONY: Your Honor, could you ask those two
23 jurors if that would affect their ability to be fair and
24 impartial?

25 THE COURT: Ma'am, would the fact that your cousin was

1 arrested, would that affect your ability to be fair and
2 impartial in this case?

3 POTENTIAL JUROR: Yes, sir.

4 THE COURT: You believe that it would?

5 POTENTIAL JUROR: Yes, sir.

6 THE COURT: I'm going to excuse you, ma'am.

7 Yes, ma'am, and I'll ask you the same thing, would the
8 fact that your son was arrested for that crime affect your
9 ability to be fair and impartial in this case?

10 POTENTIAL JUROR: No, sir.

11 THE COURT: Thank you, ma'am.

12 Have you or any member of your immediate family or any
13 close friend every been charged with a crime by the Union
14 County Sheriff's Office, meaning arrested by the Union
15 County Sheriff's Office?

16 (There was no response.)

17 THE COURT: Have you or any member of your immediate
18 family or any of your close friends ever filed a lawsuit
19 against the sheriff's office? Has anybody ever sued the
20 sheriff's office or had a family member do that or a friend?

21 (There was no response.)

22 THE COURT: Does anybody have a religious or moral view
23 that would prevent you from rendering a verdict in a
24 criminal case? Meaning, you have religious or moral
25 objections in sitting in judgment of fellow citizens?

1 (There was no response.)

2 THE COURT: And finally, is anyone in the jury panel a
3 member of an organization that does not recognize the
4 government of the United States or the State of South
5 Carolina?

6 (There was no response.)

7 THE COURT: All right, Counsel, any further questions?

8 MR. ANTHONY: No, sir.

9 THE COURT: Mr. Brown?

10 MR. BROWN: No, Your Honor.

11 THE COURT: Any objections to voir dire?

12 MR. ANTHONY: No, sir.

13 MR. BROWN: No, Your Honor.

14 THE COURT: Thank you, Counsel.

15 Madam Clerk.

16 Counsel, if y'all would approach for a moment.

17 (WHEREUPON, a bench conference was held in the presence
18 of the jury, but outside the hearing of the jury.)

19 THE COURT: Ladies and gentlemen, we're now at that
20 portion of the case where the clerk of court is going to
21 call names one at a time. If you would step forward to the
22 edge, the opening between the two attorney tables, and then
23 you'll either be excused or asked to sit down in the jury
24 box.

25 Madam Clerk.

1 THE CLERK: Juror 29, Shante Brandon.
2 (Juror No. 29, a black female, came forward.)
3 THE CLERK: What says the State?
4 MR. ANTHONY: Please excuse the juror.
5 THE CLERK: You can be seated.
6 144, Joyelette Hunter.
7 (Juror No. 144, a black female, came forward.)
8 THE CLERK: What says the State?
9 MR. ANTHONY: Please present the juror.
10 THE CLERK: What says the Defense?
11 MR. BROWN: Please seat the juror.
12 THE CLERK: Take your seat in the box.
13 Juror No. 114, Sheri Greer.
14 (Juror No. 114, a white female, came forward.)
15 THE CLERK: What says the State?
16 MR. ANTHONY: Please present the juror.
17 THE CLERK: What says the Defense?
18 MR. BROWN: Please seat the juror.
19 THE CLERK: Take your seat in the box.
20 Juror No. 37, Kenneth Bright.
21 (Juror No. 37, a white male, came forward.)
22 THE CLERK: What says the State?
23 MR. ANTHONY: Please present the juror.
24 THE CLERK: What says the Defense?
25 MR. BROWN: Please seat the juror.

1 THE CLERK: Juror No. 52, Ashley Castle.
2 (Juror No. 52, a white female, came forward.)
3 THE CLERK: What says the State?
4 MR. ANTHONY: Please present the juror.
5 THE CLERK: What says the Defense?
6 MR. BROWN: Please seat the juror.
7 THE CLERK: Ma'am, you can be seated in the box.
8 160, Taylor Jones.
9 (Juror No. 160, a white female, came forward.)
10 THE CLERK: What says the State?
11 MR. ANTHONY: Please excuse the juror.
12 THE CLERK: Juror No. 67, Derrian Davis.
13 (Juror No. 67, a white female, came forward.)
14 THE CLERK: What says the State?
15 MR. ANTHONY: Please present the juror.
16 THE CLERK: What says the Defense?
17 MR. BROWN: Please seat the juror.
18 THE CLERK: 146, Michael Ivey.
19 (Juror No. 146, a white male, came forward.)
20 THE CLERK: What says the State?
21 MR. ANTHONY: Please present the juror.
22 THE CLERK: What says the Defense?
23 MR. BROWN: Please excuse the juror.
24 THE CLERK: Sir, you can be seated.
25 115, Anna Gregory.

1 (Juror No. 115, a white female, came forward.)
2 THE CLERK: What says the State?
3 MR. ANTHONY: Please present the juror.
4 THE CLERK: What says the Defense?
5 MR. BROWN: Please excuse the juror.
6 THE CLERK: Ma'am, you can be seated.
7 No. 18, Casey Birchfield.
8 (Juror No. 18, a white female, came forward.)
9 THE CLERK: What says the State?
10 MR. ANTHONY: Please present the juror.
11 THE CLERK: What says the Defense?
12 MR. BROWN: Please excuse the juror.
13 THE CLERK: Juror No. 266, Terry Vaughan.
14 (Juror No. 266, a white male, came forward.)
15 THE CLERK: What says the State?
16 MR. ANTHONY: Please present the juror.
17 THE CLERK: What says the Defense?
18 MR. BROWN: Please seat the juror.
19 THE CLERK: 284, Shirley Wheeler.
20 (Juror No. 284, a black female, came forward.)
21 THE CLERK: What says the State?
22 MR. ANTHONY: Please present the juror.
23 THE CLERK: What says the Defense?
24 MR. BROWN: Please seat the juror.
25 THE CLERK: Juror No. 188, Matthew Meador.

1 (Juror No. 188, a white male, came forward.)
2 THE CLERK: What says the State?
3 MR. ANTHONY: Please present the juror.
4 THE CLERK: What says the Defense?
5 MR. BROWN: Please seat the juror.
6 THE CLERK: Juror 252, Theresa Stephens.
7 (Juror No. 252, a white female, came forward.)
8 THE CLERK: What says the State?
9 MR. ANTHONY: Please present the juror.
10 THE CLERK: What says the Defense?
11 MR. BROWN: Please excuse the juror.
12 THE CLERK: You can take your seat, ma'am.
13 296, Audrey Woods.
14 (Juror No. 296, a white female, came forward.)
15 THE CLERK: What says the State?
16 MR. ANTHONY: Please present the juror.
17 THE CLERK: What says the Defense?
18 MR. BROWN: Please excuse the juror.
19 THE CLERK: Juror 207, Anthony Painter.
20 (Juror No. 207, a white male, came forward.)
21 THE CLERK: What says the State?
22 MR. ANTHONY: Please present the juror.
23 MR. BROWN: Please seat the juror.
24 THE CLERK: 294, Steve Womick.
25 (Juror No. 294, a white male, came forward.)

1 THE CLERK: What says the State?
2 MR. ANTHONY: Please present the juror.
3 MR. BROWN: Please seat the juror.
4 THE CLERK: 202, Rita Northern.
5 (Juror No. 202, a white female, came forward.)
6 THE CLERK: What says the State?
7 MR. ANTHONY: Please excuse the juror.
8 THE CLERK: 186, Susan McCutcheon.
9 (Juror No. 186, a white female, came forward.)
10 THE CLERK: What says the State?
11 MR. ANTHONY: Please present the juror.
12 MR. BROWN: Seat the juror.
13 THE CLERK: Please take your seat, ma'am.
14 Juror 38, Anthony Brock.
15 (Juror No. 38, a white male, came forward.)
16 THE CLERK: What says the State?
17 MR. ANTHONY: Please present the juror.
18 MR. BROWN: Please seat the juror.
19 THE COURT: Counsel, I have one strike for the State
20 and two for the Defense on the alternates. Are you in
21 agreement on that?
22 MR. ANTHONY: Yes, Your Honor.
23 MR. BROWN: Yes, sir.
24 THE COURT: Madam Clerk, let's have two alternates.
25 THE CLERK: 168, Cynthia Koon.

1 (Juror No. 168, a white female, came forward.)

2 THE CLERK: What says the State?

3 MR. ANTHONY: Please present the juror.

4 MR. BROWN: Please seat the juror.

5 THE CLERK: Juror 56, Jordan Clevenger.

6 (Juror No. 56, a white male, came forward.)

7 THE CLERK: What says the State?

8 MR. ANTHONY: Please present the juror.

9 MR. BROWN: Please seat the juror.

10 THE COURT: Ladies and gentlemen, if you were not
11 selected, that concludes the jury selection process for this
12 case. I am very grateful for your service, as is everyone
13 in the county and here in the clerk's office. There may be
14 another trial later in the week, so in just a second, the
15 clerk of court, Ms. Lawson, is going to give you some
16 instructions. But as far as today, you folks are excused.
17 Just listen to Ms. Lawson.

18 THE CLERK: You can call back after 6:00 this afternoon
19 and we'll have directions.

20 (WHEREUPON, the jury panel was excused.)

21 THE COURT: Do we have any motions?

22 MR. ANTHONY: Your Honor, there are no motions from the
23 State.

24 MR. BROWN: Your Honor, may we approach?

25 THE COURT: You may.

1 (WHEREUPON, a bench conference was held in the presence
2 of the jury, but outside the hearing of the jury.)

3 THE COURT: So Counsel, no motions regarding jury
4 selection?

5 MR. ANTHONY: Not from the State.

6 THE COURT: Any objection to the jury selection?

7 MR. BROWN: No, sir.

8 THE COURT: Thank you.

9 Ladies and gentlemen, thank you very much. You are
10 selected for the jury and the two alternates on this case.

11 Alternates, what you'll do is you'll sit with the jury
12 during the whole case and if a juror member should get sick,
13 have a family emergency and have to leave the jury, you'll
14 be subbed in. If we don't have alternates, we have to start
15 the whole trial over again, so thank you very much. I'm
16 going to give you a few instructions and I'm going to let
17 you go for the day. The trial will start back tomorrow
18 morning.

19 The first thing is please don't go home tonight and
20 research this case. Please don't go into Google or if you
21 have family that watch the news, please don't try to find
22 out anything about this case on your own. You will have all
23 the evidence in this courtroom you need to make your
24 decision in this case. So please don't go home and do any
25 research.

1 Similarly, please don't talk about this case with
2 anyone. Once the case is over, you are free to talk about
3 the case with anyone you choose to, but until the verdict
4 has been rendered, you're not permitted to talk about this
5 case.

6 When you go home tonight, your son, your daughter, your
7 wife, your husband may say well, what did you do today? All
8 you can say is I was picked for a criminal case for this
9 week. You can tell them, when the case is over, I'll answer
10 all the questions you want to ask me. But until the verdict
11 is rendered, you cannot discuss the case.

12 And the third thing is that even includes among
13 yourselves. At the end of the case, you start your
14 deliberation, okay, but until I tell you, ladies and
15 gentlemen, you've heard all the evidence, it's time to start
16 your jury deliberation, do not even discuss your case among
17 yourselves. And the reason for that is I don't want you to
18 start thinking about this case until all the evidence is in.
19 It's not fair to both sides if you start thinking about how
20 you're going to vote before you've heard all the evidence.

21 So please -- now, you're going to have breaks during
22 jury service, you'll be back there. You may be on smoke
23 breaks, you'll have a lunch break. You can talk about your
24 family, your job, the weather, but until I tell you to
25 deliberate, you cannot talk about the case.

1 There is always the chance that this case may not go
2 forward. And it may be an attorney might get sick, a
3 witness might get sick, something could happen, so if you
4 don't mind, please call back after six o'clock tonight.
5 There's a very high percentage chance we'll all be back here
6 tomorrow for the trial, but I don't want anyone to show up
7 and find out there's no one here but you. So please call
8 the juror information number after six o'clock and we'll
9 have a message for you. More than likely, we will have the
10 trial, but you never know what can happen.

11 One other thing, the attorneys in this case are not
12 permitted to speak with you. So if you run into them in the
13 hallway, in the bathroom, at lunch and they don't talk to
14 you, they're not being rude, okay, they're not allowed to
15 speak with you. If you say hello to one of these attorneys
16 and they don't say hello back, I promise you they're not
17 being rude, they're just not allowed to speak with you.

18 Please try to be here on time. And finally, if there's
19 anything you need, speak to the bailiffs and they'll take
20 care of it, okay?

21 Ladies and gentlemen, do you have any questions?

22 (There was no response.)

23 THE COURT: Ms. Lawson is going to give you your juror
24 badge. And again, the reason for that is, everyone will see
25 that you're a juror and know not to talk to you.

1 Counsel, anything before we dismiss the jury for the
2 day?

3 MR. ANTHONY: No, sir.

4 THE COURT: Mr. Brown?

5 MR. BROWN: No, Your Honor.

6 THE COURT: What time tomorrow?

7 MR. ANTHONY: May we approach?

8 THE COURT: Certainly.

9 (WHEREUPON, a bench conference was held in the presence
10 of the jury, but outside the hearing of the jury.)

11 THE COURT: Ladies and gentlemen, you may have heard me
12 speaking with the lawyers there. We have pretrial matters
13 that I have to take up with the lawyers tomorrow morning.
14 So we'll get started at 9:30 tomorrow, but we're going to
15 ask y'all to be here at 10:30 tomorrow morning. That way,
16 you won't have to sit in the jury room while we do lawyer
17 stuff out here, okay?

18 Ms. Lawson will give you your juror badge. Please be
19 back here at 10:30 tomorrow morning. Ladies and gentlemen,
20 you're excused for the day.

21 Yes, sir.

22 THE JUROR: You just told us to call at six o'clock.

23 THE COURT: Yes, sir. Again, if you call at six
24 o'clock and it says the trial is off, then don't come back,
25 but --

1 THE JUROR: But still call?

2 THE COURT: Yes, sir, still call. It's just always a
3 chance, I get sick, the lawyers get sick, a witness gets
4 sick, there's a chance it could get postponed. It's
5 unlikely, but please call just to be sure. Otherwise, we'll
6 see you back at 10:30 in the morning. Thank you very much.

7 (WHEREUPON, the jury was excused for the day at 1:35
8 p.m.)

9 THE COURT: Counsel, anything we need to take up for
10 today?

11 MR. ANTHONY: No, sir, I don't believe so.

12 THE COURT: Mr. Brown?

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

14 THE COURT: Thank you, gentlemen. We'll see y'all at
15 9:30 tomorrow morning.

16 (WHEREUPON, court was adjourned for the day.)

17 TUESDAY, AUGUST 21, 2018

18 (WHEREUPON, State's Exhibit No. 1 was marked for
19 identification.)

20 THE COURT: Mr. Brown, I understand you have a motion.

21 MR. BROWN: Yes, Your Honor. At the outset of this
22 case, Your Honor, we understand it was a previous ruling in
23 regards to issues involved in this case. And I just want to
24 get that on the record.

25 THE COURT: Yes, sir. The stand your ground motion you

1 had made earlier was denied by written order that's on file
2 with the clerk's office.

3 MR. BROWN: Yes, sir.

4 Your Honor, I understand based upon the prosecution's
5 case, they may call one or more officers in regards to
6 statements that are alleged to have been made by my client.
7 Specifically, there's a video that relates to the initial
8 stop and the contact that my client had with law
9 enforcement. For that reason, we're asking that the Court
10 would entertain a Jackson V. Denno hearing relating to the
11 voluntary nature of any statements given.

12 THE COURT: Sure.

13 Yes, sir.

14 MR. ANTHONY: Your Honor, I would just ask one other
15 question. The roadside stop was initiated and conducted by
16 Investigator Ruby. I have him here. There was also a
17 statement made by the Defendant at the jail after he was
18 arrested for possession of marijuana and brought to the
19 jail. I'm prepared to go forward with a Denno hearing on
20 that as well.

21 I would just require of Defense counsel, do you want a
22 Denno hearing on that, too?

23 MR. BROWN: I would, Your Honor. Obviously, I have an
24 objection to both of their testimonies in a Jackson V.
25 Denno. But other than --

1 THE COURT: But Mr. Brown, the initial stop, it's not
2 custodial, right?

3 MR. BROWN: No, sir.

4 THE COURT: Okay. I mean, are you --

5 MR. ANTHONY: I mean, I'm prepared to go forward if he
6 wants to -- if he's asking for the hearing.

7 MR. BROWN: Because he is stopped, Your Honor, he's
8 under the presumption that law enforcement was detaining him
9 and matters were asked of him at that point. Because of
10 that, his presumption is that he cannot leave. He knows he
11 can't leave. Law enforcement is there. They've stopped him
12 and questions are beginning, obviously, as you'll see in the
13 video.

14 THE COURT: Mr. Brown, I'm new at this, but do you have
15 case law that an investigatory detention on the side of the
16 road is subject to the Jackson V. Denno analysis?

17 MR. BROWN: Your Honor, we would argue that's the crux
18 of Jackson V. Denno, in terms of anything that's being
19 offered against a defendant based upon statements given to
20 law enforcement and law enforcement has not gone through the
21 necessary requirements. Obviously, under our Constitution,
22 both U.S. and the State, but, in particular, matters that
23 will be held against him.

24 THE COURT: Mr. Brown, is your contention that if an
25 officer pulls somebody over for DUI, they've got to

1 Mirandize them before they ask them if they've had anything
2 to drink?

3 MR. BROWN: No, sir. But if you're being pulled over
4 in regards to a stop and information from that stop because
5 you are presumed to be in detention is being held against
6 you, such as this case, then, clearly, you must be apprised
7 of your rights.

8 THE COURT: Well, I'll hear from Mr. Anthony.

9 MR. ANTHONY: On the stop issue, we'll call
10 Investigator Ruby.

11 SCOTT RUBY, after being duly
12 sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. ANTHONY:

15 Q Would you state your name, please?

16 A Scott Ruby.

17 Q And Mr. Ruby, how are you employed?

18 A I'm an investigator with the Union Sheriff's Office.

19 Q And how long have you been an investigator?

20 A About a year and a half.

21 Q And before that, what -- were you employed with the
22 sheriff's office before that?

23 A Yes, sir. I was the shift supervisor on the night
24 shift on the patrol division.

25 Q And were you working in that capacity in August of

1 2016?

2 A Yes, sir.

3 Q And specifically, were you working on August 28th of
4 2016?

5 A Yes, sir.

6 Q Did you respond to a call on Monro Street?

7 A I did.

8 Q And when you -- well, approximately what time did you
9 go out to Monro Street?

10 A About 9:30, 9:35, I think, p.m.

11 Q And when you got to Monro Street, what did you observe?

12 A When I got there, there was a civilian car parked in
13 the middle of the road. I later determined that was the
14 actual caller to 911. And there was a black male lying in
15 the road in front of her car with obvious injuries.

16 Q And were you -- did you approach the man lying in the
17 road?

18 A I did. I tried to ascertain his injuries. Initially,
19 it was kind of hard to tell. I did have conversation with
20 him in the next few minutes trying to figure out what
21 happened to him, where was he at, who did it to him.

22 Q And what was the man's name?

23 A Elizawon Gray.

24 Q And did Mr. Gray give you any information concerning
25 who had shot him?

1 A Yes, sir. He said a man in a black PT Cruiser, and
2 later, he described him as a young man with short dreads.

3 Q And after that -- you said it was a black PT Cruiser?

4 A Yes, sir.

5 Q And after that, did the sheriff's office personnel make
6 any efforts to try to secure the scene of the shooting?

7 A Yes, sir, I maintained the scene at all times.

8 Q And what was done in particular to the section of Monroe
9 Street where the shooting had occurred?

10 A We had it blocked off at the intersection of Siam
11 Street and down below it.

12 Q Where Monroe Street and Siam Street intersect, a few
13 minutes after you had located the body, did anything come to
14 your attention?

15 A I don't understand the question.

16 Q Up there at the intersection, did any particular
17 vehicle --

18 A Oh, yes, sir.

19 Q Was your attention drawn to any particular vehicle?

20 A Yes, sir. Investigator Childers had said hey, there's
21 a black PT Cruiser here at the stop sign with a black male
22 in it with short dreads.

23 Q And so how was that -- what did you -- why did you have
24 an interest in that particular vehicle?

25 A That matched the description that the victim had just

1 given us a few minutes prior to. Not positive
2 identification by no means, but definitely something we
3 wanted to look at.

4 Q And so what did you do in regards to the car and the
5 driver of the car?

6 A I approached the driver's window. There was only one
7 person in it, Mr. Thomas. And as soon as I approached the
8 car, the overwhelming smell of marijuana was just coming
9 through the open window.

10 I talked to Mr. Thomas for a few minutes, asked him
11 where he had been. I asked him for his driver's license. I
12 asked him about marijuana and he said, Yeah, it's right
13 here. And he freely handed me some and showed me where the
14 rest was. I asked him to step out of the car. And I looked
15 inside the car, not a full search, I'm looking in it and I
16 could see marijuana over everything, covering every surface
17 of the car, virtually every surface.

18 And I decided to place him under arrest right then.
19 And I hadn't asked him about the shooting or the incident at
20 that time. I just asked him where he had been.

21 Q All right. And after that, you placed him under
22 arrest. What was the interaction with him then? Where was
23 he taken?

24 A Say that one more time.

25 Q Where was he taken after that?

1 A He was taken to the Union County jail from that
2 incident scene from his car.

3 Q And did you have any more conversation with him after
4 he was taken to the Union County jail?

5 A No, sir.

6 Q And did you have any kind of device on your person that
7 night that captured the full extent of your interaction with
8 Mr. Thomas?

9 A Yes, sir. My body worn camera was activated.

10 (WHEREUPON, State's Exhibit No. 2 was marked for
11 identification.)

12 BY MR. ANTHONY:

13 Q I'm going to show you what's been marked for
14 identification as State's Exhibit No. 2. I'd ask if you can
15 identify that DVD I've handed up?

16 A Yes, sir, that's my body worn camera from that
17 incident.

18 Q Okay. And how do you know this DVD contains that
19 footage?

20 A I just watched it a few minutes ago.

21 Q Okay. And did you do anything to confirm that you had
22 seen it?

23 A Yes, sir. I put my initials and today's date on it,
24 yes, sir.

25 MR. ANTHONY: Your Honor, we ask to introduce the body

1 cam --

2 BY MR. ANTHONY:

3 Q Well, let me ask you this. That body cam video, does
4 it capture the full extent of your conversation and
5 interaction with Mr. Thomas on August 28th?

6 A Yes, sir.

7 MR. ANTHONY: We'd ask to introduce this for the
8 purpose of the hearing.

9 THE COURT: Any objection?

10 MR. BROWN: No objection.

11 THE COURT: Without objection.

12 (WHEREUPON, State's Exhibit No. 2 was admitted into
13 evidence.)

14 THE COURT: Mr. Brown, are you objecting to the
15 entirety of the conversation on the video? What part of it
16 do you contend is involuntary?

17 MR. BROWN: Your Honor, I would obviously have to see
18 the conversation. I can only anticipate the prosecution is
19 going to argue an omission based upon a question that came
20 from Mr. Ruby comes into this case based upon the gun that
21 was located in the vehicle.

22 THE COURT: You can tell me after we watch the video.

23 MR. BROWN: Yes, sir.

24 (WHEREUPON, video was played for the Court.)

25 BY MR. ANTHONY:

1 Q Now, is that the entirety of your interaction with Mr.
2 Thomas that night?

3 A Yes, sir.

4 MR. ANTHONY: Okay. That's everything on direct.

5 THE COURT: Mr. Brown.

6 MR. BROWN: Your Honor, after hearing the tape, the
7 footage from the body camera, it's clear that the officer
8 began to go into matters that are associated with this case
9 beyond the stop, beyond the marijuana. After he was
10 handcuffed, he specifically asked him do you have anything
11 illegal in this vehicle, guns, drugs? Specific question
12 was, Where is the gun? From there, Mr. Thomas provided a
13 response. He didn't provide any information that anything
14 you will say at this point because you are being detained
15 will be used against you, anything that could relate to any
16 charges that could be brought by law enforcement. He wasn't
17 apprised of his rights, but here we are. This is a crucial
18 element in this case that's obviously being used against Mr.
19 Thomas as a portion of this case.

20 MR. ANTHONY: Just to clear this up, I just played what
21 I thought was in context. There's a place in the video at
22 three and a half minutes where Sergeant Ruby -- or
23 Investigator Ruby, after he looks through the car, he tells
24 Mr. Thomas to put your hands behind his back, you're going
25 to be charged.

1 All I would ask to do is play the tape up to that point
2 and I would just stop. I don't think there's really any
3 probative value to it after that. So it would not be the
4 State's position that we would need to show anything after
5 three minutes and 30 seconds.

6 THE COURT: Mr. Brown, do you want to make an argument?
7 The State has stated they're not going to introduce anything
8 subsequent to them putting your client under arrest. Do you
9 want to make any argument prior to that point?

10 MR. BROWN: In regards to that, prior to that, there
11 was a discussion about, you know, did he have anything else
12 in the car. That's clearly --

13 THE COURT: Yes, sir. But my understanding of Miranda
14 is Miranda applies to custodial arrest, so -- if you have
15 case -- I'm new at this. If you have case law that tells me
16 I'm wrong, but, I mean, until he's under arrest, the officer
17 can ask him questions, can't he?

18 MR. BROWN: He can ask him questions, but anything that
19 will be used later on against him based upon the statements
20 he's making, Your Honor, that's the argument. The stop
21 itself presents detention in itself, Your Honor.

22 THE COURT: Right, but not custodial arrest. Isn't
23 custodial arrest the factor that implicates Miranda?

24 MR. BROWN: Custodial arrest and detention, Your Honor,
25 that's our argument. Based upon the stop and the fact that

1 he knew he just couldn't pull off from law enforcement after
2 he's been engaged by law enforcement and questions are being
3 asked.

4 THE COURT: Mr. Brown, do you have any case law that
5 holds that someone has to be Mirandized before they can be
6 questioned during an investigatory detention?

7 MR. BROWN: Your Honor, I'm relying -- first of all,
8 Jackson V. Denno.

9 THE COURT: Okay. But again, my understanding of
10 Jackson V. Denno is it applies to the confessions made after
11 arrest. Now, I could be wrong. If you've got case law
12 showing me that it applies to someone who's been pulled over
13 on the side of the road and the officer is just talking with
14 them, I mean, I'll be happy to hear from you.

15 MR. BROWN: Your Honor, based upon the standards of
16 Jackson V. Denno, it's the State's requirement that based
17 upon -- if you're looking at burden of proof, number one,
18 based upon this being a detention, he wasn't apprised of his
19 rights. He didn't understand his rights that the statements
20 that would come in and be used against him. At some point,
21 he did provide them directly to law enforcement.

22 Again, I know it's the Court's -- in your purview by a
23 preponderance of the evidence at the time to take a look at
24 that, but, Your Honor, there are certain rights that have to
25 be invoked if a person is being detained by law enforcement,

1 which is our argument. I know the Court is saying because
2 he wasn't formerly placed under arrest. It's going to be
3 our argument pursuant to Jackson V. Denno that any
4 detention, any inability of him to simply say I don't want
5 to have a conversation with you, I'm going to walk away or
6 drive away, that wasn't what occurred. There was an
7 invoking of marijuana --

8 THE COURT: Well, Mr. Brown, there is a line of cases
9 with Miranda -- I mean, some cases it's tough to make the
10 decision exactly when the person is under arrest or not
11 free, you know, but in this case, it's kind of a routine
12 traffic stop, isn't it, that last less than four minutes
13 before he's put under arrest?

14 MR. BROWN: And I'm not arguing that, Your Honor. It
15 can be a routine traffic stop, but any information garnished
16 from that that will be used subsequent to that stop, he has
17 a right to be apprised of it.

18 THE COURT: I'm going to rule that's admissible. That
19 prior to the point your client is put under arrest, I don't
20 see any issue with the voluntariness of any statement and I
21 don't think Miranda applies.

22 MR. BROWN: Okay.

23 THE COURT: Do you want to move on to the second video?

24 MR. ANTHONY: Well, I don't have another video. I do
25 have a witness.

1 THE COURT: Oh, I'm sorry.

2 MR. ANTHONY: We call Mr. McNeil.

3 JAMES MCNEIL, after being duly
4 sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. ANTHONY:

7 Q Would you state your name, please?

8 A James McNeil.

9 Q And Mr. McNeil, I'm going to take you back down to
10 August of 2016. How were you employed at that time?

11 A I was employed with the Union County Sheriff's Office.

12 Q And what was your position then?

13 A I was the captain of investigations.

14 Q And what have you done since then in regards to
15 employment with the sheriff's office?

16 A November the 11th of 2016, I retired from law
17 enforcement.

18 Q And do you still have any kind of role in law
19 enforcement or role here in the courthouse?

20 A I do. I'm a reserve deputy and, also, I do courtroom
21 security.

22 Q How long did you serve as the investigations captain at
23 the sheriff's office?

24 A Approximately eight years.

25 Q And how long altogether were you in law enforcement?

1 A Twenty-eight years.

2 Q And were you working in your capacity as the
3 investigations captain back on August 28th of 2016?

4 A I was.

5 Q And did you see the Defendant in this case, Mr. Thomas,
6 on that day?

7 A I did.

8 Q And how did you come to see Mr. Thomas?

9 A I received a call -- I was at home. I received a call
10 by Sheriff Taylor that we had a shooting there on Monro
11 Street and he advised me to contact State Law Enforcement.

12 Q Okay. And then what else were you asked to do in
13 regards to Mr. Thomas?

14 A I contacted the investigator on call, which was Wendy
15 Childers, and got the information from her of the location
16 where I needed to contact State Law Enforcement. Once I
17 done that, it took a while, I was at home taking care of
18 that business.

19 Once I responded, I received a call from her stating
20 that a person was arrested and I needed to go to the jail at
21 that time to conduct a gunshot residue kit and, also, an
22 interview.

23 Q Okay. And the person arrested, that was Mr. Thomas?

24 A It was.

25 Q And did you know Mr. Thomas?

1 A I did.

2 Q How did you know Mr. Thomas?

3 A Mr. Thomas and my son actually played baseball and
4 football together.

5 Q So when you went to the jail -- before you went there
6 and while you were going there, did you ask anybody to join
7 you up there at the jail?

8 A I did. I called for Investigator Jermaine Smith to
9 meet me there.

10 Q And what happened when you got to the jail in regards
11 to talk to Mr. Thomas?

12 A Myself and Investigator Smith went inside. I advised
13 him why I was there. We did a Miranda warning --

14 Q Just to back up for a minute. Where did you talk to
15 him at in the jail?

16 A It was actually the training room in the Union County
17 jail.

18 Q Okay. And it was three of you in there?

19 A That's correct.

20 Q Okay. And who was, basically, the lead person talking
21 to him?

22 A I was.

23 Q And how did you start the conversation with him?

24 A I advised Najm why I was there. He was nervous at the
25 time. I advised him that he was a suspect involved in a

1 shooting. At that time, I read him his Miranda warning.

2 Q And did you use any kind of document to give him the
3 warning?

4 A I did.

5 Q And what type of document did you use?

6 A It's the Miranda warning that's issued by the sheriff's
7 office.

8 Q I'm going to show you a document that's been marked as
9 State's Exhibit No. 1 for identification. I'd ask if you
10 recognize that.

11 A I do.

12 Q And what is that?

13 A It's a Miranda warning that advises you of your rights
14 that we used at the Union County Sheriff's Office at that
15 time.

16 Q And what rights specifically did you advise Mr. Thomas
17 of at that time? Just use the form to tell the Judge that.

18 A It's my normal practice, I put the person's name of who
19 I'm interviewing at the top and the location, the date and
20 the time. And I start off at the first question. You want
21 me to read it?

22 Q Yes, if you would, just read it into the record.

23 A Before we ask you any questions, you must understand
24 your rights. Second question, you have the right to remain
25 silent. Third, anything you say can be used against you in

1 court. Fourth, you have the right to talk to a lawyer for
2 advice before you answer any questions and have the right --
3 and have him with you during questioning. Fifth, if you
4 cannot afford a lawyer, one will be appointed for you before
5 any questioning if you wish. Fifth [sic], if you decide to
6 answer questions without a lawyer present, you will still
7 have the right to stop answering questions at any time until
8 you talk to a lawyer.

9 Q So after you read those rights at the top of the form,
10 did you go through anything else that is on the form?

11 A I did. When I talked with him, I told him if he didn't
12 understand any of these questions that I would do my best to
13 explain it to him. At the bottom of the paper, the sheet is
14 a waiver of rights and I read the waiver to him.

15 The waiver states: I have read this statement of my
16 rights and I understand what my rights are. I'm willing to
17 make a statement and answer questions. I do not want a
18 lawyer at this time. I understand and know what I'm doing.
19 No promises or threats have been made to me. No pressure or
20 coercion of any kind has been used against me.

21 Q So once you read him that waiver, what did you ask him
22 to do or what did you say to him?

23 A I asked him did he agree to talk to us about the
24 incident and he said he did and he signed it.

25 Q And then what did you do to acknowledge his signature?

1 A I actually witnessed his signature and, also, Detective
2 Smith witnessed his signature.

3 Q Okay. And did he ever indicate to you that he did not
4 understand the rights you were advising him of?

5 A He never acknowledged that he didn't understand.

6 Q Did he say that he specifically did understand?

7 A He said he understood.

8 Q And did he, in your opinion, appear to understand what
9 you were telling him at that time?

10 A He did.

11 Q Did he ever ask for a lawyer?

12 A No, sir.

13 Q And so after you started talking to him, approximately
14 -- how did the conversation go once he agreed to talk to
15 you?

16 A It was -- he was very nervous. We talked to him
17 approximately two hours that night. It was slow. I advised
18 him that he was a suspect involved in a shooting. Najm
19 stated that he didn't shoot anyone. At that time, I talked
20 to him about the gunshot residue kit and I advised him that
21 if he wasn't involved, the kit would actually rule him out
22 or rule him in. And he agreed to submit to the test.

23 Q So did you go through the process and take a gunshot
24 residue kit from him there at the jail?

25 A I did. I explained to him the procedure and the

1 process that it would take.

2 Q And did you collect any other evidence from him?

3 A I did. I collected a buccal swab. A buccal swab is
4 the swabbing of the inside of the mouth for DNA purposes.

5 Q Okay. And then you said Mr. Thomas told you he wasn't
6 involved in a shooting. Did he tell you -- give you any
7 information about any firearms he might possess?

8 A He did.

9 Q What did he tell you?

10 A He stated that he had a gun in his room at his parents'
11 house.

12 Q And once you were told that, what did you do?

13 A After we collected the gunshot residue and the buccal
14 swab, it was approximately two hours, we left the jail.
15 Myself and Investigator Smith went to his parents' house,
16 talked with them, advised them why we was there. They gave
17 us verbal consent. His mother was upset that possibly a gun
18 was in the residence. His father went to his room and
19 retrieved a pillowcase and Investigator Smith retrieved the
20 gun from that pillowcase.

21 Q And just going back to your conversation with Mr.
22 Thomas, was there ever any written statement taken from him
23 that night?

24 A No, it wasn't. And the reason for that, Najm stated
25 that he would not give a written statement.

1 Q And did you or Investigator Smith ever make any kind of
2 promises to him or any kind of threats towards him about in
3 order to induce him to talk?

4 A No.

5 MR. ANTHONY: Thank you. That's everything on direct.

6 THE COURT: Thank you, sir.

7 Mr. Brown.

8 CROSS-EXAMINATION

9 BY MR. BROWN:

10 Q Did you have a chance to talk with Investigator Ruby
11 before you met with Najm?

12 A No, sir.

13 Q How did Mr. Thomas appear when you were talking with
14 him?

15 A He was nervous. It took him a while to talk to us, but
16 he was nervous, possibly scared.

17 Q You say it took him a while, what was going on while
18 you were waiting?

19 A We would talk to him and, all of a sudden, he would
20 just get quiet, just wouldn't respond.

21 Q Did you know of anything that was going on with him at
22 that point?

23 A No.

24 Q How was he dressed?

25 A I can't recall how he was dressed.

1 Q He wasn't dressed out in a county uniform, was he?

2 A I can't recall. I can't recall.

3 Q Did you smell him?

4 A Yeah.

5 Q What did he smell like?

6 A He smelt like himself. I didn't smell any marijuana or
7 anything if that's what you getting at. No, I didn't smell
8 anything.

9 Q Did you ask him had he been smoking marijuana?

10 A I did not.

11 Q Did he appear to be glassed over?

12 A When we first started talking to him, to me, it
13 appeared that he was nervous, he was scared.

14 Q But mentally, you can't say what was going on?

15 A No.

16 Q Physically, you can't say what was going on?

17 A No.

18 Q Do you know if he was under the influence of marijuana?

19 A I couldn't tell you.

20 Q But you did question him?

21 A Yes, sir.

22 Q Did you videotape it?

23 A No, sir. At that time, the room that we was in didn't
24 have video.

25 Q Did you produce a report from your conversation with

1 Mr. Thomas?

2 A I did do a supplemental report to the initial report.

3 Q And in regards to that, did you say in that report that
4 he admitted to the shooting or he only discussed a gun that
5 was found in his parents' home?

6 A He only discussed the gun that was found.

7 Q Was there other reports taken by the other two
8 individuals that were with you?

9 A I'm not sure.

10 Q And there was no other documentation of your interview
11 with him?

12 A No, sir.

13 Q No videos?

14 A No, sir.

15 Q Based upon the form that you presented -- how long have
16 you been in law enforcement?

17 A Twenty-eight years.

18 Q Based upon the form that you presented to Mr. Thomas,
19 did you ask him specifically of his educational background?

20 A No, I did not.

21 Q Did you ask could he read?

22 A No, I did not.

23 Q Did you ask has he ever been in a situation like this
24 in terms of being interrogated by the police?

25 A No, I did not.

1 Q Is it your practice typically to have a form that has
2 two different parts on it and only have a defendant sign one
3 part of it based upon your over 20 years of experience?

4 A My practice is, basically, the form that we have here.

5 Q Okay. My specific question is, there's two different
6 elements to this form, your interrogation and advice of
7 rights?

8 A Uh-huh.

9 Q Is it your practice, as you're saying, based upon your
10 years in law enforcement, is to only have the person being
11 interviewed sign just where it says waiver of rights?

12 A Yes, sir.

13 Q In your 20 plus years of law enforcement, have you ever
14 asked the person to initial or sign beside each one of the
15 questions that you go through?

16 A I certainly have.

17 Q Would you disagree with me or would you agree with me
18 that in the majority of the type of interrogations that
19 you've done, you would have the person initial beside the
20 questions that you would ask?

21 A That's correct.

22 Q My question to you is what was different in this
23 situation that you didn't have Mr. Thomas do that?

24 A In the form that -- at the previous law enforcement
25 agency I worked at, they had a line by each one of these

1 questions and you get them to initial those lines. When I
2 came to work here in Union, this form was used and it didn't
3 have the lines. This is what we use here.

4 Q So is it the lines that would dictate the need for a
5 person to initial beside that or would it be the nature of
6 the questions that you would ask a person to have them
7 initial to show that they understood or, at least, having
8 been asked those questions?

9 A Well, I asked him after each question did he understand
10 it. That if he didn't, to let me know and I would try as
11 best to answer it for him.

12 Q My specific question to you is by having a line beside
13 those questions, is that what would generate you to have a
14 person to initial it? If you didn't have that line, then
15 you wouldn't ask the person to initial beside it?

16 A That's correct. When I came here, I did not. I did
17 not ask them to initial it.

18 Q But this was in recent times in terms of your
19 experience in law enforcement?

20 A Right.

21 Q This was in recent times based upon your practice --
22 you had done in numerous interviews?

23 A Very many.

24 Q And the majority of your interviews were where you
25 would have a person to initial beside the question?

1 A That's correct.

2 Q That wasn't done in this case?

3 A That wasn't done in this case, no, not at this
4 interview.

5 Q What is the purpose of having a person to initial
6 beside those specific questions you ask?

7 A To let the officer know they understand those
8 questions.

9 Q And also to memorialize the fact that the person --
10 specifically, to show you have proof?

11 A That's correct.

12 Q But that hasn't been provided?

13 A No, sir, not on this one.

14 MR. BROWN: Thank you.

15 THE COURT: Any redirect?

16 REDIRECT EXAMINATION

17 BY MR. ANTHONY:

18 Q You actually -- just before y'all left the jail, you
19 and Investigator Smith, you actually secured his clothes; is
20 that correct?

21 A That's correct.

22 Q So thinking back on that, do you recall what he was
23 wearing?

24 A It had to be in the jumpsuit that they provide them at
25 the jail.

1 Q He wasn't wearing his clothes because y'all collected
2 them?

3 A Yeah, we collected the clothes when we left the jail.

4 MR. ANTHONY: That's all on redirect.

5 THE COURT: Any recross?

6 MR. BROWN: No, sir.

7 THE COURT: Thank you, sir. You may step down.

8 MR. ANTHONY: That's our proffer.

9 THE COURT: Any witnesses, Mr. Brown?

10 MR. BROWN: Your Honor, for the purposes of this
11 hearing, I would call Mr. Thomas.

12 THE COURT: Okay.

13 NAJM THOMAS, after being duly
14 sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. BROWN:

17 Q State your name.

18 A Najm Thomas.

19 Q Mr. Thomas, you've been present for the testimony of
20 the two officers?

21 A Yes, sir.

22 Q You heard what they had to say?

23 A Yes, sir.

24 Q I want to ask you about the first conversation that the
25 prosecutor had with Investigator Ruby. You do recall being

1 pulled over on that night?

2 A Yes, sir.

3 Q Did he ever ask do you understand the nature of my
4 questions?

5 A No, sir.

6 Q Did he ever provide you with any kind of statement
7 about any rights that you would have by talking to him?

8 A No, sir.

9 Q Based upon you being on the side of that road, did you
10 feel like you could just drive off at any point?

11 A No, sir.

12 Q Did you feel like you had to, at that point, talk to
13 law enforcement?

14 A Yes, sir.

15 Q Based upon the questions he was asking you?

16 A Yes, sir.

17 Q Did he ever tell you that anything that you say to him
18 would be used against you at a later date?

19 A No, sir.

20 Q At some point, he did place you under arrest?

21 A Yes, sir.

22 MR. BROWN: That's all the questions in regards to
23 this.

24 THE COURT: Including about the second statement?

25 MR. BROWN: No, Your Honor. I didn't know if you

1 wanted to bifurcate or I could ask him about both.

2 THE COURT: Well, I think you should because we've
3 already heard from the witness on the second statement.

4 BY MR. BROWN:

5 Q In regards to the second gentleman --

6 A Can you repeat that?

7 Q In regards to the second gentleman that testified,
8 sitting over there with the bowtie, do you know him?

9 A Yes, sir.

10 Q What's his name?

11 A Mr. McNeill.

12 Q You've heard him testify about knowing you?

13 A Yes, sir.

14 Q You went to school with his son?

15 A Yes, sir.

16 Q At some point after your arrest on that evening, you
17 were at the detention facility?

18 A Yes, sir.

19 Q Did he come see you?

20 A Yes, sir.

21 Q Did he bring anyone else with him?

22 A Yes, sir.

23 Q He testified there was two other people with him?

24 A Yes, sir.

25 Q Do you recall that?

1 A No, sir.

2 Q Well, let me ask you this, based upon the video that
3 you saw, that stop that occurred was, obviously, prior to
4 you going to the county detention facility?

5 A Yes, sir.

6 Q Had you been smoking?

7 A Yes, sir.

8 Q What had you been smoking?

9 A Marijuana.

10 Q At the time of your interview with Mr. McNeil, did he
11 ask you any questions about any drug use?

12 A No, sir.

13 Q Did he ask you specifically questions of were you under
14 the influence of anything?

15 A I don't recall.

16 Q You've heard him testify as to the form that was
17 provided that talked about your rights? You did hear him
18 say that in court?

19 A Yes, sir.

20 Q Let me show you State's Exhibit No. 1. Is that your
21 signature?

22 A Yes, sir.

23 Q Do you recall signing this?

24 A Yes, sir.

25 Q Listed on this sheet is a number of questions that the

1 investigator said he would have gone over with you. Do you
2 recall him asking about your rights on that evening?

3 A No, sir.

4 Q Do you recall him telling you that I'm going to go
5 through these rights and after I go through your rights, I
6 want you to sign this paper?

7 A No, sir.

8 Q Did he tell you that you were being interviewed because
9 of a shooting?

10 A Yes, sir.

11 Q Did you feel in regards to that that you were being
12 interviewed is the reason why you had to sign?

13 A Yes, sir.

14 Q Did he ask you your level of education?

15 A No, sir.

16 Q Did he ask you could you read clearly?

17 A No, sir.

18 Q Did he ask you if you had any kind of experience with
19 law enforcement with these type of questions?

20 A No, sir.

21 Q Did he advise you that you could get some help with
22 someone that may understand the nature of the questions as
23 you recall that evening?

24 A I don't recall that.

25 Q So you don't recall him going over these rights with

1 you that are listed on this page as you heard him testify?
2 The page he testified to, you don't recall him talking with
3 you about that?

4 A No, sir.

5 Q At some point, he asked you about a gun. You did tell
6 him there was a gun at your parents' house, though, right?

7 A Yes, sir.

8 Q And you did provide a swab, as he said?

9 A Yes, sir.

10 Q But in regards to any -- of him going through a list of
11 the rights, you just don't recall it?

12 A No, sir.

13 Q Did you initial any of these rights or indicate that
14 you had read them and understood them?

15 A No, sir.

16 MR. BROWN: That's all the questions I have.

17 THE COURT: Mr. Anthony.

18 CROSS-EXAMINATION

19 BY MR. ANTHONY:

20 Q Mr. Thomas, you knew that night at the jail that they
21 were going to talk to you, right?

22 A Would you say that again?

23 Q You knew they wanted to talk with you, correct?

24 A Yes, sir.

25 Q Okay. And they told you that you didn't have to talk

1 to them; is that right?

2 A Yes, sir.

3 Q And you understood you didn't have to talk with them if
4 you didn't want to, correct?

5 A Yes, sir.

6 Q Okay. And you understood you could have told them you
7 wanted a lawyer, correct?

8 A At the time, no, I did not.

9 Q So you did not understand that you could have a lawyer?

10 A Yes, sir.

11 Q Okay. So you understood that you had the right that
12 you didn't have to talk to them if you didn't want to,
13 correct?

14 A Yes, sir.

15 Q And you went ahead and talked to them anyway?

16 A Yes, sir.

17 Q And you told them that you didn't shoot anybody?

18 A I don't recall that.

19 Q You don't remember what you told them?

20 A No, sir.

21 Q All right. Well, you remember telling them about this
22 gun at your house?

23 A Yes, sir.

24 Q So you told them there was a gun at your house?

25 A Yes, sir.

1 Q And they didn't make you tell them that?

2 A No, sir.

3 Q And they didn't promise you or threaten you to get you
4 to tell them that?

5 A No, sir.

6 Q I mean, you knew what you were talking about and during
7 the conversation, you told them you had a gun at your house,
8 right?

9 A Yes, sir.

10 Q And they asked you to write something down and you
11 didn't want to write a statement; is that correct?

12 A Could you repeat that?

13 Q You didn't want to write down anything that you had to
14 say to them that night; is that correct?

15 A No, sir -- I mean, yes, sir.

16 Q So you knew enough about what was going on to decide
17 that you were going to talk to them and speak to them, but
18 not write anything down?

19 A Could you repeat that question again?

20 Q You understood enough about what was going on to make a
21 decision that you were going to talk to the investigators,
22 but not to write anything for the investigators; isn't that
23 right?

24 A I don't understand that question.

25 Q Well, you decided not to write anything, correct?

1 A Yes, sir.

2 Q But you decided to talk, correct?

3 A Yes, sir.

4 Q So you knew enough to know that you were entitled to
5 not to have to write anything, they couldn't make you write
6 anything; isn't that right?

7 A Yes, sir.

8 MR. ANTHONY: That's everything I have.

9 THE COURT: Thank you, Mr. Anthony.

10 Anything else, Mr. Brown?

11 REDIRECT EXAMINATION

12 BY MR. BROWN:

13 Q He's asking you questions that you're agreeing with.
14 Do you write well?

15 A Somewhat.

16 Q Did they give you a piece of paper and put it in front
17 of you and tell you to write something?

18 A Yes, sir.

19 Q And you didn't want to give a statement?

20 A No, sir.

21 Q Again, in terms of this type of situation, you haven't
22 been in this kind of situation before?

23 A No, sir.

24 Q Having to explain yourself to law enforcement?

25 A No, sir.

1 Q Being interrogated?

2 A No, sir.

3 Q And you didn't have questions explained to you that you
4 understood?

5 A No, sir.

6 Q In terms of your rights?

7 A Yes, sir.

8 Q Would you have wanted a lawyer there or someone that
9 could have explained something to you about the proceeding?

10 A Yes, sir.

11 Q But as you recall, they didn't ask you those questions?

12 A No, sir.

13 Q Three people?

14 A No, sir.

15 Q And you were nervous?

16 A Yes, sir.

17 Q And they waited on you to say something?

18 A Yes, sir.

19 Q Time passed and they were just sitting there waiting on
20 you to talk?

21 A Yes, sir.

22 Q So at some point, did you feel like you had to say
23 something to them because they didn't leave the room?

24 A Yes, sir.

25 Q So they were just waiting on you to talk and time

1 passed by?

2 A Yes, sir.

3 Q And you didn't provide a written statement?

4 A No, sir.

5 MR. BROWN: That's all the questions I have.

6 THE COURT: Any recross?

7 RECROSS-EXAMINATION

8 BY MR. ANTHONY:

9 Q Are you sure there were three people in the room?

10 A It was two people.

11 Q Two people?

12 A It was three people in the room, me and two
13 investigators.

14 MR. ANTHONY: All right. That's everything.

15 THE COURT: Mr. Brown.

16 MR. BROWN: No other witnesses, Your Honor.

17 THE COURT: Mr. Thomas, you may step down and go back
18 to counsel table.

19 Mr. Brown, argument?

20 MR. BROWN: Obviously, it would be the Defense's
21 position that based upon the two separate time periods of my
22 client being either interviewed or questioned by law
23 enforcement at the stop, as I said to the Court, we do think
24 that under Jackson V. Denno, the entire purpose, while it
25 may not have been an actual arrest, it is a stop,

1 nevertheless. He's deemed to be in custody at that point,
2 but anything that he said, he should have had the
3 opportunity to be advised that he had certain rights that
4 would be protected if he chose to give them up. At the time
5 period, he did engage in law enforcement, made some
6 statements, obviously, that are presumably going to be used
7 against him.

8 Second, as it relates to the interview at the detention
9 facility, clearly, Mr. Thomas states that he doesn't recall
10 the kind of questions that were being asked of him. I
11 understand that the assistant solicitor is trying to bolster
12 the nature of the interview by the questions he's asked of
13 Mr. Thomas. You could just see if I asked him something,
14 the assistant solicitor would ask him something based upon
15 the questions, he may not clearly understand what was being
16 asked of him from the State, from the prosecutor, but
17 particularly, with his interview that he had at the
18 detention facility.

19 You heard from a well-seasoned law enforcement official
20 that said in his practice, the majority of investigations
21 he's personally done involved a person simply signing off
22 showing they were apprised of their rights. Your Honor,
23 that's customary. Particularly, in this particular
24 practice, it's customary. You've seen with law enforcement
25 with the kind of questions that are being asked for this

1 very reason, Your Honor, so a person can show that, at
2 least, they were given their rights and they understood at
3 the time what was being questioned.

4 Mr. Thomas admitted that he signed the form based upon
5 the fact that he was being interviewed, but in terms of
6 demarcating each and every line as it relates to his rights,
7 there's no indication there, Your Honor.

8 For that matter and with the confusion that clearly he
9 shows and has presented to this Court, we would ask the
10 Court not allow anyone to come in and say he had a
11 conversation with Mr. Thomas and based upon that
12 conversation, he made some type of admission or gave any
13 information that relates to a gun that was not used in the
14 commission of what's being alleged, Your Honor.

15 The collateral issue, clearly, is the fact that based
16 upon the video, the passage of time and what we've heard by
17 way of testimony thus far, clearly, Mr. Thomas was smoking
18 something, marijuana was the indication. Being under the
19 influence of some type of narcotic while being interviewed
20 by law enforcement, whether it's from the stop itself,
21 clearly, time has passed and he's at the detention facility
22 to provide that information under the influence, Your Honor,
23 clearly, I would represent to the Court, I'm not a doctor,
24 we haven't heard from anyone thus far, but clearly, that
25 would provide some cognitive challenges in terms of his

1 interaction with law enforcement, so I think that would be
2 compromised.

3 For those reasons, Your Honor, anything that's going to
4 be presented that's going to be held against him by way of
5 statement, I would ask the Court to suppress it.

6 THE COURT: Thank you, Mr. Brown.

7 Mr. Anthony.

8 MR. ANTHONY: Well, as to the stop on the roadside, the
9 police had probable cause -- had a reasonable suspicion to
10 make the stop on the Cruiser, the vehicle matching the
11 description of the vehicle that was given out as a suspect
12 vehicle from the shooting. And Sergeant Ruby, Investigator
13 Ruby was well within his rights to stop the vehicle and
14 start talking to Mr. Thomas. Once he smelt marijuana on Mr.
15 Thomas, he had probable cause to make a search of the
16 vehicle.

17 And as I told the Court, the only thing we're trying to
18 introduce into evidence is the interaction between Sergeant
19 Ruby and Mr. Thomas up until the time Investigator Ruby
20 placed him under arrest. And there is no rule that you have
21 to Mirandize people when you're making an investigative
22 detention pursuant to reasonable suspicion, which is what
23 this was up until the time of arrest. So all those
24 statements up until that time should come in and be
25 considered by the jury.

1 As to the statement to Captain McNeil, I would argue
2 the best evidence that Mr. Thomas gave a knowing and
3 voluntary intelligent waiver really comes from Mr. Thomas.
4 I mean, he testified that he knew he didn't have to answer
5 questions and he didn't have to talk to them and he
6 controlled the interrogation. He did not give them a
7 written statement. He testified well, they wanted me to,
8 but I didn't. That clearly demonstrates that he knew what
9 was going on, that he was making his own decisions about
10 whether he wanted to talk to them or not. And once he
11 decided to talk to them, he decided the means and the type
12 of conversation he would have, he controlled that.

13 So we think, certainly, from Captain McNeil's testimony
14 that he gave Mr. Thomas his warnings, that he didn't make
15 any promises or any threats to Mr. Thomas, that it appeared
16 to him that Mr. Thomas knew what was going on. And then
17 from Mr. Thomas' testimony, which, basically, just verifies
18 that from his own testimony about his perception of what
19 happened that night, we don't think there's any reason that
20 Mr. Thomas' statements there at the jail that night to
21 Captain McNeil should be suppressed.

22 THE COURT: Mr. Brown, anything in reply?

23 MR. BROWN: Just briefly, Your Honor. Based upon the
24 testimony that Mr. Thomas offered, I don't think I ever
25 heard him say that he -- in regards to the shooting itself,

1 Your Honor.

2 THE COURT: I'm not sure I follow you.

3 MR. BROWN: Just in regards to that issue, I never
4 heard an admission that he denied there had been a shooting.
5 I think that was alluded to based upon what the officer
6 testified, but Mr. Thomas -- based upon my questions, I
7 think the followup, in particular, was the fact that he did
8 admit there was a gun at his parents' house. I haven't
9 heard anything about the shooting itself.

10 THE COURT: Well, my recollection of the investigator's
11 testimony was that he denied any involvement in the
12 shooting.

13 MR. BROWN: Yes, sir. And that came through the
14 investigator, not from Mr. Thomas at the time he took the
15 stand.

16 THE COURT: Right.

17 I'm going to rule for the State on both of the motions.
18 As to the traffic stop, I'm not aware of any legal authority
19 that states Miranda applies to an investigative traffic
20 stop. It's not a custodial interrogation. I guess, in
21 theory, Jackson V. Denno might be implicated by a traffic
22 stop if an officer threatened the detainee or something, but
23 I don't see any evidence in this case that would make the
24 traffic stop anything other than a routine investigatory
25 traffic stop with an officer. There weren't any threats or

1 promises or any unusual activity by the officer. So I think
2 that was voluntary and Miranda is not implicated.

3 As to the conversation in the jail, I think -- I mean,
4 based on the testimony and the standard evidence for this
5 purpose, I find that the State has met their burden, that
6 the statement was made by the Defendant, that he was advised
7 of his rights and he waived them and that I do not find the
8 statement was made involuntarily.

9 It was not an exceptionally length interrogation, there
10 was no testimony in that regard, no threats or promises or
11 anything in that regard. So the one issue, it does appear
12 he was under the influence of marijuana, but I don't think
13 that makes it involuntary.

14 You can certainly argue to the jury, Mr. Brown, that he
15 wasn't in his right mind and what he said, they can consider
16 that, but he chose to smoke marijuana, so I don't think that
17 makes the statement involuntary.

18 Anything else, Counsel, before we start?

19 MR. BROWN: Judge, as an additional motion in regards,
20 obviously, to the stop itself, because there is an
21 implication of criminal activity, Mr. Thomas was charged
22 with possession of marijuana. He has not been found guilty.
23 And as I understand it, the State is not pursuing any type
24 of indictment at this time as it relates to those charges as
25 coupled with activities that were alleged on that evening.

1 Your Honor, it would be my motion that any presentation
2 or any discussion about marijuana, clearly, is highly
3 prejudicial based upon the stop itself and the information
4 that comes from there, and that falls under Rule 403. The
5 implication that there's conduct that's being had provides
6 an unfair prejudice to my client.

7 THE COURT: So let me just make sure, your argument is
8 the marijuana evidence is unfair prejudice?

9 MR. BROWN: Yes, sir.

10 THE COURT: And you're saying you don't want to use it
11 to argue about the statement he made to the investigator?

12 MR. BROWN: No, he's not under any kind of duty to make
13 any statements.

14 THE COURT: No, no, but you argued to me just now that
15 he was under the influence of marijuana when he made that
16 statement and it made it questionable. You're not going to
17 argue that to the jury?

18 MR. BROWN: If the statements are to come in, Your
19 Honor, I think I still have the latitude to argue that.

20 THE COURT: Well, you can't have it --

21 MR. BROWN: I'm not trying to have it both ways, Your
22 Honor, but I'm simply saying if the Court is going to rule
23 that that's going to come in --

24 THE COURT: That statement is coming in, I've already
25 ruled.

1 MR. BROWN: Then I should be allowed to make whatever
2 argument I want to make in response to that.

3 THE COURT: How then are you telling me it's
4 prejudicial to hear your client smokes marijuana when you're
5 going to raise the issue yourself?

6 MR. BROWN: Your Honor, that would be after -- if the
7 Court is going to rule against me, then I have no choice but
8 to argue it in defense of my client.

9 THE COURT: Okay, well, there are two issues. I have
10 ruled against you on the issue of the statement made in the
11 jail. That, I believe, is voluntary. But the issue we're
12 talking about now is whether I should exclude any mention of
13 marijuana. And I think you're telling me you want me to
14 exclude the State from mentioning marijuana, but you're
15 allowed to discuss --

16 MR. BROWN: No, Your Honor, if there's no discussion of
17 marijuana period, I'm not going to bring it up. That's
18 anticipating my argument, but I'm not going to make that
19 argument. If the Court says we can't talk about marijuana,
20 clearly, I won't.

21 THE COURT: Just to be clear, your argument is the
22 marijuana should not be mentioned because the probative is
23 substantially outweighed by the prejudice?

24 MR. BROWN: That's very correct, Your Honor.

25 THE COURT: Okay.

1 MR. BROWN: We have a young man on that evening that
2 has been stopped, has conversation with law enforcement, the
3 first thing the officer says is marijuana. Young man, young
4 black male, young man with dreads, young black male with
5 dreads, marijuana is coming into play, that can provide some
6 type of implication to the jury that there's criminal
7 activity afoot.

8 Clearly, we have a defense that we're going to raise in
9 regards to this, but we don't want a presumption that he is
10 a criminal of some sort with the including of marijuana.
11 Marijuana is not a part of this case. Marijuana is not
12 being prosecuted by this case. So we feel that, obviously,
13 the probative value, clearly, comes into question based upon
14 the prejudice that this will create for a jury to consider,
15 Your Honor.

16 THE COURT: Mr. Anthony.

17 MR. ANTHONY: When Investigator Ruby is dealing with
18 him, he asked him before the search if there was anything
19 illegal in the vehicle, and then he gives this list, says
20 guns, ammunition, anything I -- I think at one point he says
21 anything I need to be worried about. Mr. Thomas says no.
22 Of course, the State's theory is that Mr. Thomas said that
23 lying to Investigator Ruby because he knew there was a gun
24 hidden behind the glove box in that vehicle.

25 So that statement has significant probative value for

1 the State. It's specifically part of the res gestae of this
2 case. There's no way this case can be presented to the jury
3 in any kind of cognizable fashion without the jury being
4 told that Mr. Thomas was arrested there on the roadside. He
5 wasn't arrested for shooting Mr. Gray at that time, he was
6 just arrested and taken to jail. And that will have to be
7 presented to the jury for the case to make any sense.

8 And the State would argue that any kind of prejudice
9 accruing to Mr. Thomas because the jury would be told that
10 there was some smell of marijuana coming off him, which is
11 what -- basically, that's the only reference the State wants
12 to present is that Investigator Ruby saying I smelled
13 marijuana and Investigator Ruby says it could just be a
14 ticket and asked him if this is just personal use. And,
15 basically, Investigator Ruby --

16 THE COURT: The statements about marijuana being all
17 over the car, that was post-arrest.

18 MR. ANTHONY: Yes, sir, I don't intend to introduce
19 that. I just intend to introduce the comment about the
20 smell. And I think Mr. Thomas said, I just rolled it. And
21 Investigator Ruby says, Well, if that's all it is, we're
22 just talking a ticket. And says, Is this personal use? And
23 then mixed in with that is Investigator Ruby saying, Now,
24 there's nothing in here I need to be worried about? And Mr.
25 Thomas says, No.

1 And so the State would argue that that has very high
2 probative value for the jury and that that is significantly
3 outweighed by any kind of prejudice that would accrue to Mr.
4 Thomas because the jury is going to have to know that Mr.
5 Thomas was arrested for something for the case to make any
6 sense. So that part of it is all part of the res gestae and
7 all runs together.

8 The State is very agreeable to cutting out the most
9 prejudicial part of that where Sergeant Ruby starts saying
10 well, it's all over the car and all of that. We're not
11 going to try to put that in, but we do think in order for
12 the case to make sense that the jury is going to have to
13 hear -- or the jury needs to hear that Sergeant Ruby smelt
14 marijuana on him and that's why he searched the car and
15 that's why it turned out that he was being arrested and
16 that's how he ended up at the jail with Captain McNeil
17 taking the swabs and taking a statement. But that's our
18 position, Your Honor.

19 THE COURT: Thank you, Mr. Anthony.

20 Mr. Brown, any reply?

21 MR. BROWN: Your Honor, I would simply say it's not the
22 Court's duty to help the State make their case. If it
23 doesn't make sense, that's not for your consideration, Your
24 Honor.

25 What's at stake is, clearly, the prejudice it's going

1 to create. There's a reference to marijuana. I understand
2 anything subsequent to the arrest, that's not going to be
3 part of my argument. It's getting to the crux of the
4 conversation with the officer, information that was shared.
5 Clearly, there's a conversation about marijuana that takes
6 place, that's what causes the stop.

7 The State can choose to present their case any way they
8 want with the exclusion of the marijuana, but it's not the
9 Court's doing, definitely not the Defense's position to help
10 them bolster their case in terms of bringing it. Marijuana
11 has nothing to do with this case. Clearly, it would
12 prejudice my client for the jury to hear that.

13 THE COURT: Mr. Brown, I hear you, but I -- I mean, he
14 had to get arrested for something. In modern society, I
15 can't think of any criminal charges that would be less
16 prejudicial to your client than a simple possession of
17 marijuana charge. So the jury is going to know he got
18 arrested for something, right? What would be less
19 prejudicial to your client than a marijuana charge?

20 MR. BROWN: Your Honor, that's why in some cases, cases
21 are dismissed based upon the fact that the prosecution can't
22 pursue their case. Just because they bring it doesn't mean
23 it has to be heard.

24 THE COURT: Mr. Brown, I understand. Maybe I'm not
25 explaining myself well. To win this motion, you have to

1 show that there's unfair prejudice that substantially
2 outweighs the probative value. And my comment is the jury
3 knows he's arrested for something other than the murder,
4 that's clear. So what is it, what crime do you believe is
5 less prejudicial than simple possession of marijuana?

6 MR. BROWN: Your Honor, based upon the facts that are
7 being brought out in this case and the indictment itself,
8 the indictment specifically says what he was arrested for.
9 The indictment specifically says what the charges are. The
10 indictment references a shooting.

11 What the jury can infer from the nature of these
12 charges is that hey, when the shooting occurred on that
13 evening -- there's no conversation about the marijuana --
14 between the time period in which he was stopped or at some
15 point in time, there was a shooting that involved him. They
16 have enough evidence to show -- and it's not being argued by
17 my client at this point -- through DNA, through SLED,
18 through the doctors, through the reports, through initial
19 information that's been shared that Najm Thomas is the
20 person that actually shot this individual. That's not in
21 dispute in terms that it actually happened. To present
22 anything else in regards to the nature or the circumstances,
23 that's my argument.

24 I don't know why marijuana would have to come into play
25 to show that he was arrested at some point. To show the

1 fact that this officer initiated a stop and he got pulled
2 over and he was arrested in regards to that, there's ways in
3 which that can be redacted to show that he was being
4 arrested.

5 THE COURT: Mr. Brown, the key piece of evidence the
6 State wants is the question, Do you have anything else in
7 the car, anything illegal? And your client on the tape
8 says, Just the weed, correct? If you take that answer out
9 --

10 MR. BROWN: And that goes to my previous motion, Your
11 Honor. He's asking him something that's going to be used
12 against him and he hasn't been apprised of his rights. So
13 to say that it wasn't a custodial stop, but at the same
14 time, we're going to take information from what you've
15 given, clearly, that's part of my previous argument, but,
16 clearly, with this coupled with the marijuana, it creates
17 unfair prejudice.

18 THE COURT: Mr. Brown, I --

19 MR. BROWN: And the State would have to have
20 information to show because they want to suggest. They
21 can't come in court and say this is what he did. They want
22 to suggest that he hid the gun based upon the nature of the
23 shooting. There's no information here. They're trying to
24 get an implication, but they don't know what was in his mind
25 at the time. They don't know how the car was constructed.

1 They don't know if this gun fell through the little spot in
2 this dashboard or whatever. So they're trying to get around
3 one aspect of the law. Clearly, under this rule, it does
4 not allow them to bring this in in order to try to bolster
5 their case, Your Honor. For that reason, that's why we're
6 arguing this.

7 THE COURT: Mr. Brown, I'm going to deny the motion
8 under Rule 403. I think the prejudice in the current
9 society of an 18-year-old smoking marijuana is low,
10 especially knowing the jury is going to have to know he's
11 arrested for something. That may be the most least
12 prejudicial charge there is. In any case, I think there's
13 substantial probative value to his response of the State's
14 question of do you have anything illegal in the car. So I'm
15 going to allow it to come in.

16 Anything else, Counsel?

17 MR. ANTHONY: The only matter I have is I would just
18 ask that in Mr. Brown's opening statement, that he be
19 ordered to refrain from making any reference to any
20 statement made by the victim in regards to any prior
21 difficulties between the victim and Mr. Thomas. I would
22 have to argue that if that were to come in at some point or
23 if he were to attempt to bring that in at some point during
24 the course of the trial, there would be a hearsay objection
25 by the State. So I would just ask that not be included in

1 his opening statement.

2 THE COURT: Mr. Brown, do you have any intention to
3 comment on alleged statements by the victim in the case?

4 MR. BROWN: Your Honor, I understand that Counsel's
5 opening statements is not evidence. In the preparation of
6 my case, if I decide to call my client, and my client
7 decides to take the stand, and my client himself says there
8 was prior difficulties, then that should not preclude me if
9 I so choose in my opening statements to make that statement
10 because I can back it up with someone being able to make
11 that. If not, the jury would see that evidence was never
12 presented.

13 THE COURT: Mr. Anthony, what if he phrases it as my
14 client will testify that he had previous difficulties with
15 the victim?

16 MR. ANTHONY: I don't have any objection to that. I
17 would just object to him saying in his opening statement the
18 victim said this about a relationship with the Defendant.
19 If he wants to say -- at this point, if his comment is
20 limited -- I think there might be an objection even to what
21 his client would say about prior difficulties, but if all he
22 says is there were prior difficulties, I would not object to
23 that. If he says the Defendant will say there were prior
24 difficulties, I don't have an objection to that.

25 THE COURT: Mr. Brown.

1 MR. BROWN: Your Honor, if I say this case could be
2 based upon prior difficulties, does John have any problem
3 with that?

4 THE COURT: I think we all agreed that's acceptable.
5 My understanding, the State is concerned they don't want you
6 to say the victim said X, Y and Z.

7 As long as we stay away from claims of what the victim
8 said, are we okay?

9 MR. ANTHONY: Yes, sir. I don't have any objection to
10 that. Thank you.

11 THE COURT: Counsel, anything else?

12 Just to be clear, Mr. Brown, we're agreed that if you
13 want to say in opening argument, explain that there were
14 difficulties between your client and the victim, as long as
15 you don't say the victim said, you can make that argument.

16 MR. BROWN: Thank you, Your Honor.

17 THE COURT: Anything else, Counsel?

18 MR. ANTHONY: No, sir.

19 MR. BROWN: No, sir.

20 THE COURT: Counsel, we've been going quite a bit.
21 Let's take a 15-minute break and we'll start.

22 (WHEREUPON, a short break was taken.)

23 THE COURT: Counsel, anything we need to take up before
24 we bring the jury in?

25 MR. ANTHONY: Your Honor, I just need a second. I've

1 got my first witness I'm trying -- I think she's coming.

2 THE COURT: Okay.

3 (Pause.)

4 MR. ANTHONY: Thank you, Your Honor, the State's ready.

5 THE COURT: Let's bring in the jury.

6 (WHEREUPON, the jury enters the courtroom.)

7 THE COURT: Ladies and gentlemen, let me first
8 apologize for our late start. It's my fault, not the
9 lawyers' fault. I underestimated how long pretrial matters
10 would take, so I'm sorry y'all had to wait. That's my
11 fault. Let's go ahead and get y'all sworn in.

12 Madam Clerk.

13 (WHEREUPON, the jury was sworn.)

14 THE COURT: Ladies and gentlemen, we are about to begin
15 the trial of the State vs. Najm Thomas. Before we begin, I
16 want to tell you that this trial will probably be different
17 from what you may expect. Many people don't have the chance
18 to attend court like you're doing now and many people get
19 their understanding of what criminal trials are like from TV
20 and movies. TV, movies, lawyer books are always full of
21 high drama, intense moments. And there may very well be
22 some times in this trial that are like that, but it will not
23 always be like that. Trials are not for entertainment.
24 They're a fundamental part of our democracy and it's an
25 effort to make sure justice is done between both parties

1 before the Court. Our job is to make sure that justice is
2 done and that may be a slow, deliberate and even repetitive
3 process sometimes, the opposite of what you may have seen on
4 television or read in books or watched on TV.

5 The courtroom is a place of honor dedicated to the
6 protection and preservation of citizens' rights through
7 which many have called the greatest justice system ever
8 created. The attorneys appearing before you are advocates
9 for the parties that they represent, but first and foremost,
10 they are officers of the court sworn to uphold the integrity
11 and fairness of our system and to help you do justice in
12 this matter.

13 You should expect the attorneys to be professional,
14 competent and ethical in the representation of their
15 clients. Remember that you have taken an oath to try this
16 case and reach a fair and just verdict and you are also
17 expected to be professional, reasonable and ethical. Thank
18 you for accepting the very important responsibility of jury
19 service and for your contribution today to our justice
20 system.

21 What I'm going to say now is intended as an
22 introduction to the trial of this case. It's not a charge
23 on the law. I will instruct you on the law at the end of
24 the case. This is merely an explanation of the procedure
25 that we're going to follow in the trial so you may better

1 understand what will be happening.

2 The Defendant, Mr. Thomas, is charged by indictment in
3 the court with the crime of attempted murder, the elements
4 of which will be explained to you later. The indictment is
5 simply the charge by which the case is brought into court
6 and is not in any sense evidence of the allegations it
7 contains.

8 The Defendant has pled not guilty to this charge. The
9 State, therefore, the government has the burden of proving
10 the elements of the indictment beyond a reasonable doubt.
11 It will be your duty, ladies and gentlemen, to decide
12 whether the government has met that burden.

13 Your purpose as jurors is to find and determine the
14 facts. You are the sole judge of the facts in this case.
15 If at any time, I make any comment regarding the facts,
16 please disregard it.

17 And ladies and gentlemen, I'm human, I may at some
18 times scratch my face or make facial motions or something,
19 anything I do is unintentional. I do not have an opinion on
20 this case. I am not allowed to have an opinion on the guilt
21 or innocence of this Defendant. So please don't infer from
22 a body language or something that I do that I have an
23 opinion on this case. I do not. It is for you, ladies and
24 gentlemen of the jury, to determine the facts of the case.

25 You are to determine these facts from the testimony

1 that you hear and the other evidence introduced in the
2 court. It is up to you to determine the inferences which
3 you feel may be properly drawn from that evidence. It is
4 especially important you perform your duty of determining
5 the facts diligently and conscientiously because ordinarily
6 there is no way to correct an erroneous determine of the
7 facts, in other words, a mistake by the jury.

8 On the other hand, with equal emphasis, the same law
9 that makes you the judge of the facts makes me as a judge
10 the judge of the law. The law as given by the Court is the
11 only law you may consider. You must accept and follow the
12 law as I explain it to you later even though you might
13 disagree with it. I cannot tell you what the facts are and
14 you cannot disagree with me as to what the law is or what it
15 ought to be. Your job is to take the law as I explain it to
16 you and apply it to the facts as you find them from the
17 testimony of the witnesses and any other evidence as
18 introduced. After doing that, you will render your verdict
19 under the solemn oath that you took as jurors.

20 And I mentioned this yesterday, until I advise you to
21 begin your deliberations, you must not discuss this case
22 with anyone, including your fellow jurors. After the case
23 is submitted to you, I will tell you, you may begin
24 deliberations and only then can you begin discussing the
25 case with your fellow jurors.

1 The attorneys and the parties in this case have been
2 advised they are not to talk to you at all. So if you see
3 anyone involved in the case and they don't even say hello,
4 they're not being unfriendly, they're just doing what I've
5 asked them to do.

6 During the trial, please don't read, listen to or watch
7 any news reports about this case. This includes anything
8 that might be on the internet, the radio or television. You
9 must not consider anything you may have heard outside the
10 courtroom. And please do not do any research, please don't
11 do any research on the internet about the law or about this
12 case in particular.

13 It is important that you keep an open mind and not
14 decide any issue in the case until all of the evidence has
15 been presented, the attorneys have made their closing
16 arguments and I have instructed you that you may begin
17 deliberations. It is your solemn responsibility to
18 determine the guilt or innocence of the Defendant and your
19 verdict must be based solely on the evidence presented in
20 this trial and the law as I instruct you.

21 In just a moment, the prosecution will begin the case
22 by making what is called an opening statement in which the
23 solicitor will explain to you the issues in the case or, at
24 least, what the solicitor thinks are the issues in the case.
25 The solicitor gets to go first because the burden of proof

1 is on the government. They must prove the case. The
2 attorney for the Defendant may also make an opening
3 statement, although they are not required to do so. What
4 the attorneys tell you during these opening statements are
5 not evidence. It is only the lawyers' arguments as to what
6 they think the issues are or what the evidence might show.

7 The evidence in this case will be presented to you by
8 the testimony of the sworn witnesses from the witness stand
9 right here next to me and/or any exhibits that might be
10 introduced into evidence. From time to time during the
11 trial, you may hear one of the lawyers say something like,
12 Your Honor, I believe we have a matter of law to discuss or
13 may we approach the bench. Sometimes I may find it
14 necessary to excuse you from the courtroom for a short time.
15 The reason for these things is you are the judge of the
16 facts and I am the judge of the law. Sometimes when I
17 discuss matters of law with the attorneys, it may be
18 necessary for me to ask you to leave the room.

19 In determining what the facts are in this case, you
20 must decide whether or not a witness is believable. It will
21 be my responsibility to rule as a matter of law as to
22 whether or not certain testimony is admissible at all or
23 not. But once the testimony is admitted into court, whether
24 you believe it is solely for you to determine.

25 In deciding whether to believe a witness, you have the

1 right to consider any interest the witness might have, any
2 possible bias, any possible prejudice, whether the witness
3 had the opportunity to have seen the matters and the things
4 of which they may testify and the way the witness acts on
5 the witness stand.

6 You have a right to consider anything that is in the
7 record that would help you evaluate the testimony of the
8 witnesses. That means it is your duty to pay close
9 attention to these witnesses, to observe the witnesses, to
10 listen to the witness and pay close attention to the
11 attorneys and to the Court. Don't let your thoughts wander,
12 but give strict attention to the testimony in this case so
13 that at the end of testimony, after all the arguments of
14 counsel and my explanation of the law, you will be in a
15 position to determine what the facts are and to apply the
16 law to those facts and render a just verdict.

17 The first task I'm going to give you when you go back
18 on the first break is to elect a foreperson to preside in
19 the jury room and to be the jury spokesperson here in court.
20 The jury foreman or foreperson does not have any more power
21 or less power than anyone else. They only have two jobs.
22 The first is to communicate with the Court if there are
23 issues. For example, it's too hot in the jury room, the
24 jury needs a break, or there's some issue I need to know
25 about. That's one job. And the second job is just to guide

1 the discussions. The vote of the foreperson counts just the
2 same as everyone else's vote in the matter.

3 A couple of other things, I do not allow you to take
4 notes in court. I know some people might be more
5 comfortable if they took notes. The reason for that is,
6 some people are very good note takers based on practice
7 they've had in school or for their job. Some people aren't
8 such good note takers. And my experience has been if jurors
9 take notes, the jury room can become a battle of who has the
10 best notes, who took the most detailed notes. And I don't
11 think that's a good idea.

12 Once you get in the jury room, if you need to see
13 evidence again, it can be brought to you. If you need to
14 hear testimony again, it can be replayed for you. And
15 that's why I don't allow you to take notes. If you have
16 questions about what happened in court, it can be provided
17 for you, but please pay close attention.

18 On a similar note, I do have to take notes in court
19 because there are things I may have to rule on where it's
20 important that I keep track of what happens in court. So if
21 you see me typing up here, that's just because I'm part of
22 the computer generation, I type faster than I write. I'm
23 not on Facebook or anything. What I'm typing are court
24 notes.

25 So now, Counsel, any objection to the general jury

1 charge?

2 MR. ANTHONY: No, sir.

3 THE COURT: From the Defense?

4 MR. BROWN: No, sir.

5 THE COURT: Let's call the case.

6 MR. ANTHONY: Thank you, Your Honor.

7 THE COURT: You want me to go ahead and read the
8 indictment?

9 MR. ANTHONY: I'm sorry.

10 THE COURT: That's okay.

11 Ladies and gentlemen, again, as I've explained, I'm
12 about to read the indictment in the case. This is the
13 formal charging document. It is not evidence. It is what
14 the government is going to try to prove.

15 The State of South Carolina vs. Najm Thomas, the
16 indictment is for attempted murder. The State alleges that
17 in Union County, South Carolina, on or about August 28th,
18 2016, Najm Ahmad Thomas did with intent to kill attempt to
19 kill Elijah Juan Gray with malice aforethought, either
20 expressed or implied, by shooting the victim with a handgun
21 in violation of the South Carolina Code of Laws.

22 Mr. Anthony.

23 MR. ANTHONY: Thank you, Your Honor.

24 OPENING STATEMENT

25 MR. ANTHONY: Good morning, y'all. My name is John

1 Anthony. I'm the deputy solicitor here in Union and I will
2 be representing the State in the trial of this case.

3 There's this old saying, some of you may have heard it on TV
4 shows or movies, that the killer always returns to the scene
5 of the crime. Maybe some of y'all have heard that. Well,
6 I've done this for a long time and I can tell you that
7 normally that is absolutely not true. That very seldom ever
8 happens. But, actually, that's what happened in this case.

9 In a few moments, you're going to hear from a young
10 woman named Meghan Hames. And Ms. Hames, back in August of
11 2016, she lived on Monro Street and she was driving that
12 night about 9:30 or so to go up to the BP to get some gas.
13 And as she was driving down Monro Street, she came upon a
14 man just lying in the middle of the road. So she drove past
15 him, turned around, called 911 and the sheriff's office
16 responded.

17 It turned out this young man, his name was Elizawon
18 Malik Gray. He was lying in the middle of the road.
19 Investigator Ruby, who was a shift sergeant back then, he
20 responded to that. He found Mr. Gray there. Mr. Gray had
21 been shot multiple times. He was able to have a
22 conversation with Mr. Gray and Mr. Gray told him that he had
23 been shot by a young man with dreads in a black PT Cruiser.

24 So the EMS comes and they load Mr. Gray up on the
25 ambulance and Mr. Gray is taken off to get helicoptered up

1 to Spartanburg Regional. And the sheriff's office stays
2 there because they now have a crime scene. So they rope off
3 part of Monro Street where the body is and they're waiting
4 on the SLED agents, the South Carolina Law Enforcement
5 Division agents, to come and process the crime scene.

6 And in about 30 minutes after Investigator Ruby gets
7 there, guess what pulls up? A black PT Cruiser and it's
8 being driven by a young man who has short dreadlocks at that
9 time, the Defendant in this case, Mr. Thomas. So the
10 sheriff's deputies begin to talk to Mr. Thomas. And as this
11 investigation proceeds, they realize that Mr. Thomas is the
12 person who shot Mr. Gray and he had returned to the scene of
13 the crime right after doing that.

14 So the evidence that you will hear that shows that is,
15 first of all, there's a gun that was found behind the glove
16 box in that black PT Cruiser that Mr. Thomas was driving.
17 That gun was the gun that shot Elizawon Gray. He was
18 driving around with a weapon in his car. There will be a
19 SLED agent who will testify that all the shell casings that
20 were found out on the road -- they found 13 shell casings
21 out on the road. All those shell casings out on the road
22 were fired by that gun that was in Mr. Thomas' PT Cruiser.

23 Then you will hear a witness who's going to testify
24 that just a few minutes after the shooting, he was up at the
25 BP and he knew Mr. Thomas, and that Mr. Thomas tried to sell

1 this same weapon. The same weapon that was found behind the
2 glove box of his car, Mr. Thomas tried to sell that weapon
3 right after he committed the shooting.

4 Then Mr. Thomas, when he pulled up that night, he was
5 arrested for simple possession of marijuana and he was taken
6 to the jail. And when he was at the jail, he was obviously
7 a suspect in the shooting. So Captain McNeil, who was the
8 man that was investigations captain of the sheriff's office
9 at the time, James McNeil, he went in there and talked to
10 Mr. Thomas. And Mr. Thomas gave him -- or agreed to give
11 him what's called a GSR kit, which is this swabbing that law
12 enforcement people do and they send that down to SLED and
13 SLED's lab can determine if you have these metals on you
14 that come from shooting a gun.

15 And so they did that with Mr. Thomas. They did the GSR
16 kit with his hands. They did the GSR kit on his pants. And
17 Mr. Thomas had gunshot residue on his hands and on his
18 pants. And they talked to Mr. Thomas about this shooting.
19 And when they talked to him, he denied that he committed the
20 shooting and he denied that he had a gun in his vehicle.
21 But he told them about another gun. He tried to lead them
22 to another gun that was at his house.

23 So you will hear all of this evidence over the next day
24 or so that shows that Mr. Thomas shot Mr. Gray, but what
25 you're not going to hear is you're not going to hear from

1 Mr. Gray because Mr. Gray is not agreeing to participate in
2 the prosecution of the case. He's not going to be called as
3 a witness by the State. So some of y'all may be thinking
4 well, if Mr. Gray's not here, why am I here? Why am I
5 having to be here if he's not?

6 Well, the reason y'all are here is because the State,
7 myself, the sheriff's office, we don't think that people
8 like Meghan Hames ought to have to be driving up on bodies
9 in the middle of their street when they set out to go to the
10 store. We don't think that people ought to be doing that in
11 the middle of the neighborhoods here in Union County. And
12 when we have evidence that we can present to a jury that
13 shows that somebody did that, that somebody shot somebody
14 multiple times in the middle of a road, then we're going to
15 present our case and we're going to do what we think we need
16 to do in court to prove that the Defendant committed that
17 crime. And we're going to do that whether the victim
18 cooperates or not. Sometimes victims cooperate and
19 sometimes they don't. This case, the victim is not
20 cooperating, but we have enough evidence we believe to
21 present this case to y'all and prove that Mr. Thomas
22 committed this crime.

23 Mr. Thomas shot at Mr. Gray 13 times. There was 13
24 shell casings that were found out there in the road. Mr.
25 Gray had 10 wounds to his body. There were no casings found

1 from any other gun out there in the road that night except
2 for Mr. Thomas' gun.

3 So I just ask you to listen to all of the evidence in
4 this case, listen to the questions that I ask, listen to the
5 questions that Mr. Thomas' lawyer ask. Mr. Thomas is not
6 under any obligation to call any witnesses, but if he calls
7 witnesses, listen to the questions that his lawyer ask of
8 the witnesses, but listen to the questions that I ask those
9 witnesses, too. Because at the end of the case, what y'all
10 have to do as jurors is you have to look at all the evidence
11 from any lawyer and from any side. All that evidence goes
12 into a big pot and gets considered by you and you have to
13 decide if the person is guilty or not. And we believe that
14 when you've heard this evidence in this case and you've
15 considered it, we believe that you're going to find Mr.
16 Thomas guilty of attempted murder. Thank you.

17 THE COURT: Mr. Brown.

18 MR. BROWN: Thank you, may it please the Court.

19 OPENING STATEMENT

20 MR. BROWN: Ladies and gentlemen of the jury, rush to
21 judgment. Rush to assume. You've heard from the Assistant
22 Solicitor why we're here, they brought charges. He didn't
23 bring the charges, he's prosecuting them. Law enforcement
24 brought the charges because they encountered a young man,
25 obviously, on a roadway in Union County during the time

1 period of a shooting. It's not in dispute there was a
2 shooting.

3 You know, I have this conversation time and time again
4 with many people who have the authority that you have as
5 sitting jurors. I don't understand where this country is
6 going, which there's arguments about the fact that people
7 cannot possess handguns for the fact that sometimes those
8 handguns are used. Sometimes those handguns are used
9 wrongfully. The prosecution in this case is going to
10 suggest to you that something unlawful occurred because
11 someone got shot as a result of someone having a handgun.
12 But I'm going to tell you that Mr. Thomas lawfully possessed
13 that handgun.

14 Buzz words that you'll hear, which you just heard some
15 of them, you say body, you say killer. There's no body and
16 there's no killer. There's no victim. You're not going to
17 have a victim walk through those doors and come and take the
18 stand and tell you Mr. Thomas tried to kill him. Don't lose
19 sight of that. Mr. Thomas doesn't have to come and tell you
20 that he wasn't trying to kill anyone, that's not his
21 position, that's not his job. They have to bring the
22 evidence to you.

23 But I understand they have to follow this case because,
24 unfortunately, Mr. Thomas was arrested. Unfortunately, a
25 case was immediately made against him based upon the

1 shooting. Rush to judgment. Rush to assumption. That's
2 what the prosecution has done. They have a duty to show
3 you, prove to you that beyond a reasonable doubt Mr. Thomas
4 is guilty of attempting to murder someone in this county, a
5 person that, as you heard the prosecution say in his own
6 words, a victim who doesn't want to participate.

7 I'll leave that to you to think about during the course
8 of this case. But use your common sense and understand that
9 a person who lawfully possesses a handgun is a lawful person
10 to use that handgun under certain situations.

11 I want to make an argument that, clearly, this case had
12 to start somewhere and it started with the sheriff's office.
13 A young man got arrested. Then he had to hire a lawyer and
14 deal with bond issues. So once you get this train rolling,
15 you can't just automatically say oh, we're sorry, we want to
16 stop the prosecution. We understand what's going on. The
17 victim went to the hospital. The victim supposedly talked
18 to different people. But the victim doesn't want to be
19 here.

20 I want each and every one of you to listen to the
21 evidence in this case. Please pay very close attention to
22 what you hear in this case and think about some of the
23 things that you don't because what special certification do
24 you have to be here today. The fact that you're a citizen
25 of this county. And number two, God gave you the ability to

1 live each day and have life experiences. You don't leave
2 your life experiences when you walk through the doors of
3 this courthouse. You know things, obviously, you can see
4 things. You know, it's unfortunate the prosecution has
5 chosen to go forward with this case. But please pay very
6 close attention to this case and I look forward to speaking
7 with you at the end.

8 THE COURT: Mr. Anthony, call your first witness.

9 MR. ANTHONY: We call Ms. Hames.

10 MEGHAN HAMES, after being duly
11 sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. ANTHONY:

14 Q Would you state your name, please?

15 A I'm sorry?

16 Q Would you state your name, please?

17 A My name is Meghan Hames.

18 Q And Ms. Hames, where do you live?

19 A I currently live in Boiling Springs.

20 Q Okay. And are you employed?

21 A I am. I work at Almost Pink.

22 Q Now, I want to take you back now to August the 28th of
23 2016. Where did you live at that time?

24 A I was living at 305 Monro Street.

25 Q And I want to take you now to the night of the 28th.

1 Did you go anywhere that night?

2 A I did.

3 Q And where did you go?

4 A I was going to get gas at the Kangaroo gas station.

5 Q And approximately what time did you go to do that?

6 A It was around 9:30.

7 Q And from where you live, how do you travel to get to
8 the BP gas station?

9 A I head down Monro Street and I turn on Siam Street to
10 get to the gas station.

11 Q And as you were going down Monro Street that night,
12 what happened? What did you see?

13 A I saw a man laying in the road. And at first, it
14 didn't click that he was actually laying in the road, so I
15 turned around on Siam Street. So I had my headlights on him
16 and I could clearly see that he was laying in the road.

17 Q And what race was this person?

18 A He was African-American.

19 Q And could you tell anything about how he was dressed?

20 A He had a red t-shirt on.

21 Q And when you -- after you turned around and drove back
22 to him, what did you do then?

23 A I called 911.

24 Q Did you ever get out of your car?

25 A I did not.

1 Q And when you called 911, what were you advised was
2 going to happen?

3 A They would send an officer and that I needed to stay
4 there.

5 Q And after you called 911, did you call anybody else?

6 A I called my boyfriend.

7 Q And then what did your boyfriend do?

8 A He came and sat with me.

9 Q And did you stay there until a sheriff's deputy came?

10 A I did.

11 Q And at some point, did you speak to that deputy?

12 A I did.

13 Q And what information did you give him?

14 A I just told him that I was headed to the gas station
15 and that I saw the man in the road, so I turned around and
16 called 911 and I stayed there.

17 Q And during the time that you saw a man in the road, did
18 you ever see anybody approach him?

19 A I didn't.

20 (WHEREUPON, State's Exhibit No. 5 was marked for
21 identification.)

22 BY MR. ANTHONY:

23 Q I'm going to hand you what's been marked for
24 identification as State's Exhibit No. 5. And I'd ask if you
25 can recognize the area on that diagram.

1 A Okay.

2 Q What is that?

3 A This is Monro Street and this is where I lived.

4 Q That's an overhead shot of it?

5 A Yes.

6 Q And does that photo appear to accurately show the
7 layout of your neighborhood?

8 A Yes, it does.

9 MR. ANTHONY: We move No. 5 into evidence.

10 THE COURT: Any objection?

11 MR. BROWN: No objection, Your Honor.

12 THE COURT: Into evidence without objection.

13 (WHEREUPON, State's Exhibit No. 5 was admitted into
14 evidence.)

15 MR. ANTHONY: I'd ask to publish, Your Honor.

16 THE COURT: Any objection?

17 MR. BROWN: No objection.

18 THE COURT: Without objection.

19 BY MR. ANTHONY:

20 Q I'm going to give you this and ask you a few questions
21 about it. You can use this pointer. Just push right there
22 and turn the pointer on.

23 A Okay.

24 Q If you need me to zoom in or zoom out, certainly, just
25 tell me to do that. Can you show the jury on that diagram

1 where you live?

2 A I live up here at the top of Monro.

3 Q And that street that runs down through here, what
4 street is that?

5 A Yes, sir, that's Monro Street.

6 Q And where is the BP on there?

7 A The gas station is right here.

8 Q And what route were you taking to get from your house
9 to get gas?

10 A Yes, I was headed this way and I was going to turn on
11 Siam.

12 Q And I want to zoom in a little bit now. And can you
13 show the jury approximately where you came upon the body
14 that night?

15 A Yes. I saw him right here in front of this house. I
16 initially saw him there as I was passing to get to this stop
17 sign.

18 Q And then where did you turn around?

19 A I turned around right where the stop sign is.

20 Q Okay.

21 MR. ANTHONY: Thank you. That's everything I have on
22 direct.

23 THE COURT: Mr. Brown.

24 CROSS-EXAMINATION

25 BY MR. BROWN:

1 Q You said you stayed in your car the whole time?

2 A Yes, sir.

3 Q You didn't talk to the gentleman laying in the road?

4 A I did not.

5 MR. BROWN: Thank you.

6 THE COURT: Any redirect?

7 MR. ANTHONY: No redirect.

8 THE COURT: Any objection to excusing this witness?

9 MR. BROWN: None.

10 MR. ANTHONY: No, Your Honor.

11 THE COURT: Thank you, Ms. Hames. You're excused.

12 THE WITNESS: Thank you.

13 MR. ANTHONY: Next witness would be Investigator Ruby.

14 SCOTT RUBY, after being duly
15 sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. ANTHONY:

18 Q Would you state your name, please?

19 A Scott Ruby.

20 Q And Mr. Ruby, how are you employed?

21 A I'm an investigator with the Union Sheriff's Office.

22 Q And what's your other job at the sheriff's office?

23 You're an investigator, but do you do anything --

24 A I'm a criminal investigator and a polygraph examiner.

25 Q And how long have you held that position?

1 A A year and a half.

2 Q And altogether, how long have you been with the
3 sheriff's office?

4 A Twenty years.

5 Q And going back to August of 2016, what was your job
6 with the sheriff's office at that time?

7 A I was the night shift supervisor in the patrol
8 division.

9 Q And were you working on August 28th of 2016?

10 A I was.

11 Q And did you get called out to a shooting on Monro
12 Street?

13 A Yes, sir.

14 Q And is that in Union County?

15 A It is.

16 Q And when were you dispatched to go out there?

17 A Approximately 9:30 p.m.

18 Q Would that be reflected in the incident report?

19 A Yes, sir.

20 Q Let me show you this. Is there a dispatch time on
21 there?

22 A Yes, sir. The dispatch time was 2135 or 9:35 p.m.

23 Q And when did you get there?

24 A I arrived at 2139, four minutes later.

25 Q And when you arrived, what did you see?

1 A I saw Ms. Hames in her car parked in the middle of
2 Monro Street. She had her flashers on. And as I got out of
3 my car and approached, I saw a man lying in front of her car
4 in the road bleeding from obvious injuries.

5 Q I'm sorry?

6 A Bleeding from obvious injuries.

7 Q Were you able to talk to the man?

8 A I did, yes, sir.

9 Q And did you learn his name?

10 A Yes, sir. He told me his name was Elizawon Gray.

11 Q And did he give you an address?

12 A He did.

13 Q What was that?

14 A I don't remember. It was a local Union address. I
15 don't remember.

16 Q Okay. All right. And what -- did you ask him about
17 being shot?

18 A Yes, sir. I asked him who had shot him and the
19 circumstances, what happened.

20 Q And what did he tell you about being shot?

21 A He told me he had been shot -- he didn't initially give
22 me a name, he gave me a nickname of Ghost of somebody who
23 shot him, the nickname Ghost. He said he was driving a
24 black PT Cruiser and that he was a young man with dreads is
25 the person that shot him.

1 Q And did he tell you anything else about who shot him or
2 why he was shot or anything along those lines?

3 A I asked him why did somebody shoot you and his response
4 was because he owed him something or he thought he owed him
5 something.

6 Q And after you got there and started trying to talk to
7 Mr. Gray, did anybody else arrive?

8 A Yes, sir. Mr. Johnson, he's the first local first
9 responder, who we're familiar with, he showed at
10 approximately the same time I did.

11 Q And what did Mr. Johnson do in regards to trying to
12 assist Mr. Gray?

13 A Mr. Johnson had a medical First-Aid bag kind of thing
14 and he performed first aid on Mr. Gray until the medical
15 personnel showed up.

16 Q And did additional medical people come?

17 A Yes, sir.

18 Q And what did they do when they got there?

19 A They were treating him in the roadway and, eventually,
20 they transported him by ambulance, I think, to the city
21 ballpark where they flew him to regional.

22 Q Okay. And did you do anything about trying to get any
23 additional sheriff personnel out there?

24 A Oh, yes, sir. Investigator Childers, who was on call,
25 the on-call investigator that night, she wasn't too far

1 away. She arrived pretty quick and she was assisting with
2 the scene, also.

3 Q And then did anybody from City Police Department come?

4 A Yes, sir, Sergeant Dale Mitchell.

5 Q And what did you ask Sergeant Mitchell to do?

6 A I was securing the crime scene, making sure no traffic
7 could get either direction on Monro Street. And I asked
8 Sergeant Mitchell to turn all traffic at Siam and Monro and
9 not to let any cars down there.

10 Q And did you make any decision about trying to get some
11 additional crime scene personnel there?

12 A I knew we were going to. I advised Investigator
13 Childers and a discussion took place with the sheriff and
14 others and we decided to call SLED's crime scene
15 investigative unit there.

16 Q And did you -- after showing up and trying to talk with
17 Mr. Gray and started to try to secure the scene, did you
18 have a conversation with Ms. Hames?

19 A Yes, sir. I asked her what she had seen, heard and her
20 involvement in it and I got her personal information, name,
21 address and so forth and released her from the scene.

22 Q And then did you do anything in regards to getting
23 information from Mr. Johnson?

24 A Yes, sir. I asked him -- we were discussing the
25 incident and he told me he had seen somebody matching that

1 description, that vehicle earlier, so he provided a written
2 statement while I was there.

3 Q And after you talked to Mr. Johnson and got this
4 information about him having seen a PT Cruiser, did any
5 other sheriff's investigator follow up on that?

6 A Yes, sir.

7 Q And who was that?

8 A To my knowledge, it was strictly Investigator Vinson.

9 Q Okay. And based on what Mr. Johnson said, what did
10 Investigator Vinson tell you?

11 A Mr. Johnson in his statement said that he had seen that
12 PT Cruiser at the BP just moments before the shooting to
13 where he had heard the shots even. And I think Investigator
14 Vinson went to the BP to follow up on that.

15 Q And then what did you do there at the scene?

16 A I stayed at the scene for several hours until SLED
17 arrived and finished their investigation. I stayed until
18 the end. But in the meantime, I secured it to make sure
19 none of the evidence could have been moved or tampered with,
20 kept all the traffic out of it. We had crime scene tape up
21 on both ends of the road to keep it closed off.

22 While I was waiting on SLED, because sometimes they
23 take a little bit, I used evidence markers and everywhere I
24 could find a piece of evidence I thought was related to the
25 case, I would mark that.

1 Q Did you ever find any weapons located around Mr. Gray?

2 A No, sir.

3 Q And after you made these decisions and set these
4 processes in motion, did you eventually come to see a PT
5 Cruiser at the scene?

6 A Yes, sir.

7 Q And how did that happen?

8 A Approximately 30 minutes after I had got there,
9 Investigator Childers and Sergeant Mitchell, who were behind
10 me at the intersection of Siam and Monro, had called me, got
11 my attention and said there's a black PT Cruiser here with a
12 man driving it wearing dreads.

13 So, obviously, we wanted to look at that because that
14 was a description that had been given. And I approached the
15 vehicle and there was a young black male driver, he was the
16 only person in it, and it was a black PT Cruiser. As I
17 approached, the driver's side window was down --

18 Q Let me just back you up for a second.

19 A Yes, sir.

20 Q Where was the PT Cruiser stopped? Where had it come in
21 from and where were you -- where did y'all stop it?

22 A Yes, sir. It came down Siam Street towards Monro
23 coming from the BP, that direction. And Sergeant Mitchell
24 and Investigator Childers, they observed it come to the stop
25 sign. When they observed it, they said just pull right here

1 for a minute. We need to talk to you a second. Or
2 something, I don't know what they said.

3 Q Okay. Did it come from the direction of the BP?

4 A Yes, sir.

5 Q So you approached the vehicle and who's in the vehicle?

6 A Mr. Thomas was the only occupant. He was driving the
7 PT Cruiser.

8 Q Okay. And what did you observe about Mr. Thomas'
9 appearance that gave you some interest as far as the
10 shooting?

11 A About his -- can you rephrase that one more time?

12 Q About his physical appearance, what was --

13 A Oh, I'm sorry. Well, he was a young male and he had
14 dreads and he was driving a black PT Cruiser. I mean, that
15 was every piece of information that I was provided and he
16 met.

17 Q And then when you approached the Cruiser, did you
18 observe anything else coming --

19 A Oh, yes, sir. Yes, sir. Before I got within probably
20 three to four feet of the car, as I was walking up, the odor
21 of marijuana, it was very strong emanating from the car.

22 Q Okay. And after you made -- after you smelled that
23 odor, what did you decide to do?

24 A I asked Mr. Thomas to step out of the car. I spoke to
25 him and asked him about the weed. He said yes, it's right

1 here and he handed me a little hand-rolled marijuana cigar.
2 I asked him if he had any more and he said he had a little
3 bag in there. And that was fine. I asked him to step out
4 to the rear of the car.

5 Q And at that point, did you search the vehicle?

6 A I didn't do a complete search. Once I got into the
7 back of the car, the other officers, Childers and Mitchell,
8 were right there, I said just stay with him for a second. I
9 think Investigator Childers was writing out a contact sheet
10 or something. I looked in the car with my light and I saw a
11 lot of marijuana residue all over the -- everywhere in the
12 car on the surfaces and I decided to place him under arrest
13 at that time.

14 Q All right. And what were you charging him with?

15 A Possession of marijuana.

16 Q And what arrangements did you make as far as having Mr.
17 Thomas taken somewhere?

18 A I asked Sergeant Mitchell to transport him to the jail
19 for me.

20 Q And after he was transported -- after Mr. Thomas was
21 transported to the jail, what did you continue to do?

22 A I stayed with the crime scene.

23 Q And who eventually arrived to deal with the crime
24 scene?

25 A Three SLED crime scene investigators.

1 Q And did the sheriff's office do anything to authorize a
2 further search of the vehicle?

3 A Yes, sir, a search warrant had been obtained.

4 Q And what did those crime scene agents do in regards to
5 the vehicle?

6 A What did they do?

7 Q Yeah, what kind of operation did they perform?

8 A Oh, as they were executing the search warrant on that
9 vehicle, they fingerprinted many things, looked in every
10 nook and cranny of it and did whatever crime scene SLED
11 agents do. They were photographing and measuring.

12 Q Okay. They probably did what they call processing?

13 A Yes, sir.

14 Q I'm going to draw your attention back to Exhibit 5.
15 Can you just show the jury again, where is the BP or
16 Kangaroo, it's got Kangaroo on there, where is that located?

17 A Yes, sir, that's going to be on the bottom of the
18 screen down here along Lockhart Highway.

19 Q And then the diagram, the map actually refers to a
20 state road, that road that runs from the Kangaroo back to
21 Monro Street, what is that referred to as?

22 A Siam Street, that goes from Lockhart Highway back to
23 Monro.

24 Q And then when the PT Cruiser -- Mr. Thomas pulled up in
25 that PT Cruiser, show the jury where he was coming from and

1 where he was stopped?

2 A He was coming from this direction, traveling towards
3 Monro Street. The officers met him at this stop sign right
4 here. And we actually asked him to pull it to the right and
5 park right here.

6 (WHEREUPON, State's Exhibit No. 3 was marked for
7 identification.)

8 BY MR. ANTHONY:

9 Q I'm going to show you now what's been marked as State's
10 Exhibit No. 3. I'd ask if you recognize that document?

11 A Yes, sir, I do.

12 Q What is that?

13 A This is -- it's the evidence markers that I placed at
14 the scene that night. It's the actual incident location
15 that shows where the evidence was observed and photographed
16 and located in relation to the intersection of Siam and
17 Monro where the vehicles were parked, also.

18 Q Okay. And does that diagram fairly and accurately
19 depict the location of the shell casings and the vehicles
20 and the other items of note there at the crime scene that
21 night?

22 A It does.

23 MR. ANTHONY: We would move No. 3 into evidence.

24 THE COURT: Any objection?

25 MR. BROWN: Without objection.

1 THE COURT: In evidence without objection.

2 (WHEREUPON, State's Exhibit No. 3 was admitted into
3 evidence.)

4 BY MR. ANTHONY:

5 Q And I'm going to just put this up on the projector. So
6 if you would, just use that diagram to show where was Mr.
7 Gray on -- well, first of all, where is Monro Street?

8 A This is Monro Street running horizontally right here.

9 Q And where was Mr. Gray?

10 A Mr. Gray was found laying in the road right here.

11 Q And where was the PT Cruiser? What direction did it
12 come from and where was it parked?

13 A The PT Cruiser came down Siam Street, down the hill to
14 the stop sign right here. That's where officers first
15 observed it. And they had it turn and park right here.

16 Q And then there were a couple -- well, first of all,
17 going down Monro Street, these items right here over on this
18 side of the road, what are all those?

19 A Those are shell casings.

20 Q Okay. If you would, just point them out for me.

21 A Yeah, these.

22 Q Those are shell casings, all right. And there are a
23 couple of personal items that are marked as number two and
24 three on there. Can you tell the jury what those are and
25 where they're located?

1 A Yeah, item two and three was a water bottle with the
2 victim's name on it and earphones and a cigar.

3 Q Well, I think -- let me back up. Look at number 18 and
4 see what that is?

5 A Yeah, number 18 was the water bottle, I'm sorry.

6 Q And then what is number 2?

7 A Cell phone.

8 Q And number one is -- there's not an item associated
9 with number one, but what --

10 A In my experience, as we're processing a scene,
11 sometimes the victims have already been removed. Item
12 number one is where the victim's head was laying.

13 Q So his head is right here?

14 A Yes, sir.

15 Q And then these personal items, the phone and the
16 earplugs, are here and here; is that right?

17 A Yes, sir.

18 Q And what direction was his body pointed?

19 A His feet were down the road.

20 Q Okay, his feet were down towards two and three?

21 A Yes, sir.

22 (WHEREUPON, State's Exhibit No. 4 was marked for
23 identification only.)

24 BY MR. ANTHONY:

25 Q I'll show you now what's been marked for identification

1 as State's 4. Can you identify that picture, please?

2 A Yes, sir, this is a photograph of the incident there on
3 Monro Street after EMS had transported the victim.

4 Q And does that photo fairly and accurately represent
5 what the scene looked like after Mr. Gray had been
6 transported?

7 A Yes, sir.

8 MR. ANTHONY: All right. We'd move 4 into evidence.

9 THE COURT: Any objection?

10 MR. BROWN: Without objection.

11 THE COURT: In evidence without objection.

12 (WHEREUPON, State's Exhibit No. 4 was admitted into
13 evidence.)

14 MR. ANTHONY: I'd ask to publish.

15 THE COURT: Any objection?

16 MR. BROWN: No objection.

17 THE COURT: Go ahead and publish.

18 BY MR. ANTHONY:

19 Q I'm showing you now No. 4 and I'd ask you if you'll
20 show the way his body was facing there on the diagram, but I
21 want to focus a little bit here. What are we looking at
22 there?

23 A We're looking at the spot we just discussed. That's
24 where I found Mr. Gray laying with his head towards us in
25 the photograph and his feet away from us.

1 Q Can you see number one there?

2 A I think so. My eyes aren't that great.

3 Q Then back here, what is that?

4 A Are you talking about the backpack?

5 Q Yeah, that tan item, where did that come from?

6 A That is what Mr. Johnson pulled out of his truck with
7 his First Aid supplies in it.

8 Q Okay. And then I want to back out just a little bit.
9 All of these white markers over on this side of the road,
10 what are they?

11 A Yes, sir, those were the shell casings.

12 Q Investigator Ruby, were you wearing any kind of
13 recording device when this happened?

14 A Yes, sir, I had a body worn camera on.

15 Q I'm going to hand up what's been marked as State's
16 Exhibit No. 2. I would ask if you recognize that DVD?

17 A I do, sir. That's a copy of the recordings made from
18 my devices that evening.

19 Q And how do you know that that's what that DVD contains?

20 A I actually reviewed it this morning, initialed and
21 dated it this morning when I reviewed it.

22 Q And do the recordings on that DVD fairly and accurately
23 reflect what your body camera picked up that night?

24 A Yes, sir.

25 MR. ANTHONY: We move 2 into evidence.

1 THE COURT: Any objection?

2 MR. BROWN: No objection, Your Honor.'

3 THE COURT: In evidence without objection.

4 (WHEREUPON, State's Exhibit No. 2 was admitted into
5 evidence.)

6 MR. ANTHONY: I would ask to publish No. 2.

7 THE COURT: Any objection?

8 MR. BROWN: No objection, Your Honor.

9 THE COURT: Go ahead and publish, Counsel.

10 BY MR. ANTHONY:

11 Q What I would be playing first is the body camera file
12 from actually pulling up at the crime scene.

13 (WHEREUPON, video was played for the jury.)

14 MR. ANTHONY: I'm sorry, Your Honor, if we can have
15 just a second?

16 THE COURT: Certainly.

17 (Pause.)

18 THE COURT: Let's take a short break and see if we can
19 get the audio working.

20 Ladies and gentlemen, I'm going to ask you to retire to
21 the jury room.

22 (WHEREUPON, the jury exits the courtroom.)

23 THE COURT: Mr. Brown.

24 MR. BROWN: Clearly, Your Honor, this is going beyond
25 the scope of what we were informed earlier that the

1 prosecution would be showing. It's not going directly to
2 any testimony this victim would have offered. They're
3 showing the conditions of the victim and --

4 THE COURT: I mean, I agree we haven't talked about it
5 yet, but what would be the basis -- I mean, it's in evidence
6 now without objection.

7 MR. BROWN: In terms of my original motion and what we
8 discussed was going to be presented, because I took them in
9 good faith, was the information that was going to come from
10 this particular portion only showed a conversation between
11 the officer and the victim.

12 MR. ANTHONY: I didn't say that. He made a suppression
13 motion as to what the Defendant said and I responded to
14 that.

15 THE COURT: That was my understanding, too. You made a
16 suppression motion as to statements made by the Defendant
17 and we discussed that. I don't recall any discussion that
18 the video was going to be limited to that.

19 MR. BROWN: Well, clearly, I'm not limited in making my
20 objection about what's being shown on the video. I think
21 this is far beyond anything that the jury should be privy to
22 by way of information that's going to come out. I know he's
23 showing the victim at the time of the officer approaching
24 him, but the nature of understanding he's been shot, it's
25 been discussed. He's going to bring a doctor in that's

1 going to talk about the nature of his wounds. In fact, he's
2 already apprised implied to the jury that this gentleman has
3 been shot at 13 times. It's just pandering to the jury at
4 this point, Your Honor. It's going to have a cumulative
5 effect and I object to it.

6 THE COURT: Mr. Brown, is your objection under Rule 403
7 that the graphic nature of the video is prejudicial?

8 MR. BROWN: Clearly, Your Honor.

9 THE COURT: Mr. Anthony, what's the probative value of
10 showing the victim on the ground?

11 MR. ANTHONY: I think there's a probative value to the
12 jury seeing and hearing the victim in his words saying --
13 giving this description of the man who shot him. That's the
14 probative value because, otherwise, it just has to be
15 relayed through law enforcement officers -- or one law
16 enforcement officer. And, obviously, the jury -- there's a
17 significant probative value to the jury hearing the victim
18 say it himself.

19 THE COURT: I agree with you, Mr. Anthony, but how much
20 do we have to watch of this before we actually get to the
21 point where the victim identifies -- or gives a description?

22 MR. ANTHONY: It's fairly early on in the recording. I
23 mean, there was no motion to parcel this up. My intention
24 was to just play the entirety of him in the roadway.

25 THE COURT: I understand. Mr. Brown has made his

1 motion now. I think why don't we just fast-forward to where
2 he makes the identification or maybe five seconds before.

3 MR. ANTHONY: Okay, yes, sir. I'll just need a minute
4 to find that.

5 THE COURT: Okay.

6 (Pause.)

7 MR. ANTHONY: I think that's the end of it. There's a
8 statement and then there's a period where Investigator Ruby
9 is not talking to him and he goes back to him again. I
10 think at that point, that's the end of what he's being --
11 what the victim conveyed right there.

12 THE COURT: So it's the second portion where he starts
13 -- where he ask him who shot you again and gets a
14 description? Is that sufficient or do you want the
15 beginning, also?

16 MR. ANTHONY: Well, I'd like to get, at least, the
17 first encounter and then the second encounter. And I can
18 deal with that however you'd like. I can skip the in
19 between part if you'd like.

20 THE COURT: I think that will be the easiest.

21 Mr. Brown, is that -- if he just skips -- I think he's
22 entitled to have the two -- because he says on two different
23 occasions a little bit of information.

24 MR. BROWN: If that's the Court's ruling, Your Honor.

25 THE COURT: Well, I'm asking what you request.

1 MR. BROWN: If that's the information -- I know the
2 second part covers everything that was in question.

3 THE COURT: I agree with you, but I also think -- the
4 victim says it twice. I think the State's entitled to get
5 the first statement in the record as well.

6 MR. BROWN: I would object to any rendition by the
7 investigator when he says he's pumped full of holes in terms
8 of him trying to describe what's happening. You can hear it
9 on the recording that he's trying to describe what he said
10 to him as opposed to us having an opportunity to hear what
11 he said. So I would object to that part coming in.

12 THE COURT: You're objecting to the phrase pumped full
13 of holes?

14 MR. BROWN: By the investigator.

15 THE COURT: Where is that --

16 MR. ANTHONY: He says that, I think, during
17 conversation on the radio or on the phone. He says it
18 before he goes back to him the second time.

19 THE COURT: So that would be skipped, right?

20 MR. ANTHONY: Yes, sir, I could skip that.

21 THE COURT: Okay.

22 MR. ANTHONY: I'm going to need --

23 THE COURT: My law clerk is pointing that at some time
24 between now and the end of the case, we're going to want to
25 prepare a redacted disk of just the portion we're going to

1 hear.

2 MR. ANTHONY: Yes, sir.

3 MR. BROWN: Yes, sir.

4 THE COURT: Let's just do a dry run to make sure we're
5 in agreement. I don't think it will take very long.

6 You don't mind, Mr. Anthony?

7 MR. ANTHONY: No, sir, I think that's a great idea.

8 (WHEREUPON, video was played for the Court.)

9 THE COURT: Mr. Brown, is that satisfactory?

10 MR. BROWN: I don't see the need of having the yelling
11 in the background. He's already given the information about
12 the PT Cruiser.

13 THE COURT: You mean the last few seconds of the video?

14 MR. BROWN: Yes, sir.

15 MR. ANTHONY: Let me rewind it again, do it again.

16 (WHEREUPON, the video was played for the Court.)

17 THE COURT: Why don't we cut it right there?

18 MR. ANTHONY: Okay.

19 THE COURT: Mr. Anthony, does that get you what you
20 need?

21 MR. ANTHONY: I think so, Your Honor.

22 THE COURT: Mr. Brown, how about that, cut it right
23 there?

24 MR. BROWN: That's fine, Your Honor.

25 THE COURT: Counsel, I just looked at my watch, it's

1 one o'clock. Rather than bringing them back in here and
2 playing that and sending them to lunch, my suggestion is
3 that it might be a good time to break for lunch.

4 MR. ANTHONY: Yes, sir, I agree.

5 THE COURT: Okay, we'll be in recess until 2:15.

6 (WHEREUPON, a lunch recess was taken.)

7 (WHEREUPON, the jury enters the courtroom.)

8 THE COURT: Ladies and gentlemen, have y'all elected a
9 foreperson yet?

10 (Jury indicated in the negative.)

11 THE COURT: If you don't mind, just on the next break,
12 if y'all will go ahead and take care of that. We're going
13 to continue with the testimony of Investigator Ruby.

14 MR. ANTHONY: Your Honor, I will go ahead and ask
15 Investigator Ruby to resume his spot on the witness stand.

16 THE COURT: Yes, sir.

17 MR. ANTHONY: At this time, we would go ahead and ask
18 to publish the relevant portions of his body camera video.

19 THE COURT: Okay.

20 (WHEREUPON, video was played for the jury.)

21 MR. ANTHONY: Your Honor, at this time, I would publish
22 to the jury the relevant portion of the body camera
23 conversation between Investigator Ruby and Mr. Thomas.

24 THE COURT: Any objection other than what you
25 previously --

1 MR. BROWN: No, Your Honor?

2 (WHEREUPON, video was played for the jury.)

3 CONTINUED DIRECT EXAMINATION

4 BY MR. ANTHONY:

5 Q And when I cut that off, what were you telling him you
6 were getting ready to do?

7 A Arrest him.

8 Q And that's for marijuana?

9 A Yes, sir.

10 Q I just have a couple more questions. There's a woman
11 -- in the last video we just showed the jury, there's a
12 woman there at the Cruiser with you, who is that?

13 A That's Investigator Childers with the sheriff's office.

14 Q Okay. And was Mr. Thomas wearing a shirt when you
15 stopped him?

16 A No, sir.

17 Q Other than your work on the case that night, did you
18 have anything else to do with any further investigation in
19 the case?

20 A Not once I left the scene, no, sir.

21 MR. ANTHONY: Thank you. That's everything I wanted to
22 ask you.

23 THE COURT: Mr. Brown.

24 MR. BROWN: Thank you.

25 CROSS-EXAMINATION

1 BY MR. BROWN:

2 Q Investigator, that was you with the body cam when
3 someone approached Mr. Gray?

4 A I had the body camera on that we were just watching.
5 Is that what you're asking?

6 Q Yes, sir.

7 A Okay.

8 Q Who was the lady that was standing out there with you
9 then?

10 A The black lady, older black lady?

11 Q Yes, sir.

12 A I believe her name is Ms. Norman. She lives at the
13 house right there by that driveway.

14 Q Did she provide a statement?

15 A No, sir.

16 Q Did you call her in to provide a statement?

17 A No, sir.

18 Q Who was the gentleman that was out there with no shirt
19 on?

20 A That was also part of that family, if I recall
21 correctly.

22 Q Do you know his name?

23 A Norman is all I know.

24 Q Anybody else that was out there, do you know their
25 names?

1 A Aside from the person that called 911 and Mr. Johnson
2 to help out.

3 Q Who was the person that called 911?

4 A Ms. Hames.

5 Q Was she out there when you got there?

6 A Yes, sir.

7 Q Is she in the video?

8 A She was in her car. The car was in the video.

9 Q She was in the car?

10 A Yes, sir.

11 Q She never exited the car once you came to the scene?

12 A She got out and talked to me after I had approached
13 where the victim was. When I came back, she got out and
14 talked to me.

15 Q So she wasn't in that area?

16 A No, sir.

17 Q Do you see his father, friends, anybody out there?

18 A Somebody had showed up after several minutes. I
19 assumed the way they talked, it was a relative or close
20 friend.

21 Q Do you know if anyone had been there earlier?

22 A Before I got there?

23 Q Yes.

24 A I have no idea.

25 Q But Ms. Hames testified that she was the only person

1 out there?

2 A Correct.

3 Q But that's not true?

4 A It depends how you're asking that question, sir. I'm
5 not sure I understand.

6 Q Well, from what we've seen on the video, was Ms. Hames
7 the only person out there?

8 A Where's out there?

9 Q Where Mr. Gray was located?

10 A There was nobody else in the road when I got there.
11 They were all up on their yard adjacent to --

12 Q Well, in the area where Mr. Gray was?

13 A Oh, yeah.

14 Q So she wasn't the only person that was in the area?

15 A I'm getting confused on what you're asking. She was in
16 her car --

17 Q I'm asking --

18 A There were neighbors were in their yard right there
19 adjacent to the road.

20 Q Which was adjacent to where Mr. Gray was at?

21 A Correct.

22 Q So other people were in the area near Mr. Gray?

23 A Yes, sir.

24 Q In fact, a gentleman was trying to tell you what he
25 heard in terms of shots? Do you recall that?

1 A Not specifically, no, sir.

2 Q Well, the jury will have a chance to see that.

3 MR. ANTHONY: Objection, that's not a question.

4 THE COURT: Sustained.

5 BY MR. BROWN:

6 Q Again, you had your body camera on the whole time?

7 A Yes, sir.

8 Q In regards to securing the scene, would you say you had
9 the scene secured?

10 A Yes, sir.

11 Q With all those people out there, would you describe it
12 as a scene that was actually secured?

13 A The immediate incident location, yes, sir.

14 Q The multitude of numbers we've seen listed in terms of
15 the various items that were found at the scene, I'm going to
16 show you State's Exhibit 3, both of the cars, the various
17 things that you marked in terms of numbers, were people in
18 that area?

19 A Medical personnel, yes, sir.

20 Q What about the people that were at their home, nearby?

21 A They had approached and several times I asked them to
22 step back.

23 Q Did they comply with your wishes?

24 A Yes, sir.

25 Q Was anyone else in the road behind you?

1 A There were other investigators behind me.

2 Q Was anyone else that wasn't an investigator behind you?

3 A I don't know.

4 Q So you don't know if it was actually secured?

5 A That's not what I said.

6 Q I'm asking that now, I'm asking do you know if it was
7 actually secured there?

8 A Behind me or in front of me? I'm not sure what area
9 you're talking about.

10 Q Any place that you found yourself during the time
11 period in which this video was being made? Behind you as
12 you were facing forward looking at Mr. Gray, behind you, was
13 that area secured?

14 A I wasn't looking. I don't know. I was looking at the
15 incident location. You're talking behind where the vehicles
16 were?

17 Q Yes. Or behind you from where you were standing?

18 A I can't answer that. If it was behind me, I don't know
19 who was there.

20 Q Okay. Down the road, were there other people out here?

21 A They were in the yard, correct.

22 Q Do you know if anyone else was in the road?

23 A I saw Ms. Hames' boyfriend walk down the road after I
24 got there.

25 Q From this direction?

1 A Correct.

2 Q Direction of the vehicle?

3 A The other side of that vehicle, yes, sir.

4 Q Anybody else?

5 A Not that I remember.

6 Q But you don't know?

7 A Which direction?

8 Q From the direction which Ms. Hames' boyfriend was

9 coming from?

10 A I'm saying I saw nobody else there aside from the folks

11 that I mentioned.

12 Q But you don't know if anyone else was there?

13 A Not that I saw.

14 Q Did you ever ask Mr. Gray if anyone was with him?

15 A Ask who?

16 Q Mr. Gray.

17 A No, sir.

18 Q The gentleman who was in the road?

19 A No, sir.

20 Q Do you know if anyone else was with Mr. Gray at the

21 time?

22 A I had no knowledge of it.

23 Q Did you bother to ask?

24 A I must not have.

25 Q Have you talked with Mr. Gray since that time?

1 A I've never talked to him since.

2 Q Have you looked into Mr. Gray in terms of his
3 background?

4 A No, sir.

5 Q Do you know anything about Mr. Gray?

6 A First time I met him was that night, sir.

7 Q So no other interview with him?

8 A No, sir.

9 Q No written statement?

10 A No, sir.

11 Q Didn't try and go see him at his job, if he has one?

12 A No, sir, that was my last contact with him.

13 Q Did you ever go to the house that you got the address?

14 A No, sir.

15 Q Did you go speak with him at the hospital?

16 A No, sir.

17 Q You asked him questions directly in terms of why was
18 someone mad at him. Why did you ask that?

19 A I was trying to determine a motive for the shooting.

20 Q Did you get a motive?

21 A I had a response from him.

22 Q Why were you trying to determine the motive?

23 A Trying to figure out who it was and why somebody got
24 shot. It's pretty standard.

25 Q Is it standard to suggest a motive?

- 1 A I don't understand how you're asking that.
- 2 Q Excuse me?
- 3 A Can you ask that again? I'm not sure exactly what
- 4 you're asking.
- 5 Q Is it standard to seek a motive?
- 6 A Yes.
- 7 Q Is it standard to suggest a motive?
- 8 A I didn't think I did.
- 9 Q You asked him was someone mad at him?
- 10 A Yes, sir.
- 11 Q Why did you choose the term mad?
- 12 A Because I would assume somebody would have to be mad to
- 13 take that kind of action on somebody.
- 14 Q There's no other assumptions you could have made in
- 15 regards to that?
- 16 A I'm sure there could in hindsight.
- 17 Q But you didn't?
- 18 A No, sir.
- 19 Q So you don't know if he was mad at somebody that
- 20 evening?
- 21 A No idea.
- 22 Q Did you ask him what did he have about his person on
- 23 that evening?
- 24 A No, sir.
- 25 Q Did you ask him what items do you have on you?

- 1 A Of course not.
- 2 Q So you don't know what he had on him?
- 3 A In his pocket -- what are you saying, in his pocket?
- 4 Q On his person, in his hands --
- 5 A No, sir.
- 6 Q -- in his pockets?
- 7 A I didn't search him, no, sir.
- 8 Q And you don't know if he had anyone else there with
- 9 him, that's what you're saying?
- 10 A I don't know that.
- 11 Q You don't know if anyone out there was related to him?
- 12 A I have no idea.
- 13 Q Do you know if he ever stayed in the house that was
- 14 directly adjacent to where he was laying?
- 15 A Ever? I have no idea.
- 16 Q Do you know if he was staying there that weekend?
- 17 A If he had been?
- 18 Q Yes.
- 19 A I don't know.
- 20 Q Do you know if he was staying in that house on that
- 21 day?
- 22 A I don't know.
- 23 Q Do you know if he knew the people in that area?
- 24 A No idea.
- 25 Q Well, isn't it true that one lady indicated to you that

1 she knew him?

2 A I asked, correct.

3 Q But she indicated to you that she knew him?

4 A Somebody did, I couldn't even tell you who it was. I
5 don't remember.

6 Q So people knew him that were out there?

7 A Somebody that was in that area said I know him, yes, or
8 know his family, yeah.

9 Q Did you ask how long those people may have been out
10 there before you arrived?

11 A No, sir.

12 Q Did you ask Ms. Hames how long the people that are
13 standing near him, how long they had been out there?

14 A No, sir, I did not ask her.

15 Q How long have you been in law enforcement?

16 A Twenty years, 12 active and eight reserve.

17 Q You say your purpose on that day was to collect
18 evidence as a criminal investigator?

19 A No, sir, I never said.

20 Q I'm asking?

21 A No.

22 Q Well, you did --

23 A I didn't collect the evidence, no, sir, I marked it.

24 Q You marked it?

25 A I marked it.

1 Q Was that your only function?

2 A And secure the scene, yes, sir.

3 Q Not to secure statements?

4 A That's part of it, if I have time, yes, sir.

5 Q Couldn't you make time?

6 A Couldn't I make time?

7 Q Yes, as an investigator?

8 A Yes, sir.

9 Q You're associated with this case?

10 A Correct.

11 Q Even till today?

12 A Correct.

13 Q So from the time you discovered Mr. Gray until today,

14 could you have collected statements from anyone?

15 A It's not in my avenue at that point, sir. Once an

16 investigator is assigned to it as primary, he takes the lead

17 on it.

18 Q When was the investigator assigned as far as you know?

19 A That night or the next day.

20 Q So the next day, you had no interest in it or had no

21 ability to interview anyone else?

22 A I moved on to the next case, sir. I wasn't involved

23 with it after that.

24 Q On to the next one?

25 A Yes, sir.

1 Q One of the questions you asked on the video related to
2 the car is did Mr. Thomas have anything illegal in the car?

3 A Yes, sir.

4 Q Besides what was obvious in terms of he gave you a
5 personal bag of marijuana?

6 A I asked him the question prior to that.

7 Q Well, he gave you a bag of marijuana eventually?

8 A Yes, sir.

9 Q Was anything else illegal in the car?

10 A Not that I knew of.

11 Q As far as you know, was anything illegal ever found in
12 the car?

13 A To my understanding, later it was, yes, sir.

14 Q What?

15 A A pistol.

16 Q A pistol that was illegal to be in the car?

17 A I don't know that.

18 Q Okay, my question is based upon your years in law
19 enforcement, based upon your knowledge of gun laws, was
20 anything found in that car that was illegal?

21 A Just the pistol.

22 Q What made the pistol illegal?

23 A Where he was carrying it.

24 Q Where was that?

25 A Hidden behind the glove box.

1 Q That made it illegal because it was behind the glove
2 box?

3 A It's unlawful carrying, yes, sir.

4 Q Was he charged with unlawful carrying of a pistol?

5 A I don't know.

6 Q Well, who brought the charges?

7 A The investigator. Investigator Vinson, if I recall.

8 Q But you've been privy to the information in this case
9 since the time it's been going on?

10 A Yes, sir.

11 Q Has he been charged with unlawful carrying as far as
12 you know?

13 A I don't know.

14 Q Is that a part of this case?

15 A I don't know.

16 Q So your testimony is you don't know if anyone else was
17 at the scene with Mr. Gray at any point before you arrived,
18 before Ms. Hames discovered him?

19 A Correct.

20 Q You don't know, if anything, that Mr. Gray may have
21 possessed upon his person during that evening?

22 A Correct.

23 MR. BROWN: Thank you. That's all the questions I
24 have.

25 THE COURT: Any redirect?

1 MR. ANTHONY: Yes, sir, just briefly.

2 REDIRECT EXAMINATION

3 BY MR. ANTHONY:

4 Q As a patrol sergeant, what is your normal
5 responsibility -- well, at the time this happened, what was
6 your job?

7 A To secure the scene.

8 Q What was your job with the sheriff's office?

9 A I was a patrol supervisor.

10 Q And as a patrol supervisor -- what's the difference
11 between a patrol supervisor and an investigator?

12 A I don't investigate the cases, I secure the scene and
13 turn it over to an investigator.

14 Q And is that what you did here?

15 A After I left the scene, correct, it was turned over.

16 Q And in your job back at that time when you were patrol
17 supervisor, would you have had any responsibility for doing
18 any kind of followup on this case after dealing with the
19 actual scene where Mr. Gray was shot?

20 A Not unless it was requested.

21 Q And was that ever requested?

22 A No, sir.

23 Q And would anything like that ordinarily be requested?

24 A No, sir.

25 Q All right. And did anybody tell you that night when

1 you arrived there, did you ever talk to anybody that told
2 you they saw the shooter?

3 A No, sir.

4 Q And to your knowledge, did anybody get in the road and
5 move things around or take things or do anything along those
6 lines in regards to Mr. Gray?

7 A Not to my knowledge.

8 MR. ANTHONY: If I could have a moment?

9 THE COURT: Yes, sir.

10 (Pause.)

11 MR. ANTHONY: Thank you. That's everything I wanted to
12 ask.

13 THE COURT: Mr. Brown, any recross?

14 MR. BROWN: Just one question.

15 RECROSS-EXAMINATION

16 BY MR. BROWN:

17 Q A patrol sergeant in regards to traffic or in regards
18 to criminal matters?

19 A We don't have individual units within Union County for
20 everything.

21 Q So you naturally would cover the criminal
22 investigation?

23 A One more time, please.

24 Q You would cover a criminal case at that point?

25 A Correct.

1 THE COURT: Mr. Anthony?

2 MR. ANTHONY: Nothing further.

3 THE COURT: Any objection to excusing Investigator
4 Ruby?

5 MR. BROWN: No.

6 THE COURT: Mr. Anthony?

7 MR. ANTHONY: No, sir.

8 THE COURT: Thank you, sir. You're excused.

9 THE WITNESS: Thank you.

10 MR. ANTHONY: The next witness is Mr. Johnson.

11 MARK JOHNSON, after being duly
12 sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. ANTHONY:

15 Q Would you state your name, please?

16 A Mark Johnson.

17 Q And Mr. Johnson, where do you live?

18 A I live on Monarch Highway.

19 Q Will you make sure you lean into that microphone so
20 everybody can hear you, please.

21 What do you do for a living?

22 A Right at the moment, I'm unemployed other than odd jobs
23 for myself.

24 Q Okay. And are you involved with any fire departments?

25 A Yes, sir.

1 Q And I want to take you back now to August 28th of 2016.
2 Did you happen to go to the BP on that night?

3 A Yes, sir.

4 Q Approximately what time did you go to the BP?

5 A It was between 9:00, 9:20, I went through there.

6 Q When you went there, how did you drive into the gas
7 station?

8 A I come in off the Lockhart Highway side and circled
9 around the store by the back and backed in at the last
10 parking space on the Monarch end of the store.

11 Q And when you drove in, did you see any type of vehicle
12 in particular?

13 A Yes, sir, I did.

14 Q What kind of vehicle did you see?

15 A It was a black PT Cruiser occupied with a black male.

16 Q And where was the black male located at in the PT
17 Cruiser?

18 A They were on the Monarch end of the store.

19 Q In the Cruiser, where was the black male? What seat?

20 A He was in the driver's seat.

21 Q And where was the Cruiser located in relation to the
22 store?

23 A In the parking lot on the Monarch end of the building.

24 Q And so what did you do when you drove in? How did you
25 come to park there in front of the building?

1 A Yes, sir. Like I said, I drove around the back side,
2 come back around to the front and parked -- backed into the
3 parking space on the end of the building there.

4 Q And when you parked, what did you observe about the
5 Cruiser?

6 A Just that it was a black young male with some
7 dreadlocks sitting in the driver's seat as I went past.

8 Q Once you got parked, where was the Cruiser?

9 A It was gone by then.

10 Q The Cruiser was gone -- when you drove in, you saw it,
11 then you pulled -- by the time you parked, it had pulled
12 out?

13 A Yes, sir.

14 Q And what did you do once you got to the BP? What did
15 you do there?

16 A I just sat there watching the traffic and people going
17 in and out of the store. I was listening to the radio and I
18 could hear Mr. Ruby on the radio.

19 Q And what would be talked about on the radio?

20 A He had a victim laying in the road and needed some
21 assistance down there.

22 Q Okay. So what did you do?

23 A I rode down and when I was there, a male was laying in
24 the road.

25 Q And how far away were you from Monroe Street, from the

1 location?

2 A Maybe 200 yards.

3 Q Okay. And so did you get there before Sergeant Ruby or
4 after Sergeant Ruby? How did that work out?

5 A I was there directly after him.

6 Q And did you see anybody in the road?

7 A I seen the victim laying in the road and the lady that
8 called 911 sitting in her car.

9 Q And why did you decide that you needed to go down
10 there, Mr. Johnson? What was it about your expertise that
11 made you think you could go down there and help out?

12 A I'm a trained First Responder.

13 Q So when you got there and saw the man lying in the
14 road, what did you do?

15 A I just checked to see and asked what had happened to
16 him. He said he had been shot. I asked where. He
17 described out a couple places in his stomach area and the
18 wrist, I think. I administered first aid.

19 Q Did any other responders eventually come to the scene
20 -- well, let me ask you this. You said you rendered first
21 aid. What did you do specifically to help him out?

22 A All I could do was put bandages to where he had been --
23 was bleeding.

24 Q And then did anybody else response to provide
25 appropriate medical treatment?

1 A Yes, sir, EMS came in.

2 Q And after EMS showed up, did you begin to talk to
3 Sergeant Ruby about what had happened?

4 A Yes, sir.

5 Q And during your conversation with him, was -- at that
6 point in time, what was mentioned about the Cruiser?

7 A That I had seen it at the Kangaroo.

8 Q Was it brought up to you that that was a suspect
9 vehicle?

10 A As far as I can recall.

11 Q So at that time, while you were out there that night,
12 did you write up a statement for Sergeant Ruby about what
13 you had seen?

14 A Yes, sir, I did.

15 Q I'm going -- once again, I put Exhibit 5 on the
16 projector. I'm going to focus in here on the BP. I'm going
17 to hand you this pointer. You just press that red button
18 there on the pointer, okay?

19 A Okay.

20 Q And if you would, Mr. Johnson, would you show the jury
21 when you got to the Kangaroo that night, how did you drive
22 in?

23 A I come in right here and went around through the back.
24 As I got here is where I seen the black PT Cruiser with the
25 black male in the driver's seat. I come on around across

1 the front and I backed into this parking spot right here on
2 this end and the car was gone.

3 Q And that night, what did you do after you talked to
4 Sergeant Ruby and gave him a statement? How long were you
5 required to stay there that night?

6 A I was there for a good while as well because I had used
7 my vehicle to block the lower end of the road off to keep
8 anyone else from coming in.

9 Q And there's a photo, Exhibit 4, and there's an item in
10 that exhibit right there?

11 A Yes, sir.

12 Q What is that?

13 A That's my first aid bag that I keep in the truck.

14 Q So did you have to wait for the SLED people to finish
15 dealing with the scene that night before you could leave?

16 A Yes, sir, basically.

17 MR. ANTHONY: Thank you. That's everything on direct.

18 THE COURT: Mr. Brown.

19 CROSS-EXAMINATION

20 BY MR. BROWN:

21 Q Is that a truck in the picture at the end of the road?

22 A Yeah, I think there is one there.

23 Q Law enforcement didn't make you move the vehicle?

24 A No, sir.

25 Q How long do you think it was sitting out there?

1 A Till some time late in the morning.

2 Q All right. And you were stopping cars from coming?

3 A Not that I recall.

4 Q Well, you parked your car there --

5 A I parked it there to keep anyone from coming up through
6 there.

7 Q Okay. Nobody moved the vehicle?

8 A No, they couldn't with my truck sitting the way it was.

9 Q Did you ever see anybody come up to it and turn around?

10 A Not that I recall. My attention was taking care of
11 this man laying on the ground.

12 Q So you don't know what was going on behind you?

13 A Like I said, my attention was to take care of the one
14 laying on the ground that had been shot.

15 Q How long did you sit there with the man on the ground?

16 A Long enough for EMS to get there and get him loaded and
17 gone.

18 Q That didn't take most of the night into the morning,
19 did it?

20 A No, sir.

21 Q But you were there afterwards?

22 A I was still there, yes, sir.

23 Q And that was still in the same place?

24 A Yes, sir.

25 Q And this is right around the corner from the store?

1 A Down behind it.

2 Q On the other side?

3 A No, down behind the store.

4 Q So you could see the store from where this is?

5 A Vaguely. You may see the top of it. It's more up on a
6 hill. You couldn't really unless you go around the corner
7 of the house.

8 Q Okay. So you've got to come down the hill, you're
9 leaving the road that you said you pulled in off on to make
10 that right on Monro?

11 A Yes, sir.

12 Q And it's down, it's not up here?

13 A Coming from the BP, yes, you would be coming downhill.

14 Q Okay.

15 MR. BROWN: Thank you, sir.

16 THE COURT: Mr. Anthony.

17 REDIRECT EXAMINATION

18 BY MR. ANTHONY:

19 Q I'm going to show you Exhibit 3. This vehicle here,
20 which vehicle is that?

21 A That's my vehicle.

22 Q That's your truck?

23 A Yes, sir.

24 Q So your truck is on the opposite end of the crime scene
25 from Siam Street that would take you up to the BP?

1 A Right.

2 Q Is that correct to say?

3 A Yes, sir.

4 MR. ANTHONY: If I can have a moment.

5 (Pause.)

6 MR. ANTHONY: Thank you.

7 THE COURT: Mr. Brown, anything else?

8 MR. BROWN: Nothing else, Your Honor.

9 THE COURT: Any objection to excusing this witness?

10 MR. BROWN: No objection.

11 MR. ANTHONY: Not from the State.

12 THE COURT: Thank you, Mr. Johnson.

13 MR. ANTHONY: The next witness is Mr. Duncan.

14 TRAVIS DUNCAN, after being
15 duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. ANTHONY:

18 Q Would you state your name, please?

19 A Travis Duncan.

20 Q And Mr. Duncan, where do you live?

21 A 616 Browns Creek Road.

22 Q And do you know the Defendant in this case, Mr. Thomas?

23 A Yes, sir.

24 Q And how do you know him?

25 A I've known him for a good while through friends and

1 school, you know.

2 Q How long would you say you've known him?

3 A A few years.

4 Q And I want to take you back now to September [sic] the
5 28th of 2016. Did you see Mr. Thomas that night?

6 A Yes, sir.

7 Q Where did you see him?

8 A Me and my sister and two other friends had pulled into
9 the BP. And as we pulled up to the gas station, he was
10 coming out.

11 Q Who were the two other friends?

12 A Nick Lemonds and Jonathan McAbee.

13 Q At about what time did you go to the BP?

14 A Between about 9:20, 10 o'clock.

15 Q And when you went to the BP, who was driving?

16 A My sister.

17 Q And where did you park initially at the BP?

18 A She pulled up to the gas pump and his PT Cruiser was
19 parked at the gas pump to the right of us.

20 Q And where was he coming from when you first saw him?

21 A He was walking out of the BP.

22 Q And what did you do?

23 A We just casually started talking to each other, you
24 know, we knew each other. We spoke and proceeded to get
25 into the car because he said he wanted to show me something.

1 Q Whose car did you get into?

2 A The black PT Cruiser.

3 Q So you got in the PT Cruiser?

4 A Yes, sir.

5 Q And was anybody with Mr. Thomas?

6 A No, sir.

7 Q Was he wearing a shirt?

8 A No, sir.

9 Q What did he say to you or what did you do when you got
10 in the PT Cruiser?

11 A I got into the PT Cruiser and we proceeded to pull to
12 the right side of the BP, from the gas pump to the side of
13 the store where the previous witness had said he seen it
14 parked.

15 Q And what happened when you got to the side of the BP?

16 A He had asked did I want to buy a pistol. He said -- I
17 think he said \$250. I said I didn't have the money, I only
18 had \$75. And, you know, he proceeded to say I could give
19 him the rest of the money later, but I had already seen
20 flashing lights as I had pulled in, police lights, so I was
21 already on edge a little bit. But, you know, he never said
22 anything that the pistol had been used or anything like
23 that, he was just casually trying to sell it to me.

24 Q Well, this pistol he was trying to sell you, did he
25 show it to you?

1 A Yes, sir.

2 Q When did he show it to you?

3 A When we pulled to the side of the store, he pulled it
4 out.

5 Q And where did it come from?

6 A Behind the glove box.

7 Q And what kind of gun was it, the best you can say?

8 A I don't recall a name, it's been a while. It was --
9 appeared to be a nine or a 40.

10 Q What color was it?

11 A Black.

12 Q And what did -- did he tell you anything about why he
13 was trying to sell the gun?

14 A Other than -- I asked and other than him saying he had
15 got another one, no, sir.

16 Q And you say you told him you only had \$75?

17 A Yes, sir.

18 Q And what was his response to that?

19 A He was still going to sell it to me. You know, we knew
20 each other and he said I could give him the rest of the
21 money later, but I had said that I could not take it with me
22 in the car with my sister. I even got out of the car, the
23 PT Cruiser, and walked back to my sister's car and pretended
24 like I had asked. I didn't really want to get it. I walked
25 back to the PT Cruiser, got back in and said I couldn't take

1 it with me in the car with her.

2 Q Okay. So you get back in the car and explain that you
3 can't take that gun in the car with your sister?

4 A Yes, sir.

5 Q What does he say then? Does he offer to do anything
6 else to help?

7 A Well, he offered to take me to my grandmother's, but at
8 the time, I had told him I had friends with us and I was
9 planning on going somewhere with them.

10 Q So you say he offered to take you to your
11 grandmother's?

12 A Yes, sir. So, I guess, I wouldn't have to ride with my
13 sister.

14 Q Okay. How did you respond to that?

15 A Again, I had said I had friends in the car with us, it
16 wasn't just me and my sister, and we were all hanging out.
17 I just wasn't going to leave them.

18 Q And did you say anything to Mr. Thomas about police
19 lights at that time or anything about a shooting?

20 A No, I did not say anything about a shooting. I didn't
21 really know that a shooting had occurred. I just had seen
22 police lights as I was pulling in and they were flashing.
23 It was dark, so you could see the blue lights flashing.
24 There had been a shooting is what had been stated, but --

25 Q When you say that had been stated, who said that?

1 A He said the police were going to be hot, he had heard
2 there had been a shooting.

3 Q Who is he?

4 A Najm.

5 Q Mr. Thomas said that?

6 A Yes, sir, but he didn't say he shot anyone or any
7 involvement in it, but he just stated that that's what the
8 lights were for because I had asked.

9 Q So Mr. Thomas is telling you there had been a shooting.
10 What did he say about the police?

11 A They were already riding everywhere and that they were
12 going to be hot. Because we had seen them riding.

13 Q Okay. And when you told him that you didn't want to
14 buy the gun, what did he do with the gun?

15 A Oh, it was just placed back behind the glove box.

16 Q Then what did you do?

17 A I left with my sister and, actually, because the police
18 were everywhere and I didn't know what was going on, I had
19 actually went back to my grandmother's and they had went on
20 their way.

21 Q Okay. So your sister took you to your grandma's house?

22 A Yes, sir.

23 Q And what did you do when you got there?

24 A Actually, I had laid down and was asleep when SLED and
25 police officers had come to the door and come in and they

1 had placed me in handcuffs and took me outside and said been
2 involved in a shooting.

3 Q Okay. And then did you give them a statement and talk
4 to them about what happened between you and Mr. Thomas that
5 night?

6 A Yes, sir. After they got me outside and they started
7 to calm a little bit and talk to me, they were explaining
8 that somebody had been shot and they had viewed some tape
9 from the BP gas station and seen me and Mr. Thomas get in
10 the car together and me get out and go back to my sister's
11 car. And they asked about it and I explained to them
12 exactly what I told you.

13 MR. ANTHONY: Thank you. That's everything on direct.

14 THE COURT: Mr. Brown.

15 MR. BROWN: Your Honor, may we approach on a matter of
16 law?

17 THE COURT: Yes, sir.

18 (WHEREUPON, a bench conference was held in the presence
19 of the jury, but outside the hearing of the jury.)

20 CROSS-EXAMINATION

21 BY MR. BROWN:

22 Q Mr. Duncan, you said you know Mr. Thomas?

23 A Yes, sir.

24 Q Did y'all just happen to be at the same location at the
25 same time or had y'all talked prior to that time?

1 A That day, no, sir. We just so happened to pull in the
2 BP and he was coming out.

3 Q What about prior to that day?

4 A I've talked to him before. Like I say, we knew each
5 other. But I didn't know where he was at any time that day
6 or that he was at the BP.

7 Q And as far as your testimony here today, you didn't
8 purchase a gun from him?

9 A No, sir.

10 Q And you didn't sell anybody a gun in regards to this
11 case?

12 A No, sir.

13 Q And you're not known for that in terms of purchasing
14 and selling guns, are you?

15 MR. ANTHONY: Objection, relevance.

16 BY MR. BROWN:

17 Q And based upon the fact that law enforcement came to
18 see you, you testified that SLED saw a video of you speaking
19 to Mr. Thomas?

20 A Yes, sir.

21 Q And did they mention anything about you providing the
22 handgun or did they question you in regards to providing the
23 handgun?

24 A At first, they didn't say whether or not -- it's not --
25 excuse me, I'm going to rephrase. They didn't come to me

1 and say necessarily they were there for Najm, they came to
2 me and placed me in handcuffs and said I was involved or
3 could be involved in a shooting and they questioned me. And
4 then afterwards, I explained to them everything what I just
5 said word for word.

6 MR. BROWN: Thank you.

7 THE COURT: Any redirect, Mr. Anthony?

8 MR. ANTHONY: No, sir.

9 THE COURT: Any objection to excusing Mr. Duncan?

10 MR. ANTHONY: None from the State.

11 MR. BROWN: No, Your Honor.

12 THE COURT: Thank you, Mr. Duncan. You can step down.
13 You're excused, sir.

14 MR. ANTHONY: May we approach?

15 THE COURT: You may.

16 (WHEREUPON, a bench conference was held in the presence
17 of the jury, but outside the hearing of the jury.)

18 THE COURT: Ladies and gentlemen, we're just going to
19 double check the next witness is available, so y'all may
20 have a ten-minute break in the jury room. Like I said, if
21 you can, go ahead and elect a foreperson, please.

22 We'll be in recess for ten minutes.

23 (WHEREUPON, a short break was taken.)

24 THE COURT: Mr. Anthony, are y'all ready for the next
25 witness?

1 MR. ANTHONY: Yes, sir.

2 THE COURT: Mr. Brown?

3 MR. BROWN: Yes, sir.

4 THE COURT: Bring the jury back in.

5 (WHEREUPON, the jury enters the courtroom.)

6 THE COURT: It's my understanding the jury has elected
7 a foreperson.

8 Is it Mr. Meador?

9 THE FOREPERSON: Meador.

10 THE COURT: Meador, okay. Perfect. Thank you, sir.
11 Okay. Mr. Anthony.

12 MR. ANTHONY: I call Ms. Frost as the next witness.

13 AUDREY FROST, after being duly
14 sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. ANTHONY:

17 Q Would you state your name, please?

18 A Audrey Frost.

19 Q And Ms. Frost, where do you live?

20 A I live in Union.

21 Q And where do you currently work?

22 A Vapor Apparel.

23 Q I want to take you back to September [sic] of 2016,
24 what were you doing for a living then?

25 A I was a convenience store manager for Kangaroo Express.

1 Q And which particular Kangaroo Express were you
2 managing?

3 A Monarch.

4 Q And how long had you been the manager of the Kangaroo
5 Express back at that time?

6 A Ten years.

7 Q So as the manager of the station, were you familiar
8 with the camera system?

9 A Yes, sir.

10 Q And what kind of cameras did y'all have at the Kangaroo
11 back in September -- or August of 2016?

12 A It was a 24-hour time lapse DVR system.

13 Q And how many cameras did you have?

14 A Inside and out, a total of 16.

15 Q And where were the cameras located?

16 A Inside or outside the store or both?

17 Q Well, start with the outside.

18 A Okay.

19 Q I know you had 16, if you can remember, what areas did
20 you cover?

21 A On the front, we had a camera on each pump and then we
22 had one at the back of the store that showed the back
23 parking lot.

24 Q And then inside?

25 A On the cash registers, on the beer cave, the bathroom

1 doors, the cooler doors.

2 Q And did those cameras have clocks that tracked the
3 time?

4 A Yes, sir.

5 Q And I'm going to take you back now specifically to the
6 night of August 28th of 2016. Did you see Investigator
7 Vinson that night?

8 A They had called me because they needed to look at the
9 video system. I'm not going to say I went there because a
10 lot of times, I didn't. I would give them the password and
11 just let them watch the video system.

12 Q Okay. And when you say they, who would that be?

13 A The police officer, whichever one was on duty that
14 needed to watch it.

15 Q And did you give them authorization to look at the
16 video system that night?

17 A Yes, sir.

18 Q And was the video functioning properly that night?

19 A Yes, sir.

20 Q And did you have any conversation with them about
21 trying to do a report of things that were captured on the
22 video that night at the Kangaroo?

23 A Yes, sir. They had left me a time frame that they
24 wanted downloaded, but our DVD burner was not working at the
25 time, so I could not burn the DVD for them.

1 Q And did you see Investigator Vinson a few times over
2 that?

3 A He came several times.

4 Q And because of the DVD burner not working, were you
5 ever able to provide him a DVD of what was on the cameras
6 that night?

7 A No, sir. We even tried putting it on flash drive and
8 it wouldn't load to a flash drive.

9 MR. ANTHONY: Thank you. That's everything on direct.

10 THE COURT: Mr. Brown?

11 MR. BROWN: No questions, Your Honor.

12 THE COURT: Any objection to excusing Ms. Frost?

13 MR. ANTHONY: I'd ask that she just remain for a couple
14 more witnesses.

15 THE COURT: Okay. Ms. Frost, if you don't mind, you
16 can step down and remain in the courtroom, please.

17 MR. ANTHONY: The next witness will be Investigator
18 Vinson.

19 RUSSELL VINSON, after being
20 duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. ANTHONY:

23 Q Would you state your name, please?

24 A Russell Vinson.

25 Q And Mr. Vinson, how are you employed?

1 A I'm an investigator with Union County Sheriff's Office.

2 Q How long have you served as an investigator with the
3 sheriff's office?

4 A Investigator approximately two years.

5 Q How long have you worked with the sheriff's office?

6 A Approximately 15 years.

7 Q Were you working or, at least, available to go to work
8 on August 28th, 2016?

9 A On that night, I was initially called out to a missing
10 person with the K-9 Unit and while in route to that, we got
11 cancelled and then I was asked by Captain McNeil to come
12 down to the scene and help with the shooting.

13 Q And when you say the shooting, you're referring to the
14 shooting of Mr. Gray on Monro Street?

15 A Yes.

16 Q And what did you do when you got to the scene?

17 A I was asked to go up and view video at the BP station
18 that supposedly --

19 Q Let me back up just a little bit. When you got there,
20 who did you talk to about what was going on?

21 A I spoke with Captain McNeil and also Sergeant Ruby.

22 Q And after that, where did you decide to go?

23 A They asked me if I would go to the BP station, that
24 they had gotten a statement from Mr. Johnson saying that
25 they had seen a black PT Cruiser -- or he had seen a black

1 PT Cruiser come through the parking lot as he was coming in.

2 Q And did you go there with anybody?

3 A I went there by myself.

4 Q And when you got to the Kangaroo, did you look at their
5 video system from that night?

6 A I did.

7 Q And were you able on camera to see the PT Cruiser?

8 A I was.

9 Q And what time did you see the PT Cruiser initially at
10 the Kangaroo?

11 A The initial time that I have when I seen the actual PT
12 Cruiser was -- 2126 is when I seen Mr. Johnson actually
13 pulling into the parking lot, around behind the store and
14 him backing in. And as he was backing in, the PT Cruiser
15 comes around and pulls out of the store.

16 Q When you say 2126, that's --

17 A 9:26.

18 Q In the evening?

19 A Yes.

20 Q And then looking at the cameras, did you see the
21 Cruiser come back to the BP?

22 A I did.

23 Q And what time did the Cruiser come back to the BP?

24 A It was 2154 or 9:54.

25 Q And did you observe Mr. Thomas at that time on the

1 camera?

2 A I did. I'm sorry, I told you -- it come back in at
3 2151 instead of 2154. He pulls back in and pulls up to the
4 gas pumps and goes into the store.

5 Q Okay. And then what do you see a few minutes later
6 going on when you viewed the camera?

7 A Actually, he comes out and he gets in his car and he
8 sits there less than a minute. He goes back into the store
9 and stays in the store for less than a minute and then he
10 comes back out. And as he's coming back out to his car,
11 which his car is parked at the gas pump, there's another car
12 that pulls up right beside his car. They talk for a few
13 minutes. I observe a male get out of that car and get into
14 the black PT Cruiser and then I seen the black PT Cruiser
15 pull off. The way the cameras are angled, you cannot tell
16 -- on the side of the building, there's no camera, so you
17 don't know if he actually left the store or he pulled to the
18 side of the store.

19 Q But you know he left the gas pump area?

20 A Correct.

21 Q And that was 9:54?

22 A Yes.

23 Q And so after watching that video, what were you
24 interested in doing in regards to the man that got into the
25 vehicle with Mr. Thomas?

1 A Trying to identify who the male was that got in the car
2 with him.

3 Q And how did you go about doing that?

4 A Right at the same time when Mr. Thomas' car was coming
5 and the other car, which Mr. Duncan was in, pulls up, there
6 is another guy that was walking from his residence across
7 the road into the parking lot and I recognized who he was.
8 And then myself and Agent McCraw with SLED went to his
9 residence to see if he knew who those subjects were.

10 Q Okay. Who was this person?

11 A His name was Richard Farr.

12 Q So you went and talked to Mr. Farr?

13 A Yes.

14 Q And after talking to Mr. Farr, based on what he told
15 you, what was the next step in the process of identifying
16 the man that got in the car with Mr. Thomas?

17 A Mr. Farr told us he did not know who the subjects were,
18 but that they lived in a trailer behind Ottaray Baptist
19 Church, which is the same neighborhood he lives in, and he
20 had seen those people there several times.

21 Q So where did you go after talking with him?

22 A We left and went to the trailer right behind Ottaray
23 Baptist Church, which was on Wardlaw Street.

24 Q And who did you speak to there?

25 A We spoke to a Mr. Jonathan McAbee and a Nick Lemonds

1 and then they told us that they were at the BP station with
2 Travis and Travis' sister and Travis had got out of the car
3 and got into the car with Mr. Thomas.

4 Q And so after getting all that, what is the next thing
5 you did?

6 A Myself and Agent McCraw went down to Mr. Duncan's
7 residence, which is his grandmother's residence, in Brown's
8 Creek where he was staying.

9 Q And approximately what time did you go down to Mr.
10 Duncan's grandma's house?

11 A By this time, it was after four o'clock in the morning.

12 Q And were you able to speak with Mr. Duncan?

13 A We did.

14 Q And did you take a statement from him?

15 A We did.

16 Q And after talking with Mr. Duncan, what did you do in
17 regards to advising anybody about the location of the gun?

18 A When Mr. Duncan advised us where Mr. Thomas had stuck
19 the gun back behind the glove box, we, in turn, called the
20 SLED agents, the crime scene people to let them know where
21 he told us he placed the gun at behind the glove box.

22 Q And after doing that, were there other things that you
23 did in regard to investigating the case?

24 A I did. The next day, I was assigned the case by
25 Captain McNeil. That's kind of our procedures, when the

1 cases come out that day, the next day, he hands out the
2 cases to which investigators are going to be investigating.
3 I never actually went home that night, but that next
4 morning, myself and Agent McCraw actually went to the jail
5 to try to speak to Mr. Thomas, advised him of his Miranda
6 rights, but he --

7 Q Okay. And then after that, what's the next thing you
8 did after going to the jail?

9 A After that, we went to the hospital to talk to Mr.
10 Gray. This was myself and Investigator Jermaine Smith.

11 Q And after doing that, did you do anything in regards to
12 making any charges as to Mr. Thomas?

13 A I did. After conferring with Captain McNeil, we
14 charged Mr. Thomas with attempted murder.

15 Q And was there ever an attempt made to interview any of
16 Mr. Thomas' associates, anybody that was in his family or --

17 A Yes, myself and Agent McCraw interviewed, talked to his
18 live-in girlfriend that was living at the residence with
19 him.

20 Q Okay. And were you ever -- did you make attempts to
21 get the video camera footage from the BP?

22 A I did on several occasions. I went back for probably
23 the next week and a half everyday to try to get actual
24 copies of the video.

25 Q And were you ever able to get a copy of the video?

1 A No, we never could get a copy of it.

2 Q And in regards to any phones that were collected from
3 the crime scene, what phones would you receive?

4 A After the search of the crime scene, there was three
5 phones that were recovered. One that was laying by where
6 the victim was at, one was recovered from Mr. Thomas' car
7 and another phone was laying in the ditch where the initial
8 traffic stop was made by Sergeant Ruby of Mr. Thomas. It
9 just happened to be laying there in the side ditch.

10 Q And what was done in regards to those phones?

11 A Search warrants were done on the phones and they were
12 taken to SLED to be analyzed.

13 Q And was any relevant evidence found on those phones?

14 A No.

15 Q Any communication between Mr. Thomas and Mr. Gray,
16 anything like that?

17 A None at all.

18 Q Is that the extent of your investigation on the case?

19 A It is.

20 MR. ANTHONY: Thank you. That's everything on direct.

21 THE COURT: Mr. Brown.

22 CROSS-EXAMINATION

23 BY MR. BROWN:

24 Q You say you went and attempted to speak with Mr. Thomas
25 with Agent McCraw?

1 A When he was in the jail?

2 Q Yes.

3 A After he had been placed in jail, myself and Agent
4 McCraw went to try to talk to Mr. Thomas, and advise him of
5 his rights. And at that time, he told us he did not wish to
6 speak to us. He wanted to speak to his mother before he
7 talked to us.

8 Q When was that?

9 A This was the next day.

10 Q What time? That morning? That evening? Afternoon?

11 A Probably in the afternoon. I have the actual -- if
12 you'll give me just a second to find his Miranda warnings,
13 it will have the actual time on it. This would be at 12:38
14 that next afternoon.

15 Q Okay, 12:38.

16 A Actually, 12:34 is what time we started, read them and
17 advised him of his rights and when he signed and witnessed
18 it, it was at 12:38 --

19 Q How did he sign and witness it?

20 A How did he sign it?

21 Q Yes, sir.

22 A Mr. Thomas --

23 Q The standard form that y'all use here in Union?

24 A The standard form that we use.

25 Q You have a signature on your form?

1 A Yes, sir.

2 Q And he didn't provide a statement whatsoever?

3 A No, sir. When he advised us he did not wish to speak
4 to us, we didn't ask him any questions and we left.

5 Q In terms of the PT Cruiser, did you ever take a look at
6 the car?

7 A No, sir.

8 Q Who actually went into the vehicle?

9 A SLED. When SLED was called in, a search warrant was
10 done and they were the ones that processed the car.

11 Q So you never had any dealings with the vehicle
12 whatsoever?

13 A No, sir. I went to scene initially and was told what
14 to do as far as going to the BP station and that was my only
15 time I had went to the scene.

16 Q Did you analyze through the phones any cell phone tower
17 activity in terms of locations --

18 A No.

19 Q So you can't say where Mr. Gray was 12 hours before the
20 shooting?

21 A No.

22 Q Six hours, one hour, 30 minutes?

23 A No.

24 Q You didn't do that kind of analysis?

25 A No, sir.

1 MR. BROWN: Thank you. That's all the questions I
2 have.

3 THE COURT: Any redirect?

4 MR. ANTHONY: No redirect.

5 THE COURT: Thank you, sir, you may step down.

6 MR. ANTHONY: No, sir. The State would ask that Ms.
7 Frost be excused now.

8 THE COURT: Any objection?

9 MR. BROWN: No objection.

10 THE COURT: Ms. Frost, you may be excused. Thank you,
11 ma'am.

12 MR. ANTHONY: Next witness is Corporal Eaves.

13 DAVID EAVES, after being duly
14 sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. ANTHONY:

17 Q Would you state your name, please?

18 A David Eaves.

19 Q And Mr. Eaves, how are you employed?

20 A Union County Sheriff's Department.

21 Q And what do you do there?

22 A I'm a jailer.

23 Q How long have you been a jailer?

24 A Eight years.

25 Q How long?

1 A Eight years.

2 Q Eight years, okay. And were you working in that
3 position on the night of August the 28th, 2016?

4 A Yes, sir.

5 Q And that night, was Mr. Thomas brought into Union
6 County jail?

7 A Yes, sir.

8 Q And did you have any conversations with Investigator
9 Smith and Investigator McNeil that night about Mr. Thomas?

10 A They came to get his personal belongings.

11 Q And what is the process at the jail when a person --
12 when a person is arrested and brought in to be processed at
13 the jail, what is done with their clothing and their
14 personal things?

15 A They are put in a tote and we put it in the clothing
16 section where we put their clothes.

17 Q And was that what Investigator Smith and Captain McNeil
18 were asking for was Mr. Thomas' clothes?

19 A Yes, sir.

20 Q And were you able to locate Mr. Thomas' clothes and
21 turn them over to Investigator Smith?

22 A Yes, sir.

23 MR. ANTHONY: Thank you. That's everything on direct.

24 THE COURT: Mr. Brown.

25 MR. BROWN: No questions.

1 THE COURT: Any objection to excusing Corporal Eaves?

2 MR. ANTHONY: No, sir.

3 MR. BROWN: No objection.

4 THE COURT: Thank you, sir. You're excused.

5 MR. ANTHONY: Next witness would be Mr. McNeil.

6 JAMES MCNEIL, after being
7 duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. ANTHONY:

10 Q Would you state your name, please?

11 A James McNeil.

12 Q And Mr. McNeil, back in August of 2016, how were you
13 employed?

14 A Union County Sheriff's Office.

15 Q What was your position then?

16 A Captain in charge of investigations.

17 Q How long were you the investigations captain at the
18 sheriff's office?

19 A Approximately eight years.

20 Q And how long were you in law enforcement?

21 A Twenty-eight years.

22 Q And what's happened to your employment status since
23 November of 2016?

24 A November the 11th, I retired.

25 Q November the 11th of?

1 A 2016.

2 Q All right. And what do you do now?

3 A Courtroom security and reserve deputy for Union County
4 Sheriff's Office.

5 Q Captain McNeil, I want to take you to August 28th of
6 2016. Did you become involved in the investigation of a
7 shooting on Monro Street on that night?

8 A I did.

9 Q And how were you advised this had occurred?

10 A I received a call at home by Sheriff Taylor saying that
11 we had a shooting on Monro Street and to call State Law
12 Enforcement to have their crime scene unit come and process
13 the scene.

14 Q Was that something you arranged?

15 A Yes, sir.

16 Q And after you arranged that, what was the next thing
17 you became involved in as far as this incident?

18 A Once I left home, I was contacted by Investigator Wendy
19 Childers to go to the jail and do a gunshot residue kit.

20 Q And who were you going to do a gunshot residue kit on?

21 A Najm Thomas.

22 Q And what's the purpose of doing a gunshot residue kit?

23 A A gunshot residue kit is a kit to actually -- it's a
24 process to remove gunshot residue from a suspected person
25 that had fired a gun.

1 Q And did you ask anybody else to come in with you while
2 doing this interview of Mr. Thomas and this collection?

3 A I did.

4 Q Who was that?

5 A Investigator Jermaine Smith.

6 Q And where did the two of y'all meet?

7 A At the Union County jail.

8 Q And did you know Mr. Thomas from before this night?

9 A I did.

10 Q And did Investigator Smith know him as well?

11 A He did.

12 Q And how did y'all know him?

13 A My son and Najm played on youth football teams and
14 youth baseball teams together.

15 Q So when you get to the jail, where did you speak to Mr.
16 Thomas?

17 A It was actually a training room at the jail.

18 Q And what kind of room is a training room?

19 A It's a room with a chair and table in it. Basically,
20 we use that room for training purposes.

21 Q And before you started talking to Mr. Thomas, did you
22 advise him of any rights that he had?

23 A I did. I advised him why we was there, to talk to him,
24 and before we done that, I told him we needed to advise him
25 of his Miranda warnings.

1 Q And do you use any kind of document to advise a person
2 of that?

3 A We do.

4 Q I'm going to hand you what's been marked for
5 identification as State's Exhibit No. 1 and ask if you
6 recognize that document?

7 A It's an advisement of rights and Miranda warnings.

8 Q And how did you go about advising Mr. Thomas of his
9 Miranda?

10 A First, I put his name at the top of it and I read each
11 one of the questions to him and asked him did he understand
12 them. If he didn't, I would do my best to try to explain it
13 to him.

14 Q And did he indicate that he understood the rights that
15 are on that form?

16 A He did.

17 Q If you would, just tell the jury what rights you
18 advised him of when you were talking to him.

19 A The first question is, before we ask you any questions,
20 you must understand your rights. The second question, you
21 have the right to remain silent. Third question, anything
22 you say can be used against you in court. Fourth question,
23 you have the right to talk to a lawyer for advice before any
24 questions if you wish and to have him with you during
25 questioning. Fifth question, if you cannot afford a lawyer,

1 one will be appointed for you before any questions if you
2 wish. Sixth question, if you decide to answer questions
3 without a lawyer present, you still have the right to stop
4 answering questions until you talk to a lawyer. Having
5 those rights -- you also have the right to stop answering
6 any questions at any time until you talk to a lawyer.

7 Q So once you read him those rights and he told you he
8 understood them, what was the next thing you read to him?

9 A The next part is waiver of the rights. And it states:
10 I read the statement of my rights and understand what my
11 rights are. I'm willing to make a statement and answer
12 questions. I do not want a lawyer at this time. I
13 understand and know what I am doing. No promises or threats
14 have been made to me. No pressure or coercion of any kind
15 has been used against me.

16 Q And once you read that to him, what did you ask him to
17 do?

18 A I asked him to sign at the bottom.

19 Q And did he sign acknowledging he was aware of his
20 rights and he was waiving them?

21 A He did.

22 Q And is that waiver form -- well, after he signed, what
23 did you do?

24 A We witnessed his signature and also put a time at the
25 end.

1 Q So that's your signature and Investigator Smith's
2 signature on the form?

3 A Yes, sir.

4 MR. ANTHONY: Your Honor, at this time, we would move
5 Exhibit No. 1 into evidence.

6 THE COURT: Any objection?

7 MR. BROWN: No objection, Your Honor.

8 THE COURT: In evidence without objection.

9 (WHEREUPON, State's Exhibit No. 1 was admitted into
10 evidence.)

11 BY MR. ANTHONY:

12 Q While you were talking to Mr. Thomas and reading his
13 rights to him, did he appear to know what you were telling
14 him?

15 A He did.

16 Q And did he appear to be competent to talk to you about
17 what had happened?

18 A Yes.

19 Q So at that point, what did you ask him?

20 A First, I told him why I was there and he was a suspect
21 involved in a shooting. I advised him that I had a GSR kit
22 that I wanted to collect. He consented to that. I also had
23 a buccal swab, which is a DNA collection, and he submitted
24 to that.

25 (WHEREUPON, State's Exhibit No. 6 was marked for

1 identification.)

2 BY MR. ANTHONY:

3 Q I'm handing up to you what's been marked for
4 identification as State's Exhibit No. 6. I'd ask that you
5 just look at the contents of that envelope and let me know
6 if you've seen that before?

7 A Yes, sir, I have.

8 Q What is that?

9 A This is a gunshot residue collection kit.

10 Q And what is inside of that as far as an actual item
11 that you used to collect the GSR?

12 A Inside of it, you have four blotters that actually
13 collect residue on the back of the hands and also in the
14 palm of the hands on each hand. You have two for each hand.

15 Q So when you took the kit from Mr. Thomas, you just
16 opened up the blotter and pushed it into his hand?

17 A Yes, sir. You blot the back side of the hands and also
18 the palms of the hands. Also, in the kit is the directions
19 on how to use it and also the information sheet is inside
20 the collection kit.

21 Q Once you took that -- took those samples from Mr.
22 Thomas, what did you do with the blotters?

23 A I filled out the paperwork and also put the blotters
24 back inside the kit with the information, directions on how
25 to use the kit.

1 Q And what did you do with regards to the kit itself?

2 A Sealed the kit and it was turned over to a State Law
3 Enforcement agent.

4 Q You said you also took a swab; is that correct?

5 A That's correct.

6 Q And what was the purpose of taking the swab?

7 A DNA collection from Najm.

8 Q So after you took the GSR kit and the swab, what was
9 the next thing in the investigation you did as far as
10 interacting with Mr. Thomas?

11 A We talked with him for a length of time. He was very
12 nervous, possibly scared. We would talk a little while and
13 we would stop. At the end of the interview, we talked to
14 him about guns. He stated he had a gun at his parents'
15 house in his room --

16 Q Let me just ask, did you ask him about the shooting?

17 A We did.

18 Q What did he tell you about the shooting?

19 A He stated he wasn't involved in the shooting.

20 Q But he did deny having anything to do with the
21 shooting?

22 A Yes, sir.

23 Q You said he did tell you he had a gun?

24 A He did.

25 Q And what did he tell you about this gun?

1 A He stated he had a gun at his parents' house in his
2 room in a pillowcase.

3 Q And after he told you that, what did you and
4 Investigator Smith decide to do with regards to trying to
5 locate that gun that Mr. Thomas told you about?

6 A Once we left the jail, we went to his parents' house.

7 Q Okay. Before you left the jail, did Investigator Smith
8 collect anything else?

9 A Collected his clothing from the jail.

10 Q And who specifically did he get those from?

11 A From the jail.

12 Q From Mr. Eaves?

13 A Mr. Eaves, yes, sir.

14 Q And so after you collected the clothes, where did you
15 and Investigator Smith go?

16 A We went to Najm's parents.

17 Q And where is that?

18 A It's in the Brockman Heights community in the City of
19 Union.

20 Q And when you arrived there, what happened there at his
21 parents' house?

22 A We went inside and spoke to his parents, advised them
23 why we was there. And once we told them we was there
24 looking for a gun, his mother got upset, stated she didn't
25 allow guns at her residence. Najm's father went back to the

1 room and retrieved the pillowcase and brought it out to
2 Investigator Smith and a pistol was retrieved from that
3 pillowcase.

4 Q So did Investigator Smith, did he initially collect
5 that pistol?

6 A That's correct.

7 Q So after you got the pistol from Mr. Thomas' parents'
8 residence -- well, let me back up just a minute. When Mr.
9 Thomas was telling you where the pistol was, where did he
10 say it was at the house?

11 A It was in his room.

12 Q Okay. And you did not go into his room, his father
13 did; is that correct?

14 A That's correct.

15 Q Well, after the pistol was turned over, where did you
16 and Investigator Smith go then?

17 A Went to the crime scene on Monro Street.

18 Q And who did you meet with there?

19 A SLED agents was there at the time. There were several
20 officers there at the scene.

21 Q And what did you do with Exhibit No. 6, the GSR kits
22 that you just took a look at? What did you do with those?

23 A Turned that over to the crime sene unit.

24 Q And did you do the same thing with the buccal swab?

25 A That's correct.

1 Q And was that Agent Claycomb?

2 A I'm not sure, but turned it over to the agent at the
3 scene.

4 Q I'll just show you this chain of custody. I'll refer
5 you to the second page of that. Does that refresh your
6 recollection of who you turned it over to?

7 A Yes, sir, Dawn Claycomb.

8 Q And then, as far as the pants, the clothes that were
9 taken from the jail, that was initially turned over to
10 Investigator Smith; is that correct?

11 A That's correct.

12 Q And once you got to the scene and started dealing with
13 SLED, what happened in regards to you taking custody of
14 those?

15 A I took custody of them and turned all items over to the
16 agent with the crime scene unit.

17 Q All right. So you turned Mr. Thomas' pants over to
18 Agent Claycomb?

19 A That's correct.

20 Q And then as far as the gun that was taken from Mr.
21 Thomas' house, who had gotten that initially?

22 A His father collected it from the room and Investigator
23 Smith collected it from the father.

24 Q And then what happened -- what did Investigator Smith
25 do with the gun there at the crime scene before it was

1 turned over to SLED?

2 A It was turned over to me.

3 (WHEREUPON, State's Exhibit No. 7 was marked for
4 identification.)

5 BY MR. ANTHONY:

6 Q And I'm showing you what's been marked for
7 identification as State's Exhibit 7 and ask that you take a
8 look at that weapon in that box. Does that appear to be the
9 gun that you signed over to Agent Claycomb?

10 A Yes, sir.

11 THE COURT: Mr. Anthony, can I see that pistol for a
12 moment?

13 MR. ANTHONY: Yes, sir.

14 THE COURT: Is it zip tied? That's what I'm looking
15 at.

16 MR. ANTHONY: Yes, sir.

17 BY MR. ANTHONY:

18 Q And after you turned that evidence to SLED that night
19 at the crime scene, did you have any other involvement in
20 the investigation of this case during your time as
21 investigations captain?

22 A The only other thing I done on the case, the following
23 morning, I actually turned the case over to Detective
24 Vinson.

25 Q Okay. And in the past, at my request, did you make any

1 efforts to try and contact Mr. Gray?

2 A I did.

3 Q And did you actually have a conversation with Mr. Gray?

4 A I did. It was back in June. I was here at the
5 courthouse and I received a call and it was from Mr. Gray.

6 Q And based on that conversation, what is your
7 expectation as far as Mr. Gray coming to court to
8 participate in this case?

9 A He wasn't coming to court.

10 Q And Captain McNeil, is Mr. Thomas here in the
11 courtroom?

12 A Yes, sir.

13 Q And would you point him out, please?

14 A With the red shirt on sitting beside Mr. Brown.

15 Q And how has his appearance changed -- how does he
16 appear differently today physically than he did that night
17 when you talked to him at the jail?

18 MR. BROWN: Objection, Your Honor. I don't understand
19 the relevance of that question.

20 THE COURT: I'm going to overrule it.

21 Go ahead.

22 THE WITNESS: He had dreads that night at the jail.

23 BY MR. ANTHONY:

24 Q And he doesn't have dreads anymore?

25 A No, sir.

1 MR. ANTHONY: Thank you. That's everything on direct.

2 THE COURT: Mr. Brown.

3 CROSS-EXAMINATION

4 BY MR. BROWN:

5 Q Doing okay this afternoon, sir?

6 A Doing fine.

7 Q How many years have you been in law enforcement?

8 A Twenty-eight.

9 Q Where else have you worked in law enforcement?

10 A Chester County Sheriff's Office.

11 Q Just Chester and Union?

12 A Chester and Union, yes, sir.

13 Q You were asked about what is the commonly known process
14 of going through the rights of a person being interviewed.
15 Do you use a form for that?

16 A Yes, sir.

17 Q Do you still have the form?

18 A Yes, sir.

19 Q Is it similar to the forms that you used for Chester?

20 A It's similar, but not the same.

21 Q What's different?

22 A The one in Chester, we had the lines by each question
23 for the person that you actually reading the rights to for
24 them to sign and put their initials there.

25 Q And why would that be done?

1 A To let us know that they understand those questions.

2 Q So that's not the case on the interrogation form used
3 in Union?

4 A No, sir.

5 Q So there's no indication by him signing beside each
6 line that he understood those rights?

7 A That's correct.

8 Q So the only thing he signed was the second part of the
9 interrogation form which you call the waiver of rights?

10 A That's correct. Also, there's a carbon copy of the one
11 we use here in Union and Chester didn't have a carbon copy.

12 Q So the one form you have to actually make a photo copy?

13 A That's correct.

14 Q But it still showed the person's initials beside each
15 line?

16 A That's correct.

17 Q It showed that they understood?

18 A That's correct.

19 Q Do you know how far Mr. Thomas went in school?

20 A No, I don't.

21 Q Do you know if he was a successful student?

22 A No, I don't.

23 Q Do you know if he had advanced courses?

24 A No, I don't.

25 Q General courses?

1 A No.

2 Q Special education?

3 A No, I don't.

4 Q Do you know if he reads well?

5 A No.

6 Q If he writes well?

7 A No.

8 Q Those kind of questions, based upon your experience in
9 law enforcement, are they common questions when you're
10 talking to someone, when you're interrogating them?

11 A Yes.

12 Q Did you ask those questions?

13 A No, I didn't.

14 Q Was that based upon you having some familiarity with
15 him or you just didn't think it was important to ask those
16 questions?

17 A I knew of him. Good kid. He grew up with my son
18 playing ball. I didn't see any problems with him at that
19 time.

20 Q So he wasn't the kind of kid that would get in trouble?

21 MR. ANTHONY: Objection.

22 THE COURT: Sustained.

23 MR. BROWN: Your Honor, he's testified to knowing him
24 growing up. He's making a direct statement about knowing
25 him based upon his own child.

1 THE COURT: He testified, but we're not going to follow
2 up on that.

3 BY MR. BROWN:

4 Q So you didn't ask those questions?

5 A No, sir.

6 Q In terms of the interview, is there anything else that
7 you observed? Was there a video?

8 A No, the room wasn't equipped with audio or video.

9 Q And there was someone that testified prior to you,
10 Investigator Vinson?

11 A Yes, sir.

12 Q And as you heard, he came to speak with Mr. Thomas as
13 well?

14 A That's correct.

15 Q Was that before you spoke with Mr. Thomas or after?

16 A That was after.

17 Q In proximity to the time period Mr. Thomas was brought
18 to the detention facility, do you know how much time had
19 passed?

20 A Several hours. It was early morning hours when we left
21 the detention center, the jail at that time.

22 Q And you said -- obviously, he appeared scared?

23 A He did.

24 Q And so you guys just sit there and talked about other
25 things in general or did you just give him some time to get

1 quiet and then you would ask him something again?

2 A Yes. We talked about playing ball. We talked about a
3 lot of things. But he told us he wouldn't do a written
4 statement. We had a good rapport with him. He would just
5 talk a little while and then he would stop. But you could
6 tell he was scared.

7 Q So during the interview, would you have had him sign
8 this at the end of it or at the beginning?

9 A At the beginning.

10 Q So after he signed it, you could just tell he was
11 nervous?

12 A Yes, sir.

13 Q At what point did you get the GSR kit?

14 A That was at the first part of the interview.

15 Q And he didn't provide any kind of resistance?

16 A No.

17 Q Did you talk to him about what the purpose of a GSR kit
18 is?

19 A I did. I explained it to him and he was stating that
20 he wasn't involved in the shooting. And I explained to him
21 that if he wasn't involved that the kit would actually rule
22 him out or rule him in. And he understood that.

23 Q Did you tell him that he had the right to not take the
24 test?

25 A Yes.

1 Q And did you explain to him the nature of the test after
2 there was some discussion about whether he was involved or
3 not?

4 A Yes, sir.

5 Q And he let you take the test?

6 A He did.

7 Q Same thing with the swab of his cheeks?

8 A Yes, sir.

9 Q It was after you had the conversation whether he was
10 involved in the shooting or not?

11 A That's correct.

12 Q So he didn't resist you in terms of getting the GSR
13 kit?

14 A No, he didn't.

15 Q Didn't resist you in terms of the swab?

16 A No, he didn't.

17 Q That's after you've told him if you've been involved in
18 this shooting, there could be a result of this showing you
19 were involved in the shooting, he let you do it?

20 A Yes, sir.

21 Q Okay. And the gun that was retrieved from the room, do
22 you know if Mr. Thomas was ever charged for that gun?

23 A I don't think he was.

24 Q Based on your experience in law enforcement, was there
25 anything wrong with him having that gun in his room?

1 A No.

2 MR. BROWN: Thank you. No further questions.

3 THE COURT: Mr. Anthony.

4 MR. ANTHONY: No redirect.

5 THE COURT: Thank you, sir. You may step down.

6 MR. ANTHONY: Next witness is Investigator Smith.

7 JERMAINE SMITH, after being
8 duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. ANTHONY:

11 Q Would you state your name, please?

12 A Jermaine Smith.

13 Q And Mr. Smith, how are you employed?

14 A With Union County Sheriff's Office as an investigator.

15 Q And what, specifically, do you do for the sheriff's
16 office right now?

17 A Work with the FBI Task Force.

18 Q And how long have you been doing that?

19 A Approximately eight years.

20 Q How long have you been in law enforcement?

21 A Approximately 23 years.

22 Q Were you working on the night of August the 28th, 2016?

23 A That's correct.

24 Q And did you go to the Union County jail that night?

25 A That's also correct.

1 Q How did you come to go to the Union County jail?

2 A At the request of Captain McNeil.

3 Q And what was the purpose of going to the jail and
4 meeting up with Captain McNeil?

5 A To speak with Najm.

6 Q And where did the two of y'all talk to Mr. Thomas?

7 A In the training room at the jail.

8 Q And who advised Mr. Thomas of his Miranda warnings?

9 A Captain McNeil.

10 Q And did you see Mr. Thomas sign the waiver form?

11 A Yes, sir, I did.

12 Q And you actually witnessed the waiver form? That's
13 your signature on the waiver form as well?

14 A It is.

15 Q And once the waiver form was complete, what did Captain
16 McNeil do? Did he gather any evidence?

17 A We did. We took some clothes that were at the jail at
18 the end of the interview.

19 Q I'm sorry?

20 A Some clothes that belonged to him, we took those.

21 Q In regards to taking evidence from Mr. Thomas' person,
22 what did y'all do as part of the interview process?

23 A Well, as he said, we spoke --

24 Q I mean, as far as gathering evidence, what did Captain
25 McNeil do?

1 A Gather while --

2 Q While in the training room?

3 A The buccal swab, yeah, I'm sorry, the gun residue kits.

4 Q Okay. All right. After that, did the two of you try

5 to interview Mr. Thomas?

6 A We did.

7 Q And what did Mr. Thomas maintain about the shooting?

8 A He wasn't aware of the shooting.

9 Q And did he talk to you about having a weapon?

10 A About having a weapon at his home, yes.

11 Q And did he tell you where it was in his home?

12 A He did.

13 Q Where did he say it was?

14 A In his bedroom in a pillowcase.

15 Q And before the two of you left the jail, did you make

16 any request of Corporal Eaves to recover anything?

17 A Yes, sir, I did, his clothes.

18 Q And did Corporal Eaves provide Mr. Thomas' pants to

19 you?

20 A He did.

21 Q And after that, what did you and Captain McNeil do?

22 A Went back to the crime scene.

23 Q Well, after --

24 A We left the jail? I'm sorry. We went to his house,

25 yeah.

1 Q And where was that located?

2 A It seems like it was Tally Drive. I don't know the
3 correct numerics.

4 Q And what happened when you went to Tally Drive?

5 A Knocked on the door and was met by his parents, kind of
6 explained to them the situation that was going on. His
7 father went back to the bedroom and retrieved the
8 pillowcase.

9 Q And what was in the pillowcase?

10 A A gun, handgun.

11 Q And did you collect that gun?

12 A I did.

13 Q And then what did you and Captain McNeil do after you
14 collected the gun?

15 A Took it back to the crime scene and turned it over to
16 SLED.

17 Q What did you specifically do with the gun and the
18 clothes? Before they went into possession of the SLED
19 agent, who did you give them to?

20 A Captain McNeil.

21 Q And then Captain McNeil turned them over to the SLED
22 agent?

23 A That's correct.

24 Q And I'm going to show you what's been marked for
25 identification as Exhibit 7. I'd ask, does this appear to

1 be the firearm that was turned over to you?

2 A It is.

3 Q And that's the one you turned over to Captain McNeil?

4 A That's correct.

5 MR. ANTHONY: Thank you. That's everything on direct.

6 THE COURT: Mr. Brown.

7 MR. BROWN: No questions.

8 THE COURT: Any objection to Investigator Smith
9 stepping down?

10 MR. ANTHONY: No, sir.

11 THE COURT: Thank you, sir. You're excused.

12 MR. ANTHONY: May we approach?

13 THE COURT: Certainly.

14 (WHEREUPON, a bench conference was held in the presence
15 of the jury, but outside the hearing of the jury.)

16 THE COURT: Ladies and gentlemen, that will be the last
17 witness for today. I'm going to let you guys go and I
18 appreciate your service today. If you can be back here at
19 9:30 tomorrow, we should be able to get going pretty shortly
20 after 9:30. You know, unlike today, there should not be any
21 legal matters to take up before the testimony resumes.

22 So let me just remind you again, when you go home
23 tonight, please don't do any internet research or library
24 research about this case or the law. Please don't talk
25 about this case with your family or your friends. You will

1 be free to do that when the case is over, but until that
2 happens, please just tell them you're serving on a criminal
3 case and you're not allowed to discuss it until the case is
4 over. Then finally, please don't discuss the case among
5 each other until I tell you it's time to deliberate. So
6 please keep those things in mind.

7 Thank you very much for being here, ladies and
8 gentlemen. I'll send you tomorrow morning at 9:30.

9 (WHEREUPON, the jury exits the courtroom.)

10 THE COURT: Counsel, anything we need to take up before
11 we head out today?

12 MR. ANTHONY: Your Honor, I think one thing that just
13 needs to be put on the record is the Court needs to make a
14 ruling on Mr. Thomas being allowed to stay out on bond.
15 Well, he's not out on bond, the case has been called, so --

16 THE COURT: He's been here at trial. He reported
17 yesterday. He reported today. I mean, is the State asking
18 him to be taken into custody?

19 MR. ANTHONY: I would leave that up to the discretion
20 of the Court. We had not addressed it and I felt like I
21 needed to mention it to the Court and it probably should be
22 addressed.

23 THE COURT: Thank you, Mr. Anthony.

24 Mr. Brown.

25 MR. BROWN: Your Honor, clearly, since October 21st,

1 2016, when we were able to get him a bond, he's been present
2 and he's done everything I've asked him to do. Clearly,
3 he's come in regards to this case. And I feel if he were to
4 be taken into custody compromises our ability to represent
5 him effectively.

6 MR. ANTHONY: Yes, sir. I would just say that my
7 concern is just that he doesn't have a bond.

8 THE COURT: I mean, I understand the bond -- would you
9 like me to reset a bond?

10 MR. ANTHONY: Well, I've seen other cases where a
11 bondsman has agreed to stay on a bond while a person is on
12 trial. The concern here is if he didn't show back up to
13 court, there is no bond.

14 THE COURT: Mr. Brown, have you had a chance to discuss
15 that with the bondsman?

16 MR. BROWN: I haven't, Your Honor. It's customary that
17 a bond, clearly, is up when a case is called. It's been my
18 practice that when that occurs, there's never this type of
19 issue, Your Honor, as long as the person reports. If they
20 miss trial, obviously, that's going to compromise them. I'd
21 simply state to the Court that we don't have any reason or
22 any doubt that he wouldn't show up.

23 THE COURT: Well, this is something I should have taken
24 up on yesterday and it's my fault for not doing that. So
25 why don't we do this, Mr. Brown, if you could contact the

1 bondsman tonight and report back to me tomorrow what he
2 says.

3 And I see, Mr. Thomas, you've reported to court every
4 time you've been asked to, so we appreciate that. So I'm
5 not going to take you into custody today. I do have to warn
6 you, though, if you -- I hope you don't have the idea that
7 you might try to run, but if you do, the trial does not have
8 to stop, okay? You've been here, the trial has started, the
9 trial can continue in your absence. I don't think you'll do
10 that. You've been very responsible and been here when the
11 Court has asked, so I appreciate that.

12 Hopefully, you'll let me know tomorrow morning if the
13 bondsman is willing to stay on the bond. If not, we'll
14 figure out what happens tomorrow.

15 MR. BROWN: Your Honor, I will probably at the outset
16 of the case ask for the Court's opinion, if an issue does
17 come up by way of testimony that occurs from the stand under
18 Rule 405, I would ask the Court to consider if I'm allowed
19 latitude to go into that. Because over my objection, the
20 Court did not allow me to talk about issues of reputation
21 based upon the painting of a witness. And I don't know if
22 that's going to happen again.

23 If we decide we're not going to pursue calling
24 witnesses on behalf of the defense, then our only
25 opportunity to examine that will be in a situation in which

1 people will appear on the stand that have been called by the
2 prosecution that I'm seeking information based upon
3 reputation. So under Rule 405, Your Honor, I would ask the
4 Court to take a look at that.

5 THE COURT: I'm looking at it right now. So what are
6 you asking me to do?

7 MR. BROWN: Based upon any testimony that may come up
8 about the reputation of anyone involved in this case.

9 THE COURT: Okay. Rule 405 is issues where reputation
10 is admissible. That's not -- the question of -- I tell you,
11 the reason I sustained the objection was, my reading of the
12 Rule is pertinent character traits to the case. And generic
13 good character testimony, I don't think fits that exception.
14 So if you have case law that shows me that I'm wrong, I'll
15 reconsider that ruling.

16 But the reason I sustained the objection was, my
17 recollection of it, the witness said something to the effect
18 he's a good boy and you followed up with a question like so,
19 he's a good kid or something to that effect. And that was
20 why I cut that line of questioning off. If you leave --

21 Let's see. Yeah, Rule 404(a)(1), evidence of a
22 pertinent trait of character offered by an accused. So if
23 you think -- the reason I sustained the objection was that
24 was generic good, he's a good kid. And I did not think that
25 met that exception.

1 MR. BROWN: Again, I'm pursuing it under Rule 405, but
2 I understand the Court's ruling in regards to that.

3 THE COURT: Right. Rule 405 is how the evidence comes
4 in if it's admissible.

5 MR. BROWN: Yes, sir.

6 THE COURT: But if you have evidence that goes beyond
7 the generic he's a good kid and it's a pertinent trait,
8 you're allowed to put that in as character of the accused.
9 Of course, that then allows the prosecution to rebut that
10 evidence if they have evidence that goes the other way.

11 MR. BROWN: Absolutely.

12 THE COURT: Okay.

13 Anything else, Counsel?

14 MR. ANTHONY: No, sir, I don't have anything else.

15 THE COURT: Anything from the Defense, Mr. Brown?

16 MR. BROWN: Nothing, Your Honor.

17 THE COURT: Thank you, gentlemen. I'll see you
18 tomorrow morning at 9:30.

19 Court will be in recess until 9:30 tomorrow.

20 (WHEREUPON, Court was adjourned for the day.)

21 WEDNESDAY, AUGUST 22, 2018

22 THE COURT: Good morning, Counsel. Anything we need to
23 take up before I bring the jury in?

24 MR. ANTHONY: Nothing from the State.

25 THE COURT: Mr. Brown?

1 MR. BROWN: No, sir.

2 THE COURT: Let's bring the jury in.

3 (WHEREUPON, the jury enters the courtroom.)

4 THE COURT: Morning, ladies and gentlemen. We're going
5 to resume with the State's case.

6 Mr. Anthony.

7 MR. ANTHONY: Thank you, Your Honor. We call Dr.
8 Whitfield.

9 BRYAN WHITFIELD, M.D., after
10 being duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. ANTHONY:

13 Q Would you state your name, please?

14 A Dr. Bryan Watkins Whitfield, the sixth, M.D.

15 Q And Dr. Whitfield, how are you currently employed?

16 A I'm one of the chief surgical residents at Spartanburg
17 Regional and employed through Spartanburg Regional.

18 Q And can you tell the jury your educational background
19 and your training in the field of medicine?

20 A Yes, sir. So I did four years for my undergraduate
21 degree at the University of Georgia. I then went on to do
22 four years of medical school and received my Doctorate of
23 Medicine at Mercer University in Georgia. And then I'm now
24 currently in the fifth out of my five years of general
25 surgery training here at Spartanburg Regional.

1 Q And the five-year time that you've spent working at
2 Spartanburg Regional, what did that entail with regards to
3 surgical training?

4 A So we rotate through meeting different specialities and
5 training under different speciality surgeons, including
6 everything from cancer surgery to vascular surgery. The
7 bulk of our training is in emergent, general and trauma.

8 Q And the program you're currently in, how long does it
9 last?

10 A So it's five years long.

11 Q And you're in your last year?

12 A That's correct.

13 Q And as far as you operating on patients, are you
14 allowed to do that?

15 A So I'm allowed to start emergent cases, whether they be
16 a trauma that comes and needs to emergently go, I can start
17 cases, but I still require an attending physician to show up
18 at some point throughout the case.

19 Q And currently, when people come in the emergency wound
20 with gunshot wounds and other kinds of emergency situations,
21 what is your role when you're working in the emergency room?

22 A So my role is to take the rest of our resident team
23 down and evaluate the patient. I then come up with a plan,
24 whether that be take the patient to the operating room or
25 nonoperatively manage them or carry them to the ICU and I

1 carry that plan out. If it's a code trauma, meaning they
2 come in and it's a code activation, then our attending will
3 come in as well. But for the most part, I run the show at
4 night.

5 Q And this is something you've been doing now for five
6 years?

7 A So we have graduated responsibility, but for the last
8 -- since my fourth year, I've been a chief resident.

9 MR. ANTHONY: Your Honor, at this time, we would submit
10 Dr. Whitfield as an expert in the field of trauma diagnosis
11 and surgery.

12 THE COURT: Any objection?

13 MR. BROWN: No objection.

14 THE COURT: All right. Ladies and gentlemen, Dr.
15 Whitfield has been accepted as an expert in the field of
16 trauma surgery and trauma diagnosis. Ladies and gentlemen,
17 what that means is most witnesses are not allowed to give
18 their opinions. Most witnesses can give what they saw, what
19 they heard, what the facts are. Dr. Whitfield has been
20 qualified as an expert, so he is permitted to offer his
21 opinion.

22 BY MR. ANTHONY:

23 Q Now, I want to take you back to the night of August
24 28th of 2016. Were you working that night?

25 A Yes, sir, I was.

1 Q And did you become involved in the treatment of
2 Elizawon Malik Gray?

3 A Yes, sir, I did.

4 Q And how did you become involved in Mr. Gray's
5 treatment?

6 A So I was the resident in charge of the surgical and
7 trauma ICU that night. So when they activated him as a code
8 trauma and brought him to the hospital, I was in charge of
9 going down and securing his airway, giving him fluids and
10 resuscitating him. I was also in charge of -- or assisted
11 in taking him to the operating room.

12 Q And in evaluating Mr. Gray, what was wrong with him?

13 A He had multiple gunshot wounds to his lower
14 extremities, upper extremities. He also had a couple to his
15 torso as well.

16 Q And so once he got in and you observed him, what did
17 you decide was the appropriate way to treat his situation?

18 A When he showed up, he was critically ill. His blood
19 pressure was low. His heart rate was very, very high.
20 Given the nature of his injuries and where they were, we
21 were concerned that he had a significant intraabdominal
22 injury, so we immediately started transfusing him blood and
23 fluid and took him to the operating room for exploratory
24 surgery.

25 Q And were you present for his exploratory surgery?

1 A Yes, sir, I was.

2 Q Were you actually involved in performing it?

3 A Yes, sir, I was.

4 Q How did y'all go about performing the exploratory
5 surgery? What exactly did that involve?

6 A So as soon as the patient came upstairs to the
7 operating room, he was intubated, meaning he was put on a
8 breathing machine. We then prepped and draped his belly,
9 made a large incision down the midline of his belly because
10 we didn't know what we were going to find. We then opened
11 him up, packed off his entire abdomen. And then starting in
12 a sequence starting in his left upper quadrant looking at
13 his spleen, we marched around his belly looking for
14 injuries.

15 Q And what kind of injuries did you observe?

16 A So he had a significant hematoma in his
17 retroperitoneum, which is the area behind the abdominal
18 cavity that holds a lot of the important blood vessels in
19 your kidneys. He had a significant hematoma, which is a
20 bruise, and swelling and blood that was pushing up and you
21 could actually see it.

22 Q And so a hematoma, essentially, is a bruise caused from
23 blood collecting?

24 A Yes, sir.

25 Q And what would have caused him to start bleeding into

1 that area and having that bruise?

2 A Laceration of blood vessels, which is what we were
3 concerned about.

4 Q And the laceration of blood vessels would have been
5 caused by the gunshot itself?

6 A Yes, sir.

7 Q And once you saw the hematoma, how did you go about
8 treating that?

9 A Right. So our protocol for all penetrating
10 retroperitoneal hematomas is to explore them. What that
11 means is we rotate the bowel out of the way. We open up the
12 space, the tissue plane that's back there and we proceed to
13 slowly examine the retroperitoneum looking for hemorrhage
14 and vessels.

15 So during that time, we looked back there, we did not
16 see an active bleeding vessel. Some of that could have been
17 because we packed him off when we first got in there. But
18 given the amount of blood that was back there, we opted to
19 put additional compressive packs back there, leave his belly
20 open with a sterile wound dressing and take him back to the
21 ICU with plans to bring him back to the operating room to
22 ensure that we didn't miss anything.

23 Q And you were supervising the ICU at that time?

24 A That night, yes, sir.

25 Q So what happened after he was taken to the ICU? What

1 was the next event in his treatment?

2 A So after he got to the ICU and we continued to
3 resuscitate him with blood and IV fluids, he stabilized and
4 we were able to return him within 24 hours back to the
5 operating room where we opened his belly back up, reexamined
6 the area of the hematoma, removed the packs. He was no
7 longer bleeding or there was no additional injuries that we
8 noted. So we then closed his abdomen. At that time, we
9 also had our orthopedic surgeon come in to evaluate his
10 extremity injuries.

11 Q Just one thing just so I understand it, when you say
12 you packed something off, what exactly does that entail?

13 A Yes, sir. So that entails taking these -- we call them
14 laparotomy pads. They're sterile -- thicker than the
15 sterile hand towels. You wad them up into little balls and
16 put them back there to create pressure so you can stop
17 anything from bleeding.

18 Q Okay. Kind of like a Band-aid, except it goes inside
19 you?

20 A That's right, yes, sir.

21 Q And in your treatment of Mr. Gray, did you have
22 occasion to observe all the wounds?

23 A Yes, sir, we completely undressed him and looked him
24 over to make sure we knew where every wound was and we
25 documented those in the medical record.

1 (WHEREUPON, State's Exhibit No. 8 was marked for
2 identification.)

3 BY MR. ANTHONY:

4 Q I'm handing up what's been marked for identification
5 State's Exhibit No. 8. I'd ask if you can identify that?

6 A Yes, sir, that's where we documented his gunshot wounds
7 and injuries.

8 Q And is that a fair and accurate representation of where
9 on his body Mr. Gray had the gunshot wounds?

10 A Yes, sir, it is.

11 MR. ANTHONY: We would move No. 8 into evidence.

12 THE COURT: Any objection?

13 MR. BROWN: No objection.

14 THE COURT: In evidence without objection.

15 MR. ANTHONY: And I would move to publish.

16 THE COURT: Go ahead and publish.

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

19 BY MR. ANTHONY:

20 Q Dr. Whitfield, I'm going to hand you this pointer.
21 Just hit the little red button there on the pointer. Just
22 so the jury will know exactly what we're looking at here, if
23 you'll just show them where it's marked that Mr. Gray had
24 gunshot wounds?

25 A Yes, sir. So these circles that GSW, gunshot wound,

1 these are all the areas where we identified bullet holes.

2 Q And, basically, is the process if you see a wound, you
3 just document it?

4 A That's correct, and then we'll look for underlying
5 injuries.

6 Q Okay. And there's not necessarily any kind of record
7 made about whether it's -- how penetrating the wound is or
8 anything?

9 A No, sir, we can't tell -- obviously, when we see them,
10 we can't tell whether it's entrance or exit or what kind of
11 wound it is. We just see it there and we document it.

12 Q Okay. And so each circle there is a gunshot?

13 A Yes, sir.

14 Q Just a few more questions about Mr. Gray's stay in the
15 hospital and followup treatment. Did he have to have any
16 other procedures done other than the two you just talked
17 about?

18 A Yes, sir, he did. So outside of the two procedures
19 that I was a part of, he also had to go back for several
20 orthopedic procedures involving the long bones that were
21 shot and fractured.

22 Q Long bones where?

23 A Meaning in his legs, in his arm, the radius ulna in the
24 hand. And then, also, as a course of his injuries because
25 when he got up to the ICU, he was unable to be

1 anticoagulated, meaning given prophylaxis or medications to
2 prevent DVTs just due to his concern for bleeding, he
3 ultimately developed a DVT because of that necessitating
4 vascular surgery.

5 Q And what is a DVT?

6 A That is a blood clot in your vein.

7 Q So he had to have an operation?

8 A He did, yes, sir. He had to have an operation and,
9 ultimately, had to have a filter put in his vena cava, which
10 is the largest vein in the body.

11 Q And the injuries -- and this sounds like a stupid
12 question, but I'm just going to ask you this. Those
13 injuries that he suffered, would they have created a
14 substantial risk of death for Mr. Gray?

15 A Yes, sir. Hemorrhagic shock. When he showed up to the
16 hospital -- we have a grading system for hemorrhagic shock,
17 meaning blood loss, which, ultimately, if left untreated
18 will lead to organ failure, which means your heart will give
19 out, your organs will give out. And he was in what I would
20 call class three hemorrhagic shock when he showed up there,
21 four classes. His blood pressure was low. His heart rate
22 was high. He was beginning to have organ damage secondary
23 to his blood loss. And that's part of the reason why he
24 required so much blood.

25 Q Basically, if he had gone for much longer without being

1 treated, he would have died?

2 A Yes, sir, I would say that's correct.

3 MR. ANTHONY: That's everything on direct.

4 THE COURT: Yes, sir, Mr. Brown.

5 MR. BROWN: Thank you.

6 CROSS-EXAMINATION

7 BY MR. BROWN:

8 Q Doctor, you were asked each circle represents a
9 gunshot?

10 A A gunshot wound, yes, sir.

11 Q So you testified that based upon each dot, you don't
12 know if it's an entry or an exit wound?

13 A That is correct.

14 Q So could that involve the moving of a projectile in
15 someone's body?

16 A Yes, sir, it could.

17 Q So this may not be -- the actual number of circles that
18 you see may not be actual individual bullets?

19 A That is correct, in the sense that one could certainly
20 be an entry -- you know, two of those wounds could be from
21 one bullet or more, conceivably.

22 Q So bullets could exit based upon the unpredictable
23 nature of the body and how it ricocheted or hit someone
24 inside the body?

25 A Yes, sir.

1 MR. BROWN: Thank you.

2 THE COURT: Any redirect, Mr. Anthony?

3 MR. ANTHONY: No, sir.

4 THE COURT: Any objection to Dr. Whitfield stepping
5 down?

6 MR. BROWN: None.

7 MR. ANTHONY: No, sir.

8 THE COURT: Thank you, Dr. Whitfield. You're excused,
9 sir.

10 MR. ANTHONY: The next witness is Agent Claycomb.

11 DAWN CLAYCOMB, after being
12 duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. ANTHONY:

15 Q Would you state your name, please?

16 A Dawn Marie Claycomb.

17 Q And Agent Claycomb, how are you employed?

18 A I work with the South Carolina Law Enforcement Division
19 within the crime scene department.

20 Q How long have you worked with SLED?

21 A Approximately six years. October will be six years.

22 Q You say you worked in the crime scene department?

23 A Yes, sir.

24 Q And can you tell the jury what your educational
25 background and training, specifically, in crime scene

1 investigation is, please?

2 A Sure. I obtained my Bachelor of Science degree in
3 forensic science with a minor in chemistry and biology at
4 Waynesburg University. After that, I obtained a position
5 with the Richland County Sheriff's Department. I was on
6 uniform patrol working the road. During that time, my work
7 was small property crimes, processing small property crimes.
8 Approximately three years, I worked there. And then I
9 obtained a position with South Carolina Law Enforcement
10 Division within the crime scene department and I've been
11 there since, for the last six years.

12 During that time, there's a lot of internal training,
13 external training. Your training consist of anywhere from
14 eights months to a year. You do on-the-job training and you
15 respond to crime scenes throughout that training. Several
16 written tests, you have to do a lot of reading during that
17 time. You do a mock scene, mock court. So it's extensive
18 training during that time.

19 After I completed my training and was a competent crime
20 scene agent, I became a field training agent and I've been
21 training new trainees in the last three years.

22 Q Have you been qualified before as an expert in crime
23 scene investigation?

24 A Yes, sir.

25 Q How many times?

1 A One to two times in crime scene and one time in
2 footwear examination.

3 MR. ANTHONY: Your Honor, at this time, we submit Agent
4 Claycomb as an expert in the field of crime scene
5 investigation.

6 THE COURT: Mr. Brown, any objection?

7 MR. BROWN: May I ask a question?

8 THE COURT: Sure.

9 VOIR DIRE

10 BY MR. BROWN:

11 Q You said you were how many times in terms of your
12 testifying experience?

13 A Approximately one to two. Typically, when we testify
14 at a trial, we will state what we found and the facts and
15 all the evidence that we collected. It depends on the trial
16 if we're actually qualified as an expert or just testifying
17 to what we located.

18 MR. BROWN: No objection.

19 THE COURT: Agent Claycomb is qualified as an expert in
20 crime scene investigation.

21 CONTINUED DIRECT EXAMINATION

22 BY MR. ANTHONY:

23 Q I'm going to take you now to August 28th of 2016. Did
24 you get a call that night to process a scene out on Monro
25 Street in Union?

1 A Yes, sir.

2 Q And when were you called out?

3 A Approximately 10:16 p.m.

4 Q What time did you get to Union?

5 A We arrived at approximately 11:47 p.m.

6 Q And who came with you?

7 A We typically work a scene in pairs, one team, two
8 people. This particular incident, I had two trainees with
9 me, so there were three agents total for crime scene.

10 Q Who were they?

11 A Special Agent Jennifer Miller and Special Agent Anna
12 Tankersley.

13 Q And who did you talk to while you were coming to Union
14 about what had happened?

15 A Typically, a local department will contact us if they
16 need crime scene processing assistance. At that time,
17 Captain McNeil had contacted our operations desk in
18 reference to the crime scene request. His information was
19 given as the point of contact. So once I received the call,
20 I made phone contact with Captain McNeil and he provided
21 some initial information that was found out during the
22 investigation initially.

23 Q And once you got there, did you talk to anybody else
24 about what had happened?

25 A Yes. Once we arrived on scene, we made contact with

1 the sheriff, Sheriff Taylor, and also one of our field
2 agents, Special Agent McCraw, was also on the scene and we
3 made contact and got additional information.

4 Q And we're going to go into specifics of this in a lot
5 of detail in a minute, but when you arrived, what was the
6 general nature of your work there that night?

7 A Basically, once we arrived on scene, the scene had
8 already been secured. There was evidence located by the
9 Union County Sheriff's Office that placards were -- markers
10 were placed near items of evidence that they had already
11 located. The scene secured with crime scene barrier tape
12 and first responding vehicles. And at that time we make
13 contact, we do an initial walk-through with an investigator
14 or the sheriff, whoever's on scene, just evidence that
15 they've already located.

16 At that time, once we get that initial information and
17 do a quick walk-through of the scene, that's when we start
18 our actual processing of the scene. And that consist of
19 doing photos, documenting how we saw it when we arrived,
20 doing notes, a diagram of measurements. And then after
21 that's all documented, we do, basically, the collection of
22 all the evidence on scene.

23 Q And the location that you collected the evidence from
24 that night, where were you collecting evidence from?

25 A Most of the evidence was all located within the roadway

1 on Monro Street.

2 Q And then did you also search a vehicle that night?

3 A Yes. There was a vehicle on scene parked within the
4 roadway that was secure with barrier tape that we were
5 advised possibly was involved in the incident.

6 Q Did you also collect some evidence from Captain McNeil
7 that night?

8 A Yes. While we were on scene processing the evidence at
9 the scene, there were several other investigators with the
10 Union County Sheriff's Office that collected evidence at
11 other locations that was returned to the scene and then
12 turned over to us with a chain of custody.

13 Q You said that you did a diagram. I'm going to just put
14 here on the project what's already been put into evidence,
15 Exhibit 3, and ask if you recognize this document?

16 A Yes, sir. This is a diagram that's included in my
17 final report.

18 Q Is that the diagram that you did?

19 A Yes.

20 Q Just give the jury an overview of where on that diagram
21 were the shell casings that you located?

22 A Sure. Right here on this side of the roadway, that was
23 the area with the cartridge cases on Monro Street.

24 Q And then the car that you processed, where is that
25 located on the diagram?

1 A Right here, it's labeled car A. And that's towards
2 that left side of Monro Street.

3 (WHEREUPON, State's Exhibit Nos. 9 through 26 were
4 marked for identification.)

5 BY MR. ANTHONY:

6 Q Okay. I'm going to start off by talking to you about
7 this area where the shell casings were found. I'm going to
8 hand up some photos that are marked State's Exhibit 9
9 through 26. I'd ask you to look through those photos and
10 see if you recognize what they are?

11 A Yes, sir, photos of the scene that night.

12 Q And do those photos fairly and accurately depict what
13 you saw at the crime scene that night?

14 A Yes, sir.

15 MR. ANTHONY: We'd move 9 through 26 into evidence.

16 THE COURT: Any objection, Mr. Brown?

17 MR. BROWN: No objection.

18 THE COURT: Into evidence without objection.

19 (WHEREUPON, State's Exhibit No. 9 through 26 were
20 admitted into evidence.)

21 BY MR. ANTHONY:

22 Q We're going to kind of go back and forth between these
23 pictures and the diagram. I want to show you, first of all,
24 No. 9. Would you just tell the jury what we're looking at?

25 A Sure. This is the intersection. On the left, you can

1 see vehicles that are parked. That's actually Monro. And
2 the intersection right here, the cross here is Siam Street.
3 And that's the intersection.

4 Q All right. And now, on the diagram, going back to No.
5 3, where would you be standing to see what that picture just
6 showed, No. 9 showed?

7 A Standing in this area here looking in this direction.

8 Q And I'm going to show you now No. 10. As we would
9 progress down Monro Street, what is that?

10 A This is further east down Monro Street. Right here,
11 you can see the area of markers. That's where the cartridge
12 cases were located. And on this side, there was more
13 evidence also with suspected blood, projectiles and a few
14 other items of evidence.

15 Q And I'm going to show you now No. 11.

16 A This is looking in the opposite direction of Monro.
17 You can see the vehicles parked over here. These are some
18 of the first responding vehicles and the PT Cruiser that was
19 parked back here. And this is just another angle of looking
20 at the cartridge cases within the roadway.

21 Q So going back to 3, if you were standing -- if you're
22 taking that shot that gives you No. 11, where would you be
23 standing to get that shot?

24 A Approximately right here in this location looking in
25 this direction.

1 Q And then just going back briefly to 10, where would you
2 be standing to see what you're seeing here on No. 10 on the
3 diagram?

4 A That would have been taken standing in this location
5 here shooting in that direction.

6 Q Okay. I'm going to show you now No. 13, which gets us
7 to a little more close-up shots. What are we looking at
8 there?

9 A This is a closer shot of -- you can see marker two and
10 marker 20 here and you can see suspected blood within the
11 area that was within the roadway.

12 Q And then how does 2 and 20 match up to what you would
13 see on the diagram? How can you tell where that is from the
14 diagram?

15 A If you were to be standing right here and taking a
16 photo right here at marker 2 and 20.

17 Q I'm going to show you now No. 14. What is that?

18 A That is a close-up photo of the evidence at marker 2.
19 It was a cell phone. You can see this is the front part of
20 the cell phone. This is the battery and this is the back
21 cover of the cell phone. This battery right here had a
22 projectile lodged within the battery.

23 Q And I'm going to show you No. 15. I'd ask you what
24 that is a close-up of?

25 A This is a close-up photo of marker 20, which was

1 marking a projectile right here in the roadway.

2 Q I'm going to show you now No. 16. What are we looking
3 at there?

4 A This is a photo of markers 3 and 19. You can also see
5 there's -- this is first aid debris. This is just paper
6 from gauze packs in the area. But marker 3 here was a pair
7 of earphones and marker 19 was a projectile.

8 Q And going back to the diagram, can you use the diagram
9 to show the jury where 3 and 19 would be?

10 A Sure. 3 is right here and 19 is right next to it in
11 that location.

12 Q I'm going to show you now No. 17. What are we looking
13 at there on No. 17?

14 A That is a close-up photo of marker 19, which was
15 marking the projectile right there.

16 Q I'm going to show you now No. 18, State's Exhibit 18,
17 which is also a shot of marker 18?

18 A Marker 18 was marking a water bottle that was located
19 within the roadway and there was a name Eli M. Gray written
20 on the side of the water bottle.

21 Q And looking at the diagram, where would 18 be on the
22 diagram?

23 A Eighteen is right here on the other side of 20 and 2.

24 Q And I'm going to show you another photo. This photo
25 was admitted yesterday. I'm going to show you Exhibit 4.

1 Can you use that exhibit to give the jury a better idea of
2 where 18 is in relation to the other ones?

3 A Sure. You can see 18 is over here and this is 2, 20, 3
4 and 19 there.

5 Q All right. That's the right side of the road looking
6 down the street. So now we'll move over to the left side of
7 the road. I'm going to show you Exhibit 19. What are we
8 looking at here?

9 A This was the majority of cartridge cases that we
10 located, markers 4 through 14. 15 is over here and then 16
11 and 17 are over here on this side.

12 Q Okay. And I'm going to take you through the evidence
13 on the left side of the road. We'll start with No. 20.
14 What are we looking at right there?

15 A Marker 4 and marker 5 are both marking cartridge
16 casings that were laying from the roadway.

17 Q And just to have a frame of reference, can you use the
18 diagram to show where 4 and 5 are?

19 A Right here in this location.

20 Q I show you now 21. What are we looking at there?

21 A Here, you can see markers 6, 7 and 8. And those are
22 also marking cartridge cases.

23 Q Where would those be on the diagram?

24 A Six, 7 and 8 are right here.

25 Q I show you 22. What are we looking at there?

1 A You can see 7, 8, 11 and 13, also, marking cartridge
2 cases.

3 Q And then 23, what have we got there?

4 A Here is marker 9, 10, 11 and 12. They were also
5 marking cartridge cases.

6 Q And if you would go back to the diagram. Where are 9,
7 10, 11 and 12?

8 A Nine, 10, 11 and 12 are right here in this location.

9 Q We'll go now to 24. What are we looking at there?

10 A Here, you can see marker 13 and 14. Both are marking
11 cartridge cases.

12 Q And can you just point that out on the diagram?

13 A Right here.

14 Q Thank you. And now we'll go to 25. What are we
15 looking at?

16 A This is marker 15. It was marking an unfired
17 cartridge, meaning it was not fired.

18 Q And then the last one will be 16 and 17 -- or, I'm
19 sorry, Exhibit 26, what are we looking at there?

20 A Marker 16 and 17, both cartridge cases.

21 (WHEREUPON, State's Exhibit Nos. 40 through 53 were
22 marked for identification.)

23 BY MR. ANTHONY:

24 Q I'm going to show you now some of this. I'm handing up
25 a bag containing State's Exhibits 40 through 53. I'd ask if

1 you -- if you need to step down, you may step down. But if
2 you would, just look through those items and see if you can
3 identify them?

4 A This is, basically, our outer packaging. It's a sealed
5 pouch. When we pick up a cartridge case, we typically put
6 it in these small cardboard boxes that you see. You can see
7 the cartridge casings have already been processed by the
8 lab. Typically, once we find a cartridge casing on a scene,
9 we will collect it and put it in small cardboard boxes.

10 Q And what are these?

11 A These are all of the cartridge cases that we located,
12 marker 4 through 14. 15 was the unfired cartridge. The
13 other ones are fired. And these are 16 and 17.

14 Q I'm just going to ask you, are all these boxes -- the
15 procedure as far as filling out all these boxes the same?

16 A Yes, sir.

17 Q So I'm going to show you State's Exhibit 46. What has
18 been documented there on the front of that box?

19 A There is a description of what's collected, one
20 cartridge case nine-millimeter from marker 8. You can see
21 initials, date and time it was collected. And then place
22 seal tape on each side, date and initials on each side.

23 Q And when you collected them, they were not in this
24 little plastic container; is that correct?

25 A Correct.

1 Q They were just in a little cardboard box?

2 A Yes.

3 Q And the location that you would put on here, like item
4 marker number 8, so when you look at that and see item
5 marker number 8, how would that correspond to the marker
6 number on the diagram?

7 A Collected from marker 8, that means that cartridge case
8 was collected from marker 8 at the scene.

9 Q And marker 8 would also reference back to the marker 8
10 on the photos the jury just saw?

11 A Correct.

12 Q And then once you collected the shell casings and put
13 them in boxes, what was the next thing you did as far as any
14 kind of processing?

15 A Once those are packaged in the little cardboard boxes,
16 we place them into the bag go to the department to be
17 processed and the information, item numbers, lab number, my
18 name, the agency and the date it was packaged. And once
19 it's heat sealed, my initials and the date goes on it, the
20 date that it was sealed.

21 Q And that's what you did with these items, you put them
22 in the big bag and marked it?

23 A Correct.

24 Q And then who did you take that bag to?

25 A Once we're finished with it and it's packaged, we'll

1 take it downstairs to our evidence control. I believe it
2 was Amy Black at the time. That, basically, goes to storage
3 until the department picks it up for processing.

4 Q And what departments -- did you make the request for a
5 particular department to process that?

6 A Yes. The items that I placed on here were for touch
7 DNA and the firearms department. So it will first go to the
8 process for any touch DNA and then it will go to the
9 firearms department for processing.

10 Q Thank you. You can take your seat back.

11 A (Witness complies.)

12 Q And got a few more here I need to show you. I have
13 another bag here that contains items 54 through 56 and ask
14 if you can identify that bag?

15 A Yes. This is the heat-sealed pouch that contained the
16 three projectiles that were collected from the scene.

17 Q And those projectiles, they're all in cardboard boxes,
18 too?

19 A Yes, the same as the cartridge cases.

20 Q And those projectiles, where were they collected from,
21 what location?

22 A This one here, one projectile from marker 19 that was
23 located in the roadway. Marker 19 is right here. And then
24 one projectile from marker 20 that was also located in the
25 roadway right here in this location. And then this third

1 projectile -- one projectile from the cell phone battery,
2 marker number 2, I believe we saw that photo earlier with
3 the cell phone that had the cover off of it and the cell
4 phone and the battery laying there. This was the projectile
5 that I removed from the actual battery.

6 Q And when did you take that projectile out the battery?

7 A It would have been on the 30th. So not the following
8 day, but the next day, I had to respond back to the lab. I
9 didn't want to damage the projectile in any way. I can't
10 mark it for firearms to do a complete examination. I don't
11 want to place any other marks other than what's already on
12 it. So I had to use a vice to actually remove the
13 projectile from the cell phone battery.

14 Q And then once you removed the projectile from the
15 battery, what did you do with it then?

16 A I packaged it like the other projectiles that were
17 collected from the scene and they were all three packaged in
18 this heat-sealed pouch as well, just like the cartridge
19 cases. And you can see the assignment was placed for the
20 firearms department to process the projectiles.

21 Q And who did you submit that bigger SLED bag to?

22 A The same thing, once I packaged it, initialed and dated
23 it, once I sealed it, I took it down to our evidence control
24 to Jennifer Acock, which then is stored until the firearms
25 department picks it up for processing.

1 Q I'll just go back and ask you one more question about
2 these cartridge casings. You found one unspent round in
3 this area here; is that correct?

4 A Marker 15 was marking the unfired cartridge and that
5 was right here towards the middle of the roadway.

6 Q In the middle of a bunch of fired shell casings, what
7 would account for an unfired cartridge? Somebody was firing
8 a weapon and just happened to have an unfired cartridge come
9 out?

10 A I can't say for certainty, but there are possible
11 reasons for an unspent cartridge to be found on scene.
12 Whether that's dropped --

13 MR. BROWN: I would object to this. It calls for
14 speculation.

15 THE COURT: I'm going to overrule. She's offering
16 possibilities. She's not saying what she believes happened.
17 I think she can say what the possibilities are.

18 THE WITNESS: The possibilities are if it's not in the
19 gun, it could be dropped. The other possibility is if it is
20 inside the gun, once the magazine is in the gun, if there is
21 a round chambered into the chamber of the gun, if the slide
22 is racked back, that will eject the unfired cartridge,
23 meaning that it was not fired. That's a possibility.
24 Another possibility is if there's a jam in the gun, if it
25 gets stuck within the chamber or somehow will not fire, the

1 slide manually has to be racked in order for that to be
2 ejected from the gun.

3 BY MR. ANTHONY:

4 Q So after you've collected all the evidence, what did
5 you move to then?

6 A At that point, once all of the evidence was collected
7 from marker 1 through 20, we processed the PT Cruiser that
8 was back here.

9 (WHEREUPON, State's Exhibit No. 27 through 39 were
10 marked for identification.)

11 Q I'm going to show you -- I'm going to do this pretty
12 much the same way. I'm going to show you Exhibits 27
13 through 39. Can you tell me what those are?

14 A Yes, these are photos that were taken of the PT Cruiser
15 and inside the PT Cruiser that night.

16 Q Do they fairly and accurately depict the appearance of
17 the PT Cruiser when you processed it?

18 A Yes, sir.

19 MR. ANTHONY: We move 27 through 39 into evidence.

20 MR. BROWN: No objection.

21 THE COURT: Into evidence without objection.

22 MR. ANTHONY: And ask to publish.

23 THE COURT: Go ahead and publish.

24 (WHEREUPON, State's Exhibit Nos. 27 through 39 were
25 admitted into evidence.)

1 BY MR. ANTHONY:

2 Q I'm going to start off here with 27. Can you tell me
3 what we're looking at there?

4 A This is -- the scene would have been located down this
5 direction, the markers we just observed, 1 through 20.
6 These were two Union County Sheriff's -- the first
7 responding vehicles and then this was the PT Cruiser located
8 right here within the roadway.

9 Q So going back to Exhibit 3, if you're looking at this
10 diagram, where would you be standing to make that --

11 A That photo would have been taken right here in this
12 location pointing in this direction.

13 Q I'm going to show you now 28. What are we looking at
14 there?

15 A This is just a side view, the driver's side of the PT
16 Cruiser.

17 Q 29?

18 A This is a photo of when the driver's door was open, a
19 photo of the interior of the vehicle.

20 Q And showing you now 30.

21 A This is a photo standing outside of the rear driver's
22 side of the vehicle with the door open. This here is the
23 driver's seat. This is the rear pocket on the driver's
24 seat. And that is a holster that was in that pocket.

25 Q This is 31?

1 A That is just a close-up photo of the holster that we
2 just saw.

3 Q And then 32?

4 A And this is once the holster was removed from the
5 pocket. That's just a close-up photo of the holster once it
6 was removed.

7 Q 33?

8 A This is a photo of the glove box inside the vehicle.

9 Q 34?

10 A That is a photo on the rear passenger side of the
11 vehicle with the door open and this is the back seat.

12 Q Okay. And then what is that, that item on the back
13 seat?

14 A This is a white in color shirt that was laying on the
15 back seat.

16 Q 35?

17 A This is a photo of the driver's door pocket. Once the
18 driver's door is open, it's the pocket on the driver's door
19 on the interior.

20 Q And then there's a little bag in that pocket; is that
21 correct?

22 A There is a clear zip-lock-type baggy with coins in it
23 and unfired cartridge.

24 Q And 36?

25 A This is once that bag was removed from the driver's

1 door pocket. You can see the change and here's the unfired
2 cartridge.

3 Q 37?

4 A This is a mid-range photo standing at the driver's door
5 with the driver's door open looking into the driver's seat
6 and the driver's floorboard. Here is a cell phone. This
7 was a wallet and this was a small cooler-type bag.

8 Q And whose wallet is that?

9 A They are cards and items belonging to Mr. Thomas within
10 the wallet.

11 Q Now, in processing the Cruiser, did there come a point
12 where you got a call from Agent McCraw?

13 A Yes. When we were processing the PT Cruiser, we were
14 advised by one of our field agents that during questioning,
15 he was advised information of a possible location of a gun
16 inside the vehicle. And he asked us to again check the
17 glove box of the vehicle. We opened the glove box, checked
18 everything through it. At that point, we removed the actual
19 glove box, the door, the container to it and in behind that,
20 we located a handgun.

21 Q I'm going to show you 38.

22 A This is a photo -- right here, you can see the glove
23 box. There's little safety pins on the side that you can
24 either remove to be able to fold it out to gain access to
25 the inside behind the glove box.

1 Q And what item do you see behind the glove box?

2 A Right here, you can see the hand gun with the muzzle
3 down in that area.

4 Q And this is something you only did after you talked to
5 Agent McCraw?

6 A Correct.

7 Q And starting hunting?

8 A Correct.

9 Q And then I'll show you 39?

10 A That's just a closer photo of the handgun that was
11 tucked down.

12 (WHEREUPON, State's Exhibit No. 57 was marked for
13 identification.)

14 BY MR. ANTHONY:

15 Q I'm going to show you now what's been marked for
16 identification as State's Exhibit 57 and ask you to take a
17 look at this and see if you recognize it?

18 A Yes. This is the paper bag containing the black
19 holster from the driver's seat pocket. And then you can see
20 the description, date, time that it was collected and the
21 description of where it was from. And this is the holster
22 that was collected from the rear driver's pocket.

23 Q And is the holster still in the same condition --
24 appear to be in the same condition as it was when you seized
25 back on August 28th, 2016?

1 A Yes, sir.

2 MR. ANTHONY: We would move 57 into evidence.

3 THE COURT: Mr. Brown.

4 MR. BROWN: No objection.

5 (WHEREUPON, State's Exhibit No. 57 was admitted into
6 evidence.)

7 (WHEREUPON, State's Exhibit No. 59 was marked for
8 identification.)

9 BY MR. ANTHONY:

10 Q I'm going to hand up what's been marked for
11 identification as No. 59, ask you to take a look at that
12 item.

13 A Yes, sir. This is the handgun that was located behind
14 the glove box.

15 Q And what did you do with that gun after you recovered
16 it from behind the glove box in the Cruiser?

17 A Basically, once we find it, we remove it, we photo it
18 as is, how we found it, and then we make the weapon safe to
19 be placed in the box for packaging.

20 Q And did the gun have a clip or ammunition in it?

21 A Yes. It had a magazine that was within the magazine
22 well of the gun. It was an empty magazine and there was one
23 unfired cartridge within the chamber of the gun. So that --
24 the magazine was removed. It was emptied. And then we
25 removed the unfired cartridge from the chamber of the

1 handgun.

2 Q And once you made the gun safe, what did you do after
3 that?

4 A It's packaged in this gun box, taken back to the lab
5 and sent to the firearms department to be processed.

6 Q Did you identify the serial number of the gun on your
7 box?

8 A Yes, sir. The serial number is photographed and
9 documented here on -- yeah, the serial number is documented
10 on the box when it's collected.

11 Q And where did you want that gun to be sent at SLED for
12 processing?

13 A It was sent to the latent print department where it's
14 processed for latent prints and touch DNA and then to the
15 firearms department. And you can see it's marked here, the
16 assignments on where it's to be sent.

17 Q Aside from not being loaded anymore, does the gun
18 appear to be in the same condition as it was when it was
19 received?

20 A Yes, sir.

21 Q And the serial numbers that are on that gun match the
22 serial numbers on the box?

23 A Yes, sir.

24 MR. ANTHONY: We move 59 into evidence.

25 MR. BROWN: No objection.

1 THE COURT: Into evidence without objection.

2 (WHEREUPON, State's Exhibit No. 59 was admitted into
3 evidence.)

4 BY MR. ANTHONY:

5 Q Did you do anything to collect gunshot residue evidence
6 with the PT Cruiser?

7 A Yes. We first visually searched the vehicle for any
8 gunshot residue. We use an ALS, an alternate light source,
9 to look for any gunshot residue on the vehicle. Basically,
10 when you use this light, the gunshot residue will be
11 fluorescent. If we did see any signs of fluorescence, it
12 could be suspected GSR. At that point, we use a GSR kit to
13 collect what we observed with the light.

14 In this case, there were four kits collected from the
15 vehicle. Basically, each compartment of the vehicle, the
16 front driver's side, the front passenger side, the rear
17 driver's side and the rear passenger side.

18 (WHEREUPON, State's Exhibit Nos. 60 through 63 were
19 marked for identification.)

20 BY MR. ANTHONY:

21 Q I've handed up a large SLED bag with four smaller items
22 in it that are marked for identification as State's Exhibits
23 60 through 63. I ask that you take a look at that and see
24 if you can recognize them.

25 A Yes. Each one of these were collected from the

1 previous compartments that I mentioned?

2 Q And after you took those kits -- you said you did right
3 passenger, right driver, left passenger, left driver?

4 A Yes.

5 Q And did you swab -- what areas of the car did you swab?

6 A Basically, within these kits, they're small vials. If
7 you can imagine like a ChapStick tube. The lid comes off
8 and on that lid, there's a sticky disk. Basically, that
9 disk -- any locations we suspect there's GSR, we basically
10 collect it with that sticky vial and place it back in the
11 tube and that's then placed in this envelope to be sent for
12 a GSR examination.

13 Q And do did you actually swab locations in the interior
14 and exterior?

15 A Yes. Inside this container, there are four vials. I
16 basically, did interior/exterior. I did the window
17 interior/exterior and the actual door exterior/interior. So
18 each compartment is the interior/exterior window and door of
19 each area.

20 Q And then once you take those swabbings, what did you do
21 to secure the actual bags, first of all?

22 A The vials are then placed in this little envelope,
23 they're sealed and the information is written on the front
24 and they're placed in a heat-sealed pouch with my date and
25 initials.

1 Q And then what did you do with those bags?

2 A That's, again, taken to evidence control where it
3 awaits to be processed by the department.

4 Q And what department did you want to process those bags?

5 A This was to the trace department for GSR.

6 Q And when was that bag submitted and who did you submit
7 it to?

8 A This was the 30th and that would have been to Amy
9 Black.

10 Q And did you do anything to try to collect potential DNA
11 from the vehicle?

12 A Yes. We also swabbed areas within the vehicle for
13 touch DNA. Basically, all the interior and exterior door
14 handles and the steering wheel and the gearshift.

15 Q And then did you do anything with regard to trying to
16 collect fingerprints?

17 A Yes. We processed the vehicle for any latent prints
18 using black powder. We dusted the exterior of the vehicle,
19 the driver's door, passenger door, front and rear, that we
20 were able to get latent prints and lift.

21 Q Going now to your collection of evidence from the
22 sheriff's office, did you receive any of Mr. Gray's
23 clothing?

24 A Yes. That was -- once we were finishing up processing
25 at the scene, Investigator Childers, she returned to the

1 scene with evidence that was collected from Mr. Gray at the
2 hospital. And that was signed over to us by chain of
3 custody.

4 Q I want to ask you now about items you collected from
5 Captain McNeil. I'll hand you first State's Exhibit 7 for
6 identification and ask if you recognize that item in that
7 box?

8 A Yes. This was a handgun that was collected and it was
9 turned over to us at the scene.

10 Q And then what did you do with that weapon?

11 A This was, basically, photographed as they collected it,
12 placed in the gun box and it was returned to the lab.

13 Q And did you note the serial number on that box in your
14 report -- or on that gun in your report?

15 A Yes. Basically, any evidence, the serial number is
16 documented in our report for each weapon.

17 Q And is the serial number on that gun? This Exhibit No.
18 7, does that match the serial number that you documented
19 from the weapon that Captain McNeil turned over to you?

20 A Yes, sir, it's the same serial number.

21 Q You may have already said this, but just to be clear,
22 what did you do with that gun as far as sending it on to
23 other people at SLED?

24 A Basically, packaged in this gun box, it's sealed with
25 my initials and date and sent -- this one specifically was

1 sent to the firearms department for processing.

2 Q And does that gun appear to be in the same condition as
3 it was when it was turned over to you by Captain McNeil on
4 August 28th?

5 A Yes, sir.

6 MR. ANTHONY: Your Honor, we'd move No. 7 into
7 evidence.

8 MR. BROWN: No objection.

9 THE COURT: Into evidence without objection.

10 (WHEREUPON, State's Exhibit No. 7 was admitted into
11 evidence.)

12 BY MR. ANTHONY:

13 Q I'm handing you now what's been marked as Exhibit 6 for
14 identification. I'd ask if you recognize the little bag
15 inside of the larger bag?

16 A Yes, this is another GSR kit. This was turned over to
17 me by Captain McNeil via chain of custody that was collected
18 from Mr. Thomas.

19 Q And what did you do with that paper bag once you got it
20 from Captain McNeil?

21 A This was sealed already when it was turned over to me,
22 so I, basically, take this envelope, place into our
23 heat-sealed pouch, seal it with the date and initials and
24 then it's sent to the trace department for processing for
25 gunshot residue.

1 Q Okay. And who did you turn that over to?

2 A That was also taken to evidence control to Amy Black.

3 (WHEREUPON, State's Exhibit No. 58 was marked for
4 identification.)

5 BY MR. ANTHONY:

6 Q And I'm showing you now what's been marked for
7 identification as State's Exhibit No. 58 and ask if you can
8 identify that item?

9 A This was a pair of pants reportedly collected from Mr.
10 Thomas turned over to me via chain of custody from Captain
11 McNeil. And you can see the description, pair of black
12 pants from Mr. Thomas, the date and initials.

13 Q Okay. And do you put the item in that paper bag?

14 A Yes, sir.

15 Q And what did you do with the paper bag?

16 A It's sealed and then placed in this cardboard box to be
17 sent for processing. And this particular item was sent to
18 the trace department for GSR.

19 Q And who did you submit that to?

20 A Again, that was turned over to evidence control Amy
21 Black for additional processing.

22 Q And was that also on the 31st?

23 A 31st or the 30th.

24 Q Okay. Do you know which? It may have been the 30th?

25 A Let's see, I did the packaging on the 30th.

1 Q Okay. And you would have turned it over either that
2 day or the next?

3 A Correct.

4 Q Was there any evidence that you returned back to the
5 sheriff's office from processing the scene?

6 A Yes. There were three cell phones total that we
7 located. You saw the one within the roadway that was
8 located marked with marker 2. I collected the battery, but
9 the cell phone and the cover was turned over to Union
10 County. There was also a cell phone collected on the front
11 driver's floorboard of the PT Cruiser. That was also turned
12 over to Investigator Vinson. And there was also a cell
13 phone near the intersection of Siam and Monro that was marked
14 with marker within the diagram that we also collected. That
15 was also turned over to Investigator Vinson.

16 Q Can you just show the jury where that was?

17 A Right here is marker A, there was a cell phone located
18 there near the intersection.

19 Q So that phone was just flat out on the side of the
20 road?

21 A Yes.

22 Q And y'all thought it might have something to do with
23 the case?

24 A Correct.

25 Q All right. You testified you arrived there that night

1 a little before midnight. How long did you stay?

2 A We cleared the scene, it was approximately 5:43 a.m.

3 Q And as far as some of the items you submitted to SLED,
4 you testified that you tried to take some fingerprints from
5 the vehicle?

6 A Yes, sir.

7 Q Was there any fingerprint examination of any other
8 evidence?

9 A We were able to lift latent prints from the vehicle and
10 those were sent to the latent print department for
11 examination.

12 Q Was there any prints found on that vehicle that were
13 connected to the case to your knowledge?

14 A To my knowledge, according to their report, latent
15 impression was identified with a Cassie Branburn.

16 Q To your knowledge, did she have any connection to the
17 case?

18 A No. To my knowledge, I haven't heard that name
19 involved.

20 Q And were there any useable DNA profiles?

21 A To my knowledge, according to the report, they were
22 unable to obtain any profiles.

23 MR. ANTHONY: If I can have one moment?

24 THE COURT: Certainly.

25 (Pause.)

1 MR. ANTHONY: Thank you. That's everything on direct.

2 THE COURT: Counsel, we've been going an hour and 15
3 minutes. Let's take a short break before we resume.

4 Ladies and gentlemen, we'll be on break for ten
5 minutes.

6 (WHEREUPON, the jury exits the courtroom.)

7 (WHEREUPON, a short break was taken.)

8 (WHEREUPON, the jury enters the courtroom.)

9 THE COURT: Yes, sir, Mr. Anthony.

10 MR. ANTHONY: That was the conclusion of my direct.

11 THE COURT: Mr. Brown.

12 CROSS-EXAMINATION

13 BY MR. BROWN:

14 Q Agent, if the gun isn't fired or misfires, there's no
15 particular gunshot residue that's produced from the round
16 that comes out of the chamber, is there?

17 A I can't answer that. That would be a better question
18 for firearms. But typically, if a gun is fired or you
19 handle a firearm, it's possible to have gunshot residue on
20 you.

21 Q But an unspent cartridge that hasn't been fired,
22 there's no gunshot residue as far as you know?

23 A That would be something that would need to be tested.

24 Q When you got to the scene, was it a well-lit area?

25 A There was, if I recall, a streetlight near where the

1 evidence was located, but for the most part, it was very dim
2 lighting.

3 Q Even with the streetlight?

4 A Correct.

5 Q From what we've seen that's been shared by way of the
6 markers, what type of area were you discussing of the
7 location of the various cartridges?

8 A Within the roadway?

9 Q Yes, ma'am.

10 A It's a sloped roadway. Is that what you're referring
11 to?

12 Q Yes, ma'am. As it relates to, let's say, cartridge 4
13 and 17, is there a small area?

14 A I can give an approximate. We did measurements of each
15 marker to the reference points, which you can see reference
16 point three and four. Here and here, measurements are taken
17 from each marker to those. I can give approximate. So
18 marker 4 to reference point three, for example, is
19 approximately 71.57 feet. Marker 17 was approximately 86.88
20 feet to reference point three.

21 Q At least, two cars length, if not three?

22 A I can't say for certain.

23 Q From what we see, the projectiles weren't all clumped
24 in the same area, would you agree with me on that?

25 A The projectiles?

1 Q The cartridges, I'm sorry?

2 A Cartridge cases?

3 Q Yes.

4 A Like I said, you can see 14 to 17, most of them appear
5 to be on this side of the roadway.

6 Q And they're spread out?

7 A Correct.

8 Q And you say that when you got to the scene, it was
9 secured by some type of tape as a barrier?

10 A There was barrier tape when we arrived on scene.

11 Q Where was the tape located?

12 A There was barrier tape up here near the PT Cruiser and
13 there was also some down here near this other vehicle.

14 Q So that's the only area? It's not around?

15 A Yeah, this area is lined with -- it was a wooded area,
16 but it was both ends of the roadway were secured with
17 barrier tape.

18 Q Okay. And you said there was an inability to get a DNA
19 match? One of the last things you testified to. What was
20 that?

21 A That's a better question for DNA. Just to my
22 knowledge, looking at the report, they were unable to
23 calculate a profile.

24 Q On what item was that?

25 A Swabs that were taken from the pistol trigger, a

1 partial DNA profile, it was a mixture of at least three
2 individuals, due to inability to calculate a statistic. No
3 further interpretation will be offered. Swabs from the
4 pistol grip and grooved areas of the slide. There were
5 several other items that were processed by DNA.

6 MR. BROWN: Thank you. That's all the questions I
7 have.

8 THE COURT: Any redirect?

9 MR. ANTHONY: Just briefly.

10 REDIRECT EXAMINATION

11 BY MR. ANTHONY:

12 Q Just to make sure they understand what you just
13 testified about. When you talk about reference points,
14 where are those reference points on the diagram? Just show
15 them on the diagram where they are?

16 A Here's reference point two, three and four.

17 Q Okay. And you did measurements from each marker to the
18 reference point three and reference point four; is that
19 right?

20 A Correct.

21 Q And so going to item four up there, what was the
22 distance from reference point three to the marker 4?

23 A Marker 3 was 61.67 feet, marker 4 was 71.57 feet to
24 reference point three.

25 Q Okay. Marker 4 to reference point three was how much

1 again?

2 A Marker 3 you said?

3 Q No, marker 4?

4 A Marker 4 was 71.57 feet to reference point three.

5 Q So marker 4 is right here?

6 A Correct.

7 Q And reference point three is right here?

8 A Correct.

9 Q So what you were saying is from here to here is 71 and
10 some feet?

11 A Correct.

12 Q And then item 17, marker 17 to reference point three,
13 how far was that?

14 A 86.88 feet.

15 Q Okay. So 86 from here to here and 71 from here -- from
16 four?

17 A Right.

18 Q I know there was some inches in with those feet, but,
19 essentially, from 4 to 17 was about 15 feet?

20 A Approximately.

21 Q And so when we're talking about those 15 feet, if we
22 look at Exhibit 11, that's, basically, the distance from 17
23 right here at the back to 4 up here at the front?

24 A Correct.

25 Q And just to clear up one other thing, the area that you

1 processed here in this roadway, when you arrived, was that
2 secured?

3 A Yes, sir.

4 Q And what did you observe had been done to secure it on
5 the sides of the road?

6 A There was barrier tape just to secure so no vehicles
7 could drive through the roadway.

8 MR. ANTHONY: Thank you. That's everything on
9 redirect.

10 THE COURT: Mr. Brown.

11 RE CROSS-EXAMINATION

12 BY MR. BROWN:

13 Q When you say barrier tape, you mean on both ends of the
14 road?

15 A Correct.

16 Q Nothing on the side?

17 A I can't recall if they were on the side near the
18 driveway at all, but definitely on the ends.

19 MR. BROWN: That's all.

20 THE COURT: Mr. Anthony?

21 MR. ANTHONY: No further redirect.

22 THE COURT: Any objection to Ms. Claycomb being
23 excused?

24 MR. ANTHONY: No, Your Honor.

25 THE COURT: Thank you, Ms. Claycomb. You're excused.

1 THE WITNESS: Thank you.

2 MR. ANTHONY: The next witness would be Jessica Stowe.

3 JESSICA STOWE, after being
4 duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. ANTHONY:

7 Q Would you state your name, please?

8 A My name is Jessica Stowe, S-T-O-W-E.

9 Q And Ms. Stowe, how are you employed?

10 A I am employed with the South Carolina Law Enforcement
11 Division, often referred to as SLED.

12 Q What is your job with SLED?

13 A I am a forensic serologist within the DNA department.

14 Q And what does that mean to be a forensic serologist?

15 A Serology is the identification of body fluids, such as
16 blood, semen and saliva. We also examine items of evidence
17 for potential skin cells that could be left behind from
18 someone wearing something or someone touching something.

19 And we collect those and then forward that to the DNA
20 analysts where they will develop a DNA profile potentially.

21 Q How long have you worked in serology?

22 A I have been a serologist for about six and a half
23 years.

24 Q And were you working in that capacity in November of
25 2017?

1 A Yes, I was.

2 Q And I am going to ask you now to step down and look at
3 some of our exhibits here on the table.

4 A Okay.

5 Q These are items that have been marked for
6 identification as State's Exhibit No. 40 through 53. I'll
7 ask you to look at those boxes and let me know if you've
8 seen them before.

9 A Okay. Yes. These appear to be items 3 through 16,
10 which I swabbed.

11 Q Okay. And how did those items come into your
12 possession and when did they come into your possession?

13 A I received these items on November the 22nd, 2017, from
14 Amy Black. She was working in evidence control at the time.

15 Q And when you got them -- I'm showing you now this
16 larger bag. Do you recognize this bag and is there some
17 relation between it and those exhibits?

18 A I do. So we can recognize this by our SLED specific
19 lab number, L1612361, which is the item in the -- the lab
20 number for this case, container A, which contained items 3
21 through 16, which I did process as well as my initials on
22 the bag, JHS, and the date.

23 Q So all these little bags, when you got them, they were
24 in that big bag?

25 A Yes, that just makes it easy for transporting one bag

1 versus several.

2 Q And was the big bag sealed up?

3 A Yes, it was.

4 Q And when you got them from Ms. Black in evidence
5 intake, what did you do with the big bag and the items in
6 the little boxes?

7 A So the first thing that I would do is open the big bag
8 and then do an inventory. In container A was supposed to be
9 items 3 through 16, so I first opened it up and confirmed
10 that items 3 through 16 are present and match what is in our
11 computer system and those are the items I need to process.

12 Q And then how did you go about processing them?

13 A These items specifically had a touch DNA request and a
14 firearms request. So when that happens, before they go to
15 firearms, it's important that any potential DNA that could
16 be there, it needs to be removed so that way it doesn't get
17 removed when it goes to firearms. So for these items, I
18 swabbed them to remove any potential DNA.

19 Q And once you swabbed them for DNA, what did you do with
20 them then -- well, let me back up. These individual items
21 in these little boxes, how were they secured when you got
22 them?

23 A The cartridge cases -- the majority of them are
24 cartridge cases. One of them was an unfired round. They
25 were individually packaged inside those little boxes that

1 were sealed with the SLED tape to ensure that they don't
2 fall out.

3 Q And did all those little boxes, were they all sealed
4 when they came to you?

5 A Uh-huh.

6 Q So you opened them up and swabbed them; is that
7 correct?

8 A Uh-huh. And then I did not label them. We usually
9 label each item specifically, like if I was processing this
10 jacket, I would label this jacket. But because it's going
11 to firearms, I don't want to get in the way of anything they
12 need to do, so I labeled the outside of the packaging.

13 Q And what did you do with the casings, with each
14 individual casings -- well, one was a projectile, but what
15 did you do with those items once you had swabbed them?

16 A Those needed to go to the firearms department, so I
17 gave them to Chad Smith, who is a forensic scientist in the
18 firearms department.

19 Q But before you did that, what did you do with each
20 individual one?

21 A I packaged them back up into the big bag, sealed it,
22 you see my initials right here, JHS, and then gave them to
23 Chad.

24 Q And in regards to each individual smaller bags, did you
25 do anything -- did you make any markings on these?

1 A No. The smaller bags, I believe, were added in
2 firearms.

3 Q Well, I'm sorry, I said bag. I mean in regard to the
4 smaller boxes?

5 A The boxes, yes. So I would label each box. So this
6 box, this was item 13, so I have 13 L1612361 JHS, L29, 17.
7 And each one will be labeled like that.

8 Q Okay. And you just put that marking on it?

9 A Uh-huh.

10 Q Did you put that marking on it when you turned it back
11 into the --

12 A I do it in the beginning. It doesn't matter when you
13 do it, you just need to do it. So I typically do it in the
14 beginning.

15 Q Okay. But in regards to each box, after you swabbed
16 the casing, you put it back in the box?

17 A Uh-huh.

18 Q And then send it all --

19 A And then put it back in this bag so it's secure and
20 then I send it to firearms.

21 Q All right. And you take that over to Mr. Smith?

22 A Uh-huh. I believe he came down and retrieved it.

23 Q When did you turn it over to him?

24 A That would have been on December the 5th, '17.

25 Q And then the swabs that you took, where did they go?

1 A Those went to DNA Analyst Sara Goodman.

2 Q And other than just being involved in the process of
3 those cartridges for DNA, did you have any other involvement
4 in the investigation of the case or the process of any
5 evidence?

6 A No. I had a very small role in this case. That's the
7 extent of what I did.

8 MR. ANTHONY: Thank you. That's everything on direct.

9 THE COURT: Mr. Brown.

10 MR. BROWN: No questions.

11 THE COURT: Any objection to excusing Ms. Stowe?

12 MR. BROWN: None, Your Honor.

13 MR. ANTHONY: No, Your Honor.

14 THE COURT: Thank you, ma'am. You're excused.

15 THE WITNESS: Thank you.

16 MR. ANTHONY: The next witness will be Ms. Simmons.

17 ILA SIMMONS, after being duly
18 sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. ANTHONY:

21 Q Would you state your name, please?

22 A My name is Ila Simmons.

23 Q Ms. Simmons, how are you employed?

24 A I'm employed at the South Carolina Law Enforcement
25 Division, also known as SLED, in the forensic laboratory

1 trace evidence department.

2 Q Okay. And how long have you worked in trace evidence
3 with SLED?

4 A About 16 years.

5 Q And were you working at SLED -- well, just recently,
6 has your status there in the trace unit changed?

7 A Yes, sir. I worked as a forensic scientist there for
8 about 13 years and then I took some time off. I came back
9 to the trace department, was rehired there and went back
10 through the training, the whole training regimen for the
11 gunshot residue analysis.

12 Q All right. Let me show you a few items of evidence.
13 What was your role in the trace evidence department in
14 reference to GSR kits?

15 A At that time, I was going through training, so I was
16 preparing kits for analysis by the analyst and I was also
17 collecting gunshot residue samples from clothing.

18 Q And that was in March of 2018?

19 A Yes, sir.

20 Q Let me show you -- first off, I'm going to show you a
21 set of GSR kits, State's Exhibits 60 through 63. It's in a
22 larger bag. I'll hand these up to you and ask if you've
23 seen those before?

24 A Yes, sir, I have.

25 Q And what are those?

1 A These are four GSR kits collected from a vehicle, a PT
2 Cruiser.

3 Q And then I'm going to show you what's been marked for
4 identification State's Exhibit 6. This is a GSR kit and
5 also a SLED bag, and ask if you've seen those?

6 A Yes, sir, I have.

7 Q And when did you come to possess those items?

8 A It would have been March 22nd, approximately 8:30 in
9 the morning, of this year.

10 Q And where did you get them from?

11 A I would have gotten them out of the trace storage area.
12 It's a locked section of the trace department.

13 Q Okay. And what's the procedure there at the trace
14 department about retrieving evidence for y'all to process?
15 How does evidence get from where it's submitted to trace?

16 A The submitting agency, in this case, Union County,
17 would have submitted it through our central log-in
18 department, which is downstairs. We're on the third floor
19 and they're on the first floor. They store the evidence
20 there under lock and magnetic key until we go and we
21 retrieve the evidence that each department needs. And we
22 would have gotten it from the central log-in department. In
23 this case, I believe Amy Black was the person that we
24 retrieved all the evidence from. And we would have brought
25 it upstairs and stored it in our locked evidence area that

1 only the trace department and management has access to.

2 Q And when those bags came into your custody, what was
3 the condition of them?

4 A They were heat-sealed, so they were completely sealed.

5 Q And so as part of your job, did you open those
6 heat-sealed big SLED bags up?

7 A Yes, sir, I would have.

8 Q And the paper bags inside, what condition were they in?

9 A They were sealed by the person that collected the
10 gunshot residue kits.

11 Q Okay. And once you opened up the big bags and opened
12 up the little bags, what is your role in doing a GSR
13 analysis?

14 A At that time, I was just preparing them for analysis,
15 so I would have checked to make sure that all the
16 information agreed with what the log-in information says.
17 And when I found out that it did, I went ahead and I would
18 open the small envelopes that are in the larger bags and I
19 would have made sure that all of the samples that it said it
20 contained are actually in the item. And I would have also
21 taken the gunshot residue information sheet out of each kit.
22 Every gunshot residue kit has a standardized sheet that the
23 person collecting the kit fills out and I would have made
24 sure that the pertinent information we needed for analysis
25 was on that sheet.

1 Q And did you find that to be the case in regards to the
2 kits there in front of you from the PT Cruiser and from Mr.
3 Thomas?

4 A Yes.

5 Q And then once you did that in regards to those two sets
6 of GSR kits, what did you do with them?

7 A I would forward these to Lieutenant Jennifer Nates, who
8 would have performed the analysis on it.

9 Q Okay. And I'm going to show you now Exhibit 58 and ask
10 if you've seen this item before?

11 A Yes, sir, I have.

12 Q And what is that?

13 A This is a pair of black jogging pants that I processed
14 for gunshot residue.

15 Q And when did those come into your possession?

16 A These would have come into my possession, I believe it
17 was August 31st of 2016.

18 Q So you got those a long time before you got --

19 A Yes, sir, I did.

20 Q -- the other two sets of kits you just talked about?

21 A Yes.

22 Q And how did they come to you?

23 A They were brought up from our central log-in by an
24 analyst within the trace evidence department.

25 Q And once there, where were the pants stored?

1 A They were also stored in our locked trace evidence
2 storage area.

3 Q And when did you take the pants into your possession?

4 A I believe it was September 16th of 2016.

5 Q And what did take those pants into your custody to do
6 with them?

7 A I would process them for the presence of gunshot
8 residue.

9 Q The actual item itself, how was it packaged when it
10 came into your possession?

11 A It was in this cardboard box, but the cardboard box was
12 sealed and it had Dawn Claycomb's initials and the date that
13 she sealed it. So it was sealed from the time that she
14 placed the item in the box and then once I opened it, also,
15 bagged inside, the pants are in a paper bag. The paper bag
16 was also sealed and initialed.

17 Q And if you would, you can just open up the bag and get
18 the pants out.

19 A All right.

20 Q And that's all the clothes that came to you, just that
21 one pair of pants?

22 A Yes, sir, to process for gunshot residue.

23 Q And do those pants appear to you to be in the same
24 condition as they were when you processed them in September
25 of 2016?

1 A Yes, sir.

2 MR. ANTHONY: We move 58 into evidence.

3 MR. BROWN: Without objection.

4 THE COURT: Into evidence without objection.

5 (WHEREUPON, State's Exhibit No. 58 was admitted into
6 evidence.)

7 BY MR. ANTHONY:

8 Q You can go ahead and put them back in the bag and get
9 that out of the way.

10 A (Witness complies.)

11 Q Thank you. So once you opened up the box and got the
12 pants out, what exactly did you do to process those pants?

13 A I would have taken a piece of -- it would be a small
14 disk that was attached to a handle. It's like a piece of
15 double-sided tape. So it's sticky on one side, that side
16 sticks to the handle. The other side, I would have dabbed
17 over the front area of the pants. I would have taken one
18 sample from the right side of the pants and one sample from
19 the left side of the pants up to about the knee area down
20 from the waistband.

21 Q Then once you take the particle lifts, what do you do
22 with them?

23 A I would have put them in a plastic box and then I would
24 seal them in a heat-sealed pouch and stored them in our
25 storage area.

1 (WHEREUPON, State's Exhibit No. 64 was marked for
2 identification.)

3 BY MR. ANTHONY:

4 Q I'm going to hand you what's been marked for
5 identification State's Exhibit No. 64. Do you recognize
6 that item?

7 A Yes, these are particle lifts I collected from the
8 black jogging pants.

9 Q And if you would, just step down and explain to the
10 jury.

11 A I would place the two particle lifts -- this sticky
12 tape is kind of like you have fuzz on your clothes and you
13 dab with a piece of tape. It works the same way. It's just
14 a very small area.

15 Q Does that little blue box -- that's the particle lifts?

16 A Yes.

17 Q Thank you. And then once you have taken the lifts, you
18 put them in that big SLED bag?

19 A Yes, sir.

20 Q And then what did you do with it?

21 A I would have put them into storage, which is the same
22 locked area where we keep all of our evidence until it was
23 time to analyze them and then I would hand them off to the
24 analyst who in this case was Lieutenant Jennifer Nates.

25 Q And you actually put a date on that bigger bag for when

1 you sealed it up?

2 A Yes.

3 Q When was that?

4 A It was 9/6/16.

5 Q And then on March 22nd, 2018, when you were doing the
6 work on these other two kits we just talked about, did you
7 do anything in regard to that?

8 A No, I would have just gotten these out of storage and
9 handed them over to my lieutenant.

10 Q You didn't open it up, but you did go retrieve it and
11 give it to Lieutenant Nates?

12 A That's correct.

13 MR. ANTHONY: Thank you. That's everything on direct.

14 THE COURT: Mr. Brown?

15 CROSS-EXAMINATION

16 BY MR. BROWN:

17 Q How many GSR kits did you process?

18 A In this case, I would have processed the four from the
19 PT Cruiser, the one from Mr. Thomas and then processed the
20 pants as well.

21 Q So just one GSR kit that you know of on one person?

22 A Yes, sir.

23 MR. BROWN: Thank you.

24 THE COURT: Mr. Anthony?

25 MR. ANTHONY: No redirect.

1 THE COURT: Any objection to Agent Simmons being
2 excused?

3 MR. ANTHONY: No, sir.

4 MR. BROWN: No objection.

5 THE COURT: Thank you, Agent Simmons. You're excused.

6 MR. ANTHONY: Next witness will be Lieutenant Nates.

7 JENNIFER NATES, after being duly
8 sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. ANTHONY:

11 Q Would you state your name, please?

12 A Jennifer Nates, N-A-T-E-S.

13 Q And Lieutenant Nates, how are you employed?

14 A I'm employed by the South Carolina Law Enforcement
15 Division in the trace evidence section.

16 Q And how long have you worked for SLED?

17 A I've worked for SLED for 21 years and I've been in
18 trace evidence for 20 years.

19 Q And would you give the jury your educational background
20 and training as it relates to being a trace evidence
21 analyst?

22 A I received a Bachelor of Science degree in chemistry in
23 1997 from a small state school in Pennsylvania called
24 California University of Pennsylvania. It's located in the
25 town of California, PA.

1 Once I received my degree, I performed an internship at
2 SLED to decide what career path I wanted to take and decided
3 that was the area I wanted to work in. I was then hired in
4 the drug analysis department. I completed their training
5 program. I completed the police academy and then began
6 taking drug cases and poison cases.

7 I was employed there for approximately one year when an
8 opening came available in trace evidence and I applied for r
9 a transfer, which was granted. I then began a three-year
10 training program in trace evidence under the direct
11 supervision of the lieutenant and other senior analysts in
12 that department. This training included each area of trace
13 analysis, competency test in those areas and training in
14 outside courses dealing with the instruments that are used,
15 the type of conclusions that you can draw from the analysis
16 of the evidence and the analysis of different types of
17 evidence.

18 Q And you are currently -- as a lieutenant, you are a
19 supervisor in that unit?

20 A I am.

21 Q Have you testified as an expert or been qualified as an
22 expert witness before regarding analysis of trace evidence?

23 A I have.

24 Q Approximately how many times?

25 A I've testified 126 times. I think approximately a

1 hundred are in trace evidence, the remainder are in drug
2 analysis.

3 MR. ANTHONY: Your Honor, at this time, we submit
4 Lieutenant Nates as an expert in the field of evaluation and
5 testing of trace evidence.

6 THE COURT: Any objection?

7 MR. BROWN: No objection.

8 THE COURT: Ladies and gentlemen, once again, this is
9 our third expert witness. Normally witnesses can only
10 testify to what they heard, saw, sensed or smelled or
11 something or that nature, but Ms. Nates is qualified by her
12 experience as an expert in the field of analysis and trace
13 evidence. She is permitted to give her opinion. That does
14 not mean you must accept the opinion as true, but it is
15 evidence for you to use in any way you see fit and to give
16 it the weight and credibility you believe are appropriate.

17 BY MR. ANTHONY:

18 Q Lieutenant, can you tell the jury a little bit about
19 gunshot residue and what creates gunshot residue and where
20 you might find it?

21 A Gunshot residue is a term used in the forensic
22 community to describe the residue and debris that is
23 produced when a firearm is discharged. Our lab currently
24 analyzes for what is called PGSR, or primer gunshot residue.
25 There are several different types of gunshot residue. All

1 of them together encompass the gunshot residue term.

2 We specifically analyze for primer gunshot residue,
3 which is the gunshot residue that is generated from the
4 primer compensation in the cartridge. So the gunshot
5 residue that our laboratory analyzes for is a multi-particle
6 that contains three elements particular to gunshot residue,
7 which is barium, antimony and lead. These three components
8 in one microscope molten particular are called primer
9 gunshot residue.

10 Gunshot residue is produced when a weapon is discharged
11 and it can be deposited on anything in the vicinity to the
12 discharge of that firearm. It also can be put onto an
13 inanimate object. If I fire a gun and lay it down here,
14 gunshot residue can transfer to this surface.

15 Q I'm going to ask you now some questions specific to the
16 case. I've got, first of all, Exhibits 60 through 63. I'd
17 ask if you would just look at these GSR kits and see if you
18 can identify them?

19 A These envelopes are what is called a Tri-Tech GSR kit.
20 Our agency provides these GSR kits to agencies throughout
21 the state for collection of GSR. They would have been
22 sealed in this bag. And when I received it, I initial and
23 date the outer container. And then as I open each kit, I
24 initial and date each kit. Each of these has the
25 corresponding laboratory number, which I'm sure you've heard

1 each case is assigned when it's submitted to SLED and the
2 corresponding item number for that item.

3 Q And when did you receive those kits?

4 A I received these kits on 3/22/18.

5 Q And who had prepared those kits for you to analyze?

6 A Ila Simmons.

7 Q And what had she specifically done to prepare them for
8 your analysis?

9 A When gunshot residue kits are received, there are just
10 some pieces of information that we need to verify prior to
11 analysis. One is that the kits are sealed, that the name on
12 the kit and the name on the paperwork corresponds to the
13 name and the paperwork that was submitted with that case.

14 She would both verify that it was sealed and initialed
15 and that all of the items numbers and all the information
16 would have matched the submission information. She would
17 have also have verified in this case, these were collected
18 from a vehicle, so there would not be any time frame
19 requirement. On a kit from a living person, the kit must be
20 collected within six hours of the shooting for it to be
21 valid. So she would have verified on a kit from a living
22 person. On this, she would have documented all the
23 information was correct.

24 Q And did all the information appear to be correct to you
25 when you began to process items 60 through 63?

1 A There were no issues with them and I did begin
2 processing.

3 MR. ANTHONY: We would move 60 through 63 into
4 evidence.

5 THE COURT: Any objection?

6 MR. BROWN: No objection.

7 THE COURT: Into evidence without objection.

8 (WHEREUPON, State's Exhibit Nos. 60 through 63 were
9 admitted into evidence.)

10 BY MR. ANTHONY:

11 Q I'm going to hand up now what's been marked for
12 identification as No. 6. Do you recognize that kit?

13 A Yet again, it has my initials and date on when I
14 received this sealed container. And the GSR kit within it
15 also contains my initials and date on when I received this
16 item?

17 Q And when did you get it?

18 A On 3/22/18.

19 Q So you received that the same time you received the
20 ones from the Cruiser?

21 A Yes.

22 Q Okay. And did everything appear appropriate at that
23 time as far as everything being in order for you to begin
24 your analysis?

25 A It did or I would not have analyzed the kit.

1 MR. ANTHONY: We move 6 into evidence.

2 THE COURT: Any objection?

3 MR. BROWN: No objection.

4 THE COURT: Into evidence without objection.

5 (WHEREUPON, State's Exhibit No. 6 was admitted into
6 evidence.)

7 BY MR. ANTHONY:

8 Q I want to hand you now No. 64 and ask if you recognize
9 that item?

10 A State's Exhibit 64 is an our item 41.1, which are
11 particle lifts that were collected from item 41, which was a
12 pair of black jogging pants.

13 Q And how did that item come to you?

14 A This came to me from Ila Simmons.

15 Q On what date?

16 A On 3/22/18.

17 Q And what condition was the item in when it came to you?

18 A It was sealed when it came to me.

19 MR. ANTHONY: We move 64 into evidence.

20 THE COURT: Any objection?

21 MR. BROWN: No objection.

22 THE COURT: Into evidence without objection.

23 (WHEREUPON, State's Exhibit No. 64 was admitted into
24 evidence.)

25 BY MR. ANTHONY:

1 Q So you have to get all those items, four from the car,
2 one from Mr. Thomas' hands and one from the pants, and just
3 describe to the jury the process that you use to test for
4 GSR for those items?

5 A Normally, an analyst would do the processing work that
6 Ila Simmons performed, so what I have to do at this point as
7 it's already been checked for accuracy, for sealing, that
8 the evidence is okay for analysis.

9 So I would then make a sequence on the scanning
10 electron microscope, which is, basically, a grid to tell
11 where I am placing a sample. I would then open up this
12 plastic box, use a special tool, they are tweezers that have
13 a round -- there are two round metal things that fit into
14 the grooves on the samples so that we can pick them up and
15 lift them out and place them where we need them. I would
16 then place them inside the chamber of the instrument. I
17 would do the same thing for each of the kit items. So all
18 the samples from each of the kits would be placed in this
19 sequence log. Close the chamber and evacuate it.

20 Once I do that, then I have a physical sequence sheet
21 -- let me see if I have one to show you. And this is just a
22 sheet that differentiates an area on our grid and what
23 sample is on that area so that we know that we have put the
24 sample in the correct area. And we also double check it.
25 As we process it, we view where the stage will relocate to

1 to make certain it goes back to the area that I set it to go
2 to.

3 I would have set this up for each of the samples and
4 then performed all of the quality performances that need to
5 be done on the instrument to show that it's in proper
6 working order and then started the analysis.

7 Q Well, I'm going to ask you first about the car swabs.
8 First off, did you make any decision about what parts of
9 those kits from the car to process?

10 A I did.

11 Q And what was that?

12 A Normally, when vehicles are submitted for GSR, it's
13 considered an inanimate object, so, therefore, there's no
14 time frame for the collection. Anything I find -- so as you
15 all know, usually, the outside of the vehicle is not as
16 clean as the inside of a vehicle. With these samples, when
17 they're collected, if there's a large amount of dirt and
18 debris on it, it's very difficult for us to form an analysis
19 due to all of that present on the samples. So normally, if
20 we are able to identify gunshot residue on the inside of a
21 vehicle, we do not analyze the exterior vehicle samples.

22 Q So did you start with the interior here?

23 A I did.

24 Q And did you process the -- we'll start with the front
25 driver's side swabs. What did you determine from the front

1 driver's side?

2 A From the front driver's compartment?

3 Q Yes, ma'am, the interior.

4 A Item 24 was the GSR kit that was collected from the
5 front driver's compartment. There was a sample collected
6 from the steering wheel, a sample collected from the
7 exterior driver's door, which I did not analyze, the
8 interior driver's door and the interior driver's window
9 frame.

10 Q And so what parts did you analyze from that?

11 A I analyzed the steering wheel and the interior driver's
12 door.

13 Q And did you find gunshot residue?

14 A I did find multiple particles characteristic of primer
15 gunshot residue.

16 Q And did you find them on the door?

17 A I found them on the steering wheel, on the interior --
18 and on the interior driver's door.

19 Q And how many particles did you find on the interior
20 driver's door?

21 A On the interior driver's door, the way the instrument
22 works is it will go through and it will categorize each
23 particle that is on the sample. We then have to go back and
24 verify.

25 In this case, when the instrument went through the

1 analysis, it hit on ten particles on the interior driver's
2 door that it said potentially were primer gunshot residue.
3 I went back and verified four of them, which is over what is
4 required for our policy to confirm. So I actually confirmed
5 four particles of gunshot residue on the interior driver's
6 door.

7 Q And what about the steering wheel?

8 A On the steering wheel, I only confirmed and the
9 instrument only found one particle characteristic of primer
10 gunshot residue.

11 Q That was the front interior driver's side?

12 A Yes.

13 Q What about the interior rear driver's?

14 A The item 25 was the GSR kit collected from the rear
15 driver's compartment of the vehicle. It was a sample
16 collected from the interior rear driver's door, which was
17 negative for any particles characteristic of primer gunshot
18 residue.

19 The second sample was the exterior rear driver's
20 window, which I did not perform an analysis on due to it
21 being an exterior sample.

22 The third sample was the exterior rear driver's door,
23 which I did not perform an analysis on that either due to it
24 being an exterior sample.

25 The fourth sample was an interior rear driver's window

1 frame and it was negative for the presence of primer gunshot
2 residue.

3 Q So from the interior of the driver's side, you didn't
4 find any gunshot residue?

5 A On the rear compartment.

6 Q On the interior rear driver, no gunshot residue?

7 A Yes.

8 Q Okay. Let's do the passenger side now. What were the
9 results from the front passenger side?

10 A Item 26 was a GSR kit collected from the front
11 passenger compartment of the vehicle. The first sample was
12 the interior front passenger window frame and I confirmed
13 two particles characteristic of primer gunshot residue. The
14 second sample was from the interior front passenger door and
15 it was negative for the presence of primer gunshot residue.
16 The third sample was from the exterior front passenger door.
17 Since it was an exterior sample, I did not analyze this
18 sample. The fourth sample was from the front passenger
19 dashboard and in that sample, I confirmed one particle of
20 gunshot primer residue.

21 Q And as to the rear passenger side of the vehicle,
22 interior passenger side, what did you find there?

23 A Item 27 was the kit collected from the rear passenger
24 compartment. The sample from the exterior rear passenger
25 window, I did not analyze as it was an exterior sample. The

1 sample from the interior rear passenger window, I confirmed
2 one particle of primer gunshot residue. The sample from the
3 exterior rear passenger door, it was an exterior sample and
4 I did not perform an analysis. The sample from the interior
5 rear passenger door was negative for the presence of primer
6 gunshot residue.

7 Q And insofar as gunshot residue from vehicles go, if a
8 gun is fired inside a vehicle, what can you say about the
9 possibility of finding gunshot residue?

10 A When a firearm is discharged within a small enclosed
11 space, which would be the inside compartment of a vehicle,
12 you expect to find gunshot residue within that area. There
13 are usually no references that can be made if I find it on
14 one side versus the other on where it was fired from. It's
15 somewhat like an airbag. When an airbag does off, the
16 airbag particles are going to go everywhere, so you can't
17 really tell which airbag it came from unless only one is
18 deployed. But in this case, I would expect to find gunshot
19 residue inside of a vehicle if a weapon was fired from
20 within it.

21 Q We're going to move on now to number six, which was the
22 GSR kit that was taken from Mr. Thomas. Did you make an
23 analysis here?

24 A I did.

25 Q And when did you do that?

1 A The kit from Mr. Thomas was analyzed on 3/23/18.

2 Q And what results did you get from your analysis from
3 the kit that was taken from Mr. Thomas' hands?

4 A Each of the GSR kits that are submitted from a person
5 at this time would have four samples within it. A sample
6 would be collected from the back of the right hand, the
7 right palm, the back of the left hand and the left palm.

8 In this case, I had those four samples from this kit
9 and I confirmed among all four samples eight particles of
10 primer gunshot residue.

11 Q How did that break down as far as different parts of
12 the hand?

13 A I confirmed one on the right palm area, three on the
14 right back area, two on the left palm area and two on the
15 left back area.

16 Q But altogether, you found eight gunshot residue
17 particles on Mr. Thomas' hands?

18 A I confirmed eight of what was found, yes.

19 Q You confirmed that?

20 A Yes.

21 Q So as far as confirmation goes, is that a matter of
22 policy at SLED that unless you confirm a certain number, you
23 don't go on and confirm anymore or how does that work?

24 A We do. We look for the presence or absence of gunshot
25 residue because more or less particles is not going to

1 change what opinion I can provide on that analysis. Once I
2 find gunshot residue present, I can tell you that person was
3 near a weapon when it was fired, they fired a weapon or they
4 handled something with gunshot residue on it. Having more
5 particles or less particles is not going to change any of
6 those scenarios. In this case, I confirmed eight. We only
7 have to have two for a positive result.

8 Q And then we're going to go on to the last one, which is
9 No. 64. This is the kit that was taken by Ms. Simmons from
10 Mr. Thomas' pants. Did you perform an analysis on these?

11 A I performed the same type of analysis on these samples
12 as I did on the other GSR kits.

13 Q And what results did you get from performing that
14 analysis?

15 A Ms. Simmons collected two samples from the pants.
16 Normally, we just designate it right groin and left groin.
17 It's usually from the waist down to just above the knees.
18 The right groin sample, I confirmed four particles
19 characteristic of primer gunshot residue. And on the left
20 groin sample, I confirmed two particles characteristic of
21 primer gunshot residue.

22 Q And once again, you said you only have to confirm two
23 to say that you found the presence of it?

24 A We can report one, but then you have from singular to
25 plural, so with two, you can report the multiple presence.

1 MR. ANTHONY: If I can have a moment.

2 (Pause.)

3 MR. ANTHONY: That's everything on direct.

4 THE COURT: Mr. Brown.

5 CROSS-EXAMINATION

6 BY MR. BROWN:

7 Q You said you could have particles from handling a
8 weapon in terms of their presence?

9 A Yes, you can.

10 Q Would that be consistent or inconsistent with say, for
11 instance, if you touched the inside of a door after handling
12 a weapon after discharging?

13 A If you fire a weapon and you have gunshot residue on
14 your hands and you touch a door, you can transfer it to the
15 door handle.

16 Q Would that be possible in this case?

17 A It's always possible.

18 Q From your analysis, you identify two areas as it
19 relates to the driver's side of the vehicle that was
20 analyzed?

21 A In the driver front compartment?

22 Q Yes.

23 A Yes, I did from the steering wheel and from the
24 interior driver's door.

25 Q Out of all the samples that were taken in the vehicle

1 that you analyzed, was that area the most appreciable in
2 terms of particles?

3 A That area was, it did have the most particles present.

4 Q And based upon the steering wheel, you mentioned -- and
5 the most being found on the interior driver's door?

6 A The interior driver's door, which I don't have
7 knowledge exactly -- I'm assuming it was collected from the
8 entire door on the inside.

9 Q But you don't know if it was?

10 A They designate it as interior driver's door and that
11 would be -- have to be asked of the crime scene person.

12 MR. BROWN: Thank you.

13 THE COURT: Any redirect, Mr. Anthony?

14 REDIRECT EXAMINATION

15 BY MR. ANTHONY:

16 Q If you shot a gun outside a vehicle, your expectation
17 as to how GSR would be found inside the vehicle, it would be
18 based on a matter of transfer, is that fair to say?

19 A I don't understand your question.

20 Q If you have it on your hands from shooting it outside
21 and you touch stuff inside, that's how it would come to be
22 there?

23 A You can have it there. Normally -- we have two
24 different types of cases when we have vehicles. We would
25 receive cases where the person is suspected of having fired

1 a gun outside of the vehicle, so normally the samples would
2 be collected from the steering wheel, the handle and the
3 gearshift because we're specifically looking for areas they
4 may have touched where it could have been transferred. If
5 we have knowledge that possibly a weapon was fired from
6 within a vehicle, they would collect from more broad areas
7 because we are just trying to support that a weapon could
8 have been discharged in that area.

9 So in this case, I had it from the steering wheel,
10 which could have been from transfer or could have been from
11 being discharged in the vehicle due to the amount that was
12 found on the door, which was not specified as the door
13 handle.

14 Q So the particles you found on the front and the rear
15 passenger side, would that be consistent with firing a
16 weapon outside a car?

17 A From a weapon being outside of the vehicle?

18 Q Yes.

19 A I would not expect to find anything on the inside fired
20 from outside unless it was physically transferred from a
21 person touching it.

22 MR. ANTHONY: Thank you.

23 THE COURT: Mr. Brown.

24 MR. BROWN: No further questions.

25 THE COURT: Any objection to excusing Lieutenant Nates?

1 MR. ANTHONY: No, Your Honor.

2 MR. BROWN: No, Your Honor.

3 THE COURT: Thank you, Ms. Nates. You're excused.

4 THE WITNESS: Thank you.

5 MR. ANTHONY: The next witness is Agent Smith.

6 CHAD SMITH, after being duly
7 sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. ANTHONY:

10 Q Would you state your name, please?

11 A Chad Smith.

12 Q And Agent Smith, how are you employed?

13 A I'm employed at the South Carolina Law Enforcement
14 Division. Specifically, I work in the firearms department
15 at SLED's forensic laboratory in Columbia.

16 Q How long have you worked for SLED?

17 A It will be ten years in November.

18 Q And how long have you been a firearms examiner?

19 A The whole time.

20 Q That whole time?

21 A Yes, sir.

22 Q Would you tell the jury your educational background and
23 specific training in the field of firearms identification?

24 A Well, I attended Clemson University where I earned a
25 Bachelor of Science Degree in biological sciences. When I

1 came aboard SLED, I started my training in the firearms
2 department as a firearms examiner. The training program
3 last between three to five years. It is supervised by the
4 court-qualified examiners of the firearms department. It's
5 extensive reading and studying during this period, multiple
6 examinations and practice tests are given. I also attended
7 various classes and seminars. I also was able to tour a
8 variety of manufacturers, tool and firearm manufacturers.
9 Towards the end of my training, I helped other examiners
10 prepare their own case work. At the end of the training
11 period, I received a comprehensive examination, which I
12 successfully passed, and then I began to receive my own case
13 work.

14 Q How long did that training period last again?

15 A At the time, it was between three to five years. It
16 took me three and a half years.

17 Q And you've done this for ten now?

18 A Yes, sir.

19 Q Have you testified before in court as an expert witness
20 in the field of firearms identification?

21 A I have.

22 Q Approximately how many times?

23 A Forty-seven times.

24 MR. ANTHONY: Your Honor, at this time, I would submit
25 Agent Smith as an expert in the field of firearms

1 identification.

2 THE COURT: Any objections?

3 MR. BROWN: No objection.

4 THE COURT: All right. Ladies and gentlemen, Agent
5 Smith is qualified as an expert in firearms identification.

6 BY MR. ANTHONY:

7 Q Agent Smith, it's probably going to be a little simpler
8 for you to testify just standing down here since we've got
9 so much evidence. I want to show you first of all what's
10 been admitted into evidence as State's Exhibit 59. I'd ask
11 that you look at the firearm in that box and see if you've
12 seen it before?

13 A Yes, sir, this is the pistol that I received for
14 examination.

15 Q And when did you receive it?

16 A It was October 19th of 2016.

17 Q And then I ask you to look at another gun, which is
18 Exhibit 7. Have you seen that firearm before?

19 A Yes, sir, this is the revolver that I received for
20 examination.

21 Q And how did that come into your possession?

22 A I received that from Technician Jackie Davis, who works
23 in our evidence control department.

24 Q And when did it come into your possession?

25 A That was September 15th, 2016.

1 Q And then I call your attention to Exhibits 40 through
2 53, which are this set of exhibits here, and 54, 55 and 56.
3 I ask have you seen those before?

4 A Yes, sir. I received --

5 Q We'll talk about 40 through 53 first because that came
6 from a different source. How did you receive those items,
7 40 through 53?

8 A I received them inside this box here, this evidence
9 came sealed, which was inside this heat-sealed pouch,
10 container A.

11 Q Okay. And when did those come to you?

12 A That was on December 5th of 2017.

13 Q And how did you get those?

14 A Jessica Stowe, who works in our serology department.

15 Q And that was the young woman that just testified a few
16 moments ago?

17 A Yes, sir.

18 Q And when they came to you, how were these little boxes
19 packaged up?

20 A The evidence was inside the box. The box was evidence
21 tape sealed.

22 Q And then how were they all packaged together?

23 A Inside the larger bag.

24 Q And was that bag sealed when it came to you?

25 A Yes, sir.

1 MR. ANTHONY: Your Honor, we'd move 40 through 53 into
2 evidence.

3 THE COURT: Any objection?

4 MR. BROWN: No objection, Your Honor.

5 THE COURT: Into evidence without objection.

6 (WHEREUPON, State's Exhibit Nos. 40 through 53 were
7 admitted into evidence.)

8 (WHEREUPON, State's Exhibit Nos. 54 through 56 were
9 marked for identification.)

10 BY MR. ANTHONY:

11 Q And then I would ask you about these items, which is 54
12 through 56, and ask if you've seen them before?

13 A Yes, sir. They were three bullets that were submitted
14 for examination.

15 Q And how did you get those?

16 A Each item was inside, again, a larger container which
17 was evidence tape sealed. All three of those items were
18 inside this bag here, which is container B.

19 Q And was that bag, that big SLED bag, was it sealed up
20 with those three items in it when it came to you?

21 A Yes, sir.

22 MR. ANTHONY: All right. We move 54 through 56 into
23 evidence.

24 THE COURT: Any objection?

25 MR. BROWN: No objection.

1 THE COURT: Into evidence without objection.

2 (WHEREUPON, State's Exhibit Nos. 54 through 56 were
3 admitted into evidence.)

4 BY MR. ANTHONY:

5 Q Okay. If you would, just explain to the jury what you
6 did in regards to those firearms and those shell casings and
7 projectiles?

8 A Okay. Well, I received 13 fired nine-millimeter Luger
9 caliber cartridges and also one unfired nine-millimeter
10 Luger caliber cartridge, three fired bullets and the
11 revolver, which was a 357 Magnum, and the pistol, which was
12 a nine-millimeter pistol.

13 So what I would do, once I receive the items, I go
14 through to make sure everything I'm supposed to have I do
15 have and then I go ahead and start taking photographs of all
16 the items. In this particular case, I had my trainee assist
17 me. The evidence was still in my custody at the time. All
18 his help was done in my presence. So he helped take
19 pictures.

20 Then what I would do is actually look at the cartridge
21 cases, compare them with each other, look for similar
22 markings that are individual in nature that I could tell
23 were put there by the firearm. So I look at those markings.

24 And the way you compare two samples is kind of a
25 comparison microscope. It's, basically, two microscopes

1 connected by an optical bridge system, so you look into it
2 and you can compare two samples simultaneously and we're
3 looking for the debridement of those markings that's placed
4 by the firearm. So I compare the cartridge cases.

5 I look at the bullets to try and determine what
6 possible caliber it could be. And also, I'm looking for
7 what's known as general rifling characteristics. What that
8 means is a firearm has a rifle barrel, but what rifling does
9 is put a spin on a projectile as it travels down the barrel,
10 so it creates more velocity and accuracy. It's kind of like
11 a professional football player, a quarterback. He throws
12 that football. He wants a nice tight spiral so he can hit
13 his target. So that's what rifling does.

14 Rifling is made up of a series of what's called lands
15 and grooves. So manufacturers put lands and grooves to
16 create that rifling. And there's a pattern created. And as
17 the bullet travels down the barrel, that rifling imparts its
18 markings onto the bullet. So we're looking for those
19 markings as well.

20 So I look at all the evidence, then I test fire the
21 firearm. I make sure the firearm is in working order and
22 then I test fire the firearm. And the way we do that is we
23 have a large water tank that we shoot into and we collect
24 the bullets and cartridge cases and analyze those. So we're
25 looking at those under the bridge microscope looking for,

1 again, similar debridement and we can compare test fires
2 with the evidence. In this case, 13 fired cartridge cases
3 were fired.

4 Q So what were you able to determine when you looked at
5 those -- first off, let's talk about fired casings. When
6 you compared those fired casings to each other and then when
7 you compared them to the casings left by the test shots that
8 you fired?

9 A Yes, sir. I was able to determine that all the
10 cartridge cases were fired by State's Exhibit 59 pistol.
11 Again, I would compare the cartridge cases with each other
12 and then compare those cartridge cases with the test
13 cartridge cases.

14 Q Okay. And that is this weapon right here, State's
15 Exhibit No. 59; is that correct?

16 A Yes, sir.

17 Q And what were you able to determine about the unfired
18 round that was submitted to you?

19 A The unfired cartridge, State's Exhibit 53, again, it's
20 a nine-millimeter Luger caliber cartridge. And it's the
21 caliber for use in the nine-millimeter pistol.

22 Q So, obviously, there's no markings on it for you to
23 compare, but that type ammunition would go and could be
24 fired by this weapon?

25 A Yes, sir.

1 Q Now, in regards to items 54 and 56, the projectiles,
2 what were you able to determine about those?

3 A I was able to determine that two of the bullets, items
4 17 and 18, which is State's Exhibits 55 and 54, they are
5 both consistent with being nine-millimeter Luger caliber
6 cartridges.

7 Q And that's the kind of weapon we have right here?

8 A That's correct.

9 Q Exhibit 59?

10 A Yes, sir.

11 Q Okay.

12 A State's Exhibit 56 was actually submitted with all this
13 debris. Some of that debris was consistent with being just
14 very small copper fragments, probably jacket fragments. And
15 as far as caliber-wise, I didn't determine the specific
16 caliber like I did with the other two bullets because it was
17 so damaged, but I could say it was under the umbrella of a
18 nominal 38 caliber, which includes nine millimeter.

19 Q And did you have to remove anything -- I think there's
20 a couple of little tubes here. What is that?

21 A On State's Exhibits 54 and 55, when I received them,
22 there was some debris consistent with maybe blood. I
23 couldn't say for sure it was blood, but it was consistent
24 with blood. So what we go ahead and do is when we see trace
25 material like that, we go ahead and swab it. That way,

1 we've got it and if the submitting agency wants to submit
2 it, the trace material for analysis, then we have it.

3 Q And were you able to -- going back to these
4 projectiles, I know you said you couldn't say for sure they
5 were matched up from the gun from the car, but were you able
6 to make any conclusion about whether they would be matched
7 up with the revolver from the residence, which is No. 7?

8 A I could tell that -- again, they were inconclusive with
9 a nine-millimeter pistol, so I really can't say they were
10 all fired by the same gun or multiple guns or even fired by
11 one pistol. They certainly could have been. But just due
12 to the damage on the bullets as well as the markings on the
13 bullets, there just wasn't enough there to make that
14 conclusive result. With regards to State's Exhibit 7, which
15 was the revolver, I can say conclusively that the three
16 bullets were not fired by this revolver. That's just based
17 on the differences of the markings compared to the test
18 fires.

19 Q But you can say with certainty that this weapon right
20 here, this weapon that came from the Defendant's vehicle,
21 No. 59, is the weapon that left all those shell casings over
22 there to your left, No. 40 to 53?

23 A Yes, sir.

24 MR. ANTHONY: Thank you very much, Agent Smith. That's
25 everything on direct.

1 THE COURT: Mr. Brown.

2 CROSS-EXAMINATION

3 BY MR. BROWN:

4 Q Agent Smith, you said you have testified 47 times?

5 A Yes, sir.

6 Q In regards to the cases you testified about, are they
7 cases that involved a certain type of caliber gun that you
8 testify more to than others?

9 A I couldn't say that for sure. In the laboratory, we
10 see a lot of different calibers, so it's kind of spread out.

11 Q Would you say it's consistent between a 357 and
12 nine-millimeter?

13 A Well, nine millimeter is certainly a very popular
14 caliber, so we do see a lot of that.

15 Q And so would you say you've seen that more possibly
16 than any other caliber?

17 A Possibly, but that's not to say for certain.

18 Q You say when you go through your process, you test fire
19 weapons?

20 A Yes, sir.

21 Q And there was one caliber round that didn't exactly
22 match those, but the majority of the cartridges that were
23 expended would come from the nine millimeter?

24 A Bullet-wise?

25 Q Yes.

1 A Yes. One of the bullets, just due to damage, it was
2 missing a large portion of it, so I really couldn't get an
3 idea to narrow it down to a specific caliber, like say
4 nine-millimeter Luger, but I could say with the other
5 characteristics of it that it falls under the nominal 38
6 caliber, which includes nine millimeter Luger caliber, but
7 there's others as well.

8 Q When you say others, other type of guns?

9 A Just other calibers. It could possibly be a 380 auto
10 or something else. But just, again, due to the damage of
11 it, I couldn't narrow it specifically down.

12 Q And as it relates to the unspent nine-millimeter
13 caliber or round that was found, you said that could
14 possibly be fired from other guns as well?

15 A It could be fired in any -- basically, any firearm
16 chamber for nine-millimeter Luger. So, basically, any
17 firearm that's chambered for that particular round could
18 fire that cartridge.

19 MR. BROWN: Thank you.

20 THE COURT: Any redirect?

21 MR. ANTHONY: No, no redirect.

22 THE COURT: Any objection to excusing Agent Smith?

23 MR. ANTHONY: No, sir.

24 MR. BROWN: No, sir.

25 THE COURT: Thank you, Agent Smith. You're excused.

1 THE WITNESS: Thank you, Judge.

2 THE COURT: Mr. Anthony, do you have a short witness?

3 MR. ANTHONY: No, sir.

4 THE COURT: All right, ladies and gentlemen, we're
5 going to break for lunch in that case. An hour and 15
6 minutes yesterday, was that enough time for lunch for those
7 of you that wanted to go home and do what you needed to do?

8 (Jury indicated in the affirmative.)

9 THE COURT: Okay. We'll be in recess until 2:00 p.m.
10 It's 12:45, we'll start back at two o'clock. Thank you,
11 ladies and gentlemen.

12 (WHEREUPON, the jury exits the courtroom.)

13 THE COURT: Counsel, anything we need to take up?

14 MR. ANTHONY: I don't have anything for the record. I
15 was hoping maybe I could talk to the Court and Mr. Brown in
16 chambers before we would go to lunch.

17 THE COURT: Sounds good.

18 Mr. Brown, anything you need to take up on the record?

19 MR. BROWN: Nothing, Judge.

20 THE COURT: All right. I'll see you gentlemen in
21 chambers.

22 Court will be in recess until 2:00 p.m.

23 (WHEREUPON, a lunch recess was taken.)

24 THE COURT: Mr. Anthony, do you have any more
25 witnesses?

1 MR. ANTHONY: No, sir, the State would not have any
2 more witnesses.

3 THE COURT: Mr. Brown, I assume you have a motion?

4 MR. BROWN: Yes, Your Honor. Based upon the
5 presentation by the State, the Defense motion that we have
6 not heard the necessary elements involved in charging him
7 with attempted murder. For that reason, Your Honor, a very
8 short reply, I make a motion for directed verdict.

9 THE COURT: Do you want more time to argue, Mr. Brown?

10 MR. BROWN: No, Your Honor. I would simply say I would
11 renew all my previous objections.

12 THE COURT: Mr. Anthony.

13 MR. ANTHONY: Well, we believe there's obviously
14 evidence in the record from which a reasonable juror could
15 find, first of all, that attempted murder occurred given the
16 injuries sustained by Mr. Gray. As to Mr. Thomas being the
17 person who actually did the shooting, that's a decision a
18 jury would have to find. So we think the case should go to
19 the jury.

20 THE COURT: I'm going to rule for the State.
21 Obviously, the jury gets to determine credibility and things
22 like that, but at this point, with the burden the State has
23 to carry, the State has enough for the case to go to the
24 jury.

25 So let me get my script here. Mr. Thomas, you have a

1 very important decision about whether you want to testify,
2 so I have a script I need to go through with you. If you'll
3 just give me one second.

4 (Pause.)

5 THE COURT: Mr. Thomas, you want to stand up and let
6 the clerk swear you in.

7 NAJM THOMAS, after being duly
8 sworn, testified as follows:

9 THE COURT: Mr. Thomas, at this time, I'm going to
10 explain to you certain of your rights. If you don't
11 understand anything I say, please let me know. If you want
12 me to explain anything in more detail, please let me know.
13 Do you understand?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: We have now reached the stage of the trial
16 where you and your attorney may present your defense. You
17 have the right to claim the protections under the Fifth
18 Amendment of the Constitution of the United States. This
19 amendment states in part, no person shall be compelled in
20 any criminal case to be a witness against himself. This
21 means you cannot be required to testify in this case. You
22 have the right to testify on your own behalf, however, no
23 one can make you testify. This is a personal right and no
24 one can waive or give up this right except you.

25 If you decide to testify, you will be subject to the

1 same rules that govern other witnesses and you may be
2 examined and cross-examined on any relevant issue in this
3 case. In addition, if you have any convictions involving
4 dishonesty or false statements or for crimes punishable by
5 more than one year and the Court determines the probative
6 value of admitting this evidence outweighs its prejudicial
7 effect, the solicitor will be able to introduce your record
8 to attack your credibility.

9 And also, you understand that you testified in a
10 previous hearing in this case. That testimony was under
11 oath and you may be able to be cross-examined about that
12 testimony. Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: If you decide to testify, this decision on
15 your part must be made freely and voluntarily and
16 intelligently, made with the knowledge of the protections
17 given to you by the Fifth Amendment and the consequences of
18 your decision to testify.

19 If you decide not to testify, I will instruct the
20 jurors they cannot give the fact you didn't testify any
21 consideration whatsoever. And there is to be absolutely no
22 prejudice to you because you did not testify. It is left
23 entirely up to you as to whether or not you testify. You
24 may talk with your lawyer, your family and friends or anyone
25 else, but the final decision is entirely up to you.

1 Do you understand what I have explain to you.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you have any questions about what I have
4 explained to you?

5 THE DEFENDANT: No, sir.

6 THE COURT: Have you discussed with your lawyer whether
7 you wish to testify in this case?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And have you made a decision at this point
10 about whether you want to testify?

11 THE DEFENDANT: No, sir.

12 THE COURT: Okay. Well, why don't you speak with your
13 lawyer and your family if you want to and you make your
14 decision, okay?

15 Mr. Brown, if you want to take your client out in the
16 hall or some place else, that will be fine.

17 MR. BROWN: Thank you, Your Honor.

18 (Pause.)

19 THE COURT: Mr. Thomas, did you have an opportunity to
20 discuss the issue of whether you want to testify with your
21 lawyer and your family?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Have you made a decision on that issue?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And what is your decision?

1 THE DEFENDANT: I want to testify.

2 THE COURT: Okay. Thank you, Mr. Thomas. You may have
3 a seat back at counsel table.

4 Counsel, anything we need to take up before we bring
5 the jury back in?

6 MR. ANTHONY: Your Honor, the only thing, I apologize
7 for having a problem with this. I was asking our staff to
8 just run another NCIC on him. I don't think he has anything
9 that we can use, but I would -- if the Court would give us
10 just a minute to verify that and figure out what he needs to
11 be impeached on.

12 THE COURT: It won't take very long?

13 MR. ANTHONY: It shouldn't. They're telling me they're
14 having a little technical difficulty, but if I can just step
15 back there?

16 THE COURT: Sure.

17 (Pause.)

18 MR. ANTHONY: Your Honor, he doesn't have anything that
19 we can use.

20 THE COURT: Okay.

21 Mr. Brown.

22 MR. BROWN: Your Honor, by way of previous testimony, I
23 know it's pursuant to a certain type of hearing, a stand
24 your ground. If there's an allusion to that that's made at
25 any point, I would rather the information come in by way of

1 it being known as a motion that was made --

2 THE COURT: How about we just call it a pretrial
3 hearing?

4 MR. BROWN: Yes, sir. Thank you.

5 THE COURT: Any objection?

6 MR. ANTHONY: No, sir, that's fine.

7 THE COURT: One thing, Counsel, I didn't want to bring
8 the jury back in and have Mr. Anthony say I rest my case and
9 send them back out and do your motion. So just so they hear
10 what they may have heard on TV, when we bring them in, Mr.
11 Anthony, you want to say I rest my case and then we'll move
12 on even though you've officially done it?

13 MR. ANTHONY: Yes, sir.

14 THE COURT: Let's bring the jury back in.

15 Mr. Brown, do you have any objection to that?

16 MR. BROWN: No objection.

17 (WHEREUPON, the jury enters the courtroom.)

18 THE COURT: Mr. Anthony.

19 MR. ANTHONY: Your Honor, that would be all the State's
20 evidence.

21 THE COURT: Ladies and gentlemen, the State has rested
22 their case.

23 Mr. Brown, you may call your first witness.

24 MR. BROWN: Thank you, Your Honor. If it please the
25 Court, I'd call Mr. Najm Thomas.

1 NAJM THOMAS, after being duly
2 sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. BROWN:

5 Q Najm, if you would, please, state your full legal name?

6 A Najm Ahmad Thomas.

7 Q And where do you reside? Where do you live?

8 A 103 Tyler Drive.

9 Q That's here in Union County?

10 A Yes, sir.

11 Q And you know why we're here?

12 A Unfortunately.

13 Q And you've been present throughout the testimony that's
14 been offered in this case thus far?

15 A Yes, sir.

16 Q Have you been at every hearing in regards to this case?

17 A Yes, sir.

18 Q So you know everything involved here?

19 A Yes, sir.

20 Q Will you tell the jury what you did as it started on
21 August 28th of 2016?

22 A I went to work at six o'clock in the morning because I
23 worked weekend shift and on the weekdays, I was going to SCC
24 Community College for welding. So I went to work at six
25 o'clock in the morning. I got off at 4:00, I think it was

1 four o'clock. I went home, as usual, spent time with my
2 infant son, he was an infant at the time, and my girlfriend.
3 And I spent time there a couple hours. And I was going to
4 the store to get usual snacks or Gatorade or something for
5 my morning class for welding because we're in there for four
6 and a half hours. So I wanted to get all that situated like
7 normal.

8 On the way to the store, I saw two males walking to the
9 store, too, but I didn't recognize them, except for one of
10 them, I thought I knew, so that's why I was turning around
11 in the BP. When I turned around, there was no one there,
12 but it was real dark. And my car was already having trouble
13 and it started acting up again.

14 So I pulled my car over to the side at the stop sign at
15 the bottom of Siam Street. If my car was breaking down, I
16 didn't want to be in the middle of the road, so I turned to
17 the right. There was a little parking spot towards the
18 right, like in front of the house when you make the right on
19 Siam Street, I parked right there. As I was checking on my
20 car, it was real dark and it's a big oak tree right there in
21 front of the yard --

22 Q Let me ask you this, when you say you turned to the
23 right, is that right Monroe Street?

24 A Yes, sir.

25 Q Go ahead. I'm sorry, I didn't mean to interrupt you.

1 A So when I was checking my car, because I was already
2 having trouble, someone emerged behind a big old bush in
3 front of the house, somebody emerged. And when they emerged
4 from behind the bush, they were also behind my car and also
5 behind me, so I really didn't see them until they got really
6 close.

7 So when he got close, I instantly noted this is not
8 usual for somebody to be walking up on you at nighttime when
9 it's almost pitch dark. Second of all, when he threatened
10 me, that's when I knew, okay, this might be a crazy
11 situation. So when --

12 Q You say when he threatened you?

13 A Yes, sir.

14 Q So you recognized the person?

15 A Yes, sir, it was Malik. I went to school with him.

16 Q Malik?

17 A Malik Gray, Elizawon Gray.

18 Q Okay. Continue.

19 A When I saw Malik, when he threatened me, I was like
20 okay, this might be serious now. It's dark, he already
21 threatened me. When he raised his hand, he had something in
22 his hand. I thought it was a weapon and I got scared. I
23 got nervous. The only thing I know is either defend myself
24 or run away. I couldn't run away, so the only thing I had
25 to do was defend myself. And that's when I defended myself

1 because I had to.

2 Q And you had a gun?

3 A Yes, sir.

4 Q And we've heard testimony about a particular gun. What
5 gun did you have in your hand at that time?

6 A The nine-millimeter pistol.

7 Q Do you go to gun ranges?

8 A No, sir.

9 Q Do you take target practice?

10 A No, sir.

11 Q So you pulled -- you had the gun -- how did you have
12 the gun in your hand?

13 A I can't remember exactly how I had the gun in my hand.
14 I just know I defended myself with the gun.

15 Q Well, we heard testimony about there was a holster in
16 the car you were driving. Were you driving a black PT
17 Cruiser?

18 A Yes, sir.

19 Q There was a holster in the back seat on the driver's
20 side. Do you recall that?

21 A Yes, sir.

22 Q Where was the gun located that you had on that day?

23 A Could you say that again?

24 Q On that night, where was the gun at? Did you have it
25 in your pocket? Did you have it on you? Was it in the car?

1 Did you have to reach in the car to get it when you stopped
2 your car to check on it? Where was the gun at?

3 A In the holster.

4 Q So at some point, you reached when you were threatened
5 or you got the gun to make sure you were safe at that moment
6 when your car came to a stop?

7 A Yes, sir.

8 Q Which one?

9 A Could you say that again? You're confusing me now.
10 I'm sorry.

11 Q Did you grab the gun when you heard somebody come up on
12 you or did you -- when your car stopped, you were able to
13 get to the gun immediately? So it was right there within
14 arm's length.

15 MR. ANTHONY: I object to the leading on this.

16 THE COURT: I'm going to sustain that objection.

17 BY MR. BROWN:

18 Q How did you get the gun out of the car?

19 A Out of the glove compartment.

20 Q When did you put -- when did it get in the holster?

21 A I don't recall the exact moment.

22 Q When did you use the gun to defend yourself?

23 A After he threatened me.

24 Q So it's your testimony that it all just happened so
25 fast that you grabbed the gun and then you defended

1 yourself?

2 A Yes, sir, everything happened so fast.

3 Q Why did you shoot so many times?

4 A At the time, I didn't know how many times I shot. I
5 was very scared, so it was a lot of adrenaline. I really
6 don't know exactly how many times I shot or why I shot so
7 many times. I was just scared and I was just not trying to
8 be -- I wanted to live instead of, you know.

9 Q Why were you so worried that something was going to
10 happen to you that involved Malik?

11 A Well, when I saw Malik, I recognized him also because
12 weeks before he robbed me at gunpoint with his gun and some
13 friends.

14 Q Why didn't you go to the police and tell them about
15 that?

16 A Because we don't go to the police around here. If you
17 tell on somebody around here, it's going to make it worse
18 for you.

19 Q So at that moment, you say you were nervous, you shot
20 your gun. Did you watch him and shoot in his direction?
21 Did you know if you hit him or not?

22 A No, sir, at the time, I did not know I hit him.

23 Q Could you see things well? Could you see things
24 clearly from where you were standing?

25 A It was very dark.

1 Q So after you shot your gun, what was the next thing you
2 did?

3 A Hopped in my car and went in the other direction.

4 Q When you left, where was the first place you went?

5 A I went home.

6 Q Who was there?

7 A I didn't go inside the house.

8 Q So you were outside in the yard for a little while?

9 A Yes, sir.

10 Q What were you doing?

11 A I was -- I used to smoke marijuana, so I was grabbing
12 my marijuana outside because my momma don't want it inside
13 the house. So I had it outside.

14 Q And what did you do once you grabbed -- was it a bag?

15 A It was a Nike bag.

16 Q What did you do after you got the bag?

17 A I headed back to the BP.

18 Q The same store that you went to originally to get the
19 snacks?

20 A Yes, sir.

21 Q And what did you do once you got to the BP?

22 A I went into the BP to get some wraps. I don't know
23 exactly everything I got, but I just know I was going to get
24 some wraps because my nerves were real bad and at the time,
25 I was just going to smoke to calm my nerves. Because I went

1 through this situation that I never been in before and it
2 happened so fast and I was scared and I was nervous and just
3 a lot of things was going through my mind at the time.

4 Q And when you were at the store, did you see anybody
5 that you knew?

6 A I saw Travis Duncan and probably a few other people I
7 knew from school.

8 Q And Travis Duncan testified in this courtroom?

9 A Yes, sir.

10 Q You heard his testimony?

11 A Yes, sir.

12 Q You heard his testimony as it relates to you and Travis
13 talking?

14 A Yes, sir.

15 Q Was that true?

16 MR. ANTHONY: Objection.

17 THE WITNESS: Yes, sir.

18 MR. ANTHONY: That's pitting.

19 THE COURT: I'll sustain the objection.

20 MR. ANTHONY: I move to strike the answer.

21 BY MR. BROWN:

22 Q You heard Travis' testimony?

23 THE COURT: I'll sustain the objection and order that
24 answer stricken.

25 Go ahead, Mr. Brown.

1 BY MR. BROWN:

2 Q You heard Travis' testimony?

3 A Yes, sir.

4 Q What were you doing with Travis on that day?

5 A I was going to sell him back the gun that I originally
6 bought from Travis because he always told me if I buy a gun
7 from him and I sell it, sell it back to him.

8 Q So the gun that's been presented in evidence, the
9 nine-millimeter, you got that originally from Travis?

10 A Yes, sir.

11 Q So Travis didn't buy the gun back?

12 A No, sir.

13 Q So once you talked to him, what was the next thing you
14 did?

15 A I rolled me a cigar and I was headed home.

16 Q That's a marijuana cigar?

17 A Yes, sir.

18 Q And when you pulled out the BP, where did you head
19 then?

20 A I was heading home, but then I was stopped by law
21 enforcement because they were securing the scene that I
22 pulled up to.

23 Q So you pulled up to, basically, the same area that you
24 had just left from?

25 A Yes, sir.

1 Q You didn't think about law enforcement being there?

2 A No, sir, I did not.

3 Q You didn't think about Malik being there?

4 A No, sir, I did not. I thought Malik was long gone, had
5 ran away or something. That was my normal route home, so I
6 always go that way.

7 Q So when you shot in the direction of Malik, you didn't
8 see him fall?

9 A No, sir, he was still running when I shot.

10 Q So at some point, you got stopped by law enforcement.
11 What was the next thing you did?

12 A I don't remember much. I know I was very nervous and
13 probably was a little out of it because I was so scared.
14 It's not -- I can't really describe the feeling I was having
15 because it's been a while.

16 Q You had already rolled up a marijuana cigarette?

17 A Yes, sir.

18 Q Do you recall talking to the officer?

19 A Yes, sir.

20 Q You saw the video that was played?

21 A Yes, sir.

22 Q And at some point, he starts asking a series of
23 questions. Why didn't you mention the fact that you had
24 shot the gun at someone?

25 A At the time, I don't know.

1 Q You were still nervous, obviously, coming in contact
2 with law enforcement?

3 A Yes, I was nervous because a black man and a gun and a
4 police usually don't end well.

5 Q So after that, you were taken into custody?

6 A Yes, sir.

7 Q You got a visit from another officer that you know?

8 A Yes, sir.

9 Q Who was that?

10 A That gentleman right there beside you, Mr. McNeil.

11 Q Officer McNeil came and asked you some questions?

12 A Yes, sir.

13 Q At some point, you told him about another gun?

14 A Yes, sir.

15 Q Why did you do that?

16 A I don't recall. I don't remember exactly why I told
17 him that.

18 Q Were you still nervous then?

19 A Of course, very nervous.

20 Q And at first, didn't he ask you if you had been
21 involved in a shooting?

22 A I think he did, yes, sir.

23 Q And you didn't tell him that you were involved in a
24 shooting?

25 A I'm not a hundred percent sure. I don't remember

1 exactly what I said.

2 Q Well, you heard his testimony that he went through some
3 rights with you and asked you various questions. Were you
4 paying attention? Did you understand what he was talking
5 about during that time? Or were you just nervous and
6 couldn't understand?

7 A I know I was very nervous. I'm not a hundred percent
8 sure if I understand everything.

9 Q You signed the forms?

10 A Yes, sir.

11 Q Why did you sign the form?

12 A I thought I had to sign the form to be interviewed.

13 Q Well, at some point, he indicated to you that he would
14 like to take a test, a gunshot residue test?

15 A Yes, sir.

16 Q And he also wanted to swab the inside of your mouth for
17 DNA?

18 A Yes, sir.

19 Q Did he explain to you what this possibly could result
20 in?

21 A Yes, sir.

22 Q Did you tell him no, I don't want to that?

23 A No, sir, I didn't.

24 Q So you agreed to do both those things?

25 A Yes, sir.

1 Q And you knew it was going to show that you had shot a
2 gun?

3 A Yes, sir.

4 Q So you weren't trying to hide anything at that point?

5 A No, sir.

6 Q So when you were asked these things about a gun
7 initially, as you remember it, was the first time when you
8 got stopped by the police?

9 A Could you repeat that question?

10 Q When you were asked about a gun, about being involved
11 in a shooting, was the first time when you got stopped by
12 the police?

13 A I think so. I don't a hundred percent remember.

14 Q Well, you talked to Travis about the gun?

15 A Yes, sir, I did.

16 Q You got stopped by the police?

17 A Yes, sir.

18 Q You didn't mention the fact of the shooting?

19 A No, sir.

20 Q Then at some point, you were transported to jail
21 because of possession of marijuana?

22 A Yes, sir.

23 Q Officer came to see you and then you were asked again
24 about a shooting?

25 A Yes, sir.

1 Q You didn't say anything initially about it?

2 A No, sir, I did not.

3 Q But you agreed to do the test?

4 A Yes, sir, I did.

5 Q Knowing where it was going to go?

6 A Yes, sir, I did.

7 Q There was also testimony that another officer came to
8 see you the next day. Is it true that you told him you
9 wanted to talk to your mom?

10 A Yes, sir, it was.

11 Q Before you talked to him?

12 A Yes, sir.

13 Q And he left?

14 A Yes, sir.

15 Q Did he ever come back to see you?

16 A Not that I know of. I don't think so.

17 Q So you told him you wanted to talk to your mom, but he
18 didn't come back to followup with you?

19 A No, sir.

20 Q Where is your car now?

21 A It's at my mama house.

22 Q Why?

23 A Because it's still broken down.

24 Q So when was the last time you drove it?

25 A That night.

1 Q And it's been sitting in the yard ever since?

2 A Yes, sir.

3 Q What was the problem with the car?

4 A All kind of problems.

5 Q What were some of the main problems that you were
6 having with the car?

7 A The exhaust, probably some engine damage. I know I had
8 a lot of leaks. My car smelled. I don't know why it
9 smelled, probably exhaust. It had a lot of problems. The
10 turbo was out. My car had turbo, but the turbo wasn't
11 working.

12 Q What happened to the second person you said you saw --
13 or do you know if it was Malik you saw with this person?

14 A Could you repeat the question?

15 Q You said initially when you went to the BP, you saw two
16 people. Do you know if it was even Malik with this other
17 person that you thought you saw?

18 A No, sir.

19 Q So you didn't think it was Malik?

20 A No, sir, I did not.

21 Q And you thought the other person was one of your
22 friends?

23 A Yes, sir, I did.

24 Q That's why you turned around?

25 A Yes, sir, I did.

1 Q Did you plan in advance to shoot Malik?

2 A No, sir.

3 Q Did you know Malik was going to be on that road where
4 he was at on that night?

5 A Could you repeat the question?

6 Q Did you know Malik was going to be on -- in that area
7 that night?

8 A No, sir.

9 Q Did you think in advance that I'm going to get Malik
10 and then you shot him?

11 A No, sir, I did not.

12 Q It's not something that you intended?

13 A No, sir.

14 Q Where do you work at now?

15 A I'm unemployed.

16 Q Because you got charged with this case?

17 MR. ANTHONY: Objection.

18 THE WITNESS: Yes, sir.

19 MR. ANTHONY: Relevance.

20 THE COURT: I'm going to allow it.

21 BY MR. BROWN:

22 Q Because you got charged with this case?

23 A Yes, sir.

24 Q It's been very hard on you?

25 A Yes, very hard.

1 Q Are you still going to school?

2 A No, I got kicked out of school.

3 Q Were you inside the car firing a weapon?

4 A No, sir, I was not.

5 Q But you did touch the inside of the driver's side door?

6 A Yes, sir, I did.

7 Q And the pants that you've heard about today, you were
8 wearing?

9 A Yes, sir, I was.

10 Q And you touched the steering wheel as you drove away?

11 A Yes, sir, I did.

12 MR. BROWN: Please answer any questions the prosecutor
13 may have.

14 CROSS-EXAMINATION

15 BY MR. ANTHONY:

16 Q Mr. Thomas, do you think you did anything wrong that
17 night?

18 A No, sir, I do not.

19 Q You didn't do anything wrong shooting at Malik?

20 A It was unfortunate that I had to defend myself like
21 that.

22 Q I'm sorry?

23 A It was very unfortunate that I had to defend myself
24 like that.

25 Q Okay. But your testimony is that you didn't do

1 anything wrong?

2 A No, sir.

3 Q And you never -- after you shot at him 13 times, you
4 never called 911?

5 A No, sir, I did not.

6 Q You had a phone there in your car, correct?

7 A Yes, sir, I did.

8 Q And all you would have had to do was pick it up and hit
9 911 or hit the emergency button and you could have gotten
10 help there, correct?

11 A Help where?

12 Q There where you shot him?

13 A Yes, sir, I could have.

14 Q But you didn't do that?

15 A No, sir.

16 Q You just hopped back in your PT Cruiser and drove off?

17 A At the time, I did not know I shot Mr. Gray.

18 Q But you knew you had shot at him 13 times, right?

19 A Yes, sir, I did.

20 Q You put 13 bullets in his direction?

21 A I didn't know how many times I shot either.

22 Q You didn't know how many times you shot?

23 A No, sir.

24 Q But you knew you pressed that trigger multiple times?

25 A Yes, sir.

1 Q And you shot in the direction of Mr. Gray?

2 A I think so.

3 Q Okay. Because you said Mr. Gray was coming at you,
4 right?

5 A Yes, sir.

6 Q So you shot at him, right?

7 A Right.

8 Q And your response to doing that 13 times was just to
9 hop in the Cruiser -- or after doing that 13 times was just
10 to hop in the Cruiser and drive off?

11 A Go home, yes, sir.

12 Q And so your testimony is you went home, right?

13 A Yes, sir.

14 Q But within just a few minutes of doing this, you were
15 back at the BP, correct?

16 A Yes, sir.

17 Q And when you got to the BP, you bumped into Travis
18 Duncan?

19 A Yes, sir.

20 Q And that wasn't a planned meeting or anything like
21 that? He was just there, correct?

22 A No, sir, it was not.

23 Q And you hadn't -- you say you hadn't done anything
24 wrong, right?

25 A I want to rephrase that. I know I was trying to sell a

1 gun --

2 Q Well, there's not a question in front of you. The
3 question is are you saying -- you're saying you haven't done
4 anything wrong, correct?

5 A Except for try to sell the gun.

6 Q And you see Travis Duncan up there at the BP, right?

7 A Yes, sir.

8 Q And he's the first person really that you have any kind
9 of interaction with after you shot 13 times at Malik, right?

10 A I probably talked to some people at the store, too,
11 when I went in there more than Travis.

12 Q But you get to the store and Travis is right there and
13 you want to talk to Travis?

14 A When I get to the store, Travis was not there.

15 Q Okay. Well, you walk in -- that's right, you walk into
16 the store and then walk out and Travis is there; is that
17 correct?

18 A I think so, yes, sir.

19 Q And so as soon as you see Travis, you start wanting to
20 talk to him about selling the gun to him, correct?

21 A Yes, sir.

22 Q Okay. And this is the gun that you had just shot --
23 like, within the past 20, 30 minutes, you just fired that
24 gun 13 times at Malik Gray?

25 A Yes, sir.

1 Q And you want -- at this point in time, you want to sell
2 it?

3 A Yes, sir.

4 Q And you don't have that gun just secured in your glove
5 box, do you?

6 A I'm not a hundred percent sure.

7 Q Well, the gun's hidden, right? You have hidden that
8 gun behind the glove box; is that correct?

9 A Could you say the question again a different way?

10 Q The question is, you hid the gun behind the glove box,
11 didn't you?

12 A That's where I always put my gun.

13 Q So you always hide your gun?

14 A That's not hiding the gun.

15 Q That's not hiding?

16 A (There was no response.)

17 Q You need to answer yes or no.

18 A My gun was in the glove compartment. That's where
19 legally a gun is supposed to go.

20 Q Well, if you had opened up the glove box, you would
21 have seen that gun, wouldn't you?

22 A No, sir.

23 Q So it really wasn't in the glove compartment then, was
24 it?

25 A Yes, sir.

1 Q So your testimony is it's in the glove compartment, but
2 when you open up the glove compartment, you can't see it?

3 A Say that again.

4 Q Your testimony is you're saying the gun was in the
5 glove compartment, even though when you opened up the glove
6 compartment, you couldn't see it? That's what you're
7 telling the jury?

8 A It was behind the glove compartment.

9 Q Well, there's a difference behind and in, isn't it?

10 MR. BROWN: Your Honor, it's been asked and answered.

11 THE COURT: I'm going to allow it.

12 THE WITNESS: Could you say it --

13 BY MR. ANTHONY:

14 Q There's a difference between behind the glove box and
15 in the glove box, isn't there?

16 A Yes, sir.

17 Q If it's in it, you can see it, right?

18 A I'm not a hundred percent sure.

19 Q You don't know if you can see a gun if it's in the
20 glove box?

21 A Yes, sir.

22 Q Okay. If it's in the glove box, you can see it. If
23 it's behind the glove box, you can't see it, right?

24 A You're confusing me. Could you slow it down?

25 Q If the gun's placed behind the glove box, you can't see

1 it, can you?

2 A If you look, you probably could see it, but not at a
3 glance, you cannot see it.

4 Q And that was your whole purpose of sticking it back
5 behind it, wasn't it, so people couldn't see it?

6 A Yes, sir.

7 Q Okay. So you talked to Travis. Travis won't buy your
8 gun, right?

9 A Yes, sir.

10 Q You're still stuck with the gun that you just shot 13
11 times at Malik Gray, right, when you leave the BP?

12 A Yes, sir.

13 Q So you go back down Siam Street to the intersection of
14 Siam and Monro, right?

15 A Yes, sir.

16 Q Okay. And at that point in time, the police are out?

17 A Yes, sir.

18 Q And they stop you?

19 A Yes, sir.

20 Q And you get asked to get out of the car, correct?

21 A Yes, sir, I did.

22 Q And Sergeant Ruby tells you he's going to search the PT
23 Cruiser, correct?

24 A Yes, sir.

25 Q And he asked you -- before he goes to search the PT

1 Cruiser, he asked you if there's a gun in the car, correct?

2 A I think so, I'm not a hundred -- well, yes, sir, on the
3 video.

4 Q And you told him no?

5 A Yes, I did.

6 Q Now, at this point in time, you weren't anywhere near
7 the gun, correct? I mean, you were standing outside of the
8 Cruiser?

9 A Yes, sir.

10 Q So even though you were nowhere near the gun, there's
11 no way the police would be worried about you having a gun on
12 your person, you still lied about not having a gun in the PT
13 Cruiser, didn't you?

14 A Repeat the question again, please.

15 Q Didn't you lie to the police about not having a gun in
16 the PT Cruiser?

17 A Yes, sir.

18 Q And during the course of Sergeant Ruby searching the
19 Cruiser, he found the holster, correct?

20 A Yes, sir, he did.

21 Q And he asked you specifically, like after he found the
22 -- he found the holster there in the pocket of the back
23 driver's seat, correct?

24 A Yes, sir, he did.

25 Q And then he asked you where's the gun that goes with

1 this holster, correct?

2 A I'm not a hundred percent sure.

3 Q You don't recall telling him again that there's not a
4 gun in the car?

5 A Yes, sir.

6 Q Okay. So you lied another time and told him again
7 there wasn't a gun in the car?

8 A I thought you said a holster.

9 Q No.

10 A Are we talking about when he asked me did I have a gun
11 in the car or are we talking about when he asked me where's
12 the gun that go to the holster.

13 Q I'm talking about when he asked you where's the gun
14 that goes to the holster and is it in the car?

15 A Okay.

16 Q That's what I'm talking about. You told him the gun
17 wasn't in the car, correct?

18 A Yes, sir.

19 Q Now, they charge you with marijuana and at that point
20 in time, you get transported out to the jail, correct?

21 A Yes, sir.

22 Q Okay. And at that point in time, you get questioned by
23 Captain McNeil and Investigator Smith, correct?

24 A Yes, sir.

25 Q And you knew the two of them, right?

1 A Yes, sir, I did.

2 Q They had coached you in football or baseball; is that
3 right?

4 A Yeah, I used to play football and baseball with
5 McNeill's son and the other investigator's son, too. I
6 played sports with both of those.

7 Q And how old were you when they were coaching you?

8 A Probably 13, 14. I don't remember.

9 Q I mean, it had been a long time?

10 A Yes, sir.

11 Q And they asked you about the shooting, correct?

12 A Yes, sir.

13 Q And you told them you hadn't been involved in the
14 shooting?

15 A Yes, sir.

16 Q You told them you didn't know anything about it?

17 A Yes, sir.

18 Q And they got to asking you about guns and you told them
19 your gun was at your house, correct?

20 A Yes, sir.

21 Q Because you knew that that wasn't the gun that you shot
22 Malik Gray with, didn't you?

23 A No, that was not the gun that shot Malik.

24 Q That's right. And you knew that, so you didn't mind
25 telling them about that gun, right?

1 A I don't know what was the original reason for me
2 telling them the gun was at my mama's house.

3 Q Oh, you don't know why you told them about the gun at
4 your mom's house?

5 A I don't remember the original reason why I told them
6 about the gun.

7 Q Well, do you think it could have been because you knew
8 that wasn't the gun that had left all the shell casings out
9 there on Monro Street?

10 A Could you say that again?

11 Q Do you think it might have been because you knew the
12 gun at your house wasn't the gun that had left all the shell
13 casings out on Monro Street?

14 A Could you repeat the question again?

15 Q Do you think you might have told them you had a gun at
16 your house because you knew that gun wasn't the gun that had
17 left all the shell casings out on Monro Street?

18 A The reason why I told them about the gun at my house
19 was because I already thought they was going to search my
20 mama's house, so I was going ahead and corroborating the gun
21 was at my mama's house.

22 Q Okay. You thought they were going to search your
23 house, didn't you?

24 A Yes, sir.

25 Q But you knew if they found that gun, finding that gun

1 wasn't really going to get you in any more trouble, right?

2 A Not a hundred percent sure.

3 Q You knew you hadn't shot Malik Gray with that gun?

4 A Yes, sir.

5 Q And after all these people talking to you about this
6 incident where you say you didn't do anything wrong, you
7 never one time just piped up that night and said yeah, Malik
8 Gray was coming at me, he was threatening at me and I
9 thought I had to shoot? You never told anybody that?

10 A Probably my mom and my lawyer.

11 Q Well, you didn't tell them that that night, did you?

12 A No, sir, I did not.

13 Q Now, you stopped your vehicle there at the intersection
14 -- well, after you left the BP, the first time you go to the
15 BP, you say you started heading back towards Monro Street;
16 is that right?

17 A Yes, sir.

18 Q On Siam Street?

19 A Yes, sir.

20 Q And you said that you thought you were having car
21 trouble, right?

22 A I was having car trouble.

23 Q But you actually stopped your car at that place,
24 correct? Where you claimed to have stopped, you stopped
25 your vehicle?

1 A Yes, sir.

2 Q You put on the brakes, you stopped it and you put it in
3 park and you turned off the ignition?

4 A Well, my car was acting up, so I slowed down and yeah,
5 originally stopped to check my car, yes, sir.

6 Q But it wasn't acting up so bad that it just stopped
7 running, right?

8 A It was acting very bad because the turbo was out. And
9 a car with turbo, if the turbo is out, it won't drive the
10 way it's supposed to.

11 Q But it was driving when you stopped it, correct?

12 A Barely, yes, sir.

13 Q Well, it was driving, correct?

14 A Yes, sir.

15 Q It was running well enough that you made a decision
16 that I'm going to put on the brakes, put it in park and hit
17 the ignition right here at this spot at the intersection of
18 Siam and Monro?

19 A Could you say that again?

20 Q It was running well enough that you made a decision to
21 stop it, to put on the brakes, put it in park, turn the
22 ignition off there at that intersection, correct?

23 A What do you mean running well enough?

24 Q I mean, you didn't have to do that? It didn't just
25 stop on you?

1 A I didn't have to stop or -- could you explain?

2 Q I mean you didn't have to stop. The car didn't just
3 stop running on its own. You shut it down. Is that not
4 correct?

5 A Yes, sir.

6 Q All right. And then after you shot Malik Gray, you got
7 back in the car and cranked it up and put it in drive and
8 drove off in it, correct?

9 A I don't know if it happened exactly like that, but I
10 did drive off as soon as I could.

11 Q And the gun -- you said you normally carried your gun
12 behind the glove box; is that correct? That was your normal
13 carrying place for it?

14 A I'm not a hundred percent sure.

15 Q Would you carry it other places sometimes? I mean, I'm
16 just asking.

17 A No, sir.

18 Q Okay.

19 A It would either be in the glove compartment or the
20 behind the glove box.

21 Q So when you stopped there at Siam and Monroe, did you
22 get the gun out from behind the glove box and put it
23 somewhere else?

24 A I'm not a hundred percent sure.

25 Q You don't know?

1 A I'm not a hundred percent sure.

2 Q Well, let me ask you this way, when Malik was coming at
3 you, where did you get the gun from?

4 A I'm not a hundred percent sure. I know I was fortunate
5 enough to grab the gun in time and defend myself.

6 Q But you don't know where the gun was?

7 A Not a hundred percent sure, sir.

8 Q And your testimony is that you didn't know after you
9 shot 13 times if you had hit Mr. Gray?

10 A After I shot, Mr. Gray was running off, so that's when
11 I immediately tried to get away as fast as possible because
12 he was running the other direction.

13 Q You didn't see him fall?

14 A No, sir, I did not.

15 Q And you said that you saw two guys you knew on the way
16 to the BP the first time you went there before you shot
17 Malik?

18 A On the way to the BP, I saw two males walking towards
19 the BP. I didn't recognize a hundred percent sure who it
20 was. I thought it was one of my friends that lived close to
21 the area, so I was going to give them a ride home, take them
22 to the BP and take them back home.

23 Q Okay. Well, where did you see them? Where were you
24 when you saw them?

25 A Probably making a right -- a little bit before you make

1 a right to go up Siam Street to get to the BP.

2 Q Were on Monro Street when you saw them?

3 A I think so, yes, sir.

4 Q Okay, you were on Monro Street. And then you were
5 going in the direction on Monro Street where you have to
6 turn right on Siam?

7 A Yes, sir.

8 Q So you had not turned on Siam yet when you saw them?

9 A No, sir.

10 Q And how far were these two fellows from off the road?

11 A Probably walking into the grass area between like -- I
12 guess between the house on the right side of Siam and the
13 house that's on the left side where Mr. Gray emerged at,
14 probably closer to the right side, the right house, that
15 yard.

16 Q But you didn't just pull over then and holler at them
17 and have them get in your car?

18 A No, sir.

19 Q You drove on -- made a right turn on Siam and drove on
20 up to the BP and then turned around there, that's what
21 you're saying?

22 A Could you repeat that, please?

23 Q You went past them, made a right onto Siam, drove all
24 the way up to the BP and turned around there? That's what
25 you did?

1 A Yes, sir.

2 Q Okay. And did you know -- who were the two guys?

3 A I wasn't a hundred percent sure who it was. I thought
4 it looked like one of my friends, so I was going to turn
5 around --

6 Q The friend, who was that?

7 A It looked like one of my friends named Chris. I've got
8 a friend named Michael Johnson and Chris Johnson. They
9 brothers. They're my friend.

10 Q But you didn't just stop and try to pick them up then,
11 you drove on by?

12 A No, sir, because, at first, I wasn't a hundred percent
13 sure even if it was -- it looked like my friend, but I
14 wasn't a hundred percent sure. But when he like -- when one
15 of the guys waved, that's when I was like okay, maybe it is
16 one of my friends. So then that's when I did turn around.

17 Q After you went all the way to the BP?

18 A After I went all the way up the hill, yeah, and turned
19 around at the BP.

20 Q Okay. And going back to Monro Street from the BP, that
21 didn't have anything to do with you having seen Malik out
22 walking?

23 A No, sir, it did not.

24 Q And you said I believe on your direct a few minutes
25 ago, you said that you didn't call the police when you say

1 Malik robbed you -- what did you say Malik did? Did he rob
2 you? Is that what you said he did?

3 A He robbed me at gunpoint, yes, sir.

4 Q Well, when he robbed you a few months before this, you
5 said you didn't go to the police because everybody -- you
6 just don't go to the police?

7 A Nobody wants to snitch, yes, sir.

8 Q Yeah, you don't want to report stuff to the police. So
9 is it, basically, the way you look at things, something like
10 that, you just handle it yourself?

11 A No, sir.

12 Q You wouldn't just handle it yourself?

13 A No, sir.

14 Q And that wasn't part of what was going on that night?
15 You weren't just handling some issues you had with Malik by
16 yourself?

17 A No, sir, I was not.

18 Q And when you stopped the PT, what did you begin to do
19 as far as checking?

20 A I'm not a hundred percent sure. It would have been
21 almost two years ago.

22 Q Did you pop the hood?

23 A I'm not a hundred percent sure. I think I popped the
24 hood, but like I said, that's when this situation occurred,
25 so I'm not a hundred percent sure on that either, sir.

1 MR. ANTHONY: If I could just have a moment, please?

2 THE COURT: Certainly.

3 (Pause.)

4 BY MR. ANTHONY:

5 Q Mr. Thomas, do you remember back a couple of months ago
6 that you were in Court in regards to this case?

7 A I'm not a hundred percent sure.

8 Q Do you remember being in court and us having a hearing
9 and you giving some testimony up there on the witness stand
10 just like you are today?

11 A Yes, sir.

12 Q And I'm going to ask you a few things about that
13 testimony. All right. You were asked a question about the
14 car and stopping the car and asked about what you did when
15 you stopped the car. And one of your answers was -- and
16 this was in questioning from Mr. Brown. You said once you
17 stopped your car, you said I opened my glove compartment and
18 I got my gun because it was a dark area and I wanted to feel
19 safe. So I then put my gun in the cubby holder in my seat.
20 Do you remember saying that?

21 A Yes, sir.

22 Q Okay. So that's what you said back on June the 12th of
23 this year?

24 A Yes, sir.

25 Q Okay. And I was asking you some questions and I asked

1 you about getting out of your vehicle and did you pop the
2 hood. And your answer was, I popped the hood first, then I
3 got my gun out the glove compartment and placed it in the
4 back of my seat cubby holder. Do you remember saying that?

5 A Yes, sir.

6 Q And then I asked you, What did you do as far as trying
7 to look at your Cruiser? And your answer right after that
8 last answer was, Well, first, I was looking under my car to
9 see if anything -- to see if there was anything wrong with
10 my car. Do you remember saying that?

11 A Yes, sir.

12 (WHEREUPON, State's Exhibit No. 65 was marked for
13 identification.)

14 BY MR. ANTHONY:

15 Q Do you remember me showing you this diagram that we've
16 had marked now as State's Exhibit No. 65?

17 A Yes, sir.

18 Q And when I showed you that diagram, I asked you to tell
19 me where you stopped your vehicle that night and put an X
20 there. Do you remember that?

21 A Yes, I do remember that.

22 Q And that's where you put the X; is that correct?

23 A Yes, sir.

24 Q And then I asked you to put an M where you saw Malik
25 initially, like where you saw him coming from. Do you

1 remember that?

2 A I remember you saying where did Mr. Gray emerge from
3 and where did you see him initially.

4 Q And you put him right there?

5 A See, this diagram that you showing me now that's from
6 the pretrial hearing is not as good a diagram as I saw
7 today, so I was very confused with this diagram. But when I
8 saw the diagram today, it was very clear to where everything
9 was at, the trees and where he emerged at.

10 Q Well, is this still where you say he emerged?

11 A In the pretrial, yes, sir.

12 Q Well, is this where you say now he emerged?

13 A No, sir.

14 Q Okay. Let me just ask you, at the pretrial hearing,
15 you said this is where he emerged? Is that accurate where
16 you put that M?

17 A In the pretrial hearing, that's where I said I saw
18 Malik at.

19 Q Okay. All right.

20 MR. ANTHONY: I move State's 65 into evidence.

21 THE COURT: Any objection, Mr. Brown?

22 MR. BROWN: It's based on? I'm sorry.

23 MR. ANTHONY: It's based on Mr. Thomas' representation
24 of where he stopped and where he said Mr. Gray came up.

25 MR. BROWN: I would object, Your Honor, based upon the

1 fact that he's clarified saying that's not where he's saying
2 he stopped at.

3 THE COURT: Okay. In which case, would it not be --

4 Actually, ladies and gentlemen, I need to discuss a
5 legal matter with the lawyers, if y'all could step back to
6 the jury room for a moment.

7 (WHEREUPON, the jury exits the courtroom.)

8 THE COURT: Mr. Brown.

9 MR. BROWN: Mr. Anthony would not have been prohibited
10 -- or attempted to enter this document into evidence at the
11 time of the prior hearing, Your Honor. He didn't seek to do
12 that. In terms of trying to rehabilitate his position from
13 an earlier pretrial hearing, he's trying to get -- similar
14 to the hearing that took place previously, Your Honor, he's
15 trying to get my client to agree that this is the location
16 where he states he saw a person emerge. He's clearly
17 testifying here today, Your Honor, that upon the fact that
18 he's had the chance to look at a different diagram, he
19 disagrees with this in terms of the depiction as presented
20 here. I think he would say that. And based upon that and
21 what he wants to present here, Your Honor, that's different.
22 He stated clearly this is not the representation that he
23 feels is representative of what he knows occurred on that
24 night. So I disagree based upon that basis, Your Honor.

25 THE COURT: Mr. Anthony, my initial thought on this is

1 Mr. Brown is correct. He has admitted that he has changed
2 his testimony. And I think the rules are if he admits he's
3 changed his testimony, it's not admissible.

4 MR. ANTHONY: Well, I don't think I can really argue
5 that at this point. I'll keep going and we'll see what
6 happens.

7 THE COURT: Thank you, Mr. Anthony.

8 Bring the jury back in.

9 (WHEREUPON, the jury enters the courtroom.)

10 THE COURT: Mr. Anthony.

11 BY MR. ANTHONY:

12 Q So your testimony is that now, you don't think that
13 Malik came from where you said he came from when you
14 testified earlier; is that right?

15 A Say it again.

16 Q I take it you're saying now that you don't think Malik
17 came from the same place --

18 A Yes, that's inaccurate.

19 Q I'm sorry?

20 A That's not accurate, the diagram.

21 Q Well, I'll give you the pointer and why don't you show
22 us where you say he came from now?

23 A Well, if you can show me -- it's another diagram and
24 it's a picture that I saw that painted it perfectly.

25 Q Well, is this not a shot of the area?

1 A It's going to be kind of hard to describe how it looks
2 now. It does not look the same as far as how thick the
3 trees are.

4 Q Well, this is an overhead shot, correct?

5 A I know, but I'm saying I could explain it better if I
6 had a different angle.

7 Q Well, all I'm asking you to do is take that overhead
8 shot and point out to the jury where you first saw Malik.

9 A How do I press this thing?

10 THE COURT: Mr. Anthony, can you show him how to
11 operate the pointer, please?

12 MR. ANTHONY: Yes.

13 BY MR. ANTHONY:

14 Q That red button right there.

15 MR. BROWN: Your Honor, I would object. I mean, if
16 he's trying to force him to give an answer after he said he
17 can't answer based upon this depiction.

18 THE COURT: If he says he can't do it, then he can't do
19 it, but I think he's going to attempt to do it.

20 THE WITNESS: I would feel better if I had a different
21 picture.

22 BY MR. ANTHONY:

23 Q Well, why can't you use that picture? What's wrong
24 with that picture? Why are you not able to say -- look at
25 that overhead picture of the whole area and put this dot

1 where Malik came from?

2 A It's not going to give a clear picture of the area, not
3 this diagram right here.

4 Q And why not? What's not clear about an overhead shot
5 of where you shot Malik? You want me to move it in a little
6 closer?

7 A (There was no response.)

8 Q Does that help?

9 A Could you show me where the -- just to make sure I'm
10 right.

11 Q It's this button right here. You see that?

12 A Right -- see, here's -- there's a house right here that
13 I'm trying to describe and there's a big old bush right here
14 where Malik came from. He came behind the bush like that.
15 He had to.

16 Q Okay. So he came where you just were pointing, like
17 over on the other side of the car?

18 A Yes, sir, but that's not originally where the car was
19 at.

20 Q Well, that's where you said before that the car was at
21 when you parked it and shot him; is it not?

22 A That is an inaccurate diagram.

23 Q Oh, so you put the X in the wrong place, too?

24 A Yes, sir.

25 Q Okay. Okay. Well, where was the car?

1 A That's why I also said if you had a diagram and
2 picture, I could also show you clearly where my car was at.

3 Q Okay. I'm just asking where was the car?

4 A It's like a little parking spot right there by their
5 mailbox, that's where I originally parked my car at.

6 Q Okay.

7 A Because I didn't want to be in the middle of the road.

8 Q Well, I'm going to hand you what's been marked for
9 identification as No. 65 and I'm going to ask you to take
10 this diagram and put -- I want you to take the diagram and
11 put once again where you parked. Instead of doing like an
12 X, put an X and a 2, okay? So there's the diagram --

13 MR. BROWN: I would object. We're going through the
14 same exercise we did before. He's trying to get him to put
15 something on something that he does not recognize and can't
16 identify.

17 THE COURT: Mr. Brown, if he can do it, he can do it.

18 BY MR. ANTHONY:

19 Q So I'd ask you to just put an X2 where the car was that
20 night, where you say it was now?

21 A (Witness complies.)

22 Q Okay. And then I'd like you to put an M2 where you say
23 Malik is now?

24 A Well, on this, probably right there at the X. Like
25 around the bush.

1 Q Okay. So can I see the pointer a second? I just want
2 to make sure we're all clear on this. That right there is
3 your X; is that right?

4 A X2, yes, sir.

5 Q And that right beside is an M where Malik came from; is
6 that right?

7 A No, that's -- say that again.

8 Q That M, I think that's your M --

9 A No, that's X2 right there.

10 Q Oh, that's a two?

11 A I was saying, basically, from this diagram, Malik
12 emerged like where the X at.

13 Q Okay. Go ahead. Is that your answer?

14 A That X2 right there is where my car was originally
15 parked at and where you can see the X is where Malik emerged
16 from around the bush.

17 Q Okay. Basically, the car -- where the car was parked
18 and where Malik came out, you're saying is basically the
19 same place, very close?

20 A Yes, it's very close.

21 Q Okay. And you say the car has, basically, just been
22 parked at your house since your family got it back after it
23 was searched?

24 A Yes, sir.

25 Q But the car -- you were able to drive the car home,

1 correct?

2 A Yes, sir.

3 Q And then you were able to get back in the car and crank
4 it up and drive back to the BP?

5 A I'm not a hundred percent sure if it was like that, but
6 yes, I did go back to the BP.

7 Q Well, you went in the PT Cruiser, correct?

8 A Yes, sir.

9 MR. ANTHONY: If I can just have one moment?

10 THE COURT: Yes, sir.

11 (Pause.)

12 MR. ANTHONY: That's everything on cross.

13 THE COURT: Mr. Brown.

14 REDIRECT EXAMINATION

15 BY MR. BROWN:

16 Q This wasn't the first time you had problems with your
17 car, was it?

18 A No, sir.

19 Q So you were used to driving your car when it was having
20 problems?

21 A Yes, sir.

22 Q And in terms of offering any testimony about the
23 location of your car, where Mr. Gray was, where any of this
24 happened, you're the only person that's coming to testify
25 about this, correct?

1 A Yes, sir.

2 Q You did it at the pretrial hearing?

3 A Yes, sir.

4 Q And you're doing it today?

5 A Yes, sir.

6 Q Were you under any kind of restriction by law to not
7 have a gun on the date this occurred?

8 A Could you repeat the question?

9 Q Did you have legal rights to have a gun?

10 A Yes, sir.

11 Q On that day?

12 A Yes, sir.

13 Q You weren't restricted from having a gun?

14 A No, sir.

15 Q What gun goes in that holster?

16 A That holster probably would fit many guns.

17 Q Would it have fit the gun that came from the house?

18 A Yes, sir.

19 Q It could have fit the gun -- the nine-millimeter?

20 A Yes, sir.

21 MR. BROWN: That's all the questions I have.

22 THE COURT: Mr. Anthony?

23 MR. ANTHONY: No recross.

24 THE COURT: Thank you, Mr. Thomas. You can have a seat
25 back at the table.

1 Call your next witness.

2 MR. BROWN: Your Honor, those are all the witnesses we
3 have.

4 THE COURT: Okay.

5 Ladies and gentlemen, the Defense has now rested their
6 case, so what remains is for me to charge you or explain to
7 you the law on the case and then finally the closing
8 arguments by the attorneys. Because it is four o'clock
9 today, we are not going to do that today. Because if I did
10 it today, then we'd have explain the law and argument and
11 then I'd have to ask you to deliberate and you might be here
12 all night.

13 So rather than do that today, I'm going to send you
14 home a little bit early and ask you to be back here at ten
15 o'clock tomorrow. Tomorrow, you'll hear my explanation of
16 the law and you'll hear the attorneys do their closing
17 arguments and you'll deliberate.

18 Ladies and gentlemen, thank you. Let me remind you
19 again, do not discuss the case with anyone outside of the
20 jury. Within the jury, do not discuss the case until I tell
21 you it's time to deliberate. And then finally, please do
22 not do any internet research or other research tonight. I
23 appreciate your patience and your time and I'll seen you at
24 ten o'clock tomorrow morning.

25 (WHEREUPON, the jury exits the courtroom.)

1 THE COURT: Counsel, anything we need to take up
2 outside the presence of the jury?

3 MR. ANTHONY: If I could have one second.

4 THE COURT: Certainly.

5 MR. ANTHONY: I would renew my motion to move 65 in,
6 the diagram.

7 THE COURT: Under what basis? Doesn't Rule 613 take
8 care of that?

9 MR. ANTHONY: Well, I think 613 covered the initial
10 question, but I think since he put those new markings on the
11 diagram that it is now subject to admission as any kind of
12 demonstrative evidence would be.

13 THE COURT: Mr. Anthony, I'm going to disagree with you
14 there. That's a good argument. I think if you give someone
15 a piece of inadmissible evidence and ask them to mark on it,
16 I don't think that makes it admissible.

17 MR. ANTHONY: Yes, sir.

18 THE COURT: But if you have case law for me -- I don't
19 have to issue a ruling until tomorrow, so if you want to
20 find me -- show me that I'm wrong overnight, I'll be happy
21 to hear from you.

22 MR. ANTHONY: Okay. Thank you, Your Honor.

23 THE COURT: Counsel, anything else?

24 MR. BROWN: Nothing, Your Honor.

25 THE COURT: Counsel, let's get back at 9:30 tomorrow

1 and we'll work on charges again. My practice would be to
2 charge first and then we'll have argument.

3 MR. ANTHONY: I will just advise the Court, I don't
4 anticipate that I will have a reply case. If I do, then I
5 will --

6 THE COURT: Okay, Mr. Anthony, I guess I'm jumping the
7 gun. I did not even ask you about that.

8 MR. ANTHONY: If I have a reply case, it will be brief
9 and I'll be ready to present it right at 9:30, but right
10 now, I don't anticipate a reply case.

11 THE COURT: And I apologize for jumping the gun, but
12 otherwise we'll work on charges tomorrow at 9:30 with the
13 goal being back in at ten o'clock with the jury.

14 MR. BROWN: Your Honor, is it the Court's standard
15 practice to allow the prosecution to open on the law?

16 THE COURT: My understanding of the law now is since
17 you put on a case, it will be what I think of as the new
18 system. The prosecution will open, you'll have your chance
19 and then the prosecution can reply, but only reply to what
20 you've said. And again, the law is not exactly clear on
21 that point right now, but that is my understanding of what
22 the practice is. If either of you has argument that's not
23 the proper practice, I'll be happy to hear from you.

24 Thank you, gentlemen, see you at 9:30 tomorrow.

25 Counsel, I've just been reminded there's one more thing

1 we need to take up.

2 Mr. Brown, have you had a chance to speak with the
3 bondsman for your client?

4 MR. BROWN: Yes, Your Honor. I can provide his
5 telephone number to the Court if you would like. I spoke
6 with him this morning. He is more than happy to continue on
7 the bond.

8 THE COURT: If you're telling me as an officer of the
9 court that he's willing to remain on the bond, then I'll
10 take you at your word.

11 MR. BROWN: Yes, sir.

12 THE COURT: We'll be in recess until 9:30.

13 (WHEREUPON, Court was adjourned for the day.)
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

I, PENNY M. JOHNSON, Official Court Reporter for the
Second Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate, and
complete Transcript of Record of the proceedings had and the
evidence introduced in the trial of the captioned case,
relative to appeal, in Court of General Sessions for Union
County, South Carolina, on the days of August 20 - 22, 2018.

I do further certify that I am neither of kin, counsel,
nor interest to any party hereto.

April 4, 2020

Penny M. Johnson
Penny M. Johnson
Official Court Reporter

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF UNION	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
State of South Carolina,	)	Case No(s) : 2017GS4400845
	)	
Plaintiff,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
Najm Ahmad Thomas,	)	
	)	
Defendant.	)	
	)	

August 23, 2018
Union, South Carolina

B E F O R E:

HONORABLE WILLIAM A. McKINNON, Judge.

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

JOHN ANTHONY, Esquire
Attorney for the Plaintiff

MICHAEL BROWN, Esquire
Attorney for the Defendant

Teresa B. Johnson, CVR-M-CM, RVR, RVR-M
Realtime Verbatim Reporter
P.O. Box 2812
Greenville, S.C. 29602

Records are
taken and
produced via
AudioScribe



I N D E X

DESCRIPTION	PAGE
Requests for Charge	3
Jury Charge	4
Closing Argument	
by Mr. Anthony	25
by Mr. Brown	40
Reply Argument	57
Motion - Mistrial	66
Jury Deliberation	69
Jury Note	71
Motion - Curative instruction	71
Jury Verdict	78
Sentencing Hearing	81
Certificate of Reporter	95

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u> <u>EV</u>
COURT EXHIBITS		
C-1	Jury Note	86
C-2	Affidavit of Elizawon Gray	94
C-3	Jury Charge	94

P R O C E E D I N G S

(Proceedings begin on the 23rd day of August, 2018
at 10:51 a.m.)

THE COURT: Counsel, any objections to the
proposed jury charge?

MR. ANTHONY: No, sir. Not from the state.

THE COURT: Any from the defense?

MR. BROWN: Your Honor, I would request to
have (Indiscernible).

COURT REPORTER: I apologize. I can't hear all
the way over there.

MR. BROWN: Assault and battery first degree.

THE COURT: Yes, if you will, step over there.
Any objection from the defense to the proposed
charge?

MR. BROWN: Your Honor, clearly, the defense
would've also wanted included as a lesser-included
offense to attempted murder, assault and battery in
the first degree. I understand it's not the Court's
position to have that charge included.

THE COURT: You have made your request and it
is protected for the record.

MR. BROWN: Yes, sir.

THE COURT: The Court denies your request.

Counsel, any objections to the proposed verdict

1 form?

2 **MR. ANTHONY:** Not from the state.

3 **THE COURT:** From the defense?

4 **MR. BROWN:** None, Your Honor.

5 **THE COURT:** Counsel, my proposed procedure is
6 that I will charge the jury; and then the state will
7 open in full -- not open, but close in full; the
8 defense will then close; and then state will have a
9 reply. Any objection to that procedure?

10 **MR. ANTHONY:** No, sir.

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

12 **MR. BROWN:** If that's the Court's procedure,
13 no, sir.

14 **THE COURT:** Okay. All right. Gentleman,
15 anything we need to take up before we bring the jury
16 in?

17 **MR. ANTHONY:** Not from the state.

18 **MR. BROWN:** Not from the defense, Your Honor.

19 **THE COURT:** Okay. Let's bring in the jury.

20 **MR. ANTHONY:** Your Honor, do you have the
21 indictment up there with you?

22 **THE COURT:** I do. Yes sir.

23 (Jury enters at 10:56 a.m.)

24 **THE COURT:** Ladies and gentlemen, I apologize
25 for the delay. Some things -- sometimes, things come

1 up that we can't avoid. But I appreciate y'all being
2 back here this morning. As you know, all of the
3 evidence is done in this case. What remains is: I'm
4 about to instruct you on the law that you must apply
5 in this case. And then, the final thing that will
6 happen in the courtroom is you will hear the closing
7 arguments of the lawyers.

8 So I'm about to instruct you on the law. And,
9 ladies and gentlemen, I know you may have had
10 English teachers or speech teachers that tell you
11 when you're talking to folks, don't read off a piece
12 of paper. I'm going to do that now, even though
13 teachers always tell you not to do that, because
14 it's very important that I read this to you
15 precisely. If I make mistakes in what I read or if I
16 ad lib, it may be a problem and giving you the wrong
17 law. So I'm going to read this jury charge to you
18 and you will have a copy of it back in the jury room
19 if you have any questions about what the law is. I'm
20 about to read -- explain to you the law.

21 Ladies and gentlemen of the jury, I remind you
22 that during this trial, you and I have different
23 duties to perform. As the trial judge, it is my
24 responsibility to preside over the trial of this
25 case and I have the duty to rule on the

1 admissibility of evidence and other legal issues.
2 You are only to consider the competent evidence
3 before you. If there was any testimony ordered
4 stricken from the record in this case during the
5 trial, you must disregard that testimony. You are to
6 consider only the testimony which has been presented
7 from the witness stand, any exhibits which were made
8 a part of the record in the case, and the
9 stipulations of counsel.

10 I have the additional duty to charge you the
11 law applicable on this case. As the presiding judge,
12 I am the sole judge of the law in this case and it
13 is your duty as jurors to accept and apply the law
14 as I now state it to you. If you already have any
15 idea as to what the law is or what it ought to be
16 and it does not agree with what I now tell you the
17 law is. You must abandon the other idea because you
18 are sworn to accept the law and apply the law
19 exactly as I state it to you.

20 In every case tried in this court before a
21 jury, the jury becomes the sole and exclusive judge
22 of the facts in the case. A trial judge cannot
23 intimate, state, or comment on any statement to a
24 trial jury about the facts in the case. Since you,
25 the jury, are the sole judge of the facts in this

1 case, you are not to infer from what I've said
2 during the progress of the trial, in ruling upon the
3 admissibility of evidence or otherwise, or anything
4 that I say now during the course of this
5 instruction, that I have any opinion about the facts
6 of this case. The law does not allow me to have an
7 opinion about the facts of this case. That is solely
8 a matter for you, the jury, to determine. As jurors,
9 it is your duty to determine the effect, the value,
10 the weight, and the truth of the evidence that
11 you've heard during the trial.

12 There are two types of evidence generally
13 presented during a trial: direct evidence and
14 circumstantial evidence. Direct evidence is the
15 testimony of a person who claims to have actual
16 knowledge of the facts, such as an eyewitness. It is
17 evidence which immediately establishes the main fact
18 to be proved.

19 Circumstantial evidence is proof of a chain of
20 facts and circumstances indicating the existence of
21 a fact. It is evidence which immediately establishes
22 collateral facts from which the main fact may be
23 inferred. Circumstantial evidence is based on
24 inference and not on personal knowledge or
25 observation. The law makes no distinction between

1 the weight or value to be given to either direct or
2 circumstantial evidence, nor is a greater degree of
3 certainty required of circumstantial evidence than
4 of direct evidence. You shall weigh all the evidence
5 in the case. After weighing all the evidence, if
6 you're not convinced of the guilt of the defendant
7 beyond a reasonable doubt, you must find the
8 defendant not guilty.

9 Necessarily, you must determine the credibility
10 of witnesses who have testified in this case.
11 Credibility simply means "believability." It becomes
12 your duty as the jurors to analyze and to evaluate
13 the evidence and determine which evidence convinces
14 you of its truth. In determining the believability
15 of witnesses who have testified in this case, you
16 may believe one witness over several witnesses or
17 you may believe several witnesses over one witness;
18 you may believe part of the testimony of a witness
19 and reject the remaining part of the testimony of
20 the same witness; you may believe the testimony of a
21 witness in its entirety or reject the testimony of a
22 witness in its entirety; you may consider whether
23 any witness has exhibited to you any interest or
24 bias or prejudice or any other motive in the case;
25 you may also consider the appearance and the manner

1 of a witness while they were on the witness stand.

2 The rules of evidence ordinarily do not permit
3 witnesses to testify to opinions or conclusions. An
4 exception to this rule exists for what we call
5 "expert witnesses." A witness, who by education and
6 experience has become the expert in a science, art,
7 profession, or calling, may state an opinion as to
8 relevant and material matter to which the witness
9 claims to be an expert and may also state the
10 reasons for their opinion.

11 You should consider any expert opinion received
12 in evidence in this case and, like any other
13 evidence, you should give it the weight that you
14 think it deserves. If you decide the opinion of an
15 expert witness is not based on sufficient education
16 and experience, or if you conclude the reasons given
17 in support of the expert's opinion are not sound, or
18 if the opinion is outweighed by other evidence, you
19 may disregard the expert opinion entirely. An
20 expert opinion's witness is to be given no greater
21 weight than that of other witnesses simply because
22 they are an expert. Further, you're not required to
23 accept an expert's opinion even though it's not
24 contradicted.

25 In order to establish criminal liability,

1 criminal intent is required. For example, the mental
2 state required to prove the mental state of a
3 particular crime might be purpose, intent,
4 knowledge, or criminal negligence -- or criminal
5 negligence. Criminal intent must be proven by the
6 state beyond a reasonable doubt.

7 Criminal intent is always a matter that must be
8 determined by the jury from the circumstances
9 surrounding the situation. There's no way to prove
10 intent to a mathematical certainty. There is no way
11 medical science can dissect a person's brain to
12 determine what that person had in mind. So the law
13 says that criminal intent may be inferred from the
14 circumstances shown to have existed. This is how you
15 make a determination of whether or not the element
16 requiring intent is present. It was not necessary to
17 establish intent by direct and positive evidence,
18 but intent may be established by inference in the
19 same way as any other facts when taking into
20 consideration the acts of the parties and all other
21 facts and circumstances of a case.

22 Criminal intent is a mental state of conscious
23 wrongdoing. It's up to you to determine what the
24 defendant intended to do based on the circumstances
25 shown to have existed. Criminal intent can arise

1 from action or a failure to act. It can arise from
2 negligence, recklessness, or an indifference to duty
3 or consequences that is considered by the law to be
4 the equivalent of criminal intent.

5 Statements alleged to have been made by the
6 defendant have been admitted into evidence in this
7 case. While the Court has determined the statement
8 was admissible, I instruct you that you make the
9 ultimate decision of whether or not the defendant
10 made that statement. If the defendant did make the
11 statement, you must determine whether the statement
12 was made by the defendant voluntarily and of his own
13 free will. This means the statement was not caused
14 by pressure, force, fear, threats, coercion, or
15 intimidation, or by hope or promise of leniency or
16 reward in kind.

17 In determining whether the statement was
18 voluntary, you should consider both the
19 characteristics of the defendant and the details of
20 the questioning. Some of the factors you can
21 consider are -- sorry, you must consider are: the
22 age of the defendant; the defendant's education or
23 lack of education; the defendant's mental ability or
24 capacity; the defendant's IQ or intelligence; the
25 defendant's background; the place and length of

1 detention; the nature of the questioning, and the
2 advice or lack thereof to the defendant of his
3 constitutional rights, including, but not limited
4 to: the right to remain silent; that any statement
5 may be used against him in a court of law; the right
6 to have a lawyer present; and that if he could not
7 -- that if he could not afford a lawyer, a lawyer
8 could be appointed him without any cost; and that he
9 could stop making a statement at any time. You
10 should carefully consider all the surrounding
11 circumstances before you give any weight to an
12 alleged statement by the defendant.

13 The state has the burden of proving beyond a
14 reasonable doubt if the alleged statement was
15 voluntary. If you determine it was, you may give
16 that statement any further consideration as you deem
17 proper. You may decide what weight, if any -- or you
18 must decide what weight, if any, should be given to
19 any alleged statement. If you determine the alleged
20 statement was not free and voluntary and by -- made
21 by the defendant, you should not consider the
22 statement at all.

23 I will give you a copy of these instructions in
24 written form. During your deliberations, you may
25 refer to the instructions to guide your

1 decision-making. You should consider the
2 instructions as a whole and not follow some and
3 ignore others. Please return the instructions to
4 the Court at the time the verdict is rendered.

5 The indictment that I read to you at the
6 beginning of the case charges the defendant with
7 attempted murder. I remind you that the fact that
8 the defendant was arrested and charged and indicted
9 is not evidence in this case and cannot be
10 considered by you as evidence of guilt in this case,
11 nor does it create any presumption or inference of
12 guilt. The document is simply the formal written
13 instrument which contains the charges made against
14 the defendant. It is the formal document by which
15 this case is brought into court.

16 The defendant has pled not guilty to this
17 indictment and that puts the burden of proof on the
18 state to prove the defendant guilty. A person
19 charged with committing a criminal offense in South
20 Carolina is never required to prove their innocence.
21 I charge you that it is an important rule of law
22 that the defendant in a criminal trial, no matter
23 what the seriousness of the charge may be, will
24 always be presumed to be innocent of the crime for
25 which the indictment was issued, unless their guilt

1 has been proven by evidence satisfying you of guilt
2 beyond a reasonable doubt. Presumption of innocence
3 does not end when you begin your deliberations, but
4 accompanies the defendant throughout the trial until
5 you reach a verdict of guilt based on evidence
6 satisfying you of the guilt beyond a reasonable
7 doubt.

8 The presumption of innocence is like a robe of
9 righteousness placed about the shoulders of the
10 defendant, which remains with the defendant until it
11 has been stripped from the defendant by evidence
12 satisfying you of their guilt beyond a reasonable
13 doubt. The presumption of innocence is not a mere
14 legal theory or a legal phrase. It is substantial
15 right to which every defendant is entitled, unless
16 you, the jury, are satisfied from the evidence of
17 the defendant's guilt beyond a reasonable doubt.

18 What is reasonable doubt under the law? A
19 reasonable doubt is the kind of doubt that will
20 cause a reasonable person to hesitate to act. The
21 state has the burden of proving the defendant guilty
22 beyond a reasonable doubt. Some of you may have
23 served as jurors in civil cases where you've been
24 told that it was only necessary to prove a fact is
25 more likely true than not true, such as by the

1 greater weight or preponderance of the evidence. In
2 criminal cases, the state's proof must be more
3 powerful than that. It must be beyond a reasonable
4 doubt. Proof beyond a reasonable doubt is proof that
5 leaves you -- leaves you firmly convinced of the
6 defendant's guilt.

7 There are very few things in this world that we
8 know with absolute certainty. And in criminal cases,
9 the law does not require proof that overcomes every
10 possible doubt. If, based on your consideration of
11 the evidence, you are firmly convinced the defendant
12 is guilty of the crime charged, you must find the
13 defendant guilty. If, on the other hand, you think
14 there is a real possibility that the defendant is
15 not guilty, then you must give the defendant the
16 benefit of the doubt and find him not guilty.

17 The offense of attempted murder as charged in
18 the indictment in this case necessarily includes a
19 lesser included offense of assault and battery of a
20 high and aggravated nature. If you are not satisfied
21 beyond a reasonable doubt the defendant is guilty of
22 attempted murder, he may, however, be found guilty
23 of the lesser offense of assault battery of a high
24 and aggravated nature if the evidence is sufficient
25 to established this -- guilt of the lesser offense.

1 You should bear in mind that the burden is always
2 upon the prosecution to prove beyond a reasonable
3 doubt each and every material element of any lesser
4 included offense that is included in any offense
5 charged in the indictment. The law never imposes
6 upon a defendant the burden of calling any witness
7 or to produce any evidence.

8 After considering the evidence, if you decide
9 that the prosecution has proven each of the elements
10 of the lesser included offense of assault and
11 battery of a high and aggravated nature, you should
12 find the defendant guilty of any offense proven and
13 you should show -- and you should so state in your
14 verdict. After considering all the evidence, if you
15 decide the prosecution has failed to prove one or
16 more elements of the crime charged, which is
17 attempted murder, or of the lesser included offense,
18 which is assault and battery of high and aggravated
19 nature, you should find the defendant not guilty of
20 the offenses which have not been proven and you
21 should so state. While you may find the defendant
22 not guilty of all the charges or not guilty of some
23 of the charges, you may not find the defendant
24 guilty of both attempted murder and assault and
25 battery of a high and aggravated nature.

1 Elements of attempted murder: The defendant is
2 charged with attempted murder. In order to prove
3 this crime, the state must prove the defendant with
4 intent to kill -- attempting to kill another person
5 with malice aforethought. Malice is hatred, ill
6 will, or hostility towards another person. It is the
7 intentional doing of a wrongful act without just
8 cause or excuse and with an intent to injure another
9 person and indicates a wicked or depraved spirit
10 intent on doing wrong.

11 Malice aforethought does not require that
12 malice exists for any particular time before the act
13 is committed. Malice must exist in the mind of the
14 defendant at the same time of the act and cannot
15 develop after the act occurred. Therefore, it must
16 be a combination of the previous evil intent and the
17 act. Attempted murder can be committed only when the
18 defendant's act or acts are accompanied by express
19 malice or malice in fact.

20 Expressed malice is a deliberate and specific
21 intent of the defendant to unlawfully kill another
22 with hatred or ill will or hostility without just
23 cause or excuse. And it's the performance of act or
24 acts which intend but fail to kill a human being.

25 Specific intent means the defendant consciously

1 intended the completion of the killing of another,
2 but failed to do so. If you, the jury, has found the
3 state has proven beyond a reasonable doubt that it
4 was the defendant's specific intent to kill another
5 person with expressed malice, then you must find him
6 guilty. If you find the state has failed to prove
7 the defendant is guilty of attempted murder, you
8 must then decide whether the state has proven the
9 defendant guilty of the lesser included offense of
10 assault and battery of a high and aggravated nature.

11 The elements of assault and battery of a high
12 and aggravated nature: A person commits the offense
13 of assault and battery of a high and aggravated
14 nature if the person unlawfully injures another
15 person and either great bodily injury to another
16 person results or the action is accomplished by
17 means that are likely to produce death or great
18 bodily injury. Great bodily injury means bodily
19 injury which causes a substantial risk of death or
20 which causes a serious permanent disfigurement or
21 protracted loss or impairment of the function of a
22 bodily member or organ.

23 The defendant has raised the issue of
24 self-defense. Self-defense is a complete defense.
25 And if it is established, you must find the

1 defendant not guilty. The state has the burden of
2 disproving self-defense by proof beyond a reasonable
3 doubt. If you have a reasonable doubt of the
4 defendant's guilt after considering all the
5 evidence, including the evidence of self-defense,
6 you must find the defendant not guilty. On the other
7 hand, if you have no reasonable doubt of the
8 defendant's guilt after considering all the
9 evidence, including the evidence of self defense,
10 you must find the defendant not guilty.

11 The following elements are required to
12 establish self-defense: number one, without fault.
13 The defendant must be without fault in bringing on
14 the difficulty. If the defendant's conduct is the
15 type that was reasonably calculated to and did
16 provoke a deadly assault, the defendant would be at
17 fault for bringing on the difficulty and would not
18 be entitled an acquittal based on self-defense. Two,
19 imminent danger, the second element of self-defense
20 is the defendant was actually in imminent danger of
21 death or serious bodily injury and that the
22 defendant actually believed he was in imminent
23 danger of death or serious bodily injury. If the
24 defendant actually was in imminent danger, it must
25 be shown by circumstances that would've warranted a

1 person of ordinary firmness and courage to strike
2 the fatal blow and prevent death or serious bodily
3 injury. If the defendant believed he was in imminent
4 danger of death or serious bodily injury, it must be
5 shown that a reasonably prudent person of ordinary
6 firmness and courage would have had the same belief.
7 In deciding whether the defendant actually was, or
8 believed he was, in imminent danger of said death or
9 serious bodily injury, you should consider all the
10 facts and circumstances surrounding the crime,
11 including the physical condition and the
12 characteristics of the defendant and the victim. The
13 final element, or third element of self-defense is
14 the defendant had no other probable way to avoid the
15 danger of self -- serious bodily injury but to act
16 as the defendant did.

17 The defendant does not have to show he was
18 actually in danger. It is enough if the defendant
19 believed he was in imminent danger and a reasonably
20 prudent person of ordinary firmness and courage
21 would've had the same belief. The defendant has a
22 right to act on appearances even though the
23 defendant's beliefs may have been mistaken. It is
24 for you to decide whether the defendant's fear of
25 imminent danger or death or serious bodily injury

1 was reasonable and would have been felt by an
2 ordinary person in the same situation. Words
3 accompanied by hostile acts may, depending on the
4 circumstances, establish self-defense. Evidence of
5 prior difficulties between the defendant and the
6 victim may be considered in deciding whether the
7 threat existed, whether the defendant had a reason
8 to believe a threat existed, and how serious that
9 threat was.

10 Prior instances of violence by the victim may
11 be considered in deciding what the defendant
12 actually believed he was in imminent danger of death
13 or serious bodily injury or was actually in imminent
14 danger. Threats made by the victim may be considered
15 in determining whether the defendant actually was or
16 believed he was in imminent danger. The defendant
17 had no duty to retreat if by doing so the danger of
18 being killed or suffering serious bodily injury
19 would've increased.

20 A person cannot be required to make an exact
21 calculation as to the degree or amount of force
22 which may be used to avoid death or serious bodily
23 harm. Therefore, in self-defense, the defendant has
24 the right to use the force needed to avoid death or
25 serious bodily harm. The force used in self-defense

1 does not have to be limited to the degree or amount
2 of force used by the victim. The defendant has the
3 right to use so much force as it appeared to be
4 necessary for complete self protection that a person
5 of ordinary reason and firmness would've believed he
6 needed, to prevent death or serious bodily harm. If
7 the defendant is justified in defending himself and
8 in firing the first shot, the defendant is also
9 justified in continuing to shoot until it is
10 apparent that the danger of death or serious bodily
11 injury has completely ended.

12 Ladies and gentlemen, I have a few final
13 instructions. This is the verdict form. It will be
14 the responsibility of the foreman to handle the
15 verdict form. Notice there is the principal charge
16 of attempted murder followed by the lesser included
17 charge of assault battery of high and aggravated
18 nature. Each one has a guilty or not guilty which
19 you will mark. And then the foreman will sign the
20 verdict form. I remind you, ladies and gentlemen,
21 the verdict must be unanimous.

22 And, ladies and gentlemen, in just a minute,
23 I'm going to ask the attorneys to make their closing
24 arguments. After that, I will send you back to the
25 jury room. Do not begin deliberations until the

1 bailiff brings you the evidence. When you go back in
2 the jury room, you will have to sit for a few
3 minutes because the attorneys are going to have to
4 look at the evidence and make sure all the evidence
5 is together and it's all there. Once that happens,
6 the bailiffs will bring you all the evidence in the
7 case. And when the bailiffs bring you the evidence,
8 that is your signal that you may begin your
9 deliberations in this case. If you have any issues
10 during deliberations, tell the jury foreman. He'll
11 tell the bailiffs and the bailiff can bring -- the
12 bailiff will bring me the note if you have any
13 issues. The verdict must be unanimous.

14 Ladies and gentlemen, at this time, that
15 concludes the Court's instructions. I will remind
16 you one more time: I will give you a copy of the
17 instructions.

18 Counsel, any objections to the jury charge?

19 **MR. ANTHONY:** May we approach?

20 **THE COURT:** You may.

21 (Bench Conference is held off the record.)

22 Ladies and gentlemen, that's the reason I ask
23 that question. I did, apparently, make a mistake
24 when I was reading the jury charge when I was
25 talking about self-defense. I'm going to read the

1 self-defense introduction once more and I'm going to
2 read it correctly.

3 The defendant has raised the defense of
4 self-defense. Self-defense is a complete defense
5 and, if it is established, you must find the
6 defendant not guilty. The state has the burden of
7 disproving self-defense beyond a reasonable doubt.
8 If you have a reasonable doubt of the defendant's
9 guilt after considering all the evidence including
10 the evidence of self-defense, you must find the
11 defendant not guilty. On the other hand, if you have
12 no reasonable doubt of the defendant's guilt after
13 considering all the evidence including evidence of
14 self-defense, then you must find the defendant
15 guilty.

16 And ladies and gentlemen, I will speak about
17 the verdict for one more time. Again, the first
18 charge is attempted murder. That is the principal
19 charge in this case. If your verdict on that charge
20 is not guilty, then you can consider the lesser
21 included charge of assault battery of high and
22 aggravated nature.

23 Counsel, any objection to the charge as
24 corrected?

25 **MR. ANTHONY:** No, sir.

1 **THE COURT:** Mr. Brown?

2 **MR. ANTHONY:** That's fine, Your Honor.

3 **THE COURT:** All right.

4 Mr. Anthony.

5 **MR. ANTHONY:** Thank you, Your Honor.

6 What I'm going to do is I'm going to talk to
7 you in some detail about the case for the next few
8 minutes. After I'm through, Mr. Brown, Mr. Thomas's
9 attorney, he'll have an opportunity to make his
10 argument. And after he's through, I'll have another
11 opportunity to speak with you much more briefly
12 about a few things he might've raised that I want to
13 address. And that's how this will work.

14 What y'all have to decide in this case is
15 whether Mr. Thomas acted in self-defense in shooting
16 Malik Gray. This comes down to a decision --
17 basically comes down to a decision of whether what
18 Mr. Thomas did to Mr. Gray that night was okay. Was
19 it all right for him to shoot Malik Gray?

20 Now, when we talk about this in a legal way, we
21 talk about it in self-defense. Self-defense is
22 established by what are called "elements." And the
23 judge just told you what those elements are. And in
24 a lot of cases, there might be some agreement about
25 what happened between the two people. And you might

1 have to look at some of those elements and really
2 assess the elements and see who they -- see whether
3 they apply and see -- see which side of the case is
4 a little more credible and make an
5 element-by-element analysis of what went on here.

6 And if we prove -- the way self-defense works
7 is: For it to be established, all of the elements
8 have to be present. All of the factors have to be
9 present. If we prove -- the state proves that one
10 element is not present, then it's not self-defense.
11 It's not self-defense, and Mr. Thomas is guilty.

12 But this case is a little bit different because
13 there's no agreement here as to what happened. We're
14 saying that none of these elements apply. Because
15 Mr. Thomas' account of what happened on August 28th
16 is just a made-up story. And he's trying to con you
17 with a made-up story and this is not a self-defense
18 case at all. And what I want to do is just take a
19 few minutes and explain to you how you can know that
20 Mr. Thomas lied to you yesterday afternoon and
21 there's no way you can know that this is
22 self-defense.

23 You might remember back on Tuesday morning, I
24 told you that part of y'all's job as jurors is to
25 consider all of the evidence, no matter who presents

1 it. And in this case, the best evidence of Mr.
2 Thomas's guilt, it came yesterday afternoon when
3 Mr. Thomas got up and testified. And that's -- that
4 was obviously defense evidence, but the best
5 evidence that he was guilty came straight from their
6 side of the case. Because when you look at what he
7 said and compare it to the evidence, to the physical
8 evidence at the crime scene and what we know about
9 the crime scene, then you know that Mr. Thomas is
10 guilty and that this isn't self-defense. So I want
11 to take just a few minutes and talk to you about the
12 case.

13 Yesterday, when Mr. Thomas testified, I showed
14 him a diagram and he -- I asked him to mark on that
15 diagram where he was when Mr. Gray approached him
16 and where Mr. Gray came from. And it came out -- he
17 testified about the fact that this was actually the
18 second time that he had talked about this, the
19 second time he'd been asked this question. And the
20 first time he was asked about this, he said that he
21 parked the Cruiser that night right where the X is
22 and he said that Malik Jeter came to him right where
23 that M is across the road.

24 And then yesterday, he said something a little
25 bit different. He said that he parked the Cruiser

1 right there, a little further up the road where the
2 X is, and that Mr. Jeter came out, as I heard it,
3 roughly about the same place, from a bush right
4 there. And that that's where he shot Malik Jeter.
5 Well, he's been given two chances to discuss this
6 and two chances to say where this happened. And the
7 thing is that both of these are completely wrong.

8 And you know they are completely wrong because
9 they don't match up with what we know about the case
10 because Mr. Jeter was found way down here. And the
11 evidence from the crime scene is all in this area
12 here, not all the way up here. And so it just can't
13 be that this happened where Mr. Gray is saying that
14 it happened.

15 Here is the diagram from the crime scene. And
16 you see there's two driveways: here and here.

17 (Demonstrating.)

18 And so this is where -- Mr. Jeter is not up
19 here; he's down here. And that's where all of the
20 evidence is found. I'm sorry. I said Mr. Jeter. I
21 meant Mr. Gray. There's where Mr. Gray is found.

22 Let's look -- let's look at this. When you look
23 at this diagram and you see where Mr. Gray is,
24 Officer Ruby testified that Mr. Gray was right there
25 at Marker 1 and that he was -- his head was there at

1 No. 1 and he was lying in this direction. His head
2 was lying down towards Siam Street. And his personal
3 effects are all behind him. Like, when you zoom in,
4 his headphones are right here at No. 3, his cell
5 phone is here at No. 2, his water bottle is here at
6 No. 18. So what does it look like happened here?
7 It's real clear from this evidence.

8 He is walking this way down Munro Street. And
9 the shooter comes along the same way. And he gets
10 shot right around where he fell because here's all
11 of these shell casings up here at 208, and that's
12 where this happened. It didn't happen down here. It
13 happened down the road here at the second driveway.
14 And that crime scene is only consistent with the
15 shooter coming this way and Mr. Gray being right
16 here. (Indicating.)

17 Not up here somewhere. (Indicating.)

18 So what you can deduce from that is that
19 Mr. Thomas, what he said, just isn't credible. It
20 just doesn't make any sense when you try to
21 reconcile where the evidence was found, where
22 Mr. Gray was found, with where Mr. Thomas says all
23 of this happened.

24 Now, there are some other things. There were 13
25 shell casings found. But Mr. Thompson says he

1 thought that Mr. Gray just ran off. And he said he
2 even shot at him after he ran off, which might be
3 the only true thing he said yesterday. Mr. Gray,
4 Malik Gray has 10 gunshot wounds. But Mr. Thomas sat
5 there yesterday and said that he ran off.

6 Now, you can look at the diagram and see
7 Mr. Gray did not run off. The shell casings are
8 right here and he's right here. So he got shot by
9 somebody coming down the road right here and he just
10 dropped. You know, Mr. Thomas dropped him very close
11 to where the shell casings were found, which is
12 where the shooter was. So that doesn't make any
13 sense.

14 And then, you also have to look at the fact
15 that Mr. Thomas never reported any of this. He
16 didn't report it when it happened. He claimed he was
17 being attacked. He had a cell phone in his vehicle,
18 but he never picked up that cell phone to call 911.
19 He never reported it when he was stopped by the
20 sheriff's office. He lied about having a gun in his
21 car when he was -- when they were getting ready to
22 search his car. He lied about having a gun in his
23 car when they found the holster, after they searched
24 his car, or they -- as they were searching his car.

25 He went to jail. And he was questioned at the

1 jail by his old coaches, by Captain McNeil and
2 Investigator Smith, but he still doesn't talk about
3 the shooting. He says he doesn't know anything about
4 the shooting when he's questioned at the jail about
5 this. And he tells them about another gun that isn't
6 the murder -- or isn't the attempted murder weapon.
7 He tells them about this gun in his house. He
8 doesn't tell them about the gun in the Cruiser. And
9 that's because he had the gun in the Cruiser hidden
10 and he was still thinking, "Well, maybe I can get
11 out of this. I'll tell them about this other gun and
12 they won't find the gun in the cruiser."

13 And the thing is: They wouldn't have. Your
14 Honor, they wouldn't have found that gun if they
15 hadn't found Travis Duncan. If Travis Duncan hadn't
16 told them he's got a gun hidden behind his glovebox,
17 they wouldn't have found it. They weren't going to
18 search there. They only searched there behind the
19 glovebox after Investigator Vinson and Agent McCraw
20 talked to Travis Duncan and called the SLED agent,
21 Agent Claycomb, and told her, "Hey. You need to look
22 behind that glovebox." If they hadn't done that,
23 they would've never found it. He never reported. But
24 then, as soon as he commits this shooting, as soon
25 as Mr. Thomas shoots Mr. Gray, he goes and tries to

1 sell the gun. He goes to BP and sees Travis Duncan
2 and tries to sell him the gun.

3 He talked about his car yesterday. Said, "Oh.
4 My car was not running well. I had -- you know,
5 needed to stop and check." But you have to remember,
6 that car did not break down. He just decided to stop
7 the car in an area where he testified earlier that
8 he stopped -- he made a decision to stop his car in
9 an area that he said he had to get out a gun to feel
10 safe.

11 Now, just ask yourself, "Who voluntarily stops
12 their car in a place where they have to pull out a
13 gun to feel safe to check it?" Nobody does that. And
14 the thing is, Mr. Thomas didn't do that either
15 because there wasn't anything wrong with his car. He
16 never stopped. His car never stopped. He stopped his
17 car himself. It didn't break down. He decided to
18 stop it there on the side of the road. He decided,
19 after he shot Mr. Gray, to hop back in the car and
20 drive off. He says he went home.

21 What did he do after he got home? He wasn't
22 that worried about his car because he hopped right
23 back in it and went back up to the BP. So all of
24 this stuff about having car trouble and I stopped my
25 car because I was having car trouble, that's --

1 that's just a big fraud. He never did that. He
2 stopped his car because he saw Malik Gray walking
3 along the street and he decided that he was going to
4 gun him down.

5 If you look at this diagram, over on the left
6 side is Grove Street. And that's where, remember,
7 Malik Gray said, "I live on Grove Street." And so
8 what happened here is Malik Gray was just walking
9 home. He's just walking down Munro Street, trying to
10 get home. And Mr. Thomas sees Malik Gray. He doesn't
11 see these two friends that he's talking about that
12 we don't even know if they exist. He sees Malik
13 Gray.

14 And he goes down to the Kangaroo. And he thinks
15 about it. And then he gets turned around and starts
16 heading back down Munro Street while Malik Gray is
17 walking home. And that's when all of this happens.
18 That's when Malik Gray gets gunned down and all of
19 these shell casings get left in the road and Malik
20 Gray is left laying there. That's what happened.

21 And there's a little more. You heard the
22 evidence from the trace expert yesterday from SLED.
23 She says there was gunshot residue all over the
24 interior of that PT Cruiser. You know, you can get
25 gunshot residue on the driver's side of a vehicle if

1 you shot somebody outside the vehicle and then you
2 get back in. That's possible. Because you'd have it
3 on your hands and if you touch the steering wheel,
4 it could get on the steering wheel from your hands.

5 But think about some of the other places that
6 it was. It was on the passenger side. There was
7 gunshot residue on the back passenger window. And if
8 you're going to get gunshot residue on the back
9 passenger window of that car, what does that mean?
10 What did the expert witness say? She said if you
11 got gunshot residue in the car, I would expect the
12 gun to have been fired in the car. And the only
13 explanation for gunshot residue on the back
14 passenger window of that car is that Mr. Thomas shot
15 Mr. Gray from inside that car. And that just
16 verifies what all the evidence at the crime scene
17 shows.

18 And when you go back to the jury room, I just
19 ask you to look at these diagrams, look at where he
20 claimed to be. And it's just clear as day that he
21 just came in here yesterday and tried to pull one
22 over on y'all. He tried to convince y'all of
23 something that just couldn't have happened. It
24 couldn't have happened the way he says it happened
25 because of where shell casings are and where Malik

1 Gray's body was found. There's just no way that it
2 happened like he said it did. And there's no way
3 this is a self-defense shooting.

4 So once you realize that this isn't
5 self-defense, you just have to decide, "Well, what
6 crime is it?" And the first crime you'll need to
7 consider is the charged crime, which is attempted
8 murder. And that's what this is. This is attempted
9 murder.

10 If you look at this diagram, which you'll have
11 back in the jury room, Mr. Gray had 10 gunshot
12 wounds. And there were 13 shell casings, one unspent
13 round. You just have to ask yourself, "What else
14 could Mr. Thomas have been trying to do that night
15 besides kill Mr. Gray?" It's a miracle he didn't
16 kill Mr. Gray. If Mr. Gray had died, this would be a
17 murder. And since he didn't die, it's attempted
18 murder. He was trying to kill him.

19 Now, if you don't, for some reason, think that
20 this meets the definition of attempted murder, then
21 it at least meets the definition of high and
22 aggravated assault and battery. Mr. Thomas committed
23 an assault and battery that put Mr. Gray at risk of
24 death. That's basically what assault and battery of
25 a high and aggravated nature is. It's doing

1 something to somebody that almost kills them. And
2 you heard the doctor say yesterday morning that if
3 they hadn't got him treated, if they hadn't got
4 Mr. Gray treated, he would've died. He would've just
5 bled out. He was already in a critical place. If
6 they hadn't had to air vac him up to Regional and
7 got him into -- into that trauma unit, he would have
8 died. So at the very least -- if you don't think
9 this is attempted murder, at the very least, this is
10 assault battery of a high and aggravated nature.

11 A couple of other things I want to mention. If
12 you go back there to the jury room and some of you
13 are voting guilty and some of you're voting not
14 guilty, that does not mean that you just have to
15 throw your hands up and find Mr. Thomas not guilty.
16 If that happens, all you need to do is just send a
17 note out to the judge and he will give you some more
18 instructions. If you can't agree on the charge, it's
19 the same thing. If some of y'all vote attempted
20 murder and some of y'all voted assault battery of a
21 high and aggravated nature, you can't agree, you
22 just tell the judge and he will give you some more
23 instructions. It doesn't mean that you have to find
24 Mr. Thomas not guilty if you can't agree on the
25 charge.

1 We have to prove Mr. Thomas guilty beyond a
2 reasonable doubt. Now, guilt beyond a reasonable
3 doubt does not mean guilt beyond a shadow of a
4 doubt. It doesn't mean beyond any doubt, like the
5 judge just told you. And there's not very much in
6 the world that can be proven beyond any doubt. But
7 if you find that we presented evidence that leaves
8 you firmly convinced that Mr. Thomas is guilty --
9 and we've done that -- then you need to convict him.

10 I want just to address something that was said
11 by Mr. Thomas's attorney in his opening statement a
12 few days ago. Nothing requires me or the solicitor's
13 office to prosecute this case. Mr. Brown said that
14 we can't stop this prosecution because the sheriff's
15 office made a quick judgment and they charged
16 Mr. Thomas. Well, that's completely wrong. The
17 solicitor's office decides not to prosecute cases
18 made by the sheriff's office all the time. And we
19 get along pretty well, but sometimes they don't like
20 that too much. But that is our prerogative. That is
21 the solicitor's office's decision.

22 So the indictment in this case that charged
23 Mr. Thomas with attempted murder, that was signed by
24 me and -- not the sheriff's office. It was signed by
25 me. And that means that I thought there was enough

1 evidence in this case to prove that Mr. Thomas
2 committed this crime. And if I didn't think that, I
3 wouldn't have spent what amounts to a whole week of
4 court time presenting this case to y'all and
5 prosecuting this case. Because what gets brought to
6 court is my responsibility, not anybody else's.

7 And y'all, as long as I'm doing this, when
8 these cases arise and somebody is getting gunned
9 down in the middle of a street here in this county,
10 I'm going to try and do something about it, you
11 know, whether the victim is here or not. If there's
12 evidence, I'm going to present that evidence. And
13 that's what I did this week. And that doesn't have
14 anything to do with what anybody thinks or what
15 anybody wants. It's a decision that I make as a
16 solicitor working here in this county.

17 The decision that you are going to be asked to
18 make in a few minutes is called a verdict. That word
19 "verdict" comes from this Latin word that means to
20 speak the truth. When I think of that -- that word
21 "verdict" and it's meaning to speak the truth, I
22 think about this old song that's called "The Trouble
23 with the Truth." Some of you might've heard that
24 song. There's a line in the song that says, "The
25 trouble with the truth is it's just what I need to

1 hear. It rings so ripe deep down inside my ear."

2 There's a lot of people who need to know the
3 truth in this case. Najm Thomas needs to hear the
4 truth. He is a young man but he's going down a very
5 bad, very scary path. And he needs to be told that
6 you just can't go around shooting people. The
7 sheriff's office needs to be told that when they
8 work on a case that's this hard and they respond to
9 a scene and they collect their evidence and they do
10 their job the best they can and they gather enough
11 evidence to convict somebody of a serious, violent
12 crime, when they do their job, they need to know
13 that a jury will do something about it and will hold
14 the person that is being proven guilty responsible.

15 But the real group that needs to hear the truth
16 in this case are the people of Union County. Because
17 this case is really not about justice for Malik
18 Gray. It's about justice for the people of the Union
19 County. Because your verdict will say a lot about
20 the kind of county you want to have. Do you want
21 have a county where it's okay to go around gunning
22 people down in the middle of the road? Do you want
23 to have the kind of county where somebody like
24 Mr. Thomas can just come in here with some
25 trumped-up story that flies in the face of all the

1 evidence? All the evidence in the case and tell a
2 bunch of -- bunch of lies to people and get out of
3 it after shooting a man 10 times? You want to have
4 that kind of county?

5 Well, I think that y'all are smarter than that.
6 And I think you want a Union County where people
7 like Najm Thomas can't go around gunning people
8 down. And I will ask when you go back to that jury
9 room that you consider this evidence that has been
10 presented to you and you render a verdict that tells
11 Najm Thomas, that tells the Sheriff's office, and
12 that tells all the people in Union that there is law
13 here and that people will be held responsible for
14 the crimes they commit and that we're not the Wild
15 West. I ask that you find Najm Thomas guilty of
16 attempted murder. Thank you.

17 **THE COURT:** Mr. Brown.

18 **MR. BROWN:** Thank you, Your Honor.

19 Ladies and gentlemen of the jury, as I told you
20 at the outset of this case, this will be a matter of
21 the state represented by the sheriff's office and,
22 as you just heard throughout the entirety of this
23 case, by the prosecutor's office rushing to judgment
24 and rushing to assume and, in fact, not doing their
25 job. Everybody involved.

1 Now, the state agents, we know they came. It
2 was a long list of people that came and testified
3 and I know the state was trying to put on a certain
4 kind of presentation by having a long list of
5 witnesses and having officer after officer after
6 officer come testify about things that we all knew
7 from the day in which we entered this courtroom,
8 when we entered to address this. In fact from the
9 long questioning of the prosecutor, he had to admit
10 that, weeks ago, Mr. Thomas came in on his own
11 during a motion and told you what happened. So it
12 was never an issue that he was trying to continue
13 throughout this case to say, "I never shot anybody."
14 We know there was a shooting. The issue was: Was the
15 shooting lawful? Information came directly from one
16 person after he was initially stopped.

17 What can I say? I will say this: From the first
18 officer that pulled him over, that could have been a
19 very bad situation that Mr. Thomas said that happens
20 so often in this country. And I can understand that.
21 Coming down 176, I know that it can be deemed as a
22 speed trap. Every time I come down 176 coming from
23 Spartanburg, I'm thinking about one thing and one
24 thing only: getting pulled over by the police.

25 But in this instance, you were able to see

1 Mr. Thomas when he had the first interaction with
2 Investigator Ruby. But from his body cam, what did
3 you know that Investigator Ruby knew? He knew there
4 had been a shooting. He had a chance, several
5 minutes after the fact, to talk to Mr. Thomas. And
6 he asked him about the gun. He already knew when he
7 arrested him on what basis? For marijuana. So I will
8 give them credit. I will give that investigator
9 credit. It could have been a very different
10 situation if Mr. Thomas had answered any way
11 different than he answered.

12 If he ever said I have a gun in the car, what
13 could possibly happen? We probably wouldn't be in
14 this courtroom today, because you never know. In
15 that type of situation, if you tell an officer that
16 you have a gun and an officer knows there's been a
17 shooting and he knows how many times someone's been
18 shot, it's a very bad situation. So I do give that
19 officer credit. But in terms of rushing to judgment,
20 what have you heard about this case? Certain things
21 that law enforcement did and other things that law
22 enforcement didn't do.

23 Now, hearing from the solicitor, it makes me
24 think of a few things just to -- to ask a question,
25 in particular, as it relates to the location of

1 everything you heard throughout this case. When you
2 hear about the location of the BP, or the gas
3 station, the Kangaroo gas station, you know where
4 it's located. When you hear about the direction
5 which was alleged to have been seeing Mr. Thomas
6 leaving the BP, when he came up on the BP and was
7 seen and discussed about him leaving, which way did
8 he go? Was it ever in dispute? He traveled down
9 this road, did he not?

10 Now, we've had a long list of people that came
11 into this courtroom. There's several at least -- or
12 a few things that could have been on the list coming
13 off of the highway to begin with. How many places if
14 Mr. Thomas, in fact, had to travel in a different
15 direction coming out of the gas station, going down
16 the highway, even after -- go off until he turned
17 down Brown Street. Then he would have to come down
18 Munro if you believed the prosecution's version of
19 the facts.

20 Now, if they had done their job and looked into
21 the case, then you pass -- you pass the Carter's
22 Muffler & Auto Service. There's an Arthur State Bank
23 ATM there, two churches, the fire department. And,
24 in particular, when you turn down Brown Street, what
25 is one of the things we know that schools have in

1 front of them to keep the kids safe? Cameras. Every
2 location I'm talking about potentially would have
3 had a camera to show who was coming up and down that
4 road on that day. But did law enforcement do their
5 job? Did they produce any evidence about any
6 cameras anywhere besides discussion of a camera at
7 the gas station? No other cameras have been
8 presented.

9 But the prosecutor wants you to think that he
10 came back down the road after he saw two people or
11 saw someone, apparently, and he decided to leave the
12 gas station -- because we didn't hear that
13 testimony. The testimony we heard was that he went
14 straight down the road, straight down this way,
15 which would have positioned his car making the
16 right-hand turn after he left the gas station. He
17 would have no left hand turn. He couldn't have
18 turned left. And then are we to believe that he
19 backed up on the road? Didn't hear that testimony.
20 That's not what the prosecution is trying to have
21 you believe.

22 Secondly, if you listen to what the prosecutor
23 -- prosecution is trying to have you to believe,
24 from the direction of the car, the car would have
25 had to have been turned, but the way the prosecution

1 is trying to argue -- I'm looking for the diagram
2 here -- from the location of the dispensing of
3 shells. If you recall from the testimony for the
4 SLED agent, we talked about, in particular --
5 basically "particulars" is what we call that. The
6 highest levels were found in two places, his hands
7 -- not one, but both -- and on the inside of that
8 door and on the steering wheel. Now, when he drove
9 off, could he have opened that back door and touched
10 anything in the car? We don't know. But at what
11 levels were those throughout the car? Much lower
12 levels. And it had to be reported, based upon what
13 the agent said, just to show there were some
14 particulars, not that it came from the gun blast
15 itself. Anything from a number beyond that would
16 have to be indicated. That's what happened. Much
17 lower numbers.

18 So logically, think about it. If you spent any
19 time personally around handguns, whether it's
20 rifles, M-16s, M-6s, with a handgun such as a nine
21 millimeter, if you had experience firing a gun --
22 there may be someone on this jury that would know.
23 If you're on the inside of the car, what would
24 happen if you discharge a weapon? The shells will
25 be expelled. And what would they expel? It's a

1 kickback. Would the kickback come out in such a
2 manner that would be in a straight line on a
3 roadway? Would you have not found at least one
4 shell discharged inside of the car if he was
5 shooting from the inside of the car? Does that make
6 sense? Think about your common sense, your
7 experiences in life, and what you know that could
8 happen. I submit to you there's no way in the world
9 that he could've been coming down that way and
10 shooting and no shell wound up in that car. That's
11 impossible.

12 If you look at the facts of the case coming in
13 by way of testimony and what Mr. Thomas said, first
14 of all, he told you. I'm showing you State's Exhibit
15 9. If you take the corner, the roadway leading from
16 the gas station, turning right onto Munro, does that
17 seem to be a well-lit area? Even though these cars
18 here, and this is the PT Cruiser and the law
19 enforcement vehicles, you can see how it was from
20 there. But what's the one thing Mr. Thomas did tell
21 you when he turned? Vision was obstructed by
22 vegetation. If you got into a clear area in the road
23 away from visitation -- vegetation, common sense
24 will tell you he stopped this car right where he
25 said he was going to stop it: at some point up in

1 this area. And I know this is at an angle and we
2 discussed 18 feet, 15 feet.

3 Second thing he would tell you: If he was
4 firing out of his car, you can't have shell casings
5 on both sides. The car would have to be a very small
6 car or it would be virtually impossible. You've got
7 shell casing in this manner spread the way that they
8 are in one lane of the road. That's impossible.

9 There's one thing you do not see here, and what
10 has not been said at all to anyone in this
11 courtroom? That based upon the brush right here,
12 based upon the roadway, there were tire tracks that
13 was pushed back that indicated a car had been on
14 that side. Because it's impossible to discharge a
15 weapon and have all the shell casings right here, if
16 he was shooting out of the car, without the car
17 being on this side. You haven't heard that because
18 it didn't happen.

19 The version of the facts are consistent with
20 what Mr. Thomas, the only person that's come in here
21 to testify to tell you what happened on that day.
22 Pull your car off the road and you're here and
23 you're in the front of the car as the prosecutor
24 wanted to point out from a previous hearing, if he
25 was in the front of his car somewhere and someone

1 comes up on you, you're on this side, where are your
2 shell casings going to go when you turn around?
3 You're facing him and you start firing, they're
4 going to kick out on the street where they did. Not
5 on the side, because why? It's parked right here.

6 At that point, he's discharging fast. You heard
7 him say he's scared. He gets to his car, the
8 interior, from the front, and he leaves. And he said
9 that Mr. Gray ran off. What indication would you
10 have gotten?

11 Now you heard the doctor also who testified.
12 The prosecutor wants to paint it as attempted -- the
13 wound came from bullets. But you heard from the
14 doctor when Dr. Whitfield said that could be
15 (Indiscernible) wounds too. We know there were 10
16 active shots. But he's shooting in his direction
17 based upon his fear.

18 Now, it would also be impossible for a person
19 to have those types of shots upon his body if they
20 were running because you wouldn't have -- as you're
21 firing and you get to your car and you know that
22 person, at some point, runs off, you wouldn't have
23 the number of bullets in the front. If that was the
24 case, you would have a number of bullets in the
25 back. Clearly, a side wound could be an exit wound.

1 This is the only indication that it was a shot to
2 the back, which would be consistent with what my
3 client said.

4 As he was firing, he was running to the car. He
5 was trying to run off and get in his car. One shot.
6 If he was gunning him down, he wouldn't have had one
7 shot to the back. It would've been more. If Mr. Gray
8 had a chance to run away, you would've been shooting
9 a lot more. This shows, by way of the nature of the
10 injuries, full frontal, which would be consistent
11 with what my client said.

12 He was in the front of the car, Mr. Gray came
13 up from behind the car at the angle that you see.
14 Mr. Gray is fully in front of him. He hears
15 something, knows that voice and he definitely heard
16 a threat. You heard what happened previously from
17 Mr. Gray with my client. At that moment, he started
18 shooting. Frontal injuries, not to the back, not to
19 the extreme side. Think about it. Use your common
20 sense.

21 Clearly, based upon the charges, ladies and
22 gentlemen of the jury, have you heard anything about
23 malice? Did the prosecutor elicit out of Mr. Thomas
24 any malice? One of the fundamental elements to
25 attempted murder. The question I asked in regards to

1 handgun that was being maintained: Was it unlawful
2 for him to possess it? He wants to say he was a
3 young man that was going down a bad road. He may
4 have literally went down a bad road that evening
5 when he ran into the person that previously was
6 violent and definitely presented some form of a
7 threat. The judge will charge you on the law and you
8 have the law. Take a look at it and make your
9 decision based upon that.

10 But again, the only person that came into this
11 courtroom was Mr. Thomas to tell you that. Then, we
12 had a long list of people. If I wanted someone to
13 come into this courtroom to be able to sit on that
14 side, I have a piece of paper that I can use. The
15 prosecution elicited to it. That's a subpoena. They
16 have the subpoena power of the state to call people
17 in here as witnesses in the case. Well, as I said,
18 if you look at what law enforcement did and indeed
19 the state of South Carolina, including the
20 prosecutor, they didn't do their job. You get an
21 investigator to contact the alleged victim in this
22 case and the alleged victim says, "Nah. I ain't
23 coming to court," we do a motion hearing. No victim.
24 He told him, "I'm not coming." Did the prosecutor
25 send out a subpoena? Did you send out an officer to

1 pick up the victim bring him to court so he can tell
2 the jury I'm not participating? He didn't. Again, as
3 he says, "Oh. Well, now it's not about Mr. Gray;
4 it's about the citizens of Union." It is not
5 unlawful to possess a handgun especially if you fear
6 your life and you're trying to protect yourself.

7 What is the telltale sign that this young man,
8 as you heard, working, taking welding, trying to
9 better himself, what is indicative of him being
10 fearful based upon the situation that he told you
11 about, that he got robbed by Mr. Gray and two other
12 people? He was scared. Scared that evening when he
13 got pulled over. Scared when he talked to law
14 enforcement. What did he tell the officer? He said,
15 "Look. I knew they could search my mom's house."
16 Another gun.

17 What tells you he was afraid, afraid of this
18 happening, anything happening? Where was that gun
19 located? What did he tell you? So afraid for his
20 safety, he sleeps with a gun in his bed in the
21 pillow. His mama didn't know about it. The family
22 didn't know about it. Just in case anything happens.
23 You never heard about him being in any kind of
24 trouble. That didn't come out in this courtroom.
25 There was allusion to how he was as a kid. Well, he

1 was a good guy. You don't have a stereotypical
2 person.

3 But again, if you watch the manner, the way I
4 conducted myself, and I apologize for anything I may
5 have done that could offend, don't hold that against
6 my client, but any objections that I had to make.
7 You saw the prosecutor was trying to get Mr. Thomas
8 to say something about where the car was located.
9 You saw that. He was trying to force him to say
10 something. Just like when he had the first
11 conversation with him, he was trying to force him to
12 say something. But even if you look at the area on
13 the diagram, where was the car located and where was
14 Mr. Gray alleged to be located? Still behind the
15 car. Not inconsistent with what's been shown here.

16 But in terms of what was going to come out in
17 this courtroom, that comes from the stand, that
18 comes from the evidence that's been presented.
19 That's for you to weigh. Consider that. The
20 prosecutor has asked you to make a decision based
21 upon not having all the facts. One of the common
22 facts was to come in from another person. You don't
23 have all the facts. And I submit to you you don't
24 have all the facts just so you can make a clear
25 determination.

1 You heard from Mr. Thomas. He didn't say
2 anything to law enforcement at the first initial
3 stage. Law enforcement seen him in the jail. Didn't
4 say anything initially, but he also told him about
5 the guns he had from the home. He gave it up. He had
6 to talk. Sure. Do a swab. Do gunshot residue. He
7 knew what the results were going to be.

8 The pants. The prosecutor wants to discount
9 them. He's trying to hide something from you. If he
10 was trying to hide something from you, he would've
11 never took the stand. That's why he went through the
12 whole process of having officer after officer who
13 couldn't tell you anything about what happened,
14 except what happened initially.

15 He told you in his own words, admitted what he
16 said to the young man at the gas station, had no
17 problem, he was scared. What did he do after the
18 shooting? He went home. Tried to calm his nerves
19 after the shooting. He proceeds to go back down the
20 same road.

21 The prosecution wanted to start at the outset
22 of this case and call him a killer. A young man
23 going back down the road to head home. He knew he
24 shot in that direction, but he didn't think he shot
25 anybody. But lo and behold, when he gets to the end

1 of the street, he's pulled over. Law enforcement is
2 there. I can't say what was on his mind that day
3 with law enforcement, except that he was fearful. I
4 can't say what was on his mind on that day when
5 Mr. Gray got shot, but for the fact that he was
6 scared. Just look at the geography, the area that
7 they presented that they're trying to claim
8 happened. If they did their job, we would have more
9 evidence. Michael Johnson, Chad Johnson, what did
10 the prosecutors just tell you? Those are two young
11 men that Mr. Thomas (Indiscernible). The prosecutor
12 said the same thing that he said in regards to
13 getting in contact with Mr. Gray, we don't even know
14 if Mike or Chad existed.

15 Don't you think it would've been important to
16 at least go by their house and try to have a
17 conversation, were y'all out there that day, what
18 was going on that day? Would it have been important
19 to ask the lady from the store who came in that day?
20 Do you recognize these names? Didn't do it.

21 Imminent danger. No duty to retreat. Keep in
22 mind the law as it's going to be given. Think about
23 it closely. Yes, the prosecution has a duty to the
24 state of South Carolina that they can bring this
25 case, but as I said before at the outset of this

1 case that ball was in their yard. It was a high
2 profile case. It was well known. It was a high
3 profile case. It was well known. It was a known
4 case. A rush to judgment.

5 The last thing I want you to consider is if,
6 based upon this theory, he was driving his car down
7 the road, how would it have been possible for him to
8 steal the car, keeping it in the road as straight as
9 you see that line of bullets which would have to be
10 further over, but how would it have been possible
11 for him to hold a handgun and drive a car? It's not
12 consistent with what they're trying to present, the
13 residue. Remember what the SLED agent told you: It's
14 impossible.

15 And if he was driving the car, you think this
16 skinny young man could hold a nine millimeter gun
17 that has a kickback to it? It's not a subtle gun.
18 He was holding with one hand and driving and he was
19 able to shoot in a straight line? It's very
20 difficult. He's not a big guy. It's common sense.

21 He's presented to you what happened to him on
22 that evening. You don't have anything else before
23 you to disprove that. You may think there's some
24 doubt. Again, the Court has instructed you on that
25 doubt. And I would just say based upon what we've

1 heard and what we have not heard in this courtroom
2 represents reasonable doubt in this case. Not only
3 in terms of the charge of attempted murder, but in
4 terms of the assault battery of a high and
5 aggravated nature. There has to be an unlawful
6 element to it. And no one said it was unlawful for
7 anything to happen out there, except the case the
8 prosecution was attempting to present.

9 Second thing, just remember if someone was seen
10 to be going to the store and if he came back down
11 the street and someone saw his car, would they not
12 have come through the bushes and come around and
13 been in the location that Mr. Gray would have been
14 in?

15 Ladies and Gentlemen, I just appeal to you,
16 based upon what you have heard, what you've seen,
17 what's been presented to you and the lack thereof,
18 that it's your duty as a jury in this county to come
19 back with a verdict none other than not guilty.
20 Of course, there's been a rush to judgment. They
21 rushed to assume. The only person whose hands were
22 investigated. Not saying that Mr. Gray would've had
23 a gun on that evening, but why didn't you check his
24 clothes? Why didn't you check his hands? In any
25 kind of shooting, law enforcement owes a standard.

1 You check for gunshot residue on everyone when a
2 shooting is involved especially when there is an
3 alleged victim.

4 We haven't seen Mr. Gray. That's the name
5 that's missing from the list. That's the name that
6 you should have heard, that's the name that you need
7 to make clear in your decision, particularly, as it
8 relates to the law in this case and a decision as it
9 relates to my client's innocence or what they assume
10 to be potential guilt. You can't make a decision on
11 what you don't have. I submit to you it requires a
12 verdict of not guilty. Thank you.

13 **MR. ANTHONY:** I'm just going to try to hit a
14 few of the things that he said. First off, he was
15 talking about proof of malice, proof of the criminal
16 intent you have to have to commit attempted murder.
17 Well, proof of malice comes from what a person does.
18 So it's not very hard to find any better example of
19 somebody wanting to kill somebody than shooting at
20 them 13 times. That's malice. If you shoot at
21 somebody 13 times, you are acting with malice.
22 Doesn't matter whether you're legally entitled to
23 have a gun or not. Once you take that gun and use it
24 to shoot somebody 13 times, it's conclusive you're
25 acting with malice.

1 He was talking about how -- how could my client
2 have been driving this vehicle and firing at the
3 same time. Well, these are close -- this is
4 close-range shooting. You can tell from the diagram
5 that the vehicle, the vehicle that was coming down
6 the road there is shooting at Mr. Gray, it's close.
7 The driver side of that vehicle is going to be very
8 close to him.

9 And I'm not -- I'm not prosecuting Mr. Thomas
10 for having good aim. If Mr. Thomas had good aim,
11 Mr. Gray would be dead. So I'm saying that those --
12 that the way that Mr. Gray was shot and where he was
13 shot on his body, lot of shots in the extremities,
14 three shots that didn't go into him at all, that's
15 actually consistent with somebody trying to drive a
16 vehicle and shoot at somebody at the same time. It's
17 not a -- not a -- really, just by the grace of God,
18 maybe if Mr. Thomas hadn't been trying to control
19 that vehicle, Mr. Gray would be dead.

20 You can't check -- he was talking about why
21 didn't they -- they try to get GSR off Mr. Gray.
22 Well, you can't check on GSR on somebody that's
23 being air-bagged to the hospital. You know, when
24 somebody gets shot, the first thing the police had
25 to do is try to make sure they don't die. They can't

1 be so worried about collecting evidence that they
2 neglect that person's health. The very first thing
3 that happened with Mr. Gray was he got taken to a
4 strip and put in a helicopter and sent to
5 Spartanburg Regional. There was no opportunity to
6 try and get gunshot residue off his hands.

7 More importantly, there's absolutely no
8 evidence -- and this is something you really have to
9 think about -- there's no evidence Mr. Gray had a
10 gun. You know, they didn't find a gun. Mr. Thomas
11 never said Mr. Gray had a gun. Did you hear
12 Mr. Thomas say the word, "He had a gun"? He didn't
13 say that. Never said that yesterday.

14 They talked about we should've called Michael
15 Johnson and Chad Johnson. You know, they could have
16 brought Michael and Chad. Well, Mr. Thomas was too
17 busy lying to the police. You know, Mr. Thomas never
18 admitted to anybody during the investigation of this
19 case that he shot anybody. So how are we supposed to
20 know Michael and Chad Johnson even exist? He said
21 yesterday, I asked him, "Well, who did you tell
22 about this?" He said, "Well, I told my mom and I
23 told my lawyer." Well, you know, he didn't tell the
24 police this story that night. He was being
25 interviewed that night by his old ball coach, people

1 he should feel comfortable with and he still never
2 -- never bothered to just say, "Yeah. That's right.
3 I was getting attacked and I had to shoot somebody."
4 So I don't know how the state is supposed to bring
5 in Michael Johnson and Chad Johnson. And that's --
6 that's the person that would be confirming
7 Mr. Thomas's story. You know, they can call
8 witnesses too. And they could have called Chad
9 Johnson, Michael Johnson, whoever. And they could
10 have said, "Yeah. I was walking along Munro Street
11 that night. And I saw Mr. Thomas drive by in that
12 Cruiser. And I tried to flag him down. You know,
13 they could've sent -- brought somebody in to say
14 that. Did you hear anybody get up on that stand
15 yesterday afternoon and say, "That's right. That
16 night, Mr. Thomas, I think he was probably coming
17 back to get me." I didn't; did you?

18 There is no evidence of either way that
19 Mr. Thomas, when he left the BP the first time to go
20 shoot Mr. Gray, there's not any evidence from the
21 camera how he pulled out. The cameras don't show
22 that. Mr. Thomas says he pulled out and went that
23 way, but that's what Mr. Thomas says. That's not
24 something that's been independently verified at all.
25 The much more logical thing is he pulled out in some

1 way or another -- and there's a number of ways to
2 get back to Munro Street. But some way or another he
3 got that Cruiser back to Munro Street and started
4 driving down this way. And that's when he came up on
5 Elizawon Gray. Because he'd seen Elizawon Gray
6 before walking home and had decided he was going to
7 shoot him.

8 He talked about the GSR. And he said, "Well,
9 you know, there's lower levels in the car." I'm not
10 quite sure I understand what he -- understood what
11 he was saying about the GSR, to be quite honest. I
12 think what you have to remember is there wouldn't be
13 any GSR on the passenger side of that car if the
14 shots hadn't been coming from inside of the car, if
15 the weapon hadn't been held right outside the car.
16 That's the only thing that would really account for
17 GSR back on the window of the back passenger side.
18 And that's where it was found.

19 Now, what really -- what you really have to
20 look at in this case, ladies and gentlemen, is
21 there's just no explanation that this -- that this
22 happened the way Mr. Thomas says it happened. There
23 is no way that this shooting occurred right in here
24 and Elizawon Gray wound up right down here headed
25 this way. It just not -- doesn't make any sense.

1 There's no way Elizawon Gray's body would be down
2 here facing this direction if he had been shot at
3 from up here. That just -- that doesn't make any
4 sense.

5 Remember the bottle water is past Mr. Gray,
6 like it was dropped while he was fleeing this way.
7 So there's no way to account for that body being
8 down here and the other thing is there's absolutely
9 no way to account for the shell casings being up
10 here -- down here too. That just doesn't make any
11 sense. They can talk about that all day, but there's
12 just no way you can explain how shell casings are up
13 here and how the bodies are up here if the shooting
14 occurred up here. That's just -- that's just -- that
15 is just irreconcilable.

16 And when you think about that, the only
17 conclusion is that Mr. Thomas just didn't tell you
18 the truth. Because you know this stuff. You know,
19 you know where Elizawon Gray's body was found. You
20 know where the shell casings were found. I can't
21 explain how the shell casings ended up necessarily
22 in the pattern they ended up and that kind of thing,
23 but you know where the body is and you know where
24 the casings are. And there's no way to reconcile
25 that with the two stories he told.

1 Remember the first time he got asked about
2 this, he said, well, I parked right here and he came
3 at me this way. Well, that's just completely out of
4 -- out of -- out of left field. And this is just as
5 bad. There's no way to reconcile that. There's no --
6 no real conclusion you can draw from it except that
7 he didn't tell you the truth and he gunned Elizawon
8 Gray down.

9 I just have -- have a couple more things.
10 Talked a lot about Mr. Gray not being here. Well, I
11 just want you to think about this: If Mr. Gray was
12 dead, we'd be prosecuting Mr. Thomas for murder, not
13 attempted murder, but murder. And you know Mr. Gray
14 wouldn't be testifying then either because Mr. Gray
15 would be dead, just like he should be dead right
16 now. We never get to call the victim in murder
17 cases. When we try a murder case, we don't ever call
18 the victim because there's not a victim to call.

19 The point I'm trying to make: If there's enough
20 evidence to convict Mr. Thomas, it doesn't matter
21 where it comes from. Mr. Gray doesn't have to
22 testify to have enough evidence to convict
23 Mr. Thomas. If the victim always had to testify,
24 then we'd never be able to prosecute anybody for
25 murder. We just would never be able to do it. So if

1 you heard enough evidence to say, yeah, this guy
2 committed an attempted murder, Mr. Thomas committed
3 an attempted murder, then Mr. Thomas should be
4 convicted. The question is whether there's enough
5 evidence; it's not whether -- you know where did the
6 evidence come from or who provides it. If there's
7 enough evidence, then Mr. Thomas needs to be found
8 guilty. And in this case, there's plenty of evidence
9 that he's guilty of attempted murder.

10 When Mr. Thomas testified about this robbery
11 that he said occurred earlier where he claims Malik
12 Gray robbed him, he was asked why he didn't report
13 it to the police. And he -- his answer was -- he
14 said, "We don't go to the police around here."
15 That's what he said yesterday afternoon. And that
16 attitude is what led to this.

17 Mr. Thomas decided, "I'm not going to the
18 police. I'm just going to get my gun. I carry a gun
19 in my vehicle hidden and I sleep with a gun. And I'm
20 going to get one of those guns and I'm going to take
21 care of this myself." And that's what he did, ladies
22 and gentlemen.

23 He saw Malik Gray out on Munro Street. He got
24 -- he cruised down to the BP. He got in behind him
25 and he gunned him down. And Mr. Thomas needs your --

1 to hear in your verdict that that kind of senseless
2 attitude that, you know, "We don't go to the police
3 around here. If somebody messes with me, I just get
4 my gun and I'll go put 10 rounds in them," that
5 attitude needs to stop. That -- Mr. Thomas and the
6 sheriff's office in Union County needs to hear that
7 we're not going to be a lawless place for somebody
8 like Najm Thomas and just go around shooting people.
9 Thank y'all.

10 **THE COURT:** All right. Ladies and gentlemen,
11 again, thank you. That concludes the courtroom
12 portion of this case. I'm going to ask you to retire
13 to the jury room. And again, for the last time, I'm
14 going to tell you: Don't start your deliberation.
15 After a little bit of time in the court, the lawyers
16 have to look at the evidence and make sure all the
17 evidence is correct and the exhibits are present.
18 And then, the bailiff will bring you the evidence.
19 And once the bailiff brings you the evidence, that's
20 your signal that you can begin deliberation.

21 I believe, Madam Clerk, can you bring a lunch
22 for the jury today?

23 **THE CLERK:** Yes.

24 **THE COURT:** So once the evidence has come in,
25 y'all can go ahead and start deliberating. And lunch

1 will be brought in for you today. Thank you, ladies
2 and gentlemen. Y'all can retire to the jury room.

3 (Jury exits at 12:26 p.m.)

4 **THE COURT:** All right. Counsel, anything we
5 need to take up?

6 **MR. ANTHONY:** Nothing from the state.

7 **MR. BROWN:** Yes. Your Honor, I have one
8 motion, a motion for a mistrial.

9 **THE COURT:** Okay.

10 **MR. BROWN:** Based upon the prosecution's
11 reference to who Mr. Thomas could've called, in
12 particular, as -- we had a discussion about the two
13 brothers. He gave the impression to the jury that
14 there was some requirement or that the defense is
15 bound in terms of calling witnesses. As the Court is
16 well aware, the defense has no duty whatsoever as it
17 relates to a case that's being called against him.
18 So giving that type of implication to a jury makes
19 it seem that we were required to call witnesses.

20 And I would object to the reference of murder.
21 This is not a murder case, Your Honor. So I think
22 that is highly --

23 **THE COURT:** You mean the reference when the
24 solicitor said if he had died it would be a murder
25 case?

1 **MR. BROWN:** Yes. And then he tried to make it
2 analogous to a murder by referring to that. This is
3 not a murder case, and I don't know why that was
4 brought up.

5 **THE COURT:** Your argument is that it's a
6 burden shifting argument by the state to say you
7 could've called witnesses.

8 **MR. BROWN:** Yes. We have no duty, Your Honor,
9 whatsoever.

10 **THE COURT:** Do you have any -- my hesitation
11 is you kind of opened the door to that argument. You
12 went after the state pretty hard saying they had to
13 call the victim in, they had to call witnesses in.
14 And it seemed like the state just replied in kind
15 and said, "Well, you could have called those folks
16 in, too."

17 I don't -- I don't think the state said you had
18 an obligation to call those witnesses. I think the
19 state was just responding in kind. Do you have any
20 case law that says that that sort of statement from
21 the state is burden shifting?

22 **MR. BROWN:** Your Honor, I don't have any at
23 this time. It was contemporaneous to what just
24 happened. But I will have to look in the interim of
25 deliberations, Your Honor.

1 **THE COURT:** All right. Anything else, counsel?

2 **MR. ANTHONY:** Would you like me to respond?

3 **THE COURT:** Yes, sir.

4 **MR. ANTHONY:** Okay. I'm entitled to do that,
5 to make a reference to his failure to call
6 witnesses, especially when I'm attacked in his
7 closing for not calling witnesses.

8 And then, as far as making the murder
9 reference, that was just in response to his argument
10 that we needed to call Mr. Gray. I think I'm
11 entitled to point out that this could have been a
12 scenario where Mr. Gray wasn't -- wouldn't have been
13 available to be called and to just make that kind of
14 argument that I made to the jury about how that is
15 something they should be able to set aside and just
16 make a finding in the case based on the evidence
17 presented. And that was essentially what I was
18 doing.

19 **THE COURT:** Thank you, Mr. Anthony. If you
20 have any authority, you can find it while the jury
21 is deliberating. I will listen to you again. But I'm
22 going to deny that motion right now.

23 **MR. BROWN:** Yes, sir.

24 **THE COURT:** Counsel, any objection to
25 releasing the alternate jurors?

1 **MR. ANTHONY:** No, sir.

2 **MR. BROWN:** None, Your Honor.

3 **THE COURT:** Any objection to sending the
4 evidence -- y'all want to take a look at the
5 evidence before we send it back?

6 Would you bring the two alternates in?

7 **THE BAILIFF:** The alternates?

8 **THE COURT:** Yeah, the two alternates.

9 (Alternate jurors enter at 12:32 p.m.)

10 **THE COURT:** I just want to thank y'all for
11 your service. I know that serving as an alternate
12 juror is frustrating. You sit through the whole
13 trial and you don't get to deliberate. I'm sorry.
14 There's no way around that.

15 But y'all have a very important purpose here.
16 If someone got sick, had a childcare emergency or
17 something like that and they had to leave the jury,
18 y'all would have prevented us from having to start
19 the whole trial over again. So thank you very much
20 for your service. Your service is just as important
21 as the other jurors. And I really, really appreciate
22 everything that you've done.

23 You are welcome to stay and see what the
24 verdict is, what the jury does, but you are released
25 from your service. You have completed it. And thank

1 you very much from the Court and the county.

2 (Alternate jurors exit at 12:32 p.m.)

3 (Jury begins deliberation at 12:38 p.m.)

4 (Court is resumed at 1:52 p.m.)

5 **THE COURT:** Counsel, I'm pretty new and I -- so
6 I consulted with some of my colleagues on the bench
7 about Mr. Brown's objection to the closing argument.
8 And having consulted with my colleagues, I think the
9 safest is to do a jury instruction regarding --
10 regarding that comment.

11 So what I propose to do is call the jury back
12 in and emphasize to them again that the entire
13 burden is on the state. The defendant is not
14 obligated to call any witnesses or produce any
15 evidence at all. Any objection to that procedure?

16 **MR. ANTHONY:** Well, Your Honor, I'd ask the
17 Court to review a case --

18 **THE COURT:** Okay. Absolutely.

19 **MR. ANTHONY:** I'll hand up -- I don't have
20 copies of this. I can make them right quickly if you
21 need. The case is State v. Douglas, which is 332
22 S.C. 67.

23 **THE COURT:** Okay. (Reviewing.)

24 Mr. Brown, I believe Mr. Anthony is right, if
25 you want to take a look. If you want to approach,

1 I'll hand you the case. This seems to be pretty much
2 right on point.

3 (Bench conference is held off the record.)

4 **MR. BROWN:** Your Honor, I will only say that
5 the only difference that I can find is that we
6 didn't call any other witnesses on my client's
7 behalf, which I know that particular case in point
8 does touch upon that.

9 And I have an older case that I cite based upon
10 the burden of proof of the prosecution throughout a
11 case, myself.

12 **THE COURT:** I hear your argument. But I think
13 if your client testifies, I think that's an even
14 stronger situation. I mean, you can call witnesses.
15 And in fact, your client has given up his right not
16 to testify. So I'm going to say under State v.
17 Douglas, I want to overrule the objection and I'm
18 going to decline to give the jury instruction.

19 But I have a note from them, Counsel. I have a
20 note from the jury. And the note from the jury
21 discloses the vote and the jury pool. It,
22 apparently, is just a status update from the
23 foreman. It says that -- I'll tell you the first
24 line is we are trying. And then, it's signed by the
25 foreman. And the rest of the note tells me what the

1 current vote is in the jury room.

2 MR. BROWN: Your Honor, I don't think it's
3 volatile of their process, I mean, maybe if they
4 inform the Court of where they're at. I think the
5 deliberation process --

6 THE COURT: I don't think it's -- I don't think
7 it's a violation of process. I just don't know if I
8 should do anything with it. I mean, I don't think --
9 I -- I would never ask the jury what the vote is and
10 we're not supposed to do that. But he just
11 volunteered it.

12 I don't think -- it does not state -- it does
13 not state -- well, it does say "adamant not to
14 change mind." There is a -- I don't even know should
15 I give it to both of y'all to read? I've never
16 heard of this happening where the jury has given
17 what the vote is in the jury room.

18 MR. ANTHONY: I'd like to see it. I mean, I
19 don't -- I mean, it's going to be made part of the
20 record. I don't -- I don't --

21 MR. BROWN: Your Honor, the Court does have the
22 opportunity to have an instruction to give the jury
23 in --

24 THE COURT: I mean I feel like I'm in a
25 situation. I feel like if I have a note from the

1 jury, I think I'm obligated to let you read it. So
2 if y'all want to -- if y'all want to approach.

3 (Bench conference is held off the record.)

4 **MR. ANTHONY:** If I could just have a moment.

5 **THE COURT:** Absolutely.

6 **MR. ANTHONY:** This is something we need to
7 process a little bit.

8 **THE COURT:** Yes, sir.

9 (Pause.)

10 Counsel, any objection to me reading what's in
11 the record? I know the note is on the record.

12 **MR. ANTHONY:** No, not from the state.

13 **MR. BROWN:** I would, Your Honor, at this stage
14 of deliberation.

15 **THE COURT:** Do you object, Mr. Brown?

16 **MR. BROWN:** I would.

17 **THE COURT:** Okay. I will declined to do that
18 then.

19 (There is a pause.)

20 **MR. BROWN:** Your Honor, I was going to request
21 that the Court, if you were going to make a curative
22 instruction, I would seek a curative instruction on
23 the basis of malice. What Mr. Anthony told the jury
24 was completely incorrect. I was going to ask the
25 Court to --

1 **THE COURT:** My recollection was that
2 Mr. Anthony argued that malice can be inferred by
3 the circumstances. Is that correct? Am I
4 remembering that correctly?

5 **MR. BROWN:** Well, I think the way he
6 encapsulated was that, you know, by his actions that
7 was malice.

8 **THE COURT:** Tell me what your objection is.

9 **MR. BROWN:** The way he framed it in terms of
10 expressing the nature of the law when he told the
11 jury directly that the fact he shot a certain number
12 of times in itself proves malice.

13 **THE COURT:** So you are -- are you arguing that
14 because if it was, in fact, in self-defense that,
15 obviously, shooting a person a certain number of
16 times in self-defense would not constitute malice?

17 **MR. BROWN:** Well, my argument would be -- that
18 would relate to other aspects of the charges that
19 were given based upon self-defense whether you shoot
20 one time or several times. But as it relates to
21 malice specifically, there was a direct reference
22 made by Mr. Anthony to the jury to have them think
23 that because he shot a certain number of times that
24 in itself is malice, not the frame of mind, not
25 however long it took. In itself by shooting the gun

1 several times, in fact, he said 13 times, that is
2 malice.

3 **THE COURT:** I think -- I mean, I don't remember
4 his exact wording. But my understanding of his
5 argument was that it is evidence of malice. He
6 correctly stated the law, you know, that in the
7 charge says something like you can't cut someone's
8 head off and dissect it and see what they're
9 thinking. You have to look at the circumstances
10 surrounding the action.

11 His argument was shooting someone 13 times is
12 evidence of malice. If you can't argue that, how
13 else would he argue malice?

14 **MR. BROWN:** I think he said that it is malice
15 in his explanation of the law and telling them that
16 that in itself is malice.

17 **THE COURT:** So what you're saying to me, I
18 guess -- let me make sure I understand your
19 argument. Your argument is that by saying it is
20 malice, rather than saying I believe that's evidence
21 of malice, he is in effect stating a conclusion of
22 law that -- he's arguing that as a matter of law it
23 is malice?

24 **MR. BROWN:** Yes, sir. I can see that the jury
25 could believe that based upon that statement.

1 **THE COURT:** I'm going to deny the motion on
2 that.

3 **MR. BROWN:** Yes, sir.

4 **THE COURT:** My recollection was that -- that
5 was -- well, Mr. Anthony, let me hear from you on
6 that?

7 **MR. ANTHONY:** I -- I -- I -- I don't want to --
8 I want to interject if the Court's denying the
9 motion. I mean, I was just -- I was just -- as to
10 that, I mean, that's just closing argument. You
11 know, I mean, that's -- that's just rhetoric during
12 closing argument. I think I'm perfectly within my
13 bounds to say if you shoot somebody 10 times, that
14 you are acting with malice without being so
15 delicately about how I phrase it. I just don't think
16 there is anything out of bounds about making the
17 argument that way.

18 **THE COURT:** I mean, I -- that's my -- that's my
19 ruling. I think technically the argument is these
20 circumstances are evidence of malice under the law.
21 I don't think that he is restricted in closing
22 argument so particular that he has to argue those
23 words, so I'm going to deny the motion.

24 **MR. ANTHONY:** Before we do anything else, can I
25 talk with Mr. Brown again?

1 **THE COURT:** Yes, sir.

2 Counsel, before y'all step out in the hall, I
3 don't want the jury to think I'm ignoring them. What
4 I propose to do is call them back in and say, "I
5 received your note. I'm not allowed to respond to
6 that sort of note giving me an update." If they are
7 telling me that they are at an impasse and cannot --
8 then I'll respond to that. Short of that, I can't
9 respond to that sort of update.

10 **MR. ANTHONY:** Your Honor, my -- our position
11 would be that that notes means they are at an
12 impasse. I mean, he uses the word "hung." So I don't
13 think there is much the Court can do in responding
14 --

15 **THE COURT:** You know what? You are totally
16 right. I misread it. I read that as trying, "We are
17 trying." But he's written that in a funny way. You
18 are right. It says, "We are hung."

19 **MR. ANTHONY:** I don't think there is much the
20 Court can do besides give them an Allen charge.

21 **THE COURT:** I agree with you.

22 **MR. ANTHONY:** But Mr. Brown's client is not
23 here and I was hoping maybe he would have a word
24 with him before we bring the jury back in.

25 **MR. BROWN:** I would need him before we start

1 with the jury.

2 (There is a pause.)

3 **GOVERNMENT ATTY:** He's trying to get in touch
4 with Mr. Thomas.

5 **THE COURT:** Thank you, Mr. Anthony.

6 (There is a pause.)

7 **MR. ANTHONY:** We will go ahead and take the
8 verdict. I don't want to delay the Court.

9 **THE COURT:** Let's bring the jury back in.
10 (Jury enter the courtroom at 2:25 p.m.)

11 **THE COURT:** Ladies and gentlemen, I understand
12 that you have a verdict.

13 **THE JUROR:** Yes, sir.

14 **THE COURT:** Mr. Foreman, if you could pass that
15 to the bailiff and hand it up to me please.

16 Madam Clerk.

17 Will the defendant please rise?

18 Madam Clerk, would you publish the verdict
19 please?

20 **THE CLERK:** The State versus Najm Thomas,
21 2017-GS-44-845, attempted murder, not guilty;
22 assault and battery of a high and aggravated nature,
23 guilty.

24 **THE COURT:** Madam Clerk, if you'll ask the jury
25 is this still their --

1 **THE CLERK:** Oh, yes. Is this still your
2 verdict?
3 **JUROR FOREPERSON:** Yes.
4 **THE CLERK:** Thank you.
5 **THE COURT:** Mr. Brown, would you like the jury
6 to be polled individually?
7 **MR. BROWN:** Yes, Your Honor.
8 **THE COURT:** Madam clerk, would you poll the
9 jury.
10 **THE CLERK:** Jolette Hunt, is this still your
11 verdict?
12 **THE JUROR:** Yes.
13 **THE CLERK:** Sheri Greer?
14 **THE JUROR:** Yes.
15 **THE CLERK:** Kenneth Blythe?
16 **THE JUROR:** Yes.
17 **THE CLERK:** Ashley Castle?
18 **THE JUROR:** Yes.
19 **THE CLERK:** Darian Davis?
20 **THE JUROR:** Yes.
21 **THE CLERK:** Terry Bowan?
22 **THE JUROR:** Yes.
23 **THE CLERK:** Shirley Wilber?
24 **THE JUROR:** Yes.
25 **THE CLERK:** Maggie Medder?

1 **THE JUROR:** Yes.

2 **THE CLERK:** Anthony Painter?

3 **THE JUROR:** Yes.

4 **THE CLERK:** Steve Womack?

5 **THE JUROR:** Yes.

6 **THE CLERK:** Susan McCutchen?

7 **THE JUROR:** Yes.

8 **THE CLERK:** And Anthony Brock?

9 **THE JUROR:** Yes.

10 **THE CLERK:** Thank you.

11 **THE COURT:** Counsel, anything further before I
12 release the jury?

13 **GOVERNMENT ATTY:** Nothing from the state.

14 **MR. BROWN:** I just renew all previous motions
15 at this time, Your Honor.

16 **THE COURT:** Those are denied.

17 **MR. BROWN:** Yes, sir.

18 **THE COURT:** Ladies and gentlemen, that
19 concludes your service in this case. I thank you
20 very much. I know this has taken up an entire week
21 of your time. But the County, justice system, and
22 myself, we all appreciate your service. This could
23 not happen without you folks giving up your time.
24 We're very grateful for your service.

25 You're free to go now. We really appreciate

1 your time. The next step is I will sentence the
2 defendant. And if you would like to stay and watch
3 that, you're perfectly free to do that. You can, but
4 you are not required to do that. Your service is
5 complete.

6 I'll actually say one more thing. At this
7 point, you're also free to talk about this case with
8 anyone you choose to. You don't have to talk about
9 it with anyone. Occasionally, lawyers want to get
10 better and lawyers might contact you and say, "Can
11 you give me some advice on what how I did or what I
12 can do better?" You can talk to the lawyers if you
13 want to. You don't have to.

14 A reporter might call you. Again, you can talk
15 to them if you want to. You don't have to. No one
16 can force you to talk about what happened in the
17 jury room. Your family and friends, if you want to
18 talk about the case now, you may do so. Again,
19 ladies and gentlemen, thank you. Your service is
20 completed.

21 (Jury exit the courtroom at 2:29 p.m.)

22 **THE COURT:** They need to sign the indictments.
23 The foreman needs to sign the indictments. You know
24 the foreman?

25 **THE BAILIFF:** Yes, sir. I think so.

1 **THE COURT:** Someone go grab the foreman before
2 he goes.

3 Counsel, I apologize.

4 (There is a pause.)

5 **THE COURT:** Counsel, let's do sentencing.

6 From the state?

7 **MR. ANTHONY:** Yes, sir. I can go ahead and give
8 information. Or do you want to just give me the
9 indictment for a moment, I can go ahead and publish
10 the indictment.

11 **THE COURT:** Yes, sir. (Pause.)

12 All right. This is the State of South Carolina
13 versus Najm Thomas sentencing on Indictment 2017-GS-
14 44-0845, convicted by jury verdict of assault and
15 battery of a high and aggravated nature. I'll hear
16 from the state.

17 **MR. ANTHONY:** Your Honor, I just have a few --
18 few things briefly. Mr. Thomas had a juvenile
19 history. In February 2014, he was convicted as a
20 juvenile of receiving stolen goods and possession of
21 marijuana --

22 **MR. BROWN:** Your Honor, I don't think that
23 should be considered by this Court because it's a
24 juvenile record.

25 **THE COURT:** In sentencing, I can consider.

1 **MR. BROWN:** Okay.

2 **MR. ANTHONY:** He was convicted in 2015 as a
3 juvenile of possession of marijuana. He actually did
4 a determinate sentence as a juvenile in 2015. Then,
5 after he made bond on these charges in May 2017, he
6 was convicted of possession of marijuana. And in
7 October 2017, he was charged -- he was convicted of
8 operating a motor vehicle without a license.

9 Your Honor, it's the state's position on
10 sentencing: If you think about this in the sense of
11 that it is just really a miracle that Mr. Gray
12 didn't die that evening, as I said to the jury,
13 there was really high probability this would've been
14 a murder case. Had that been the case, Mr. Thomas
15 would've been looking at 30 to life. The jury did
16 not convict him of murder. They convicted him of
17 ABHAN -- or didn't convict him of attempted murder,
18 they convicted him of ABHAN, which I think you can
19 roughly analogize that to us trying Mr. Thomas for
20 murder and getting a voluntary manslaughter. If he
21 were convicted of voluntary manslaughter for killing
22 Mr. Gray, he'd be looking at up to 30 years right
23 now. He was convicted of ABHAN because he didn't
24 kill Mr. Gray, so he's looking at up to 20 years
25 right now.

1 We think if the Court looks at his behavior and
2 what it appears he was intending to do that night,
3 and certainly, the way he acted that night and the
4 criminal act he committed and the likely result of
5 that criminal act, that the 20 years that ABHAN
6 carries would be an appropriate sentence in this
7 case. That's what -- that's what we would ask for,
8 just given the egregious violent nature of his
9 conduct that night. Thank you, Your Honor.

10 **THE COURT:** Yes, sir. Mr. Brown?

11 **MR. BROWN:** Your Honor, one of the more
12 significant things I can say from the outset of this
13 case is obviously -- because this is sentencing -- I
14 shared with the prosecution from the outset of the
15 case that I was contacted by the victim in the case.
16 The victim in the case came to my office. He shared
17 information with me directly as it relates to the
18 prior incident that he had with Mr. Thomas in which
19 he admitted to me that he did rob him.

20 There was some confrontation that, as
21 Mr. Thomas has relayed during the course of his
22 testimony, involving him and friends being at the
23 same location. He knew Mr. Malik. Mr. Malik took
24 advantage of Mr. Thomas in light of what Mr. Thomas
25 had on him. You've heard his history as it relates

1 to marijuana. He had marijuana on him the day in
2 which Mr. Malik robbed him.

3 On the day Mr. Malik came to my office, he came
4 with a gentleman that -- one of the gentleman that
5 supposedly was at the scene at the gas station.
6 Neither one of them wanted to participate in the
7 course of this trial, one of the Hammond brothers.
8 So in fact, he did see them, a guy named Chris
9 accompanied Mr. Malik to my office.

10 Specifically what Mr. Malik told me and it was
11 memorialized and I'll hand this up to the Court too,
12 so it can be a part of the Court's record: "Do not
13 hold any bad feelings or ill will against him
14 because of the fact of our mutual physical disputes
15 with one another. I cannot say what he was thinking
16 on the day of the shooting or if he was fearful for
17 his safety. I do not wish for this case to proceed
18 and I'm requesting that all charges related to this
19 case be dismissed. I have confronted Najm's lawyer
20 on my own free will and I will present this
21 affidavit freely." He came to my office and told me
22 the entirety of the case, Your Honor.

23 I know because of his lack of participation we
24 couldn't get into certain things by way of hearsay
25 and hoping what was going to happen. What's

1 unfortunate is two young men in this county: one got
2 robbed and the second time that the one that got
3 robbed was approached, as he said, that night and
4 what happened. I'll hand this up for the Court to
5 consider. I know the jury could not hear this, but I
6 think it's most appropriate that you see it in his
7 own handwriting.

8 **THE COURT:** We'll make it a Court's exhibit.
9 (Court's Exhibit 1 is marked for identification.)

10 **MR. BROWN:** Your Honor, you've heard the
11 entirety of the history of my client. He was a
12 juvenile. It's the same type of thing that he's
13 gotten in trouble for that over 20 states now are
14 recognizing the legalization of marijuana, minus the
15 driving charge. Outside of that, he hasn't had a
16 violent history of any sort, hasn't had any
17 situations involving guns, anything involving
18 physicality. It's been his principal situation that
19 from being a young male up until now, he smokes
20 marijuana. That was seen on the video that evening
21 and that's what he's presently been involved in.

22 And unfortunately, because this person robbed
23 him, he became an easy, as they say on the streets,
24 a mark. It's still his contention, Your Honor, that
25 he was somewhere lawfully and this person did

1 approach him. And based upon that previous incident
2 that, in his own way, he was fearful.

3 Based upon that -- those standards, Your Honor,
4 and the fact that the victim has spoken during the
5 course of this case, we don't feel that 20 years is
6 appropriate. Your Honor, I would ask based upon this
7 20-year-old young man, I think the Court should take
8 those words into consideration by way of mitigation.
9 If the Court were to fashion a sentence much less
10 than that with something hanging in terms of a
11 balance over his head, that would be most
12 appropriate.

13 This is the first time he's ever had to appear
14 before a General Sessions Judge. He made some
15 mistakes as a juvenile, but he knows that to go
16 forth in life, having illegal substances is not the
17 way the go. And if the law is to change, Your Honor,
18 and I know our state legislator debates this issue
19 all the time in terms of marijuana, that may change
20 the course of some things as we've seen in recent
21 times with the expungement of some of those charges
22 related to usage thereof.

23 Your Honor, it wasn't in his heart, it wasn't
24 any type of ill will, it wasn't any premeditation.
25 He wasn't circling the area looking for Mr. Gray.

1 That wasn't the situation. I think Mr. Gray knew
2 that. And as he's related to me and as he has shown
3 the prosecution and as he has shown law enforcement,
4 he wasn't going to participate. For those reasons,
5 we ask you to take that in great consideration based
6 upon all words and the desires of the alleged victim
7 in this case.

8 I know Mr. Thomas wants to address you. I know
9 his mother would like to say some words in response,
10 as well.

11 **THE DEFENDANT:** Your Honor, I thank you for
12 being here. I know you have to do your job. I just
13 want you to know that my intentions was only to
14 defend myself. And like right now, I'm even scared
15 to pick up a gun because if I defend myself, I still
16 come to court and I still could be tried, I can
17 still go to jail just for defending myself. Now, I'm
18 just even scared to look at a gun, pick a gun up,
19 anything.

20 And -- I'm sorry, I know that you have to
21 sentence me. I just hope you could, in your heart,
22 give me another chance. Because as the prosecutor
23 states, I am down a bad road and I'm down -- I'm
24 going down a bad road which, since that night, I've
25 been going the opposite direction. I've been trying

1 to do better. Even though I can't go to school, I
2 would've liked to have gone back to school. It's
3 been hard for me to get a job. I just want you to
4 give me another chance to be a productive member of
5 society that I know I could be because I'm not
6 really a bad person, how they tried to portray me
7 as. I was only trying to defend myself to make sure
8 I get home to my family and my kid. I thank you for
9 listening to me.

10 **THE COURT:** Yes, sir.

11 Yes, ma'am?

12 **MR. BROWN:** State your name for the record
13 please.

14 **SPEAKER:** Okay. Hope Thomas, Najm's mother.
15 Ever since Najm was a child, he never been an
16 aggressive person. He always was trying to turn the
17 other cheek. He always say, "Just let it go." That
18 night, I really in my heart believe my son wanted
19 (Indiscernible). And he chose to live. He being
20 punished because he chose to live.

21 That young man had beat my son and my son still
22 chose to let it go. I believe, yes, he didn't go to
23 the police. He didn't tell me the child's name
24 because he know I would've probably went to the
25 parent and he just wanted to let it go. Because of

1 that, that young man thought he was a weak link and
2 he could do it again. For some reason, from that
3 night on, my son felt like because of his action,
4 Malik Gray, he had to carry a gun. I didn't even let
5 him play with water guns.

6 So please, give my child a second chance to see
7 his son grow up for him to be a good man that I know
8 he is. He just, for some reason, he liked to smoke
9 that weed. For the license thing, he had a license,
10 he have licenses. He just keep leaving them at home
11 instead of just putting them in the car. He don't be
12 out there looking for trouble.

13 Since this happened, all he want to do is spend
14 time with his son. He got a job but as soon as they
15 find out what was on his record, they boot him out
16 of there. He tries again. They give him a chance to
17 get in there, the temp service, but when the company
18 find out, they ship him out. And so it's not like he
19 ain't been trying. He have.

20 So please, give my son a chance. Please don't
21 give him no 10, 15, 20 years, because being in
22 prison do something to some people. And 20 years,
23 you done set his life to be a failure definitely, in
24 my opinion. He a good man. He never been aggressive
25 person. That man made him aggressive.

1 So to me, the Court saying, "If you defend
2 yourself, you still go to prison. If you don't
3 defend yourself, you going to die." So what choice
4 do we have? What choice did he give him? So please,
5 Your Honor, don't send my son to no 20, 15, 10 years
6 to prison for choosing to live. Thank you for
7 listening.

8 **THE COURT:** Mr. Brown, does anyone else want to
9 be heard?

10 **MR. BROWN:** No, Your Honor. Clearly, he has
11 support of his family.

12 **SPEAKER:** Can I say something?

13 **MR. BROWN:** We have another gentleman, Your
14 Honor. State your name, sir.

15 **SPEAKER:** Jeremy Thomas. I'm his brother. That
16 Malik guy, man, he a bad guy, man. He robbed him
17 once before. He came to me and told me. And I asked
18 him what did he do. He said, "I just let it go." I
19 said, "All right, then. Leave it at that."

20 A couple of months go by again, he robbed him
21 again. You know what he did then? He let it go. Man,
22 how many times somebody got to be robbed until --
23 until things like this happen? But now, he making
24 him look like he is the devil.

25 This is a nice guy, nice dude. He don't bother

1 nobody. He don't mess with nobody. Cause I'm the
2 same way. We ain't got no friends. We just got us.
3 So we don't mess with nobody, bother nobody, we
4 ain't harmful or nothing. That Malik dude, he cause
5 all of this, all of this. He cause me tears, him,
6 and her tears because he had to protect himself.

7 I mean, Your Honor, if somebody coming at you
8 two or three times, I mean, over and over. And I
9 know he said call the police. But in the streets of
10 Union County, if you call the police, you a snitch.
11 And once you a snitch, you are labeled. And then,
12 you know what that mean? More are coming for you.
13 So when he say he should've called the police, it is
14 easy to say that when you ain't in it, when you
15 ain't in these streets, when you ain't knowing what
16 you really should be knowing.

17 **THE COURT:** Mr. Brown?

18 **MR. BROWN:** No, sir.

19 **THE COURT:** Mr. Anthony, I understand you had
20 contact with the victim.

21 **MR. ANTHONY:** Yes, sir.

22 **THE COURT:** I'll be right back. The Court will
23 be in recess.

24 (Court is recessed at 2:53 p.m.)

25 (Court is resumed at 3:00 p.m.)

1 **THE COURT:** I'm sorry. You can be seated.

2 (Pause.)

3 Counsel, I have given this a good bit of
4 thought and I have taken into account in my sentence
5 the fact that the victim obviously did not want to
6 cooperate, did not come to court. On the other hand,
7 the jury obviously did not take the self-defense
8 argument. In the Court's view, the defendant's
9 actions to try to conceal what happened, and the
10 evidence was that he hid the gun behind the glove
11 box, he attempted to mislead the police by giving
12 them a firearm that was not one used in the
13 shooting. They asked him about it, which he denied.
14 And then what happened after the shooting, trying to
15 sell the pistol in the parking lot. So those
16 actions, I think, were intending conceal and they
17 are not considered self-defense in my opinion.

18 The State of South Carolina versus Najm Ahmad
19 Thomas, Indictment 2017-GS-44-0845 for assault and
20 battery of a high and aggravated nature, the
21 sentence of the Court is Mr. Thomas is committed to
22 the custody of the South Carolina Department of
23 Corrections for a period of 16 years. He is given
24 credit for 57 days time served.

25 **MR. ANTHONY:** Thank you, Your Honor.

1 (Proceedings conclude at 3:03 p.m.)
2 (Court's Exhibits 2 and 3 are marked for
3 identification.)
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I, the undersigned, Teresa B. Johnson, Official Court Reporter, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Union, South Carolina, on this 22nd day of September 2019.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.



Teresa B. Johnson, CVR-M-CM, RVR, RVR-M
Official Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

County of Union)

Najm Ahmad Thomas, 00377500)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2019-CP-44-222

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lee Correctional Institution
990 Wisacky Highway, Bishopville, SC 29010
2. Name and location of Court which imposed sentence Union County General Sessions
PO Box 703, Union, SC 29379-0703
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2017GS4400845, 3411 Assault/ABHA
(b) _____

FILED FOR RECORD
2019 JUL 15 AM 10:15
CLERK OF COURT
UNION, SC

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 08/23/18 16 years with 57 days credit for time served _____
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No _____
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) I instructed the attorney to appeal but he did not file a timely appeal. _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of trial counsel _____
- (b) Ineffective assistance of trial counsel _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Trial counsel failed to present an adequate defense, failed to object, failed to introduce evid. _____
- (b) Trial counsel failed to timely file a notice of appeal. _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No _____
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No _____
- (d) any other petitions, motions or applications in this or any other Court? No _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

Revised 3/2003

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) PCR is the appropriate remedy
- (b) PCR is the appropriate remedy
- (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? Yes
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
Only on this application for post conviction relief.

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. Michael Demorris Brown
Rainey & Brown, LLC, POB 3282, Spartanburg, SC 28394
 - ii. J. Falkner Wilkes, 114 Whitsett Street, Greenville, SC 29601

 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. General Sessions case

 - ii. This PCR action.

 - iii. _____

Revised 3/2003

19. State clearly the relief you seek in filing this application:

Reversal and granting of a new trial.

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

County of Lee)

VERIFICATION

I, Najm Ahmad Thomas, 00377500, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Najm Thomas
Najm Thomas

SWORN to and subscribed before me this 3
day of July, 2019.

Debra Easterday (L.S.)
Notary Public

My Commission Expires: 3/3/2024

Revised 3/2003

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Najm Ahmad Thomas, 00377500, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Najm Thomas
Applicant

SWORN or affirmed to and subscribed before me this

3 day of July, 2019.

Debra Eastwood
Notary Public

My Commission Expires: 3/3/2020

Revised 3/2003

COUNTY OF UNION
STATE VS.

NAJM AHMAD THOMAS

REDACTEDINDICTMENT/CASE#: 2017-GS-44-0845
A/W: 2016A4410100758
Date of Offense: 08/28/2016
S.C. Code §: 16-03-0029
CDR Code #: 3410

SENTENCE SHEET

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

In disposition of the said indictment comes now the Defendant who was

CONVICTED OF or ☐ PLEADSTO: Assault and Battery of a High and Aggravated NatureIn violation of § 16-3-600(d) of the S.C. Code of Laws, bearing CDR Code # 3410☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or Lewd Act)The charge is ☐ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury (def's initials)The plea is ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

John C. Anthony 7116
John C. Anthony, Deputy Solicitor SC Bar #Najm A. Thomas
Defendant69749
Attorney for Defendant SC Bar #WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
for a determinate term of 16 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which
are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections. credit for 57 days☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Ordered PTUP _____
days/hours Public Service EmploymentObtain GED ☐☐ Set by SCDPPPS _____

Recipient: _____

*Fine _____ \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100⁰⁰

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

§56-5-2995 (DUI Assessment) \$12 \$ _____

§56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 61.6 (Public Def/Prob) \$500 \$ _____

§14-1-212 (Law Enforce Funding) \$25 \$ 25⁰⁰

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

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

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ 375TOTAL \$ 128.75

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,

Proviso §61.6 requires \$500 be paid to Clerk

during probation and shall be collected before

any other fees. Milla

Presiding Judge: _____

Judge Bar ID: _____

Sentence Date: 8/23/18Judge Code: 2761Clerk of Court/Deputy Clerk: Donna OwensCourt Reporter: TERESA JOHNSON

SCCA/217 (07/2016)

STATE OF SOUTH CAROLINA)
COUNTY OF UNION)

INDICTMENT

At a Court of General Sessions, convened on May 11, 2017, the Grand Jurors of Union County present upon their oath:

ATTEMPTED MURDER

That in Union County, South Carolina, on or about August 28, 2016, Najm Ahmad Thomas did, with intent to kill, attempt to kill Elizawon Gray, with malice aforethought, either expressed or implied, by shooting the victim with a handgun, in violation of Section 16-03-0029, 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.


DEPUTY SOLICITOR

ARREST WARRANT

2016A4410100758

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Union

THE STATE
against

Najm Ahmad Thomas

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Union

Personally appeared before me the affiant Russell Vinson

being duly sworn deposes and says that defendant Najm Ahmad Thomas

did within this county and state on or about 8/28/2016

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Union

DESCRIPTION OF OFFENSE: Murder / Attempted Murder

ON, SC

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts.

Did commit the crime of Attempted Murder in that on 8/28/2016 he did shoot Elizawon Gray several times while he is walking on Munro Street in Union County. This being in violation of the S.C. Code of Laws, 1976, as amended in such case made and provided.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Union

Affiant's Address 220 W. Main Street
Union, SC 29379-

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 8/28/2016

defendant Najm Ahmad Thomas

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Union

) as set forth below

DESCRIPTION OF OFFENSE: Murder / Attempted Murder

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 8/29/2016

Signature of Issuing Judge

Jimmy Dean Crocker

Judge Code: 5934

Judge's Address Union County Courthouse

Union, SC 29379-2215

Judge's Telephone (864)429-1648

Issuing Court ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

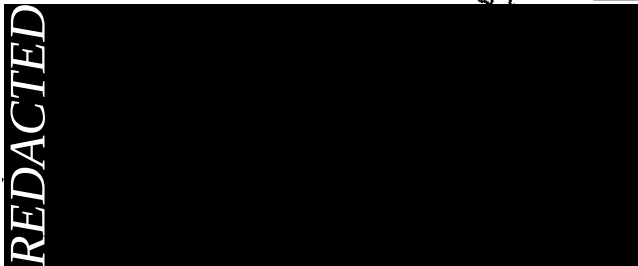
Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

AFFIDAVIT

FILED FOR RECORD

2016 SEP 2 2016-09-21 11:00

CLERK OF COURT



Offense: Murder / Attempted Murder

Offense Code: 3410

Code/Ordinance Sec. 16-03-0029

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be dealt with according to the law

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant Najm Ahmad Thomas

on 8-29-16

E.D. "Spike" Mc Craw

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions

210 W. Main Street

P.O. Box 1003

Union, SC 29379

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

APPENDIX PAGE 578

STATE OF SOUTH CAROLINA)
COUNTY OF UNION)

IN THE GENERAL SESSIONS COURT

16TH JUDICIAL CIRCUIT

NAJM AHMAD THOMAS,)

Defendant,)

V)

STATE OF SOUTH CAROLINA,)

FILED FOR RECORD
2018 SEP 14 PM 4 20
CLERK OF COURT
UNION, SC

**MOTION FOR RELIEF IN SUPPORT OF DEFENDANT'S MOTION
FOR A NEW TRIAL**

COMES NOW, the Petitioner herein, NAJM THOMAS, by and through the undersigned counsel, and moves this Honorable Court to vacate the sentence and conviction heretofore imposed, based upon new information that only became discoverable after trial. RULE 29(a) SCRCrimP ("Except for motions for new trials based on after-discovered evidence, post trial motions shall be made within ten (10) days after the imposition of the sentence.") *State v. Campbell*, 376 212, 216, 656 S.E.2d 371, 373 (2008). Shortly after the defendant was found guilty of ABHAN by a jury in Union County, defense counsel was contacted by the alleged victim in the case. Elizawon Gray, the alleged victim, relayed to counsel that based upon his previous conversation with Assistant Solicitor John Anthony that he did not think that the case involving the defendant would ever go to trial. He specifically stated that the prosecutor was upset with him and said that he (Anthony) was possibly going to have to go forth with or without Mr. Gray. Defense counsel was not informed as to the nature of this conversation prior to the trial. The conversation should have been disclosed prior to the trial and may

7

have contained exculpatory information. Any exculpatory information should have been disclosed that came to the attention of the prosecution, police or any other person or agency associated with the prosecution in this case, until the conclusion of the matter by trial and appeal, as required under the mandate of *Brady vs. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed 2d (1963).

In contacting defense counsel post trial, Mr. Gray stated to defense counsel that his conduct on the evening of the shooting towards Mr. Thomas was like his previous conduct that Mr. Thomas testified about concerning being beaten up by Mr. Gray on a prior occasion. He stated to defense counsel that he was being "aggressive", both in his words and his physical presentation, towards Mr. Thomas just before Mr. Thomas shot him. Mr. Gray said that the result of the trial should have never happened and that he wants to testify to tell what happened. Defense counsel contacted the State immediately to inform Assistant Solicitor John Anthony that the alleged victim had made direct contact with him, unsolicited by defense counsel, concerning this issue. Prior to this case going to trial, the alleged victim indicated both to the State and defense counsel that he did not want to participate in the case. With the exercise of due diligence by defense counsel in seeking out additional witnesses from the scene of the shooting, this new information could not have been discovered before this point in time. The information disclosed to defense counsel after the trial also has impressions that only the alleged victim would be able to rely to a court in the consideration of this motion. In support hereof, the Defendant would state the following:

1. The Defendant was indicted (2017GS4400845) by the Grand Jury for Union County, South Carolina during the May 2018 term. The Defendant was charged with Attempted Murder said to be in violation of S.C. Code § 16-03-0029.

The facts giving rise to the charges brought against the Defendant occurred on August 28, 2016. On that date, the Defendant and the Alleged Victim encountered one another on Munro Street in Union with Elizawon Gray being shot several times. The defendant was later pulled over near the scene of the shooting and was initially charged by the Union County Sheriff's Office with Simple Possession of Marijuana. Subsequently, the Defendant was additionally charged with Attempted Murder while being detained at the Union County Detention Facility.

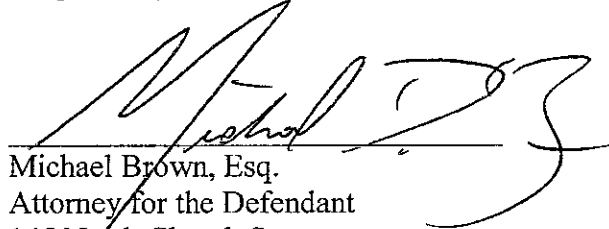
2. The Defendant proceeded to a jury trial in the Union County Court of General Sessions before the Hon. William A. McKinnon (The court had heard during the June 2018 term of General Sessions Court a "Stand Your Ground" Motion). The Defendant's trial started on August 20, 2018. Following the presentation of the state's case, with noted objections placed on the record by the defense regarding various aspects of the state's case, the Defendant testified. No other witnesses were called. The following morning, both sides delivered closing arguments. The jury was presented with two considerations of charges: Attempted Murder and the lesser included offense of ABHAN. The jury returned a verdict of not guilty on Attempted Murder, but guilty on the ABHAN charge.
3. The Petitioner was sentenced on August 24, 2018. The Petitioner received a term of incarceration of sixteenth years.
4. Thereafter, the alleged victim contacted defense counsel. Counsel immediately contacted Assistant Solicitor John Anthony and informed him regarding the contact initiated by the

alleged victim. After confirming that the alleged victim wanted to provide information that had never been disclosed, the Defendant submits that:

- I. The result of the trial would likely have been different if the jury had the benefit of the newly discovered information being shared.
- II. The newly shared information has been discovered since trial.
- III. The information, after due diligence, could not have been discovered before now.
- IV. The new information is material to the issue of guilt or innocence as well as the issue of self defense.
- V. The new information is not merely cumulative or impeaching.
- VI. Any exculpatory information must be disclosed that is now, or has been, or may have come to the attention of the prosecution, police or any other person or agency associated with the prosecution in this case, until the conclusion of this matter by trial and appeal, as required under the mandate of *Brady vs. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed 2d (1963).

WHEREFORE, in consideration of the foregoing, the Defendant respectfully prays that this Court issue an Order vacating the conviction and subsequent sentence imposed in this case based upon the discovery of new information that the defense would argue is exculpatory in nature and should be allowed for a new jury's consideration (if necessary). At a minimum, the Defendant requests an evidentiary hearing on these issues with the appearance of the alleged victim at such hearing.

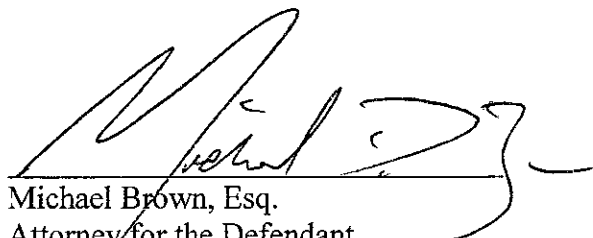
Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael Brown", is written over a horizontal line.

Michael Brown, Esq.
Attorney for the Defendant
145 North Church Street
Suite 210
Spartanburg, South Carolina 29306
Telephone: (864) 573-1003

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Motion has been sent this 14th day of September 2018, by regular United States Mail with sufficient postage affixed thereto to insure delivery thereof to the Solicitor's Office, 210 W. Main Street, Union, South Carolina 29379.



Michael Brown, Esq.
Attorney for the Defendant

FILED FOR RECORD
2018 SEP 14 PM 4 20
CLERK U.S. COURT
UNION, SC

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF UNION	)	SIXTEENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA	)	STATE'S RESPONSE TO NEW
	)	TRIAL MOTION
vs.	)	
	)	2017-GS-44-845
NAJM THOMAS	)	2016A4410100758
DEFENDANT.	)	

FILED FOR RECORD
2018 OCT 5 PM 3:11
CLERK OF COURT
UNION, SOUTH CAROLINA

Comes now the State of South Carolina, by and through Deputy Solicitor John C. Anthony, in response and opposition to the Defendant's Motion for a New Trial Based on After-Discovered Evidence pursuant to Rule 29(b) of the South Carolina Rules of Criminal Procedure.

The Defendant's motion appears to be based on a conversation after the trial that the Defendant's Counsel had with the Victim, Elizawon Gray. Defense Counsel alleges that his conversation with Mr. Gray creates the basis for claiming a Brady violation by the State and the existence of new evidence which would require the Court to grant a new trial. Both of these claims are without merit.

Defense Counsel's motion does not allege that the Victim ever provided the Deputy Solicitor with any information subject to Brady. He makes the contradictory assertion that based on his conversation with the Deputy Solicitor, the Victim thought the case would not go to trial and that the Deputy Solicitor was upset and was going to go forward "with or without" the Victim. Neither of these allegations are exculpatory. Defense Counsel can only speculate that that the conversation "may have contained exculpatory information." (Defense Motion pp. 1-2).

The Victim never provided the Deputy Solicitor with any Brady evidence. The Deputy Solicitor had two brief conversations with the Victim, the last of which was in July, 2017. In neither of those conversations did the Victim advise the Deputy Solicitor of any behavior by him that would support a self-defense claim by the Defendant.

During the investigation, the Victim did disclose to investigators from the Sheriff's Office that he had robbed the Defendant of some marijuana a few months before the shooting. This conversation was documented, and an Investigator's report was provided to Defense Counsel (attachment 1). As the exculpatory evidence which the State did possess was provided to the Defense, no basis exists to grant the Defendant a new trial based on a Brady violation.

At several times during the trial, Defense Counsel referred to an affidavit that had been taken from the Victim at his office (attachment 2). Defense Counsel presented this affidavit to the Deputy Solicitor several months before the trial. During the Stand Your Ground hearing, the Defendant testified that a friend of his named Chris had taken the Victim to Defense

Counsel's office. (Hearing Transcript p. 6 (attachment 3)).

In the affidavit, the Victim references a prior physical altercation with the Defendant, states that it could have influenced the Defendant's thinking on the day of the shooting, and asks that the charges against the Defendant be dismissed. Most importantly, the affidavit states that the Victim had "confronted Najm's [the Defendant's] lawyer of my own free will."

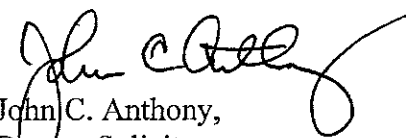
"To prevail on a motion for a new trial based on after-discovered evidence, a defendant must show (1) evidence is such as will probably change the result if a new trial is granted; (2) the evidence has been discovered since the trial; (3) the evidence could not have been discovered prior to trial by the exercise of due diligence; (4) the evidence is material; and (5) the evidence is not merely cumulative or impeaching. The granting of such a motion is not favored and, absent error of law or abuse of discretion, an appellate court will not disturb the trial judge's denial of the motion." State v. Needs, 508 S.E.2d 857, 869 (1998) (citation omitted).

The affidavit taken from the Victim by Defense Counsel plainly indicates that Defense Counsel had spoken to the Victim about the incident. Thus, the contents of the statement by the Victim referenced in the Defendant's New Trial Motion, if not already known to Defense Counsel at the time of the trial, at least could have been discovered prior to trial by the exercise of due diligence. Due diligence will not be found when a Defendant has failed to adequately question a known witness. State v. Prince, 447 S.E.2d 177, 184 (1993) (new trial motion denied when appellant had attempted to speak before trial to the witnesses offering the alleged after-discovered evidence); State v. Kelly, 329 S.E.2d 442, 442-43 (1985) (new trial motion denied when appellant and her investigator had spoken before trial to the witness that appellant claimed provided after-discovered evidence).

As Defense Counsel acknowledges in his Motion, the Victim advised him that he did not want to participate in the case. (Defense Motion p. 2). Thus, it appears that Defense Counsel decided the Defendant would be better served by not calling the Victim and presented his defense accordingly. The law does not allow for a new trial solely because an attorney's strategic choice does not lead to a positive result for his client.

The Defendant's Motion fails to allege a Brady violation. Furthermore, Defense Counsel's contact with the Victim prior to trial negates the applicability of a Motion Based on After-Discovered Evidence. As the Defendant has failed to assert sufficient legal grounds to proceed on his Motion, the State requests that it be summarily denied without further hearing.

Respectfully submitted,


John C. Anthony,
Deputy Solicitor

October 5, 2018

INCIDENT REPORT SUPPLEMENTAL

Page #: 1

Case Number: 2016-002110

Officer: VINSON-R VINSON,

Date Entered/Changed: 05/29/2018

Reviewer:

Review Date:

DETAILED STATEMENT OF INVESTIGATION: On 08/29/2016 I was called to the scene of a shooting on Munro St. by Capt. Mcneil. On arrival I was told to go to the BP station and look at video and try and identify the suspect that was driving a dark color PT Cruiser. I was told by Sgt. Ruby that Mark Johnson was sitting in the parking lot and seen a dark PT Cruiser circle threw. On video, Mark Johnson comes into the parking lot of the BP station at 21:26 and as he is backing into a parking space the dark color PT Cruiser comes threw and leaves the parking lot. Mr. Johnson leaves the store at 21:44. At 21:51 the PT Cruiser pulls up to the gas pumps and Najm Thomas exits the vehicle and goes into the store. Mr. Thomas comes out of the store at 21:54 and goes back to his car. Mr. Thomas stays at his vehicle less than a minute then goes back into the store. Mr. Thomas comes out of the store about a minute later and goes back to his vehicle. When Mr. Thomas gets back to his vehicle, another vehicle pulls up to him and a male identify as Travis Duncan exits the vehicle and gets in with Mr. Thomas and they pull to the side of the store. At 21:55 Mr. Duncan exits Mr. Thomas's vehicle and walks back to his for about a minute and then walks back to Mr. Thomas's vehicle. Mr. Duncan stays about a minute and then goes back to his vehicle and leaves.

On 08/29/2016 at 04:20 AM Special Agent Spike McCraw and I went to the 616 Browns Creek Rd. and spoke with Travis Duncan. Mr. Duncan gave a written statement saying that he seen Najm Thomas at the BP station and he asked him to get into his vehicle so he could show him something. Mr. Duncan stated that they pulled to the side of the building, and Mr. Thomas pulled out a gun from the glove box and asked him if he want to buy it for \$250. Mr. Duncan stated that he gave the gun back to Mr. Thomas and told him he didn't have the money to buy it. Mr. Duncan stated that Mr. Thomas put the gun back in the behind the glove box. Mr. Duncan stated that Mr. Thomas asked him to ride with him but he told him that he wouldn't have a ride home. Mr. Duncan stated that he got out and walked back to his vehicle and acted like he was asking his sister would she come and pick him up. Mr. Duncan stated that he went back to Mr. Thomas's vehicle and told him that his sister wouldn't come back to get him and then he left. I called Sgt. Ruby and advised him to ask sled to look behind the glove box for the gun.

On 08/29/2016 at 12:34 PM Special Agent McCraw and I went to the jail to speak with Mr. Thomas. Mr. Thomas advised us that he would like to speak to his mother before he would talk to us.

On 08/29/2016- Investigator Jermaine Smith and I went to Spartanburg Regional to speak to the victim, Malik Gray. We asked Mr. Gray why Mr. Thomas would have shot him and he stated that he had robbed him of some marijuana a few months back. Mr. Gray stated that he and Mr. Thomas had some altercations in the pass but nothing to make him believe that he would shoot him.

On 08/29/2016- A warrant was signed on Mr. Thomas for Attempted Murder.

On 08/30/2016- Special Agent McCraw and I went to Mr. Thomas's residence to speak to his girlfriend Raven Holder. Ms. Holder voluntarily agreed to talk with us but didn't give us a written statement. Ms. Holder stated that a couple of months before the shooting she noticed Najm was repairing the PT Cruise and painting it black. Ms. holder stated that she noticed there was bullet holes in the vehicle and when she asked him about it, he said that someone shot it up. Ms. Holder stated that around December 2015 or January 2016, Mr. Najm came home with black eye and a busted lip and when asked he said that he had been jumped. Ms. Holder stated that after that about once a month Najm would come home with some injuries and he stated that Mr. Gray and some friend would beat, pistol whip, and rob him. Ms. Holder stated that Najm never told her what he was robbed of but she thinks it was drugs or money. Ms. holder stated that it was the same guys but Mr. Gray was the main one and he had warned them to leave him alone. Ms. Holder stated that she knew Najm sold Marijuana and that he had a gun and started to carrying it in the vehicle after it was shot up.

09/01/2016- I was unable to get a copy of the BP station's video. The manger stated that the system had crashed and all of the video was lost.

STATE OF SOUTH CAROLINA
COUNTY OF UNION

) IN THE COURT OF GENERAL SESSIONS

FILED 8-7-2018

THE STATE,

2018 NOV 5 AM 11 03

vs.

CLERK OF COURT
UNION, SC

Indictment No.: 2017-GS-44-00845

NAJM THOMAS,

Defendant.

)
) **ORDER DENYING DEFENDANT'S POST-
) TRIAL MOTIONS.**
)

Presiding Judge:	William A. McKinnon
Date of Hearing:	October 26, 2018
Assistant Solicitor:	John C. Anthony
Defendant's Attorney:	Michael D. Brown
Court Reporter:	Aileen Butler

This matter came before the court on October 26, 2018 on Defendant's Motion for New Trial and Defendant's Motion to Reconsider his Sentence. At the hearing, Defendant made an oral motion to continue his post-trial motions, which the court denied.

Defendant argued two separate grounds for a new trial: (1) based on an alleged *Brady* violation, and (2) based on after-discovered evidence. Defendant then argued the motion to reconsider his sentence. The court considered written memorandum, oral argument, and listened to a recorded jail phone call made by Defendant on August 24, 2018. The court DENIES all of Defendant's post-trial motions as follows.

PROCEDURAL HISTORY

Defendant was tried for attempted murder in Union County during the week of August 20, 2018. The jury rendered a not guilty verdict on Attempted Murder; but returned a verdict of guilty on the lesser included offense of Assault and Battery of a High and Aggravated Nature. The court sentenced Defendant to sixteen (16) years in prison on August 23, 2018. Defendant

Wm

filed his post-trial motions with the Union County Clerk of Court on September 14, 2018. The State filed its response on October 5, 2018.

DISCUSSION

I. Motion For New Trial

1. Defendant failed to establish a Brady Violation.

A *Brady* claim is based upon the requirement of due process. Such a claim is complete if the accused can demonstrate (1) the [undisclosed] evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment. Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). This rule applies to impeachment evidence as well as exculpatory evidence. *Id.*

Defendant failed to establish the existence of any exculpatory or impeachment evidence that was not disclosed prior to this trial. In his written motion, Defendant states the victim of the shooting, Elizawon Gray, contacted him after the trial and stated “he did not think that the case involving [Thomas] would ever go to trial” and that “the prosecutor was upset with him” and “[the prosecutor] was possibly going to have to go forth with or without Mr. Gray.” Defendant’s Motion, p. 1.

None of these alleged statements constitute evidence favorable to the accused. The fact victim Gray did not wish to cooperate with the Solicitor’s Office was well known by Defendant Thomas prior to trial, as he admits in his written motion (“Prior to this case going to trial, the alleged victim indicated both to the State and defense counsel that he did not want to participate in the case.” Defendant’s Motion at 2.) Accordingly, the court denies Defendant’s request for a new trial based on the alleged *Brady* violation.



State of South Carolina
The Circuit Court of the Sixteenth Judicial Circuit

William A. McKinnon
Judge

Moss Justice Center, 2nd Floor
1675-1H York Highway
York, SC 29745-7495
Phone: (803) 628-3047
Fax: (803) 628-3055
wmckinnonj@sccourts.org

October 31, 2018

The Honorable Melanie Lawson
Clerk of Court
P.O. Box 703
Union, SC 29379

Re: State of South Carolina vs. Najm Thomas
Indictment No.: 2017-GS-44-00845

Dear Ms. Lawson:

Enclosed please find Order in the above matter. Please file and forward a clocked copy to counsel.

Thanking you, I am

Sincerely,

Frances J. Kirkman
Administrative Assistant to the
Honorable William A. McKinnon

Enclosures

State of South Carolina	)	IN THE COURT OF COMMON PLEAS
County of Union	)	
	)	2019-CP-44-222
Najm Ahmad Thomas, 00377500,	)	
Applicant,	)	(Statement to Make More Definite and Certain)
v.	)	
State of South Carolina,	)	
Respondent.	)	

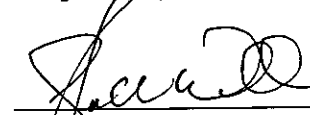
NOW INTO COURT COMES THE APPLICANT, who respectfully responds to the State's Motion to Make More Definite and Certain with the following:

- 10) a) Ineffective assistance of trial counsel.
- b) Failure of the prosecution to disclose all relevant information relating to the alleged victim's reluctance or refusal to testify, including any information it may have had relating to the prior armed robbery of the defendant by the alleged victim and the attempt to rob the defendant again which gave rise to the shooting of the alleged victim.* [Claiming work product privilege the state has refused to provide relevant information pursuant to Applicant's subpoena duces tecum].
- 11) Trial counsel failed to present an adequate defense, failed to object, failed to introduce evidence.
 - a) Trial counsel failed to discover or investigate the potential reasons behind the alleged victim's reluctance to testify and his absence at trial;
 - b) Trial counsel failed to subpoena the alleged victim to provide exculpatory evidence for the "stand your ground" hearing held in June of 2018 prior to the August 2018 trial;
 - c) Trial counsel failed to subpoena the alleged victim for trial to provide exculpatory evidence relating to the alleged victim's prior armed robbery of the defendant and his attempt to rob the defendant on the date of the incident. Evidence which would have established a defense of self-defense and applicability of the stand your ground law which would exempt the defendant from prosecution
 - d) Trial counsel failed to subpoena the alleged victim to the Rule 59 hearing to allow his testimony to be heard by the court and to move for a continuance of the hearing upon discovering that the alleged victim was not in court to testify when the hearing was called by the clerk;
 - e) Trial counsel further failed to call the prosecutor as a witness at the Rule 59 hearing to present evidence relevant to the prosecution's interactions with the alleged victim including whether the state had the alleged victim under subpoena for the trial, whether the prosecution released the alleged victim from subpoena prior to trial, whether the prosecution was aware that the alleged victim was

reluctant to testify, and if so, why, whether the alleged victim had disclosed to the prosecution the facts surrounding the alleged victim's prior armed robbery of the defendant or that he was attempting to rob the defendant again on the date of the incident, whether the prosecution had any information that would be subject to disclosure to the defense under Brady, Rule 5 or other applicable law or rule, whether the state made full disclosure of any such information and when, whether the state had reason to believe that the alleged victim might not appear for court or might not testify favorably to the state's theory of the case and if so, whether the state fully disclosed that information or belief to the defense in a timely manner.

- f) Trial counsel failed to file a notice of appeal to preserve issues for direct appeal:
 - i) Court's error in admitting evidence of an alleged "confession" (Rule 803);
 - ii) Court's error in failing to direct a verdict;
 - iii) Admission of inadmissible hearsay attributed to alleged victim;
 - iv) Improper closing argument by the prosecutor;
 - iv) Court's error in proceeding with Rule 59 hearing without the presence of the alleged victim.
- 3) That the prosecution (including law enforcement) failed to timely and fully disclose all discoverable information to the defense relating to the alleged victim's reluctance or refusal to cooperate with the prosecution.* [Applicant has served a subpoena on the solicitor for the production of documents and information relating to the prosecution's knowledge of the alleged victim's reluctance to testify, potential refusal to appear or cooperate with the prosecution and any knowledge on the part of the prosecution as to the basis of the alleged victim's position. The state has refused to respond with any information under the subpoena duces tecum and has, on the eve of trial, filed a motion to quash claiming "work product" privilege].

Respectfully submitted,



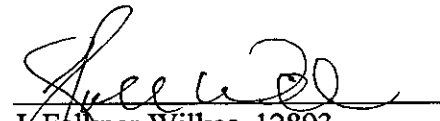
J. Falkner Wilkes, 12893
114 Whitsett Street
Greenville, SC 29601
(864) 421-4618
jfalcknerwilkes@gmail.com
Counsel for Applicant

August 15, 2022.

State of South Carolina	)	IN THE COURT OF COMMON PLEAS
County of Union	)	
	)	2019-CP-44-222
Najm Ahmad Thomas, 00377500,	)	
Applicant,	)	(Certificate of Service)
v.	)	
State of South Carolina,	)	
Respondent.	)	

I certify that I have served the Applicant's Statement to Make More Definite and Certain on the State by delivering a copy via AIS email and U.S. Mail to Zachary Jones, Assist. Atty. Gen. at: ZacharyJones@scag.gov.

Respectfully submitted,


 J. Falkner Wilkes, 12893
 114 Whitsett Street
 Greenville, SC 29601
 (864) 421-4618
 jfalknerwilkes@gmail.com
 Counsel for Applicant

August 15, 2022.

To:
 Clerk of Court - Union County
 Melanie Lawson
 PO Box 703
 Union, SC 29379-0703

c:
 Zachary Jones, Asst. Atty. Gen.