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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Georgetown County

Honorable Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ERYK J. SMITH,

APPELLANT

APPELLATE CASE NO. 2022-000723

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1 STATE OF SOUTH CAROLINA) Court of General Sessions
2)
3 State of South Carolina) Fifteenth Judicial Circuit
4 Plaintiff,) Case No. 2019-GS-22-00777,
5 vs.) 2019-GS-22-00778 &
6 Eryk J'Von Smith,) 2019-GS-22-00779
7 Defendant.) Transcript of Record
8
9 -----

10 May 17-20, 2022

11 Georgetown County, South Carolina

12 B E F O R E:

13 The Honorable Benjamin H. Culbertson, Presiding Judge,
14 and a jury
15

16 APPEARANCES:

17 Alicia Richardson, Esquire
18 Elizabeth Smith, Esquire
19 For the State.

20 Ralph Wilson, Jr., Esquire
21 Lauren Anderson, Esquire
22 For the Defendant.

23 Official Court Reporter
24 Julie Kevish
25

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
D-A	Statement	132	(not admitted)

1 (Whereupon proceedings convened Tuesday, May 17, 2022)

2 THE COURT: Where is this alleged to have occurred?

3 MS. SMITH: The Francis Marion Store on 701 right
4 here in Georgetown County.

5 MS. RICHARDSON: At the corner of 701 and 51.

6 THE COURT: Is it alleged to have happened in the
7 store or right there outside of the --

8 MS. RICHARDSON: Outside of the store.

9 THE COURT: What is the attempted murder? What are
10 ya'll saying he did?

11 MS. RICHARDSON: Shot the victim.

12 THE COURT: Shot the victim?

13 MS. RICHARDSON: Yes.

14 THE COURT: With a handgun?

15 MS. RICHARDSON: With a handgun.

16 THE COURT: Okay. Is the defendant here?

17 MR. WILSON: Almost, Judge.

18 MS. RICHARDSON: We have some security concerns we'd
19 like to address, we can do it now or when he comes in.

20 THE COURT: Let's wait until he comes in so we can
21 put everything on the record. I was just asking these
22 questions so that when I voir dire with the jury panel I could
23 tell them what the allegations were.

24 Ms. Richardson, you said you had something before the
25 jury comes in?

1 MS. RICHARDSON: We're aware that some of the
2 Defendant's friends or family were photographing or videoing
3 witnesses in the courtroom in this case. We believe some of
4 that was posted on Facebook last night. This morning when I
5 arrived there was a family member who appeared to be doing some
6 sort of live broadcast, something similar to Facebook Live
7 outside of the courtroom. The State is concerned about
8 security that witnesses or participants are being photographed
9 and that could be placed on social media, also, that would of
10 course be a concern when the jury comes in.

11 THE COURT: I mean, I could prohibit any photographs
12 or anything of that nature in the courthouse. Once you're
13 outside the courthouse there's not a whole lot I can do.

14 MS. RICHARDSON: This occurred, from my
15 understanding, either in the courtroom or outside the courtroom
16 yesterday and then today it was just outside of these doors,
17 the doors to the courtroom.

18 THE COURT: What do you want me to do?

19 MS. RICHARDSON: To admonish and make sure everyone
20 knows that it's not allowed, to do any of the recording while
21 they're inside the courthouse, any videos, photographs or
22 recordings.

23 THE COURT: Well, let's go ahead and make sure
24 courthouse security knows, no photographs, no recordings, no
25 videos of anybody anywhere in the courthouse here in the trial

1 of the case.

2 THE DEPUTY: Yes, sir.

3 THE COURT: So I don't know who you all need to
4 notify, just make sure all of courthouse security knows that so
5 if they see it going on they can tell the people, take the
6 phones or do whatever, okay?

7 THE DEPUTY: Yes, sir.

8 THE COURT: Anything else we need to do?

9 MS. RICHARDSON: Not from the State, Your Honor.

10 THE COURT: Anything else from the State before we
11 bring the jury in?

12 MS. RICHARDSON: No, Your Honor. There may be some
13 motions. Defense handed me some motions yesterday. The
14 State's going to have a couple of motions, but if you want to
15 just go head and pick the jury and then we would need a few
16 minutes to set up the computers and technology and that sort of
17 thing. I just didn't want to set up anything before the jury
18 walked through.

19 THE COURT: Anything from the defense we need to
20 bring up before we bring the jury in?

21 MS. ANDERSON: Nothing before we bring the jury in,
22 there are some pre-trial motions that we did file before when
23 this case was up in November and then the ones we did give Ms.
24 Richardson yesterday.

25 THE COURT: Okay. So I guess we'll bring the jury

1 in, pick the jury, and then how long are these pre-trial
2 motions going to take? I guess what I'm saying is, do we cut
3 the jury loose until this afternoon or do we just have them sit
4 in the jury room, or what are we going to do while we address
5 the pre-trial motions?

6 MS. RICHARDSON: The State's motion's short, I don't
7 know how long the defense will be.

8 MS. ANDERSON: I don't believe they should take too
9 terribly long, Your Honor.

10 THE COURT: Alright, let's go ahead and bring the
11 jury panel in. I'll need a witness list. Does the defense
12 have anything in addition?

13 MS. ANDERSON: Your Honor, if I may approach with our
14 proposed witness list as well?

15 THE COURT: That would be fine. Thank you.

16 (Potential jury entered the courtroom.)

17 THE COURT: Have we got everybody in? Good morning,
18 ladies and gentlemen. First of all, I want to thank you for
19 being prompt and being here on time this morning, that's great
20 assistance for the Court. Number two, I want to apologize for
21 keeping you out in the waiting area for so long, but we did
22 have some matters we needed to address and scheduling we needed
23 to do, so that was unavoidable, I appreciate your patience and
24 I thank you for that.

25 Now, we are getting ready to start the trial of the

1 case of the State of South Carolina versus Eryk J'Von Smith,
2 but I have some questions to go over with you. All of you have
3 been qualified to serve as jurors for this term of general
4 sessions court. The next series of questions I have to go over
5 with you is referred to as Voir Dire questions. That is to
6 determine whether or not you're qualified to serve as jurors on
7 this particular case, and it also gives the attorneys some
8 additional information that assists them in the jury selection
9 process. As I told you during jury qualifications, jurors,
10 just like witnesses, are constantly taking oaths, so if I could
11 please get all members of the jury panel to stand and raise
12 your right hand.

13 (Potential jury panel sworn.)

14 (Voir Dire)

15 THE COURT: Is there any member of the jury panel
16 that did not respond to the oath by saying I do? If so, please
17 stand. Thank you very much. As I said, we're getting ready to
18 start the trial of the case of the State of South Carolina
19 versus Eryk J'Von Smith.

20 MS. RICHARDSON: Your Honor, may I approach?

21 THE COURT: Yes.

22 (Discussion was held off the record at the bench with
23 Court and counsel.)

24 THE COURT: Ladies and gentlemen, I understand we
25 have a juror that just came in so we're going to have to start

1 panel jury. The rest of you are at liberty to sit in whatever
2 seat you like. If you want to sit in the same seat throughout
3 the trial of the case, you can do that, if you want to
4 alternate seats, you can do that, as well. The only
5 restriction is that the foreperson occupies the first seat on
6 the front row and the alternates occupy the alternate seats.
7 I'm going to excuse you back to the jury room for just a few
8 minutes while I excuse the remainder of the jury panel. If you
9 can select a foreperson, like I said, write his or her name on
10 a sheet of paper with the jury number and give it to the
11 Bailiff and we'll bring you back into the courtroom at that
12 time. Thank you very much.

13 (Jury exited the courtroom.)

14 Any challenges to the selection or constitution of
15 the jury by the State?

16 MS. RICHARDSON: No, Your Honor.

17 THE COURT: Any by the defense?

18 MS. ANDERSON: No, Your Honor.

19 THE COURT: Ladies and gentlemen, those of you who
20 remain in the jury panel, we have our jury for this first case
21 so I'm going to excuse you for the remainder of the day. You
22 need to call that number to the Clerk of Court's Office after
23 6:00 p.m. today, and that will give you some further directions
24 as to when you need to return or if you need to return. Again,
25 I want to thank you for your service, the fact that you're

1 here, it has already been a great assistance to the Court and I
2 want to thank you for that service. Please call that number
3 after 6:00 p.m. today and you're free to go for the remainder
4 of today. Thank you very much.

5 I understand we have some pre-trial motions. Do you
6 want to go ahead and address those now?

7 MS. RICHARDSON: Can we have a short restroom break?

8 THE COURT: Let's take about a ten-minute break and
9 then we'll come back and get started.

10 (Recess taken.)

11 THE COURT: You all know the timing better than I do.
12 I understand the jury selected a foreperson, do we want to
13 bring them in and cut them loose for lunch and then address the
14 motions?

15 MS. RICHARDSON: Yes, Your Honor, but first of all, I
16 want to address one issue that's come to my attention regarding
17 the jury.

18 THE COURT: Alright.

19 MS. RICHARDSON: I was advised during the break that
20 Juror Number 220, Jesse Tompkins, is dating the daughter of one
21 of our administrative assistants downstairs. So I don't know
22 if that means -- because it was more about employees in our
23 office, but I just wanted to bring that to everyone's
24 attention.

25 THE COURT: Well, yeah, I think I asked is anybody in

1 their family close personal -- well, that would be a close
2 personal friend.

3 MS. RICHARDSON: He doesn't date our employee, but
4 our employee's daughter. Do you see what I mean, so it's a
5 little --

6 THE COURT: A little bit different. Okay. Do we
7 want to question her?

8 MS. ANDERSON: Your Honor, we ask that they be
9 excused. They didn't disclose that for starters, and we think
10 that's a close personal relationship. I mean, they're still
11 dating the daughter of an employee within the Solicitor's
12 Office.

13 THE COURT: Well, no, it's not an employee of the
14 Solicitor's Office, so I don't know -- do you object to
15 excusing him or do you want me to just question him?

16 MS. RICHARDSON: I'd ask that you question him, Your
17 Honor.

18 THE COURT: And what is the employee's name?

19 MS. RICHARDSON: Marsha Conner.

20 THE COURT: Do we know who they have selected as a
21 foreperson yet? Alright. They have selected Juror Number 38,
22 Kimberly Coles, as foreperson. Let's bring Mr. Tompkins out.
23 Juror 220, bring him out. I'm going to go ahead and mark this
24 as Court's Exhibit No. 1.

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

1 Mr. Tompkins, how are you doing? I don't want you to
2 think you did anything improper or wrong, I just didn't ask the
3 question during Voir Dire, but I understand that you date the
4 daughter of someone employed in the Solicitor's Office?

5 THE JUROR: Yes, sir.

6 THE COURT: Would the fact that you date the daughter
7 of someone employed with the Solicitor's Office affect your
8 ability to give the defendant in this case a fair and impartial
9 trial?

10 THE JUROR: No, sir.

11 THE COURT: Would it affect your ability to give the
12 State a fair and impartial trial?

13 THE JUROR: No, sir.

14 THE COURT: Could you disregard that association in
15 its entirety and base your decision in this case exclusively on
16 the testimony and evidence in this case?

17 THE JUROR: Yes, sir.

18 THE COURT: Thank you for bringing that to our
19 attention. You can go back in the jury room. Does anybody
20 want to put a motion on the record?

21 MS. ANDERSON: Your Honor, I would still to move to
22 dismiss him and excuse him as a juror, Your Honor. I would
23 object him sitting as a juror. That knowledge of his
24 relationship with the daughter of an employee of the
25 Solicitor's Office would have absolutely influenced our

1 position to seat him as a juror.

2 THE COURT: What's the State's position?

3 MS. RICHARDSON: Your Honor, I'll leave that in the
4 Court's discretion.

5 THE COURT: Well, they did have preemptive challenges
6 left, and if they are saying that would have exercised one of
7 those had they known that then I am going to go ahead and I'll
8 excuse Mr. Tompkins. Who do we want to draw the alternate?
9 Let the Clerk just reach in and pull out. Juror Number 148,
10 Kirk D. Mills will be the alternate. Let's bring Mr. Tompkins
11 back in real quick.

12 Mr. Tompkins, don't take anything personal by this,
13 but I'm going to excuse you from this particular case. I want
14 to thank you. You've been given that phone number, you'll need
15 to call that number after 6:00 p.m. today.

16 THE JUROR: Okay.

17 THE COURT: Do you have anything in the jury room?

18 THE JUROR: No, sir.

19 THE COURT: Okay. Well, you're free to go for the
20 remainder of the day, and please call that number after 6:00
21 p.m.

22 THE JUROR: Thank you very much.

23 THE COURT: Thank you. Anything from the State
24 before we bring the jury in and let them go to lunch?

25 MS. RICHARDSON: No, Your Honor.

1 THE COURT: Anything from the defense?

2 MS. ANDERSON: No, Your Honor.

3 THE COURT: Let's bring the jury in.

4 (Jury entered the courtroom.)

5 THE COURT: Ladies and gentlemen, welcome back. I
6 understand, Ms. Coles, you've been selected as Foreperson; is
7 that correct?

8 THE FOREPERSON: Yes, sir.

9 THE COURT: Thank you very much for serving in that
10 capacity. You will always occupy the seat where you now sit.
11 Now, during the break I have excused one of the jurors, and by
12 random draw, Mr. Mills, you are now part of the 12 panel jury.
13 So you no longer have to occupy that alternate seat if you wish
14 to sit with the other jurors, okay? But other than that, as I
15 said, the alternate still occupies the alternate seat, the
16 Foreperson occupies the first seat on the front row, the rest
17 of you are at liberty to sit at whatever seat you like, whether
18 it be the same seat, alternate, or just which ever you prefer.
19 Now, we're getting ready to start the trial of this case, but
20 we have a few more things we need to address before we get to
21 the testimony and things of that nature, so given the time of
22 day, I'm going to go ahead and excuse you to lunch and let you
23 go to lunch on your own. I'm going to ask you to please be
24 back at 2:00 this afternoon and we'll get started. That will
25 give us plenty of time to get witnesses scheduled, get them

1 here and get everything in line so that we can go ahead and go
2 straight through with, hopefully, no further breaks. Okay? So
3 I hope you have a good lunch. I'm going to ask that you please
4 be back at 2:00, and I caution you, do not discuss the case
5 with anyone. Do not discuss it among yourselves, it's too
6 early for deliberations. Don't conduct any independent
7 investigations, don't go looking on the internet or through the
8 newspaper or anything of that nature to try and find out
9 anything about the case. Everything you need to make a
10 decision in this case will be presented to you during the
11 trial, so don't conduct any investigations, don't talk to
12 anybody, don't do any research. I hope you have a good lunch
13 and we'll see you back at 2:00. Thank you very much.

14 (Lunch Recess taken.)

15 THE COURT: Anything from the State?

16 MS. RICHARDSON: Your Honor, as you know, yesterday
17 the defendant had initially agreed to plead guilty. At that
18 point, Your Honor, we were trying to handle the remainder of
19 the docket. Two of the testifying co-defendants, we began
20 negotiations regarding their charges in anticipation that they
21 would not be testifying. I'd ask based on the posture on the
22 way that occurred that those negotiations be excluded from
23 being brought up in this case because they were after
24 negotiations had been reached regarding the guilty plea.

25 THE COURT: So the negotiations with these

1 co-defendants were prefaced upon this defendant pleading guilty
2 and their testimony not being needed; is that correct?

3 MS. RICHARDSON: Correct, Your Honor. Now, before,
4 and I disclosed this to the State, before he had signed a
5 notice to plead guilty there was a negotiation with one of the
6 defendants, Mr. Jed Coleman. The offer was that his
7 recommended sentence would be no higher than what we had
8 offered Mr. Smith, and that obviously we would take into
9 consideration any cooperation that he had given with Ms.
10 Gamble. She has a lot of other charges pending and her offer
11 was just that we would consider the extent of her testimony and
12 cooperation and make any recommendations, but there was no
13 point blank recommendation or number given prior to that.

14 THE COURT: What's the defendant's position?

15 MR. WILSON: Judge, we don't object to not
16 discussing, obviously, the negotiations yesterday. Obviously,
17 we would object to any determination of the Court, Judge, that
18 it would be improper for us to talk about negotiations that we
19 know about from the evidence, but we have no intent on
20 discussing what the State did yesterday, but they promised
21 quite a bit to a lot of these other witnesses, including made
22 promises to the alleged victim, made promises to the two
23 primary witnesses, as well, so we want to go into that, as
24 well.

25 THE COURT: Well, when you said, "promises" --

1 MR. WILSON: Yes.

2 THE COURT: I mean, what --

3 MS. RICHARDSON: That was just, and I believe what
4 he's probably addressing there is law enforcement advised all
5 the parties when they were interviewing, because it was a drug
6 deal that was going on before the shooting occurred, that they
7 were not investigating or looking to charge anybody in the drug
8 deal, and did not, not even the defendants or the victims.

9 THE COURT: So you're not objecting to that?

10 MS. RICHARDSON: I think they could bring it in but
11 it also is going to come in that they also did that with the
12 defendants, as well, not this defendant but the other two.

13 THE COURT: But all of that occurred prior to when
14 they still thought that the defendant was going to trial?

15 MS. RICHARDSON: That occurred the first night, the
16 first night, and it was reiterated when we did talk with the
17 victim, but that was the whole time.

18 THE COURT: So that's admissible.

19 MR. WILSON: That's right, Judge, but now there were
20 also conversations that were had by Mr. Brown and the Solicitor
21 on tape where they proffered the statements literally two or
22 three days before trial, last week that I'm talking about, as
23 well, if you want to bring that in as well. Now, whatever
24 discussions they had yesterday about plea deals, I don't even
25 know what plea deals they had, but if they had them I don't

1 know anything about it. We're not going to ask about those
2 plea deals. Amounts of time, that's not going to come up in
3 our cross-examination, Judge.

4 THE COURT: I'll grant your motion to suppress any
5 negotiations or promises that were made yesterday.

6 MS. RICHARDSON: Thank you, Your Honor.

7 MR. WILSON: Thank you, Your Honor.

8 THE COURT: Anything further from the State?

9 MS. RICHARDSON: Yes, Your Honor. We did receive a
10 defense list today that has some witnesses that are not on our
11 list. We would ask that Mr. Wilson's office provide date of
12 birth and Social Security numbers for those witnesses so that
13 we can do a criminal background check on them, and we don't
14 need it for the professional witnesses, he has a doctor on
15 there, and obviously one of our employees or law enforcement,
16 but just for the lay witnesses we would need that information.
17 We had provided NCIC information for the lay witnesses we
18 anticipate testifying as well.

19 THE COURT: What's the defense position on that?

20 MS. ANDERSON: Your Honor, we don't have that right
21 this instant, but we can certainly get it for the State.

22 THE COURT: What do you need, dates of birth and
23 what?

24 MS. RICHARDSON: And Social Security numbers for
25 those witnesses.

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1 THE COURT: Can you give me the names of the
2 witnesses you want?

3 MS. RICHARDSON: Dequanda Simmons, Kayshayla Beckmon,
4 but I may have her information, although she had some pending
5 charges, I think, Ellen Henry, Jayme Dela Cruz.

6 MS. ANDERSON: Jayme Dela Cruz is an officer, I
7 believe in Georgetown.

8 MS. RICHARDSON: Oh, with the City.

9 MS. ANDERSON: Yes, ma'am.

10 THE COURT: So it would just be Dequanda Simmons,
11 Kayshayla Beckmon, if we don't have that, and Ellen Henry.
12 Alright, you can get those for them?

13 MS. ANDERSON: Yes, Your Honor.

14 THE COURT: I'll grant that motion. Anything else
15 from the State?

16 MS. RICHARDSON: No, Your Honor.

17 THE COURT: Any pre-trial motions from the defense?

18 MS. ANDERSON: Yes, Your Honor.

19 THE COURT: Let me hear from you.

20 MS. ANDERSON: Your Honor, we did file a motion for
21 in camera hearing regarding testimony of Joshua Miller. We are
22 withdrawing that motion, we don't need to move forward on that
23 one.

24 THE COURT: Who was the witness?

25 MS. ANDERSON: Joshua Miller.

1 THE COURT: What else?

2 MS. ANDERSON: We've got a motion seeking the
3 exclusion of a gun that was brought back to South Carolina from
4 Arizona. We're seeking the exclusion of that gun. It was
5 tested by SLED. It's not the gun that was used in this
6 incidence. There's no relevance to this case in regards to
7 that gun and the bias -- there's no probative value here in
8 this case, Your Honor. It would unduly prejudice our client if
9 it was brought into this case.

10 THE COURT: What's the State's position on that?

11 MS. RICHARDSON: Your Honor, we agree, we'd not be
12 seeking to bring that up in our case in chief, however, if they
13 open the door during cross-examination or during their case and
14 make it relevant, we would bring that to the Court's attention
15 at that time.

16 THE COURT: I'll grant the Motion to Suppress the
17 introduction of the gun brought back from Arizona, unless the
18 door is opened by defense. Anything else?

19 MS. ANDERSON: There were also some bullets recovered
20 in Arizona. Our position would be the same in that case.

21 MS. RICHARDSON: State's position is the same on
22 that, Your Honor.

23 THE COURT: I'll grant that motion, unless the door
24 is opened.

25 MS. ANDERSON: Your Honor, we're also asking to

1 sequester the witnesses. There is a lot of inconsistent
2 statements that have been made by these witnesses. There is a
3 lot of continued inconsistent statements and a lot of close
4 relationships with a lot of these witnesses and so we believe
5 that if the witnesses are allowed to hear the testimony of
6 other witnesses that could bolster the continued
7 inconsistencies and changing of statements.

8 THE COURT: I typically do grant that. As I
9 understand, the defendant, the victim and the lead investigator
10 can be in the courtroom.

11 MS. RICHARDSON: Your Honor, we have an unusual
12 situation here, as well. Officer McConnell is on our witness
13 list and is anticipated to testify. He is now with courthouse
14 security. He is one of the officers providing security in the
15 courtroom today. Given the issues that we had yesterday, I
16 would ask that he be allowed to remain in the courtroom. I
17 think Your Honor does have the discretion to make those
18 exceptions, and that is for security purposes.

19 THE COURT: First of all, who is the lead
20 investigator?

21 MS. RICHARDSON: Melvyn Garrett, and the victim,
22 Joshua Miller.

23 MS. ANDERSON: Your Honor, we would be objecting to
24 the victim staying in the courtroom.

25 THE COURT: Well, I think the law is the victim can

1 be in the courtroom.

2 MS. ANDERSON: He has just also made some
3 inconsistent statements and changed his statement.

4 THE COURT: Give me something that gives me the
5 authority to exclude him from the courtroom because I
6 understand the rules are lead investigator, victim and
7 defendant are allowed in the courtroom. Unless you can find me
8 something that at least gives me the discretion to make the
9 decision, I don't know that I can.

10 MS. ANDERSON: I understand, Your Honor. We would
11 just stand our objection to him remaining in the courtroom.

12 THE COURT: What's your position on Officer McConnell
13 being in the courtroom?

14 MS. ANDERSON: Your Honor, we don't object to him
15 remaining in the courtroom.

16 THE COURT: I'm going to grant the motion, however,
17 Melvyn Garrett is the lead investigator, Officer McConnell is
18 courthouse security, Joshua Miller is the victim, and the
19 defendant will not be sequestered. They can be in the
20 courtroom. I'm denying your motion to sequester Joshua Miller,
21 however, if over lunch you find some legal authority that says
22 he's to be excluded then we'll do that, but I've just always
23 been of the impression that lead investigator, defendant and
24 victims can be in the courtroom and not subject to
25 sequestration.

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1 MS. RICHARDSON: And Your Honor, since the defense is
2 providing a witness list, we'd ask that this apply to them as
3 well. I don't know all the parties that are present in the
4 courtroom.

5 THE COURT: Yes, anybody that's testifying except for
6 those four that I called out will be sequestered. Okay?

7 MS. ANDERSON: Yes, Your Honor.

8 THE COURT: Are any of those witnesses in the
9 courtroom now?

10 MS. ANDERSON: I don't believe so, Your Honor, no.

11 THE COURT: Anything else from defense?

12 MS. ANDERSON: Yes, Your Honor. We also have a
13 motion, Your Honor, asking Your Honor to basically prevent the
14 State from eliciting any testimony intended to inflame the
15 passions of the jury. Your Honor, the State has on their
16 witness list a Ms. Carol Teal and a Ms. Candace Adams. Those
17 are alleged are the victim's mother -- the alleged victim's
18 mother, and grandmother. They were not present at the time.
19 Obviously, we do not know what testimony they intend to obtain
20 from them, but we would ask that you basically admonish the
21 statement and advise them not to be eliciting any testimony
22 from them with the purposes of using that testimony to inflame
23 the passions of the jury.

24 THE COURT: Well, not knowing what they are going to
25 testify to I can't grant your motion, but I agree, there's

1 going to have to be relevancy to their testimony other than
2 just to inflame the passions of the jury. Okay?

3 MS. ANDERSON: Yes, Your Honor.

4 THE COURT: So we'll have to deal with that as it
5 arises. Okay?

6 MS. ANDERSON: Yes, Your Honor.

7 THE COURT: Anything else?

8 MS. ANDERSON: Your Honor, we've also filed a motion
9 the exclude any testimony regarding any prior bad acts of the
10 defendant in this case.

11 THE COURT: Well, I mean, I don't know that I can
12 grant that in limine. Number one, I don't know if there are
13 any bad acts or what they are going to do, but if it fits
14 within the Lyles exception or it's a crime tending to show
15 dishonesty, or if it's prejudicial, if outweighed by the
16 probative value then it comes in. Anything in particular
17 you're talking about?

18 MS. ANDERSON: Yes, Your Honor. There was an
19 incident back in, I believe it was in 2017, which is brought up
20 in some of the co-defendant's statements in which Mr. Smith was
21 shot, and that is an incident in which one of the co-defendants
22 does bring it up in her statement. We do believe if that's
23 brought in that it can allow the jury to infer some things
24 regarding prior bad acts, so we'd ask that any testimony
25 regarding him being shot previously be excluded, that's one

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1 thing that we do believe any testimony regarding that be
2 excluded.

3 THE COURT: What's the State's position?

4 MS. RICHARDSON: Your Honor, the State did not intend
5 to bring that up in our case in chief. If it becomes relevant
6 we would address it with the Court if the door's opened at some
7 point, but that's not something we intended to bring up.

8 THE COURT: You know, and I don't know whether to
9 grant your motion or deny your motion, but the law is that they
10 can bring it up if it fits within the Lyles exception, if it shows
11 motive or intent or identification or a common scheme, all of
12 the Lyles exceptions.

13 MS. RICHARDSON: We would bring it to the Court's
14 attention outside the presence of the jury before we sought to
15 introduce that.

16 THE COURT: Now, as to other bad acts it depends,
17 quite honestly, on whether or not your client takes the stand.
18 Once he puts his credibility at issue then there are may be
19 other bad acts that can be brought up, but certainly they are
20 excluded unless he puts his credibility at issue, but as far as
21 with the Lyles exceptions we'll just have to deal with those on
22 a case by case basis, but I agree, if the State just lets us
23 know ahead of time then we'll make a decision. Okay?

24 MS. ANDERSON: Yes, Your Honor.

25 THE COURT: But I'm going to deny your motion in

1 limine because we'll have to deal with it as it comes along. I
2 can't just say as a matter of law it's inadmissible. Anything
3 else?

4 MS. ANDERSON: Your Honor, we have a motion in limine
5 regarding improper testimony just asking the Court that
6 preventing the State from introducing testimony which is
7 speculative or hearsay, and we just ask the Court that you
8 determine that that is excluded and cannot be introduced at
9 this point, Your Honor.

10 THE COURT: Well, if it's inadmissible just raise
11 your objection and I'll deal with it, but without specifically
12 identifying what you think they are going to -- certainly
13 hearsay is inadmissible unless it falls within one of the
14 hearsay exceptions. Irrelevant testimony is inadmissible,
15 they're going to have to show some relevancy.

16 MS. ANDERSON: Yes, Your Honor, there is a chunk of
17 one of the co-defendant's statements, which is a large portion
18 of speculative testimony which is a concern for us, Your Honor,
19 which we would ask that you exclude, Your Honor, however I
20 understand that we will raise that objection if it does come
21 in.

22 THE COURT: Alright. Thank you.

23 MS. ANDERSON: Our last one, Your Honor, is regarding
24 unreliable witnesses, Your Honor. We would present to you that
25 we believe the testimony of Jed Coleman and Janena Gamble is

1 unreliable. Their credibility is questionable and their
2 motives to give their testimony is questionable and we would
3 ask that Your Honor exclude their testimony --

4 THE COURT: Exclude testimony of who?

5 MS. ANDERSON: Of Jed Coleman, Joshua Miller and
6 Janena Gamble, as they are unreliable witnesses. They have
7 motive to lie and have provided inconsistent statements
8 throughout providing statements to law enforcement.

9 THE COURT: What's the State's position?

10 MS. RICHARDSON: Your Honor, that would not go to
11 admissibility. That would be something that their inconsistent
12 statements, the rules are in place to allow impeachment and
13 that would go to the weight of any testimony the jury gave
14 them, but that's not a basis to exclude testimony based on
15 inconsistencies in prior statements.

16 THE COURT: Anything in reply?

17 MS. ANDERSON: I mean, Your Honor, I mean, there's
18 nothing that corroborates any of their statements other than
19 their continuous inconsistent statements.

20 THE COURT: Well, I think that's a credibility issue
21 for the jury to decide. I'm going to deny the motion.

22 MS. ANDERSON: Yes, Your Honor.

23 MS. RICHARDSON: Now, just a housekeeping matter. Do
24 we need to do Form 4's on all of these?

25 THE COURT: Do you have any other motions?

1 MS. ANDERSON: That's it, Your Honor.

2 THE COURT: Well, they've handed up Form 4's. I
3 don't know that we need to since -- I mean, they're on the
4 record now and we're in the trial of the case. If we weren't
5 going straight into the trial of the case I would do the Form
6 4's, I don't know that we need to since they are all at this
7 point in time. Are there any other filed motions that we need
8 to address?

9 MS. RICHARDSON: I believe we addressed all other
10 filed motions in previous hearings, there was a Motion to
11 Compel, I think we did that, and I believe it might have been,
12 Your Honor, we did the motions with the list and that sort of
13 thing, so I think everything else has been addressed. The
14 Court can maybe print a list and see, and they may need that to
15 clear their records, but I just didn't know if we needed to
16 prepare that.

17 THE COURT: No, you all don't need to, and I'm not
18 going to do the Form 4's, simply because we've discussed them
19 here in open court, we're going straight into the trial so
20 you're going to have the record, number one. And number two, a
21 lot of these, I've said, yes, I've denied it, or yes, I've
22 granted it, but my decision can change. Like, I granted the
23 motion to exclude the gun from Arizona, but if the defense
24 opens the door then that changes that decision. You know, I've
25 denied the defendant's Motion in Limine to suppress certain

1 testimony, but we're going to have to deal with it on a case by
2 case basis as to prior bad acts, or if it turns out it does fit
3 under one of the Lyles exception, or it does fit under a
4 hearsay exemption, you know, then I may grant it at that time
5 or I deny it now, or I deny it now or may grant it at a later
6 time, so I'm not going to do a Form 4 on those unless I find
7 out later or I think later that it may become necessary. The
8 only one I may do is on the motion for the in camera hearing
9 with Joshua Miller, even though I don't know that I need to,
10 they withdrew it, so I might do that just to show it's no
11 longer an issue. Anything else from the defense?

12 MS. ANDERSON: No, Your Honor.

13 MS. RICHARDSON: No, Your Honor.

14 THE COURT: Okay. You said you had a housekeeping
15 matter?

16 MS. RICHARDSON: That was just about that Form 4, I
17 just wanted to make sure either of us didn't need to prepare
18 any documents.

19 THE COURT: No, you don't, that's fine.

20 MS. RICHARDSON: That's all.

21 THE COURT: We'll be in recess until 2:00. The jury
22 will come back, let's be here ready to go at 2:00 so we can get
23 started. Okay?

24 MS. RICHARDSON: Thank you, Your Honor.

25 MR. WILSON: Thank you, Judge.

1 (Lunch recess taken at 12:00 p.m..)

2 THE COURT: Over lunch the Clerk informed me that one
3 of the jurors, juror number 235, Ms. Voorhees, contacted the
4 bailiff that she was having a panic attack and that she
5 contacted her therapist who said she shouldn't serve on the
6 jury. She talked to the therapist, supposedly, I haven't
7 talked to her, they've got her in a separate room so I'm going
8 to bring her in and see if she continue, if not, we'll seek the
9 second alternate. I mean, if she's going to have a panic
10 attack, but I don't know whether she is or she isn't. I
11 haven't talked to her, I haven't seen her, quite frankly I
12 don't remember which one she is until she comes in, but if she
13 says -- if she appears distraught -- who was the bailiff that
14 talked to her? Did you talk to her?

15 THE DEPUTY: I didn't, no.

16 THE COURT: Who is the bailiff that she contacted
17 her?

18 THE DEPUTY: She's with her now.

19 THE COURT: Oh, she's with her now. In the other
20 jury room?

21 THE DEPUTY: Right.

22 THE COURT: Well, let's go ahead and bring Ms.
23 Voorhees in and let me talk to her. Well, before we do that, I
24 apologize, is there anything the State wants to put on the
25 record in that regard?

1 MS. RICHARDSON: Your Honor, if she's replaced that's
2 going to leave us with no alternates.

3 THE COURT: But I mean, I don't want somebody --

4 MS. RICHARDSON: I agree, but it's just going to
5 leave us with no alternates.

6 THE COURT: Anything from the defense?

7 MS. ANDERSON: No, Your Honor.

8 THE COURT: Let's bring her in and I'll see if I
9 think she can continue or not.

10 (Juror entered the courtroom.)

11 THE COURT: Ms. Voorhees, I understand you had some
12 difficulty over lunch?

13 THE JUROR: Yes, sir.

14 THE COURT: And what is that?

15 THE JUROR: I am treated for anxiety and panic
16 attacks and I talked to with my therapist over lunch and she
17 advised me to have a conversation and that it probably would
18 not be in anyone's best interest for me to serve on the jury.

19 THE COURT: Well, we've got to put this on the record
20 so I'm going to need you to speak a little bit louder, and I
21 apologize for that, but we're in the middle of a case --

22 THE JUROR: I do understand.

23 THE COURT: -- and that's how we have to deal with
24 that. Have you had panic attacks in the past or is this
25 something that just happened for the first time?

1 THE JUROR: No, it's something that I do struggle
2 with. I've been treated for about ten years and it's something
3 that I try to function with.

4 THE COURT: And I don't want you to exceed your
5 capabilities, but you know your condition better than I do.

6 THE JUROR: Yes, sir.

7 THE COURT: Do you think you can continue or do you
8 think -- or have you been advised by your provider not to
9 continue?

10 THE JUROR: Both. I have been advised, as well as I
11 don't believe that I am capable. I do have their phone number
12 and they are available to speak with you if that would be
13 necessary.

14 THE COURT: That's alright. I'm going to go ahead
15 and I'll excuse you, Mr. Voorhees. Thanks for being here, and
16 you'll need to call that number after 6:00 p.m. today for
17 further instructions.

18 THE JUROR: Yes, sir. I appreciate it, and I
19 apologize for the inconvenience.

20 THE COURT: Thank you, that's alright, not a problem.
21 So we will now need to seat the other alternate, Charlene V.
22 Smith. Anything from the State before we bring the jury in?

23 MS. RICHARDSON: No, Your Honor.

24 THE COURT: Anything from the defense?

25 MS. ANDERSON: No, Your Honor.

Jury Sworn

1 THE COURT: We'll bring the jury in and swear the
2 jury. I'll give them opening charges, we'll get into opening
3 statements and then we'll see how far we get in the trial
4 today. Also, I need to let you know, I think you all have been
5 in front of me before or if this is news to you, but I allow
6 direct examination, cross-examination, redirect, only as to
7 matters addressed on cross that were not addressed on direct.
8 I don't allow recross-examination. So if in redirect somebody
9 starts to exceed the scope of redirect, raise your objection
10 and we'll deal with it then. Let's go ahead and bring the jury
11 in.

12 (Jury entered the courtroom at this time.)

13 THE COURT: Ladies and gentlemen, welcome back. I
14 hope everybody had a good lunch. I want to thank you for being
15 prompt and returning on time. Now, over lunch I had to excuse
16 another juror, so Ms. Smith, you are now part of the 12-person
17 jury at this point in time, as well. We're getting ready to
18 start the trial of this case, but as I told you during the jury
19 qualification and jury voir dire, jurors are constantly taking
20 oaths, so I'll need all members of the jury to please stand
21 while the Clerk of Court administers the oath for you to serve
22 as jurors on this specific case.

23 (Jury sworn.)

24 THE COURT: Is there any member of the jury that did
25 not respond to the oath by saying I do? If so, please stand.

1 Thank you very much.

2 Ladies and gentlemen, we're getting ready to start
3 the trial of the case of the State of South Carolina versus
4 Eryk J'Von Smith. Now, before we begin the trial I do have
5 some preliminary instructions that I need to go over with you.
6 I know from watching TV shows, movies, reading books, different
7 mediums for entertainment purposes, trials are often full of a
8 lot of suspense and a lot of action, that might be the case in
9 this trial, but it probably won't be. Trials are usually slow
10 and repetitive, the exact opposite of what you might be
11 accustomed to when you watch a trial for entertainment
12 purposes, however, I do hope you do find the trial educational,
13 I hope you do find it entertaining, and I want to thank you
14 from the outset for serving as jurors in this case. The
15 attorneys appearing before you are advocates of the parties
16 they represent, but first and foremost, they are officers of
17 the Court. They're sworn to uphold the integrity and the
18 fairness of our judicial system and to help you in a search for
19 the truth in this case. You can expect them to be
20 professional, competent and ethical in their representation of
21 their client's interest. Now, what I now say is intended to
22 serve as an introduction to the trial of this case. These
23 remarks are not a charge on the law in this case. I will
24 instruct you on the law applicable to this case at the end of
25 the trial before you retire to consider your verdict. This is

Jury Instructions

1 merely an explanation of the procedure that we will follow in
2 the trial of this case so that you can better understand what
3 may be happening.

4 Now, the defendant is charged by indictments filed
5 with the Clerk of Court charging the defendant with attempted
6 murder, armed robbery and criminal conspiracy. Now, I'll
7 explain the elements of those crimes to you at a later time.
8 All you need to know at this point in time is that these
9 indictments are simply the charges by which this case is
10 brought into the Court, and these indictments are not in any
11 sense evidence of any of the allegations contained in them.
12 The defendant has pled not guilty to these indictments. The
13 State, therefore, has the burden of proving each of the
14 elements of the indictment beyond a reasonable doubt. It will
15 be your duty, ladies and gentlemen, to decide whether or not
16 the State has met that burden. Your purpose as jurors is to
17 find and determine the facts of this case. You are the sole
18 judges of the facts of this case. If at any time I make a
19 comment regarding the facts of this the case you must disregard
20 my comments. You are to determine the facts from the testimony
21 you hear and the other evidence introduced here in the trial of
22 this case. It is up to you to determine the inferences which
23 you feel may properly be drawn from that evidence. It is
24 especially important that you perform your duty in determining
25 the facts diligently and conscientiously, because ordinarily

1 there is no way to correct an erroneous determination of the
2 facts by a jury. On the other hand, and with equal emphasis,
3 the same law that makes you the judge of the facts makes me the
4 judge of the law. The law as given by the Court is the only
5 law that you may consider. You must accept and follow the law
6 as I give it to you even though you may disagree with it. Just
7 as I cannot tell you what the facts of this case are, you
8 cannot disagree with me about the law to be applied in this
9 case. Your job is to take the law as I give it to you and
10 apply it to the facts as you find those facts to be from the
11 testimony of the witnesses and any other evidence that is
12 introduced. After doing that you will then render your
13 verdict, a true and just verdict under the solemn oath that you
14 just took as jurors. Now, until I advise you to begin your
15 deliberations you must not discuss this case with anyone,
16 including your fellow jurors. Don't discuss it with any
17 friends, family members or anyone involved in the case. After
18 the case is submitted to you you can then discuss the case but
19 only in the jury room with your fellow jurors. The attorneys
20 and the parties in this case have been advised that they are
21 not to talk to you at all, so they are not being rude, they are
22 following the instructions of the Court. Now, during the trial
23 you are not to read or listen to or watch any news reports
24 about this case. This includes anything that may be in the
25 newspapers or on the internet, the radio or the television.

Jury Instructions

1 You must not consider anything you may have read or heard about
2 the case outside of the courtroom whether that be before or
3 during the trial of this case. It is important that you keep
4 on open mind and not decide any issue in the case until all of
5 the evidence has been presented, the parties have made their
6 closing arguments, and I've instructed you on the law to be
7 applied in this case. It is your solemn responsibility to
8 determine the guilt or innocence of the defendant and your
9 verdict must be based solely on the evidence as it is presented
10 to you in this trial and on the law as I instruct you during
11 and at the close of the trial. In just a moment the Solicitor
12 will make what is called an opening statement in which the
13 Solicitor will explain to you the issues in this case or at
14 least what the Solicitor thinks the issues in this case are.
15 The attorney for the defendant may also make an opening
16 statement, although she is not required to do so. What the
17 attorneys tell you during their opening statements is not
18 evidence in this case, it is only the attorneys' contention as
19 to what they think the issues in this case are. The evidence
20 in this case will be presented to you by testimony of sworn
21 witnesses from the witness stand and by other exhibits that may
22 be introduced into evidence. Now, in determining what the true
23 facts are in this case you must decide whether or not the
24 testimony of a witness is believable. It is my responsibility
25 to rule as a matter of law as to whether certain testimony is

1 admissible at all or not, however, once testimony is admitted
2 into evidence, whether or not you believe it is solely for you
3 to determine. In deciding whether to believe a witness you
4 have the right to consider the interest of any witness, the
5 bias of any witness, the prejudice of any witness, the
6 opportunity for the witness to have seen the matters and things
7 about which the witness may testify and the way the witness
8 acts on the witness stand. You have the right to consider
9 anything that is in the record that will help you evaluate the
10 testimony of the witnesses. That means that it is your duty to
11 pay close attention to these witnesses, to observe the
12 witnesses, to listen to the witnesses, and to pay close
13 attention to the attorneys and to the Court. Don't let your
14 thoughts wander, but give strict attention to the testimony in
15 this case so that at the end of all of the testimony, after the
16 arguments of counsel and the charge on the law by the Court,
17 you will then be in a position to determine what the true facts
18 are and to apply the law to those facts and thus render a true
19 and just verdict. Now, are there any additional charges or
20 challenges to the opening charges by the State?

21 MS. RICHARDSON: None from the State.

22 THE COURT: Any from the defense?

23 MS. ANDERSON: No, Your Honor.

24 THE COURT: Ladies and gentlemen, we'll begin the
25 trial of this case with the attorneys' opening statements, and

Opening Statement-By Ms. Smith

1 as I stated, these opening statements are not evidence. It's
2 just the attorneys' contention as to what they feel the issues
3 in this case are. Who wishes to make an opening statement for
4 the State?

5 MS. SMITH: I do. May it please the Court?

6 THE COURT: Yes, ma'am.

7 (Elizabeth Smith presented an opening statement on
8 behalf of the State at this time.)

9 MS. SMITH: I'm dying. Call My mom, tell her I love
10 her. Take care of my dog. It hurts. I'm dying. He was just
11 24 years old when Joshua Miller said those words on the floor
12 of the Francis Marion Convenience Store as he was bleeding out.
13 He was 24 years old when he was shot in the face by the
14 defendant through the neck, out through his cheek, through his
15 arm. He was laying on the convenience store floor, the Francis
16 Marion Gas Station floor, and he thought he was dying. The
17 clerks there, other people who were there, they called 911,
18 they grabbed rags, they held it to his face, they put pressure
19 and they tried to stop the bleeding. They saved his life. The
20 police got there, EMS got there, they took him to the hospital.
21 Those doctors, they also saved his life. So what happened to
22 make him think he was dying? What happened when he got shot in
23 the face? Well, on October 9, 2018 Josh got picked up by his
24 best friend, Corey Hayes. It was Josh's car, a white Chrysler.
25 They went to the Francis Marion because they were going to meet

1 up with a friend. They parked at gas pump number two, they
2 were waiting for their friend to arrive. A black Audi pulls
3 in, goes to the far left side of the store and parks there. It
4 is dark, there are no cameras over there, it is bumpy, and
5 there's no traffic. So conversations occur, and finally the
6 black Audi comes over and parks beside Corey's white car, the
7 Chrysler. Corey's in the front driver's seat, Josh is in the
8 passenger seat, and in the black Audi is Janena Gamble, the
9 driver, the defendant in the passenger seat, Jed Coleman and
10 his little brother in the back of the car. Well, Jed was
11 friends with Josh and Corey. So Jed in the backseat and Janena
12 in the driver's side jump out of their car and get in the
13 backseat of Corey's car. So why are we there? Well, we were
14 there to pick up some Xanax pills. Josh and Corey were going
15 to give some Xanax pills to Jed and Janena for money. So when
16 the pills were passed back what wasn't passed back, the money.
17 Janena jumped out of the car, went back to her car and Josh got
18 out to go get back what was just taken from him, and when he
19 leaned into the black Audi, into their car, bam, he's on the
20 ground, he's on all knees, hands and knees, he thought he had
21 just gotten sucker-punched, but then he knew different, because
22 he saw a gun. He got shot through the arm, through the neck
23 and out through his cheek, and when he realized that, he ran.
24 He ran from behind from the store -- from the front of the
25 store, excuse me, to behind it. When he realized that he

Opening Statement-By Ms. Smith

1 wasn't going to get help behind the store, he ran into the
2 store, and that's when those people grabbed towels and called
3 911 and saved his life. That's why we're here, because this
4 defendant is charged with attempted murder, armed robbery, and
5 criminal conspiracy. The judge just told you a minute ago that
6 he's going give you the elements of all of those at the end.
7 But I'm going to give you a little road map so that you all
8 know what to look for with all of the testimony. Okay? So
9 attempted murder seems pretty obvious. It's the attempt to
10 kill another, the intent to kill another, and then we've got
11 criminal conspiracy. Right? So criminal conspiracy is two
12 people that get together and they are working towards a
13 criminal goal, okay? But then we have armed robbery. Armed
14 robbery, that seems pretty obvious, as well, but it's the
15 taking or the attempting to taking of another's property,
16 personal property, with the intent to deprive while having a
17 deadly weapon, but it's not just having the deadly weapon, it's
18 having the deadly weapon at any point of the crime to stop them
19 from getting back what's theirs. So ladies and gentlemen of
20 the jury, we have to prove all three -- we have to prove our
21 case with what's called beyond a reasonable doubt, that's the
22 burden of proof the State has. So beyond a reasonable doubt,
23 what does that mean? The judge is going to tell you that
24 beyond a reasonable doubt simply means that you must be firmly
25 convinced of the defendant's guilt to find him guilty, so how

1 is the State going to do that? Well, in the next couple of
2 days we're going to produce witnesses, you're going to hear
3 testimony, and we're going to introduce evidence, and at the
4 end of this case when Ms. Richardson gets up and talks to you
5 about everything that you've heard, because the judge is right,
6 sometimes it's boring in the courtroom, we're repetitive, and
7 we have to be a lot of the times, the rules require that we be
8 a lot of the time, so at the end of this case when Ms.
9 Richardson gets up, she's going to tie it all together, but
10 listen, listen to the evidence as it comes in, listen to the
11 testimony, listen to what you hear. When you go back to your
12 jury room at the end of this trial when you see all the
13 evidence, when you've listened, deliberated on all of the
14 testimony, I believe you'll be firmly convinced, we ask that
15 you find the defendant guilty of all charges. Thank you.

16 THE COURT: Does defense wish to make an opening
17 statement?

18 MR. WILSON: May it please the Court, Your Honor?

19 THE COURT: Alright.

20 MR. WILSON: Thank you, Judge.

21 (Attorney Wilson presented an opening statement on
22 behalf of the Defendant at this time.)

23 MR. WILSON: Good afternoon. My name is Ralph. I am
24 with my co-counsel here. This is Ms. Anderson sitting at the
25 table with me. She is, obviously, co-counsel in this case.

Opening Statement by Mr. Wilson

1 Okay? We have two opportunities to talk directly to you. One
2 is now and once when this trial is over, but I'm going to tell
3 you just a small story. When I was in law school, the first
4 day of law school, and I want to proceed just by saying my
5 father told me not to do this, but the first day of law school
6 I'm in this class, I'm in a contracts class, and there's a case
7 the professor is talking about. Professor says to me, he says,
8 you know, somebody in class, please, raise your hand and talk
9 to me about this case -- now, mind you, we had not opened up
10 one book, not one book, and I decided to go ahead and raise my
11 hand, which is a no, no, in law school. I raised my hand. The
12 professor had me up for an hour and a half debating the facts
13 of a case he gave to me, and I had no idea what the law was, no
14 idea. At the end of class when he's had me up for an hour and
15 a half, the professor says to me, Mr. Wilson, you're going to
16 be okay one day, but wait from now on to raise your hand after
17 you know the law, and that's what trials are about. You don't
18 know the law yet. The prosecutor's not responsible for judging
19 the law or giving you the law, I'm not responsible. The only
20 person who can give you the law is His Honor. His Honor is
21 correct, you are the trier of fact, and no one can tell you
22 anything else other than you deliberating and telling
23 yourselves what you believe the truth is in this case. What I
24 can tell you is this, a lot of what the prosecutor just told
25 you is exactly correct. Josh Miller got a call, or a

1 communication, from Jed Coleman who was one of the State's
2 witnesses. They then decide that him and Ms. Gamble want to
3 get some Xanax. We don't dispute that. We don't dispute that
4 at all. We believe there was a drug deal between those three.
5 You're going to hear testimony, and the prosecutor already
6 knows I know this because they gave me what's called evidence,
7 discovery, so I looked through the stuff, I looked through
8 their statements. Okay? I know everything that the prosecutor
9 knows about this case, and then some because I know what my
10 client says. They never talked to my client. The three of
11 them, not this defendant, decided they wanted to do a drug
12 deal. They decided that they were going to call him early that
13 day and say, hey, look, it's your birthday. Let's celebrate
14 your birthday, we're going to Conway, we're going to Coastal,
15 which is what they told him. They pick him up, all of them are
16 drinking all day, they are smoking weed, and what they didn't
17 tell you was is that Josh Miller, the person who they say is
18 their primary witness and their alleged victim, is selling
19 drugs. He is selling narcotics. What do they do? They cut a
20 deal with him, promise him, talk to us, we're not going to tell
21 anybody and we're not going to charge you with the drugs you're
22 selling. Jed Coleman makes multiple statements and lies to the
23 police multiple times, you'll hear on the stand. Janena Gamble
24 not only lies multiple times, but has continued to lie to law
25 enforcement in light of a proffer agreement. All of this

Opening Statement by Mr. Wilson

1 you're going to hear from this witness stand. Now, let me tell
2 you something that is important in the law, and I'm not going
3 to go over the law because that's the judge's responsibility,
4 but I want to tell you about knowledge, what we call scienter.
5 In a case like this it is important for you to listen to these
6 witnesses because it's important for you to know what this
7 defendant, what this man knew and when he knew it. More
8 important than that, you need to know what the others knew and
9 when they knew it. No one can attest to the fact that there
10 was an altercation in the white car, somebody, and they don't
11 mean this defendant, they don't say, Eryk Smith was in that
12 white car. You just heard the prosecutor, they don't say that
13 he was in that white car doing a drug deal. The question is
14 when he knew about the drug deal. The question is when did he
15 know somebody in that car decided to rob Josh Miller? Because
16 that's important. I'm asking each and every one of you to
17 listen to the case. We picked this jury for a particular
18 reason. All of you were picked because of your backgrounds,
19 because of who you are, and you just swore an oath that I take
20 extremely serious. I've tried cases throughout the state,
21 murder cases all the way up to public urination, and the most
22 important thing is for the jurors to listen to a case like
23 this, because there's so many lies and there's so many ways to
24 twist the law, and that's what I don't want to happen. I don't
25 want the to law to be twisted so that you don't understand that

1 this young man is not guilty. I don't want the facts to be
2 twisted so you don't understand at the end of this case that he
3 is not guilty of the crimes that they're alleging he did, that
4 is extremely important. I'm asking you to hear each witness,
5 look at them, observe them, understand what their motivation is
6 to lie. You'll hear testimony about inconsistent statements.
7 You're going to hear me cross-examine witnesses about
8 inconsistent statements, things that they said one time and
9 then the next time they were talked to they said something
10 else, and I want you to ask yourself this because the
11 prosecutor brought up it up in her opening about Josh Miller
12 ran to the back of Francis Marion, we all know what Francis
13 Marion is in Georgetown and you know where it is, right there
14 and it's sitting on a little corner right there before when you
15 come into Georgetown. She said something interesting. She
16 said he's on video running to the back of Francis Marion Gas
17 Station. While you are here listening to this testimony, I
18 want you to ask yourself, why didn't he run inside? Why did he
19 run to the back? And She's right, that's what he did. He ran
20 back to the back of the gas station, then he ran to the side
21 after he was shot in the face. The defendant is asking you and
22 telling you he's not guilty, and he's asking you for a fair
23 trial and I'm asking you to listen and hear the evidence that's
24 coming before you today and for the rest of the week. Thank
25 you so much.

1 THE COURT: Ladies and gentlemen, we'll now begin the
2 evidentiary portion of the trial with the State's case.
3 The State can call your first witness.

4 MS. RICHARDSON: The State calls Brook White.
5 **Brooke White being first duly sworn, testified as**
6 **follows:**

7 THE CLERK: Please state your first and last name and
8 spell it for the Court.

9 THE WITNESS: Brooke White, B-r-o-o-k-e, W-h-i-t-e.

10 DIRECT EXAMINATION

11 BY MS. RICHARDSON:

12 Q. Brooke, can you give us your full name?

13 A. Leslie Brooke White.

14 Q. And your maiden name?

15 A. Cecile.

16 Q. And how old are you?

17 A. Twenty-seven.

18 Q. And are you from Georgetown?

19 A. I'm originally from Conway.

20 Q. You always lived in either Horry or Georgetown County?

21 A. Yes, ma'am.

22 Q. Are you married?

23 A. Yes, ma'am.

24 Q. Do you have any children?

25 A. I have three.

1 Q. And so with having those three children do you work
2 outside of the home?

3 A. Sometimes.

4 Q. But you primarily stay home with the kids?

5 A. Yes, ma'am.

6 Q. But back in October of 2018 were you working?

7 A. Yes, ma'am.

8 Q. And where did you work?

9 A. Francis Marion Gas Station.

10 Q. What did you do there?

11 A. I was a cashier.

12 Q. And on the night of October 9, 2018, did you come into
13 contact with Joshua Miller?

14 A. Yes, ma'am.

15 Q. And did you know him prior to that?

16 A. Just from seeing him in the store sometimes.

17 Q. And how often do you think you saw him in there?

18 A. Just every now and then.

19 Q. And what about Corey Hayes, did you know him?

20 A. Yes, ma'am.

21 Q. And how did you know Mr. Hayes?

22 A. From coming into the store. He'd come in about every
23 day buying stuff.

24 Q. And what about his sister, did you know her?

25 A. Yes, ma'am, she came in the store about like every

1 couple days.

2 Q. And that was Krista Hayes?

3 A. Yes, ma'am.

4 Q. And are you aware that Corey is no longer with us, that
5 he passed away?

6 A. Yes, ma'am.

7 Q. And when did you first come into contact with Mr.
8 Miller that night?

9 A. When he come in the store screaming for us to call 911,
10 he had been shot.

11 Q. And did you call 911?

12 A. Yes, ma'am.

13 THE COURT: I'll mark that as State's 1.

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

16 MS. RICHARDSON: Let me show you what's been marked
17 as State's Exhibit No. 1 for identification.

18 BY MS. RICHARDSON:

19 Q. Do you recognize that?

20 A. Yes, ma'am.

21 Q. And what is it?

22 A. This is my initials on the 911 call CD.

23 Q. Have you reviewed that?

24 A. Yes, ma'am.

25 Q. Is that an accurate reflection or a copy of the calls

1 that you made to 911 that night?

2 A. Yes, ma'am.

3 MS. RICHARDSON: Your Honor, at this time the State
4 would offer State's Exhibit Number 1 into evidence and would
5 offer to publish it to the jury.

6 MR. WILSON: Without objection, Judge.

7 THE COURT: State's Exhibit Number 1 is admitted into
8 evidence without objection. You may publish it.

9 (State's Exhibit No. 1 was admitted into evidence.)

10 (911 CD playing)

11 BY MS. RICHARDSON:

12 Q. Now, did you help take care of Mr. Miller?

13 A. I didn't hold towels to him. Blood makes me feel like
14 I'm going to faint, but I was there. I called 911.

15 Q. Is that why you were kind of having a hard time at the
16 end of the call?

17 A. Yes.

18 Q. And did you see anything that happened outside?

19 A. No.

20 Q. And you said you didn't even hear a gunshot?

21 A. I didn't even know anything that happened until he came
22 in the store.

23 Q. So the extent of your involvement was when he came in
24 and you called 911?

25 A. Right, yes.

1 Q. And then you met with officers and gave them statements
2 and that sort of thing?

3 A. Yes.

4 MS. RICHARDSON: I have no further questions. Answer
5 any questions that the other attorneys may have for you.

6 THE COURT: Cross-examination?

7 MS. ANDERSON: We don't have any questions for this
8 the witness, Your Honor.

9 THE COURT: You may step down.

10 MS. RICHARDSON: Your Honor, we'd ask that she be
11 excused from her subpoena.

12 MR. WILSON: Without objection, Judge.

13 THE COURT: She's free to go. Thank you very much.
14 The State can call your next witness.

15 MS. RICHARDSON: Daphne Westbrooks.

16 **Daphne Westbrooks was first duly sworn, and testified**
17 **as follows:**

18 THE CLERK: State your full name and please spell it
19 for the record.

20 THE WITNESS: Daphne Westbrooks, D-a-p-h-n-e,
21 W-e-s-t-b-r-o-o-k-s.

22 DIRECT EXAMINATION

23 BY MS. SMITH:

24 Q. Hey, Ms. Daphne.

25 A. Hi.

1 Q. What do you do for a living?

2 A. I own Francis Marion Convenience Store and Kensington
3 Kidz Daycare.

4 Q. And where are you from?

5 A. Georgetown.

6 Q. Born and raised?

7 A. Yes.

8 Q. And how long have you owned Francis Marion Convenience
9 Store?

10 A. Since 2010.

11 Q. So would that mean you owned it in 2018?

12 A. Yes.

13 Q. And do you have any cameras at your store?

14 A. I do.

15 Q. Where are your cameras?

16 A. We have one when you first walk in the front door and we
17 have one above our pizza oven. There's one over when you walk
18 in the door to the left up at the top so that it shines down
19 the aisles. There's one on the outside around the corner of
20 the building, and we have one placed in the liquor store that's
21 beside the store to show the parking lot.

22 Q. And the one that you said, around the corner, if you're
23 facing your store would that be to the right or to the left?

24 A. Right. There's like a drive -- there used to be a
25 drive-thru at the store many years ago and it's on the

1 right-hand side. Well, the window was right there. We closed
2 that window up but that drive-thru is still there, so it's
3 sitting right there so we can see who's in the drive-thru.

4 Q. And do your cameras actually record?

5 A. Yes.

6 Q. And do you keep those in the ordinary course of your
7 business?

8 A. Yes.

9 Q. Do you use those cameras?

10 A. Yes.

11 Q. And why do you use those cameras?

12 A. For the safety of my employees.

13 Q. And if the police asked you to give them a copy would
14 you do that?

15 A. Yes.

16 Q. Have you done that before?

17 A. Many times.

18 (State's Exhibit No. 2 was marked for identification.)

19 MS. SMITH: I'm handing the witness what has been
20 premarked as State's Exhibit 2.

21 Q. Ms. Daphne, what is that?

22 A. A videotape, a DVD.

23 Q. And what's it of?

24 A. This is of the night of the shooting.

25 Q. And have you reviewed that?

1 A. Yes.

2 Q. Is that the videotape that you gave to police?

3 A. Yes.

4 Q. Has it been altered, manipulated, changed in any way?

5 A. No.

6 MS. SMITH: Your Honor, at this time the State moves
7 to introduce State's Exhibit No. 2 into evidence.

8 THE COURT: Any objection?

9 MR. WILSON: Your Honor, without objection.

10 THE COURT: State's Exhibit No. 2 is admitted into
11 evidence without objection.

12 (State's Exhibit No. 2 was admitted into evidence.)

13 MS. SMITH: I beg the Court's indulgence. Your
14 Honor, I have no further questions at this time.

15 THE COURT: Cross-examination?

16 MR. WILSON: No questions of this witness, Judge.

17 THE COURT: You may step down. Thank you very much.

18 MS. SMITH: Your Honor, may she be excused from her
19 subpoena?

20 THE COURT: Any objection?

21 MR. WILSON: No objection, Your Honor.

22 THE COURT: She's free to go, thank you very much.
23 The State can call your next witness.

24 MS. SMITH: Your Honor, the State calls Deputy
25 McConnell.

1 Deputy A. Brandon McConnell being first duly sworn,
2 testified as follows:

3 THE CLERK: Please state your full name for the
4 record and spell your first and last name.

5 THE WITNESS: Brandon McConnell, B-r-a-n-d-o-n,
6 M-c-c-o-n-n-e-l-l.

7 DIRECT EXAMINATION

8 BY MS. SMITH:

9 Q. Where are you currently employed?

10 A. Georgetown County Sheriff's Office.

11 Q. And how long have you been there?

12 A. This September will be 13 years.

13 Q. And what is your current position?

14 A. I'm currently the sergeant assigned to the judicial
15 center.

16 Q. Have you done anything else for the county other than
17 work at the courthouse?

18 A. Yeah, for actually, 12 and a half years, I worked patrol
19 answering calls for service.

20 Q. What type of calls for service did you respond to?

21 A. Anything from barking dogs, to shootings, to petty
22 larcenies, whatever calls came in from the dispatch center.

23 Q. Do you have any training in law enforcement?

24 A. I do. I went through the basic training at the South
25 Carolina Criminal Justice Academy as any police officer does to

1 get certification. We also do annual training as far as
2 driving and firearms qualification, latent print, evidence
3 collection, things of that nature.

4 Q. Were you working for the county on the night of
5 October 9, 2018?

6 A. I was.

7 Q. Did you respond to a call at the Francis Marion
8 Convenience Store?

9 A. I did.

10 Q. And in 2018 did you all have with body worn cameras?

11 A. We did.

12 Q. Where is the Francis Marion Convenience Store?

13 A. It's located at the intersection of North Fraser and
14 Browns Ferry Road.

15 Q. What county is that in?

16 A. Georgetown County.

17 Q. Now, did you have your Body Camera on you on October 9,
18 2018?

19 A. I did.

20 MS. SMITH: May I approach?

21 THE COURT: Yes.

22 (State's Exhibit No. 3 was marked for identification.)

23 MS. SMITH: I am passing the witness what has been
24 marked for identification purposes as State's Exhibit No. 3.

25

1 BY MS. SMITH:

2 Q. Sergeant McConnell, what did I just hand you?

3 A. This is a CD of my Body Cam footage from the night of
4 the incident.

5 Q. And has it been altered, manipulated in any way?

6 A. It does not appear so.

7 Q. How do you know that that's your Body Camera footage?

8 A. I actually signed the CD.

9 Q. So you've reviewed it?

10 A. I have.

11 Q. And other than redactions that have been done to it, the
12 clips made of it, are there any other manipulations or
13 alterations?

14 A. No.

15 Q. Is that what it purports to be?

16 A. Yes.

17 MS. SMITH: Your Honor, at this point in time the
18 State moves to introduce State's Exhibit 3 into evidence and
19 published to the jury.

20 THE COURT: Any objection?

21 MR. WILSON: No objection to the redactions, Your
22 Honor.

23 THE COURT: State's Exhibit 3 admitted into evidence
24 without objection.

25 MS. SMITH: I'd like to publish to the jury.

1 THE COURT: Alright.

2 (State's Exhibit No. 3 was admitted into evidence.)

3 (Body Cam footage CD played for jury.)

4 (Video playing.)

5 BY MS. RICHARDSON:

6 Q. What does Bravo Mike mean?

7 A. That's a term we use for describing a black male.

8 Q. You say "we," what do you mean by "we"?

9 A. Law enforcement, in general.

10 Q. What about Bravo Fox?

11 A. Bravo Fox would be a black female.

12 Q. And Whisky Mike?

13 A. Whisky Mike, white male.

14 Q. Now, about how long did it take for you to get to the
15 Francis Marion Store?

16 A. I believe I was coming from beginning of Maryville
17 community, so probably about five minutes or so.

18 Q. At the beginning of that video there was some silence,
19 about 30 seconds of silence. What was that?

20 A. So the body cameras have, like, a pre-buffer recording,
21 so it's like technically recording but then we press the
22 activation button to activate the audio recording.

23 Q. So that wasn't a glitch or anything?

24 A. No, no, that's just how they work.

25 Q. When you got to the crime scene what was your main

1 concern?

2 A. My main concern was to locate the victim, try to get a
3 status on that person.

4 Q. And obviously, you did that, but next you went outside
5 and there was a crime scene, right?

6 A. Correct.

7 Q. And when there is a crime scene do you help preserve it?

8 A. Absolutely.

9 Q. Is that a part of your job?

10 A. Yes.

11 Q. Did you do that that night?

12 A. To the best of our abilities.

13 Q. If an unauthorized person were to come into your crime
14 scene what would you do?

15 A. They would be escorted out.

16 Q. And did that happen that night?

17 A. It did.

18 Q. What was the weather like on October 9, 2018?

19 A. It was raining.

20 Q. And did you all interview any witnesses?

21 A. We did.

22 Q. And was that the full extent, that we just showed, was
23 that the full extent of your body camera?

24 A. Other than the redacted part, yes.

25 Q. So were there witness interviews that were on the body

1 camera, the rest, the remainder?

2 A. Yes.

3 Q. Did you learn how many people were in the black Audi?

4 A. We did. We learned that there were four people that
5 occupied that car.

6 Q. And did you take any pictures that night?

7 A. I did.

8 Q. Sergeant McConnell, I'm passing him what has been
9 pre-marked as State's Exhibit 4 for identification purposes
10 only.

11 (State's Exhibit 4 was marked for identification.)

12 Q. What did I just hand you?

13 A. This is a photograph of the front of the store in the
14 parking lot?

15 Q. Is that a true and accurate depiction of what the store
16 looked like that night?

17 A. Yes.

18 Q. Has it been altered, changed in any way?

19 A. Doesn't appear so.

20 Q. Other than being enlarged?

21 A. That's it.

22 MS. SMITH: Your Honor, at this point in time the
23 State moves to introduce State's Exhibit 4 into evidence.

24 THE COURT: Any objection?

25 MR. WILSON: Without objection, Your Honor.

1 THE COURT: State's Exhibit 4 admitted into evidence
2 without objection.

3 (State's Exhibit No. 4 was admitted into evidence.)

4 MS. SMITH: I'll publish it to the jury down here for
5 just a few minutes. Your Honor, I'd like the Court's
6 indulgence for one second.

7 BY MS. SMITH:

8 Q. Sergeant McConnell, can you please show the jury where
9 the crime scene is on this picture? And you can stand up if
10 you want or you can come around to help the jury see if you'd
11 like, and that would probably be the easiest for the people in
12 the back.

13 A. So technically, this whole area, the whole parking lot
14 is the crime scene. I think what you were wanting to point out
15 is, here is gas pump two, which is where we learned that the
16 vehicles were parked just on the left side of that pump.

17 Q. And what about the liquor store, where would the liquor
18 store be?

19 A. The liquor store is just on the other side of this white
20 car here.

21 Q. And where is 701 from this picture?

22 A. This picture was taken from 701.

23 Q. Are we looking at the store from 701?

24 A. Correct, and in this area back just above our cars here
25 would be Browns Ferry Road.

1 MS. SMITH: Thank you. Your Honor, I have no further
2 questions.

3 THE COURT: Cross-examination?

4 MR. WILSON: Your Honor, briefly, if it please the
5 Court, Judge.

6 THE COURT: Alright.

7 CROSS-EXAMINATION

8 BY MR. WILSON:

9 Q. Officer, just a few questions. That night,
10 approximately how many minutes would you say it took you to get
11 from you where if you were on another call or another section
12 of Georgetown, how long did it take you to get from there to
13 the Francis Marion, how many minutes? Would you say five
14 minutes, ten minutes?

15 A. No. As I said a few minutes ago, it probably I took
16 about five minutes. I think I was just on the other side of
17 the Maryville bridge when the call came out and I just did a
18 U-turn.

19 Q. And typically before law enforcement gets there the
20 scene would be unsecured, correct, before law enforcement
21 actually gets there and secures it?

22 A. Yes.

23 Q. And so during that time when you all came and secured it
24 and you all put the yellow tapes around the front of it, I saw
25 that, and there was like barriers, basically, keeping people

1 out?

2 A. Yes.

3 Q. Did anyone go back and tape off the back of that store?

4 A. That, I'm not sure of. I was the supervisor plus the
5 responding officer, so I kind of had a lot going on, I was
6 trying to get -- so I cannot attest to that.

7 Q. Last question then. Did you all find evidence, though,
8 on the side of the actual Francis Marion Gas Station on the
9 right side which is where the liquor store would be where that
10 camera view is?

11 A. I did not, but I cannot attest -- excuse me -- once my
12 investigator got on scene that scene was turned over to him.

13 MR. WILSON: No further questions.

14 THE COURT: Redirect?

15 MS. SMITH: No, Your Honor.

16 THE COURT: You may step down. Thank you.

17 MS. SMITH: Your Honor, we do ask that he be released
18 from his subpoena from this case.

19 THE COURT: Any objection?

20 MR. WILSON: No objection, Judge.

21 MS. SMITH: Obviously, he'll still be here, though.

22 THE COURT: The State can call your next witness.

23 MS. SMITH: The State calls Deborah Johnson.

24

25

1 **Deborah Johnson being first duly sworn, testified as**
2 **follows:**

3 THE CLERK: Please state your name for the record and
4 please spell your first and last name.

5 THE WITNESS: My name is Deborah Marie Johnson,
6 D-e-b-o-r-a-h, J-o-h-n-s-o-n.

7 DIRECT EXAMINATION

8 BY MS. RICHARDSON:

9 Q. Ms. Johnson, just generally, where do you live?

10 A. Horry County.

11 Q. And have you always been from this area?

12 A. I grew up in Georgetown County, yes, ma'am.

13 Q. You graduated from the schools down here?

14 A. Yes, ma'am.

15 Q. And are you married or have any children?

16 A. I have five children, yes, ma'am.

17 Q. And back in October of 2018 where were you working?

18 A. Francis Marion Convenience Store.

19 Q. And how long did you work there?

20 A. I was there approximately three-and-a-half months, four
21 months, somewhere around there.

22 Q. And were you there the night that Joshua Miller got
23 shot?

24 A. Yes, ma'am.

25 Q. And tell me, did you know him before this night?

1 A. He had been in the store a couple of times, but actually
2 knowing him on a personal basis, no, ma'am.

3 Q. What about Corey Hayes, did you know him?

4 A. Basically the same thing. He'd been a customer in the
5 store, I did not know him on a personal basis.

6 Q. And his sister, Krista Hayes, did you know her?

7 A. Not on a personal basis, no, ma'am, just by seeing her
8 in the store.

9 Q. Okay. And tell me what happened that night.

10 A. Me and my coworker, Brooke, was working. We were
11 getting ready to start doing our closing duties. Mr. Miller
12 came running into the store, hand on his face, hollering for us
13 to call 911, that he'd been shot. Brooke picked up the phone
14 and tossed me some little cleaning rags, I grabbed them, ran
15 around the counter, started applying pressure while she called
16 911. I led Mr. Miller to the end of the, I guess it's a little
17 step up, and I had him sit down there and continued to apply
18 pressure and tried to keep him talking.

19 Q. What did you use to apply pressure?

20 A. It was, I call it cleaning cloths, but it's little
21 cloths we use to wipe the counter so I go them over prepared
22 food.

23 Q. Did anybody help you with that?

24 A. A former coworker helped me for a little bit and then I
25 believe Corey's sister, Krista, helped a little bit, too, but I

1 know my former coworker did because she knows exactly are where
2 the cloths are kept.

3 Q. And you said you kept talking to him?

4 A. Yes, ma'am.

5 Q. What kind of things were you asking him?

6 A. Just random questions trying to keep him talking. He
7 would keep saying, tell my mom I love her, make sure my dog's
8 fed, am I going to die, I kept trying to reassure him we were
9 doing the best we could and I would make sure that whoever knew
10 him would tell his mother that he did love her and that the dog
11 was taken care of, just basically whatever I could to keep him
12 talking.

13 Q. And what was his condition?

14 A. Really and truly, I did not believe he would make it by
15 as much blood as I seen lost in the back, he did keep fading
16 out on me and he turned purple at times.

17 Q. And obviously, law enforcement and EMS did arrive?

18 A. Yes, ma'am.

19 Q. And did you stay on scene?

20 A. Yes, ma'am.

21 Q. And cooperated and gave statements to law enforcement?

22 A. Yes, ma'am.

23 Q. And did you observe anything that happened outside the
24 store?

25 A. No, ma'am. We did not hear anything -- or I did not

1 hear anything or see anything until Mr. Miller came running in
2 the store.

3 Q. So the extent of your involvement was providing
4 assistance once he came in?

5 A. Yes, ma'am.

6 Q. And before today have you seen Mr. Miller since then?

7 A. He did come in the store one time after he got out of
8 the hospital and thanked us, but after that I left the store.
9 I no longer work at Francis Marion and I moved out of
10 Georgetown County.

11 MS. RICHARDSON: I have no further questions. Answer
12 any questions that the attorneys may have.

13 THE COURT: Cross-examination?

14 MS. ANDERSON: No questions for this witness, Your
15 Honor.

16 THE COURT: You may step down.

17 MS. RICHARDSON: Your Honor, we'd ask that she be
18 excused from her subpoena, as well.

19 MS. ANDERSON: No objection, Your Honor.

20 THE COURT: Alright, she's free to go. Thank you
21 very much. Let's go ahead and take about a 10 or 15-minute
22 break, give the jury an opportunity to stretch their legs, get
23 something to drink, whatever the case may be. Do not discuss
24 the case even among yourselves, don't conduct any
25 investigation. We'll take about a 10 or 15-minute break and

1 we'll come back and resume. Thank you very much.

2 (Jury exited the courtroom.)

3 THE COURT: Anything from the State before we recess?

4 MS. RICHARDSON: No, Your Honor.

5 THE COURT: Anything from the defense?

6 MS. ANDERSON: No, Your Honor.

7 THE COURT: We'll take about a 10 or 15-minute break
8 and we'll come back and resume.

9 MS. RICHARDSON: Thank you, Your Honor.

10 MR. WILSON: Thank you, Judge.

11 (Recess taken.)

12 THE COURT: Anything from the State before we bring
13 the jury in?

14 MS. RICHARDSON: No, Your Honor, but I believe the
15 defense has something they wanted to address.

16 THE COURT: Alright, anything from the defense?

17 MS. ANDERSON: Yes, Your Honor, we were informed that
18 someone has been coming in and relaying testimony to the
19 State's witnesses. They're coming in, sitting through
20 testimony and then they're being overheard in the hallways
21 relaying that testimony to the State's witnesses.

22 THE COURT: Alright.

23 MS. ANDERSON: So we would just ask Your Honor to
24 admonish that those that are allowed to sit in the courtroom
25 and hear testimony are not relaying it to witnesses. It

1 frustrates the order and gives us concern for the purpose of
2 the order.

3 THE COURT: I agree. That's the reason for the
4 sequestration. Do we know who it is that's relaying the
5 information, or how did you come about the information?

6 MS. ANDERSON: I don't know the name of the person --

7 MS. RICHARDSON: Your Honor, we only had, you see
8 just a handful of people here and several of them have been in
9 the courtroom so I believe we need some information on this.

10 MR. WILSON: Judge, a paralegal came back and told us
11 that in the hallway Jayqwane Cox who was here earlier and
12 possibly his girlfriend was the courtroom going back and
13 relaying information. Now, again, this is third party coming
14 from us. My concern would obviously be we don't want that to
15 be the case of anyone is -- Jayqwane Coleman, I'm sorry, is
16 coming back and, you know, obviously, frustrating the purpose
17 of the sequestering order and frustrating our defense issue.
18 Jayqwane Coleman is a witness. He's supposed to be sequestered
19 and not even supposed to be in the courtroom.

20 MS. RICHARDSON: I have not seen him in the
21 courtroom, Your Honor.

22 MR. WILSON: I agree, Judge. What I'm saying is --

23 THE DEPUTY: He walked in to sit down and I asked him
24 for him to duck out. There was no witnesses here on the stand.

25 MR. WILSON: The issue is not Jayqwane, the issue was

1 the girlfriend who came in -- the girlfriend came in and then
2 went back out to relay the information to him. He is one of
3 the witnesses who we allege gave, again -- or was in this
4 particular vehicle with these other witnesses.

5 THE COURT: I understand. Who is the girlfriend that
6 relayed the information?

7 MS. ANDERSON: She has justed walked in, Your Honor.

8 MS. RICHARDSON: She's sitting on the defense side of
9 the courtroom, Your Honor. I don't know who she is.

10 THE COURT: Jayqwane Cox's girlfriend, is she here?

11 MS. RICHARDSON: Jayqwane Coleman, I believe.

12 MR. WILSON: Coleman, I'm sorry, Judge.

13 THE COURT: Jayqwane Coleman's girlfriend, is she
14 here?

15 MS. DEAS: I'm her sister.

16 THE COURT: Could you please stand? Your name?

17 MS. DEAS: Gabriel Deas.

18 THE COURT: Did you listen to any testimony and then
19 go out and tell people in the hallway what the testimony was or
20 who was testifying?

21 MS. DEAS: No, sir. I went to the bathroom and we
22 went on break after that.

23 THE COURT: What I'm saying is, we sequester the
24 witnesses for a reason. That's so that they will come in not
25 knowing what the prior testimony is.

1 MS. DEAS: No, sir, I didn't do anything like that.

2 THE COURT: Well, I'm going to go ahead and let
3 everybody in here know, if there is anything of that nature
4 going on you're subject to being held in contempt. You could
5 be put in prison for a year, fined \$1,500.00 and/or ordered to
6 perform 300 hours of community service. So has anybody in the
7 courtroom given any of the testimony to any of the witnesses
8 outside?

9 (No response.)

10 THE COURT: Alright. If it happens, then we're going
11 to hold them until the end of the trial and I'll deal with the
12 contempt charges, and we'll take them into custody right away.

13 MS. RICHARDSON: And just for the record, Your Honor,
14 I believe this is coming from some of the same people that we
15 believe took photographs yesterday, so I think we probably are
16 just going to have security observe, because I've never met Ms.
17 Deas and was not aware. She's obviously sitting on the
18 defendant's side of the courtroom.

19 MS. DEAS: Because they told me to sit on this side,
20 I actually going to sit right there.

21 MS. RICHARDSON: But I'm saying I wouldn't have
22 recognized her or known her.

23 THE COURT: Ms. Coleman is a witness for the State;
24 is that correct?

25 MS. RICHARDSON: Mr. Coleman --

1 THE COURT: Jayqwane Coleman.

2 MS. RICHARDSON: -- is a potential witness for the
3 State, yes, Your Honor.

4 THE COURT: Alright. Go out there, all I want you to
5 do is ask him who he talked to during the break.

6 MS. RICHARDSON: And Your Honor, he is represented by
7 counsel who is not here. He has pending charges and was also
8 on the roster --

9 THE COURT: Is he here?

10 MS. RICHARDSON: Yes, I just saw him outside. He is
11 here, he's out in the hallway.

12 THE COURT: Is he going to testify today?

13 MS. RICHARDSON: No, Your Honor, not today. His
14 attorney is not here.

15 THE COURT: Is he under subpoena today?

16 MS. RICHARDSON: Yes, Your Honor. He's under
17 subpoena, but his attorney is not here.

18 THE COURT: Let's go ahead and bring him in. I'll
19 question him then.

20 MS. DEAS: Can I say something, Your Honor?

21 THE COURT: Yes, ma'am.

22 MS. DEAS: We're here because he thought he had court
23 today. That's the only reason why we're here. I wasn't with
24 him yesterday.

25 MS. SMITH: Your Honor, our office investigator is

1 looking for him now. He's no longer out there.

2 Well, they can look for him. We'll question him when he's
3 available but don't let him come in the courtroom. How do we
4 manage that?

5 THE COURT: How do we manage not having -- Your
6 investigator, is he going to testify, or is he in the courtroom
7 or --

8 MS. SMITH: He is not on our witness list and he is
9 not scheduled to testify. He is in the courtroom to provide us
10 with any needs or to help us with any needs that we may have,
11 but he's out there are now trying to help with the Court's
12 request.

13 MS. RICHARDSON: And we don't know all the parties,
14 so when people come in we don't know who they are.

15 THE COURT: I understand. Tell your investigator,
16 let's find out when Mr. Coleman gets here, let us know but
17 don't bring him into the courtroom.

18 MS. SMITH: Yes, Your Honor.

19 THE COURT: Do we need to wait for Ms. Smith to get
20 back? We can.

21 MS. RICHARDSON: No, we should be fine, Your Honor.

22 THE COURT: Anything from the State before we bring
23 the jury in?

24 MS. RICHARDSON: No, Your Honor.

25 THE COURT: Anything from the defense before we bring

1 the jury in?

2 MS. ANDERSON: No, Your Honor.

3 THE COURT: Let's go ahead and bring the jury in.

4 (Jury entered the courtroom at 3:56 p.m.)

5 THE COURT: Ladies and gentlemen, welcome back.

6 We're ready to resume the trial. The State can call your next
7 witness.

8 MS. RICHARDSON: The State calls Joshua Miller.

9 **Joshua Miller being first duly sworn, testified as**
10 **follows:**

11 THE CLERK: Please be seated state your name for the
12 record and spell your last name.

13 THE WITNESS: Joshua Miller, J-o-s-h-u-a,
14 M-i-l-l-e-r.

15 DIRECT EXAMINATION

16 BY MS. RICHARDSON:

17 Q. Josh, how old are you?

18 A. Twenty-eight.

19 Q. And where are you from?

20 A. Baltimore, Maryland, originally. I grew up right here
21 in Georgetown.

22 Q. How old were you when you moved here to Georgetown?

23 A. Probably about four years old.

24 Q. So other than that you've been in South Carolina?

25 A. Yes.

1 Q. Where did you go to high school?

2 A. Georgetown High School and also West Florence High
3 School, I went there my freshman and sophomore year, and
4 Georgetown High School my junior and senior year.

5 Q. And did you graduate from high school?

6 A. No, ma'am, I didn't.

7 Q. Do you work?

8 A. Yes, ma'am.

9 Q. What kind of work do you do?

10 A. Right now I do cabinetry, installing and making custom
11 cabinets.

12 Q. How long have you been doing that work?

13 A. For approximately a year.

14 Q. And did you know Corey Miller -- I mean, Corey Hayes?

15 A. Yes, ma'am.

16 Q. How did you know him?

17 A. He'd been a buddy of mine, through school. I met him
18 through school but I've known him for years.

19 Q. Were you really good friends with him?

20 A. Yes, ma'am.

21 Q. Can you tell us, is Corey still with us?

22 A. No, ma'am.

23 Q. And what happened to Mr. Hayes?

24 A. He, riding his motorcycle to the gas station, a trailer
25 jumped off and hit him head on, killed him.

- 1 Q. And that was, obviously, after you were shot?
- 2 A. Yes, ma'am.
- 3 Q. Do you know his sister?
- 4 A. Yes, ma'am.
- 5 Q. What's her name?
- 6 A. Krista Hayes.
- 7 Q. Do you know Jed Coleman?
- 8 A. Yes, ma'am.
- 9 Q. Tell me how you know Mr. Coleman?
- 10 A. Me and Corey smoked with him before.
- 11 Q. Let's just go ahead and put it out there, what did you
- 12 all smoke with him?
- 13 A. Weed.
- 14 Q. And did Corey ever get marijuana from him?
- 15 A. I know one time before, yes, ma'am.
- 16 Q. And what about Janena Gamble, do you know her?
- 17 A. Not prior to this.
- 18 Q. And take us back to October 9, 2018. At that time where
- 19 were you living?
- 20 A. In Litchfield on the golf course.
- 21 Q. And just for those that aren't familiar, how far is
- 22 Litchfield from the Francis Marion Gas Station?
- 23 A. It's straight across the street from it. It's a long
- 24 road about a mile and a half to two miles long.
- 25 Q. It was off of 701? Litchfield is off of 701, not far

1 from Francis Marion?

2 A. Right across the street.

3 Q. And so take us back to that day. Tell me what you were
4 doing.

5 A. I was golfing and I got off work. I worked on the golf
6 course, I got off work and then golfed and played nine holes
7 and then Corey called me to ride with him to the gas station.

8 Q. And what were you going to the gas station for?

9 A. He was going to sell Jed and Janena some Xanax.

10 Q. Who was going to do that?

11 A. Corey.

12 Q. Do you know about what time you got there?

13 A. No, ma'am. It was probably, I'd say, around 7ish, 8ish,
14 I can't recall exactly.

15 Q. And what was the plan for this?

16 A. I wasn't, I don't know 100 percent, but I believe he was
17 pulling up and he was going to sell them some Xanax.

18 Q. Do you remember the price or anything like that?

19 A. I didn't really ask. It wasn't really my deal. I was
20 just kind of riding with him.

21 Q. And from your understanding, who was he supposed to
22 meet?

23 A. Jed.

24 Q. And do you remember where you were supposed to meet?

25 A. Francis Marion.

1 Q. And where at the store?

2 A. I believe just at the store. Corey didn't really
3 specify all that to me. I was more or less -- I was gonna go
4 and shoot some more golf and I was gonna ride to the gas
5 station and get some more beer.

6 Q. Did you do that?

7 A. Yes, ma'am.

8 Q. How much beer did you buy?

9 A. I bought a 12 pack of Bush Light.

10 Q. And you were 24 at this time?

11 A. Yes, ma'am.

12 Q. And so tell me what happened when you all were initially
13 supposed to meet up?

14 A. I believe, I mean, they was gonna jump in, get them and
15 then jump out, you know, common exchange, I guess, that's my
16 belief.

17 Q. And was there ever a time when you were on a different
18 area of the store?

19 A. When we first pulled up they were sitting on the back
20 side of the store and Corey felt real sketched out about it.
21 He didn't want to go up there.

22 Q. When you say, the backside of the store, where do you
23 mean?

24 A. If you're facing the store, further to the left past the
25 liquor store, kind of, if you know the area there's a little

1 gas station, it's kind of behind the store almost. There's a
2 parking lot, a gravel parking lot, it's real beat up right
3 behind the store, or to the left of it, and there was a
4 shipping container there, I remember that, they were parked
5 right there by it, kind of snuck back.

6 Q. And would you mind stepping down and showing us on
7 State's Exhibit 4, that area. And when you say, they were
8 first parked, who is "they"?

9 A. Janena, Jed, his little brother, and Eryk.

10 Q. Come on down. This is State's Exhibit 4, which is the
11 picture.

12 A. This is the gas station, that's the liquor store, and
13 then on the back side of that liquor store on the side there's
14 a shipping container, and they was to the right of that -- or
15 to the left if you were facing the store.

16 Q. Okay. And obviously, we can see from the picture, but
17 how was -- and this was at night time, right?

18 A. Yes, ma'am.

19 Q. How was the lighting over there?

20 A. It was dark. There wasn't no lights over there.

21 Q. If you would have a seat back. And tell me why you were
22 sort of -- you and Corey were sketched out, your term,
23 "sketched out," about being over in that area?

24 A. Kind of because they were just sitting in the back
25 almost like they were hiding. There was no lights there and

1 whenever Corey confronted them about it they got defensive.

2 Q. And how did Corey confront them?

3 A. I believe he called them.

4 Q. And they got defensive? So what did you all do?

5 A. We went to leave. We went to leave and go back, go back
6 to the golf course, and then that's when I believe they either
7 called or messaged him and told them that they would meet him
8 up closer towards the store.

9 Q. In the more well lit area?

10 A. Yes, ma'am.

11 Q. The more public area?

12 A. Yes, ma'am.

13 Q. So what kind of vehicle were you and Corey in?

14 A. We was in his white Chrysler.

15 Q. And who was driving?

16 A. Corey.

17 Q. And where were you?

18 A. In the passenger seat.

19 Q. So where did you all go at that point? Where at the
20 store did you park?

21 A. So there was two gas pumps and we were at the right side
22 of the gas pump closest towards 701.

23 Q. And then what direction were you facing?

24 A. Towards 701.

25 Q. And did the other car appear?

1 A. Yes, ma'am.

2 Q. What kind of car was that?

3 A. A black Audi?

4 Q. And where did it pull up?

5 A. It pulled up parallel with us at the gas pump.

6 Q. So again, I'm going to have you come back down. I
7 probably should have done this before you went back. If you'd
8 come back down, let's look at State's 4. So this is from 701,
9 looking in?

10 A. That's right.

11 Q. Where were you all in reference to the gas pumps?

12 A. We was at this gas pump on the side furthest from the
13 store.

14 Q. So not on this side but on the other side?

15 A. Yes, ma'am.

16 Q. And you were facing 701?

17 A. Yes, ma'am.

18 Q. So that would have been towards me?

19 A. Yes, ma'am.

20 Q. And they pulled up where?

21 A. You can't really see it in this picture, but almost
22 parallel with us at this gas pump.

23 Q. But also still on the opposite side of the store --

24 A. Yes, ma'am.

25 Q. -- from the gas pump. So the gas pump was not between

1 the two of you?

2 A. No, ma'am.

3 Q. You can have a seat. And so when both of you pulled up
4 and were facing towards 701, tell me what happened then.

5 A. Jed and Ja-dayna (phonetic) jumped in the backseat.

6 Q. And you called her Ja-dayna (phonetic)?

7 A. Ja-dayna (phonetic).

8 Q. So Jay-na (phonetic) is how we've been pronouncing, so
9 Janena, where was she in the other car?

10 A. She was driving -- oh in --

11 Q. In her car.

12 A. She was driving.

13 Q. So when she got out of her car where did she get?

14 A. She got in the backseat of Corey's car.

15 Q. And who else -- did you say somebody else got into
16 Corey's car?

17 A. Yes, ma'am, Jed Coleman.

18 Q. Where was he in the other car?

19 A. So when they got in, he got in first and sat behind
20 Corey behind the driver's seat, and then -- how do you
21 pronounce her name?

22 Q. Jay-na (phonetic.)

23 A. Janena got in the seat behind me behind the passenger.

24 Q. Do you know where Jed had been seated in the other car?

25 A. Jed seated behind the driver.

1 Q. So he was in the backseat of both cars?

2 A. Yes, ma'am.

3 Q. Do you know where the other people in the black Audi
4 were sitting?

5 A. Yes, ma'am.

6 Q. Tell me about that.

7 A. I had seen Jed's brother in the backseat sitting behind
8 the passenger side and then Eryk in the passenger's seat.

9 Q. And you're referring to -- okay, you're nodding your
10 head. Could you point to who you're referring to?

11 A. Eryk Smith.

12 MS. RICHARDSON: Let the record reflect that he has
13 identified the defendant, Eryk Smith.

14 Q. And he was in the passenger seat of the Audi?

15 A. Yes, ma'am.

16 Q. So Jed and Janena were in the back of the car you're in?

17 A. Yes, ma'am.

18 Q. So what happens then?

19 A. Corey handed him a bag of Xanax, I believe, and they
20 looked at it, I can't recall if they said something exactly,
21 and they just kind of jumped out of the car and just left like
22 they were, you know, kind of saying, screw you, and they jumped
23 out of the car and proceeded to get into that black Audi.

24 Q. No money was exchanged?

25 A. No, ma'am.

1 Q. But it was supposed to be?

2 A. Yes, ma'am.

3 Q. So they jumped out and got back in the Audi, and what
4 happened then?

5 A. When they jumped out Janena threw it through the
6 driver's side window, it was rolled down, and she threw it in
7 there as she was opening her car door and as Jed was getting in
8 the car, and because of how I was sitting I kind of beat them
9 jumping out of the car when they jumped out, and when she threw
10 it in the window I reached in to grab it before she could get
11 inside the car, and when she did I looked up and I seen a gun
12 pointed at me and then there was a bright flash and I came to
13 on my hands and knees right outside the car door.

14 Q. And did you initially realize you had been shot?

15 A. At first I thought I got hit really hard from behind and
16 then I saw blood squirting out my neck and realized that I had
17 got shot, and I got up and started running.

18 Q. And you were reaching in the car to get what?

19 A. To get the Xanax back.

20 Q. Did you see who had the gun?

21 A. Eryk Smith, right there (indicating.)

22 Q. And did you see who shot you?

23 A. Eryk Smith, right there (indicating.)

24 Q. So you fell to the ground?

25 A. Yes, ma'am.

1 Q. And where was Corey at this point?

2 A. I believe -- he was outside the car, because he got out
3 when I got out, but was kind of ducked down. I seen this -- as
4 I got up and was running away I seen Corey hiding in between
5 the gas pump and his car trying to look to see what happened.
6 He heard the gunshots and you could tell he was scared and was
7 hiding from it walking around the car.

8 Q. And after you were hit you fell to the ground?

9 A. Yes, ma'am.

10 Q. And then did you hear, or what happened next?

11 A. I looked up and I seen Jed. He made dead eye contact
12 with me and he said, you clipped him, you clipped him, you need
13 to finish him off. I've just never been scared like that in my
14 life, I started running zig-zags to the back of the store.

15 Q. And why did you go to the back of the store?

16 A. I was getting out there. I was getting furthest away
17 from the guy that just shot me, and then the other guy was
18 telling him to finish me off.

19 Q. And when you got back behind the store why did you
20 change directions?

21 A. I got back there and there was like two rundown
22 trailers, the lights were off, I just didn't feel safe. I
23 didn't think they'd help me.

24 Q. And what about Litchfield, did you think about that?

25 A. I thought I was already dead pretty much. I knew that

1 if I tried to run down that long road I'd die for sure.

2 Q. So then what did you can?

3 A. I went to turn around and run back in the store, I
4 didn't know any other option, and as I went and turned back
5 around I seen them pull off nonchalantly.

6 Q. You saw who pull off?

7 A. The black Audi, the same black Audi.

8 Q. Okay. And so you went into the store?

9 A. Yes, ma'am.

10 Q. And you've seen -- obviously you've seen the Body Cam
11 that we played showing the condition?

12 A. Yes, ma'am.

13 Q. Tell this jury where you were hit.

14 A. I believe it went in right here at the bottom of my neck
15 and it shattered my jaw and came out the side of my face right
16 here (indicating.) And also, then my wrist, it went in one
17 side and came out the other. I don't know if you all can see
18 that or not (indicating.)

19 Q. And when you were in the store tell me what kind of
20 condition you were in and what you were thinking.

21 A. I was dead. There was blood coming out of my neck, how
22 do you stop that? I thought I was dead for sure. I just
23 didn't want them to get away with it either. I didn't want to
24 just die and nothing happen, I'd just be some statistic pretty
25 much, just a dead person.

1 Q. The people that were trying to help you, did you ask
2 them to do anything for you?

3 A. To tell mom that I love her, to take care of my dogs.

4 Q. And law enforcement did try to ask you some questions
5 while you were on the scene?

6 A. Kind of. It is a little blurry, I felt like I was going
7 in and out.

8 Q. And what hospital did they take you to?

9 A. I remember them saying they were taking me to Georgetown
10 in the ambulance, but I couldn't ever feel like -- I felt like
11 I couldn't open my eyes and when I woke up I was in Charleston.

12 Q. And that's where you completed your treatment was at
13 Charleston?

14 A. Yes, ma'am.

15 Q. Was that at the Medical University of South Carolina?

16 A. Yes, ma'am.

17 Q. MUSC?

18 A. MUSC, yes, ma'am.

19 Q. And what sort of treatment did you get at MUSC?

20 A. They went in and wired my -- they put my jaw back
21 together. They said it was broken in about four pieces then
22 they went and wired it shut.

23 Q. And do you recall how long you were in the hospital?

24 A. Two or three days.

25 Q. And did your family come to you?

1 A. Yes, ma'am, my mom.

2 Q. Let me show you what's been pre-marked as State's
3 Exhibit Number 5. Can you tell me what that is?

4 A. Where I got shot, bullet holes.

5 Q. And that picture was taken by some of your family?

6 A. Yes, ma'am.

7 Q. And you provided it to us to show where your wounds
8 were?

9 A. Yes, ma'am.

10 Q. And I guess it doesn't show your hand, but that's an
11 accurate reflection of where you were shot in your face and
12 your neck?

13 A. Yes, ma'am.

14 MS. RICHARDSON: Your Honor, at this time the State
15 offers State's Exhibit Number 5 into evidence.

16 THE COURT: Any objection?

17 MR. WILSON: Without objection, Judge.

18 THE COURT: State's Exhibit 5 is admitted into
19 evidence without objection.

20 MS. RICHARDSON: And I'm just going to hold it up for
21 the jury, Your Honor.

22 THE COURT: State's Exhibit five is admitted.

23 (State's Exhibit No. 5 was marked for identification
24 and admitted into evidence.)

25

1 BY MS. RICHARDSON:

2 Q. Now, did they pull any bullets out of you?

3 A. Not that I recall, no, ma'am.

4 Q. So you believe it kind of went in and out of your face?

5 A. I believe when I asked the doctors they said that they
6 think that it went in and it exploded when it hit my jaw
7 because they saw pieces of bullet fragments in there.

8 Q. And in your wrist it was through and through?

9 A. Yes, ma'am.

10 Q. So you were also questioned -- do you recall being
11 questioned in the hospital?

12 A. Vaguely.

13 Q. Explain to me, sort of, your state of mind and what you
14 were seeing or hearing at that time?

15 A. I couldn't see anything. It felt like I was almost in a
16 dark room and I could hear voices around me asking me
17 questions, rushing, panicking, I couldn't really see a whole
18 lot.

19 Q. And at some point they did intubate you or put a
20 breathing tube in you when you were at the hospital here?

21 A. Yes, ma'am, I believe so. I remember when they went to
22 I guess put me under, or sedate me, I remember that, I remember
23 talking to the nurse.

24 Q. Did you ask her to do anything for you?

25 A. I asked her not to leave me alone.

1 Q. Did she make any phone calls for you?

2 A. No, ma'am, she sat and held my hand.

3 Q. Until you fell asleep?

4 A. Yes, ma'am.

5 Q. And the next thing you remember was waking up in
6 Charleston?

7 A. Yes, ma'am.

8 Q. And what sort of condition were you in after you were
9 discharged from MUSC?

10 A. Mouth wired shut, just broken.

11 Q. And how did you eat and drink?

12 A. Through a straw.

13 Q. And how long did you have to do that?

14 A. Eight weeks.

15 Q. And then they went back and took those wires out?

16 A. Yes, ma'am.

17 Q. You had to go back to Charleston for that?

18 A. Yes, ma'am.

19 Q. And after you got out of the hospital did you go back to
20 Litchfield?

21 A. I went there to get my dog and my stuff. I left that
22 day.

23 Q. And without telling me exactly where, but did you move
24 to the upstate area?

25 A. Yes, ma'am.

1 Q. Why did you move to the upstate?

2 A. Scared for my life. They didn't ever catch them.

3 Q. At that time some of the defendants had not been caught?

4 A. They didn't get Eryk or Jed.

5 Q. For a while?

6 A. A few months at least.

7 Q. And who did you go to the upstate with?

8 A. My mother, she lived up there.

9 Q. Did she take care of you?

10 A. Yes, ma'am.

11 Q. And after you were discharged from the hospital, you
12 didn't meet with law enforcement?

13 A. No, ma'am.

14 Q. Did you come to any sort of court hearings or anything
15 like that?

16 A. No, ma'am.

17 Q. Were you ever shown any kind of lineups or anything like
18 that?

19 A. No, ma'am.

20 Q. And then, obviously, the pandemic happened?

21 A. Yes, ma'am.

22 Q. And then you talked, you were interviewed by someone
23 with my office; is that right?

24 A. Yes, ma'am, the investigator.

25 Q. And did you tell him the truth?

1 A. Yes, ma'am.

2 Q. Did you tell him the whole truth?

3 A. Yes, ma'am. Not quite exactly.

4 Q. Tell me what you didn't tell him the truth about.

5 A. I said that we were buying weed instead of selling them
6 Xanax.

7 Q. And why did you do that?

8 A. I didn't want nobody to get in trouble.

9 Q. And then did you eventually tell the truth about that?

10 A. Yes, ma'am.

11 Q. But no question that you and your friend and Jed Coleman
12 and his friends with involved in some sort of drug transaction
13 at Francis Marion?

14 A. There's no question about it.

15 Q. How do you feel about it now?

16 A. I should have never got in the car, it's something
17 that's going to haunt me the rest of my life.

18 Q. I'm sorry, I didn't hear you.

19 A. It's something that's going to haunt me for the rest of
20 my life, something I live with.

21 Q. And before this day you did know Jed Coleman?

22 A. Yes, ma'am.

23 Q. So if you had passed him in Wal-Mart you would know who
24 he was?

25 A. Yes, ma'am.

1 Q. What about his little brother, did you know him?

2 A. I didn't know him as well as Jed, but I had seen him
3 around multiple times.

4 Q. And if you had passed him in Wal-mart you would know who
5 he was?

6 A. Yes, ma'am.

7 Q. And obviously, there was one female in the car?

8 A. Yes, ma'am.

9 Q. And that was Ms. Gamble. Did you know her prior to
10 this, or would you have been able to identify her before this?

11 A. No, ma'am, not before this, no.

12 Q. Mr. Smith, did you know him?

13 A. Not before this, no, ma'am.

14 Q. And were you able to identify him?

15 A. Yes, ma'am.

16 Q. Tell me how you identified him.

17 A. Actually, a buddy of mine sent me a YouTube link of a
18 song that he wrote bragging about shooting me, and he's in the
19 video. The first time I saw it I pointed it out exactly, I
20 knew that was him.

21 Q. And how sure are you that that's the person that shot
22 you?

23 A. As sure as I can be, 100 percent, I put it on my life.
24 You never forget somebody's face that you thought would be the
25 last person you see when somebody tried to kill you for

1 nothing.

2 MS. RICHARDSON: I have no further questions. I want
3 you to answer any questions that the other attorneys have for
4 you. Okay?

5 THE WITNESS: Yes, ma'am.

6 MR. WILSON: Your Honor, may it please the Court,
7 Judge?

8 THE COURT: Yes.

9 MR. WILSON: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. WILSON:

12 Q. Mr. Miller, how are you doing today?

13 A. As good as I can be.

14 Q. Good. I want to go back a little bit, okay, about the
15 drugs --

16 A. Yes, sir.

17 Q. -- the Xanax, okay? When Officer Garrett asked you at
18 the hospital, at the ER, you know, what is this about dope?

19 A. Yes, sir.

20 Q. Now, just so the jury understands, "dope" is a common
21 word for all narcotics, correct?

22 A. I guess so, it can be misinterpreted.

23 Q. Okay, it can be misinterpreted, but all intents and
24 purposes, Detective Garrett was asking you if this entire
25 situation was about dope, drugs?

1 A. Yes, sir.

2 Q. What did you tell him?

3 A. It was about weed.

4 Q. Did you tell him it was about money?

5 A. Yeah.

6 Q. He asked you -- in fact, he asked you what was this
7 about and you told him you that you all were just talking to
8 some girls, do you recall that?

9 A. No.

10 Q. Do you deny saying that: We were just talking to some
11 girls and they shot me.

12 A. Yeah, I didn't say that. I don't recall saying that by
13 no means.

14 Q. I'm asking you, are you denying you said it?

15 A. Yeah, I don't remember saying it.

16 Q. Okay.

17 MR. WILSON: Do you have his video, his audio?

18 Q. Just while she's doing that, so let me get this right,
19 you never told Detective Garrett in the hospital that you all
20 were just talking to some girls at all, period, right?

21 A. No, sir. I don't recall talking to him?

22 Q. At all?

23 A. No.

24 Q. Do you recall talking to him about describing that there
25 was a girl that looked like a man?

1 A. Yeah, I believe so.

2 Q. Okay, alright. So you were lucid enough in the hospital
3 to tell Detective Garrett that one of the people that got in
4 the car with you was a girl that looked like a man?

5 A. I believe so, yes, sir. I mean, the state that I was
6 in, I wouldn't put a lot on it. I remember him asking me
7 questions over and over and I just wanted him to get me to the
8 doctor.

9 Q. You were at the hospital, right?

10 A. Yes, sir.

11 Q. And Detective Garrett came in and says, who shot you,
12 and you say, I don't know; is that fair?

13 A. Yes, sir.

14 Q. Detective Garrett goes further and says, look, I'm just
15 trying to find out who shot you. Do you recall telling him, he
16 was talking: Just a girl. Do you recall that?

17 A. (No audible response.)

18 Q. Okay, alright.

19 MS. RICHARDSON: I didn't hear his response.

20 THE COURT: You need to give a verbal.

21 THE WITNESS: No, sir. I'm sorry.

22 MR. WILSON: They just want you to respond so you'll
23 be on the record.

24 A. Yes, sir.

25 Q. Do you recall telling him that you knew the other guy,

1 not the girl, Janena Gamble, who was the person who jumped out
2 of the car with the pills, that you knew Jed Coleman?

3 A. I can't recall.

4 Q. So you don't recall much in that first interview?

5 A. Not a whole lot, no, sir.

6 Q. Well, do you recall having any conversation that day
7 with Jed Coleman about him buying Xanax from you?

8 A. (No audible response.)

9 Q. So you never talked with Jed Coleman?

10 THE COURT: I'm sorry, you've got to give a verbal
11 response.

12 A. No, sir, I believe not me --

13 Q. So who talked to him, you or Corey?

14 A. Corey.

15 Q. You were the plug, correct?

16 A. No, sir.

17 Q. So you weren't the person selling the drugs?

18 A. No, sir.

19 Q. I've got a question for you. If you aren't the person
20 selling the drugs why do you jump out of the car when you say
21 that Janena Gamble --

22 A. Yes, sir.

23 Q. Let me finish the question -- when Janena Gamble gets
24 the bag of Xanax, what was the street value of the Xanax?

25 A. I don't even know how many there was.

1 Q. You didn't tell them that there were 40 in the bag and
2 that you were 10 short and that you wanted them to pop one, you
3 never said that to them?

4 A. (No audible response.)

5 Q. Okay. Alright.

6 THE COURT: You've got to give a verbal response.

7 A. No, sir.

8 Q. So you never told them that there were 40 in the bag and
9 that there were two and you want each one to pop one to make
10 sure they were real?

11 A. (No audible response.)

12 THE COURT: You've got to give a verbal response.

13 A. No, sir, I'm sorry, no, sir.

14 Q. Well, let me ask you this: In the car do you recall
15 Gamble telling you, look, I don't think these are real?

16 A. No, sir.

17 Q. She never told you that? Okay? So when she jumps out
18 of the car who has the bag of Xanax?

19 A. Janena.

20 Q. Janena does. Okay. And then she jumps out and runs to
21 the Audi, correct?

22 A. Yes, sir.

23 Q. And then what with does Jed Coleman do in the backseat?

24 A. He was getting out just as fast as she was.

25 Q. And then Corey Hayes, didn't move, did he?

1 A. I think he had attempted to get out of the car. It
2 happened a lot faster than they are kind of making it seem, it
3 was all one quick second.

4 Q. I understand. What I'm saying is just let me just make
5 sure I'm correct on this. Let's say that I'm sitting in the
6 driver's seat and the car is facing this way. So Corey Hayes
7 is right here (indicating.)

8 A. Yes, sir.

9 Q. You're sitting right here on the right side?

10 A. In the passenger seat.

11 Q. Behind you is who?

12 A. Ja-dayna (phonetic.)

13 Q. Ms. Gamble?

14 A. Ms. Gamble.

15 Q. Because I can't pronounce it either. And then to the
16 left is who?

17 A. Jed.

18 Q. In the back?

19 A. Yes, sir.

20 Q. And so Janena, Ms. Gamble, gets out of the car and then
21 you jump out after her?

22 A. Yes, sir.

23 Q. Now, why if those drugs don't belong to you are you
24 jumping out after Ms. Gamble?

25 A. I mean, I wouldn't -- would you let somebody take

1 something from your brother?

2 Q. I'm sorry, I apologize?

3 A. Would you let somebody take something from anybody that
4 you cared about in general?

5 Q. I'm not on the witness stand, so I'm asking you, why
6 would you jump out of the car after these drugs?

7 A. It probably wasn't the best, you know, intention or
8 mindset, but I wasn't gonna let anybody take something from
9 somebody I cared about, regardless.

10 Q. Well, Corey Hayes is not your biological brother, is he?

11 A. Best friend.

12 Q. But he's not your brother, right?

13 A. It depends on how you, you know, characterize that.

14 Q. Fair enough. So you jump out of the car after Ms.
15 Gamble, running after her, okay?

16 A. It was more like a step, it wasn't even a run.

17 Q. Fair enough. You were stepping toward her?

18 A. Yes, sir.

19 Q. Now, I want you to tell the jury, that day when you all
20 came out and you all said you all were sketched out about the
21 car being in dark, right?

22 A. Yes, sir.

23 Q. And you all were, for lack of a better word, you all
24 were afraid?

25 A. He was, he didn't feel right -- Corey didn't feel right

1 about it.

2 Q. Why weren't you afraid?

3 A. Because it wasn't my deal.

4 Q. Wasn't your deal. Okay, fair enough. So let me ask you
5 this then: Have you gone on a drug deal before?

6 A. Yes, sir.

7 Q. Okay. Alright. It's okay, because they promised you
8 they're not gonna charge you with the pills that were the car
9 and thrown all over the concrete, so you don't have to worry
10 about that. So I'm asking you now, you've gone on drug deals
11 before?

12 A. I've been on one before with Corey.

13 Q. And they're dangerous, aren't they?

14 A. Anything is dangerous.

15 Q. I mean, I used to work at Myrtle Waves Water Park.
16 Myrtle Waves Water Park wasn't dangerous. I'm asking you, are
17 you saying every job is dangerous?

18 A. No, no, sir, not at all. I'm not saying that was a job,
19 though, either.

20 Q. Okay, fair enough. But you did earn income from selling
21 drugs?

22 A. No.

23 Q. You weren't making money from selling drugs?

24 A. (Shakes head, no.)

25 Q. So you are then, I apologize -- Corey Hayes is afraid

1 because it's a drug deal, you're not concerned, and you all are
2 sketched out is what you told the prosecutor, but not afraid,
3 though, right?

4 A. I mean --

5 Q. The prosecutor asked you, were you "sketched out"? She
6 said those are your words.

7 A. Yes, sir.

8 Q. What does "sketched out" mean?

9 A. He felt like there was something shady going on.

10 Q. Okay, something shady going on. And did that give you
11 all cause for concern?

12 A. I guess so.

13 Q. So let me ask you this: To protect yourself, what do
14 drug dealers take on drug sales and drug buys, what do they
15 take with them to protect themselves?

16 A. It depends.

17 Q. Depends?

18 A. Yes, sir.

19 Q. Well, give us some examples of some things that you
20 would take with you.

21 MS. RICHARDSON: Your Honor, I object. This is
22 speculation. If he wants to ask him if he had something he can
23 ask him directly, but he's just doing speculation right here.

24 THE COURT: I'll sustain the objection.

25 Q. Did you or Corey Hayes have a gun with you this night?

1 A. Not at all.

2 Q. Did anyone ever ask you if you had a gun?

3 A. No, sir.

4 Q. The police never asked you, did they?

5 A. If I had a gun?

6 Q. Yes.

7 A. Like I said, they asked me stuff, but it was real fuzzy.
8 I was sitting there bleeding out and they kept asking me
9 questions and I just wanted them to get me to a doctor.

10 Q. You talked with the investigator from Ms. Richardson's
11 office, didn't you?

12 A. Yes, sir.

13 Q. And then you gave a statement, correct?

14 A. Yes, sir.

15 MR. WILSON: Your Honor, may I approach?

16 THE COURT: Yes.

17 MR. WILSON: Thank you.

18 BY MR. WILSON:

19 Q. I want you to let me know if that's the statement that
20 you gave to the police -- I'm sorry, to the investigator for
21 the prosecutor's office two days ago, three days ago?

22 A. Yes, sir.

23 Q. It was? That's your statement?

24 A. I'm sorry, you didn't let me finish reading it.

25 Q. My apologies, I apologize. I'm sorry, go ahead.

1 A. Yes, sir.

2 Q. Is that your statement?

3 A. Yes, sir.

4 Q. And at that time they already made you a promise that
5 you wouldn't be charged anything, correct?

6 A. Yes, sir.

7 Q. But in that statement -- well, let me do this. Can I
8 mark it for identification purposes? Thank you, Judge.

9 (Defendant's Exhibit A was marked for
10 identification.)

11 Q. Now, the investigator asked you, Mr. Brown, asked you,
12 were the pills yours, right?

13 A. Yes, sir.

14 Q. And even after they promised you you weren't going to
15 get in trouble?

16 A. Yes, sir.

17 Q. You still in that statement told them, no --

18 A. Yes, sir.

19 Q. -- that the pills didn't belong to you?

20 A. Yes, sir.

21 Q. So now your testimony today is that the pills did belong
22 to you?

23 A. No.

24 Q. So they're still not yours?

25 A. No, sir.

1 Q. Well, didn't you cry with the solicitor when she
2 approached you about these pills?

3 A. I've cried multiple times talking to the solicitor.

4 Q. I understand, but I'm talking about two or three days
5 ago --

6 A. Yes, sir.

7 Q. -- when they came to you asking you for another
8 statement?

9 A. Yes, sir.

10 Q. Because you didn't give them any other statement, did
11 you, other than the ER visit?

12 A. Sir?

13 Q. Other than the ER visit, when this first happened --

14 A. Yes, sir.

15 Q. -- did you provide cooperation with the State?

16 A. When it first happened?

17 Q. Other than when they first talked to you at the ER.

18 A. Yes, sir.

19 Q. When did you talk to them after that?

20 A. It had been a while because COVID had came into play and
21 everything and I was living upstate, and it was a little while.

22 Q. So you're saying that you did talk to them. Have you
23 talked to Ms. Richardson's office or to Detective Garrett since
24 2018 on the day the shooting happened --

25 A. Yes, sir.

1 Q. -- until now, except for the conversation with Steve
2 Brown, have you talked to anybody, Garrett, anybody?

3 A. Any other police officers?

4 Q. Anybody.

5 A. No, sir. I talked to one of her investigators.

6 Q. Okay. That was the other day, right?

7 A. Yes, sir.

8 Q. Like last week?

9 A. Yes, sir.

10 Q. But in the last four years?

11 A. Yes, sir.

12 Q. You only talked to them twice?

13 A. No. I stayed in contact with one of her investigators.
14 He would call me on the phone. I can't recall his name.

15 Q. So tell me about those conversations, what did you all
16 talk about?

17 A. He was trying to get me to come write my statement.

18 Q. He was trying to get you to come in?

19 A. Yes, sir.

20 Q. And what happened, why didn't you come in?

21 A. Scared.

22 Q. Scared to come in. Okay. Alright. So you were scared
23 to come talk to them, but when they contacted you a week ago
24 and then promised that they weren't going to charge you, you
25 came in?

1 A. No, sir. They subpoenaed me a few months ago.

2 Q. Okay. They issued a subpoena for you?

3 A. Yes, sir.

4 Q. So they forced you to come in?

5 A. I wouldn't say they forced me to come in, but I mean, I
6 was -- I was not motivated.

7 Q. Not motivated.

8 A. I was scared.

9 Q. I understand. You were scared. Okay. So let's get
10 back then to the end of this drug deal. When you get to this
11 car and you were at the vehicle, how tall are you?

12 A. Five nine.

13 Q. Five nine, five ten, your medical records said five ten,
14 is that about right?

15 A. Yes, sir.

16 Q. So if you are five ten, and this car height -- Audi is a
17 low car, right?

18 A. Yes, sir.

19 Q. Low to the ground?

20 A. (Shakes head, yes.)

21 Q. And you would have to go into the car to get whatever
22 she took from you?

23 A. I guess, like I said, I reached in through the window,
24 and I reached in. I mean, it wasn't taller than me, I guess I
25 was hunched over a little bit.

1 Q. About how far up would you say this window is?

2 A. I mean, it's like a sports car, it's not a normal car,
3 like, just three feet off the ground, maybe, I don't know,
4 four, maybe.

5 Q. Right, that's about, right, actually. That's close to
6 where it was, right? So the window, was it halfway down or was
7 it three fourths, how was it down?

8 A. I believe it was all the way down, maybe this much was
9 hanging up, like rolled up.

10 Q. And so you go, just so I'm right, through the Audi
11 window?

12 A. Yes, sir, I reached in.

13 Q. And what was Ms. Gamble doing at the time when you were
14 going through the window?

15 A. She was about to open the door.

16 Q. About to open the door? So you're saying she was
17 outside the car?

18 A. Yes, sir. She was in the process of, like, getting back
19 in her car.

20 Q. So when you're opening the door what's she doing to you?

21 A. You said when she opened the door?

22 Q. No. When she opened the door, you just said she was
23 opening the door, in the process of opening it.

24 A. Well, she was, like, getting there to open the door. I
25 mean, the door wasn't ajarred or anything, it was closed still.

1 Q. So you got to the door before she did?

2 A. At the same time. Like I said, when I got out of the
3 car I was practically at her door as soon as I stepped out of
4 the car.

5 Q. Fair enough. What I'm asking is, what was she doing the
6 entire time while she saw you trying to go in the window to get
7 the actual drugs back?

8 A. I mean, like I said, it happened all at one second. It
9 wasn't like there was 30 seconds for her to do anything. I
10 don't know what you want me to say.

11 Q. I don't want you to say anything. I want to ask you the
12 next question. My question is this, at the hospital you told
13 the doctor you were hit in the chest with a butt of a gun, do
14 you recall that?

15 A. No.

16 Q. You don't recall that?

17 A. Like I said, I was bleeding out. I don't remember a lot
18 of that. I remember people trying to ask me questions.

19 MR. WILSON: Your Honor, may I approach?

20 THE COURT: Yes.

21 Q. Your name is --

22 MS. RICHARDSON: Your Honor, I object. These aren't
23 authenticated. This is going to be in a record, but he'd have
24 to lay a proper foundation for that statement.

25 MR. WILSON: May I speak, Judge?

1 THE COURT: Alright.

2 MR. WILSON: Your Honor, these are his medical
3 records. He has a right to identify his name, his Social
4 Security number, his date of birth are on here, and it goes,
5 obviously, to his testimony, Your Honor. He's saying he didn't
6 say this and obviously --

7 THE COURT: Come here for a second. Let me see the
8 attorneys.

9 (Off the record discussion was held at the Bench by
10 Court and counsel.)

11 THE COURT: I sustain the objection.

12 BY MR. WILSON:

13 Q. Did you ever tell the hospital, the doctor who was
14 interviewing you, Dr. Neil Johnson, in the emergency department
15 --

16 A. I don't recall that.

17 Q. I didn't finish the question yet.

18 A. Go ahead, sir.

19 Q. -- did you ever tell him that you were struck in the
20 chest: I was hit in the chest with the butt of a gun and that
21 I also drank beer today. You never told the doctor that?

22 A. I don't recall talking to a doctor at all, but I don't
23 recall saying the beer either, but I did drink beer that day.

24 Q. Well, if you don't recall saying that to the doctor --

25 A. No, sir.

1 Q. We'll have to get the doctor in here. That's what the
2 judge is telling me, so I will do that, but what I'm asking you
3 is --

4 MS. RICHARDSON: Your Honor, I think that's not a
5 question. That's a statement to the witness. We need to
6 phrase it as a question and not comment on the judge's ruling
7 regarding evidence, as well. I object to that as well.

8 MR. WILSON: I'll withdraw it from the record, Your
9 Honor.

10 THE COURT: Alright. Ask your question.

11 Q. So let me ask you this: Do you recall having a
12 contusion on your chest?

13 A. Yes, sir.

14 Q. And tell the jury what sort of bruise is on your chest.

15 A. Just a scar.

16 Q. And do you recall it hurting?

17 A. That didn't hurt, my face and my wrist hurt.

18 Q. So you never told the doctors that you felt pain in your
19 chest?

20 A. When they were, like, asking me questions and evaluating
21 me and stuff -- this was at the hospital, this was at
22 Charleston when I remember them asking me, like, about where
23 that came from and -- I mean, I couldn't really recall. I
24 didn't know if I got grazed right there or what. That's why
25 you said -- whenever you made that comment that I said that

1 about the doctor, I don't recall that. I don't remember. I
2 remember them asking me where it came from, but I don't
3 remember that.

4 Q. Do you recall having a scuffle with Ms. Gamble, her
5 fighting with you over those pills?

6 A. No. She got up and she jumped out of the car and that
7 was that. I reached into grab them, that's when Eryk shot me.

8 Q. So my question is, so you don't recall ever scuffling
9 with her outside that car or inside the car?

10 A. No.

11 Q. So let's talk about your conversation after the fact
12 with Mr. Hayes. Did you talk with Mr. Hayes after the fact?

13 A. Of course.

14 Q. Did you all discuss this matter? Did you say anything
15 to him about this matter?

16 A. I mean, we kind of talked about it. We were real
17 worried. We felt like Jed and Eryk were after us, were trying
18 to find us and they were on the run.

19 Q. You said you felt like they were after you all, Jed and
20 Eryk were after you? So tell the jury what made you feel that
21 way. I mean, you weren't scared before but you're scared now
22 that they were coming after you, so tell the jury what they did
23 that was so scary for you.

24 A. Well, for starters, shot me in the face and I mean, I
25 thought I was going to die.

1 Q. Okay. I mean, after the fact. You said you left and
2 went upstate?

3 A. Well, you asked why I was scared. I was scared because
4 they shot me.

5 Q. Well, what else did they do after the fact?

6 A. They were on the run.

7 Q. They were on the run?

8 A. Yes, sir.

9 Q. And that made you scared?

10 A. Absolutely.

11 Q. Let me ask you this: Is there any point in time when
12 you made an effort to speak with Jayqwane or Jed or Janena
13 after this happened?

14 A. (No audible response.)

15 Q. So your testimony to this jury is that you have not
16 reached out to Jed Coleman or anybody else in this case?

17 A. Did I reach out and talk to them?

18 Q. Have you talked to them at all?

19 A. No.

20 Q. Not at all?

21 A. No.

22 Q. Okay, alright.

23 A. How or why would I?

24 THE COURT: Just listen for his question and answer
25 his questions.

1 THE WITNESS: Okay.

2 BY MR. WILSON:

3 Q. So at some point in time during this entire incident you
4 are seen on camera. Have you seen that footage of yourself
5 running?

6 A. Yes, sir.

7 Q. Who showed it to you?

8 A. The solicitors.

9 Q. So you see yourself running past the building?

10 A. Yes, sir.

11 Q. And you're running there and you're bleeding at the same
12 time?

13 A. Yes, sir.

14 Q. There's a trail of blood going to the back?

15 A. Yes, sir.

16 Q. Do you know if you dropped anything while you were
17 headed back that way?

18 A. Not really. I was frantic and I mean, panicking.

19 Q. Did you drop any pills?

20 A. Not that I can recall. I can't 100 percent say because
21 I was frantic running for my life. I wasn't worried about
22 anything else but getting away from Eryk.

23 Q. Did you throw a gun?

24 A. No. I didn't have a gun. Neither of us had a gun. We
25 didn't have a weapon, a pocket knife, a bat, nothing, not any

1 type of weapon.

2 Q. And so you basically came to do the drug deal with no
3 protection whatsoever in a sketchy situation?

4 A. I mean, for one, it wasn't my deal, and for two, we were
5 sketched out when it happened when they were parked to the
6 side, but I guess he talked to them and they came back up so I
7 mean, why would that give you suspicion if they didn't move?

8 Q. You're asking me or are you trying to tell the jury
9 something?

10 A. I'm making a statement, you know.

11 Q. And you're saying why would they give you suspicion, is
12 that what you're saying?

13 A. Can you ask that question over, please?

14 Q. What I want to know if at any point in time when you
15 were going back toward that area --

16 A. Yes, sir.

17 Q. -- did you drop anything, did you throw anything?

18 A. Not that I can recall. I was trying to figure out how
19 to survive.

20 Q. And then you turn around from that area, correct?

21 A. Yes, sir.

22 Q. And then you come back and then you go inside the store?

23 A. Yes, sir.

24 Q. Now, that door to that store is literally right in front
25 of those gas pumps, right?

1 A. Yes, sir.

2 Q. And it takes, what, 10 steps, 20 steps to get there?

3 A. I guess, depending on where you're at, yes, sir.

4 Q. But that's not the direction you went in?

5 A. No, sir.

6 Q. And Corey, was he there or do you with see him pull off?

7 A. No. When I was running, I remember seeing him hiding in
8 between the car and the gas pump, like, looking to kind of see
9 what happened. He was, like, moving around the car looking
10 through the windows.

11 Q. Did you ever own any firearms?

12 A. I do now.

13 Q. So at the time you didn't own any firearms?

14 A. No, sir.

15 Q. And your testimony to the jury is that you never had
16 firearms before?

17 A. When was that?

18 Q. I'm asking you, have you ever had firearms before this
19 incident?

20 A. Before this incident?

21 Q. Yes.

22 A. In my name, or like as a grandparent's -- I grew up on a
23 farm with family. There were no guns in my name, no, sir.

24 Q. I'm only asking you one question. Have you ever handled
25 firearms ever before, have you had them on your person?

1 A. You asked if I ever handled one or if I ever had one?

2 Q. On your person.

3 A. No, no, sir.

4 Q. Now, again, on your statement to the police, did they
5 ever ask you about having a gun?

6 A. Yeah, absolutely.

7 Q. They did?

8 A. Yes.

9 Q. Before when you testified to the jury, you said, no.

10 A. If they asked me if I had a gun -- you asked if the
11 solicitors asked if I had a gun?

12 Q. If any of the police ever asked you if you had a weapon.

13 A. Well, you said police and the solicitors.

14 Q. Anybody.

15 A. Like I said, I don't remember the police officers asking
16 me if I had a gun when I was being loaded in the stretcher or
17 anything, if that's what you're asking.

18 Q. You weren't being loaded in the stretcher two days ago
19 when you talked to them, right?

20 A. See, that's what I'm asking. Which police officers and
21 the solicitor, that's two different people, different times.

22 Q. I said anybody, has anybody?

23 A. Yes, sir, the solicitor asked me if I ever had a gun at
24 that time.

25 Q. And you told her no?

- 1 A. Yes, sir.
- 2 Q. Now, this defendant, Eryk Smith, do you know him?
- 3 A. Now? No, sir.
- 4 Q. I'm not asking you about now. Before all of this
- 5 happened, you just told the prosecutor you didn't know him.
- 6 A. Yes, sir, I didn't know him prior to this.
- 7 Q. You know him now?
- 8 A. Yes, sir.
- 9 Q. So are you all buddies, are you all friends?
- 10 A. No, no, he tried to take my life.
- 11 Q. So do you know him? Did you know him before, were you
- 12 all friends?
- 13 A. We're not friends.
- 14 Q. Were you all home boys before this?
- 15 A. No.
- 16 Q. Okay. You hadn't met him a day in your life, had you?
- 17 A. (No audible response.)
- 18 Q. You've got to answer.
- 19 A. I hadn't met him before the incident of me getting shot.
- 20 Q. Very good. Okay. And that day, you didn't have him --
- 21 did he get in the car with you all to buy drugs?
- 22 A. No, sir.
- 23 Q. Did he come up to you and say, hey, look, you know, this
- 24 Xanax ain't real?
- 25 A. No.

1 Q. Did he have any interaction with Gamble and Jed Coleman
2 when they were in your vehicle?

3 A. Do you mean, like, did they communicate to each other?

4 Q. In any way, did he -- did you see him?

5 A. I saw him when they pulled up, I seen him in the
6 passenger seat.

7 Q. What I'm asking is did you see him come up to them in
8 the car while you were engaged in a drug deal with Jed Coleman
9 and Janena Gamble?

10 A. He pulled up in the car with them.

11 Q. I understand he was in the car. What I'm asking you is,
12 in your vehicle when you all were trying to --

13 A. No, sir. He didn't enter our vehicle, no, sir.

14 Q. And you didn't talk to him that day, did you?

15 A. No.

16 Q. And he never Facebooked you or Corey, correct?

17 A. No.

18 Q. Because as a matter of fact, he doesn't know either one
19 of you, does he?

20 A. I mean, I'm sure he knows me now, he shot me.

21 Q. Sir, at the time that this happened did he know either
22 one of you, yes or no?

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

24 Q. Had he ever called you and said, hey, look, can you
25 bring me some weed or Xanax?

1 A. No, sir.

2 Q. So when Janena Gamble robs you and Corey, alright --

3 A. Uh-huh.

4 Q. -- she jumps out of the car, he's nowhere around, is he?
5 He's not in the car with you all when she decides to do that?

6 A. He's about six feet over in the other car.

7 Q. Is he there when this happens, yes or no?

8 A. Inside our vehicle or at the gas station?

9 MS. RICHARDSON: Your Honor, object. I think he
10 needs to be more succinct with the questions, because he said,
11 was he there --

12 THE COURT: Well, I think the testimony is he was in
13 the car, the other two were in the victim's car.

14 MR. WILSON: Well, the alleged victim, Judge.

15 THE COURT: Alleged victim, I agree. The car in
16 which Mr. Miller was in, I mean, I don't know what you're
17 trying to elicit in the -- ask your question again.

18 MR. WILSON: Judge, what I was asking him was to tell
19 me whether or not this defendant, because it's obviously
20 paramount to the issue of armed robbery, was this person, was
21 this defendant in the car, or did he communicate anything
22 regarding, and he keeps beating around the bush: You know, I
23 know him now because he shot me. Well, it's not a cute matter,
24 I need to know if he was anywhere around him or had any
25 communication about the armed robbery, because it goes to

1 conspiracy and the armed robbery.

2 THE WITNESS: Yes, sir --

3 MS. RICHARDSON: Your Honor, this is rapid fire,
4 obviously, and I think what he's trying to do, he just needs to
5 be more succinct with the questions. Was he there? Was he in
6 the car? Was he on the scene? I mean, that can be sort of
7 confusing. I think that's what's been going on there. If he
8 would just ask the question that he wants him to answer saying
9 is he there --

10 THE COURT: Ask the question that you want the answer
11 to.

12 MR. WILSON: Your Honor, for the record, I want to
13 put this down. This is not direct examination, this is cross.

14 THE COURT: Ask your question.

15 BY MR. WILSON:

16 Q. Did this defendant get in the car with you or have
17 communication with you about doing a robbery? Did you see him
18 interact with you at all or do anything overt?

19 THE COURT: You've asked four questions there. You
20 asked did he get in the car, did he communicate, did he have
21 anything -- ask one question, let him answer, ask the second
22 question, and let him answer.

23 Q. Did he communicate anything to you about wanting to do a
24 robbery or trying to rob you?

25 A. No, sir.

1 Q. Did he get into your car?

2 A. No, sir.

3 Q. Did he say anything to you at all about him trying to
4 help or aid them in this robbery?

5 A. No, sir.

6 Q. Did he come up to you and say we want the pills?

7 A. No, sir.

8 Q. When you were at that door did he say anything to you,
9 when you say you got shot, did he say anything to you about
10 you're not going to take those pills?

11 A. No.

12 Q. Did he say anything at all to you at all?

13 A. No, just shot me.

14 Q. But he didn't say a word to you, did he?

15 A. Not that I can recall. That whole incident was like a
16 five second thing. Like, it wasn't as long and drug out and
17 thought out as you keep asking me for it to be. It happened.
18 I don't even think there would have been time for him to say
19 anything.

20 Q. Thank you very much. Thank you much. Now, later on,
21 obviously, when you are talking with the investigators, did you
22 tell them all this?

23 A. I mean, I didn't really communicate with them too much,
24 I was bleeding out on a gurney.

25 Q. When you talked with the investigators from the

1 solicitor's office --

2 A. Yes, sir.

3 Q. -- did you tell them, he never said a word to me about
4 anything?

5 A. I mean, they never asked that question, I don't believe.

6 Q. Fair enough.

7 MR. WILSON: Court's indulgence, Your Honor.

8 THE COURT: Alright.

9 MR. WILSON: No further questions, Judge.

10 THE COURT: Redirect.

11 REDIRECT EXAMINATION

12 BY MS. RICHARDSON:

13 Q. Once he shot you were they able to get away?

14 A. Yes, I watched them drive away.

15 Q. And when you were parked, the two cars were parked, how
16 close were they together?

17 A. No more than four or five feet, that's a wingspan.

18 Q. So your passenger side door was beside her driver's side
19 door; is that right?

20 A. Yes, ma'am.

21 Q. And Ms. Wilson has asked you about the video. With the
22 Court's permission, I want to show a portion of State's Exhibit
23 2, seeking to ask him about what Mr. Wilson asked him about.

24 This is State's Exhibit 2. It's going to take me just a
25 second to -- can you queue that down until I get it to the

1 right stop so I'm not just skipping around. This is State's
2 Exhibit 2. It's the third video at 43.35 minutes. I'm going
3 to play this for you, Mr. Miller.

4 THE WITNESS: Yes, ma'am.

5 MS. RICHARDSON: Let me know if you see yourself,
6 please. I'm at 42:21. We may just have to watch it a minute
7 because every time I go forward I go forward too far.

8 (Video playing.)

9 A. That was me right there running (indicating.)

10 Q. That was you running, at 43?

11 A. Yes, ma'am, that was me.

12 Q. And who was that?

13 A. That was me again.

14 Q. That's when you ran back to the store; is that right?

15 A. Yes, ma'am.

16 MS. RICHARDSON: We'll go back to the first video. I
17 mean, the second video. Now, we're on the second video at 43
18 minutes.

19 Q. Did you recognize that car that just passed?

20 A. Yes, ma'am.

21 Q. Whose was that?

22 A. Corey's.

23 Q. Who was that coming in the store?

24 A. That's me.

25 Q. And as far as speaking with investigators, you also

1 spoke with our office in the fall; is that right?

2 A. Yes, ma'am.

3 Q. When some other matters were scheduled?

4 A. Ma'am?

5 Q. When this was scheduled before?

6 A. Yes, ma'am.

7 MS. RICHARDSON: I have no further questions.

8 THE COURT: You may step down.

9 THE WITNESS: Do you want me to take this or leave
10 it?

11 THE COURT: The exhibits, leave that right there.

12 MS. RICHARDSON: It has not been admitted, I don't
13 believe, Your Honor, identification by the defense.

14 THE COURT: Ladies and gentlemen, it's about five
15 after 5:00. We're going to go ahead and break for the day and
16 let you go home for the evening. I ask that you please be back
17 tomorrow morning at about 9:00, be back at 9:00, okay? That
18 will give you an opportunity to get a cup of coffee or whatever
19 the case may be before we begin the trial. Again, I caution
20 you, do not discuss the case even among yourselves. Don't
21 conduct any independent investigation, don't go looking through
22 the newspaper or the TV or computers or any type of research
23 into it. I hope you have a good evening and we'll see you back
24 at 9:00 a.m. tomorrow morning. Thank you very much.

25 (Jury exited the courtroom.)

1 THE COURT: Did Mr. Coleman ever come back?

2 THE DEPUTY: Yes, sir. He's right here.

3 THE COURT: Sir, if you'd come forward, please.

4 **Jayqwane Coleman was first duly sworn at this time**
5 **and was questioned as follows:**

6 THE COURT: During the break did you discuss anything
7 that had transpired during the trial of this case with anyone?

8 MR. COLEMAN: No, sir.

9 THE COURT: Did you talk to anyone?

10 MR. COLEMAN: No, sir.

11 THE COURT: No one spoke to you at all?

12 MR. COLEMAN: I don't think so.

13 THE COURT: Alright, sir. Thank you very much. You
14 can take him back out.

15 THE DEPUTY: Does he need to stick around, Judge?

16 MS. RICHARDSON: He needs to contact his attorney.

17 THE COURT: Yes, he'll need to contact his attorney.
18 He's under subpoena; is that correct?

19 MS. RICHARDSON: Right, but I don't know what kind of
20 conversations his attorney's had with him. He needs to contact
21 her and we'll contact her when we break for the day.

22 THE COURT: Anything from the State before we recess?

23 MS. RICHARDSON: No, Your Honor.

24 THE COURT: Anything from the defense?

25 MS. ANDERSON: No, Your Honor.

1 THE COURT: I'll probably take the bench as soon
2 after 9:15 as I can. It will probably be closer to 9:30, but
3 when I tell the jury to be here at 9:15 it's usually a quarter
4 until ten before we actually get started, so I'll try to take
5 the bench at 9:30. Okay? We'll be in recess until 9:30
6 tomorrow morning.

7 MS. RICHARDSON: Thank you.

8 MR. WILSON: Thank you, Judge.

9 THE COURT: Thank you.

10 (Concluded for the day at 5:07 p.m. Tuesday, May 17, 2022.)

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1 (Wereupon proceedings reconvened Wednesday, May 18, 2022)

2 THE COURT: Anything from the State before we bring
3 the jury in and get started?

4 MS. RICHARDSON: No, Your Honor.

5 THE COURT: Anything from the defense?

6 MS. ANDERSON: No, Your Honor.

7 MR. WILSON: Briefly, Judge. There is one thing I
8 want to put on the record, Your Honor. This is regarding a
9 statement that was made by Joshua Miller yesterday on the
10 witness stand regarding identification of this particular
11 witness on a video, on a rap video or something like that. We
12 received a link from the Solicitor's Office in evidence in this
13 matter. Obviously, I'm going to vehemently object to the
14 interest of that particular piece of evidence. It's highly,
15 highly prejudicial. It is not a song, after will listened to
16 it, that names out any particular individuals. It is a work of
17 art, and we, obviously, would object to that being introduced
18 at any point in time during this trial because of the
19 prejudicial nature of the actual song itself and what it talks
20 about, Judge.

21 THE COURT: The State's position?

22 MS. RICHARDSON: Your Honor, that's because it talks
23 shooting someone in the face and disappearing without a trace,
24 but we're not seeking to introduce it at this time, but if it
25 becomes relevant we'll advise the Court before we seek to do

1 so.

2 THE COURT: Well, I'll deny your Motion in Limine
3 because I can't rule as matter of law that it's inadmissible.

4 MR. WILSON: Yes, Your Honor.

5 THE COURT: It could very well be relevant and
6 admissible.

7 MR. WILSON: Thank you, Judge.

8 THE COURT: Anything further from the defense before
9 we bring the jury in?

10 MR. WILSON: Nothing further, Your Honor.

11 THE COURT: Let's bring the jury in.

12 (Jury entered the courtroom at 9:37 a.m.)

13 THE COURT: Ladies and gentlemen, welcome back. I
14 hope everybody had a good evening. I appreciate your patience
15 while we were dealing with some other matters. We're now ready
16 to resume the trial in this case. Ms. Richardson, the State
17 can call your next witness.

18 MS. RICHARDSON: The State calls Melvyn Garrett.

19 **Lieutenant Melvyn Garrett being first duly sworn,**
20 **testified as follows:**

21 THE CLERK: Please be seated, state your full name
22 for the record and spell your first and last name, please.

23 THE WITNESS: Melvyn Garrett, M-e-l-v-y-n,
24 G-a-r-r-e-t-t.

25

DIRECT EXAMINATION

2 BY MS. RICHARDSON:

3 Q. And what is your current rank?

4 A. Lieutenant.

5 Q. So Lieutenant Garrett, where are you employed?

6 A. At the Georgetown County Sheriff's Office.

7 Q. And what is your position there now?

8 A. I am one of two lieutenants assigned to the uniformed
9 patrol division.

10 Q. And just for the benefit of everyone, can you tell us
11 what a lieutenant means?

12 A. It's just above mid-level management. I am considered
13 the Monday morning quarterback. So I supervise the
14 supervisors, I review incidents between deputies and the public
15 to make sure that they are following the law in policy, I help
16 coordinate events, bike week, Fourth of July, parades,
17 Christmas parades, so on and so forth, and if you have a
18 complaint, if the public has a complaint whether it be
19 narcotics violations, speeding cars, kids knocking over
20 mailboxes, if you call the Sheriff's Office, I'm who you get.

21 Q. So this was a promotion for you?

22 A. Correct.

23 Q. And could you give us, just tell us your law enforcement
24 and educational background?

25 A. Sure. I started in 2002, so this is my 20th year. I

1 held various ranks throughout the Sheriff's Office, and I spent
2 some time overseas training police officers, Afghanistan. I
3 was Deputy Chief of Chief at Andrews Police Department for
4 about three years and then I came back here. In 2002 I
5 attended the Criminal Justice Academy. After that, SWAT
6 School, traffic enforcement, I've had several leadership
7 courses, chief's course, executive management, mid-level
8 management, general supervisor classes, computer science, cell
9 phone technology, forensic pathology, homicide, suicide,
10 drownings, arson, crime scenes, elections and a host of other
11 classes.

12 Q. Could you even given an estimate of how many cases
13 you've investigated?

14 A. I couldn't tell you.

15 Q. And what was your position back in October of 2018?

16 A. I was assigned to criminal investigations division and I
17 was the on-call investigator.

18 Q. So investigator/detective?

19 A. Correct.

20 Q. And as an on-call, did you get called to come out to a
21 scene on October 9, 2018?

22 A. I did.

23 Q. And explain to me how that call comes to you.

24 A. So your patrol units will respond to a crime scene.
25 Once they have it secured and they find out what's going on

1 they'll call me and I'll come do the investigation.

2 Q. And when they contact you do you get initial information
3 so you know what you're going to?

4 A. Yes.

5 Q. And in this case who did you talk with?

6 A. Sergeant McConnell.

7 Q. And what information did you get for the nature of the
8 call and what had been developed?

9 A. He told me that there was a gunshot victim who was shot
10 at Francis Marion Store, that there was a crime scene there,
11 several witnesses, there's a black Audi with four occupants who
12 were alleged to be involved.

13 Q. So where did you go first?

14 A. I went to the emergency room to meet with the victim
15 first.

16 Q. Why did you do that?

17 A. Well, for two reasons, number one, I was told he was in
18 critical condition, and number two, it was the first place on
19 the way to the crime scene.

20 Q. And so that would be Tideland or Georgetown Memorial?

21 A. Correct.

22 Q. And when you got there who did you meet with?

23 A. I met with the victim, Josh Miller, and later a second
24 gunshot victim who had been shot through the hand.

25 Q. And where did you see Miller?

1 A. He was this in the ER. They were trying to stabilize
2 him and so they allowed me to ask him a few questions before
3 they took him in.

4 Q. And what was his condition at that time?

5 A. He was in pretty bad shape. You know, he was scared.
6 You know, he had been shot in the face, so.

7 Q. And was he able to talk with you, did he have any
8 difficulty speaking?

9 A. I think he did pretty well considering the damage that
10 he had, he was able to communicate fairly well.

11 Q. And so you got some additional information from him?

12 A. Yes.

13 Q. Did he identify who had shot him?

14 A. No, he didn't.

15 Q. And he did give you some information regarding suspects?

16 A. He did. He told me it was a black male and a black
17 female who looked like a male.

18 Q. And did that end up being consistent with the people --
19 as far as the female that looked like a male, did that end up
20 being consistent?

21 A. Yes.

22 Q. And can you just explain to us the appearance of Ms.
23 Gamble?

24 A. Well, she had a short haircut.

25 Q. And appeared somewhat masculine?

1 A. Sure.

2 Q. And what other sort of information did he give you?

3 A. I think that I asked him what was it over, was it money
4 or drugs? He told that me it might have been over money, and
5 that was pretty much it.

6 Q. And did you give any statements regarding the fact that
7 it could have been over drugs? Did you give any instructions
8 or talk with him about that?

9 A. Well, as I do with any victim like that, I would tell
10 them, hey, listen, I don't care about that, just tell me what
11 happened. If it was over drugs or money just tell me, come
12 clean with it.

13 Q. Because your focus was investigating --

14 A. The shooting, correct, the shooting.

15 Q. And you recorded that statement?

16 A. I did.

17 Q. And did you tell him why you were trying to get
18 information from him?

19 A. Well, I told him that he might not make it.

20 Q. And then how did he react after that?

21 A. He still answered the questions. I'm sure it shook him
22 up a little bit.

23 Q. And after you left the hospital where did you go? Wait
24 a minute, first of all, when a gunshot victim comes into the
25 hospital is law enforcement already automatically notified?

- 1 A. Yes, yes.
- 2 Q. And that's per?
- 3 A. Hospital policy.
- 4 Q. So was there a of notification of a second gunshot
- 5 victim?
- 6 A. I was told about that while I was there.
- 7 Q. And who was that?
- 8 A. That was Janena Gamble.
- 9 Q. Did you talk with her as well?
- 10 A. I did.
- 11 Q. Did she give you any information at that time?
- 12 A. She told me she was at Francis Marion Store, she was
- 13 coming out of the store and they started shooting, she got hit
- 14 in the hand.
- 15 Q. So she didn't give you a lot of information regarding --
- 16 A. No.
- 17 Q. And her injuries were to her hand?
- 18 A. Correct.
- 19 Q. And that's the only injury that you saw?
- 20 A. That night, yes.
- 21 Q. And then as far as property that the victims came in
- 22 with, the shooting victims, was that recovered?
- 23 A. Yes, it was.
- 24 Q. And what did you recover from Joshua Miller?
- 25 A. If I'm not mistaken, clothing, which is normal, a

1 wallet, some money, maybe an ID.

2 Q. And about the clothes, what sort of condition was the
3 clothing in?

4 A. They were bloody and cut, because EMS normally cuts the
5 clothes off.

6 Q. And after you left the hospital where did you go?

7 A. I went to the Francis Marion Store.

8 Q. Can you describe the scene when you got there?

9 A. Yes. We had a quite a few patrol units on the scene
10 already. They had already cornered off the area, which is just
11 putting up the yellow tape and kind of tried to hold everybody
12 there so that I could talk to them.

13 Q. And did you begin processing the scene?

14 A. I did.

15 Q. Just take us through the steps of how you process a
16 crime scene.

17 A. So the first step would be to photograph the scene
18 exactly the way it is when I get there. After that I'll start
19 a search to look for different evidence, so in this case it
20 would have been blood, and then I will mark it with evidence
21 markers and photograph it again before collecting any evidence.

22 (State's Exhibit Numbers 6, 7, 8, 9, 10 & 11 were marked
23 for identification.

24 MS. RICHARDSON: For the record, Your Honor, I have
25 just shown the defense State's Exhibits marked for

1 identification 6 through 11.

2 BY MS. RICHARDSON:

3 Q. Let me show you what's been marked for identification
4 State's Exhibit 6. Can you tell me what that is?

5 A. Yes. It's a CD containing the crime scene photos that I
6 took.

7 Q. And that would be the photos you took at Francis Marion
8 Store?

9 A. Correct.

10 Q. And have you reviewed that?

11 A. I have.

12 Q. Is it an accurate copy of the photos that you took?

13 A. Yes.

14 Q. And how do you know that?

15 A. I have my signature here.

16 MS. RICHARDSON: Your Honor, at this time the State
17 would offer State's Exhibit 6 into evidence.

18 THE COURT: Any objection?

19 MR. WILSON: Without objection, Your Honor.

20 THE COURT: State's Exhibit 6 admitted into evidence
21 without objection.

22 (State's Exhibit No. 6 was admitted into evidence.)

23 Q. Let me show you 7, State's Exhibit 7 for identification.

24 A. This is a CD containing photos that I took in the lab
25 back at the Sheriff's Office, and I reviewed it and initialed

1 it.

2 Q. And when you say, the lab, that's the evidence that you
3 collected that you took back to the Sheriff's Office?

4 A. Correct. We have a lab where we process limited
5 processing of evidence.

6 Q. And have you reviewed that CD?

7 A. I have and I've initialed it.

8 Q. Is that accurate copy of the photos you took?

9 A. Correct.

10 MS. RICHARDSON: State would offer 7 into evidence.

11 THE COURT: Any objection?

12 MR. WILSON: No objection, Your Honor.

13 THE COURT: State's Exhibit 7 admitted into evidence
14 without objection.

15 (State's Exhibit No. 7 was admitted into evidence.)

16 Q. Let me show you State's Exhibit Number 8.

17 A. This is a photo, a disc containing photos of the black
18 Audi that we recovered. We took it back to the Sheriff's
19 Office, photographed it and processed it for evidence and so
20 this is it.

21 Q. And you reviewed it and initialed it as well?

22 A. That is correct.

23 Q. And that's an accurate copy of those pictures that you
24 took on of the Audi?

25 A. Yes.

1 MS. RICHARDSON: We'd offer State's 8 into evidence.

2 THE COURT: Any objection?

3 MR. WILSON: Without objection, Your Honor.

4 THE COURT: State's Exhibit 8 admitted into evidence
5 without objection.

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

7 Q. I'm going to show you State's Exhibit Number 9 and
8 State's Exhibit Number 10. Can you tell me what those are?

9 A. Absolutely. So during the processing of the crime
10 scene, as I explained before, we will take photographs, collect
11 evidence. After that I will actually do a sketch of the crime
12 scene, kind of an overview, so that, you know, it puts
13 everything kind of in perspective.

14 Q. And are those to scale or are those just to draft that
15 you did?

16 A. That's just a draft.

17 Q. Can you tell me what number nine is? What sketch is
18 that of?

19 A. This is Francis Marion store and shows the trail of
20 blood around the store and into the store.

21 Q. And then attached to the sketch, the second page?

22 A. This is a legend, and what it does is it tells you what
23 every evidence marker represents.

24 Q. And Number 10, what is that a sketch of?

25 A. This is a sketch of the store and parking lot and it

1 shows other evidence that I collected from the scene that day.

2 Q. So evidence other than blood?

3 A. Correct.

4 Q. Again, does it have a legend?

5 A. It does have a legend, and just like before, the legend
6 details each marker, what it is.

7 MS. RICHARDSON: At this time the State would like to
8 offer State's 9 and 10 into evidence.

9 THE COURT: Any objection?

10 MR. WILSON: Without objection, Your Honor.

11 THE COURT: State's Exhibits 9 and 10 are admitted
12 without objection.

13 (State's Exhibits 9 & 10 were admitted into evidence)

14 Q. And State's Exhibit 11?

15 A. This is property receipt, so any time that we collect
16 property and we return it to a victim or somebody else, we have
17 it written down and they sign that they received it.

18 Q. And whose property is that?

19 A. This is the property of Joshua Miller.

20 Q. And is that an accurate of copy of the property receipt
21 that was done for the return of his property?

22 A. Yes, it is.

23 MS. RICHARDSON: I'd offer State's 11 into evidence.

24 THE COURT: Any objection?

25 MR. WILSON: Without objection, Your Honor.

1 THE COURT: State's Exhibit 11 is admitted into
2 evidence without objection.

3 (State's Exhibit No. 11 was admitted into evidence.)

4 MS. RICHARDSON: And Your Honor, I would ask
5 permission to go ahead and publish these to the jury?

6 THE COURT: Alright.

7 MS. RICHARDSON: We'll start with State's Exhibit
8 Number 8, which is the crime scene photos. I am going to hand
9 Lieutenant Garrett a mouse so he can point if he needs to.

10 Q. So first photograph, if you want to just briefly explain
11 that for us.

12 A. This is a photo from North Fraser Street pointing
13 towards Francis Marion.

14 Q. And did you receive information as to where the shooting
15 occurred or determine where it occurred in your investigation?

16 A. I'm sure they told me it was in the parking lot.

17 Q. Can you point what area?

18 A. So the shooting would have occurred here (indicating.)

19 Q. The second photo?

20 A. It's from the corner of North Fraser and Browns Ferry
21 Road pointing toward the store.

22 Q. And you had also cornered off other areas behind the
23 store as well?

24 A. Yes, ma'am.

25 Q. And that's visible in the back?

1 A. Correct.

2 Q. And the third photo?

3 A. It's just another shot from the parking lot towards the
4 store.

5 Q. And I know it's probably visible to the jury, but would
6 you just point out where the liquor store section of the store
7 is?

8 A. It's here.

9 Q. And can you describe the area to the left of that?

10 A. To the left of that is a rough parking lot, it's very
11 dark, so that's just beyond what you see on the photo.

12 Q. Next photo?

13 A. That's just another shot of the parking lot and the
14 store.

15 Q. Okay.

16 A. This is a photograph showing some of the blood on the
17 pavement.

18 Q. And this is how you were describing you do an overview
19 before you put the evidence markers down; is that right?

20 A. Correct. We photograph in its natural state first.

21 Q. Where is this located at the store?

22 A. This is beside the pumps that I showed you guys in the
23 first photo. So another shot of the blood and also some white
24 pills that I collected, and just another shot showing the trail
25 and where it leads to.

1 Q. And so this photo is blurry, but do you just keep the
2 blurry photos as well?

3 A. Correct, I keep them all.

4 Q. And here?

5 A. That's the trash can that had been knocked over beside
6 the pump. And that's beside the trash can going through the
7 pump showing the trail of blood. Same thing, showing the trail
8 of the blood. Areas of blood.

9 Q. And this?

10 A. It's not really visible in the photograph, but there's
11 blood here, also, and it continues around the side of the store
12 which you'll see in the next couple frames here.

13 Q. And that's the side of the store?

14 A. Correct. It's the side of the store closest to Highway
15 701. That's right, just another shot of it.

16 Q. And describe this one.

17 A. So now we're back to the original start of the crime
18 scene and I started placing the evidence markers for reference.

19 Q. And are these the evidence markers that are pointed out
20 in State's 9?

21 A. Yes, they are.

22 Q. So where have you marked here?

23 A. So these markers show the trail of blood from the gas
24 pumps to the back side of the store, back around and into the
25 store.

1 Q. And that's just a closer up of the beginning of it?

2 A. Correct.

3 Q. And that's another view?

4 A. Yes. It shows the path that the victim took as he was
5 running.

6 Q. And the next photo?

7 A. Still showing the path. The next path.

8 Q. And in this photo there's a lot of water visible, what
9 were the weather conditions that night?

10 A. It was inclement, it was raining.

11 Q. Does that make it more difficult to process the scene?

12 A. Absolutely. It also makes it difficult to take
13 pictures, it was night, there was a lot of flashing lights, so
14 a lot of pictures are blurry. Same. It's showing the trail
15 leading up to the store.

16 Q. And can you identify the cars that are in it, whose car?

17 A. That is one of our Sheriff's Office patrol cars. The
18 white car to the left would have been the car that the victim
19 was riding in, and I'm not sure about the silver van over
20 there. So this shows the path leading to the back of the
21 store. It's a shot away from it but it shows a path leading to
22 that.

23 Q. And again, what are these markers for?

24 A. They are marking the blood droplets on the pavement.

25 Q. So that series is just for blood?

1 A. Correct.

2 Q. And I see that there's sort of an ending point here.

3 Did you check beyond that as well?

4 A. Absolutely.

5 Q. And did you find anything past that point?

6 A. No, I did not.

7 Q. And you were looking for blood and other evidence?

8 A. Correct. And it shows the blood trail to the back of
9 the crime scene tape.

10 Q. And again, that is just a closer up of behind the store
11 or beside the store?

12 A. That's correct. And that's just showing toward the end
13 of it. And that's the last photo of where the blood trail
14 stopped, so there wasn't any blood beyond this point.

15 Q. Was the blood trail pretty evident? Were you able to
16 easily follow that?

17 A. Absolutely, absolutely. And this just shows where the
18 blood trail began back in the front of the store and leading
19 into the doors. The same thing, leading into the doors. This
20 is the inside. It's not really evident from the photo, but
21 there's blood on the handle. There's a better picture. This
22 is showing the floor leading into the store where there was
23 also blood evidence, and this is the second door leading into
24 the store. The first part is kind of like a lobby area and
25 then there's the door to the store, and it shows blood on the

1 door.

2 Q. So there's two sets of doors going into the store?

3 A. Correct. This is a closer up at the handle. And this
4 is where I kind of stepped back and started to label again.

5 Q. And that's the area between the two sets of doors, what
6 you described as a lobby area?

7 A. That is correct. Just an evidence marker showing blood,
8 and there's blood on the handle. There's a blood trail leading
9 into the store, and it's kind of an overview of the customer
10 side of the counter that shows blood evidence that's on the
11 floor. And this is from one of the aisles pointing toward the
12 counter. This is of the counter with blood evidence and
13 towels. Again, the customer area on this side of the counter.
14 Same thing. And that's the same thing. This is the area where
15 the victim was. This is the entrance to behind the counter of
16 the store. Same. Just a different angle, same place.

17 Q. We see a hat. Was that a hat collected?

18 A. Yes, it was. This was the hat that the victim was
19 wearing. Now, this is a photograph from the back of the store
20 pointing toward the front. This is the back aisle of the
21 store. When we take photographs it's not just to show
22 evidence, but it's also to show what's not there, so here you
23 don't see blood. So another angle of the back of the store.

24 Q. So indication that the victim went to the back of the
25 store?

1 A. Correct. And this is where I began to label the trail
2 again. The evidence markers, again, showed a blood trail
3 leading to the side of the counter.

4 Q. And again, these markers are on that State's number
5 nine?

6 A. Correct.

7 Q. Just blood only.

8 A. Blood only. That's just another view of the markers.
9 Another view of the markers. And number 30 is the hat that was
10 collected. So it's all blood except for the hat. This is a
11 photo. This is back at the pump where a shooting took place.
12 As we started to look around I noticed there were a lot of
13 white pills scattered in the parking lot and these evidence
14 markers just showed most of the pills. They weren't all
15 collected. Some of them were crushed and wet and so on.

16 Q. And so you have alleged, and that's State's Number 10,
17 so this is the legend for other than blood.

18 A. Okay.

19 Q. Alright.

20 A. Thank you.

21 Q. And if you would just walk through and tell us --

22 A. So the first evidence marker that you're looking at is a
23 bullet fragment, that's number 31. Number 32, which is just
24 behind me to the left is also another part of the bullet
25 jacket. Number 33, which is to the right, is a gold chain, and

1 the rest of the markers are for the white pills.

2 Q. Okay. Let me show you what's been marked as State's
3 Exhibit Number 12.

4 MS. RICHARDSON: For the record, Your Honor, I've
5 shown proposed Exhibits 12, 13 and 14 to defense. State's
6 Exhibit 12, tell me what that is.

7 A. This is some of the white pills that were collected.

8 Q. Now, when you collect pills how do you preserve that
9 evidence?

10 A. Well, there's several different ways. The way it is
11 here, it's packaged to go to SLED so that they can test it and
12 tell us what it is.

13 Q. What sort of precautions do you take when you collect
14 evidence such as drugs?

15 A. We use gloves. There's a ventilating area in the lab
16 that we use and also a mask.

17 Q. Were some of these items wet when you collected them?

18 A. Yes.

19 Q. And when you collect them do you seal them in a package?

20 A. Correct.

21 Q. Once you seal it what do you do?

22 A. I'll add a piece of evidence tape and I'll initial and
23 date it so that it shows the chain of custody and nobody else
24 messed with it.

25 Q. There's a white and blue bag, an inner bag in this

1 package that I handed to you. Could you explain to the jury
2 what that white and blue bag is?

3 A. That's referred to as a best bag. That is where we put
4 the narcotics sealing to send to SLED.

5 Q. And that's something that you use as a standard in
6 collecting controlled substances?

7 A. That is correct.

8 Q. And you put all the information on that?

9 A. That is correct.

10 Q. And when you put the drugs or the pills in this bag did
11 you alter, tamper, manipulate them or do anything to
12 contaminate them or destroy those pills that you collected?

13 A. Absolutely not.

14 Q. And then you sealed the bag?

15 A. Correct.

16 Q. And when you seal it what do you do with it at that
17 point?

18 A. It's turned into evidence, and then I'll create another
19 form that lets the evidence technician know what I want to
20 happen with that.

21 Q. And you initial that when you seal it?

22 A. I do.

23 Q. It's kind of folded up, can you see your initials on it?

24 A. Absolutely. They are on the front.

25 Q. And explain to the jury how your evidence is kept at the

1 Sheriff's Office.

2 A. So everything is packaged separately to avoid
3 cross-examination, so each piece of evidence that I handle I'll
4 change gloves, wipe down the area, whatever the case may be,
5 and then it's all turned into the evidence technician who takes
6 custody of it.

7 Q. And where does he store that?

8 A. There's a secure evidence room where he and maybe one
9 other person has access.

10 Q. So after it's turned into the evidence custodian do you
11 have any interaction with this until today?

12 A. No, I don't even have access to it.

13 Q. And who was the evidence custodian at the Sheriff's
14 Office at that time?

15 A. Michael Thacker.

16 THE COURT: Let me show you what's been marked as
17 State's Exhibits 13 and 14. Can you tell us what those are?

18 (State's Exhibit Numbers 13 & 14 were marked for
19 identification.)

20 A. Number 13 is the bullet jacketing that I collected in
21 correspondence with number 31 evidence marker.

22 Q. And now with those do you use the best bag?

23 A. No. Most evidence is stored in paper bags.

24 Q. What procedures do you use once you collect it?

25 A. So there are evidence tins that we have. I'll put the

1 jacketing into a tin, seal it, and then I'll put it into an
2 evidence bag and seal it. After that, of course evidence tape
3 goes over it, I'll sign, date and time it.

4 Q. Once you sign, date and time it, you give it to who?

5 A. I'll turn it into the evidence custodian.

6 Q. And again, that was who?

7 A. Michael Thacker.

8 Q. And did you alter, manipulate or do anything to
9 contaminate or change the character of State's Exhibit 31 -- I
10 mean, of evidence that you collected marked as 31 and 32,
11 State's Exhibits 13 and 14?

12 A. No, I did not.

13 MS. RICHARDSON: Your Honor, at this time the State
14 would offer 13 and 14 into evidence.

15 THE COURT: Any objection?

16 MR. WILSON: Without objection, Your Honor.

17 THE COURT: State's Exhibits 13 and 14 admitted into
18 evidence without objection.

19 (State's Exhibits Numbers 13 & 14 were admitted into evidence.)

20 Q. We're going back to State's Exhibit 6 in the
21 photographs. Can you tell us about this?

22 A. Evidence marker number 31, this is the bullet jacketing.
23 Of course, the picture is a little blurry because of weather,
24 but that's what it is.

25 Q. Can you tell us what a bullet jacket is?

1 A. Well, I don't know technical terms to it, but it's just
2 kind of like the casing that goes around the actual round.

3 Q. And that's off of the projectile?

4 A. Correct.

5 Q. And that's just another picture of 31?

6 A. Yes. Thirty-two, same thing, it's a fragment of the
7 actual projectile. This is the gold chain that I spoke about.
8 And of course, the beginning of the white pills that were
9 collected.

10 Q. So it shows item marker 34?

11 A. Yes.

12 Q. Now, as far as those pills, they were put together for
13 SLED?

14 A. Correct. Thirty-five is another whole white pill.
15 Thirty-six, partially crushed. Thirty-seven, whole pill.
16 Thirty-eight, a whole pill. Thirty-nine, a pill that's in some
17 of the blood evidence. Forty is another pill. Forty-one is
18 several pills, some had been crushed.

19 Q. And at the bottom right of this corner of the sketch?

20 A. Blood evidence.

21 Q. So 41 was found near where some of the blood evidence
22 was?

23 A. Correct. This, if we can --

24 Q. Zoom in.

25 A. Zoom in one more time. Evidence marker 42, it shows

1 another pill that was collected away from the actual shooting
2 scene, the area of the shooting. This is just on the other
3 side of the pumps. This is closer up in the picture and then a
4 close up of the pill. Forty-three is another pill that was
5 found. It was at the very back of the store by the side, and
6 it was the only one back there.

7 Q. And that was the only one you found back on the side of
8 the store?

9 A. Correct, that's it. And then this is a photograph of
10 the car that the victim was riding in.

11 Q. And were you able to search that car?

12 A. Yes.

13 Q. And did you do that by consent?

14 A. Yes.

15 Q. And who was the owner or driver of that vehicle?

16 A. Mr. Corey Hayes.

17 Q. Have you learned -- or can you tell the jury what
18 happened to Mr. Hayes?

19 A. He was involved in a motor vehicle accident that was
20 fatal. That's another close up of the tag, and then there will
21 be several shots of the car down the side from the side, and
22 that's just the way we document the condition of anything
23 before we mess with it. That's a side view, passenger's side.

24 Q. Did you find any damages to the vehicle?

25 A. Not that I recall. This is the driver's side. Front.

1 And then I began to take photographs of the interior before we
2 search or touch anything. Backseat. The other side, the
3 passenger side of the backseat. Passenger side front.

4 Q. And can you tell us what's in the floor board?

5 A. That's a case of beer.

6 Q. And where -- tell us about how you would have searched
7 this vehicle? What areas would you have searched?

8 A. The entire vehicle, the entire vehicle, under the seats
9 glove box, center console, everything.

10 Q. And did you find any contraband, drugs or anything like
11 that in the vehicle?

12 A. Not that I recall.

13 Q. And if you had found them would you had have recovered
14 them?

15 A. Absolutely. They would have been photographed and
16 collected just like the rest of the evidence.

17 Q. Did you find any weapons in this vehicle?

18 A. No weapons.

19 Q. So you found no firearms?

20 A. No.

21 Q. And would you have been looking for those?

22 A. Absolutely. Anything that has to do with a shooting, so
23 I would have been looking for firearms, blood evidence,
24 bullets, magazines, and anything that would indicate that
25 something happened here in the car.

1 Q. Would you have also been looking for additional pills?

2 A. Correct.

3 Q. Did you find any of that?

4 A. I did not.

5 Q. Now I'm going to show you what's introduced as State's
6 Exhibit Number 7 labeled as evidence lab photos. This first
7 photo, could you tell us what that is?

8 A. So when I spoke of the evidence tins that the evidence
9 is separated in in the pills, that is what it is, and the
10 numbers on the top of the evidence tins correspond with the
11 evidence markers that you saw on the ground.

12 Q. This is the pill evidence?

13 A. Correct. These are some of the pills that were
14 collected and placed into this sealed bag and sent off to SLED
15 for testing.

16 Q. Because at first they were wet, right, and you had to
17 separate them into the individual tins?

18 A. That's correct.

19 Q. And then you put them in as you described the best bag?

20 A. That's correct.

21 Q. Can you explain to us what this photo is?

22 A. What you see here is what we refer to as a Dryer. Any
23 time we have wet clothing, before we can package it we have to
24 the put it in here to dry it, that way it doesn't mold or
25 mildew in the packaging.

1 Q. And whose clothing is this?

2 A. This is the clothing of the victim, Josh Miller. And
3 this is an evidence tag. So once I hang it, I close it and I
4 lock it, that way nobody else can mess with it. So when I
5 return, there's my signature, date and time, and when I sealed
6 it. After the clothes were dry then I take them out,
7 photograph them and then package them.

8 Q. Now, this is a photograph of the back of the shirt?

9 A. Correct.

10 Q. And have you also inspected the front of the shirt?

11 A. Yes, I had.

12 Q. Can you tell the jury the condition of that?

13 A. It was cut off by EMS.

14 Q. How was it cut?

15 A. A pair of scissors. They normally just cut right down
16 the middle. And what they are looking for is any other
17 injuries. This is Josh Miller's shorts he was wearing. They
18 were also cut, and then you see some money that was recovered
19 from his pocket.

20 Q. And underneath it is even his underwear?

21 A. I'm not sure, I'd have to see another photo. So this is
22 his wallet and that was separate from the money that was in his
23 pocket, a lighter and a five dollar bill. This is the money
24 from the wallet, change and a check that was recovered from his
25 wallet. That's just another shot of it.

1 MS. RICHARDSON: Let me show you what has been
2 introduced as State's Exhibit Number 11.

3 Q. Did you count the money?

4 A. Yes, I did.

5 Q. How much money did Joshua Miller have on him?

6 A. Eighty-two dollars and 78 cents.

7 Q. And that was in cash?

8 A. Yes. And there was a check from his job for \$243
9 dollars and 91 cents.

10 Q. And where was that job?

11 A. Litchfield.

12 Q. Can you tell us what that is?

13 A. That's the community that he was living in. It's also a
14 golf course, so I think when he testified he talked about
15 working on the golf course and then playing golf.

16 Q. Would you have itemized and documented everything that
17 was recovered from him at the hospital?

18 A. Absolutely.

19 Q. And was any drugs or controlled substance found?

20 A. No.

21 Q. In his clothing?

22 A. No.

23 Q. Were any weapons found in his clothing?

24 A. No. This is a photograph of boxer shorts and socks that
25 were bloody and collected. This is a sweatshirt with blood

1 evidence on the front.

2 Q. Did you also recover clothing from Ms. Gamble?

3 A. I did.

4 Q. Would this be her items?

5 A. These are her items. A pair of jeans with blood
6 evidence on it.

7 Q. And that's from Ms. Gamble?

8 A. Yes. And this is a tank top with blood on it.

9 Q. That's from who?

10 A. Ms. Gamble.

11 Q. When you got on scene, what about the witnesses, where
12 were they?

13 A. They were being held, for lack of a better term, by the
14 responding officers.

15 Q. There at the store?

16 A. Correct.

17 Q. And do you recall who was there?

18 A. Chris Hayes -- Chris -- the two employees from the store
19 and I think Chris Hayes' sister.

20 Q. Corey Hayes?

21 A. I'm sorry, Corey Hayes.

22 Q. And his sister?

23 A. Yes.

24 Q. Did you end up talking with them?

25 A. I did.

1 Q. Did you talk with them at the store?

2 A. No. I had the deputies take them back to the Sheriff's
3 Office where we have the interview set up and it's being audio
4 recorded.

5 Q. And did the store, and I know we've already heard from
6 the store owner, but did the store have cameras?

7 A. Yes.

8 Q. Did you do anything regarding viewing or collecting this
9 surveillance video footage?

10 A. We did collect surveillance video from the store.

11 Q. That was from Ms. Westbrook?

12 A. Correct.

13 Q. And how did you decide what to take?

14 A. Well, we'll review the incident and a little bit before
15 and after, but mainly what we're looking for is what happened,
16 so that's the part we're looking for and that's the part we
17 asked for.

18 Q. So was the shooting captured on video?

19 A. The shooting was not captured on video.

20 Q. And we'll look at the videos, but tell us basically what
21 views you were able to capture.

22 A. I could see the gas pumps and I could see where the cars
23 were and you could see the cars leaving, moving around, but
24 that's about it. We didn't see the actual shooting.

25 Q. But you reviewed them to see where the cars and what

1 participants you could see?

2 A. Correct.

3 Q. Let's go back and look at State's Exhibit Number 2. So
4 can you explain where this is from?

5 A. This is a view of the parking lot from the liquor store
6 pointing toward the front door, and the white car here is where
7 Mr. Hayes was parked.

8 Q. Now, this is blurry, was there anything you could do
9 about that?

10 A. No.

11 MS. RICHARDSON: I'm going to fast forward to about
12 the 40-minute mark.

13 Q. So you got some video before and after?

14 A. Absolutely.

15 Q. And this area here, is this the gas pump area?

16 A. That is the gas pump area.

17 Q. And can you tell us what's visible at the gas pump?

18 A. There is a vehicle there.

19 Q. What color?

20 A. It appears to be white from here.

21 Q. What's happening now?

22 A. This is just capturing the black Audi pulling up beside
23 the victim's car.

24 Q. And you can use your mouse if you need to point at
25 anything.

1 A. Okay. So here (indicating.)

2 Q. And now?

3 A. You just saw the victim run to the side of the store and
4 brake lights come on and the vehicle's parked at the pumps.
5 This shows Corey Hayes pulled out and turned around and came
6 back into the parking lot and the black Audi pulled out and
7 traveled south on 701 back and towards Georgetown.

8 Q. I may have missed, let me back up. And you also see the
9 victim going back in the store?

10 A. Correct.

11 Q. Going to the second video. This is the inside of the
12 store?

13 A. Correct.

14 Q. We're around the 41-minute mark inside the store. And
15 the vehicle we just saw pass?

16 A. That was Mr. Hayes' vehicle.

17 Q. And now at the 43:33?

18 A. Victim running.

19 Q. And the third video? Investigator Garrett, were there
20 any additional video footage collected or any other views that
21 showed anything of relevance to the case?

22 A. No, there were not.

23 Q. Okay. This is the video of the side of the store
24 closest to 701; is that correct?

25 A. Correct.

1 Q. We're at the 42:44 minute mark.

2 A. And there's the victim running. Mr. Hayes pulled out
3 and turned back in and the Audi started to pull out with no
4 lights on.

5 Q. And that's in this area?

6 A. Correct, and now the lights are on.

7 Q. Now, did you have all of the video prior to searching
8 the property that night?

9 A. No.

10 Q. But you had got witness statements and followed the
11 trail of blood?

12 A. Correct.

13 Q. And once you cleared the scene where did you go?

14 A. I went back to the Sheriff's Office to interview the
15 people who I had taken to the office.

16 Q. And that night did you have, based on the interviews,
17 and the information collected at the scene, did you have an
18 idea of some of the parties who may be involved?

19 A. Yes.

20 Q. Did you release any sort of BOLO's or be on the look
21 outs for those?

22 A. That's correct.

23 Q. And obviously, the vehicle that you were looking for was
24 described as what?

25 A. A black Audi with a Florida tag.

1 Q. Did you receive information about the location of that
2 vehicle?

3 A. Yes.

4 Q. And how did you get that information?

5 A. We tracked one of the suspects, Janena Gamble, and
6 through her probation and parole she was wearing an ankle
7 monitor, and they were able to tell us where she was.

8 Q. And did you receive a tip about the location of the
9 Audi?

10 A. Yes.

11 Q. And where were you advised that it might be located?

12 A. Parked across the street from the Sheriff's Office.

13 Q. What street would that have been on?

14 A. If I'm not mistaken, it's Azalea.

15 Q. And once you received that tip did you do anything to
16 verify the accuracy of that?

17 A. Yes, we went over and looked.

18 Q. And then you also got the information from probation and
19 parole?

20 A. Correct.

21 Q. And did you do any surveillance, or how did you get the
22 vehicle? Tell me about how you got the Audi.

23 A. So probation and parole was able to track the
24 whereabouts of the person who was wearing the ankle monitor.
25 So we got information that she was at MUSC and we could follow

1 a trail back to the house so we just waited.

2 Q. So Ms. Gamble had been transported to MUSC after
3 Tideland's?

4 A. Correct.

5 Q. And you waited and conducted surveillance at the house?

6 A. Correct.

7 Q. And when was this in relation to the crime?

8 A. The following day.

9 Q. And so you were able to find the vehicle there the next
10 day?

11 A. Correct.

12 Q. And then did Ms. Gamble return to the residence?

13 A. She did.

14 Q. And about time was that?

15 A. 1:00, quarter after 1:00 in the afternoon.

16 Q. The next day?

17 A. Correct.

18 Q. And the Audi was there?

19 A. Yes.

20 Q. And you also interviewed Ms. Gamble?

21 A. I did.

22 Q. And what did you do regarding the vehicle?

23 A. So we took custody of the vehicle and took it to the
24 Sheriff's Office where we have garage bay set up, and that's
25 where we keep it until we obtain the search warrant to actually

1 search it.

2 Q. So when did you seize the vehicle, the same day you
3 arrested her?

4 A. Correct.

5 Q. And that was the day after?

6 A. The day after.

7 Q. So it was seized and put in the garage at the Sheriff's
8 Office?

9 A. Yes.

10 Q. And then you got a search warrant?

11 A. Correct.

12 Q. When was the vehicle processed?

13 A. It would have been processed some time after we got the
14 search warrant.

15 Q. And did you take photographs of that?

16 A. I did.

17 Q. Did anybody assist you in processing the car?

18 A. Yes, Investigator Griffith.

19 Q. Let's look at State's Exhibit 8 which is labeled:
20 Photos of the black Audi. Tell us what we're looking at.

21 A. So this is a normal procedure once we seize a vehicle
22 and put it into the bay. As you can see, that area is cornered
23 off because there are other things in the bay other than what
24 we're processing. So that indicates that this is part of the
25 crime scene, so no one's allowed to cross that.

1 Q. And who is this?

2 A. That's Investigator Griffith.

3 Q. I want to go back to this first photo. So what is the
4 first step as far as photographing?

5 A. So with any crime scene, the first thing we will do is
6 take pictures of it the way it is when we get it, and so this
7 is what you're seeing. This is pictures of the exterior of the
8 vehicle.

9 Q. And this is the driver's side?

10 A. Driver's side.

11 Q. And this area here?

12 A. That is the driver's side window and there's damage to
13 the window.

14 Q. I'm going to zoom in a little closer. Were you able to
15 determine what kind of damage that was?

16 A. Yes. It was struck by the projectile from the gun.
17 That is the front view of the car. Passenger side view, long
18 ways. Also a passenger side view from the rear.

19 Q. And I know we can see it, but for the record, how many
20 doors are on the vehicle?

21 A. Four. That's the rear of the vehicle.

22 Q. And now, what sort of tag does it have?

23 A. A Georgia tag.

24 Q. And were you able to determine who the vehicle was
25 registered to?

1 A. Yes. It was registered to a rental company.

2 Q. And again, just more photos going around the vehicle?

3 A. Correct.

4 Q. Other than what you've described as a shot to the
5 window, did you find any other damages to the vehicle?

6 A. Not to the exterior, no. And this is where I began to
7 photograph the interior.

8 Q. And this is from the driver's side?

9 A. Correct.

10 Q. And could you just tell us what is in this area?

11 A. There's a beer can sitting in the console, cup holder.
12 This is the driver's side rear. Driver's seat.

13 Q. Was there anything concerning in this area?

14 A. I think we recovered some blood evidence, and so that's
15 what we're photographing. This is the rear from the passenger
16 side. And the front passenger seat. The trunk of the vehicle.
17 This is a close up of the damage to the window, and we have a
18 ruler sticker to show just how big it is.

19 Q. And from this were you able to determine which
20 direction -- or what direction is this?

21 A. This is showing the outside of the window so the
22 projectile would have come from inside out. And that's just
23 one of the ashtrays in the door of the vehicle. That's another
24 shot of the driver's side rear door. A shot of the ashtray
25 with cigarette remains in it. This is the beer can once we

1 processed it for fingerprints.

2 Q. And why did you process the can from the front of the
3 vehicle?

4 A. It would give us an idea of who was in the car, so
5 whoever touched it, we process the vehicle for the fingerprints
6 and then we'll collect those prints and send them out for
7 comparison.

8 Q. Now, who processed it for fingerprints?

9 A. Investigator Griffith.

10 Q. And how is that done?

11 A. We use a graphite powder, and what it does is it adheres
12 to the oil and acids on your skin and it produces a fingerprint
13 that we can see and so we'll collect that with a latent lift.

14 Q. And you were present when he did that?

15 A. I was.

16 Q. He actually collected it?

17 A. He collected it and I took a photo.

18 Q. I'm going to show you what's been marked as State's
19 Exhibit Number 15. Could you tell us what that is?

20 A. So again, all of the evidence, most evidence that we
21 collect are kept in a paper package with a label on front, and
22 inside of this package is the latent lift that we collected
23 from the beer can.

24 Q. And could you hold that up? Is that basically the print
25 from the beer can?

1 A. Correct. One side has adhesive on it and so when we lay
2 it over top of the print it collects and we close it, insert
3 it.

4 Q. And did you take custody of, you call that a hinge lift?

5 A. Yes, hinge lifter.

6 Q. And you took custody of that?

7 A. I did.

8 Q. And what did you do once you got it from Investigator
9 Griffith?

10 A. I would have filled out this evidence package and
11 inserted it, sealed it, signed it and then sent it off for
12 comparison.

13 Q. Where would you have taken it first?

14 A. It goes to the evidence locker.

15 Q. And again, who is that custodian?

16 A. Michael Thacker.

17 Q. Did you alter, manipulate, tamper with or do anything
18 with this hinge lifter?

19 A. I did not.

20 Q. And you took steps to preserve the integrity of this
21 evidence?

22 A. Yes.

23 MS. RICHARDSON: Your Honor, at this time I'd offer
24 State's 15 into evidence.

25 THE COURT: Any objection?

1 MR. WILSON: No objection, Your Honor.

2 THE COURT: State's Exhibit 15 admitted into evidence
3 without objection.

4 (State's Exhibit No. 15 was admitted into evidence.)

5 Q. And the purpose of taking this lift would be to send it
6 where?

7 A. The South Carolina Law Enforcement Division.

8 Q. And then they could compare it?

9 A. Correct.

10 MS. RICHARDSON: Your Honor, we've been going about
11 an hour and a half. Do you want to take a break or just keep
12 going?

13 THE COURT: If it's a good time for you to take a
14 break.

15 MS. RICHARDSON: It's going to be a while longer.

16 THE COURT: Ladies and gentlemen, we'll go ahead and
17 take about a ten or 15 minute break. Do not discuss the case
18 even among yourselves. That will give you an opportunity to
19 stretch your legs, get something to drink or whatever the case
20 may be. We'll take about a ten or 15 minute break and come
21 back in just a minute.

22 (Jury exited the courtroom at 10:54 a.m.)

23 THE COURT: Lieutenant Garrett, we're still in middle
24 of your testimony, so under the law you cannot discuss your
25 testimony with anyone, even the Solicitor's Office, whether

1 that be what you testified to thus far or what you anticipate
2 testifying to in the future. I'll allow you to step down off
3 the witness stand but don't talk to anybody about testimony.
4 Okay?

5 THE WITNESS: Yes, sir.

6 THE COURT: Anything from the State before we take a
7 break?

8 MS. RICHARDSON: No, Your Honor. I just needed a
9 little break.

10 THE COURT: Anything from the defense?

11 MR. WILSON: Nothing, Your Honor.

12 THE COURT: Let's take about a ten or 15 minute break
13 and we'll come back and resume.

14 (Recess taken.)

15 THE COURT: Anything from the State before we bring
16 the jury in?

17 MS. RICHARDSON: No, Your Honor.

18 THE COURT: Anything from the defense?

19 MR. WILSON: No, Your Honor.

20 THE COURT: Let's bring the jury in.

21 (Jury entered the courtroom.)

22 THE COURT: Ladies and gentlemen, welcome back.
23 We're ready to resume. Ms. Richardson, you can continue with
24 your direct examination.

25

1 DIRECT EXAMINATION (continued)

2 BY MS. RICHARDSON:

3 Q. So you interviewed Ms. Gamble, I believe we established
4 that was on the 10th, the day after; is that right?

5 A. Correct.

6 Q. And you recorded that interview as well?

7 A. I did.

8 Q. And can you sort of describe how that interview went?

9 A. She -- you know, it was obvious that she didn't want to
10 tell me a lot about her gunshot wound, but at some point she
11 did tell me.

12 Q. And were you able to learn more about her gunshot wound?

13 A. Correct.

14 Q. And tell me, and you've got medical records for her as
15 well?

16 A. Yes.

17 Q. And you saw her in the hospital the night that she was
18 shot?

19 A. I did.

20 Q. What sort of wound did she have?

21 A. She had a gunshot wound to her hand.

22 Q. Was that a through and through wound?

23 A. It was.

24 Q. So the bullet went in and out?

25 A. Correct.

1 Q. And based on your investigation who did you get warrants
2 for?

3 A. The defendant, Eryk Smith, and also her and Jed Coleman.
4 They were all charged with -- Attempted murder, armed robbery,
5 conspiracy.

6 Q. And did she, Ms. Gamble, were you able to get a
7 telephone from her?

8 A. I did.

9 Q. And that was during that first interview?

10 A. Right.

11 Q. Did she consent to giving you that?

12 A. She did.

13 Q. And did it have a passcode?

14 A. It did.

15 Q. And did she allow you to look through it while you were
16 talking with her?

17 A. She did.

18 Q. Was there ever any other forensics done on it?

19 A. Well, I believe I got a search warrant for it and we
20 downloaded it for content.

21 Q. And when you were reviewing it did you find anything
22 concerning about that night?

23 A. Yes. She sent a text to her live-in girlfriend telling
24 her to clean up the car and get rid of the drugs.

25 Q. And was there anymore information about what kind of

1 drugs?

2 A. There was heroin.

3 Q. Did she also tell her to get rid of the pills and the
4 weed?

5 A. Correct.

6 Q. And based on that information that you received, what
7 did you do?

8 A. I went over to the girlfriend's house which was, of
9 course, across from the Sheriff's Office and confronted her
10 about the text, and so she showed me what she did with it and
11 what she put in the trash can outside.

12 Q. And what did you recover from outside?

13 A. I believe it was heroin, a scale.

14 Q. Do you recall the girlfriend's name?

15 A. Sadahria.

16 Q. And she did all that by consent as well?

17 A. She did.

18 Q. Now, when you say the house was right across from the
19 Sheriff's Office, can you sort of describe where it was?

20 A. Sure. Across from the Sheriff's Office there's a street
21 called Azalea, and it's a circle. So it's toward the back of
22 the circle.

23 Q. Like a little culdesac type thing?

24 A. Correct.

25 Q. So as far as from, I know you said that the car was

1 located across from the Sheriff's Office, was it visible from

2 --

3 A. No. It wouldn't have been visible from the road.

4 Q. But you just sort of laughed because it was kind of
5 funny that's where it was?

6 A. Correct.

7 Q. But you wouldn't have been able to see it from the
8 Sheriff's Office?

9 A. No.

10 Q. Now, obviously, Ms. Gamble was taken into custody
11 immediately?

12 A. She was.

13 Q. And you had outstanding warrants for the other two?

14 A. Correct.

15 Q. Did you also have information about the fourth person in
16 the Audi?

17 A. I did.

18 Q. And who was that?

19 A. That was Jed Coleman's little brother.

20 Q. What was his name?

21 A. His nickname was Digga (phonetic).

22 Q. Would that have been Jayqwane Coleman? Does that ring a
23 bell?

24 A. That's it.

25 Q. And was he charged in this matter?

1 A. He was not charged.

2 Q. And why was that?

3 A. We were never able to -- there was no indication that he
4 even knew what was going on or that he was involved in any way.

5 Q. And based on your investigation did you determine where
6 the gunshot came from based on your witness interviews and your
7 investigation?

8 A. Yes. It came from the passenger side driver seat --
9 passenger side seat, front.

10 Q. And were you able to determine based on the witness
11 interviews who was in that seat?

12 A. Defendant, Eryk Smith.

13 Q. So were you able -- when did you arrest Jed Coleman?

14 A. It was sometime later.

15 Q. What efforts did you take to locate Jed Coleman and Eryk
16 Smith?

17 A. So once I got the arrest warrants, they were entered
18 into the national crime computer and also made contact with
19 SLED's fugitive team and we began the search warrant.

20 Q. Did you find them in Georgetown County?

21 A. We did not.

22 Q. And when you said, the SLED Fugitive Team, where would
23 you be looking for them -- first of all, where would your first
24 efforts be to locate them?

25 A. Well, they track cell phones, Facebook, all kind of

1 social media, and that leads us to different locations where
2 they have been or could be.

3 Q. Do you -- what sort of records do you pull to try to
4 find addresses or where people live?

5 A. We use DMV. We use -- and there's other sites that we
6 use to locate family members and acquaintances and so on and so
7 forth.

8 Q. Were there any sort of press releases or information put
9 out when you're looking for suspects?

10 A. Yes.

11 Q. So what sort of press releases were you put out?

12 A. I don't recall right offhand, but certainly we put out a
13 warrant poster, if you got information contact us.

14 Q. For both of these?

15 A. Correct.

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

17 Q. Let me show you what's been marked for identification as
18 State's Number 16. And can you tell me what that is?

19 A. This is one of the DMV records that we pulled, it's a
20 driver's record, and this is belonging to Eryk Smith.

21 Q. And when is that dated, can you look at the bottom when
22 it was pulled?

23 A. October 15, 2018 at 8:51 p.m.

24 Q. And that's an accurate copy of the information that you
25 got from DMV?

1 A. That is correct.

2 Q. And what you used in your investigation?

3 A. That is correct.

4 MS. RICHARDSON: Your Honor, I'd offer State's 16
5 into evidence.

6 THE COURT: Any objection?

7 MR. WILSON: Without objection, Your Honor.

8 THE COURT: State's Exhibit 16 is admitted into
9 evidence without objection.

10 (State's Exhibit No. 16 was admitted into evidence.)

11 Q. And you said that is the DMV record for Eryk Smith in
12 2018?

13 A. That is correct.

14 Q. What address does it give?

15 A. [REDACTED] Lynch Street.

16 Q. And that's where?

17 A. In the city limits of Georgetown.

18 Q. Does it show where he's had a previous address change?

19 A. Correct. It's [REDACTED] Ford Village Road.

20 Q. And would you all have looked at those addresses for
21 him?

22 A. Absolutely.

23 Q. Would you have contacted any relatives in the area?

24 A. Correct.

25 Q. So you first would have searched in Georgetown County

1 for it?

2 A. Yes.

3 Q. And you didn't have any luck?

4 A. No.

5 Q. So you got the SLED Fugitive --

6 A. Fugitive Task Force.

7 Q. And this is on Mr. Smith?

8 A. Yes.

9 Q. And what sort of things did they do to locate him?

10 A. Again, they tracked cell phones, social media, talked
11 with people in the neighborhood, will get information about
12 family members elsewhere and started to look.

13 Q. Did they talk to some of his friends?

14 A. They did.

15 Q. And who they were?

16 A. De'Montae Wright is one; Dante Scott is another one.

17 Q. Were they able to determine if they had any contact with
18 him?

19 A. Yes.

20 Q. What sort of contact did they have?

21 A. At some point they said that they allowed him to use the
22 phone or talk with him on Messenger.

23 Q. Where was Mr. Smith initially; or eventually located?

24 A. Can I --

25 Q. Mr. Smith?

1 A. Oh, it slips my mind right now.

2 Q. But out of state?

3 A. Yes.

4 Q. And he was brought back to South Carolina?

5 A. Correct.

6 (State's Exhibit No. 18 was marked for identification.)

7 Q. Let me show you what's been marked as State's 18 for
8 identification. Can you tell me what that is?

9 A. This is a Waiver of Extradition.

10 Q. What is extradition?

11 A. If a person who is wanted is found out of state they
12 have to sign a Waiver of Extradition for us to bring him back
13 to South Carolina.

14 Q. Or else have an extradition hearing in the other state?

15 A. Correct.

16 Q. And he did consent to being brought back; is that right?

17 A. Yes.

18 Q. And what state was he in?

19 A. Arizona.

20 Q. And when was that signed?

21 A. That was May 16, 2019.

22 Q. And that's when he was agreed to be brought back to
23 South Carolina?

24 A. Correct.

25 Q. And that was signed by him?

1 A. Yes.

2 Q. And he also had an attorney?

3 A. Correct.

4 MS. RICHARDSON: Now, at this time I'd move to enter
5 18 into evidence.

6 THE COURT: Any objection?

7 MR. WILSON: No objection, Your Honor.

8 THE COURT: State's Exhibit 18 is admitted into
9 evidence without objection.

10 (State's Exhibit No. 18 was admitted into evidence.)

11 Q. And you had mentioned the National Crime Database from
12 NCIC?

13 A. Yes.

14 Q. And that's where you put the warrants in?

15 A. Correct.

16 Q. Is that how other agencies verify?

17 A. That is correct. If we stop them at a traffic stop or a
18 police officer comes into contact with you, anywhere in the
19 nation they show that you're wanted and where you're wanted
20 from and what you're wanted for.

21 Q. And you don't handle that part, the warrants service,
22 there's a different division in your office?

23 A. We have a warrants division.

24 Q. And is it your understanding that he was located in
25 Arizona the end of December of '18?

1 A. Correct.

2 Q. And signed the extradition in May of '19?

3 A. Yes.

4 Q. And is it your understanding, as well, that the
5 warrants -- he was not actually processed and brought to South
6 Carolina until July of '19?

7 A. Correct.

8 Q. And were you still in investigations in July of '19?

9 A. I was not.

10 Q. Is that when you got your promotion?

11 A. Well, that was one of three.

12 Q. And what about Mr. Coleman, where was he located?

13 A. He was located in Connecticut.

14 (State's Exhibit No. 17 was marked for identification.)

15 Q. Let me show you what's been marked as State's Exhibit 17
16 and tell me what that is.

17 A. This is another Waiver of Extradition and it's signed by
18 Jed Coleman November 9, 2018.

19 MS. RICHARDSON: I'll offer State's 17 into evidence.

20 THE COURT: Any objection?

21 MR. WILSON: No objection, Your Honor.

22 THE COURT: State's Exhibit 17 admitted into evidence
23 without objection.

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

25 Q. And after Mr. Coleman, he was located first, was brought

1 back from Connecticut, he was interviewed by you?

2 A. Correct.

3 Q. And that was on December 14, 2018?

4 A. Yes.

5 Q. And that was the day after he was brought back?

6 A. Correct.

7 Q. So does it take a little while once they are located and
8 signed the extradition to actually be transported back?

9 A. We have to find transport for them.

10 Q. You actually get a company to go do that?

11 A. We get a company, sometimes we'll go get them ourselves.

12 Q. And you were able to interview him that day?

13 A. I did.

14 Q. And he gave you information, as well?

15 A. Correct.

16 Q. And then as part of the investigation do you take the
17 evidence to SLED or does somebody else do that?

18 A. Somebody else does that. Michael Thacker normally takes
19 it.

20 Q. Okay. And that's just sort of the finishing up of the
21 investigation as well?

22 A. Correct.

23 Q. And what about Mr. Miller, were you able to talk with
24 him?

25 A. No.

1 Q. And can you explain what happened with that?

2 A. I called several times, he'd left the area, to get him
3 to come down, but each time we had a date to meet he didn't
4 show up, so you know, he advised that he was afraid to come to
5 the area so we never got a chance to talk to him, other than
6 the hospital.

7 MS. RICHARDSON: I have no further questions. Answer
8 any questions that Mr. Wilson may have for you.

9 THE WITNESS: Will do.

10 THE COURT: Cross-examination?

11 MS. ANDERSON: May it please the Court?

12 THE COURT: Yes, ma'am.

13 CROSS-EXAMINATION

14 BY MS. ANDERSON:

15 Q. How are you, sir?

16 A. Good, how are you?

17 Q. I'm doing well, thank you. So the first place you went,
18 you went and spoke with Joshua Miller, correct?

19 A. Correct.

20 Q. And when you spoke with Joshua Miller did you ever ask
21 him if he had a weapon?

22 A. I don't recall asking him if he had a weapon at the
23 hospital.

24 Q. Did Joshua Miller describe the people who shot him?

25 A. He said there was a black male and black female who

1 looked like a male.

2 Q. And while you were speaking with Joshua Miller, that's
3 when you heard there was another gunshot victim?

4 A. That is correct.

5 Q. And you went and saw her and you saw her injuries at
6 that time?

7 A. I did.

8 Q. And when you spoke with Ms. Gamble she was the other
9 gunshot injury at the time. The statement she gave you at that
10 time, was she able to clearly give you a statement about what
11 she saw, what she heard?

12 A. Yes. She told me that she was in the store. When she
13 came out they started shooting. She didn't know who it was.
14 She got hit, and that's it.

15 Q. And you said earlier that Mr. Miller was also able to
16 give you a pretty clear statement about what he saw happened,
17 what he experienced?

18 A. That is right.

19 Q. So after you spoke to both Mr. Miller and Ms. Gamble you
20 went to the scene, correct?

21 A. I did.

22 Q. And when you got to the scene you processed the scene as
23 you spoke with Ms. Richardson about it, correct?

24 A. Correct.

25 Q. And what's the first thing you noticed when you got to

1 the scene?

2 A. The first thing I noticed would have been the blood, all
3 of the blood on the concrete.

4 Q. And after you noticed the blood what is the next thing
5 you noticed?

6 A. The white Xanax pills.

7 Q. And where was the majority of the white Xanax pills?

8 A. It was all pretty much where the cars were parked, where
9 the shooting was alleged to take place.

10 Q. And is it normal to find a bunch of Xanax pills right
11 there in the gas station parking lot?

12 A. Not normal.

13 Q. And what did the location of all of those Xanax pills
14 lead you to believe through your investigation?

15 A. I believe that they were involved some kind of way with
16 what happened.

17 Q. Did it lead you to believe there was some kind of
18 struggle right there?

19 A. Very possible.

20 Q. And these pills, were these Xanax pills ever tested?

21 A. I believe they were.

22 Q. They were sent off to SLED to be tested?

23 A. I believe so.

24 Q. And from your experience did these pills look like they
25 were manufactured at home?

1 A. I don't have a lot of experience with them.

2 Q. Do you have much experience at all with Fentanyl -- I
3 apologize -- with Xanax and the common concern for Xanax when
4 it's manufactured at home?

5 A. No, ma'am.

6 Q. So you're basing you're experience you don't really know
7 if Xanax is often times laced with Fentanyl?

8 A. Right, I don't.

9 Q. You said the majority of the pills were located right
10 there by the gas pump, correct?

11 A. Correct.

12 Q. Did you find Xanax pills anywhere else on the scene?

13 A. Just on the other side of the gas pumps and then the one
14 toward the rear of the store.

15 Q. So through your investigation then that would lead you
16 to believe that when Joshua Miller left that area he had some
17 of the Xanax pills?

18 A. That would lead me to believe that.

19 Q. Did you find anything else to the side of the building?

20 A. On the side of the building, other than the blood trail,
21 that's it.

22 Q. And I know we saw the video earlier or the pictures
23 earlier where you guys taped off the side of the building. Did
24 you guys searched past that taped off area?

25 A. Yes.

1 Q. And there are woods back there, correct?

2 A. There's some woods, there's grass, there's trailers.

3 Q. Did you search back in that area completely?

4 A. As far as?

5 Q. How far did you guys search back there?

6 A. Just beyond the store, in the back of the store.

7 Q. And you didn't locate anything back there?

8 A. I did not.

9 Q. Do you know if anybody else had gone back there?

10 Because you didn't tape off back there, correct?

11 A. No, just where the end of the blood evidence is is where
12 it was taped off.

13 Q. After you spoke with Joshua Miller you didn't speak with
14 him again after that ER?

15 A. No, I did not.

16 Q. Did Joshua Miller ever contact you again after 2018
17 after you spoke with him at the ER?

18 A. No.

19 Q. He never spoke with you to try to cooperate or tell you
20 who shot him?

21 A. No.

22 Q. Did he ever contact you any time in 2019 to cooperate or
23 tell you who shot him?

24 A. He did not.

25 Q. Did he ever contact you any time in 2020 to tell you who

1 shot him or to cooperate with you?

2 A. He did not.

3 Q. Did he ever contact you in 2021 to tell you who shot him
4 or cooperate with you?

5 A. No.

6 Q. You said earlier that he was afraid of coming back. Did
7 you ever try to talk to him over the phone about what happened
8 or who shot him?

9 A. I talked to his mother.

10 Q. But you didn't talk to him?

11 A. No.

12 Q. You said that he had made, I guess, meetings with you
13 that he was going to come talk to you, and he never came for
14 those?

15 A. Correct.

16 Q. How many times did he say he was going come meet with
17 you and didn't come?

18 A. I don't remember exactly how many times, but it was more
19 than once.

20 Q. Did he ever tell you that he wanted your protection or
21 your help?

22 A. No, I didn't talk to him.

23 Q. So you never spoke with Joshua Miller again at all after
24 the ER?

25 A. Not that I recall.

1 Q. Do you have the authority to charge someone with a
2 crime?

3 A. I have the authority to request a warrant from the
4 judge.

5 Q. Whose decision was it to not charge Joshua Miller with
6 any kind of crime related to the pills?

7 A. That would have been my decision.

8 Q. And what led you to make that decision?

9 A. Normally, when I'm working a serious crime like this,
10 the narcotics, I don't charge with, so I might give that to the
11 narcotics unit, give that information to them, but that's not
12 my concern, my primary concern.

13 Q. And you did speak with Mr. Coleman later on when you
14 interviewed him, correct?

15 A. I did.

16 Q. You did tell him during that interview, you know, that
17 Joshua Miller wasn't an innocent victim and that you understand
18 that because he was doing something illegal, correct?

19 A. I may have.

20 Q. So you acknowledge that Joshua Miller was at the time
21 doing something illegal?

22 A. I understand that that's what the meeting was about.

23 Q. Did you ever execute any kind of search or search
24 warrant on Corey Hayes' house?

25 A. No, I did not.

1 Q. But you searched his vehicle?

2 A. Yes.

3 Q. Did you ever do any kind of search of Joshua Miller's
4 house?

5 A. I did not.

6 Q. I know you said earlier that you searched Ms. Gamble's,
7 the Audi that was found in front of Ms. Gamble's house. Did
8 you ever search her home?

9 A. I don't recall searching her house.

10 Q. Did you ever figure out why Joshua Miller lied about
11 owning the Xanax pills?

12 A. I never had the opportunity to speak with him.

13 Q. Earlier you had testified that you didn't charge or
14 obtain arrest warrants for Jayqwane Coleman because he wasn't
15 involved, but you didn't actually determine he wasn't involved,
16 correct?

17 A. Right.

18 Q. You just had the statements of his older brother and Ms.
19 Gamble that he wasn't involved, correct?

20 A. Correct.

21 Q. You had never talked to him about what happened,
22 correct?

23 A. No, I did not.

24 Q. You had never talked to Eryk Smith about what happened,
25 correct?

1 A. I did not.

2 Q. But if the theory was that they were all involved he
3 would have been involved as well, correct?

4 A. Well, it's possible, but that's not the conclusion that
5 I came to.

6 Q. But that conclusion was just based off of Mr. Coleman,
7 his older brother's statement and Ms. Gamble's statement,
8 correct?

9 A. Correct, and also Mr. Miller's statement and Mr. Hayes.

10 Q. Well, Mr. Miller really only told you about the two
11 people during his ER interview, correct?

12 A. Correct.

13 Q. He said that the guy and the girl, and the guy and the
14 girl was Jed Coleman and Ms. Gamble who got in the vehicle,
15 correct?

16 A. Correct.

17 Q. And you interviewed Ms. Gamble, as well, a second time
18 the next day, correct?

19 A. Yes.

20 Q. And during that you discovered that she was speaking
21 with, or she was messaging to have some drugs disposed of,
22 correct?

23 A. At some point I did read the text messages.

24 Q. And that's when you guys recovered those drugs, correct?

25 A. That is correct.

1 Q. And that didn't leave you guys to believe that you
2 needed to search her home?

3 A. Again, the narcotics violations are not my primary
4 concern when working a murder or attempted murder, high crimes
5 like that.

6 Q. Did you ever ask Ms. Gamble if she had a gun that night?

7 A. I don't recall.

8 Q. But guns would have been a concern, correct?

9 A. Absolutely.

10 Q. So you could have potentially recovered guns in Ms.
11 Gamble's house, correct?

12 A. It's very possible.

13 Q. Did you ever ask Ms. Gamble if anybody had guns that
14 night?

15 A. I'm sure I did.

16 Q. Did you ever ask Ms. Gamble if she had guns in her
17 house?

18 A. I don't believe I did.

19 Q. Did you ever ask Ms. Gamble if she allowed other people
20 to bring guns in her house?

21 A. No, I don't believe so.

22 Q. Initially, or when you spoke with Ms. Gamble you allowed
23 her to have her girlfriend come in and speak with and her,
24 correct?

25 A. Correct.

1 Q. And that's the same girlfriend that she was working with
2 to dispose of the drugs, correct?

3 A. That is correct.

4 Q. And Mr. Hayes, Corey Hayes, the young man who was there,
5 as well, I just wanted to ask, he passed away in a car
6 accident, correct?

7 A. Correct.

8 Q. And that's a car accident completely separate from this
9 incident, that was much later on, correct?

10 A. That is correct.

11 Q. You also spoke about the Audi, discovering that it was a
12 rental that was released to Enterprise?

13 A. Yes.

14 Q. Did you determine if Ms. Gamble was the authorized
15 renter of that car?

16 A. I don't believe she was.

17 Q. Do you know if that car was reported stolen or what the
18 status of that rental was?

19 A. I don't know if it was ever reported stolen, but it was
20 taken without authorization from the rental company.

21 Q. When you spoke to Mr. Coleman did he tell you that his
22 brother was in the vehicle?

23 A. No.

24 Q. When you spoke to Mr. Coleman -- because you already
25 knew his brother was in the vehicle, correct?

1 A. That is correct.

2 Q. When you spoke to Mr. Coleman in an attempt to get him
3 to tell you his brother was in the vehicle, you told him, you
4 know, so he is just an innocent passenger riding with you,
5 right?

6 A. I could have.

7 Q. Through your investigation and after talking to Ms.
8 Gamble and Mr. Coleman, who did you determine got into Corey
9 Hayes' vehicle?

10 A. Jed Coleman and Janena Gamble.

11 Q. So Eryk Smith never got in the vehicle?

12 A. Not according to statements, no.

13 Q. Nothing led you to believe Eryk Smith got into that
14 vehicle?

15 A. Correct.

16 Q. Was there any information that lead you to believe
17 anything about what Janena Gamble and Jed Coleman were getting
18 in that vehicle to do?

19 A. No.

20 Q. Ms. Gamble and Mr. Coleman never told you that he knew
21 about what they getting in that vehicle to do?

22 A. Not that I recall.

23 Q. During your interviews with Ms. Gamble and Mr. Coleman,
24 you actually told both of them -- do you recall that Ms.
25 Gamble's statement from the ER was substantially different than

1 her first statement the next day?

2 A. Yes.

3 Q. Do you recall telling both of them after -- or
4 throughout their interviews that there were holes in their
5 stories and that when you went back and talked with the
6 Solicitors the stories needed to make sense?

7 A. Sure.

8 Q. So even throughout talking with them there were still
9 things that didn't make sense and things that weren't coming
10 together for you?

11 A. Correct.

12 Q. Were you ever able to determine who actually got out of
13 Corey Hayes' vehicle with the pills?

14 A. By the witness statements, Janena Gamble is the one who
15 got out with the pills.

16 Q. Were you able to determine if any money was ever
17 exchanged?

18 A. I was not.

19 Q. You were able to get records from Ms. Gamble's phone
20 while she was in custody. Were there any messages on that
21 phone from Ms. Gamble to Eryk Smith or from Eryk Smith to Ms.
22 Gamble?

23 A. Not that I recall, nothing that rings a bell.

24 Q. You initially thought this was about a marijuana deal,
25 correct?

1 A. Correct.

2 Q. And what led you to the believe that?

3 A. That's what I was told.

4 Q. That's what you were told when you first got on scene?

5 A. Somewhere during the initial investigation I was told it
6 was about marijuana.

7 Q. And you never talked with Jayqwane Coleman and you never
8 talked with Eryk Smith, correct?

9 A. That is correct.

10 Q. So the only statements you had were coming from those
11 who was arrested was Jed Coleman and Janena Gamble's
12 statements?

13 A. Correct.

14 MS. ANDERSON: The Court's indulgence, Your Honor?

15 THE COURT: Alright.

16 Q. You watched the video that Solicitor Richardson played
17 for us earlier of the Francis Marion Store that faces towards
18 that alleyway where you found the one pill and the trail of
19 blood, correct?

20 A. Correct.

21 Q. In that video do you recall where Josh Miller is running
22 up it and you see the cars, correct?

23 A. Yes.

24 Q. And in that video you first see -- you see Josh Miller
25 running up that and then you see the Audi pull out -- or you

1 see Corey Hayes' car flip around and then you see the Audi pull
2 up, correct?

3 A. Correct.

4 Q. Did you ever ask Joshua Miller why he ran up the
5 alley?

6 A. No.

7 Q. Through your experience and your investigation is there
8 any kind of medical treatment he could have received by running
9 up that alley?

10 A. I wouldn't think so.

11 Q. Was it a well lit street of houses with people who could
12 have helped had him up there?

13 A. Well, it's not well lit, but there are houses where
14 people could help him, but I don't know if that's what he was
15 thinking.

16 Q. Would he have had to have kind of veered around and gone
17 around the pumps to go in that direction?

18 A. Yes.

19 Q. His straight line would have been straight into the
20 store, correct?

21 A. Correct.

22 Q. And that would have been the safest route was to go
23 straight into the store, correct?

24 A. I don't know if I can agree with that, but it definitely
25 straighter to go into the store.

1 Q. There were store clerks in there, correct?

2 A. Yes.

3 Q. And they could have called 911, correct?

4 A. Well, they did.

5 Q. And there were no phones in the back of the alleyway,
6 correct?

7 A. Not that I recall.

8 Q. And you recall from the video that Corey Hayes' car
9 flips out of the parking lot, the Audi pulls out, and Josh
10 Miller runs up the alley, correct?

11 A. Yes.

12 MS. ANDERSON: Nothing further, Your Honor.

13 THE COURT: Redirect?

14 REDIRECT EXAMINATION

15 BY MS. RICHARDSON:

16 Q. As for the back of the store, how did you choose what
17 area to rope off?

18 A. That area was roped off prior to my arrival and that's
19 what the responding officers were trained to do.

20 Q. As far as searching behind the store, you base that on
21 the blood trail; is that right?

22 A. Yes.

23 Q. And clearly everywhere Joshua Miller went he left a
24 trail?

25 A. That is correct.

1 Q. And did you find anything of that trail beyond the point
2 that you marked with the last blood marker?

3 A. There was no other blood.

4 Q. But every else?

5 A. Everywhere else there was blood.

6 MS. RICHARDSON: Your Honor, we might need to
7 approach real quick.

8 THE COURT: Alright.

9 (Off the record discussion was held at the bench
10 between Court and counsel.)

11 Q. When you interviewed Corey Hayes did he indicate he knew
12 some of the parties?

13 A. Yes.

14 Q. Who did he know?

15 A. Jed Coleman.

16 Q. And how did he say he had know Jed?

17 A. That they'd met in the past, he had know him for a
18 little while.

19 Q. And did Mr. Hayes admit to you being involved in a drug
20 transaction?

21 A. Yes.

22 Q. And did Ms. Gamble admit to you being involved in a drug
23 transaction?

24 A. Yes.

25 Q. Did Mr. Jed Coleman admit to you being involved in a

1 drug transaction?

2 A. Yes.

3 Q. There were just difference on who was the buyer and who
4 was the seller?

5 A. Correct.

6 Q. And whether it was marijuana or Xanax?

7 A. That is correct.

8 Q. Do you know South Carolina drug laws are based on how
9 drugs are scheduled; is that right?

10 A. Yes.

11 Q. So some drugs are scheduled more seriously?

12 A. Correct.

13 Q. And what would that be, like, heroin?

14 A. Absolutely.

15 Q. And then marijuana would be less serious?

16 A. Correct.

17 Q. And Xanax is Schedule 4?

18 A. Yes.

19 Q. And that's even less serious --

20 A. Correct.

21 Q. -- as far as distribution?

22 A. Yes.

23 Q. Do you know what schedule marijuana is?

24 A. No.

25 Q. So your information initially was that at least Jed

1 Coleman, Janena Gamble and Corey Hayes were involved in some
2 sort of drug transaction; is that right?

3 A. Correct.

4 Q. And were any of them charged with that?

5 A. No.

6 Q. And purchasing controlled substances is also illegal,
7 right?

8 A. Yes.

9 Q. But none of them were charged with that?

10 A. No.

11 Q. Now, Ms. Gamble was charged with the heroin that you
12 found at the house?

13 A. Correct.

14 Q. And did Mr. Hayes tell you who the shooter was?

15 A. No. He said he couldn't see who the shooter was.

16 Q. Did he tell you where it came from though?

17 A. He said it came from the vehicle.

18 Q. And did Ms. Gamble tell you who the shooter was?

19 A. Yes.

20 Q. And who did she say the shooter was?

21 A. Eryk Smith, the defendant.

22 Q. So your information was that Eryk Smith was the shooter
23 and had a gun?

24 A. Correct.

25 Q. And that's why he was charged?

1 A. Yes.

2 Q. Your information was that Jed Coleman and Janena Gamble
3 both admitted to being present --

4 A. Yes.

5 Q. -- before and after --

6 A. Yes.

7 Q. -- and left with him?

8 A. Yes.

9 Q. And that's why they were charged?

10 A. That's correct.

11 Q. Now, as far as Jayqwane Coleman, did anybody give him,
12 say that he had any role in it other than being in the car?

13 A. No.

14 Q. And can you force, like, Mr. Jayqwane Coleman, can you
15 force people to talk with you?

16 A. No, I can't.

17 Q. And even the victim, could you force him to talk with
18 you?

19 A. No.

20 Q. And Ms. Anderson asked you about your experience.
21 You've interviewed a lot of people?

22 A. I have.

23 Q. Victims, witnesses, defendants, even?

24 A. Yes.

25 Q. In your experience when people are charged with a crime

1 do they usually just come right out and tell you everything?

2 A. Absolutely not.

3 Q. What sort of techniques do you use to try to get to the
4 truth?

5 A. Well, I'll sometimes tell them that I have more
6 information than I do. A lot of times I'll tell them, hey,
7 look, I'm going to talk with the prosecutor about you, but when
8 I bring the story against them, if it doesn't make sense
9 nobody's going to be willing to help you.

10 Q. Do you confront them with the inconsistencies?

11 A. Absolutely.

12 Q. And is that sort of the give and take what leads to the
13 eventual total statement?

14 A. Yes.

15 Q. And did you have to do some of that in this case?

16 A. Absolutely.

17 Q. And what is your experience regarding, like, self
18 protection, like, when people are giving a statement? What do
19 they usually do regarding themselves?

20 A. Oh, they're definitely going to try to take themselves
21 out of the seriousness of the crime: I was there but I didn't
22 do this or I didn't do that.

23 Q. And obviously, as far as the store, we've seen the
24 videos and the pictures. The store itself was well lit?

25 A. Yes.

1 Q. And facing directly in the direction of the gas pumps?

2 A. Yes.

3 MS. RICHARDSON: I have no further questions.

4 THE COURT: You may step down.

5 THE WITNESS: Thank you, Judge.

6 THE COURT: Let me see the attorneys for a second.

7 (Off the record discussion was held at the bench by
8 Court and counsel.)

9 THE COURT: Ladies and gentlemen of the jury, it's a
10 good time for us to break for lunch. I'm going to allow you to
11 go to lunch on your own. I'm going to ask that you please be
12 back at 1:30. Do not discuss the case, do not conduct any
13 independent investigation. I hope you have a good lunch, and
14 we'll see you back at 1:30.

15 (Jury exited the courtroom at 12:00 p.m.)

16 THE COURT: Did we have an issue we need to deal
17 with?

18 THE DEPUTY: Yes, sir.

19 THE COURT: What do we got?

20 THE DEPUTY: I'm informed they were told not to use
21 their phones per your order yesterday. I told three of them in
22 the back twice and the three ladies not to or else I'd have to
23 take them.

24 THE COURT: I'm sorry, I can't hear you. Say that
25 again.

1 THE DEPUTY: I told them that per your order not to
2 the use their phones or I would have to take them. The fellow
3 in the far corner, his phone went off, text message or
4 something, he looked at it so I took his phone.

5 THE COURT: Just hold it until the end of the trial.
6 When the trial is over we'll give it back to him.

7 MS. RICHARDSON: Is anybody else using their phones?

8 THE DEPUTY: No.

9 THE COURT: If his went off then let's hold it until
10 when the trial is over. We'll give it back to him then. Okay?

11 THE DEPUTY: Okay.

12 THE COURT: Anything else? Anything from the State
13 before we break for lunch?

14 MS. RICHARDSON: No, Your Honor.

15 THE COURT: Anything from the defense?

16 MS. ANDERSON: No, Your Honor.

17 THE COURT: Do you all want to go ahead and try to
18 work on whatever you need now?

19 MR. WILSON: Yes, sir.

20 THE COURT: We'll be in recess until 1:30.

21 MR. WILSON: Thank you, Your Honor.

22 THE COURT: Thank you.

23 (Lunch Recess taken.)

24 THE COURT: Anything from the State before we bring
25 the jury in?

1 MS. RICHARDSON: No, Your Honor.

2 THE COURT: Anything from the defense?

3 MR. WILSON: Nothing, Your Honor.

4 THE COURT: Let's go ahead and bring the jury in.

5 (Jury entered the courtroom at 1:34 p.m.)

6 THE COURT: Alright. Ladies and gentlemen, welcome
7 back. I hope everybody had a good lunch. I want to thank you
8 again for being prompt and returning on time. That's a great
9 assistance to the Court. We're ready to resume the trial of
10 the case. The State can call your next witness.

11 MS. RICHARDSON: The State calls Delsean Oliver.

12 **Delsean Oliver being first duly sworn, testified as**
13 **follows:**

14 THE CLERK: Please be seated, state your name for the
15 record and please spell your first and last name.

16 A. My name is Delsean Oliver.

17 MS. RICHARDSON: Mr. Oliver, you can remove your
18 mask, or if you have a shield.

19 THE COURT: And could I get you to spell Delsean,
20 please.

21 THE WITNESS: D-e-l-s-e-a-n.

22 THE COURT: Thank you. Ms. Richardson?

23

24

25

1 DIRECT EXAMINATION

2 BY MS. RICHARDSON:

3 Q. Mr. Oliver, where are you from?

4 A. Georgetown.

5 Q. How long have you lived in Georgetown?

6 A. Twenty-five years.

7 Q. Where did you go to high school?

8 A. Georgetown.

9 Q. Georgetown High School?

10 A. Yes.

11 Q. Do you know Corey Hayes?

12 A. Yes.

13 Q. How do you know him?

14 A. I used to play baseball with him.

15 Q. In high school?

16 A. In eighth grade through my -- my seven grade through my
17 ninth grade year.

18 Q. And do you know Jed Coleman?

19 A. Say that again.

20 Q. Do you know Jed Coleman?

21 A. Yes.

22 Q. How do you know Jed?

23 A. My friend.

24 Q. And did you know about the shooting that occurred at
25 Francis Marion back in 2018?

1 A. Say that again.

2 Q. Did you hear about the shooting that happened at Francis
3 Marion Store in 2018?

4 A. Yes.

5 Q. And how did you hear about that?

6 A. Facebook.

7 Q. And where were you that night? What were you doing that
8 day?

9 A. At the house chilling, I think.

10 Q. And who were you chilling with?

11 A. Talking about that day?

12 Q. Yeah, that night.

13 A. That night? All I remember is me, Owusu, Jed -- me,
14 Owusu, Jed, that's all I can remember.

15 Q. Was there a group of you?

16 A. No, not really.

17 Q. Did you all decide to go somewhere?

18 A. Yes.

19 Q. Where were you all going to go?

20 A. To a party in Conway.

21 Q. Now, do you remember where in Conway?

22 A. No.

23 Q. And who was driving?

24 A. Me.

25 Q. And who was driving with you?

- 1 A. Me and Owusu.
- 2 Q. When you said, Owusu, what's his name?
- 3 A. Samual.
- 4 Q. Samual Owusu; is that right?
- 5 A. Uh-huh.
- 6 Q. And who else was going the party?
- 7 A. Say that again.
- 8 Q. I said, and who else had decided to go to the party?
- 9 And can you look at me?
- 10 A. Janes.
- 11 Q. Who's Janes?
- 12 A. Janena.
- 13 Q. Is that Janena Gamble?
- 14 A. Uh-huh.
- 15 Q. You need to say yes or no.
- 16 A. Yes. Jed and J-Five.
- 17 Q. And so whose vehicle were you and Owusu in?
- 18 A. My vehicle.
- 19 Q. What kind of vehicle did you have?
- 20 A. Honda Civic.
- 21 Q. And what color was it?
- 22 A. Gray.
- 23 Q. How were the other ones going to get to the party? Can
- 24 you please look at me? How were the other ones going to get to
- 25 the party?

- 1 A. Drive.
- 2 Q. What were they driving?
- 3 A. I don't know what they was driving, but it was black.
- 4 Q. And who was driving?
- 5 A. Janena.
- 6 Q. Where was your house at that time? When you said you
- 7 all were chilling, that was at your house?
- 8 A. Yeah.
- 9 Q. Where was your house?
- 10 A. [REDACTED] Church Street.
- 11 Q. And that's here in City of Georgetown?
- 12 A. That's right.
- 13 Q. And so if you're leaving the City of Georgetown and
- 14 you're going to go to Conway, how do you go?
- 15 A. Wal-Mart Drive.
- 16 Q. Do you know what that road is?
- 17 A. (No audible response)
- 18 Q. Okay. But the road that goes by Wal-Mart?
- 19 A. Uh-huh.
- 20 Q. And you take that on into Conway?
- 21 A. Uh-huh.
- 22 Q. Does that road also pass Francis Marion Store?
- 23 A. That's right.
- 24 Q. So you're in one car, they're in another car, right?
- 25 A. Uh-huh.

- 1 Q. So where do you all go at that point?
- 2 A. Can you say that again?
- 3 Q. When you're on the way to the party in Conway, right, do
- 4 you all stop anywhere on the way to Conway?
- 5 A. I stopped by the gas station.
- 6 Q. And what gas station?
- 7 A. Francis Marion.
- 8 Q. And what about the other car?
- 9 A. I seen the other car when I got there.
- 10 Q. When you got where?
- 11 A. Francis Marion.
- 12 Q. And that was the black car?
- 13 A. That's right.
- 14 Q. Did you talk to him or anything?
- 15 A. I think after I left out the gas station I said a couple
- 16 of words and then I went back to my car, pumped gas, then I
- 17 left.
- 18 Q. And who was in the car?
- 19 A. Janena, J-Five, and Jed.
- 20 Q. Who was driving?
- 21 A. Janena.
- 22 Q. Who was in the passenger seat? Delsean, who was in the
- 23 passenger seat?
- 24 A. I think J-Five was in the passenger seat.
- 25 Q. And you talked to him, briefly?

1 A. What do you mean?

2 Q. You just kind of spoke to him you said?

3 A. Yeah.

4 Q. And what did you do at that point?

5 A. Pumped gas and I left.

6 Q. You were headed to the party?

7 A. That's right.

8 Q. Were you all hoping to meet some girls at the party?

9 A. That's right.

10 Q. Did you make it to that party?

11 A. No.

12 Q. Because what happened? Let me just go ahead and ask
13 you, did you see any shooting or anything like that?

14 A. No, ma'am.

15 Q. So you're not a witness to any of that; is that right?

16 A. That's right.

17 Q. You weren't at the store when that happened. Okay. And
18 you clearly don't want to be here today, do you?

19 A. No.

20 Q. So did you make it to the party?

21 A. No.

22 Q. What happened?

23 A. Owusu got an alert on Facebook with the GAB News about a
24 shooting that happened at Francis Marion, turned around, I
25 dropped him off home and I went home because the vibe been

1 killed after that.

2 Q. Let me hand you what's been marked as State's Exhibit

3 16. Who is that?

4 A. J-Five.

5 MS. RICHARDSON: No further questions.

6 THE COURT: Cross-examination?

7 MR. WILSON: Just briefly, Judge.

8 CROSS-EXAMINATION

9 BY MR. WILSON:

10 Q. Just to clear this up, you weren't in the car that Eryk
11 Smith was in, correct?

12 A. Say that again.

13 Q. I apologize. You weren't in the vehicle that J-Five was
14 in, Eryk Smith?

15 A. No, sir.

16 Q. And you weren't a party to any conversations about doing
17 drugs or getting drugs, were you?

18 A. No, sir.

19 Q. And then Jed Coleman and Janena Gamble didn't tell you
20 about any drugs, did they?

21 A. No, sir.

22 Q. And you all spent time together that day drinking and
23 having a good time, correct?

24 A. Yes, sir.

25 Q. And six days before this was Mr. Smith's birthday, was

1 it not?

2 A. I don't know they had a party --

3 Q. But you all were going to celebrate and go see girls in
4 Conway, that was the plan for everybody?

5 A. Yeah.

6 Q. And the two cars that were together knew about that,
7 correct? That's where everybody was going, to Conway?

8 A. Yeah.

9 MR. WILSON: No further questions.

10 THE COURT: Redirect?

11 MS. RICHARDSON: No, Your Honor, we would ask that he
12 be released from his subpoena.

13 THE COURT: Any objection?

14 MR. WILSON: No objection, Your Honor.

15 THE COURT: You may step down, you're free to go.
16 The State can call your next witness.

17 MS. RICHARDSON: The State calls Jonathan Griffith.

18 **Officer Jonathan Griffith being first duly sworn,**
19 **testified as follows:**

20 THE CLERK: Please state your first and last name for
21 the record and please spell your first and last name.

22 THE WITNESS: Jonathan, J-o-n-a-t-h-a-n, last name
23 G-r-i-f-f-i-t-h.

24

25

25 Q. And that's your title now?

1 A. Yes, ma'am.

2 Q. And you said that you had received training at the
3 Criminal Justice Academy?

4 A. Yes, ma'am, I did.

5 Q. Graduated from there?

6 A. Yes, ma'am.

7 Q. And how long is that program?

8 A. The one I went to is 12 weeks.

9 Q. And then since you graduated from there you said 2012?

10 A. Yes, ma'am.

11 Q. What other sort of training courses have you had?

12 A. Continuous education through contracted classes through
13 different companies that teach you in forensics and crime scene
14 processing, mostly in Florida, there's an academy down there we
15 go to.

16 Q. Do you have to do these classes every year?

17 A. Yes, ma'am, I do, to keep up with hours.

18 Q. What about on-the-job training? Have you received any
19 on-the-job training with other officers?

20 A. Yes, ma'am.

21 Q. Tell me about that.

22 A. On-the-job training involves your basic fingerprint
23 processing. Myself, what I do, I receive a little bit of
24 advanced training with the crime scene side of it.

25 Q. And were you asked in October of 2018 to help process

1 anything regarding the Francis Marion shooting case?

2 A. Yes. I assisted in processing the vehicle, and that
3 entails processing the items found in the vehicle.

4 Q. And you took some fingerprint, some lifts for
5 fingerprints in that case; is that right?

6 A. Yes, ma'am.

7 Q. Could you explain the process that's used to collect
8 fingerprints?

9 A. There's different processes of collecting fingerprints.
10 The most wide used way is the standard print pattern brush,
11 which I'm sure most of you have seen on TV. There's other
12 advanced ways, but they are very seldom used. It just depends
13 what you're working with. The item in question today is a beer
14 can which was used, I used standard print powder brush. Once
15 we develop a print for a good rich detail and we select it for,
16 though we want to keep it, we'll collect that print using what
17 you call a hinge lifter or a tape. A hinge lifter comes with
18 back and front, one side's sticky, one side's the background.
19 All you do is peel it, stick it on there and collect the print,
20 and then you close it back in your prints in between the sticky
21 and back board. The tape is the same way, you're just putting
22 the tape onto what we call a fingerprint card, which just
23 highlights the print on the background.

24 Q. When you do the fingerprint dust, or the dust that
25 you're talking about, how do you decide which areas you should

1 collect or that you should do the lift on? Do you do any
2 smudge or how do you decide?

3 A. No. We usually, we do not collect smudges because they
4 do not have -- what you're looking for is anything that
5 develops a good ridge detail with your fingerprints, anything
6 that can be identified as being used to identify a person.
7 That's usually what you see, swirls and all that stuff, but
8 that's what we look for. Once we see something develop we'll
9 analyze it to see the quality of it and if it's a good quality
10 and we feel good about it we'll go ahead and lift that and
11 collect it.

12 Q. And are you able to get fingerprints on every type of
13 item?

14 A. No, ma'am. Usually surfaces with textured surfaces or
15 something like that, in some aspects it is possible. We got to
16 be delicate with it, but for most of all any kind of bumpy
17 rough surface it's almost impossible to get prints from.

18 Q. So smooth surface is better?

19 A. Yeah.

20 Q. I'm going to show you what's been marked as State's
21 Exhibit 8, and I'm just going to do this on the small monitor
22 instead of pulling out the TV again. I'm going to show you a
23 photograph from State's Exhibit 8. Can you tell me what that
24 is?

25 A. That is the can collected from the vehicle.

1 Q. And the black, and I know you've already talked about
2 it, just explain basically what you had done and what we see
3 here.

4 A. If you can see in the picture the black powdery
5 substance on the can, can you all see that? If you'll look
6 closer you'll see the development of overlapping prints which
7 is usually, it might grab something a lot of times, you'll have
8 overlapping prints, but you can still use it for
9 identification. Once we develop these with the standard print
10 powder brush we'll take the hinge lifter and lay it over the
11 can and smooth it out a little bit and then we'll collect the
12 print like that and close the hinge lifter.

13 Q. And now I'm going to hand you what's already been
14 introduced into evidence as State's Exhibit Number 15. Can you
15 tell the jury what that is.

16 A. This is what we call the hinge lifter, and like I was
17 explaining, they come like this out of the pack. What you do,
18 you'll open it up, and there is a non-stick film over the
19 sticky side, which you peel off. You lay the sticky side over
20 the print and smooth it out, collect it, and then close the
21 hinge lifter back up and this is what you got.

22 Q. And State's Exhibit Number 15, is that what you did with
23 the beer can?

24 A. Yes, ma'am.

25 Q. And were you with Investigator Garrett when you did

1 that?

2 A. I believe so, yes, ma'am.

3 Q. And then was that provided to him to put into evidence?

4 A. Yes, ma'am.

5 Q. And when you collect that, do you take steps to make
6 sure that this evidence is not contaminated in any way?

7 A. Yes, ma'am.

8 Q. And once you have it, it's sealed up, is that right?

9 A. Yes, ma'am. As you can see, he signed the back of it.

10 Q. And in State's Exhibit Number 15, is that the hinge
11 lifter for the fingerprints you took from the beer can from the
12 black Audi?

13 A. Yes, ma'am.

14 MS. RICHARDSON: I have no further questions. Please
15 answer any questions that the defense attorneys may have for
16 you.

17 THE COURT: Cross-examination.

18 MS. ANDERSON: Your Honor, we have no questions for
19 this witness.

20 THE COURT: You may step down. State can call your
21 next witness.

22 MS. RICHARDSON: Your Honor, we ask that he be
23 excused from his subpoena as well.

24 THE COURT: Any objection?

25 MS. ANDERSON: No objection, Your Honor.

1 THE COURT: He's free to go.

2 MS. RICHARDSON: Michael Thacker.

3 **Michael Thacker being first duly sworn, testified as**
4 **follows:**

5 THE CLERK: Please be seated and state your full name
6 for the record and please spell your first and last name.

7 THE WITNESS: Michael, M-i-c-h-a-e-l, T-h-a-c-k-e-r.

8 DIRECT EXAMINATION

9 BY MS. RICHARDSON:

10 Q. Where are you employed?

11 A. With the Georgetown County Sheriff's Office.

12 Q. What is your rank there now?

13 A. Lieutenant.

14 Q. How long have you been with the Georgetown County
15 Sheriff's Office?

16 A. Twenty-two years.

17 Q. And tell us your education and law enforcement training
18 background, please.

19 A. Mostly with the crime scene, certified crime scene
20 analyst with the crime scene reconstruction and blood stain
21 pattern analysis.

22 Q. When did you graduate from the Criminal Justice Academy?

23 A. 2000.

24 Q. And what other sort of -- have you had other classes and
25 training since then?

1 A. Yeah, I've had multiple over the years. I have to have
2 in, actually, 80 hours of training, advanced training every
3 five years and take another testing for every five years for
4 the certification.

5 Q. And your specific job in 2018 was what?

6 A. That was the evidence and crime scene.

7 Q. And were you the evidence custodian?

8 A. Yes.

9 Q. And how long had you been doing that for Georgetown
10 County?

11 A. About, probably ten years total.

12 Q. And are you still doing that?

13 A. I am at this time, yes.

14 Q. But are you transitioning out of that?

15 A. Transitioning out of it hopefully soon.

16 Q. And what's your new position as Lieutenant, what will
17 you be doing and what are you doing?

18 A. Supervising the criminal investigation division,
19 narcotics division and the evidence.

20 Q. And when did you receive that promotion?

21 A. It's been two months, I think.

22 Q. And how many crime scenes, could you even say how many
23 crime scenes you've processed?

24 A. Total -- my goodness, I wouldn't be able to tell you,
25 probably, it's been in the hundreds just death scenes.

1 Q. And could you explain to the jury the process that is
2 used by the Georgetown County Sheriff's Office in the
3 collection and storage of evidence?

4 A. From the beginning at the scene, collections are taken
5 by the investigator or the crime scene person that's there.
6 It's packaged -- well, it's photographed and packaged from the
7 scene and sealed, brought back to our office and put in a
8 secure location, cataloged into our evidence chambers and then
9 kept there until it's needed for any future testing or returns
10 or storage.

11 Q. And tell us about that -- when you say, secure storage,
12 if you could just walk us through and explain, like in this
13 case if they brought in drugs, how would that be brought in and
14 how would it be stored?

15 A. So the narcotics, it's sealed, all the evidence sealed
16 by the officer that collects it. Narcotics are put into a
17 metal box that's locked and then everyday that's taken out of
18 that and it goes to the back, it's cataloged and stored in a
19 locked door in the facility of the office.

20 Q. And who has access to those locked doors in that
21 evidence storage?

22 A. Just myself and Captain Sarvis.

23 Q. So if an officer wanted to go back in and get evidence,
24 what would they have to do?

25 A. They would have contact me. I have all the keys.

1 Captain Sarvis has a key to get to my key.

2 Q. And what other safeguards are in place to make sure
3 evidence is not tampered with or mixed up?

4 A. Well, we do have an electronic key system on the main
5 doors and that records any person that goes through that door
6 or attempts to. If they don't have access, which is only two
7 access cards for that, it does record that. The doors are
8 locked. There's doors in the back that subdivide the different
9 types of evidence and everything is -- tamper tape is put on
10 all the evidence that it shows the officer that seals it that
11 its not been tampered with at that point.

12 Q. And how is the evidence cataloged?

13 A. It goes in -- they do a handwritten hard sheet, we call,
14 like for purposes of not always trusting computers completely,
15 but we keep that file as hard file, and then it goes from
16 there, the locked the temporary storage, it gets taken out. It
17 gets cataloged by the person which is me right now, to make
18 sure everything is where it's supposed to be, that it's secured
19 properly, that it's sealed properly and documented, both in the
20 report correctly, as well as on the paperwork for the evidence
21 sheets. From that point it goes into the computer, it gets
22 cataloged in the computer, or entered in, as you would say, and
23 it's given a location, that location is where it's stored, and
24 it's kept in a computer system. At any time that you need to
25 locate it that's where it's going to be. If it goes anywhere

1 other than that it has to be documented in a computer where
2 it's at.

3 Q. And is each case given a case number?

4 A. Each one has its own case number, yes.

5 Q. And are the items that are collected cataloged under
6 that number?

7 A. Yes. It's the case number and then the individual item
8 for that is at the end of that case number, point one, point
9 two, and so on.

10 Q. Let me show you what's been marked as State's Exhibit
11 13. Can you tell me what that is?

12 A. So this would be the evidence item number that I gave it
13 to be cataloged as 48. It would be a crime scene number 31, it
14 appears, small jacketing, as it's identified.

15 Q. Was that submitted to your evidence room?

16 A. Yes.

17 Q. And who submitted that?

18 A. That was Lieutenant Garrett.

19 Q. Did you alter or tamper with that in any way?

20 A. I have not.

21 Q. Let me show you what has been marked as State's 14.
22 What is that?

23 A. That's identified on the paperwork, small jacketing.

24 It's evidence item number 49. That was turned in by Lieutenant
25 Garrett as well.

1 Q. Can you tell when that was turned in?

2 A. The date?

3 Q. Yes.

4 A. October 12, 2018.

5 Q. And that was turned into evidence?

6 A. Yes.

7 Q. And you would have logged that in as well?

8 A. Yes, I would have logged that in.

9 Q. And have you altered or tampered with that in any way?

10 A. No.

11 Q. Let me show you what has been marked as State's 15, what
12 is that?

13 A. This is evidence item 26. This would be a latent lift
14 from a beer can.

15 Q. And who submitted that to your evidence room?

16 A. This shows Lieutenant Garrett.

17 Q. When was that submitted?

18 A. October 12, 2018.

19 Q. Have you altered or tampered with that in any way?

20 A. No, ma'am.

21 Q. Let me show you what's been marked as State's 12, what
22 is that?

23 A. This is what's called a best bag. It's a packaging
24 specifically for narcotics that gets sent to State Law
25 Enforcement Division for testing. This one is for number 051.

- 1 So it's 51 of the evidence item number.
- 2 Q. And the item number that you assigned it?
- 3 A. That I assigned, yes.
- 4 Q. And who submitted that?
- 5 A. This one is Lieutenant Garrett as well.
- 6 Q. Would you open that best bag for any purpose?
- 7 A. No. It's sealed. It's got tamper sealed tape with it
- 8 to ensure that.
- 9 Q. And have you altered or tampered with it in any way?
- 10 A. No.
- 11 Q. So once an officer submits items such as 12, 13, 14 and
- 12 15 into evidence and you log them in, how do they get to SLED
- 13 for analysis?
- 14 A. The next step, if it's going to be tested, whether it's
- 15 narcotics or any other item, then I have to go to another
- 16 website, or SLED, it's a secured site, and enter in the items
- 17 that we're going to send, and then that stuff, directly I take
- 18 that to SLED in Columbia and submit that to them.
- 19 Q. So you physically take it to Columbia?
- 20 A. Yes.
- 21 Q. And it's in your possession the entire time?
- 22 A. It goes straight to the secured part where we have it on
- 23 the shelf, to me, to Columbia, and then I leave it there in a
- 24 locker, stamp my paperwork with the date and time and that's it
- 25 for me.

1 Q. And what sort of locker do they have there?

2 A. Kind of similar to what you'd see in an airport or maybe
3 even a bowling alley or something, you know, where they have
4 the little push button locks. The difference is this just has
5 a key for them to open, so I can't open it back up. Once I put
6 it in, I lock it, and then that's it.

7 Q. So if you said, oops, I forget to put this in, what
8 would you have to do?

9 A. I would have to go around and get one of the SLED
10 personnel to come back around to open it up for me.

11 Q. Once you drop it off at SLED what's your next
12 interaction with the evidence?

13 A. The next time is when I go back to SLED at any point in
14 the future, if they have it ready to be returned, that's the
15 next point that I would have, when it gets returned back to me.

16 Q. And were these items 12, 13, 14 and 15 returned to you
17 from SLED?

18 A. Yes.

19 Q. And once they are returned from SLED what do you do?

20 A. Once I bring them back then they get documented back in
21 the computer system as returned and the location that they are
22 going to be kept and put back in the storage.

23 Q. Then how did they get here today?

24 A. Like, for today, for instance, it was documented back in
25 the computer that it was brought here for court, and paperwork,

1 signed paperwork to return here as a temporary location.

2 Q. And did you take item number 12 to SLED? I said item, I
3 mean, State's Exhibit Number 12, which is -- I'll let you look
4 at it so you have your evidence number. Did you take that to
5 SLED?

6 A. I did. I can give you the date, if you'd like.

7 Q. Yes, please give us the date.

8 A. Give me a moment. I just want to double check the
9 control number. It has a control number as well for that item,
10 and that was November 29th.

11 Q. Of what year?

12 A. 2018.

13 Q. And did you take items number 13 and 14 -- State's
14 Exhibits 13 and 14, did you take those to SLED, as well, and
15 that would be the projectile items?

16 A. Yes. I just don't see the number that I have -- 48, 49,
17 and that was taken on January 24 of 2020.

18 Q. And you said that was in 2020, right?

19 A. Yes.

20 Q. And did you take State's Exhibit Number 15 which is the
21 hinge lifter, did you take that to SLED?

22 A. No. That was on the same date, as well, January 24,
23 2020.

24 Q. And again, when you took those did those, did you alter,
25 tamper them, manipulate them or do anything to them in any way

1 to affect the integrity of those items?

2 A. No. Everything stayed intact just like it was turned
3 in.

4 Q. Do you take every item that is collected or processed
5 from a crime scene to SLED in a case?

6 A. No.

7 Q. What is the procedure for deciding what goes and is
8 there a number of items that can go?

9 A. Well, to begin, I guess at the last part of it, the
10 standard procedures for any type of fingerprint evidence is
11 unlimited, basically. Comparison, like buccal swabs or what we
12 would have, like a standards from persons, no limit on that,
13 but with the DNA items, if it's a certain class of cases that
14 they determine, if it's, you know, when you say -- some people
15 would say different types of words for that, major case or
16 something like that, we have to call and get approval of
17 anything over two to five items. So in a major case maybe five
18 items to begin with or two depending on the type of case, we
19 have to speak to the analyst about that, generally, and the
20 other part of that would be speaking with the investigator that
21 works with the case, or as you have items that may or may not
22 be anything that you have that need further information to
23 process it at the time, or maybe you have if it's suspected
24 bloods, for instance, and you have only one known person that
25 you determine that's been injured, the blood that you find to

1 be consistent with what you find at the scene for that injured
2 person, or maybe you see that on a videotape of that person in
3 the area, maybe you collect it because you have it in case you
4 need it for any other purpose later, but maybe at that time you
5 hold onto it because it doesn't give you any further relevance,
6 per say, if that answers your question.

7 Q. So basically, you send what you think would be the most
8 helpful in the investigation?

9 A. Yes, and sometimes and it's a little while afterwards
10 that you get information that might help with that and at times
11 it's, you don't want to say irrelevant, but you know, it's not
12 something that's going to answer a particular question, you may
13 already know that, to have that answer based off of other
14 things.

15 MS. RICHARDSON: I have no other questions. Please
16 answer any questions that the defense attorneys have for you.

17 THE COURT: Cross-examination?

18 MS. ANDERSON: Your Honor, we don't have any
19 questions for this witness.

20 THE COURT: You may step down.

21 MS. RICHARDSON: We'd ask that he also be excused
22 from his subpoena.

23 MS. ANDERSON: No objection, Your Honor.

24 THE COURT: He's free to go. The State can call your
25 next witness.

1 MS. RICHARDSON: Your Honor, the State calls Brittnee
2 Looney.

3 **Brittnee Looney being first duly sworn, testified as**
4 **follows:**

5 THE CLERK: Please be seated, state your full name
6 for the record and please spell your first and last name.

7 THE WITNESS: Brittnee Looney, B-r-i-t-t-n-e-e,
8 L-o-o-n-e-y.

9 VOIR DIRE EXAMINATION

10 BY MS. SMITH:

11 Q. Hi, Ms. Looney, how are you?

12 A. Good, how are you?

13 Q. Good. Where are you currently employed?

14 A. I work for the South Carolina Law Enforcement Division
15 commonly known as SLED.

16 Q. And how long have you been there?

17 A. Just over six years.

18 Q. What do you do for SLED?

19 A. I work in the drug analysis department.

20 Q. And have you done that all six years?

21 A. Yes, ma'am.

22 Q. What about your educational background, where did you go
23 to school?

24 A. I have a Bachelor's of Science Degree from Wofford
25 College in math and chemistry.

1 Q. And to become a drug analyst, do you have any training
2 that you have to do?

3 A. Yes. So I went through extensive in-house training
4 under a senior drug chemist at SLED, I attended basically the
5 law training from the South Carolina Criminal Justice Academy
6 and I attended the forensic chemist seminar put on by the drug
7 enforcement administration.

8 Q. Do you regularly test narcotics and drugs?

9 A. Yes, ma'am.

10 Q. And have you ever been qualified as an expert witness in
11 court before?

12 A. Yes, ma'am.

13 Q. So obviously, you testified before?

14 A. Yes, ma'am.

15 Q. How many times do you think you've been qualified as an
16 expert?

17 A. Thirteen times.

18 MS. SMITH: Your Honor, at this time the State offers
19 Brittnee Looney as an expert in the field of drug analysis.

20 THE COURT: Any questions or challenges?

21 MR. WILSON: Your Honor, may we approach?

22 (Off the record discussion was held at the bench by
23 Court and counsel at this time.)

24 THE COURT: Ladies and gentlemen, I'm going to excuse
25 you to the jury room for just a minute. We have a matter of

1 law we need to take up. And I'll tell you why excuse you to
2 the jury room. We're not trying to hide anything from you or
3 keep anything from you, but as I told you in the opening
4 charges, you and you alone decide the facts of this case, I
5 decide the law to be applied. An issue has come up about the
6 law to be applied in this case at this time and that often
7 requires the attorneys and me to reference factual issues, but
8 what we say not evidence and so we don't want you to be
9 influenced by anything that we say when we talk about the
10 facts, we don't want that to influence your decision, and
11 that's why we excuse you to the jury room. In any event, it
12 will give you an opportunity to stretch your legs, get
13 something to drink, whatever the case may be. So I'll excuse
14 you to the jury room for just a minute and we'll bring you back
15 out in just a second.

16 (Jury exited courtroom.)

17 THE COURT: Mr. Wilson?

18 MR. WILSON: Your Honor, we obviously served Brittnee
19 in this manner, and we've never received a drug report for the
20 pills that were found. Now, if I could be frank with the
21 Court, Judge. We want the evidence to come in, we just want to
22 see the drug report first, get a chance to look at it, discuss
23 it with my client and then we are prepared to allow her to even
24 testify as an expert witness in this case, I just want to see a
25 drug report.

1 THE COURT: Is there going to be a drug report
2 introduced?

3 MS. RICHARDSON: Yes, Your Honor. I'm not going to
4 say -- I'll be with very surprised if we didn't, so I'd like to
5 have a minute to kind of look at the discovery, but, yes, we'll
6 be glad to give it him and let him -- I'll give you a copy
7 right now.

8 THE COURT: How long do you need?

9 MR. WILSON: I only need two or three minutes to go
10 over with the client, and again, we want this to come in.

11 MS. RICHARDSON: And Your Honor, there's multiple
12 SLED reports to this case, and I'd like a little bit more time
13 so I can go make -- because we've got other SLED witnesses
14 coming today and I don't want this to come up each time so
15 let's go ahead and make sure that's not going to be an issue
16 with any other SLED witnesses. I left the discovery
17 documentation downstairs just so we didn't have to bring the
18 entire, everything with the file. If we could have just a
19 little longer so we could do that and make sure we're smooth
20 with the other SLED witness as well.

21 THE COURT: How much time do you need?

22 MS. RICHARDSON: I'd say fifteen minutes, no later,
23 then everybody can have a restroom break and that stuff as
24 well.

25 THE COURT: We'll take a 15-minute break. I know you

1 haven't gotten into any testimony right now, Ms. Looney. You
2 cannot discuss your testimony with anyone -- well, I guess as
3 to what you anticipate testifying to. Okay? Let's take about
4 a 15-minute break and come back.

5 MR. WILSON: Thank you, Your Honor.

6 (Recess taken at 2:18 p.m.)

7 MS. RICHARDSON: Just for the record, I could not
8 find verification with it. We had sent that report, all of the
9 other SLED reports have been received. We did send them an
10 internal SLED chain of custody in November which would have
11 shown the drugs going to the drug analyst and Ms. Anderson also
12 reviewed the physical evidence at the Sheriff's Office in
13 November, but I cannot document that we sent that report. And
14 he was initially represented by Charles Barr, but I couldn't
15 find where we sent it to Mr. Barr either. But the rest of the
16 reports, I don't think there's an issue with any of the other
17 SLED reports; is that right?

18 MR. WILSON: Judge, there's no issues with the other
19 reports, and I'll put on the record, Your Honor, we have no
20 objection to this report or to the testimony of Ms. Looney.

21 THE COURT: Let's go ahead and bring the jury in.

22 (Jury entered the courtroom.)

23 THE COURT: Ladies and gentlemen, welcome back. Any
24 challenges or questions on the expertise of this witness?

25 MR. WILSON: No objection and no challenges, Your

1 Honor.

2 THE COURT: I find this witness to be an expert in
3 the field of drug analysis. Now, ladies and gentlemen, I'll
4 charge you when I charge you on the law regarding expert
5 testimony, but all you need to know at this point in time is
6 that typically a witness can only testify as to their personal
7 knowledge, what they actually saw, what they actually tasted,
8 what they actually smelled, and things of that nature. There
9 is an exception for witnesses who have qualified as experts,
10 which states that in addition to their personal observation
11 they can render an opinion in the a field in which they are
12 qualified as an expert. So I find this witness to be an expert
13 in the field of drug analysis which means that in addition to
14 her personal observations she can render an opinion in that
15 field. Alright. Further direct examination.

16 MS. SMITH: Yes, Your Honor.

17 DIRECT EXAMINATION

18 BY MS. SMITH:

19 Q. Ms. Looney, how are drugs tested at SLED?

20 A. So normally, what I would do is I send a list down to
21 pick up cases. So I would go downstairs to one of our evidence
22 technicians and I pick up a batch of cases, about 30 cases, and
23 I bring them back upstairs and over the next week or two I
24 would pull from those cases and analyze those cases. So the
25 very first thing I do on a normal basis is I would check to

1 make sure that the seal is intact. If the seal on the, in this
2 case it's a BEST Kit, so that's actually, they are kits that we
3 give out to agencies across the State to submit drugs to us and
4 so there is actually a swirl pattern down the side that you can
5 tell if somebody had pulled that and just as one that you take
6 off the top of it and fold it over so you'd be able to tell if
7 somebody had tried to pull that apart, and we cut it at the
8 bottom, and so if the seal is intact I would just make a note
9 on that that the seal is intact. If it's not, I would
10 photograph that and make a note, not allowed on the worksheet,
11 but it would appear on our report, and from there then I would
12 cut into it and start the analysis of the drugs.

13 Q. And I believe you just said this, but did you receive
14 evidence in this case?

15 A. Yes, I did.

16 Q. And was there any notation of tampering, was there
17 anything to indicate a tamper manipulation, attempts to
18 destroy, anything like that on the drugs?

19 A. No, ma'am.

20 Q. And who did you receive this BEST Kit from?

21 A. I received the evidence from Doris Yarborough who is one
22 of our evidence technicians.

23 Q. And where did Doris Yarborough get that from?

24 A. She got it from our drug intake storage.

25 Q. And who put it in your intake storage?

1 A. That would be another technician by the name of Bethany
2 Davidson.

3 Q. Is Doris Yarborough at SLED?

4 A. She retired about a year ago.

5 Q. And Bethany Davidson?

6 A. She works over in training now.

7 Q. So she does not work in the your department any longer?

8 A. She is no longer in the lab, that's correct.

9 Q. So in this case, when you receive the evidence,
10 obviously you noted no indications of tamper, so what did you
11 do after that?

12 A. So from there, I cut open the bag and I would itemize
13 what's inside the bag. In this case it was just a single item
14 and so it ended up being pharmaceutical tablets, so the very
15 first thing I would do is count how many tablets I have in the
16 case. So in this case there were three whole rectangular white
17 tablets and then partial tablets and tablet fragments. From
18 there I would do an indicative test. Our indicative test gives
19 us an idea of what we're dealing with, so normally if it's a
20 powder it would be a color test. In this case since it was a
21 pharmaceutical we use published literature so we go to reliable
22 and accepted websites that we can compare the markings on the
23 pharmaceutical tablet to that website. We would print that out
24 and then we'd do a confirmatory test on that.

25 MS. SMITH: I'm approaching the witness with what has

1 been previously been marked as State's Exhibit 12 for
2 identification purposes.

3 BY MS. SMITH:

4 Q. Ms. Looney, what did I just hand you?

5 A. This is the K-Pack, so this is what we put back to the
6 BEST Kit inside of. So you can see the lab number on top
7 there. I have seal intact and the date that I cut into the bag
8 with my initials. It's sealed down here, as well as the date
9 and my initials and then it's the evidence inside.

10 Q. Is that what you received in lab number L-18-17277?

11 A. That's correct.

12 Q. And is that the case involving Janena Gamble, Eryk Smith
13 and Jed Coleman and Joshua Miller?

14 A. Yes, ma'am.

15 Q. And after getting this did you run your test?

16 A. Yes, ma'am.

17 Q. And did you alter, tamper, destroy, manipulate those
18 drugs in any way shape or form?

19 A. I have to take a sample of it and so I run a
20 confirmatory test, there's no way to get that back, so that
21 amount of evidence is then gone.

22 Q. And when you run those tests, is that what gives you
23 your final conclusion?

24 A. Yes, ma'am.

25 MS. SMITH: Your Honor, at this point in time the

1 State seeks to introduce State's Exhibit Number 12 into
2 evidence.

3 THE COURT: Any objection?

4 MR. WILSON: Without objection, Judge.

5 THE COURT: State's Exhibit Number 12 is admitted
6 into evidence without objection.

7 (State's Exhibit No. 12 was admitted into evidence.)

8 Q. And Ms. Looney, when you ran those tests were you able
9 to determine what type of drug these pills were?

10 A. Yes, ma'am.

11 Q. What was it?

12 A. Alprazolam.

13 Q. And what's a common name for that?

14 A. Xanax is a common name.

15 Q. And what schedule of drug is Alprazolam?

16 A. It's a C-4.

17 Q. Does that mean Schedule 4?

18 A. Yes.

19 Q. "C," Schedule, is that what that means?

20 A. It's a controlled status, yes, ma'am.

21 Q. Okay. And what about marijuana? What schedule of drug
22 is marijuana?

23 A. Marijuana is a C-1.

24 MS. SMITH: If you will give me one second. May I
25 approach?

1 THE COURT: Yes.

2 (State's Exhibit No. 19 was marked for
3 identification.)

4 MS. SMITH: Thank you. I'm handing what has been
5 marked as State's Exhibit No. 19 for identification purposes.

6 Q. After you come to a conclusion do you write a report?

7 A. Yes, ma'am.

8 Q. What am I showing you? What did I just give you?

9 A. A copy of that report.

10 Q. And in that report does it have your findings?

11 A. Yes, ma'am.

12 Q. Are these still your findings?

13 A. Yes, ma'am.

14 Q. That it's Xanax?

15 A. The Alprazolam, yes, ma'am.

16 MS. SMITH: Your Honor, at this time the State seeks
17 to introduce State's Exhibit 19 into evidence.

18 THE COURT: Any objection?

19 MR. WILSON: Without objection, Your Honor.

20 THE COURT: State's Exhibit 19 is admitted into
21 evidence without objection.

22 (State's Exhibit No. 19 was admitted into evidence.)

23 Q. With a schedule one drug, what does that mean?

24 A. So there are criteria that they have to come under. So
25 one would be that there's no accepted medical use for that drug

1 for it to be a C-1, it has to have a high potential for abuse
2 and also be highly addictive, as well, and so it goes down on
3 the schedule. So anything from a C-5 to a C-2, there's a
4 medical use, that's what makes it different from a C-1 in those
5 levels.

6 Q. And you talked about that these pills were consistent
7 with published literature --

8 A. Yes, ma'am.

9 Q. -- and pharmaceutical markings. What does that mean?
10 Did you first look at the drugs?

11 A. Yes. So for pharmaceuticals we have to make a sketch of
12 those tablets then, too, so I would sketch out the tablets. So
13 my review partner who is another person in the department who
14 we have everything 100 percent peer reviewed, they would also
15 look at my markings, and then we would look at published
16 literature, so it's from a known accepted website then, and so
17 that would have markings of it of what it should be if it is
18 pharmaceutically made, and so we compare that to what we get as
19 well.

20 Q. And were these three whole rectangular white tablets,
21 were they consistent with the pharmaceutical markings for Xanax
22 or Alprazolam?

23 A. Yes, ma'am.

24 MS. SMITH: Your Honor, at this point I have no
25 further questions.

1 THE COURT: Cross-examination?

2 MR. WILSON: Just briefly, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. WILSON:

5 Q. Good afternoon, Ms. Looney. How are you doing?

6 A. Good, how are you?

7 Q. Good, doing well. Let me ask you a questions. I know
8 the prosecutor asked you are these pills related to the case
9 involving Eryk Smith, Jed Coleman and then Ms. Gamble?

10 A. Yes, sir.

11 Q. When you said, yes, you don't mean that these pills
12 belonged to Eryk Smith, correct?

13 A. I don't know who the pills belonged to, that is correct.

14 Q. You received them from law enforcement and then you
15 would test them?

16 A. That's correct.

17 Q. And do you have the report?

18 A. Yes, sir.

19 Q. At the top of the report, actually, underneath drug
20 analysis SLED lab L-18-17277 and below the incident date which
21 is 10/9, 2018 whose name appears on this report?

22 A. Ja-na (phonetic), is that how you pronounce it? Gamble.

23 Q. I think it's Ja-na (phonetic,) or Janena Gamble.

24 A. Yes, sir.

25 Q. Is that what you see?

1 A. Yes, sir. That is the name I see.

2 Q. And Xanax, because I can't pronounce the other name, so
3 I apologize, but Xanax, what makes Xanax so addictive?

4 A. I'm not a toxicologist so that's actually outside of my
5 area of expertise.

6 Q. Let me ask you a question, is it reasonably acceptable
7 that Xanax is addictive and people buy and sell it on the black
8 market?

9 A. Yes, sir.

10 MR. WILSON: No further questions, Judge.

11 THE COURT: Redirect?

12 MS. SMITH: Nothing further, Your Honor.

13 THE COURT: You may step down.

14 MS. SMITH: Your Honor, could she be excused from her
15 subpoena?

16 THE COURT: Any objection?

17 MR. WILSON: Absolutely, Judge.

18 THE COURT: She's free to go. Thank you. The State
19 can call your next witness.

20 MS. SMITH: Your Honor, the State calls Jana Weaver.

21 **Jana Weaver being first duly sworn, testified as**
22 **follows:**

23 THE CLERK: Please have a seat, state your full name
24 for the record and please spell your first and last name.

25

1 THE WITNESS: My name is Jana Weaver, J-a-n-a,
2 W-e-a-v-e-r.

3 VOIR DIRE

4 BY MS. SMITH:

5 Q. Ms. Weaver, where are you currently employed?

6 A. South Carolina Law Enforcement Division, also known as
7 SLED.

8 Q. How long have you been there?

9 A. Just over eight years.

10 Q. What do you do for SLED?

11 A. I am a forensic firearms examiner in the firearms
12 department.

13 Q. Now do you have any training or expertise in this field?

14 A. Yes.

15 Q. And what type of training have you had?

16 A. I have a Bachelor's of Science Degree in Criminal
17 Justice for firearms examination. I've completed SLED's
18 in-house training, it's a multi-year training program that
19 contains multiple, probably hundreds of tests, both written and
20 verbal, we do practicals and practices where we have to do
21 hands-on comparisons, we do probably thousands of comparisons
22 during our training period. We prep cases under
23 court-qualified firearms examiners and at the end of our
24 training we have to take a competency test in all areas to make
25 sure that we are competent in the field.

1 Q. So as a firearms examiner, what falls under that
2 category? What do you examine?

3 A. We'll examine cartridge cases, bullets, firearms, we can
4 compare fired evidence such as bullets and cartridge cases to
5 test specimens fired by a specific gun, if we're given one in a
6 case. We also do serial number restorations.

7 Q. Okay. And how many comparisons do you think that you've
8 done in your career as a firearms examiner?

9 A. Thousands, probably hundreds of thousands.

10 Q. And have you ever testified in court before?

11 A. I have.

12 Q. And how many times?

13 A. Eight.

14 Q. Have you been qualified as an expert every time?

15 A. Yes.

16 MS. SMITH: Your Honor, at this point in time the
17 State moves to qualify Jana Weaver as an expert in the field of
18 forensic firearms examination for analysis.

19 THE COURT: Any challenges or exceptions?

20 MR. WILSON: Judge, no, we stipulate to her
21 expertise.

22 THE COURT: I find this witness to be an expert in
23 the field of forensic firearm examinations.

24

25

1 Q. And were they sealed when you received it?

2 A. Yes.

3 Q. And if there had been any evidence of tampering,
4 altering, attempts to destroy, what would you have done?

5 A. We'll make note of stuff like that. We'll write it on
6 our worksheets in our case file and we'll also photograph and
7 do photographs.

8 Q. Are there any notations of photographs in your case file
9 indicating tamper?

10 A. No. Everything was sealed in an evidence tape sealed
11 envelope.

12 MS. SMITH: Your Honor, I am approaching with State's
13 13 and 14, they already have been admitted into evidence.

14 THE COURT: Alright.

15 Q. Can you tell me what those are?

16 A. Usually when we examine evidence we'll scribe the lab
17 number, Item number and our initials on the evidence, that's
18 what I'm looking for. State's Exhibit 14 is one fired bullet
19 jacket fragment. My initials and seal date are also on the
20 heat-sealed ziplock bag inside of this one, as well.

21 Q. Would that be item number six?

22 A. This one is item number five, the jacket fragment. That
23 was State's Exhibit Number 13.

24 Q. So when you receive evidence of this nature, how do you
25 analyze it, what do you do?

1 A. When we get fired bullets we will look under the
2 microscope and see if we see any microscopic markings that
3 we'll use for identification. If we have other bullets within
4 the same caliber and the same general rifling characteristics,
5 which is the type and number of lands and grooves that are left
6 on the bullets by the barrel after it's shot. If they are all
7 the same number and the caliber, we'll then compare them on a
8 comparison microscope to see if they were possibly fired by the
9 same firearm or not, or maybe there could be an inconclusive
10 answer as well, and we'll do the same with cartridge cases. I
11 don't have cartridge cases in this case so I don't know --

12 Q. And is your microscope what we would think would be in
13 the a middle school science lab, or do you have specialized
14 microscope?

15 A. It is specialized. There's two stages on the
16 microscope. Each of them have their own magnification scope
17 and they meet in a bridge and the bridge has, like, binoculars
18 on it. So you look in the binoculars and you're able to see
19 both sides so you can compare them side by side by moving the
20 stages around.

21 Q. Did you do that in this case?

22 A. I did not. The fragment, State's Exhibit 13, did not
23 have any markings on it to look at.

24 Q. What about State's Exhibit 14, what did you do?

25 A. I did look at that one under the microscope, and when we

1 get a bullet in a case that has lands and grooves that we're
2 able to measure, we can measure those lands and grooves with
3 specific software on our computers, on our microscope
4 computers, and can enter into a database and that database can
5 give us a list of possible firearm makes that could have fired
6 that bullet or bullet jacket fragment.

7 Q. Were you able to identify grooves in State's Exhibit 14
8 that could help identify the caliber of bullet?

9 A. Yes.

10 Q. And what did you conclude?

11 A. I concluded that State's Exhibit 14 was a nominal .38
12 caliber, which nominal .38 is kind of a group of bullets that
13 have right about the same diameter. In this case is a nine
14 millimeter Luger, .38 Special, .357 Magnum, three auto, and/or
15 .357 SIG.

16 Q. So a nominal .38 caliber could be a couple different
17 calibers; is that right?

18 A. Correct.

19 Q. But in this case were you able to determine with those
20 groovings, were you able to determine specific types of guns
21 that this bullet could have come from?

22 A. I was able to put the information in and receive a GRC
23 list.

24 Q. GRC, what does that mean?

25 A. General Rifling Characteristics.

1 Q. And what could this item number 6, State's Exhibit 14,
2 what type of gun could it have come from?

3 A. Do you want me to read the list that I have?

4 Q. Yes, please, if you will.

5 A. I have: If it were a nine millimeter Luger caliber it
6 could have been Accu-Tek; AMT; Astra; Barilla; Cobra
7 Enterprises; Colt; Detonics; Glock, which the Glock would be an
8 aftermarket barrel, a Glock or an Accu-Match, which that's also
9 an aftermarket barrel; Glock and Federal Arm; StormLake; and
10 .38 Special caliber; American Derringer; Arms Culbert; Colt,
11 Davis Industries, EIG Importers, Garate Anitua and Maracodi
12 (phonetic,) sorry, some of these are Middle Eastern or Russian
13 names, I'm probably mispronouncing them.

14 Q. What about .357 magnum, what guns could that have been
15 from?

16 A. Colt or Coonan Arms.

17 Q. And .380?

18 A. Accu-Tek; AMT; Colt; Daewoo; Davis Industries; Inter
19 Ordnance Incorporated; Ramo; and Smith & Wesson.

20 Q. And .357 CIG?

21 A. A Glock.

22 Q. Now, that seems like a pretty long list. Is that
23 standard or would this actually be the smaller list than
24 normal?

25 A. I have seen longer lists. I've seen smaller ones as

1 well.

2 Q. Are any of the guns that you just read out, are any of
3 those revolvers, or could be revolvers?

4 A. Yes.

5 Q. And let's go back to the basics real quick. Let's talk
6 about a bullet, a cartridge case. What is a cartridge case?

7 A. A cartridge case is the metal container, if you will,
8 that holds the gun powder, the bullet or projectile and the
9 primer.

10 Q. And a bullet, are there different types of bullets?

11 A. There are.

12 Q. What is a jacketed bullet?

13 A. A jacketed bullet is typically lead, is what is
14 typically is the core and it has either brass or copper,
15 aluminum sometimes, sometimes a nickel jacket or coating around
16 the lead core.

17 Q. And a projectile, what would that be, just the common
18 term, "projectile," what would that be in your field, would
19 that be the bullet?

20 A. Yes. The projectile is the bullet.

21 Q. Okay. With a jacket, is that -- with just the jacket of
22 the bullet, is that the full projectile?

23 A. No, it's not.

24 Q. And can you explain that further for me?

25 A. With just the jacket, that means that the core of the

1 bullet, typically lead, is not inside of that jacket, so the
2 jacket is kind of just a piece of the total bullet.

3 Q. Were you able to compare State's Exhibit's 13 and 14
4 which is SLED item number five and item number six, were you
5 able to compare those together?

6 A. No, I was not.

7 Q. Do you know if they were from the same gun?

8 A. I don't know.

9 Q. Could it have been the same bullet?

10 A. It is possible.

11 Q. Is it possible that it could have been two bullets?

12 A. That is also possible, yes.

13 Q. Now, with guns, can you please tell the jury the
14 difference between a revolver and a semi-automatic pistol when
15 it comes to the ejection of rounds?

16 A. A revolver has a cylinder in it that holds the
17 cartridges, so with every shot that cylinder rotates and the
18 cartridge cases stay within that cylinder after they are fired.
19 With a semi-automatic pistol, typically, if it's functioning
20 correctly, after every pull of the trigger and the firearm
21 fires, the cartridge case is ejected out of the frame of the
22 pistol.

23 MS. SMITH: Beg the Court's indulgence.

24 Q. My last question, I apologize. State's Exhibit Number
25 13, item number five, why couldn't you compare the one bullet

1 jacket fragment small jacketing to different types of guns?

2 A. There weren't any marks on State's Exhibit Number 13
3 that were usable for the microscopic comparisons.

4 Q. And when you say "marks," do you mean grooves,
5 indentions, what do you mean by that?

6 A. The rifling marks.

7 Q. And why couldn't you compare item number five to item
8 number six?

9 A. When we do our comparisons we use those microscopic
10 marks to compare to each other and State's Exhibit 13 did not
11 have those marks.

12 MS. SMITH: Thank you so much. I have no further
13 questions.

14 THE COURT: Cross-examination?

15 MR. WILSON: Just briefly, Judge.

16 CROSS-EXAMINATION

17 BY MR. WILSON:

18 Q. Good afternoon, ma'am.

19 A. Hi.

20 Q. How are you doing?

21 A. I'm doing well. How are you?

22 Q. I'm doing well. So just to be clear, and I'm going to
23 make this real quick, the fragments that were sent to, you
24 could not tell whether or not they came from one gun or two
25 guns?

1 A. Correct.

2 Q. Okay. So the potential is that they came from one gun
3 but there's also a potential equally that they were fired from
4 two separate weapons, correct?

5 A. That is possible.

6 MR. WILSON: No further questions, Judge.

7 THE COURT: Redirect?

8 MS. SMITH: Briefly.

9 REDIRECT EXAMINATION

10 BY MS. SMITH:

11 Q. What were the conditions of State's Exhibit 14 and
12 State's Exhibit 13, were they damaged, were they whole?

13 A. They were damaged when I got them.

14 MS. SMITH: Actually, that's it. No further
15 questions.

16 THE COURT: You may step down.

17 MS. SMITH: Your Honor, can she be released from her
18 subpoena?

19 THE COURT: Any objection?

20 MR. WILSON: Without objection, Your Honor.

21 THE COURT: She's free to go. The State can call
22 your next witness.

23 MS. RICHARDSON: Your Honor, may we approach real
24 quick?

25 THE COURT: Yes.

1 (Off the record discussion was held at the bench by
2 Court and counsel.)

3 MS. RICHARDSON: Stuart Mark Leon.

4 **Dr. Stuart Mark Leon being first duly sworn,**
5 **testified as follows:**

6 THE CLERK: State your full name for the record and
7 please spell your first and last name.

8 THE WITNESS: First name is Stuart, S-t-u-a-r-t,
9 middle name is Mark, last name is Leon, L-e-o-n.

10 VOIR DIRE EXAMINATION

11 BY MS. SMITH:

12 Q. Dr. Leon, could you please tell the jury what you do for
13 a living.

14 A. I'm an employee of MUSC. I do trauma, emergency general
15 surgery and surgical critical care.

16 Q. And are you licensed to do that?

17 A. I am, yes, ma'am.

18 Q. How long have you been practicing?

19 A. I've been with MUSC since July 2002.

20 Q. And what's your education background?

21 A. I did four years of Medical School at the Medical
22 College of Pennsylvania in Philadelphia. I did my general
23 surgery residency at the Guthrie Clinic in Sayre, Pennsylvania
24 and then I did a two-year trauma critical care fellowship at
25 the University of Pittsburgh Medical Center.

1 Q. Have you ever testified in court before?

2 A. I have.

3 Q. In a criminal case?

4 A. Yes, ma'am.

5 Q. And have you ever been qualified as an expert?

6 A. I have.

7 Q. Your Honor, at this point in time the State seeks to
8 admit Doctor Leon as an expert in the field of general surgery
9 and trauma.

10 THE COURT: Any objection?

11 MR. WILSON: I was just about to stipulate, Judge.

12 THE COURT: I find this witness to be an expert in
13 the field of general surgery and trauma.

14 DIRECT EXAMINATION

15 BY MS. SMITH:

16 Q. Dr. Leon, on October 9, 2018 were you working at MUSC in
17 the Trauma Center?

18 A. I think I have October 10, 2018.

19 Q. October 10th?

20 A. Yes, ma'am.

21 Q. And on that date did you receive a request for a patient
22 to be transferred?

23 A. Yes, I did.

24 Q. From Georgetown Hospital?

25 A. That's correct, yes.

1 Q. Did you accept that patient?

2 A. I did.

3 Q. And who was that patient?

4 A. The patient was Joshua Miller.

5 Q. And did this patient have any injuries?

6 A. He did. He had gunshot wounds to his left wrist and a
7 gunshot wound right under the jaw and another one to the left
8 cheek.

9 Q. And those wounds, can you explain the wounds to the
10 jury?

11 A. The gunshot wounds to his left wrist, it would be like a
12 through and through injury, it didn't hit any vital structures,
13 and the gunshot wound to the left jaw and left cheek also
14 turned out to be a through and through injury that did break
15 the gentleman's jawbone.

16 Q. And the placement of these bullets, if someone's shot in
17 the wrist could that be a fatal injury?

18 A. It depends on what it hits. It could be. If you hit
19 your radial artery and brachial in there, radial artery and all
20 of your arteries there, if they hit those arteries you can
21 bleed out from those arteries, that is true.

22 Q. And in this case were those arteries missed?

23 A. They didn't hit anything vital.

24 Q. I'm sorry, say what did you say?

25 A. In this case the bullet did not hit any vital structures

1 in the wrist.

2 Q. So by chance, it missed vital arteries?

3 A. Yes, ma'am, that's correct.

4 Q. What about in the neck/face area? I mean, if somebody's
5 shot there could that be a fatal injury?

6 A. Depending on where the bullet hit, yes, it could be.

7 Q. And in this case where did the -- do you recall where
8 the wounds were?

9 A. Yes, ma'am. There's one under the left mandible and
10 there was another wound right at the left cheek.

11 Q. Is there anything in your neck area, any vital arteries
12 or veins in your neck area?

13 A. In the neck, yes.

14 Q. And what are those?

15 A. If the bullet was a little bit more lateral it could
16 have hit your thoracic artery or your jugular vein. If it hit
17 any one of those structures you can bleed to death. If it hit
18 the carotid artery you could have a very bad stroke, too.

19 Q. Is a gunshot wound to the neck or face, is that a
20 serious injury?

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

22 Q. And do head and neck wounds, do they tend to bleed a
23 lot?

24 A. It depends on what the bullet hits, they can.

25 Q. What is a hemoglobin level?

1 A. It's just a measurement of the amount of blood in your
2 bloodstream.

3 Q. Do you recall what Josh Miller's hemoglobin level was
4 the night that he was shot?

5 A. I believe, reviewing the records from Georgetown, his
6 hemoglobin level was 15 which is normal for a 24-year-old
7 gentleman, yes.

8 Q. And did that hemoglobin level drop at any point in time
9 while he was in MUSC?

10 A. It did. About 24 to 36 hours later his hemoglobin went
11 from a normal of 15 to ten.

12 Q. Is that a big difference?

13 A. It is.

14 Q. So what does that mean?

15 A. For every drop in the hemoglobin, one point, it's about
16 one unit of blood. So he went from 15 to ten, he lost about
17 five units of blood, which is somewhere between, roughly, 1.2
18 to 1.5 liters of blood.

19 Q. How many units of blood are in a typical male human
20 body?

21 A. About ten.

22 Q. About ten?

23 A. Yes, ma'am.

24 Q. Can you explain why the levels, why Josh Miller's
25 hemoglobin levels while at Georgetown were within the normal

1 range but were later well below the normal range?

2 A. It typically takes some time for the body to adjust. So
3 if you have a cup here with 100 percent concentrated orange
4 juice and I spill half of it on the floor, the half that's left
5 is still 100 percent concentrated, if I then fill that cup up
6 with water to the top it drops down to about 50 percent. So it
7 takes some time for the IV fluid the patient's getting for
8 resuscitation, they kind of dilute out the blood that's in the
9 bloodstream.

10 Q. Would that indicate significant blood loss to you, Dr.
11 Leon?

12 A. Yes, ma'am, it would.

13 Q. Can blood loss affect the cognitive levels of an adult,
14 of a person?

15 A. Yes, ma'am, it can.

16 Q. And what type of effect can significant blood loss cause
17 on a human's cognitive ability?

18 A. They could go into shock. They may be confused, they
19 may be combative, they may become agitated. Those are the
20 typical things we see when people lose a lot of blood from a
21 traumatic event.

22 Q. And with a jaw injury such as Josh Miller had, would it
23 be painful for a person to talk?

24 A. Yes, it would.

25 Q. And could the injury itself affect a person's ability to

1 speak?

2 A. Yes, it could.

3 Q. Are you aware of any fragments, ballistic or bone, were
4 found in Joshua Miller's jaw and face area?

5 A. The CAT scan listed fragments but didn't specify whether
6 it was fragments from the bullet or fragments from the
7 fractured bone, so it's kind of hard to say based on the
8 imaging we got that night.

9 Q. Now, could injuries like these be life threatening?
10 Could injuries like the ones that Josh Miller had, could it be
11 life threatening in this situation?

12 A. He did lose a lot of blood at the scene, and other than
13 that, the other main injury that he had was a fractured
14 jawbone. A fractured jawbone in and of itself is not a life
15 threatening injury, the blood loss could have been.

16 Q. Is a bullet to -- is a gunshot wound to the wrist or
17 face, could that be a life threatening injury?

18 A. If it hits a major vascular structure, yes, ma'am, it
19 could be.

20 Q. And here we missed vital arteries?

21 A. Yes, ma'am, that's correct.

22 Q. Now, was there any notation about an abrasion on Mr.
23 Miller's chest?

24 A. I did not see that in our notes.

25 Q. Are you aware of any notation about an abrasion on Mr

1 Miller's chest?

2 A. I believe they did mention that at Georgetown .

3 Q. And what is an abrasion?

4 A. That's basically a scrape.

5 Q. Okay. Scrapes?

6 A. You fall down the steps, you skin your knee, that's an
7 abrasion.

8 Q. And could a butt of a gun cause an abrasion?

9 A. It could, more than likely it would cause what we call a
10 contusion or a bruise, but I guess if it actually took some
11 tissue off it could cause an abrasion.

12 Q. What about a door hitting a person in the chest really
13 hard or really quickly, could that cause an abrasion?

14 A. It would more than likely cause a contusion, but I guess
15 it could cause an abrasion.

16 Q. What about falling down on concrete, does that cause an
17 abrasion?

18 A. Yes, it could.

19 MR. WILSON: Judge, I apologize, Your Honor. I'm
20 going to ask that the last two questions be stricken, Judge.
21 They're speculation and nothing in the record, Your Honor.

22 MS. SMITH: Your Honor, he's an expert.

23 THE COURT: Overruled.

24 MR. WILSON: Thank you, Judge.

25 Q. When Mr. Miller arrived at the hospital what type of

1 treatment did he receive?

2 A. When he was brought into the hospital he had the
3 breathing tube that was placed at Georgetown. He was stable on
4 arrival to MUSC. We did some further x-rays and CAT scans to
5 figure out exactly what the injuries were, that included a CAT
6 scan of his head and a CAT scan of his neck and we did some
7 plain x-rays of the wrist.

8 Q. And after that was he referred anywhere?

9 A. Was he referred anywhere? No, ma'am, we --

10 Q. Did you consult with any other doctors?

11 A. Yes, ma'am, we did. We consulted orthopedic doctors who
12 basically washed out the wrist wound, that's all the care that
13 that required, and the doctor on for face consults was an oral
14 maxillofacial oral surgeon who took Mr. Miller to the operating
15 room and repaired his mandible.

16 Q. And was his jaw wired shut after that?

17 A. Yes, it was.

18 Q. And how long was Mr. Miller in the hospital?

19 A. He came to us on October 10th and he was discharged from
20 our hospital on October 12th, two days later.

21 Q. On October 10th, was that in the early morning hours?

22 A. I don't recall, to be honest with you, I really don't.

23 MS. SMITH: No further questions. Thank you. Answer
24 any questions the defense may have.

25 THE COURT: Cross-examination?

1 CROSS-EXAMINATION

2 BY MR. WILSON:

3 Q. Just briefly, Doctor, how are you doing today?

4 A. I'm doing good. Thank you.

5 Q. Sir, just a couple questions about abrasions and
6 contusions.

7 A. Yes, sir.

8 Q. Just so we're clear, when the skin touches any surface
9 or any surface is friction against the skin, that can cause a
10 contusion or abrasion?

11 A. Yes, sir, that's correct.

12 Q. So if there is blood forced trauma to the chest area, or
13 to any portion of the body for that matter, that can cause an
14 abrasion depending on what the item is and what's touching the
15 skin?

16 A. Yes, sir, that's correct.

17 Q. And there's no doubt about that in your mind?

18 A. No doubt about that in my mind.

19 Q. And my last question is this, did Mr. Miller have a
20 code?

21 A. No, he did not.

22 MR. WILSON: No further questions, Your Honor.

23 THE COURT: Redirect?
24
25

REDIRECT EXAMINATION

1

2 BY MS. SMITH:

3 Q. Dr. Leon, how many units of blood did Mr. Miller -- in
4 your estimate, how many units of blood did Mr. Miller lose?

5 A. About five, a hemoglobin 15 to ten is about five units
6 of blood.

7 Q. Would that be half of the human body?

8 A. About, yes, ma'am, that's correct.

9 MS. SMITH: No further questions.

10 THE COURT: You may step down.

11 THE WITNESS: Thank you.

12 MS. SMITH: May he be excused?

13 THE COURT: Any objection?

14 MR. WILSON: Without objection, Your Honor.

15 THE COURT: He's free to go. Thank you very much.

16 MS. SMITH: Your Honor, I apologize, can we approach
17 one more time?

18 (Off the record discussion was held at the bench by
19 Court and counsel.)

20 THE COURT: Ladies and gentlemen, the attorneys have
21 informed me that that's basically all they have for today so
22 we're going to go ahead and break for the day. Again, do not
23 conduct any independent investigations, don't discuss the case.
24 I'm going to ask that you please be back at 9:00 tomorrow
25 morning. Thank you very much.

1 (Jury exited the courtroom at 3:25 p.m.)

2 THE COURT: Anything from the State before we recess
3 for the day?

4 MS. RICHARDSON: No, Your Honor. I do apologize, it
5 just went faster today than I anticipated.

6 THE COURT: And I understand that. I just don't want
7 this to go into next week, and by the same token I've got to
8 make sure the defense gets as much time as they need and extend
9 them the same courtesies, but it is what it is. Anything from
10 the defense before we break for the day?

11 MS. ANDERSON: No, Your Honor.

12 THE COURT: We'll be in recess until 9:15 tomorrow
13 morning.

14 MS. RICHARDSON: Thank you, Your Honor.

15 (Concluded for the day at 3:28 p.m. Wednesday, May 18, 2022)

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1 (Wereupon proceedings reconvened Thursday, May 19,
2 2022 at 9:32 a.m.)

3 THE COURT: Anything from the State before we bring
4 the jury in?

5 MS. RICHARDSON: No, Your Honor.

6 THE COURT: Anything from the defense?

7 MS. ANDERSON: No, Your Honor.

8 THE COURT: Let's bring the jury in.

9 (Jury entered the courtroom at 9:32 a.m.)

10 THE COURT: Ladies and gentlemen, welcome back. I
11 hope everyone had a good evening. I want to thank you again
12 for your promptness this morning. We're ready to resume the
13 trial of the case. The State can call your next witness.

14 MS. SMITH: Yes, Your Honor. The State calls
15 Kimberly Mears.

16 **Kimberly Mears being first duly sworn, testified as**
17 **follows:**

18 THE CLERK: State your full name for the record and
19 please spell your first and last name.

20 THE WITNESS: My name is Kimberly Mears, first name
21 is spelled, K-i-m-b-e-r-l-y, last name is spelled M-e-a-r-s.

22 VOIR DIRE EXAMINATION

23 BY MS. SMITH:

24 Q. Hello, Ms. Mears, how are you this morning?

25 A. Fine. Thank you.

1 Q. Can you tell the jury where you're employed?

2 A. The South Carolina Law Enforcement Division which is
3 commonly known as SLED.

4 Q. How long have you been there?

5 A. I've been with SLED since 2007.

6 Q. What do you do for SLED?

7 A. I'm a forensic scientist in the latent print department.

8 Q. And did you do anything else for SLED prior to becoming
9 a forensic analyst in the latent print department?

10 A. I've been in the latent print department since 2011, and
11 that gap from 2007 to 2011 I was a forensic technician in our
12 toxicology department.

13 Q. Where did you go to school?

14 A. I have a Bachelor of Science Degree in Biology from
15 Winthrop University.

16 Q. And do you have any specialized training in latent print
17 analysis?

18 A. Once I was hired by our latent print department I
19 completed our in-house training program which lasts about a
20 year. I was also accepted into the latent print examiner
21 training program sponsored by the National Institute of
22 Justice, and that was a ten-week program, both programs having
23 courses or modules covering all aspects of fingerprint work.

24 Q. What does latent print mean? What is that?

25 A. If you look at the palm side of your hand you'll see

1 tiny little raised lines on your skin. Those are called
2 ridges. They're not running uniformly from one side of your
3 hand to the other. In the joints of your fingers, they are
4 forming one of three specific pattern types, arch, a loop or a
5 whirl. The remaining joints and the palm, the ridges have a
6 flow that is specific to the area of the hand that they are on.
7 Same is true for your toes and your feet. Within the overall
8 pattern or flow of the ridges they are doing specific things.
9 One ridge can fork into two which is a bifurcation. A ridge
10 can just stop which is an ending ridge. And the ridge can be a
11 dot which resembles the period at the end of a sentence. These
12 ridges and the characteristics on the skin are what make up
13 your print, fingerprint, palm print, footprint. Moisture
14 accumulates on these ridges because they align with sweat
15 pores. So you exude sweat, you touch your face or your hair,
16 eat greasy foods, and that moisture accumulates. When you go
17 to touch an item, that moisture is transferred to the surface
18 of that item corresponding to the ridges on your skin, that is
19 your latent print. The word "latent," meaning, hidden or
20 invisible, and it means some form of processing or development
21 to be seen by the naked eye.

22 Q. And how are fingerprints analyzed, what do you do?

23 A. If we're receiving the evidence itself, we process it
24 with various chemicals to develop any prints. If we do have
25 developed prints themselves, we compare them using the ACE-V

1 methodology, ACE-V standing for analysis, comparison,
2 evaluation and verification. The analysis is where I look at
3 the print to try to determine, is this from a finger, toe, what
4 area of the palm, what area of the foot? Once I've determined
5 that, I'm going to look further and see how much information is
6 available in that print. What are the ridges doing, what are
7 the ridge characteristics doing, how many ridge characteristics
8 are there? Once I have made my analysis or I have done my
9 analysis, I can either determine the print is of no value,
10 which means there's nothing there to the compare to any known
11 fingerprint or not enough there to compare to a known
12 fingerprint. If it is of value I move to the comparison phase
13 where I take the unknown with a known print and side by side
14 compare them systematically going through the print looking for
15 similarities and differences within those ridges and the
16 overall flow of the ridges and then move to the evaluation
17 phase where I reach my conclusion. I can identify a print,
18 meaning, the unknown and known came from the same individual.
19 I cannot identify it, which means the known and unknown came
20 from different individuals, or I can say it's inconclusive,
21 which means I don't know for various reasons. After I've
22 reached my conclusion it goes to the verification phase where a
23 separate examiner does their own independent ACE process.

24 Q. Do you have any type of specialized equipment that you
25 use to assist you in this process?

1 A. For processing, we have various chemicals, as I stated,
2 that will develop different types of evidence. For the
3 comparison phase we have a micro -- excuse me -- a magnifying
4 glass on a stand that we can use to magnify the two prints and
5 we use pointers to go through the prints. We also have what is
6 comparison software which is on our computer screen where the
7 known and unknown prints are scanned into the computer, they're
8 brought up on the monitor side by side, and then the software
9 is essentially a fancy version of paint. I can zoom in and
10 zoom out on the images. I can rotate the images to twist them
11 to which way is up, I can change the contrast or the brightness
12 of it, and I can go in with different colors and mark things I
13 like or don't like within the prints, meaning similarities or
14 disagreement between the two.

15 Q. Have you ever are testified in court before?

16 A. Yes, I have.

17 Q. How many times?

18 A. About 25.

19 Q. Have you been qualified as an expert each time?

20 A. Yes, I have.

21 MS. SMITH: Your Honor, at this point in time the
22 State moves to have Ms. Mears admitted as an expert in the
23 field of latent print analysis.

24 THE COURT: Any challenges or questions?

25 MR. WILSON: No challenges or questions, Your Honor.

1 THE COURT: I find this witness to be an expert in
2 the field of latent print analysis.

3 DIRECT EXAMINATION

4 BY MS. SMITH:

5 Q. How is a latent print or a fingerprint distinct?

6 A. The characteristics I was talking about, the ridge
7 endings, the bifurcations and the dots, we are looking at
8 those within the overall ridge flow or pattern type, and those
9 characteristics and their relationship to one another within
10 the overall impression are what makes a print unique.

11 Q. And are prints unique to each and every person?

12 A. They are unique to each and every person and they are
13 also unique to each and every finger, each and every toe, part
14 of the hand or part of the foot, as well.

15 Q. In the history of prints have there ever been two
16 identical prints?

17 A. No.

18 Q. When you receive a latent print or a latent lift, what
19 does it look like, or how do you get it?

20 A. I get it in some form of sealed packaging, whether it's
21 a sealed envelope, heat-sealed plastic bag, and it is
22 transferred to me either from another individual or from our
23 evidence vault within our latent print department.

24 Q. And in this case did you receive any items?

25 A. Yes, I did.

1 Q. And who did you receive them from?

2 A. My item three which was a latent lift was received from
3 our, it's called "incoming latent evidence," it's our internal
4 evidence vault within our department.

5 Q. And then who put them there?

6 A. Prior to that -- so when evidence is logged into the lab
7 it goes through our evidence control department. We have
8 technicians down there that will create the lab number or case
9 within our computer system. They designate the lab number that
10 it's assigned and they designate each item that the evidence is
11 assigned, whatever the case may be. They then transfer the
12 evidence within the evidence control department to designated
13 locations depending on what analysis is requested on the items.
14 So evidence coming to the latent print department is going to
15 go to a latent incoming storage shelf. At some point later we
16 have an administrative assistant within the latent print
17 department who goes down to evidence control about twice a
18 week, she then grabs all of the evidence that is assigned to
19 the latent print department. And when I say "grabs," I mean
20 it's transferred from an evidence control technician to her.
21 She then brings the evidence up to our department and transfers
22 it to that internal storage vault where I received it from.

23 Q. And who first received the latent lifts at SLED?

24 A. Doris Yarborough.

25 Q. And then where did they go?

1 A. It then went into the latent evidence intake storage,
2 which is that storage shelf within our evidence control
3 department. It was then transferred to Jackie Davis who is
4 another evidence control technician. They are the only ones
5 that have access to the internal evidence locations. She then
6 transferred it to Lisa Chapman, who is our admin. for the
7 latent print department. She's the one who got the evidence
8 and brought it up to our department. She then transferred it
9 to the incoming latent print evidence vault, which is the
10 actual room within our latent print department where we store
11 or evidence.

12 Q. And then after that did you receive it?

13 A. Yes.

14 Q. Was there any evidence of tamper, anything like that?

15 A. No. The seal on the evidence envelope was intact when I
16 received it.

17 Q. And if it hadn't been intact what would you have done?

18 A. Depending on the severity, if it had a little rip in the
19 seal where still nothing could get out, that would have been
20 noted in my worksheet. If it had been wide open it would have
21 been brought to the attention of the evidence control
22 department to see what had happened along the way of the
23 evidence trail into my department.

24 Q. Do you any notes indicating any evidence of tamper
25 manipulation, alteration?

1 A. No, not in this case.

2 Q. When you received these latent lifts, or a latent lift
3 in this case, did you also have known standards of any
4 individuals?

5 A. Yes, I did.

6 Q. And what individuals did you get known prints from?

7 A. Janena Gamble; Eryk Smith, Jed Coleman and Joshua
8 Miller.

9 MS. SMITH: Beg the Court's indulgence?

10 THE COURT: Alright.

11 (State's Exhibits 20, 23, 24 and 25 were marked for
12 identification.)

13 MS. SMITH: Let the record reflect I'm showing
14 defense counsel what has been pre-marked as State's Exhibit 20,
15 23, 24 and 25, the redacted version. I'm handing the witness
16 those same documents.

17 Q. Ms. Mears, what did I just hand you?

18 A. These are copies of the known fingerprint cards of the
19 individuals I compared in this case. My items are SLED items
20 12 through 15.

21 Q. And I'm also going to hand you what has previously been
22 introduced into evidence as State's Exhibit 15. Can you tell
23 the jury what that is?

24 A. This is the sealed envelope that I received the latent
25 lift in. So this would have been that envelope that I

1 retrieved from our internal evidence vault. And then this is
2 the latent lift itself which is SLED's item 3.

3 Q. And was State's items 20, 23, 24 and 25, other than the
4 redactions made to them, have they been altered in any way?

5 A. They do not appear to be, no.

6 Q. And are those the prints that you received?

7 A. Yes, they are.

8 MS. SMITH: Your Honor, at this time State moves
9 State's Exhibits 20, 23, 24 and 25 into evidence.

10 THE COURT: Any objection?

11 MR. WILSON: No objection, Your Honor.

12 THE COURT: State's Exhibits 20, 23, 24 and 25 are
13 admitted into evidence without objection.

14 (State's Exhibits Nos. 20, 23, 24 & 25 were admitted
15 into evidence.)

16 Q. So once you received those known prints and the hinge
17 lifter with the latent prints what did you do?

18 A. So I first take an inventory of what I have to make sure
19 I have everything I'm supposed to have and nothing is missing.
20 I then look at the lift itself to do my analysis to see if
21 there are any prints of value to compare on this. In this case
22 there is an impression noted as .1, so it becomes item 3.1, and
23 I compared that impression or an unknown print to the known
24 fingerprint cards that I had, and I go in order of our item
25 numbers, so I started with my item number 12 and then moved

1 forward.

2 Q. And your item number three, the State's Exhibit number
3 15, the latent print, who did you compare the latent print to?

4 A. It was first compared to the fingerprint card bearing
5 the name Janena Gamble. It was not identified to any of the
6 prints on that card. It was then compared to the fingerprint
7 card bearing the name Eryk Smith, and it was ultimately
8 identified to the left middle finger on the fingerprint card.

9 Q. After that part of your comparison did you compare any
10 other fingerprints to the fingerprint lift?

11 A. No, I did not.

12 Q. And why is that?

13 A. Once it's identified to a known print there is no need
14 to go any further because you already know where the print came
15 from so there's no need to keep looking.

16 Q. And is that because prints are unique to one person?

17 A. That's correct.

18 Q. Did you generate a report in this case?

19 A. Yes, I did.

20 MS. SMITH: I'm showing you State's Exhibit 21. What
21 is that?

22 A. This is a copy of my fingerprint report?

23 Q. Is that a true and accurate copy?

24 A. Yes, it is.

25 MS. SMITH: Your Honor, at this time State seeks to

1 admit State's Number 21 into evidence.

2 THE COURT: Any objection?

3 MR. WILSON: No objection, Your Honor.

4 THE COURT: State's Exhibit 21 is admitted into
5 evidence without objection.

6 (State's Exhibit No. 21 was admitted into evidence.)

7 Q. And in that report, what does that say?

8 A. It lists the items of evidence that were associated with
9 the latent print assignment in this case. So SLED's item three
10 is one latent lift indicated as coming from a beer can. Item
11 3.1 is the latent impression represented on item three, and it
12 is identified with SLED's item 13, which is the known
13 fingerprint card bearing the name Eryk J'Von Smith.

14 (State's Exhibit No. 22 was marked for identification.)

15 MS. SMITH: I'm showing the witness what has been
16 marked for identification purposes as State's Exhibit 22.
17 Ms. Mears, what is that?

18 A. This is a fingerprint chart I made displaying my
19 comparison.

20 Q. Has that been altered in any way since you made it?

21 A. State's exhibit sticker has been added, but other than
22 that, no.

23 MS. SMITH: Your Honor, at this point in time the
24 State seeks to admit number 22 into evidence.

25 THE COURT: Any objection?

1 MR. WILSON: No objection, Your Honor.

2 THE COURT: State's Exhibit 22 was admitted into
3 evidence without objection.

4 (State's Exhibit No. 22 was admitted into evidence.)

5 Q. Ms. Mears, can you step down and talk to the jury about
6 what you have created, or what you've done?

7 MS. SMITH: Do you want me to hold it up for you,
8 would that be easier?

9 THE COURT: It would probably be best for her to get
10 on the other side so she's speaking towards the court reporter.

11 MS. SMITH: Absolutely.

12 A. This is what is called a fingerprint comparison chart or
13 a court chart. It is used to be a visual explanation of what
14 I'm saying on the stand. A lot of times it's easier to see
15 something instead of just listening to me talk about a lot of
16 big words. So on this side is the unknown or latent print that
17 came from the latent lift from the beer can. On this side is
18 the known print that came from the fingerprint card. We are
19 looking at the black lines within both of the images, those are
20 the ridges I was explaining that are on your skin. The overall
21 pattern type, or the circular design, is the whirl pattern on
22 the end of your finger, and then within the ridge pattern
23 you're looking at the ridge characteristics, and that is what
24 these red lines are pointing to. For example, letter A, and
25 I'll shown on the known because it's easier to see, you have a

1 ridge coming from the left or black line coming from the left
2 and where the red line it just stops, that's an ending ridge.
3 You look over in the unknown, same line marked A, you have the
4 black line coming from the left that just stops. You move down
5 to letter B, you have a black line traveling up or a ridge
6 traveling up that just stops. That's going to correlate with
7 the line marked "B" on the known, black line or ridge traveling
8 up that just stops. That's how we do our comparison, we look
9 first to find the overall pattern type that is in agreement.
10 Within that, find a cluster or group of ridge characteristics
11 that is kind of stand out and you look for that in both, and
12 from there you travel around looking for similarities or
13 disagreement. So you would say, you have your ending ridge
14 here, you would count, one, two ridges up, you see another,
15 this one is a bifurcation, one ridge forks into two and is
16 marked by "H," so you would come to your ending ridge here, go
17 up one, two, you have the line marked "H" which is your one
18 ridge forking into two, and that's going to be true for the
19 entirety of the print traveling around, you're going to see
20 your ridge characteristics in the same relation to each other
21 within the two.

22 Q. And we go from A, B, C, D, E, F, G, all the way to H.
23 Are those the only similar characteristics, or are those just
24 the ones that we've marked for today?

25 A. These are just the ones that were marked for today. If

1 I were to go through and mark each of the characteristics that
2 are in agreement, it would be a spider web of red lines that --
3 it would kind of lose the point of the chart to help understand
4 what I'm saying, everything would just kind of be jumbled
5 together. So for these we just mark the clearer more obvious
6 points while still having some kind of ease to see what the red
7 lines.

8 MS. SMITH: Beg the Court's indulgence? Ms. Mears, I
9 have no further questions. Please answer anything that the
10 defense has.

11 THE COURT: Cross-examination?

12 MS. ANDERSON: Your Honor, we have no questions for
13 this witness.

14 THE COURT: Alright. You may step down.

15 MS. SMITH: May she be released?

16 THE COURT: Any objection?

17 MR. WILSON: No objection, Your Honor.

18 THE COURT: She's free to go. Thank you. The State
19 can call your next witness.

20 MS. RICHARDSON: Your Honor, the State rests.

21 THE COURT: Ladies and gentlemen, the State has
22 rested their case in chief and now is the time in the trial
23 where I need to discuss some issues of law with the attorneys,
24 that's just required in every trial. So I'm going to excuse
25 you back to the jury room while we discuss these legal matters.

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1 That will give you an opportunity to get something to drink,
2 take a break, whatever the case may be. It might be a little
3 bit of a break, so we'll bring you back in just a minute, thank
4 you very much.

5 (Jury exited the courtroom.)

6 THE COURT: Any motions?

7 MR. WILSON: Your Honor, may it please the Court,
8 Judge? Your Honor, obviously, this is going to be a motion for
9 a directed verdict at this point in time, Judge. Let me first
10 say this, the State has not put up any evidence whatsoever to
11 talk about conspiracy or to talk about the armed robbery. The
12 defense is not going to oppose carrying, obviously, the
13 attempted murder to the jury, but there has been no
14 corroboration that this particular defendant had any
15 involvement in either of one of those crimes. One, there is no
16 evidence that there would be full assent for him to go and do a
17 drug deal, not that that's at issue in this case, and I want to
18 put this on the record because there was testimony that was
19 elicited from Mr. Melvyn Garrett, basically, the Solicitor
20 said, look, hey, we haven't charged anybody at all, period,
21 with the drugs, with the transaction for the drugs, so no one
22 was charged with that. So the conspiracy has to be based on
23 the actual underlying felony, which is the armed robbery. But
24 let's say that it is involving the drugs. There is nothing
25 that says that he was of mutual assent, no witness, not Janena

1 Gamble, obviously not Jed Coleman, came in and said that he was
2 in agreement with them regarding that matter. So the elements
3 of conspiracy are not met, period.

4 The other issue is armed robbery, taking and carrying
5 away the personal property of another with the intent to
6 permanently deprive is a specific intent crime and there has to
7 be proof that this defendant went into this situation with the
8 intent to deprive Josh Miller, based on the facts, of the
9 actual property. The property itself was going to be,
10 obviously, the pills, and everything that even Mr. Miller said
11 on the stand was related to Jed, Janena Gamble and then Jed
12 Coleman being in the car and that this particular defendant who
13 was in the other car, like Ms. Gamble, was merely present at
14 the scene, didn't participate, didn't say a word to him,
15 there's no evidence he communicated with them, there are no
16 text messages, which I would normally see in a case like this,
17 phone calls, or testimony from the stand saying that he did any
18 of those things, so the elements fail. The next issue then
19 comes down to State versus Langley, which is about accomplice
20 liability, which is the hand of one is the hand of all, and the
21 question for the Court becomes whether or not he meets that
22 criteria, and this is my issue, Your Honor. The first thing is
23 that the Court has to look at whether or not he has tried to
24 accomplish or he has tried to somehow aid and abet, and the law
25 doesn't say aid or abet, there has to be a common design and

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1 purpose, and then there has to be an intentional overt act. So
2 he has to, one, be a common design to them. There's no common
3 design here because there was never a conspiracy that was
4 proven underlying the felony. There was not even any evidence
5 that he actually came there and wanted some pills. You know,
6 and when you look at State versus Langley, in that particular
7 case, the Court said, look, you know, in that case there was a
8 gentleman who was convicted of murder and the Court in that
9 case said, look, there's not enough evidence here in this
10 particular matter. The Court went through and said what
11 evidence there was in that case, and what the evidence was,
12 there was evidence that the guy was present at the scene, there
13 was evidence that there was a cell phone that was related to
14 him at the scene, and there are was some other evidence. When
15 you look at, also, I'm just going to put the cases on the
16 record, Judge, State versus Austin and State versus Leonard,
17 and so in those cases you have the Court talking about whether
18 or not a person has to have knowledge. That's one of the key
19 things to accomplice liability. You can't have accomplice
20 liability without knowledge. And in this situation Mr. Miller
21 says, okay, he shot me, he identifies him. We read that, that
22 is attempted murder without a doubt, but he doesn't say he did
23 anything else, and in other cases even if when the Court said,
24 look, I'm going to uphold this, you have testimony in the
25 record, and like in Leonard, you have testimony in the record

1 where the defendant went into the situation and tried to
2 actually buy some shoes, some stolen shoes, so you have those
3 scenarios where there's actually corroboration that the
4 defendant acted in concert with them and not only acted in
5 concert, that there was an agreement to do an illegal act, and
6 that's not here in this situation. The existence of a common
7 design and purpose participation of the accused, State versus
8 Woomer, 276 SC 258, 277 SE2d 696 (1981), and for legal
9 purposes, and obviously if there is no common design to aid or
10 abet them and he's not doing an intentional act, you know, to
11 cause a furtherance of that particular crime and then I know
12 that State's going to probably argue, hey, well, look, he shot
13 him. That is a separate crime that can stand on its own and we
14 submit that to the Court. There is nothing in the record, and
15 I have never had this situation happen because we expected to
16 hear from Janena Gamble and then Jed Coleman, but I've never
17 had a situation where I know that the record is empty when it
18 comes down to the elements of these crimes as well as to him
19 being a part of the common design and scheme in this case,
20 Judge. And also, I want to put on the record, too, obviously,
21 that the Court made it clear in a number of cases that without
22 him having knowledge and without there being proof of knowledge
23 that he cannot be held criminally liable under the accomplice
24 liability. They can't use the hand of one is the hand of all
25 to encompass if they can't put up evidence showing that he is a

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1 part of that mutual assent, that design that would carry,
2 obviously, over to the armed robbery and to the conspiracy.
3 Josh Miller was not involved in the conspiracy. He has no
4 firsthand knowledge of it, whatsoever, and he even said on the
5 stand because I asked him, do you have -- no, didn't see him do
6 anything. Well, he shot me in the face. We consent. We
7 understand he was shot in the face and he's pointing out this
8 defendant, we agree with that, but he can't put him in a
9 conspiracy that he was out there trying to further their
10 ability to go out and commit the crime of robbery, doing the
11 drug deal, or obviously, being a mutual assent in this
12 particular case, Judge. There is nothing in the record to
13 support that. We're asking that the Court direct a verdict,
14 and normally I get up and I am going through the song and dance
15 of formality, but I want to put on the record, this is not a
16 formality, this is a real legal issue, and I'm asking the Court
17 to direct a verdict of not guilty for him on the charge of
18 conspiracy and the charge, obviously, of armed robbery and then
19 we will, obviously, put up our defense for the issue of the
20 attempted murder, Your Honor.

21 THE COURT: State's position?

22 MS. RICHARDSON: Your Honor, first of all, as Your
23 Honor knows, when reviewing the motion for directed verdict,
24 you're to be concerned with the existence of evidence, not with
25 its weight, and the evidence that we viewed in the light most

1 favorable to the State. If there's any direct or substantial
2 circumstantial evidence tending to prove the guilt of the
3 accused, then it must be submitted to the jury. Unless there's
4 a total failure of competent evidence, a directed verdict is
5 not proper. As for the conspiracy, Your Honor, I would direct
6 you to State versus Cope. It's a Supreme Court opinion from
7 2013, and I do have a copy. It is 748 S.E.2d 194, and in that
8 case, a very similar issue regarding a directed verdict for
9 criminal conspiracy was addressed, and Justice Hearn was the
10 author of that opinion. Your Honor, that case involved the
11 sexual assault and murder of a 12-year-old child where the
12 father confessed to it, and then when the DNA came back there
13 was another individual whose DNA was on the child. The Court
14 was not able, or there was no evidence ascertaining any
15 relationship between the two parties. The Court denied the
16 Motion for a Directed Verdict, and in saying so, they said, and
17 this is on Page 15 of the Opinion: Criminal conspiracy is
18 defined as a combination between two or more persons for the
19 purposes of accomplishing an unlawful object or a lawful object
20 by unlawful means. A conspiracy is an agreement or
21 combination. To establish the existence of the conspiracy,
22 proof of an express agreement is not necessary and direct
23 evidence is not essential, but the conspiracy may be
24 sufficiently shown by circumstantial evidence and the conduct
25 of the parties. In that case the Court found there was no

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1 direct evidence of the meeting of the minds between the two
2 parties but looked at the circumstantial evidence in the case
3 and the conduct of the parties, and looked at the facts in that
4 case. Your Honor, that's what we have here. We have
5 substantial circumstantial evidence that this was a conspiracy
6 and a meeting of the mind of the parties in that car. Evidence
7 has shown that all -- there were four individuals in the car
8 and came to the store together, that Eryk was in the car, Mr.
9 Smith was in the car, with Jed Coleman and Janena Gamble and
10 Jed's brother, Jayqwane. There's also evidence from Delsean
11 Oliver that Mr. Smith was in the car very shortly before the
12 shooting. If you'll remember, he said he left the store and
13 went down the road and that's when they started hearing about
14 the shooting and turned around and came back, didn't even make
15 it to Conway. Mr. Miller testified that there were
16 conversations in his car, telephone conversations and messaging
17 between Corey Hayes and Jed Coleman who was in the other car
18 and that they began to maneuver the cars and change their
19 meeting place. Mr. Smith would have been in the car at the
20 time that those conversations were occurring. So there's
21 evidence of those conversations and that they were moving
22 locations back and forth to decide on the two meeting places.
23 It is confirmed on the video that the two vehicles pull up
24 beside each other and then one gets out. There is evidence
25 both from Mr. Miller and from the photos at the scene that the

1 cars were parked, as Mr. Miller said, about six feet apart, and
2 that's evident on the video, as well, and there is evidence
3 that the window was down and it was raining. They were right
4 beside each other so there could be clear observation. Mr.
5 Miller also testified that when the drugs were taken without
6 money and Ms. Gamble got out of the car, he immediately jumped
7 out, and he went over and over and over this: It happened so
8 fast, it happened so fast. The door wasn't even open and they
9 were right there, passenger door of that car, the driver door
10 of the suspect's car, and the pills, she threw the pills into
11 the car and he said just instantaneously, a shot, when he went
12 to reach to grab them, the shot. Circumstantial evidence will
13 show that Mr. Smith was in a position to purposely watch what
14 was going on, had been in the car while the arrangements were
15 made. The window was down even though it was raining, and it
16 happened so fast that he had to already be armed and ready at
17 the time when the shots fired and how quickly it happened. The
18 evidence indicated they were going to a party and they were
19 there at the store. There's no evidence and the video doesn't
20 show that anybody got out of the car to get anything at the
21 store. It's clear, the circumstantial evidence makes it clear
22 they were meeting there for a purpose, and that purpose because
23 of moving around had them behind their friends who were going
24 to the party. And how immediate the gunshot was indicates that
25 Mr. Smith had to be ready and loaded to provide security for

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1 that deal. Obviously, there's direct testimony from Josh
2 Miller that Smith is the shooter and evidence that he was --
3 fingerprint evidence that he was in the car, as well as from
4 Mr. Oliver. The video also confirms how quick this occurred
5 and that the car, how immediately they drove off after the
6 shooting and after you see Mr. Miller run away.

7 As far as the armed robbery, Your Honor, there are
8 multiple cases that talk about, and very similar circumstances,
9 multiple cases that talk about that an armed robbery is not
10 complete as soon as the property is taken. Case law makes it
11 very clear and there are multiple scenarios that are even sort
12 of somewhat similar to this, that armed robbery is not just
13 what people typically think of as an armed robbery, produce a
14 weapon, or say you have a weapon and give me what you got, like
15 what you would think with a bank robbery or a convenience store
16 robbery. The case law makes it very clear that that's not all
17 there is: State v. Mitchell, Supreme Court Opinion from 2009,
18 675 S.E.2d 435. In that case, the defendant went into a
19 grocery store, picked up a case of chewing tobacco and left the
20 paper. No force, no intimidation, no weapon, basically what
21 would probably be just a shoplifting. An employee approached
22 him as he reached the exit door and said, bring it back. He
23 then presented a knife and threatened the employee and was able
24 to get away with the property. The Court in that case found
25 that a person can be convicted of armed robbery if he arms

1 himself at any time during the commission of the larceny.

2 Further, the Court pointed out that the central issue involves

3 the determination of at what point asportation of the property

4 becomes final so that a larceny becomes a robbery or an armed

5 robbery. The Court found and quoted: State v. Keith, which is

6 another Supreme Court Opinion, that the crime of robbery is not

7 completed the moment the stolen property is in possession of

8 the robbers but may be deemed to continue during their attempt

9 to escape. This is called in State v. Keith, 649 S.E.2d 89,

10 the continuous offense theory. In State v. Mitchell, the Court

11 quoted several scenarios from previous cases, including State

12 v. Moore, and that's 649 S.E.2d 89. And in that case, again, a

13 security guard followed someone out of the door when they had

14 stolen some medication off a shelf, stopped them outside of the

15 door, and the defendant brandished a handgun. So again, at the

16 time of the taking of force on basically just a simple larceny,

17 that became an armed robbery. In that case, the Court, and

18 this is quoted by Mitchell, the Court determined Moore's

19 motions for asportation, that the element of armed robbery

20 continues during the escape, again, under the continuous

21 offense theory. If any force or intimidation is used to retain

22 possession immediately after the taking or to carry away the

23 property or to facilitate escape the theory supports the

24 proposition that a taking is not complete, has not come to an

25 end until the perpetrator has neutralized any immediate

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1 interference with his or her position. The Court further
2 quotes: The use of a dangerous weapon at any point in the
3 robbery will constitute armed robbery as long as it can say
4 that it is part of a single occurrence. In this case the Court
5 found as long as they are still trying to get away, and it
6 includes the use of force or intimidation to retain possession
7 of what has been taken or to escape or prevent pursuit, and
8 that's what we had happen here. No one is saying that there
9 was an armed robbery in Mr. Hayes' car, I agree, there's been
10 no evidence of that. There has been evidence that there was a
11 larceny. And just like in these shoplifting cases, and that
12 Ms. Gamble was about to get away with that, Mr. Miller got out
13 and Mr. Smith shot to stop him from getting the property. The
14 evidence from -- now, we know a lot of the pills ended up on
15 the ground. There was also evidence from the phone records
16 that Mr. Garrett talked about that there were still some pills
17 and drugs in the car, as well. So Your Honor, based on the
18 totality of the circumstances, the substantial circumstantial
19 evidence presented, there is sufficient evidence that the jury
20 could determine that there was a conspiracy based on the
21 conduct of the parties moving around, the phone calls, and that
22 the armed robbery occurred at the point when they were trying
23 to prevent Mr. Miller from getting his property back or
24 pursuing the parties who had taken his property.

25 THE COURT: Thank you. Anything in reply?

1 MR. WILSON: Yes, sir, Judge, just briefly, Judge.
2 The last case the prosecutor was talking about, that case I
3 know is distinguishable, Your Honor. That person who was
4 leaving the store is the perpetrator. He is the person who was
5 actually leaving the store and he pulls a knife. That's what
6 made it an armed robbery. In this particular matter, you don't
7 have that situation. That was the perp., he knew what he was
8 doing, he was fully knowledgable, he was the actor, he was the
9 bad actor. The other issue, too, is that I have an issue
10 framing this as a situation where Josh Miller now is putting
11 himself in a position where he knows where these phone calls or
12 the communication are happening in another car when he's not in
13 it. There is no evidence whatsoever to support any of this
14 whatsoever. There's circumstantial evidence, and Your Honor is
15 aware that there is case law, and I'm not going to sit here and
16 belabor the point, but there's case law about simply putting in
17 circumstantial evidence against a defendant who, again, when
18 it's very weak, and there's no direct evidence of it, that the
19 Court should, obviously, grant the Motion for a Directed
20 Verdict and/or not allowed to go to a jury or instruct the jury
21 regarding that matter. In this situation, Judge, there is
22 nothing. Josh Miller had nothing to say or to do about what he
23 saw as far as when these calls took place or when this
24 communication took place. He can't attest to that at all. And
25 he definitely can't attest to why they moved the car or where

Defendant's Rights

1 they were, he can't attest to that either. All he can do is
2 say, look, he shot me, that's what know, and he points him out.
3 Everything else is missing from the elements of the crime as
4 well as for accomplice liability, Your Honor. That's all,
5 Judge.

6 THE COURT: I'm going to deny the motion. I think
7 there's enough for the jury to question at least circumstantial
8 evidence. Anything else?

9 MR. WILSON: Nothing further, Your Honor.

10 THE COURT: We're going to take a break here in just
11 a minute, but let me go ahead and question your client on his
12 right to testify. Okay? Sir, if I can get you to raise your
13 right hand, please? Do you swear or affirm to tell the truth,
14 the whole truth and nothing but the truth?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Thank you very much. Your name is Eryk
17 J'Von Smith?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Alright, you can put your hand down, Mr.
20 Smith. At this time I'm going to explain to you certain rights
21 that you have. If you do not understand anything I say, please
22 let me know. If you want me to explain anything in more
23 detail, please let me know. Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: We've now you reached the stage of the

1 trial where you may present your defense. You have the right
2 to claim the protections given to you by the Fifth Amendment to
3 the Constitution of the United States which states in part that
4 no person shall be compelled in any criminal case to be a
5 witness against himself. This means that you cannot be
6 required to testify in this case. You have the right to
7 testify on your own behalf, however, no one can make you
8 testify. This is a personal right and no one can waive this
9 right except for you. If you decide to testify you will be
10 subject to the same rules that govern other witnesses and you
11 may be examined and cross-examined on any relevant issue in
12 this case. In addition, if you have any convictions involving
13 dishonesty or false statement or for crimes punishable by
14 imprisonment for more than one year and this Court determines
15 that the probative value of admitting this evidence outweighs
16 its prejudicial effect to you, the Solicitor will be able to
17 introduce your record to attack your credibility. Now, at this
18 time is there any prior convictions that the State would be --

19 MS. RICHARDSON: Yes, Your Honor, he has convictions
20 from May 16, 2019 in the State of Arizona for aggravated
21 assault, domestic violence, impeding breathing, that's a felony
22 conviction --

23 THE COURT: I'm sorry, aggravated assault, what?

24 MS. RICHARDSON: It says: Aggravated assault, DV
25 impeding breathing --

1 THE COURT: Okay.

2 MS. RICHARDSON: -- and disorderly conduct involving
3 a weapon, also listed as a felony charge. He does have
4 juvenile convictions, but those do not rise to the level that
5 we would seek to use them for impeachment.

6 THE COURT: Those being 2019 convictions, I will
7 allow them to attack your credibility by questioning you on
8 those charges. If you decide to testify, this decision on your
9 part must be freely, voluntarily and intelligently made with
10 knowledge of the protections given to you by the Fifth
11 Amendment and the consequences of your decision to testify. If
12 you decide not to testify I will instruct the jurors that they
13 cannot give the fact that you did not testify any consideration
14 whatsoever and that there is to be absolutely no prejudice to
15 you because you did not testify. It is left entirely up to you
16 whether or not you testify. You may talk with your attorney,
17 your family and friends, or anyone else, but the final decision
18 will be left entirely up to you. Now, do you understand what
19 I've explained to you?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you have any questions about what I've
22 explained to you?

23 THE DEFENDANT: No, sir.

24 THE COURT: We're going to take about a ten-minute
25 break, give you an opportunity to discuss it further if you

1 want to. When we come back I'm going to ask you whether or not
2 you wish to testify in this case. Okay?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Alright. Now, if he decides not to
5 testify, is there any witnesses that will be called by the
6 defense?

7 MR. WILSON: Yes, Judge.

8 THE COURT: That's fine. I just needed to know.
9 Let's take about a ten-minute break and then we'll come back.
10 Recess taken.

11 MR. WILSON: Thank you, Judge. Judge?

12 THE COURT: Yes?

13 MR. WILSON: Your Honor, he wants to know if he can
14 speak with the family, it's up to you, Judge.

15 THE COURT: Right there.

16 MR. WILSON: Right there.

17 THE COURT: Right there, yes, I mean, as long there
18 is security, there is to be no interaction, no touching, just
19 discussion like that. It's not an attorney/client
20 confidentiality situation.

21 MS. RICHARDSON: Our staff will leave the courtroom.

22 (Recess taken.)

23 THE COURT: Mr. Smith, if I could get you to stand,
24 please. You are still under oath. Now, do you recall and
25 remember the rights that I explained to you before we took a

1 break?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Those rights under the Fifth Amendment to
4 the United States Constitution, do you remember those?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you need any further explanation on
7 those?

8 THE DEFENDANT: No, sir.

9 THE COURT: Do you have any questions about that?

10 THE DEFENDANT: No, sir.

11 THE COURT: Have you had ample opportunity to talk
12 with your attorney and whoever else regarding your right to
13 testify?

14 THE DEFENDANT: Well, I talked to my attorney, I
15 didn't get to speak with my family, though.

16 THE COURT: Alright. Do you want to talk to your
17 family?

18 THE DEFENDANT: Yeah.

19 THE COURT: Okay. I mean, it's not a confidential
20 communication, so if you want to go ahead you can just turn
21 around and talk to them right now if you want to.

22 MS. RICHARDSON: We can leave, Your Honor, or step
23 out.

24 THE COURT: I mean, the communications with the
25 family are not confidential or protected by attorney/client

1 privilege.

2 MS. RICHARDSON: We'll just step out as a courtesy.

3 THE COURT: That would be fine.

4 Mr. Smith, have you had an ample opportunity to talk
5 to your family regarding your rights to testify?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Anybody else you need to speak with?

8 THE DEFENDANT: No, sir.

9 THE COURT: Do you wish to testify in this case?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Is this your decision?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Is anybody forcing you to testify?

14 THE DEFENDANT: No, sir.

15 THE COURT: Anything further defense wants to put on
16 the record in regard to that?

17 MR. WILSON: Nothing, Your Honor.

18 THE COURT: Anything further the State wants to put
19 on the record in regard to that?

20 MS. RICHARDSON: Your Honor, just before we get
21 started, the defense list did give us notice of several
22 witnesses who were involved in cases and arrest involving the
23 co-defendant. The State would object to any Lyle 404(b) type
24 evidence against these non-testifying co-defendants that would
25 be brought in regarding them.

1 THE COURT: You're saying I should suppress prior bad
2 acts by the co-defendants?

3 MS. RICHARDSON: Yes, Your Honor, who have not
4 testified.

5 THE COURT: Okay. And what would be the relevancy?

6 MR. WILSON: Judge, I mean, the only thing I think
7 that has come out on the stand is that there was an issue where
8 I think Janena Gamble had some drugs at her house and Melvyn
9 Garrett testified regarding the fact that they went there to
10 recover them and the girlfriend was allowed to talk to Janena
11 Gamble, but I don't foresee any calls or talking about that
12 issue, I mean, but that's in evidence, obviously, already, but
13 I don't think that's going to come up during my direct
14 examination of my client or redirect.

15 THE COURT: I mean, if they haven't taken the stand
16 and if they are not going to take the stand then I don't know
17 how that's relevant to the charges against this defendant.
18 I'll grant the motion.

19 MS. RICHARDSON: Thank you, Your Honor.

20 THE COURT: Anything else?

21 MS. RICHARDSON: Your Honor, the only other issue
22 that I do see that could arise is if the defendant gives a
23 different -- gives a statement now that wasn't given to law
24 enforcement. We'll probably get to a point where there could
25 be an issue regarding commenting on his right to remain silent.

1 THE COURT: I don't understand.

2 MS. RICHARDSON: Well, I guess we can just see how it
3 develops.

4 THE COURT: I mean, he's waiving his right to remain
5 silent, he's taking the stand.

6 MS. RICHARDSON: Okay.

7 THE COURT: Now, if he gives an inconsistent
8 statement, you can use his prior inconsistent statement to
9 impeach his testimony, but I don't know, with him taking the
10 stand he's waiving his right to testify -- I mean, he's waiving
11 his right against self-incrimination by taking the stand.

12 MR. WILSON: Well, for the record, if there is
13 another statement they have, we don't have it.

14 THE COURT: I got you.

15 THE DEFENDANT: So there is no other statement he's
16 made.

17 MS. RICHARDSON: I agree, Your Honor, but this could
18 open a line of questioning from the State regarding, basically,
19 why this is the first time we've heard this today and we can
20 present arguments on that once the case develops, but I didn't
21 want to just jump in because I believe we would have to have
22 some sort of in camera hearing if that develops.

23 THE COURT: Well, I guess we'll address it, but I
24 mean, the only thing they have to advise you of is an alibi
25 witness, and if there is no alibi then we'll just take it as it

1 comes. Okay? I mean, I don't know that they are obligated to
2 let you know what his testimony is going to be. Now, if he
3 gave a prior inconsistent statement you could use the prior
4 inconsistent statement to impeach his testimony.

5 MS. RICHARDSON: What I'm advising the Court is that
6 if he gives a statement today that we've never heard before the
7 State will be questioning him basically as to why we're now
8 hearing this for first time today.

9 THE COURT: Well, and you can do that.

10 MS. RICHARDSON: Okay.

11 THE COURT: Yes. Alright, anything else?

12 MS. RICHARDSON: Nothing from the State, Your Honor.

13 THE COURT: Anything from the defense?

14 MR. WILSON: Nothing from the defense, Judge.

15 THE COURT: Are we ready to go straight into it?

16 MR. WILSON: Yes, Your Honor.

17 THE COURT: Let's bring the jury in.

18 (Jury entered the courtroom at 10:49 a.m.)

19 THE COURT: Ladies and gentlemen, welcome back. The
20 State has presented their case. Now is the time where the
21 defendant can present a defense, if he chooses to. Does the
22 defense wish to call a witness?

23 MR. WILSON: The defense calls Eryk J'Von Smith to
24 the stand, Your Honor.

25

1 **Eryk J'Von Smith being first duly sworn, testified as**
2 **follows:**

3 THE CLERK: Please be seated and state your full name
4 for the record.

5 THE DEFENDANT: Eryk J'Von Smith.

6 DIRECT EXAMINATION

7 BY MR. WILSON:

8 Q. Spell your full name.

9 A. E-r-y-k, J--V-o-n, Smith, S-m-i-t-h.

10 Q. Thank you very much. Mr. Smith, tell me where you're
11 from originally.

12 A. I'm from Plantersville, South Carolina.

13 Q. And did you grow up here?

14 A. Yes, sir.

15 Q. At some point in time did you ever move?

16 A. Yes, sir.

17 Q. Where did you move to?

18 A. September, 2016, I moved to Arizona and I've been living
19 there since.

20 Q. And tell the jury who you live with.

21 A. My mother.

22 Q. What part of Arizona do you all live in?

23 A. Tuscan, Tuscan, Arizona.

24 Q. And did you have an opportunity to come back to South
25 Carolina to Georgetown?

1 A. About the time of June 1, 2018, I did come back to South
2 Carolina to visit my grandmother which is, she's in the white,
3 she's lived there. I came back to visit her.

4 Q. Now, while you were in Arizona you got in a bit of
5 trouble, didn't you?

6 A. Yes, sir, I did.

7 Q. I want you to tell the jury the truth about what kind of
8 trouble you got to in Arizona and tell the full story.

9 A. Well, I got charged with domestic violence and
10 disorderly conduct. I pled guilty to those charges. I got
11 three years probation for those charges, it's said and done,
12 and that's really about it. That's the only thing, that's it.

13 Q. Did one of the charges involve a weapon?

14 A. Yes, it did.

15 Q. Tell the jury what happened with the weapon. What was
16 involved with that? Just to make sure I'm clear, what were you
17 charged with, tell the jury.

18 A. Disorderly conduct, that's the charge that's involved
19 with the weapon.

20 Q. And the allegation is that you did what?

21 A. The allegation is that I shot the gun in the air like
22 two times.

23 Q. Now, you had an opportunity, you said, to come back on
24 what date to South Carolina?

25 A. June 1, 2018.

1 Q. And so June 1, 2018 you came back to see your grandmama?

2 A. Yes, sir.

3 Q. And while you were here what were you doing, were you
4 working?

5 A. No, sir.

6 Q. Tell the jury what you were doing.

7 A. I was simply just back visiting my family. It had been
8 about two years since I'd been here so I was simply back just
9 visiting my family enjoying my time here. It was supposed to
10 be a brief time here, stay for the summer, and go back home.

11 Q. When is your birthday?

12 A. My birthday is October 3, 2000.

13 Q. And just to remind the jury, what date did this incident
14 happen when the shooting took place?

15 A. This happened literally six days after my birthday,
16 October 9, 2018.

17 Q. And did you celebrate your birthday?

18 A. Yeah, I did.

19 Q. Tell the jury what you did for your birthday.

20 A. Just, we had a little get together in the yard at my
21 grandmother's house, chillin' with my girl at the time, and
22 that was really much it for my birthday, I didn't really do
23 much, I didn't get to chill with anybody else though.

24 Q. Now, you know Jed Campbell, you knew him, or excuse me,
25 Jed Coleman, correct?

1 A. Yes, sir.

2 Q. How did you know Jed Coleman?

3 A. Well, I met his brother before I met him. This was,
4 like, this was about sixth grade, fifth, sixth grade, I knew
5 his brother. I knew his brother first, I was initially friends
6 with his brother, so I met him through his brother, that's how
7 I met him.

8 Q. And when you say, his brother, tell the jury his name.

9 A. Jayqwane Coleman.

10 Q. And so you had a friendship with Jayqwane?

11 A. Right.

12 Q. So on that day, on October 9th is the day we had talked
13 about.

14 A. Right.

15 Q. When you got up in the morning, tell the jury what
16 happened that day.

17 A. Well, for starters, you know, get up, get yourself
18 ready, all that, that's for starters, but around about, I'd say
19 about 12:00 we're at my cousin, Anna's house, her name's Anna
20 Marie McCray (phonetic), we're drinking, we're, you know, just
21 having a good time, it's my birthday week, you know how it is,
22 like, we're having a good time. I got a call from Jayqwane and
23 Jed asking do I want to chill with them, like, for my birthday,
24 because it was already -- before all of this -- before even
25 that day, it was already planned that I was supposed to be

1 going back home soon. So I wasn't supposed to be staying here
2 that long, I was supposed to be going home soon, so I got a
3 call from them, like, okay, we know you're about to go home so
4 do you want to chill with us before you go, you know, there
5 ain't no tellin' the next time we're gonna see you, so I say,
6 yeah. We agreed to meet at the Dollar General on 701 right by
7 the China Chill, if you know the area. I ride with Anna, she
8 takes me to Dollar General, she goes in the store, I get in the
9 car with them, we go to Georgetown.

10 Q. Now, just so the jury knows, Anna is who to you?

11 A. She's my cousin.

12 Q. And Anna did what? She transported you?

13 A. Yeah, she transported me to Dollar General in her car.

14 Q. And when you get to Dollar General, tell the jury who's
15 there and what happens.

16 A. Oh, when I get to Dollar General, they're already parked
17 there, they're in a gray -- a gray Honda Accord, they're
18 already parked there. They in a gray Honda Accord. It's
19 Delsean's car, as you know, he came here and said he drives a
20 gray Honda Accord at that time.

21 Q. You can't talk about his testimony.

22 A. I apologize.

23 Q. Tell what you know happened.

24 A. Well, I know I got there, they was already parked there,
25 they was already there waiting for me to get there. I got

1 there and I got in the car with them, Delsean was the driver,
2 of course, of his vehicle. And then you got Jed Coleman in the
3 passenger seat, you got Jayqwane, the left passenger behind the
4 driver, and then I got in on the right passenger, behind the
5 passenger, the front passenger.

6 Q. So just so I'm clear, you in what seat?

7 A. I'm in the back -- I'm in the rear passenger seat.

8 Q. And so you all are at Dollar General for how long?

9 A. As soon as I got there we left. As soon as I got in the
10 car with them we left, so probably about not even five minutes.

11 Q. So about what time was this?

12 A. Probably 12ish, 12:30, maybe.

13 Q. Now, when you all left the Dollar General, where did you
14 all go?

15 A. We go straight to Delsean's.

16 Q. And Delsean, again, is somebody that you know?

17 A. Yeah, through them, not know personally, but, yeah,
18 through them.

19 Q. So you all go to Delsean's house?

20 A. Right.

21 Q. Okay. Tell the jury what happens, everything that
22 happens at Delsean's house.

23 A. Well, we get there, and like I said, we was already
24 drinking from -- well, I was drinking already from earlier that
25 day, and I'm not gonna lie, I drink a lot. We get there and we

1 continue to turn the lights, it's -- we celebrating that it's
2 my birthday, I'm about to leave soon, this is the last time I'm
3 gonna see everybody, probably. So we get there, we drinking,
4 carrying on conversation, music playing, there's a whole lot of
5 things going on. We sittin' on his front porch, so we just
6 sittin' there, drinkin' chillin', there's not really much goin'
7 on. Well, see, initially, when I got there it was just me,
8 Delsean, Jed, and his little brother, and you have Samual
9 Owusu, he lives like across the street, so when he -- when I
10 get there -- well, he comes there, he comes over, probably
11 about, I'd say about an hour or two later, Gamble pulls up,
12 Ja-nay (phonetic), Janena --

13 Q. Let's stop right there. So you all are drinking?

14 A. Right.

15 Q. That's your testimony?

16 A. Right.

17 Q. Alright, now, Ms. Gamble pulls up?

18 A. Right.

19 Q. Okay. Tell the jury when she pulls up, what you see.

20 A. Well, when she get there -- she -- I mean, she -- she
21 jump out the car, she jump out her car, her Audi, or whatever,
22 she's classy, she dress real nice, but I see her -- I see her
23 and she got a little gun in her pocket, or whatever, I mean,
24 it's just, it's there.

25 Q. Okay. What kind of gun did she have on her and where

1 was it?

2 A. Well, at that time I didn't know what kind of gun it was
3 until she pulled it out. When she pulled it out it was a Glock
4 26.

5 Q. So when she pulls up, you see her with a gun?

6 A. Right.

7 Q. Okay. At what point in time did you figure out what it
8 is, what kind of gun it is?

9 A. Well, this was, this was later on after we had done left
10 Delsean's house.

11 Q. Okay. Well then, let me back up then. You all still at
12 Delsean's house chillin', drinkin'?

13 A. Right.

14 Q. Right? Alright. While you're there what else
15 transpired at Delsean's house?

16 A. Well, really, we were just drinking, they smokin', I
17 don't smoke. We drinkin', they smokin', just regular
18 conversation as in -- well, we know we was about to go to a
19 party later on that night, we know that, we was about to go to
20 a party later on that night. Delsean and Gamble knew it was a
21 party supposed to be -- a get together supposed to be in Conway
22 around the Legacy area, if you know that area, it's like some
23 apartments, supposed to be a party there, so we hoping to see
24 some females there. That's really what we talk about the whole
25 time, that's what the turn out was going to be, you know, the

1 terminolgy of how my culture talk is, "turn up," we call it,
2 the turn up. So that's what planning on the whole night,
3 that's what we're gonna do to celebrate my birthday before I
4 leave.

5 Q. So you all were going to go to the Legacy Apartments?

6 A. Right.

7 Q. Legacy Apartments, explain to the jury, is what type of
8 neighborhood? What would you consider it?

9 A. My words, it's the hood.

10 Q. And your plan was then to go there later that night?

11 A. Right.

12 Q. Okay. Alright. So now, what else happens at Delsean's
13 house? After that, you all talk about going there, what else
14 happens?

15 A. I mean, like, like I said, it was just regular
16 bullshittin' around and talkin' and drinking still. We mainly
17 talked about getting these females over there, you know.

18 Q. Alright, I understand that. So you're trying to get the
19 females and then do you all just leave there?

20 A. Yeah, we leave there, but we didn't leave there until
21 around probably about 5:00, so we probably, like, around 4:00
22 or 5:00 we left there and we went to the projects. Now, I'm --

23 Q. Let me back up for a second. Did Delsean ever give you
24 anything at his apartment?

25 A. Yeah, that's what I was about to get to just now.

1 Q. Tell the jury exactly what he give you.

2 A. He gave me -- he did give me a gun. He gave me a gun
3 before we left. We're going to the projects, you know, so it's
4 dangerous around the projects. Everybody know it's dangerous,
5 in any projects you go, it's the projects. We all know this.
6 So he gave me a gun, yeah, I had a gun.

7 Q. And who else had weapons that day?

8 A. We all had -- we all had weapons.

9 Q. And when you say, "we all," tell the jury specifically
10 who all had weapons.

11 A. I had a weapon, for starters, I had a weapon, Ms. Gamble
12 had a weapon, Mr. Jed Coleman had a weapon, and his little
13 brother had a weapon, all of us had a weapon.

14 Q. Now, by this time has anybody talked about doing a
15 robbery or anybody talked about --

16 A. No, see -- never --

17 Q. Let me finish the question. Did anybody talk about
18 doing a robbery or did anybody talk about getting drugs?

19 A. No. That's not the conversation. Everybody -- we know,
20 what, for one, we all know it's illegal to have a weapon, it's
21 super illegal, and in a time of days we're in, it's not rare
22 for anyone to have a weapon, literally a child can have a
23 weapon and it's not we carry weapons because we riding around
24 doing this, we ridin' -- no, it's not that. As you can see, as
25 a situation like this, anything could come to you at any given

1 moment, so it's not to ride around and be, you know -- it's to
2 be prepared for whatever comes your way because that's, that's
3 that's --

4 Q. So just so the jury understands what you're saying, when
5 Delsean gave you a weapon --

6 A. Right.

7 Q. Why did he give it to you?

8 A. Because we're going to an area where things happen to
9 anybody. It can happen to -- not to emphasize on you guys, but
10 it could happen to me, it could happen to her, him, you,
11 whoever, anything can happen to anybody in these projects,
12 it's, it's, it's dangerous.

13 Q. Now, question, do you do Xanax?

14 A. No, sir.

15 Q. And was anybody at the house, at Delsean's house, doing
16 Xanax?

17 A. No, sir.

18 Q. Was anybody talking about Xanax?

19 A. No, sir.

20 MS. RICHARDSON: Your Honor, I'll just object to the
21 leading.

22 THE COURT: Overruled. I'll allow that, that wasn't
23 leading. Go ahead.

24 Q. Now, you all eventually leave the house?

25 A. Right.

1 Q. Where did you go?

2 A. We went to the projects.

3 Q. And tell the jury what projects you're talking about,
4 where this is.

5 A. It's the -- I don't know if you all know the area, I
6 don't know where you're all from, but it's the Georgetown
7 projects. It's the -- you have The Landing projects, you have
8 the, I don't know the name of the projects, the Georgetown
9 projects, I don't know the name of the projects, but it's the
10 projects.

11 Q. Right.

12 A. And my cousin was living there at the time so that's
13 where we went. We pulled up right on Delta Court in front of
14 her house, that's where we went.

15 Q. And what were you all doing at her house?

16 A. Well, eventually I got out the car and went inside my
17 cousin's house to, you know, talk to my cousin, holler at my
18 cousin. I stayed in there probably about five, ten minutes,
19 came back out, came back out, we were back out sitting in the
20 car. You know, everybody hanging in the car, feet out the car,
21 we chillin', we ain't goin' nowhere right now, we about to go
22 somewhere, we're just chillin' for right now, though.

23 Q. Was there any conversation at that point in time about
24 anything?

25 A. No. We still talking about goin' to the party because

1 that's the next place that we're goin' to.

2 Q. And how long did you all stay at those projects area,
3 the Georgetown projects?

4 A. Probably approximately, like, 30, 45 minutes.

5 Q. And then where do you all go from there?

6 A. Well, we got to get dressed now. We got to go change
7 our clothes and do the most of this, so we go to Gamble's
8 house. We pulled up to Gamble's house, we got in the car, she
9 goes in the house, we still outside standing around the car
10 waiting for her to go get dressed, or whatever she's going to
11 do. She stay in there probably about 20, 30 minutes, and you
12 know, we sitting outside waiting for her. We still drinking,
13 still got a little beers, or whatever, and we're ready to go to
14 the party. The next place we're going, we going for Jed and
15 his brother to get dressed, so --

16 Q. So you all continue to drink at that party?

17 A. Right.

18 Q. Or that house?

19 A. Right.

20 Q. Then where do you all go after you left Janena's house?

21 A. We go to Gamble -- I mean, we go to Coleman -- Coleman's
22 house, basically.

23 Q. Now, tell the jury what happens at Coleman's house.

24 A. For starters, we get there, we -- and the thing about
25 it, we passed the Francis Marion Store. Francis Marion Store

1 was never -- we was never -- well, not to my knowledge. I
2 don't know whether we were supposed to ever go there,
3 regardless, so we never went there, we passed that store,
4 because you have to go past that store to get to Green Acres,
5 the Green Acres area, where his mom stayed at the time. So we
6 went there, and I guess they go in the house and get dressed or
7 whatever. Well, one of them go in the house and get dressed,
8 he comes back out beforehand, and I guess his mama says, like,
9 she sent him to the store to get some cigarettes or whatever,
10 so we go to the store, we go to the store.

11 Q. And you go to the store to get the mother the
12 cigarettes?

13 A. Right.

14 Q. And then while you're at the store, what do you all do?
15 Where are you at in the car?

16 A. I'm in the front passenger's seat.

17 Q. Okay. You're in the front passenger's seat?

18 A. Right.

19 Q. Alright. And who is behind you?

20 A. Jayqwane is behind me.

21 Q. Who is driving?

22 A. Janena Gamble.

23 Q. And who is in the backseat?

24 A. Jed.

25 Q. So when you all get to the gas station, tell the jury

1 what happens.

2 A. We get to the gas station, we pull up to the -- if
3 you -- I don't know -- if you're facing Francis Marion, or
4 you -- how is that? I don't -- is it a picture up there or
5 something?

6 Q. This is what's been marked as State's Exhibit 4. Okay?
7 Now, I want you to come down and show them where you all were,
8 if you can.

9 A. Now, this is before it get all dark, or whatever, so it
10 would probably be better if the lighting was better.

11 Q. Just show them where you were.

12 A. We're on this side of the store. We're on this side of
13 the store (indicating.) When we first went to the store we're
14 on this side of the store.

15 Q. Okay. Thank you so much. Now, you said, the first
16 time --

17 A. Right.

18 MR. WILSON: Court's indulgence, Your Honor. I
19 apologize, I have allergies bad, I apologize.

20 Q. So you're at the store on the right side.

21 A. Right.

22 Q. Is that fair?

23 A. Well, facing the store it's the left side, but facing
24 the street it's the right side.

25 Q. So you were at the gas station, and who gets out of the

1 car?

2 A. I believe it was Jayqwane.

3 Q. And who stays in the car?

4 A. Well, we all stay in the car, me, Jed and Gamble.

5 Q. And then how long is Jayqwane gone?

6 A. About five minutes. He run to the store, get the
7 cigarettes, and we leave.

8 Q. Where do you go?

9 A. We go back to his mother's house.

10 Q. And tell the jury what happens when you get back there.
11 Let me finish the question. I know you want to get it out, but
12 you got to take your time. Okay? Tell the jury what happened
13 when you get back.

14 A. Well, we get back and we get in the yard, he get out to
15 take the cigarettes to his mama, and he got the wrong
16 cigarettes. She cursing him about it, going crazy on him, he
17 get the wrong cigarettes, or whatever, so eventually, we have
18 to go back to the store, but before we even go back to the
19 store, we're, like, no -- okay, they go in the house. Well,
20 Jed go in the house. Jayqwane, we in the car -- we got to go
21 back to the store and get these cigarettes for my mom, I got
22 the wrong cigarettes, just arguing about that. So he went back
23 into the house, he stayed in the house for whatever, and I
24 guess while we're sitting there waiting on him to come back out
25 Gamble go in the house and use the bathroom. She said she had

1 to use the bathroom. Like I said, we're drinking all day, so
2 she had to use the bathroom, and she come back out, and they
3 both come back out. When they both come back out, we go back
4 to the store.

5 Q. So Gamble and Jed go in the house and then they come
6 back out later?

7 A. Right.

8 Q. And then you, you all go to the store?

9 A. Right.

10 Q. When you get to the store, what happens? Tell the jury
11 line by line what happens.

12 A. Well, when we get the store, we're coming from the
13 701 -- I think we're comin' -- we're comin' from the 701 side
14 up towards Georgetown, so we pull in through the, I think
15 that's the right, the first entrance on the right. I can't --
16 I know when we pull up we pull up to, like, I think that's the
17 second gas pump facing 701, and we pull up and we pull around,
18 and I know we stopped -- I know a car's at the gas pump, that's
19 normal -- a car's at the gas pump but we're beside the car.
20 It's probably like, this is a car at the gas pump, this is us.
21 So that's how that is, and then we get to the car, they ask me
22 do I want something at the store? Now, at that point, though,
23 at that point, I'm already, you know, I'm drinking, I'm laid
24 back in the -- I'm laid back, I'm chillin' in the car. So they
25 ask me do I want some -- do I want some -- do I want somethin'

1 at the store. So I'm, like, no, I'm good, like, I'm already --
2 I'm buzzing. I'm already -- I'm good, I'm laid back, I'm
3 chillin'.

4 Q. When you say, they ask you if you want something out of
5 the store, tell the jury who "they" is.

6 A. Well, I know -- well, Jed asked me do I want something
7 out of the store and he asked me do I want something out of the
8 store, and I told him, no, I'm good. So I'm already chillin',
9 I'm in the front seat, I'm laid back, I'm chillin'. They get
10 out of the car and I guess they go to the store, I'm not
11 watchin' to see where they're goin', because, like I said, I'm
12 laid back, I'm literally laid back in the car chillin'.

13 Q. By this time did anyone say that you all were going to
14 do a robbery?

15 A. No. I thought they was goin' to the store to take the
16 cigarettes back.

17 Q. Did anyone say to you that we're going to buy some
18 pills?

19 A. No.

20 Q. Now, I want you to tell the jury exactly what happens at
21 that point. How long before they get back?

22 A. Well, probably about five, ten minutes.

23 Q. So based on your --

24 A. I'm wondering, shit, where the hell they went?

25 Q. I understand. But when they get back, how long was it,

- 1 you said about ten minutes?
- 2 A. Yeah, about ten minutes.
- 3 Q. So who gets back in the car first?
- 4 A. Gamble come back in the car first.
- 5 Q. Now, tell the jury exactly what happens.
- 6 A. So like I said, and this is usual for anyone in every
- 7 day life experience even if it's me or you. If you laid back
- 8 in the -- I'm laid back in the car, I'm chillin'. Now, she
- 9 come frantically jump back in the car, so of course, when you
- 10 laid chillin' you're not worried about -- you're not worried
- 11 about anything -- anything -- okay, he's about to go in the
- 12 store, do this, whatever they got to do, come back out. So
- 13 you're layin' back chillin', imagine someone come runnin' back
- 14 to the car and just jump in the car. So now, all of the
- 15 sudden, you're goin, what's going on? But when you realize,
- 16 okay, you're gonna kind of calm down, so she jump back in the
- 17 frantic, and then right, like, it seemed like instantly, like,
- 18 right after that, a man come through the window. Now, this is
- 19 a man I don't know, never seen before, never seen his face
- 20 before and he's jumpin' through the window and he's attacking,
- 21 so --
- 22 Q. One second. So I need you to describe how he's
- 23 attacking her. Tell them what he did to Ms. Gamble and what
- 24 you're seeing.
- 25 A. Well, for starters, that's what I was getting to. He

1 jumped through the window, he's attacking, he probably trying
2 to put his hand around her throat, like, so at this point she's
3 pushing. She's trying to push him, push him off, but I see him
4 grabbing for her gun, so she's grabbing for her gun, as she's
5 she's pushin' and she upped the gun. When she upped the gun
6 he's trying to get to her gun now, because, you know, I would
7 try to get to her gun, too. I'm not trying to get, you know,
8 shot. He's trying to get to her gun and so they tusslin' over
9 the gun. So at that point they tusslin' over the gun. It's,
10 like, it's quick, it happened so fast. They tusslin' over the
11 gun. At that point, and I'm right here in the passenger, so
12 it's, like, it's the driver's seat and the passenger seat, so
13 at that point I'm in direct line of fire and the gun is -- and
14 he's overpowering, I don't care whether she pursues herself to
15 be a man, or a dike, or whatever she may call herself, she is a
16 female at the end of the day. A man is always going to be
17 stronger than a female. He is overpowering her for this gun,
18 and I know, without a doubt in my mind, I know, if he's
19 overpowering for this gun, if he's already aggressing and I
20 don't know the reason why he's attacking her, he's gonna get
21 this gun and he's gonna shoot me. He's gonna shoot everybody
22 in this car, so I shot. I didn't, I didn't shoot three, four,
23 five times, I shot one time and I shot towards the hand that I
24 felt like he was getting the gun out of, which was, I think,
25 probably, his left wrist, probably.

1 Q. And just so the jury's clear, you shot him?

2 A. Right, I shot him, I did, I did.

3 Q. That's alright, let me get the questions out. There's
4 no doubt about it in your mind?

5 A. No doubt.

6 Q. And at the time you shot him were you in fear?

7 A. I was scared for my life, honestly.

8 Q. And at that time when you shot him, was there a way for
9 you to get out of the car?

10 A. No. It happened too fast for me to get out of the car.
11 It happened too fast -- it was really in a matter of seconds.
12 It happened so fast, and I'm not even -- I'm not even thinking
13 this is about to happen. This all happened so fast. Like I
14 said, just, fast, this just happened, it just happened so
15 quick. I don't know, she jumped in the car frantic, he's
16 literally right behind us, I don't know what's going on. I'm
17 clueless to the fact of what's really going on because I don't
18 know nothing. I have no knowledge of nothing, I don't know
19 what's going on. All I know is, this is a man I don't know
20 jumping through this window attacking, he's aggressing, and
21 she's going for her gun so I don't know if she just got into a
22 it with him in the store, I don't know what that hell is going
23 on, and she's going for her gun and they fighting for the gun.
24 Like I said, I'm in direct, I'm right -- I'm literally in the
25 passenger seat. They fighting for the gun, they waving -- and

1 he's overpowering her.

2 Q. Let me ask you this question. Did anyone throw anything
3 in that window before Ms. Gamble got in the car?

4 A. No, no, no, no. Well, I didn't -- I didn't see none of
5 that, and I'm sitting right there, I'm sitting in the passenger
6 seat.

7 Q. Did you see or hear anybody talking about any drugs that
8 day?

9 A. No, no.

10 Q. While you're sitting in the chair or sitting in the
11 seat, did you see anybody, what they were doing?

12 A. No.

13 Q. Was it any concern of yours?

14 A. No. Like, I said, I'm thinking we at the store and they
15 about to go take the cigarettes back, or whatever.

16 Q. Now, this, according to your testimony, was the second
17 time you all been to the store?

18 A. Second time we been to the store.

19 Q. Okay. Alright. And the first time you went there, you
20 all parked nearly in the same spot. Okay? Close to the same
21 spot or not quite?

22 A. Not -- not quite, not quite.

23 Q. And the second time you all came back you all just
24 parked and you were just in the chair?

25 A. Right.

1 Q. Okay. Alright. Now, after the shot, what happened?

2 Tell the jury exactly happened.

3 A. Well, exactly what happened after the shot, I see -- he
4 falls, but I know Ms. Gamble, she -- well, Ms. Janena, she's
5 screaming about her hand or she says she's been shot in her
6 hand, and I'm apologizing, because I'm not apologizing because
7 I feel like -- I'm apologizing because it shot her
8 accidentally, like, I was trying to save myself. I wasn't -- I
9 was trying to save myself, I'm in the line of fire, I'm trying
10 to save myself. So she's hollering and hooting and hollering
11 about her hand, and I'm apologizing, I'm hysterical because
12 that was not -- that's not something I wanted to do, it's
13 something I had to do in order to protect myself, it's not
14 something that I wanted to do.

15 Q. Did you know Mr. Joshua Miller before that day?

16 A. No, I never seen him before in my life.

17 Q. Did you have any animosity toward him?

18 A. No. I don't even know him to have any animosity towards
19 him. I never seen him a day in my life. This is a man that I
20 don't know, never seen, have no reason to want to hate him, or
21 no reason to have animosity towards him.

22 Q. Now, after this happened, how did you feel? Tell the
23 jury how you feel, and be honest. Okay?

24 A. I was really -- I was crying, honestly, I was scared. I
25 didn't know what to do. Like, this is my first time -- this is

1 my first time shooting someone, like, it's crazy. It's,
2 it's -- I'm -- I'm fucked up -- sorry, I don't wanna curse, but
3 I'm messed up about it. Like, this is my first time ever
4 shootin' someone, so I don't know what do, I'm scared, like,
5 I'm scared, like, I'm scared, like, this really just happened.
6 Like, I was really in the line of fire, I really could have
7 lost my life just now, like, and I have to shoot someone in
8 order to not lose my life.

9 Q. And tell the jury, after this happens and you all are
10 there in the car, what do you all do next?

11 A. Well, she's trying to start the car, but I don't know
12 what she's doin', like, I don't know what she's doin', she's
13 tryin' to start the car but the car won't start and she finally
14 get to start the car and once we get the car started we're
15 going back to her house now, we're goin' straight to her house.
16 I know she's -- we're askin' her, like, I'm askin' -- the whole
17 way to her house, I'm asking her the whole time, like, well,
18 what the hell just happened? Like, why did he -- why did he
19 attack you? Like, what's going on? Like: I got to go to the
20 hospital, I got to go to the hospital, I got to go to the
21 hospital. So we all askin' her this, me -- me -- and -- and
22 Jayqwane askin' her this, like, what the hell just happened?
23 Because at this time Jayqwane was in the car with me, too,
24 while they went in the store, so we asked her, what's
25 happening, like, what's goin' on? Nobody never said what's

1 going on, she just kept saying she got to go to the hospital,
2 she got to go to the hospital, she got to go to the hospital.
3 So at that point, that's what we tryin' to do now. So we get
4 to her house, and she's -- she's -- she's frantic-ing, she run
5 and she knock on the door, she get her girlfriend, or whatever,
6 her girlfriend come out there goin', oh, you've been shot, da,
7 da, da, and I told her, I told her girlfriend what happened. I
8 was, like, yo, ask her, she won't tell us. Can you ask her
9 what just happened? Like, find out what just happened to,
10 like, to trigger this whole thing, find out, because she's not
11 sayin' nothing to us. Okay, she, yeah, whatever, but she been
12 shot, she need to go to the hospital, okay, boom, but after
13 that, I see she -- she -- she -- she bleedin'. She get the gun
14 from me, but I get the gun, or whatever, we all put the guns
15 together. Boom. They get the guns, they put it, it's like a
16 deer stand or some shit in the back of her house and they put
17 it on top of the deer stand, they get in the car and they took
18 her to the hospital and I went to my girlfriend's house --
19 well, my girlfriend at the time.

20 Q. So you left her house, and how did you get to your
21 girlfriend's house?

22 A. I walked, I walked.

23 Q. How long was the walk from her house to your
24 girlfriend's house?

25 A. From -- from -- well, the back of Azalea, I think

1 that's -- I don't know what that is, I know it's Church -- I
2 know Church Street is somewhere along those lines, that's the
3 high up end, from Church to Emanuel Street is probably about a
4 ten or 15 minute walk.

5 Q. And then when you get there, what do you do?

6 A. I'm telling her, like, I'm scared as hell. I'm telling
7 her I'm scared. Like, I'm telling her -- honestly, I'm telling
8 her -- this my girl at the time so I'm not gonna hide nothin'
9 from her, I'm telling her I'm scared as hell. Like, I'm
10 telling her what just happened. I don't know what to do, I'm
11 scared as hell. I don't know what to do, I'm scared.

12 Q. And tell the jury when you found out that they or Janena
13 Gamble, or Jed, or whoever you believe, robbed Mr. Miller.

14 A. Well, I found out the next day on the internet, on the
15 web what actually happened and what they -- well, what they
16 published what actually happened, so that's when I really found
17 out, okay, they robbed this man, and now I'm extra damn scared
18 because I just shot this man and I didn't know -- I didn't even
19 know they robbed him, I'm thinking something totally different.

20 Q. So now, where did you go after that? When you were at
21 the girlfriend's house, where did you go after that?

22 A. We left from her house. We went to her sister's house
23 in Maryville, the Maryville Oak Tree Apartments, to watch her
24 sister's kids, and that's where I stayed that night.

25 Q. And after you stayed there you all watching her kids,

1 after you stayed there where did you go?

2 A. The next day, that's when I left, the next day.

3 Q. And --

4 A. It was the next day or -- it was the next day or the day

5 after, that's when I left and went back to Arizona.

6 Q. Tell the jury where you went.

7 A. I went back to Arizona, went home.

8 Q. Now, I want you to tell me this. Now, you were

9 extradited back to South Carolina; is that correct?

10 A. Right.

11 Q. And you waived your extradition?

12 A. I waived extradition willingly, willingly.

13 Q. Now obviously, at some point in time when you found out

14 what happened, tell the jury how you felt about all this.

15 A. I was scared. That's all I could really -- that's all I

16 could really say, I was young at the time. I literally just

17 turned 18 six days before the incident. I just turned 18, so

18 I'm scared as hell for my life. I'm scared, I'm scared,

19 like -- and it's not that I'm scared that -- I don't know,

20 like, I'm just scared of the fact that, will they really

21 believe me? Like, would they really believe that I didn't have

22 nothin' to do with this? I'm a -- I'm a -- I'm a black male

23 and it's hard. Like, this is -- no offense to anyone, but this

24 is a -- this is a white -- this is a white dude that got shot

25 and me being in my culture, it's scary because I don't know if

1 they gonna believe me or not. I don't know if they gonna
2 believe the fact that I really didn't want to do this. I don't
3 know if they're gonna believe the fact that I really didn't
4 wanna shoot him, but I had to because I was in fear for my
5 life. I don't know if they're gonna believe that, so I'm
6 scared, that's what's bothering me the most.

7 Q. Now, you obviously, at some point in time, you know,
8 were arrested, correct?

9 A. Right.

10 Q. And after you were arrested did you ever have a chance
11 to talk with anybody about this?

12 A. No. No one came and questioned me upon extradition.

13 Q. But more importantly, did you ever reach out to anybody
14 and talk to anybody?

15 A. No, I didn't, because I didn't know what to do. Like I
16 said, that was my first time in any situation like that, so I
17 don't know what to do. I don't know, do I reach out to them or
18 do they come talk to me, or how does that work?

19 MR. WILSON: Court's indulgence, Your Honor?

20 THE COURT: Alright.

21 MR. WILSON: No further questions, Your Honor.

22 Please answer any questions that counsel has for you. Okay?

23 THE COURT: Cross-examination?

24

25

1

CROSS-EXAMINATION

2 BY MS. RICHARDSON:

3 Q. Mr. Smith, do you got some nicknames?

4 A. Yes, ma'am, I do.

5 Q. What's your nickname?

6 A. J, J-Five, lot of nicknames.

7 Q. What about Solo Grim, is that a nickname for you?

8 A. Yes, ma'am.

9 Q. And what do you use that name for?

10 A. I rap.

11 Q. Do you write rap songs?

12 A. I'm an artist. I don't -- I write some songs, yeah,
13 it's -- I'm an artist.

14 Q. And you produce those songs?

15 A. No, I don't produce those songs.

16 Q. You publish them on a YouTube channel?

17 A. Not me personally, no.

18 Q. But you do some rap songs?

19 A. Yeah, I'm an artist.

20 Q. And after you got back to South Carolina and were
21 charged, you were out? You were able to get out on bond; is
22 that right?

23 A. Yes, ma'am.

24 Q. And during that time did you produce some rap music?

25 A. Yes, ma'am.

1 Q. Did you write a song or produce and sing a song
2 entitled, "gun powder"?

3 A. I didn't write it, but yes, ma'am.

4 Q. And you participated in that?

5 A. Yes, ma'am.

6 Q. And in that song was the refrain all about murder being
7 sang over and over?

8 A. No, ma'am, it was just simply a work of art. It's
9 entertainment, a work of art, it wasn't -- no, no, ma'am.

10 Q. Was the chorus, "murder"? Was that word in the chorus?

11 MR. WILSON: Objection, Your Honor. Judge, it's
12 irrelevant to what's happened.

13 THE COURT: Overruled, I'll allow it. Go ahead.

14 A. What was the question again?

15 Q. Was the chorus, do you know what a chorus is in a song?

16 A. Yes, ma'am.

17 Q. Was the chorus about murder?

18 A. It's about every day life, it was a work of art.

19 Q. Was the chorus about murder?

20 A. Yes, yes, ma'am, yes, ma'am.

21 Q. Was it also about shooting someone in the face?

22 A. It's not about personally shooting someone in the face,
23 but it's about the life and the culture that I live. What I --
24 what -- what -- what goes on in the culture around my life, my
25 community, yes, ma'am.

1 Q. Okay. There was a line in the song that talked about
2 shooting in the face; is that right?

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

4 Q. Was there also a line in the song about leaving without
5 a trace?

6 A. Yes, ma'am.

7 Q. And there were multiple guns in that video, as well, or
8 gun props, I'll say, gun props?

9 A. Yeah, there was props, yeah, props.

10 Q. Okay. And this was after you were back to South
11 Carolina?

12 A. This was after I was out on bond.

13 Q. And had been charged and was out on bond?

14 A. Yes, ma'am.

15 Q. And this was after you're so upset about having to shoot
16 someone; is that right?

17 A. Well, this is a year after, yes, ma'am.

18 Q. While your charges are pending?

19 A. Yes, ma'am.

20 Q. Were you and your friends also smoking marijuana that
21 day?

22 A. No, ma'am. I don't smoke marijuana.

23 Q. And after you left, after the shooting and you left, did
24 you end up back in Plantersville?

25 A. When?

- 1 Q. Before you went to Arizona.
- 2 A. No. I stayed in Maryville that night.
- 3 Q. But you had been in South Carolina since June, right?
- 4 A. Right.
- 5 Q. Staying with your grandmama?
- 6 A. Right.
- 7 Q. Ford Village Road?
- 8 A. Yes, ma'am, [REDACTED] Ford Village Road, yes, ma'am.
- 9 Q. She's always lived there in that area?
- 10 A. Yes, ma'am, yes, ma'am.
- 11 Q. And Plantersville is on 701 between Georgetown and
- 12 Conway; is that right --
- 13 A. Yes, ma'am.
- 14 Q. -- about halfway?
- 15 A. Yes, ma'am.
- 16 Q. Did you have to go back and get your clothes?
- 17 A. When?
- 18 Q. Before you went back to Arizona?
- 19 A. Well, some of my clothes, yes, ma'am, I did.
- 20 Q. So you had to go back to your grandmama's house and get
- 21 some stuff, didn't you?
- 22 A. Yes, ma'am. That's when I left the next day, yes,
- 23 ma'am.
- 24 Q. And you knew they were looking for you?
- 25 A. No. That didn't come out yet, no, ma'am. But I did

1 know what had just happened, yes, ma'am.

2 Q. It was on the internet?

3 A. Yeah, the next day, yeah, but it wasn't me on the
4 internet, but, yes, ma'am.

5 Q. But there was information about Ms. Gamble on the
6 internet?

7 A. I believe it was Coleman.

8 Q. They were looking for him?

9 A. Yeah.

10 Q. But you knew you were with him?

11 A. Yes, ma'am, I did.

12 Q. And you knew you were the one who fired the shot?

13 A. Yes, ma'am, I did.

14 Q. And you also knew they were looking for Coleman and were
15 gonna charge him with attempted murder?

16 A. Yes, ma'am.

17 Q. And Ms. Gamble?

18 A. Well, I didn't see Ms. Gamble at that point, no, ma'am.

19 Q. And you knew you were the one who fired the shot?

20 A. Yes, ma'am.

21 Q. But you left because you are a black male and went back
22 to Arizona?

23 A. No, not simply because I'm a black male, but because I
24 was scared. I was scared that, would you all believe me?

25 Would anyone believe me? This is a white man who has been shot

1 by a black man. I been seen plenty black men lose their life
2 -- or I done seen -- I know how -- I know how it works. Even
3 before -- before that time, all the way until now, it's still
4 that way.

5 Q. Let me ask you this, what race is Jed Coleman?

6 A. He's black.

7 Q. Jayqwane Coleman?

8 A. Black.

9 Q. Janena Gamble?

10 A. Black.

11 Q. So the heck with them, right?

12 A. No. I believe, if I'm not mistaken, I believe Jed
13 Coleman left, too.

14 Q. Where was Ms. Gamble's gun? Where did she have it on
15 her person?

16 A. When she pulled up she had it in her pocket, her right
17 pocket at that.

18 Q. Pants?

19 A. Yeah, it was like a -- yeah, like, pants or joggers.
20 Maybe -- I don't remember exactly, but I know it was in her
21 right pocket.

22 Q. Where was yours?

23 A. I didn't have a gun right then not yet. I got My gun
24 from Delsean.

25 Q. Okay. Where was your gun when you were sitting at

1 Francis Marion?

2 A. Oh, on the side of the door, on the right passenger side
3 of the door.

4 Q. In the door pocket?

5 A. Yes, ma'am.

6 Q. And no question you all were pulled up right beside the
7 white car that the other guys came out of?

8 A. Not directly beside it, but pretty fair, like couple
9 feet away, probably, approximately, just like -- just like
10 that.

11 Q. And it had been raining?

12 A. Drizzling, maybe, yeah, drizzling.

13 Q. And the window was down?

14 A. No, not all the way down.

15 Q. Part of the way down?

16 A. Probably about that much -- no, probably about that much
17 down (indicating.) Enough for him to get through the window.

18 Q. And who was your girlfriend at the time?

19 A. Her name was Ellen.

20 Q. And do you also have a girlfriend in Arizona?

21 A. Not a girlfriend, but someone that I do deal with.

22 Q. And then you were going to see some more girls out at
23 Legacy in Conway?

24 A. Yeah.

25 Q. And so when you got back to Arizona, when do you think

1 you got back to Arizona, still in October?

2 A. Yes, ma'am.

3 Q. Just a few days later?

4 A. Yes, ma'am.

5 Q. How did you get back?

6 A. I drove. Well, not me personally, but me and my cousin.

7 Q. Which cousin?

8 A. His name is Dravon.

9 Q. Dravon?

10 A. Uh-huh.

11 Q. Drove you back?

12 A. Yeah, him, his two sons and his wife, or his fiancé.

13 Q. How long did it take you to get out there?

14 A. It's 35 hours from South Carolina to Arizona.

15 Q. Did you drive out there when you went to see your
16 grandmama or did you fly?

17 A. Well, I caught a bus --

18 Q. In June?

19 A. I caught a bus -- I had a bus ticket from Arizona to
20 Monroe, Louisiana, and we drove the rest of the way. My
21 family -- my cousin met me in Louisiana. We drove from Monroe,
22 Louisiana to South Carolina.

23 Q. But after this shooting they drove you back 35 hours?

24 A. Yes, ma'am, but it was already planned that. Before
25 this day even came about I was already supposed to be going

1 back home, yes, ma'am.

2 Q. And did you talk with some of your friends back in
3 Plantersville?

4 A. Yes, ma'am.

5 Q. Dante Scott?

6 A. I don't believe I talked to him. I talked with De'Monte
7 Wright, though.

8 Q. Did you ask to use his phone?

9 A. No. I used Dante's phone days prior of the shooting.
10 It's a log on my Facebook, and anybody with a Facebook knows
11 that if you get onto Facebook and you don't hit -- don't
12 remember a password, they can always log back into your
13 Facebook at any given time.

14 Q. But did you continue to communicate with your grandmama
15 after you got back to Arizona?

16 A. She -- they're the one that called me and let me know
17 that I needed to turn myself in.

18 Q. So at some point in October you still knew they were
19 looking for you, right?

20 A. Right.

21 Q. And did you turn yourself in?

22 A. I had no way to. I mean, like I said, at that point I
23 was just turning 18. I got no -- I don't got no -- no -- no
24 job, and I can't help that I come from a family that's a
25 impoverished family. They can help me if they can, but if they

1 can't, they can't, and at that time, I'm grown, I got to fend
2 for myself, so I don't got no funds to get back. I don't have
3 no way to get back. I'm trying everything I can to get back,
4 but I don't know -- at that point, I don't know if you can just
5 call the police and be, like, oh, come get me and take me back
6 to Georgetown for free.

7 Q. But you were living with your mama?

8 A. Right, but -- on and off, yeah, I was living with my
9 girlfriend, too, like, back and forth.

10 Q. But you knew they were looking for you?

11 A. Right. After my grandma called me and said, yeah, you
12 need to turn yourself in.

13 Q. So that was October of 2018, right?

14 A. Probably about the end of October, yeah.

15 Q. You're back in Arizona living your life the rest of
16 October?

17 A. Not living my life, I'm still worried, I'm worried.

18 Q. You're in Arizona through October, right?

19 A. Right.

20 Q. You don't contact anybody or anything like that?

21 A. Right.

22 Q. November?

23 A. Right.

24 Q. December?

25 A. Right.

1 Q. Had you a nice Christmas?

2 A. No, I was still -- I was worried still, still scared the
3 whole time.

4 Q. And in January? In January of 2019, you're still in
5 Arizona, right?

6 A. Well, I got arrested in January, 2019, and that's when I
7 finally had got my first offer to have a free ride back to
8 South Carolina to deal with this, and I willingly signed. As
9 soon as my case was over there, I willingly signed to come
10 back. Now, I had the option. There was two options. It was
11 either you willingly sign or you don't sign, and you, it's
12 called an extradition. When you sign you have 30 days for them
13 to come get you. Right? When you don't sign it's 90 days. So
14 when you don't sign it's like, oh, I'm not goin' down there,
15 they're gonna have to come get me, but when you sign it's,
16 okay, yeah, I want to see what's going on with this. I want to
17 sign and see what's going on. This is my first free ride back
18 so, okay, I'll do that. There's no way I wouldn't, because
19 that's what I'm trying to do anyway, I'm trying to get the
20 funds to get back there anyway. So the first free ride I had
21 back, I took that.

22 Q. Okay.

23 A. Yes, ma'am.

24 Q. And so you kept following the story on the internet and
25 getting updates?

1 A. No, ma'am, not really, no.

2 Q. But you knew Jed had been arrested?

3 A. Eventually.

4 Q. He was arrested in December, right?

5 A. I don't recall exactly when, but I recall he was
6 arrested, though.

7 Q. And your family back, you have lots of family back here
8 in Georgetown, they were probably talking with you, too, right?

9 A. No. But like I said, my grandma told me I need to come
10 turn myself in. We trying everything, we asking family -- we
11 asking family members, we asking friends, we asking girlfriends
12 for the funds to get back. I can't help that they can't help
13 me, I can't do nothin' about that, not because they don't wanna
14 help me, but because we don't have the -- we don't have the
15 money.

16 Q. So on January 29, 2019 you are arrested in Arizona?

17 A. Yes, ma'am.

18 Q. And you said domestic violence, right?

19 A. Yes, ma'am.

20 Q. It was actually aggravated domestic violence, right?

21 A. Well, I don't -- I don't remember exactly what it was,
22 but I do remember that, I pled guilty to it.

23 Q. And it was a felony?

24 A. Like a felony, yes, ma'am.

25 Q. And you were also charged with, you said, disorder

1 conduct, right?

2 A. Right.

3 Q. But it was disorderly conduct involving a weapon; is
4 that right?

5 A. Yes, ma'am, I said that, yes, ma'am.

6 Q. Okay. Involving a gun?

7 A. I shot two times in the air, allegedly.

8 Q. And it's also a felony?

9 A. Yes, ma'am.

10 Q. And in that case your girlfriend out there told the
11 police you had threatened to kill her; is that right?

12 A. No, ma'am.

13 Q. And you were -- you all had an argument and you had
14 assaulted her and left and shot the gun in the air; is that
15 right?

16 A. Yeah, that's -- that's allegedly what happened, yes,
17 ma'am.

18 Q. Well, you pled guilty to it, right?

19 A. Yeah, yeah, yeah.

20 Q. Okay. You pled guilty to assaulting your girlfriend,
21 felony level, right?

22 A. Well, impeding the breath, what does that mean?

23 Q. Impeding the breath?

24 A. Yeah, what's that mean? I don't know exactly what it
25 means, that's why I'm asking.

1 Q. But you pled guilty to assaulting her?

2 A. Yes, ma'am. Well, impeding airway, whatever that means,
3 yes, ma'am.

4 Q. You know what an airway is?

5 A. Yeah, but I'm trying to -- I don't know exactly what it
6 means. I was asking you.

7 Q. Well, I can't answer your questions. I ask you the
8 questions.

9 A. Yes, ma'am, I understand, I understand.

10 Q. I understand what you're saying, I'm not being rude, but
11 that's not allowed. Okay?

12 A. Yes, ma'am.

13 Q. Alright. So you pled guilty to that and to having that
14 gun?

15 A. To having that gun? I pled --

16 Q. To disorderly conduct --

17 A. -- to disorderly conduct.

18 Q. -- involving a gun?

19 A. Yeah. I pled guilty to disorderly conduct and to
20 domestic violence.

21 Q. And you had just shot somebody in October and this is in
22 January?

23 A. Right.

24 Q. And you're already using a gun again?

25 A. I'm scared.

1 Q. Of your girlfriend?

2 A. No, I'm scared of anything, not just of my girlfriend,
3 you got anything could happen anywhere you go. Just like this
4 situation, I wasn't prepared for this to happen and I didn't
5 want this to happen, it can happen anywhere else the same exact
6 way. I'm not prepared for this to happen, I don't want this to
7 happen, but it happened, and this could happen the same exact
8 way anywhere you go. It don't matter where you go. You can
9 go -- you can go to -- you can go to New Zealand, you can go to
10 across the country, anywhere you go, anything is bound to
11 happen, you cannot stop what God has planned.

12 Q. Oh, so God planned this drug transaction and God planned
13 for you to be caught with a gun on your side, did God plan
14 that?

15 A. I didn't know about a drug transaction, I didn't know
16 about a robbery, but what I am saying is God plans everything.
17 God knows what's gonna happen before it happens, and I'm a
18 strong believer in God.

19 Q. Do you also believe in freewill, that God lets us make
20 our choices?

21 A. Well, I guess, yeah.

22 Q. So you can choose to follow God or to follow the other;
23 is that right?

24 A. And I follow God.

25 Q. Now, no question you were, like you said, you were 18

1 years old?

2 A. I just turned 18.

3 Q. And you had been drinking all day?

4 A. Right.

5 Q. Apparently drinking some Corona?

6 A. Corona, liquor, a little bit of everything.

7 Q. And you hadn't been 18 long enough -- well, you weren't
8 even 21. You couldn't have a concealed weapons permit?

9 A. No, ma'am.

10 Q. So you've already admitted that the gun on your side was
11 illegal?

12 A. Yes, ma'am.

13 Q. And you already knew that you were going to places where
14 there was going to be, or could be some trouble?

15 A. Yes, ma'am.

16 Q. And you're drunk or buzzed or ready for it; is that
17 right?

18 A. Not drunk, but I'm prepared for whatever happens
19 because, like I said, we're going to the hood. Anybody --
20 well, I don't know if you would understand, but anybody of my
21 culture would understand. They would understand. You goin' to
22 the middle of the hood. Anybody from of my culture would
23 understand that, I don't know if you will understand, though,
24 but, and quite frankly, some people your race do understand,
25 though. Some people do understand.

1 Q. Yeah. And you do realize I work in the prosecutor's
2 office in Georgetown County?

3 A. Yes, ma'am, so that's why I'm saying, I don't know if
4 you would understand anything about the hood.

5 Q. But you made the choice to go to the hood, you didn't
6 have to go to the hood?

7 A. I didn't make the choice. I was just, like, okay, I'll
8 go.

9 Q. Okay. And no question you were supposed to go to the
10 party and meet Delsean there?

11 A. No. We was already together. This was all -- this was
12 all planned, this was all, we were going to the party.

13 Q. But Delsean wasn't in your car?

14 A. No. He wasn't in my car, but we was at his house. We
15 was at his house.

16 Q. But he wasn't in your car --

17 A. No.

18 Q. -- when you're all driving around apparently taking two
19 or three trips to Francis Marion to get cigarettes?

20 A. No. It was two trips, and no, he was not in my car.

21 Q. And who went in the store to get the cigarettes the
22 second time?

23 A. I believe either -- I believe Jed, the second time,
24 because he asked me did I want something at the store.

25 Q. But you didn't get nothin' at the store?

1 A. I told him no.

2 Q. And so you've been out of jail?

3 A. Yes, ma'am.

4 Q. And today is the first time that you've tried to say
5 that Ms. Gamble was attacked by Mr. Miller?

6 A. Yes, ma'am, because, like I said, at the time I didn't
7 know what to do. I didn't know whether someone comes to me,
8 and I'm gonna say this, too, once I arrived to jail, it was
9 brought to me that someone -- well, even in my motion I was
10 showed that someone came and questioned Coleman when he arrived
11 from extradition, so I'm thinking same thing for me. I don't
12 know that I reach out to him and be like, oh, can you come see
13 me? I don't know what to do. So I'm just automatically
14 thinkin' -- I'm thinkin', if they question' him, they gonna
15 come and talk to me, too, and I can tell them what actually
16 happened, and I then got a lawyer, and once I got a lawyer, it
17 was a wrap, he didn't want me to do that, so.

18 Q. And of course, all of this happened back in 2018?

19 A. Yes, ma'am.

20 Q. But no question whatsoever you shot him?

21 A. No question, no question.

22 Q. And you aimed at him and pulled the trigger?

23 A. I aimed at his arm to where he was fighting for the gun,
24 the arm, that that's where I aimed at the arm that he was going
25 to get the gun with, yes, ma'am.

1 Q. And you knew you had hit him in the face and neck area?

2 A. No, I didn't know exactly where I hit him. Like I said,
3 I was aiming for that arm where that gun was. I'm not worrying
4 about where it hit him, I'm aiming for this gun, I'm worrying
5 about this gun, I'm worried about losing my life. I'm not
6 worried about anything else. I'm not worried about harming
7 him. It was not -- I didn't want to harm him. I didn't want
8 to do nothin' to him. I didn't want that to happen. I was
9 literally scared for my life. I didn't want to die or I didn't
10 want to be shot.

11 Q. And we can agree that if he died your charge would have
12 been murder?

13 A. I mean, supposedly, supposedly.

14 Q. Just like that song you made in 2019 after you got out
15 of jail?

16 MR. WILSON: Objection, Your Honor.

17 THE DEFENDANT: It wasn't --

18 MR. WILSON: Objection, Judge. He's not charged with
19 murder.

20 MS. RICHARDSON: I know.

21 MR. WILSON: This man didn't pass away, Your Honor.
22 I'd like it stricken from the record, Judge.

23 THE COURT: Overruled. I'll allow it.

24 A. What was the question, ma'am?

25 Q. If he would have died you could have been looking at

1 murder, right?

2 A. I could have been.

3 MR. WILSON: Objection, Judge --

4 THE COURT: Overruled.

5 MR. WILSON: Thank you, Your Honor.

6 BY MS. RICHARDSON:

7 Q. Just like the song you made while you were out on bond?

8 A. Yes, ma'am.

9 MS. RICHARDSON: No further questions.

10 THE COURT: Redirect?

11 MR. WILSON: Briefly, Judge.

12 REDIRECT EXAMINATION

13 BY MR. WILSON:

14 Q. Where you did you grow up at? Did you grow up in a rich
15 lavished lifestyle?

16 A. No, sir, I grew up in poverty.

17 Q. Have you ever been shot before?

18 A. Yes, sir, I was.

19 MS. RICHARDSON: Your Honor, object. We had a
20 pre-trial motion on this.

21 MR. WILSON: She opened the door. Your Honor, she
22 opened the door. Would you like to discuss out of presence?

23 THE COURT: No. Overruled -- I mean, I'll sustain her
24 objection.

25 Q. Where did you grow up?

1 A. I grew up in Plantersville.

2 Q. Did you grow up in a lavished estate?

3 A. No, sir.

4 Q. What sort of culture did you grow up in?

5 A. I grew up around danger, violence. I grew up around
6 everything, like, everything. I seen -- I've seen -- I've seen
7 everything. My eyes seen everything at a young age.

8 MS. RICHARDSON: Your Honor, I object to the
9 question, this was already addressed on direct. It's not
10 proper for redirect.

11 THE COURT: I'm going to allow him a little bit of
12 leeway.

13 MR. WILSON: Last question.

14 Q. Is this something you wanted to do?

15 A. I did not want to do this. I had no reason to want to
16 do this. I have no motive, there's no motive. I didn't know
17 what happened. I didn't know that they -- I didn't know that
18 they just took something from this man. Had I known what
19 happened, had I known what they just done, had I known the
20 reason why he was aggressing, then I know if I would have shot
21 him I was wrong. I'm 21-year-old years old with a whole lot of
22 life ahead of me. I would not be here today risking my whole
23 life of being in prison for the rest of my life for something I
24 know I did not want to do. I have my family sitting here. I
25 don't want to induce the pain of them seeing me go to jail for

1 the rest of my life!

2 MS. RICHARDSON: Your Honor, I object to any
3 reference to the penalty, especially when it's incorrect.

4 THE COURT: I sustain that.

5 MR. WILSON: No further questions, Your Honor.

6 THE COURT: You may step down. Defense can call your
7 next witness.

8 MR. WILSON: Your Honor, this might be a good time to
9 break for lunch maybe. We have one more witness coming from
10 Tideland Health to put the medical records in, Judge.

11 THE COURT: Ladies and gentlemen, we'll go ahead and
12 break for lunch. I ask that you please be back at 1:15.

13 MR. WILSON: I apologize, Judge. She's actually
14 here, Your Honor.

15 THE COURT: So are you ready to call the witness?

16 MR. WILSON: I'm ready to call the witness, Judge.

17 THE COURT: Alright. Then just scratch everything I
18 just said about lunch. You can call your next witness.

19 MS. RICHARDSON: Your Honor, can we approach?

20 THE COURT: Yes.

21 (Off the record discussion was had at the bench by
22 Court and counsel.)

23 MR. WILSON: Your Honor, for the record, I know Your
24 Honor has obviously sustained the objection the State has
25 putting the Tideland Health records in --

1 MS. RICHARDSON: Your Honor, if he's going to go into
2 what we went into at the bench, I think that's improper in
3 front of the jury, and they need to be out if they're going to
4 hear --

5 THE COURT: I'll let you put it on record, but it's
6 inadmissible, it's hearsay. The person who made the statements
7 is not here to be cross-examined on that issue. That's why
8 it's inadmissible.

9 MR. WILSON: I understand, Judge. I just wanted to
10 point out for the record.

11 THE COURT: Well, we'll do that in just a minute.
12 Ladies and gentlemen, we're going to go ahead and break for
13 lunch. I think you can tell, I just sustained an objection to
14 some information that was contained in some records that
15 constitutes hearsay testimony. Under the law, the person who
16 made the statement has to be here, subject themselves to
17 cross-examination, that's just the rule of evidence. So we're
18 going to go ahead and break for lunch. I'm going to give you
19 until 1:30. Do not discuss the case even among yourselves.
20 Don't conduct any independent investigation. We'll break until
21 1:30 and then we'll come back at that time. Thank you very
22 much.

23 (Jury exited the courtroom at 11:49 a.m.)

24 THE COURT: Mr. Wilson, do you want to put something
25 on the record?

1 MR. WILSON: Yes, Your Honor. I want to put on the
2 record that we have available here as a witness, obviously, I'm
3 aware she's not on the witness list, but it's obviously, you
4 know, contrary to any evidence that came in on the record to
5 suggest that this statement didn't happen, and this, obviously,
6 the wound or the contusion that was on his chest that the
7 State's doctor testified about, obviously, causes of a concern.
8 The representative is here. Her name is Ms. Sharena Williams
9 from Tideland Health to put those records in. I know Your
10 Honor sustained the objection, but I do want to put on the
11 record that that is very key to our case, and I think it is a
12 hearsay exception. A hearsay exception is records kept in the
13 ordinary course of business at Tideland Health. I'm not
14 asking that she read in the records, I was just asking that the
15 medical records, which are part of the medical records which
16 are already in evidence from MUSC because he was referred by
17 Dr. Johnson to MUSC, same issues related to the wounds that the
18 State was allowed to introduce through their witness, and I
19 understand that the witness is not here, and I understand Your
20 Honor's ruling, but this particular witness, Dr. Johnson, is no
21 longer in the State, defense could not get him here, and we
22 have Ms. Williams who is here prepared to testify and the Court
23 is choosing not to allow that. I'm just asking that we be
24 allowed to do it, if we can't then I preserve the objection,
25 Judge.

1 THE COURT: Alright. As I understand, what you want
2 the Dr. Johnson, purportedly, put in -- that Dr. Johnson
3 treated Joshua Miller?

4 MR. WILSON: That's correct, Your Honor.

5 THE COURT: Supposedly Joshua Miller made some
6 statements to Dr. Johnson that he put in the medical records?

7 MR. WILSON: That's correct.

8 THE COURT: And you want to introduce the medical
9 records into evidence without having Dr. Johnson here?

10 MR. WILSON: Absolutely.

11 THE COURT: Okay. Alright. That's hearsay. I
12 understand the business records exception --

13 MR. WILSON: Understood.

14 THE COURT: -- but still, if Dr. Johnson is not
15 here -- Joshua Miller is not on trial, so it can't be a
16 statement against interest, and you're using it to attack
17 his -- what he's saying.

18 MR. WILSON: But, Judge, he did get on the stand and
19 he did make a statement that was contrary to what was in those
20 medical records, and again --

21 THE COURT: But you questioned him on that.

22 MR. WILSON: I did question him on that, Your Honor.

23 THE COURT: I think that's all you can do. I don't
24 know that you can get the medical records in.

25 MR. WILSON: I think that when they put in the

1 medical records which go to MUSC to Tideland, when they do
2 that, they open up the door to allow me to put those records
3 in. Now, I'm not saying the records are going to have to be
4 read and that the jury can go through whatever they want to,
5 but I think it's still part and partial, the treatment that
6 Joshua Miller received and absolutely goes to the wounds that
7 he received and, obviously, his statements to the doctor were
8 important. They still questioned him at MUSC, as well.

9 THE COURT: Yeah, but I mean, you're wanting to put
10 the medical records in so that the jury -- so there's evidence
11 in front of the jury that according to the medical records Dr.
12 Johnson said Joshua Miller told him that he was hit in the
13 chest, or whatever the case may be.

14 MR. WILSON: Among other things, he also said that he
15 was shot, so I mean, there's tons of stuff in there.

16 THE COURT: Alright, I'm still, I'm not going to
17 allow that without Dr. Johnson being here.

18 MR. WILSON: Okay.

19 MS. RICHARDSON: And just for the record, we didn't
20 actually introduce any medical records from MUSC, and the
21 doctor talked about his treatment, and second of all, we would
22 want to cross-examine Dr. Johnson regarding those statements
23 and some inaccuracies that were also in the record.

24 THE COURT: I understand. Well, I've sustained the
25 State's objection. Anything from the State before we break for

1 lunch?

2 MS. RICHARDSON: Your Honor, if it appears that the
3 defendant is going to rest, I think --

4 THE COURT: Well, I was getting ready to do that.
5 Maybe I should have done that first. Are you all going to rest
6 on the record or do you got anybody else you're going to call
7 to testify?

8 MR. WILSON: Judge, if we could have until after
9 lunch to make that decision, I may have one other witness that
10 I might call, but I'm not certain.

11 THE COURT: Okay. If you got any reply or rebuttal,
12 go ahead and get them here for after lunch, just in case they
13 don't put anything up, or even if they do, if it doesn't take
14 the rest of the day, if you've got any reply. And I don't know
15 if you do or if you don't, but I'll let you decide whether or
16 not you're going to call anymore witnesses after lunch, and
17 then let I'll let you decide what, if any, rebuttal case you
18 want to present. Okay?

19 MS. RICHARDSON: And Your Honor, when would you like
20 proposed charges, or can we start to talk about the jury
21 charge?

22 THE COURT: You can go ahead and send those to me
23 whenever you want.

24 MS. RICHARDSON: Okay.

25 THE COURT: Anything further from the defense before

1 we break for lunch?

2 MR. WILSON: Nothing further, Your Honor.

3 THE COURT: Anything further from the State?

4 MS. RICHARDSON: No, Your Honor.

5 THE COURT: We'll be in recess until 1:30.

6 (Lunch recess taken at 11:58 a.m.)

7 THE COURT: Do you all have another witness you're
8 going to call?

9 MR. WILSON: We're going to rest, Judge.

10 THE COURT: You're all going to rest on the record.
11 Do you all have anything in reply?

12 MS. RICHARDSON: No, Your Honor.

13 THE COURT: Okay. So the only thing left, and you
14 rest on the record, no reply, closing arguments, jury charges
15 and deliberations. I've been working on charges. Things kind
16 of ended quickly here today. I'm assuming you all want to
17 argue right before I charge, correct?

18 MR. WILSON: Preferably, Judge.

19 MS. RICHARDSON: Yes, Your Honor, but we'd like to
20 know what the charges are --

21 THE COURT: Exactly, and that's why I'm wondering if
22 we want to just excuse the jury for the remainder of the day,
23 come back tomorrow morning and do closing arguments, charges
24 and deliberations.

25 MS. RICHARDSON: I'd prefer to go forward today, Your

1 Honor.

2 THE COURT: Okay. Well, I'm not going to charge the
3 jury after 4:00, so we'll go ahead, rest on the record, no
4 rebuttal. I'll send them back out, I'll go back, when I get
5 the charges I'll let you all take a look at the charges and
6 we'll go from there and see how far we go. It might be closing
7 arguments today, and then we'll see, but if we want to go ahead
8 and go through today.

9 MR. WILSON: Judge, I apologize, Your Honor, I didn't
10 mean to interrupt you, I apologize.

11 THE COURT: That's alright.

12 MR. WILSON: I would rather have the closing
13 arguments right before Your Honor gives that charge to the
14 jury. It's extremely important they understand and they tie
15 the connection between, not just what I'm saying, but also what
16 the State is saying, as well, but that's going to be,
17 obviously, pivotal, and I think that the punch of the closing
18 arguments for the defendant in this case, which is important,
19 is going to be lost in the nighttime. And obviously, I know
20 that the State gets to go after us because we, obviously, put
21 up evidence.

22 THE COURT: Well, the way it goes the, as I
23 understand, is the State has to close in full.

24 MR. WILSON: That's right.

25 THE COURT: Then you close closing arguments in full.

1 MR. WILSON: Yes, Your Honor.

2 THE COURT: Then if the State has any matters that
3 you address in your closing argument that they have not already
4 addressed in their closing arguments, then they are afforded a
5 brief reply only as to those issues --

6 MR. WILSON: Yes, Your Honor.

7 THE COURT: -- is the way I understand the law now.
8 So we'll just see. I mean, we'll just see how far we get
9 today. Okay?

10 MR. WILSON: Yes, Your Honor.

11 THE COURT: Anything from the State before we bring
12 the jury in?

13 MS. RICHARDSON: No, Your Honor.

14 THE COURT: Anything from the defense?

15 MR. WILSON: No, Judge.

16 THE COURT: Let's go ahead and bring the jury in.

17 (Jury entered the courtroom at 1:41 p.m.)

18 THE COURT: Ladies and gentlemen, welcome back.

19 We're ready to resume the trial of the case. Defense can call
20 your next witness.

21 MR. WILSON: Your Honor, defense would rest at this
22 time, Judge.

23 THE COURT: Ladies and gentlemen, the defense has
24 rested their case. Does the state have anything in reply?

25 MS. RICHARDSON: No, Your Honor.

1 THE COURT: The State does not have anything in reply
2 so the only thing we have remaining to do in the trial of this
3 case are the closing arguments next, the closing arguments by
4 the attorneys, and then a charge on the law by the Court before
5 you begin your deliberations. It's going take us a while to
6 get these closing charges together. We have to have a
7 conference with the attorneys to go over everything before they
8 make their closing arguments and so we're going to take a
9 pretty good break right now. I hate to bring you back in, but
10 the attorneys had some shifting here during the lunch break,
11 that kind of shortened things, and that's not uncommon, but I
12 am going to excuse you back the jury room, we're going to have
13 a nice long break, and then I'll bring you back in as soon as
14 we are ready to go into closing arguments and jury charges.
15 Thank you very much. Again, do not discuss the case. It's
16 still too early for deliberations.

17 (Jury exited the courtroom at 1:43 p.m.)

18 THE COURT: Rather than sending the jury out and
19 bringing them back between you closing and you said there's no
20 reply, are there any motions now that -- we'll treat this as
21 though if there's any motions at the close of the defendant's
22 case. Any motions at this time?

23 MR. WILSON: Judge, we just renew our motion for a
24 directed verdict, Your Honor. We'll rest on the cases that the
25 defense put in earlier, Langley; State versus Austin and State

Charge Conference

1 versus Woomer, Your Honor. Thank you, Judge.

2 THE COURT: Alright. I'm going to stick by my prior
3 rulings on those.

4 MR. WILSON: Yes, Your Honor.

5 THE COURT: Anything from the State?

6 MS. RICHARDSON: No, Your Honor.

7 THE COURT: Prior to that, I've got some charges. I
8 was going to charge attempted murder, I was going to charge
9 assault and battery of a high and aggravated nature as a lesser
10 included, then I was also going to charge the armed robbery and
11 the conspiracy. Anything else from anybody else that they
12 think needs to be included?

13 MS. RICHARDSON: The State is requesting an attempted
14 armed robbery charge as a lesser included.

15 THE COURT: Attempted armed robbery?

16 MS. RICHARDSON: Since there is evidence that the
17 pills of property that was stolen, a lot of it was on the
18 ground. The jury could find that they weren't taken away.

19 THE COURT: Alright.

20 MS. ANDERSON: Your Honor, we would object to that
21 jury charge. Your Honor, previously it was the State's
22 position that the pills were taken. The testimony has been
23 that they were taken and the allegation's been that Joshua
24 Miller was actually robbed of the possessions. There's been no
25 allegation that it was an attempted armed robbery.

1 THE COURT: Well, being the fact that they argue that
2 they were there on the ground, I'll charge attempted armed
3 robbery. Alright? Anything else from the State?

4 MS. RICHARDSON: The State sent an e-mail to Your
5 Honor, as well as copied the defense attorneys, we are asking
6 for a hand of one is the hand of all charge.

7 THE COURT: I've got that in there.

8 MS. RICHARDSON: Also, the circumstantial evidence
9 charge. There is a -- and I don't know if Your Honor uses the
10 one from the bench book, but we're asking for the modification
11 of that charge that was proposed by State v. Herndon in 2020.

12 THE COURT: I've got that where it says: All
13 circumstances must point conclusively. I've deleted the "all,"
14 and it just says: If the State relies on circumstantial
15 evidence then the circumstances must --

16 MS. RICHARDSON: And Your Honor, the State has also
17 requested a charge be added to the armed robbery charge
18 pursuant to the State v. Mitchell, and in State v. Mitchell,
19 the case does indicate that these charges were given to the
20 jury. We are requesting that it be added to the typical armed
21 robbery charge, that a person may be convicted of armed robbery
22 if he arms himself at any time during the commission of the
23 larceny and the crime of robbery is not completed the moment
24 the stolen property is in the possession but may be deemed to
25 continue during their attempt to escape.

1 THE COURT: What's the defense's position?

2 MR. WILSON: Judge, obviously, you know, we had this
3 argument before. These cases are regarding perps, not
4 regarding someone that they are alleging was not the actual
5 perpetrator. So I would, obviously, strenuously object to
6 adding that part of the charge, I believe it is an attempt to
7 take the case law from a case where a person is a perp and then
8 to try to treat him as if he is an actual actor in the actual
9 robbery itself. That is not the case, and not the facts here
10 that are congruent with that particular case, Judge.

11 THE COURT: I note your objection, but I am going to
12 include it, but not exactly as submitted by the State. This is
13 how I've gotten armed robbery, and I'll give this to you in
14 written form. It says: Finally, the State must prove beyond a
15 reasonable doubt that the defendant was armed with a deadly
16 weapon at any time during the commission of the robbery.
17 That's how I put it in there. And then I have added the final,
18 the crime of armed robbery is not completed the moment the
19 stolen property is taken that may deemed to continue during the
20 robber's escape, so I've added that in there. But I note your
21 objection, but I'll overrule the objection, I'm going to leave
22 it in as I have there. Anything else from the State?

23 MS. RICHARDSON: No, Your Honor.

24 THE COURT: Anything from the defense?

25 MS. ANDERSON: Yes, Your Honor. We did also send you

1 over proposed jury charges, as well, Your Honor.

2 THE COURT: Let me see. Okay. I didn't have those
3 when I came in. Where did you get these charges? I mean, I'm
4 going straight from the charge book and I think I've gotten
5 most -- I mean -- okay, this is what I wanted to talk to you
6 about. I see in here. The charge of self defense in defense
7 of others. This is where I kind of struggle with this and I
8 wanted to the get input from you all. For the defense of
9 others to be applicable, then the person being defendant has to
10 be without fault in bringing on the difficulty. Now, the State
11 has to disprove self defense, but the only evidence presented
12 in this case that I have seen is that, and I can't remember the
13 name of the driver of the vehicle that the defendant was in,
14 was at fault in bringing on the difficulty?

15 MR. WILSON: Your Honor, that's correct, but Jayqwane
16 Coleman was in the backseat and he did not bring on anything
17 and there were no charges filed against him. As a matter of
18 fact, during the actual case in trial this came up that he was
19 innocent. This came out through the actual stand.

20 THE COURT: Yeah, but I mean, the defendant's
21 testimony, and the defendant doesn't have to prove anything --

22 MR. WILSON: I agree.

23 THE COURT: But the self defense was that Joshua
24 Miller was in a tussle with the driver of the vehicle while the
25 driver of the vehicle appeared to be going for her gun to

1 defend herself.

2 MR. WILSON: That's right.

3 THE COURT: But she was at fault in bringing on the
4 difficulty which means that you can't defend --

5 MR. WILSON: No, no, no, I'm not suggesting that this
6 defendant is saying he was defending her. He claimed on the
7 stand that his life was in danger, he was defending himself,
8 and in that car as well was Jayqwane Coleman who was not at
9 fault, and he didn't start any trouble.

10 THE COURT: I see. What's the State's position?

11 MS. RICHARDSON: Your Honor, he never testified that
12 he was protecting anybody but himself, and so that's the only
13 evidence that we have. He didn't indicate he was trying to
14 protect Jayqwane or anybody else or that he was even protecting
15 Ms. Gamble. He said he was afraid that if he got the gun from
16 Ms. Gamble that Mr. Miller would kill him.

17 THE COURT: Okay. Well, it's not in defense of
18 others, it's a self defense against him. Okay.

19 MS. RICHARDSON: That's my understanding of the
20 testimony and there was nothing about trying to protect
21 Jayqwane.

22 MR. WILSON: I mean, I think the Court has, and the
23 prosecution, has gone through great lengths to talk about
24 inferences and the jury can infer from this evidence that
25 Jayqwane Coleman was in the car. They can infer that he was an

1 innocent party. He's not charged. How can the State have it
2 one way with the inferences and then the defense is asking the
3 Court to allow --

4 THE COURT: Well, I mean, I guess the defense is, are
5 you saying he was in defense of others or he was in defense of
6 himself?

7 MR. WILSON: I'm saying he was in defense of both,
8 Judge, and that's inferred from --

9 THE COURT: I don't think so. I'll charge either
10 self defense of him because he was scared that he was going to
11 be killed --

12 MS. RICHARDSON: Judge, the self defense law talks
13 about great bodily injury and/or death. Okay?

14 THE COURT: Right.

15 MR. WILSON: So I mean, again, if that gun had been
16 wrestled away and been shot in that vehicle the jury can infer
17 that anybody could have been shot in that car, not just Ms.
18 Gamble, not just him, but also Jayqwane Cox -- excuse me,
19 Jayqwane Coleman, I keep saying Cox, but Jayqwane Coleman.
20 That's inferred because he's in the vehicle. There was a
21 struggle for the weapon. I mean, how can that not go before
22 the jury as an inference?

23 THE COURT: Well, this is the position I'm in, is
24 when you argue defense of others, in other words, he cannot
25 defend the driver or her brother.

1 MR. WILSON: Right, I understand.

2 THE COURT: Because they were at fault in bringing on
3 the difficulty, he can't defend them at all.

4 MR. WILSON: Absolutely, one hundred percent, but he
5 can defend someone who is not charged, he can defend the person
6 who is not a person that the State is claiming brought on this
7 issue. He was not an original aggressor, he wasn't aggressing,
8 so there was no aggressive conduct by him, and again, he wasn't
9 even charged. So how is he not innocent and can be defended by
10 a party who he's defending in the car? The inference is there
11 because he's in the vehicle.

12 MS. RICHARDSON: Your Honor, he testified that he
13 never said that. He never even said anything about being
14 worried about protecting Jayqwane or even Ms. Gamble at all. I
15 mean, he talked about himself and so that's the only evidence
16 --

17 THE COURT: I'll tell you what, you all sit here.
18 I'm going to go back and work on the charges. You all sit
19 here, and can we play back his testimony for the attorneys so
20 that you all could listen to the testimony, then when I come
21 back -- because if you all sit down and you listen to it
22 together and you hear where he's says he's trying to defend
23 somebody else, you can say that's it, and we'll come back. I
24 don't recall -- I was thinking the whole time that he was
25 defending whatever the lady's name is, I can't remember.

1 MS. RICHARDSON: Ms. Gamble.

2 THE COURT: Yes, Ms. Gamble, which self defense would
3 not apply to her.

4 MR. WILSON: It doesn't apply to her, and I think --

5 THE COURT: That's what I've been trying to wrestle
6 here, but you all sit here and get the court reporter -- have
7 you got the audio?

8 THE COURT REPORTER: Yes.

9 THE COURT: Okay. I'm going to go ahead and be
10 working on these charges. You all sit here and listen to his
11 testimony on playback and then we will come back and you all
12 can tell me what's in there. Okay? And then you can mark down
13 when they say, mark something down, and you can mark it down
14 where that is and play it back for me. Alright. Anything else
15 before I go back and start working on these charges?

16 MS. RICHARDSON: Not from the State.

17 THE COURT: Anything from the defense?

18 MR. WILSON: Yes, Your Honor, we had other charges,
19 Judge.

20 THE COURT: Okay. What was that?

21 MS. ANDERSON: Specifically, we did want to make sure
22 that there was a charge for, on our list, Your Honor, it is
23 specifically request number 23, that if it is particularly
24 within the power of the State to produce a witness who could
25 give relevant testimony on an issue in the case, failure to

1 call that witness may give rise to an inference that this
2 testimony would have been unfavorable to the State. No such
3 conclusion should be withdrawn by you, however, with regard to
4 a witness who is equally available to both parties or where the
5 testimony of that witness would be merely repetitive or
6 cumulative.

7 THE COURT: So who are you saying the State -- well,
8 number one, give me the cite where this is the law.

9 MS. ANDERSON: That would be Arnold v. Yarborough,
10 Your Honor, 281 S.C. --

11 THE COURT: Hold for a second. Arnold v. Yarborough.
12 What's the cite?

13 MS. ANDERSON: 281 S.C. 570.

14 THE COURT: Who is it you're saying that they failed
15 to call?

16 MS. ANDERSON: That would be, Your Honor, Jed Coleman
17 and Janena Gamble.

18 THE COURT: Well, you had the option of calling them,
19 too.

20 MS. ANDERSON: No, Your Honor, they're co-defendants.

21 THE COURT: But you still could have called them just
22 as easily as they could have.

23 MR. WILSON: No, Your Honor, we can't call witnesses
24 that are charged in a criminal case, Judge.

25 THE COURT: Why can't you call witnesses charged in a

1 criminal case?

2 MR. WILSON: Because they're charged in the same case
3 he's charged in and these people were witnesses for the State.
4 They proffered.

5 THE COURT: But still, you can still call them.
6 They're still -- why can you not call them?

7 MR. WILSON: We don't have the right to call them.
8 They have the right to remain silent at any point in time.
9 They only have the right to cooperate with the State. They
10 have that right, and they're doing it proffering while
11 cooperating with the State. They gave testimony to --

12 THE COURT: So you're saying a co-defendant cannot
13 cooperate with a co-defendant to testify?

14 MR. WILSON: Judge, I cannot issue a subpoena to a
15 charged defendant in a criminal case.

16 THE COURT: Really?

17 MR. WILSON: I wish I could, because I would do it
18 all the time.

19 THE COURT: Is that a rule or an appellate case?

20 MR. WILSON: That's just a rule of law. That's
21 always been a rule. I've never ever, ever -- now, I've had
22 cases where --

23 THE COURT: I mean, I know you -- and I've never
24 seen it, but I don't know of anything that prohibits it.

25 MR. WILSON: Judge, I've been trying cases for a

1 minute. There is no law which allows me as a defense lawyer to
2 call a witness who is lawyered up, that is not possible. The
3 only time they can do it is when the lawyer gets with the
4 prosecutor for the State and they proffer an agreement and work
5 something out. I can't put him on the stand and question him
6 about issues related to a matter they're charged in. I'm a
7 defense lawyer, I'm not the State, so I can't --

8 THE COURT: Well, you're not asking them about what
9 they're charged in -- well, what's the State's position on
10 that?

11 MS. RICHARDSON: Your Honor, we're in the same
12 position as far as that's concerned. We can't force them to
13 testify. We can issue a proffer agreement, but even with a
14 proffer agreement they could still, because our proffer
15 agreement said that any information could still be used against
16 them in the prosecution of their own case, they would have
17 still had the right to plead the fifth and refuse to testify.
18 We could have -- we can offer and give them this agreement, but
19 with the agreement we still can't force them to testify, even
20 with the agreement, because the agreement still says the
21 information can be used against them.

22 THE COURT: Alright. Hold for a second.

23 MS. RICHARDSON: And those agreements were provided
24 to the attorneys that showed up. And there's nothing in
25 evidence that shows that they were under a proffer agreement

1 with the State either.

2 THE COURT: I'm not going to charge that. All these
3 cases that I see stand for this proposition are civil cases.
4 The one you relied on is, there was a civil action to the
5 enforce a settlement and the argument was you relied on a
6 letter from the attorney and didn't call the attorney. Then
7 the Court said, well, you could have done the same thing, but I
8 don't know that that applies in a criminal case if the State
9 doesn't call --

10 MR. WILSON: Judge, I will say this, they obviously
11 were on the witness list, Your Honor voir dired the jury about
12 their last names of the individuals. They were not called at
13 all to testify in this case, and the reason they weren't called
14 to testify in this case, in my opinion, based on this case, is
15 that their testimony is extremely damaging to the State's case.
16 What we want to be able to do, obviously, is let the jury know
17 that they can infer something negative from that, and I think
18 that is a law that the Court's come up with, even in criminal
19 cases, and I cannot -- I don't have the availability or the
20 power to issue a subpoena to a lawyered up, or even talk to a
21 lawyered up defendant, much less put him on the stand.

22 THE COURT: I'm not going to charge that. Anything
23 else?

24 MS. ANDERSON: Your Honor, we also had the requested
25 instruction 24 right after that. The credibility of all

1 witnesses in a matter for you, the jury, to determine in the
2 making of the determination you may consider whether a
3 particular witness has a motive to testify favorably for one
4 party versus the other, thus, you may consider whether a
5 particular witness testifies under a grand community, that is,
6 with a promise from the Government that you will not be
7 prosecuted. After any such consideration you may give the
8 testimony of immunized witness such weight, if any, as you feel
9 it deserves.

10 THE COURT: So what would you say has granted the
11 immunity?

12 MS. ANDERSON: That would go towards Joshua Miller,
13 Your Honor. The State promised them that he would not be
14 charged for any involvement in the sale of the Xanax.

15 THE COURT: And what is the authority for this
16 charge?

17 MS. ANDERSON: That would be Rule 608(c), as well as
18 State v. Ferebee.

19 THE COURT: Spell that.

20 MS. ANDERSON: F-e-r-e-b-e-e.

21 THE COURT: And what --

22 MS. ANDERSON: 115 S.C. 235.

23 THE COURT: I don't see that. I can't find that
24 case. State versus Serebee?

25 MS. ANDERSON: "F", Your Honor, "F" as in Fox.

1 THE COURT: "F"?

2 MS. ANDERSON: Yes, Your Honor. I apologize.

3 THE COURT: I don't see that in here in this case.

4 Wait a minute.

5 MS. SMITH: Your Honor, on number three with this
6 case it says that his Your Honor refused to the charge this and
7 he was correct in doing so. That's right at headnote number
8 one, if you're using Lexis. Your Honor, it's also the State's
9 contention that the witness bias is already covered in the
10 standard charge that you typically do and in deciding whether
11 to believe a witness you have the right to consider the
12 interest of any witness, et cetera.

13 THE COURT: That's what this says, that the judge
14 refused to charge that and that was not error. So I'm not
15 going to charge that. Anything else?

16 MR. WILSON: Judge, is Your Honor going to charge
17 self defense, Judge?

18 THE COURT: I'm going to get back there and look at
19 it, I probably am.

20 MR. WILSON: Okay.

21 THE COURT: Now, I think I'm going to charge self
22 defense, I don't know that I'm going to charge defense of
23 others, but you all are going to sit here and listen to the
24 testimony and if in that testimony the defendant said he was
25 defending someone else, then I'll take that into consideration,

1 but I need you to sit and listen to the defendant's testimony
2 again.

3 MR. WILSON: Yes, Your Honor. Thank you, Judge.

4 THE COURT: Anything else from the defense?

5 MS. ANDERSON: Your Honor, the only other one, the
6 other charges that we've requested in one through 23, I won't
7 go through with you one by one, Your Honor. They are the
8 traditional language in most of them, other than, Your Honor,
9 we are asking for a charge of mere presence, Your Honor. That
10 is our request in number seven: If you find from all of the
11 evidence that the defendant was merely present at or near the
12 scene of this alleged crime on the date in question you're
13 instructed to such presence at or near scene of a crime will
14 not support a finding of guilty. Mere presence can only create
15 a suspicion and you cannot find the defendant guilty because of
16 suspicion. Mere presence at or near the scene of a crime does
17 not of itself permit an inference to be drawn by you that
18 defendant had knowledge of any criminal plan which might have
19 been formed, nor does mere presence support inference of intent
20 to exchange in or a criminal conduct suspicion. Circumstances
21 like mere presence are not sufficient for a finding of guilty
22 against any defendant.

23 THE COURT: Well, I was going to charge mere presence
24 simply because of the charges of armed robbery and criminal
25 conspiracy. As a matter of fact, it's part of the criminal

1 conspiracy charge, that you have to show mere presence is not
2 enough, but I was going to put it in there because of the armed
3 robbery, as well. I don't think it's applicable to the
4 attempted murder because he wasn't just there. His testimony
5 is he admitted to shooting Joshua Miller so I don't think he
6 can argue mere presence on the attempted murder charge, but he
7 can argue it on the armed robbery and conspiracy charge.

8 MS. RICHARDSON: Your Honor, I agree with that.

9 THE COURT: Anything else?

10 MS. ANDERSON: No, Your Honor.

11 THE COURT: Alright. You all sit and listen to this
12 testimony and I'm going to work on the charges and we'll meet
13 back as soon as I get done. When you all listen through this
14 testimony, if it comes to the point where you all agree on what
15 his testimony is then you all can send word back there to me as
16 to whether or not to include defense of others or don't include
17 defense of others. Alright? Anything before I go back and
18 start working on this?

19 MS. RICHARDSON: I'm just standing, Your Honor.

20 THE COURT: Alright, thank you all, I'll be in
21 recess.

22 (Recess taken.)

23 THE COURT: Did you all listen to the testimony, what
24 did it show?

25 MS. RICHARDSON: Your Honor, at one point he did say

1 that he thought Mr. Miller was going to overpower her and take
2 the gun and might shoot everybody in the car. That's the only
3 comment I heard regarding anybody else. Everything else was
4 me, me, me, I'm afraid for my life, I was scared for my life
5 and had to do it. That's the only comment he made about
6 anybody else.

7 THE COURT: Well, since everybody in the car, he's
8 including himself in that, I'm just going to charge self
9 defense and not defense of others.

10 MR. WILSON: Your Honor, may I just put two things on
11 the record then? And I'm not arguing with the Court, just for
12 the record, just a couple things, Judge. Obviously, we think
13 that there is a need, obviously to charge self defense of
14 others. He does say clearly in his testimony that he believes
15 that because of the tussling with the gun that he's going to
16 shoot everyone in the car, he does say that, clearly. So he
17 has concern. Not only that, he does also say on the tape that
18 this is his friend and that he's known this guy for some time,
19 obviously has some interest in protecting him, I would say, but
20 obviously, in any situation like this in self defense,
21 obviously, if you're defending yourself you're going to claim
22 that your most imminent needs are within yourself. The other
23 thing, too, Your Honor, I want to say this, as well. The
24 prosecution, and this is related to Your Honor's other
25 decision, the prosecution obviously can, and this is about the

1 witnesses, I know Your Honor's already ruled, again, I'm not
2 arguing, but the prosecution has the authority to induce
3 witnesses who testified. They also have the authority to make
4 promises and guarantees that the defendant does not have access
5 to, and the Courts have addressed this on occasion, but I want
6 to put that on the record, as well, and we have nothing to
7 offer defendants that come in who were charged in the same
8 case, obviously, to induce them to testify. And then, also, we
9 believe that we are entitled in this situation, back to this
10 motion, to have self defense put in of others. We think that
11 if the State is allowed to use circumstantial evidence, in
12 every case that I've ever tried and even cases in federal court
13 and state court, if they can use it then the defense can also
14 use it, and we should have equal rights to that evidence to
15 infer whether or not evidence, you know, evidence tend to show
16 something. No matter how, you know, soft the evidence is, in
17 this case I think that there is soft circumstantial evidence
18 for conspiracy and for armed robbery, but I know that the
19 Courts obviously won't allow it to go to the jury and the same
20 thing, I think the defendant is owed that inference that would
21 be given to the State and I think the quality of demands that
22 he be treated the same, which is what he's asking for, Judge,
23 so that's kind of what our position is, Your Honor.

24 THE COURT: Well, if the testimony is, I thought he
25 was going to shoot everybody in the car, and he's in the car,

1 he's including himself in that --

2 MR. WILSON: Absolutely.

3 THE COURT: -- I don't know that a jury could find
4 him not guilty by self defense in the defense of others without
5 also finding him not guilty of self defense of himself, that's
6 what I'm saying. So I'm just going to go -- I think the one
7 charge, self defense of himself, in other words, self defense
8 of someone else, he doesn't have to show that he's in danger.
9 Well, if the testimony is, like, look, I thought he was going
10 to kill everybody in the car, and he's one of the ones in the
11 car, I think self defense of himself is the more appropriate
12 charge, and I'm going to do that. Okay?

13 MR. WILSON: Yes, Your Honor.

14 THE COURT: I've just about got everything, as a
15 matter of fact, I got it done now. I know you all need time to
16 review my charges. I've got the verdict form. It is 3:25.
17 I'm not charging the jury after 4:00, but I'll let you argue
18 after 4:00 if you want to, your closing arguments. So what do
19 you all want to do? If this was Friday night we wanted to get
20 it in this week, we would go late. I'm not going to keep this
21 jury, and I don't want them rushing making a decision on a
22 Thursday night when we still got Friday ahead of us. What is
23 the position of the defense?

24 MR. WILSON: Your Honor, my position is, I don't
25 want, obviously, to have the charge separated from closing

1 arguments for myself or the State.

2 THE COURT: What does the State want to do? Because
3 I don't know that you're going to get both closing arguments
4 charges in the next 35 minutes.

5 MS. RICHARDSON: I don't believe we would, Your
6 Honor. The State would like to go forward and would suggest
7 that we ask the jury what they would like to do.

8 THE COURT: I'll let you make your closing argument
9 if you want to. At 4:00, if the defense wants to go ahead and
10 go home for the evening, we'll do that, so you need to decide
11 whether you want to go ahead and make your closing argument now
12 or not.

13 MS. RICHARDSON: No, Your Honor, not if they are
14 going to be separated. I think they all need to be at the same
15 time.

16 THE COURT: Well, like I said, it's obvious we're
17 going to get it in this week so I'm not concerned about coming
18 back on Friday. If this was a case of where I felt we were
19 going to have trouble getting in by tomorrow then I would stay
20 late and I would do that, but having had the jury already sit
21 in there in the jury room for little over an hour now, I don't
22 want to bring them out, do closing arguments, charge them at
23 4:30 or quarter to 5:00, I just don't feel comfortable doing
24 that. Alright? So I'm going to bring the jury in, excuse them
25 until tomorrow morning and we'll come back and pick up tomorrow

1 morning. But I do have these, if you all want to take them
2 home and look at them overnight and we'll do it that way.
3 Anything from the State before we bring the jury in?

4 MS. RICHARDSON: No, Your Honor.

5 THE COURT: Anything from the defense?

6 MR. WILSON: No, Your Honor.

7 THE COURT: Let's bring the jury in.

8 (Jury entered the courtroom.)

9 THE COURT: Ladies and gentlemen, welcome back. I
10 appreciate your patience and I apologize for keeping you in the
11 jury room for so long, but we have been working on the charges,
12 and it just takes some time. We got that done. We're ready to
13 proceed, however, it is now 3:30 and with closing arguments,
14 they will go on a while, closing charges, that will go on a
15 while, and then you will have your deliberations. So I know
16 that you've got lives that you need to get to. I think we're
17 going to go ahead and break for the day. I'm going to ask that
18 you please be back at 9:00 tomorrow morning and we'll go ahead
19 and finish everything up tomorrow morning. Again, I caution
20 you, do not discuss the case even among yourselves, don't
21 conduct any investigations, I hope you have a good evening, and
22 we'll see you back at 9:00 tomorrow morning. Thank you very
23 much.

24 (Jury exited the courtroom.)

25 THE COURT: Anything from the State before we recess

1 for the evening?

2 MS. RICHARDSON: No, Your Honor.

3 THE COURT: Anything from the defense?

4 MS. ANDERSON: No, Your Honor.

5 THE COURT: We'll be in recess. I do have these.
6 When I came in my secretary was printing you out copies. I'm
7 sure she's got that done by now, so if you all want to sit
8 tight I can bring you copies or if you want to wait until
9 tomorrow morning, whichever you prefer. Otherwise, we'll be in
10 recess until tomorrow morning and I'll bring those in in just a
11 second.

12 MR. WILSON: Judge, we're going to wait.

13 MS. RICHARDSON: We'll wait, too. Thank you.

14 THE COURT: Sounds good. Thank you.

15 (Concluded for the day Thursday, May 20, 2022 at 3:26 p.m.)

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1 (Whereupon proceedings reconvened Friday, May 20, 2022)

2 THE COURT: Anything we want to address on the
3 proposed closing charges at this time? I'll give you two
4 opportunities, once now and then after I charge them, because
5 sometimes it does sound differently when you hear it read
6 versus when you read it. Anything from the State?

7 MS. RICHARDSON: No, Your Honor.

8 THE COURT: Anything from the defense?

9 MR. WILSON: Your Honor, just one request. Your
10 Honor did put in the jury charge regarding self defense as a
11 complete defense for lesser included offenses, didn't name the
12 charge of assault and battery of an aggravated nature. We
13 would just ask that that be put in the charge, Judge, just to
14 name it so they know that it's there so there's no ambiguity
15 about what the lesser included offense it.

16 THE COURT: I think with the charges and the way the
17 verdict forms are set up, that there's not going to be, so I
18 deny that motion.

19 MR. WILSON: Thank you, Your Honor.

20 THE COURT: Anything else? Anything before we bring
21 the jury in?

22 MS. RICHARDSON: No, Your Honor.

23 THE COURT: The State will close in full.

24 MS. ANDERSON: Your Honor, I just have something
25 briefly before we bring them in.

1 THE COURT: Okay.

2 MS. ANDERSON: Yesterday, Ms. Richardson did make
3 some reference when we were talking about circumstantial
4 evidence about the Xanax, some Xanax being found in the car,
5 subsequent. Your Honor, that's not in the record that any
6 Xanax was found in the car later on, and we just wanted to
7 inform the Court that we would object if that's brought up in
8 closing argument.

9 THE COURT: Okay.

10 MS. RICHARDSON: What is in the record is that the
11 phone records of Ms. Gamble, Mr. Garrett testified phone
12 records of Ms. Gamble indicated that she asked her girlfriend
13 to clean the drugs out of the car, weed, pills, and to move
14 heroin.

15 MS. ANDERSON: Your Honor, it specifies that it's
16 heroin, there's no pills specified in that.

17 THE COURT: Well, I mean, you can't say that there
18 was Xanax in the car if there was not Xanax in the car, but if
19 there was heroin in the car you can say there was heroin in the
20 car, I mean.

21 MS. RICHARDSON: And it wasn't that it was -- we can
22 cover that she had to clean out the car, but it is on the
23 record that it was weed, that she asked about weed, pills and
24 then the heroin, as well.

25 THE COURT: Okay. If she said "pills," then I'm

1 going to allow it. I don't recall. I do remember the
2 testimony about her saying, clean out the car, but I don't
3 remember whether she said pills or heroin or weed, or whatever.

4 MR. WILSON: Judge, obviously, the inference that the
5 State is trying to make, when Garrett was on the stand he was
6 under cross-examination. He obviously, said, look, you know,
7 we did a search and we found the heroin, which she sent the
8 message to the girlfriend saying get whatever out of the car
9 out of the car.

10 THE COURT: Alright. Do you all want to listen to
11 the testimony again and see if he says "pills"? If he says
12 "pills," she can say it. If he doesn't say "pills" -- or if
13 she didn't say "pills," then I agree, there's nothing -- it
14 doesn't come in.

15 MR. WILSON: Judge, obviously, I think we have to
16 because, again, we would object, obviously, to the inference.
17 Obviously, it goes to whether or not there was a true taking
18 and carrying away.

19 THE COURT: Well, I mean, what did you decide -- I
20 take it back. She doesn't necessarily have to say "pills". If
21 she's saying: Clean drugs out of the car --

22 MR. WILSON: Right.

23 THE COURT: Well, then I'm going to allow it then.
24 I'll allow it. Overrule the objection. Anything else?
25 Alright. The State will close in full, then the defense will

1 close. The State can only reply as to matters addressed on the
2 defendant's closing that was not addressed in your original
3 closing. Alright? Let's bring the jury in.

4 (Jury entered the courtroom at 9:31 a.m.)

5 THE COURT: Ladies and gentlemen, welcome back. I
6 hope everyone had a good evening. Thank you again for being
7 prompt. That's a big assistance to the Court and I want to
8 thank you for that. We've reached the stage of the trial where
9 the attorneys will now make their closing arguments. Now, just
10 like their opening statements these closing arguments are not
11 evidence in this case. It is simply the attorneys contention
12 as to what they feel the evidence has shown in the law be
13 applied. If at any time an attorney references a factual issue
14 that is different from the facts that you find them to be or
15 references the law that is different from the law as I will
16 instruct at the end on their closing arguments, then you can
17 disregard that portion of their closing arguments because this
18 is not a charge on the law and it is not evidence of the facts,
19 it is just their contention as to what they think the evidence
20 has shown and the law to be applied. Ms. Richardson?

21 (Attorney Richardson presented a closing argument on
22 behalf of the State at this time.)

23 MS. RICHARDSON: Joshua Miller said, I'm dying. I'm
24 dying, tell my mama I love her, take care of my dog. The
25 things a 24 year old, what would flash before his eyes at the

1 moment he thought he was going to die. I don't think any
2 question from either side that he thought he was dying that
3 night, and not only him, not only him, she saw the reaction of
4 Officer McConnell, how frantic he was to get gloves and to try
5 to save his life: I'm not worrying about that, he's about to
6 dye in their arms. And those store clerks, I think we saw some
7 of the best in people on those Body Cams and 911 calls. It's
8 hard to watch, but there's always just that kind of glimmer
9 where you see the goodness of human nature. Brooke White on
10 the 911 tape getting frustrated when they're asking questions:
11 Damn, he's gonna die, he's gonna die, get here, get here
12 yesterday. You know, just those kind of things, the nurse who
13 held his hand before he went to sleep. We saw some of the
14 best, but we've also seen some of the worst, and if he and I
15 could agree on one thing, it's a miracle, it's a miracle. How,
16 as the doctor testified, it missed all the things, everybody
17 knows, I know we belabored that with the doctor, but that's
18 common sense. You don't need a doctor to tell you that you get
19 shot, really, in this area, but especially anywhere in the face
20 or head, you hear a gunshot wound to the head, you don't expect
21 him to be sitting there. And it wasn't his skill, I'm gonna
22 shoot and I'm gonna hit here and miss the carotid and that, we
23 can agree on that, and thank God, thank God that's where we are
24 today, and this is not any worse than it's been. And also,
25 there's no dispute that this was a drug deal, no dispute

1 whatsoever. In the end, initially, we were told it was over
2 marijuana, the mistaken belief that marijuana is less serious
3 than these (indicating,) but that doesn't matter. It doesn't
4 matter. They were all doing wrong, but none of that warrants
5 death. None of that warrants death. So whether he was doing
6 something wrong or not he's no less deserving of being treated
7 fairly regarding what happened. Now, we've spent a lot of
8 time, I know we've been here all week, and at first this was a,
9 what you would hear as a who done it. We spent a lot of time.
10 Who is J-Five? I had to almost pull it out Delsean. Who is
11 J-Five? Because everybody knew who Jed was and Jed's little
12 brother, there's only one girl in the car. Who was this other
13 person that was in the car that shot him? J-Five. What else
14 did we spend a lot of time doing? All this (indicating), all
15 of this. I bet all of you know now more about who works at the
16 Georgetown County Sheriff's Office evidence room and who works
17 at SLED and who's retired and who has transferred departments
18 and all the steps and the envelopes and the seals and the
19 initials and all that we have to do, and how you take
20 fingerprints, you've learned a lot, but that's important,
21 because the importance is we were trying to establish his
22 identity, that he was in that car and had to show at that point
23 every step in the process so you all would know that we didn't
24 confuse this with something that was taken somewhere else and
25 that his fingerprints were the fingerprints that matched and it

1 was all lined up and that we didn't mix up somebody else's
2 fingerprint card, because we were looking at a who done it, a
3 lot of time on a who done it. And then all of the sudden, that
4 didn't matter, because once he decided to tell his story, he
5 admits it was him, he admits it was him that was the shooter.
6 So it's not in dispute that he fired the gun, it's not in
7 dispute Josh Miller was shot, it's not even in dispute, because
8 we heard all of these questions about, well, he ran out of the
9 store, what was he doing in the store, did you all look for a
10 gun, did you go to his house, did you search for a gun,
11 insinuating that he had a gun when he came up, and now none of
12 that's in dispute. The only gun that he's alleged to have
13 touched is the one that they say Janena had, and also, there's
14 no dispute that it was a robbery, a taking of the drugs, that
15 the drugs were taken. So what are we left with? What do you
16 all have to decide? He's saying, I didn't know nothin' about
17 nothin'. It's my birthday week, we're going to see some girls,
18 I just been having me a good time all day, didn't know nothing
19 was going on, all the sudden, minding my own business,
20 somebody's attacking me. So we've got to decide what he knew
21 in his involvement in the taking of the drugs, and then whether
22 or not he's entitled to be excused from the shooting based on
23 self defense. So that's it, it's a credibility issue,
24 believability, and to do that we have to look at what everybody
25 said, and we also have to look at the evidence.

1 So this is the State versus Eryk Smith, and you'll be
2 told by the judge, and I'm sure you'll be told by the defense
3 attorney, and I'm going to tell you, it is the State, so the
4 State has to prove it, has the prove it. What's he charged
5 with? Conspiracy, armed robbery and attempted murder, and how
6 do we prove it and what is the level that we have to prove?
7 You'll hear beyond a reasonable doubt, presumed innocent, and
8 that's true. The judge will tell you what reasonable doubt is,
9 it's not every single doubt, it's not absolute certainty, it's
10 looking at everything. Are you firmly convinced that he
11 committed these offenses, firmly convinced that he's guilty of
12 these offenses and not excused by self defense? And we do that
13 through direct and circumstantial evidence, and you'll hear a
14 bunch about that, and it's basically just sort of a common
15 sense type thing. You don't lose your common sense when you
16 come in here. "Direct" means what somebody said, what Josh
17 Miller said, what you can see on the video. Circumstantial is
18 what we do every day. You use the circumstances around you to
19 determine what happened. The easiest thing to think about in
20 this case is, you see all these pictures with the big puddles
21 of water at the store, that's circumstance of water being on
22 the ground leads us to believe what? It rained, it rained a
23 lot. So that's what circumstantial evidence means, and neither
24 one of these have any more weight than the other. You can use
25 circumstantial, you can use direct, just like you do in your

1 every day life. So conspiracy, and you'll hear us as attorneys
2 talk about elements of a crime, that's just the parts, the
3 things that you have to prove to make a crime, what it's made
4 up of, just like the parts of a recipe. So for conspiracy we
5 have to show combination between two or more persons to
6 accomplish a criminal or unlawful object or something that's
7 not criminal or unlawful by unlawful means, but basically, it's
8 the agreement. The judge is going to tell you, he's going to
9 read you the law, I'm just hitting highlights, but he's going
10 to read you the law, and he's going to explain to you that for
11 this agreement, we don't have to have a written contract, we
12 don't have to have somebody come in and say, here's the plan,
13 because we don't. And when you got, you know, people coming
14 together for unlawful purposes, you're not always going to have
15 that. But the judge is going to tell you you can figure that
16 out from the circumstantial evidence, from the circumstances
17 and from the conduct of the parties, you can figure out what
18 they had planned, that's evidence that they had a plan. So
19 first of all, the store, and you have everything that was
20 admitted into evidence you'll have back in the jury room and if
21 you want to see anything you can speak with the judge about
22 that. So this is the Francis Marion Store, these photos were
23 taken that night, and this is from 701. So you got 701 and you
24 51 right here (indicating,) this was in the dark, and you can
25 see this is a busy store. If you'll remember looking at the

1 video, how many cars and just random people you saw coming in
2 there, but this shooting happened at a public place, and this
3 gas pump, this is where we're talking about. But when you look
4 at this picture, and you can look at the other pictures in more
5 detail, conduct of the parties, where were they first supposed
6 to meet? In the dark, in the dark, over there where there's no
7 lights, where everybody testified is not a paved but a bumpy
8 parking lot. What did Joshua Miller say: By that shipping
9 container, over there. Why? Why? And they didn't like it.
10 They didn't like it. And it took -- they say they even left,
11 took some wheeling and dealing before I came back to the front
12 of the store. And still their car, the defendant's car was out
13 closer to 51, more this way. So look at this. How close
14 together were those cars? And everybody's agreed on that, you
15 can see it on the video. And that video's not great, but you
16 can see it up in the corner, those cars were right there, I
17 think they said about six feet apart. Look at this, the blood
18 and the drugs all right there together in the space of two
19 cars, close together. The other thing, he didn't know nothin'
20 about nothin'. The hand of one is the hand of all. He knew
21 they were going there for a drug deal, he's responsible for
22 everything that happened. Now, are we trying to say that they
23 came to that store to kill Joshua Miller? No. Nobody's trying
24 to say that, but things went wrong, things went wrong, and he
25 was in that car, and you heard them say, there were

1 conversations about moving around. And he's got a story for
2 everything: Oh, we parked over there because we were returning
3 some cigarettes. He had something to match up to everything.
4 They wanted to park in the dark then moved to front, and what
5 did he say? We all had guns, all of us had guns, all four of
6 us had guns. Now, do you really think he thought they were
7 sitting there and driving around, he didn't hear nothin' on the
8 phone, nothin' about movin' around, Delsean and them are
9 already on the way to Conway to meet some girls, and they're
10 hanging out at a parking lot at a store over some cigarettes,
11 over some cigarettes? You don't see anybody getting out and
12 going to get cigarettes. Nobody's going in there and getting a
13 Pepsi. They're waiting around there when they're supposed to
14 be going to a party. Why are they waiting around there?
15 (Indicating,) parked right close together, and he went on and
16 on about how everything's so dangerous, everywhere you go is so
17 dangerous, I got to have a gun: We went to the projects to see
18 my cousin, a female, you know, I had a gun, it's dangerous.
19 What's dangerous in the projects is people like that who are
20 drinking all day and going there with guns on their side in a
21 place that is dominated by women and children. That's the bad
22 element. That's the bad element. It was dangerous, and then
23 I'm going a party, a party, and we all got to have guns at this
24 party. You know, I look around, I'm scared, I'm always scared,
25 but not on this night. On this night I got my gun to put right

1 here, but I'm not paying attention and I'm just chilling,
2 relaxing and laid back, I'm not paying attention, I'm not
3 paying attention at all, and out of nowhere, I didn't know what
4 they were doing and out of nowhere, there's an attack.

5 Armed robbery. Now, are we trying to say that they
6 walked up, looked at Joshua Miller and Corey Hayes and said,
7 give me your drugs? No, no. But armed robbery, the judge will
8 tell you, is taking away the property of another, and it can be
9 taken away from any, it doesn't have to be taken all the way,
10 you don't have to get all the way away with it if it's -- but
11 armed robbery is just not the moment when the drugs are
12 snatched, that doesn't complete the robbery. To look at
13 whether it's armed robbery, it's a continuous action, it's all
14 the way until it's over and includes when they're trying to
15 escape. So the person becomes armed at any time during the
16 taking of the drugs and trying to get away, and trying to get
17 away, at that point even though it may not have initially been,
18 at that point it becomes an armed robbery.

19 And as far as intent to commit an armed robbery, they
20 did first try to just grab them, but they were ready, they were
21 ready to make it armed, and that's what happened. So
22 initially, it wasn't, but before they left it became an armed
23 robbery. It's just like if somebody went in a bank and handed
24 the teller a note and said, give me the money and didn't say
25 anything about a weapon or whatever and went to leave and the

1 security guard came after them and then they pulled out a gun,
2 that's a armed robbery, it's just sort of in a different
3 context.

4 And then attempted murder, it's basically an attempt
5 to commit a murder, but it's attempting to kill another, and
6 the intent to kill has to be specific with malice aforethought
7 expressed and implied. Again, you're probably going to learn
8 more about this than you ever wanted to know, but attempting to
9 kill another person, that's easy, shot Josh Miller. A specific
10 intent to kill, look, and that intent can be formed at any
11 time. You pointed a gun at a human being's face, neck, chest,
12 where ever you intended, wherever you intended, here again, not
13 to mention the shot in his hand.

14 Malice just means hatred, ill will or hostility, like
15 shooting at somebody, what more ill will can you get? And it
16 has to be -- aforethought means they had time and it can be
17 just a second. It doesn't have to be a plan ahead -- an
18 extreme amount ahead of time. Malice and intent to kill. Do
19 you remember the videos and how fast he ran? This is just a
20 still shot from him, no question he got the intent to kill him,
21 he made a comment: He just clipped, finish him off.

22 So what is he saying? He's saying that this was self
23 defense. I didn't know nothing about nothing with these drugs,
24 I didn't know nothing about nothing with this robbery, even
25 though I was cocked and loaded and ready, I didn't know

1 nothin', and he just came up out of no where and he was choking
2 Janena, and you know, I had to do what I had to do, I thought
3 he was gonna kill me, I was in the line of fire. The judge
4 will tell you, for self defense, not everybody gets to claim
5 self defense. You can't start something and be part of the
6 problem and then finish it. You have to be without fault,
7 without fault. And under the hand of one is the hand of all,
8 if you're part of what they're doing, you're responsible for
9 their fault too, and in imminent danger and no other way to
10 avoid it, no other way to avoid it. The gun's right under the
11 door, according to him. But really, what does this all boil
12 down to? All this boils down to is credibility, believability,
13 who do you believe? And really, do you believe his story?
14 Think about it, he had an answer for everything. He sat there,
15 he watched everything, he explained to you he had his motion,
16 his discovery paperwork from us, he watched all the testimony
17 and evidence, and at first it was, who did it? What about him?
18 What did he take around the back of the store? And then now
19 it's, I just didn't have a choice, I had no choice, I was put
20 in the situation, it came out of nowhere, I had no choice.
21 Credibility, believability, look at what he said and how he
22 said it. Janena, dressed nice for the party. Oh, she had a
23 gun, too, by the way, according to him, in those pants, in
24 those pants. So she has snatched drugs, was trying to get in
25 the car, or he says, in the car, sitting down, and has got,

1 getting the gun out of his pants. Joshua Miller told you how
2 fast all this happened, out of those pants, those little pants.
3 What's he say? I'm laid back, laid back, because guess what,
4 that seat's laid back in that picture, right? And Jayqwane was
5 sitting right behind him. Really? How did he fit in that if
6 you were all just laid back. Why is that seat laid back? Why
7 is that seat laid back? Did we find any shell casings in that
8 car? Did we find any drugs in that car? You heard Officer
9 Garrett say there was text messages between Janena and the
10 girlfriend about cleaning out that car, but they forgot the
11 trash. They forgot that beer can. They forgot that beer can,
12 and that beer can put him in that car, put him in that car.
13 But oh, no, I'm laid back, I'm just laid back chillin'. And
14 then it becomes, remember what he said, this guy, this man, I
15 had seen out of nowhere, I had never seen before comes out of
16 nowhere, I didn't know nothin' about nothin,' and he reaches in
17 the car and gets Gamble by the neck, reaches in like this in
18 the car through the window in the car, and I just said, she's
19 got her gun, and I had to do it. And we know there's a gunshot
20 on the window, and then I say to him when I'm asking about, you
21 know, I don't know nothin' about nothin' with the drug deal, I
22 say, well, you had the windows down. The window's down and it
23 was raining. Suddenly, that window's not down anymore. When
24 he's being asked about your ability to hear and see what's
25 going on, the window's down when he's in fear for his life and

1 when Josh Miller, this strange man is choking and going to kill
2 him, that window's down then, but when I say, well, you were
3 sitting there and they are right beside you, right, and your
4 window was down and it was raining, no, that window's not down
5 anymore, that window's not down anymore, when it had something
6 to do with him not knowing what was going on. He said, well,
7 it was down about that much (indicating,) about that much,
8 (indicating,) it was down about that much (indicating.) And
9 how did he get in the window again, he's changing his story to
10 suit what he heard here and to fit the circumstance.
11 Everything's an excuse. He minimized everything that he had
12 been involved in, everything's an excuse, look at his demeanor,
13 look at what he had to say. And you know what? You can blame
14 him maybe about that much, if that. Thank you.

15 THE COURT: Defense?

16 MR. WILSON: If it please the Court, Judge?

17 THE COURT: Yes, sir.

18 (Mr. Wilson presented a closing argument at this time.)

19 MR. WILSON: This is no fairytale. Most of us every
20 day, we go to work, we go home, we eat, we sleep, we get up and
21 we do the same thing again. Anything that you know about
22 living in the projects, living in what my client calls the
23 hood, is not a fairytale situation. If you have even a glimmer
24 of good sense you learn to mind your business, and that happens
25 all the time. My client is not charged with possession of a

1 weapon. He's not charged with unlawful carrying of a pistol.
2 He's charged with armed robbery, conspiracy and attempted
3 murder. The burden of proof in every case in South Carolina in
4 a criminal case is on the State. They have the burden of
5 bringing you competent evidence to prove all of the elements of
6 everything they charge everybody with beyond a reasonable
7 doubt. They are charged with that duty, that is in the law,
8 and Your Honor is going to tell you that. Now, the
9 prosecutor's right, my job is not to give you the law, I'm
10 going to give you my take on it. The prosecutor's job is not
11 to give you the law, she gave you her take on it, but a lot she
12 didn't discuss with you, some things she didn't tell you, and
13 we're going to talk about that right now. I told you at the
14 beginning of this trial that knowledge is so important.
15 Knowing about something is important. When you talk about
16 crimes, two things that matter, the intent and the act. That's
17 called "mens rea" and "actus reus." That's the basics of
18 criminal law. Two things have to occur. Now, in this case
19 Your Honor is going to charge you on the law of accomplice
20 liability in South Carolina, and that is the law regarding the
21 hand of one is the hand of all. You're going to hear the judge
22 tell you, it is not enough, no matter what you heard just now
23 to just know about a crime, and I'm not telling you that this
24 defendant knew about what was going to happen, I'm not telling
25 you that at all, but I want you to hear the charge of the law

1 on accomplice liability, which is the hand of one is the hand
2 of all. It's not enough. It's not enough to even know about a
3 crime and be at the scene of a crime. Meaning this, let's say
4 I was in the car and I knew that Janena Gamble and Jed Coleman
5 were going to get drugs from Joshua Miller, and let's say I
6 knew about it the entire day, that's still not enough under the
7 hand of one is the hand of all. And what's missing here, what
8 you didn't hear, you didn't hear from Jed Coleman, the person
9 they say who was with Janena Gamble, who Josh Miller says got
10 in the car to buy drugs from them. You never heard from them,
11 did you? Josh Miller tells you, yes, Janena Gamble got in the
12 car with me, so did Jed Coleman. I asked him on the stand, did
13 you have any communications, whatsoever, anything? I gave him
14 an opportunity, he could have said anything he wanted to, did
15 you have any communications, whatsoever, with Eryk Smith? He
16 said, no, he shot me in the face, that's what he said. Josh
17 Miller gets on the stand, he already lied to the prosecutor
18 multiple times. He lied to Investigator Melvyn Garrett when he
19 first talked to him, and he got on the stand and continued to
20 lie to you. Were those pills yours? No, those pills weren't
21 mine. But he's willing to jump out of a car when he says Corey
22 Hayes isn't, and when I ask him about it, what's his statement:
23 I wanted to get the drugs back for my brother. A young man who
24 passed away a long time ago, he says that's his friend. He's
25 saying the drugs don't belong to him, they belong to Mr. Hayes.

1 Those pills weren't his, but he's willing to jump out of a car,
2 chase down someone who has a weapon and jump in the window.
3 And the prosecutor just told you that Mr. Smith testified that
4 the window was up that bit, or down, or whatever you want to
5 say. I think what he said was, hey, the window was up this
6 much. Obviously, it's not possible for him to jump through a
7 window that's this high (indicating,) that's not possible.
8 Okay? But something that you should know, my client has always
9 had the right to remain silent. Every last one of you, me,
10 everybody in this courtroom has the right to remain silent at
11 all times when you are charged with an offense. He had to sign
12 his right to remain silent and he gave that right up when he
13 got on the stand, he had to get on the stand, he had to tell
14 you what he told you. He could have said, Mr. Wilson, I'm just
15 going to let you go ahead and close this up. Do you think he
16 had to get up here and tell you that he shot? Do you think he
17 had to get up there and tell you that he put a weapon in his
18 own hand? No. And that was his decision, not mine. He chose
19 to get up and tell you what happened that day. And you want to
20 talk about believability? You saw Josh Miller on the stand.
21 Do you really believe everything that he said? He said he's at
22 the crime scene, right? He's there, he's sketched out, Corey
23 Hayes is sketched out. It's dark. I asked him, I said, was
24 this your first drug deal? I had one other before. That's
25 what he said, he had one other drug deal before, but the pills

1 weren't his, the pills weren't his. All the evidence in this
2 case talks about Janena Gamble jumping out of that car. There
3 is no testimony in the record, none, none, that Eryk Smith
4 combined or agreed, or even knew that they wanted to buy Xanax
5 from these people, and he was man enough to get up on the stand
6 and tell you he didn't know. The record reflects: I did not
7 know they were trying to do a drug deal. And I know if you
8 don't live in these situations, you don't know this, but why
9 would they tell anybody else if they're trying to get money off
10 of the sale of drugs they get from Josh Miller? Four people in
11 the car going to split pills, that makes no sense whatsoever,
12 and I've been trying cases for a minute. All of the sudden
13 Josh tells you, oh, I was scared to come back. Okay, you were
14 scared to come back. Mr. Garrett said he reached out to him
15 multiple times, was supposed to meet him. Four years, didn't
16 meet with him once. After the ER visit, never showed up. He
17 was scared to come back, why didn't he call? Why didn't he
18 call? In your minds ask yourself why he never called this
19 investigator, who was doing his job. Why do you think he
20 didn't call? You heard Melvyn Garrett testify under oath that
21 when they have these cases they're concerned about the major
22 crimes, and that's proper. Well, you also heard what he said,
23 sometimes a lot of times, and I promise you, they often do,
24 they give the information regarding the drug activity to the
25 DEU or to the DEA. The gig was up. Do you know what a huge

1 problem Xanax is in our country? They don't want, and you
2 heard the actual doctor testify, the State's own witness got up
3 and said, look, these are pharmaceutical grade pills, this is
4 the good stuff. This is the real stuff. And yet, still in the
5 record the evidence presented to you, you heard not one word,
6 one word, that he even touched a pill or said the word "pill"
7 that day, not one time. And this beer can he keeps talking
8 about, you know, when we're in trial you heard me say no
9 objection multiple times to this evidence. The beer can, if he
10 was there getting ready to defend Janena Gamble, who he doesn't
11 even know, if that's what he was doing, why is he drinking a
12 beer sitting in the car, which is congruent with what he's
13 already said: I was drinking all day. Yeah, he was drinking,
14 yes, he's underage, but he's not charged with that. He's not
15 charged with that. Is it wrong for him to be doing that?
16 Yeah, it's illegal, minor's aren't supposed to have alcohol,
17 they're not supposed to have guns either. That's not why we're
18 here. And this rap song, everybody in here has a right to free
19 speech and how you express yourself about strife in your life,
20 about living in the hood, what happens in your life every day,
21 comes out in every culture in history through music.
22 Everybody, I don't care if it's country music, I don't care if
23 it's rap music, rock and roll, it's about your experiences.
24 Talk about ill will or hatred, he didn't know this man. Josh
25 Miller told you himself on the stand, they never met, didn't

1 know him, but all of the sudden he has wickedness in his heart,
2 hatred in his heart for this man, he didn't know the guy. And
3 on the stand he told you, I did not want to do this. Now, I
4 admit to you, my client is not a polished man. Okay? He's not
5 polished. He is not polished, and what I mean by that is, he's
6 not very well educated, and he's, honestly, just not a
7 polished, clean person, period, he's just not. Okay? Does
8 that mean he's wrong in this situation? No, it does not. Does
9 it mean you could hold it against him because he doesn't have a
10 lot of money, impoverished, got friends who are involved in all
11 sorts of stuff? When I asked him on the stand about his record
12 in Arizona, he told you, a little too over excited to get on
13 the stand and talk, but it's been four years. Nervous?
14 Absolutely. Scared? Should be. But he got on the stand and
15 talked to you. Court's indulgence, Your Honor?

16 THE COURT: Alright.

17 MR. WILSON: Now, let's talk about the law. The law
18 says they got to prove Eryk Smith guilty beyond a reasonable
19 doubt. Okay? This is reasonable doubt up here. Okay? And
20 you're going to hear the judge use different language, he's
21 going to say, firmly convinced of his guilt, that he went in,
22 had something to do with the robbery, but not only knew about
23 it, that's not enough, that he was joined with them in some
24 plan or some scheme, because you know for a fact in the record
25 there's nothing that says he actually took those pills. None

1 of the co-conspirators got up and said, hey, he was involved in
2 this. No one got up and said he was involved in this.
3 Reasonable doubt, that's the standard. They have to get beyond
4 this point. They have to prove to you every element, and she's
5 right, every crime has elements. Okay? Take for instance, the
6 crime of armed robbery, the taking and carrying away of the
7 personal property of another with the intent to permanently
8 deprive them of the property, and you're doing it with force,
9 normally a weapon, or taking property in the presence of
10 another who has the ability to reach for that property. The
11 question is this: Is there any evidence that this young man
12 took anything, grabbed pills, hey, we're going to definitely go
13 out and do this, I want some Xanax tonight? The circumstantial
14 evidence that the prosecutor was talking about that the cars
15 were parked there, well, I see cars at the gas station all the
16 time, we all do, but if my daughter gets out of the car I'm not
17 thinking she's going to do a drug deal, that's not my first
18 thought. And if I'm drinking and having a good time I'm not
19 thinking my friends, I'm going out with friends, I'm not
20 thinking my friends are getting out of the car to go do a drug
21 deal, that's not my first thought. Just because a car is close
22 to your car does not mean you're doing a drug deal. That's not
23 beyond a reasonable doubt, even if you believe the cars are
24 close together that's not evidence of beyond a reasonable
25 doubt. These are all the other levels that we have of proof in

1 our system of justice, no evidence, Scintilla of Evidence,
2 reasonable suspicion, probable cause, which is what they use to
3 arrest you, and when Mr. Garrett arrested this man he did it
4 based on, based on his own testimony, two people, Janena Gamble
5 and then Jed Coleman, who you didn't hear from. He thought he
6 had enough. He said, look, I got probable cause, I'm gonna go
7 ahead and arrest him for this crime, and he did, and my client
8 admitted to being in the car. Preponderance of the evidence, a
9 little bit greater, preponderance of the evidence is simply
10 tipping the scale 51 percent, and that's used in civil cases.
11 Clear and convincing evidence, a little bit stronger, and then
12 beyond a reasonable doubt. The issue regarding conspiracy,
13 again, there is nothing in the record that supports there was
14 conspiracy. If the co-conspirators got on the stand and said,
15 yes, he is the one that did this with us, that's a conspiracy,
16 when two or more people are joining together, what we call
17 mutual assent or some sort of joined together for a common plan
18 or scheme to do a crime, that's conspiracy. Tell me when you
19 heard that in this case. Tell me when you saw anything that
20 led you to believe that this was a conspiracy. And then
21 attempted murder, attempted murder: Attempted murder carries
22 with it something called malice aforethought. Okay? That
23 means that you tried to kill someone, and it's not just trying
24 to kill someone, you had the intent to kill them and that you
25 did so with hatred or wickedness or an ill heart. Josh Miller

1 himself told you he didn't know him, so how in the world does
2 he establish that he had malice aforethought, that he had
3 malice in his heart, that he hated him or that he planned to
4 kill him, or that this was some sort of common scheme or plan
5 to do harm to Josh Miller? It was not. Remember what Eryk
6 Smith did tell you, he says that when she was in the car and
7 she was sitting down, she had her hands up, the other hand was
8 struggling for the weapon. How do you think, if what he says
9 is true was that they were outside the car and he was just
10 opening the car door and she wasn't doing anything to him, how
11 do you think her hand was on his throat? Why do you think her
12 hand was on his throat? There was only one shot fired, that's
13 the testimony in the record. Why do you think her hand was on
14 his throat? How is that possible? She was shot in the hand.
15 If she's not engaged in mutual combat with him why was her hand
16 near him at all, period, if she's outside the car? How is that
17 even possible? When he fired that shot, he fired it and hit
18 this arm, (indicating,) the left arm, which is the arm that was
19 wounded. You heard the doctor testify under oath that they
20 washed it out and that's how they treated it. But they want
21 you to believe that he was involved in some scheme and plan,
22 that this was all some mastermind, they are not masterminds,
23 okay? This is a small deal compared to what happens in the
24 drug world, and the prosecutor himself just said, hey, he was
25 upset in thinking that the marijuana was going to be less

1 trouble than this, thinking, this is nothing, and she's right
2 in the scheme of things, 40 pills ain't nothing on the street
3 market, okay? It is nothing compared to the seizures that law
4 enforcement sees every day, but it's still illegal. Self
5 defense, did he have a right to defend himself with deadly
6 force? That's the question here, right, and that's what we're
7 all talking about. Did he have a right to defend himself?
8 Everybody, no matter who you are, where you come from, and if
9 you don't like the law, it's the law, it is the law. Eryk
10 Smith is telling you, he told you on the stand, I didn't do
11 anything in this situation, I didn't bring about this action.
12 I wasn't trying to buy drugs, sell drugs, or help Janena
13 Gamble, he doesn't know, or help Jed Coleman. He jumps through
14 the window, he grabs her gun, and he admits they all had
15 weapons. That doesn't make sense that Janena Gamble, if she
16 just stole property from Josh Miller that belongs to him and
17 she's not gonna reach for her gun when she sees him coming for
18 that weapon, of course she is, they struggled over that weapon.
19 He wanted his drugs back, and she, for whatever reason, wanted
20 to rob him of these little bit of drugs. I don't know why she
21 did it, I don't care, she did it. The question is, did he know
22 about it, did he participate in it, did he help her? The
23 answer is, no. He had a right to defend himself. The law says
24 that if you didn't bring about the trouble, you got nowhere to
25 retreat, no where to get out, and you, yourself are in danger,

1 and it doesn't say they got to prove or we have to prove that
2 he was actually in danger, he's got to believe that he's in
3 danger, that's the law, and if that is the case you have a
4 right to defend yourself with deadly force, and that right
5 extends to all of us in every situation. You're going to hear
6 Your Honor tell you a lot about knowledge, knowledge of what's
7 going on, combining, you're gonna hear these words, joining
8 together. Okay? You're going to hear these words because
9 these are the things that the State has to prove to you beyond
10 a reasonable doubt. Evidence, competent evidence, that's
11 believable and credible, that Eryk Smith went out there with
12 this mastermind plan to get 40 pills from Josh Miller, who at
13 best is a small town drug dealer, and all four of them, or
14 three of them, based on the State's theory, decided that this
15 was the time to do it. That's not how everything happens in
16 life. He told you, we went to Coleman's house, his mama wanted
17 cigarettes, he told you that. He didn't have to say that. He
18 could have said, look, we were just at Delsean's house all day
19 long. He gave you a play-by-play of what they did that day.
20 He told you he was drinking, he told you he had a gun, why
21 would he tell you all that and then say -- makeup a story about
22 the cigarettes, does that make sense? This is every day life.
23 If there were text messages and messages and phone calls, move
24 the car, you know, we got to get in the right position, for 40
25 pills? They want us in a different position. This is only 20,

1 30 feet, and don't you find it odd after this all happens
2 you're in fear for your life, and the quickest way to get help
3 is to run inside that store? I have watched this video 50 to
4 60 times, and you go behind that store. And if you carefully
5 watch the video, and Your Honor will make it available if you
6 need to see it, when he's running back, that's before the Audi
7 even pulls out. You heard him testify under oath: I wanted to
8 get as far away from him as I could. Watch the video. When
9 he's coming back up there at that alley, then you see the Audi
10 pull out. Ladies and gentlemen, you know, there are times when
11 I look at cases and I just know there are issues. In this
12 case, because they fail to talk with Eryk Smith, and Eryk Smith
13 failed to talk with them, for whatever his reasons were, a lot
14 was missed, but I am telling you, he stood on the stand and
15 told you he did not commit this crime. He wasn't involved in
16 an armed robbery, he wasn't in a conspiracy with anyone. This
17 is not the mastermind that they are making it out to be and in
18 the circumstances even, don't dictate that he is guilty of any
19 of these crimes, and furthermore, he still had a right, as we
20 all do, to defend himself, whether or not the gun was illegal
21 or not, it doesn't matter in this situation, the question is,
22 did he have a right to defend himself? That's the question. I
23 am asking you to return a verdict of not guilty on armed
24 robbery, because he didn't do it, I'm asking you to return a
25 verdict of not guilty on conspiracy, because it wasn't proven

Reply by Ms. Richardson

1 at all, and I'm asking you to, obviously, return a verdict of
2 self defense, not guilty, on the attempted murder, because he
3 had a right to defend himself, didn't know Josh Miller,
4 obviously wasn't trying to hurt him, and he thought that his
5 life was in danger. It can happen in a split second to all of
6 us.

7 MS. RICHARDSON: Your Honor, I object to any
8 reference to the golden rule.

9 THE COURT: Sustained.

10 MR. WILSON: At the end of this trial the State has
11 the burden of proving you beyond a reasonable doubt of good
12 evidence, that he did something illegal, that he did something
13 wrong, that he was wrong, and not just wrong, but he knew about
14 it, he combined, and then did something to actually assist him,
15 that didn't happen in this case, there's no evidence of that,
16 whatsoever. I'm asking you to return verdicts of not guilty
17 for Eryk Smith. Thank you so much.

18 MS. RICHARDSON: So now we're to believe that Josh
19 Miller wasn't scared for his life just because he made a
20 decision to run one way instead of a well lit store where he
21 would've been trapped? It doesn't matter who owned the pills,
22 none of that matters. The only person, the only person that
23 puts a gun in Janena Gamble's hand, and really in Jed or
24 Jayqwane, or anybody else in the car, is him (indicating,)
25 because he didn't want to be the only one. So we are to

1 believe Josh Miller didn't tell us that both of them had a gun,
2 that he's somehow trying to protect Janena, that they both
3 didn't have a gun? He's the only one who's saying that, for
4 the first time here (indicating,) for the first time here
5 (indicating,) we're to believe what he's -- oh, he told you all
6 about what he did in Arizona. Really, did he, did he, or did
7 he minimize? Did he say, well, just disorderly conduct and
8 domestic violence? I had to pull it out of him. And let's
9 attack this man. That wasn't all the evidence he had, you
10 heard on the Body Cams, before he even got there while they
11 were loading Josh in the ambulance, they're goin' -- they were
12 talking to the witnesses at the scene, talking to the witnesses
13 at the scene, what were they radioing out? Black Audi, Florida
14 tags, instead of Georgia, black Audi, Florida tags, three Bravo
15 Mikes, one Bravo fox, they knew right then, three black males,
16 one black female. And when he was on the stand he was being
17 questioned, how he knew this and how he knew that. You don't
18 know Eryk Smith? I know he shot me. You've never seen him
19 before? I know he shot me. The identity of Eryk Smith was
20 being questioned until all of this, until all of this was put
21 in. The only one with this story is him. The only one with
22 his story is him, and he has minimized his involvement. You
23 know, does there have to be, and the judge will tell you as far
24 as conspiracy, a specific plan? Did he have to actually touch
25 the drugs? Nope. Hand of one is the hand of all. His

1 involvement? No, he didn't -- there's no evidence he talked to
2 him and planned anything as far as purchasing the drugs,
3 they're getting ready to go to a party, getting ready to go to
4 a party, and here's some Xanax. No, he didn't get in the car,
5 nobody's ever said he did, never got into that car with him.
6 What was he? What was he? A lookout, an armed lookout. And
7 after the robbery, and when they're trying to get away from the
8 pills, who tried to stop him? With a gunshot. He was ready,
9 very quickly, too quickly, too quickly. He knew that he was
10 there for a reason. Now, did anybody intend for it to go down
11 that way? Nope. But you're responsible for something that you
12 set into motion that is dangerous like this. No question and
13 undisputed that Jed Coleman and Janena Gamble are also charged.
14 No question and undisputed that purchasing and selling drugs
15 both is illegal, and none of them, none of them have been
16 charged with that, it's not just a favor to Josh Miller, none
17 of them were charged with it, because we're investigating the
18 shooting. Well, he couldn't have ill will and hatred, because
19 he didn't know him. Now, listen, we all know murder can be an
20 obstruction, and the judge is going to tell you, it doesn't
21 have to be specifically that I hated him and I knew who he was.
22 Malice is disregard for human life, disregard for human life,
23 and it doesn't have to be planned ahead of time, the shooting,
24 or the attempt to kill or the killing. Aforethought, a split
25 second, the malice, a split second. He didn't care about his

1 life, they cared about getting away. And look, I don't know
2 that they were cleaning out the car to save themselves from
3 pills or marijuana, or even heroin. A man had just been shot
4 in the head and neck, and they knew it, that's why they're
5 cleaning up, that's what they're cleaning up. It's
6 credibility. He told you who shot him, he told you what they
7 were doing. He don't know nothin' about nothin', a story for
8 everything.

9 He's guilty. He's guilty of conspiring, he's guilty
10 of the armed robbery, even if he's not the one who took the
11 drugs, and even if they didn't get taken all the way away, just
12 a little bit, they got moved, just a little bit, and most of
13 all, and especially of all, he's guilty of trying to kill that
14 man right there (indicating,) Joshua Miller, the one justified
15 in doing so. He was trying to help him get away. Thank you.

16 (Charge on the Law)

17 THE COURT: Ladies and gentlemen, all of the
18 testimony and other evidence in this case has been presented to
19 you. The attorneys have made their closing arguments and now
20 is the time of the trial when I charge you with the law to be
21 applied in this case. The indictments in this case allege that
22 the defendant committed three different crimes. The charges
23 against the defendant are attempted murder, armed robbery and
24 criminal conspiracy. I remind you that the fact the defendant
25 was arrested, charged and indicted in this case is not evidence

1 in this case and cannot be considered by you as evidence of
2 guilt in this case, nor does the defendant's arrest, charge and
3 indictment create any presumption or inference of guilt. These
4 documents are simply the formal instruments which contain the
5 charges made against the defendant. They are the formal
6 documents by which this case is brought into this courtroom.
7 Also, each indictment of charge is a separate and distinct
8 offense. You must decide each indictment separately on the
9 evidence and the law applicable to it uninfluenced as to your
10 decision as to any other indictment. The defendant may be
11 convicted or acquitted on any or all of the offenses charged.
12 You'll be asked to write a separate verdict of guilty or not
13 guilty for each indictment. The defendant pleads not guilty to
14 all three indictments. That plead puts the burden on the State
15 to prove the defendant guilty. A person charged with
16 committing a criminal offense in South Carolina is never
17 required to prove his innocence. I charge you that an
18 important rule of law is that the defendant in a criminal
19 trial, no matter what the seriousness of the charge may be,
20 will always be presumed to be innocent of the crime for which
21 the indictment was issued unless guilt has been proven by
22 evidence satisfying you of that guilt beyond a reasonable
23 doubt. The presumption of innocence does not end when you
24 begin your deliberations, but it accompanies the defendant
25 throughout the trial until you reach a verdict of guilt based

1 on the evidence satisfying you of that guilt beyond a
2 reasonable doubt. The presumption of innocence is like a rope
3 of righteousness placed about the shoulders of the defendant
4 which remains with the defendant until it has been stripped
5 from the defendant by evidence satisfying you of the
6 defendant's guilt beyond a reasonable doubt. The presumption
7 of innocence is not a mere legal theory, it is not just a legal
8 phrase. The presumption of innocence is a substantial right to
9 which every defendant is entitled unless you, the jury are
10 satisfied from the evidence of the defendant's guilt beyond a
11 reasonable doubt. Now, what is a reasonable doubt in the law?
12 A reasonable doubt is the kind of doubt that would cause a
13 reasonable person to hesitate to act. Proof beyond a
14 reasonable doubt is proof that leaves you firmly convinced of
15 the defendant's guilt. We know very few things in this world
16 with absolute certainty and in criminal cases the law does not
17 require proof that overcomes every possible doubt. If based on
18 your consideration of the evidence you are firmly convinced
19 that the defendant is guilty of the crime charged, you must
20 find the defendant guilty. On the other hand, if you think a
21 real possibility exists that the defendant is not guilty, you
22 must give the defendant the benefit of that doubt and find him
23 not guilty. I remind you that during this trial you and I have
24 certain duties to perform. As the trial judge my
25 responsibility is to preside over the trial of this case. I

1 also have the duty to rule on the admissibility of the evidence
2 offered during this trial. You are to consider only the
3 competent evidence before you. If any testimony was ordered
4 stricken from the record in this case during this trial you
5 must disregard that testimony. You are to consider only the
6 testimony which has been presented from the witness stand, any
7 exhibits which have been made a part of the record in this
8 case, and any stipulations of counsel. I have the
9 additional duty to charge you the law applicable to this case.
10 As the presiding judge, I am the sole judge of the law in this
11 case. Your duty as jurors is to accept and apply the law as I
12 now state it to you. If you have any ideas to what the law is
13 or what the law ought to be and your idea is different from
14 what I now tell you the law is, you must disregard your idea of
15 what the law is or ought to be because you were sworn to accept
16 the law and apply the law exactly as I state it to. In every
17 case tried in this court before a jury, the jury is the sole
18 and exclusive judge of the facts in a case. A trial judge can
19 not intonate, state, comment on or make any statement to a
20 trial jury about the facts in a case. Since you the jury are
21 the sole judge of the facts of this case, do not infer from
22 what I have said during the progress of this trial and ruling
23 upon the admissibility of evidence, or otherwise, or anything
24 that I say now during the course of this instruction to you
25 that I have any opinion about the facts in this case. The law

1 does not allow me to have an opinion about the facts in this
2 case. This is a matter solely for you the jury to determine.
3 As jurors, your duty is to determine the effect, value, weight
4 and truth of the evidence presented during this trial. Now,
5 two types of evidence are generally presented during a trial,
6 direct evidence and circumstantial evidence. Direct evidence
7 directly proves the existence of a fact and does not require
8 deduction, such as the testimony of an eyewitness who claims to
9 have actual knowledge of the fact. Circumstantial evidence is
10 a proof of a chain of facts and circumstances indicating the
11 existence of a fact. Crimes may be proven by circumstantial
12 evidence. The law makes absolutely no distinction between the
13 weight or value to be given to either direct or circumstantial
14 evidence, nor is a greater degree of certainty required of
15 circumstantial evidence than of direct evidence, however, to
16 the extent the State relies on circumstantial evidence the
17 circumstances must be consistent with each other and when taken
18 together point conclusively to the guilt of the accused beyond
19 a reasonable doubt. If these circumstances merely portray the
20 defendant's behavior is suspicious, the proof has failed. The
21 State has the burden of proving the defendant guilty beyond a
22 reasonable doubt. This burden rests with the State regardless
23 of whether the State relies on direct evidence, circumstantial
24 evidence or some combination of the two. You should weigh all
25 of the evidence in the case. After weighing all of the

1 evidence, if you are not convinced of the guilt of the
2 defendant beyond a reasonable doubt you must find the defendant
3 not guilty. On the other hand, after weighing all of the
4 evidence if you are convinced of the defendant's guilt beyond a
5 reasonable doubt you must find the defendant guilty.

6 Necessarily, you must determine the credibility of witnesses
7 who have testified in this case. Credibility simply means
8 believability. Your duty as jurors is to analyze and to
9 evaluate the evidence and to determine which evidence convinces
10 you of its truth. In determining the believability of
11 witnesses who have testified in this case you may believe one
12 witness over several witnesses or several witnesses over one
13 witness. You may believe a part of the testimony of a witness
14 and reject the remaining part of the testimony of that same
15 witness. You may believe the testimony of a witness in its
16 entirety or reject the testimony of a witness in its entirety.

17 You may consider whether any witness has exhibited to you any
18 interest, bias, prejudice or other motive in this case. You
19 may also consider the appearance and manner of a witness while
20 on the witness stand. The rules of evidence ordinarily do not
21 permit witnesses to testify to opinions or conclusions. An
22 exception to this rule exists for witnesses we call expert
23 witnesses. A witness who by education and experience has
24 become an expert in some art, science, profession or calling
25 may state an opinion as to relevant and material matter in

1 which the witness claims to be an expert, and may also state
2 the reasons for the opinion. You should consider any expert
3 opinion received in evidence in this case, and like any other
4 evidence, give it the weight you think it deserves. If you
5 decide that the opinion of an expert is not based on sufficient
6 education and experience or if you conclude that the reasons
7 given in support of the opinion are not sound, or that the
8 opinion is outweighed by other evidence, you may disregard the
9 opinion entirely. An expert witness' testimony is to be given
10 no greater weight in that of other witnesses simply because the
11 witness is an expert. Further, you're not required to accept
12 and expert's opinion, even though it is not contradicted.

13 In order to establish criminal liability criminal
14 intent is required. For example, the mental state required to
15 be proven by the State for a particular crime might be purpose,
16 intent, knowledge, recklessness or criminal negligence.
17 Criminal intent must be proven by the State beyond a reasonable
18 doubt. Criminal intent is always a matter that must be
19 determined by the jury from the circumstances surrounding the
20 situation. Intent cannot be proved to a mathematical
21 certainty. Medical science cannot dissect a person's brain and
22 determine what the person had in mind, so the law says that
23 criminal intent may be proved from the circumstances shown to
24 have existed. In other words, the State must show that the
25 circumstances in this case indicate beyond a reasonable doubt

1 that the defendant had a criminal intent. Intent does not have
2 to be established by direct and positive evidence. Intent may
3 be established like any other act by taking into consideration
4 the acts of the parties and all the facts and circumstances of
5 the case. Criminal intent is a mental state, a conscious wrong
6 doing. You must determine what the defendant intended to do
7 based on the circumstances shown to have existed. Criminal
8 intent can arise from an action or a failure to act. It may
9 arise from negligence, recklessness or an indifference to duty
10 or to consequences that is considered by law to be the
11 equivalent of criminal intent. Mere presence at the scene is
12 not sufficient to prove someone guilty of a crime. A
13 defendant's presence where a crime is being committed or mere
14 association where the person who commits a crime does not make
15 a defendant an accomplice or an aider and abettor of the person
16 committing the crime. The burden is on the State to prove
17 every element of the crime charged. If you find after
18 reviewing all of the evidence that the State has proved that
19 the defendant was only present at the scene of a crime and they
20 have not proved beyond a reasonable doubt any other
21 participation in the crime, then you must find the defendant
22 not guilty. The law is that proof of at the scene of the crime
23 is not sufficient to find someone guilty, however, if a crime
24 is committed by two or more people who are acting together in
25 committing a crime, the act of one is the act of all. A person

1 who joins with another to commit an unlawful act is criminally
2 responsible for everything done by the other person, which
3 happens as a probable or natural consequence of the acts done
4 in carrying out the common plan and purpose. For example, two
5 people can be guilty of burglary, when only one of the two
6 enters the dwelling to steal something while the other waits
7 outside the dwelling to carry the stolen goods to a vehicle.
8 If two or more people are together, acting together, assisting
9 each other and committing the offense, the act of one is the
10 act of all, or as it is sometimes said, the hand of one is the
11 hand of all. Prior knowledge that a crime is going to be
12 committed without more is not sufficient to make a person
13 guilty of that crime. Mere knowledge that another person is
14 going to commit a crime, even if the defendant is present when
15 the crime is committed, is not sufficient to convict the
16 defendant as a principal. Guilt as a principal is shown by
17 actual or constructive presence at the scene as a result of a
18 prior arrangement. Therefore, a finding of a prior arranged
19 plan or common scheme is necessary for a finding of guilt as a
20 principal. The state must prove beyond a reasonable doubt by
21 competent evidence the theory of the hand of one is the hand of
22 all. A principal in a crime is one who either actually commits
23 the crime or one who is present aiding, abetting or assisting
24 in committing the crime. When a person does an act in the
25 presence of or with the assistance of another the act is done

1 by both where two or acting with a common plan or intent are
2 present at the commission of a crime, it does not matter who
3 actually commits the crime, all are guilty, the hand of one is
4 the hand of all. Present at the commission of a crime deems to
5 be sufficiently mere to aid and abet and assist in the
6 commission of the crime, however, mere presence at the scene of
7 a crime is not sufficient to convict one as a principal on the
8 theory of aiding and abetting.

9 Intent is also a necessary element, but there must
10 have been a common design or intent to commit the crime and the
11 crime must have been committed pursuant thereto with the person
12 aiding and abetting by some overt act. Intent means intending
13 the result which actually occurs, not accidentally or
14 involuntarily. Intent may be shown by acts and conduct of the
15 defendant and other circumstances from which you may naturally
16 and reasonably infer intent. The State must prove these
17 elements beyond a reasonable doubt.

18 You have heard the evidence that the defendant was
19 convicted of a crime other than the one for which the defendant
20 is now on trial. This evidence may be considered by you if you
21 conclude it is true only in deciding whether the defendant's
22 testimony is believable and for no other purpose. You must not
23 consider the defendant's prior record as any evidence of the
24 defendant's guilt of the charge of this case.

25 The defendant is charged with attempted murder. To

1 convict the defendant of this the crime the State must prove
2 the defendant attempted to kill another person with malice
3 aforethought either expressed or implied. Malice is hate, ill
4 will, or hostility towards another person. It is the
5 intentional doing of a wrongful act without just cause or
6 excuse and with an intent to inflict an injury or under
7 circumstances that the law will infer an evil intent. Malice
8 aforethought does not require that malice exists for any
9 particular time before the act is committed, but malice must
10 exist in the mind of the defendant just before and at the time
11 the act is committed. Therefore, there must be a combination
12 of the previous evil intent and the act. Malice aforethought
13 may be express or inferred. These terms "express" and
14 "inferred" do not mean different kinds of malice but merely the
15 manner in which malice may be shown to exist. That is either
16 by direct evidence or by inference from the facts and
17 circumstances which are proved. Express malice is shown when a
18 person speaks words which express hatred or ill will for
19 another, or when a person prepared beforehand to do the act
20 which was later accomplished. For example, lying awake for a
21 person, or any other acts or preparation going to show that the
22 deed was within the defendant's mind would be express malice.
23 Malice may be inferred from conduct showing a total disregard
24 for human life. If facts are proved beyond a reasonable doubt
25 sufficient to raise an inference of malice to your satisfaction

1 this inference would be simply an evidentiary fact to be
2 considered by you, the jury, along with the other evidence in
3 the case and you may give it the weight you decide it should
4 receive. Attempted murder requires a specific intent to kill,
5 not a general intent. A specific intent to kill is an element
6 of attempted murder. Intent means intending the attempted
7 result, not accidentally or voluntarily causing the result.
8 The State must prove beyond a reasonable doubt that the
9 defendant intended to kill a specific person with malice
10 aforethought but failed in that attempt. In other words, to
11 convict the defendant in this case of attempted murder, the
12 State must prove beyond a reasonable doubt that the defendant
13 intended to kill the alleged victim, Joshua Miller, with malice
14 aforethought, but failed in that attempt. The State is not
15 required to prove that the defendant knew the victim or the
16 victim's name, only that the victim was the person that the
17 defendant intended to kill. As I previously instructed you,
18 intent may be shown by acts and conduct of the defendant and
19 other circumstances for which you may naturally and reasonably
20 find intent. Evidence of the character of the act, the
21 character of the instrument used, the manner in which it was
22 used, the purpose to be accomplished, and the resulting wounds
23 or injuries may be considered in determining the intent with
24 which the act was committed. Intent may also be demonstrated
25 by proving that the defendant voluntarily and willfully commits

1 an act, the natural tendency of which is to take another's
2 life.

3 If you find that the State has failed to prove beyond
4 a reasonable doubt that the defendant committed attempted
5 murder, you may consider whether the State has proven beyond a
6 reasonable doubt that the defendant committed assault and
7 battery of a high and aggravated nature. Included within the
8 offense of attempted murder is the lesser offense of assault
9 and battery of a high and aggravated nature. To convict the
10 defendant of assault and battery of a high and aggravated
11 nature, the State must first prove beyond a reasonable doubt
12 that the defendant unlawfully injured another person. The
13 State must also prove that the defendant's act either caused
14 great bodily injury to another person or the defendant's act is
15 accomplished by means likely to produce death or great bodily
16 injury. Great bodily injury means bodily injury which causes a
17 substantial risk of death or which causes serious permanent
18 disfigurement or protracted loss or impairment of the function
19 of a bodily member or organ. An assault occurs when a person
20 unlawfully attempts or offers to commit a violent injury upon
21 another person and had the present ability to complete the
22 attempted injury. An assault is the intentional creation of a
23 reasonable fear of imminent bodily harm. Assault does not
24 require that the intended injury or harm actually take place.
25 For example, if I walk up to you and when we are within arm's

1 reach, I draw back to hit you, that is an assault. A battery
2 is the unlawful touching of another person by a person who has
3 committed the assault. An unlawful touching can be caused by
4 part of the accused body or by any object the accused puts in
5 motion. A battery is the completion of the assault by using or
6 applying force to another person, however slight, in a rude,
7 angry or resentful matter without legal justification for doing
8 so. In my earlier example, if I carry through the assault by
9 hitting, then that is a battery. Unlike attempted murder,
10 assault and battery does not require a specific intent, only a
11 general intent. In other words, the State is not required to
12 prove that the defendant specifically intended to injure the
13 alleged victim, Joshua Miller. The defendant raises the
14 defense of self defense to the charge of attempted murder and
15 any lesser included offense of that charge. Self defense is a
16 complete defense, and if it is established you must find the
17 defendant not guilty of that charge.

18 The State has the burden of disproving self defense
19 by proof beyond a reasonable doubt. If you have a reasonable
20 doubt of the defendant's guilt after considering all of the
21 evidence, including the evidence of self defense, then you must
22 find the defendant not guilty on the charge of attempted murder
23 and its lesser included charge. On the other hand, if you have
24 no reasonable doubt of the defendant's guilt after considering
25 all of the evidence, including the evidence of self defense,

1 then you must find the defendant guilty. The following
2 elements are required to establish self defense. First, the
3 defendant must be without fault in bringing on the difficulty.
4 If the defendant's conduct was the type which was reasonably
5 calculated to and did provoke a deadly assault, the defendant
6 would be at fault in bringing on the difficulty and would not
7 be entitled to an acquittal based on self defense. The second
8 element of self defense is if the defendant was actually in
9 imminent danger of death or serious bodily injury or that the
10 defendant actually believed he was imminent danger of death or
11 serious bodily injury. If the defendant was actually in
12 imminent danger, the circumstances existing at the time of the
13 self defense would have to have warranted a person of ordinary
14 firmness and courage to strike a fatal blow to prevent death or
15 serious bodily injury. If the defendant believed he was in
16 imminent danger of death or serious bodily injury, it must be
17 shown that a reasonably prudent person of ordinary firmness and
18 courage would have had the same belief. In deciding whether
19 the defendant actually was or believed he was in imminent of
20 death or serious bodily injury, you should consider all of the
21 facts and circumstances surrounding the crime, including the
22 visible condition and characteristics of the defendant and the
23 victim. The defendant does not have to show that he was
24 actually in danger. It is enough if the defendant believed he
25 was in imminent danger and a reasonably prudent person of

1 ordinary firmness and courage would have had the same belief.
2 The defendant has the right to act on appearances, even though
3 the defendant's beliefs may have been mistaken. It is for you
4 to decide whether the defendant's fear of immediate danger of
5 death or serious bodily injury was reasonable and would have
6 been felt by an ordinary person in the same situation. A final
7 element of self defense is that the defendant had no other
8 probable way to the avoid the danger of death or serious bodily
9 injury than to act as the defendant did in this particular
10 instance. A person cannot be required to make an exact
11 calculation as to the degree or an amount of force which
12 may be needed to avoid death or serious bodily harm.
13 Therefore, in self defense, the defendant has the right to use
14 the force needed to avoid death or serious bodily harm. The
15 force used in self defense does not have to be limited to the
16 degree or amount of force used by the victim. The defendant
17 has the right to use so much force as appeared to be necessary
18 for complete self protection at which a person of ordinary
19 reason and firmness would have believed to be needed to prevent
20 death or serious bodily harm.

21 The defendant is also charged with armed robbery. To
22 convict the defendant of this crime the State must first prove
23 beyond a reasonable doubt that the defendant took personal
24 property from the person or presence of another person.
25 Property is in the presence of a person if it is within the

1 person's reach, inspection, observation or control, so that the
2 person could, if not overcome with violence or prevented by
3 fear, keep possession of the property. The State must also
4 prove beyond a reasonable doubt that the defendant carried the
5 property away intending to permanently deprive the owner of the
6 property and to keep the property for the defendant's own use.
7 The slightest removal of the property or the complete
8 possession of the property, even for an instant by the
9 defendant, is sufficient to show a taking and carrying away of
10 the property. The taking and carrying away of the property
11 must have been done with violence or by putting the owner of
12 the property in fear of violence. Finally, the State must
13 prove beyond a reasonable doubt that the defendant was armed
14 with a deadly weapon at any time during the commission of the
15 robbery. A deadly weapon is any article, instrument or
16 substance which is likely to cause death or great bodily harm.
17 Whether an instrument has been used as a deadly weapon depends
18 on the facts and circumstances of each case. The following are
19 examples of instruments which may be deadly weapons: A pistol;
20 a shotgun; a rifle; a dirk; a dagger; a knife; a slingshot;
21 metal knuckles; a razor; gasoline; a fireball; a molotov
22 cocktail and other liter fluid. A gun may be a deadly weapon
23 even is it not operated. The crime of armed robbery is not
24 completed the moment the stolen property is taken, but may be
25 deemed to continue during the robber's escape. If you find

1 that the State has failed to prove beyond a reasonable doubt
2 that the defendant is guilty of armed robbery, you may then
3 decide whether the State has proved beyond a reasonable doubt
4 that the defendant committed the lesser included crime of
5 attempted armed robbery. To convict the defendant of attempted
6 armed robbery the State must prove beyond a reasonable doubt
7 that the defendant attempted to take property from the presence
8 or possession of another person while armed with a deadly
9 weapon but failed in that attempt. An attempt is an effort to
10 accomplish a crime which does not succeed. An attempt includes
11 a specific intent to do a particular criminal act along with an
12 act falling short of the act intended. The State must show
13 more than mere preparation and intent, some overt act in the
14 effort to commit the crime is required. Intent means intending
15 the result which actually occurs, not accidentally or
16 involuntarily. Intent may be shown by acts and conduct of the
17 defendant and other circumstances from which he may naturally
18 and reasonably infer intent.

19 The defendant is also charged with conspiracy. To
20 convict the defendant of conspiracy the State must prove beyond
21 a reasonable doubt that the defendant combined with one or more
22 persons for the purpose of committing an unlawful act or
23 committing a lawful act by unlawful means. A mutual
24 understanding, agreement or common intention and plan must
25 exist between the defendant and at least one other person.

1 Mere passive knowledge of or consent to criminal conduct of
2 another is not enough to make a person a conspirator, guilty
3 knowledge and participation is required. Similarly, the mere
4 fact that the defendant may have associated with another person
5 or met with another person and discussed common aims and
6 interests does not necessarily establish proof of the existence
7 of a conspiracy or that the defendant was involved in the
8 conspiracy. On the other hand, the agreement does not have to
9 be a formal one or be in writing. The conspirators do not have
10 to hold a meeting and expressly state the terms of the common
11 plan, nor does the agreement have to be stated in words between
12 the conspirators. The agreement of a criminal conspiracy may
13 come into being through an implied mutual understanding. The
14 willful, intentional and knowing adoption by two or more
15 persons of a common plan is sufficient. No overt acts need to
16 be shown to establish a conspiracy. The conspiracy may be
17 shown by circumstantial evidence and the conduct of the
18 parties. In order to convict a defendant of conspiracy the
19 State must prove beyond a reasonable doubt, not only that the
20 defendant knew of the unlawful conduct, but that the defendant
21 agreed to combine with the other persons for the purpose of
22 accomplishing the unlawful conduct.

23 As the jury, you must find one of several different
24 verdicts for each indictment in this case. No significance is
25 to be given to the order in which I state these possible

1 verdicts to you, I simply must state one first, one second, and
2 so on. As to the indictment for attempted murder, you may find
3 the defendant guilty of attempted murder, guilty of assault and
4 battery of a high and aggravated nature, or not guilty. As to
5 the indictment for armed robbery, you may find the defendant
6 guilty of armed robbery, guilty of attempted armed robbery, or
7 not guilty. As to the indictment for criminal conspiracy, you
8 may find the defendant guilty or not guilty. Ladies and
9 gentlemen, your verdict for each indictment must be unanimous,
10 and as I previously instructed you, you must decide each
11 indictment separately on the evidence and the law applicable to
12 it uninfluenced by your decision as to the other indictments.

13 Ms. Coles, as Foreperson, when the jury agrees on a
14 verdict, if you'll check the appropriate verdict for the
15 appropriate indictment, then sign your name at the bottom, date
16 the verdict form, and then knock on the door and advise the
17 bailiff that the jury has reached a verdict. Now,
18 I'm going to excuse you to the jury room, but please do not
19 begin your deliberations. I need to check with the attorneys
20 and see if they have any challenges to my charges or additional
21 charges I need to give you. If they do and I deem them
22 appropriate, I'll bring you back into the courtroom and make
23 whatever corrections or additional charges are necessary. If
24 there are none then the exhibits and the verdict form will be
25 taken back to the jury room and the bailiff will instruct you

1 to begin your deliberations, but please do not begin your
2 deliberations until the bailiff instructs you to do so. Thank
3 you very much.

4 (Jury retired to the jury room at this time)

5 THE COURT: Any challenges or additional charges from
6 the State as to the charge?

7 MS. RICHARDSON: No, Your Honor.

8 THE COURT: Any from the defense?

9 MR. WILSON: No, Your Honor.

10 THE COURT: Let's make sure we've got all of the
11 exhibits. Here's the verdict form, and let's make sure we've
12 got all the exhibits and then I'll have the bailiff take them
13 back to the jury and you can tell them to begin their
14 deliberations.

15 MS. RICHARDSON: And Your Honor, we do have a laptop
16 available where the internet has been disabled.

17 THE COURT: If they ask for it we will make the
18 decision then.

19 MS. RICHARDSON: Okay.

20 THE COURT: Do we got everything?

21 MS. RICHARDSON: Yes, Your Honor.

22 THE COURT: Alright, if we can go ahead and take the
23 exhibits and the verdict form to the jury and tell them they
24 can begin their deliberations. Anything from the State before
25 we recess while the jury deliberates?

1 MS. RICHARDSON: No, Your Honor.

2 THE COURT: Anything from the defense?

3 MR. WILSON: Nothing, Your Honor.

4 THE COURT: We will be in recess unless and until we
5 hear from the jury.

6 MR. WILSON: Thank you, Judge.

7 (Recess taken and deliberations began at 11:14 a.m.)

8 (Question of the Jury)

9 THE COURT: I've gotten three questions or requests
10 from the jury. This is not the order I got them in, but I'll
11 address the easiest first. First: The jury requests a
12 description of what each charge is again. We need a copy of
13 what the judge explained to us. I'm just going to give them a
14 written copy of my charges to take back there, but I'm going to
15 bring them back in and tell them, you know, the law says you
16 have to consider the charges as a whole, you can't pick part of
17 the law to follow and ignore other parts of the law, you have
18 to follow the entire charge.

19 The other two questions: Could the defense had
20 called State's witnesses, J. Gamble and Jed Coleman to the
21 witness stand, and why didn't defense attorney call the
22 defendant's girlfriend here in South Carolina to testify? You
23 all tell me what you all think. Number one: Why didn't you
24 call the girlfriend? I'll just say that's a decision nobody
25 knows except for the defendant or the defendant's attorney, you

1 know, I can't answer that, it can't be answered. Number two,
2 we want to say, could the defense have called State's witnesses
3 J. Gamble and Jed Coleman? And I think this is the law. I can
4 say, the defense could have requested, but since they are
5 co-defendants they could not be compelled to testify. I don't
6 know if a request was made and denied or if the request was
7 just never made. What's the defendant's position on that?

8 MR. WILSON: Judge, I would renew, and I know it's
9 going to be an issue, but I would renew my permanent issue that
10 if the Court's going to tell them that then I would ask the
11 Court to also let them know that we don't have the power to
12 induce, we don't have the power to proffer or promise, that
13 only comes to the State.

14 THE COURT: Well, I'm not going to phrase it that
15 way, but I will say that you do not have the power to compel
16 them to come testify on the defendant's behalf. Since they are
17 co-defendants they can exercise their right to remain silent
18 and not cooperate.

19 MR. WILSON: Yes, sir.

20 MS. RICHARDSON: Yes, I would ask just they be
21 advised as co-defendants, they have the right to remain silent.

22 THE COURT: Okay. Well, they are asking, why didn't
23 the defendants call them to testify, or could they have called
24 them to testify and why didn't they? And I think the best
25 thing is to say they could not compel them to testify because

1 as co-defendants they have the right to remain silent and could
2 not be required to assist this defendant or to testify at all.

3 MS. RICHARDSON: That's good.

4 THE COURT: Anything from the State before we bring
5 the jury in?

6 MS. RICHARDSON: No, Your Honor.

7 THE COURT: Anything from the defense?

8 MR. WILSON: Nothing, Your Honor.

9 THE COURT: I'm also going to tell them that we've
10 ordered lunch for them, when it gets here they can deliberate
11 while they eat or they can stop deliberations, eat and then
12 resume, but everybody has to do the same thing. Alright, let's
13 bring the jury in.

14 (Jury entered the courtroom.)

15 THE COURT: Ladies and gentlemen, welcome back. I've
16 received your questions and requests, and I'll address them one
17 at a time. The first one: Could the defense have called
18 State's witnesses J. Gamble and Jed Coleman to the witness
19 stand? The defense could not require them to come and testify
20 and could not subpoena them to come and testify. As
21 co-defendants, these two defendants have the right to remain
22 silent, so the request could have been made and rejected or
23 could have not been made at all. I can tell you that the
24 defense could not compel these co-defendants to come and
25 testify in this case. Why didn't defense attorney call the

1 defendant's girlfriend here in South Carolina to testify? I
2 don't know. You don't know, the only people that knows are the
3 defendant and defendant's attorney, and that's just a decision
4 they made in this trial. Last request: The jury requests a
5 description of what each charge is again. We need a copy of
6 what the judge explained to us. I've got a copy of my charges.
7 I'm going to give it to you to take back. You can use it in
8 your deliberations, however, I must caution you, you must
9 consider the charges as a whole. You can't pick certain things
10 to follow and ignore other instructions, and also, I'll need
11 you to return this when you conclude your deliberations.

12 Now, one final matter, we have ordered lunch for you,
13 I don't know when it's going to get here, but when it gets here
14 if you are still deliberating you can do one of two things.
15 You can continue to deliberate while you eat, or you can stop
16 your deliberations, eat, and then resume your deliberations.
17 Whatever you want to do is up to you. The only requirement is
18 everybody must do the same thing. You can't have some jurors
19 continue deliberations while others choose not to, so whatever
20 you agree to do as a group, you can do that. I don't know how
21 long it will before it gets here, but it shouldn't be too much
22 longer. Ms. Coles, I'll give you these instructions to take
23 back with you and I'll send you back to the jury room to
24 continue your deliberations. Thank you very much.

25 (Jury retired to jury room to continue deliberations

1 at 11:44 a.m.)

2 THE COURT: Anything from the State?

3 MS. RICHARDSON: No, Your Honor.

4 THE COURT: Anything from the defense?

5 MR. WILSON: Nothing, Your Honor.

6 THE COURT: I'm going to have the court reporter mark
7 this whatever the next Court's exhibit is, then mark that the
8 next Court's exhibit. We will be in recess.

9 MR. WILSON: Thank you, Judge.

10 MS. RICHARDSON: Thank you, Judge.

11 (Recess taken.)

12 (Question of the jury)

13 THE COURT: We've got another question from the jury.
14 It says: Please provide clarification or examples of how
15 "without fault" works. I mean, basically, the law is for self
16 defense to be applicable or to be a valid defense, the
17 defendant has to be without fault in bringing on the
18 difficulty. I don't know how else to explain it, unless you
19 all could give me an example or something. I mean, I went back
20 there and I did a quick search, I didn't do an exhaustive
21 search on the internet, but it all says that every appellate
22 case, and the ones I read, it just said self defense is not an
23 available defense unless the defendant is without fault in
24 bringing on the difficulty. I don't know how much --

25 MR. WILSON: Judge, I don't know how the State feels,

1 I would caution against examples. I think it's explanatory.
2 Without fault is without fault. You know, I don't know how
3 else to explain it, I don't know what I would say to explain
4 it.

5 MS. RICHARDSON: I would just not add any additional
6 instructions. They've been instructed.

7 THE COURT: I'll just say, I can't give any examples
8 or provide more clarification than to say self defense requires
9 that the defendant be without fault in bringing on the
10 difficulty.

11 MS. RICHARDSON: And I believe that's in the written
12 instructions they already have.

13 THE COURT: Or maybe I can just say, refer to the
14 written instructions, I mean, I don't know --

15 MR. WILSON: Without fault is without fault, and my
16 idea to it is, I'm not sure what they're saying but --

17 THE COURT: That's what I'm saying, I'm not really
18 sure whether they're having trouble understanding the term
19 "without fault."

20 MR. WILSON: Right.

21 THE COURT: Maybe if I just say I'm not permitted to
22 give you an example, you must refer to the written charge which
23 is the law in this case.

24 MR. WILSON: Yes, Your Honor.

25 THE COURT: Does that sound sufficient?

1 MS. RICHARDSON: Yes, Your Honor.

2 THE COURT: Alright, I just put: I am not permitted
3 to give any examples of without fault. The only clarification
4 I can give is in the written jury charge provided to you. Does
5 that sound alright to the defense?

6 MR. WILSON: Yes, Your Honor.

7 THE COURT: Does that sound alright to the State?

8 MS. RICHARDSON: Yes, Your Honor.

9 THE COURT: Let's go ahead and mark this as Court's
10 Exhibit 4. If you would go ahead and just take that note back
11 into the jury room. Anything from the State before we recess?

12 MS. RICHARDSON: No, Your Honor.

13 THE COURT: Anything from the defense?

14 MR. WILSON: Nothing, Your Honor.

15 THE COURT: We'll be in recess until we hear from the
16 jury.

17 (Recess taken.)

18 THE COURT: I've received a note from the jury. It
19 says: Unfortunately, we're unable to reach a unanimous
20 decision on as to indictment number 2019-GS-22-00778. All I
21 know is to bring them in and give them the Allen Charge and
22 send them back out. Anything from the State?

23 MS. RICHARDSON: No, Your Honor.

24 THE COURT: Anything from the defense?

25 MR. WILSON: Your Honor, just briefly, what the

1 number again, I apologize, Judge.

2 THE COURT: 778, Attempted Murder.

3 MR. WILSON: Thank you, Your Honor. Nothing from the
4 defense, Your Honor.

5 THE COURT: Let's bring the jury in. Let's go ahead
6 and mark this as a Court's exhibit.

7 (Allen Charge.)

8 THE COURT: Ladies and gentlemen, I understand you've
9 been unable to reach a unanimous verdict as to one of the
10 indictments; is that correct?

11 THE FOREPERSON: That is correct.

12 THE COURT: Now, you stated that you've been unable
13 to agree on a verdict on one of these indictments. As I
14 instructed you earlier, the verdict of the jury must be
15 unanimous. When a matter is in dispute it isn't always easy
16 for even two people to agree, so when 12 must agree it becomes
17 even more difficult. In most cases absolute certainty cannot
18 be reached or expected, however, you have a duty to make every
19 reasonable effort to reach a unanimous verdict. In doing this
20 you should consult with one another, express your own views and
21 listen to the opinions of your fellow jurors. Tell each other
22 how you feel and why you feel that way. Discuss your
23 differences with open minds. Although the verdict of the jury
24 must be unanimous, every one of you has the right to your own
25 opinion. The verdict you agree to must be your own verdict,

1 the result of your own convictions, and should not give up your
2 firmly held beliefs merely to be in agreement with your fellow
3 jurors. The majority should consider the minority's position
4 and the minority should consider the majority's position. You
5 should carefully consider and respect the opinions of each
6 other and re-evaluate your position for reasonableness,
7 correctness and impartiality. You must lay aside all outside
8 matters and re-examine the questions before you based on the
9 law and evidence in this case. If you do not agree on a
10 verdict in this case I must declare a mistrial. In that case
11 it does not mean that anybody wins. It just means that at some
12 future time I will try this case with some other jury sitting
13 where you now sit. The same participants will come and the
14 same lawyers will ask basically the same questions and get
15 basically the same answers, and we'll go through the whole
16 process again. You were selected in the same manner and from
17 the same source as any future jury will be, and there is no
18 reason for me to suppose that the case will ever been submitted
19 to 12 more intelligent, impartial, conscientious and competent
20 jurors than you, or that the more or clearer evidence will be
21 produced on one side or the other. So I'm going to ask that
22 you please return to the jury room and continue your
23 deliberations to see if you can reach a unanimous verdict.
24 Thank you very much.

25 (Jury exited the courtroom at 3:24 p.m.)

1 THE COURT: Anything from the State?
2 MS. RICHARDSON: No, Your Honor.
3 THE COURT: Anything from the defense?
4 MR. WILSON: Nothing, Your Honor.
5 THE COURT: We'll be in recess until we hear from the
6 jury.
7 (Recess taken.)
8 THE COURT: I understand the jury has reached a
9 verdict. Anything from the State before we bring the jury in?
10 MS. RICHARDSON: No, Your Honor.
11 THE COURT: Anything from the defense?
12 MR. WILSON: Nothing, Your Honor.
13 THE COURT: Let's bring the jury in.
14 (Verdict)
15 THE CLERK: Ladies and gentlemen, welcome back. Ms.
16 Coles, I understand the jury has reached a verdict; is that
17 correct?
18 THE FOREPERSON: Yes, sir.
19 THE COURT: Have you completed and signed the verdict
20 form?
21 THE FOREPERSON: Yes, sir, would you like it?
22 THE COURT: If you would hand it to the bailiff,
23 please. Thank you. I'll ask the Clerk of Court if she would
24 please publish the verdict.
25 THE CLERK: State of South Carolina versus Eryk J'Von

1 Smith, as to indictment Number 2019-GS-22-00778 for Attempted
2 Murder, we, the jury, find the defendant guilty of assault and
3 battery of a high and aggravated nature.

4 As to Indictment 2019-GS-22-0777 for armed robbery,
5 we the jury find the defendant not guilty.

6 As to Indictment 2019-GS-22-00779 for criminal
7 conspiracy, we, the jury, find the defendant not guilty.

8 THE COURT: Ladies and gentlemen, if this is your
9 verdict, please signify by raising your right hand. Let the
10 record reflect that all jurors raised their right hand. Any
11 polling of the jury by the defense?

12 MR. WILSON: None, Your Honor.

13 THE COURT: Ladies and gentlemen, that concludes your
14 duties in this case, and it also concludes your duties as
15 jurors for this week. I want to thank you for your service. I
16 know it's not a fun thing to do or an easy thing to do, but it
17 is an important and a vital thing that you have performed this
18 week and I want to thank you for that service. You've got a
19 one year disqualification from serving jury duty in state and
20 circuit court, you've got a three-year exemption. I hope you
21 don't exercise your exemption because we do need good jurors
22 and I want to thank you for your service, each and every one of
23 you, you've done a very fine job and I want to thank you.
24 You're free to go for the remainder of the day and the
25 remainder of the week and please take our gratitude with you.

1 Thank you very much.

2 (Jury excused.)

3 THE COURT: Any post-trial motions at this time?

4 MR. WILSON: Your Honor, for the record, I can't say
5 I'm unhappy with it, I understand it, I understand it and I
6 believe that it's a compromised verdict based on the fact that
7 Your Honor had to Allen charge the jury. Obviously, they were
8 not guilty, which is what we believed, on the armed robbery and
9 the conspiracy but compromised on the attempted murder because
10 they couldn't agree on self defense. I think the questions
11 that they asked regarding that matter, including the fault
12 issue, as well as coming back and saying they were deadlocked,
13 is what I believe happened. We would just ask for a new trial
14 based on the former objections, and obviously, I know Your
15 Honor is probably going to be doing sentencing, Judge.

16 THE COURT: I'm going to deny the motion.
17 Anything else?

18 MR. WILSON: Nothing further, Judge.

19 THE COURT: Anything further from the State?

20 MS. RICHARDSON: No, Your Honor.

21 THE COURT: Are we ready to go ahead on the
22 sentencing?

23 MS. RICHARDSON: Yes, Your Honor.

24 THE COURT: Ms. Anderson or Mr. Wilson, anything in
25 mitigation?

1 MR. WILSON: Your Honor, if I may, Judge. Judge, my
2 client is 21 years old. In this situation, Your Honor, this
3 was, obviously, a tough fought battle between the State and
4 defense. I think it is noteworthy, Judge, that this defendant
5 was not found guilty of armed robbery, not found guilty of
6 conspiracy. I think, again, the jury struggled with the issue
7 regarding self defense, and that is always a difficult defense
8 to assert when someone has been shot. Having said that, Judge,
9 he has not been found guilty of the greater offense of
10 attempted murder, and I know Your Honor obviously has to impose
11 a sentence that is appropriate, but I would ask the Court to
12 take into consideration sincerely the fact that the jury has
13 found him not guilty of the other crimes, essentially saying
14 that he was not involved in those crimes. Now, having said
15 that, obviously, I think when I get back and I think about the
16 logical path that the jury took to say, well, look, he's not
17 responsible for the armed robbery, he's not responsible of the
18 conspiracy, legally, but then to find him at fault for having
19 to defend himself was, again, a compromise, but I do understand
20 sometimes that's how things work. Having said that, I mean, I
21 know that, you know, he had one charge, obviously, in a
22 conviction, or plea, in Arizona that was domestic violence, and
23 he obviously had a disorderly conduct that was related to a
24 weapon and, you know, I had a good chance to spend time with
25 him and his family this week. I've obviously known him before

1 I represented him, obviously when this first happened, and he
2 is a smart young man. You know, obviously, and again, I told
3 the jury, and I meant this, he is not polished, he needs,
4 obviously, I think, some growing up to do, but he's not a bad
5 person, I don't sense that about him, and I know bad actors
6 because I represent a lot of them. I'm asking the Court to
7 have mercy on him considering the verdict and we're just asking
8 the Court to consider all of the factors in this situation,
9 Judge.

10 THE COURT: Alright. Ms. Anderson, anything you want
11 to say?

12 MS. ANDERSON: No, Your Honor, nothing further.

13 THE COURT: Mr. Smith, anything you want to say or
14 does anyone want to speak on your behalf?

15 THE DEFENDANT: I just ask for mercy from the Court.

16 THE COURT: Alright. Does the victim wish to speak?

17 MS. RICHARDSON: No, Your Honor, the victim has
18 expressed considerable fear and has left the court. Your Honor
19 did hear his testimony. Just for the record, I don't agree
20 with Mr. Wilson's assessment that this had to be just a
21 compromised verdict, obviously, Your Honor knows there is a
22 difference between the charges regarding specific and general
23 intent, as well. I will note that he was arrested and pled
24 guilty to the charges in Arizona which occurred when he knew
25 that he was being booked for these charges, they did involve a

Sentencing

1 firearm. Additionally, Your Honor, he was out on bond and his
2 bond had been revoked because he violated the conditions of his
3 bond for house arrest but was also arrested and found in a car
4 where there was a firearm. There were multiple people in the
5 car but he was in found in a car where there was a firearm.

6 THE COURT: Any other prior record?

7 MS. RICHARDSON: No, Your Honor. He had some minor
8 juvenile stuff, nothing that would have risen to the level of
9 impeachment, but he had just turned 18 right before this
10 occurred.

11 (Sentencing)

12 THE COURT: Mr. Smith, you have been found guilty by
13 a jury trial in the charge of assault and battery of a high and
14 aggravated nature. The sentence of the Court is that you be
15 confined to the State Department of Corrections for 20 years,
16 and you'll receive credit for any time served thus far.

17 MS. RICHARDSON: Your Honor, the State will be
18 dismissing the other pending charges against him as well.

19 MR. WILSON: Your Honor, would he get credit for time
20 served, Judge?

21 THE COURT: He gets credit for any pre-trial
22 detention he's served.

23 MR. WILSON: Yes, sir. Thank you, Judge.

24 THE COURT: Thank you.

25 (Trial concluded Friday, May 20, 2022 at 2:33 p.m.)

1 CERTIFICATE

2 STATE OF SOUTH CAROLINA

3 COUNTY OF GEORGETOWN

4 I, Julie A. Kevish, Official Court Reporter for the
5 State of South Carolina, do hereby certify that the foregoing
6 is a true, accurate and complete Transcript of Record of the
7 proceedings had and evidence introduced in the Court of General
8 Sessions for Georgetown County, South Carolina, on the 20th day
9 of May, 2022.

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

12

13 May 20, 2022

14

15

Julie Kevish

16

JULIE A. KEVISH
OFFICIAL COURT REPORTER

17

18

19

20

21

22

23

24

25

WITNESSES

Georgetown County Sheriff's Office

59

REST WARRANT NUMBER

2018A2210500596

CDR: 3410 §16-03-0029

DOI: 10/9/2018

ACTION OF GRAND JURY

TRUE BILL

Dana L. Strickland
Foreperson of Grand Jury
Date: 8/25/2019

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2019-GS22-00778 ✓

The State of South Carolina

County of Georgetown

Alicia Richardson

19G00524

COURT OF GENERAL SESSIONS

SEPTEMBER, 2019 TERM

THE STATE

VS.

ERYK J'VON SMITH
[REDACTED] LYNCH STREET
GEORGETOWN, SC 29440

DOB: [REDACTED] 2000
SSN: [REDACTED]
B / M

ATTORNEY:

Indictment for

ATTEMPTED MURDER

Jimmy A. Richardson, II, Solicitor

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

INDICTMENT

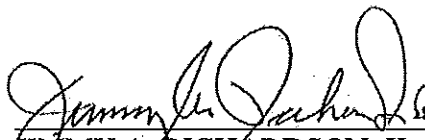
At a Court of General Sessions, convened on September 25, 2019, the Grand Jurors of Georgetown County present upon their oath:

ATTEMPTED MURDER

CDR: 3410 16-03-0029

That Eryk J'Von Smith did in Georgetown County on or about October 9, 2018 with intent to kill Joshua Miller, attempt to kill the victim with malice aforethought, either expressed or implied in violation of Section 16-3-29, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


JIMMY A. RICHARDSON, II
FIFTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Georgetown

STATE

VS.

Eryk J'Von Smith

AKA:

Race: BLACK Sex: M Age: 21DOB: ██████-2000 SS#: ██████████Address: ██████ Ford Village RoadCity, State, Zip: Georgetown, SC 29440DL#: ██████████ SID#: ██████████INDICTMENT/CASE#: 2019GS2200778A/W#: 2018A2210500596Date of Offense: 10/9/2018S.C. Code §: 16-03-0029CDR Code #: 3410

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Assault & Battery of a High & Aggravated Nature 0-20 yrs.in violation of § 16-03-0600(B)(1) of the S.C. Code of Laws, bearing CDR Code # 3411
☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
 (CSC w/minor 1st or CSC w/minor 3rd)

 The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives
 Presentment to Grand Jury. _____ (def.'s initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Richardson, Alicia A. SCB8880

SC Bar # Defendant

Anderson, Lauren K.
Attorney for Defendant

SCB103728

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction, ☐ County Detention Center,for a determinate term of 20 days/months/years/Time Served ☐ Youthful Offender Act not to exceed X yearsand/or to pay a fine of \$ X; provided that upon the service of X days/months/years/Time Served and or payment
of \$ X; plus costs and assessments as applicable*; the balance is suspended with probation for Xmonths/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

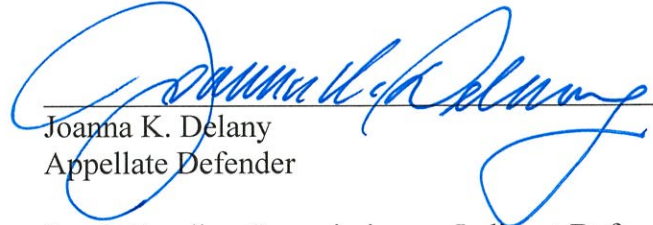
The sentence shall run

☐ 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 SCDOD.
_____ days/months☐ To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65
(Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Joanna K. Delany
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 14th day of August, 2023.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
Aug 14 2023
SC Court of Appeals

Appeal from Georgetown County

Honorable Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

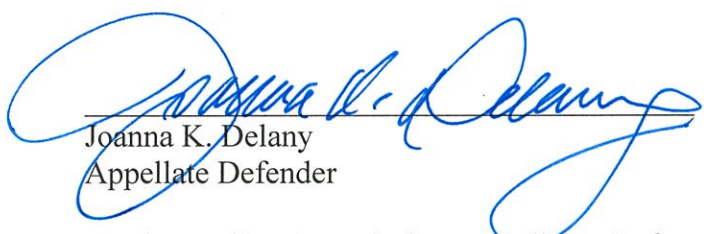
ERYK J. SMITH,

APPELLANT

APPELLATE CASE NO. 2022-000723

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Record on Appeal in the above-referenced case has been served upon Ambree M. Muller, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 14th day of August, 2023.


Joanna K. Delany
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT