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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable G.D. Morgan, Jr., Circuit Court Judge

BRITTANY PEARSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-000561

APPENDIX

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
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STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS

The State,)
-vs-) TRANSCRIPT OF RECORD
Brittany Shaunta Pearson,) 2015-GS-42-795;796
Defendant.) May 23 - 25, 2016
Spartanburg, South Carolina

B E F O R E:

J. DERHAM COLE, JUDGE; and a jury

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

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1 (Proceedings May 23, 2016)

2 THE COURT: All right. First case up is State vs.
3 Brittany Shaunta Pearson.

4 Mr. Quinn, you represent her?

5 MR. QUINN: I do, Your Honor.

6 THE COURT: And, Ms. Poulos, you represent the state
7 -- you and Mr. Anthony?

8 MS. POULOS: Yes, Your Honor, yes.

9 THE COURT: Do y'all have any pretrial matters we need
10 to address?

11 MS. POULOS: We do, Your Honor.

12 THE COURT: And what do we have?

13 MS. POULOS: I know Mr. Quinn has filed a "Stand Your
14 Ground" motion. And actually Mr. Ghent is going to be
15 assisting us with -- with that. He's on his way down.

16 And we have a -- we have a -- just a very short
17 Jackson vs. Denno hearing. I think I'll need to put that
18 on the record since there's a confession in this case.

19 The state has one just very short motion in limine to
20 exclude any -- any prior acts of violence or the victim's
21 toxicology. And I'm not even sure if Mr. Quinn's going to
22 use that. I believe that would be all the pretrial matters
23 that I'm aware of, Your Honor.

24 THE COURT: And how much time do you anticipate that
25 will take?

1 MR. QUINN: I anticipate calling one witness in the
2 "Stand Your Ground" motion. Maybe an hour for that. You
3 know, two hours. No more than that total for the motions.

4 I would anticipate in case the Court's trying to
5 figure out longterm, I think two days for the trial, two
6 full days. So if we started this afternoon and did
7 motions, whenever we do openings, today or tomorrow, we'll
8 finish wednesday, I would expect. And then depending on
9 how long we go wednesday, if we get a verdict wednesday
10 night or Thursday morning, I would hope.

11 THE COURT: All right. Let's excuse the jury until
12 3:30.

13 MR. QUINN: Do you want voir dire now?

14 THE COURT: If you have it, I'll take it.

15 All right. We are ready to proceed with the motion?

16 MR. QUINN: I am.

17 MS. POULOS: Your Honor, we are waiting on Mr. Ghent.
18 He -- he will be assisting us with the "Stand Your Ground"
19 portion of it, although we may -- I could put my other
20 motion on the record, Your Honor. That -- that shouldn't
21 take very long.

22 THE COURT: Okay.

23 MS. POULOS: Your Honor, this motion I filed, it's
24 just a motion to exclude any prior incidents between the
25 defendant and the victim, Myah Cole, as well as the

1 victim's toxicology report under South Carolina case law
2 and Rules 401, 402 and 403 of the South Carolina Rules of
3 Evidence.

4 Your Honor, in -- in this case I -- just out of an
5 abundance of precaution we make a motion to exclude any
6 prior specific incidents of violence or evidence involving
7 the victim that the defendant may try to introduce. We
8 don't believe that there are any, but, again, I -- I just
9 wanted to file that.

10 In fact, in the defendant's own verbal recorded
11 statement to police she acknowledges that the two of them
12 had never gotten physical before. She acknowledged that
13 they have argued verbally but had never gotten to that
14 point.

15 So I don't believe that that's an issue, but I
16 certainly wanted to -- to make that motion out of an
17 abundance of precaution to avoid any issues, Your Honor.

18 Obviously, our position would be that any evidence
19 would be irrelevant and highly prejudicial, Your Honor, and
20 shouldn't be admissible and mentioned in this case.

21 I have cited the State vs. Lyles case in my -- I'm
22 sorry. Actually, these -- cited State vs. Brown case with
23 regard to that issue, Your Honor, as well as cited the
24 rules 401, 402 and -- and 403.

25 I don't know if Mr. Quinn wishes to respond. I won't

1 go any further, but that would be our argument with regard
2 to the prior acts of -- of violence, which, again, I'm not
3 aware that there are any in this case.

4 The second part of the motion, Your Honor, deals with
5 the victim's toxicology report from SLED. The victim's
6 toxicology came back to blood alcohol of .151.

7 Obviously, it's irrelevant in this case. There's
8 no -- we would argue that there's no probative link at this
9 point, that the events that occurred on the night of this
10 incident between the defendant and the victim are -- are
11 any -- any correlation to her blood alcohol.

12 And, again, there will be evidence that the defendant
13 herself admits to consuming alcohol herself. So I'm not
14 sure if -- if the defense is going to make alcohol an -- an
15 issue. But we've cited State vs. Lyles in this case, Your
16 Honor, and that any testimony or any evidence of -- of
17 that, Your Honor, probative value would be outweighed by
18 the danger of unfair prejudice should be excluded, Your
19 Honor.

20 And -- and, obviously, if -- if the defense intends to
21 introduce such evidence we'd also ask for an in-camera
22 review so that we can have an opportunity to -- to hear --
23 hear those issues before it's presented to a jury, Your
24 Honor.

25 THE COURT: All right. Mr. Quinn.

1 MR. QUINN: The -- this case involves a fight between
2 two women who are lesbian lovers. They had been arguing
3 all day about an issue that's not raised in this motion.

4 They end up in the apartment complex in which they
5 lived, in the parking lot, in the car that belongs to Ms.
6 Pearson, my client. And the argument continues at that
7 point and then turns physical when the state -- the defense
8 will allege that Myah Cole attacked Ms. Pearson requiring
9 her to eventually arm herself during this attack and shoot
10 Ms. Cole one time.

11 So self-defense is the defense that will be put up.
12 And I know you know that's a "Stand Your Ground" argument.
13 But I wanted you to have a little bit of a factual basis
14 since I know the Court is not aware of any of the facts
15 yet.

16 I am not aware of any prior acts of violence, and if
17 somehow I become aware of one during the trial I will raise
18 that to the Court and perhaps ask to have it admissible.
19 But I'm not aware of any at this point.

20 So the first part of our motion as far as I know is
21 moot. But this issue about the blood alcohol -- and the
22 Court should know this is the first time I've seen the
23 motion. It was just handed to me. So I'm trying to glance
24 through it. I have not had time to research it, and-but I
25 believe that the victim's --

1 THE COURT: Well, if we take -- if we take a few
2 minutes do y'all want to discuss it and see if y'all can
3 come to a resolution of it?

4 MR. QUINN: That's fine with me if we do.

5 THE COURT: Well, you say you -- this is the first you
6 heard of it. So I thought maybe y'all would want to talk
7 about it.

8 MS. POULOS: Well, Your Honor, I'm not even sure if he
9 wants to -- if that's going to be an issue. If he's not
10 going to -- to try to attempt to introduce any evidence of
11 toxicology, if he's not going to call a toxicologist and
12 prove the chain, then we don't really need to argue that.
13 I -- I just wanted to -- to put that on the record. I'm
14 not really sure. We haven't communicated too much about
15 the case to be honest with you.

16 THE COURT: Well, that's why I was giving y'all a
17 chance to communicate.

18 Do you propose to offer that evidence, Mr. Quinn?

19 MR. QUINN: I do.

20 THE COURT: Okay. Well, y'all probably need to -- to
21 discuss it.

22 So let's take ten minutes. Y'all discuss that, and
23 we'll come back, and then we'll begin with the Duncan
24 hearing.

25 MR. GHENT: Your Honor, may I address one matter

1 before we begin?

2 THE COURT: Sure.

3 MR. GHENT: I will be making a motion I'll make at
4 whatever point the Court wishes.

5 I have been upstairs working this morning on getting
6 not so much the motion as the memorandum in support of it.

7 My argument is very simple. The statute is
8 unconstitutional and, you know --

9 THE COURT: Well, we haven't gotten there yet. We'll
10 discuss that when we come back.

11 MR. GHENT: Yes, sir.

12 THE COURT: We'll take ten minutes.

13 (Whereupon, a recess was taken.)

14 (Photographs marked State's Exhibits Nos. 1 through 8
15 for Identification; cartridge case marked State's Exhibit
16 No. 9 for Identification; firearms analysis report marked
17 State's Exhibit No. 10 for Identification; diagram of body
18 marked State's Exhibit No. 11 for Identification;
19 photographs marked State's Exhibits Nos. 12 through 16 for
20 Identification; 9-1-1 call marked marked State's Exhibit
21 No. 17 for Identification; waiver of rights signed by
22 defendant marked State's Exhibit No. 18 for Identification;
23 written statement of defendant marked State's Exhibit No.
24 19 for Identification; recorded statement of defendant
25 marked State's Exhibit No. 20 for Identification; black

1 book bag marked State's Exhibit No. 21 for Identification.)

2 THE COURT: All right. Mr. Quinn.

3 MR. QUINN: Your Honor, going back to the state's
4 motions, the first motion had two parts. The second part
5 was this issue about the toxicology that you were nice
6 enough to give us a break. We, unfortunately, were not
7 able to resolve it, so it will still be an issue for the
8 Court.

9 I believe toxicology result is admissible. There will
10 be testimony from a number of witnesses that there had been
11 drinking going on all day by both parties, the defendant
12 and the victim.

13 I think the toxicology report only quantifies how much
14 alcohol was taken in by one of the people involved. So I
15 think the issue of alcohol is relevant. And I don't
16 understand the carving out just that we can't use the
17 number. So I think it's relevant; I think it's probative
18 to the actions taken by the victim. And I would ask that
19 it be admissible.

20 THE COURT: Ms. Poulos.

21 MS. POULOS: Your Honor, just simply that, you know,
22 the probative value -- prejudicial value, actually, would
23 outweigh the probative value.

24 We, obviously, don't have the same luxury of having
25 Ms. Pearson's blood alcohol report. Mr. Quinn is right.

1 There will be testimony that both of them were -- were
2 drinking at the time, but, unfortunately, we just have the
3 results of -- of one.

4 I think -- I think it's highly prejudicial, Your
5 Honor, but -- but, if anything, I think that alcohol could
6 be interpreted both ways. And -- and, again, I guess if --
7 if Mr. Quinn plans to establish the -- the chain and -- and
8 have that evidence admitted, you know, obviously, again,
9 our position would be that it's highly prejudicial, but
10 we -- I guess we'll just -- we'll just see how it goes at
11 that -- at that time.

12 THE COURT: All right. Mr. Quinn, what do you
13 perceive the relevance to be?

14 MR. QUINN: Well, I -- I think the relevance actually
15 is overcome by the -- there's going to be testimony about
16 alcohol abuse. So everybody agrees it's relevant. Even
17 the state -- the state will introduce that testimony.

18 So unless the state is moving to withdraw any
19 discussion of alcohol from the case it becomes relevant to
20 how somebody reacts, how somebody acts, whether it's in
21 conformity or not in conformity with their prior history,
22 whether somebody overreacts because they'd been drinking
23 alcohol.

24 I think it's a common standard that the jury can use
25 their common sense to understand that alcohol affects

1 somebody in the manner in which they make decisions and the
2 manner in which they react.

3 THE COURT: All right. Are you offering to introduce
4 a -- a test result?

5 MR. QUINN: At this point I'm not because I didn't
6 know the state wasn't going to, and I do not have all of
7 those witnesses under subpoena.

8 I would have to try to do that over lunch. So at this
9 point I'm not trying to put in the result from the
10 toxicology, but I want that opportunity. I certainly do.

11 MS. POULOS: That's --

12 MR. QUINN: Their motion is to prevent me from putting
13 the SLED toxicologist on the stand and have him testify as
14 to what the victim's blood alcohol was.

15 THE COURT: I know, but that would be based on a test
16 result. But you're saying you weren't intending to
17 introduce that test result, so.

18 MR. QUINN: No. I'm intending to. I don't have the
19 witnesses under subpoena. I don't want to mislead the
20 Court.

21 I thought the state would bring that as part of their
22 case. That's my mistake. And I don't have those witnesses
23 under subpoena. So this may be a dry run that I can't get
24 the chain and the toxicology here in the next 48 hours.
25 But I do want the opportunity at least if I can get that

1 done to then put it to the jury.

2 MS. POULOS: Your Honor, he has no witnesses on the
3 witness list, so obviously that's his -- intention is a
4 little late. If he was intending to use that he should
5 have properly subpoenaed who he needed to subpoena, should
6 have spoken to the toxicologist.

7 And I -- and I don't know if he had at some point or
8 not. But at this point in the game, you know, if you're
9 intending -- if he intended to use that it's a little late
10 in the game to say, oh, I don't have it ready. He has no
11 witnesses on his witness list. Obviously, we're getting
12 ready to pick a jury, so.

13 THE COURT: Well, I mean, he can put witnesses on the
14 witness list. That ain't hard to do.

15 MS. POULOS: I'm sure he --

16 THE COURT: I mean, this is not something that has
17 arisen after the jury has been selected.

18 MS. POULOS: Right.

19 THE COURT: We haven't gotten to that point yet.

20 Well, I guess the whole thing has become premature if
21 we don't even know if we're going to be able to introduce
22 it. So I don't know why I'm addressing it necessarily
23 but --

24 MR. QUINN: Only because the state filed the pretrial
25 motion to prevent its use.

1 THE COURT: To -- to exclude it, but they didn't know
2 you were going to use it. Now you say you want to use it,
3 but nobody's -- you haven't subpoenaed those to be
4 available to use it. So I don't even know if you can get
5 far.

6 In other words, I'd be ruling on something that would
7 be a waste of time and unnecessary if -- if you can't
8 introduce it.

9 MR. QUINN: And that's why I wanted the Court to know
10 that. I didn't want to mislead the Court into thinking I
11 had all of the witnesses ready.

12 THE COURT: All right. Well, we'll address that when
13 and if we need to.

14 All right. What's the -- the next motion is?

15 MR. QUINN: The next motion that I assume Mr. Ghent is
16 going to argue has been passed over to me. I hope the
17 Court has a copy of a motion to hold South Carolina Code
18 Section 16-11-410 unconstitutional.

19 THE COURT: I don't have that.

20 MR. GHENT: Your Honor, as long as it's understood I'm
21 not moving at this time, I'm merely providing the Court
22 with a copy of the motion.

23 MR. QUINN: Okay. Well, I'm ready to do the "Stand
24 Your Ground" motion.

25 THE COURT: Okay.

1 MR. QUINN: Is their argument then I'm prevented from
2 doing it because the statute is unconstitutional?

3 THE COURT: Well, I don't know.

4 Mr. Quinn has made a motion to grant his client
5 immunity from prosecution pursuant to 16-11-440 or 450.

6 MR. QUINN: 440.

7 THE COURT: So does the state oppose the motion?

8 MR. GHENT: Your Honor, I'm moving to have it declared
9 unconstitutional.

10 I would -- my only concern is, and I believe Mr. Quinn
11 was saying it in jest, that he could always consent to it
12 and build in P.C.R. I don't think Mr. Quinn practices law
13 like that. So I'm ready to argue the motion.

14 THE COURT: Okay.

15 MR. GHENT: Your Honor, it's very simple.

16 The statute, which is a very poorly written statute,
17 very poorly drafted, under Duncan the South Carolina
18 Supreme Court had to create a procedure to basically enable
19 there to be some remedy under a statute, which supposedly
20 was remedial in its nature.

21 My argument is very simple, Your Honor. May I begin
22 it with a question to the Court?

23 THE COURT: If you dare to.

24 MR. GHENT: Yes, sir.

25 Bearing in mind that Your Honor's probably been

1 sitting on the bench as long as any other judge in this
2 state -- was a practicing trial lawyer before then, I
3 believe was also a member of the general assembly -- I
4 would ask the Court exactly -- and I mean this -- how many
5 times in the entirety of Your Honor's serving as a circuit
6 court judge has Your Honor granted immunity other than
7 under this statute.

8 THE COURT: I haven't.

9 MR. GHENT: Exactly.

10 My argument is very simple, Your Honor. The
11 legislature has done something it cannot do under the
12 constitution.

13 The holding of the Court in the Lanford, the language
14 of the Court in Lanford, the language of Thrift, the body
15 of case law predating that makes clear that while perhaps
16 control of the docket is something that is primarily a
17 judicial function, the matter of the charging discretion,
18 the decision to bring the charge, the decision to go
19 forward with the charge, the decision to grant immunity,
20 all of those are executive functions. They're not judicial
21 functions.

22 while there is such a thing as judicial immunity, it
23 is in the vein of judicial immunity, absolute immunity from
24 suit. There is no such thing.

25 I would respectfully submit under Kastigar, the

1 federal decision from 1972, and other decisions predating
2 that there is no federal authority that says there is
3 judicial immunity, judicially granted immunity from a
4 criminal prosecution.

5 The statute creates also civil immunity from civil
6 liability. But there is a case that I cite in my
7 memorandum where Judge Moore, later Justice Moore, ordered
8 the solicitor to admit someone into the pretrial
9 intervention program. Justice Moore went on to serve with
10 distinction on the South Carolina Supreme Court as one of
11 the best, most knowledgeable trial judges at the time he
12 was presiding.

13 He was reversed, and the reason was simply it is not
14 within your discretion to step into the prosecutor's
15 discretion. What the legislature has done here is carved
16 out a huge hole in the prosecutor's absolute discretion to
17 decide who will and who won't receive immunity.

18 Now, there's no question that the type of immunity can
19 be addressed by the legislature. Use verse absolute. It's
20 done federally; it's done in state. In Thrift -- and I
21 cite the Thrift decision at page three of my memorandum.
22 May I read it, Your Honor?

23 THE COURT: Sure.

24 MR. GHENT: "Under the separation of powers doctrine,
25 which is the basis for our form of government, the

1 executive branch is vested with the power to decide when
2 and how to prosecute a case. Both the South Carolina
3 Constitution and South Carolina case law place the
4 unfettered discretion to prosecute solely in the
5 prosecutor's hands. The attorney general as the state's
6 chief prosecutor may decide when and where to present an
7 indictment and may even decide whether an indictment should
8 be sought. Prosecutors may pursue a case to trial, or they
9 may plea bargain it down to a lesser offense, or they can
10 simply decide not to prosecute the offense in its entirety.
11 The judicial branch is not empowered to infringe on the
12 exercise of this prosecutorial discretion."

13 Now, Your Honor, in plea bargains there have been
14 situations which have arisen where the courts have
15 recognized there is some overlap, some discretion, of the
16 Court. Lanford used that same language. With powers there
17 is some overlap, but there's no question that the power to
18 decide whether or not an individual should stand trial when
19 they have shot another person for decades, and the cases I
20 cite go back decades.

21 Now, the second part of my argument is very simple.
22 They say that it is the legislative intent in the statute
23 to codify the common law and only expand the area of
24 immunity that has to do with one's place of business.

25 Your Honor, I cite precedent as late as 2005. We take

1 the opportunity to overrule the analysis elevating the
2 possessory status of a home or place of business.

3 This expansion of the -- and I quote -- "Immunity from
4 retreat doctrine is not good public policy, especially in
5 contemporary context of private clubs."

6 I then go on to cite State vs. Bradley, 1923; State
7 vs. Smith, 1955, and numerous other precedence going back
8 to 1910 that make clear that when they talk about immunity
9 in the common law, in the case law, they refer to an
10 immunity from having to prove the forth element, the duty
11 to retreat, of the four elements which are self-defense.

12 Your Honor, not only is it a separation of powers. It
13 is a matter that the legislature simply did not get it
14 right in terms of codifying the law. And whenever it comes
15 down to codifying the law but expanding it only to cars and
16 businesses -- there was a case already predating the
17 protection of persons and properties statute which make
18 clear that under the circumstances there that a business
19 was also included as were -- as was the parking lot of the
20 business in a "Stand Your Ground" matter.

21 In short, the statute is unconstitutional. Thank you.

22 THE COURT: Mr. Quinn.

23 MR. QUINN: Your Honor, I don't have any argument on
24 the motion. I'll leave it to Your Honor's sound
25 discretion.

Brittany Shaunta Pearson (In-camera)
Direct examination by Mr. Quinn

1 THE COURT: All right. Motion to dismiss on the
2 grounds of it not being within -- constitutional grounds is
3 denied.

4 All right. Are you ready to proceed?

5 MR. QUINN: Yes, sir. We call Brittany Pearson to the
6 stand.

7 BRITTANY SHAUNTA PEARSON,
8 having been first duly sworn, testified as follows:

9 DIRECT EXAMINATION BY MR. QUINN

10 Q Brittany, slide up a little bit.

11 Tell me your full name for the record.

12 A Brittany Shaunta Pearson.

13 Q Speak up just a little bit.

14 How old are you, Ms. Pearson?

15 A Twenty-seven.

16 Q Okay. And do you know Myah Cole?

17 A Yes.

18 Q And what was your relationship with Myah?

19 A She was my girlfriend.

20 Q And how long had that relationship existed?

21 A Almost a year.

22 Q And how did you two meet? Just briefly.

23 A We worked at the same place.

24 Q And did you two move in together? Were you living
25 together at the time of the incident?

Brittany Shaunta Pearson (In-camera)
Direct examination by Mr. Quinn

1 A Yes.

2 Q And so were you two living together and in a
3 relationship on November 8th of 2014?

4 A Yes, sir.

5 Q Briefly, what had you and she done that day?

6 A We went out to eat, and then we went to a baby shower.

7 Q And about what time was the baby shower?

8 A Around like 1:00 p.m.

9 Q And where did you proceed from the baby shower?

10 A We rode around for a couple of minutes, and then we
11 went home.

12 Q And the baby shower, was it here in Spartanburg
13 County?

14 A Yes, sir.

15 Q And were you living here in Spartanburg County?

16 A Yes, sir.

17 Q And where were y'all living?

18 A We lived on Southport Road.

19 Q And was it in a private residence or apartments, or
20 where are you living?

21 A Apartment complex.

22 Q Do you remember the name of the apartment complex?

23 A Park Place.

24 Q And did you all then leave the apartment a second time
25 after the shower?

Brittany Shaunta Pearson (In-camera)
Direct examination by Mr. Quinn

1 A Yes, sir.

2 Q And where did you go then?

3 A We went to a bar and grill.

4 Q And what's the name of it, do you remember?

5 A Red's.

6 Q Okay. And is that located also in Spartanburg County?

7 A Yes, sir.

8 Q Now, how were you two getting along during that day?

9 A Everything was fine until the baby shower.

10 Q And what happened at the baby shower that changed?

11 A She got upset about the way I reacted to what she had
12 done to me. She didn't like how I reacted to it.

13 Q Okay. There's a lot of pieces in there. Tell me what
14 she did to start, that started, the problems.

15 A She grabbed my butt in front of everybody when we were
16 at the baby shower, and I didn't like it.

17 Q And who was at the baby shower? Not by names. Your
18 family, her family?

19 A Her family and friends.

20 Q Her family and friends. And did you two have words
21 about that?

22 A Yeah. She was like it's mine. I was like, yeah, but
23 that's unnecessary.

24 Q And had you two ever talked about public displays of
25 affection before that day?

Brittany Shaunta Pearson (In-camera)
Direct examination by Mr. Quinn

1 A Yes.

2 Q And what was your feeling about public displays of
3 affection?

4 A Neither one of us agreed with it. She was fine with
5 it, and I was too.

6 Q You both agreed that you would not do it or you would
7 do it? I'm sorry?

8 A We wouldn't.

9 Q You wouldn't. Okay. And do you know what caused her
10 that day to suddenly do that?

11 A I do not.

12 Q And did that start an argument between the two of you?

13 A Yes, sir.

14 Q And was that argument primarily verbal throughout the
15 day?

16 A Yes, sir.

17 Q And did it continue, or did it stop at some point, or
18 what happened?

19 A It continued into something more once we went back
20 home.

21 Q Okay. You need to speak up for me a little bit.

22 A It continued into something more when we went back
23 home.

24 Q Okay. So the argument started at the baby shower.
25 Did it continue when you went home the first time?

Brittany Shaunta Pearson (In-camera)
Direct examination by Mr. Quinn

1 A Yes, sir.

2 Q And at any point did that get physical between the two
3 of you when you went home the first time?

4 A No, sir.

5 Q And then you go out to Ray's Place. And did the
6 argument continue there?

7 A You talking about the baby shower or the --

8 Q I'm talking about when you went out to the second
9 place.

10 A The bar and grill?

11 Q Yes.

12 A Yes, yes.

13 Q And was there anything there that aggravated, or did
14 anything happen there that aggravated, the situation?

15 A Yes.

16 Q And tell the judge what happened.

17 A We were there with another couple, and they were
18 kissing in public. And she made a smart comment, and I
19 left.

20 Q And who is she made the comment?

21 A Myah.

22 Q Okay. And when you left where did you go?

23 A I went to my car.

24 Q So when you say you left, you left the building and
25 went out to the parking lot.

Brittany Shaunta Pearson (In-camera)
Direct examination by Mr. Quinn

1 A Yes, sir.

2 Q Okay. And what happened from there?

3 A I tried to leave, but she was a position to where if I
4 would pull out I would hit her with my car. And she was
5 beating on my window. So I unlocked the door and let her
6 in, and we went home.

7 Q And when she was beating on your window was it with
8 the intention to hurt you or get your attention, or what
9 was her intention?

10 A Get my attention. She didn't want me to leave her
11 there.

12 Q Okay. And so did you two leave the bar and grill
13 together?

14 A Yes.

15 Q And where did you go?

16 A We went home, to the parking lot.

17 Q Okay. And then tell the judge what happened when you
18 reached the parking lot.

19 A It -- it got worse, and I told her to get out of the
20 car, and I gave her my keys. And words kept going, kept
21 trying to get her to get out of the car. And she got out,
22 but she came back in, and that's when she started to hit
23 me.

24 Q And when you say she got out, she got out of the
25 passenger side, or where was she sitting?

Brittany Shaunta Pearson (In-camera)
Direct examination by Mr. Quinn

1 A She was in the passenger seat.

2 Q Front or back?

3 A Front.

4 Q Okay. And so did she get completely outside of the
5 car?

6 A Yes.

7 Q And then how was she hitting you? Were you in or out
8 of the car?

9 A I was in the car.

10 Q And where were you sitting in the car?

11 A In the driver's seat.

12 Q One of the things I don't understand. Let's go back
13 for a second.

14 You said you gave her your keys. Why did you give her
15 your keys?

16 A Because she didn't have her keys. She left her keys
17 inside the house when we left the first -- the second time.

18 Q Okay. So you're talking about house keys?

19 A Yes.

20 Q Okay. And whose car was it that you two were in?

21 A Mine.

22 Q And what type of car was it?

23 A A Dodge Dart.

24 Q Okay. And -- and can you give us an idea? Is that a
25 small car, a large car, a van? What is that?

Brittany Shaunta Pearson (In-camera)
Direct examination by Mr. Quinn

1 A A small car.

2 Q I'm sorry?

3 A Small car.

4 Q And so when she got out of the car and came back in,
5 where did she come back into the car?

6 A Back into the driver, I mean, the passenger in the
7 front.

8 Q And what was her position in the passenger seat? Did
9 she have a seat, or what happened?

10 A No. She had her knees in the seat, and she was over
11 me.

12 Q And what happened from there?

13 A She started punching me in my head and she was -- I
14 had dreads at the time, and she was holding my head against
15 the window and beating my head into the window.

16 Q The window at the driver's door?

17 A Yes, sir.

18 Q And tell me what you mean by dreads. What are dreads?

19 A Single like pieces of hair that's twisted together.

20 Q Okay. Dreadlocks. Is that what they're also called?

21 A Yes.

22 Q Okay. And so she had her hands where on you?

23 A She had one hand -- her left hand was over my head,
24 and she was punching me with her other hand.

25 Q And what were you doing when all of this was going on?

Brittany Shaunta Pearson (In-camera)
Direct examination by Mr. Quinn

1 A I was trying to fend her off of me.

2 Q And how were you doing that?

3 A I had my hands up, but I froze.

4 Q And what size roughly was Myah? How tall was she
5 about?

6 A We were the same height.

7 Q And so what height is that?

8 A 5'4".

9 Q And what about her weight in relation to yours?

10 A She was like maybe 10 or 15 pounds more than me.

11 Q And what about ages? Are you two similar age?

12 A She was like two years older than me, a year older
13 than me.

14 Q And when this happened, when she came back in the car,
15 do you know what led to the change that she suddenly
16 attacked you?

17 A No.

18 Q I assume there was nobody else in the car. I guess I
19 should have mentioned that. Yes or no?

20 A No.

21 Q Okay. And so what did you do when she attacked you?
22 You said you tried to fend her off. What happened after
23 that?

24 A I had my hands up, and I had never been put in a
25 position like that before, and I didn't know what to do,

Brittany Shaunta Pearson (In-camera)
Direct examination by Mr. Quinn

1 and I -- I couldn't move. I felt like -- I had my seat
2 belt still on because that was the plan, for me to go there
3 and drop her off. And I froze, and my gun was under the
4 seat. And I grabbed it and I cocked and I shot her.

5 Q And how many times did you shoot her?

6 A One time.

7 Q And when you shot her were you in fear of being
8 injured?

9 A Yes.

10 Q Were you afraid she was going to kill you or just
11 serious bodily injury, or what fear, if any, did you have?

12 MR. GHENT: Objection to the leading, Your Honor.

13 THE COURT: Don't lead her.

14 A I -- I never been put in that position before. I'm
15 not a fighter. I ain't never. I don't know. Like I -- I
16 don't know. I froze.

17 Q Okay. And what happened after that? The gun fired.
18 And what happened from there?

19 A I opened my car door and I threw the gun out of the
20 car, and I got out of the car. And she fell over into my
21 seat. And I called the police.

22 Q And did you call them? What number did you use to
23 call?

24 A 9-1-1.

25 Q And did you stay on the phone with the operator?

Brittany Shaunta Pearson (In-camera)
Direct examination by Mr. Quinn

1 A Yes.

2 Q And did you -- were you there when the police arrived?

3 A Yes.

4 Q And did you cooperate with the police?

5 A Yes.

6 Q And what was your physical condition at that point?

7 A I was numb. I didn't feel anything.

8 Q Were you calm?

9 A No, not at all. I -- no, I wasn't.

10 Q Okay. When you and Myah were in the car were either
11 of you engaged in an unlawful activity?

12 A What do you mean by that?

13 Q Were you doing anything against the law when you two
14 were in the car together?

15 A No.

16 Q And I believe you said this. But whose car was it?

17 A My car.

18 Q And were you acting in self-defense when you drew the
19 gun?

20 MR. GHENT: Object to the leading, Your Honor. That
21 also calls for a conclusion of law.

22 THE COURT: Don't lead her.

23 Q Did you do -- what, if anything, did you do to cause
24 Myah to attack you?

25 A Nothing.

Brittany Shaunta Pearson (In-camera)
Cross-examination by Mr. Ghent

1 Q What, if any, other choice did you have to protect
2 yourself?

3 A I don't feel like I had any other option.

4 Q What, if anything, do you believe would have happened
5 if you had not protected yourself in that fashion?

6 A I feel like she would be sitting her instead of me.

7 Q Are you aware of any other means you had of avoiding
8 this difficulty?

9 A No.

10 Q If you had taken the time to unbuckle your seat belt
11 and open the door and get out, is it your belief that Myah
12 would or would not have stopped her attack?

13 A I don't know.

14 MR. QUINN: I don't have any other questions at this
15 time, Your Honor.

16 MR. GHENT: May it please the Court.

17 THE COURT: Yes, sir.

18 CROSS-EXAMINATION

19 BY MR. GHENT

20 Q Your attorney asked. I quote, "What, if any, other
21 choice do you believe you had?" You do not believe you
22 could have simply opened the door and gotten out?

23 A She was holding me down.

24 Q You do not believe you could have opened the door.

25 A I had my seat belt on. I couldn't go anywhere. I

Brittany Shaunta Pearson (In-camera)
Cross-examination by Mr. Ghent

1 froze. I wasn't thinking like that.

2 Q Okay. Your seat belt was attached right here, is that
3 right?

4 A Yes, sir.

5 Q So I understand what you're saying about you froze,
6 but you could have pushed that little button. It would
7 have come loose, correct?

8 A Yes, sir.

9 Q There was nothing broken about the door, was there?

10 A No.

11 Q You could have pulled the latch on the door and shoved
12 it open, couldn't you?

13 A Yes, sir.

14 Q And regardless of what was going on, that would have
15 caused you both to, if you wanted to, roll out into the
16 parking lot, correct?

17 A Yes.

18 Q And you could have gotten up and yelled for help had
19 you done so, correct?

20 A Yes.

21 Q But you didn't do that.

22 A No.

23 Q Now, in terms of that car, again, it was a small car,
24 correct?

25 A Yes, sir.

Brittany Shaunta Pearson (In-camera)
Cross-examination by Mr. Ghent

- 1 Q And you said you had your gun under the seat.
- 2 A Yes, sir.
- 3 Q Did Myah have a gun?
- 4 A No.
- 5 Q Did she have a knife?
- 6 A No.
- 7 Q Did she have a razor?
- 8 A No.
- 9 Q A box cutter?
- 10 A No.
- 11 Q Any weapon whatsoever?
- 12 A No.
- 13 Q The gun was yours. It was a .45 caliber Beretta,
- 14 correct?
- 15 A .45 caliber 1911.
- 16 Q Manufactured by Beretta, correct?
- 17 A Remington.
- 18 Q Remington. And, again, a small car. You were able to
- 19 reach down. And you shot her. Where did you shoot her?
- 20 A I just put it in between us and fired.
- 21 Q In between you and fired, is that correct?
- 22 A In between us and fired.
- 23 Q In between the two of you and fired. Do you know
- 24 where the bullet went in?
- 25 A No.

Brittany Shaunta Pearson (In-camera)
Cross-examination by Mr. Ghent

1 Q Would it surprise you that it went in up here?

2 A I wasn't aiming.

3 Q I understand that. But you say you just took the gun
4 and fired. Wouldn't that have hit her in the torso?

5 A I put it in between us.

6 Q And fired.

7 A Yes.

8 Q So it would have been between the two of you like my
9 fist is, right? She's there and you're here. And that's
10 your story in terms of the shooting, correct?

11 A Yes.

12 MR. GHENT: Your Honor, if I may have just a moment.

13 (Pause.)

14 MR. GHENT: I believe counsel has already seen these,
15 but for the record could the record reflect that I am
16 showing him State's Exhibits 11, 12, 13, 14, 15 and 16?
17 And I will of course allow him a moment to look at them
18 again. I know he's familiar with them. Permission to
19 approach the witness, Your Honor.

20 THE COURT: You may.

21 Q Ms. Pearson, I show you State's Exhibit 11. That is a
22 drawing, correct? It appears to be a drawing of the wound
23 and the way the bullet passed through Myah, correct? That
24 shoulder from the top, correct, going down, correct? That
25 would appear to be inconsistent with what you just told the

Brittany Shaunta Pearson (In-camera)
Cross-examination by Mr. Ghent

1 judge of a gun in between the two of you and a bullet going
2 into her torso, would that not?

3 A I didn't say torso. I said I put it between us.

4 Q well, I said like that, held it in front of me, and
5 like that. And I do believe body, torso, whatever. That
6 would be inconsistent, wouldn't it?

7 A It seems like it.

8 MR. GHENT: Your Honor, if I may -- has Your Honor
9 seen that?

10 Q Let's go to your hands. How long did this struggle
11 take?

12 A I don't know.

13 Q Approximately.

14 A I don't know.

15 Q I show you State's Exhibit 16. Is that a photograph
16 of your arms taken after the incident, after you were at
17 the station --

18 A Yes.

19 Q -- by the police officers?

20 A Yes.

21 Q Please show me the marks that appear on that.

22 A My arms are red.

23 Q Your arms are red.

24 A Yeah.

25 Q Do you see any scratch marks, any claw marks, any

Brittany Shaunta Pearson (In-camera)
Cross-examination by Mr. Ghent

1 cuts?

2 A She never scratched me.

3 Q Any abrasions?

4 A She punched in my head.

5 Q Any bruises?

6 A No.

7 Q Let's look at State's Exhibit 15, shall we? These are
8 your hands, are they not?

9 A Yes.

10 Q Any marks?

11 A No.

12 Q Any injuries?

13 A No.

14 Q Any scratches?

15 A No.

16 MR. GHENT: We offer them -- all of these -- for
17 purposes of this hearing, Your Honor.

18 (Photographs marked State's Suppression Exhibits Nos.
19 15 and 16.)

20 Q The back of your hands, Exhibit 14. Any marks?

21 A No.

22 Q Any abrasions?

23 A No.

24 Q Any injuries reflected whatsoever in that picture?

25 A No.

Brittany Shaunta Pearson (In-camera)
Cross-examination by Mr. Ghent

1 MR. GHENT: Offer it, Your Honor.

2 (Photograph marked State's Suppression Exhibit No.

3 14.)

4 Q State's Exhibit 13. Any marks?

5 A No.

6 Q No abrasions.

7 A No.

8 Q No bruises.

9 MR. GHENT: Offer it, Your Honor.

10 (Photograph marked State's Suppression Exhibit No.

11 13.)

12 Q State's Exhibit 12. Your head, your face. Any
13 bruises, scratches, marks, injuries apparent there?

14 A No, not from my face.

15 Q Nothing. In short, this battle in which you say you
16 feared for your life resulted in no marks on you
17 whatsoever. Counsel, your own attorney, asked what, if
18 any, other choice do you believe you had, and you say you
19 froze. Actually in order to reach down under the seat and
20 get the gun, that does not indicate someone who is frozen,
21 does it?

22 A No.

23 Q Also, that gun has to be cocked, does it not?

24 A Yes.

25 Q And you did so, did you not?

Brittany Shaunta Pearson (In-camera)
Cross-examination by Mr. Ghent

1 A Yes.

2 Q And by doing that you pulled the hammer back like
3 that, which takes some distance between you and Myah at the
4 point at which you do it, does it not? There had to be a
5 space for you to do it, correct?

6 A No. I did it when I picked up, when I picked it up.

7 Q So as you pulled it up you immediately cocked it and
8 put it up.

9 A Yes.

10 Q Did you say, "I have a gun?"

11 A She knew I had the gun.

12 Q She knew you had a gun.

13 A Yes. I had more than one gun.

14 Q It was right there. And she didn't get out of the car
15 or try to get out of the car?

16 A No.

17 Q That wouldn't explain why the bullet went in as it
18 did, the inconsistency in your story? After you shot her
19 did you call 9-1-1?

20 A Yes.

21 Q Do you recall telling them you had just shot your
22 girlfriend?

23 A Yes.

24 Q Approximately how long do you think it took for you to
25 place that call?

Brittany Shaunta Pearson (In-camera)
Cross-examination by Mr. Ghent

1 A I don't know.

2 Q What sort of background do you have? Where do you
3 work, by the way?

4 A At the time I was working at U.P.S.

5 Q Were you working with Myah?

6 A No.

7 Q But y'all had worked together previously.

8 A Yes.

9 Q Y'all are almost or were almost the same age, is that
10 correct?

11 A Yes.

12 MR. GHENT: Your Honor, at this time I would ask to
13 have this marked. I show it to counsel. I'm not sure what
14 number we're up to. It's the lease from their apartment,
15 No. ■ Park Place Apartments in Spartanburg County, Your
16 Honor.

17 MR. QUINN: I'm sorry.

18 MR. GHENT: Just for purposes of this hearing.

19 MR. QUINN: I have no objection for this hearing.

20 (Apartment lease marked State's Suppression Exhibit
21 No. 22.)

22 Q This occurred on November the 8th, correct?

23 A Yes.

24 Q At night.

25 A Yes.

Brittany Shaunta Pearson (In-camera)
Cross-examination by Mr. Ghent

1 Q And it was in the parking lot at ■ Park Place
2 Apartments.

3 A Yes.

4 Q Do you recall signing the lease together with Myah?

5 A Yes.

6 Q It was both of your apartment. You both signed for
7 it, correct?

8 A Yes.

9 Q And you both were responsible for making the payments,
10 correct?

11 A Yes.

12 Q The car that you say was yours, it was one which you
13 shared with her, was it not?

14 A No.

15 Q Are you testifying you never let her drive it?

16 A I probably let her drive it, but I paid for that car.

17 Q I understand. I'm not saying it was her car. But
18 y'all were girlfriends. Y'all were in love. You were
19 living together, sharing an apartment together, sharing a
20 bedroom together. You were sharing a car. That is you
21 were letting your girlfriend drive the car too, correct?

22 A I'd only had the car for maybe a month and a half. I
23 just bought it.

24 Q But y'all would share the means of transportation,
25 would you not?

Brittany Shaunta Pearson (In-camera)
Cross-examination by Mr. Ghent

1 A No.

2 Q No?

3 A We had two different schedules. If we did anything,
4 it was on the weekends.

5 Q But earlier you said you did let her drive the car.

6 A I have before.

7 Q Okay. Now, in terms of the size that you say Myah was
8 as compared to you, would you agree that you're 5'3" or so?
9 Does that sound about right?

10 A Yes.

11 Q 145 pounds. Does that sound about right?

12 A Yes.

13 Q Myah was approximately 5'3", correct?

14 A Yes.

15 Q And no more than a few pounds separated y'all, isn't
16 that correct?

17 A About ten pounds, yeah.

18 Q All right. So it wasn't a matter of a size difference
19 in that car, was it? You were both about the same size.

20 A She was on top of me. It's a difference.

21 Q On top of you.

22 A Yes.

23 Q And you had a gun, correct?

24 A After the fact.

25 Q After. Well, before you shot her you had the gun.

Brittany Shaunta Pearson (In-camera)
Cross-examination by Mr. Ghent

1 A Yes.

2 Q And you had it in your hand, correct?

3 A No.

4 Q And you shot her. No. I'm not talking about from the
5 very beginning. Your own testimony is you reached down and
6 got it from under the seat and you shot her. And counsel
7 asked you what kind of car it was. It was a very small
8 car, wasn't it?

9 A Yes.

10 Q Did Myah have a gun?

11 A No.

12 Q Did you have training in the military?

13 A Yes.

14 Q How long did you serve in the military?

15 A Four years.

16 Q Did Myah have training in the military?

17 A Yes.

18 Q How long did she serve in the military?

19 A About two years.

20 Q Two years. And as a matter of training in the
21 military you had combat training and self-defense training,
22 did you not?

23 A Combat training, no. Self-defense training, yes.

24 Q That's basically the way to defend yourself with your
25 hands, your feet or whatever, is it not?

Brittany Shaunta Pearson (In-camera)
Cross-examination by Mr. Ghent

1 A Yes.

2 MR. GHENT: Your Honor, for purposes of the hearing we
3 would offer the lease.

4 (Exhibit previously marked.)

5 Q And, again, those apartments are in Spartanburg
6 County, are they not?

7 A Yes, sir.

8 Q When you called 9-1-1 you told the operator that you
9 had shot Myah, shot your girlfriend, I believe.

10 A Yes, yes.

11 Q And that came about two minutes after you had shot
12 her. Does that make sense?

13 A I guess so, yes.

14 Q And after that the police came. Do you recall that?

15 A Yes.

16 Q And you were taken into custody. Do you recall that?

17 A Yes.

18 Q You went down to the sheriff's office and you spoke
19 with a Christopher Banks, a sheriff's deputy, police. Does
20 that appear to be the man?

21 A Yes.

22 CHRISTOPHER BANKS: City officer.

23 MR. GHENT: City officer. Excuse me.

24 Q And he told you what your rights were, didn't he?

25 A Yes.

Brittany Shaunta Pearson (In-camera)
Cross-examination by Mr. Ghent

1 MR. GHENT: Your Honor, at this time for purposes of
2 this hearing only could the record reflect I'm showing
3 counsel the waiver form and the statement?

4 (Pause.)

5 (Waiver of rights form signed by defendant marked
6 State's Suppression Exhibit No. 18.)

7 MR. GHENT: Your Honor, may I approach the witness?

8 THE COURT: Yes.

9 Q I show you State's Exhibit 18, first page. That is a
10 preinterrogation waiver form, and it goes over a list of
11 rights you have. Does not that indicate that you checked
12 off that all of those rights had been discussed with you?

13 A Yes.

14 Q By Officer Banks.

15 A Yes.

16 Q And it also shows that it was witnessed by another
17 officer.

18 MR. GHENT: If you would, please stand, sir.

19 (Whereupon, John Burgess stood.)

20 Q That gentleman, do you remember him?

21 A Yes.

22 Q Lieutenant Burgess. And, again, did you sign this
23 form?

24 A Yes.

25 Q And did you then write or give a statement to the

Brittany Shaunta Pearson (In-camera)
Cross-examination by Mr. Ghent

1 officer and he read it back to you?

2 A Yes.

3 Q And you confirmed that was your statement.

4 A Yes.

5 Q If you would, would you please read this aloud?

6 THE COURT: I don't need her to read anything. I can
7 read it myself if it's in evidence.

8 MR. GHENT: Yes, sir.

9 At this time we'd offer this into evidence, Your
10 Honor.

11 (Exhibit previously marked.)

12 MR. GHENT: Your Honor, if I may have just a moment.

13 (Pause.)

14 Q Just to clarify, Ms. Pearson, do you have a concealed
15 weapons permit?

16 A Yes.

17 Q How long have you had it?

18 A A little -- a little less than a year.

19 Q Do you recall speaking with Investigator Burgess about
20 the circumstances that occurred before, during and after
21 the shooting?

22 A No.

23 Q That would be this gentleman right here. You don't
24 recall talking to him?

25 A I said I talked to him earlier, yes.

Brittany Shaunta Pearson (In-camera)
Cross-examination by Mr. Ghent

1 Q Oh, okay. So you do recall it.

2 A You said about what we talked about. No. I don't
3 remember what we talked about.

4 Q Do you recall him asking you did you ever tell her to
5 stop hitting, kicking, pushing you, and you answering no?

6 A Yes.

7 Q Do you recall him asking you did you tell her stop,
8 you have a gun, that is I have a gun, and you said no to
9 him?

10 A I said that.

11 Q Do you recall him asking you did she know you had a
12 gun and you said yes?

13 A Yes.

14 Q Do you recall him asking you did she have a gun and
15 you said no?

16 A Yes.

17 Q Do you recall him asking you did she have any type of
18 weapon on her and you said no?

19 A Yes.

20 Q Do you recall him asking when you pulled out the gun
21 did you make any attempt to tell her to back away, stop
22 hitting me, and you said no?

23 A Yes.

24 Q Do you recall him asking where was she actually
25 hitting you at physically, where at, and you said the head

Brittany Shaunta Pearson (In-camera)
Cross-examination by Mr. Ghent

1 and the neck? Do you recall telling him that?

2 A Yes.

3 Q But, again, there are no bruises on your head or your
4 neck, are there, in the pictures?

5 A You can only see my face in the picture. When I got
6 to the jailhouse I had a knot on the side of my head.

7 Q But the pictures were taken at the jailhouse, were
8 they not?

9 A No. They were taken in the interrogation --

10 Q They were taken in the interrogation room at the jail,
11 correct, at the police department, at the sheriff's office,
12 is that correct?

13 A Yes.

14 Q Do you recall her asking do you have any not knots,
15 injuries you can point to, and you said no?

16 A Yes.

17 Q "Only numb right now." Do you recall that?

18 A Yes.

19 Q Do you recall him asking as we sit here right now
20 looking back and reflecting on this should you have shot
21 her and you said no, I should not have shot her? Do you
22 recall saying that?

23 A Yes.

24 Q Do you recall him asking was it worth getting a gun
25 and shooting her? Do you recall what you said?

Brittany Shaunta Pearson (In-camera)
Cross-examination by Mr. Ghent

1 A Yes.

2 Q What did you say?

3 A No.

4 Q Do you recall him asking you were you in that much
5 fear of hurting so badly, blacking out, that you had to
6 shoot someone, and you said no?

7 A Yes.

8 Q You said no, correct?

9 A Yes.

10 Q Again, do you recall him asking if your actions
11 warranted shooting someone, and you said no, correct?

12 A Yes.

13 Q Do you recall him asking do you think you should be
14 charged with a crime, and do you recall saying yes?

15 A Yes.

16 Q Do you recall him asking you why?

17 A I just lost my best friend. I was not thinking about
18 myself at that point. I didn't matter. It didn't matter
19 to me.

20 Q Well, do you recall answering I killed someone that I
21 loved and I didn't think about anything at all, I just did
22 it? The law -- you can't kill anybody. Do you recall
23 saying that?

24 A Yes.

25 MR. GHENT: Your Honor, if I may have a moment.

Christopher Michael Banks (In-camera)
Direct examination by Ms. Poulos

1 (Pause.)

2 Q Thank you, Ms. Pearson. You have been very helpful.

3 THE COURT: Do you have other witnesses?

4 MR. QUINN: No further witnesses, Your Honor.

5 THE COURT: Does the state have any?

6 MR. GHENT: None from the state, Your Honor.

7 THE COURT: All right. Court is in recess until 2:45.

8 Let me see y'all just a minute before you go.

9 (Whereupon, a recess was taken.)

10 THE COURT: All right. We have got a motion to
11 determine the voluntariness of the statement.

12 MS. POULOS: Yes, Your Honor.

13 THE COURT: All right.

14 MS. POULOS: Your Honor, the state calls Investigator
15 Chris Banks.

16 CHRISTOPHER MICHAEL BANKS,
17 having been first duly sworn, testified as follows:

18 DIRECT EXAMINATION BY MS. POULOS

19 Q If you would, sir, please state your name for the
20 record and where you are employed.

21 A My name is Christopher Michael Banks. I'm employed
22 with the Spartanburg Police Department.

23 Q And back in November of 2014 were you in the
24 investigations unit?

25 A Yes, I was. I was currently assigned to

Christopher Michael Banks (In-camera)
Direct examination by Ms. Poulos

1 investigations.

2 Q And back in November of 2014 were you assigned to
3 investigate a shooting at 110 Southport Road?

4 A Yes, I was.

5 Q And is that in the City of Spartanburg?

6 A It's in the city limits of Spartanburg, yes.

7 Q Which is within Spartanburg County.

8 A Yes.

9 Q Okay. And after obtaining information from other
10 officers as to -- as to the facts and what happened at the
11 scene, did you obtain a statement from the defendant
12 Ms. Brittany Pearson in this case?

13 A Yes, I did.

14 Q And where was that statement given?

15 A At 145 West Broad Street, city hall, the interrogation
16 room.

17 Q And was the defendant advised of her rights verbally?

18 A Yes, she was. Written and verbally, yes.

19 Q And did she sign a written waiver?

20 A Yes, she did.

21 Q Okay. I'm going to hand you what's been premarked for
22 identification purposes as State's Exhibit 18 and ask you
23 is that the preinterrogation waiver form that Ms. Pearson
24 signed.

25 A Yes, it is.

Christopher Michael Banks (In-camera)
Direct examination by Ms. Poulos

1 Q And would you list or would you read out the rights
2 that you are listed on that form?

3 A It starts off as, "You have the right to remain
4 silent. Anything you say can and will be used against you
5 in a court of law. You have the right to talk to a lawyer
6 and have a lawyer present with you while you're being
7 questioned. If you cannot afford to hire a lawyer, a
8 lawyer will be appointed free of any costs to represent you
9 before any questioning begins." And the last one is, "You
10 have the right to stop answering questions at any time."

11 Q And Ms. Pearson, you indicated, did sign that form.

12 A Yes. She did.

13 Q Did you also sign that as well?

14 A Yes, I did.

15 MS. POULOS: Your Honor, we just move that it be
16 admitted just for purposes of this hearing.

17 THE COURT: It's admitted.

18 (Exhibit previously marked.)

19 Q Now, during the time you interviewed Ms. Pearson did
20 she appear to understand her -- her rights?

21 A Yes, she did.

22 Q Did -- was she under the influence of -- of -- of any
23 drugs or alcohol to your knowledge?

24 A Not at the time. I think I asked her if she had been
25 drinking, and I think she said she had drank something

Christopher Michael Banks (In-camera)
Direct examination by Ms. Poulos

1 earlier in the evening.

2 Q But did she appear to be coherent --

3 A Yes.

4 Q -- when you were speaking with her? Did she freely
5 talk about the case?

6 A Yes, she did. We talked for several -- several
7 minutes. About an hour.

8 Q At some point did Investigator Jennifer Watson also
9 come in, and during the questioning?

10 A Yes, she did.

11 Q And later did Investigator John Burgess also come in
12 for some follow-up questions?

13 A Yes. He was the lead investigator.

14 Q Okay. So basically there were three of you all
15 investigators sort of coming in and out of the room or
16 together. And this was all one continuous process?

17 A Yes.

18 Q Correct? Did she admit to shooting the victim?

19 A Yes, she did.

20 Q And when she said that was she speaking freely and
21 voluntarily?

22 A Yes, she was.

23 Q Was she coerced or threatened by either you or
24 Investigator Watson or Investigator Burgess?

25 A No. I -- I sat in front of her. Investigator Watson

Christopher Michael Banks (In-camera)
Direct examination by Ms. Poulos

1 sat to my right. And when Burgess came in, he came in from
2 the door on her side. And at no time did anybody threaten
3 or coerce her, no.

4 Q Was she offered something to drink or bathroom breaks?

5 A Yes.

6 Q Okay. Did she also provide a written statement as
7 well?

8 A Yes. I did.

9 Q I'm going to show you what's been premarked as State's
10 Exhibit 19 for identification purposes and ask you if that
11 is a written statement that Ms. Pearson provided.

12 A Yes, it is.

13 Q Did -- did you write this statement out for her, or
14 did she write it out?

15 A I wrote it out. Our city policy is that if a person
16 when we -- in interviewing, interrogating by the -- the
17 city wants us to do the actual written of the statements.

18 Q Okay. And was she given -- she was given an
19 opportunity to review and make any changes that she saw
20 necessary?

21 A Yes. At several times during the interview I asked
22 her if this is what she meant in the statement. A few
23 parts we had to rewrite. And then after we were done she
24 reviewed it and signed it.

25 Q Okay.

Christopher Michael Banks (In-camera)
Direct examination by Ms. Poulos

1 MS. POULOS: Your Honor, we'd ask that State's
2 Exhibit 19 be admitted for purposes of this hearing only.

3 THE COURT: It is.

4 MS. POULOS: Thank you.

5 (Written statement of defendant marked State's
6 Suppression Exhibit No. 19.)

7 Q Was that statement witnessed by Investigator John
8 Burgess?

9 A Yes, it was.

10 Q Okay. Now, was the interview also recorded as well?

11 A Yes. It is.

12 Q Okay. All right. I'm going to hand you State's
13 Exhibit 20 for identification purposes and ask you is
14 that -- a copy of the recorded statement that she provided.

15 A Yes, it is.

16 MS. POULOS: Your Honor, we'd ask that State's
17 Exhibit 20 be admitted for purposes of this hearing.

18 THE COURT: It is.

19 (Recorded statement of defendant marked State's
20 Suppression Exhibit No. 20.)

21 Q And, Investigator Banks, she -- she ultimately
22 confessed to getting into an argument with the victim and
23 then shooting her?

24 A Yes, she did.

25 Q Okay. What did she say as to why she shot the victim?

Christopher Michael Banks (In-camera)
Direct examination by Ms. Poulos

1 A She said at the time she was being assaulted by the
2 victim. They were fighting in the car. And she said that
3 the victim was on top of her. And she reached under the
4 her seat, pulled out her gun, racked it and shot.

5 Q What was she angry about?

6 A I had to ask. It was mentioned several times in the
7 interview, is what she called P.D.A., which I finally found
8 out was public display of affection. An incident had
9 occurred earlier in the day at a baby shower.

10 Q Now, at some point after the baby shower and after, I
11 believe, that she -- she stated that they were at Red's Bar
12 -- is that correct?

13 A Yes. After they left the baby shower they went back
14 home to their apartment. Left it. No. They stopped off
15 at the convenience store, picked up a [sic] alcoholic
16 beverage, a beer of some sort, went home. I believe they
17 or the victim consumed the alcohol.

18 They left again and went to the bar, which was Red's
19 Bar on Hayne Street. An incident occurred there, some type
20 of argument, again, in reference to the P.D.A., the public
21 display of affection. And when they got back to the
22 apartment the last time the defendant tried to get her out
23 of the car.

24 Q Did she admit to pushing the victim to get her out of
25 the car?

Christopher Michael Banks (In-camera)
Cross-examination by Mr. Quinn

1 A Yes.

2 Q And did she indicate that in her --

3 A In her statement.

4 Q In her written statement as well? Did she admit to --
5 to you all that she should not have shot the victim?

6 A Yes, she did.

7 Q Did she sustain any injuries?

8 A Not that I could see at the time of the questioning.

9 Q Could she point to any injuries at the time you all
10 questioned her?

11 A No. She did not. Not with me, no.

12 Q That's all I have. Please answer any questions
13 Mr. Quinn may have for you.

14 MS. POULOS: If I might, Your Honor, for just a few.

15 CROSS-EXAMINATION

16 BY MR. QUINN

17 Q And I'm sorry, Officer. I did not catch your rank
18 when you started. What -- what rank?

19 A My rank is what they call M.P.O. It just means master
20 patrol officer. It means I've been here for ten years.

21 Q Okay. Well, Master Patrol Officer Banks, the
22 statement indicates -- the statement waiver form indicates
23 that the time that the statement, slash, interview was
24 completed was at 12:45 a.m.

25 A Yes. It was.

Christopher Michael Banks (In-camera)
Cross-examination by Mr. Quinn

1 Q which would have been at that point November 9th,
2 isn't that correct?

3 A Yes.

4 Q Did you deal with Ms. Pearson any time after that?

5 A No. I did not.

6 Q Go back and review to see if she had any injuries?

7 A No. I did not.

8 Q Speak with her again about an additional statement or
9 ask her any other questions?

10 A No. I did not.

11 Q The -- and you were also asked by Ms. Poulos to
12 identify the disc that is still in front of you. Have you
13 had the opportunity to look at or listen to that disc?

14 A Again, no, not since the night of the interview. I'm
15 not the lead investigator. Burgess was at the time. I
16 just did the initial interview.

17 Q Is your handwriting or initials or anything on that
18 disc that would identify it as the original disc?

19 A No, other than what's given by the evidence
20 technician.

21 Q Okay. And did you see the evidence technician sign
22 that?

23 A No. I did not pick up the evidence.

24 Q I don't have any other questions. Thank you.

25 MS. POULOS: Nothing further, Your Honor.

1 THE COURT: You may step down.

2 MS. POULOS: That's all we have, Your Honor.

3 THE COURT: Mr. Quinn, do you have any evidence?

4 MS. POULOS: No witnesses, Your Honor, and no
5 argument.

6 THE COURT: All right. I find the statement is freely
7 and voluntarily made.

8 I also find that the motion to dismiss or to grant
9 immunity to the defendant based upon 16-11-450 should be,
10 and therefore is, denied.

11 All right. What else?

12 MR. QUINN: I don't believe there's anything else
13 until the selection of the jury.

14 THE COURT: We'll be at ease until the jury is
15 present.

16 Can I see y'all just a minute?

17 (Bench conference held off the record.)

18 THE COURT: We will be at ease until the jury arrives.
19 (Whereupon, a recess was taken.)

20 THE COURT: All right. Are we ready for the jury
21 panel to be brought around?

22 MS. POULOS: Yes, Your Honor.

23 MR. QUINN: Yes, Your Honor.

24 THE COURT: Okay. Bring them in.

25 Which one of these indictments are you going forward

Jury qualification

1 on? I've got two indictments charging murder. They have
2 the same number but two different indictments apparently.

3 MS. POULOS: Yes, sir. We had to amend the -- the
4 first one, Your Honor. I -- I spoke with Mr. Quinn. We
5 used the -- it's just a scrivener's error. We had used him
6 referring the victim, and it's actually her. So that's the
7 only -- the only change. And we just had to do an amended
8 indictment just to fix the pronoun.

9 THE COURT: Well, looks like the amended one is the
10 one that has got him in it. Oh, excuse me. No. This is
11 March of 2015 and February of 2016.

12 MS. POULOS: Yes, yes, sir. Okay. Thank you, Judge.

13 (The following takes place in the presence of the jury
14 venire.)

15 THE COURT: Good afternoon, ladies and gentlemen.

16 We are ready to begin with jury selection in the first
17 case that will require some of your participation. The
18 title of the case is the State vs. Brittany Shaunta
19 Pearson.

20 Ms. Pearson has been accused by the prosecutor by way
21 of documents that are called indictments. They're charging
22 papers. They're like a warrant.

23 The state charges the defendant, Brittany Shaunta
24 Pearson, with the crimes of murder and possession of a
25 firearm during the commission of a violent crime.

Jury qualification

1 The state alleges by way of these indictments that the
2 defendant did here in Spartanburg County or on about
3 November the 8th of 2014 wilfully and with malice
4 aforethought kill one Myah Cole by shooting her with a
5 firearm and that she did die as a proximate result of that
6 gunshot wound.

7 The defendant is also charged with possession of a
8 firearm during the commission of a violent crime, also
9 occurring on November 8, 2014.

10 The indictment alleges that the defendant did visibly
11 display a firearm during the commission of a violent crime,
12 that violent crime being the murder that is set forth in
13 the previous indictment.

14 Now, as to those allegations and as to each of those
15 charges the defendant has entered a plea of not guilty. A
16 plea of not guilty places upon the state the burden of
17 proving the allegations that they have made by way of these
18 indictments, the burden of proving each of the essential
19 elements of the crimes alleged against the defendant; and
20 therefore the burden is upon the state to establish the
21 defendant's guilt to the satisfaction of 12 jurors beyond a
22 reasonable doubt before any verdict of guilty could be
23 returned.

24 Before we begin with jury selection in the case I've
25 got some folks to introduce to you and some questions to

Jury qualification

1 ask of you. The purpose is to find out if you know anybody
2 involved in the case, as well as do you have any reason why
3 you could not be fair and impartial if selected to serve as
4 a juror in this particular case.

5 And so as these people are introduced to you if you
6 have any connection or relationship or knowledge of any of
7 these people or any members of their respective families, I
8 will ask that you please stand so that we can -- we can
9 determine what that connection is and determine whether or
10 not it would have any bearing upon your decision or upon
11 your ability to be fair and impartial if you were selected
12 as a juror in the case.

13 First of all, as I told you, the defendant, that is
14 the person who is accused of having committed these crimes,
15 is Brittany Shaunta Pearson.

16 Ms. Pearson, if you will, stand and face the jury
17 panel, please.

18 (Whereupon, the defendant stood.)

19 THE COURT: Okay. Thank you. Be seated.

20 Ms. Pearson is represented by Thomas Quinn, her
21 lawyer. He'll be assisting her in the trial of the case.

22 As I indicated to you by reading the allegations, the
23 person who is alleged to be the victim of this event is
24 Myah Cole.

25 The state in this case is represented by Timi Poulos

Jury qualification

1 and Grady Anthony. They are both assistant circuit
2 solicitors for the Seventh Judicial Circuit.

3 Potential witnesses to be called during the trial
4 include John Burgess with the Spartanburg County Sheriff's
5 Department; Courtney Westfall-Burgess with the Spartanburg
6 County Sheriff's Department; Chris Banks with the
7 Spartanburg Police Department; Jennifer Watson with the
8 Spartanburg Police Department; Timberly Osswald,
9 Spartanburg Police Department; Daniel Gordon, Spartanburg
10 Police Department; Kevin Renneker, Spartanburg Police
11 Department; Mylnor Beach, Spartanburg Police Department;
12 Wendi Lively employed with Spartanburg County 9-1-1; Todd
13 Shields employed with the Spartanburg Emergency Medical
14 Services; David Wren, employed -- medical doctor,
15 pathologist, Spartanburg Regional Medical Center; Michelle
16 Eichenmiller employed by the state law enforcement
17 division, SLED; Marquita Smith, a resident of Spartanburg;
18 Heath Tyrone Gary, a resident of Spartanburg; Brittni
19 Smith-Miller, a resident of Spartanburg; and Tara Watts, a
20 resident of Spartanburg.

21 Does any member of the jury panel know anybody who's
22 just been introduced to you? Do you have any connection --
23 personal, social, professional, employment, school, church
24 any connection whatsoever? If so, please stand.

25 All right. Your name and number please, sir.

Jury qualification

1 JUROR NO. 54: Jason Frady, No. 54.

2 THE COURT: All right. And what is your connection,
3 with what witness?

4 JUROR NO. 54: I work at 9-1-1. I dispatch to those
5 officers. And Wendi Lively is my director, deputy
6 director.

7 THE COURT: Okay. All right. And would any of those
8 connections or facts have any bearing upon your decision in
9 the case?

10 JUROR NO. 54: Not at all.

11 THE COURT: All right. Thank you. You may be seated.
12 Yes, ma'am.

13 JUROR NO. 81: Jennifer Watson. I'm friends with her
14 mother, Lynn Gray.

15 THE COURT: And what's your juror number?

16 JUROR NO. 81: Eighty-one.

17 THE COURT: And you're friends with whose mother?

18 JUROR NO. 81: Jennifer's mother.

19 THE COURT: Okay. Would that have any bearing on your
20 decision in the case?

21 JUROR NO. 81: No, sir.

22 THE COURT: All right. Thank you. Be seated.

23 Yes, ma'am.

24 JUROR NO. 173: My aunt by marriage is John Burgess'
25 sister.

Jury qualification

1 THE COURT: All right. And your number is what?

2 JUROR NO. 173: 173.

3 THE COURT: And your aunt by marriage is John Burgess'
4 sister?

5 JUROR NO. 173: Yes.

6 THE COURT: Would that connection have any bearing
7 upon your decision in the case?

8 JUROR NO. 173: No.

9 THE COURT: All right. Thank you. Be seated.
10 Yes, sir.

11 JUROR NO. 170: Name is Glenn Thomas, No. 170. I'm
12 good friends with Officer Gordon.

13 THE COURT: With officer who?

14 JUROR NO. 170: Gordon.

15 THE COURT: Gordon. All right. Would that have any
16 bearing in your decision in this case if you were selected?

17 JUROR NO. 170: No, sir.

18 THE COURT: All right. Thank you. Be seated.

19 Anyone else have any connection with anybody involved
20 in the case? That includes the lawyers. And because these
21 prosecutors are in the Seventh Judicial Circuit solicitor's
22 office, that would include whether or not you're connected
23 with anybody employed in that office. So, if so, please
24 stand.

25 Yes, ma'am.

Jury qualification

1 JUROR NO. 37: Juror No. 37. My daughter-in-law works
2 in the solicitor's office.

3 THE COURT: All right. Would that have any bearing on
4 your decision in this case?

5 JUROR NO. 37: No, sir.

6 THE COURT: Thank you. Be seated.

7 All right. As I told you, this is an event that
8 arises according to the indictments back -- from an
9 occurrence on November the 8th of 2014.

10 It is alleged to have occurred in the parking lot of
11 the Park Place Apartments located off Southport Road here
12 in the City of Spartanburg.

13 Does anybody think you might have heard, seen or read
14 information that relates to this particular case? In other
15 words, have you been exposed to any information about this
16 case from any source whatsoever -- media, individuals,
17 television, radio, newspaper, anything?

18 All right. Yes, ma'am.

19 JUROR NO. 19: I read the paper every day.

20 THE COURT: All right. And what's your number,
21 please?

22 JUROR NO. 19: Nineteen.

23 THE COURT: No. 19. And your name?

24 JUROR NO. 19: Lorna Burrell.

25 THE COURT: All right. And you've read something in

Jury qualification

1 the newspaper about the case?

2 JUROR NO. 19: Yes, sir.

3 THE COURT: How recent did you read that?

4 JUROR NO. 19: It would have been when it was --
5 happened.

6 THE COURT: Back in 2014? Is there anything you
7 specifically remember about what you read?

8 JUROR NO. 19: Just the names, or one name, because I
9 teach for somebody with the same name.

10 THE COURT: Okay. And is there anything about what
11 you have been exposed to that would in any way influence
12 your judgment?

13 JUROR NO. 19: No.

14 THE COURT: Could you put it aside and not allow it to
15 influence any decision that you make and base your decision
16 solely upon what you see and hear during the trial?

17 JUROR NO. 19: Yes, sir.

18 THE COURT: All right. Thank you. Be seated.
19 Anyone else?

20 JUROR NO. 140: Yeah. I got a question. One of the
21 witnesses, Brittni Smith-Miller.

22 THE COURT: All right. Tell me what your number is.

23 JUROR NO. 140: She used to go with my cousin.

24 THE COURT: Tell me what your number is.

25 JUROR NO. 140: 140. I don't know if this here is --

Jury qualification

1 THE COURT: All right. Brittni Smith-Miller has been
2 dating your cousin?

3 JUROR NO. 140: It was -- it was awhile ago. I just
4 know her from there.

5 THE COURT: Okay. But you know her or you believe you
6 do?

7 JUROR NO. 140: From that, from my cousin, yeah.

8 THE COURT: Okay. Is there anything about your
9 connection with her that would affect your judgment in the
10 case?

11 JUROR NO. 140: I mean, I'm --

12 THE COURT: Is that a no?

13 JUROR NO. 140: No. I don't know what's going on.
14 No.

15 THE COURT: Okay. So that connection would not
16 influence your decision?

17 JUROR NO. 140: No.

18 THE COURT: Thank you. You may be seated.

19 Has any member of the jury panel or any member of your
20 immediate family -- and let me define an immediate family
21 member as a parent or a spouse or a child or a sibling --
22 a parent, spouse, child or sibling. Have you or any
23 members of your immediate family as I just defined it ever
24 been the victim of, or have you or a family member ever
25 been accused of, having committed any type of criminal

Jury qualification

1 offense which might be characterized or classified as a
2 violent offense?

3 And those would include murder, manslaughter, armed
4 robbery, rape, assault and battery with intent to kill,
5 aggravate assault and battery, criminal domestic violence
6 of a high and aggravated nature, or any other similar type
7 of an offense.

8 Have you or a family member ever been the victim of or
9 ever been being accused of having committed any of those
10 similar types of offenses? If so, please stand.

11 All right. I'm going to start -- I'll start on the
12 front row and go down the row, and then I'll work my way
13 back, and then I'll jump the aisle.

14 Give me your name and number, please.

15 JUROR NO. 146: Jennie Riley, 146.

16 THE COURT: And was it you or a family member?

17 JUROR NO. 146: My father.

18 THE COURT: So it was a family member. All right.

19 And was he a victim or was he accused of something?

20 JUROR NO. 146: Accused.

21 THE COURT: And what was he as accused of?

22 JUROR NO. 146: Murder.

23 THE COURT: And has that case been resolved?

24 JUROR NO. 146: He's in prison.

25 THE COURT: All right. Is there anything about that

Jury qualification

1 experience that would affect your judgment in this case?

2 JUROR NO. 146: No.

3 THE COURT: All right. Thank you. Be seated.

4 Yes, ma'am.

5 JUROR NO. 88: Shaylee Hummell, 88. Family member.

6 Armed robbery -- armed robbery.

7 THE COURT: And your name was 188?

8 JUROR NO. 88: Eighty-eight.

9 THE COURT: Eighty-eight. All right. And who was the
10 family member?

11 JUROR NO. 88: My mother.

12 THE COURT: And she was the victim of an armed
13 robbery?

14 JUROR NO. 88: She was accused.

15 THE COURT: She was accused of armed robbery. All
16 right. And is that case resolved?

17 JUROR NO. 88: Yes.

18 THE COURT: And is there anything about that fact or
19 that circumstance that would affect your judgment in the
20 case?

21 JUROR NO. 88: No, sir.

22 THE COURT: Thank you. Be seated.

23 Yes, ma'am.

24 JUROR NO. 9: Annie Brown.

25 THE COURT: Your number?

Jury qualification

1 JUROR NO. 9: Nine.

2 THE COURT: All right.

3 JUROR NO. 9: My son.

4 THE COURT: Your son. He was a victim or a defendant?

5 JUROR NO. 9: He was --

6 THE COURT: A victim or accused of something?

7 JUROR NO. 9: Accused -- accused.

8 THE COURT: All right. Of what?

9 JUROR NO. 9: Helping killing, well, assisting in
10 killing someone.

11 THE COURT: And has that case been resolved?

12 JUROR NO. 9: Yes, sir.

13 THE COURT: Would that fact influence your judgment in
14 this case if you were selected?

15 JUROR NO. 9: No, sir.

16 THE COURT: Thank you. You may be seated.

17 Next row.

18 JUROR NO. 96: Willie Jeter, 96.

19 THE COURT: You?

20 JUROR NO. 96: My grandfather.

21 THE COURT: Your grandfather. He was a victim or
22 accused?

23 JUROR NO. 96: Accused.

24 THE COURT: Of what?

25 JUROR NO. 96: Murder.

Jury qualification

1 THE COURT: And has that case been resolved?

2 JUROR NO. 96: No.

3 THE COURT: It's still pending?

4 JUROR NO. 96: Yes, sir.

5 THE COURT: Where is that pending?

6 JUROR NO. 96: Spartanburg County.

7 THE COURT: All right. Would that fact in any way
8 interfere with your ability to be fair and impartial in
9 this case?

10 JUROR NO. 96: Probably so.

11 THE COURT: All right. And you're Juror 96?

12 JUROR NO. 96: Yeah.

13 THE COURT: All right. We'll excuse Juror 96 from
14 service in this trial. But don't leave yet.

15 All right.

16 JUROR NO. 40: Jerome Player, No. 40.

17 THE COURT: How does that question relate to you?

18 JUROR NO. 40: It was me. Criminal domestic violence.

19 THE COURT: And you were accused or a victim?

20 JUROR NO. 40: Accused, but it wasn't tried or
21 nothing.

22 THE COURT: All right. Has that case been resolved?

23 JUROR NO. 40: Yeah.

24 THE COURT: And --

25 MS. POULOS: What was his number?

Jury qualification

1 THE COURT: 140.

2 MS. POULOS: Thank you.

3 THE COURT: Would that have any bearing upon your
4 decision in this case?

5 JUROR NO. 40: No.

6 THE COURT: All right. Thank you. Be seated.
7 Yes, ma'am.

8 JUROR NO. 119: Juror 119, Stephanie Miller. Domestic
9 violence, my parents. My dad shot my mother and killed
10 her.

11 THE COURT: So one was accused and one was a victim.

12 JUROR NO. 119: Yes.

13 THE COURT: Would either of those facts have any
14 bearing upon your decision in this case?

15 JUROR NO. 119: No.

16 THE COURT: Thank you. Be seated.
17 Yes, ma'am.

18 JUROR NO. 23: Ashley Cartee, No. 23. And I, myself,
19 accused, assault and battery.

20 THE COURT: And has that case been resolved?

21 JUROR NO. 23: Yes, sir.

22 THE COURT: And would that have any bearing upon your
23 decision in this case?

24 JUROR NO. 23: No, sir.

25 THE COURT: Thank you. Be seated.

Jury qualification

1 Yes, sir.

2 JUROR NO. 101: Juror 102 or 101. I'm sorry. I was
3 accused of assault and battery.

4 THE COURT: You were?

5 JUROR NO. 101: Yes.

6 THE COURT: All right. And has that case been
7 resolved?

8 JUROR NO. 101: Yes, it has, yes, sir.

9 THE COURT: And would that fact in any way interfere
10 with your ability to be fair and impartial in this case?

11 JUROR NO. 101: No, sir.

12 THE COURT: All right. Thank you. You may be seated.
13 Anyone else, you or a family member been the victim or
14 an accused?

15 (No response.)

16 THE COURT: Has any member of the jury panel ever been
17 called to testify as a witness in a criminal case, whether
18 you were called by the prosecutor's office or called by a
19 defense counsel? Have you ever been called to testify as a
20 witness in a criminal case? If so, please stand.

21 (No response.)

22 THE COURT: All right. I told you what the
23 allegations are, and I've introduced some folks to you that
24 will be involved in the case, and I told you a little bit
25 about what the case is about.

Jury qualification

1 Is there anything about the nature of the case itself
2 that would prevent any juror from being able to be fair and
3 impartial if you were selected? If so, please stand.

4 (No response.)

5 THE COURT: Does any juror know of any reason
6 whatsoever why you think you could not be fair and
7 impartial if you were selected as a juror to determine the
8 verdict in this particular case? If you have any reason
9 whatsoever why you cannot be fair, I would ask that you
10 please stand.

11 (No response.)

12 THE COURT: None responding.

13 Any other questions requested by the state?

14 MS. POULOS: None from the state, Your Honor.

15 THE COURT: By the defendant?

16 MR. QUINN: No, Your Honor. Than you.

17 THE COURT: All right. Draw us a jury please, ma'am.

18 When your name is called you're going to be asked to
19 come forward. You see where the bailiff is standing. Just
20 come and stand right in front of the bailiff.

21 Each side has a chance to have you seated for service
22 in the case or to have you excused from serving in the
23 case. If either side asks that you be excused, you can go
24 back and have a seat where you are now. If both agree to
25 have you seated, you'll be having a seat in the jury box to

Jury qualification

1 your right and to my left.

2 THE CLERK: Juror No. 81, Amanda G. Henderson.

3 What say the state?

4 MS. POULOS: Please present the juror.

5 THE CLERK: What say the defense?

6 MR. QUINN: Please excuse the juror from this trial.

7 THE CLERK: Juror No. 91, Savanna James.

8 MR. QUINN: She was transferred. She's the young
9 woman that cares for her father.

10 THE CLERK: Juror No. 119, Stephanie Miller.

11 What say the state?

12 MS. POULOS: Please excuse this juror.

13 THE CLERK: Juror No. 133, Ethan Peeler.

14 What say the state?

15 MS. POULOS: Please present the juror.

16 THE CLERK: What say the defense?

17 MR. QUINN: Please swear the juror.

18 THE CLERK: Juror No. 54, Jason Frady.

19 What say the state?

20 MS. POULOS: Please present the juror.

21 THE CLERK: What say the defendant?

22 MR. QUINN: Please excuse the juror from this trial.

23 THE CLERK: Juror No. 92, Marisol Jenkins.

24 What say the state?

25 MS. POULOS: Please excuse the juror.

Jury qualification

1 THE CLERK: Juror No. 8, Marcus Boyd.

2 what say the state?

3 MS. POULOS: Please present the juror.

4 THE CLERK: what say the defense?

5 MR. QUINN: Please excuse the juror from this trial.

6 THE CLERK: Juror No. 39, John Dill.

7 what say the state?

8 MS. POULOS: Please present the juror.

9 THE CLERK: what say the defense?

10 MR. QUINN: Please swear the juror.

11 THE CLERK: Juror No. 140, Jerome Player.

12 what say the state?

13 MS. POULOS: Please excuse the juror.

14 THE CLERK: Juror No. 160, Jackie Socorro.

15 what say the state?

16 MS. POULOS: Please present the juror.

17 THE CLERK: what say the defense?

18 MR. QUINN: Please swear the juror.

19 THE CLERK: Juror No. 156, Chasmond Smith.

20 what say the state?

21 MS. POULOS: Please present the juror.

22 THE CLERK: what say the defense?

23 MR. QUINN: Please swear the juror.

24 THE CLERK: Juror No. 173, Melanie Wells.

25 what say the state?

Jury qualification

1 MS. POULOS: Please present the juror.

2 THE CLERK: What say the defense?

3 MR. QUINN: Please swear the juror.

4 THE CLERK: Juror No. 97, Glen Johnson.

5 What say the state?

6 MS. POULOS: Please present the juror.

7 THE CLERK: What say the defense?

8 MR. QUINN: Please excuse the juror from this trial.

9 THE CLERK: Juror No. 89, Christopher Jackson.

10 What say the state?

11 MS. POULOS: Please present the juror.

12 THE CLERK: What say the defense?

13 MR. QUINN: Please swear the juror.

14 THE CLERK: Juror No. 146, Jennie Riley.

15 What say the state?

16 MS. POULOS: Please excuse this juror.

17 THE CLERK: Juror No. 181, Kamal Treifi.

18 What say the state?

19 MS. POULOS: Please present the juror.

20 THE CLERK: What say the defense?

21 MR. QUINN: Please swear the juror.

22 THE CLERK: Juror No. 101, Austin Kimberly.

23 What say the state?

24 MS. POULOS: Please present the juror.

25 THE CLERK: What say the defense?

Jury qualification

1 MR. QUINN: Please swear the juror.
2 THE CLERK: Juror No. 55, Patricia Freeman.
3 What say the state?
4 MS. POULOS: Please present the juror.
5 THE CLERK: What say the defense?
6 MR. QUINN: Please excuse the juror.
7 THE CLERK: Juror No. 162, John Stathakis.
8 What say the state?
9 MS. POULOS: Please present the juror.
10 THE CLERK: What say the defense?
11 MR. QUINN: Please swear the juror.
12 THE CLERK: Juror No. 102, Amanda Landress.
13 What say the state?
14 MS. POULOS: Please present the juror.
15 THE CLERK: What say the defense?
16 MR. QUINN: Please swear the juror.
17 THE CLERK: Juror No. 43, Allen Dunn.
18 What say the state?
19 MS. POULOS: Please present the juror.
20 THE CLERK: What say the defense?
21 MR. QUINN: Please swear the juror.
22 THE CLERK: Juror No. 80, Darius Hemphill.
23 What say the state?
24 MS. POULOS: Please present the juror.
25 THE CLERK: What say the defense?

Jury qualification

1 MR. QUINN: Please swear the juror.

2 THE CLERK: Juror No. 165, David Stoxen.

3 THE COURT: This is for the alternate juror.

4 THE CLERK: What say the state?

5 MS. POULOS: Please present the juror.

6 THE CLERK: What say the defense?

7 MR. QUINN: Please swear the juror.

8 (Whereupon, a jury was impaneled.)

9 THE COURT: Those who have been selected, I'll ask you
10 to please go with the bailiff to a jury room, and I'll
11 bring you back shortly.

12 (The following takes place outside the presence of the
13 jury.)

14 THE COURT: Are there any matters that need to be
15 addressed regarding jury selection by the state?

16 MS. POULOS: No, sir, Your Honor.

17 THE COURT: By the defendant?

18 MR. QUINN: No, Your Honor.

19 (Whereupon, the remaining members of the jury venire
20 were excused.)

21 THE COURT: Let me see y'all just a minute, please.

22 (Bench conference held off the record.)

23 THE COURT: Bring the jury in, please.

24 (The following takes place in the presence of the
25 jury.)

Jury qualification

1 THE COURT: Ladies and gentlemen, we're going to begin
2 with the trial first thing in the morning beginning at
3 9:30. So you're going to be excused now and asked to
4 report back in the morning in the morning to the jury room
5 at 9:30.

6 Keep in mind during the overnight recess and at any
7 time else during the course of this trial you're not
8 permitted to discuss the case in any fashion whatsoever
9 with any person whatsoever. You can't even discuss it
10 among your fellow jurors until you are involved in jury
11 deliberations at the trial's conclusion.

12 Also, you're not permitted to conduct any research or
13 do your own investigation into any issue that relates to
14 the case. You can't search for information on the
15 internet, newspapers, television, radio. You have to avoid
16 any exposure because you have to base your decision upon
17 what you see and hear during the trial, and you can't
18 permit yourselves to be influenced by any outside or
19 extraneous information because it might be false or
20 misleading.

21 So no discussions, no media exposure, no research, no
22 investigation. Do have a good evening. Please report to
23 your jury room at 9:30 in the morning, 9:30 in the morning.
24 Have a good afternoon.

25 (The following takes place outside the presence of the

1 jury.)

2 THE COURT: Any other matters we need to address
3 before we recess?

4 MS. POULOS: No, sir, Your Honor.

5 THE COURT: Court in this recess until 9:30 in the
6 morning.

7 END OF PROCEEDINGS MAY 23, 2016

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1 (Proceedings May 24, 2016)

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: Do we have any matters to address before
5 the jury is sworn?

6 MS. POULOS: Nothing from the state, Your Honor.

7 MR. QUINN: Nothing from the defense.

8 THE COURT: Ask the jury to step in, and ask Mr. Dunn
9 to take the foreperson's seat.

10 (The following takes place in the presence of the
11 jury.)

12 THE COURT: Good morning, ladies and gentlemen.

13 We are ready to begin with the trial of the case for
14 which each of you jurors have been selected.

15 Mr. Dunn, I'm going to ask you to serve as the
16 foreperson of the jury. As the foreperson you'll have
17 three specific duties that none of the other jurors will
18 have.

19 First of all, you'll be asked to serve as the
20 spokesperson for the jury. And that just means if
21 something arises during the course of the trial that needs
22 to be brought to my attention -- you or a fellow juror has
23 some difficulty, problem or question -- you let me know
24 directly if you're in the courtroom or through the bailiff
25 if you're not. And I'll address those issues where

1 necessary.

2 Secondly, you'll be called upon to preside over jury
3 deliberations when the time comes at the trial's conclusion
4 when you and your fellow jurors go back to begin with your
5 deliberations. You will preside over that process in the
6 jury room simply to ensure that those deliberations are
7 carried out in some orderly fashion.

8 And, thirdly, you'll actually write the verdict or the
9 decision of the jury. You'll do that on a verdict form
10 that I'll provide you when you go back to begin
11 deliberations. And on that verdict form you will indicate
12 the jury's unanimous decision as it relates to that
13 particular indictment.

14 The foreperson has those specific duties that I've
15 just indicated. That does not however mean that he is any
16 more important than any of you other jurors, and that's
17 because the decision of the jury is the unanimous consensus
18 opinion of all 12 jurors, and so all of you will have an
19 equal say and an equal vote in what the ultimate decisions
20 will be in this case.

21 Someone simply has to be delegated those
22 responsibilities that I have just indicated, and I have
23 delegated those to Mr. Dunn in appointing him as the
24 foreperson. But all of you jurors are equally important so
25 far as the ultimate decisions in this case are concerned,

1 because, as I've stated, the verdicts have to be unanimous.
2 All 12 of you must be in agreement.

3 Mr. Stoxen, you have been selected as an alternate
4 juror, and the function of an alternate juror is to take
5 the place of one of the original 12 if during the trial one
6 of those 12 cannot continue to serve for some reason. And
7 so if one is called away because of an emergency or an
8 illness or some other circumstance that prevents their
9 continuing to serve as a juror, you would be called upon to
10 take that person's place. In that event you become the
11 12th juror. And in that event you participate throughout
12 the trial including the jury deliberations at the trial's
13 conclusion.

14 If however when the time does come for jury
15 deliberations at the end of this trial if the original 12
16 are able to participate, then your service ends and you
17 don't participate any further. And that's because the
18 decision of a jury is that of 12, and no more than 12 are
19 permitted to engage in that deliberation process. But it
20 is important that you pay just as careful attention as we
21 ask of all of the jurors selected in this case because it
22 does occur from time to time for one reason or another one
23 of these may be unable to continue. And in that event you
24 become the 12th.

25 So we do appreciate your participation as an alternate

Jury sworn

1 juror, just as we appreciate the participation of each of
2 you jurors who have been selected for the purpose of
3 deciding the verdict in this particular case.

4 You may swear the panel.

5 (Whereupon, the jury was duly sworn.)

6 THE COURT: Ladies and gentlemen, as you know, you
7 have been selected to decide the verdict in the case of the
8 State vs. Brittany Shaunta Pearson.

9 As you also know, Ms. Pearson has been accused by the
10 prosecutor by way of these indictments with having
11 committed two separate and distinct offenses, although they
12 allege out of one event or occurrence which the state
13 alleges occurred back on November the 8th of 2014.

14 By way of these indictments the state alleges that
15 Brittany Shaunta Pearson did here in Spartanburg County on
16 that date wilfully and with malice aforethought kill one
17 Myah Cole by shooting her with a firearm and that she died
18 as a proximate result of that gunshot wound.

19 She's also charged with the unlawful possession of a
20 firearm during the commission of a violent crime, that
21 violent crime being the murder alleged in a separate
22 indictment.

23 Now, as to those charges and as to those allegations
24 the defendant has entered a plea of not guilty. And, as I
25 told you, that plea of not guilty places upon the state the

1 burden of proving the allegations that they have made by
2 way of each of these indictments, the burden of proving
3 each of the essential elements of the crimes that are
4 alleged against the defendant; and therefore the burden is
5 upon the state to establish the defendant's guilt to the
6 satisfaction of you 12 jurors beyond a reasonable doubt
7 before any verdict of guilty could be returned.

8 The indictments are not evidence in the case. They
9 don't prove anything; they don't establish anything.
10 They're simply the means by which any person who is charged
11 with a crime where the jurisdiction lies in this court is
12 put on notice of what crime the state claims they
13 committed.

14 The indictment will be in the jury room at the trial's
15 conclusion, because it's on the indictments, Mr. Foreman,
16 that you're going to indicate the jury's decision. But
17 other than serving as the verdict forms in this case, the
18 indictments serve no purpose so far as you jurors are
19 concerned.

20 The allegations made therein must be established by
21 the state beyond a reasonable doubt before you could find
22 the defendant guilty.

23 Every person accused of a crime -- and it doesn't
24 matter how serious the offense might be for which that
25 person stands charged -- every person accused of a crime is

1 presumed innocent of the charge.

2 That presumption of innocence remains with any
3 defendant, as it does with this defendant, from the time
4 that she is placed under arrest and throughout the course
5 of the criminal process and even throughout the course of
6 the actual trial in the case.

7 That presumption of innocence will be with Ms. Pearson
8 even at the time that you go back to begin with your
9 deliberations at this trial's conclusion.

10 That presumption of innocence will be with her in that
11 jury room, and it'll be with her forever unless you 12
12 jurors determine that she's no longer entitled to that
13 presumption of innocence.

14 In other words, after you've considered all of the
15 evidence in the case that has been presented, and from that
16 evidence you determine what you believe to be the facts
17 that relate to these allegations, and upon deciding those
18 facts you apply the law that the court will have provided
19 you, if you 12 jurors determine that the defendant's guilt
20 has been proven beyond a reasonable doubt, then she would
21 no longer be entitled to the presumption of innocence. But
22 it is only if, unless and until you are satisfied of her
23 guilt beyond a reasonable doubt that the presumption of
24 innocence would no longer be applicable.

25 Now, the way the trial will proceed is that in a

1 moment the lawyers are going to address you in what are
2 called opening statements.

3 There are two occasions in the trial of the case where
4 lawyers are permitted to address the jury, and that is at
5 the beginning of the trial before any evidence has been
6 introduced, then again at the conclusion of the trial after
7 all of the evidence has been received. But keep in mind,
8 as I just indicated, the lawyers' statements aren't
9 evidence. The evidence comes in during the course of the
10 trial by way of witness testimony or introduction of
11 documents or physical exhibits.

12 The lawyers' statements are not to be considered by
13 you as any evidence upon which you will base your decision,
14 but you should listen to what the lawyers have to say
15 because those statements do serve a purpose.

16 The opening statements serve to provide you with a
17 basic understanding as to what this case is about from both
18 the perspective of the state, as well as the defendant, so
19 that you'll have some context in which to place the evidence
20 that we will be receiving shortly thereafter.

21 The closing statements occur after all of the evidence
22 has been received. And, again, while those statements are
23 not evidence, it does afford the lawyers an opportunity to
24 discuss with you the evidence that you have seen and heard
25 during the course of the trial. And through that

1 discussion each will be trying to convince you or to
2 persuade you that the evidence in the case does or does not
3 support a particular decision.

4 The evidence comes in during the course of the trial.
5 The state has the burden of proof, as you know. The state
6 has to prove the defendant's guilt beyond a reasonable
7 doubt. So the state will go forward first in its
8 presentation of evidence.

9 Once the state has concluded that presentation of
10 evidence any defendant charged with a crime has an
11 opportunity to testify or to call a witness or to introduce
12 evidence. But please understand that a defendant in a
13 criminal trial is never under any obligation to testify or
14 to call any witness or to produce any evidence.

15 The burden is not upon a person charged with a crime
16 to prove that they are not guilty or to prove that they are
17 innocent because in many cases that might not be possible.
18 The burden is on the state to prove their guilt. So the
19 state has the burden of presenting evidence.

20 A defendant does not have any burden to testify or to
21 present evidence. Should a defendant not testify or call a
22 witness or introduce evidence, you can't hold that against
23 anyone charged with a crime. It's not to be considered in
24 any way whatsoever in your deliberations or in your
25 determination as to whether or not the evidence in the case

1 establishes the defendant's guilt beyond a reasonable
2 doubt. But every defendant is afforded an opportunity to
3 testify or to present evidence should he or she wish to do
4 so.

5 So after you see and hear all of the evidence and
6 after you hear the final summations of the lawyers, I will
7 then instruct you on the law as it relates to the criminal
8 law generally and as it relates to these specific crimes
9 particularly. Then you'll be asked to go back and to begin
10 with your deliberations. And through that process you're
11 going to be called upon through the exercise of good
12 judgment and common sense conscientiously applied to the
13 testimony and evidence in the case to decide the facts as
14 they relate to the allegations, apply the law and to arrive
15 at a fair and just decision, whatever that decision may be,
16 based upon the law and the evidence presented during the
17 trial.

18 It is important that you pay careful attention
19 throughout the course of the trial. There'll be a number
20 of witnesses that will testify. And every witness'
21 testimony is important or they wouldn't be called to
22 testify as a witness.

23 Sometimes there may be a conflict in witnesses'
24 testimony. That conflict may relate to a material fact
25 that has to be determined by you in order to arrive at a

1 decision.

2 You are the people who have been selected to decide
3 the facts; and therefore you are the people who are
4 selected to decide the credibility and the believability of
5 each witness that testifies during the trial.

6 You can believe everything that a witness testified
7 to, or choose to believe none of it. You may believe some
8 portion of a witness' testimony and reject some other
9 portion of that same witness' testimony.

10 You can believe one witness as opposed to several, or
11 several as opposed to one. Whatever your good judgment and
12 common sense tells you is the most believable and credible
13 testimony is the testimony that you should accept, and you
14 should reject any testimony or other evidence that you find
15 not to be credible or believable.

16 But in order to be in a proper position to fairly
17 evaluate every witness' testimony and its credibility
18 you've got to listen to what they have to say so that when
19 you go back to begin with your deliberations you'll be in a
20 proper position to fairly assess and evaluate that witness'
21 testimony in light of not just what they said but in light
22 of all of the testimony and all of the evidence received
23 during the course of the trial.

24 And of course it's also important that you keep an
25 open mind throughout the course of the trial. You are not

1 to begin making up your minds or formulating your opinions
2 as to what you think the ultimate decisions in this case
3 ought to be until all of the evidence has been received,
4 until I've instructed you on the law and until you've been
5 asked to begin with your deliberations in the case.

6 That is the process that has been designed over the
7 last 230-some-odd years to ensure that you can arrive at a
8 fair and just decision in any case.

9 So I do want to thank you in advance for your
10 participation, as well as for your careful attention. I
11 would ask that you please give the lawyers your attention
12 now as they give you their opening statements.

13 Let me do this while I've got you here. Let me ask the
14 back row to move down to your right one seat. I'll ask the
15 gentleman on the front row, last seat, to move back one
16 seat. And then the front row move to your left one seat.

17 Hopefully in that way you'll better be able to see --
18 except for the alternate, of course, you'll better be able
19 to see the screen. If you have any difficulty seeing that,
20 you let me know. We'll make some other arrangements.

21 All right. Please give the lawyers your attention now
22 as they give you their opening statements.

23 Mr. Anthony.
24
25

Opening statements

1 MR. ANTHONY: Ladies and gentlemen, we're here today
2 because Myah Cole is dead. We're here today because the
3 defendant, Myah's girlfriend, Brittany Pearson, killed her.

4 They were in the parking lot outside their apartment
5 complex. They were in the defendant's car. Myah takes a
6 1911 handgun, .45 caliber, chambers a round into that gun.
7 She fires it into Myah's chest just below the neck. And
8 that .45 caliber round rips through Myah's body. She
9 bleeds out in the passenger seat of that car. She takes
10 her last breath on this earth just after 9:00 o'clock on
11 November the 8th of 2014.

12 This case starts out innocently enough, something
13 called public display of affection. P.D.A. is what the
14 kids are calling it these days. It's pretty simple, just
15 showing your affection physically for someone in public.

16 This occurred at a baby shower earlier that day. Both
17 Myah and Brittany were there. Myah grabs Brittany's butt
18 in front of the room. And it's clear that others are
19 there. Brittany gets angry about it. She's cold, tense.
20 Myah continues to socialize. Brittany seems distant.

21 This anger continues throughout the day. They go to a
22 bar called Red's to shoot pool with some of their
23 friends -- Heath Gary and Marquita Smith.

24 It's clear to Heath and Marquita that Brittany's mad
25 at Myah. She's cold; she's upset; she's angry. Her eyes

Opening statements

1 are bloodshot. She stormed out of that bar before they can
2 finish one game of pool, and Myah follows.

3 They get in the defendant's car. They drive back to
4 their apartment, Park Place Apartments over there at 110
5 Southport Road behind Fuddruckers.

6 They park outside their apartment and they begin to
7 argue. And it's at that point that Brittany takes that gun
8 and ends Myah's life.

9 Now, you'll hear from several witnesses to substantiate
10 these facts. You're going to hear from officers who arrived
11 on the scene and hear from the E.M.S. worker who found Myah
12 dead. You're going to hear from Dr. David Wren who did the
13 autopsy on Myah. He can tell you how she died, but he can't
14 tell you why.

15 There's no question in this case as to who killed Myah.
16 The defendant's taken responsibility for that. There's no
17 question in this case as to the weapon that was used to take
18 Myah's life. That was recovered on the scene. It was that
19 pistol I told you about.

20 The only question you're going to have to decide as
21 jurors is whether or not the defendant was acting in
22 self-defense.

23 I think once you've heard all of that evidence you'll
24 agree with me that when Brittany picked up that pistol and
25 chambered that round into it and pointed it at Myah's chest

Opening statements

1 she wasn't afraid, she wasn't scared. She was angry. When
2 she pulled the trigger, took Myah's life, she let that anger
3 get the better of her.

4 There's two crimes in this case that you're going to be
5 charged with, as the judge has told you.

6 Murder is the unlawful taking of human life with malice
7 aforethought. Ladies and gentlemen, a lot of people think
8 that malice has to be some kind of drawn-out thing. Well,
9 it doesn't have to be. It can happen in an instant.

10 The second crime is possession of a weapon during a
11 violent crime. As we just told you, that violent crime is
12 murder, and that weapon is going to be that 1911 pistol.

13 Now, I'm from Spartanburg County. This is my home
14 town. I took this job because I wanted to try and make a
15 difference in my community.

16 MR. QUINN: Objection. I don't believe it's
17 appropriate for the solicitor interject himself into the
18 trial.

19 THE COURT: Okay. Confine your --

20 MR. ANTHONY: I'll move on, Judge.

21 You as jurors are going to be acting as the conscience
22 of this.

23 MR. QUINN: Objection. I don't believe that's an
24 appropriate argument either and ask that the Judge instruct
25 the jury.

Opening statements

1 THE COURT: Sustained. I'll instruct the jury on
2 that.

3 MR. ANTHONY: That's good, because I was about to end
4 anyway.

5 The only way to decide whether or not such things
6 should be tolerated is to find that the defendant is
7 guilty. Thank you.

8 THE COURT: Mr. Quinn.

9 MR. QUINN: May it please the Court.

10 Mr. Foreman and ladies and gentlemen of the jury,
11 believe it or not, this is the most nerve-racking part of
12 the trial of course, because y'all haven't heard any of the
13 testimony.

14 So we all know a little bit about the case. None of
15 us are real sure exactly how it will come from the witness
16 stand. So it's real difficult to talk about, well, we're
17 going to be able to show you this or you're going to find
18 this at the end of the case. So I'll probably save the
19 facts primarily for closing argument and talk to you here
20 about what the judge has already mentioned and about the
21 law.

22 The judge has given you pretty much a diagram of how
23 the case is going to proceed and how your deliberations,
24 which will occur at the end of the case, should proceed.

25 He's given you the starting point, which is called in

Opening statements

1 the law the presumption of innocence. That should be the
2 starting point for every decision you make in this case,
3 that is that every one is presumed innocent.

4 Outside of the courtroom where we don't use phrases
5 that you learn the first year in law school, we talk about
6 it as the benefit of the doubt, that if you can decide one
7 way that it's for me and one way it's against me, you give
8 me the benefit of the doubt. In law we call it the
9 presumption of innocence. And it's the first point that
10 you start.

11 As Brittany Pearson sits here she is completely
12 innocent of these charges, and she will remain completely
13 innocent through this trial and including in your
14 deliberations.

15 If there is ever a question about, well, the state
16 might have, could have, it's close, that benefit of that
17 doubt always goes to Ms. Pearson or any citizen that would
18 be charged.

19 The judge has told you that the state has the burden
20 of proof, that the state has to convince you beyond any
21 reasonable doubt with proof. And I don't want to lose
22 track of that word, because this decision that you're going
23 to be asked to make about someone's life at the end must be
24 based on evidence, not conjecture, not what if or maybe or
25 could it have happened this way, but proof.

Opening statements

1 And there's two ways to determine proof. One is I
2 show you something, I show you evidence. And I'm going to
3 use an easy one in this case. I'm going to use an easy one
4 that is not in this case.

5 Let's say we had fingerprints in the case. And there
6 are none in this case. And the state could identify whose
7 fingerprints they were. They came to you and said those
8 fingerprints at the crime scene are Tom Quinn's.

9 Then the 12 of you could go in the back and go, hey,
10 you know, if his argument is he wasn't there, he loses,
11 because we have evidence. We have proof. If that proof is
12 not available to you, if you find that there is not
13 evidence, then that's a reasonable doubt.

14 In other words, if the case was there were
15 fingerprints at the crime scene and the state could not say
16 whose they were but could say they weren't the defendant's,
17 but we don't know whose they are, that would be lack of
18 proof and would leave you with a reasonable doubt. So
19 you're looking to see did the state provide you evidence on
20 every element of the case.

21 The solicitor has alluded to that in their case
22 they're going to present witnesses from the baby shower and
23 witnesses from Ray's place.

24 Let's see who they present. They present you all of
25 the witnesses, what those witnesses say, what did they

Opening statements

1 observe, how did they learn their information, what can
2 they convey to you. Like I said, that'll be closing
3 argument.

4 But if the State's going to tell you there are
5 witnesses, I sure -- I am sure you would want to hear them.
6 You want to see what the evidence is. Because the judge is
7 going to tell at the end of the case, as he has now, you
8 evaluate whether the state has provided the proof that
9 convinces you beyond a reasonable doubt. Beyond a
10 reasonable doubt simply means that you don't have any
11 question in your mind.

12 When we talk about civil cases, it's preponderance of
13 evidence, 51 percent to 49 percent. You win in a civil
14 case if you can just prove that 51 percent. In a criminal
15 case it's a hundred percent. We do it like this in law
16 school. It has to be a hundred percent. No question.
17 It's beyond a reasonable doubt.

18 If there's any question in your mind -- the judge is
19 going to charge you, I believe, although maybe not these
20 exact words. If there's any question in your mind the
21 benefit of the doubt goes to the defendant, and you will
22 find her not guilty.

23 Now, what she's charged with is murder. We'll talk
24 about this gun thing that's -- we'll talk about that at the
25 end.

Opening statements

1 Murder is the unlawful killing of another with malice
2 aforethought. In the old cases -- 1800s, 1700s -- we
3 define malice as a black heart, a heart bent on mischief or
4 evil.

5 Now, we talk about that someone has to be
6 cold-blooded. That's the more modern phrase. It's murder
7 is cold-blooded. It's evil.

8 Aforethought means that you planned it. That's a
9 fancy way of saying you had a plan, that you planned it
10 out, that it wasn't something that arose out of heat or out
11 of passion. It's a different crime.

12 Malice aforethought. Murder is cold blooded. Listen
13 to see if the state provides you evidence that this is cold
14 blooded on anybody's part. I don't believe that evidence
15 will exist.

16 The state's also alluded to that whether the -- the
17 question is whether this is even an unlawful killing under
18 whatever circumstances that occurred, or did Brittany
19 Pearson who was being attacked in her car while she was
20 seat-belted in sitting under the wheel by someone who was
21 above her holding her head and beating it against the
22 window, whether that was legal under the law of
23 self-defense for her to fire one round into the chest of
24 Myah Cole.

25 She then exits the vehicle, calls 9-1-1. You're going

Opening statements

1 to hear. That's the call. I believe the call will be
2 placed into evidence. We'll see. But you're going to hear
3 that Brittany Pearson is the one who called 9-1-1 to try to
4 get help for her girlfriend after this fight that resulted
5 in her being shot.

6 The judge will charge you what self-defense is. There
7 are several elements. We're going to throw in some closing
8 arguments once you have the evidence to be able to attach
9 to them. But you'll have to get over that burden to start
10 with.

11 And the judge will also charge you -- this is sort of
12 an interesting thing in South Carolina -- that the state
13 has to disprove self-defense. In other words, they have
14 the burden to convince you it was not self-defense.

15 The defense has no burden. We don't have to convince
16 you that it was, although I think when you hear the facts
17 you'll hear -- believe that it was or you're convinced that
18 it was. But the state has to disprove it. They have to
19 convince you beyond any reasonable doubt that there was no
20 self-defense in this case.

21 You'll hear the facts. You'll see what the car looks
22 like. You'll hear where this happened, what their
23 relationship was. It's no more cold-bloodedness. This is
24 not a murder case. Brittany Pearson never intended to kill
25 Myah Cole until she had no choice but to protect herself.

Timberly Blake Stacy
Direct examination by Ms. Poulos

1 At no point during the day does Brittany make any sort of
2 threat. There's no physical difficulties between them.

3 Listen for the evidence. What you're going to hear is
4 a self-defense case, not a murder case. This is not
5 cold-blooded.

6 I'd ask for your consideration. I don't believe this
7 case will take terribly long. We may go into tomorrow. I
8 don't know. We may finish today. But I'd ask for your
9 attention. And we'll have the opportunity to speak with
10 you again, and then we'll all be able to talk about the
11 evidence and see what comes from the witness stand. I look
12 forward to that opportunity. Thank you.

13 THE COURT: Ms. Poulos.

14 MS. POULOS: Thank you, Your Honor.

15 Your Honor, the state calls Officer Timberly Stacy.

16 (Witness identified herself as Timberly Blake Stacy.
17 Name listed on the solicitor's witness list was Timberly
18 Stacy Osswald.)

19 TIMBERLY BLAKE STACY, having
20 been first duly sworn, testified as follows:

21 DIRECT EXAMINATION BY MS. POULOS

22 Q Officer Stacy, if you would, please, introduce
23 yourself to the jury and where you are employed.

24 A My name is Timberly Blake Stacy, and I work for the
25 Spartanburg City Police Department.

Timberly Blake Stacy
Direct examination by Ms. Poulos

1 Q And back on November the 8th of 2014 just after
2 9:00 o'clock p.m. were you called out to a shooting scene
3 at 110 Southport Road in Spartanburg?

4 A I was.

5 Q Is that in the city limits of Spartanburg?

6 A It is. It's located within the city.

7 Q And also which is Spartanburg County, is that correct?

8 A That is correct.

9 Q Okay. That night when you got to the scene did you go
10 out to the parking lot in front of those apartments?

11 A I did.

12 Q And did you see the defendant in this case,
13 Ms. Pearson?

14 A I did. She was there.

15 Q What was the -- what was the first thing that you
16 asked her when you got there?

17 A I asked her where is she.

18 Q And when you said where is she, were you referring to
19 the victim?

20 A The victim, uh-huh.

21 Q All right. And what did she tell you?

22 A She said she was in the car.

23 Q And did you get to see the victim?

24 A I did.

25 Q And where was she? How -- how was she positioned?

Timberly Blake Stacy
Direct examination by Ms. Poulos

1 A She was in the passenger seat of the car slumped over
2 in the driver's seat face down.

3 Q Did you attempt to speak to her?

4 A I did. I gently shook her arm and her leg and asked
5 her if she was okay.

6 Q And did you get a response?

7 A I did not.

8 Q At that time was the defendant a suspect -- at that
9 time?

10 A At that time, she was not.

11 Q All right. And -- and what did the defendant say at
12 the scene about what happened?

13 A Once I left the victim I walked over to her. She was
14 extremely hysterical, very upset, shaking, crying on the
15 phone. I asked her what happened. Then she said that we
16 had gotten into an argument and I shot her.

17 Q So she admitted to shooting the victim on the scene.

18 A She did.

19 Q And what other officers were present and heard that?

20 A Sergeant Gordon.

21 MR. QUINN: Objection. Calls for a conclusion that
22 she's not entitled to make.

23 MS. POULOS: Your Honor, I think she can say who was
24 present.

25 MR. QUINN: That's --

Timberly Blake Stacy
Direct examination by Ms. Poulos

1 THE COURT: Well, she can say who was present. You
2 can rephrase the question. But he's saying that he doesn't
3 -- she doesn't know whether he heard it or not. He'd have
4 to testify to that.

5 Q Who was right next to you when the defendant admitted
6 to shooting the victim?

7 A Sergeant Gordon was on the scene.

8 Q Thank you.

9 In asking what happened on the crime scene, is that
10 anything unusual?

11 A It's done at any -- any call we go to.

12 Q Do you consider that a routine question?

13 A Absolutely.

14 Q Now, Officer Stacy, did you see the gun?

15 A I did.

16 Q Where was the gun?

17 A It was located outside of the vehicle behind the -- or
18 located beside the rear driver's-side wheel on the ground.

19 Q Okay. Officer Stacy, I'm going to show you what's
20 been marked as State's Exhibits 1, 2, 3 and 4 for
21 identification purposes and ask you do those photos fairly
22 reflect the gun and the car that you saw that night.

23 A Yes, they do.

24 MS. POULOS: Your Honor, we would ask at this time
25 that State's Exhibits 1 through 4 be admitted into

Timberly Blake Stacy
Direct examination by Ms. Poulos

1 evidence.

2 MR. QUINN: No objection.

3 THE COURT: They're admitted.

4 MS. POULOS: Thank you, Your Honor.

5 (Photographs marked State's Exhibits Nos. 1 through
6 4.)

7 MS. POULOS: Permission to publish.

8 THE COURT: You may.

9 Q Officer Stacy, I'm showing you State's Exhibit 1. Was
10 that the gun that you saw, Officer Stacy?

11 A It is.

12 Q And where -- where was that gun located in relation to
13 the -- the car?

14 A The car, it was maybe one to two feet away from the
15 rear wheel on the driver's side of the vehicle.

16 Q When you saw it was it on the ground as shown in that
17 picture?

18 A Yes.

19 Q I'm showing you State's Exhibit 2. Is that also the
20 same gun with, obviously, the corresponding magazine that
21 went with it?

22 A Yes.

23 Q The clip.

24 A It is.

25 Q And this is State's Exhibit 3. Is that a photograph

Timberly Blake Stacy
Direct examination by Ms. Poulos

1 of the vehicle?

2 A Yes.

3 Q And also State's Exhibit 4. Is that the back side of
4 the vehicle?

5 A It is.

6 Q And when you first saw Ms. -- Ms. Pearson, the
7 defendant, do you recall where she was standing in
8 relationship to the vehicle?

9 A She was standing on the driver's-side rear of the
10 vehicle, again, maybe one or two feet actually further out
11 in the parking lot on the phone facing the opposite
12 direction of the car.

13 Q Okay. All right. Now, Officer Stacy, I'm going to
14 show you what's been premarked as State's Exhibit 5 and ask
15 you to take a look at that and ask you if that's the same
16 weapon. Is that the same weapon that is -- was depicted in
17 the photographs that we just saw, as well as the clip that
18 came from it?

19 A Yes, ma'am.

20 Q And that's the gun that you saw at the crime scene on
21 the ground.

22 A Uh-huh.

23 Q Same gun in that photograph.

24 A It is.

25 Q Okay.

Timberly Blake Stacy
Cross-examination by Mr. Quinn

1 MS. POULOS: Your Honor, at this time we'd ask that
2 State's Exhibit No. 5 be admitted into evidence.

3 MR. QUINN: No objection.

4 THE COURT: It's admitted.

5 (Photograph marked State's Exhibit No. 5.)

6 Q All right. And Officer Stacy, after -- at that time
7 after she made the admission that, that she did shoot the
8 victim at the scene, was she then placed in handcuffs?

9 A She was then placed in handcuffs.

10 Q And did you then transport her to city hall for
11 further questioning by the investigators?

12 A Uh-huh. She was -- after she was placed in handcuffs
13 she was immediately put into the rear of my patrol vehicle
14 and read her rights at that point.

15 Q One moment.

16 (Pause.)

17 Q Thank you. Please answer any questions Mr. Quinn may
18 have for you.

19 CROSS-EXAMINATION

20 BY MR. QUINN

21 Q Officer Osswald, do you know the name of these
22 apartments at 110 Southport Road?

23 A They are Park Place Apartments.

24 Q And do you know how many apartments there are in Park
25 Place?

Timberly Blake Stacy
Cross-examination by Mr. Quinn

1 A Roughly 180.

2 Q And the parking lot that this vehicle was found in,
3 were there other vehicles in the parking lot?

4 A There were.

5 Q Did you determine if any of those were occupied?

6 A I did not.

7 Q Do you know if any -- do you know personally, did any
8 other officers?

9 A I do not know personally if they did.

10 Q Were you asked to speak to people in the apartments
11 around the parking lot to see if anyone witnessed this?

12 A When I arrived on the scene she was the only visible
13 person in the parking lot, so I immediately went to her and
14 asked. At that point I didn't know if she would provide me
15 with any useful information or not.

16 Q Okay. But later after you dealt with Ms. Pearson and
17 she was handcuffed and in the vehicle were you asked, or do
18 you know if other -- do you personally know if other
19 officers were asked to canvass the apartments to see if
20 anyone witnessed or heard anything?

21 A There was other officers that did go to various
22 different apartments to ask if anyone knew anything about
23 what happened.

24 Q While you were there did you happen to notice if there
25 were lights on in any of the apartments around the parking

Timberly Blake Stacy
Cross-examination by Mr. Quinn

1 lot?

2 A I don't recall.

3 Q And you say, I believe your testimony is, you were
4 dispatched to this location.

5 A I was.

6 Q Okay. And how long did it take you to arrive?

7 A Approximately two minutes.

8 Q Two minutes?

9 A Uh-huh.

10 Q Okay. And who dispatches you to go to a scene?

11 A Spartanburg County dispatch center does. I'm not
12 sure. I mean, I don't know names.

13 Q And is the dispatch center also commonly known as
14 9-1-1, or are those two separate entities?

15 A It is one in the same.

16 Q Okay. So can you hear the 9-1-1 operators when you're
17 being dispatched?

18 A We do.

19 Q Do you know if it was, in fact, Ms. Pearson that was
20 on the phone with 9-1-1?

21 A No, I do not.

22 Q When you arrived I believe your testimony is Ms.
23 Pearson had the -- her phone in her hand, is that right?

24 A Uh-huh.

25 Q Did you take the phone from her?

Timberly Blake Stacy
Cross-examination by Mr. Quinn

1 A when I asked her about what happened, I then placed
2 the phone on the rear of the vehicle.

3 Q Did you listen to see who she was talking to or ask
4 who she was talking to?

5 A No, sir. It wasn't my phone call.

6 Q But didn't you think it might be important to
7 determine if she had made a statement to another person
8 while she was on the phone before you arrived?

9 A Not at the time, no.

10 Q Okay. So you don't know if she was on the phone with
11 9-1-1 or --

12 A I have no idea who she was on the phone with.

13 Q But you did not see anyone else in the parking lot
14 talking to 9-1-1.

15 A No.

16 Q Were you -- and I assume you were the first officer on
17 the scene.

18 A Yes.

19 Q Riding by yourself.

20 A Yes.

21 Q Now, do you agree that the gun when you arrived was
22 not as it appears in this picture that is before the jury?
23 That is State's Exhibit 2.

24 A I would agree that it does not appear that -- like
25 that, no. It was not like this.

Timberly Blake Stacy
Cross-examination by Mr. Quinn

- 1 Q Right.
- 2 A It was -- it was loaded.
- 3 Q It had not been taken apart.
- 4 A Right.
- 5 Q Magazine hadn't been taken out.
- 6 A Right.
- 7 Q Do you know how many bullets were in the gun?
- 8 A I did not physically touch the gun.
- 9 Q And I believe your description today of Ms. Pearson is
- 10 that she was very hysterical.
- 11 A She was. She was hysterical.
- 12 Q And can you tell me what you mean by hysterical? Was
- 13 she crying?
- 14 A She was crying. She was visibly shaking, pacing.
- 15 Whoever she was on the phone with, she was very loud. I
- 16 couldn't -- I couldn't really make out what she was saying.
- 17 Q And did you, other than the statement she made when
- 18 you first arrived, did you take any other statement from
- 19 her?
- 20 A I did not.
- 21 Q You were not involved in her interrogation later, is
- 22 that correct?
- 23 A I was not.
- 24 Q And did you know Myah Cole's name at the scene? Was
- 25 that provided to you?

Timberly Blake Stacy
Cross-examination by Mr. Quinn

1 A It was never provided to me on scene.

2 Q Okay. So there was a black female passenger in the
3 car, is that correct?

4 A That is correct.

5 Q And that was the only other person in the car?

6 A Uh-huh.

7 Q And I believe your description is she was leaned over
8 into the driver's seat.

9 A Uh-huh.

10 Q And how much of her was in the driver's seat?

11 A Her upper torso.

12 Q And, in fact, the driver's seat had blood on it, isn't
13 that right?

14 A I remember seeing a very little, but I didn't -- I
15 didn't move her or wait and look long enough to really see.

16 Q So are you saying you --

17 A There was -- I did see a very small amount, but that's
18 all I seen.

19 Q Okay. But you saw what you believed to be blood in
20 the driver's seat.

21 A Yes.

22 Q Okay. Now, where were her feet?

23 A From what I can remember her feet was in the vehicle.

24 Q But where in the vehicle?

25 A In the floorboard.

Timberly Blake Stacy
Cross-examination by Mr. Quinn

1 Q So her feet were on the floorboard of the passenger
2 side or driver's side?

3 A Of the passenger side.

4 Q And she was leaned over like this?

5 A Yeah. Her torso was turned.

6 Q Completely turned and leaning into the driver's seat.

7 A Yeah. It was -- it was not a -- it didn't look like a
8 natural position.

9 Q And did you ask Mr. Pearson whether Ms. Cole spoke to
10 her after the shooting or whether there were any -- any
11 words?

12 A That's the -- that's the only thing I asked her.

13 Q Did you ever determine whether the gun was legal?

14 A I never touched the gun, never asked any questions.
15 Once she was placed in the vehicle I took her to 145 West
16 Broad Street and that's -- well, that's where my part
17 ended.

18 Q Okay. And -- and you may have already answered this,
19 but let me ask it.

20 Did you ask Ms. Pearson whether she had a concealed
21 weapons permit or whether it was legal?

22 A I didn't ask anything else.

23 Q I don't have any other questions. Thank you.

24 MS. POULOS: Just one, Your Honor.

25

Timberly Blake Stacy
Redirect examination by Ms. Poulos

1 REDIRECT EXAMINATION

2 BY MS. POULOS

3 Q Officer Stacy, you -- you just testified that Ms. --
4 Ms. Cole -- that the victim's feet were in the -- I think
5 you said the floorboard. Where -- where was her -- her
6 butt? Was she sitting in the seat?

7 A She -- she was.

8 MR. QUINN: I object to the leading nature of the
9 question.

10 Q Where was --

11 THE COURT: Overruled.

12 Q Where was she positioned?

13 A Her -- her bottom was in the seat. It was in the
14 passenger seat turned.

15 Q So her --

16 A I mean, it was -- it wasn't fully flush. It was -- it
17 was more rotated.

18 Q Thank you.

19 THE COURT: You may step down.

20 MS. POULOS: Your Honor, the state calls Sergeant
21 Daniel Gordon.

22 DANIEL GORDON, having been
23 first duly sworn, testified as follows:

24 DIRECT EXAMINATION BY MS. POULOS

25 Q Sergeant Gordon, if you would, introduce yourself and

Daniel Gordon
Direct examination by Ms. Poulos

1 where you are employed.

2 A My name is Daniel Gordon. I'm a sergeant with the
3 Spartanburg Police Department.

4 Q And back on November 8th of 2014 just after 9:00 p.m.
5 did you also respond to 110 Southport Road at Park Place
6 Apartments in reference to a shooting?

7 A Yes, ma'am, I did.

8 Q And that is in the city limits of Spartanburg, which
9 is in Spartanburg County, is that correct?

10 A Yes, it is.

11 Q When you got to the scene did you see the defendant,
12 Ms. Pearson?

13 A I did.

14 Q And what did the defendant say to Officer Osswald
15 about what had happened?

16 A She stated we had an argument and I shot her.

17 Q So she admitted to the shooting at the scene.

18 A Yes, ma'am.

19 Q Did you see the weapon on the ground?

20 A I did not.

21 Q Okay. At that time was she then put in play -- put in
22 handcuffs by Officer Stacy and then transported to -- for
23 questioning?

24 MR. QUINN: I object. I object to the leading nature
25 of the questions.

Daniel Gordon
Cross-examination by Mr. Quinn

1 THE COURT: Don't lead her -- him.

2 Q Was she transported for questioning --

3 A She was.

4 Q -- at that point? Thank you. That's all I have.

5 A Yes, ma'am.

6 CROSS-EXAMINATION

7 BY MR. QUINN

8 Q Did you transport her?

9 A No, sir, I did not.

10 Q So you don't know where they took her. Did you?

11 A No, sir.

12 Q You don't know why they took her there. Did you?

13 A No, sir.

14 Q So when you just answered the solicitor's question

15 that she was transported for questioning, that's a guess on
16 your part, isn't it?

17 A She was transported. I know that.

18 Q And were you here when Officer Osswald just testified?

19 A Yes, sir.

20 Q And did you hear that she said that the statement

21 given was we had an argument and I pulled my gun and I shot
22 her?

23 A I heard we had an argument and I shot her.

24 Q So you didn't hear the same thing Officer Osswald did.

25 A Apparently not.

Jeffrey Todd Shields
Direct examination by Mr. Anthony

1 Q And apparently from the -- I believe Officer Osswald's
2 testimony is you two were standing next to each other, is
3 that right?

4 A Yes.

5 MR. QUINN: I don't have any other questions.

6 THE COURT: You may step down.

7 MR. ANTHONY: Call Todd Shields.

8 JEFFREY TODD SHIELDS, having
9 been first duly sworn, testified as follows:

10 DIRECT EXAMINATION BY MR. ANTHONY

11 Q Please introduce yourself, Mr. Shields.

12 A I'm Jeffrey Todd Shields. I'm a paramedic with
13 Spartanburg County E.M.S.

14 Q How long have you been with E.M.S.?

15 A Since 1997.

16 Q Did you receive a call on November 8th of 2014, 110
17 Southport Road?

18 A Yes, I did.

19 Q Is that in Spartanburg County?

20 A Yes.

21 Q When you arrived on the scene you found the body of
22 what was determined to be Myah Cole?

23 A Yes, we did.

24 Q Where was that body?

25 A She was sitting in the small car in the passenger seat

Jeffrey Todd Shields
Direct examination by Mr. Anthony

1 slumped to the left side.

2 Q Could you describe that in a little more detail about
3 how she was positioned in that car?

4 A Her buttocks was in the -- the passenger seat. I
5 didn't see where her feet were. And she was face down
6 pretty much in the driver's seat.

7 Q Now, on your report you stated the body was positioned
8 R.L.R.

9 A Yes. That -- yes.

10 Q What does that mean?

11 A Right lateral recumbent, which is a documentation
12 error on my part. That would put her laying on her right
13 side. She was on her left side.

14 Q So you made a mistake in your notes.

15 A Yes. I did.

16 Q Were there any wounds on that body?

17 A Yes. Once we got her positioned to check her for some
18 signs of life we did notice a wound just above the chest
19 here or below the neck. One small wound.

20 Q Did you check her for vital signs?

21 A Yes, we did.

22 Q What did you find?

23 A She had no spontaneous respirations. We also checked
24 for carotid pulse, which she did not have one. Likewise,
25 we also confirmed, again, with apical checking with the

Jeffrey Todd Shields
Cross-examination by Mr. Quinn

1 stethoscope to the chest. We did not hear any heartbeat,
2 again. And then electrically we check it with a cardiac or
3 a heart monitor. And her heart was cardiac standstill,
4 asystole or flatline, if you will.

5 Q Did you attempt to revive her?

6 A I'm sorry?

7 Q Did you attempt to revive her?

8 A No, sir, no, sir.

9 MR. ANTHONY: No further questions, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. QUINN

12 Q Did you move the body out of the vehicle?

13 A No, sir.

14 Q And so was the body still in place when the officers
15 arrived?

16 A Yes, sir.

17 Q Okay. And were the officers there before you? I'm
18 sorry?

19 A Yes, they were. The crime scene tape was already up,
20 the yellow tape you see. It was already -- we went under
21 it and went and proceeded to the car where we found
22 Ms. Cole.

23 Q And you don't take any pictures at a crime scene, is
24 that correct?

25 A No, sir.

Jeffrey Todd Shields
Cross-examination by Mr. Quinn

1 Q But the body was still in place. So the police could
2 have taken pictures of the inside of the vehicle, is that
3 correct?

4 A I'm -- I'm sure if that's their protocol. I mean, I
5 would think they would. I don't --

6 Q But you didn't.

7 A No, sir.

8 Q You were not involved in any of that.

9 A We do not. No, sir.

10 Q Okay. Did you determine, and was there only one
11 gunshot wound?

12 A Well, when we put her on a heart monitor, we do open
13 the shirt, cut her shirt open, check it. All we seen was
14 one wound about right in here where my button is roughly.

15 Q And were you able to observe where the exit wound was
16 roughly?

17 A No, sir, I didn't, no, sir.

18 Q Did you happen to observe the car where the bullet had
19 struck the vehicle?

20 A No, sir.

21 Q Was there blood in the driver's seat? Did you notice?

22 A I didn't notice.

23 Q And that's -- none of that is part of your involvement
24 at the scene, isn't that right?

25 A No, sir, no. Just seeing if she had any signs of

Marquita Smith
Direct examination by Ms. Poulos

1 life, and it happens very quickly. We check the body very
2 quickly, make a determination of what we want to do, and in
3 this case not much we could do. And we left or backed out
4 of the scene for the police to do an investigation.

5 Q And the solicitor asked you if it was determined if
6 this woman's name was Myah Cole. Did you did that
7 determination?

8 A Not immediately, no, but eventually we did get the
9 I.D. of her, and I put it in my P.C.R., my patient care
10 report.

11 Q And do you know how, where that I.D. came from?

12 A No, I do not, no, I do not.

13 Q Thank you.

14 MR. QUINN: I don't have any other questions.

15 MR. ANTHONY: No further questions.

16 THE COURT: You may step down.

17 MS. POULOS: Your Honor, the state calls Marquita
18 Smith.

19 MARQUITA SMITH, having been
20 first duly sworn, testified as follows:

21 DIRECT EXAMINATION BY MS. POULOS

22 Q Ms. Smith, if you would, please introduce yourself to
23 the jury.

24 A I'm Marquita Smith.

25 THE COURT: Please get closer to that microphone, the

Marquita Smith
Direct examination by Ms. Poulos

1 black one.

2 Q Ms. Smith, do you live here in Spartanburg?

3 A Yes, I do.

4 Q And do you know the victim, Ms. Myah Cole, in this
5 case?

6 A Yes. I did.

7 Q How -- how did you know Myah?

8 A I met Myah through my boyfriend approximately,
9 probably three years ago.

10 Q So you've known her for about three years?

11 A For about three years.

12 Q Okay. What about the defendant, Brittany Pearson?
13 How do you know her?

14 A I met her through Myah. She come around seldomly.

15 Q Okay. Were -- was Ms. Cole, the victim, and the
16 defendant, were they -- they were girlfriends.

17 A Right.

18 Q Okay. Back in 2014 were the two of them living
19 together in -- in the apartment on -- on Southport Road?

20 A Yes, they were.

21 Q Okay. On Saturday, November the 8th of 2014, the day
22 that this all happened -- I'm going to take you -- take you
23 back -- when did you first see the victim and the defendant
24 that day?

25 A We were at my boyfriend, Heath Gary's, dad's house at

Marquita Smith
Direct examination by Ms. Poulos

1 a shower, baby shower.

2 Q Okay. And while you were at the shower do you have
3 opportunity to observe the two of them together?

4 A I did.

5 Q And how -- how did they seem towards one another?

6 A Very distant.

7 Q Was -- was Ms. Pearson talking to Myah at all?

8 A She didn't appear talking to her.

9 Q What -- how -- what was her demeanor like?

10 A She was very upset about something.

11 Q Was it apparent to you they had been arguing, or could
12 you even tell?

13 A Yes. It was very observant.

14 Q Would you say that the defendant was mad, or not?

15 MR. QUINN: Objection to the leading nature of the
16 questions.

17 THE COURT: Overruled.

18 Q Was she mad, or not?

19 A She was mad. You could tell she was bothered by
20 something.

21 Q Were they sitting together?

22 A No.

23 Q Now, was the victim in this case, was she talking and
24 being social, or was she not?

25 A Every day all day.

Marquita Smith
Direct examination by Ms. Poulos

1 Q Now, at some point did they both leave the baby
2 shower?

3 A They did.

4 Q They left together. And -- and later on that evening
5 did you have opportunity to see the two of them again?

6 A I did.

7 Q And where was that?

8 A At Red's Pool Hall.

9 Q Okay. And who was with you?

10 A Heath Garrett, my boyfriend, and I. And they -- they
11 came minutes after.

12 Q Okay. When you got there how did the defendant appear
13 to act then?

14 A Still upset.

15 Q Still mad?

16 A Still mad.

17 Q All right. Did you have a conversation with the
18 victim about Brittany?

19 A Yes, I did.

20 Q And you don't have to say what she said, but based on
21 that conversation could you tell that the victim was
22 bothered by something?

23 A Yes, extremely.

24 MR. QUINN: I'm sorry. Object to the leading nature
25 of the questions.

Marquita Smith
Direct examination by Ms. Poulos

1 MS. POULOS: Your Honor --

2 THE COURT: Overruled.

3 Go ahead.

4 MS. POULOS: Thank you.

5 Q What was she bothered about?

6 MR. QUINN: Objection. It's hearsay.

7 THE COURT: Sustained.

8 Q Did -- what did Myah seem like?

9 A The same as she always. If -- if she's bothered about
10 something, it's very hard to tell because her demeanor is
11 very laid back, sociable, always smiling.

12 I could tell a little bit that she was upset about
13 something bothering her that day, that night rather,
14 because it was a little throwed off.

15 Q What was -- what was the defendant upset about?

16 A Showing affection to my knowledge, showing affection.

17 Q What? Can you be a little bit more specific? What
18 about affection?

19 MR. QUINN: Objection. I ask that a predicate be laid
20 as to how she has this information.

21 THE COURT: All right. Excuse me just a minute.

22 Let me see y'all.

23 (Bench conference held off the record in the presence
24 of the jury but out of the hearing of the jury.)

25 Q Ms. Smith, was the victim and the defendant arguing

Marquita Smith
Direct examination by Ms. Poulos

1 about public displays of affection?

2 A They were.

3 Q Now, at Red's -- take you back a little bit. What was
4 Brittany doing at Red's?

5 A She was shooting pool. It was her turn to shoot.

6 Q Okay. And did she?

7 A Uh-huh.

8 Q Okay. What did she look like?

9 A She had -- she was kind of angry looking, you know.
10 She just -- you could tell something had occurred. You
11 could tell they had been in an argument. She was -- she
12 was kind of even distracted while she's playing.

13 Q Did you look at her up close? Did you get a good look
14 at her?

15 A Yes.

16 Q Did you notice anything?

17 A Her eyes were a little bloodshot.

18 Q You say they were bloodshot?

19 A Yeah.

20 Q Did you see her have anything to drink?

21 A We had a beer.

22 Q Did the victim also have something to drink?

23 A Yes. We all had a beer.

24 Q Okay. Now, at some point did the defendant leave
25 Red's?

Marquita Smith
Direct examination by Ms. Poulos

1 A Yes.

2 Q How did she leave?

3 A She kind of stormed off.

4 Q And what about the victim, what -- what did she do?

5 A She tagged along behind. She greeted us. You know,
6 we offered her and Brittany to go have wings with us. We
7 were trying to get them to have wings with us, and it
8 didn't happen. She stormed off, and Myah, you know,
9 greeted us and left out.

10 Q Did Brittany greet you?

11 A No.

12 Q Now, had the two of them come in one car or separate
13 cars?

14 A One.

15 Q And who was driving, do you -- do you remember or do
16 you know?

17 A I don't know.

18 Q Okay. And a short time later on did you learn that
19 Brittany had -- had shot Myah --

20 A Yes.

21 Q -- and that Myah had died? Did you learn that later?

22 A Yes.

23 Q Now, I want you to describe the sizes of the two of
24 these women. I know you're familiar with them both. How
25 would you describe their height in relation to one another?

Marquita Smith
Cross-examination by Mr. Quinn

1 A They are about neck and neck. They're -- she is not
2 taller than Brittany. They're about neck and neck. And
3 weight-wise Brittany -- I mean, Myah may be a little bit
4 bigger because she wore baggy clothes, but they're kind of
5 neck and neck.

6 Q Okay. All right. Give me one moment.

7 (Pause.)

8 Q Okay. Thank you. Please answer any questions Mr.
9 Quinn may have.

10 CROSS-EXAMINATION

11 BY MR. QUINN

12 Q Just a few questions, Ms. Smith.

13 How many people were at the wedding shower?

14 A It was quite a bit.

15 Q Can you give me an idea? Does that mean ten or twenty
16 or a hundred or --

17 A Probably about -- anywhere from about 12, maybe about
18 12.

19 Q Okay. And were many of them adults?

20 A Uh-huh.

21 Q And how many people were at the pool hall when y'all
22 were shooting pool?

23 A Just in like public-wise?

24 Q Yes, ma'am.

25 A It was quite -- it was quite crowded.

Heath Tyrone Gary
Direct examination by Ms. Poulos

1 Q And there were four of you shooting people. And I'm
2 sorry. Tell me your boyfriend's name again, please.

3 A Heath Gary.

4 Q Say that first name.

5 A Heath.

6 Q Heath. I'm sorry. And you liked Myah, isn't that
7 right?

8 A Yes.

9 Q I don't have any other questions. Thank you.

10 MS. POULOS: Nothing on redirect.

11 THE COURT: You may step down.

12 MS. POULOS: Your Honor, the state calls Heath Gary.

13 HEATH TYRONE GARY, having been
14 first duly sworn, testified as follows:

15 DIRECT EXAMINATION BY MR. ANTHONY

16 Q Please introduce yourself to us, Mr. Gary.

17 A I'm Heath Gary.

18 Q What do you do for a living, Mr. Gary?

19 A I'm a material handler at Draexlmaier Automotive.

20 Q Are you in a relationship with Marquita Smith?

21 A Yes, I am.

22 Q Okay. Did you know the victim, Myah Cole?

23 A Yes.

24 Q How long? How long would you say you knew her?

25 A Around about five years.

Heath Tyrone Gary
Direct examination by Ms. Poulos

1 Q Okay. Where did y'all meet?

2 A I worked with her at Concept Packaging.

3 Q Did you know the defendant?

4 A Yes.

5 Q On Saturday, November 8th of 2014, the day all of this
6 happened, when did you first see Myah and Brittany?

7 A At the pool hall.

8 Q Which pool hall was that?

9 A At Red's Grill.

10 Q Do you mind telling us around about where that is?

11 A Around the Fairforest area.

12 Q You went, and you had gone over there to play pool?

13 A Yes.

14 Q About what time did you arrive there?

15 A Around 8:00 o'clock, or a little after.

16 Q Okay. Who -- who were you there with?

17 A With Marquita Smith.

18 Q Now, did Brittany and Myah arrive there together?

19 A Yes.

20 Q How did the defendant and Myah seem toward each other
21 while you were there?

22 A They was a little distance from each other.

23 Q Okay. Were they talking to each other?

24 A Not really.

25 Q Did it seem to you as if they had been arguing?

Heath Tyrone Gary
Direct examination by Ms. Poulos

1 A It seemed like they have had a little misunderstanding
2 or disagreements.

3 Q Okay. Could you specifically tell us how -- how the
4 defendant seemed while -- while you were there?

5 A Well, she seemed like she would have been going
6 through some things, like she had a lot on her mind.

7 Q Okay. Was she angry?

8 A Yes.

9 Q Did she seem upset?

10 A Yes.

11 Q Did you end up playing a game of pool with her?

12 A Yes, I did.

13 Q Did you finish playing that game?

14 A We didn't -- we did not get to finish.

15 Q Is that because the defendant left before the game
16 ended?

17 A Yes.

18 Q When she left was it sudden or was it, you know,
19 mind-set or --

20 A Well, they kind of like just stormed out, but Myah did
21 tell me she was leaving.

22 Q Okay. Now, who stormed out?

23 A Brittany. She stormed out first, and Myah told me she
24 was leaving, and she went right behind her.

25 Q Okay. How did the defendant seem when she left?

Heath Tyrone Gary
Cross-examination by Mr. Quinn

1 A She seemed like she was angry about something.

2 Q When Myah left did she seem angry?

3 A Yes.

4 Q Or did she seem normal?

5 A She seemed -- she seemed angry. You could tell she
6 was angry.

7 Q Did they leave together in one car?

8 A Yes.

9 Q Now, if you were to describe their size would you say
10 they're similar in size or --

11 A About the same size.

12 Q Mr. Gary, do you -- do you know what they were arguing
13 about that day?

14 A Yes, about -- I think they was arguing about --

15 MR. QUINN: Objection. It's hearsay.

16 THE COURT: Sustained. He said he's thinking about
17 it. You have to know and you have to have personal
18 knowledge, and he doesn't apparently.

19 MR. ANTHONY: That's fine, Judge. I understand.

20 Nothing further, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. QUINN

23 Q Mr. Gary, when Brittany and Myah arrived at Red's they
24 weren't speaking to each other, is that right?

25 A Yes.

Heath Tyrone Gary
Cross-examination by Mr. Quinn

1 Q And they were acting distant toward each other?

2 A Yes, they were.

3 Q Now, your girlfriend is Marquita, the woman who just
4 testified, is that right?

5 A Yes.

6 Q And she went to the restroom with a -- when Brittany
7 and Myah left, isn't that right?

8 A I can't remember.

9 Q Okay. Do you remember giving a statement on
10 November 10th of 2014, a voluntary statement to the police?
11 Let me show you what I've been provided as a copy. Does
12 that appear to be a copy of the statement that you've
13 given?

14 A Yes.

15 Q And does it say, "My girlfriend went to the restroom"?

16 A Yes.

17 Q And then they left, is that correct?

18 A Yes.

19 Q And I believe your description is both women, Brittany
20 and Myah, were angry and upset when they left.

21 A Yes.

22 Q Thank you.

23 MR. QUINN: I don't have any other questions.

24 MR. ANTHONY: Nothing further.

25 THE COURT: You may step down.

Courtney Westfall-Burgess
Direct examination by Mr. Anthony

1 MS. POULOS: Your Honor, the state calls Investigator
2 Courtney Burgess.

3 COURTNEY WESTFALL-BURGESS,
4 having been first duly sworn, testified as follows:

5 DIRECT EXAMINATION BY MR. ANTHONY

6 Q Please introduce yourself to us, Ms. Burgess.

7 A My name is Courtney Burgess. I'm currently a latent
8 fingerprint examiner for the Spartanburg County Sheriff's
9 office, but at the time of this incident I was a crime
10 scene investigator with the Spartanburg Police Department.

11 Q Okay. How long were you with the Spartanburg Police
12 Department?

13 A Approximately nine years.

14 Q Okay. What were your responsibilities while you were
15 there?

16 A I was responsible for responding to crime scenes,
17 executing search warrants. Basically, my duties were to
18 locate, collect and preserve evidence.

19 Q How long did you have that position?

20 A The entire time that I was there, about nine -- nine
21 and a half years.

22 Q Did you execute a search warrant on a vehicle involved
23 in an incident that occurred on November 8th of 2014?

24 A Yes, I did. It was a gray Dodge Dart.

25 Q Okay. Do you know about what year that Dodge Dart

Courtney Westfall-Burgess
Direct examination by Mr. Anthony

1 was?

2 A It was a 2015, I believe. It was a brand new vehicle.

3 Q And when you searched the vehicle, would you describe
4 what the inside of the vehicle looked like?

5 A It was very clean. There weren't very many personal
6 items in the vehicle. On the front seat in both the
7 passenger and the driver's seat and on the center console
8 there was what appeared to be blood in both of the seats
9 and on the console.

10 Q Was there any glass in that vehicle, being shattered
11 glass?

12 A No. There wasn't.

13 Q All the windows were intact?

14 A Yes.

15 Q Okay. Did you find a shell casing in that car?

16 A I did, a .45 caliber shell casing. It was found on
17 the rear driver floor kind of up against where the center
18 console meets the floor in the -- in the floorboard in the
19 back.

20 MR. ANTHONY: Judge, may I approach the witness?

21 THE COURT: You may.

22 Q I hand you what's been marked as one of the state's
23 exhibits. I apologize. State's Exhibit No. 9. Do you
24 recognize it?

25 A I'd have to look inside of it.

Courtney Westfall-Burgess
Direct examination by Mr. Anthony

1 Q That's fine.

2 A Okay. It is in a SLED package. Okay. Yes.

3 Q Okay.

4 A This is the shell casing that I collected.

5 Q Is that the same -- that's the same shell casing you
6 collected from that Dodge Dart.

7 A It is.

8 Q Okay. And after you collected it was it taken into
9 evidence and locked in a secured location at the police
10 department?

11 A It was.

12 MR. ANTHONY: Judge, at this time I'd like to admit
13 that casing into evidence.

14 MR. QUINN: No objection, Your Honor.

15 THE COURT: It's admitted.

16 (One fired .45 caliber cartridge case marked State's
17 Exhibit No. 9.)

18 MR. ANTHONY: Permission to publish this casing, Your
19 Honor.

20 THE COURT: You may.

21 Q Okay. What's the caliber of that casing?

22 A .45.

23 Q Now, when you found the casing did you find any bullet
24 holes in the vehicle?

25 A No, I did not.

Courtney Westfall-Burgess
Direct examination by Mr. Anthony

1 Q Did you find a bullet?

2 A No, I did not.

3 Q Okay. Did you also take photos when you processed
4 that vehicle?

5 A I did.

6 Q Now, I'm going to show you what's been marked State's
7 Exhibits 6 through 8. Would you take a look at those,
8 please?

9 A Okay.

10 Q Are those the photos you took?

11 A They are.

12 Q Do those photos fairly and accurately reflect the area
13 where the shell casing was found inside that vehicle?

14 A Yes, they do.

15 MR. ANTHONY: Judge, at this time I'd like to admit
16 these photos into evidence.

17 MR. QUINN: I would like to see them just for a
18 second, please.

19 (Pause.)

20 MR. QUINN: I have no objection to the photos.

21 THE COURT: They're admitted.

22 (Photographs marked State's Exhibits Nos. 6 through
23 8.)

24 Q Could you describe those photos for us, Ms. Burgess?

25 A Do you mind if I step down to see it a little bit

Courtney Westfall-Burgess
Direct examination by Mr. Anthony

1 better?

2 (Whereupon, the witness left the stand.)

3 A This is a photo taken from standing at the rear driver
4 door looking in towards the center console.

5 Q Okay.

6 A Right in the very bottom pointer you can see that
7 little gold glint that's there. That's where the shell
8 casing was located.

9 Q Okay.

10 THE COURT: Ms. Burgess, let me ask you.

11 Do you see that microphone above your head?

12 THE WITNESS: Yes.

13 THE COURT: If you'll stand back so it's just above
14 and in front of you.

15 Q Here you go. Would you describe this photo for us?

16 A This is just a little bit closer view of the shell
17 casing. You can see it right there.

18 Q Okay. And then this one obviously.

19 A Obviously, more close-up shell casing right there on
20 the floor mat.

21 Q And that's the same shell casing, right?

22 A It is.

23 Q Thank you. You can have a seat, Ms. Burgess.

24 (Whereupon, the witness returned to the stand.)

25 Q Now, did you process the gun that was involved in this

Courtney Westfall-Burgess
Cross-examination by Mr. Quinn

1 crime?

2 A I did.

3 Q Did you process that gun for prints?

4 A Yes, I did.

5 THE COURT: Excuse me. Lights, please.

6 Q Whose prints were determined to be on that gun?

7 MR. QUINN: Objection. Unless the investigator did
8 that analysis herself, I believe it's hearsay.

9 MR. ANTHONY: Judge, we're going to establish it a
10 later time. If we need to move on, we can.

11 THE COURT: Well, you'll need to move on.

12 Q How many rounds were in the magazine in the gun when
13 you found it?

14 A When I received the gun from evidence the box
15 contained the gun, the magazine and six rounds.

16 I don't know exactly how they were loaded. Whoever
17 would have collected the gun would have unloaded the gun
18 before placing it into evidence. That's just protocol.
19 But there were six .45 caliber rounds with the gun.

20 MR. ANTHONY: Nothing further, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. QUINN

23 Q Investigator Burgess, were you the lead investigator
24 on this case?

25 A No, I was not.

Courtney Westfall-Burgess
Cross-examination by Mr. Quinn

1 Q So were you responsible at the scene for determining
2 what photographs, if any, were taken?

3 A I was not at the scene, no.

4 Q When you did the search warrant of the car did you
5 take any photographs of the car?

6 A Yes, I did.

7 Q And do any of those photographs reveal blood anywhere
8 in the car?

9 A There should be photographs of what appears to be
10 blood in the car, yes.

11 Q And do you remember where that blood was located?

12 A On the -- in the seat of the driver's seat, on the
13 center console and in the passenger seat.

14 Q And did you measure the vehicle?

15 A I measured the -- I believe it was the distance
16 between the -- the driver door and the front passenger
17 door, just the -- what the width of the inside of the
18 vehicle was.

19 Q And do you remember what that was?

20 A It was approximately, let's see, 4'10".

21 Q And that's from door to door?

22 A Yes, from the -- I guess what you would call the door
23 panel, the plastic or whatever material the inside of the
24 door is made, to the other side of the door.

25 Q And were you involved? Did you seize Ms. Pearson's

Courtney Westfall-Burgess
Cross-examination by Mr. Quinn

1 cell phone?

2 A I don't believe there was a cell phone in the vehicle,
3 no.

4 Q Okay. Were you ever involved with recovery of a cell
5 phone from Ms. Pearson?

6 A No, I was not.

7 Q Did you after -- well, did you have anything to do
8 with the examination of the gun, like did you determine
9 whether it was legal or not?

10 A No, no, I did not.

11 Q Did you determine whether Ms. Pearson had a concealed
12 weapons permit?

13 A No, I did not.

14 Q Did you examine the vehicle to see if there was any
15 evidence of the bullet's path in the vehicle?

16 A There were no bullet holes in the vehicle. There were
17 no -- there was no damage to the vehicle other than the --
18 the red substance in the front seats. There was no damage,
19 no holes.

20 Q And you certainly looked everywhere you could see in
21 the car, is that right?

22 A Yes, I did.

23 Q Okay. And that would have included the passenger seat
24 where that apparently Ms. Cole was seated in.

25 A Yes.

Courtney Westfall-Burgess
Cross-examination by Mr. Quinn

1 Q Okay. And did you find any evidence of the trace of a
2 bullet in the back of that seat?

3 A No, I did not.

4 Q And as an investigator is it reasonable to believe
5 that if she was shot sitting in the seat, if the bullet
6 passed through her, it would also have passed through the
7 seat?

8 MR. ANTHONY: Judge, I object. Speculation.

9 THE COURT: Sustained unless you qualify her as a
10 firearms expert or other qualifications.

11 Q Did you find any evidence of a bullet hole in the
12 passenger seat?

13 A No, I did not.

14 Q Thank you.

15 MR. QUINN: I don't have any other questions.

16 MR. ANTHONY: No further questions, Your Honor.

17 THE COURT: You may step down.

18 We're going to take a short break. I'll ask the jury
19 to please go to your jury room. Do not discuss the case in
20 any fashion. I'll bring you back after that break to
21 continue.

22 (The following takes place outside the presence of the
23 jury.)

24 THE COURT: We'll be at ease for 15 minutes.

25 (whereupon, a recess was taken.)

Michelle Eichenmiller
Direct examination by Ms. Poulos

1 THE COURT: Bring the jury in, please.

2 (The following takes place in the presence of the
3 jury.)

4 THE COURT: That back row needs to move down one seat.
5 The gentleman on the end move back. Do we just do this
6 every time we come in? Thank you.

7 I think the bailiff's throwing you off. Six on the
8 front and seven on the back. Let's remember that from now
9 on. Okay. All right.

10 MS. POULOS: Your Honor, the state calls Michelle
11 Eichenmiller.

12 MICHELLE EICHENMILLER, having
13 been first duly sworn, testified as follows:

14 DIRECT EXAMINATION BY MS. POULOS

15 Q If you would, ma'am, please state your name and where
16 you're employed.

17 A My name is Michelle Eichenmiller. I work for the
18 South Carolina Law Enforcement Division in the forensic
19 laboratory. I'm in the firearms department.

20 Q Is that South Carolina Law Enforcement Division
21 sometimes referred to as SLED for short?

22 A Yes.

23 Q Okay. And what are your current job duties?

24 A I'm a forensic firearms examiner. Firearms
25 identification is the branch of forensic science that

Michelle Eichenmiller
Direct examination by Ms. Poulos

1 attempts to deal with fired bullets, cartridge cases,
2 firearms and a couple of other small tests that we can do
3 in the firearms section.

4 Q If you would, describe your educational background and
5 any training that you have to the jury.

6 A I have a bachelor's degree in biology. I also have a
7 master's degree in forensic science.

8 In order to be a firearms examiner though you have to
9 go through an in-house training program. So wherever
10 you're hired, the firearms examiners there are tasked with
11 training you.

12 It was approximately a 3-year program where I did a
13 lot of reading the history of firearms, a lot of microscope
14 work on my own. I watched how the firearms examiners did
15 their job. By the end of the training I took a competency
16 test, and they deemed me competent to work cases on my own.

17 Q And so have you performed analysis of firearms with
18 regards to ballistics? Is that -- is that what you
19 described?

20 A Ballistics is actually the science of projectiles in
21 motion. We deal with them after they have come to a stop.
22 So it's forensic firearms identification.

23 Q Okay. And how many identifications have you made with
24 regard to firearms?

25 A Probably thousands.

Michelle Eichenmiller
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1 Q Okay. Have you been qualified as an expert in
2 firearms analysis in court before?

3 A Yes, I have.

4 MS. POULOS: Your Honor, at this time we'd offer
5 Michelle Eichenmiller as an expert in firearms
6 identification.

7 MR. QUINN: No objection.

8 THE COURT: She is so qualified.

9 Q Ms. Eichenmiller, in this case did you receive items
10 from evidence listed as one Remington Model 1911
11 semiautomatic pistol, .45 caliber with one magazine and six
12 unfired .45 caliber cartridges?

13 A I did.

14 Q Okay. And did you also receive one fired .45 caliber
15 cartridge case?

16 A I did.

17 Q And how did those items come into your custody?

18 A At SLED the contributor, the submitting agency, will
19 bring their evidence to our evidence log-in department.

20 I'm notified there's a case downstairs waiting for me.
21 I go downstairs, pick up the evidence, ensure that -- the
22 evidence will not be accepted at SLED if the seals are not
23 intact. So the evidence log-in technicians make sure the
24 seals are intact. I, again, make sure when I take it into
25 my custody.

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1 The item will have a bar code, which is unique for it,
2 so that as it travels through the lab if it had to go from
3 me to someone else we would scan the bar code.

4 I also have a bar code so that when that item comes
5 into my custody they scan my bar code to say that it's with
6 me. Then I take it back upstairs. I'll open it up. I'll
7 take documentary pictures.

8 I'll fill out some worksheets that we have. We have
9 to do manufacturer, caliber, if the safeties worked. Then
10 I will test fire it in our bullet recovery tank, which is a
11 large 2-story water tank that we shoot into. We recover
12 the test specimens. Then I'll take it back to my office
13 and examine the test specimens versus any evidence that
14 I've received under my microscope.

15 Q And I'm going to show you what's already been admitted
16 into evidence as State's Exhibit 5, I believe, and State's
17 Exhibit 6 -- 9. I'm going to ask you if you would take a
18 look at five. Are those -- and -- and the other exhibits
19 as well. Are those the two items that you received and you
20 performed analysis on?

21 A Whenever I receive evidence into my custody I'll write
22 the lab number and the item number and my initials on it so
23 I can identify it later. That's the cartridge case.

24 Q Are your initials noted on the firearm, ma'am?

25 A Yes. I wrote it in three different places. It's on

Michelle Eichenmiller
Direct examination by Ms. Poulos

1 the slide, the magazine and on the barrel. And this is the
2 firearm that I examined in this case.

3 Q And when you received both of those items you stated
4 earlier -- I just wanted to reiterate. Were -- were those
5 items sealed?

6 A Yes.

7 Q And if the seal had been broken you would have noted
8 that in your report.

9 A Correct.

10 Q Okay. Now, did you make an examination of those items
11 for matching characteristics?

12 A I did. Like I said, I did the test fires in our
13 bullet recovery tank. I brought them back to my
14 microscope.

15 I compared the test fires to make sure the firearm is
16 reproducing marks like it should. And then I'll compare it
17 to the evidence. I have a comparison microscope. It looks
18 like basically a pair of binoculars. I can look at one
19 cartridge case on one side and one on the other. I can
20 maneuver them so I can try to see if the matching
21 characteristics are there.

22 Q And in this case what conclusions were you able to
23 reach?

24 A My conclusion was that the -- it's my item two. Not
25 sure the state's exhibit. The cartridge cases --

Michelle Eichenmiller
Direct examination by Ms. Poulos

1 Q The cartridge case, yes.

2 A -- was fired by the firearm.

3 Q So you were able to determine just for -- to make it
4 simple for the jury to understand, was that cartridge case
5 fired by that weapon?

6 A Yes.

7 Q Okay. Now, did you also make an examination as to the
8 trigger-pull weight?

9 A I did.

10 Q And can you explain to the jury what trigger-pull
11 weight is?

12 A Trigger-pull weight is the approximate weight it takes
13 to make the firearm function, so how much weight it takes
14 on the trigger to get the firearm to work.

15 We measure it by a set of like hanging weights. It's
16 on a u-shaped rod that we put on the trigger, and we keep
17 adding weight until the trigger goes off basically.

18 Q And what conclusion were you able to make with regard
19 to trigger-pull weight in this case?

20 A The trigger-pull weight of item one, my item one, the
21 firearm, was found to be approximately four pounds.

22 Q And what would you equate that to for the jury to
23 understand the weight? Do you have an analogy that you
24 could --

25 A It's approximately a half a gallon of milk, but if you

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Direct examination by Ms. Poulos

1 think about it, it's one finger with that much weight on
2 the trigger.

3 Q Now, when you received the magazine was it -- was it
4 packaged with unfired rounds as well?

5 A It was.

6 Q How -- how many?

7 A There were six unfired rounds in the box with the
8 magazine and the firearm.

9 Q And did you generate a report with regard to your
10 findings?

11 A I did.

12 Q I'm going to show you what's been premarked as State's
13 Exhibit 10 and ask you is that a copy of your report.

14 A Yes, it's a copy of my report.

15 Q And is that your signature on page two?

16 A Yes.

17 MS. POULOS: Your Honor, at this time we'd ask that
18 State's Exhibit 10 be admitted into evidence.

19 MR. QUINN: No objection.

20 THE COURT: It's admitted.

21 (Firearms analysis report marked State's Exhibit No.
22 10.)

23 Q Now, could you hold that, the weapon, up so that the
24 jury could -- could see it?

25 (whereupon, the witness complied.)

Michelle Eichenmiller
Cross-examination by Mr. Quinn

1 Q And on the weapon, could you explain what you do to
2 get that firearm to -- to be ready to be fired?

3 A Okay. The lock would normally not be here. This is
4 for, you know, safety purposes. But normally to get this
5 firearm to fire you can pull the slide back and let it go
6 forward, and then it'll be ready to fire.

7 You can also -- this has an external hammer that you
8 can just manually move with your thumb. And once it's in
9 the down position, then that firearm is ready to fire.

10 Q And when you -- if someone were to rack the -- or pull
11 the slide back, that is what gets the bullet into the
12 chamber to be fired?

13 A Yes.

14 Q Okay. Thank you, ma'am. Please answer any questions
15 the defense may have.

16 CROSS-EXAMINATION

17 BY MR. QUINN

18 Q Just a couple if I might.

19 The gun was found to be in working order?

20 A Yes.

21 Q The 4-pound trigger-pull weight, is that within the
22 range set by the manufacturer?

23 A Yes. The manufacturer says, I believe, it's three and
24 a half to five pounds, is what they suggest.

25 Q Thank you.

1 MS. POULOS: Nothing further, Your Honor.

2 THE COURT: You may step down.

3 MS. POULOS: May we approach, Your Honor?

4 (Bench conference held off the record in the presence
5 of the jury but out of the hearing of the jury.)

6 THE COURT: All right. Ladies and gentlemen, we've
7 got another witness who's going to be present -- the
8 pathologist. And he's got a scheduling issue, so we've got
9 to determine what that -- how that issue can be resolved.

10 So I'm going to ask you to go to your jury room.
11 Don't talk about the case. We'll make that determination,
12 and then I'll bring you right back.

13 (The following takes place outside the presence of the
14 jury.)

15 THE COURT: Have you got somebody checking on him?

16 MS. POULOS: Your Honor, I spoke with him probably 30
17 minutes ago. He said he was on his way. I told him we
18 just had one witness and then it was him. So I -- I'll be
19 glad to go back up and talk with him.

20 THE COURT: I don't want you to go up to the office.
21 That takes too long.

22 (Pause.)

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

24 (The following takes place in the presence of the
25 jury.)

Dr. John David Wren
Direct examination by Ms. Poulos

1 THE COURT: All right. You may proceed.

2 MS. POULOS: Thank you, Your Honor. The state calls
3 Dr. John Wren -- David Wren.

4 DR. JOHN DAVID WREN, having
5 been first duly sworn, testified as follows:

6 DIRECT EXAMINATION BY MS. POULOS

7 Q Dr. Wren, if you would, please, state your full name
8 for the jury.

9 A John David Wren.

10 Q And where do you work, Dr. Wren?

11 A I work at Spartanburg Regional Hospital. I'm the
12 laboratory medical director there. And I'm actually
13 employed by Carolina's Pathology Group.

14 Q If you would, tell the jury about your educational
15 background and any training that you have.

16 A I have a bachelor's degree, a master's degree and a
17 doctor of philosophy degree in chemical engineering from
18 Clemson University. I have an M.D. degree from the Medical
19 University of South Carolina.

20 I did a residency in combined anatomic and clinical
21 pathology at the medical university. I finished that and
22 those requirements, which is a 5-year residency, in three
23 years and nine months, about ten -- ten months, because I
24 had done research in environmental systems and chemical
25 kinetics with life support systems, actually space travel,

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1 while I was at Clemson and at the Medical University before
2 I started my residency.

3 while I was a resident there at the Medical University
4 I was the assistant medical examiner in Spartanburg -- in
5 Charleston County from July of 1980 until the middle --
6 until the end of January of 1983.

7 I did forensic autopsies one weekend a month and as a
8 fill-in basis for the board certified forensic pathologist.
9 It's sort of a fellowship in forensic pathology. And while
10 I was doing those forensic autopsies, which was basically
11 as a resident, I did around 90 autopsies and testified over
12 a considerable number of counties in South Carolina. I can
13 name some of them but probably not all, most along the
14 coast being Dillon County, Georgetown, Charleston,
15 Beaufort, Dorchester, Orangeburg. I came up to Lexington
16 and Laurens a couple of times -- Fairfield over toward
17 Winnsboro. Those are the main ones that I had to testify
18 as an expert in forensic pathology.

19 I passed my anatomic and clinical pathology boards on
20 the first attempt, finished the clinical pathology boards
21 in 1987, the anatomic pathology in 1983.

22 I've been working at -- in Charleston -- in
23 Spartanburg since 1982 in October and been doing forensic
24 autopsies for the coroner here since I came here.

25 I've been qualified in all of those counties, plus

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1 Anderson and Greenville and Spartanburg and Union and York
2 County. Those are the main ones I've done in since I've
3 been up here. I've done over 5,000 forensic autopsies as
4 of today.

5 MS. POULOS: Your Honor, at this time we'd offer Dr.
6 Wren as an expert in the field of forensic pathology.

7 MR. QUINN: I don't have any challenge to it.

8 THE COURT: He is so qualified.

9 Q Dr. Wren, did you perform an autopsy on the body of
10 the victim, Myah Cole, in this case on November the 9th of
11 2014?

12 A Yes. I began that autopsy in the Spartanburg Regional
13 Autopsy Room at 1:15 p.m. on that date.

14 Q And how many times did you determine that victim had
15 been shot?

16 A She had a through-and-through gunshot wound. She
17 would have been shot one time.

18 Q And could you explain to the jury what a
19 through-and-through gunshot wound is?

20 A Well, a through-and-through gunshot wound is one that
21 enters the body and then goes through the body and then
22 exits, so that unless the bullet is fragmented or left some
23 type of trail, which you can see sometimes is bone if it
24 goes through bone on the x-ray, or if it shatters the lead
25 and you see some lead fragments, you can tell which way

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1 usually it's going. But there are characteristics of exit
2 and entrance gunshot wounds that can tell a person that's
3 experienced in that field which one's the entrance and exit
4 greater than 90 -- 98 percent of the time probably.

5 Q And so did you recover any -- any bullets or fragments
6 or anything in this case?

7 A No. There were no fragments or bullets.

8 Q Did you find any gunpowder or stippling on -- on the
9 victim, Your Honor -- Dr. Wren?

10 A No. There was none there. The entrance was just
11 where the collarbone -- just below where the collarbone
12 joins the breastplate. Now, it didn't hit any bone there.
13 And it came out the -- the back and had not hit any bone as
14 it went through the body. So there were no fragments.

15 The entrance was, like I said, just where the
16 collarbone joins the sternum. It's called the breastplate.
17 And it exited in the right back more toward the arm than
18 where it went in.

19 Q Was that like the lower back?

20 A Yes.

21 Q Did you also create diagrams to go along with your
22 report and your analysis?

23 A Yes, I did.

24 Q Dr. Wren, I'm going to show what's been marked as
25 State's Exhibit 11 and ask you if you would identify. Are

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1 those the diagrams that you prepared?

2 A Yes. These are entrance -- I mean, these are the two,
3 three diagrams. Basically, there are four, two on each
4 page. But I filled out three of them.

5 Q Yes, sir. And do they fairly reflect the gunshot
6 wounds as -- as you determined them to be?

7 A Approximate location, yes. I measured the locations
8 also.

9 MS. POULOS: Your Honor, we'd ask that State's
10 Exhibit 11 be admitted into evidence at this time.

11 MR. QUINN: No objection.

12 THE COURT: It's admitted.

13 (Diagram of body marked State's Exhibit No. 11.)

14 MS. POULOS: Permission to publish, Your Honor.

15 THE COURT: You may.

16 Q Now, Dr. Wren, I believe this would be the front and
17 back portion of your -- of your diagram, is that -- is that
18 correct?

19 A Yes.

20 Q Okay. And if you could, explain to -- to the jury
21 using -- using a diagram. I have a pointer for you. If
22 you would, explain to the jury where the entrance wound is.

23 A The entrance wound is up here just below the
24 collarbone or the clavicle, it's called, where the clavicle
25 joins the breastplate or the sternum. It went in just

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1 inferior to that, which was -- this individual was 15 and a
2 quarter inches from the top of the head and one and a
3 quarter inch to the right of the midline.

4 That wound measured 31 one-hundredths inches in
5 diameter and had a little abraded area from 8:00 to 1:00
6 o'clock if you consider 12:00 o'clock toward the head and
7 6:00 o'clock toward the feet.

8 There was an abraded area on the side. That sort of
9 means the direction the bullet was coming from, although
10 since the body is not -- has contours and all it basically
11 indicates that that part of the tissue was where it entered
12 first.

13 And then it had a -- what's called a slap abrasion,
14 which is where -- it's sort of like a little abrasion which
15 was over toward the center of the body. And that's from
16 the -- the -- as the bullet enters the body it will cause
17 anything that's in the way, for instance clothing, to hit
18 the skin, and it causes a little abrasion.

19 Now, as I stated previously, there were no powder or
20 stippling. Powder and stippling indicates a close -- a
21 close-range gunshot wound. It's not contact if it --
22 unless you see powder within the wound or a splitting of
23 the wound or if you see other type of evidence, I can go
24 through to tell you what signs you will have.

25 Then as the bullet goes -- as the barrel of the gun

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1 which throws out powder, burning powder, and soot as it
2 moves away from the skin, it throws out soot, and it sort
3 of deposits soot or powder stippling like tattooing of the
4 burning powder on the skin. I did not see any of that.
5 So, and there was no evidence of a contact gunshot wound,
6 either loose or tight contact.

7 So this was not a -- it's basically considered a
8 distant gunshot wound, which in handguns can be anywhere
9 from ten inches to miles, ever how far the bullet will
10 travel.

11 The exit was in the back. The solid line means that
12 you can see it if you were looking at the body. So the
13 gunshot came from the top of the head, hit the skin, went
14 into the body, which is a dashed line, so you can't see
15 that. If you were looking at the person that means it's in
16 the body itself, and then it comes out the back like this.

17 Q And, Dr. Wren, you noted that there's an arrow I see.
18 would that indicate that the bullet went in a downward
19 angle?

20 A That's the direction it's going. The back, the exit
21 in the back, was just below the shoulder blade, and it was
22 irregular in shape.

23 When a bullet passes into the body like it did up --
24 up at the top, unless it's contact, loose or tight contact,
25 it bores a hole in the skin rather than tearing into it.

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1 And unless it's tumbling it will make a round or an oval
2 hole, depending on -- on the angle that it goes into the
3 skin and whether the skin's stretched tight or loose. But
4 basically as a round or an oval hole.

5 As a bullet comes out of the body if it's coming out
6 nose first it will tint the skin. It pushes the skin up
7 and -- and usually just tears its way out unless it's
8 against an object that will hold the skin together. And
9 then it can bore itself out. But usually it's -- it's an
10 irregular wound and actually can be sutured back together
11 if one wants to to where it's just a hole there. And you
12 can close it in because it's -- it didn't tear the tissue
13 out with it. The tissue stays there.

14 So the exit was four and -- four inches to the -- four
15 inches to the right of midline, whereas the entrance was
16 one and a quarter inches to the right of midline. And it
17 was actually 19 and a quarter inches from the top of the
18 head so that --

19 Q I'm sorry.

20 A So that bullet was going -- I estimated it as going
21 downward at approximately 45 degrees, which will be shown
22 on the other diagram, and it was going from front to back,
23 and it was also going from the decedent's left side to the
24 right side, or medial to lateral at 15 to 20 degrees.

25 Q All right. I'm going to show you the second page of

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1 your diagram. It's two diagrams, Dr. Wren.

2 A This is a -- this is a side view. I did not do the
3 left side because it would be very difficult to put a lot
4 of dotted lines in there, because as it come by the head it
5 would have to be dotted and then show up a little bit, and
6 then it would go down and be dotted and then come out the
7 back.

8 But this one shows it from the right side. It shows
9 it came into the -- the chest. And, by the way, this one
10 you -- when you put a circle up there you can't tell
11 exactly where it is toward the midline. But in this side
12 view, on the right side view, you can see that it was
13 before the midline. Then it goes down and out the back and
14 continues on somewhere, wherever. It'll be spent somewhat,
15 and it'll hit something or just keep going, depending on
16 where the person -- what was behind the person.

17 Q So, Dr. Wren, based on your diagram and the -- where
18 it -- the direction that you have the arrow, would that
19 indicate that the bullet or the gun would have had to have
20 been fired from above?

21 A Yes. If you go back to the other one, other diagram,
22 it shows a little bit better.

23 Anywhere along this line ten inches -- well, six to
24 ten inches, depending on the handgun size, and the bullet
25 would have been somewhere along that straight line, and it

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1 could have been way up here or it could have been by the
2 nose, but definitely not much closer. And it would have
3 been going down in a straight trajectory because it didn't
4 hit anything that would deflect it.

5 Q Which organs did -- did the bullet hit?

6 A That bullet went -- it hit the -- I'll have to refer
7 to this.

8 From the internal description I said that -- that it
9 hit the superior vena cava at the junction of the right
10 atrium down.

11 The heart actually sits mostly in the left chest
12 cavity, but the right side projects over. So as it came
13 through it hit the inferior, I mean, the superior vena
14 cava, which is where the blood from the top part of the
15 body goes into the heart. And the atrium is where it's
16 received.

17 Then from the atrium it passes through a valve and
18 goes into the right ventricle where the right ventricle
19 pumps it to the lungs. And then it comes back into the
20 left atrium of the heart and then goes through another
21 valve and goes into the left ventricle where it's pumped
22 out the aorta and then divided and is distributed to the
23 body.

24 But it hit there, and it went through the vessels
25 where the lungs attach to the trachea causing a -- blood in

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1 the left pleural -- right pleural cavity, as well as blood
2 within the pericardial sac, which is a sac that encloses
3 the heart pretty tightly most of the time unless there's a
4 big gapping hole there.

5 so she had 750 ccs of blood in the right pleural
6 cavity from the bleeding, and she had 125 ccs in the
7 pericardial sac. So that was 900 ccs of blood that was
8 accounted for ex -- I mean, internally, plus there was some
9 from the hemorrhage into the tissues around the -- in the
10 mediastinum, which is the midportion of the body between
11 the two pleural cavities.

12 Q And, Dr. Wren, based on the autopsy and with a -- in a
13 reasonable degree of medical certainty were you able to
14 form an opinion as to the cause of death of Ms. Myah Cole?

15 A Well, if you lose ten percent of your -- around ten
16 percent of the blood in your body one can actually go into
17 irreversible shock. And even though they are resuscitated
18 successfully and given blood, they can pass away anyway,
19 but this was more than that.

20 And I -- I decided that she died as a result of
21 internal hemorrhage from a hemothorax, which is blood
22 within that pleural cavity I was talking about, plus a
23 hemopericardium, which is blood within -- the term for
24 blood within the pericardial sac secondary to a gunshot
25 wound to the chest.

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1 Q So basically in simple terms --

2 A Basically, she bled to death.

3 Q She bled to death.

4 Okay. Thank you, Dr. Wren. Please answer any
5 questions the defense may have.

6 CROSS-EXAMINATION

7 BY MR. QUINN

8 Q Dr. Wren, I wonder if you'd be good enough to step
9 down for me.

10 (Whereupon, the witness left the stand.)

11 THE COURT: Lights on, please.

12 Q Well, if -- if I were standing, can you just show the
13 jury where the entrance wound and the where the exit
14 wound --

15 A The entrance was right here.

16 Q And the exit wound?

17 A The exit was right along here.

18 Q And, as you described it, the bullet's going down.

19 A Yes, sir.

20 Q So if you and I were standing, where would the gun
21 would had to have been to create that path?

22 (Whereupon, the witness demonstrated.)

23 Q Okay. Now, if I were sitting in a seat, can you show
24 the jury where the gun would have had to have been?

25 A Well, your head would have to be turned slightly, and

Dr. John David Wren
Cross-examination by Mr. Quinn

1 it would go like this.

2 Q Okay. And how far? You said a minimum ten inches,
3 because it's not a -- not a close wound, I think you
4 described it as. It's a distance --

5 A Well, there's wounds called contact gunshot wounds,
6 which can be either tight or loose contact.

7 A tight contact gunshot wound is actually pressed hard
8 against the skin or against the -- the body. And when the
9 gasses and bullet come outta the -- out of the barrel they
10 actually go into the skin, and they blow back and tear
11 around. So you get what's called a stellate wound. It's
12 not the round wound that I described as it bored its way
13 in.

14 The bullet does bore its way in, but the -- but the
15 gasses have to expand back and get out somewhere. So they
16 tear their way back out. So you get a stellate wound.

17 Now, if it's loose contact it's essentially the same
18 way. But right up against the skin it has a way to get --
19 particularly, if the skin is not a flat surface against it,
20 not perpendicular to it, it can escape from the edges of
21 the barrel.

22 So then in that case you'll see. Sometimes you can
23 see the -- the barrel will actually burn the skin because
24 it gets hot right away.

25 And so those are the two types. That's the loose

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1 contact. It will -- can or cannot tear the skin. It
2 usually doesn't because the skin is pretty loose and it's
3 not tight up against it.

4 Now, as you move back from the skin the barrel will
5 discharge gasses and burn particles, as well as soot. And
6 depending on the caliber of the -- of the gun, the higher
7 the caliber, the further those gasses will expand. And
8 they expand out just to the cone, like it would expand out,
9 and eventually reaches a point where it does not do
10 anything to the skin.

11 It's far enough away to where it disburses before it
12 hits the skin if it's -- if the skin is exposed. If it's
13 not exposed you can even see it on light-colored clothing.

14 But SLED can take the clothing if it's dark clothing,
15 and they can look at it under a scanning electron
16 microscope or scanning -- a microscope, and they can
17 actually see particles there.

18 Q And I'll let you have a seat again.

19 A And then once it passes that intermediate range, we
20 call it, it's called distant. And distant means we can't
21 tell how far away it is. It could be -- like I said, it
22 could be a mile away if it can travel that far, or it can
23 be 11 inches away. It just depends on anything you can
24 imagine in a straight line from the two entrance and exit
25 points, could be where the -- the weapon was.

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1 (Whereupon, the witness returned to the stand.)

2 Q And I'll wait until you're seated again, Doctor.

3 But I believe in the response to one of the solicitor's
4 answers you said the bullet would had to have been fired
5 from above.

6 A Yes.

7 Q Now, that is assuming that the person shot is upright,
8 isn't that correct?

9 A Well, it's -- when I said above, it's from above and
10 slightly to the left of the decedent assuming that the head
11 and toe of the decedent was from 12:00 to 6:00 o'clock
12 position.

13 Q But if I was in this position, then you don't have to
14 be above me. You could be in front of me, isn't that
15 correct?

16 A No. You'd have to be like this still.

17 Q Slightly above.

18 A Yeah. And your head would have to be turned to where
19 it didn't hit your head.

20 Q Okay. So like this.

21 (Whereupon, Mr. Quinn demonstrated.)

22 A Probably more like that way, yeah.

23 Q All right. Okay.

24 A And you'd have to be turned enough to where it would
25 come out of your back towards your right arm.

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1 Q So you would not have to be above the person, however,
2 if that person was bent over.

3 A Well, your hand would have to be. I mean, your arm
4 would have to be.

5 Q To create that path.

6 A Yes, to create that path, because there's nothing to
7 deflect it at all, at least until it gets to your skin. So
8 it has to come in from that direction, and then it passes
9 on through if it doesn't hit anything that will deflect it.

10 Q Doctor, if you were bent over at the waist and I shot
11 you here, is that roughly where the entrance wound is?

12 A It's on this side.

13 Q I'm sorry. Here.

14 A Yes.

15 Q And you were bent over, would the bullet not come out
16 your lower back?

17 A Sure.

18 Q And it would describe that path, isn't that correct?

19 A Yes. That's true.

20 Q Okay. Now, you say that SLED can test with a -- and
21 I'm sorry. I forgot the words you used. But they can test
22 whether there's stippling on dark clothing, isn't that
23 correct?

24 A Most of the time, yes.

25 Q And the clothing in this case was dark clothing, isn't

Dr. John David Wren
Cross-examination by Mr. Quinn

1 that correct? Do you remember?

2 A I said that she had on a white tank top t-shirt, a
3 black short-sleeve pullover t-shirt and a black sports bra.
4 So she had some white clothing also.

5 Q And do you know if it was ever submitted to SLED?

6 A I -- when I take the clothing off I describe it. I
7 look at it to see if I see anything like that.

8 For instance, if it were a contact gunshot wound, most
9 of the time you'll see tearing of the clothing rather than
10 a nice round hole. I didn't see anything like that.

11 And then I give that as evidence to the -- let's see
12 who I gave the evidence to. Well, probably didn't -- one
13 of the law enforcement people, which they didn't have --
14 they usually don't sign for the clothing, but they take the
15 clothing. That's correct.

16 Q So it would not be your obligation to submit it to
17 SLED. But do you in if it -- if the clothing was submitted
18 to SLED for testing?

19 A I don't know, no.

20 Q Do you draw blood for toxicology?

21 A Yes.

22 Q And do you know if that is normally submitted to SLED?

23 A When we draw blood from a -- from a decedent it's
24 labeled and placed in a locked refrigerator, and then the
25 coroner has a designated agent, one of the coroner's

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1 investigators, that takes all of the toxicology and enters
2 it into a record.

3 We -- we used to draw three -- three tubes of blood,
4 and probably there were three drawn then, because recently
5 we only had to do two unless special requests are made.
6 And they send -- at one time they were sending two, but I
7 think they just send one tube now.

8 The coroner does that, and there's a record with the
9 coroner's office of when it's sent.

10 Q And when you say it's sent, it's sent to the South
11 Carolina Law Enforcement Division, SLED.

12 A Yes, yes. It's supposed to be sent to them.

13 Q And you did not respond to the scene, did you?

14 A No.

15 Q Were you provided any photographs from the scene?

16 A Sometimes I do. I don't recall about this one.

17 Q Okay. And did you also in your examination of the
18 body describe a broken nail?

19 A Yes. I said the fingernail of the right middle finger
20 is almost completely avulsed at the tip.

21 Q Could you tell the jury what avulsed means, please?

22 A Torn away from the nail bed.

23 Q And did you attribute that to the bullet wound by any
24 means?

25 A No.

Dr. John David Wren
Cross-examination by Mr. Quinn

1 Q Did you attribute it to any injury or just note that
2 it was in that condition?

3 A Well, sometimes it's indicative of an altercation.
4 Most of the time it is unless investigation shows that they
5 could have caught it on something as they were falling, or
6 you can't tell usually what caused it.

7 Q Thank you, Doctor.

8 MR. QUINN: I don't have any other questions.

9 MS. POULOS: No further questions, Your Honor.

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

11 MS. POULOS: Your Honor, the state would rest.

12 THE COURT: All right. Ladies and gentlemen, that is
13 all of the testimony or other evidence to be offered by the
14 state, at least in their case in chief.

15 Before we go any further I've got some matters I'll
16 need to address with the lawyers. It's also a convenient
17 time to recess for lunch. So we'll do that.

18 Keep in mind you're still not to discuss the case or
19 allow yourselves to be exposed to any information relating
20 to it.

21 Enjoy your lunch. Please report to your jury room at
22 2:00 o'clock this afternoon, 2:00 o'clock this afternoon,
23 at which time we'll continue.

24 (The following takes place outside the presence of the
25 jury.)

1 THE COURT: All right. Motions or other matters to
2 address?

3 MR. QUINN: Yes, sir. At this time I would move for a
4 directed verdict on the charge of murder. There's no
5 evidence been submitted to the Court to indicate that this
6 was done in a cold-blooded fashion, or distinguish it from
7 manslaughter. So I would ask for a directed verdict on the
8 charge of murder.

9 THE COURT: Ms. Poulos.

10 MS. POULOS: Your Honor, just simply, we've provided
11 evidence that Ms. Pearson admitted to the shooting; we
12 provided evidence that there was a conflict.

13 We have shown her state of mind, which would be anger,
14 throughout the day. I think two witnesses testified about
15 that. Obviously, we've shown the murder weapon. We've
16 shown the cause of death. I think there is sufficient
17 evidence at this point to go forward, Your Honor.

18 Obviously, depending on how this goes, we may be
19 asking for a lesser charge to voluntary at the appropriate
20 time but -- but at this time we feel that we've certainly
21 established enough to -- to go forward.

22 THE COURT: All right. Based upon the evidence,
23 malice is a question for the jury. So your motion for a
24 directed verdict is denied.

25 MR. QUINN: May I address the Court, the issue of

1 whether voluntary manslaughter would be submitted to the
2 jury, assuming that the defendant rests and that's all the
3 testimony that's before the Court.

4 My argument would be that voluntary manslaughter
5 should not be submitted to the jury, that there has not
6 been laid any evidence showing sufficient provocation for
7 the defendant to have -- and I'm sorry. I need to pull the
8 cases to get the right language -- but to have lost her
9 ability to reasonably make decisions.

10 I know -- I'm sorry. I'm using the wrong language
11 from the voluntary-manslaughter cases. But at this time
12 point my argument would be that voluntary manslaughter
13 should not be submitted to the Court and I'm asking the
14 Court --

15 THE COURT: Well, I'll make that determination once
16 the evidence is closed. Are you saying you're not going to
17 offer any?

18 MR. QUINN: I'm saying that it may make a difference
19 as to whether I offer it or not. And I'm sorry. The
20 language that I was using before, that there was no
21 evidence that the defendant -- at this point there's no
22 evidence that the defendant was acting in a sudden heat of
23 passion.

24 THE COURT: Well, you may be correct, but, as I say,
25 I'll make that decision once the evidence is closed.

1 MR. QUINN: Thank you. I don't have anything else at
2 this time. Thank you.

3 MS. POULOS: Your Honor, the only thing that we wanted
4 to address -- and I believe this is the appropriate time --
5 is, obviously, I'm not sure if the defense at this point is
6 going to put up a case, if they're going to call the
7 defendant to testify.

8 I do want to raise the issue of self-serving
9 statements. Obviously, if they do intend to call any
10 police officers to get out her statement -- she did give a
11 full confession with her side of the story -- our position
12 according to the Terry case -- I know Your Honor's familiar
13 with self-serving statements, self-serving hearsay. And I
14 do have copies of that.

15 But basically the Terry case involved the issue of
16 whether a statement against penal interest may be admitted
17 by a non-testifying defendant pursuant to -- to Rule
18 804(b)(3).

19 That court held that the defendant who elected not to
20 testify could not thereafter admit a self-serving statement
21 that he made to police.

22 Your Honor, our -- our objection or our -- our issue
23 is simply that any statements that were to come out other
24 than through her, I believe, would be self serving. If the
25 defendant wants to get that information out, then she

1 certainly needs to take the stand.

2 I believe that case law states that the Fifth
3 Amendment privilege against self-incrimination -- it cannot
4 be used as both a -- a shield and as a sword.

5 I think -- I don't think she can claim unavailability
6 by exercising that right. She can't make herself
7 unavailable by invoking it and then also benefiting from
8 that unavailability, Your Honor.

9 Again, I know Your Honor's familiar with the case law.
10 I just wanted to put that on the record, and perhaps that
11 would determine whether or not she -- I don't know how they
12 plan to proceed, but I know that this issue came up in --
13 in my last trial, Your Honor, and I -- and I did foresee it
14 happening in this one as well. So that would be our
15 position with regard to self-serving statements.

16 THE COURT: All right. Mr. Quinn.

17 MR. QUINN: I think it's premature. If we get to that
18 point I'll gladly address it.

19 THE COURT: Okay. Have you discussed with your client
20 whether or not she wishes to testify?

21 MR. QUINN: Well, I'd ask the Court to give me the
22 lunchtime to speak with her. Quote honestly, I --

23 THE COURT: Well, I will.

24 MR. QUINN: I'm sorry?

25 THE COURT: You will have that time to speak with her.

1 MR. QUINN: Before she answers the Court's questions
2 about testifying? The state's presentation has been much
3 briefer than I expected.

4 We have discussed it in the past, but I don't know if
5 her decision will be the same based on what's been
6 presented this morning.

7 THE COURT: Okay. Well, I'll let her make that
8 decision during lunch, but I'm going to question her about
9 it now.

10 MR. QUINN: Yes, sir.

11 THE COURT: Ms. Pearson, have you discussed with Mr.
12 Quinn your right to testify, as well as not testify, during
13 the course of this trial?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you understand that it's your choice,
16 only you can make that decision? You have the right to
17 determine whether or not you'll testify. If you wish to,
18 you may. If you don't wish to, you cannot be required to.

19 Do you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you understand that if you choose to
22 take the witness stand and testify you've got to answer all
23 of the questions that are asked of you to the extent that
24 they're relevant? Not only those questions asked by your
25 lawyer, but also questions asked by the prosecutor even if

1 the responses to those questions might tend to prove you
2 guilty of some crime they claim you committed.

3 THE DEFENDANT: I understand that, sir.

4 THE COURT: Do you also understand that if you choose
5 not to take the witness stand that I'm going to instruct
6 the jury, as I already have, that they can't hold that
7 against you? They can't consider that fact in any way.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Have you discussed with Mr. Quinn the
10 advantages and the disadvantages of testifying, as well as
11 not testifying?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And do you appreciate what those
14 advantages and disadvantages are?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you need additional time to talk with
17 Mr. Quinn about whether or not you will testify in this
18 case?

19 THE DEFENDANT: I do not.

20 THE COURT: You don't need to talk to him any more
21 about it?

22 THE DEFENDANT: No, sir.

23 THE COURT: Okay. Have you made a decision?

24 THE DEFENDANT: Yes, sir. I will testify.

25 THE COURT: Okay. well, you can change it. You can

1 change your mind during the lunch recess if you want to.
2 Mr. Quinn will talk to you. But, nevertheless, I
3 understand that's what your wish is.

4 Okay. Who is on the defendant's bond, by the way?

5 MR. QUINN: Atchison Bonding. She's on electronic
6 monitoring and has been since her release.

7 THE COURT: Well, what -- what's the state's position
8 on her remaining?

9 MS. POULOS: Your Honor, I don't really have a
10 position.

11 Obviously, Your Honor, I think she needs to be held in
12 custody during the lunch break. I mean, we'd certainly
13 feel more comfortable with that, but we'll leave that to
14 your -- your discretion.

15 THE COURT: Okay.

16 MS. POULOS: She has not been taken into custody at
17 all. She's been on ankle monitoring since she got out
18 on -- on bond.

19 THE COURT: All right. Mr. Quinn, have you discussed
20 with Ms. Pearson that she has to be present and she has to
21 be on time when we have court and that in the event she
22 failed to appear or was late we would proceed with the
23 trial in her absence, notwithstanding the fact that she
24 wanted to be here?

25 MR. QUINN: Yes, sir, I have, Your Honor. She

1 understands it.

2 THE COURT: All right. Ms. Pearson, do you understand
3 you are to remain on the electronic surveillance? That's a
4 G.P.S. monitor, I guess.

5 MR. QUINN: Yes, sir.

6 THE COURT: Do you understand you have to appear in
7 accordance with the terms of the bond? And of course now
8 that you're at trial you're instructed by the Court you
9 must appear. If you don't, that it would be a violation of
10 the Court's order. Do you understand?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And you have to be timely. You can't be
13 late in reporting.

14 In the event that the case goes into another day,
15 you'll need to talk with the bondsman about whether or not
16 they are willing to continue the obligation.

17 MR. QUINN: Yes, sir.

18 THE COURT: Because, you know, there is some issue
19 about that once the case is begun. So if it goes into
20 tomorrow and she wishes to stay out, I'll have to have
21 someone from the bonding company to tell me that they're
22 willing to continue that obligation.

23 MR. QUINN: Yes, sir.

24 THE COURT: All right. Court is in recess until
25 2:00 o'clock.

1 (Whereupon, a recess was taken.)

2 THE COURT: All right. Any matters to address before
3 the jury is brought back in?

4 MS. POULOS: Yes, Your Honor. We do have one matter
5 to address.

6 Your Honor, Mr. Quinn has presented me with numerous
7 photographs from the crime scene. They are of the victim's
8 body.

9 Our position, Your Honor, would simply be -- we have a
10 couple of different positions on it. The first is that
11 they're inflammatory. There is blood in the photographs.
12 There is the victim's head, face.

13 It's highly prejudicial in this case. I'm not aware
14 of too many cases where victims' bodies are allowed to be
15 admitted into evidence. But he was gracious enough to at
16 least give me the opportunity to look at them first and --
17 and telling me or giving me heads up as to what he's going
18 to use.

19 Furthermore, Your Honor, the -- the photographs aren't
20 relevant. They don't fairly reflect the way the
21 position -- the body was positioned.

22 We had Officer Stacy testified that the victim's body
23 was in the seat. We had E.M.S., Todd Shields, to testify
24 that the body was in the seat.

25 I believe Officer Stacy did say that the victim's feet

1 were in the floorboard. This would only mislead and
2 confuse the jury, and it's not a fair representation of the
3 way the body was. All of --

4 THE COURT: Well, where did the pictures comes? Where
5 did those photographs come from?

6 MS. POULOS: They -- they were taken after E.M.S. had
7 already put the leads on her and -- and the electrodes.
8 They were prepared to transport the body at -- at that
9 time, Your Honor.

10 THE COURT: Okay.

11 MS. POULOS: So that would be our objection if -- if
12 Your Honor would like to see them.

13 THE COURT: Yeah. I'll have to see them.

14 MS. POULOS: Okay.

15 THE COURT: I can't make much out of them to start
16 with, but, nevertheless, your -- your position is,
17 Ms. Poulos, is that this is not the position or condition
18 of the body as it was at the time of the event, this is the
19 position or condition of the body after she had been
20 treated by --

21 MS. POULOS: E.M.S.

22 THE COURT: -- emergency medical services?

23 MS. POULOS: E.M.S., Your Honor.

24 I think the first responder or actually the first
25 officer that responded to the scene would have testified

1 otherwise. And even the E.M.S. technician himself
2 testified that that is not -- well, actually, he didn't say
3 specifically that is not but he -- what he specifically
4 said was that her body was in the seat and she was slumped
5 over.

6 There's been no testimony that the legs were out of
7 the vehicle. And -- again, our position is they're not
8 relevant because they don't fairly represent the way the
9 body was at the time this happened.

10 THE COURT: Okay. Mr. Quinn.

11 MR. QUINN: Well, as to whether they're inflammatory
12 or prejudicial, I never heard the state argue that on
13 behalf of the defendant but --

14 THE COURT: Well, there's a first time for everything.

15 MR. QUINN: Okay.

16 THE COURT: And I don't find these to be inflammatory,
17 and so long as they're relevant to some issue in the case.

18 MR. QUINN: Well, I think they're relevant to the
19 position of the body when the pictures were taken. They
20 certainly cannot --

21 THE COURT: Well, they are relevant as to the pictures
22 of the body when the photograph was taken. But the
23 question is whether they're relevant to the position of the
24 body at the time of the event.

25 MR. QUINN: And my client will testify that that is

1 essentially the position the body was in.

2 The E.M.T. testified that they barely moved the body
3 to check for heart rate, and so that's the only movement of
4 the body.

5 So, I mean, the state can certainly argue that their
6 pictures taken by their technician does not accurately
7 reflect the scene, but my client will testify that that is
8 the position the body was in when she exited the vehicle to
9 call 9-1-1. So I believe they're relevant.

10 THE COURT: Well, if that's true, sounds like to me
11 there's going to be conflicting testimony about that.

12 Who took these photographs?

13 MS. POULOS: Your Honor --

14 THE COURT: Was that Ms. Burgess?

15 MS. POULOS: Investigator Burgess did, but he came
16 onto the scene, you know, later.

17 THE COURT: Oh, John Burgess took these, not Courtney
18 Burgess?

19 MS. POULOS: No, sir, no, sir.

20 THE COURT: Okay. But he took them after --

21 MS. POULOS: After E.M.S. had already done what they
22 needed to do with the -- with the body. The body -- it's
23 my understanding, Your Honor, that the body at that point
24 was being prepared to be transported. I mean, everything
25 had already been done with her.

1 THE COURT: All right. Well, let me -- Mr. Quinn,
2 let's -- let's clear that up.

3 I -- I understood from the testimony that the
4 testimony of the -- I think at least two officers was that
5 the body of Ms. Cole was seated in the passenger seat with
6 her leaning over into the driver's seat with her feet in
7 the passenger side, not outside of the car but inside of
8 the car, either on the floorboard or in some fashion. But
9 her buttocks were in the seat and her torso was leaned
10 over.

11 These pictures don't show that, and so that would
12 explain, seems like to me, the fact that the E.M.S. people
13 said that they moved her.

14 MR. QUINN: Well, that would be if their -- if E.M.S.
15 had said that, that'd be one thing. They did not.

16 Secondly, that's the whole purpose of the trial, is
17 I'm not limited to, oh, the state's witness said that so
18 you can't contest it.

19 I will allege that the state's witnesses are wrong and
20 that those pictures show that they were wrong. So they're
21 relevant to the case. They don't support the state's
22 version of the case, but that doesn't mean they're not
23 relevant. My client can certainly testify as to the
24 position of the body. Nobody --

25 THE COURT: I'm not arguing that. I'm just -- I'm

1 just asking. So, I want to be clear on what the testimony
2 was and what it is to be. So the testimony was as to the
3 position of the body, and you're saying that that --
4 that's not truthful testimony, it's inaccurate.

5 MR. QUINN: It's inaccurate.

6 THE COURT: Your client is going to testify that this
7 is exactly the way the body was as shown in the photograph?

8 MR. QUINN: She's going to say that's the position the
9 body was in.

10 THE COURT: Okay. What about it?

11 MS. POULOS: Well, Your Honor, if they're going to
12 allege that our -- our witnesses are --

13 THE COURT: Well, you get to do rebuttal too. I mean,
14 I --

15 MS. POULOS: Lying about what they testified to, then
16 that's a whole -- that opens up a whole other can of worms
17 but --

18 THE COURT: Well, that wouldn't be any different than
19 you saying she's lying about it.

20 MS. POULOS: Well, the -- Your Honor, on the pictures
21 the -- the -- the leads are still -- there are stickers
22 that are -- I mean, everything that they had done had been
23 done.

24 THE COURT: I understand.

25 MS. POULOS: You know, maybe -- perhaps there was a

1 window of time between when they first got to her to
2 the time, but at some point, obviously, the body got like
3 that. You know, I mean, I just -- I think it's just --
4 it's -- it's very misleading to the jury, Your Honor. I --
5 I know --

6 THE COURT: Well, it might be, but you should have a
7 witness that would tell us how the got like that if it was
8 in a different position when they arrived. Somebody has to
9 know that if they did it.

10 I mean, somebody prior to the picture being taken
11 would have had to have moved this body if this is not the
12 way it was. And you have control of those witnesses. I
13 mean, I don't know who they would be. But I know two
14 testified to what the -- the position of the body. But
15 nobody's testified about how the body got into this
16 position when the photographs were taken.

17 We know -- we have a photograph of this, so we know
18 how the body was positioned when this photograph was taken.
19 But nobody is telling us how it got in that position. And
20 apparently the defendant is going to testify that's the way
21 it was. But you -- you have a chance for rebuttal, and so
22 I assume you have a witness that could say that they moved
23 the body when they provided medical care or moved the body
24 for whatever purpose.

25 I don't know what it would be but -- but I understand

1 these pictures were taken by Mr. Burgess. And the
2 defendant apparently is, according to Mr. Quinn, going to
3 testify that that's -- that's exactly the way it was after
4 she shot the lady and called the police, that the body was
5 just like that. So that'll be something for the jury to
6 sort out so far as credibility goes.

7 Okay. But I don't find them to be inflammatory in any
8 way. There's -- you can -- well.

9 MS. POULOS: The victim's face, Your Honor, and the
10 blood and it just --

11 THE COURT: Well, I can't actually see her face, I
12 don't think. I don't see her face in these. And there's
13 some blood, but, obviously, they're relevant to a claim of
14 self-defense.

15 MS. POULOS: Thank you, Your Honor.

16 THE COURT: Okay.

17 MR. QUINN: Thank you.

18 THE COURT: Ms. Poulos, are you going to need to
19 contact some other witnesses?

20 MS. POULOS: Your Honor, actually, I've got the E.M.S.
21 technician here if you -- if you can give me one second,
22 just one moment.

23 THE COURT: Okay.

24 (Pause.)

25 MS. POULOS: Yes, Your Honor. We're ready.

Brittany Shaunta Pearson
Direct examination by Mr. Quinn

1 THE COURT: All right. Bring the jury in, please.

2 MS. POULOS: Your Honor, I'm just -- if I may have
3 one -- one second I'm -- I'm not sure if the -- the family
4 wants to be present for these photographs if I may give
5 them one opportunity to exit the courtroom.

6 THE COURT: Okay. Oh, sure, yeah.

7 If these photographs are going to be disturbing for
8 anybody, it's best that you leave the courtroom. You can
9 come back afterwards.

10 MS. POULOS: They're going to stay, Your Honor.

11 THE COURT: Okay. Be sure you can control your
12 emotions.

13 (The following takes place in the presence of the
14 jury.)

15 THE COURT: All right. Ladies and gentlemen, as you
16 know, the state has concluded with their presentation of
17 evidence. So we will now proceed with any to be offered by
18 the defense.

19 Mr. Quinn.

20 MR. QUINN: Thank you, Your Honor. We call Brittany
21 Pearson to the stand.

22 BRITTANY SHAUNTA PEARSON,
23 having been first duly sworn, testified as follows:

24 DIRECT EXAMINATION BY MR. QUINN

25 Q Can I have your full name for the record, please?

Brittany Shaunta Pearson
Direct examination by Mr. Quinn

1 A Brittany Shaunta Pearson.

2 Q And you need to speak up a little bit for me.

3 okay. Spell your first name for me.

4 A B-R-I-T-T-A-N-Y.

5 Q And your middle name.

6 A S-H-A-U-N-T-A.

7 Q That's better.

8 Okay. Brittany, did you know Myah Cole on

9 November 8th of 2014?

10 A Yes.

11 Q And what relationship, if any, did you have with Myah?

12 A She was my girlfriend.

13 Q And how long had that been true?

14 A Almost a year.

15 Q And how did you two meet?

16 A We used to work together.

17 Q Where was that?

18 A At U.P.S.

19 Q And what did you do at U.P.S.?

20 A I was a supervisor.

21 Q And what did she do at U.P.S.?

22 A She was a package handler.

23 Q And can you describe the relationship for me? Say,
24 you were girlfriends? Were you living together, dating?

25 Tell me what you --

Brittany Shaunta Pearson
Direct examination by Mr. Quinn

1 A We dated for a while before we got into a
2 relationship, and then I got into an incident that I had to
3 move out of my own apartment, and I moved in with her.

4 Q What did you do at your apartment that made you have
5 to move?

6 A I had got robbed.

7 Q And so when did you move in, about when did you move
8 in, with Myah?

9 A February of 2014.

10 Q So, and this incident happened in November, is that
11 correct?

12 A Yes.

13 Q Nine months or so? Does that work out right?

14 A Yes.

15 Q And were you seeing anyone else?

16 A No.

17 Q Was Myah seeing anyone else?

18 A No.

19 Q Now, on November 8th did you and Myah spend the day
20 together?

21 A Yes.

22 Q Wake up together that morning?

23 A Yes.

24 Q And did you two go to a wedding shower or wedding
25 party?

Brittany Shaunta Pearson
Direct examination by Mr. Quinn

- 1 A A baby shower.
- 2 Q A baby shower. And where was the shower?
- 3 A It was like over at her adopted father's house.
- 4 Q And do you remember her adopted father's name?
- 5 A Yes. His name is Ray.
- 6 Q And had you met him before?
- 7 A Yes.
- 8 Q So were you invited to the shower?
- 9 A Not personally. I just went with her.
- 10 Q Did you two have any difficulties before you went to
- 11 the shower that day?
- 12 A No, not an all.
- 13 Q And at the shower did you and Myah have any
- 14 difficulties?
- 15 A During the middle time we were there we had started
- 16 having conflict.
- 17 Q Okay. And what was the conflict about?
- 18 A She had grabbed my butt while we were there.
- 19 Q And did other people witness that, do you know?
- 20 A I'm not sure.
- 21 Q And did she say anything when that happened?
- 22 A I -- I said something. I was like where did that come
- 23 from, because we don't do P.D.A.
- 24 Q And what does P.D.A. stand for?
- 25 A Public display of affection.

Brittany Shaunta Pearson
Direct examination by Mr. Quinn

1 Q And what did she respond?

2 A She was like, "It's mine, ain't it?"

3 Q And so did that cause a disagreement between the two
4 of you, or did you get over it, or what happened?

5 A She didn't like the way I responded, and she kept
6 going on about it. And I was like, "It's not a big deal.
7 When we're in the privacy of our own home, I can't even get
8 a neck hug out of you, so what's the problem now?"

9 MS. POULOS: Your Honor, I object. I'm going to
10 object. That's getting into hearsay. It's the victim's.
11 That's what the victim said.

12 THE COURT: Oh, I'm sorry. I thought it was what she
13 was saying.

14 MR. QUINN: I did too, Judge. I will try to be
15 careful about that.

16 THE COURT: Okay.

17 Q And you can't say what anyone else said. We'll try to
18 be careful with that, Brittany.

19 So did you two have a disagreement about this public
20 display of affection?

21 A Yes.

22 Q Okay. And how did you two evidence that disagreement?

23 A I don't understand.

24 Q Did you two have words; did you come to blows? Was
25 there anything else said about it?

Brittany Shaunta Pearson
Direct examination by Mr. Quinn

1 A We just had words.

2 Q And how long did you stay at the shower roughly?

3 A Maybe like another two hours.

4 Q And were you keeping track of time during the day for
5 any reason?

6 A No.

7 Q Did you two have plans you had to be somewhere at a
8 specific time?

9 A No.

10 Q And did you enjoy the shower, or was it just a fight
11 all of the time?

12 A I was just there for her.

13 Q And did you two resolve your differences at the
14 shower?

15 A Yes.

16 Q Okay. And then where did you go from the shower?

17 A We planned -- when we left there we was trying to
18 figure out something else to do. We rode by my mother's
19 house, and she wasn't there. So we, like, stopped by a
20 convenience store, and she got a beer, and we went home.

21 Q Okay. And who is she?

22 A Myah.

23 Q Okay. Was there anyone else in the car with the two
24 of you?

25 A No.

Brittany Shaunta Pearson
Direct examination by Mr. Quinn

1 Q And what car were you driving?

2 A I was driving my Dart.

3 Q Dodge Dart?

4 A Yes, sir.

5 Q And how long had you had that car?

6 A A month and a half, two months.

7 Q And did you do all of the driving that day?

8 A Yes.

9 Q Now, let's go back to the shower for a second. I'm
10 sorry. Where was the shower? Physically was where it?

11 A In a house.

12 Q And where was the house?

13 A In Spartanburg.

14 Q Okay. Do you know any better than that --
15 neighborhood or street or anything?

16 A No, I don't.

17 Q Okay. And where was the store you two stopped at?

18 A It was a convenience store just like by the
19 fairgrounds.

20 Q And did you just stop there for a moment?

21 A Yes.

22 Q Now, in the car between the shower and your house were
23 there more words spoken about this disagreement?

24 A No.

25 Q And when you got home what was the plan?

Brittany Shaunta Pearson
Direct examination by Mr. Quinn

1 A Well, we started talking about it again and it was --
2 we wasn't getting anywhere, because she didn't like the way
3 I reacted to what she said, what she did, rather.

4 And Heath was calling her because he wanted us to come
5 and play pool, and we was still talking about the
6 situation. And I didn't want to go anywhere. I didn't
7 want to leave again. And she begged me and begged me. And
8 he was still calling during this time. And finally I
9 decided to go out.

10 Q And when you say you decided to go out, where were you
11 going to go?

12 A Red's Bar and Grill.

13 Q And what were you going to do that there?

14 A Just play pool and chill.

15 Q With?

16 A Myah, Heath and his girlfriend.

17 Q And so Heath was calling you from this bar and grill.

18 A He was calling her.

19 Q Okay. And did you and Myah ride together?

20 A Yes.

21 Q And is the name of it Ray's or Red's? We keep calling
22 it two different things.

23 A Red's.

24 Q Red's. Okay.

25 A Yeah.

Brittany Shaunta Pearson
Direct examination by Mr. Quinn

1 Q And what was your attitude on the way to Red's? Were
2 you angry, upset, calm, pleasant?

3 A It was -- it was quiet because I had been crying. I
4 had been crying when we were at home.

5 Q And what was Myah's attitude?

6 A She didn't really have attitude, but we weren't -- we
7 didn't say anything to each other in the car ride over. We
8 just listened to music.

9 Q And at Red's did it continue in that fashion, or what
10 happened at Red's?

11 A We played. She played pool and then I played pool.
12 And we was trying to figure out what we was doing after
13 that.

14 And the other couple that we were there with, they
15 started kissing on each other. And I was like here we go
16 again. And she said a smart comment. I can't remember
17 what she said.

18 MS. POULOS: Your Honor, I object.

19 Q I was going to say. You can't say what she said.

20 MR. QUINN: I'm sorry. Do you want to finish your
21 objection?

22 MS. POULOS: Just object to the hearsay.

23 THE COURT: She just said a comment was made, but she
24 didn't say what it was.

25 A And they were kissing, and I can't remember exactly

Brittany Shaunta Pearson
Direct examination by Mr. Quinn

1 what was said, but it was along the lines of P.D.A. and --

2 Q You can't say what she said.

3 THE COURT: You can't testify as to what Ms. Cole
4 said. You can say what you did as a result of the
5 conversation or the comment.

6 Q So were there still words, or were there more words
7 between the two of you when this other couple started
8 showing affection?

9 A Yes.

10 Q Along the same argument?

11 A Yes.

12 Q And were both of you engaged in it -- you and Myah?

13 A Yes.

14 Q And how did you react at that point?

15 A She asked them a question --

16 Q Okay.

17 A -- about P.D.A. and --

18 Q And based on their answer, what happened?

19 A After that I walked out.

20 Q And did Myah follow you?

21 A Yes.

22 Q And the witnesses -- Marquita and Heath -- have
23 described you two as upset or angry. They used both of
24 those words. Were you upset or angry?

25 A I was upset.

Brittany Shaunta Pearson
Direct examination by Mr. Quinn

1 Q And were you able to determine if Myah was upset or
2 angry?

3 A Yes.

4 Q And which of the two, or both? How would you describe
5 it?

6 A Both.

7 Q So when -- where did you two go when you walked out of
8 Red's?

9 A I tried to get in my car and leave, but she had came
10 up to the passenger side and started beating on the window
11 of my car. And she positioned herself to where I wouldn't
12 be able to back out or I would hit her with my car. So I
13 eventually left her in the car.

14 Q And where did you two proceed? Well, first of all,
15 did anything further happen at Red's?

16 A No.

17 Q So where did you two go from there?

18 A Home.

19 Q And is it fair to say, now, we have covered much of
20 the afternoon. You stayed at the shower a couple of hours.
21 How long were you at Red's?

22 A I don't remember.

23 Q But has it -- has it now gotten to be the evening?

24 A Yeah. It had to be around about 8:00.

25 Q And has this argument gone on, off and on, all

Brittany Shaunta Pearson
Direct examination by Mr. Quinn

1 afternoon?

2 A Yes.

3 Q All right. And I'm sorry. You two were in the car.

4 Was there any more difficulties at that point?

5 A We were arguing the whole way back home.

6 Q And can you describe your argument -- low-key, heated,
7 physical?

8 A It was heated but no physical.

9 Q And so where did you two go?

10 A We went home.

11 Q And where is home? Tell the jury where that --

12 A Park Place Apartments.

13 Q And did you park in front of or near your apartment?

14 A Yes. I parked in front of our apartment.

15 Q Now, when you arrived did you notice if there was
16 anyone else in the parking lot?

17 A No.

18 Q Did you notice if there were lights on in the
19 adjoining apartments or anywhere near you?

20 A No.

21 Q And what happened in the parking lot?

22 A The plan was for me to drop her off, because she had
23 been drinking, and it wasn't no coming down off of that. I
24 always would leave the situation. And the plan was to drop
25 her off.

Brittany Shaunta Pearson
Direct examination by Mr. Quinn

1 We got in the parking lot. I gave her my keys. We
2 was still going back and forth at this point.

3 She got out of the car, and she got immediately back
4 in. Her knees were in the seat and she was on top of me.
5 I had dreadlocks at the time, medium length like to my
6 shoulders. And it was enough for her to grip and hold me
7 down. And she was punching me in my head.

8 Q And what did you do?

9 A I -- I put my hands up, but, like, I put my hands up,
10 and I couldn't do nothing because I still had my seat belt
11 on. And I sit real close to the steering wheel, and it's
12 like I couldn't move. I couldn't get out. And I reached
13 under the seat. I cocked my gun back, and I put it in
14 between us and I fired.

15 Q How many times did you fire?

16 A One time.

17 Q And when you fired where were her hands?

18 A On my head.

19 Q And what was she doing with her hands?

20 A She was beating me in my head.

21 Q And were you -- would you have been able to get out of
22 the car at that point?

23 A No. I still had my seat belt on.

24 Q And you say her knees were in the seat. What seat
25 were her knees in?

Brittany Shaunta Pearson
Direct examination by Mr. Quinn

1 A In the passenger seat.

2 Q So did she ever get out of the car?

3 A Yes.

4 Q And then what happened after she got out of the car?

5 A She got immediately back in the car.

6 Q Do you have any idea what may have turned into a
7 physical altercation?

8 A I don't know. We ain't never had no physical. I
9 mean, our arguments would get heated, but we never put our
10 hands on each other ever.

11 Q And did you think you had any other choice in this?

12 A No. I don't.

13 Q Now, after the shooting, what happened?

14 A I immediately got out of the car, and I was shaking so
15 bad I couldn't even unlock my phone. So I had to dial
16 9-1-1 from the outside part. And I was talking to them and
17 telling them what had happened and what I did.

18 Q And what -- do you remember what you said, what the
19 words were?

20 A "I shot my girlfriend."

21 Q And did you -- did they ask you questions like where
22 were you and who you were and things like that?

23 A Yes.

24 Q And did you try to answer their questions correctly?

25 A Yes.

Brittany Shaunta Pearson
Direct examination by Mr. Quinn

1 Q And did help finally arrive?

2 A Yes.

3 Q And did you have to do anything to help guide them
4 over?

5 A Yes.

6 Q And what did you do?

7 A I used the light on my cell phone, because they
8 actually passed the parking lot. I used the light in my
9 cell phone to show them where I was. And they came into
10 the area.

11 Q Did you leave the scene at any time?

12 A No.

13 Q And so were you standing there right next to the car
14 when the police arrived?

15 A Yes.

16 Q And when the police asked you questions did you answer
17 their questions?

18 A Yes.

19 Q Now, do you know if the 9-1-1 call -- do you know if
20 9-1-1 is recorded? Did they say that or not?

21 A I don't know.

22 Q Do you know if anyone else called 9-1-1?

23 A No, I don't know.

24 Q So the police arrived. And what happened from there?
25 well, first of all, let me back up. Where was the gun?

Brittany Shaunta Pearson
Direct examination by Mr. Quinn

1 A I threw it out. That was the first thing I did. I
2 threw it out of my hands when I opened the car door.

3 Q Did the gun have other bullets in it?

4 A Yes.

5 Q Do you know how many?

6 A I believe it was a seven shooter. I can't remember.

7 Q Did you pull the trigger more than once?

8 A No.

9 Q The gun, whose gun was it?

10 A It was mine.

11 Q As far as you know was the gun legal?

12 A Yes.

13 Q Do you hold any particular permits for a weapon?

14 A I had C.W.P. for over a year at this time.

15 Q And was your C.W.P. in effect at the time of the
16 shooting?

17 A Yes, sir.

18 Q Did Myah know if you had a gun?

19 A Yes.

20 Q And how would she have known that?

21 A I -- I made that apparent with anybody that I have
22 close to me, because I had more than one gun.

23 Q Did you have more than one gun in the car?

24 A No.

25 Q And so the police arrived. Did they find the gun

Brittany Shaunta Pearson
Direct examination by Mr. Quinn

1 immediately or how -- what happened with that?

2 A I don't know if they found it immediately or not, but
3 I remember telling them it's over there.

4 Q And did they ask you? Again, did they ask you
5 questions or place you under arrest, or what happened with
6 the police when they arrived?

7 A They took my phone out of my hand, and they put
8 handcuffs on me and put me in the car.

9 Q And so do the police still have your phone?

10 A Yes.

11 Q And would that phone indicate a call to 9-1-1 if one
12 was made?

13 A Yes.

14 Q Did you attend to or speak with Myah at any point?

15 A I probably did.

16 Q Do you remember what, if anything, was said or what
17 you did?

18 A No.

19 Q Did you move her body?

20 A I didn't touch her at all.

21 Q Did you look back in the car and see the position her
22 body was in?

23 A Yes.

24 MS. POULOS: Your Honor, we object to those
25 photographs subject to our prior objection.

Brittany Shaunta Pearson
Direct examination by Mr. Quinn

1 THE COURT: All right. They're admitted.

2 (Photographs marked Defendant's Exhibits Nos. 1
3 through 3.)

4 Q And, Brittany, I need you to look at what's been
5 marked Defendant's Exhibits 1, 2, and 3.

6 First of all, do you recognize the vehicle in
7 Defendant's Exhibits 2 and 3?

8 A Yes.

9 Q And whose car is that?

10 A That's my car.

11 Q Okay. And can you see Myah's body in those three
12 pictures?

13 A Yes.

14 Q And is -- can you tell the position of Myah's body?

15 A Yes.

16 Q And is that the position her body was in when you saw
17 her in the car?

18 A About the same, yes.

19 Q All right. Now, was her bottom in the passenger seat
20 when the shooting occurred? Her butt, was it sitting in
21 the passenger seat?

22 A No.

23 Q What was her position relevant -- relative to you when
24 the shooting occurred?

25 A She was laying across the whole front area of the car.

Brittany Shaunta Pearson
Direct examination by Mr. Quinn

- 1 Q Okay. And where were her knees?
- 2 A In the passenger seat.
- 3 Q So her behind would have been up pointed toward the
- 4 ceiling, pointed to the roof, is that right?
- 5 A Yes.
- 6 Q Okay. And is that what's reflected in these pictures?
- 7 A Yes.
- 8 Q How many times did you shoot?
- 9 A One time.
- 10 Q And do you know where the bullet struck her?
- 11 A No.
- 12 Q When you shot her, what position was she in?
- 13 A She was like over me, like leaned over on me.
- 14 Q Okay. So if you're in the driver's seat -- I'm going
- 15 to pretend I'm in the seat -- was she sitting next to you
- 16 like this like you would in a car?
- 17 A No.
- 18 Q When you shot her did you reach up above her to shoot?
- 19 A No.
- 20 Q Did you shoot downward at any point?
- 21 A No.
- 22 Q Was she -- you describe. You tell me when I'm in the
- 23 position that she was relative to you. So was she here?
- 24 A Yes.
- 25 Q And was she leaned over like this?

Brittany Shaunta Pearson
Direct examination by Mr. Quinn

1 A Yes.

2 (Pause for witness crying.)

3 Q Can you answer my questions? Take a deep breath. Did
4 you see the doctor testify this morning?

5 A Yes.

6 Q And did he describe that the bullet was from the front
7 to the back?

8 A Yes.

9 Q Okay. And did he describe the bullet's path was up or
10 down, or do you remember?

11 A He said down.

12 Q Okay. And if I was leaned over like this, what
13 direction would the bullet travel?

14 A Down.

15 Q When you shot Myah, is that generally the position she
16 was in?

17 A Yes.

18 Q And is that evidenced in these photographs?

19 A Yes.

20 Q The police placed you under arrest at the scene, isn't
21 that right? Put you in handcuffs.

22 A Yes, sir.

23 Q Put you in an officer's car, is that right?

24 A Yes.

25 Q And did they transport you to the police department?

Brittany Shaunta Pearson
Direct examination by Mr. Quinn

1 A Yes.

2 Q Did you meet with officers at the police department?

3 A Yes.

4 Q For how long?

5 A It seemed like forever. I was -- I don't -- I
6 remember when I got to the jail it was like 2:00 o'clock in
7 the morning.

8 Q And about what time was it when you got back from
9 Red's?

10 A It was like 8:30-ish.

11 Q And did you give a statement to the police?

12 A Yes.

13 Q Was it written or oral or both?

14 A Both.

15 Q And do you know if it was recorded? Do you happen to
16 know?

17 A Yeah. I have that in my discovery.

18 Q Then did you tell the police about the shooting?

19 A Yes.

20 Q When you shot Myah did you have any other choice?

21 A No. I don't think I did.

22 Q Were you afraid of anything?

23 A I ain't never been put in that position before. I
24 didn't -- I didn't know what was going to happen.

25 Q And did you fear you would be hurt or --

Brittany Shaunta Pearson
Direct examination by Mr. Quinn

1 A Yes.

2 Q Did you, in fact, have any mark on your head the next
3 day?

4 A Yes.

5 Q And where was that?

6 A I had like a knot on the side of my head.

7 Q And did the police take you for medical treatment that
8 night?

9 A No.

10 Q Did they do x-rays on your head or anything like that?

11 A No.

12 Q Did you ask them to, tell them that you were having
13 any difficulties?

14 A No.

15 Q Did you do anything to cause Myah to attack you?

16 A No.

17 Q Did the police ask you questions like if you had to do
18 it all over again would you do something different?

19 A Yeah. They asked me that.

20 Q And what did you tell them?

21 A I told them yeah.

22 Q And is that still true, that you would have done
23 something different if you could have?

24 A Yes.

25 Q Did you have that ability to do anything differently?

Brittany Shaunta Pearson
Cross-examination by Ms. Poulos

1 A No.

2 Q Did you kill Myah Cole in cold blood?

3 A No.

4 Q Was it your plan to kill her?

5 A No.

6 Q Had you planned it out?

7 A No.

8 Q Thought of it before?

9 A No.

10 Q The police officers described you as very hysterical
11 when they arrived. Does that seem like a fair description?

12 A Yes.

13 Q I don't have any other questions. Answer any
14 questions the prosecution might have.

15 CROSS-EXAMINATION

16 BY MS. POULOS

17 Q Ms. Pearson, when you were at the parking lot with
18 Myah, this was after the whole baby shower and Red's and
19 y'all got back there. You were trying to get Myah out of
20 the car, correct?

21 A Yes.

22 Q All right. And you physically pushed her to get her
23 out, did you not?

24 A Yes.

25 Q Okay. And you wrote that in your statement, right?

Brittany Shaunta Pearson
Cross-examination by Ms. Poulos

1 A Yes.

2 Q So you were the one who started the physical
3 altercation, correct?

4 A It wasn't physical like that.

5 Q Well, you made it physical when you pushed her out,
6 didn't you?

7 A Nah. She didn't -- it wasn't pushing her outta the
8 car. It didn't happen like that.

9 Q Well, how did you push her out? Pushing is pushing,
10 isn't it, Ms. Pearson?

11 A I handed her my keys, and it was more like a go type
12 of push. I don't -- I don't know any other way to describe
13 it.

14 Q So in your mind push just means you're going to wave
15 at the air. Push means physical contact, does it not?

16 A Yes.

17 Q Okay. So you agree with me about that.

18 Now, you were mad at her about everything that had been
19 going on that day. It started with the baby shower. You
20 were mad because she grabbed your -- your butt, correct?

21 A I never said I was mad.

22 Q You just said that you were angry that she did that,
23 you didn't like that.

24 A I didn't say I was angry. I said I was surprised.

25 Q Well, did you like it? You were -- oh, you were

Brittany Shaunta Pearson
Cross-examination by Ms. Poulos

1 surprised. You weren't mad because she did that?

2 A No.

3 Q No. You weren't mad. Well, what were you both
4 arguing about? You testified that you were both arguing
5 over public displays of affection, is that correct?

6 A Yes.

7 Q So you were mad, correct?

8 A I didn't say I was mad. I said I was surprised
9 because we never did that.

10 Q Well, when you argue, you're mad. Would you agree
11 with me about that?

12 A No. I don't.

13 Q You don't.

14 A No.

15 Q Well, how is it then?

16 A Because you can have a -- a disagreement with somebody
17 any time. You don't have to be mad about it.

18 Q So you weren't mad at her.

19 A No.

20 Q Okay. All right. Well, Ms. Pearson, are you right
21 handed? Are you right handed?

22 A Yes.

23 Q Okay. And you grabbed the gun. You -- you testified
24 that -- that Myah was on top of you.

25 A Yes.

Brittany Shaunta Pearson
Cross-examination by Ms. Poulos

1 Q So you were underneath, right?

2 A Yes.

3 Q She was on top of you. And, in fact, you just said
4 that she was over me, is that correct?

5 A Yes.

6 Q All right. You also said that her knees were in the
7 seat, is that right?

8 A Yes.

9 Q Okay. Was she still on top of you when you shot her?

10 A Yes.

11 Q When she was on top of you, you reached down through
12 a -- past a big old steering wheel to get your gun. Is
13 that what you did?

14 A My -- my hands probably wasn't up at this point.

15 Q Where were your hands?

16 A I don't know but it -- my gun wasn't like ten feet
17 away. It was right there. My car is small.

18 Q Right. But what I'm saying is you're saying the
19 victim was on top of you.

20 A Yes.

21 Q And you were able to somehow while she's on top of you
22 bang your head up against the window. You have the ability
23 to reach down and pick up a gun. Is that -- is that what
24 you're expecting the jury to believe?

25 A Yes.

Brittany Shaunta Pearson
Cross-examination by Ms. Poulos

1 Q All right. And while she's -- now, you racked it with
2 which hand?

3 A I racked it with my right hand.

4 Q With your right hand. So while Myah is on top of you
5 beating your head up against the window you reach down
6 under your seat with which hand?

7 A I believe it was my left hand.

8 Q Your left hand.

9 A Because I racked it with my right hand.

10 Q Okay. You reach down with your left hand. You move
11 it to your right hand. You rack it with your right hand.
12 And you have time to get the gun in between the two of you,
13 all while she's beating you in the head on top of you.
14 You're able to do that.

15 A I don't know if I switched hands or not, but I put it
16 in between us.

17 Q Okay. So while that's going on. But the victim is on
18 top of you during all of that.

19 A Yes.

20 Q During all of that. Okay. And in all of that time it
21 took you to do that you didn't think is that -- is this
22 something I really want to do?

23 A What time in between?

24 Q In all of the time where she was on top of you and you
25 had to at some point get your hand underneath the seat,

Brittany Shaunta Pearson
Cross-examination by Ms. Poulos

1 pull the gun up, rake it with your right hand --

2 A You --

3 Q -- and turn it, put it back in your right hand,
4 actually -- you had to put it in your left hand, correct?
5 You had to put the gun in your left hand to rack it with
6 your right hand, is that -- is that true?

7 A I grabbed it.

8 MR. QUINN: May I ask that she ask one question at a
9 time?

10 MS. POULOS: I'll -- I'll -- I'll continue, Your
11 Honor.

12 Q Ms. Pearson, did you have to pick up the gun -- with
13 your right hand or your left hand?

14 A I picked it up with my left hand.

15 Q Okay. Did you rack it with right hand?

16 A Yes.

17 Q Okay. And then to fire it you had to, again, move the
18 gun from your left hand to your right hand, is that
19 correct?

20 A I don't remember if I changed hands or not.

21 Q Well, you didn't fire it with your left hand. You
22 fired it with right hand, right?

23 A I don't remember.

24 Q You're right handed, Ms. Pearson?

25 A Yes.

Brittany Shaunta Pearson
Cross-examination by Ms. Poulos

1 Q Okay. Then you fired a gun with your right hand,
2 correct?

3 A I don't remember which hand I fired it with.

4 Q You don't remember. Oh, now, you don't remember.
5 okay.

6 MR. QUINN: And I object to the comments.

7 THE COURT: Don't comment.

8 MS. POULOS: Yes, Your Honor.

9 Q Have you ever fired a gun with your left hand, ma'am?

10 A Yes.

11 THE COURT: Excuse me just a minute.

12 No comments from the gallery either.

13 Q Ms. Pearson, did you attempt at any point to tell her
14 to back away, stop hitting me?

15 A I probably did, but I don't know.

16 Q She didn't have a weapon, did she?

17 A No.

18 Q She didn't have a knife.

19 A No.

20 Q She didn't have a gun.

21 A No.

22 Q She didn't have a razor.

23 A No.

24 Q She didn't have anything, right?

25 A No.

Brittany Shaunta Pearson
Cross-examination by Ms. Poulos

1 Q But you had the gun. And you didn't think to say get
2 off of me, did you?

3 A I probably did, but I don't remember.

4 Q You don't remember that either.

5 Okay. Do you recall giving a statement to Investigator
6 Burgess?

7 A Yeah. I gave a statement.

8 Q Okay. And when he questioned you after this happened,
9 do you recall him asking you did you ever tell her to stop
10 hitting, kicking or pushing you, and your response was no?
11 Do you recall that?

12 A If it -- if I signed it, yeah, I said that.

13 Q Okay. Do you recall him asking you did you tell her
14 to stop, you have a gun, and your response was no?
15 Correct?

16 A Yeah. I guess so.

17 Q All right. He asked you did she know that you had a
18 gun, and you said yes, correct?

19 A Yes.

20 Q Because you did -- she -- you said that she didn't --
21 she knew that you had a gun, correct? All right. And he
22 asked you did she have a gun, and your response was no, is
23 that correct?

24 A Yes.

25 Q He asked you did she have any type of weapon on her,

Brittany Shaunta Pearson
Cross-examination by Ms. Poulos

1 and you said no, correct?

2 A Correct.

3 Q All right. He continues to ask you when you pulled
4 out the gun did you make any attempt to tell her to back
5 away, to stop hitting me. And your response was no,
6 correct?

7 A I guess so, yeah.

8 Q All right. Then he goes on, and he says, "where was
9 she hitting you at physically?" And your response was,
10 "Head and neck. Her feet were in the passenger seat." Do
11 you recall telling him that?

12 A Yeah.

13 Q Okay. well, you just testified a minute ago that her
14 feet were out, correct?

15 A I said her knees were in the seat.

16 Q Knees were in the seat. well, you testified or you
17 gave a statement to Officer Burgess that her feet were in
18 the passenger seat.

19 A I've always said. I said in the statement her knees
20 were in the seat. She wouldn't have been able to stand up
21 in that car. It's too small.

22 Q Was the door opened or closed?

23 A It was open.

24 Q It was open. Okay. So he also asked you, "Do you
25 have any knots or injuries that you can point to?" And

Brittany Shaunta Pearson
Cross-examination by Ms. Poulos

1 your response was, "No. Only numb right now." Correct?

2 A I had handcuffs on the whole time. I couldn't feel or
3 anything.

4 Q Okay. All right. Well, he also took some photographs
5 of you, correct?

6 A Yes.

7 Q All right. Ms. Pearson, I'm going to show you State's
8 Exhibits 12, 13, 14, 15 and 16 and ask you to take a look
9 at those. And are -- is that you in the photographs?

10 A Yes.

11 Q Were those taken by Officer Burgess?

12 A Yes.

13 Q Was that done at the end of the questioning, towards
14 the end of the interview?

15 A Yes.

16 MS. POULOS: Your Honor, at this time we'd ask that
17 State's Exhibits 12 through 16 be admitted into evidence.

18 MR. QUINN: No objection.

19 (Photographs marked State's Exhibits Nos. 12 through
20 16.)

21 MS. POULOS: Permission to publish, Your Honor.

22 THE COURT: You may.

23 Q This is State's Exhibit 12. Where are the injuries on
24 your face, ma'am?

25 A I didn't say she was hitting me on my face. I said

Brittany Shaunta Pearson
Cross-examination by Ms. Poulos

1 she was hitting me in the side of my head.

2 Q No injuries on your face, correct?

3 A Correct.

4 Q State's Exhibit 13. This is a picture of your neck.

5 Point to the injuries on your -- on your neck, ma'am.

6 A My whole left side of my neck is red.

7 Q Really? That's red?

8 A You don't see what I see?

9 MR. QUINN: Okay. I object again and would ask that
10 the solicitor be reprimanded at this point for comments and
11 for making asides, humping at answers.

12 MS. POULOS: Your Honor, the question was is that red.

13 THE COURT: Overrule your objection.

14 MS. POULOS: Thank you.

15 Q State's Exhibit 14. Those are your hands,

16 Ms. Pearson, correct?

17 A Yes.

18 Q Point or tell the jury where your injuries are to your
19 hands.

20 A There's no injuries on my hands.

21 Q State's Exhibit 15. These are the palms of your
22 hands. Tell the jury where your injuries are to your palms
23 of your hands.

24 A No injuries to my palms.

25 Q All right. And State's Exhibit 16. These would be

Brittany Shaunta Pearson
Cross-examination by Ms. Poulos

1 your arms, correct?

2 A Yeah.

3 Q And can you point to your injuries on your arms?

4 A They're red as well.

5 Q So, basically, you didn't claim any injuries. You
6 didn't say you had any injuries to the officer, true?

7 A Yes.

8 Q You only said that you were numb.

9 A My hands were in cuffs. What am I supposed to feel?

10 Q Ms. Pearson, he asked you, "Do you have any knots,
11 injuries that you can point to?" And your response was no.

12 A I hadn't felt myself because I had my hands cuffed
13 together.

14 Q But -- but they were in front of you, correct?

15 A Yeah.

16 Q So you could see them, Ms. Pearson, right?

17 A Yeah.

18 Q So if they had been red, if they had been swollen, if
19 they had been bruised, you would have been able to see
20 that, correct?

21 A Yes.

22 Q And you're claiming that she hurt you so bad that you
23 had no other choice than to pull out your gun and shoot
24 her?

25 A Yes.

Brittany Shaunta Pearson
Cross-examination by Ms. Poulos

1 Q And this is how you came out looking? You were hurt
2 that bad, Ms. Pearson?

3 A I never said I was hurting that bad.

4 Q Well, I believe you've testified you had no other
5 choice.

6 A I didn't know where -- if I wasn't sitting right here,
7 she would be right here right now.

8 Q Ma'am, you said you didn't have any other choice. And
9 you could have just driven off, couldn't you?

10 A How?

11 Q All right.

12 A Driven off with her on top of me?

13 Q All right. You could have gotten out of the car.

14 A I sit too -- my knees and my steering wheel is right
15 here. I couldn't have just got outta the car with her
16 holding me down.

17 Q You couldn't --

18 A And I had my seat belt on.

19 Q Yes, ma'am. You couldn't have just -- the little
20 lever on the side of the door, you couldn't have just
21 opened it, opened the door?

22 A It wasn't that simple.

23 Q It wasn't that simple. But you could have, right?

24 A I don't think so.

25 Q You don't think so?

Brittany Shaunta Pearson
Cross-examination by Ms. Poulos

1 A Because if I could have done that, I would have did
2 it.

3 Q Well, there wasn't blocking -- anything blocking
4 your -- your driver's-side door, was there?

5 A My seat belt was on. I couldn't get outta the car.

6 Q Your seat belt was on. Well, you didn't tell police
7 your seat belt was on when you gave your statement, did
8 you?

9 A I don't know.

10 Q You didn't write it in your written statement, did
11 you? And I'll be glad -- actually, this is a copy of your
12 written statement. Can you point there where you told the
13 officers or where you put that down in your official
14 statement that your seat belt was on and you couldn't get
15 out?

16 A I know my seat belt was on because my plan was to drop
17 her off and pull off.

18 I handed her my keys because it's a push-button start.
19 I didn't have to have my keys in the ignition in order for
20 her to go and get her keys outta the house. I didn't do
21 anything. I was planning on dropping her off and leaving.
22 My seat belt was not off.

23 Q Your seat -- you're saying your seat belt was on and
24 you couldn't get out of the car. But you didn't put that
25 in your statement, did you?

Brittany Shaunta Pearson
Cross-examination by Ms. Poulos

1 A Apparently not.

2 Q Apparently not.

3 Okay. Were -- ma'am, were you -- I -- I guess my
4 question is you were in that much fear, you were hurting so
5 badly about to black out that you had no other choice but to
6 shoot her.

7 A I've never been put in that position before. I didn't
8 know what to do.

9 Q Okay. Ms. Pearson, you -- you're a former member of
10 the -- the Army, is that correct?

11 A The Navy.

12 Q The Navy. I'm sorry. So, obviously, you're -- you're
13 familiar with guns. And I think you testified that -- that
14 you had several, correct?

15 A Yes.

16 Q Okay. And in -- as part of your military training are
17 you trained to handle dangerous situations?

18 A Yes.

19 Q Okay. You -- you probably also trained on
20 self-defense, correct?

21 A Yes.

22 Q And in all of the training that you've had, the
23 background that you have, as tough as you are, military and
24 all, and you chose to resolve an altercation with Myah Cole
25 by pulling out your gun and killing her?

Brittany Shaunta Pearson
Cross-examination by Ms. Poulos

1 A well, in the military they teach you to do whatever is
2 possible to stop your assailant.

3 Q And you expect this jury to believe you had no other
4 choice, there was nothing you could have done.

5 A There was nothing else I could have done.

6 Q And she had no weapon on her.

7 A No.

8 Q All right. So, basically, your argument over P.D.A.
9 led to the death of Myah Cole, correct?

10 A Yes.

11 Q Okay. And you just couldn't take it any more, could
12 you?

13 A That's not true. It wouldn't have went any further
14 than it did if she wouldn't have been drinking, because it
15 wasn't no issue with me. We had squashed it before we even
16 left the baby shower.

17 Q Right. But you continued to argue at Red's, correct?

18 A Because she seen somebody do P.D.A. and she --

19 Q Yeah. But you didn't like that, did you?

20 A She didn't like that I didn't do P.D.A. with her.

21 Q Right. But that made you upset, right?

22 A I don't get what you're trying to say.

23 Q It made you mad --

24 A She was mad. I wasn't mad. I'm like why do we keep
25 going through the same thing, it shouldn't be an issue. I

Brittany Shaunta Pearson
Cross-examination by Ms. Poulos

1 wasn't mad about anything. Like, why we keep arguing about
2 a dead issue.

3 Q But you didn't want her touching you in public, did
4 you?

5 A It wasn't that serious.

6 Q It wasn't that serious?

7 A No.

8 Q But yet you argued at Red's and you argued all the way
9 back.

10 A We argued because --

11 Q Correct?

12 A -- she didn't like the way I responded to when she did
13 it. It ain't like I smacked her hand away when she did it.

14 Q But you didn't like her giving you public displays of
15 affection, is that fair to say?

16 A I wasn't comfortable with it.

17 Q Yeah. Okay. You didn't like it. And that's --
18 that's -- you made that pretty obvious, correct?

19 A Yeah. Me and her established that early on. She
20 didn't like it either.

21 Q All right. You testified that Myah had been drinking.
22 But you'd been drinking too that day, right?

23 A I had one beer.

24 Q I believe you told Investigator Burgess that it was
25 one or two, is that correct?

Brittany Shaunta Pearson
Cross-examination by Ms. Poulos

1 A I don't remember.

2 Q You don't remember that one. Okay. Well, both of you
3 had been drinking. Is that fair to say?

4 A No, because I was the driver. And so I know I had one
5 beer because I got -- I got one ticket to my name, and I'm
6 27. That's unheard of. I'm not fixing to jeopardize a
7 privilege.

8 Q Well, but you both had been drinking.

9 A I had one beer.

10 Q So you both had been drinking. You and Myah had both
11 been drinking, right?

12 A I had one drink.

13 Q And -- and also Investigator Burgess -- another
14 question. I don't believe I -- I mentioned this earlier,
15 but even if I did, but he asked you were you in that much
16 fear of hurting so badly that you had to shoot somebody.
17 And you said no.

18 A That's correct.

19 Q That's correct? So you weren't in that much fear.

20 A At that point I was not thinking about myself. I had
21 just took the life of my girlfriend. It was nothing else
22 past that at that moment.

23 Q All right. But he specifically asked you about how
24 much fear you were in, and your response was no, right?

25 A Yes.

Brittany Shaunta Pearson
Redirect examination by Mr. Quinn

1 Q Thank you. That's all I have.

2 REDIRECT EXAMINATION

3 BY MR. QUINN

4 Q Ms. Pearson, when you met with the officers was it
5 immediately after this had occurred?

6 A Yes.

7 Q And what was your emotional state?

8 A I don't know, like I was -- I couldn't -- I could
9 barely tell them what happened. Like, I couldn't talk at
10 all. I was numb.

11 Q At the scene you were described as very hysterical or
12 distraught. Were you continuing in that fashion throughout
13 this interview?

14 A No. Like, I had tired myself out from crying. I
15 cried the whole time in the car that I couldn't -- couldn't
16 pull out no more.

17 Q And they talked to you for a couple of hours right
18 after this incident, right?

19 A Yes.

20 Q Have they ever come back to you and talk to you again
21 since?

22 A No.

23 Q Did they come back the next day and ask if you had any
24 injuries?

25 A No.

Brittany Shaunta Pearson
Recross-examination by Ms. Poulos

1 Q Come and take any additional pictures?

2 A No.

3 Q I don't have any other questions. Thank you.

4 MS. POULOS: Just one.

5 RECROSS-EXAMINATION

6 BY MS. POULOS

7 Q Ms. Pearson, you were hysterical because you just
8 killed somebody, correct?

9 A I was hysterical because I took my girlfriend's life,
10 yes.

11 Q Thank you.

12 THE COURT: You may step down.

13 MR. QUINN: Defense rests.

14 THE COURT: Any reply?

15 MS. POULOS: One moment, Your Honor.

16 (Pause.)

17 MS. POULOS: Yes, Your Honor, just one in followup.
18 Todd Shields. We're recalling Todd Shields, Your Honor.

19 THE COURT: All right. Mr. Shields, you've previously
20 been placed under oath. You're still under oath for the
21 purpose of these questions.

22 THE WITNESS: Yes, sir.

23

24

25

Jeffrey Todd Shields
Direct examination by Ms. Poulos

1 JEFFREY TODD SHIELDS, having
2 been first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MS. POULOS

4 Q Mr. Shields, you testified earlier in -- in this case
5 that with regard to the positioning of -- of the body
6 when -- when you arrived on the scene, is that correct?

7 A Yes.

8 Q And if you could redirect for -- for the jury what you
9 said, how -- how was the victim positioned when you
10 arrived?

11 MR. QUINN: Objection. This is not proper reply.
12 She's just asked him to repeat his direct. That's not
13 proper reply.

14 MS. POULOS: I'm laying the basis for questions, Your
15 Honor.

16 THE COURT: Okay. Overrule your objection.

17 MS. POULOS: Thank you.

18 A What was the question again? I'm sorry.

19 Q What was the position of the body, in, when you
20 arrived?

21 A Yes. When we -- we arrived her buttocks was in the
22 passenger seat. She was slumped to the left face down in
23 the driver's seat, if you will.

24 Q And I'm going to show you what's been admitted into
25 evidence as Defendant's Exhibits 1, 2 and 3 and ask if you

Jeffrey Todd Shields
Direct examination by Ms. Poulos

1 would review those photographs.

2 A Sure.

3 Q And ask you. How did the victim's body get in that
4 position?

5 A What I do know is I went to the driver's side of the
6 car with the advanced airway bag. My partner went around
7 to this side, the passenger side, of the car with the
8 cardiac monitor.

9 We have to position her on her back due to the car
10 being real small so we could check her, as I stated
11 earlier. I had to get her shoulders, up under her
12 shoulders, rotate her back, around on her back. My partner
13 got her legs, and we placed her in a supine position, which
14 is on her back, the best we could to -- to further our
15 care, to check her.

16 Q And the way that the body is reflected in those
17 photographs was -- was that just prior to you transporting
18 the body, or at what point in time would -- would -- would
19 the positioning of the body be accurate?

20 A Yes. This -- this is her face. Looking here is
21 facing actually back to the back seat of the car. And this
22 is right before we removed her from the car onto our
23 stretcher because we -- we loaded her up and placed her in
24 a body bag on the passenger side of the car.

25 Q Thank you. That's all I have.

Jeffrey Todd Shields
Cross-examination by Mr. Quinn

1 CROSS-EXAMINATION

2 BY MR. QUINN

3 Q Don't go anywhere.

4 A Okay.

5 Q Step down here for moment, please.

6 A Yes, sir, yes, sir.

7 (Whereupon, the witness left the stand.)

8 Q Put your bottom in that chair. Put your face in the
9 chair to the left of you.

10 (Whereupon, the witness complied.)

11 Q Okay. How did Myah manage to do it if you can't do
12 it?

13 A I don't know that there was a rail here to the left.

14 Q Keep your butt in that chair and move that chair any
15 place you want, and put your head in that chair.

16 A Okay.

17 Q Uh-uh, uh-uh. Get your butt down. Remember your
18 butt's in that seat. That's your testimony.

19 A Yes, sir.

20 Q Okay.

21 A This is the best I can do here.

22 Q And where was the blood?

23 A I did not see any blood.

24 Q So your testimony is that you came over. She was
25 seated as you are now, butt in the seat, straight up and

Jeffrey Todd Shields
Cross-examination by Mr. Quinn

1 down, with a bullet chest -- a bullet wound to her chest,
2 is that right?

3 A Yes, sir.

4 Q Exited her back, right?

5 A I didn't see an exit wound, no, sir.

6 Q If there was an exit wound, don't you agree it would
7 have been in her back if the bullet was to the front?

8 A It should have been.

9 Q Should have been.

10 A Yes. It should have been.

11 Q Because a bullet usually at that speed goes in a
12 straight line, isn't that right?

13 A Yes, sir, yes, sir.

14 Q Okay. And therefore if you're seated like that,
15 there'd be a bullet hole in that seat, wouldn't there?

16 A I would think so. Now, I did not look for it, sir.

17 Q Okay. So your testimony is you come over, you find
18 this woman. She's not slumped over. She's sitting
19 straight up.

20 A Uh-huh.

21 Q Y'all lay her down.

22 A Yes, sir.

23 Q In the seats?

24 A Yes.

25 Q why? why would you take her out of the vehicle and

Jeffrey Todd Shields
Cross-examination by Mr. Quinn

1 lay her on the ground where you could do compression?

2 A No. We check her in the car. We laid her supine,
3 open her airway to see if we have any -- if she's even
4 alive to even move the body no more than we have to.

5 Q You laid her on her back.

6 A Yes.

7 Q Because you don't want to move the body any more than
8 you have to.

9 A Yes, sir.

10 Q But you moved her out of sitting to laying, even
11 though you found no signs of life.

12 A No signs of life after we checked her and got her on
13 her back, yes.

14 Q And then you turn over her onto her side?

15 A No.

16 Q The manner in which she's laying in these pictures.

17 A No, sir. We didn't place her like that. That's just
18 prior to us removing her from the car.

19 Q And I'm not trying to be difficult.

20 A Yes, sir.

21 Q Myah had passed at that point, is that right?

22 A Yes.

23 Q She doesn't have the ability to move herself about in
24 this car.

25 A Yes.

Jeffrey Todd Shields
Redirect examination by Ms. Poulos

1 Q But somehow her body gets turned over as evidenced in
2 these pictures, Defense Exhibits 1, 2 and 3, onto her side
3 and turned over, but you didn't do that.

4 A No, sir.

5 Q And you have no idea --

6 A I mean, we didn't place her like that, no, sir.

7 Q Any idea who did?

8 A No, sir.

9 Q The police came and moved the body?

10 A I don't know who did, sir. I know we didn't.

11 Q And that's your testimony.

12 A Yes, sir.

13 MR. QUINN: I don't have any other questions.

14 MS. POULOS: Just one.

15 (Whereupon, the witness returned to the stand.)

16 REDIRECT EXAMINATION

17 BY MS. POULOS

18 Q This photograph -- photograph would be Defendant's
19 Exhibit 1.

20 Are -- is there any evidence that you -- in that
21 picture that you had already finished with her? And,
22 specifically, I'm referring you to -- it's a little small in
23 that picture -- but the leads. Can you see that?

24 A I -- I can't see them here.

25 Q Okay. would you have already finished hooking her up

Jeffrey Todd Shields
Recross-examination by Mr. Quinn

1 to a monitor at that point, the time -- at the time that
2 those were -- photographs were taken?

3 A Yeah. This is the way she looked when we were called
4 back into the scene to transport her.

5 Q Okay.

6 A This is what we found because we -- we placed the
7 stretcher right there and just pulled her out.

8 Q Okay. All right.

9 A So I don't know how she got in this -- this position
10 here.

11 RECROSS-EXAMINATION

12 BY MR. QUINN

13 Q And you didn't take any of those pictures. That's
14 correct, isn't it?

15 A No, sir, no, sir. Did not.

16 Q You don't know how many pictures were taken, or by
17 whom.

18 A No, sir.

19 Q Is that right?

20 A No, sir.

21 Q Thank you.

22 MS. POULOS: That's all I have.

23 THE COURT: Okay. You may step down.

24 MS. POULOS: That's all the reply we have.

25 THE COURT: All right. Ladies and gentlemen, that is

1 all of the testimony or evidence to be offered in the trial
2 of the case. What remains to be done are the lawyers'
3 final summations, after which I'll instruct you on the law.
4 Then you'll begin with deliberations.

5 I've got some legal matters I need to address with the
6 lawyers first. Once I do that, depending on how long it
7 takes, we'll bring you back to continue, or perhaps come
8 back tomorrow. So I'll make that determination during the
9 break. So please go to your jury room, but don't discuss
10 the case as of yet.

11 (The following takes place outside the presence of the
12 jury.)

13 THE COURT: Motions or other matters to address?

14 MR. QUINN: I'd like to renew my motion for a directed
15 verdict.

16 THE COURT: All right. That motion is denied for the
17 same reason, based upon the same ground.

18 MR. QUINN: And I would like to address the issue
19 again of whether the Court is intending to submit voluntary
20 manslaughter. We would oppose the submission of voluntary
21 manslaughter.

22 THE COURT: Okay. Well, we'll -- we'll break for a
23 few minutes and have a charge conference.

24 Any objection to -- if the jury is -- I mean,
25 summations and argument, I'm guessing, will take at least

1 until 4:30 -- and instruction. I prefer for the jury not
2 to go out that late.

3 Is there any objection to concluding the trial in the
4 morning?

5 MS. POULOS: No objection, Your Honor.

6 MR. QUINN: No objection.

7 THE COURT: All right. Bring the jury back, please.

8 (The following takes place in the presence of the
9 jury.)

10 THE COURT: Ladies and gentlemen, as I told you, all
11 of the evidence is in. The final summations and the
12 instruction on the law and deliberations are what's left to
13 be done.

14 As I told you on Monday, I prefer not to have you stay
15 up here in the evening if it can be avoided. And more
16 often than not, it can.

17 The final summations and the instruction are likely to
18 take probably an hour or more. And of course we don't have
19 any idea how long your deliberations will take.

20 So to avoid you having to be up here tonight, we will
21 conclude in the morning beginning at 9:30. So you're going
22 to be excused for the balance of today.

23 Be certain that you continue to follow the
24 instruction. That is no discussions about the case with
25 anybody in any fashion; no research; no investigation; no

1 exposure to any type of media coverage.

2 otherwise, do have a good evening. Please report to
3 your jury room at 9:30 in the morning, 9:30 in the morning.
4 Have a good afternoon.

5 (The following takes place outside the presence of the
6 jury.)

7 THE COURT: Let's take a break and have a charge
8 conference in chambers, please.

9 We will be at ease for 15 minutes.

10 (Whereupon, a recess was taken. No further
11 proceedings in the courtroom.)

12 END OF PROCEEDINGS MAY 24, 2016

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1 (Proceedings May 25, 2016)

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: All right. Any matters we need to address
5 before the jury is brought in?

6 MS. POULOS: None from the state, Your Honor.

7 MR. QUINN: Your Honor, yes, just one if I might. And
8 I believe I had mentioned this on the record before, but
9 just to be sure I'm covered on the record.

10 Your Honor has indicated to us in his charge
11 conference that he is going to submit to the jury voluntary
12 manslaughter as a possible finding.

13 I do object to that. I don't believe that the
14 evidence is in the record sufficient to warrant that
15 charge, particularly that there is no evidence that the
16 defendant would have been -- would have been under an
17 uncontrollable impulse to do violence.

18 So I understand Your Honor is going to charge it, but
19 I do object and wanted the record just to be clear. Thank
20 you. That's the only issue I have.

21 THE COURT: All right. Ms. Poulos, do you want to
22 heard?

23 MS. POULOS: No, sir, Your Honor. I think the record
24 speaks for itself. There's sufficient testimony and
25 evidence that would -- would indicate both a heat of

Closing arguments

1 passion and sufficient legal provocation to go forward.

2 THE COURT: All right. Any other matters to address?

3 MS. POULOS: No, sir.

4 MR. QUINN: No, sir.

5 THE COURT: All right. Bring the jury in, please.

6 (The following takes place in the presence of the
7 jury.)

8 THE COURT: Good morning, ladies and gentlemen.

9 As you know, when we recessed yesterday all of the
10 evidence had been received; and therefore what remains to
11 be done are the lawyers' final summations, after which I'll
12 instruct you on the law that's applicable. And then you
13 can begin with your deliberations in the case.

14 So please give the lawyers your attention now as they
15 give you their final summations.

16 Mr. Quinn.

17 MR. QUINN: May it please the Court.

18 Good morning, Mr. Foreman and ladies and gentlemen of
19 the jury.

20 Proof beyond a reasonable doubt. We talked about that
21 some in opening, and I want to start there. Because as I
22 mentioned in opening, proof is evidence. It is facts. It
23 is something that 12 of you can take in the jury room and
24 examine and look at, hold and touch, and reach your own
25 conclusions, not what somebody tells you you should think

Closing arguments

1 but what you can determine from the evidence. Because the
2 judge is going to tell you your verdict, that is your
3 decision, whatever that decision is, must be based on the
4 evidence that was presented to you. So we're going to talk
5 about the proof as we go through this case in my closing
6 argument.

7 There are two ways -- two ways that reasonable doubts
8 arise. One is from the evidence itself, and we're going
9 talk about that in depth, in fact.

10 The other is from what's missing, what wasn't
11 presented to you, because a reasonable doubt is usually
12 defined as a doubt which causes a person to hesitate to
13 act, something that makes you say wait, wait a minute,
14 doesn't make any sense to me, or why wasn't that question
15 answered, and is that answer available. And if it is, if
16 I'm being asked to decide whether Brittany Pearson should
17 spend the rest of her life in jail shouldn't I have all of
18 the information to make a decision.

19 When they bring me in off the street, decide I'm a
20 reasonable person, put me in a jury box, and then they say
21 make the most important decision of somebody else's life,
22 but we're not going give you all the information, we're not
23 really going to tell you everything you might need to know,
24 we're going to wink. And you might think I'm being
25 facetious or easy in my argument.

Closing arguments

1 Just start chronologically. What was the first thing
2 you learned about this case? You learned that there was a
3 baby shower. And I may say, still say, that wrong. It may
4 have been a wedding shower. I keep screwing that one up.
5 But there was a shower at which there were a dozen adults,
6 is the description that you heard.

7 How many people from the shower did you hear testify?
8 Marquita and Brittany. That's it. Where are the other ten
9 adults who were there that might be able to tell you we saw
10 Myah Cole grab Brittany Pearson's behind inappropriately
11 and say this is mine, because that may be an issue.

12 The state may get up and say that didn't happen. So
13 why wasn't those other ten adults presented to you, or some
14 of them at least, somebody who can say none of us saw it,
15 all of us saw it, all of us felt this way, there was a
16 fight, there was an argument, there was no problem at all?
17 They were there two hours. Do you remember that, that
18 testimony? How long at the shower? Two hours.

19 You get one witness, Marquita, from the state. That's
20 it. Where are the other witnesses? Might that have made a
21 difference to you? When the state's theory is that this
22 shooting is carried out by Brittany Pearson because she's
23 angry, she's mad, because one of the things you 12 probably
24 don't even know yet -- well, see, we find out things before
25 you do.

Closing arguments

1 This case has taken a hard right-hand turn. We
2 started out. This was a murder case. Remember me talking
3 in the opening about in the old days we called it a black
4 heart bent on mischief and all.

5 It's a voluntary manslaughter case now. The judge is
6 going to submit to you as a potential verdict voluntary
7 manslaughter, not just murder.

8 Now after the testimony is in suddenly Brittany
9 Pearson is having to defend now, not just did you plan to
10 do this, did you have malice aforethought, were you
11 planning on injuring Myah. Now we also have to defend that
12 it happened out of passion, that it happened in the last
13 second. And we'll talk about that as we go.

14 But y'all need to know -- and I probably should have
15 told you that before I started much into the facts -- that
16 you're going to have several decisions now. You're going
17 to have not only murder and this associated gun charge.

18 You're going to have voluntary manslaughter and an
19 associated gun charge; and you're going to have not guilty
20 either because you don't believe the state proved their
21 case, that they presented you enough evidence to find
22 Brittany guilty of anything, or that she's not guilty
23 because of self-defense. So you're going to have several
24 decisions to make. So it's not just a murder case any
25 more, that at some point it changed.

Closing arguments

1 So we have the baby shower. That's where the incident
2 occurs that starts this whole terrible series of events.
3 They leave together. They go and get a beer. They get
4 called to come out and shoot pool. They go out and shoot
5 pool at, I believe, it's Red's Grill. There's more
6 difficulty there between the two of them.

7 Marquita testifies, and Marquita likes Myah. She
8 admits that. She's known her for years and likes her,
9 cares for her.

10 She says they -- that she left upset. She being
11 Brittany. I'm sorry. Left upset. But it's hard to tell
12 if Myah is upset. It's just not sort of her personality.
13 She's always outgoing and friendly.

14 And then her boyfriend, Heath, gets up who I'm sure
15 had a long night last night, and says, no, Marquita's
16 wrong, they were both upset, they were both angry, they
17 were both distant, I think was his word, from each other,
18 and that they left. And Marquita was in the bathroom. She
19 never even saw them leave. She was in the restroom when
20 all of this happened. So maybe the two of them figured
21 that out.

22 But everybody agrees, including Brittany, that this
23 had been ongoing all day. Now, Brittany says I wasn't mad
24 about this, it was a disagreement, we've had arguments
25 before, you know, in the relationship, we've been living

Closing arguments

1 together for months. I forget eight, nine, ten months.
2 We've had disagreements. They've never turned physical.
3 There's never been any violence between us, never any
4 difficulties between us.

5 Any testimony to show that that's not true, that
6 Brittany Pearson who served in our Navy, honorably
7 discharged, one ticket in 27 years, no other difficulties
8 in her life, no troubles between she and Myah, suddenly
9 decides she's going to kill Myah with a gunshot? That
10 would have been what the murder attack would have been,
11 cold blooded, planned. Doesn't make a bit of sense. So
12 now they're going to try voluntary manslaughter.

13 The shooting occurs. No question about it. And that
14 is really all the state proved to you.

15 When we left for lunch yesterday you didn't know
16 anything more about the facts, I don't think, than you knew
17 when you started. What have they proven? They have proven
18 they found a gunshot cartridge in a car, but not the
19 bullet. We'll come back to it.

20 They proved that they had the gun. Well, mostly
21 because Brittany told them the gun's right there when they
22 got there.

23 And how did they get there? They drive by the scene,
24 and Brittany's waving her cell phone. This is a killer.
25 This is the person they want you to send to jail because

Closing arguments

1 she's cold blooded or even hot blooded, that she is so
2 upset that she's going to shoot Myah down.

3 who calls 9-1-1? where's the tape? where's the 9-1-1
4 operator? why don't they come and tell you what was said?

5 They put up two officers from the scene. Two. The
6 two of them can't agree on what she told them. They have
7 different stories, statements, even though supposedly
8 they're standing next to each other.

9 Do you have any idea how many police come to a murder
10 scene? Have you ever seen television, movies, read books
11 about it? God forbid. I hope not. Ever been to a murder
12 scene or ever been to the scene of the highway patrol
13 stopping somebody on the side of the road and there's two
14 or three cops?

15 where are all the police that were at the murder
16 scene? who are all of these cops who have sat here all
17 week behind the solicitor's table?

18 what is all of the evidence piled up over here that
19 didn't get put in so you can see it? where did it come
20 from?

21 where is their lead investigator, the person who ran
22 the case? where is the person who took the pictures?
23 There's an argument about what the position of the body
24 was. where is the person who took the pictures? Is it one
25 of the people sitting here? If so, why didn't they walk

Closing arguments

1 30 feet, put their hand on the Bible and swear to tell the
2 truth and testify?

3 where is the proof? why haven't they shown you 12 the
4 evidence? Because it doesn't help their case? Is that a
5 reasonable conclusion? Is that a conclusion a reasonable
6 person would make in a serious decision that if I hid
7 something from you or didn't tell you about it that it
8 wasn't favorable to me? You get to make that decision,
9 whether that's reasonable or not.

10 But the judge will tell you that reasonable doubt can
11 arise from evidence or from a lack of evidence. And that's
12 why I keep going back to where is all of the evidence that
13 they must have gathered.

14 Do Spartanburg County officers not wear body cams now?
15 where are the body-cam tapes? How many officers have
16 cameras in their car? Did any of the officers at the scene
17 have cameras? where's the tapes?

18 We're not in any hurry. You've seen the way court
19 runs. We take our time. There are no time limits. If we
20 had to try this case until next week, we could do that.
21 It's not as if the state only has two hours to put their
22 case up or they run out of time.

23 where is all those people from the scene? where is
24 all of the evidence from the scene? where is the 2-hour --
25 or more than two hours I believe testimony was --

Closing arguments

1 interrogation of Brittany Pearson? Who are the officers
2 that spoke to her for two hours immediately after this
3 happened?

4 Did she have a lawyer with her or not? You know she
5 gave a statement. She testified she gave a written
6 statement. The solicitor asked her about the written
7 statement, didn't you say this, didn't you. You don't have
8 it. It's not in evidence. The tape recordings of all of
9 this testimony, of all of the story that she gave, not in
10 evidence.

11 Is it reasonable to believe that if that written
12 statement says I, Brittany Pearson, shot and killed Myah
13 Cole because I was mad with her, I was angry with her, I'd
14 had enough, she deserved to die, anything that was helpful
15 to their case, don't you think it would be right here dead
16 in front of you, that they'd be waving it around the
17 courtroom?

18 If that tape of two hours with several officers --
19 and, again, could be one of these officers sitting here
20 questioning her, none would give it to you.

21 So either it's reasonable to believe it's favorable to
22 the defense or you should find her not guilty because
23 there's a hole in the case. And the judge is going to tell
24 you that's a reasonable doubt.

25 And we're not talking about minor things here. I'm

Closing arguments

1 not getting into silly things like, well, they didn't
2 fingerprint the cartridge. Brittany told them right up
3 front, stood there, that she had shot.

4 There was no question it was her gun. There really
5 wasn't any question the gun worked. But it was nice of the
6 woman to ride up from Columbia from SLED to tell us that
7 the gun worked and that it was within manufacturer's range
8 and that there were no problems with it.

9 Now, it might have been nice if she had gotten the
10 toxicologist to ride with her so we would know what the
11 toxicology results were from Myah's autopsy that the doctor
12 talked about he drew three vials of blood and they get sent
13 down to SLED for analysis. But now we only have to draw
14 two vials of blood, but back then it was three. No
15 forensic toxicologist. He could have ridden with her, I
16 guess.

17 What about the stippling, all of this thing about how
18 far away was the gun when it -- when the shot went off?
19 That's a distant wound, at ten inches, at ten inches it's
20 distant under the law.

21 We do some strange things under the law. And it can
22 be up to miles. Okay. But that's ten inches. But we can
23 check. There's some magical microscope, and I'm sorry --
24 the doctor said what type, and I don't remember -- that
25 will test clothing and tell you if there's stippling and

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1 how much. And apparently they couldn't fit that person in
2 the car from SLED either, because that person hasn't
3 testified.

4 So even know from the state's own witnesses that
5 testified from this stand there's additional evidence, but
6 we haven't given it to you. Don't worry about it. You
7 just go on back and make whatever decision we want you to
8 make.

9 Because the state's case is two things. Their case
10 was Brittany Pearson shot Myah Cole. Here's the gun. They
11 put the gun in evidence. Here's the shell casing. They
12 put the shell casing in evidence. Here's the officer who
13 arrested her. That's it. That's their case.

14 And if they don't like what Brittany says, doesn't fit
15 their theory, doesn't fit what they would like to have had,
16 and so because of that their theory is standing at this
17 podium going, oh, yeah, oh, yeah, oh, yeah. That's pretty
18 much it. Not, oh, yeah, well, we have an eye witness
19 because we canvassed the apartments.

20 Where the shooting happened is in a parking lot of an
21 apartment complex, what I think the testimony was, 180
22 units. This is Saturday night at 9:00 o'clock. Do you
23 think some people might have been up?

24 If there was this argument that raises to a killing,
25 cold blooded, hot blooded, whatever killing, don't you

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1 think somebody might have heard it and don't you think they
2 would have asked? Don't you think they would have said to
3 two of the 55 or however many police officers came, excuse
4 me, we see there are lights on in your house, we were
5 wondering if you heard anything outside or saw anything.
6 Do you think anybody might have answered? That would be
7 nice to know, wouldn't it?

8 It'd be nice to have that lead investigator stand up
9 and say, yeah, that's part of our protocol. Obviously, we
10 look for witnesses. I mean, that seems pretty obvious.
11 And, yeah, we were able to find witnesses or not find
12 witnesses or they heard argument or heard a gunshot or they
13 heard nothing. But wouldn't it be nice to know what the
14 answer was to (knock on wood by Mr. Quinn), nope, none of
15 your business, we're not telling you.

16 That's the state's attitude. You just take what we
17 give you. We're going to give you what we feel like, not
18 what you maybe need to make an intelligent decision.

19 So what do they do? The state's theory according to
20 the argument -- and of course I'm guessing some of what the
21 state's going to say. I don't get an opportunity to get
22 back up. Thankfully, you don't have to listen to me but
23 once.

24 They get to get up and argue, and they get to say
25 pretty much whatever they want. Okay. Every time they say

Closing arguments

1 something I hope each of you will think in your head the
2 defendant starts with the presumption of innocence. The
3 judge has told you that, and he will tell you that again.

4 That is the starting point for any decision that
5 Brittany Pearson as she sits there now, just as she was
6 when we started the trial, is innocent. Not sort of
7 innocent, not maybe innocent. Innocent.

8 She's not guilty of anything unless the state shows
9 you proof, evidence. The judge is going to use the word
10 proof, I believe, of her guilt beyond a reasonable doubt.
11 That's why we keep talking about evidence, because that's
12 what proof is. She gets the benefit of any doubt. If
13 you're not certain about something, she gets the benefit.
14 That's your starting.

15 And also as part of that, think, if Mr. Quinn could
16 get back up what would he say about that? wouldn't he say
17 prove it? People think what are the best two words in
18 court. They think the answer is not guilty. The answer is
19 prove it. Don't tell me you think it. Don't tell me you
20 guess it or suppose it or hope it. Prove it. And you show
21 me what you've done to attempt to prove it, let me make the
22 decision because that's what the judge is going to charge
23 me my obligation is.

24 So their case is -- this is their theory. And I have
25 to not get too upset about this. Their theory is that a

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1 Dodge Dart -- and I've only put one chair here. But from
2 one door to the other is four foot and ten inches. And I'm
3 bigger than each of these women. But let's assume they're
4 this wide, a couple of feet, maybe not even quite that,
5 20 inches, let's say. That's still a little over three
6 feet. So with four feet and ten inches they're within a
7 foot of each other, because it's panel to panel and nobody
8 means -- you figure it out if you don't -- if you're
9 worried about the inches.

10 Suffice it to say, it's a small space. It's a little
11 car. It's a Dodge Dart, okay, with a roof. And there are
12 pictures. And I'm not real good on this equipment that the
13 solicitor is nice enough to make available to us. So,
14 unfortunately, I'm probably just going to show you the
15 pictures as we go. I'll try it one time. Let's see how it
16 works.

17 Okay. You can see the sides of the car. This is
18 taken from the back seat, obviously, and how far above them
19 the roof is, which is not very far.

20 So they put up an expert witness, Dr. Wren, nice
21 elderly man.

22 They put up two other witnesses who testified that
23 Myah Cole is seated in the passenger seat with her feet on
24 the ground.

25 The first witness that testifies to that, the E.M.T.,

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1 started his testimony the first day by getting up and
2 saying, hey, I screwed up in my report, I said it was
3 L.L.R. and it's R.L.R. I don't know what that stands for.
4 That was the very first thing he had to do, was get up and
5 say, hey, I screwed up my report but now you should rely on
6 me. Okay. I'm the one that says that the pictures are
7 wrong, okay, about how she was laying. But we'll come back
8 to him. He's a delight.

9 Sitting in the passenger seat straight up. The doctor
10 testifies the bullet enters just below the clavicle on this
11 side, so high up on somebody's body, and that the shot if
12 you're sitting up has to be from above because it travels
13 through the body and comes out the back four inches lower.

14 So the person shooting would have had to take the gun,
15 raise it up above them and hope that they fit under the
16 roof of this car, that they could get it high enough
17 because it's got to be at least ten inches above, or eleven
18 if that sort of changed, and shoot down. And Myah has to
19 sit there the whole time, because that's the only way it
20 makes any sense if the bullet is coming from above and
21 she's sitting in the chair.

22 Then this magic bullet evaporates, passes through her
23 body, but there's no hole in the seat, no hole in the
24 floor, no path of the bullet. But that's the state's
25 theory.

Closing arguments

1 It's impossible. It's not just unreasonable. And
2 you're supposed to make any reasonable decision. It's
3 impossible. Bullets don't evaporate. They don't just go
4 away.

5 We know the shooting happened inside of the car
6 because they found the cartridge in the car. They didn't
7 find the bullet. There is no way on God's green earth that
8 this shooting happened with Myah Cole sitting like this in
9 the passenger seat. It is improper, well, and I'll -- I'm
10 sorry.

11 Brittany's testimony is that she was sitting in the
12 driver's seat, that the door was open, Myah got out. And
13 then what happened? I have no idea what.

14 She'd been drinking. There had been an argument.
15 Brittany says Myah was much more upset about it than she
16 was, that her attitude was, you know, we'll get through it,
17 whatever. I'm not going to try to put words in her mouth.
18 You heard her testimony. But that she comes back in and
19 grabs her by the locks, the dreadlocks, in her head and is
20 hitting her head against the window and punching her.

21 She draws the gun and shoots. And I tried to say with
22 the doctor if someone was leaning over and got shot
23 wouldn't the bullet come out their back somewhere lower.
24 wouldn't that be what happened?

25 And why wasn't the bullet found in the car? They did

Closing arguments

1 put up the woman who did the search warrant on the car,
2 Investigator Burgess I believe it is. Why wasn't the
3 bullet found in the car? Because the door was open and it
4 passed through Myah Cole's body and it kept going out the
5 door. That's why there's no mark in that car from where
6 the bullet went.

7 That is the only way the bullet could have exited the
8 vehicle. All of the windows were up. There is no other
9 mark in the car from the bullet. It had to go out the
10 passenger door.

11 The only testimony about how that would have happened
12 is Brittany Pearson. Did she tell the police that that
13 night? You don't know. But is there any evidence that
14 she's made this story up, that months later she's created
15 this fiction?

16 It fits with the only physical evidence the government
17 gives you, that she was attacked without provocation by
18 Myah Cole and that she reached down and shot the gun. It
19 is the only way the evidence fits.

20 If the state argues their theory, which has been
21 presented throughout the case, that she, Myah Cole, was
22 sitting like this in the chair, they're wrong, and the
23 verdict must be not guilty. They cannot get up and argue
24 physical impossibilities.

25 There are no cases that someone was convicted where

Closing arguments

1 you claim an alien came along and did something or that
2 bullets magically disappear or that they do not follow all
3 the laws that we know of nature and reality.

4 The bullet went somewhere. That's why the officers
5 looked for it. It went out the door that was open when
6 Myah Cole stepped out before she jumped back into the car
7 to attack Brittany Pearson.

8 This is a terrible case. I don't know if this case
9 would have been tried if Myah Cole had been a man, if the
10 argument had been it was a man attacking a woman in her own
11 car while she was seat-belted in, a small woman whose legs
12 were up under the steering wheel. Would the state have
13 gotten up and said, oh, you should have figured some way
14 out? You can't just do that. Shame on you.

15 The law doesn't say any of that, but I don't know if
16 we tried it in that case. And I hope that the issue about
17 their sexual identity does not arise in the jury room.
18 It's got nothing to do with this case. Whatever the
19 genders involved were, Brittany loved Myah.

20 They had lived together. They cared for each other.
21 They had disagreements like every other couple, and I bet
22 if you weren't in a courtroom where everything is limited
23 she'd have told you they had wonderful days like anybody
24 else. There was no evidence they were splitting up.
25 Neither of them was seeing anybody else.

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1 You heard the description of the officer who came to
2 the scene that Brittany was very hysterical. Brittany gets
3 out of the car and immediately calls 9-1-1, waves the
4 police down with her phone when they come, points at the
5 gun and tells them what she's done and cooperates with the
6 police throughout this interview.

7 Brittany then says, no, I shouldn't have done it. I
8 wish I had thought of something else. I wish there'd have
9 been any other thing I could have done. But she testified
10 to you there wasn't anything else.

11 Let's talk about the law of that. You're going to
12 get -- the judge gives you the law. He charges you. I
13 will certainly not attempt to misstate the law. But if you
14 think the judge says "A" and it sounds like I have said
15 "B", take the judge's word for it. Okay. He's a little
16 bit better at it than I am.

17 In self-defense there are several elements you have to
18 make. You have to be without fault in bringing on the
19 difficulty. That is you can't start a fight and then when
20 you get your tail cut say oh, oh, oh, oh, you know, he
21 shouldn't have hit me back. Okay. That's like killing
22 people and claiming you're an orphan. You don't get to do
23 that.

24 Okay. There is no evidence, no proof offered by the
25 state, to show that Brittany Pearson was in any way

Closing arguments

1 responsible for this attack by Myah Cole. None. So I
2 believe it is reasonable for the jury to find that she was
3 without difficulty -- I'm sorry -- without fault in
4 bringing on the difficulty.

5 Finally -- and I'm skipping around -- she had no other
6 means of avoiding danger. In other words, she couldn't get
7 up and walk away. That's not applicable in this case.

8 You may already know from -- there's lots of newspaper
9 cases about "Stand Your Ground" or that you have to retreat
10 or not. In this case there is no obligation on Ms. Pearson
11 to retreat because of that law. She's in her own vehicle.

12 If you are attacked where you have a right, a legal
13 right, to be -- your home, your vehicle, your work -- you
14 don't have to back up. It means just that. It means this
15 is my castle, my home, my area and I don't have to retreat.
16 I believe the judge will tell you that.

17 The government's got to argue it or else they lose,
18 and they don't want to lose. They have got to argue that
19 she didn't have to shoot her. They're going to give up
20 murder. I mean, they'll make noises about it because I
21 keep picking on them about it. But they're not really
22 going to argue for a murder conviction.

23 If they do, your verdict should take a minute. Walk
24 out, she's not guilty of murder. There's no evidence it's
25 cold blooded. They haven't even tried that.

Closing arguments

1 So now they're going to say, well, it was hot blooded.
2 You heard there was this argument at all day. Don't you
3 think Brittany was ticked? Don't you think Brittany was
4 mad? Don't you think Brittany was so mad she was ready to
5 kill somebody over this? Heck of an argument. No
6 evidence. Oh, don't worry. They won't worry about that.
7 This is argument. This isn't evidence.

8 But the judge is going to tell you that the law in
9 South Carolina says that if a defendant believes that she
10 was in imminent danger that she can act on appearances if a
11 reasonable person would also have acted in the same way.

12 In other words, if you 12 agree that it was reasonable
13 for her to believe as she has testified that if she had not
14 shot Myah in self-defense to protect herself that it would
15 have been Myah sitting here, that Myah would have hurt her
16 so badly to where it killed her, then Myah would have been
17 the one on trial.

18 If a reasonable person -- all of you -- is sitting in
19 their car and attacked -- strapped in, legs under the
20 wheel, door locked, can't get out -- do you think you have
21 to go, oh, well, you just keep hitting me, you just keep
22 your hands wrapped in my head, slamming my head, and I'll
23 figure out, excuse me, if I can lean over and undo my seat
24 belt and get out. She was asked something along the lines
25 of it. I'm not saying it's the exact words.

Closing arguments

1 weren't you taught self-defense in the military?

2 Yeah. The first thing we're taught is get the attacker
3 away from me, get it off of me.

4 She didn't have to go looking for this gun. Everybody
5 knew she carried a gun. Do you think a woman that lived
6 with her for months and months knew that she had a gun in
7 the car?

8 She reaches down. She agrees that she racks it, I
9 think, is the right word. I'm sorry. Not very literate
10 with guns. Shoots her one time. If this is a killing that
11 she's so mad she wants to kill her, why does she shoot one
12 time when there's six more bullets in the gun? Six more
13 bullets in the gun.

14 Why did she call the police? Why didn't she run away
15 if she was trying to kill her as opposed to getting her off
16 and then immediately changing to I got to save her?

17 Where is the cold blooded and where is the hot blood?
18 Don't get sucked into just because there was a disagreement
19 that this automatically makes it voluntary manslaughter.
20 That's what the state's going to want to argue.

21 They're going to say, well, she killed her so she's
22 got to be guilty of something. No. She's not guilty of
23 anything in South Carolina. In South Carolina this is a
24 self-defense case. That may be true in all of the states.
25 I'm only practicing, I only practice, in South Carolina.

Closing arguments

1 But here if you are attacked you have the right to defend
2 yourself.

3 The judge will tell you what the elements are. Listen
4 to him. They fit exactly on those elements.

5 So they gave up on murder. Now, they're going to try
6 to get you to buy voluntary manslaughter. Don't fall for
7 it. Ask in your minds where is the evidence, where is the
8 proof.

9 Don't give me guesses, prosecutor. Don't give me
10 suspicions or hints or our theory is or don't you believe,
11 because we believe you have the burden of proving it beyond
12 a reasonable doubt. That is to where I have no question.

13 You didn't give us the evidence; you didn't give us
14 what's available. You have a theory that you haven't been
15 able to prove. You might like the idea of she did it for
16 this reason or that, but there's no evidence of it.

17 And if I'm unsure, because Ms. Poulos may argue better
18 than I do. She may be really on her feet where I'm not.
19 Where does the judge tell me my starting point is and what
20 do I always apply to everything, which is that Brittany
21 Pearson gets the benefit of any doubt that you have?

22 Voluntary manslaughter is scary in this case. I tell
23 you. It was -- it was no way, it was unreasonable to
24 believe this would have been a murder conviction.

25 But now you have to consider manslaughter. Consider

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1 it. It does not fit these facts. The only testimony about
2 whether Brittany Pearson was so angry that she was unable
3 to control herself and stop herself is her, is that she
4 said, no, I was never that mad, I was protecting myself.

5 The verdict in this case should be not guilty. It's a
6 terrible case. whatever your verdict, Myah Cole's
7 situation, her family's situation is not going to change.
8 That Brittany is going to live with this for the rest of
9 her life and has to face the possibility of going to jail
10 for the rest of that life is not going to change.

11 Don't make this worse than it is. The correct verdict
12 in this case is not guilty. There are huge gaps in the
13 evidence that are available to the state that they did not
14 give you. And you have to have all of the information to
15 make a reasonably intelligent decision. Your verdict in
16 this case should be, the law requires that your verdict in
17 this case be, not guilty.

18 THE COURT: Ms. Poulos.

19 MS. POULOS: Thank you, Your Honor.

20 Ladies and gentlemen, good morning.

21 On behalf of the state I want to thank you all for
22 your -- your service, for being here today and this week as
23 we tried this case.

24 This was a tragedy, ladies and gentlemen. It's a
25 tragedy. And it was a tragedy that resulted from a bad

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1 decision. That was a bad decision to take Myah Cole's life
2 on that night. And all of this was over, was over P.D.A.,
3 public displays of affection. That was the conflict that
4 day. That's what she was mad about from the baby shower,
5 and it escalated and it kept brewing and brewing and
6 brewing, and it boiled over in that parking lot that night.
7 It was a bad decision.

8 What matters in this case at the end of this, you all
9 are able to separate the truth from a story that just
10 doesn't make sense.

11 Mr. Quinn stood up here for the last 35 minutes, and
12 he told you that the state wants to win and the state's all
13 about this and don't believe this and don't believe that.

14 And I get to get here and say the same thing about
15 what he said, but I think y'all are better than that, and I
16 think you've got common sense, and I think when you look at
17 and apply your common sense you'll realize exactly what
18 went on in this case despite the picture that they want to
19 present.

20 Obviously, we're going to have a different picture to
21 present. But the choice is, obviously, going to be yours.
22 And just remember if you use that little common sense, I
23 know y'all will do the right thing in the end, whatever
24 that may be.

25 This isn't about winning. This isn't about winning or

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1 losing for me. It's not a personal thing. It's just about
2 justice. And if justice is done by convicting her, that's
3 what it will be. And if it's not, that's y'all's choice.
4 It's not about winning.

5 On November 8th of 2014 Myah and Brittany went to the
6 baby shower. You heard about. You heard from Marquita
7 Smith. She testified. She was one of the last two people
8 who saw Myah alive, and she had been with both of them that
9 day. And she said that Brittany was mad. She was mad.
10 She was distant. She wasn't talking to anybody. She was
11 mad. Myah was talking. She was being friendly. She
12 wasn't.

13 Now, they want to downplay that, but she was mad.
14 That's how it all got started. And we hear now from what
15 she testified to that the reason she was mad was because
16 Myah grabbed her butt and she didn't like it. And she said
17 that they talked about public displays of affection before
18 and they agreed not to do it or whatever. But the point is
19 it bothered her. They can downplay it all they want, but
20 it bothered her, and that bother kept just escalating.

21 You know how you think of something and -- and -- and
22 you just -- it's in your mind, and then it becomes like
23 it's a downward spiral. And the more you hold on to that
24 it just gets bigger and bigger and bigger. And that's what
25 happened to Brittany Pearson that night. That's what she

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1 did. She kept holding on to it.

2 And a lot of people, you know, internalize anger in
3 other ways, but it -- she reached a -- a boiling point and
4 a breaking point, and it was a bad decision, a horrible
5 decision.

6 So after the baby shower, she had testified, and we
7 all know, they left. She went to their apartment, and they
8 argued about it some more. She said that, we argued about
9 it.

10 And they decide to go meet up with Marquita and Heath
11 at Red's. That was the second place they went out that
12 day. And at Red's or the second place that was with Red's
13 people Brittany still seemed angry. She seemed cold. You
14 heard Heath testify about that. Obviously, you heard
15 Marquita testify about that.

16 She's sitting by herself. And -- and the defendant
17 yesterday testified that Myah had a conversation with
18 Marquita about -- about P.D.A. And, obviously, didn't know
19 what that was about. But what that did was that just added
20 fuel to the fire. It just added fuel to the fire. It just
21 made it worse.

22 And she storms out. The witnesses testified that she
23 storms out. She didn't walk out. Said she walked out.
24 Obviously, she's going to say -- everything's going to be
25 downplayed by her because it suits her better to downplay

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1 it.

2 She storms out. Didn't even finish her game of pool
3 she was playing. That's how mad she was. Didn't tell
4 anybody good-bye. Myah stopped to greet everybody, told
5 them good-bye. She wasn't mad. She didn't.

6 So from there they left, argued all the way back to
7 the apartment. And then we get to the parking lot, and
8 that's where all of this sort of unfolds.

9 They continue to argue, and then they got physical.
10 She admits that it got physical. She admits they were both
11 fighting. She also admitted that she pushed Myah out of
12 the car to get her out of the car. She admitted that.

13 She's the one who got physical first, not Myah. But,
14 anyway, aside from that, from that point on all we have is
15 Brittany's version. We don't have Myah's version. Myah --
16 there's always two sides to every story, and we don't have
17 her version. Just remember that, because she's dead.
18 She's dead as a result of her actions. So we don't have
19 Myah's story. All we've got is her story.

20 We couldn't bring you evidence from a dead body. I'd
21 love to be able to bring Myah up here and testify to that,
22 to what happened, but I don't have her. But what I do have
23 is explanations and inconsistencies that they put up.

24 Brittany says they started fighting and Myah got the
25 best of her and she was fighting and beating her in the

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1 head and the neck, so she reaches under the seat, she pulls
2 out her gun and she shots -- she shot Myah.

3 All right. Now, let's think about that. She said on
4 numerous occasions that Brittany was on top of her and
5 while Brittany is on top of her she has the ability to
6 reach down under her seat, pull up a gun, rack it with her
7 right hand and somehow turn it, aim it, and get it in
8 between them, what she told you.

9 How does she do all of that when somebody is on top of
10 them fighting them, beating on whatever -- whatever she
11 says that the victim was doing? How is that even possible
12 in a small car? How do you do that? How? I mean -- I
13 mean, just think about how is that even physically
14 possible.

15 And she said I froze. Well, she obviously wasn't
16 frozen when she reached down to pick up the gun. She
17 wasn't frozen when she picked it back up. She wasn't
18 frozen when she racked it. She wasn't frozen when she
19 pointed it. She wasn't frozen when she pulled the trigger.
20 But she said she froze. Doesn't sound like a woman who's
21 frozen to me.

22 Now, let's talk about the position of the body because
23 there was an awful lot of confusion about that. Officer
24 Stacy. She was the first officer -- officer on the scene.
25 And she testified that -- and also the E.M.S. technician

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1 testified that -- the victim's bottom, her butt, was in the
2 seat when they saw her and she was slumped over in the
3 driver's seat on the left side.

4 All right. Officer Stacy went on to say that her feet
5 were in the floorboard.

6 Now, the defense admitted some photographs, which,
7 obviously, showed something a little different. They
8 showed the victim face down but her legs half way out of
9 the car.

10 E.M.S. got up here again yesterday and testified
11 that's not how he saw her. Either the E.M.S. is lying or
12 our officer is lying or some kind of conspiracy or she's
13 wrong, because they have nothing to gain by lying. Why
14 would they want to lie and say the position is something
15 different than what it was?

16 Are they in on a conspiracy? That's what they want
17 you to believe, or it's just some big mistake, or I -- I
18 don't know what they want you to believe.

19 But we had the first -- we had the very first officer
20 who saw her, and she testified the butt was in the seat
21 slumped over.

22 The E.M.S. guy didn't remember about her feet, but he
23 just said butt was in the seat slumped over. So take that
24 for what you will, but there was a lot going on that night.

25 E.M.S. workers had been checking on the body. They

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1 had to put leads, electrodes, on her and -- and he
2 testified, the E.M.S. guy testified yesterday, those
3 pictures were taken right before the body was being
4 transported to the morgue. So at that point everything
5 they had wanted to do with the body was already done and
6 they were getting ready to transport.

7 So we would argue that is not the position that Myah
8 was in when she shot her. But even if you believe that,
9 what does that say? well, if you look at those pictures
10 closely her knees in the picture are almost out of the car.

11 She testified yesterday that Myah's knees were in the
12 passenger seat. That is not even possible because those
13 pictures don't show that. So that's inconsistent. She
14 says her knees were in the passenger seat and she was on
15 top of me beating me, but those pictures was -- we would
16 believe that that's not how the body was.

17 But even if you do believe what they want you to
18 believe, the pictures don't help her. They actually hurt
19 her. The knees are almost out of the car. Myah Cole is
20 half way out of the car. So why do they think that's
21 important? It just -- all it does is just point out
22 another inconsistency with their story.

23 It couldn't have happened the way that they want you
24 to believe it happens. Mr. Quinn got up here and says the
25 solicitor's going to say it couldn't happen, that's not

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1 possible. It's not possible what she wants y'all to
2 believe. That's what's not possible.

3 Her theory isn't supported by forensic evidence,
4 ladies and gentlemen. Dr. Wren testified about the
5 position of the bullet, and I think that's very, very
6 important in this case.

7 Now, if you look at the position of the bullet and you
8 look at the path, it went in on the right side of her
9 clavicle, sort of upper area. Dr. Wren testified that it
10 went in a downward angle, which you can see from the arrow.
11 It went left to right -- left to right, front to back.

12 The trajectory of the bullet was at a downward angle,
13 and he testified when Mr. Quinn got him to come off the
14 stand and do his little demonstration with the chair. Dr.
15 Wren said that the bullet or the gun had to have been fired
16 from this way -- this way. That's the first thing that he
17 said, right?

18 To make that angle you had to be this way. You had to
19 have been -- the gun had to have been above to make the
20 shot. In fact, his words were the gun would have had to
21 have been fired from above and slightly to the left of the
22 body. Well, that makes sense. That makes perfect sense.

23 Now, the defense asked, well, if the victim had been
24 lying flat and he positioned like this, horizontal,
25 would -- could that shot have been made, and he said -- he

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1 said yeah.

2 But the problem is, is the defendant said that the
3 victim was on top of her, didn't say she was leaning like
4 this with her hands. She was on top of her, which means
5 physically, ladies and gentlemen, that is an awful
6 awkward -- whether you use your right hand or your left
7 hand, that's an awkward shot to make. And I -- I'm trying
8 to demonstrate the best I can without looking like an
9 idiot. But that is an awfully hard angle to make that
10 shot, and that's because it didn't happen the way that they
11 want you to believe that it happened.

12 Brittany had to be higher or over Myah when she shot
13 her. And we don't even know if she was in the car. She
14 said she was in the car at that point. We don't know.
15 Maybe she got out. Maybe she shot. Maybe she did actually
16 get out and say, oh, my, God, and do like this. Well, that
17 makes sense.

18 She could have made that shot like that if -- if she
19 had gotten out of the car, but we don't know. All we have
20 is her version of the story -- her version. That's what
21 she got -- she wants you all to believe.

22 What I would say if you believe her that she was on
23 top of her, that shot is impossible to make from
24 underneath. Just think about it. You're going to have the
25 diagram and you're going to have all of this stuff. You're

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1 even going to have the gun. And -- and that's -- that's a
2 big gun. You'll be able to -- you can act it out, whatever
3 you guys want to do, but it's physically impos -- it's
4 forensically impossible. It's an unnatural way to aim a
5 gun, this way, when you're down here and somebody's on top
6 of you. It's just an awkward way.

7 I don't care if it's right-handed or left-handed. She
8 got all looped up. I asked her if she -- if she's
9 right-handed. She said yeah. And I don't know how many
10 people are right-handed and -- and they're going to shoot
11 with their nondominant hand, but whatever you believe, I
12 don't care, left or right, it doesn't make sense. It's not
13 possible -- it's not possible.

14 But -- but during all of the time that it take -- took
15 her to go through each step, she was so frozen that she had
16 time to reach under the seat, pull up the gun, put it in
17 her left hand, rack it with her right hand, turn, aim it,
18 put it in between them and pull the trigger, that's how
19 frozen she was. And she didn't once stop to think is that
20 really what I want to do. No, she didn't. And she
21 admitted that to Investigator Burgess when I asked her
22 about it.

23 You heard from the SLED firearms analyst.

24 Get the lights. Thank you.

25 You heard from the firearms analyst, and did she come

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1 from Columbia. We appreciate her being here because I
2 think she gave some insight.

3 One of the things she gave insight was -- was the
4 trigger-pull weight, and she told you that it would take
5 four pounds of pressure to fire, for one finger to fire,
6 that gun.

7 She gave an example of about half a gallon of milk.
8 That's a lot for one finger. That's a lot of pressure.
9 That's a lot of effort. That's a heavy gun, again, to pick
10 that up. It's got a slide. There's a lock on it, but I
11 wouldn't imagine on a heavy gun that slide would be very
12 easy to pull back. But that's -- that's up to you to -- to
13 decide that.

14 But you gotta rack it. You gotta put some effort into
15 it to get it to fire. She put some thought into that, put
16 some effort into that. And the moment that she racked the
17 gun was the moment that she decided that she was going to
18 kill Myah Cole. That's it.

19 She admitted that she never once told Myah to back
20 away, step away, I got a gun, back up. I mean, back a lot
21 of people up. I don't know. She didn't do that. She
22 didn't do that. She said I had no other choice, she had no
23 other choice.

24 Well, Myah was unarmed. Myah didn't have a gun; she
25 didn't have a razor; she didn't have a knife; she didn't

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1 have any type of weapon. She didn't have a stick; she
2 didn't have a pen. She didn't have anything in her hands.
3 And this woman is saying she had no choice, no choice.
4 Think about that. Put in that common sense. This woman
5 had no choice. That's what she wants you to believe. But
6 does that make sense?

7 Myah already had the door open to get out, and I think
8 the defense -- we -- we both concede that the door was
9 open. windows were up, obviously, but the door was open.

10 They didn't find a bullet hole and they didn't find a
11 bullet. It -- it went somewhere. Who knows where. So we
12 know the door was open.

13 Now, the judge is going to tell that -- that,
14 obviously, instruct you that -- that, obviously, she has no
15 duty to retreat when she's in her own car. I understand
16 that. But she could have done a lot of things.

17 She says she had no choice, but I would say that she
18 did have some choices. Taking it back from -- from the
19 parking lot that night, she could have separated with her.
20 She'd been angry and mad all day. She could have said
21 peace-out, you know, I'm -- I'm going to do something else
22 for the rest of the day. But she hung out with her. They
23 continued to hang out all day, which to me it just -- or
24 common sense will tell you it just further escalated.
25 You're with somebody that you're mad. Leave. Don't --

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1 just don't hang out with them any more. Don't go shoot
2 pool. Just -- just leave. Go do your own thing.

3 She testified Myah had her own car. So it's not like
4 they had only one car and that was the one mode of
5 transportation. Just leave. Go do something else.

6 She could have told her, like I just said. She
7 could -- back off, I'm going to have a gun in your face,
8 back up. She didn't do that either. Right. One of the
9 simplest things she could have done was just gotten outta
10 the car.

11 Now, I asked her about that yesterday. There wasn't
12 anything blocking the car. We know that. We know the door
13 was in proper working order because she got out right after
14 that. I don't know. Maybe -- maybe she was already out.
15 We don't know that. We just know what she said. She could
16 have possibly already been out when she shot. But we don't
17 know.

18 And she said something about a seat belt, but she
19 never said anything like that before. That's the first we
20 hear about a seat belt, so whatever. She could have gotten
21 out of the car. Just -- just use your common sense. Just
22 open the door and get out. That's all you have to do to
23 kill somebody. Open the door and get out.

24 But she didn't do any of those things at all. She
25 chose to resolve a conflict instead by killing an unarmed

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1 woman who did not deserve to die. Myah Cole did not
2 deserve to die in that way at all, not at all.

3 This woman over here, yeah, she's -- she's a former
4 member of the Navy. All right. She's familiar with guns,
5 and, yeah, I did ask her about the training. Do you think
6 that's what they taught them in the military? You really
7 believe her life was in that much danger? She couldn't
8 even handle a silly argument over P.D.A. which turned
9 physical? It doesn't matter if it ended up being a
10 fistfight. If you believe her, it was a fistfight.

11 You don't -- you don't -- you just don't pull out a
12 gun and kill somebody. She had been the most -- she should
13 have had exercised all of those options, and then if she
14 had no choice, then you pull out the gun.

15 Don't let her fool you. She's a -- she's a smart --
16 she's obviously a smart, smart woman. She's in -- she was
17 in the military. And I don't have any military experience
18 or background, but it just seems to me that her -- her
19 story of I-had-no-choice, that just -- that just doesn't
20 add up. It's just very weak -- it's very weak.

21 Now, defense made a big deal about she didn't -- she
22 called 9-1-1 and she was hysterical and all of that
23 supposedly. We don't know if she called 9-1-1. But,
24 anyway, she -- what happened is, is she realized what she'd
25 done and she felt stupid and she knew it and regretted it.

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1 It was a bad decision, just like what I said. It was a bad
2 decision. Bad decisions have consequences. They have
3 consequences. You take somebody's life, there are
4 consequences. You pay for that.

5 This was absolutely not self-defense. That was not a
6 self-defense case. I'm going to tell you why. The first
7 element the judge is going to instruct you -- and Mr. Quinn
8 started hitting on some of these, and I'm -- I'm going to
9 hit them a little bit more, and then you all will
10 ultimately be able to decide.

11 But the first element will be that she was without
12 fault in bringing on the difficulty. Now, she admitted
13 that she physically pushed the victim outta the car first.
14 She was already angry with her. We know that. And it kept
15 brewing, and she got more and more aggravated. So she
16 brought the difficulty because she was mad. She's not
17 without fault. So I'd submit to you that that first
18 element cannot be established.

19 The second element was that she was in imminent danger
20 of losing her life or sustaining severe bodily injury.
21 Well, we know that Myah didn't have a weapon, and she
22 admitted that.

23 How could she be in not much fear? How? She's the
24 one that had the weapon. Myah didn't have any type of
25 weapon. And she admitted that she had no injuries. And we

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1 saw her, that, in the pictures. And I'll show them to you
2 again. And you take a good look at all of these when you
3 get back there.

4 She had no injuries. You see the proof in the
5 pictures. Not one scratch, not one knot, not one mark, not
6 one bruise, not one hand mark, not any, any redness on her
7 neck, any redness on her forehead. Nothing, absolutely
8 nothing.

9 If she was being hit that bad, that bad that she had
10 no other choice but to pull out a gun to save her life,
11 don't you think there'd be evidence of it? There's not one
12 single shred of it at all.

13 And she admitted to police after it happened that she
14 wasn't so much in -- she was not in so much fear, hurting
15 so badly, a black -- about to black out that she had to
16 shoot somebody. That was the exact question that was asked
17 by Officer Burgess, which I asked her about again, and she
18 acknowledged that, that she was not in that much fear. So
19 can't establish the second element of self-defense either.

20 All right. The third element is a reasonably prudent
21 person would have entertained the same belief. She
22 testified that she would have done things differently.

23 Obviously, a reasonable person would not have acted
24 the way that she did. So the third element cannot be
25 established.

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1 And, fourth, that she had no other probable means of
2 avoiding the danger. Now, again, the law is going to state
3 that if somebody's in their own car they have no duty to
4 retreat. Get that, and that's obviously you're going to
5 consider that, and the judge is going to instruct you about
6 that.

7 But back to common sense and back to no other probable
8 means nor other probable means to avoid this. There were.
9 She testified at one point that after she pushed Myah out,
10 to get out, of the car, Myah got out and then got back in.

11 Well, she couldn't -- she could have driven off. At
12 that point when Myah got out -- and maybe it was a -- a
13 split second. We don't know. She could have driven off.
14 She didn't drive off. She, again, could have just pointed
15 the gun at her, like, back off. She didn't do that. She
16 didn't get outta the car.

17 There are a lot of things she could have done. So
18 there were options, other options, available to her to keep
19 it from happening.

20 So we'd submit to you that the fourth element can't be
21 established either. The law states that we must -- we have
22 the burden of disproving self-defense and -- and we do.

23 But the law further states that our burden is carried
24 by disproving any one of those four elements beyond a
25 reasonable doubt.

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1 We don't have to disprove all four. We just have to
2 disprove one. And Judge Cole will instruct you about that.
3 And we -- we have not only disproved one element, but we've
4 pretty much disproved all four -- all four.

5 Brittany Pearson got up here yesterday and she told
6 you a story. It was a desperate story. It was a story
7 told to justify a killing that was not self-defense. It
8 just doesn't add up. Give her an A for effort, but it --
9 it just doesn't add up.

10 There are too many inconsistencies, the way she said
11 that Myah was on top of her, the path of the bullet. It's
12 not possible. The distance the gun had to be away from
13 her.

14 Dr. Wren said that there was no stippling on the body,
15 which basically means that he said that the gun would have
16 had to have been fired from at least ten inches away up to
17 a mile. At least ten inches away. Not her body was ten
18 inches away. The gun.

19 So if you put that much distance between where the gun
20 was and where Myah was that puts her out even further. We
21 don't believe she was on top of her at all. None of that
22 makes sense at all.

23 Her own admission to the police said that she was not
24 in that much fear. How could she turn around and claim
25 self-defense when she admitted to police right after this

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1 happened that she was not in that much fear, about to pass
2 out, black out, about to lose her life? How can she turn
3 around now and say it was self-defense when she said she
4 wasn't in that much fear? That's what she told police.
5 And now she's saying, oh, but it was self-defense. I said
6 that. That doesn't make any sense at all.

7 For you to believe her that means that she was being
8 fought, beaten so badly that she had no choice. And,
9 again, she acknowledges that she was not in that much fear,
10 hurting so badly, blacking out, that she had to shoot.

11 That's how she came out of the whole thing -- hair
12 still in place. I'm not even sure she was even attacked at
13 all. We don't believe she even was. But even if she was
14 it couldn't have been that bad or we'd've seen something
15 more than just that.

16 Not one bruise, not one scratch, not one mark, not one
17 cut, not -- nothing. Not one hand mark, not any redness,
18 nothing.

19 She told police she had no injuries. She said she was
20 numb. She was numb because she's killed somebody. She was
21 numb all right.

22 Myah. Myah lie dead in the parking lot, and she comes
23 out without a single scratch. How can that be
24 justifiable -- how -- how can that be justifiable?

25 She killed Myah cold because she was angry, not out of

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1 fear. Out of anger. That's why she killed her. If she
2 wants to admit it or not, she wants to tweak her story the
3 way that it best fits her own way, she killed her because
4 she was angry. It brewed; it stewed hours and hours, and
5 she couldn't take it any more. And she let her angers and
6 emotions get the best of her. And now, unfortunately,
7 she's got to face the consequences for those actions.

8 And, again, this isn't about winning a case or losing
9 a case. It's not about it at all. I don't care about
10 winning or losing. That's not at all. It's about -- it's
11 about justice. And, again, whatever you guys see that
12 justice -- the way that you see that justice needs to be
13 served is the way your verdict should reflect. It's about
14 justice. That's what it's about.

15 Now, she's on trial. She's been charged with murder
16 and possession a weapon during the commission of a violent
17 crime.

18 The judge is going to instruct you that you may also
19 consider the charge of voluntary manslaughter.

20 Now, murder is the intentional killing of another with
21 malice aforethought. Malice can happen in a split second.
22 It doesn't have to be drawn out. It can happen to be just
23 like that. It doesn't have to be planned. You know, he
24 made some comments about it had to be planned or
25 premeditated. It doesn't have to be planned. We don't

Jury charge

1 have to prove any of that stuff. That'd be for murder.

2 Now, for voluntary manslaughter, that is the killing
3 of another in a sudden heat of passion under reasonable
4 provocation without malice. Murder, manslaughter. You get
5 to decide if she should be found guilty of either one of
6 those or not guilty at all. It's up to y'all to decide.

7 Ladies and gentlemen, I -- I want to thank you again
8 on behalf of the state for your -- for your attention, for
9 your service. And when you go back to the jury
10 deliberation room just remember what I've constantly tried
11 to tell you throughout this morning, is to just use your
12 common sense, take a step back and let justice be done.
13 Thank you.

14 THE COURT: Does any juror need a break before we
15 continue with the instruction? Anyone?

16 (No response.)

17 THE COURT: Ladies and gentlemen, you of course have
18 heard and seen all of the evidence in the case.

19 Can I ask you to take that exhibit down, please?

20 (Pause.)

21 THE COURT: Ladies and gentlemen, you of course have
22 heard and see all of the evidence presented during the
23 trial. You've now heard the final summations of the
24 lawyers. So I'm going to instruct you now on the law
25 that's applicable in the case.

Jury charge

1 You'll then be asked to go back and begin with your
2 deliberations. And through that process you'll examine all
3 of the evidence. You'll determine the credibility of
4 witness testimony. You'll decide the facts. You'll apply
5 the law, and you will determine whether or not the
6 defendant has been proven guilty of a crime beyond a
7 reasonable doubt.

8 It is your exclusive duty to determine what the facts
9 are, and you do that through your own common sense
10 examination and evaluation of all of the testimony and
11 other evidence received during the course of this trial.

12 You 12 jurors alone will decide what weight, value and
13 effect to give to any particular witness' testimony or
14 other evidence in the case. Your sole objective is to
15 render a fair and impartial decision based upon the law and
16 the evidence received during the course of the trial.

17 Now, as you know, in this case the defendant has been
18 accused of the crimes of murder and possession of a firearm
19 during the commission of a violent crime, that violent
20 crime being the crime of murder.

21 The state alleges by way of these indictments that the
22 defendant did kill one Myah Cole wilfully and with malice
23 aforethought by shooting her with a firearm and that she
24 died as a proximate result of that gunshot wound.

25 They also allege that during the commission of that

Jury charge

1 violent crime -- the crime of murder -- she did visibly
2 display a firearm during its commission.

3 Now, as to those allegations and as to each of those
4 charges, as I've told you, the defendant has entered a plea
5 of not guilty.

6 A plea of not guilty has placed upon the state the
7 burden of proving the allegations that they have made, the
8 burden of proving each of the essential elements of the
9 crimes alleged against the defendant; and therefore the
10 burden is upon the state to establish the defendant's guilt
11 to the satisfaction of you 12 jurors beyond a reasonable
12 doubt before any verdict of guilty could be returned as to
13 any charge.

14 A person who is accused of a crime is never under any
15 obligation to prove that they're not guilty or to prove
16 that they are innocent because in many cases that might not
17 be possible. The burden is always upon the state because
18 they brought the charge against another to establish that
19 person's guilt beyond a reasonable doubt.

20 You are instructed that it is a vital, important and
21 cardinal rule of law that every defendant in a criminal
22 trial, no matter how serious the offense might be for which
23 that person stands charged, that person shall always be
24 presumed innocent of that charge.

25 That presumption of innocence remains with any

Jury charge

1 defendant, as it does with this defendant, from the time
2 that she is placed under arrest and throughout the course
3 of the criminal process and even throughout the course of
4 actual trial in the case.

5 As I told you, that presumption of innocence will be
6 with her even as you go back to begin with your
7 deliberations in this case, and that presumption of
8 innocence will be with her in that jury room, and it'll be
9 with her forever unless you 12 jurors determine that she's
10 no longer entitled to that presumption of innocence.

11 In other words, after you've carefully considered all
12 of the evidence in the case and examined all of the
13 testimony and other evidence, you determine what you
14 believe the facts to be, you'll apply the law as I will
15 have provided it to you, if you 12 jurors unanimously
16 determine that her guilt as to a crime has been proven
17 beyond a reasonable doubt, then she would no longer be
18 entitled to that presumption of innocence as it relates to
19 that charge. But it is only if, unless and until you are
20 satisfied of her guilt beyond a reasonable doubt that the
21 presumption of innocence would no longer be applicable.

22 Now, while the state does have the burden of proving
23 the defendant's guilt to your satisfaction beyond a
24 reasonable doubt, that doesn't mean that the state has to
25 prove her guilt beyond all doubt or beyond any possible

Jury charge

1 doubt. But it does require the state to prove her guilt to
2 your satisfaction beyond a reasonable doubt.

3 The term reasonable doubt should be given its plain
4 and ordinary meaning. A reasonable doubt is the kind of
5 doubt that would cause a reasonable person to hesitate to
6 act upon the information provided.

7 A defendant in a criminal trial is entitled to any
8 reasonable doubt that arises from the evidence or lack of
9 evidence in a case. And if upon any factual issue
10 essential to a finding of a verdict of guilty you have some
11 reasonable doubt as to how that issue should be resolved,
12 it would be your duty to resolve that reasonable doubt in
13 favor of the defendant.

14 And therefore if upon your consideration of the whole
15 case you have a reasonable doubt as to her guilt as it
16 relates to a particular charge, you must resolve that
17 reasonable doubt in her favor and return a verdict of not
18 guilty.

19 At the same time, after you've considered all of the
20 evidence in the case and you've applied the law, if you
21 have no reasonable doubt as to her guilt as it relates to a
22 particular charge, then it would your corresponding duty to
23 find her guilty of any crime you have determined was proven
24 to your satisfaction beyond a reasonable doubt.

25 Now, in applying the principle reasonable doubt, you

Jury charge

1 are also further instructed that where you are permitted to
2 consider any lesser included offenses -- and in this
3 particular case I will be instructing you on the law of
4 murder as is set forth in the indictment, as well as the
5 lesser included offense of voluntary manslaughter, which is
6 not actually set forth in the indictment. But it is a
7 lesser included offense, and the jury is permitted to
8 consider that lesser charge, whether or not it is actually
9 set forth in the indictment.

10 But in considering the evidence and in considering the
11 charges if you have a reasonable doubt as to whether the
12 defendant has been proven guilty of the greater charge or
13 of only the lesser charge, then it's your duty to find her
14 only guilty of the lesser charge. But you could not find
15 her guilty of the lesser charge unless you are convinced
16 beyond a reasonable doubt of her commission of that
17 particular crime.

18 Now, the same law that provides that you are the
19 judges of the facts also provides that I am the judge of
20 the law, and that simply means that nobody is going to tell
21 you how to arrive at your determination of fact in this
22 case.

23 You do that, as I've already stated, through the
24 exercise of good judgment and common sense conscientiously
25 applied to the testimony and evidence received during the

Jury charge

1 course of the trial.

2 You must however under your oath as a juror accept the
3 law as I provide it to you as being the law that you are to
4 apply in the case. In other words, you're not to concern
5 yourself with what you thought the law was before you came
6 to serve as a juror this week or what you think the law
7 ought to be.

8 Under your oath as a juror you must accept the law as
9 I provide it to you as being the law that you are to apply
10 in the case, and then you simply take that law and you
11 apply it to the facts as you 12 jurors determine those
12 facts to be in arriving at your decision.

13 Now, as I told you, you are the sole judges of the
14 facts in this case, and therefore you are also therefore
15 necessarily the sole judges of the credibility or the
16 believability of each witness that has testified during the
17 course of this trial.

18 In order to assess a witness' credibility there are
19 several factors which you should consider. I'm going to
20 list those factors for you.

21 You should consider the demeanor of the witness, that
22 is how the witness appeared to you when the witness
23 testified from that witness stand. Was the witness
24 straightforward in responding to questions, or was the
25 witness hesitant or evasive in responding to questions that

Jury charge

1 were asked of that particular witness.

2 Simply put, did the witness appear to you to be
3 telling the truth and to have knowledge of the facts to
4 which that witness has testified.

5 You should also consider whether or not the testimony
6 of a witness is consistent, or is it inconsistent, with
7 that witness' testimony provided here in court, or is it
8 consistent or inconsistent with other statements made by
9 that same witness, whether it be in court or outside of
10 court.

11 You should also consider whether or not the testimony
12 of a witness is consistent or inconsistent with other
13 testimony or other evidence received during the course of
14 the trial.

15 You should also consider how the witness came to know
16 the facts to which that witness has testified. In other
17 words, what was that particular witness' opportunity and
18 ability to perceive the existence of those facts to which
19 that witness has testified, and then what is their ability
20 to come into court and to accurately recollect to you as to
21 what they have previously perceived by the use of their
22 senses.

23 You should also consider whether or not a witness has
24 any bias or prejudice as it relates to a particular case or
25 whether the witness has any interest in the outcome of the

Jury charge

1 case if you determine that a witness does have such an
2 interest.

3 In other words, do you find a reason why a particular
4 witness would come into court and would testify one way or
5 another to help or hurt one side or the other and whether
6 or not a witness does have an interest in the outcome and
7 you determine that that interest would bear upon that
8 particular witness' credibility as a witness.

9 You should also consider whether or not the testimony
10 of a witness is strengthened, or is it weakened, by other
11 evidence or other testimony received during the course of
12 the trial.

13 Because you are the finders of the fact, because you
14 are the judges of the credibility of each witness that has
15 testified during this trial, you are permitted to believe
16 as much or as little of what a witness has testified to as
17 you deem is appropriate.

18 So you can believe everything that a witness testified
19 to. You can choose to believe none of it. You may believe
20 some portion of a witness' testimony and reject some other
21 portion of that same witness' testimony.

22 You could believe one witness as opposed to several,
23 or several as opposed to one. But whatever your good
24 judgment and common sense tells you is the most believable
25 and credible testimony is the testimony and evidence that

Jury charge

1 you should accept, and you should reject any testimony or
2 other evidence that you find not to be credible or
3 believable. Again, your sole objective is to render a fair
4 and impartial decision in this case based upon the law and
5 the evidence provided.

6 Now, as you know, the defendant is charged with murder
7 and possession of a firearm during the commission of a
8 violent crime. So I will instruct you on the law as it
9 relates to murder and also possession of a firearm during
10 the commission of a violent crime. And I will also
11 instruct you on the lesser included offense following that
12 of the crime of voluntary manslaughter.

13 Murder is a statutory offense. It is set forth in
14 Section 16-3-10 of the Code of Laws. The Code of Laws is
15 simply these blue volumes you see.

16 Every year the legislature meets in session from
17 January to June. They're meeting right now. I think this
18 is the -- or next week will be the last week.

19 During the course of those sessions they pass a number
20 of laws and rules and regulations that govern our conduct
21 in a variety of ways. Some of the statutes that they pass
22 are criminal penalty statutes, and it just means they make
23 certain behavior or they classify certain behavior as a
24 crime.

25 where a person has been found guilty of that crime or

Jury charge

1 has violated the statute that prohibits us engaging in some
2 particular type of conduct, then it subjects us to some
3 form of punishment or penalty for having violated that
4 statute or having committed that crime.

5 Please understand, however, that you are never to be
6 concerned with punishment or the consequence of your
7 decision.

8 Your sole obligation and duty in a trial is to
9 determine whether or not a person has been proven guilty of
10 the crime alleged against them. And you do that without
11 any consideration being given to what the consequence might
12 be of that finding.

13 You certainly are not to consider any punishment that
14 might be imposed as a result of your determination because
15 that's not something that the jury decides.

16 Section 16-3-10 of the Code of Laws of South Carolina
17 defines the crime of murder, and it defines the crime of
18 murder as the killing of any person with malice
19 aforethought, either expressed or implied -- the killing of
20 any person with malice aforethought, either expressed or
21 implied.

22 So in order for the defendant to be found guilty of
23 the crime of murder it would be necessary that the evidence
24 in this case has established to your satisfaction beyond a
25 reasonable doubt that the defendant did commit some act or

Jury charge

1 acts which proximately caused the death of the decedent --
2 in this case Myah Cole -- and that the killing was done
3 with malice aforethought. Malice aforethought is an
4 essential element of the crime of murder.

5 So what is malice aforethought? well, malice as an
6 essential element of the crime of murder is a state of mind
7 connoting an ill will and having the intent to do harm.
8 Intent means the state of a person's mind which directs his
9 or her actions towards a specific object or goal. And
10 intent would include those consequences which represent the
11 very purpose for which an act is done, as well as those
12 consequences which are known to be substantially certain to
13 result, whether actually intended or not.

14 Malice as an essential element of the crime of murder
15 is a technical term importing wickedness and excluding any
16 just cause or legal excuse. It is something which springs
17 from depravity, from a heart devoid of social duty and
18 fatally bent on mischief. It is a state of mind indicating
19 an extreme disregard for or an extreme indifference to
20 human life.

21 Malice may be likewise defined as a state of mind
22 which indicates a formed purpose and design to do a
23 wrongful act under circumstances that exclude any legal
24 right to do it.

25 The words expressed or implied malice do not mean

Jury charge

1 different kinds of malice but merely the manner in which
2 malice may be shown to have existed. That is to say either
3 by direct evidence or by circumstantial evidence from which
4 you might infer the existence of malice.

5 An inference is simply a deduction of fact which may
6 logically and reasonably be drawn from the proof of some
7 other fact or set of facts. In other words, you may infer
8 that a particular fact exists or that a particular event
9 occurred based upon proof of sufficient factual
10 circumstances which would reasonably warrant your arriving
11 at a particular conclusion.

12 Malice may be expressed as where there is an expressed
13 threat to kill, or where it is shown there was a lying in
14 wait, or where the circumstances show directly that the
15 intent to kill was entertained by the killer.

16 Malice may be inferred, though no expressed intent to
17 kill is proven by direct evidence, where the facts and
18 circumstances which have been proven by the evidence in
19 this case satisfy you beyond a reasonable doubt that malice
20 was present in the mind of the defendant at the time any
21 homicide took place.

22 The existence of malice may be inferred from acts,
23 declarations and conduct of the defendant, as well as from
24 any other circumstances shown to have existed at the time
25 of the event from which you might reasonably infer the

Jury charge

1 existence of malice, as often the state of a person's mind
2 can only be proven by circumstantial evidence.

3 Malice as an essential element of the crime of murder
4 does not necessarily require a specific or actual intent to
5 take human life, but rather it means a state of mind
6 accompanying conduct signifying a general malignant
7 recklessness and an extreme disregard for or an extreme
8 indifference to human life.

9 So even if the facts proven are sufficient to give
10 rise to an inference of malice, such an inference would
11 simply be an evidentiary fact to be taken into
12 consideration by you 12 jurors, along with all of the other
13 evidence received during the trial. And you may give such
14 inferences such weight, if any, that you determine they
15 should receive, if any.

16 The state is required to prove malice, just as it must
17 prove any other essential element of the crime alleged, and
18 it is for you 12 jurors to determine whether or not the
19 evidence in this case does establish the existence of
20 malice beyond a reasonable doubt.

21 It's also that there not only exist malice but that it
22 be malice aforethought. The law does not require that
23 malice must exist for any appreciable length of time before
24 the commission of any act proximately causing a fatal
25 result. Indeed, it may be conceived at the very moment

Jury charge

1 that the fatal act is committed.

2 It is sufficient in the law so long as the state does
3 prove beyond a reasonable doubt both the existence of
4 malice and the commission of some act or acts by the
5 defendant which proximately caused the fatal result.

6 You must determine whether or not malice aforethought
7 exists based upon your consideration of all of the evidence
8 introduced during the trial of the case and any reasonable
9 inferences that might be derived from that evidence.

10 While the state must prove beyond a reasonable doubt
11 that a killing did occur accompanied by the element of
12 malice aforethought in order to establish the crime of
13 murder, it is not necessary that the state prove any motive
14 for a killing. Motive is not an essential element of the
15 crime of murder which has to be established by the evidence
16 in the case, although there may be some evidence relating
17 to that fact introduced during the course of the trial.

18 You are further instructed that an indictment for
19 murder may also include the jury's consideration of the
20 lesser included offense of voluntary manslaughter even
21 though that lesser offense is not actually set forth or
22 alleged in the indictment itself.

23 A jury may find a defendant charged with a crime of
24 murder guilty of only the lesser included offense of
25 voluntary manslaughter where the evidence in the case

Jury charge

1 warrants you making such a finding.

2 In other words, a defendant who has been charged with
3 murder may be found only guilty of voluntary manslaughter
4 if the jury determines that the evidence in the case does
5 warrant that finding, whether or not that actual crime is
6 alleged in the indictment itself.

7 So with regard to the lesser offense of voluntary
8 manslaughter, you are instructed that manslaughter is
9 defined as an unlawful killing of a human being without the
10 element of malice aforethought, either expressed or
11 implied, being present.

12 While the element of malice must be proven in order
13 for the defendant to be found guilty of the crime of
14 murder, malice is not an essential element of the crime of
15 manslaughter.

16 Voluntary manslaughter is defined in the law as the
17 unlawful killing of another human being which is committed
18 in a sudden heat of passion provoked by a sufficient legal
19 provocation.

20 The law recognizes that sudden heat of passion arising
21 out of exasperation, rage, anger, sudden resentment, fear
22 or terror may for the time being effect the self-control of
23 an individual temporarily disturbing the ability to
24 properly reason creating an uncontrollable impulse to do
25 violence and therefore reduces the crime from that of

Jury charge

1 murder to that of voluntary manslaughter provided that
2 sudden heat of passion arose from a sufficient legal
3 provocation.

4 The law does not reduce from murder to voluntary
5 manslaughter every homicide that is committed in the heat
6 of passion. It must be the heat of passion justly excited
7 by a sufficient legal provocation. If a sufficient legal
8 provocation does not exist, then the killing, even
9 committed in the heat of passion, is murder and is not
10 voluntary manslaughter.

11 The sudden heat of passion aroused by a sufficient
12 legal provocation, which may reduce a homicide from that of
13 murder to that of voluntary manslaughter, need not be
14 something which dethrones reason entirely or shuts out
15 knowledge or volition, but it must be such heat of passion
16 provoked by such acts or circumstances as would naturally
17 disturb the ability of an ordinary reasonable and prudent
18 person to properly reason rendering in her mind incapable
19 of cool reflection and producing what, according to human
20 experience, may be described as an uncontrollable impulse
21 to do violence.

22 In determining whether an act resulting in the death
23 of another was impelled by heat of passion aroused by a
24 sufficient legal provocation or by malice aforethought, you
25 should consider all of the evidence received during the

Jury charge

1 trial of the case and all of the circumstances surrounding
2 the event in question.

3 Therefore, as I have stated, voluntary manslaughter is
4 defined as an unlawful homicide committed in the absence of
5 malice but in a sudden heat of passion aroused by a
6 sufficient legal provocation, a sufficient legal
7 provocation being the existence of facts or circumstances
8 as would naturally effect the ability of an ordinary
9 reasonable and prudent person to properly reason, rendering
10 in the mind of that person, making them incapable of cool
11 reflection and producing what according to human experience
12 may be described as an uncontrollable impulse to do
13 violence.

14 Now, in this case there has been presented evidence
15 relating to what is known in the law as the defense of
16 self-defense.

17 A defense to a criminal charge is a reason based upon
18 the law or the facts or both as to why the person charged
19 with that crime should not be found guilty.

20 As it relates to the defense of self-defense, the law
21 recognizes the right of every person to defend himself or
22 herself from death or serious bodily injury. And to do
23 this a person may use such force as is reasonably necessary
24 even to the point of taking human life under the
25 appropriate circumstances.

Jury charge

1 The right of self-defense is founded upon necessity,
2 either actual or reasonably apparent necessity, and it is a
3 complete defense to a charge of an unlawful homicide. The
4 existence of self-defense entitles a person charged with
5 the commission of an unlawful homicide to a verdict of not
6 guilty.

7 Although the defendant may raise the defense of
8 self-defense, the burden of proof is not on the defendant
9 to prove the existence of such a defense, because, as I
10 have previously instructed you, the burden is always upon
11 the state to prove the defendant's commission of the crime
12 alleged against her beyond a reasonable doubt. This burden
13 would therefore necessarily require that the state prove
14 beyond a reasonable doubt the absence of self-defense.

15 In your consideration of the existence or absence of
16 self-defense you are instructed that there are four basic
17 essential elements which must be present in order for
18 self-defense to be established in a particular case.

19 As to the first element, it must be shown that the
20 defendant was without fault in bringing on the immediate
21 difficulty which necessitated the use of deadly force
22 against another that resulted in that person's death.

23 The defendant cannot provoke, initiate or otherwise
24 through her own fault bring about a difficulty and then
25 claim the right of self-defense in the use of deadly force

Jury charge

1 in repelling an attack caused by that provocation.

2 As to the second element, you are instructed that
3 every person is entitled to defend himself or herself
4 against a threat of death or the infliction of reasonably
5 anticipated unlawful serious bodily harm and in doing so
6 may use such force as is reasonably necessary even to the
7 point of using deadly force. However, every assault or
8 attack will not justify the use of deadly force or extreme
9 force in order to defend against it.

10 where deadly force is employed in response to an
11 assault or an attack it must be shown that at the time the
12 deadly force was employed the defendant actually believed
13 that she was in imminent danger of losing her own life or
14 sustaining serious bodily injury, or it must be shown that
15 the defendant actually was in such imminent danger of
16 losing her life or sustaining serious bodily injury. And
17 the term imminent danger means an immediate or present
18 danger and not some past or future danger.

19 As to the third element, you are instructed that if
20 the defense is based upon a belief of imminent danger of
21 death or serious bodily harm, then it must be shown not
22 only that the defendant had such a belief but that the
23 defendant's belief was reasonable, in other words, that a
24 reasonably prudent person of ordinary firmness and courage
25 would have entertained the same belief if that person had

Jury charge

1 been acting under the same or similar circumstances as
2 established by the evidence in this particular case.

3 If the defendant was in actual imminent danger, then
4 it must be shown that the circumstances were such as would
5 warrant a person of ordinary reason and courage to act as
6 the defendant acted in order to save herself from death or
7 suffering serious bodily injury.

8 Deadly force in repelling an assault is only
9 appropriate when necessary and may only be exercised when
10 the defendant is in actual imminent danger of losing her
11 life or suffering serious bodily injury or when the
12 defendant entertains a reasonable belief that she is about
13 to suffer death or sustain serious bodily harm.

14 The law of self-defense also encompasses preventative
15 action taken to protect one's self from sustaining bodily
16 injury provided such action is taken in anticipation of
17 imminent danger of bodily injury and such action is in
18 response to an immediate threat.

19 The defendant has the right to act upon appearances.
20 The defendant may be mistaken. The law does not hold
21 someone to a refined assessment of the actual danger as
22 might be accomplished having adequate time to properly
23 reflect, provided however that she has acted as a person of
24 ordinary reason, firmness and courage would have acted or
25 should have acted in meeting the appearance of any danger.

Jury charge

1 In other words, she does not have to wait until her
2 aggressor gets the advantage, for one always has the right
3 to act under the law of self-preservation and to prevent
4 her assailant from getting the advantage over her.

5 There is, however, a requirement of objectivity. The
6 belief of the necessity to act must be reasonable. The
7 circumstances must be such that a reasonable and prudent
8 person of ordinary firmness and courage acting under the
9 same or similar circumstances would have entertained the
10 same belief and would have been warranted in acting as the
11 defendant did in this particular case.

12 As to the fourth element, it must be shown that the
13 defendant had no other means of avoiding the danger of
14 losing her life or sustaining the infliction of serious
15 bodily injury other than to act as she did under the
16 particular circumstances existing, because, as I have
17 stated, the use of deadly force in defending one's self
18 against an attack is founded upon necessity.

19 It is therefore a person's duty to avoid the use of
20 deadly force and the taking of human life where it is
21 possible to avoid such action if such action can be taken
22 without increasing the danger to one's self.

23 While a person ordinarily does have a duty to retreat
24 before employing the use of deadly force when on a public
25 street or otherwise in a public place, a person who is not

Jury charge

1 engaged in an unlawful activity and who is attacked in her
2 own home, her place of business, her occupied vehicle or
3 any other place she has a right to be has no duty to
4 retreat and has the right to stand her ground and meet
5 force with force, including deadly force, if she reasonably
6 believes it is necessary to prevent death or bodily -- or
7 great bodily injury to herself.

8 The defense of self-defense has not been established
9 if any one or more of the required elements is absent or
10 has been disproven.

11 As I have previously stated, where there has been
12 presented evidence relating to the defense of self-defense,
13 the state has the burden of disproving self-defense in
14 order to prove the defendant guilty of any unlawful
15 homicide the state claims the defendant has committed.

16 This does not, however, require that the state
17 disprove each of the four elements in order to disprove the
18 existence of self-defense. The state will have met its
19 burden of disproving the existence of self-defense if the
20 state disproves beyond a reasonable doubt any one of the
21 required elements necessary to the existence of
22 self-defense.

23 If you have a reasonable doubt as to the defendant's
24 guilt after considering all of the evidence received during
25 the course of this trial, including any evidence that

Jury charge

1 relates to the issue of self-defense, then it would be your
2 duty to resolve that reasonable doubt in favor of the
3 defendant and to find her not guilty.

4 If, on the other hand, you have no reasonable doubt as
5 to the defendant's guilt as it relates to a particular
6 unlawful homicide, after considering all of the evidence,
7 including any evidence relating to the issue of
8 self-defense, then it would be your duty to find the
9 defendant guilty of any unlawful homicide that has been
10 proven to your satisfaction beyond a reasonable doubt based
11 upon the instruction I've already provided you as it
12 relates to the crimes of murder and of voluntary
13 manslaughter.

14 Now, the defendant is also charged in a separate
15 indictment with unlawful possession of a firearm or the
16 unlawful display of a firearm during the commission of a
17 violent crime.

18 That's a statutory crime set forth in Section
19 16-23-490 of the Code of Laws of South Carolina. And that
20 section of law provides that it shall be unlawful to
21 possess a firearm or visibly display what appears to be a
22 firearm during the commission of a violent crime.

23 Section 16-1-60 of the Code of Laws of South Carolina
24 provides that the crimes of murder and the crime of
25 voluntary manslaughter is classified and are classified as

Jury charge

1 violent crimes under the law.

2 And therefore in order for the defendant to be found
3 guilty of a violation of this particular section of law it
4 would be necessary that the evidence in this case has
5 established to your satisfaction beyond a reasonable doubt
6 that the defendant did commit either the crime of murder or
7 the crime of voluntary manslaughter and that the defendant
8 did during the commission of that crime possess a firearm
9 or visibly display what appears to be a firearm during the
10 commission of that crime.

11 Now, Mr. Foreman and ladies and gentlemen of the jury,
12 I am not in any way concerned with what your decisions are,
13 but you are instructed that the verdicts have to be
14 unanimous. All 12 jurors have to be in agreement before
15 any verdict or any decision can be returned.

16 Mr. Foreman, as you know, you're going to be presiding
17 over jury deliberations in the jury room simply to ensure
18 that those deliberations are carried out in some orderly
19 fashion, but all jurors are expected to participate in
20 those deliberations, because, as I've stated, the verdict
21 of the jury is the consensus opinion of all 12, and all 12
22 of you must be in agreement before any decision can be
23 reached and returned to the Court.

24 Now, Mr. Foreman, in addition to the evidence which
25 has been introduced in the trial, you will have these two

Jury charge

1 indictments in the jury room with you. They will serve as
2 the verdict form.

3 As I've told you, they're not evidence. The evidence
4 will be in the jury room, but these aren't evidence, but
5 they will be in the jury room. But they solely will be
6 serving as the verdict forms in this case.

7 On the back of each indictment you'll see in the lower
8 left-hand corner the word verdict, and it's beneath that
9 word that you'll indicate the jury's unanimous decision,
10 whatever that decision may be.

11 You will also sign your name as the foreperson of the
12 jury. No other juror needs to sign the verdict form, just
13 the foreperson. You'll also place the appropriate date on
14 it.

15 Now, with regard to the indictment charging the
16 defendant with the crime of murder, you have three
17 potential verdict forms that relate to that indictment.

18 Those three potential verdict forms are guilty,
19 meaning guilty of the crime in the indictment, which is
20 murder. But it's just that one word guilty. That would
21 mean guilty of murder.

22 Second potential verdict form is guilty of voluntary
23 manslaughter. So you're going to be able to consider that
24 lesser included offense.

25 If you find the defendant has not been proven guilty

Jury charge

1 of the crime of murder but you find that the defendant has
2 been proven guilty of the crime of voluntary manslaughter,
3 then you would have to state that. So the verdict form
4 then would be guilty of voluntary manslaughter.

5 And if the state has failed to prove the defendant to
6 be guilty of either of those offenses, then the verdict
7 form would be not guilty.

8 So as to the indictment charging murder the three
9 potential verdict forms are guilty, guilty of voluntary
10 manslaughter, and not guilty. So whatever that decision
11 is, indicate it in the space provided. Sign your name as
12 the foreperson. Place the appropriate date. Today's the
13 25th.

14 The second indictment charging possession of a firearm
15 during the commission of a violent crime has two potential
16 verdict forms. Those are guilty and not guilty.

17 If the defendant is found not guilty on the indictment
18 alleging murder, then the defendant must be found not
19 guilty on the indictment alleging possession of a firearm
20 during the commission of a violent crime.

21 The defendant may only be found guilty of possession
22 of a firearm during the commission of a violent crime if
23 the jury finds her to be guilty beyond a reasonable doubt
24 of either the crime of murder or the crime of voluntary
25 manslaughter.

Jury charge

1 So, again, whatever that decision is, insert it in the
2 space provided. Sign your name, date it.

3 During your deliberations there may come a time where
4 you have a question about the facts or the evidence in the
5 case or testimony of a witness.

6 I am never permitted to answer questions that relate
7 to issues of fact. Those are issues that must be decided
8 by the jury in your consideration of all of the evidence
9 received and whatever weight you give to testimony or other
10 evidence.

11 Also, don't ask for any additional evidence to be
12 received, because the case is closed. And so even if there
13 is evidence out there that does exist and you think it
14 might help you in resolving the case, you can't have it
15 because it was not introduced during the course of the
16 trial. So don't inquire about could you have something
17 else that's out there. If you don't have it now, if it
18 wasn't introduced in the trial, you can't receive it when
19 you go back because the evidence has been closed.

20 If you have a question about a witness' testimony and
21 you think that that question can be answered by having
22 testimony replayed in whole or in part, we can bring you
23 back into the courtroom to have that witness' testimony
24 reheard.

25 I don't have transcripts of the witnesses' testimony,

Jury charge

1 but if you want to have testimony replayed the court
2 reporter will find that testimony and replay it for you.
3 And you can listen to all of the testimony of a witness or
4 just some portion of it if that's all you need. But if you
5 need to have testimony reheard you'll have to let me know
6 of that fact, and the court reporter can locate it and then
7 we will bring you back to have the testimony reheard.

8 If at any time you ever need a reinstruction on the
9 law that I have provided or you need an additional
10 explanation or a further clarification on the law that I
11 provided, I am permitted to answer those questions. So if
12 you need a reinstruction, different explanation or some
13 clarification, let me know of that fact, and I'll be happy
14 to provide that for your benefit.

15 Mr. Foreman, if at any time you have some matter that
16 needs to be addressed to me, if you'll write it on a piece
17 of paper, give it to the bailiff, he'll provide it to me
18 and I'll respond to that question or that issue.

19 Once you have arrived at your decisions and you've
20 indicated those on the verdict forms, knock on the door and
21 notify the bailiff that you've reached a decision, and then
22 we'll bring you back to the courtroom to receive it.

23 Do not give the bailiff the verdict form. You will
24 hold on to the verdict forms. I'll receive those from you
25 after the jury returns to the courtroom. So just let the

Jury charge

1 bailiff know you've reached your unanimous decision, but
2 maintain possession of the verdict form. You may give the
3 bailiff the exhibits which have been introduced during the
4 trial.

5 If during your deliberations we have any smokers on
6 the jury, you are permitted to smoke during deliberations,
7 but you can't smoke in the courthouse. You have to go
8 outside for that purpose. So if anybody wants to smoke,
9 let the bailiff know. They'll take those jurors outside to
10 accomplish that purpose.

11 You are instructed, however, that deliberations have
12 to stop. If any juror is absent from the jury room for any
13 authorized purpose deliberations have to stop. They may
14 only resume when all 12 jurors are present so that all 12
15 jurors may participate.

16 It's not quite lunchtime, but I don't know how long
17 your deliberations will take. And so what I will tell you
18 is that if you get to a point where you think it's
19 appropriate to order lunch, we will take your lunch orders
20 and have that provided to you in the jury room.

21 It usually takes about an hour, maybe a little bit
22 longer than that, but not too much longer, to take the
23 orders, place the order, have it prepared and brought to
24 the jury room for your benefit.

25 So I just give you that information so that when you

Jury charge

1 go back to begin deliberations, understanding it takes a
2 little over an hour to have all of that done if you --
3 whatever time you find it to be appropriate to order lunch,
4 you let the bailiff know, and we'll send the clerk back to
5 take your lunch orders.

6 Now, with the exception of Mr. Stoxen who is the
7 alternate juror, I'll ask the original 12 jurors -- all of
8 the original 12 are feeling healthy and good and not going
9 to get sick and can deliberate the case. In that event
10 Mr. Stoxen will be excused.

11 So right now I'll ask the 12 primary jurors if you'll
12 please go to your jury room, but do not begin deliberations
13 until I send you word to do so.

14 I have got some matters I'll need to address with the
15 lawyers. If I need to bring you back for any reason, I
16 will. If I don't need to bring you back for any reason,
17 then I'll simply send word by way of the bailiff that you
18 may begin deliberations. In that event he'll bring to the
19 jury room all of the evidence, as well as the verdict
20 forms, to the foreperson.

21 So please retire to your jury room, but do not begin
22 deliberations until I send you word to do so.

23 You can discuss lunch, if you want to order it now or
24 not. So you can discuss that.

25 (Whereupon, the jury retired to the jury room at

1 11:27 a.m.)

2 (whereupon, the alternate juror was excused.)

3 THE COURT: Are there any exceptions taken to the
4 instruction or requests for additions to the instruction by
5 the state?

6 MS. POULOS: No, sir, Your Honor.

7 THE COURT: By the defendant?

8 MR. QUINN: Your Honor, I have no exceptions or
9 additions to your instruction.

10 I did have a concern with submitting the indictments
11 as the verdict forms and would like to address that with
12 the Court.

13 THE COURT: All right. Address it.

14 MR. QUINN: I would ask the Court to reduce the
15 possible verdicts to a verdict form as opposed to
16 submitting the indictments.

17 My concern of course is that they are stamped
18 true-bill and that the jury may believe that someone before
19 their consideration has considered the evidence and
20 determined that these charges are somehow appropriate.

21 They -- they certainly don't know that the indictments
22 are returned by a grand jury and that it's a secret and
23 that there's no real challenge to evidence at that point.

24 So my concern is that the issue of it being
25 true-billed may mislead the jury into thinking there's been

1 a previous determination as to the appropriateness or
2 whether there was sufficient evidence to submit these cases
3 to the Court.

4 THE COURT: well, I don't think that's a concern,
5 because there obviously is sufficient evidence to submit
6 these cases to the Court or they wouldn't be sitting back
7 there in the jury room right now.

8 MR. QUINN: And while that's certainly true, they
9 don't know if that decision has been made by the Court or
10 solely by the prosecutor, and it invites their speculation
11 as to what it means by true-bill and who the foreman of the
12 grand jury was and what does the grand jury do and whether
13 that's already been -- that they've considered the evidence
14 and determined there's something there.

15 So my concern is that it invites speculation on the
16 part of the jury that the Court is not going to address and
17 may not even aware of what the speculation was. And so
18 there is no advantage that I'm aware of to submitting the
19 indictments themselves as opposed to a vanilla verdict form
20 saying that these are the potential verdicts.

21 THE COURT: well, I can tell you what the advantage
22 is. The advantage is, is that the more pieces of paper you
23 have the more likely it is for something to go missing.
24 And that has happened before when I have used verdict
25 forms. And I've used verdict forms on occasion where you

1 had multiple decisions for them to make that might be
2 confusing. But I do use a verdict form, but I always have
3 them insert -- insert the verdict on the indictment while I
4 give them the verdict form to consider. But I have had it
5 come up where, you know, there was a verdict form and then,
6 you know, the appellate court thought that the jury didn't
7 indicate their decision because the indictment was sent
8 down there with no verdict. So they didn't understand how
9 the defendant got convicted because there was no verdict.
10 That's because the verdict-form sheet was not provided and
11 had to be hunted. So, anyway, it just causes issues, I
12 think, when you have more sheets than that.

13 If you think -- if you want them to have a sheet to
14 show guidance as to the verdict forms, I'm happy to provide
15 that, but I'm going to have them write the verdict as to
16 their decision on the indictment itself in the space it
17 provides for the verdict.

18 MR. QUINN: And I have no problem with that after a
19 verdict is rendered to ask the foreman to sign the
20 appropriate indictments, whatever the verdict was. I've
21 got no problem with that, but my concern is just submitting
22 the indictment itself into the jury room.

23 THE COURT: Okay. Well, I note your -- your
24 objection, but I'm going to permit it.

25 All right. Let me ask y'all to verify the exhibits

1 please before they go back.

2 (Pause.)

3 THE COURT: Bring the jury back in.

4 (Whereupon, the jury returned to the courtroom at
5 11:36 a.m.)

6 THE COURT: I just have one additional thing I need to
7 address with you, and then you can complete your lunch
8 order.

9 As I say, you're going to have all of the evidence
10 back there. You're also going to have this Exhibit No. 5,
11 is the weapon. You'll see it's got a lock on it.

12 If you -- you're entitled to operate it if you want
13 to. If you want to operate it we'll have to take the lock
14 off. So I'm not going to take it off unless you tell me
15 that you want to work, you want to operate the gun.

16 You do you have to put the clip in it for it to
17 operate. But under no circumstances is there to be any
18 ammunition placed in the weapon. I mean, I know that's
19 common sense, but, trust me, you've still got the safety.
20 No ammunition in the weapon; no ammunition in the clip.

21 The bullets are in a bag by themselves. Just leave
22 them in the bag. But if you want to operate the weapon it
23 will require insertion of the clip, the empty clip, and it
24 will require this to be taken off.

25 I'm not going to send the key with you, but if you

Verdict

1 want to operate it, you're entitled to. But we'll have to
2 unlock it for you.

3 Okay. All right. Please retire to your jury room.
4 And once you complete your lunch orders you can begin with
5 your deliberations.

6 (Whereupon, the jury retired to deliberate at
7 11:40 a.m.)

8 THE COURT: All right. Anything else we need to
9 address?

10 MR. QUINN: Nothing from the defense.

11 MS. POULOS: Nothing from the state.

12 THE COURT: All right. We will be at ease while the
13 jury is deliberating.

14 (Whereupon, the exhibits were submitted to the jury at
15 11:40 a.m.)

16 (Whereupon, a recess was taken.)

17 THE COURT: I'm informed that the jury has reached a
18 decision.

19 Are we ready to receive it?

20 MS. POULOS: Yes, Your Honor.

21 MR. QUINN: I'd like my client unhandcuffed and
22 unchained.

23 THE COURT: Okay. Well, you can unhook her hands.
24 All right. Bring the jury in, please.

25 (Whereupon, the jury returned to the courtroom at

Verdict

1 1:35 p.m. to report its verdict.)

2 THE COURT: Mr. Foreman, have you and your fellow
3 jurors reached a unanimous decision?

4 THE FOREMAN: Yes, we have.

5 THE COURT: Have you reflected those decisions on the
6 indictment as requested?

7 THE FOREMAN: Yes.

8 THE COURT: Did you sign your name and date it?

9 THE FOREMAN: Yes, sir.

10 THE COURT: If you will, please hand those verdict
11 forms up by way of the bailiff.

12 You may publish the verdicts.

13 THE CLERK: In the State of South Carolina, in the
14 County of Spartanburg, Indictment No. 2015-GS-42-0796, the
15 State vs. Brittany Shaunta Pearson, indictment for murder,
16 we, the jury, find the defendant guilty of voluntary
17 manslaughter. Signed by Allen Dunn, foreperson, this date,
18 5/25/16.

19 And in Indictment 2015-GS-42-0795, the State of South
20 Carolina vs. Brittany Shaunta Pearson, indictment for
21 possession of a firearm or knife during the commission of
22 or attempt to commit a violent crime, we, the jury, find
23 the defendant guilty. Signed by the foreperson, Allen
24 Dunn, this date, May 5th -- May 25th of 2016.

25 Ladies and gentlemen of the jury, if this is your

Sentence

1 verdict and still your verdict, please raise your right
2 hand.

3 (Whereupon, all responded in the affirmative.)

4 THE CLERK: So say y'all.

5 THE COURT: Does the defendant wish to have the jury
6 polled?

7 MR. QUINN: No, Your Honor. Thank you.

8 THE COURT: All right. Any others matters we need to
9 address with the jury present?

10 MR. QUINN: Not that I'm aware of.

11 MS. POULOS: No, sir.

12 (Whereupon, the trial jury was excused.)

13 THE COURT: All right. Any other matters we need to
14 address prior to the imposition of sentence?

15 MS. POULOS: No, sir, Judge.

16 MR. QUINN: I'd make a motion for a new trial.

17 THE COURT: All right. That motion is denied.
18 You can replace the restraints if you'd like.

19 (Pause.)

20 THE COURT: All right. Anything further on behalf of
21 the state?

22 MS. POULOS: Your Honor, I believe we have a couple of
23 members of the victim's family who would like to be heard.

24 THE COURT: Okay.

25 MS. POULOS: Your Honor, this is Jay Cole. He's the

Sentence

1 victim's brother.

2 THE COURT: Okay.

3 JAY COLE: Good afternoon, Your Honor. I'd like to
4 thank you for allowing us to come before you and speak.

5 In terms of sentencing I wanted to -- we had a lot of
6 time to think about this, over a year. And Myah's life
7 was -- was special. She was an Army veteran. She had no
8 criminal past. She abhorred violence, and that's the
9 reason why she got out of the Army.

10 And her life was taken when she was 26 years old. And
11 I believe that Brittany, you know, at one point did have
12 some love for Myah.

13 I don't know what happened that day, but I do know
14 that we lost our sister forever. She's not coming back
15 even with a favorable verdict. And so because my sister
16 was, you know, 26 years old at the time, you know, I just
17 would like to recommend that, you know, a sentence of 26
18 years be applied, you know, for her -- for her punishment,
19 for Brittany's punishment, for taking my sister's life.

20 My sister can never have children. She had nieces, a
21 nephew on the way. My sister is pregnant now. She will
22 never get an opportunity to enjoy the things of life that
23 people who are alive get to enjoy with their family. So I
24 wanted to -- I just wanted to put that out there to you.

25 THE COURT: Okay. Thank you.

Sentence

1 JAY COLE: Thank you.

2 MS. POULOS: Your Honor, this Alex Lyles. She is the
3 victim's sister.

4 ALEX LYLES: Your Honor, I lived with my sister. I
5 lived with my sister and Brittany. I moved out shortly
6 after they moved to Park Place.

7 My sister was amazing, very laid back, very sweet,
8 gentle person.

9 She knew what she liked. She knew what she didn't.
10 She'll never get to live her dreams. She'll never get to
11 meet her first nephew, get to enjoy the things that we get
12 to enjoy.

13 I hope today that everyone saw this for what it was.
14 My sister, unfortunately, is not here to tell her side of
15 the story. I would like to see the max. That's what I
16 would like to see. And even to me that's not long enough
17 because my sister is gone forever.

18 THE COURT: All right. Thank you, ma'am.

19 MS. POULOS: That's all, Your Honor.

20 THE COURT: All right. Mr. Quinn, anything further?

21 MR. QUINN: Your Honor, certain facts of the case as
22 the jury -- obviously, the jury determined it was not cold
23 blooded.

24 We've also heard that Brittany is 27, has one prior
25 ticket. That's her only involvement with the law.

Sentence

1 She spent four years in the Navy and was honorably
2 discharged, was working as a supervisor at U.P.S. when this
3 incident occurred. She has been able to work while she's
4 been out on bond.

5 Obviously, her family -- family loved Myah, and so did
6 Brittany. They had lived together for several months, as
7 you heard, a number of months. Whatever happened happened
8 in the blink of an eye. It has ruined two lives.
9 Obviously, it's taken Myah's and will ruin Brittany's
10 between having to go to jail and now be marked for the rest
11 of her life.

12 I would ask Your Honor who, obviously, has lots of
13 experience considering other cases you've heard in this
14 Court, other cases that resulted in this verdict, to find
15 that the facts in this case and the defendant before you
16 justifies a sentence in the lower range of the large range
17 of two years to 30 years that you have. I'd ask that Your
18 Honor be as reasonable as you could in sentencing.

19 THE COURT: All right. Ms. Pearson, anything you'd
20 like to add?

21 THE DEFENDANT: No, sir.

22 THE COURT: On Indictment 2015-796, an indictment for
23 murder, wherein you have been found guilty by a jury of the
24 offense of voluntary manslaughter, the sentence of the
25 Court is you, Brittany Shaunta Pearson, be confined to the

Sentence

1 South Carolina Department of Corrections for a period of 24
2 years.

3 Indictment 2015-795, possession of a firearm during
4 the commission of a violent crime, wherein you have been
5 found guilty by a jury of that offense, the Sentence of the
6 Court is you be confined to the South Carolina Department
7 of Corrections for a period of five years.

8 You have a right to appeal the decision of the jury
9 and the sentence of the Court. You must file any notices
10 of your intent to appeal those decisions within ten days of
11 today's date. Do you understand?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right.

14 END OF REQUESTED TRANSCRIPT OF RECORD
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 23rd, 24th and 25th days of May 2016.

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

September 15, 2016

A handwritten signature in cursive script, appearing to read "Linda D. Moffitt", is written over a horizontal line.

Linda D. Moffitt
Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF)

Full name and prison number (if any) of Applicant.
Brittany Shaunta Pearson #368453)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2019 CP 42 01305

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make reference to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Leath Correctional Institution
2. Name and location of Court which imposed sentence Spartanburg County Court, Spartanburg, SC
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2015-65-42-795 Possession of firearm during commission of violent crime
 - (b) 2015-65-42-796 Voluntary Manslaughter
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 5/25/16 - 5 years
 - (b) 5/25/16 - 24 years

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?

8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Conviction Upheld
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. July 18, 2018 - submitted
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

2019 APR -5 PM 1:08
SOUTH CAROLINA COURT
SPRINGFIELD COUNTY

- (a) Improper counsel
 (b) Deficient representation and prejudice
 (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) _____
 (b) _____
 (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
 (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. N/A
 ii. _____
 iii. _____
 iv. _____

(b) the name and location of the Court in which each was filed:

- i. N/A
 ii. _____
 iii. _____
 iv. _____

(c) the disposition thereof:

- i. N/A
 ii. _____
 iii. _____

2019 APR -5 PM 1:09
 SPANISHBURG COUNTY
 CLERK OF COURT

iv. _____

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. N/A

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) N/A

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

2019 APR -5 PM 1:09
CLERK OF COURT
CHARLES COUNTY

- (a) your arraignment and plea? _____
- (b) your trial, if any? ✓
- (c) your sentencing? ✓
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? ✓
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

- i. Thomas Quinn 109 Laurens Rd. Building 4 Suite D. Greenville, SC 29607
- ii. Lara Cady P.O. Box 11589 Columbia, SC 29211
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. Trial, Sentencing
- ii. Appeal
- iii. _____

2019 APR -5 PM 1:09
 STATE OF SOUTH CAROLINA
 JUDICIAL BRANCH
 CLERK OF COURT

19. State clearly the relief you seek in filing this application:

Fair trial with all evidence against me presented to a jury of my peers resulting in overturned conviction

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

County of Greenwood)

VERIFICATION

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

SWORN to and subscribed before me this 2nd
day of May Apr. 1, 2019.

Mandy Holcomb (L.S.)
Notary Public

My Commission Expires: 2-13-2029

COURT
GREENWOOD COUNTY
2019 APR -5 PM 1:09

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

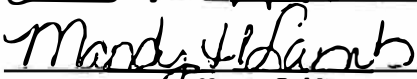
I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.



Applicant

SWORN or affirmed to and subscribed before me this
2nd day of April, 2019.



Notary Public

My Commission Expires: 2-13-2029

2019 APR -5 PM 1:09
SPARTANBURG COUNTY
COURT

- 11)
- a) Lawyer failed to ^{BSP} subpoena SLED toxicologist, his prejudice to do so resulted in jury not hearing relevant testimony as to how victim's alcohol level affected her reactions that night.
 - b) All evidence wasn't introduced to jury, only evidence relevant to prosecutions case was seen. My attorney failed to introduce critical evidence that showed bruising on me.
 - b) On several occasions officers and paramedics gave conflicting testimony of the position of the victim's body in the car. Pictures taken of the crime scene conflicts with their testimony.

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG) FOR THE SEVENTH JUDICIAL CIRCUIT

Brittany Shaunta Pearson,) Case No.: 2019-CP-42-01305
S.C.D.C. No. 368453,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

RETURN
(Counsel Appointed)

In response to the application for post-conviction relief filed by Brittany Shaunta Pearson (Applicant) on April 5, 2019, Respondent would show this Court:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Applicant was indicted at the February 2015 term of the Spartanburg County Grand Jury for murder (2015-GS-42-00796). Applicant was additionally indicted at the March 2015 term for possession of a firearm or knife during the commission of or attempt to commit a violent crime (2015-GS-42-00795). Thomas J. Quinn, Esq. represented Applicant. Timi Poulos, Russell D. Ghent, and Grady Baldwin Anthony, Esqs., of the Seventh Circuit Solicitor's Office, prosecuted the case. On May 23, 2016, Applicant proceeded to trial before the Honorable J. Derham Cole and a jury. The jury found Applicant guilty of the lesser-included offense of voluntary manslaughter, and as indicted for the weapon on May 25, 2016. Judge J. Derham Cole sentenced Applicant to imprisonment for concurrent terms of 24 years for voluntary manslaughter, and 5 years for the weapon.

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Applicant filed a timely notice of appeal and a direct appeal was perfected by Lara M.

Cady, Esq., who raised the following issue:

Did the court abuse its discretion by failing to grant Appellant immunity from prosecution pursuant to the Protection of Persons and Property Act where the decedent attacked Appellant in her occupied vehicle and Appellant shot the decedent in self-defense after the decedent continually beat Appellant in the head and repeatedly slammed her head into the car window?

By unpublished opinion decided July 18, 2018, the South Carolina Court of Appeals affirmed Applicant's convictions. State v. Pearson, Op. No. 2018-UP-324 (S.C. Ct. App. filed July 18, 2018). The Remittitur was issued on August 10, 2018.

II. STATEMENT OF THE FACTS

The Shower and the Shooting¹

On November 8, 2014, Applicant and the victim, Myah Cole, who were living together and in a relationship, attended a baby shower. (Tr. 26, ll. 2-8). Everything was going fine that day until Cole grabbed Applicant's butt in front of everyone at the shower, and then became upset with how Applicant reacted negatively. (Tr. 27, ll. 8-16). The incident sparked a verbal argument that continued throughout the day. (Tr. 28, ll. 12-16). The couple went out to a bar and grill later that evening and were with another couple who kissed in public. (Tr. 29, ll. 5-18). After Cole made a "smart comment," Applicant decided to leave and went out to the parking lot. (Tr. 29, ll. 18-25). Applicant tried to leave in her car, but Cole blocked the car and beat on the window until Applicant unlocked the door, let Cole in, and drove home to their apartment. (Tr. 30, ll. 2-16).

¹ The facts of what occurred on the night of the killing are based on Applicant's version of events as presented at the immunity hearing. The only other witness would have been Victim, who was dead.

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When the two reached the parking lot of the complex, Applicant told Cole to get out of the car, pushed her out, and handed her the keys to the apartment. (Tr. 30, ll. 17-20; Tr. 215-16). Cole initially exited the car, but then got back in and began striking Applicant. (Tr. 30, ll. 20-23). Applicant offered no testimony that she told Cole she could not re-enter the car, or that she otherwise prohibited re-entry of the vehicle they shared. Cole was in the passenger seat on her knees over Applicant, punching her in the head and beating her head into the window. (Tr. 32, ll. 4-24). Applicant tried to fend her off by putting her hands up and then reached under the seat for her gun, which she grabbed, cocked, and fired at Cole. (Tr. 33-34). Applicant then opened the car door, threw the gun out, and called 911. (Tr. 34, ll. 19-24). Cole died from a single gunshot wound that entered where her collarbone joined her breastplate and came out her lower back. (Tr. 161, ll. 10-20).

The Immunity Hearing

Applicant sought immunity under S.C. Code Ann. § 16-11-440. (Tr. 20, ll. 4-6). Applicant testified to the facts set forth above. Applicant explained that she had her seat belt on when Cole was punching her and felt like she could not go anywhere and “froze.” (Tr. 32-33; Tr. 46-47). However, when asked if she could have pushed the button to release the seat belt, she admitted she could have. Further, Applicant admitted she could have pulled the latch on the door and pushed it open, rolled into the parking lot, and yelled for help. (Tr. 37, ll. 5-20). Applicant also admitted Cole did not have a weapon. (Tr. 38, ll. 3-12). Applicant testified that after she reached under the seat for the gun, she put it between herself and Cole; then fired. (Tr. 38, ll. 3-12). Counsel showed Applicant photographs of her arms and hands taken after the incident and asked about any marks, abrasions, cuts, scratches, or bruises. Other than her arms being red, Applicant acknowledged the absence of any injuries on her arms or hands. (Tr. 40-

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41). Similarly, after being shown a photograph, she agreed there were no injuries on her face. (Tr. 42, ll. 12-17). Although she claimed at trial that she had a knot on the side of her head, she recalled telling the investigator after the incident that she did not have any injuries to which she could point. (Tr. 52, ll. 5-16). Applicant testified she cocked the gun as soon as she picked it up from under the car seat and did not tell Cole she had the gun before shooting her. (Tr. 42-43). Applicant testified she remembered telling an investigator she did not tell Cole to stop hitting her, did not tell her to stop because she had a gun, and did not make any attempt to tell her to back away. (Tr. 51, ll. 4-23). Applicant recalled telling the investigator that she was not in so much fear that she felt she had to shoot someone. (Tr. 53, ll. 4-7).

Following a lunch recess, the State called Investigator Christopher Banks of the Spartanburg Police Department to testify as to the voluntariness of Applicant's statement. Banks testified about his interview with Applicant, which was conducted at 12:45 a.m. on the night of the shooting, he testified she admitted pushing Cole to get her out of the car. (Tr. 60-62). Banks testified he could not see any injuries on Applicant at the time of the interview, nor did she point out any injuries to him. (Tr. 61, ll. 7-11). Following Banks' testimony, the trial court found the statement was freely and voluntarily made and denied Applicant's motion for immunity. (Tr. 63, ll. 6-10).

III. CURRENT APPLICATION

In her post-conviction relief application, Applicant alleges she is being held unlawfully for the following reasons:

1. Ineffective assistance of trial counsel, in that:
 - a. "Lawyer failed to subpoena SLED toxicologist, his prejudice to do so resulted in jury not hearing relevant testimony as to how victim's alcohol level affected her reactions that night."

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- b. "All evidence wasn't introduced to jury, only evidence relevant to prosecutions case was seen. My attorney failed to introduce critical evidence that showed bruising on me."
- c. "On several occasions officers and paramedics gave conflicting testimony of the position of the victim's body in the car. Pictures taken of the crime scene conflicts with their testimony."

Applicant requests relief as follows:

- "Fair trial with all evidence against me presented to a jury of my peers resulting in overturned conviction"

Attached to and incorporated herein are the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the current application for relief. Respondent reserves the right to amend this Return upon receipt of relevant information.

IV. RESPONSE TO ALLEGATION OF INEFFECTIVE ASSISTANCE OF COUNSEL

Ineffective Assistance of Trial Counsel, Generally

Applicant's allegations of ineffective assistance of counsel are without merit. In a civil action, Applicant bears the burden of proving the allegations in her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Applicant must prove that counsel's performance was deficient. Strickland, 466 U.S. at 686; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its

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"reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (citing Strickland, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. Cullen v. Pinholster, 563 U.S. 170, 196 (2011); Harrington v. Richter, 562 U.S. 86, 109-10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." Yarborough at 6; see also Murphy v. Davis, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable."). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury." United States v. Basham, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting Elmore v. Ozmint, 661 F.3d 783, 858 (4th Cir. 2011)).

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Failure to Call Witness: SLED Toxicologist

Where a PCR applicant alleges trial counsel was ineffective in failing to call a witness, the applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998). "The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice." Id. (quoting Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995)).

Respondent denies Applicant is entitled to relief upon the allegation that Counsel failed to present a South Carolina Law Enforcement Division toxicologist as a witness. First, Applicant is not entirely clear as to the content of the expected testimony of the witness; it seems to be the level of Cole's intoxication. Second, Cole's intoxication is not probative of Applicant's guilt when Applicant's story of self-defense is an attack that evidently left no identifiable injuries. Cole could have been heavily under the influence and the outcome would not change. Third, the record reflects that Counsel did not call any such witness in favor of attacking the competence of the State's investigation and presentation, as he questioned the absence of any toxicologist in closing arguments. (Tr. 255, ll. 9-16). Even if Counsel were to feign ignorance in an evidentiary hearing, the clarity of the record demonstrates his strategic reason, such that Applicant cannot show prejudice.

Failure to Present Evidence of Injuries

Respondent denies Applicant is entitled to relief upon the allegation that Counsel failed to present evidence of her injuries. As noted in Section II, above, Applicant herself was forced to admit her abject lack of injuries when confronted with photographs taken of her on the night

in question. Counsel failed to present evidence of Applicant's injuries because Applicant was not injured.

Conflicting Testimony of First Responders

Respondent denies Applicant is entitled to relief upon allegedly conflicting testimony from first responders. Though not specifically articulated, Applicant's complaint on this matter appears to be under the umbrella of ineffective assistance of counsel on the application, and so would appear to be a claim that Counsel was ineffective in failing to adequately impeach testimony on the subject.

At trial, Officer Timberly Blake Stacy, of the Spartanburg City Police Department, testified she responded to the scene on November 8, 2014, and was directed to the victim, Myah Cole, positioned in the passenger seat of the car, "slumped over in the driver's seat face down." (Tr. 107-09). On cross-examination, Officer Stacy further described the arrangement of Cole's body, explaining her upper torso was in the driver's seat, her feet were in the passenger floorboard area, and that she saw a small amount of blood in the driver's seat. (Tr. 118-119). On redirect, Officer Stacy confirmed Cole was in a sitting position in the passenger seat, but fully flush with the seat. (Tr. 120, ll. 3-18).

Paramedic Jeffrey Todd Shields testified that he responded to the scene on November 8, 2014, and found Cole slumped to the left in the passenger seat of a small car, face down into the driver's seat. (Tr. 123-24). The State pointed out that Shields noted in his report that Cole's body was laying on her right side, which Shields admitted was a mistake in his notes. (Tr. 124, ll. 7-15). Shields testified on cross-examination that the body was in place when law enforcement arrived. (Tr. 125-26).

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Applicant testified at trial that she did not move Cole's body after the shooting, and that Cole "was laying across the whole front area of the car." (Tr. 209-10; Defendant's Trial Exhibits 1-3). Applicant testified Cole's knees were in the passenger seat, and agreed with Counsel that Cole's "behind would have been up pointed toward the ceiling, pointed to the roof[.]" (Tr. 211, ll. 1-7).

The State recalled Shields in reply, who reaffirmed his testimony on direct. (Tr. 235, ll. 4-23). Shields explained that in order to check on Cole's status, he had to move her body, and that the photographs introduced by the defense were from after she was moved, and just before the body was transported. (Tr. 235-36). On cross-examination, Counsel challenged Shields to reenact Cole's position, but Shields was unable to do so. (Tr. 237-38). Counsel further challenged the Shields' recollection of Cole's position, and the necessity of the movements of Cole's body. (Tr. 238-40).

In closing arguments, Counsel questioned the whereabouts of the lead investigator or whoever was responsible for the pictures of Cole's body. (Tr. 252-53). Counsel additionally pointed out Shields' admitted error in his records. (Tr. 259-60).

As the record explored above demonstrates, Counsel clearly challenged the testimony of the State's witnesses regarding the position of the body at the scene, and used the testimony in closing to support his argument that the various elements of the State's case did not mesh. Counsel was extremely effective in attacking the strength of the State's presentation, resulting in Applicant's conviction of only the lesser-included offense for her admitted shooting.

Conclusion and Action Requested

Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not

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conclusively refute. Accordingly, Respondent respectfully requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V. ASSERTION OF RIGHTS TO NOTICE OF AMENDMENTS, EXPERTS

Applicant must specify any claims she intends to raise at the PCR evidentiary hearing.

Any claims not specifically laid out in this PCR application or in amendments *will be opposed by the State at an evidentiary hearing* pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCPP; Mangal v. State, 421 S.C. 85, 805 S.E.2d 568 (2017). All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCPP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCPP.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

VI. GENERAL DENIAL

Respondent denies each allegation not expressly admitted, qualified, or explained.

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VII. CONCLUSION

WHEREFORE, Respondent respectfully requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel.

Respectfully submitted,

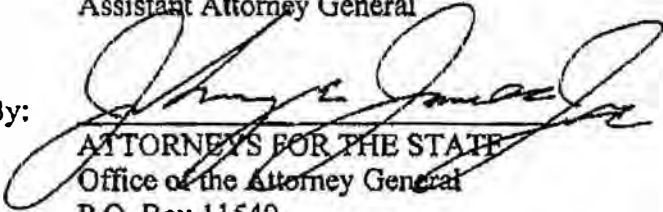
ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JOHNNY ELLIS JAMES JR.
Assistant Attorney General

By:



ATTORNEYS FOR THE STATE
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

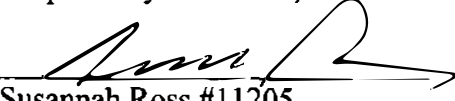
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
	)	
BRITTANY PEARSON,	)	AMENDED APPLICATION
APPLICANT.	)	
v.	)	
	)	
THE STATE OF SOUTH CAROLINA,	)	
RESPONDENT.	)	CASE # 2019-CP-42-1305
_____	)	

This matter comes before the Court by way of application of post conviction relief filed April 5, 2019, making a number of allegations of ineffective assistance of trial counsel. A Return was made on July 8, 2019. This application is intended to incorporate and add to Ms. Pearson's application allegations of Fifth, Sixth, Eighth and Fourteenth Amendment violations of the Constitution of the United States & Art. I Sec. 3, 10, & 14 of the South Carolina Constitution due to ineffective assistance of trial counsel for:

- a. failing to effectively argue 16-11-440 & 16-11-450
- b. failing to prepare pretrial brief regarding immunity and request a reasoned ruling under the preponderance of the evidence standard;
- c. failing to request jury instructions and object to confusing self-defense instruction p. 321, 1.8; 308-312; and
- d. failing to argue for parole under S.C. Code Sec. 16-25-90

Respectfully submitted,


 Susannah Ross #11205
 Attorney for the Applicant
 330 E. Coffee St.
 Greenville, SC 29601
 (864) 242-0029

Greenville, South Carolina
 This 15 day of April, 2022

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STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG	)	2019-CP-42-01305
	)	
	)	
	)	
	)	
BRITTANY PEARSON,	)	
	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
THE STATE OF SOUTH CAROLINA,	)	
DEFENDANT.	)	
	)	

April 20, 2022
Spartanburg, South Carolina

B E F O R E:

THE HONORABLE G.D. MORGAN, JR., JUDGE.

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

CHELSEY MARTO, ESQ.
Assistant Attorney General

SUSANNAH ROSS, ESQ.
Attorney for the Applicant

AMBER PAYNE, CVR
Circuit Court Reporter

I N D E X

(SW) - Denotes State's Witness
 (AW) - Denotes Applicant's Witness

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P R O C E E D I N G S

(Whereupon, the hearing began at
3:35 p.m.)

THE COURT: All right. Are we ready to proceed on
Brittany Pearson; is that correct?

MS. MARTO: Yes, Your Honor.

THE COURT: All right. Case 2019-CP-42-01305. I'll
hear from you.

MS. MARTO: Yes, Your Honor. May it please the
Court. Applicant is confined in the South Carolina
Department of Corrections pursuant to orders of
commitment of the Spartanburg County Clerk of Court.
She was indicted February 2015 for murder.
Applicant was additionally indicted March 2015 for
possession of a firearm or knife during the
commission of or attempt to commit a violent crime.
She was represented by Mr. Thomas Quinn. And Timi
Poulos, Russell Ghent, and Grady Anthony of the
Seventh Circuit Solicitor's Office prosecuted the
case.

On May 23rd, 2016, she proceeded to trial
before the Honorable J. Derham Cole and a jury and
was found guilty of the lesser included offense of
voluntary manslaughter. And as indicted for the
weapons charge on May 25th, 2016, Judge J. Derham --

1 Derham Cole sentenced her to 24 years for voluntary
2 and five years for the weapons charge, sentences
3 running concurrently.

4 She filed a timely notice of appeal that was
5 perfected by Ms. Lara Caudy, and by unpublished
6 opinion July 18th, 2018, the South Carolina Court of
7 Appeals affirmed the convictions. The remittitur
8 was issued August 10th, 2018. Post-conviction
9 relief application was filed April 5th, 2019, and
10 the return was made July 8th, 2019. With that, I'll
11 turn it over to Ms. Susannah Ross.

12 THE COURT: All right. Ms. Ross?

13 MS. ROSS: Thank you, Your Honor. May it please the
14 Court. I'm just gonna hand up some case law and an
15 amended application. Ms. Pearson -- this is a -- a
16 terribly tragic, sad case. She's alleged
17 ineffective assistance with failing to effectively
18 argue for immunity and demand of reasoned ruling on
19 the record. This is pursuant to the 16-11-440 and
20 450. We cite "State v. Glen" for that at 838
21 S.E.2nd 491. It's a 2019 case, and here, it -- it's
22 just verbiage that it says, quote, "Here in its oral
23 ruling from the bench, the Circuit Court did not
24 address the elements of self-defense thereby making
25 appellate review difficult. Instead, the Court went

1 straight in consideration of subsection 16-11-
2 440(C). This constituted reversible legal error."
3 And, again, that reasoned ruling did not appear in
4 the transcript in this case.

5 You can say failed to prepare pretrial brief
6 regarding the immunity issue. Failure to object to
7 the instruction at Page 321, Line 8 and 3 -- 321,
8 Line 8, is where the Applicant's attorney takes no
9 exception to the judge's instruction. 308, Line 13,
10 is around the cite where the instruction comes in
11 regarding self-defense that we would -- I mean --
12 excuse me -- it's 308 through 313 is the self-
13 defense instruction we'd argue. It's -- it's
14 confusing. The -- the -- my understanding -- and,
15 again, I feel like this law is complex, but my
16 understanding of immunity law, stand your ground, is
17 you -- there's a -- an understanding that you have a
18 reasonable fear of deadly harm if someone attacks
19 you in a place -- in your home or place you have a
20 right to be. This happened to be Ms. Pearson's car.
21 However, it was her domestic partner who attacked
22 her. Therefore, because both had a right to be in
23 that place, my understanding of the law is you --
24 you jump to this Part C where while there's no
25 presumption of a reasonable fear of deadly harm

1 because they're (as spoken) both have the right to
2 be there, there is no duty to retreat; simply zero.
3 And here, the -- the instruction is very confusing
4 where he suggests that she had a duty to do anything
5 in her power to avoid the -- what happened. To
6 avoid having to shoot. And -- and to me, that's
7 just a reiteration of the duty to retreat, and
8 there's a number of case law I can cite on that.

9 But -- but that is where I feel like the jury
10 was really being instructed to deliberate on whether
11 Ms. Pearson had any ability to avoid the shooting,
12 which I guess she would have if you think about it.
13 However, the law says she would have -- she doesn't
14 have the duty to retreat, so she would not have to
15 do that in this case. The -- the records will plead
16 with the State, and everyone's saying, "You could've
17 jumped out of the car. You could've gotten away.
18 You could've escaped." She had a choice whether to
19 respond with deadly force is all throughout the
20 closing, but, here, we'd argue that was not --
21 shouldn't have been instructed as the law of the
22 case.

23 As Number 4, there was no history of Ms.
24 Pearson and her partner as it -- there's no request
25 that the judge instructed that because this was a

1 domestic attack that 16-25-90 SC code should apply,
2 and that's the part of the code that says you're
3 parole eligible if a domestic -- it's sort of like
4 the battered woman codified if a domestic dispute
5 exists.

6 The sixth one is -- excuse me -- fifth. Mr.
7 Quinn waived the toxicity report issue by failing to
8 subpoena the SLED toxicologist. I would argue she
9 has now moved to Florida, and I have not -- you
10 know, I've not been able to subpoena or force her to
11 be here, but we do have that toxicology report
12 showing the victim's -- was quite inebriated. And
13 that would've been part -- I would argue it -- it
14 was part of the autopsy and could've been introduced
15 with Dr. Ward (as spoken).

16 Sixth, failed to introduce evidence of injury
17 to the Applicant.

18 And, seventh, there was some conflicting
19 testimony regarding the body -- positioning of the
20 body. And we've also alleged a due process
21 violations (as spoken) in that it sort of goes to
22 these pictures. The State know -- knows or
23 should've known their own picture to show one scene
24 where they sort of argued another scene in closing.
25 And so, at this point, we further move to conform

1 the pleadings to the evidence pursuant to the "Love
2 v. State," and I call Ms. Pearson to the stand.

3 THE COURT: All right. Ms. Pearson?

4 THE COURT: You step over here right where the --
5 where the Bible is.

6 (WHEREUPON, the applicant was sworn in.)

7 THE COURT: Ms. Pearson, you may take off your mask.

8 DIRECT EXAMINATION OF BRITTANY PEARSON

9 BY MS. ROSS:

10 Q Okay. You've alleged ineffective assistance of counsel,
11 and you know you'd be put back in the position you would
12 be in before your trial; is that correct?

13 A Yes.

14 Q And what do you want to do?

15 A (No response.)

16 Q Do you want to go forward?

17 A Yes.

18 Q Okay. Now, let's see. Did -- you've alleged ineffective
19 assistance of counsel. What are -- what are some of the
20 baseses (as spoken)? And I'm gonna -- as you speak, I'll
21 go through and see which ones I have.

22 A I felt like I should've had immunity. I only used my
23 gun, because I thought that it was the end of me, so I
24 just wanted to protect myself. I never intended on
25 taking her life at all. She was intoxicated. I had been

1 trying to stop us from going anywhere, and she insisted
2 on it. And I didn't want to leave her at the bar that we
3 were at. So that's the only reason that we were out.

4 Q Okay. And, at some point earlier, you had tried to -- to
5 leave her before?

6 A Yes.

7 Q And what -- what prevented you --

8 THE COURT REPORTER: I'm sorry.

9 Q -- from doing that?

10 THE COURT REPORTER: Can you speak up just a bit,
11 please?

12 MS. ROSS: Here, let me stand up here --

13 THE COURT: If you'd just kind of lean --

14 MS. ROSS: -- so you --

15 THE COURT: -- a little bit into the microphone if
16 you would and speak up a little bit. Thank you.

17 THE COURT REPORTER: Thank you.

18 Q Now, you tried to leave her back at the baby shower,
19 correct?

20 A Yes.

21 Q And -- and why didn't -- why didn't you? What happened?

22 A She ended up jumping in the car. We just -- we just
23 ended up leaving and going home.

24 Q Now, there is -- one thing that was used against you at
25 trial is -- is after you were questioned, after the

1 shooting, you said you were just numb.

2 A Yes, ma'am.

3 Q And when you were asked about physical -- physical
4 injury, you said you were numb. What did you mean by
5 that?

6 A At that moment, I just lost my best friend. And I knew
7 it was my fault. So I didn't have no feelings after that
8 moment. And I had been handcuffed the whole time,
9 reiterating the whole story for hours, and my emotions
10 were numb at that point.

11 Q Had you been injured?

12 A Yes.

13 Q How had you been injured?

14 A She had been hitting me in the head with her fists and
15 banging my head against the car window.

16 Q I'm gonna show you some pictures that were in discovery.
17 Now, during trial, they showed a lot of pictures of your
18 arm saying, "Where are your bruises? Where are your
19 bruises?" And did you have any bruises right afterwards?

20 A Not on the pictures that they showed.

21 Q Okay. Did they show these pictures at all of your face?

22 A Not at all.

23 Q And those pictures were in your discovery; is that
24 correct?

25 A I don't remember seeing them.

1 Q Okay. Do you recognize these pictures right now?

2 A Yes, ma'am.

3 Q And how about these pictures?

4 A Yes.

5 Q Can you tell me what they show? And the Court?

6 A Well, on my right side, I lifted up my hair for them, and
7 I had a knot on the side of my head and swelling by my
8 eye.

9 Q Okay. And you say "right side." It was on this side
10 (indicates), correct? Was it your left side or your
11 right side? Right side?

12 A My right side.

13 Q Now, how about any injury on your head?

14 A I was handcuffed the whole time. That's the only time I
15 didn't have handcuffs on, and I felt that when I lifted
16 up my hair for them to take the picture.

17 Q Okay. Now, this shows Myah had a broken fingernail,
18 correct?

19 A Yes, ma'am.

20 Q And do you have any idea how that could've happened?

21 A Probably from when she was punching me in my head.

22 Q Okay.

23 MS. ROSS: (To the Court) I'd offer these as
24 Applicant's Exhibits 1 and 2.

25 MS. MARTO: No objection.

1 THE COURT: All right. Exhibits 1 and 2 admitted
2 into evidence without objection.

3 (WHEREUPON, the photos, they are marked into
4 evidence as Applicant's Exhibits No. 1 and 2.)

5 THE COURT REPORTER: (To Ms. Ross) Just give me
6 just a second. Okay.

7 Q Now, on Page 34, I'm showing you a highlighted expert --
8 excerpt on Page 34 at Line 10. This was from the -- the
9 pretrial immunity hearing. Do you recall that?

10 A Yes.

11 Q And this is where you said you froze?

12 A Yes, ma'am.

13 Q Now, that was argued in your appellate opinions.
14 However, later on, on Page 36, Line 6, what did you say
15 about --

16 A I said that, "I feel like she would be sitting here
17 instead of me."

18 Q And what did you mean by that?

19 A If I wouldn't have protected myself, she would be sitting
20 right here, and she would have no way to say that she had
21 the right to do what she was doing.

22 Q Okay. And so you meant you were sitting there being
23 charged with murder, correct?

24 A Yes, ma'am.

25 Q And did you meant (as spoken) that she would've been

1 sitting there charged with murder?

2 A Yes, ma'am.

3 Q And who do you think she would've murdered?

4 A Me.

5 Q And that's how you felt at the time you pulled out the
6 gun?

7 A Yes, ma'am.

8 Q Now, did you sit down with Mr. Quinn at any length to
9 discuss that? These magic words that you need to say --

10 A No.

11 Q -- for immunity? Did -- did he tell you that that needed
12 to be clear, that you feared for your life?

13 A No.

14 Q However -- and when you pulled out the gun, it -- how --
15 how did you -- what were you thinking?

16 A I felt like she wasn't gonna stop.

17 Q And was she yelling? Do you recall?

18 A Probably.

19 Q Did you feel like you had -- could -- any choice?

20 A No, ma'am.

21 Q Now, did -- and -- and did you review that with Mr. Quinn
22 that that needed to be on the record? That was what --
23 you needed to tell the truth then that you felt like it
24 was?

25 A No, ma'am.

1 Q Now, the State, in this case, goes into the questions you
2 were asked right afterwards. And, again, you were saying
3 you were numb, and the last thing you say in your
4 statement is you guess you could've done things
5 differently.

6 A Yes. I said that.

7 Q Or something to that effect; is that correct?

8 A Yes, ma'am.

9 Q What could you have done at the time?

10 A Looking back at it, I don't think I could've done
11 anything. I just felt remorseful because of who she was
12 to me.

13 Q Could you get out of the car?

14 A No, ma'am. I had my seat belt on. She only had my keys
15 so she could go get her keys out of our apartment.

16 Q So even though the State in closing kept on saying, "She
17 could've driven off. She could've driven off." Could
18 you have driven off?

19 A No, ma'am.

20 Q Why not?

21 A Because she had my keys.

22 Q And it talks about your military experience. Was Myah
23 the same size as you?

24 A She was more stockier than me.

25 Q Did she have any military experience?

1 A Yes, ma'am.

2 Q Was that brought out at the trial?

3 A No.

4 Q What was her military experience?

5 A She was in the Army.

6 Q Okay. And you'd been in the Navy?

7 A Yes, ma'am.

8 Q Now, let's see. Let's talk about the toxicity report.

9 There's some -- we talked a little about this. Do -- do
10 you recognize this? One second. Do you recognize that
11 from your discovery?

12 A Yes, ma'am.

13 Q What is that?

14 A The toxicity report.

15 Q And did you want -- there's something in the trial
16 testimony about whether that was put into evidence or
17 not. What was your position on that?

18 A I wanted them to put that out there, but they stopped
19 that beforehand.

20 Q And why did you want that in your trial?

21 A Because she was drunk.

22 Q How was she acting? Was she acting normally towards you?

23 A No.

24 Q How was she -- what was different?

25 A She was more irate.

1 MS. ROSS: (To the Court) I ask to offer -- mark
2 and offer this as Applicant's Exhibit 3.

3 MS. MARTO: No objection.

4 THE COURT: All right. Exhibit 3 is admitted
5 without objection.

6 (WHEREUPON, the toxicity report, it is marked
7 into evidence as Applicant's Exhibit No. 3.)

8 Q Did your lawyer ask the judge after the trial that --
9 that because this was a domestic dispute -- this was
10 about a domestic dispute -- that your sentence should be
11 considered for parole?

12 A No.

13 Q Was there a history of domestic abuse between you?

14 A It wasn't a hundred percent physical.

15 Q Okay. And, in fact, in the transcript at Page 206, you
16 said you never had physical fights, right?

17 A No.

18 Q But what was it?

19 A It was more like emotional.

20 Q Now, did you call 911?

21 A Immediately.

22 Q Have you heard that 911 --

23 A No.

24 Q -- tape?

25 A I -- I haven't.

1 Q Can you listen to it now?

2 A Yes.

3 MS. ROSS: (To the Court and Applicant) I'm gonna
4 try to put it up where you can hear it.

5 (WHEREUPON, Applicant's Exhibit No. 4 was
6 played in open court.)

7 Q Okay. So you're saying there she was banging your head
8 against the window. Did that come out at trial you
9 saying that right after the fact?

10 A Yes.

11 (WHEREUPON, Applicant's Exhibit No. 4 continued
12 to be played in court.)

13 MS. ROSS: I'll offer this as Defendant's Exhibit 3
14 when I can get it out of my computer.

15 THE COURT: (To Ms. Ross) I think that'd be four.

16 MS. ROSS: Oh, I apologize

17 THE COURT: I think it's four.

18 THE COURT REPORTER: It'll be four.

19 MS. ROSS: (To the Court Reporter) Okay.

20 MS. MARTO: (To the Court) No objection.

21 THE COURT: All right.

22 MS. ROSS: (To the Court) If I could just get a
23 moment.

24 THE COURT: Exhibit Number 4 is admitted without
25 objection.

1 (WHEREUPON, the 911 audio, it is marked into
2 evidence as Applicant's Exhibit No. 4.)

3 MS. ROSS: I beg the Court's indulgence.

4 Q Now, in that, you're saying that -- it came out that --
5 that there was a fight, right?

6 A Yes, ma'am.

7 Q And you're saying that she was banging your head against
8 the wall. Was that argued in closing or expounded upon?

9 A Not that much. Not really.

10 Q Do you feel like at your trial it -- it came out enough
11 that you were being hurt and that you were really scared
12 and you would've never had done this otherwise?

13 A No.

14 Q Now, when you reviewed your discovery, did you ever see
15 anything about a guy named "Dustin Lawson" calling in?

16 A Maybe. It was a lot of people that got interviewed.

17 Q Okay. Do you recall if he was ever called as a witness?

18 A No. I was the only witness.

19 Q Okay. I'm just gonna show you what Dustin
20 Lawson -- this is the incident report. What does it say
21 that he said? Can you read that?

22 A That whole part right there?

23 THE COURT REPORTER: I -- I can't hear.

24 Q The -- from -- where, "Mr. Lawson stated."

25 A "Mr. Lawson stated that he and Ms. Jones were smoking

1 when they heard an argument. The argument escalated, and
2 Mr. Lawson heard screaming and what sounded like
3 someone's -- someone beating on a door."

4 Q All right. And that wasn't brought in at -- brought out
5 at your trial?

6 A No, ma'am.

7 Q And he wasn't called as a witness at the trial?

8 A No, ma'am.

9 Q Now, do you think that might've helped your -- your
10 argument that someone was -- Myah was beating your head
11 against the door?

12 A Yes.

13 Q And was that what was happening?

14 A Yes, ma'am.

15 Q And is that why you pulled out your gun?

16 A Yes, ma'am.

17 Q And you didn't feel like you had any other way
18 to --

19 A No, ma'am.

20 Q -- handle the situation? Now, a lot of times in the
21 trial, you said, "I was scared. I've never been put in
22 that position before."

23 A Yes, ma'am.

24 Q What position was that?

25 A Having to fear for my life like that. I've been in the

1 military before, but I ain't never been put in that type
2 of situation before.

3 Q And you're trained to use a weapon, the weapon you had?

4 A Yeah. I had a license to carry.

5 Q And so you -- you knew when to use it and when not to use
6 it?

7 A Yes, ma'am.

8 Q Would you have ever used it if you didn't fear for your
9 life?

10 A No, ma'am.

11 Q Now, do you think that came out at your trial
12 effectively?

13 A No, ma'am.

14 Q Okay.

15 MS. ROSS: I beg the Court's indulgence.

16 Q Is there anything else you'd like to tell the -- the
17 Court in this -- in your case?

18 A No, ma'am.

19 Q Okay.

20 MS. ROSS: (To the Court) I have no further
21 questions.

22 THE COURT: All right. Cross?

23 MS. MARTO: Thank you, Your Honor.

24 **CROSS-EXAMINATION OF BRITTANY PEARSON**

25 BY MS. MARTO:

1 Q Good afternoon, ma'am. So you testified at trial,
2 correct?

3 A Yes, ma'am.

4 Q And you testified that you and Myah got into an
5 altercation, correct?

6 A Yes, ma'am.

7 Q And that she was pushing you against the window, correct?

8 A No. She was punching my head into the window.

9 Q She -- she grabbed you by your dreads, held you over to
10 the window, and started punching you, right?

11 A Yes, ma'am.

12 Q And that you testified that you had a knot on the side of
13 your neck at the end, correct?

14 A No. I didn't say that.

15 Q You didn't say that?

16 A No, ma'am.

17 Q I'm looking at the transcript. It says, on Page 214,
18 during your direct examination with Mr. Quinn, starting
19 with Line 5 -- or starting with Line 2, it says, "Did

20 you, in fact, have any mark on your head the next day?"

21 Line, 4, "Yes."

22 "And where was that?"

23 And then on Line 6, you said, "I had, like, a knot
24 on the side of my head." Do you recall that?

25 A Yeah. On my head, not my neck.

- 1 Q Okay. So you had a knot on the side of your head?
- 2 A Yes, ma'am.
- 3 Q And they took pictures of that, correct?
- 4 A Yes, ma'am.
- 5 Q And they saw redness on the side of your head, correct?
- 6 A I had lifted up my hair, everything, and those pictures
7, were never showed in court.
- 8 Q And that was brought out at trial, correct?
- 9 A No. The pictures that were brought out in court only
10 showed my arms.
- 11 Q Well, the testimony brought out at court, showed -- said
12 that you had redness on your neck, correct?
- 13 A Yes, ma'am.
- 14 Q Okay. And then you stated repetitively that you didn't
15 do anything that would cause Myah to attack you, correct?
- 16 A Correct.
- 17 Q Okay. And you did testify that you didn't feel like you
18 could do anything differently, correct?
- 19 A That's correct.
- 20 Q And you did testify that if you -- you felt like if you
21 didn't pull your gun, then she would be in your position,
22 right?
- 23 A Yes, ma'am.
- 24 Q And you still believe that, correct?
- 25 A Yes, ma'am.

1 Q Okay. But you made that all well-known to the jury,
2 right?

3 A Yes, ma'am.

4 Q And you also made much, if not all, of that known to the
5 judge during the pretrial matter, correct?

6 A Yes, ma'am.

7 Q Okay. And the judge just decided to side against you,
8 right?

9 A Yes, ma'am.

10 Q Okay. And then the jury found you guilty of voluntary,
11 right?

12 A Yes, ma'am.

13 Q And -- now, the victim was never armed, correct?

14 A No, ma'am.

15 Q No. She was just using her hands?

16 A Yes, ma'am.

17 Q And y'all were about the same size, right?

18 A Yes --

19 Q Roughly?

20 A -- ma'am.

21 Q And there was no indication that there was any physical
22 domestic violence prior to that day, correct?

23 A Not physical, no, ma'am.

24 Q And, now, who -- who was the witness that you stated
25 could've testified that she had you up against the

1 window?

2 A I think it was, like, some neighbors, like, across the
3 street that just happened to be outside. I didn't know
4 them at all.

5 Q So did -- do you know if anybody got their information or
6 names?

7 A They -- they have statements from them.

8 Q Okay. Now, did you testify at trial that Myah had been
9 drinking that day pretty heavily?

10 A In the beginning, it was like the toxicology report was -
11 - was taken out, so I -- none of that was brought up
12 during the trial.

13 Q Nothing about her drinking was brought out at trial?

14 A No, ma'am.

15 Q Did you state that you hadn't been drinking that -- or
16 you had only had one beer that day?

17 A Yes, ma'am.

18 Q Because you were the driver?

19 A Yes, ma'am.

20 Q But you never testified that the victim was drunk?

21 A I don't recall.

22 MS. MARTO: One moment, Your Honor.

23 Q And now you testify that you were seat belted in the car,
24 right?

25 A Uh-huh.

1 Q And that the doors were locked?

2 THE COURT REPORTER: I'm sorry. I didn't hear the
3 answer.

4 THE APPLICANT: Yes, ma'am.

5 Q And that the door was locked?

6 A Yes, ma'am.

7 Q And that you feel -- felt like you couldn't have done
8 anything in that moment?

9 A No, ma'am.

10 Q I'm looking at Page 231 of the transcript starting with
11 Line 21. And on cross-examination, the prosecutor said,
12 "All right. You testified that Myah had been drinking,
13 but you were drinking, too, that day, right?"

14 And you stated, "I had one beer." And then also, on
15 Page 230, it states, starting with Line 13, you stated
16 that, "It would -- it wouldn't of went any further than
17 it did if she wouldn't have been drinking." Do you
18 recall any of that?

19 A Yes, ma'am.

20 Q So do you recall stating at trial that Myah's drinking
21 had been at least a contributing factor behind everything
22 that went on?

23 A Yes, ma'am.

24 Q Then that's probably what provoked her to start beating
25 on you?

1 A Yes, ma'am.

2 Q How long -- how long did the incident occur for before
3 you pulled the gun?

4 A I don't know.

5 Q Was it just a few seconds? Was it a minute or longer?

6 A I couldn't put a number on it.

7 Q And did you get a chance to listen to the 911 call with
8 your attorney?

9 A I had all the discovery. I don't remember listening to
10 that particularly, but I looked over all the paperwork
11 that I had.

12 Q And did Mr. Quinn answer any questions you had concerning
13 all that?

14 A Yes, ma'am.

15 Q Okay.

16 MS. MARTO: No further questions, Your Honor.

17 MS. ROSS: (To the court reporter) Okay. Here's
18 that 911 --

19 THE COURT REPORTER: Where do you want me to mark
20 it? Do you have an envelope?

21 MS. ROSS: I don't. Just like the actual top will
22 be fine.

23 THE COURT REPORTER: Okay. Okay.

24 **REDIRECT EXAMINATION OF BRITTANY PEARSON**

25 BY MS. ROSS:

1 Q Do you recognize this from your discovery by any chance?

2 A No.

3 Q Okay. Can you read what it says at the top?

4 A "Dustin Lawson."

5 Q Okay. But even above that in --

6 A "Witness Interview Form."

7 Q Okay. And then it has the name?

8 A "Dustin Lawson."

9 Q And a phone number?

10 A "(864) 612-2927."

11 Q So that's some contact information. And, again, what is
12 -- what is he -- does he say -- what you just read before
13 about hearings of banging on the door?

14 A It said, "Over time, it became more intense. I heard one
15 of the females say, 'I don't have a problem,' while the
16 one who was screaming was banging on something, possibly
17 a door."

18 Q All right.

19 MS. ROSS: (To the Court) At this point, I'd offer
20 this as Applicant's Exhibit 5.

21 THE COURT REPORTER: (To Ms. Ross) Hold on just one
22 second. Okay.

23 MS. ROSS: (To the Court) No further questions.

24 (To the Applicant) Please answer any questions --
25 oh.

1 THE COURT: Is Exhibit Number 5 admitted into
2 evidence --
3 MS. ROSS: (To the Court) We're --
4 THE COURT: -- without objection?
5 MS. MARTO: We're gonna object to that because of
6 hearsay, Your Honor.
7 THE COURT: Okay. Ms. Ross?
8 MS. ROSS: Judge, I -- I can look at it again.
9 Through Mr. Quinn that was made part of discovery,
10 and I was bringing that in reply direct to whether
11 there was any contact information to that particular
12 -- any -- the witness that I referred to before.
13 THE COURT: Let's -- so, I mean, it is hearsay,
14 isn't it?
15 MS. ROSS: We'd argue it was part of discovery
16 provided through -- in the regular course of
17 business to the -- to the defense counsel, and then
18 his argument would've been whether to put it up or
19 not -- or to pull that witness up or not. So we
20 would offer it, not for the truth of the matter
21 asserted at this point, just for the fact that there
22 was that piece of paper in the evidence package in
23 the case.
24 THE COURT: All right. Ms. Marto? What about the
25 evidence? It's -- it's not argued for the truth,

1 but just for the fact that there was a witness
2 statement out there and it was part of discovery and
3 wasn't put into evidence at trial.

4 MS. MARTO: Has there been a foundation laid
5 concerning Ms. Pearson obtaining that through
6 defense counsel? I'm sure I would object on that,
7 Your Honor.

8 MS. ROSS: Judge, again, I just argue it's the form
9 kept in the regular course of business; however, I'd
10 be happy to acquire -- you know, authenticate
11 further through Mr. Quinn.

12 THE COURT: Yeah. I'll -- I'll sustain it through
13 this witness.

14 MS. ROSS: All right.

15 THE COURT: Sustain it through this witness. And if
16 you got more of a foundation with another witness,
17 I'll revisit it. I'm
18 gonna -- I'll sustain it through this witness.

19 MS. ROSS: All right. Thanks.

20 THE COURT REPORTER: (To Ms. Ross) Was that
21 entered?

22 MS. ROSS: No.

23 THE COURT REPORTER: Okay. Thank you.

24 MS. ROSS: (To the Court) No further questions.

25 MS. MARTO: No questions, Your Honor.

1 THE COURT: All right. (To the applicant) You may
2 step down, Ms. Pearson.

3 (WHEREUPON, the applicant was excused.)

4 THE COURT: All right.

5 MS. ROSS: (To the Court) We'll just go ahead and
6 call Mr. Quinn in this case.

7 THE COURT: All right. Mr. Quinn?

8 (WHEREUPON, the witness was sworn.)

9 DIRECT EXAMINATION OF THOMAS J. QUINN, ESQ.

10 BY MS. ROSS:

11 Q Hi there. Thank you for your patience this afternoon.
12 I'll just start with showing you this, which I saw in
13 discovery. Do you recognize that?

14 A I do.

15 Q And what is it?

16 A It's a witness interview form for Dustin Lawson.

17 Q And Mr. Lawson gave a statement there, and in it he -- he
18 refers to "banging against the window," yet you didn't
19 call him in your case. Why not?

20 A I don't remember.

21 Q How long ago was this case?

22 A The trial was six years. The incident was in late 2014.

23 Q Okay.

24 A But the trial was May of 2016.

25 Q Okay.

1 MS. ROSS: (To the Court) And I would offer this
2 witness form into evidence at this time.

3 THE COURT: All right. Any --

4 MS. MARTO: No objection.

5 THE COURT: All right. Now, that's Exhibit 5,
6 right?

7 (WHEREUPON, the witness interview form, it is
8 marked into evidence as Applicant's Exhibit No.
9 5.)

10 Q Were you appointed or retained in the case?

11 A Retained.

12 Q And did you meet with the defendant a few times?

13 A I did.

14 Q And did you provide her with discovery?

15 A I did.

16 Q And as far as the immunity hearing, did you review her
17 testimony with her?

18 A I don't know if I did it specifically for the immunity
19 hearing, but we went over what had happened and what

20 Brittany would say about it.

21 Q All right. Did you go over her statements to law
22 enforcement immediately after the fact?

23 A We did.

24 Q And -- and her version of what happened then and what she
25 said?

1 A We did.

2 Q Okay. And at that -- for that immunity hearing, I would
3 just -- it was denied, correct?

4 A It was.

5 Q I'm referring to Page 63, Line 8, of the transcript. Is
6 that the ruling that the judge made in the case?

7 A It is.

8 Q Does he go into any further detail or explain the basis
9 of his ruling?

10 A He did not.

11 Q And did he go through the elements of self-defense and
12 which elements he thought were met and/or not as
13 regarding immunity?

14 A He did not.

15 Q Did you object to that or request a reasoned ruling?

16 A I did not object or ask for any further deliberation of
17 his decision.

18 Q Okay. Now -- and he didn't volunteer any, as well? At
19 that hearing, that is the point where Ms. Pearson
20 testified that she froze; is that correct? Or do you
21 recall?

22 A I do not recall, but I -- I know she testified to that.

23 Q And just to refresh your recollection, Page 34, Line 16.

24 A Yes, ma'am. I see where it -- yes, ma'am. I see where
25 she testified to that in the immunity hearing.

1 Q And I believe the -- in closing arguments, the solicitor
2 made much of that testimony, and I'll refer you to that.

3 MS. ROSS: One moment. I beg the Court's
4 indulgence. I will skip that right now and come
5 back later that that was referred to in closing.

6 Q As far as -- back at trial, Brittany testified that there
7 was a heated verbal argument at Page 204, Line 6. And
8 that's under -- I'm sorry.

9 A Yes, ma'am. I see that that question was asked.

10 Q There -- there was certainly testimony about an argument
11 and -- throughout the case. Were you trying a
12 manslaughter case or a murder case?

13 A At that point, I was trying a murder case.

14 Q Okay. Now, did you ask for a manslaughter instruction?

15 A No.

16 Q Did you want a manslaughter instruction?

17 A I did not. I objected to it.

18 Q And -- but there was a manslaughter instruction given?

19 A There was.

20 Q Was there anything made about that as -- as far as your
21 position on it having a manslaughter instruction?

22 A My position was that there should not be a manslaughter
23 instruction and that if we were gonna try a manslaughter
24 case, we should start over so that I could ask the
25 correct questions for manslaughter as opposed to murder.

1 And --

2 Q And --

3 A -- much of that was done in a jury charge conference.

4 Q Okay. And in the indictment, the notice document, it
5 said nothing about you trying a manslaughter case?

6 A No. There was no notice for a manslaughter case.

7 Q And that wasn't what you were prepared to try?

8 A Well, I probably would've been prepared, but that's not
9 what she was charged with.

10 Q But you were noticed to try?

11 A Right. There was no notice.

12 Q Okay. As far as the 911 call, do you recall whether that
13 that was put into evidence or not, because it looks like
14 it was referred to, but I didn't see at trial where it
15 was actually introduced into evidence.

16 A It should be in the index, and I'm trying to see a list
17 of exhibits from the court reporter. And according to
18 the list of exhibits, it was Exhibit 19.

19 Q Okay. One through six. Do you have any independent
20 recollection of that 911 call being played for the jury?

21 A I do not.

22 Q Did you hear it just now earlier today?

23 A I did.

24 Q And in it, you heard Ms. Pearson say, "She was beating my
25 head against the window," I believe?

1 A That may have not been the exact words, but I heard her
2 say that.

3 Q "She was banging my head against the window"?

4 A Yes, ma'am.

5 Q And did you argue that in closing?

6 A I don't remember.

7 Q Okay. And did you -- and, obviously, you didn't bring in
8 this witness, Dustin Lawson, to -- to provide sort of
9 substantiating testimony about something banging against
10 the door?

11 A I did not. He did not testify.

12 Q Now, as far as the -- the pictures that I've put in
13 earlier, did you offer pictures of the Applicant's face
14 into evidence at all?

15 A I did not.

16 Q And -- and -- it's hard to tell from the picture. Do you
17 see from the picture anything that looked like it could
18 be bruising in any of the pictures, or do you know?

19 A I'm sorry. I do not.

20 Q Okay. And how about on the fingernails here? This is
21 Myah, the victim's hands. Do you see a broken
22 fingernail?

23 A I do see the broken fingernail.

24 Q And that wasn't put into evidence?

25 A It was not.

1 Q Okay.

2 A And I should correct myself. It was not put in by the
3 defense. I don't remember what all the photographs were
4 from the State.

5 Q Okay. Now, I just take you to Page 321, Line 8, and it's
6 apparent from the transcript, but you did not take any
7 exceptions to the judge's jury instruction?

8 A I did not.

9 Q And -- and in those instructions, I refer you to Page
10 308, Line 13, he -- he does state -- well, would you
11 agree that it's -- it was a confusing jury instruction on
12 self-defense if you've had a chance to look at it?

13 A I have had a chance to look at it since seeing the
14 Applicant's submission, and I can see where there
15 would've perhaps have been confusion.

16 Q And in -- in a case where a person is in a place where
17 they have a right to be, like their car, there is no
18 fourth element or duty to retreat, is there?

19 A That's correct.

20 Q And though he instructs that there is no duty to mistreat
21 -- retreat, he does instruct, "It must be shown that the
22 defendant had no other means to avoid the danger."

23 A I don't know that the instruction has those
24 exact -- that exact language, but, yes, that's what he
25 charged.

1 Q Now, on Page 227, Line 13, the State --

2 THE COURT: (To Ms. Ross) What page was that?

3 MS. ROSS: 227, Line 13. Let me make sure.

4 Q In cross, the State begins arguing, "You could've gotten
5 out of the car."

6 A Yes, ma'am.

7 Q Did you ever object or suggest at that point that she had
8 no duty to retreat?

9 A I did not.

10 Q In closing, at Page 286, the State admits there's no duty
11 to retreat, but then goes on to argue that she could've
12 gotten out of the car and that she had (inaudible/person
13 coughing.) Did you ever take any kind of exception to
14 that or object during the closing -- in the State's
15 closing?

16 A Not that I remember, and I do not see any objection in
17 the transcript.

18 Q And the State is arguing, "She had choices. She could've
19 left"?

20 A Yes.

21 Q Now, because there were no exceptions to the voicemail
22 (as spoken) charge or the self-defense charge, those
23 could not be reviewed on appeal. Those --

24 A I'm sorry. The self-defense charge, yes, ma'am. What
25 was the other? I missed it.

1 Q The voluntary manslaughter charge.

2 A Yes, ma'am. That's correct.

3 Q And without exception, that wasn't preserved for
4 appellate review; the -- the issue of erroneous jury
5 instruction?

6 A That's right. I objected -- I believe I objected on the
7 record to the manslaughter charge but not to it being
8 infusive.

9 Q And had you seen the unpublished opinion? In this case,
10 there's an unpublished opinion. Have you seen it by any
11 chance?

12 A I don't believe so.

13 Q Now, as to the -- the battered woman section, did you
14 ever argue that this should be parole eligible under
15 that; that the sentence -- Ms. Pearson should be parole
16 eligible given it was a domestic situation?

17 A I did not. I don't believe I was even aware of that code
18 section.

19 Q Okay. And the toxicity report issue, that's fleshed out
20 a little bit in the transcript. Do you recall that?

21 A I do.

22 Q And what -- and you felt that in order to put that into
23 evidence you would've had to have that SLED agent present
24 to testify?

25 A I do.

1 Q Okay. And as far as the autopsy, when did Dr. Wren -- he
2 ordered that toxicity report?

3 A I'm sorry. I do not remember. It may -- but it may very
4 well have been.

5 Q Did you make any effort to argue that you could get that
6 report in through Dr. Wren as he would be familiar with
7 it as part of his autopsy duties?

8 A I did. It may have been admissible through him under
9 business records.

10 Q And as far as the autopsy, with that, Myah had no injury
11 or bruising aside from the gunshot wound that killed her?

12 A As I remember. I'm sorry. I've not reviewed it. But
13 that's -- that's my memory.

14 Q But that wasn't part of the case that she -- she --
15 the -- the gunshot victim, Myah, didn't -- that wasn't
16 brought out at trial in your recollection that she had
17 any bruising or injury other than the gunshot?

18 A As I remember, it was not. Now, whether there was any
19 testimony about the broken fingernail, I don't remember.

20 That -- that may have been testified to.

21 Q Okay. All right.

22 MS. ROSS: (To the Applicant) Is there anything
23 else you wanna ask?

24 THE APPLICANT: Unh-unh.

25 MS. ROSS: Okay. (To the Court) I have nothing

1 further.

2 THE COURT: Cross?

3 MS. MARTO: Thank you, Your Honor.

4 CROSS-EXAMINATION OF THOMAS J. QUINN, ESQ.

5 BY MS. MARTO:

6 Q Good afternoon, sir.

7 A Good afternoon.

8 Q Thank you for your patience. So you had an immunity
9 hearing in this matter, correct?

10 A We did.

11 Q And Judge Cole decided against you, correct?

12 A He did.

13 Q Now, are -- what did you think that the chances of
14 success of that hearing were before Judge Cole?

15 A Before Judge Cole, they were slim. I -- my belief is
16 that Judge Cole has never granted an immunity hearing.

17 Q Do you recall if Judge Cole stated that on the record?

18 A I do not remember if he did on the record, but I -- at
19 the time, I knew it was true.

20 Q Okay. And now, during the immunity hearing, there was
21 testimony given by Ms. Pearson that the victim was the
22 one that was beating her against the window, correct?

23 A That has always been Ms. Pearson's testify -- testimony.

24 Q And has the State ever really tried to contradict that
25 testimony?

1 A No. The State's argument has always been that she
2 overreacted.

3 Q Essentially that she brought a gun to a fistfight?

4 A Yes.

5 Q And that came out at both the immunity hearing and the
6 trial, correct?

7 A It did. And in fact, it also came out in Brittney's
8 statement to the police the night it happened.

9 Q So Ms. Pearson's testimony and statement essentially was
10 consistent with the State in that regard?

11 A It was.

12 Q The only question was whether she overreacted or not?

13 A That's their argument.

14 Q Now, going back to my question concerning Judge Cole's
15 statement. If you look on Page 21 of the transcript,
16 starting with Line 4, the State asks Judge Cole, "How
17 many times in the entirety of Your Honor serving as a
18 Circuit Court Judge, has Your Honor granted immunity
19 other than under the statute?"

20 And then he said, "I haven't." And then they went
21 on to discuss how the immunity statute was
22 unconstitutional, essentially. And then the Court denied
23 that, correct?

24 A Correct.

25 Q Okay. And it's your understanding that Judge Cole just

1 likely does not grant immunity either under the statute
2 or otherwise on a typical basis, correct?

3 A As of today, I don't think he's ever granted immunity.

4 Q And are you aware of any reason of why that's the case?

5 A You'd have to ask Judge Cole.

6 Q Okay.

7 A I'm certain he would say it was based on the facts of
8 each individual case.

9 Q Okay. Now, did you discuss potential witnesses with the
10 State prior to trial?

11 A I -- I did. I had been provided a copy of their
12 witnesses prior to trial.

13 Q And were all those witnesses called at trial?

14 A No. They were not.

15 Q Approximately, how many of them do you think were called?

16 A It's -- it -- it's been a long time, but probably half.
17 No more than that.

18 Q Okay. Do you recall anybody that they stated they were
19 going to call at trial but didn't?

20 A Well, no. I can't -- certainly can't testify that Ms.
21 Poulos told me she was gonna call certain witnesses and
22 then later did not. It was my -- my mistake in believing
23 that the people she had put on the witness list she
24 intended to subpoena and use as witnesses. That was --
25 that was a mistake on my part.

1 Q And did she put the toxicologist on the witness list?

2 A He was on -- she was on the witness list.

3 Q And they intended -- they seemingly intended to call her
4 as a witness up until trial, and they did not, correct?

5 A That was my belief. They, in fact, called other
6 witnesses from SLED.

7 Q Was there ever any dispute that the victim had been
8 drinking that day?

9 A No.

10 Q And so it was acknowledged that she was seemingly drunk
11 at the time of the incident, correct?

12 A I don't know if that word was used, but it was -- it was
13 widely accepted that she had been drinking.

14 Q And now, you don't recall hearing of any prior incidences
15 of violence between the victim and the defendant,
16 correct?

17 A In fact, I don't believe there were any, if even Ms. --
18 Ms. Pearson testified today.

19 Q So before the incident, would you have considered Ms.
20 Pearson a battered woman?

21 A I would not.

22 Q Now, this -- excuse me. And both the State and the Court
23 itself stated that Ms. Pearson had no duty to retreat,
24 correct?

25 A That's correct.

1 Q And, at the time, did you find anything confusing or
2 improper concerning the jury instructions?

3 A Certainly not improper. I -- I can see now where it is
4 confusing. I -- I apparently did not know that at the
5 time, because I did not object.

6 Q What do y'all-- what do you think would've happened if
7 you had objected?

8 A Either Judge Cole would've denied my objection, or he
9 would've recharged the jury in virtually the same
10 language he used the first time.

11 Q So do you think that it would've made a difference
12 concerning the jury charge in any meaningful way?

13 A Not -- it would not have benefited the defense.

14 Q Now, you stated that you had objected to the voluntary
15 manslaughter instruction, correct?

16 A Yes.

17 Q And is that because you thought that if it proceeded to
18 the jury as if she could only be found guilty of murder
19 or not guilty, you likely would've gotten a not guilty
20 after the evidence was presented?

21 A Absolutely.

22 Q And so what were those conversations? How did those take
23 place with the Judge and State?

24 A The conversations came up primarily in the judge's
25 chambers in the charge conference. And Ms. Poulos -- and

1 she may, if she was here, agree, made the mistake by
2 saying, "I've always thought this was a manslaughter
3 case," which -- I can be set off pretty easily. It set
4 me off. I -- I just said to the judge, you know, "We've
5 been sandbagged, both you and I. We need to start this
6 case over and try it for what we really think it is."
7 And the judge's position was that the Supreme Court has
8 ruled that if the facts fit into other potential lesser
9 included, then we should charge the lesser included, and
10 that's what he did.

11 Q Now, you were never given a plea offer to voluntary,
12 correct?

13 A No. And I'm sorry. I told you that last weekend, but
14 having now reviewed the file, early in the case, we were
15 offered a plea to manslaughter but not with any time
16 agreement that we can take our chances and plea to
17 manslaughter. And Brittany decided not to do that.

18 Q You had decided to roll the dice when it came to going to
19 trial for murder?

20 A Yes.

21 Q Because it was your understanding that she was going to
22 be tried for murder not voluntary?

23 A Yes.

24 Q And the voluntary was a last-minute surprise by the
25 State?

1 A The State asked for the manslaughter charge.

2 Q Was that seemingly because they knew they didn't have
3 enough to secure a murder conviction?

4 A That's absolutely correct. They'd never had won this
5 case as murder.

6 Q And after a heated discussion in chambers with the judge,
7 the judge ultimately decided to give the voluntary
8 manslaughter option?

9 A He did. Based primarily on the reason I just -- and I
10 may have not used the exact language he used, but he
11 said, "It's a lesser included offense, and the facts
12 fit."

13 Q Now, do you recall doing any independent investigation in
14 this case?

15 A I spoke to some of the potential witnesses in the case.
16 I'm sure I didn't speak to all.

17 Q Okay. And do you recall roughly what they would've
18 testified to?

19 A You'd have to ask me each particular witness. I'm sorry.

20 Q That's fine. Why did you decide not to call any other
21 people that you talked to? Do you recall?

22 A Well, the one that leaps to mind, when she didn't put up
23 the chief investigating officer, I certainly was not
24 gonna put him up on the stand and let her take him on
25 cross-examination. And so that concerned me with some of

1 the witnesses is that if I had called them, she would've
2 gotten them on cross. And so, obviously, we didn't call
3 any of the witnesses that she did not present.

4 Q Do you recall talking to anybody that was on scene while
5 the fight was taking place?

6 A I did not.

7 Q Now, did you submit a pretrial brief in this matter?

8 A I did not.

9 Q Do you think it would've changed anything concerning the
10 trial proceedings?

11 A No.

12 Q Now, concerning the 911 call, is it possible that the
13 call was marked, but never entered into evidence?

14 A No. I don't believe so because I believe that the court
15 reporter's transcript listed as an exhibit -- State's 17;
16 it's listed as Number 19. Oh, although, I see where
17 you're correct. I'm sorry. It was listed as "for
18 identification," but it was not entered into evidence.

19 Q And did you ever consider entering it into evidence
20 yourself after the State had marked it?

21 A I did not. Or I -- I, obviously, did not because I
22 didn't. I don't remember if it was a strategy decision,
23 or I just missed it.

24 Q Okay. Do you think that it would've been helpful in your
25 case after hearing it now?

- 1 A I do. That's one thing for Brittany to testify.
2 Brittany was a pretty good witness to how upset she was.
3 And we in fact had officers who testified that she was
4 hysterical. But it's a world of a difference from me
5 telling you something and you hearing it for yourself, so
6 yes. It would've been beneficial.
- 7 Q All right. Do you think it would've been enough to
8 change the proceedings?
- 9 A I don't know. This was a self-defense case. And it was
10 a pretty good self-defense case. I don't know if it
11 would've made enough of a difference or not. But it
12 could very well have made a difference.
- 13 Q Do you have any idea why the jury decided to convict?
- 14 A Well, I did not --
- 15 Q Do you have any opinions on that?
- 16 A -- speak with any of the -- I did not speak with any of
17 the jurors in this case.
- 18 Q Yeah.
- 19 A But, yeah. It's a compromised verdict. I mean, they
20 thought they were doing us a favor by convicting her of
21 manslaughter.
- 22 Q Now, based upon the testimony and the photos introduced,
23 was there any indication that Ms. Pearson suffered pretty
24 sizeable injuries?
- 25 A There's -- there was no photographic evidence. The next

1 day when she was able to note the mark on her face, she
2 was in the jail, and no one took a photograph.

3 Q She didn't seek out medical treatment for this? You
4 don't recall, do you?

5 A I do not remember if she went to the medical in the jail,
6 but if she did, they did not take a picture. I remember
7 we tried to find out if that had happened.

8 Q What was your understanding of the extent of the
9 injuries?

10 A That she had a knot on the side of her head.

11 MS. MARTO: One moment, Your Honor.

12 Q Now, did you think that the positioning of the victim and
13 the disputes that occurred over that had any bearing on
14 the jury's decision in this case?

15 A I don't think it did. But it -- it made a difference to
16 Brittney, and -- and so we questioned at some length
17 about the position of Myah's body.

18 Q And did you talk to Ms. Pearson about her testimony
19 pretty significantly?

20 A I don't remember about "pretty significantly," but we
21 spoke of it.

22 Q Okay. And did you think that she presented a compelling
23 narrative at trial?

24 A Looking back on it, I wish we had fleshed it out a little
25 bit more, but I thought she was able to tell the jury

1 what had happened.

2 Q At the time, were you satisfied with how that proceeded?

3 A No. Because just like you want to tell -- say the
4 answers and not have me give them, I wanted to be able to
5 get up and tell Brittany what to answer. But I thought
6 she was able to handle herself on cross because I did
7 redirect, but it was very brief, because she had done
8 well.

9 MS. MARTO: One moment, Your Honor. No further
10 questions, Your Honor.

11 MS. ROSS: (To the Court) Just briefly.

12 REDIRECT EXAMINATION OF THOMAS J. QUINN, ESQ.

13 BY MS. ROSS:

14 Q You -- you agreed that the 911 recording we just heard
15 may have been beneficial. And in that, she talks about
16 fighting and -- and banging the head against the window.
17 That was not substantiated by any other testimony except
18 for her own at trial, was it?

19 A It was not substantiated by any other. I'm not even sure
20 she testified to that at trial. I think she may have
21 said at trial that Myah was punching her in the head, and
22 I'm not sure if she said it was -- that she was banging
23 her head against the window.

24 Q And that was also what -- another witness gave a
25 statement saying he heard something banging -- it sounded

1 like banging against the door?

2 A That's right. Mr. Lawson --

3 Q And that didn't end up -- that didn't end up at the trial
4 during -- presented at trial?

5 A It was not presented.

6 Q Now, assuming that you were not doing -- trying a murder
7 case at that time but a voluntary manslaughter, wouldn't
8 that have been helpful to have those two pieces of
9 evidence in at trial?

10 A Absolutely.

11 MS. ROSS: (To the Court) I've got no further
12 questions.

13 THE COURT: (To Ms. Marto) Any --

14 MS. MARTO: Just one, Your Honor.

15 **RECROSS-EXAMINATION OF THOMAS J. QUINN, ESQ.**

16 BY MS. MARTO:

17 Q Was it your understanding from the beginning of the case
18 that this case would've been more properly considered as
19 a voluntary case as opposed to a murder?

20 A Yes.

21 MS. MARTO: (To the Court) No further questions.

22 THE COURT: All right. Anything else from this
23 witness?

24 MS. ROSS: No, Your Honor.

25 THE COURT: No?

1 MS. MARTO: No, Your Honor.

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

4 THE WITNESS: Thank you.

5 (WHEREUPON, the witness was excused.)

6 THE COURT: Any further witnesses from the
7 Applicant?

8 MS. ROSS: No, Your Honor.

9 THE COURT: Anything --

10 MS. MARTO: No, Your Honor.

11 THE COURT: -- from State? All right. Anything from
12 the parties?

13 **CLOSING ARGUMENTS**

14 MS. ROSS: Well, Judge, this is a very -- to me,
15 it's a very confusing case, because I find stand
16 your ground very confusing law. And I know -- I've
17 been working through it. I -- which is argued, you
18 know, "State v. Jones" is a -- is a similar case. I
19 -- I might have handed it up. I have such an old
20 copy. It's a appellate case number. I -- oh, here
21 we go. 786 S.E.7th -- 2nd 132. That was a domestic
22 situation with a boyfriend and a girlfriend where
23 there was sort of a -- a longer argument, but one
24 where the girlfriend went and stabbed the boyfriend,
25 and then proceeded to leave and drive around and not

1 call 911 for a while. And this occurred in both of
2 theirs (as spoken) home, but she didn't call 911 or
3 anything. And then, eventually, came back, and --
4 and then he ended up dying.

5 But she was granted immunity in that situation,
6 and it's -- it's just something to look at the other
7 cases like that. And the language in there is if --
8 if both people are living together in a home or a
9 car where they both have a place to be, you pop down
10 to this reasoning where a reasonable -- whether the
11 fear of death or great bodily harm is reasonable or
12 not is no longer a presumption. So we would -- we
13 would admit that it's not a presumption in this
14 case, necessarily, but under "C," the testimony that
15 was presented showed that Ms. Pearson did testify
16 that she had a fear of great bodily injury or death.
17 She talked about it. She said on the stand it was
18 misinterpreted, the appellate opinion. Her
19 testimony from the stand was she thought that, "Myah
20 would be where I am now," and what she meant by
21 that, which should've been fleshed out, was being
22 charged with murder, that she thought she would've
23 been killed. And that -- that came out, and that
24 was really lost in translation, but that was
25 definitely in -- in the trial.

1 THE COURT: But it did come out, and the -- the
2 immunity statute was argued at trial, correct?

3 MS. ROSS: Yes. The -- the problem was -- is
4 because there was no well-reasoned ruling on that,
5 the Court of Appeals had nowhere to go with it.
6 There was no -- the standard of review just simply
7 wasn't there because there was no ruling fleshing
8 out where -- where the judge was -- where he was
9 thinking what was proved where, so --

10 THE COURT: So, from a PCR standpoint, what is your
11 argument on that, though?

12 MS. ROSS: Ineffective assistance for failure to ask
13 for a reasoned ruling on that for the Court of
14 Appeals to review. You know, this case -- the
15 timing is interesting with the change in the case
16 law as it goes, because, you know, she could've been
17 Jones if -- if that -- if that reasoned ruling had
18 gotten on there, she could've been the one who --
19 finding, you know, that she'd have gotten (as
20 spoken) protection. So that's where we go with --
21 with that. I'm losing my train of thought.

22 So, also, on -- and because of that, the review
23 couldn't -- the appellate review couldn't get into
24 where Judge Cole's mind was or what he was thinking
25 about these steps that go into immunity. They're so

1 important to the courts and have been laid out in a
2 number of cases.

3 Another issue that was certainly brought out
4 with even the voluntary manslaughter while Mr. Quinn
5 objected to that instruction being given initially.
6 When he was asked by the judge, "Do you have any
7 exceptions to the jury charge?" Because he did not
8 renew that objection, I -- I questioned whether that
9 was preserved for the record at all regarding the
10 voluntary manslaughter, and it certainly wasn't
11 preserved regarding the self-defense instruction.
12 And I now would just argue and ask you to review the
13 case law for yourself as far as self-defense.

14 But his instruction is misleading to the point
15 of -- of really confusing the jury. I don't know
16 where they'd go if they're told, you know, "She has
17 no duty to retreat, but she has a duty to consider
18 any alternative means to avoid the situation as part
19 for self-defense," which is one and the same as the
20 duty to retreat. So they're instructed on the duty
21 to retreat, and then told, "But she
22 was -- may have been in a place where she had a
23 right to be." And there was no question. And she
24 was absolutely in a place, her own car, where she
25 had a right to be. And the testimony was that this

1 was her car, not Myah's car. Just hers.

2 Other than that, Judge, I just ask you to look
3 at the case law, and I believe I've laid out most of
4 my argument in my opening.

5 THE COURT: And the argument -- let me just make
6 sure, Ms. Ross. And on the instruction as far as
7 the duty to retreat that the error, as I understand,
8 that you are arguing for the purposes of this
9 hearing, is that Counsel did not object to that
10 particular charge that was made by the trial court.
11 And had he done that, there would've been something
12 different?

13 MS. ROSS: There'd be something that the -- the
14 Court of Appeals could review. And so, I mean, some
15 of the cases that are out there -- I've passed up
16 "State v. Glen." There's "State v. Curry," "State
17 v. Davis." These are all saying that the fourth
18 element, the State does not have to -- well, the
19 defense does not have to prove that fourth element
20 of duty to retreat. And in that instruction, the
21 judge talks about the fourth element. Talks about
22 duty to, you know, to retreat. And that -- that
23 jury is sitting there saying -- I just can't imagine
24 they'd think anything other than she had a -- you
25 know, a duty to avoid the situation however she

1 could.

2 And just briefly, like on Page 273 of the
3 State's closing, Ms. Poulos goes on and on about
4 how, "Ms. Pearson had a choice. She could've gotten
5 out of the car. She could've left. That door --
6 she -- you know, it doesn't make sense that her seat
7 belt was on, that she had no other choice." That
8 was not a matter for the jury to consider. And we
9 just argue that the State shouldn't have even been
10 presenting that in closing, because that was not the
11 law. Now --

12 THE COURT: So from an appellate standpoint as far
13 as the direct appeal, how is that addressed? What
14 did -- what did the Court of Appeals do, if
15 anything, on that issue as far as the charge? Was
16 that even addressed?

17 MS. ROSS: They did an Anders Brief, because it
18 wasn't even reviewed because it wasn't -- my
19 understanding, and I'm not sure if -- there has to

20 be an objection to an instruction before it's
21 considered to be -- it's -- it's reviewed. And so,
22 because there was no objection to the instruction or
23 objection in the case of the closing argument to the
24 State's closing, without an objection to that
25 language, there's nothing for the appellate courts

1 to review.

2 So that's where we come into the ineffective
3 assistance of trial counsel for failing to make
4 those objections to concisely preserve these issues
5 that are just so -- so very close and narrow. And -
6 - and I -- and because that wasn't done, the
7 appellate courts couldn't review that. And I -- and
8 I believe if they had, they would've seen this case
9 differently.

10 And I can go on forever, but I believe in their
11 unpublished opinion, they talked about her testimony
12 only being that she froze. And -- and they made it
13 sound like Ms. Pearson never put on the record that
14 she, in fact, would've said that she would've been -
15 - she would've been in the same position as -- the
16 victim would be in the same position she was charged
17 with murder. I believe she did express that she
18 felt great fear, but because she didn't use the
19 magic words, that was just ignored in the appellate
20 opinion.

21 THE COURT: All right. Ms. Marto?

22 **CLOSING ARGUMENTS**

23 MS. MARTO: Yes, Your Honor. Much of the facts in
24 this case are not in dispute. It doesn't seem like
25 the State nor the Defense disputed that the victim

1 was the individual that was effectively harming the
2 defendant up until the defendant pulled a gun. The
3 question was whether the -- Ms. Pearson brought a
4 gun to a fistfight, or if her decision to pull a gun
5 out of fear was reasonable in her self-defense. And
6 because of that, much of, I think, the allegations
7 being raised today, come down to a difference in how
8 they could've been pursued.

9 How a slightly different change in the way
10 things were phrased in the immunity hearing could've
11 produced a different result or what testimony
12 could've been listed that maybe wasn't. But the
13 underlining facts have largely been fixed by both
14 parties in this case. And much of Counsel's
15 testimony concerning the issues raised today were
16 made in hindsight and retrospect.

17 At the time, we didn't see anything wrong with
18 the jury instructions. And he did state that
19 prejudice likely wouldn't been found given the fact
20 that Judge Cole would've either denied their
21 objection or he would've basically cured it and
22 given a different one that effectively would've
23 conveyed the same information.

24 There was no showing of prejudice concerning
25 the immunity hearing, because there's no showing

1 that that would've been an admissible issue on
2 appeal or that -- that, otherwise, would have
3 preserved the issue better than a different result
4 would've been reached.

5 Same -- and then concerning the 911 call, that
6 would've been largely duplicative of the testimony
7 that she had given, and as, I think, Mr. Quinn
8 testified, she was a good witness. She was a
9 compassionate person that people could've easily
10 sided for, but, ultimately, most of the issues
11 raised here today, come down to the jury's
12 determination that her claims of being pushed up
13 against the window, held in place, and punched were
14 not reason for her to pull a gun and shoot her
15 girlfriend in the chest.

16 And so -- and then, again, when it came to
17 voluntary, Mr. Quinn testified that this was not an
18 issue at the beginning of the case. And it wasn't
19 an issue in the case until the State seemingly
20 acknowledged they couldn't have secured a murder
21 conviction. Mr. Quinn did the right thing by
22 objecting to the voluntary instruction. But it --
23 as it relates to something that would be in his
24 client's best interest, but the Court decided that
25 voluntary was appropriate in this case, and as Mr.

1 Quinn testified, he thought that this should've been
2 more properly considered a voluntary case as opposed
3 to a murder the entire time.

4 And so, we would argue that the claims in this
5 case don't entitle Ms. Pearson a relief because,
6 ultimately, what most of this boils down to is the
7 jury's determination that she should be found guilty
8 of voluntary and whatever the reasons were for that.
9 We would argue that relief should be denied, because
10 the issue was seemingly not with Mr. Quinn or
11 anything he did not -- or didn't not -- or did or
12 did not do, but rather that the jury decided against
13 the Applicant, and so --

14 THE COURT: Well, what about the 911 -- or let me
15 ask you this: What about the witness, Mr. Lawson,
16 and the failure to call Mr. Lawson who gave a
17 statement about "banging in the head"?

18 MS. MARTO: Yes, Your Honor. That would've
19 supported her allegation, but then, again, I don't
20 think the State ever argued that there was any
21 dispute that she was being held against the window
22 and being nailed in the head. That was seemingly a
23 fact that both sides seemingly agreed with
24 throughout the entirety of the trial. And so that
25 would've just been duplicative at that point because

1 everybody had seemingly already agreed on what the
2 basis of the facts were and, ultimately, the main
3 issue was the jury's determination. Whether self-
4 defense or voluntary or murder, but voluntary was
5 the main charge at that point once the State
6 requested the lesser. And so, we would just argue
7 that relief should be denied in this case.

8 THE COURT: All right. All right. Anything else?

9 MS. ROSS: Just briefly.

10 THE COURT: Yes, ma'am.

11 **FURTHER CLOSING ARGUMENTS**

12 MS. ROSS: I just refer you to Page 287, I happen to
13 open up. This is closing argument where Line 5,
14 "Brittany Pearson got up here yesterday; she told
15 you a story. It was a desperate story, a story told
16 to justify killing. That was not self-defense. It
17 just doesn't add up. I give her an "A" for effort,
18 but it just doesn't add up." So it doesn't sound
19 like the State's acknowledging the -- the beating
20 against the window or the -- they're suggesting in
21 closing that Brittany made up the story.

22 And, again, in closing argument, Page 288, Line
23 11, they argued, "She -- this -- she came out of the
24 hair -- the whole thing, hair still in place. I'm
25 not even sure she was attacked at all. We don't

1 believe she even was. But even then it was (as
2 spoken), it couldn't have been that bad or we'd have
3 something more. Not one bruise." And then she goes
4 on and on.

5 THE COURT: Anything else?

6 MS. MARTO: No, Your Honor.

7 THE COURT: All right. I will review everything
8 again. Take it under advisement. I'll let you
9 know. Thank you both for your -- your arguments and
10 your presentation.

11 MS. ROSS: Thank you, Judge.

12 MS. MARTO: Thank you.

13 (Whereupon, the within hearing was
14 concluded at 5:03 p.m.)

15 (*This transcript may contain quoted material.
16 Such material is reproduced as read or quoted by the
17 speaker.)

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

CERTIFICATE

I, Amber Payne, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina on April 20th, 2022.

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



Amber J. Payne, CVR

Date: June 27, 2023

Notary public for South Carolina

My commission expires August 12, 2029

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

NIKKI R. HALEY
Governor



MARK A. KEEL
Chief

Inv. Jeffery Dwayne Corn
Spartanburg County Coroner's Office
366 N. Church Street, Suite 1700
Spartanburg, SC 29303

TOXICOLOGY DEPARTMENT
January 22, 2015
SLED No: L14-14320
Your Case No: C1411066
Incident Date: 11/08/2014

[V-Deceased] Myah Marguerita
Cole

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Mark A. Keel, Chief
South Carolina Law Enforcement Division

ITEMS OF EVIDENCE

Item: 1 **Sample Type: Blood (Toxicology) - Aorta Blood labeled "COLE, MYAH"**

Analysis by Headspace Gas Chromatography (GC) and/or Headspace Gas Chromatography/Mass Spectrometry (GC/MS)

Analyte	Result	Units	Threshold
Ethanol	0.151	% (g/dL)	0.010
Methanol	Negative	% (g/dL)	0.010
Acetone	Negative	% (g/dL)	0.010
Isopropanol	Negative	% (g/dL)	0.010



P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351



1/22/15

Screen by Enzyme Linked Immunosorbant Assay (ELISA)

Analyte	Result	Units	Threshold
Amphetamine	Negative	mg/L	0.100
Benzodiazepines	Negative	mg/L	0.050
Carisoprodol	Negative	mg/L	0.500
Cocaine Metabolite	Negative	mg/L	0.200
Methadone	Negative	mg/L	0.050
Methamphetamine	Negative	mg/L	0.100
Opiates	Negative	mg/L	0.075
Oxycodone	Negative	mg/L	0.075
Tramadol	Negative	mg/L	0.050
Zolpidem	Negative	mg/L	0.020
Cannabinoids	Negative	mg/L	0.030

This report contains the conclusions, opinions and interpretations of the analyst whose signature appears below.



Kelly A. Bugden
Forensic Toxicologist

CC: Inv. John Burgess - Spartanburg Department of Public Safety

For any additional interpretation of results please contact the Toxicologist above at the SLED Toxicology Department , (803) 896-7385.



PUBLIC SAFETY DEPARTMENT

CITY OF SPARTANBURG
P.O. BOX 1746 - 145 W. BROAD ST.
SPARTANBURG, S.C. 29304

CASE NUMBER

11020814

WITNESS INTERVIEW FORM

Name: DUSTIN WYLE LAWSONAddress: [REDACTED]Telephone Number [REDACTED]Social Security Number: [REDACTED]Date of Birth: [REDACTED]Today's Date: 11-8-14Time: 2152

This is a voluntary statement being given by Mr DUSTIN LAWSON, a white male who resides at [REDACTED] SPARTANBURG, South Carolina. This statement is being given at [REDACTED] in the city of SPARTANBURG, South Carolina. This statement is being written by officer GORDON in the words of MR LAWSON.

Around 9 o'clock, my fiancée^{and I} (Abby) Ruth Jones were out in front of our apartment [REDACTED] smoking. About half way through we heard 2 people arguing who were female. Over time it became more intense. I heard one of the females say "I don't have a problem" while the one who was screaming was banging on something possibly a door. About 30 seconds later Abby said we should go inside. They were still arguing. As I went to put out my cigarette, it was quiet for

Time Interview Began: 2153 p.m.Time (Statement/Interview) was completed: 2210 p.m.

I have read this statement consisting of 2 page(s), and I swear or affirm that the facts contained therein are true and correct.

I further state that I have received a copy of this statement.

SWORN TO AND SUBSCRIBE TO BEFORE ME

THIS DAY OF , 20

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES:

Signed: [Signature]Witness: [Signature]Witness:

VOLUNTARY STATEMENT

PAGE 2 OF 2NAME: DUSTIN LYLE LAWSON

CASE NUMBER

11020814

a moment. Then we heard a gunshot, like I immediately went into the house. I pulled out my phone and told Abby to go to the back room. I pulled out my phone to call you guys (police) and looked out the window. I heard a female crying and saw her standing on the drivers side. After I got off the phone, Abby joined me at the window. She looked to be on the phone, and a few minutes later you guys showed up. end of STATEMENT 2210

WITNESS: [Signature]

WITNESS: _____

[Signature]
Signature of person giving voluntary statement

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	FOR THE SEVENTH JUDICIAL CIRCUIT
	)	
Brittany Pearson, #368453,	)	Case No.: 2019-CP-42-01305
Applicant,	)	
	)	
v.	)	ORDER OF DISMISSAL
	)	
State of South Carolina,	)	
Respondent.	)	

This matter comes before this Court by way of Applicant's post-conviction relief application filed April 5, 2019. Respondent made its return on July 8, 2019, requesting an evidentiary hearing be convened. An evidentiary hearing was held at the Spartanburg County Courthouse. Susannah C. Ross, Esquire, represented Applicant. Assistant Attorney General Chelsey F. Marto represented Respondent.

Applicant testified on her own behalf at the evidentiary hearing. Counsel Thomas Quinn, Esquire, also testified. After reviewing all records and evidence before this Court, this Court finds Applicant cannot meet her requisite burden of proof of establishing she is entitled to post-conviction relief and denies and dismisses this application with prejudice. Findings of fact and conclusions of law are set forth below.

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. In February 2015, the Spartanburg County Grand Jury indicted Applicant for murder (2015-GS-42-00796). In March 2015, the Spartanburg County Grand Jury indicted Applicant for possession of firearm or knife during commission of or attempt to commit a violent crime (2015-GS-42-00795). Thomas J. Quinn, Esquire represented Applicant. Timi Poulos, Russell D. Chen, and Gaby B. Anthony,

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Esquires, prosecuted the case. On May 23-25, 2016, Applicant proceeded to trial before the Honorable J. Derham Cole, circuit court judge, and a jury. On May 25, 2016, Applicant was found guilty of the lesser-included offense of voluntary manslaughter and as indicted for the weapons possession. Judge Cole sentenced Applicant to twenty-four years' imprisonment for voluntary manslaughter and five years' imprisonment for weapons possession, sentences running concurrently.

Applicant filed a timely notice of appeal, and a direct appeal was perfected by Lara M. Caudy, Esquire, who raised the following issue:

Did the court abuse its discretion by failing to grant Appellant immunity from prosecution pursuant to the Protection of Persons and Property Act where the decedent attacked Appellant in her occupied vehicle and Appellant shot the decedent in self-defense after the decedent continually beat Appellant in the head and repeatedly slammed her head into the car window?

By unpublished opinion decided July 18, 2018, the South Carolina Court of Appeals affirmed Applicant's convictions. *State v. Pearson*, Op. No. 2018-UP-324 (S.C. Ct. App. filed July 18, 2018). The remittitur was issued on August 10, 2018.

Summary of Relevant Facts

The Shower and the Shooting

On November 8, 2014, Applicant and the victim, Myah Cole, who were living together and dating, attended a baby shower. (Tr. 26). Cole grabbed Applicant's butt in front of everyone at the shower, and then became upset with how Applicant reacted negatively. (Tr. 27). This sparked a verbal argument that continued throughout the day. (Tr. 28). The couple went out to a bar and grill later that evening and were with another couple who kissed in public. (Tr. 29). After Cole made a comment, Applicant left and went out to the parking lot. (Tr. 29). Applicant tried to

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leave in her car, but Cole blocked the car and beat on the window until Applicant unlocked the door, let Cole in, and drove to their apartment. (Tr. 30).

When the two reached the parking lot of the complex, Applicant told Cole to get out of the car, pushed her out, and handed her the apartment keys. (Tr. 30, 215-16). Cole initially exited the car, but then got back in and began striking Applicant. (Tr. 30). Applicant offered no testimony that she told Cole she could not re-enter the car, or that she otherwise prohibited re-entry of the vehicle. Cole was in the passenger seat on her knees over Applicant, punching her in the head and beating her head into the window. (Tr. 32). Applicant tried to fend her off by putting her hands up and then reached under the seat for her gun, which she grabbed, cocked, and fired at Cole, killing her. (Tr. 33-34). Applicant opened the car door, threw the gun out, and called 911. (Tr. 34). Cole died from a single gunshot wound that entered where her collarbone joined her breastplate and came out her lower back. (Tr. 161).

The Immunity Hearing

Applicant sought immunity under S.C. Code Ann. § 16-11-440. (Tr. 20). Applicant explained that she had her seat belt on when Cole was punching her and felt like she could not go anywhere and "froze." (Tr. 32-33, 46-47). However, when asked if she could have pushed the button to release the seat belt, she admitted she could have. Further, Applicant admitted she could have pulled the latch on the door and pushed it open, rolled into the parking lot, and yelled for help. (Tr. 37). Applicant admitted Cole did not have a weapon. (Tr. 38). Applicant testified that after she reached under the seat for the gun, she put it between herself and Cole, then fired. (Tr. 38). Counsel showed Applicant photographs of her arms and hands taken after the incident and asked about any marks, abrasions, cuts, scratches, or bruises. Only that her arms being red, Applicant acknowledged the absence of any injuries on her arms or hands. (Tr. 40-41). Similarly,

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after being shown a photograph, she agreed there were no injuries on her face. (Tr. 42).

Although she claimed at trial that she had a knot on the side of her head, she recalled telling the investigator after the incident that she did not have any visible injuries. (Tr. 52). Applicant testified she cocked the gun as soon as she picked it up from under the car seat and did not tell Cole she had the gun before shooting her. (Tr. 42-43). Applicant testified she remembered telling an investigator she did not tell Cole to stop hitting her, did not tell her to stop because she had a gun, and did not make any attempt to tell her to back away. (Tr. 51). Applicant recalled telling the investigator that she was not in so much fear that she felt she had to shoot someone. (Tr. 53).

The State called Investigator Christopher Banks of the Spartanburg Police Department to testify as to the voluntariness of Applicant's statement. In testifying about his interview with Applicant, which was conducted at 12:45 a.m. on the night of the shooting, he testified she admitted pushing Cole to get her out of the car. (Tr. 60-62). Banks testified he could not see any injuries on Applicant at the time of the interview, nor did she point any injuries out to him. (Tr. 61). Following Banks' testimony, the trial court found the statement was freely and voluntarily made and denied Applicant's motion for immunity. (Tr. 63).

Current Action Before this Court

In her current PCR application, Applicant alleges she is being held in custody unlawfully because of ineffective assistance of counsel in that:

1. Ineffective assistance of trial counsel, in that:
 - a. "Lawyer failed to subpoena SLED toxicologist, his prejudice to do so resulted in jury not hearing relevant testimony as to how victim's alcohol level affected her reactions that night."
 - b. "All evidence wasn't introduced to jury, only evidence relevant to prosecutions case was seen. My attorney failed to introduce critical evidence that showed bruising on me."

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- c. "On several occasions officers and paramedics gave conflicting testimony of the position of the victim's body in the car. Pictures taken of the crime scene conflicts with their testimony."

In her amended application dated April 15, 2022, Applicant alleged:

1. Ineffective assistance of counsel for:
 - a. Failing to effectively argue 16-11-440 & 16-11-450.
 - b. Failing to prepare pretrial brief regarding immunity and request a reasoned ruling under the preponderance of the evidence standard.
 - c. Failing to request jury instructions and object to confusing self-defense instruction p. 321, 1.8; 308-312.
 - d. Failing to argue for parole under S.C. Code Sec. 16-25-90.

At the PCR hearing, Applicant proceeded forward on the following allegations:

1. Ineffective assistance of counsel for:
 - a. Failing to effectively argue 16-11-440 & 16-11-450.
 - b. Failing to prepare pretrial brief regarding immunity and request a reasoned ruling under the preponderance of the evidence standard.
 - c. Failing to request jury instructions and object to confusing self-defense instruction p. 321, 1.8; 308-312.
 - d. Failing to argue for parole under S.C. Code Sec. 16-25-90.
 - e. Failure to enter photographs of injuries and share the photographs with Applicant.
 - f. Failure to address Applicant's military history.
 - g. Failure to enter the toxicology report.
 - h. Failure to enter the 911 call.
 - i. Failure to expand on her head/neck injuries.
 - j. Failure to investigate and present Dustin Lawson's witness statement.
 - k. Failure to make a formal object to the voluntary manslaughter instruction.
 - l. Failure to clarify the victim's position in the car.

All other allegations raised in his initial application and amendments are deemed waived and abandoned and, accordingly, will not be addressed in this order.

Summary of the Testimony

Applicant Testimony

Applicant testified that she understood the proceeding. She stated she thought she should have been afforded immunity. She stated she was numb from the shooting and that she did "have any feelings after that" because she lost her best friend. She stated that her head had been beaten

by the victim prior to the shooting. She stated that photographs of her head and neck injuries were not entered at trial and that she did not recall seeing them in discovery. She stated that at the immunity hearing, Applicant talked about being frozen and how she thought the victim would have killed her if she did not fire first. She stated that she did not think she had another choice regarding the shooting. She testified that though she said at the immunity hearing and trial that she thought she could have handled the situation differently, she now believes that is not the case. She stated that the victim's military experience was not brought out at trial. Applicant testified that she wanted the victim's toxicity report in at trial, but that this was not permitted into evidence. She stated she never talked to Counsel about parole. She stated that there had been no prior physical altercations between her and the victim, but that the abuse she suffered at the hands of the victim was more emotional. She testified that she called 911, but never listened to the call. She stated that her head injuries were never expanded upon at trial. She stated that Dustin Lawson's witness statement was not brought out at trial but thought it would have been helpful because it would substantiate her side of the story. She stated that she feared for her life and had a license to carry. She stated she never would have used the weapon unless she feared for her life.

On cross-examination, Applicant stated she testified at trial. She stated she testified at trial that she had a knot on the side of her head. Even with this testimony elicited at trial, Applicant testified that the jury found her guilty. She stated that she and the victim were about the same size. She testified that there was no history of physical violence between the two of them before the incident. She stated that she testified to having one beer the day of the incident because she was the driver. She stated that she testified that she had her seat belt on and could not have done anything else in the moment. She testified that the victim was drinking that day

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and that this was a contributing factor to her aggression. She testified that Counsel went over all questions she had regarding the discovery.

Counsel Testimony

Counsel testified that he received the witness statement from Dustin Lawson as a part of the discovery. Counsel testified that the trial occurred in 2016 and that he met with Applicant before trial. He stated he went over her statements given to law enforcement with her. He stated that the immunity was denied at the immunity hearing. He stated he did not object to the ruling. He stated that there was a heated verbal argument in chambers between himself and the State when the State requested a lesser-included offense instruction to voluntary manslaughter. He stated he did not recall the 911 call being published to the jury. Counsel testified he did not remember talking about the banging of Applicant's head against the car window during closing arguments. He stated that he did not offer any pictures of Applicant's face into evidence at trial. He stated he did not recall exactly what the State admitted into evidence at trial. Counsel testified that he could see how the jury charge could be somewhat confusing. He stated that Applicant had no duty to retreat but that the jury was charged that an element of danger existed. He testified that the State argued at trial that Applicant could have left the trial. He stated that he did not make a formal object to the voluntary manslaughter charge on the record. He stated that there was not an objection made to the self-defense charge. He stated that because no objections were made, nothing was preserved for appellate review on this ground. Counsel testified that the victim did not have any bruising or signs of injury beyond the gunshot wound.

On cross-examination, Counsel testified that chances of Judge Cole granting immunity at the immunity hearing were slim. He stated that, to the best of his knowledge, Judge Cole had never granted immunity in any case before. He testified that the State's argument had always

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been that Applicant overreacted and brought a gun to a fist fight. He testified that he received a copy of the State's potential witness list, but that the State ultimately decided to call about half the people on the list. He testified that the toxicologist was on the potential witness list. Counsel testified that it was widely accepted that the victim was drinking the day of the incident. He testified that he would not consider Applicant a battered woman. He stated he did not see anything improper with the jury charges and that he did not think an objection to the jury charge would have made a difference on the outcome at trial. He stated that a plea offer to voluntary manslaughter was made but was rejected. Counsel testified that the State's request for a voluntary manslaughter charge was a surprise by the State. He stated he objected to the charge in chambers, but Judge Cole overruled the objection. Counsel stated he spoke to some potential witnesses. He stated that he thought the 911 call could have made a difference at trial and was unsure why he did not enter it into evidence, because it could have backed up Applicant's testimony. Counsel stated he was unsure whether the position of the victim in the car after being shot made a difference at trial. Counsel testified that Applicant presented as a good witness but had wished she had done some things differently while on the stand at both the immunity hearing and the trial. On re-direct, Counsel testified he thought the 911 call and witness statement would have been helpful at trial.

Findings of Fact and Conclusions of Law

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. Before this Court are the Spartanburg County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the trial transcript, direct appeal records, and this PCR action's records. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon

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their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by South Carolina Code Annotated Section 17-27-80 (2003).

Ineffective Assistance of Counsel

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel's performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel's actions fell outside of the zone of "reasonableness under prevailing professional norms." *Strickland*, 466 U.S. at 688. See also Rule 71.1(e), SCRCP ("The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."). Reasonableness is determined by the "variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant," and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment."

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Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel's performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually "countless" ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel's deficient performance must have prejudiced the applicant so that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. Realistically, this matters "'only in the rarest case'" because "[t]he likelihood of a different result must be substantial, not just conceivable." *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (quoting *Strickland*, 466 U.S. at 697).

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

Failing to Effectively Argue 16-11-440 & 16-11-450

Applicant claims Counsel was ineffective for failing to effectively argue for immunity under the Protection of Persons and Property Act. Counsel argued much of what Applicant alleges she wanted raised and pursued an immunity hearing before the trial. The fact that Counsel was unsuccessful in his argumentation should not render him deficient. Additionally,

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this Court declines to find that any additional argumentation presented at the PCR hearing would have changed the outcome. This is particularly true because of Counsel's credible testimony that as an experience attorney, he was under the impression that Judge Cole had never granted immunity before and preferred sending things to the jury. Accordingly, relief is denied.

Failing to Prepare Pre-Trial Brief

Applicant claims Counsel was ineffective for failure to prepare a pre-trial brief regarding immunity. This Court finds Counsel acted reasonably in electing to present his immunity argument orally instead and fails to see how Applicant was in any way prejudiced on this ground. Accordingly, relief is denied.

Failure to Request Reasoned Ruling on Record

Applicant claims Trial Counsel was ineffective for failure to object to the Trial Court's failure to make full and complete findings of fact and conclusions of law for the elements of self-defense as applied under a claim pursuant to the Protection of Persons and Property Act. "[T]he trial court must necessarily consider the elements of self-defense in determining a defendant's entitlement to the Act's immunity. This includes all elements of self-defense, save the duty to retreat." *State v. Curry*, 406 S.C. 364, 371, 752 S.E.2d 263, 266 (2013). Though determining each element was analyzed by the Court when conducting appellate or post-conviction review and would have been made simpler if conducted explicitly on the record, this requirement was not clarified until several years after the immunity hearing was conducted. *State v. Glenn*, 429 S.C. 108, 123, 838 S.E.2d 491, 499 (2019) (finding that the circuit court should at least make specific findings on the elements on the record).; *see also Thornes v. State*, 310 S.C. 306, 310, 426 S.E.2d 860, 861 (1992). The relevant time frame for analysis is when the alleged ineffectiveness occurred, not several years later when a witness modifies her original

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statements.”).

Counsel has never been required “to be clairvoyant or anticipate changes in the law which were not existent at the time of trial.” *Gilmore v. State*, 314 S.C. 453, 456, 445 S.E.2d 454, 457 (1994), *overruled on other grounds by Brightman v. State*, 336 S.C. 348, 520 S.E.2d 614 (1999). *See generally e.g. Thornes v. State*, 310 S.C. 306, 309-10, 426 S.E.2d 764, 765-66, (1993) (citations omitted); *Robinson v. State*, 308 S.C. 74, 417 S.E.2d 88 (1992); *Arnette v. State*, 306 S.C. 556, 413 S.E.2d 803 (1992); *Kirkpatrick v. State*, 306 S.C. 359, 412 S.E.2d 389 (1991).

This Court finds Counsel acted reasonably. There was no requirement that explicit findings be placed on the record at the time of trial and Counsel was not expected to anticipate this change in the law. Additionally, there has been no showing that failure to make specific findings impacted appellate court proceedings. Specifically, in the Court of Appeals’ order, the court did not find that the issue of immunity was not properly preserved for appellate review. Rather, it simply chose to affirm the findings of the lower court. Accordingly, there has been no showing that any failure to make specific findings of fact and conclusions of law in any way impacted Applicant’s success on direct appeal. Thus, because this Court declines to find any error on the part of Counsel that impacted circuit or appellate court proceedings concerning the denial of immunity, no prejudice is found, and relief denied accordingly.

Failure to Request Jury Instructions/Object to the Self-Defense Charge

Applicant claims Counsel was ineffective for failure to request jury instructions and for failing to object to the self-defense charge. Concerning deficiency, Counsel must articulate a valid reason for employing a certain strategy, which is measured under an objective standard of reasonableness. *Roseboro v. State*, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1992). In

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determining whether a defendant was prejudiced by improper jury instructions, the court must find that, viewing the charge in its entirety and not in isolation, there is a reasonable likelihood that the jury applied the improper instruction in a way that violates the Constitution. *Battle v. State*, 382 S.C. 197, 203, 675 S.E.2d 736, 740 (2009). The law to be charged must be determined from the evidence presented at trial. *State v. Knoten*, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001).

A self-defense jury instruction was given at trial. (Tr. 307-08). Counsel did not object. Though he stated he could see how the charge was confusing, he declined to see anything erroneous in the instruction. This Court declines to find Counsel deficient on this ground and declines to find prejudice, as there is no evidence that the charge was applied improperly. Accordingly, relief is denied.

Failure to Argue for Parole

Applicant claims Counsel was ineffective for failing to argue for parole. Section 16-25-90 states:

[A]n inmate who was convicted of . . . an offense against a household member is eligible for parole after serving one-fourth of [her] prison term when the inmate at the time [she] . . . was convicted of an offense against the household member, or in post-conviction proceedings pertaining to the plea or conviction, presented credible evidence of a history of criminal domestic violence, as provided in Section 16-25-20, suffered at the hands of the household member.

S.C. Code § 16-25-90 (2004).

Applicant candidly testified that all abuse she suffered from the victim was verbal and emotional. Counsel credibly testified that he did not perceive Applicant to be a battered woman. This Court concurs and find that Counsel was reasonable in not making a frivolous argument and finds that even if he had argued this, it would not have been successful. Accordingly, relief is denied.

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Failure to Enter/Share Photographs

Applicant claims Counsel was ineffective for failure to enter the photographs of Applicant's injuries and for failure to share this discovery with her. Applicant testified that she was injured at trial. Her narrative of the victim beating her before she grabbed her gun was also exhausted at trial. This Court finds that the photographs were duplicative with this testimony and concludes that Counsel's alleged failure to enter them was non-prejudicial. Additionally, this Court finds that even if Applicant was never shown the photographs, she was aware of the injuries sustained after the altercation. This Court fails to find any failure to share these photographs with Applicant prejudicial. Accordingly, relief is denied on this ground.

Failure to Address Military History

Applicant claims Counsel was ineffective for failure to address the victim's military history. This Court declines to find this relevant and, accordingly, declines to find Counsel deficient for failing to explore this issue. Additionally, this Court declines to find that making this fact known to the jury would have impacted the trial results. Accordingly, relief is denied on this ground.

Victim's Position

Applicant claims Counsel was ineffective for failure to clarify the victim's position in the car. Counsel credibly testified that he did not think this issue mattered. This is a reasonable conclusion and Counsel is not deficient as a result. This Court concurs with Counsel's recognition that this did not matter and, accordingly, declines to find Applicant met their burden of proof in establishing prejudice. Relief is denied on this ground.

Failure to Enter Toxicology Report

Applicant claims Counsel was ineffective for failure to enter the victim's toxicology

2023 APR -3 AM 9:45
CLERK OF COURT
SPARTANBURG COUNTY
JANET W. COX

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report. Counsel credibly testified he did not subpoena and plan to call the toxicologist because they were on the State's witness list. This is reasonable and Counsel is not deficient for failing to subpoena them themselves. Additionally, there was ample testimony at the trial supporting the fact that victim had been drinking that day. This Court declines to find that the report would have added anything to the trial that would have led to a different result. Accordingly, relief is denied.

Failure to Enter 911 Call

Applicant claims Counsel was ineffective for failure to enter the 911 call. This Court finds that the call would not have affected the outcome at trial because the trial ultimately boiled down to a matter of Applicant's credibility to the jury. A 911 call from Applicant does not impact that determination of credibility. Accordingly, relief is denied.

Failure to Expand on Head/Neck Injuries

Applicant claims Counsel was ineffective for failure to expand upon her head and neck injuries. However, Applicant testified that she had marks on her head the next day. (Tr. 214). This Court declines to find Counsel deficient for failing to present this to the jury an additional time and finds that Applicant was not prejudiced, because this testimony was already before the jury. Accordingly, relief is denied on this ground.

Dustin Lawson's Witness Statement

Applicant claims Counsel was ineffective for failure to present Lawson's witness statement. Applicant has failed to meet his burden of proving prejudice. *See Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995) (To show counsel was ineffective by failing to call a witness, the witness(es) must be produced at the PCR evidentiary hearing or their testimony must otherwise be presented, consistent with the rules of evidence); *Clark v. State*, 315 S.C. 385, 434 S.E.2d 266 (1993) (Mere speculation regarding the witness's testimony is insufficient to

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establish prejudice). Accordingly, relief is denied.

Failure to Formally Object to Voluntary Manslaughter Charge

Applicant claims Counsel was ineffective for failure to formally object to the voluntary manslaughter jury instruction. Counsel credibly testified that this was dealt with extensively in chambers and that he objected in the back. Counsel also requested this charge not be given to the jury once the State rested. (Tr. 178). Though Counsel likely should have renewed his objection on the record, there has been no showing of prejudice. The Judge would have denied the request had it been renewed. Additionally, to the extent that Applicant argues a formal objection was needed for issue preservation on appeal, Applicant has failed to prove to this Court that an appeal of this issue would have been successful. Accordingly, relief is denied.

Conclusion

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant her application. Therefore, this PCR application must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

1. The PCR application be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

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AND IT IS SO ORDERED this 16th day of March, 2023.

G.D. MORGAN
Presiding Judge
Seventh Judicial Circuit

Spartanburg, South Carolina.

CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

2023 APR -3 AM 9:45

FILED

WITNESSES

City of Spartanburg

Roxie M. Foster

SENTENCE MADE

REPORT ENTERED

ARREST WARRANT NUMBER

CAUTIONED

INDEXED

2014A4210203548 CHECKED WARRANTS

CHECKED SIGNATURE

ASSESSMENT AND

ACTION OF GRAND JURY

TRUE COPY

True Bill

MAR 12 2015

Foreperson of Grand Jury

Date:

VERDICT

*Guilty**Allen Dunn 5/25/16*

Foreperson of Petit Jury

Date:

DOCKET NO.

15-GS-42 0795

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

MAR 18 2015

TERM

THE STATE

VS.

Brittany Shaunta Pearson

Indictment for

POSSESSION OF FIREARM OR KNIFE
DURING COMMISSION OF OR ATTEMPT
TO COMMIT A VIOLENT CRIME

SC Code: 16-23-490

CDR Code: 549

Class FELIF

A CERTIFIED COPY

CLERK OF COURT

SPARTANBURG COUNTY

BY: *[Signature]* D.C.DATED *4/1/16*

2015 MAR 18 PM 1:31

K. J. GALEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on MAR 12 2015 the

Grand Jurors of Spartanburg County present upon their oath:

**POSSESSION OF FIREARM OR KNIFE DURING COMMISSION
OF OR ATTEMPT TO COMMIT A VIOLENT CRIME**

That the defendant, Brittany Shaunta Pearson, did in Spartanburg County on or about November 8, 2014, visibly display a firearm during the commission or attempted commission of a violent crime, in violation of Code §16-23-490, *CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS **COMPUTER**COUNTY OF SPARTANBURGSTATE VS.Brittany Shaunta Pearson

AKA:

Race: BLACK Sex: F Age: 27DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: Spartanburg, SC 29301DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Weapons / Possession of weapon during violent crime, if not also sentenced to life without parole or death (~ 5 years)in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Timi Poulos
POULOS, TIMI70455
SC Bar#

Defendant

Thomas J. Poulos
Attorney for Defendant4616
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand or to pay a fine of \$; ~~provided that upon the service of~~ days/months/years and/or paymentof \$; plus costs and assessments as applicable"; ~~the balance is suspended with probation for~~ ~~months/years~~ and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCIDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ § 56-5-2995 (DUI Assessment) \$12 \$ § 56-1-286 (DUI Breath Test) \$25 \$ Proviso 47.9 (Public Def/Prob) \$500 \$ § 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§ 14-1-213 (Drug Court Surcharge) \$150 \$ § 50-21-114(B)(1) Breath Test Fee) \$50 \$ § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ Proviso 90.3 (SCCA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ 3.90TOTAL \$ 133.90

PTUP

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: L. Moffitt

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 9093Sentence Date: May 23, 2016

WITNESSES

City of Spartanburg

Anthony S. Minor

ARREST WARRANT NUMBER

2014A4210203547-Amended

COMPUTER

ACTION OF GRAND JURY

COMPUTER

FEB 19 2016

True Bill

Foreperson of Grand Jury
Date:

VERDICT

Guilty of Voluntary Manslaughter

Allen Dunn 5/25/16

Foreperson of Petit Jury
Date:

DOCKET NO. -
15-03-42-0796

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

FEB 22 2016

TERM

THE STATE

vs.

Brittany Shaunta Pearson

Indictment for

MURDER

SC Code 16-03-0010, 0020

CDR Code 116

Class FEL-EXM

ACERTIFIED COPY
M. [Signature]
CLERK OF COURT
SPARTANBURG COUNTY
BY: *William [Signature]* D.C.
DATED *2/27/16*

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

FEB 19 2016

At a Court of General Sessions, convened on _____, the

Grand Jurors of Spartanburg County present upon their oath:

MURDER

The Defendant, Brittany Shaunta Pearson, did in Spartanburg County on or about November 8, 2014, feloniously, willfully, and with malice aforethought, kill one [REDACTED] by shooting her with a firearm and the victim died as a proximate result thereof, all in violation of Section 16-3-0010, 0020, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Timi Poulos
Assistant Solicitor

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

STATE VS.

Brittany Shaunta Pearson

AKA:

Race: BLACK Sex: F Age: 27

DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip: Spartanburg, SC 29301

DL#: [REDACTED] SID#: [REDACTED]

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

In disposition of the said indictment comes now the Defendant who was

TO: Manslaughter / Voluntary manslaughter (2-30 years)

in violation of § 16-03-0050 of the S.C. Code of Laws, bearing CIDR Code # 0217

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-43 w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

POULOS, TIMI

SC Bar# 70455

Defendant

Attorney for Defendant

SC Bar# 4616

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 24 days/months/years or ☐ under the Youthful Offender Act not to exceed — yearsand/or to pay a fine of \$ —; provided that upon the service of — days/months/years and/or paymentof \$ —; plus costs and assessments as applicable*: the balance is suspended with probation for —in — years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ — plus 20% fee: \$ —

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

PTUP

— days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. —May serve W/E beginning —Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ — beginning —\$ — paid to Public Defender FundOther: —☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: L. Moffitt

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

IN THE COURT OF GENERAL SESSIONS **COMPUTER**

INDICTMENT/CASE#: 2015GS4200796

A/W#: 2014A4210203547

Date of Offense: 11/8/2014

S.C. Code § : 16-03-0050

CIDR Code #: 0217

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

Presiding Judge

Judge Code:

Sentence Date:

CF