

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Beaufort County

Honorable Heath P. Taylor, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

DELMAR RACORY SANDERS,

APPELLANT.

APPELLATE CASE NO. 2022-001243

PRO-SE BRIEF OF APPELLANT

DELMAR SANDERS

APPELLATE

Turbeville Correctional Institution

1578 Clarence Coker Hwy

Turbeville, SC 29162

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The trial court erred in not granting appellant immunity under the persons and property act by preponderance of the evidence standard.

However under statute 16-11-440 sections A and C of that act, if someone is in their home or B in their vehicle and anyone attempts to get them out of their vehicle such as "Man get out the way let me drive" they have a right to stand their ground and meet force with force.

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TABLE OF AUTHORITIES

State v. Curry 752 S.E. 2d 662 (2011)

State v. Glenn 838 S.E 2d 491(2019)

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State v. Chhith- Berry 878 S.E.352(2022)

State v. Ford 886 S.E. 2d 710 2023

State v. Oates 803 S.E. 2d911 2017

State v. Rosenbaum 882 S.E. 2d 180 2022

U.S. Const, Amend. V. VI. XIV

STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in not granting Appellant immunity under the person and property act by preponderance of the evidence standard.

STATEMENT OF THE CASE

Appellant was indicted in Beaufort County for murder related to the death of Deone McClendon, the attempted murder of Rhonda Randall, and a weapons charge. Tr. Trans.6. On August 22, 2022 appellant was tried before the Honorable Heath P. Taylor and a jury. Tr.Trans.1. Mary Jones and Samantha Molina represented the state. Tr.Trans.2. Seth Paulk represented appellant. Tr.Trans.2. The jury acquitted appellant of murder and attempted murder. Tr.Trans.742. The jury convicted appellant the lesser-included offense of voluntary manslaughter and the weapons charge. Tr.Trans.742. Judge Taylor sentenced appellant to thirty years imprisonment for manslaughter and a consecutive five – year term on the weapons charge. Tr.Trans.770. This appeal follows.

STANDARD OF REVIEW

The trial court erred in refusing to grant appellant immunity under the persons and property act . **See. STATE V. CURRY 752 S.E 2D 662 (2011) and also STATE V. GLENN, 838 S.E 2D 491 (2019)**

Exhibits

Exhibit A: Tr. Trans 174 lines 9-13

Exhibit B: Tr. Trans. 563 lines 23-24/ 563 lines 1-7

Exhibit C: Tr. Trans. 742

Exhibit: D: Tr. Trans 408 line 23/ 409 line 1

Exhibit E: Tr. Trans. 414 line 3/ lines4-11

Exhibit F: Tr. Trans. 415 lines 1-25

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Exhibit I: Tr. Trans. 420 lines 10-13

Exhibit J: Tr.Trans.421 lines 21-25

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Exhibit L: Tr. Trans. 423 lines 13-15

Exhibit M: Tr. Trans. 424 line 22

Exhibit N: Tr. Trans. 427 lines 3-25

Exhibit O: Tr. Trans. 431 lines 18-20

Exhibit P: Tr. Trans.432 lines 1-7

Exhibit Q: Tr. Trans. 433 lines 14-20

Exhibit R: Tr. Trans. 434 lines 7-13

Exhibit S: Tr.Trans.435 lines 1-25

Exhibit T: Tr. Trans. 429 lines 1-10

Exhibit U: Tr. Trans 440 line 11

Exhibit V: Tr. Trans 442 lines 1-7

ARGUMENT

The trial court erred in not granting appellant immunity under the protection of persons and property act by preponderance of the evidence standard. The self-defense case hinged on appellants credibility. Appellant was indicted for the murder of his cousin Deonne McClendon ("McClendon") and the attempted murder of Rhonda Randall ("Randall"). Randall a prostitute and crack addict, was the states main witness at trial. Tr. Trans. 174 lines 9-13 Exhibit A. She testified that she solicits her body to people who pays her money to pay her bill. Tr. Trans. 563 line 23-24 and 564 line 1-7 Exhibit B. Expert Keith Johnson stated his opinion that "appellants rendition of the events to that and what happened that night was as plausible as ones, that Ms. Randall had put out". It was as plausible that he was going to be robbed by the gentlemen and her, as it was that appellant just randomly shot these people, to me in my mind it was more so". Keith Johnson also explained that "appellant had no motive" "What was his motive?"

The jury acquitted appellant of attempted murder for the shooting of Randall and only convicted him of voluntary manslaughter for McClendon's death. Tr. Trans 742 Exhibit C, appellant testified that he went to "bootleggers" to get some individual cigarettes because he was short on cash and waiting for his direct deposit and 12:00 am so he could purchase himself a pack of cigarettes. Upon arrival at "bootleggers" he was approached by Mr. McClendon who then asked appellant for a ride to the store in which appellant declined. The owner of "bootlegger" then asked appellant to go to the store to purchase some items for his personal independent use at which appellant agreed and also affirmed to taking Mr. McClendon as well ("killing two birds with one stone"). Appellant testified that Mr. McClendon told appellant that he was going to put his gun under the hood just in case they were stopped and searched by police. McClendon stated he was going to pick up "two girls" but turned out to only be one girl in whom appellant never met, Ms. Rhonda Randall.

They arrived at the Oasis Inn Motel McClendon and Randall both went inside together while appellant stayed in his vehicle. Appellant refused to get into the motel because he wasn't interested in hanging out with them being that there was only one girl. Just two minutes later Randall came back to appellants driver side and pulled on his door handle, but it was locked as appellant stated in Tr. Trans. 408 and 409 line 23 and line 1 Exhibit D. There was also a video in trial court that proves the rendition of events that appellant testified had occurred at the Oasis Motel. He opened the door for her to see what it was that she had wanted. Randall had tried to convince appellant to come inside the hotel in which he refused by telling her that he's checking his balance for his direct deposit. Randall returned inside the hotel. Shortly after McClendon and Randall came out of the hotel room together. Tr. Trans. 414 line 3 Exhibit E. McClendon was the first to approach the vehicle and appellant manually unlocked the door for him and him only. Tr. Trans 414 line 4-11 Exhibit E. Appellant stated the doors were locked and that Ms. Randall had tried to open all the doors but failed because appellant did not use the automatic unlocking mechanism because it would have unlocked all the doors and Randall would have had access to getting in appellants vehicle unwanted. Tr. Trans. 415 lines 1-25 Exhibit F. At this time appellant thought of way to defuse and escape the situation by telling McClendon he was going to the atm to withdraw money and buy more drugs and for them both to just wait there at the motel until he returns. Tr. Trans. 416 line 16-20. Tr. Trans 416 line 5-15 Exhibit G, appellant stated that McClendon

disregarded what appellant see (**State v. Marshall**) s.c App 2019 428 s.c. 11 832 S.E 2d. This is the first out of four elements of self defense that the appellant was without fault in bringing on the difficulty.

Appellant gave direct testimony that he did not want McClendon and Randall to go with him to the atm. **Tr. Trans 418 lines 2-15 Exhibit H.** In **Tr. Trans. 420 lines 10-13 Exhibit I,** appellant stated that he was thinking everything that can be thought of when it come to getting hurt or being robbed after victims went against appellants will of wanting to go to the atm by himself. **See (State v. Rosenbaum) S.C App 2022 438 S.C 91 882 S.E 2d 180.** This refers back to the second element of self defense that appellant “actually believed he was in imminent danger of death or great bodily injury or believed he was in such danger”. This follows **Tr. Trans 421 lines 21-25 Exhibit J**, when appellant stated that he was afraid that they were going to hurt him or rob him and take his money being that he had just told him he was going to the atm to withdraw money after receiving his direct deposit. **Tr. Trans 422 lines 13-18 Exhibit K,** Appellant stated that as he was driving he heard something heavy drop on the back seat floor board. Randall then, without being questioned hastily stated that it was her phone, but when appellant looked back her phone was clearly in the cup holder. McClendon then states that appellant is swerving and passing all the ATMs and that his position as the driver should be changed but appellant refused. **Tr. Trans. 423 lines 13-15 Exhibit L. Tr. Trans. 424 line 22 Exhibit M,** and 356 lines 15-25 the (**Castle Doctrine**) was applied when appellant stated on page 424 line 22 that “his truck is his mobile home”. On page 356 lines 15-25 and 357 7-25 elaborates a little more on appellants dwelling and living situation as to being his vehicle. **See (State v. Curry) 406 s.c 364 752 S.E 2d 263.**

Tr. Trans 427 line 3-25 Exhibit N, appellant stated that something was being passed from the back to the front seat and that McClendon was reaching for something with his left hand. Appellant then pulls over to speak with them, but when he turned on the dome lights in his vehicle he spotted a small .380 Caliber Pistol positioned on McClendon’s lap. **Tr. Trans. 431 lines 1-16** appellant stated that the barrel of the gun was pointed in his direction and McClendon was demanding him to let him drive at which appellant declined. **Tr. Trans. 431 Lines 18-20 Exhibit O,** appellant then asked McClendon “what’s going on, i thought you put that under the hood, you sad you put that under the hood”? Appellant believed that there wasn’t a gun in the car and that it was under the hood as McClendon had told him. **Tr. Trans. 432 lines 2-7 Exhibit P. Tr. Trans 433 14-20 Exhibit Q,** McClendon then gets out the car, then appellant gets out the car and spotted the gun on the passenger seat in reach for Randall to retrieve it. This frightened appellant and made him second guest himself on whether he should run and leave his (mobile home) his vehicle but he declined to do so. **See: (Title 16-11-440).** Presumption of reasonable fear of imminent peril when using deadly force against another unlawfully entering residence, occupied vehicle or place of business. **See Exhibit C of section 16-1-60.** A person who is not engaged in a unlawful activity and who is attacked in a place where he has the right to be, including but not limited to his place of business, has no duty to retreat and has the right to stand his ground and meet force with force including deadly force if he **believes** it is necessary to prevent death or great injury to himself or another person to prevent the commission of a violent crime as defined. **(State v. McCray) 413 S.C.76 773 S.E. 2d 914 (2015).** **Tr. Trans. 434 7-13 Exhibit R,** McClendon then walks around the front of the vehicle, appellant was keeping an eye on the gun to make sure Randall didn’t grab it being that he saw her scoot up near it. This made appellant sit back down in the driver seat to watch the gun, McClendon and Randall simultaneously. **Tr. Trans. 435 1-25 Exhibit S.**

In **Tr. Trans. 429 lines 1-10 Exhibit T** appellant stated in **line 7** that he felt like he was potentially in danger. This reflects the Third element of self defense. If his defense was based upon his belief of

imminent danger a reasonably prudent man of ordinary firmness and courage would have held the same belief. McClendon then asked to drive at which appellant refused once again. Tr. Trans. 429 line 16-19 appellant stated he turned in his dome lights and saw a gun on McClendon's lap with the barrel facing him demanding to drive. Tr. Trans. 431 lines 12-25 and Tr. Trans. 432 lines 1-25 talks about how appellant didn't know where the gun came from being that McClendon never popped the hood again to retrieve all night. Appellant established enough evidence to have this case dismissed at trial. Appellant also stated in Tr. Trans 437 lines 12-15, that he took the weapon not to use it but to prevent anyone else from using it on him. Tr. Trans. 438 lines 16-23 McClendon was outraged and yelling telling appellant "you're going to let me drive". Appellant made direct testimony stating he knew for a fact that if McClendon had taken the gun back from him that appellant would have been shot. Tr. Trans. 438 line 25 and Tr. Trans. 439 lines 1 and 2 McClendon starts getting closer and closer demanding to drive but appellant refused. When appellant said "No" McClendon vigorously came at appellant to get the gun from him and that's when appellant fired. Tr. Trans. 439 lines 5-15 appellant states he was pointing down hopefully not to hurt as much and that he really just wanted to scare McClendon. Once McClendon turned and ran away he didn't pursue him or continue to shoot, but thought he missed. Appellant thanked God he had missed. Appellant turns to Randall and said, "hey you need to get out of my car" at which Randall did not comply instead she starts yelling and digging through her purse. Tr. Trans 440 Line 11 Exhibit U appellant fired a warning shot at Randall. Tr. Trans. 442 lines 1-7 Exhibit V appellant stated he did not continue to shoot at anyone and sought his way to escape since both assailants were out of the vehicle. Appellant stated he wasn't trying to kill anybody, but only trying to protect and preserve his property and life.

The Court should reverse his conviction and grant him immunity under the protection of person and property act (Title 16-11-440).

Respectfully Submitted

Delmar Sanders, 364856

CONCLUSION

For the foregoing reasons, this court should reverse and vacate Sanders sentence or provide a new immunity hearing.

Appellant

This ___ Day of _____ 2023

Exhibit A: Tr. Trans. pg. 174 lines 9-13

1 old dudes?

2 A. What's the relevance to this? Do I
3 have to answer it?

4 THE COURT: Yes, ma'am, you do.

5 BY WITNESS:

6 A. Yes, I do.

7 Q. So prior to Deonne coming to get you,
8 you'd been turning tricks on old dudes?

9 A. Was I soliciting my body to people who
10 pay me money? Yes, I was. Was it old dude,
11 young dude, any dude.

12 Q. Okay.

13 A. To help me pay my bill, yes, I did.

14 Q. And you also tell Duncan at the
15 hospital, that you heard pop, pop, pop.

16 Do you recall saying that?

17 A. Yes.

18 Q. And that the next thing that you knew,
19 you had been shot?

20 A. Yes. You'all are really trying to
21 defend this man.

22 Q. Your statement earlier that you just
23 testified to on direct was, that you only heard
24 one shot and then a second shot directed towards
25 you; but when you were talking to Officer Duncan

Exhibit B: Tr. Trans.pg. 563 lines 23-24 and pg. 564 lines 1-7

1 themselves. Crack cocaine was different, it was
2 almost -- it was the go to, whether it be men or
3 women. Prostitution by crack cocaine users was
4 a common theme. And homeless invariably led to
5 that, if you stayed on it long enough.

6 Q. And along with the practices of
7 solicitation to feed crack addiction, is it also
8 a common practice of persons who are addicted to
9 crack cocaine who do solicit themselves, is it a
10 common practice for them to rob people?

11 A. Yes. Either through armed robbery, or
12 just taking a wallet, but robbery was a common
13 theme also. It's just an opportunity. And the
14 reason being is, in that demographic, in that
15 world, the customer, the John, for more of a
16 better description, can't report it.

17 He's already involved in an illicit crime,
18 so if he gets robbed, he's not gonna report it,
19 so it was common.

20 Q. Would you comment about the opinions
21 that you formed after reviewing the evidence in
22 this case?

23 A. In my opinion, Mr. Sanders' rendition
24 of the events to that and what happened that
25 night was plausible as ones, that the lady the

1 eyewitness put out. It was as plausible that he
2 was gonna be robbed by the gentleman with her
3 and her, as it was that he just randomly shot
4 these people. To me, in my mind, it was more
5 so.

6 Q. And why is that?

7 A. He had no motive. What was his motive?

8 MR. PAULK: Your Honor, that's basically
9 the extent of my questions.

10 THE COURT: Okay, Ms. Jones?

11 MS. JONES: Your Honor, I have no questions
12 for Mr. Johnson, but I certainly object to his
13 testimony.

14 THE COURT: Mr. Paulk, first, I don't --
15 like I said, I know Mr. Johnson well, and have
16 no question, as to his qualifications in the
17 areas; however, can you point me to any case,
18 where we've allowed an expert to, essentially,
19 as I'm hearing, come in and, essentially, vouch
20 for either witness? Because that's what it
21 sounds like he's doing.

22 I know this other case deals more with
23 profiling, that was Agent -- I think it was Paul
24 Larosa, who I'm sure Mr. Johnson knows well, but
25 he didn't -- he seemed to be getting close to

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Exhibit C: Tr. Trans. pg. 742

1 a verdict?

2 MADAM FORELADY: Yes, Your Honor.

3 THE COURT: Can you provide that to the Bailiff,

4 please?

5 MADAM FORELADY: Yes, sir.

6 THE COURT: Thank you. All right, Madam Clerk?

7 CLERK: Thank you.

8 THE COURT: If you will publish the verdict?

9 CLERK: All right. "In the Court of General
10 Sessions, Fourteenth Judicial Circuit, the State of
11 South Carolina v. Delmar Sanders, Indictment Numbers
12 2021-GS-07-01220, 1219 and 1221, we the jury
13 unanimously find the Defendant, Delmar Sanders, as to
14 the charge of murder, not guilty.

15 We, the jury, unanimously find the Defendant,
16 Delmar Sanders, as to the charge of voluntary
17 manslaughter, guilty.

18 We, the jury unanimously find the Defendant,
19 Delmar Sanders, as to the charge of attempted murder,
20 not guilty.

21 We, the jury, unanimously find the Defendant,
22 Delmar Sanders, as to the charge of possession of
23 weapon during the commission of a violent crime,
24 guilty.

25 THE COURT: All right. Would anyone like to poll

Exhibit D: Tr. Trans. pg. 408 line 23 and pg. 409 line 1

1 my mother's house, or I can just go somewhere to
2 sleep, until I can go to go work the next
3 morning.

4 Q. Okay.

5 MS. JONES: Speak up --

6 BY MR. PAULK:

7 Q. Yeah, can we --

8 MS. JONES: -- I can barely hear him.

9 WITNESS: Yes, ma'am.

0 BY MR. PAULK:

1 Q. So could you repeat that and just speak
2 up a little bit?

3 A. I was waiting -- I was sitting -- I was
4 checking my balance, waiting for money to come
5 in. And while I'm waiting, she's there.

6 Q. So what's happening right now?

7 A. She's coming out of the hotel room.

8 You can see --

9 Q. And --

0 A. You see she tried to pull my door, it
1 was locked, and that's when I opened the door
2 for her.

3 Q. So she first pulls on the door, and you
4 can see that it's --

5 A. Yes.

1 Q. -- locked, but then you unlock it?

2 A. Yes.

3 Q. And was she trying to get you to come
4 into the hotel room?

5 A. She was trying to get me to come in,
6 and I told her, "No," so I'm checking my
7 balance, once I get my money I'm gonna go and
8 I'm gonna go home."

9 Q. So why didn't you just leave?

10 A. I didn't want to leave my cousin there,
11 and he had told me to wait. I didn't want to
12 leave him stranded, but I knew what he told me
13 at first, that he was gonna go, and he was gonna
14 do his thing, and that's it, but I told him,
15 eventually, I was gonna leave.

16 Q. So after Ms. Randall comes out and
17 attempts to get you to come into the hotel room,
18 what are you thinking?

19 A. I'm thinking like what is going on?
20 Like what --

21 Q. Speak up a little bit, Delmar.

22 A. I'm thinking what is going on? Why do
23 I have to be there? It's already -- she's
24 already has her friend, who she claims is her
25 lover. She already has -- like they're already

Exhibit E: Tr. Trans. pg. 414 lines 3 -11

1 Q. So for the folks -- what's happening
2 right now?

3 ~~A. He came, he beat her to the door, so I~~
4 opened the door for him. I didn't open the door
5 for her. My doors were locked. You can see
6 that she clearly by pulling the back door, she
7 can't go, so now she goes around. And I'm
8 talking to him, I'm like, "Hey, what's going on?
9 I don't know what's going on? I don't know
10 what's you got going on, but you need to come on
11 and get in the car --

12 COURT REPORTER: Slow down.

13 BY MR. PAULK:

14 Q. Yeah, let's pause the video. We'll
15 pause the video and walk through this real slow.
16 Okay, so here do you see Deonne and Rhonda
17 walking to your car?

18 A. Yes.

19 Q. Do you know why they were both coming
20 to your car?

21 A. I have no idea.

22 Q. So who gets to your car first?

23 A. Deonne gets to my car first.

24 Q. And was his door locked, when he first
25 got there?

Exhibit F: Tr. Trans. pg. 415 lines 1-25

1 A. It was, and I unlocked it with my hand,
2 without the automatic mechanism.

3 Q. You didn't use the power lock?

4 A. I did not, because that would have
5 unlocked all the doors.

6 Q. Why did you decide to unlock Deonne's
7 door?

8 A. That way he can -- we can talk. I can
9 talk to him about what's going on. I don't know
10 her. I don't know what's going on.

11 Q. But you did unlock Deonne's door?

12 A. I did unlock Deonne's door with my
13 hand.

14 Q. So now we see Ms. Randall at the back
15 driver's side.

16 A. Yes.

17 Q. And --

18 A. That wasn't even where she was seated
19 the first time.

20 Q. So did she just pull on that door
21 handle?

22 A. She did, and it was locked.

23 Q. And were the rest of your doors locked?

24 A. The rest of them was locked.

25 Q. Okay. And you never used the power

Exhibit G: Tr. Trans. pg. 416 lines 5-15

1 lock to let her in the car?

2 A. Never.

3 Q. How did that back door get unlocked for
4 her to get in?

5 A. Deonne unlocked it for her with his
6 hand. He reached in, he grabbed it and unlocked
7 it.

8 Q. Did you want Ms. Randall to get into
9 your car?

10 A. I did not. She just gets in and just
11 sits down like -- right here I'm explaining to
12 them that I'm going to the ATM, and this was my
13 escape route. This was my reason to get away
14 from them, because I noticed that there are some
15 things that are going on.

16 So I'm basically lying to them, saying I'm
17 going to the ATM to get more, I know that what
18 they wanted, so I'm lying to them, telling them
19 I'm going to get more drugs. That was my escape
20 route. I was going to leave them there.

21 Q. Were you all out of drugs at this
22 point, Delmar?

23 A. They were not out of drugs.

24 Q. How do you know they weren't out of
25 drugs?

Exhibit H: Tr. Trans. pg. 418 lines 2-15

1 doors are shut, what are you telling them?

2 A. I am letting them know that I don't
3 ~~agree with you guys' decision of disregarding my~~
4 decision to not let you guys go with me.

5 Q. You didn't want them to go with you to
6 the ATM?

7 A. I did not want them to go with me,
8 yeah.

9 Q. Why didn't you want them to go with you
10 to the ATM?

11 A. Well, I wasn't even going to the ATM,
12 that was just my way of getting away from them,
13 hoping that they was, oh, he's going to get more
14 drugs, let's just stay here and wait for him. I
15 was never gonna come back.

16 Q. Slow down just a little bit buddy.

17 So you had no intention of going to get
18 more drugs that night?

19 A. No intentions.

20 Q. You had no intention of going with them
21 to the ATM?

22 A. No intentions. That's why I never
23 stopped for an ATM.

24 Q. Why didn't -- if you had been going to
25 the ATM, why wouldn't you want them to go with

Exhibit I: Tr. Trans. pg. 420 lines 10-13

1 sister. I wouldn't take my friend, you know.
2 what I mean? I'll take my wife. I wouldn't
3 take my homeboy. I wouldn't take his people
4 with me, because that's --

5 Q. Is it because you would be afraid of
6 being robbed?

7 A. Of course.

8 Q. So after you'all get in the car and
9 start driving, what were you thinking?

0 A. I'm thinking everything I can be
1 thinking of when it comes to somebody hurting
2 you, robbing you, you're thinking all types of
3 stuff.

4 Q. Why were you --

5 A. I'm not --

6 Q. -- thinking that? Had they threatened
7 you?

8 A. They didn't threaten me. They didn't
9 threaten me, but they went against my will, what
10 I was trying -- I was like, "No, you can't ride
11 with me, no." They went in the room for three
12 or four minutes, came back out. It's like
13 what --

14 Q. Do you think that it was odd that went
15 in the room and --

Exhibit J: Tr. Trans. pg. 421 lines 21-25

1 A. Being intimate lovers in the hotel
2 room, and two of them go in there? Yes, if
3 ~~they're gonna have sex or whatever, that takes a~~
4 little while. And I mean like --

5 Q. So you thought that it was a little
6 quick for them to go in there --

7 A. It was a little quick.

8 Q. -- and have relations?

9 A. That was a little quick, and it's also,
10 you know, kind of weird that she would come out,
11 try to get me to come in, like go do your thing.
12 Go do your thing, and if you need me to wait,
13 I'll wait and I'll take you guys back home, or
14 you can stay here, I'll take my cousin home,
15 whatever.

16 Q. Were you afraid that they were planning
17 something in the hotel room?

18 A. Yes.

19 Q. What were you afraid that they were
20 planning?

21 A. To hurt me, or rob me and take my
22 money, being that I just told them that I was
23 going to the ATM. And I told my cousin
24 beforehand that I was waiting on a direct
25 deposit.

Exhibit K: Tr. Trans. pg. 422 lines 13-18

1 Q. So then what was your plan, when you
2 started driving?

3 A. I didn't really have one. I was
4 thinking of one. I was -- I passed all the ATMs
5 on purpose. I was driving slow, I was thinking
6 I don't know what to do.

7 Q. Delmar, there's been some testimony
8 that you were swerving that night, that they
9 were scared of your driving? Could you explain
10 that?

11 A. Okay. I wasn't swerving. I swerved
12 maybe once or twice and looking back at Ms.
13 Randall, because something definitely dropped,
14 and I didn't know what it was, but it was heavy,
15 something definitely dropped.

16 Q. You just heard -- what did you hear?

17 A. On the floorboard a little hollow
18 sound.

19 Q. Did you ever see what dropped?

20 A. Never seen what dropped.

21 Q. After you heard something drop, what
22 happened?

23 A. Well I was just gonna asking if she'll
24 let -- "Oh, that's my phone, sorry." So I'm
25 like -- I thought about it, I'm like, hm, I

Exhibit L: Tr. Trans. pg. 423 lines 13-15

1 didn't even ask you.

2 Q. So you drive past all the ATMs, what
3 are you thinking?

4 A. I'm thinking, how do I get out of this
5 situation? How do I get out of this situation
6 the right way without yelling, screaming,
7 cursing and saying, "I'm gonna drop you off."

8 So I'm thinking about just going straight
9 to where he was at and just stopping. Like,
10 okay, yeah, this is your destination, that's
11 your girl, let's go.

12 Q. So then what happens?

13 A. I start driving, we get to the -- well,
14 as I was passing the ATM, "Hey, you passed all
15 the ATMs, you're passing all the ATMs." I'm
16 ignoring him, because I knew where I was going
17 then. I'm driving, we get up past a mobile home
18 trailer park, and that's actually when I heard
19 the thumb hit the ground. Well, let me get past
20 the mobile home trailer park.

21 Q. And what was the name of that trailer
22 park? Could you just say it a little --

23 A. Independence, sorry, Independence
24 Mobile Home Trailer Park.

25 Q. Okay. After you heard that thud on the

Exhibit M: Tr. Trans. pg. 424 line 22

1 ground, what were you thinking?

2 A. That it could possibly be something.

3 It could be something, it was heavy. It could
4 be a hammer, it could be a rock, but it was
5 something.

6 Q. Okay.

7 A. My tools are in the back.

8 Q. What kind of tools did you have in the
9 car?

10 A. I had climbing gear -- I didn't have my
11 climbing gear at that time. I had like a
12 hammer, I had a drill, and stuff like that.

13 Q. Okay. Was pretty much everything you
14 owned in that car?

15 A. Pretty much.

16 Q. Did they ever ask to drive?

17 A. They did.

18 Q. What did you say?

19 A. I told them, "No, no one drives my
20 truck." No one had a license. Even if they did
21 have a license, you're still not driving this.
22 This is, basically, my mobile home. If you
23 wreck this, I have to pay for it.

24 Q. You didn't trust anybody else to drive
25 your car?

Exhibit N: Tr. Trans. pg. 427 lines 3-25

1 A. Yes.

2 Q. -- while you were driving?

3 A. Yes. I noticed that he was reaching

4 for something with his left hand like this.

5 Q. So can you kind of step down right here
6 in front of the jury? I just want them to be
7 able to see this.

8 BY MR. PAULK:

9 Q. Take a seat. You're Deonne. Show me
10 what he did. Now, obviously, in a car there's
11 no side on the seat right there.

12 Well, maybe -- let's turn you around so
13 you can face the jury. In a car there's,
14 obviously, no -- nothing right there on your
15 right-hand side, so what was he doing?

16 A. He was reaching for whatever. I mean I
17 assume you'd just go like this and get whatever
18 but like this. And it's wide, it was weird.

19 Q. So was he reaching towards the
20 backseat?

21 A. Yes. And, if not, reaching towards the
22 backseat, he was still reaching with the
23 opposite hand, which didn't make sense.

24 Q. Did you notice anything else weird?

25 A. Yeah, I noticed that, that she was

Exhibit O: Tr. Trans. pg. 431 lines 18-20

1 A. I pulled over, so I can see what's
2 going on and talk to him.

3 Q. Okay.

4 A. Since I'm swerving, well, let me just
5 pull over.

6 Q. After you pulled the car over, and you
7 turned the dome lights on, what happens?

8 A. I see that the gun was on the slide,
9 his hand was placed on it, he wasn't pointing it
10 directly at me.

11 Q. Slow down, buddy.

12 A. I see the gun on his lap.

13 Q. Uh-huh, then what?

14 A. He wasn't pointing directly at me, but
15 the barrel was facing my way, and his hand was
16 pointed, and said let him drive.

17 Q. Okay. What did you say?

18 A. I said, "No." I said, "What's going
19 on? I thought that that was under the hood.
20 You said you put that under the hood."

21 Q. You actually saw them put it under the
22 hood? You saw them put a gun under the hood
23 earlier?

24 A. I didn't see them put a gun under the
25 hood, they told me that they were putting a gun

Exhibit P: Tr. Trans. pg. 432 lines 2-7

1 under the hood.

2 Q. And your hood was -- you did see your
3 hood popped?

4 A. Yes.

5 Q. So you had reason to believe that if
6 there was a gun, that it was under your hood?

7 A. Yes.

8 Q. Okay.

9 A. He never popped my hood at the -- when
10 he got out at Duke Street he never popped the
11 hood, and when we got to the hotel, he never
12 popped the hood clearly.

13 Q. Okay, we just saw the video though --

14 A. Right, right, right, right.

15 Q. -- so the hood was never popped.
16 What'd the gun look like?

17 A. It was small. Like, as I stated, it
18 would fit in your hand, and hang off maybe a
19 quarter of an inch off your hand, the barrel
20 part.

21 Q. So it'd almost fit in the palm of your
22 hand?

23 A. Yes.

24 Q. A small gun?

25 A. Yes.

Exhibit Q: Tr. Trans. pg. 433 lines 14-20

1 Q. Small enough to fit inside a purse?

2 A. It should, yes.

3 Q. Small enough to fit inside a pocket?

4 A. Yes.

5 MS. JONES: Your Honor, leading.

6 THE COURT: Sustained.

7 BY MR. PAULK:

8 Q. How small was the gun?

9 A. The gun was the size of your hand,
10 hangs off maybe an inch or quarter inch off your
11 fingers, your middle finger. It wasn't a big
12 gun at all.

13 Q. Okay. Then what happened?

14 A. He got out the car. That made me get
15 out the car, and I was thinking at this time,
16 should I just run, get underneath the car?

17 No, no, I can't leave the car, I'll just
18 stay here. So he comes around, you know, the
19 gun's on the seat. So I'm like, okay, and then
20 she scoops up -- she's --

21 Q. Hold on, hold on, hold on. You said he
22 got out of the car, and then you got out of the
23 car?

24 A. Yes.

25 Q. Where was the gun when you got out of

Exhibit R: Tr. Trans. pg. 434 lines 7-13

1 the car?

2 A. The gun was on the seat.

3 Q. Which seat?

4 A. His passenger seat where he was seated.

5 Q. Okay. He gets out of the car, you get
6 out of the car, then what happens?

7 A. He walks around the front of the car.
8 I'm looking back at the gun, and when I -- while
9 looking back at the gun, I noticed that she
10 scooted up to --

11 Q. She who?

12 A. Rhonda. She scooted up, put both her
13 elbows on the seat, and was looking at the gun.

14 Q. Put both her elbows on what seat? I'm
15 a little unclear on what's going on here.

16 A. The driver's front seat and the
17 passenger's front seat, they're only half a foot
18 away from each other.

19 Q. Uh-huh.

20 A. You know, so she's able to rest both
21 her elbows on the seat.

22 Q. Okay. And so you saw her prop up in --

23 A. Yes.

24 Q. -- between the front seat --

25 A. Yes.

Exhibit S: Tr. Trans. pg. 435 lines 1-25

1 Q. -- and the backseat?

2 A. Yes. Her buttocks was maybe on the

3 edge of the backseat in the middle.

4 Q. Okay. So she was leaned up towards the
5 front --

6 A. Right.

7 Q. -- while you and Deonne were outside of
8 the car?

9 A. Yes.

10 Q. Was she within arm's each of the gun at
11 that point?

12 A. She was in arm's reach of the gun.

13 Q. Could you tell if she was looking at
14 the gun?

15 A. Yes.

16 Q. So what'd you see?

17 A. I'd seen her look at the gun, and maybe
18 get away. So now I'm -- I've got one foot out,
19 while I'm sitting there, and I'm looking in
20 between them, I'm not even -- I'm not looking at
21 where --

22 Q. Hold on.

23 A. -- he's at --

24 Q. Slow down.

25 A. I'm not looking directly at him. I'm

Exhibit: T Tr. Trans. pg. 429 lines 1-10

1 A. He wasn't trying to hide it.

2 Q. So you thought they were trying to hide
3 something from you?

4 A. Yes.

5 Q. How'd that make you feel?

6 A. Scared as shit. It felt like I was,
7 potentially, in danger. And I tried to overrule
8 it, like, hey, wait, he's my cousin, hey, and
9 let's just see what goes on, let's see what goes
10 on.

11 And, you know, as I said, in the video what
12 put the icing on the cake was, I saw the gun.

13 Q. So after you noticed them trying to
14 discretely pass something from the back to the
15 front, what happened?

16 A. That's when I -- that's when they
17 started asking me for the -- that's when they
18 started asking to drive. And once they asked to
19 drive, I said, "No." I pulled over. I turned
20 on my dome lights. I can do it myself, I turn
21 it on, that's when I noticed --

22 Q. You turned on what now? I couldn't
23 quite hear you.

24 A. The dome lights.

25 Q. So what are the dome lights?

Exhibit U: Tr. Trans. pg. 440 lines 1-25

1 her know, "Hey, you need to get out of the car
2 right, now, man, like this is -- I don't know
3 what you'all got going on."

4 Q. Did you tell her to get the fuck out of
5 the car?

6 A. Yes. Yes, I did.

7 Q. And did she?

8 A. She did not. She did not comply. She
9 was going through her purse, saying what she was
10 gonna do, and saying, "Wait, wait, wait."
11 That's when I fired a warning shot at her. She
12 was already hanging out of the car, and as you
13 can see, there was a hole in the middle of the
14 seat.

15 If she was seated fully in the car and that
16 -- with that hole being in the middle of the
17 seat, it would have hit her directly in her
18 chest. So there's to show right there that
19 where she was hanging out. So I guess her arm
20 was right there where that hole was, and so that
21 means that she's hanging out of the car.

22 And I -- definitely, I'm not trying to
23 point it at her until I raised it and I pointed
24 to the right and I shot, hopefully, and scaring
25 her, let her know, hey, this is -- I'm not

Exhibit V Tr. Trans. pg. 442 lines 1-7

1 pursue anybody. I didn't keep shooting at
2 anybody. I wasn't trying to kill anybody. I
3 wasn't trying to kill anybody, I was trying to
4 protect and preserve my property and my life.
5 And if I wouldn't have acted that way, I would
6 not be here talking to you guys today, I believe
7 that. I would not.

8 Q. What'd you do after that?

9 A. I drove away.

10 Q. Where'd you drive?

11 A. I couldn't find my phone, so I just
12 kept driving. I was discombobulated, I didn't
13 know what to think, where to go, I just kept
14 driving, kept driving. I ended up on 21, and
15 that's when I was like, "Okay, I've got to get
16 rid of this gun, now I can't have no gun."

17 Q. Why'd you have to get rid of the gun?

18 A. 'Because I'm not supposed to have a
19 gun.

20 Q. You're not supposed to have a gun?

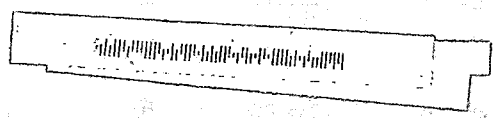
21 A. I'm not supposed to have a gun. I
22 don't want to have anything to do with a gun.

23 Q. Have you been convicted of a felony

24 before, Delmar?

25 A. I have been convicted of a felony.

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