

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Richland County

Honorable Daniel M. Coble, Circuit Court Judge

KEYLAN J. DURHAM,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001507

APPENDIX

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1 projectiles -- the holes and everything were all in the
2 passenger and around the front. And the windows were
3 damaged, I think, on the driver side, I'm not sure if the
4 bullets went through the windows, but as far as on the
5 door panels now, I don't believe so.

6 Q Okay. And State's Exhibit 99 that they introduced
7 that's a picture of the car with the red sticks in them?

8 A Yes, showing the windshield -- couple windshield
9 shots and two of the hood shots.

10 Q And based on what you documented in your report from
11 processing the car, the only shots to the driver side of
12 this vehicle is on the -- in the windshield, correct?

13 A I believe so, yes, ma'am.

14 MS. PINNOCK: Beg the Court's indulgence.

15 (WHEREUPON, a pause in the proceedings.)

16 MS. PINNOCK: Thank you. I have no further
17 questions.

18 THE COURT: Any redirect?

19 MRS. CAMPBELL: Just a quick question.

20 REDIRECT EXAMINATION

21 BY MRS. CAMPBELL:

22 Q On the vehicles you talked about on the driver side,
23 was that window -- what was the condition of the driver's
24 window?

25 A I believe, it was busted, broken because there was a

1 lot of glass. The back glass was broken, I believe, the
2 driver's front was broken too.

3 Q Is that what we talking about State's Exhibit 94?

4 A Yes, ma'am.

5 Q And that was glass that would be consistent with the
6 window?

7 A Driver side window, yes, ma'am.

8 Q So you can't tell ---

9 A I can't tell if a bullet went in the actual window,
10 if that's what you're asking because ---

11 Q Or how many or anything?

12 A Or how many or anything because it was shattered. It
13 wasn't a window there any more.

14 MRS. CAMPBELL: Thank you, Your Honor. I have
15 nothing further.

16 MS. PINNOCK: Nothing further, Your Honor.

17 THE COURT: Thank you.

18 (WHEREUPON, the witness leaves the witness
19 stand.)

20 THE COURT: Call your next witness.

21 MR. STEADMAN: Dereka Brown.

22 THE CLERK: Do you solemnly swear or affirm that
23 the testimony you're about to give in this case to be the
24 truth, the whole truth, and nothing but the truth so help
25 you God?

1 THE WITNESS: Yes, ma'am.

2 THE CLERK: Be seated and state your full name
3 for the record.

4 THE WITNESS: Dereka Brown.

5 WHEREUPON,

6 Dereka Brown,
7 after first having been duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. STEADMAN:

10 Q Good afternoon, Ms. Brown. You live Columbia area?

11 A Not any more I use to.

12 Q Did you use to live in the Columbia area?

13 A Yes.

14 Q How long did you live in the Columbia area?

15 A I stayed up here for five years.

16 Q And what part of town was that in?

17 A Broad River Road.

18 Q And did you live at the Brook Pines apartment
19 complex?

20 A Yes.

21 Q Did you live there back in August 6th 2014?

22 A Yes.

23 Q Do you remember that day?

24 A Yes.

25 Q Do you remember what you were doing that day?

1 A Yes.

2 Q What were you doing that day?

3 A I was in the house cleaning.

4 Q And you know why we're here today, did you observe
5 the officers trying to arrest Keylan Durham that day?

6 A Yes.

7 Q Tell me what you saw?

8 A Well, when they pulled in and first they pull in, I
9 guess, they was trying to set him up. He was -- once he
10 pulled in and he parked, they told him to get out the
11 vehicle. He got out, but he got back in.

12 Q Let me stop you real quick. Where were you standing?

13 A I was standing on the balcony?

14 Q And the balcony on your apartment complex?

15 A It's at the very top third floor.

16 Q And does it face out to the parking lot?

17 A It does.

18 Q Okay. All right. Tell me when you saw the black car
19 pull in then what happened?

20 A He got in -- I mean, he got out and he got back in.
21 And he backed out and they just spin back.

22 Q And did you see the officer get out of his vehicle?

23 A He got out his vehicle and stood up beside the
24 vehicle when they backed up. The person stood in front of
25 him and they got back in.

1 Q And did you see the person who got out of the black
2 vehicle?

3 A He had on a had red shirt.

4 Q He had on a red shirt. And did you see the officer
5 have to jump out of the way of his vehicle?

6 MS. PINNOCK: Objection, he's leading.

7 THE COURT: Don't lead the witness. Another
8 question.

9 BY MR. STEADMAN:

10 Q When you saw the vehicle back up was the officer
11 standing in way of the vehicle?

12 A He was on the side.

13 Q And then what did he do after that?

14 A He backed up out of control, he shot.

15 Q And what do you mean out of control, how was that
16 person driving?

17 A He was wild, they just backed up.

18 Q And did you see it hit the tree?

19 A Yeah.

20 Q Then what happened once it hit the tree?

21 A He hit the tree. He spin out again, hit the brown
22 vehicle, then he hit the light pole. After that, they
23 open -- the other officers came toward the car and open
24 the door and someone fell out.

25 Q And after the car hit the tree, did you see another

1 police officer have to jump out of the way?

2 A She got out of her vehicle, it was a woman. She was
3 -- by the time she got out, they had done stop all the
4 vehicles basically.

5 Q And was this person driving out of control that day?

6 A Yeah.

7 Q And did you talk to the officers eventually and tell
8 them what you saw?

9 A Yes, I did.

10 MR. STEADMAN: Thank you. No more questions.

11 THE COURT: Cross-examination.

12 MS. PINNOCK: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MS. PINNOCK:

15 Q How you doing?

16 A Hi.

17 Q You just described the car driving as being out of
18 control, right?

19 A Yes, ma'am.

20 Q You said it backed out of the parking space fast?

21 A Very fast.

22 Q It hit the tree, it spun?

23 A Yes.

24 Q It hit the car?

25 A Yes.

1 Q And it spun?

2 A Yes.

3 Q And it ultimately hit the light pole?

4 A Yes, and it stopped.

5 Q And everything happen very quickly, right?

6 A Yes.

7 MS. PINNOCK: Beg the Court's indulgence.

8 Nothing further questions.

9 THE COURT: Anything further?

10 MR. STEADMAN: No, Your Honor.

11 THE COURT: All right. Thank you. You may step
12 down.

13 (WHEREUPON, the witness leaves the witness
14 stand.)

15 MR. STEADMAN: Marcus Harvey.

16 THE CLERK: Do you solemnly swear or affirm that
17 the testimony you about to give in this case to be the
18 truth, the whole truth, and nothing but the truth so help
19 you God?

20 THE WITNESS: Yes, ma'am.

21 THE CLERK: Please be seated and state your full
22 name for the record.

23 WHEREUPON,

24 Marcus Harvey,

25 after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

1

2 BY MR. STEADMAN:

3 Q Mr. Harvey, how you doing today?

4 A I'm doing good. How you doing?

5 Q Good. You live in the Columbia area?

6 A Yes, sir.

7 Q And what part of town do you live in?

8 A Broad River.

9 Q You work in town?

10 A Yes, sir.

11 Q Where you work?

12 A Lizard Thicket.

13 Q And did you use to live in the Brook Pine apartment
14 complex?

15 A Yes, sir.

16 Q And did you live at the Brook Pines apartment complex
17 back on August 6th 2014?

18 A Yes, sir.

19 Q You remember that day?

20 A Yes, sir.

21 Q What were you doing that day?

22 A Standing on my balcony smoking a cigarette, listening
23 to music.24 Q And did you -- were you in a relationship at that
25 point with Ms. Dereka Brown?

1 A Yes, sir.

2 Q And so were you standing on the same balcony that she
3 was standing on?

4 A Yes, sir.

5 Q And did you observe a black car pull in at Brook Pine
6 parking lot?

7 A Yes, sir.

8 Q What did you observe after that black car pulled in?

9 A Well, they went and park and then I seen a black
10 Crown Vic and, I think, it was a black Charger. I can't
11 remember what color it was, but I seen one pull ahead.
12 And then one pull right behind the black car. As the
13 dude's trying to get out the car, he seen there was
14 police, so he jump back in the car. The police told him
15 to get out put his hands up. He threw the car in reverse
16 and almost hit the police, that's when the police fired
17 his rounds. He hit the tree. And while he was still
18 firing rounds, he hit the pole. And then after that he
19 pulled the dude out the backseat.

20 Q Did the officer had to jump out the way?

21 A Yes, sir.

22 Q And once you saw that first officer jump out of the
23 way, where did you see that vehicle go at that point?

24 A Reverse and hit a tree. It was going backwards.

25 Q And after it hit the tree, what happened to the car?

1 A Well, after it hit the tree, it continued to move
2 until it hit the light pole and that's when it stopped.

3 Q And how would you describe that car and it's driving
4 that day?

5 A Before it got wrecked?

6 Q Yes.

7 A A nice looking car.

8 Q Well, how would you describe that person driving, was
9 it out of control?

10 A Well, kind of drove in a little fast not too much
11 break when you park, but a little reckless.

12 Q And did you eventually see it hit the pole and the
13 car was disabled?

14 A Yes, sir.

15 Q Okay. And, Mr. Harvey, you aware you have a pending
16 charge in our office?

17 A Yes, sir.

18 Q For accessory after the fact to a burglary?

19 A Yes, sir.

20 Q Carries zero to ten?

21 A Yes, sir.

22 Q And were you convicted in 2008 of misdemeanor
23 shoplifting?

24 A Yes, sir.

25 MR. STEADMAN: Thank you.

1 THE COURT: By the defense.

2 MS. PINNOCK: I have no questions, Your Honor.

3 THE COURT: All right. Thank you, sir. You may
4 step down.

5 (WHEREUPON, the witness leaves the witness
6 stand.)

7 THE COURT: Next witness.

8 MR. SHELLENBERG: The State calls Tamra Smith.

9 THE CLERK: Do you solemnly swear or affirm that
10 the testimony you're about to give in this case to be the
11 truth, the whole truth, and nothing but the truth so help
12 you God?

13 THE WITNESS: Yes, ma'am.

14 THE CLERK: Please have a seat and state your
15 full name for the record.

16 WHEREUPON,

17 Tamra Smith,

18 after first having been duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. SHELLENBERG:

21 Q Good afternoon, Ms. Smith. Where are you employed?

22 A Alvin S. Glenn Detention Center.

23 Q And how long you been working there?

24 A About eight years.

25 Q And what do you do over at Alvin S. Glenn?

1 A I'm a nurse. I work with the medical doctor.

2 Q With the medical doctor. If a person in jail needs
3 to have some sort of procedure done, what is the steps
4 they follow?

5 A Well, they would see the doctor and we would do
6 whatever necessary.

7 Q And do they have to sign a consent form for
8 treatment?

9 A For invasive treatments, yes, sir.

10 Q Okay. And what -- would a gunshot wound be an
11 invasive treatment?

12 A Yes.

13 Q Were you working back on August 12th of 2014?

14 A Yes, sir.

15 Q Did you do -- were you involved in any procedures
16 that day?

17 A Yes, sir.

18 Q Were you involved in the procedure on a Keylan
19 Durham?

20 A Yes, sir.

21 Q Do you recognize Keylan Durham?

22 A Yes.

23 Q Can you point him out?

24 A Him right there.

25 Q What's he wearing?

1 A A blue shirt.

2 Q Okay. What procedure do y'all do?

3 A We removed a bullet from his left bicep.

4 THE COURT: Ma'am, would you pull that mic a
5 little bit to you, let me hear you a little bit better.

6 A We move the bullet from the left bicep.

7 Q And was it very invasive, how long did the procedure
8 take?

9 A Probably not even ten minutes.

10 Q What did they do?

11 A The doctor just take a scaffold and cut through like
12 the top layer of skin and pulled it out with some
13 tweezers.

14 Q Just on top of the skin.

15 MR. SHELLENBERG: Beg the Court's indulgence.

16 BY MR. SHELLENBERG:

17 Q And then after y'all removed the bullet, did he
18 consent to have it turned over to authorities?

19 A I'm not sure, sir. That was between him and the
20 doctor.

21 Q Okay. I show you what's been marked -- does that
22 refresh your memory?

23 A Uh-huh.

24 Q At that point did he -- if I sign that consent, did
25 he turn it over to authorities?

1 A Yes.

2 MR. SHELLENBERG: Thank you.

3 THE COURT: Questions by the defense.

4 MS. PINNOCK: No questions, Your Honor.

5 THE COURT: All right. Thank you. You may step
6 down.

7 (WHEREUPON, the witness leaves the witness
8 stand.)

9 MRS. CAMPBELL: The State calls Gray Amick.

10 THE CLERK: Do you solemnly swear or affirm that
11 the testimony you're about to give in this case to be the
12 truth, the whole truth, and nothing but the truth so help
13 you God?

14 THE WITNESS: I do.

15 THE CLERK: Please be seated and state your full
16 name for the record.

17 THE WITNESS: My name is Grayson Amick.

18 WHEREUPON,

19 Dr. Grayson Amick,
20 after first having been duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MRS. CAMPBELL:

23 Q And, Dr. Amick, where are you employed?

24 A I work at the Richland County Sheriff's Department.

25 Q What do you do there, sir?

1 A I'm currently the laboratory director.

2 Q As the laboratory director, what are your duties
3 include?

4 A Overseeing the disciplines that we have at the
5 sheriff's department including firearms, identification,
6 crime scene latent prints and DNA.

7 Q Prior to becoming the director of the laboratory, did
8 you work there?

9 A Yes.

10 Q What was that?

11 A For the first 11 years there, I been there for 12
12 years, I was the DNA technical leader supervisor of the
13 DNA department.

14 Q So were you the guy that actually does the DNA
15 analysis?

16 A I'm one of them.

17 Q One of them. Can you tell the jury a little bit
18 about your education and training in DNA?

19 A Yes, I got a bachelor of science in 1989 and PHD
20 biochemistry in 1993 from USC. At that point I was --
21 that was 1993. At that point I was hired by State Law
22 Enforcement Division state lab, that's known as SLED. I
23 worked there for 11 years. And in 2004 was hired by
24 Richland County to start their lab with another gentleman.
25 We started that lab in 2004 and been in forensics, so a

1 total of 23 years.

2 Q And as you have testified before as an expert in DNA
3 analysis?

4 A I have.

5 Q And approximately how many times have you been
6 qualified as an expert?

7 A Approximately 90 times.

8 MRS. CAMPBELL: Your Honor, at this time we
9 offer as an expert in DNA analysis.

10 MS. PINNOCK: No objection, Your Honor.

11 THE COURT: All right. He's admitted.

12 BY MRS. CAMPBELL:

13 Q Dr. Amick, in order to do DNA analysis, do you have
14 to have either a known standard from a person as well --
15 typically do you have a known standard is or known
16 profiled from a person?

17 A You don't have to have one, but you can have one to
18 do comparisons.

19 Q In order to compare, you need one?

20 A Yes.

21 Q Need something to compare it to?

22 A Correct.

23 Q And there's going to be some talk about how DNA is
24 extracted typically is DNA found in your body fluids?

25 A Yes, it is.

1 Q And so things such as saliva and blood are typically
2 places we find DNA?

3 A That's correct.

4 Q In addition to that, is there also something that's
5 kind of referred to generically as touch DNA?

6 A Yes.

7 Q What is touch DNA?

8 A Touch DNA is pretty much anything that's not body
9 fluid DNA, so blood, semen, saliva would be from body
10 fluids. Everything else we usually through into touch, so
11 basically it's something that would come off of your hand
12 or collar of a shirt or something that your body touches
13 and skin cells are then placed on that item.

14 Q And that's where I was going with this. The DNA
15 actually comes from the sluffing of the skin cells?

16 A That's right.

17 Q And does everybody always leave what's called touch
18 DNA, say if I walk up here and I touch this picture, is my
19 DNA then going to be on this picture?

20 A It may or it may not be.

21 Q What are the factors that are involved in the same
22 manner as fingerprints?

23 A The factors are it is a lot like fingerprint, so it
24 depends on the person. Depends on if they're sweating or
25 not. Depends on whether they shed cells easily or not.

1 Depends on the sub-straight or what you touch so the
2 environment. So there's a lot of different factors
3 whether or not you leave it or not.

4 Q And even if you find DNA from touch -- say you got
5 touch DNA say it's not a body fluid such as blood or
6 saliva, can you tell how long it's been there?

7 A No, you cannot tell how long it's been there.

8 Q So say even if I have a car, but I share it with
9 other people and you don't find my DNA in my car, that
10 doesn't mean it's not my car?

11 A That's correct.

12 Q I may or may not leave it there?

13 A That's correct.

14 Q I want to turn your attention to this case. Did you
15 receive certain items just the evidence in this case not
16 the standards?

17 A I received evidence in this case.

18 Q And what evidence did you receive to be tested?

19 A I receive what I have is item three, six touch swabs
20 collected by Columbia Police Department, which are
21 described as swab from the interior door handle, swab from
22 the gear shift, swab from a steering wheel, swab from an
23 interior driver door handle, another swab from a steering
24 wheel, another swab from a gear shift and a wig.

25 Q I'm going to show what's been marked as State's

1 Exhibit 58 and State's Exhibit -- I'll find the number
2 128?

3 A What about them?

4 Q Are those the items you received?

5 A And this has our Richland County property bag and bar
6 code on it. It appears to be the swabs here and again
7 this is our evidence label and again it appears to be the
8 wig from this case.

9 Q And did you also -- and typically how do you receive
10 a standard from a person say if I was to be compared?

11 A Usually, we just take a swab Q-tip and swab the
12 mouth, so it's called a buckle swab.

13 Q Okay. And from that you can develop a DNA profile to
14 use as a comparison purpose?

15 A Yeah.

16 Q And in this case regardless of how you see them, did
17 you receive four different DNA comparisons standards that
18 you wanted to compare to four different people?

19 A Yes, there were four different people that I used to
20 compare.

21 Q And who were those four people?

22 A Let's see Lashonda Edwards, Marck Drastich, Devontae
23 Bryant and Keylan Durham.

24 Q Taking these items in order I'm going to show you
25 item 3.1 which was collected from where?

1 A This was from interior driver door handle.

2 Q And what time was that collected, sir?

3 A 1529.

4 Q Were you able to -- and as part of your testing how
5 does the testing go? First you test to see if there's any
6 DNA to construct?

7 A That's correct. So we would take that inside the box
8 would be like a swab. We take that and try to get the DNA
9 off the swab and then try to find out how much we got off
10 the swab and then do the analysis.

11 Q Okay. And does there have to be a certain amount of
12 DNA present to do any kind of analysis?

13 A Yes, it does.

14 Q When you tested for the presence of DNA on item 3.1
15 what were your results?

16 A I did get DNA from item 3.1.

17 Q And once you get the DNA then you do a comparison to
18 each of the standards we just referred to the four
19 different ones?

20 A That's right.

21 Q And what were the results when compared?

22 A Results are item 3.1 was that item 3.1 was a mixture
23 and that those four people that mention Edwards, Marck
24 Drastich, Devontae Bryant and Durham were excluded from
25 being contributors to that mixture.

1 Q So it wasn't any of their DNA?

2 A They were not in that mixture correct.

3 Q And again the DNA that was taken off that driver's
4 door handle, can you tell how long it's been there or how
5 it got there?

6 A I cannot.

7 Q Moving onto item 3.2 and I show you this item, that's
8 from the gear shift. And what time was that collected?

9 A 1605.

10 Q Okay. Were you able to extract DNA from that item?

11 A No DNA was extracted from item 3.2.

12 Q And is that unusual?

13 A No, on touch swabs sometimes you get DNA and
14 sometimes you don't for the reasons we mentioned, so it's
15 not unusual.

16 Q Moving onto item number 3.3, which is going to be
17 from where?

18 A 3.3 is from the steering wheel.

19 Q And what time was that collected?

20 A 1604.

21 Q Okay.

22 A 3.3 DNA result from 3.3 it's the same as 3.1. It was
23 a mixture and the four people that looked at were excluded
24 from the mixture.

25 Q So simply whatever DNA was there it wasn't any of

1 there's?

2 A That's correct.

3 Q And moving on to item 3.4. Where was that from at
4 the time?

5 A 3.4 is from the interior driver door handle 1606.

6 Q And what were the results of that?

7 A 3.4 no DNA was extracted from item 3.4.

8 Q Moving to item 3.5 where is that from?

9 A 3.5 is from the steering wheel time was 1527.

10 Q What results?

11 A 3.5 same result as one and three, that is it was a
12 mixture and that the four individuals looked at were
13 excluded from that mixture.

14 Q And finally 3.6?

15 A Was from the gear shift 1526 is the time and 3.6 was
16 also a mixture and the three people that I tested were
17 excluded from that mixture.

18 Q Finally the wig that you tested, how did you try to
19 get DNA from the wig?

20 A So what we do with a wig is kind of like a hat, so we
21 will swab or scrap and swab the inside to try to tell who
22 was maybe wearing it.

23 Q Were you able to -- what was the results of your
24 testing as far as the wig went?

25 A The wig was item five. No DNA was extracted from

1 item five, so no DNA from the wig.

2 Q And was that the extent of your testimony?

3 A Yep.

4 MRS. CAMPBELL: Thank you. I have nothing
5 further.

6 THE COURT: The defense.

7 MS. PINNOCK: Very briefly, Your Honor.

8 CROSS-EXAMINATION

9 BY MS. PINNOCK:

10 Q Good afternoon.

11 A Hi.

12 Q Mrs. Campbell asked you if she were to pick up this
13 picture would she necessarily leave her DNA. And it's
14 true you can touch something, put it down and your DNA is
15 not there?

16 A That's one possibility, yes.

17 Q Okay. It's also a possibility that if you touch
18 something your DNA is there?

19 A That's correct.

20 Q On item 3.3?

21 A Yes.

22 Q The date on that is August 4th 2014, right?

23 A It's hard -- it looks like a 8-4-14. These
24 descriptions were written here by the person who collected
25 these.

1 Q Okay. So whoever processed that item would have
2 written that date?

3 A That's correct.

4 Q Okay. And just one more question. So that picture
5 was printed this morning, if I don't touch that, my DNA is
6 probably not going to be on that, right?

7 A It should not be correct.

8 MS. PINNOCK: Thank you.

9 THE COURT: Redirect?

10 MRS. CAMPBELL: Just one question.

11 REDIRECT EXAMINATION

12 BY MRS. CAMPBELL:

13 Q And neither Keylan Durham nor Devontae Bryant's DNA
14 was on those?

15 A Keylan Durham and Devontae Bryant they were excluded
16 from any of the profiles I got on any of this evidence.

17 Q As were Lashonda ---

18 A Edwards and Marck Drastich.

19 MRS. CAMPBELL: That's all I have.

20 MS. PINNOCK: Nothing further, Your Honor.

21 THE COURT: All right. Thank you, sir.

22 (WHEREUPON, the witness leaves the witness
23 stand.)

24 MR. STEADMAN: State calls Mike Phipps.

25 THE COURT: Let's stand for a moment while he's

1 coming.

2 THE CLERK: Do you solemnly swear or affirm that
3 the testimony you about to give in this case to be the
4 truth, the whole truth, and nothing but the truth so help
5 you God?

6 THE WITNESS: I do.

7 THE CLERK: Please have a seat and state your
8 full name for the record.

9 THE WITNESS: Michael Stewart Phipps
10 P-H-I-P-P-S.
11 WHEREUPON,

12 Michael S. Phipps,
13 after first having been duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. STEADMAN:

16 Q Investigator Phipps, where are you employed?

17 A With the Lexington County Sheriff's Department.

18 Q And what do you do for the Lexington County Sheriff
19 Department?

20 A I'm a crime scene investigator more specifically
21 resent job duties having focusing on computers and cell
22 phone forensics.

23 Q And how did you get involved in this case?

24 A Back in 2014, crime scene response was my job
25 assignment, so we received a call for service out in

1 Richland County to respond to a shooting.

2 Q And what were your duties once you got to the scene
3 of the shooting.

4 A Initially, I was assisting CSI and Shelby Derrick.
5 She was the primary crime scene officer on the scene.
6 Shortly after initially arriving on scene, I was diverted
7 asked to go to SLED headquarters in response to collecting
8 firearms.

9 Q All right. Let me go back before you collected the
10 firearms let me go back to the scene. What did you do at
11 the scene?

12 A I assisted CSI Derrick in mapping the scene. She
13 identified items of evidence that needed to be collected
14 or documented. After she identified those, she placed a
15 placard on the ground with an identifying number. And
16 then I used a piece of surveying equipment called a total
17 station and we set that up and we took measurements of
18 those items.

19 Q And what is a total station?

20 A It's what you see on the side of the road at
21 construction sites, highway projects. It's an optical
22 instrument you look through. It projects a laser. It
23 measures a distance at an angle to an object. We use a
24 little computerize handheld device that all that data is
25 dumped into. And then once we have that data we can go

1 back to our headquarters process it with some more
2 software which gives it sort of a top down view type
3 sketch of the scene.

4 Q And where do you set this total station up at?

5 A It's depending on the scene. Obviously, we try to
6 set it where we have the most view of everything within
7 that scene. In this instance, pretty much in the middle
8 of the parking lot was our best advantage point.

9 Q And once you decided to set up in the middle of the
10 parking lot, how do you measure where all the items are in
11 the parking lot?

12 A As the item that needed to be collected or picked up
13 identified, a number is assign to it. I then enter that
14 number into the data collector, which is a little computer
15 that the total station connects to or speaks with. And
16 then we aim the total station at that object, hit a button
17 or laser, measures that distance angle to the object and
18 records it in software.

19 Q And how accurate is this laser?

20 A It's -- of course used for construction. It's highly
21 accurate fractions of an inch.

22 Q And then once you determine what points you want to
23 shoot the laser to measure, how do you get that data and
24 then interpret that data?

25 A We -- then the little handheld instrument that I

1 spoke of we take the file that it generates. We put it
2 into mapping software sort of like a cad drawing software
3 and it plots those points to scale which we can then
4 annotate make additional remarks on, draw additional lines
5 to make things clearer. And then we can print that out as
6 sort of a sketch.

7 Q And did you make a sketch to scale in this case?

8 A Yes, sir, I did.

9 Q And did you take various measurements and insert them
10 into that sketch?

11 A Yes, sir.

12 Q Is this the sketch you created?

13 A Yes, sir, it is.

14 Q Are these the item numbers associated with those
15 pieces of evidence that Sergeant Derrick collected?

16 A Correct.

17 Q And are those the measurements that you created on
18 the software?

19 A Yes, sir.

20 MR. STEADMAN: Your Honor, at this point we
21 introduce State's 128 into evidence.

22 THE COURT: Any objection?

23 MR. BAILEY: Without objection.

24 (WHEREUPON, State's Exhibit No. 128 was admitted
25 into evidence.)

1 BY MR. STEADMAN:

2 Q Please step down. And can you describe for the jury
3 what we're looking at?

4 A This is the parking lot area right through the
5 center. This line at the very top represents the building
6 space for the apartment complex. The parallel lines here
7 represent the sidewalk the front of that building. They
8 are not extended out. The sidewalk does continue out, but
9 that was the only portion that we could measure as we have
10 line of site line, but that sidewalk continues. The
11 entrance to this parking lot is right here and again
12 portions of the curb line are drawn for reference.
13 There's a fire hydrant here. The vehicles are represented
14 here where they came to rest. There is various items that
15 have numerical values which are items that were picked up
16 and collected. You have to refer to a chart to identify
17 each one of those. There's a pole that was sheared off
18 here. The initial location the pole was represented
19 there. And then the pole points, for the two ends of the
20 poles would be here and here, just tree showing where it
21 was, where it was located.

22 Q And what measurements did you take with respect to
23 the vehicles and the sidewalks?

24 A The software gives you the ability to look at any
25 dimension when you have an open-ended software, you can

1 ask it well what is the dimension between eight and 14.
2 It will give you that dimension, but obviously putting
3 every dimension that you can possibly show on there look
4 like the spider web. So we just put some points of
5 reference there and see if you can get some scale. There
6 is a scale off to the side here showing your 30 feet. And
7 then from the side of the vehicle to this curb is 48 feet
8 seven inches. The end of this vehicle to the end of that
9 vehicle is 44 feet six inches, so we just randomly plotted
10 some dimension so that we give some point of reference of
11 some scale at the scene.

12 Q And besides doing the total station and the
13 measurements, did you also collect the firearms from the
14 officers in this case?

15 A Yes, sir, I did.

16 Q And which firearms did you collect? Feel refer to
17 your report.

18 A Refer to my report. When I responded to SLED
19 headquarters, I met with three officers and collected
20 three pistols. The first being a Glock model .22 serial
21 number HBB898. The second being a Glock model .22 bearing
22 RC0345SD. And then the third being FN model FNS-9 bearing
23 serial number GKU0020019.

24 Q Did you take pictures of these weapons?

25 A Yes, sir, I did.

1 Q Are these the pictures that you took of those
2 weapons?

3 A Yes, sir, they are.

4 MR. STEADMAN: Your Honor, at this point we
5 introduce 129, 130 and 131.

6 MR. BAILEY: Without objection.

7 THE COURT: They're admitted.

8 (WHEREUPON, State's Exhibit Nos. 129, 130, 131
9 were admitted into evidence.)

10 BY MR. STEADMAN:

11 Q If you don't mind stepping down one more time.

12 A Yes, sir.

13 Q And I'm going to ask you to refer to Sergeant
14 Derrick's report as well. Which weapon was associated
15 with the .40 caliber Smith and Wesson HBB898, whose weapon
16 was that?

17 A The HBB898 was SLED Agent Keith Thrower.

18 Q Yeah, let me back up. Let's start with Officer
19 Marcus Brown's, which weapon was his?

20 A The FNS-9.

21 Q And what type of rounds did you collect from his
22 pistol?

23 A It was a .9 millimeter chambered .9 millimeter and
24 all the cartridges that were recovered from the weapon
25 were all Windchester.

1 Q And were the other two weapons .9 millimeters?

2 A They were not. They were .40 S&W or 40 Smith and
3 Wesson.

4 Q So the only weapon that would have expelled .9
5 millimeter casing would have been Marcus Brown weapon?

6 A The only -- yes, from the officer's weapon.

7 Q Now, can you tell me on here -- you show me on this
8 diagram and feel free to refer to Derrick's report which
9 shell casings would be Marcus Brown's?

10 A The .9 millimeter cartridges that were collected or
11 numbered ---

12 Q Slow down so I can mark them.

13 MR. BAILEY: Objection, Your Honor, can't write
14 on the evidence after it's been admitted.

15 THE COURT: All right. Sustain the objection.

16 BY MR. STEADMAN:

17 Q Tell me if you want to just point to them why don't
18 you show me which one's the .9 millimeter casing on this
19 diagram?

20 A According to the Crime Scene Officer Derrick's report
21 the .9 millimeters were items one, two, three, four, five,
22 six, seven.

23 Q And can you point to them?

24 A Finally, there were two in additional 15 and 16, 17,
25 18, 19, 20. This is item one, two, three, four, five,

1 six.

2 Q Let me hold it out here so everybody can see it.
3 Which one is the .9 millimeters.

4 A You got one, two, three, four, five and six in that
5 area be items seven a bit further out from that right
6 there. And then you have to go over to items 15, through
7 20, which are 15, 16, 17, 18, 19 and 20.

8 Q And all those were Officer Marcus Brown's shell
9 casings?

10 A All those were .9 millimeter casings that were
11 collected from that scene.

12 Q All right. Let's move on to the next two weapons
13 involved in this case. What types of rounds did you
14 locate in those weapons?

15 A I'm sorry state the question again?

16 Q The next -- what .40 caliber weapon in this case?
17 What type of ammunition did you locate from those weapons?

18 A Well, they had 40 Smith and Wesson cartridges
19 obviously, but they were a mixture of Winchester and
20 Spear. For Agent Thrower's firearm, there was one
21 Winchester head stamp, meaning the base of the cartridge
22 where the primer is the manufacturer prints their
23 identification there. So there was one of those and ten
24 Spear. Deputy Justin Britt's firearm contained four
25 Winchester and nine Spear cartridges.

1 Q So each of the officers .40 caliber weapons contained
2 a mixture of Windchester and Spear .40 caliber ammunition?

3 A Yes, sir.

4 Q Can you please show me on this diagram where you
5 located the .40 caliber ammunition?

6 A Starting with item number eight through 14, eight
7 being right here nine, ten, 11, 12, 13 and 14. Then going
8 to, I believe, that was it. I believe that was all that
9 was recovered.

10 Q All right. Thank you. After you photographed and
11 tag those weapons into evidence, did you have any other
12 involvement in this case?

13 A Just collecting the firearms, submitting those to our
14 evidence unit and generating sketches.

15 Q And where were those weapons and ammunition
16 eventually sent off to?

17 A My understanding that they were sent to Georgia
18 Bureau of Investigations.

19 MR. STEADMAN: Thank you. No further questions.

20 THE COURT: By the defense.

21 MR. BAILEY: Just briefly, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. BAILEY:

24 Q Investigator Phipps, how you doing today?

25 A Fine. Yourself?

1 Q I'm doing fine. So you work for Lexington County
2 Sheriff's Department, right?

3 A Yes, sir.

4 Q And y'all were called in to investigate because no
5 Lexington County officers were involved in this particular
6 incident; is that right?

7 A That was my understanding, yes, sir.

8 Q There was a SLED officer South Carolina Law
9 Enforcement Division. I realize I don't know if anybody
10 said it out loud, there was a SLED officer, correct?

11 A Yes, sir.

12 Q There was a Richland County Sheriff's Department
13 officer?

14 A Yes, sir.

15 Q And there was a City Columbia of police officer
16 Officer Brown that all fired shots at this incident,
17 right?

18 A To my knowledge, yes, sir, those are the only three
19 people I collected weapons from.

20 Q Right. And it's typical to bring in an outside law
21 enforcement agency to investigate shootings of other law
22 enforcement agencies; is that right?

23 A Yes, sir.

24 Q Okay. And that's a good thing because it allows for
25 impartial investigation, no conflict of interests, right?

1 A Yes, sir.

2 Q Okay. Have you done a fair amount of these kinds of
3 investigations?

4 A Not so many officer involved, but I've been a crime
5 scene investigator for 12 years, so many shooting cases.

6 Q And there were 21 shots that we know of that were
7 fired in this case; is that right?

8 A Again, my involvement was limited to the mapping. So
9 I haven't been briefed on what ultimately they discovered
10 as far as a total number of shots fired.

11 Q Sure, I understand. Have you been called to
12 investigate a lot of one sided shot outs before?

13 A Where just one person fired, yes, sir.

14 Q Have you been called to investigate a lot of one
15 sided shot outs with multiple shooters and unarmed
16 subjects?

17 A Not sure what you are asking with that question.
18 You're saying whether there's two people shooting at each
19 other?

20 Q I guess, I'm saying have you investigated a lot of
21 situations where multiple policemen were firing at
22 individuals that were unarmed?

23 A No, sir, I already stated this is, you know, the
24 first officer involved shooting that I've been involved
25 in.

1 MR. BAILEY: Thank you very much, sir.

2 MR. STEADMAN: No further questions, Your Honor.

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

4 (WHEREUPON, the witness leaves the witness
5 stand.)

6 THE COURT: Next witness.

7 MRS. CAMPBELL: Your Honor, we have that issue
8 that we may need to address.

9 THE COURT: All right. Ladies and gentlemen,
10 we'll take a break now. We've also found our foreperson
11 Mr. Robertson. Mr. Robertson, where are you. You're the
12 man foreperson. The foreperson take the first inside seat
13 serve as spokesperson for the jury and preside over the
14 deliberations. All right.

15 (WHEREUPON, the jury retire to the jury room.)

16 THE COURT: Yes.

17 MRS. CAMPBELL: Your Honor, the next witness is
18 Investigator Moore from Lexington and, I believe, he's one
19 of the ones that's going into the statement.

20 THE COURT: All right. Y'all need a couple
21 minutes to speak with...

22 MS. PINNOCK: Yes, sir, if we could.

23 THE COURT: All right. We'll take a short
24 break.

25 MRS. CAMPBELL: Your Honor, we've redacted it we

1 just mark this like 2A.

2 THE COURT: That will be fine.

3 (WHEREUPON, State's Exhibit No. 2A was marked
4 for identification.)

5 (WHEREUPON, a break was taken.)

6 THE COURT: Ms. Pinnock.

7 MS. PINNOCK: Yes, Your Honor. There was some
8 confusion with the process and what the hearing was
9 regarding. We have spoken to Mr. Durham and we have
10 informed the State that we would like to go forward with
11 the Denno hearing.

12 THE COURT: All right.

13 MRS. CAMPBELL: Do that right now. We call
14 Investigator Moore.

15 THE CLERK: Do you swear or affirm that the
16 testimony that you're about to give in this case to be the
17 truth, the whole truth and nothing but the truth so help
18 you God?

19 THE WITNESS: I do. John Moore M-O-O-R-E.

20 WHEREUPON,

21 John Moore,

22 after first having been duly sworn, testified as follows:

23 DIRECT EXAMINATION IN-CAMERA

24 BY MRS. CAMPBELL:

25 Q Sir, where are you employed?

1 A I'm employed with Lexington County Sheriff's
2 Department.

3 Q And what do you do there?

4 A I'm a detective assign to major crimes.

5 Q Is a detective -- how long have you been in law
6 enforcement?

7 A On my 32nd year.

8 Q I want to turn your attention back to August of 2014.
9 Did you become involved in the case -- involving the
10 shooting that occurred at Brook Pines?

11 A Yes, ma'am.

12 Q And when did you actually become involved in the
13 case?

14 A That afternoon we was coming -- my shift was coming
15 in the afternoon shift and we got called out to go to a
16 location probably about 1:30.

17 Q Did you actually respond to Brook Pines?

18 A Yes, I did.

19 Q During the course of your investigation, did you
20 understand that two of the young men that were in the car
21 had been shot and taken to the hospital?

22 A Yes.

23 Q That day were -- either Mr. Quinten Warner or Keylan
24 Durham were released from the hospital?

25 A Mr. Durham was.

1 Q And do you remember approximately what time that was
2 he was released?

3 A I would say around five something in that nature is
4 late afternoon.

5 Q Once he was released from the hospital having been
6 treated what happened with him?

7 A Once he was treated, he was brought to the Lexington
8 County detention center where Sergeant Barr and myself
9 interviewed.

10 Q And tell the judge how you went about interviewing
11 him and advising him of his rights?

12 A Your Honor, he was brought in by CPD and Detective
13 Edmond brought him in and we sat down with him, brought
14 him in the interview room Sergeant Barr and myself. As
15 soon as he came in the interview room, he wanted to go to
16 the restroom. So we ask CPD could they escort him to the
17 restroom. I followed him to the restroom to make sure
18 know where the directions to the restroom get him in. He
19 used the restroom. We got him some water and we came back
20 to the interview room.

21 Q What happened next?

22 A I introduced myself and Sergeant Barr to him. We
23 told him that we're from Lexington County Sheriff
24 Department and we're to investigate the shooting incident
25 that happened today.

1 Q Then what happened?

2 A I told him -- I brought out a piece of paper with our
3 Miranda rights on it and its information, pertinent
4 information his on the top. I said let's take a moment
5 it's been a busy day, let me fill this out, take a breath.
6 And I ask him some questions his name, his phone number, a
7 contact number which he gave Kiane Warner his contact
8 number and some pertinent information about himself.

9 Q Once that had been filled out on top of the form, did
10 you advise him of his rights?

11 A At that point I read him his Miranda rights. I went
12 down all the Miranda rights, read them, ask him did he
13 understand them and he said he did. I sign to it next to
14 him. And then I asked him to read the Miranda rights back
15 to me, so I know that he could read and write because he
16 told me he went through school to the 11th grade. And
17 that's just something I do with getting statements from
18 people. I read the rights to them and then I have them
19 read it to me to make sure that they understand.

20 Q Okay. Show you State's Exhibit Number 134 do you
21 recognize that?

22 A Yes.

23 Q And is that the form that you were using that day?

24 A That's correct.

25 Q And at the top part the information you just went

1 through and told the judge about is that what you filled
2 in on that form?

3 A That's what I filled in at the top.

4 Q And then in the middle of the page, I believe, are
5 some statements of the Miranda rights written out?

6 A That's correct. My initials are to the left. His
7 initials are to the right.

8 Q And can you just read them into the record the way
9 you read them too that day?

10 A I read him the Miranda rights that said you have the
11 right to remain silent. Do you understand that. Said
12 anything you say can and will be used against you in a
13 court of law. Do you understand that. Yes. You have the
14 right to talk to a lawyer for advice before asking any
15 questions to have him or her present with you during any
16 questions. Do you understand that? Yes. If you have no
17 money for lawyer fees, the court will appoint one to
18 represent me without no cost. Do you understand that?
19 Yes. If I decide to answer any questions now without a
20 lawyer present, I still have the right to stop answering
21 the questions at any time, also have the right to stop
22 answering questions any time until I talk to a lawyer. Do
23 you understand that? Yes. I have read the statement of
24 my rights and understand what my rights are and he
25 understand that, yes. He initial it. And I make the

1 following statement. At that point I say put the pen down
2 and I ask him to read it back to me again to make sure he
3 can read each and every line and he did. And I said all
4 right. Before you make any statements, you understand
5 that you don't have to talk to us, but we're here to
6 investigate the police shooting only. He said he
7 understood.

8 Q And at that point did he choose to talk to you?

9 A He did.

10 Q And did he give you a verbal statement?

11 A He gave Detective Barr and I a verbal statement.

12 Q That you memorialized in your notes?

13 A Right. His statement went on to say -- I ask him
14 what went on out there. He said that morning ---

15 Q You don't have to go into the substance of this
16 statement for this hearing I don't think.

17 A Okay.

18 Q At any point did he invoke any of his rights? Did he
19 ever ask for an attorney?

20 A No.

21 Q Did he ever say he didn't want to talk any more?

22 A No.

23 Q Did you deprive him of any creature comforts?

24 A No.

25 Q Did you threaten him in any way, promise him

1 anything?

2 A None.

3 Q And in your opinion was he talking to you
4 voluntarily?

5 A Voluntarily and he understood each and every one of
6 his rights.

7 Q And in fact he initialed, I believe, beside each and
8 every one of those rights as well as you did; is that
9 correct?

10 A That's correct.

11 Q And then he gave you verbal statement at the end of
12 that statement. Did you ask him to reduce it to writing?

13 A Yes.

14 Q And was he willing to do that?

15 A No.

16 Q And at that point what did you do?

17 A He told me -- I asked him are you willing to write
18 this down. He said, no, he said he was in pain from the
19 slug in his arm.

20 Q But he didn't want to write, I think, is what's in
21 there next?

22 A He didn't want to write.

23 Q And at that point did you then memorialize that in
24 any way on the statement form?

25 A I just wrote on the statement that at this time not

1 willing to give a -- I said refuse to write, but gave a
2 verbal statement and underneath that has anyone made any
3 threats or promises to you in any way during his verbal
4 statement and he wrote, no, and initial it.

5 Q Okay. And then he signed at the bottom?

6 A Yes.

7 Q And then the two -- that was you and Tracy Barr ---

8 A Sergeant Barr that's correct.

9 MRS. CAMPBELL: Your Honor, may I approach.

10 THE COURT: Yes.

11 BY MRS. CAMPBELL:

12 Q At any point when he was giving you the verbal
13 statement, did he indicate that he did not want to
14 cooperate?

15 A No.

16 Q Once he had signed off on the written paper saying he
17 didn't want to put it in writing, was he then transported
18 to the jail?

19 A He was.

20 MRS. CAMPBELL: Your Honor, that's all I have by
21 the defense.

22 THE COURT: By the defense.

23 MS. PINNOCK: Thank you, Your Honor.

24 CROSS-EXAMINATION IN-CAMERA

25

1 BY MS. PINNOCK:

2 Q Investigator Moore, what time was it when you started
3 talking to Mr. Durham?

4 A It was about 6:32, I believe, we wrote on the paper.

5 Q And he said he was just released from the hospital?

6 A Around five.

7 Q When you were speaking to him, it was just you and
8 Sergeant Barr?

9 A In the room correct, yes, ma'am.

10 Q Do you have -- do y'all audio record your interviews?

11 A No, ma'am.

12 Q Is that a policy at Lexington County or is it just...

13 A Some of the detectives do some don't.

14 Q So, I guess, there's no audio, there's no video of
15 anything. You weren't equipped with video cameras in the
16 interview?

17 A No.

18 Q How many people other than yourself and Sergeant Barr
19 were in the room?

20 A Just us two.

21 Q What are the -- how large is this room?

22 A It's an interview room. The table probably hold six
23 chairs. It's a window looking outside, a door and two
24 windows into the hallway.

25 Q And was Mr. Durham handcuffed during the interview?

1 A He was. He had a transport belt, handcuffs to the
2 front.

3 Q Now, we don't have a written statement. We don't
4 have a recording, but you said -- isn't it Investigator
5 Barr -- Corporal Barr?

6 A Sergeant Barr.

7 Q Sergeant Barr was taking notes?

8 A Right.

9 Q Is that what you referred to when you made your
10 summary?

11 A What our policy is that we try to keep two
12 investigators to a defendant. We have one that shares the
13 questioning and answer Q and A. And the other one usually
14 taking notes if there's any questions that I left out
15 because I'm concentrating on him and reading into him with
16 his body language and his answers. If I leave out
17 something, normally they push something or they liable to
18 write down some notes for us.

19 Q Okay.

20 A But on this particular case, I wrote the statement
21 out, typed it out and I send it or allow Sergeant Barr to
22 review it. And once she reviewed it and gave me her okay,
23 I locked it into our report.

24 Q Okay. So you just summarized -- you weren't
25 referring to anything and you didn't compare notes with

1 Sergeant Barr before you did your summary?

2 A I went ahead and did the summary, yes, ma'am.

3 Q And how long were you speaking with Mr. Durham?

4 A I would say about an hour. By the time he came in,
5 and had to go to the bathroom, get water and he was very
6 fast talking, very fidgety. And he constantly messing
7 with his cuffs in the front, plus he had the projectile in
8 his arm that he was messing with and he showed it to me
9 several times. He allowed me to touch the bullet in his
10 skin on the back of his arm.

11 Q Okay. And where was everybody positioned in the
12 room?

13 A He was across the table from me and Sergeant Barr was
14 directly to my right.

15 Q And did I understand you correctly when you said you
16 went through the advise of rights? You went through his
17 rights the first time you read them?

18 A Yes.

19 Q Did he initial at that point?

20 A Yes.

21 Q Okay. And then after you did that you had him go
22 back and read it again?

23 A Yes, read it out loud to me.

24 Q And ---

25 A And I want to make sure that they can -- just note

1 him, that's just my technique. I want everybody to read
2 what I read to him because I want to hear them read it and
3 I want them to acknowledge it to me.

4 Q Did I understand you correctly when you said at that
5 point y'all talked about what was going on and he gave you
6 a statement?

7 A I'm sorry say that again.

8 Q After you read him his rights and then he read them
9 back to you, at that point you went into questioning?

10 A I had him to sign it, where he understood, right at
11 the end the last one where you want give a statement, had
12 him sign that and I told him put his pen down.

13 Q Okay. And then you started questioning him?

14 A Right.

15 Q I don't have a copy of it.

16 MS. PINNOCK: Your Honor, may I ---

17 A I got mine.

18 Q No, the advice of rights.

19 A Oh.

20 THE COURT: It's right here.

21 BY MS. PINNOCK:

22 Q And did you go through the -- did you go through and
23 explain what coercion meant to Keylan? How did you
24 explain that to him?

25 A There's no pressure. There's no force. There's no

1 promises. There's no -- nothing other than telling your
2 side of the story.

3 Q And that was added onto the advice of rights after
4 you had gone through with his statement was, right?

5 A Did that after he gave his statement.

6 Q Okay.

7 A After he gave his statement, we added that in there.

8 MS. PINNOCK: Beg the Court's indulgence.

9 (WHEREUPON, a pause in the proceedings.)

10 BY MS. PINNOCK:

11 Q And, Investigator, you said Keylan got released from
12 hospital around five, right?

13 A I believe, he was transported in the late afternoon
14 I'm thinking around when I got called to come to the
15 sheriff's office to interview him.

16 Q And do you know what kind of pain meds they had him
17 on at that point?

18 A I don't know of any pain meds that he was on anything
19 that he said he didn't say or anything.

20 Q He was transported by Investigator Gilliam?

21 A No, CPD.

22 Q Okay. And they didn't tell you that he was on any
23 sort of medication?

24 A None that I know. In fact, I even ask him was he in
25 pain during our interview and he told me no. And at the

1 end of the interview when I asked him to write it down, he
2 told me he was in pain.

3 MS. PINNOCK: Thank you.

4 THE COURT: Anything further?

5 MRS. CAMPBELL: Just to clear up about the pain.

6 REDIRECT EXAMINATION IN-CAMERA

7 BY MRS. CAMPBELL:

8 Q Did you obtain his medical records?

9 A I did.

10 Q And here in the discharge summary does it say what
11 kind of medication he was to use?

12 A Use Tylenol, Tylenol for pain.

13 MRS. CAMPBELL: Thank you. I don't have
14 anything further, Your Honor.

15 THE COURT: Anything further?

16 MS. PINNOCK: One second, Your Honor, if I may
17 have one second.

18 (WHEREUPON, a pause in the proceedings.)

19 MS. PINNOCK: Your Honor, I do apologize. I
20 can't find the one page I'm looking for. I'm reading as
21 quickly as I can. I can't seem to put my fingers on it.

22 (WHEREUPON, a pause in the proceedings.)

23 THE COURT: The question of not whether or not
24 he was on medicine?

25 MS. PINNOCK: Yes, sir.

1 THE COURT: All right.

2 (WHEREUPON, a pause in the proceedings.)

3 THE COURT: Want you ask for what you think
4 might be in the papers?

5 MS. PINNOCK: Your Honor, I don't think I made
6 up seeing it. I just can't find where I saw it.

7 THE COURT: All right. Meanwhile, did he seem
8 to understand what he was -- the conversation with you?

9 THE WITNESS: Yes, sir, he did.

10 THE COURT: Did it appear to you any medication
11 he might have been on would have affected his ability to
12 lucidly communicate with you?

13 THE WITNESS: No, sir. He was clear with us.

14 MS. PINNOCK: Your Honor, we found it. He was
15 given Fentanyl, which is a control substance.

16 BY MS. PINNOCK:

17 Q Investigator, Mrs. Campbell asked you about
18 his discharge summary. Can you tell me what time is 1401?

19 A Discharge at 1401. Well, he's given medicine 1401.
20 It doesn't say who this from. It just has a paper. It
21 doesn't say if it's from Richland detention center or
22 Richland County. I don't see that.

23 Q Sorry about that. These records are from Palmetto
24 Health Richland, right?

25 A These are, yes, ma'am. I'm not sure about this.

1 Q And the patient's name is what?

2 A Keylan Durham.

3 Q Okay. Can you look at the bottom of the page that I
4 handed you first and tell me the page number?

5 A This page number here?

6 Q That one right there, sir.

7 A This one here is 17 pages of six.

8 Q I'm sorry.

9 A Seventeen pages of six.

10 Q Would you agree there's a number cut off?

11 A Well, yeah, maybe on that.

12 Q This first page I gave you is ten of 63. Would you
13 agree that's 17 of 63?

14 A I would think it would be, yes.

15 Q Can you tell me what time in civilian time what time
16 is 1401?

17 A That's 2:01.

18 Q He was provided with 50 milligrams of Fentanyl?

19 A That I believe's what it says.

20 Q Would you agree with me that that is a control
21 substance?

22 A I'm assuming if the hospital gave it. I'm not sure
23 and the paper on that said that on Durham's name was on
24 the bottom of all these and it's not on the bottom of
25 this.

1 Q Yes, sir, these come from two different?

2 A Two different departments.

3 Q You would agree to that 50 milligrams of a control
4 substance at 1401?

5 A Whatever that drug is.

6 MS. PINNOCK: Thank you.

7 THE COURT: Anything further? You can step
8 down, sir.

9 (WHEREUPON, the witness leaves the witness
10 stand.)

11 THE COURT: Next witness.

12 MRS. CAMPBELL: We don't have any more witnesses
13 on this issue.

14 THE COURT: Any defense witnesses?

15 MS. PINNOCK: No, Your Honor.

16 THE COURT: All right. I find that any
17 statement given was given freely and voluntarily after
18 being advised of his constitutional rights. All right. I
19 have a problem with a juror. All right. They can come on
20 in then.

21 (WHEREUPON, the jury came into open court.)

22 THE COURT: Mr. Foreman, how are the jurors?

23 JURY FOREMAN: How are we?

24 THE COURT: Yes.

25 JURY FOREMAN: We're good.

1 THE COURT: Good. All right. Everyone is
2 feeling sufficient to proceed?

3 PROSPECTIVE JUROR: I believe so.

4 THE COURT: All right. We'll press on then.
5 Next witness.

6 MRS. CAMPBELL: The State calls Sergeant Barr.

7 THE CLERK: Do you swear or affirm that the
8 testimony that you about to give in this case to be the
9 truth, the whole truth and nothing but the truth so help
10 you God?

11 THE WITNESS: I do.

12 THE CLERK: Have a seat in the witness box
13 please and state your name for the record.

14 THE WITNESS: It's Tracy Barr B-A-R-R.

15 WHEREUPON,

16 Tracy Barr,
17 after first having been duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MRS. CAMPBELL:

20 Q Sergeant Barr, where are you employed?

21 A Lexington County Sheriff's Department.

22 Q And what do you do there?

23 A I'm the Sergeant over special victims' unit.

24 Q And how long you been sergeant over special victims'
25 unit?

1 A Approximately a year and a half.

2 Q I want to turn your attention back to August the 6th
3 of 2014, did you come in contact with a young man name
4 Keylan Durham that day?

5 A I did.

6 Q Can you explain to the jury how you came in contact
7 with him?

8 A Sure. If I have the ability to refer to my notes at
9 times.

10 Q Sure.

11 A Okay. On August the 6th Sergeant Mefford assisted
12 Detective Moore with -- who handled the lead investigation
13 of this case. I was asked to assist him with an interview
14 with Mr. Durham. And at that time we met at the sheriff's
15 department during that initial contact. During the course
16 of that interview as a secondary detective, I was taking
17 notes at that time. Had a note pad, but there wasn't
18 anything significant enough to document on the note pad.
19 It was just there for use to ask questions to provide
20 Detective Moore if I had any thoughts that came up that we
21 may need to ask.

22 Q Okay. And I just want to go over some certain
23 things. Are you aware of what was called the advise of
24 rights?

25 A Yes, I was present when Detective Moore read the

1 Miranda rights that are on our statement form to
2 Mr. Durham at that time in the interview room.

3 Q I want to show you what's been marked as State's
4 Exhibit 134 for ID purposes at this point. Do you
5 recognize that?

6 A I do, that's my signature.

7 Q Is that a form that was used with Keylan Durham that
8 afternoon?

9 A Yes, ma'am.

10 Q And what's the time at the top of the form when y'all
11 started talking to him?

12 A 6:32 p.m.

13 Q Okay. And the information at the top of the form is
14 that information that would have been filled by Detective
15 Moore as far as his name and various address and things of
16 that nature?

17 A I believe so.

18 Q And then in the middle of the form is there an area
19 where it's called the advice of rights?

20 A Yes, ma'am. There's five questions with the portion
21 where they can initial -- Mr. Durham initialed by each one
22 of those that he understood those rights.

23 Q Okay. And that's his initials on the right-hand
24 side.

25 A Yes, ma'am.

1 Q Whose initials are on the left-hand side indicating
2 that he was the one advising him of his rights?

3 A Those are Detective Moore's.

4 Q And all those rights were gone through with him that
5 day?

6 A Yes, ma'am.

7 Q And were you there when Detective Moore even asked
8 him to read them back to him to make sure he understood?

9 A Yes, I was.

10 Q Once that process was completed, did he then initial
11 by the point whether or not he wanted to make a statement?

12 A He did. He indicated he did not want to write a
13 statement.

14 Q But he didn't want to write one, but prior to that,
15 he gave a verbal?

16 A Yes.

17 Q So first is it your technique to take verbal
18 statement and then reduce it to writing typically?

19 A Yeah.

20 Q And in this case after he's been explained his rights
21 and he read the rights back to y'all, did he indicate
22 whether or not he wanted to talk to you?

23 A He stated that he gave verbal statements, but he
24 didn't want -- they were very brief, but he did not want
25 to write a statement. He could read and write. But

1 basically nothing significant during that interview.

2 Q Okay. And that interview was summarized ultimately
3 by Investigator Moore?

4 A Yes, we -- as a secondary person after that
5 interview, I sat down with Detective Moore went over that
6 interview, which was basically what he documented in his
7 supplemental reports.

8 Q And was there anything different in his report than
9 what you recall as far as what he said?

10 A No, ma'am, we compared that information and I agreed
11 that everything was accurate and true.

12 Q At any time and then once he completed that was that
13 he transported, I believe, to the jail?

14 A He was, yes.

15 Q At some point once he had made a verbal statement to
16 y'all was he then asked to reduce it to writing?

17 A He was.

18 Q And is that when he indicated on the paper that he
19 did not wish to put it in writing?

20 A Yes, ma'am.

21 Q And then he signed off on that as well?

22 A Yes.

23 Q And was that the extent of your involvement with him
24 that day?

25 A It was.

1 Q At any time when y'all were with him, did you or
2 anyone threaten him or promise him anything to make him
3 talk?

4 A No, ma'am.

5 Q Did anyone deprive him of any creature comforts?

6 A No, ma'am.

7 Q At any point did he assert any of his rights?

8 A No, he was very anxious. He kept fidgeting with his
9 wound, but he did not indicate that he was in any pain in
10 any way or asked.

11 Q And where was his wound?

12 A Was on his left bicep.

13 Q And Detective Moore is the one that actually
14 summarized what he said that day?

15 A Yes, in his supplemental report as lead detective,
16 he's the one that handled that.

17 Q And you had the opportunity to review that and it was
18 accurate?

19 A Yes.

20 MRS. CAMPBELL: Thank you, ma'am. I don't have
21 anything further.

22 THE COURT: By the defense?

23 MR. BAILEY: Just a second, Your Honor. No
24 questions.

25 (WHEREUPON, a pause in the proceedings.)

1 THE COURT: You may step down.

2 (WHEREUPON, the witness leaves the witness
3 stand.)

4 THE COURT: Next witness.

5 MRS. CAMPBELL: The State calls Detective Moore.

6 THE CLERK: Do you swear or affirm that the
7 testimony you're about to give in this case to be the
8 truth, the whole truth and nothing but the truth so help
9 you God?

10 THE WITNESS: Yes, ma'am.

11 THE CLERK: Have a seat in the witness box
12 please.

13 WHEREUPON,

14 John Moore,
15 after first having been duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MRS. CAMPBELL:

18 Q Detective Moore, where are you employed?

19 A I'm employed with the Lexington County Sheriff's
20 Office.

21 Q And what do you do there?

22 A I'm a detective assign to the major crime unit.

23 Q How long have you been in law enforcement?

24 A I'm on my 32nd year.

25 Q I want to turn your attention back to August of 2014.

1 How did you become involved in this case?

2 A I was working the afternoon shift just coming in and
3 our shift starts at two o'clock, got call at 1:30 to
4 proceed to Richland County to Brook Pines apartments
5 officer involved shooting.

6 Q And what date was that, sir?

7 A That was August 6th 2014.

8 Q And after receiving that call, what did you do?

9 A I proceeded to the apartment complex.

10 Q Were there other officers from the Lexington County
11 Sheriff's Department also called out that day?

12 A Yes, we have a shift of five detectives and we're on
13 the afternoon shift and we had several more of our
14 detectives head over that way as well.

15 Q Once you got to the apartment complex, what did you
16 do?

17 A I had to park at the front and walk all the way back.
18 There was police cars and a lot of police cars and so I
19 had to move all the way back to get to the command post
20 where the incident had happened.

21 Q And what was your role in this investigation?

22 A At that point it was just to assist Richland County,
23 that they had a officer involved shooting. And at this
24 point all I knew was that they needed help. Once I got on
25 scene, I realized they wanted us to take the statements of

1 the police officers that was on scene but have not fired
2 their weapon.

3 Q And when you got to the scene, did you make contact
4 with any of the police officers?

5 A I did. I made contact with several of the police
6 officers, isolated them away from there and from the scene
7 and gave them statement forms, introduce myself to them,
8 told them I was here to get their statement.

9 Q And the first investigator you came in contact with,
10 I believe, was Bryan Zwolak?

11 A I did.

12 Q And what was he wearing when you came in contact with
13 him?

14 A He had this ray vest on saying police and he was in
15 his gear. And he -- I ask him -- I introduce myself to
16 him because I never met him before and told him I'm John
17 Moore with the sheriff's office here in Lexington. I like
18 for you to give me your account of what happened and it
19 was very hot. So we moved to the shade area and under a
20 tree and I gave him a notebook so he could write on and he
21 started writing out his statement.

22 Q And ultimately did he give you a written statement
23 that day?

24 A Yes, ma'am, he did.

25 Q After getting his written statement that day at the

1 scene, did you make contact with anyone else at the scene?

2 A I did. I made contact with Officer Balley.

3 Q And tell the jury basically what you did with Officer
4 Balley?

5 A Basically, the same thing. I told her I'm John Moore
6 with the sheriff's office. I'm here to get your
7 statement. And like I said, it was very hot. And she
8 asked could we sit in her car and run the air condition
9 and I told her that be fine. I gave her a statement form.
10 I told her I just want you to tell me exactly what
11 happened and she wrote it out for us.

12 Q And you actually collected that statement as well?

13 A I collected both of those statements.

14 Q While you were there at the scene, did you also have
15 an opportunity to just view the general area was being
16 processed at that point, I guess?

17 A The crime scene was roped off and our CSI units
18 hadn't gotten there yet or just was arriving when I
19 finished with the second statement, I believe. And that's
20 when I first seen him, but there was a lot of police
21 officers around. So I recognized our crime scene units
22 was inside the roped off area.

23 Q While you were there at the scene that day, did you
24 make any contact with any just eyewitnesses not police
25 witnesses, but eye witnesses?

1 A I did. There was two witnesses when we canvased the
2 apartment complex that had knowledge of the incident.

3 Q And what were their names?

4 A Their names was Ms. Brown and Harvey ---

5 Q Marcus Harvey.

6 A Marcus Harvey, yes.

7 Q And Ms. Dereka Brown?

8 A Dereka Brown.

9 Q Who were here in court earlier?

10 A Yes.

11 Q And were you able to give statements from them as to
12 what they observed?

13 A I got statements from Marcus Harvey, separated him.
14 Sergeant Barr got her statement in the kitchen. And we
15 went out on the balcony where I could get his statement.

16 Q So you kept them separate while they were talking?

17 A Separate them. That's just policy with witnesses
18 whether it's police officers as witnesses or general
19 public. We separate them from the scene hopefully and
20 from anybody else and we get just their side of the story.

21 Q And that was reduced to writing as well when you
22 collected those?

23 A That's correct.

24 Q That same afternoon did you get any information about
25 where Keylan Durham was and what was happening with him?

1 A During the canvas of the apartment complex, Sergeant
2 Mefford, my boss, called and asked to meet CPD with
3 defendant one of the shooters at Lexington County
4 Sheriff's Department at the interview room try to get a
5 statement from him. And I finished up the -- and this was
6 about five. I finish up my canvassing part of it.

7 Q Let me stop you there. When you say canvas what does
8 that mean?

9 A Knocking on doors and checking to see if anybody has
10 heard anything, anybody seen anything, want to talk to the
11 police.

12 Q And that day did you get anybody other than Mr.
13 Harvey and Ms. Brown?

14 A Just them two, just them two.

15 Q And the person that CPD had he been released from the
16 hospital?

17 A He has.

18 Q And who was that person?

19 A That is the defendant Keylan Durham.

20 Q Okay. And once you finish with your canvas, where
21 did you go?

22 A I met up with Sergeant Barr at the Lexington County
23 sheriff's office.

24 Q Did you then -- the view Sergeant Barr made contact
25 with the defendant?

1 A We did. We've set up an interview room. And once we
2 got set up, it was shortly after CPD showed up with the
3 defendant.

4 Q And when you say you set up an interview room, what
5 does that mean?

6 A We have several interview rooms at our sheriff's
7 office. There's four of them. Basically, what we done is
8 went in, open it up, turn the lights on, turn the air
9 conditioner on and sit there, got papers, cleaned up a
10 little bit when you have somebody there. There's papers
11 availability for statement forms, witness statements and
12 that stuff. So we just set up a table and waited for him
13 to arrive.

14 Q Once he got there, did you and Sergeant Barr make
15 contact with him?

16 A We did.

17 Q Tell the jury about that?

18 A As soon as we brought him in, I introduced ourselves
19 to him. I started off with me and Sergeant Barr. He
20 immediately said he needed to go to the bathroom. CPD
21 patrol units and Detective Gilliam brought him in. And I
22 said we need to walk him to the bathroom. He wants to use
23 the bathroom. Because I know of the events, my worry was
24 any type of escape or movement or leave. So I walked into
25 the bathroom. We got him to the bathroom. I secured the

1 outside door, so he couldn't go nowhere and they opened up
2 the bathroom door, made sure there was nobody in that.
3 And then let him go in and use the bathroom. Once he used
4 the bathroom, I asked him did he need some water or
5 anything of that nature. He said he like to have some
6 water. I got him some water and brought him back to the
7 interview room.

8 Q And at that point what happened?

9 A Introduce myself again to him and Sergeant Barr. I
10 told him that we are here, we're Lexington County
11 sheriff's office. And our only duties here today is to
12 investigate the events of the shooting. And he understood
13 that.

14 Q And at that point did you make any preparations maybe
15 taking a statement from the defendant?

16 A I did.

17 Q And what did you do?

18 A I pulled out a statement form. In that statement
19 form, has the information on the top. It's pertinent to
20 the defendant. So I started writing out that statement at
21 the top with his name, his address and that he was
22 answering the questions for me. When I asked him his
23 name, he gave it to me. I asked him his address, he gave
24 it to me. I ask him contact number, he gave me Kiane
25 Warner, his girlfriend, gave me her phone number. At the

1 time I said while I'm asking him this, I'm also evaluating
2 him, how's he doing, is he fidgety, is he moving, is he
3 complying to the question, is he not complying, is he
4 trying to hide something. He appeared to be straight up
5 as soon as I asked him the question, he answered.

6 Q So he appeared coherent?

7 A He was very coherent.

8 Q And you asked him a question his response was
9 appropriate?

10 A Appropriate and immediate. We got down to the
11 Miranda rights and read him each line of the Miranda
12 rights after I read it to him.

13 Q Let me ask you this before you did that, did you also
14 ask him how far he gone in school?

15 A I did.

16 Q What did he ---

17 A I did. He indicated that he went to the 11th grade.

18 Q And did you also ask him whether or not he could read
19 or write?

20 A I did.

21 Q And what ---

22 A I asked him could he read and write and did he
23 understand the English language here and he said he did.

24 Q And at that point, I believe, you started talking to
25 him about the Miranda rights?

1 A I started reading him his rights. I went down the
2 line. I read him his rights. When I got finished, I
3 asked him did he understand that. He indicated yes, went
4 to the next one. You understand that, indicated yes.
5 Each Miranda right I went through. After I read it to
6 him, I initialed the side. And then I turn it over to him
7 and I gave him the paper and ask him to read it to me.

8 Q The rights themselves?

9 A The Miranda rights. And he went down each Miranda
10 right as soon as you read it. Again, I asked him do he
11 understand it. Yes, initial to the side, read the second
12 one do you understand that. Yes. Initial to the side.
13 Reason I do that that's my technique of investigation. I
14 want to make sure that he understands. He's reading every
15 word and he knows. Meanwhile why he's doing that, that
16 gives me the opportunity to observe him. That's just
17 being an investigator observe him is he answering
18 truthfully, quickly, is he trying look around, is he
19 trying to make up something, but he was positive and quick
20 off of this when I asked him the questions.

21 Q Okay. And I want to show you what's been marked as
22 State's Exhibit Number 134 for ID. Do you recognize this
23 form?

24 A I do.

25 Q And is that the form you used with Keylan Durham that

1 day on August the 6th?

2 A That is.

3 Q And what time does it indicate that y'all initiated
4 this whole interview process?

5 A The starting time was 6:32 p.m.

6 Q And then at the bottom does it indicate what time
7 y'all quit talking to him?

8 A It's just got August 6th 2014, time 6:54 p.m.

9 Q And that was the time that you spent talking to him
10 that day?

11 A Yes, ma'am.

12 Q Okay. And are these the rights you went through with
13 him and that you read to him and he read to you?

14 A Yes, ma'am.

15 Q And can you go through it the way you did it for the
16 jury?

17 A I said you have the right to remain silent. Do you
18 understand that? Yes. Anything I say can and will be
19 used against me in a court of law. Do you understand
20 that? He says I do, yes. I have the right to talk to a
21 lawyer for advice before ask any questions and have him or
22 her present with me during any questions. Do you
23 understand that? Yes. If you have no money for a lawyer
24 fees, the court will appoint you one to represent me
25 without no cost if I wish. Yes. If I decide to answer

1 any questions now without a lawyer present, I will still
2 have the right to stop answering questions at any time.
3 And I also have the right to stop answering questions
4 until I talk to a lawyer. Do you understand that. Yes.
5 I said the last one I have read the statement of my rights
6 and I understand what my rights are and he initial it.
7 And I made the following statement. At this point I
8 return it back to him and I have him read it. I initial
9 beside once I read it to him and he initials once he read
10 it to me, that's my technique every investigator, every
11 detective is different, but that's the way I do it and I
12 do it that way is standard.

13 Q Okay. And did he indicate that he was willing to
14 talk to you that day?

15 A He did.

16 Q And after he been advised of his rights and document
17 that he understood that he was going to waive them, did he
18 talk to you?

19 A Yes, ma'am, he did.

20 Q Can you tell the jury what he told you that day?

21 A After we finished this, I told him put down the pen.
22 It's been a long day, let's take a breath. We took a
23 breath. I said what happened out there. Meanwhile, I
24 told him that we're here just to investigate the police
25 shooting, that's all we do. And he said, well, I started

1 off from my sister's house and I borrowed her car and I
2 had to run some errands. And then he went to a Wal-Mart
3 parking lot, which is off Bush River he said and he had to
4 sell some items. I said sell items for what. He said I
5 needed gas money. He said during that time, he said he
6 saw four Lexington County police officers. I said you
7 did. He said and when I left there, I seen some
8 undercovers. I said what is undercovers. Undercovers
9 could be different to different people. What is that in
10 your mind. He said, you know, cop, feds. What happened
11 after that he said when he pulled in the apartment
12 complex, he noticed they followed him in and he went pass
13 his sister's parking and went down into the next parking
14 area and pulled in there. When he pulled into a space, he
15 put it in park to go out the door. And when he went out
16 the door, he noticed a police officer coming to him with a
17 gun, with a police vest yelling. I said so you saw the
18 sheriff badge on him. He recanted and said, no, I didn't
19 know who it was. He recanted that statement back. I
20 didn't know who it was.

21 Q First he told you he did know who it was?

22 A And then he recanted.

23 Q It was the police?

24 A Uh-huh. And he said he jumped back in the car, put
25 it in reverse and he was getting out of there.

1 Q Did you ask him why he was trying to get away?

2 A I think he was just paranoid and he's trying to get
3 away from the police at that point. He said they started
4 shooting at him. The shooting continued. He hit a tree,
5 hit something else and went back into the pole. While
6 they were shooting, he jumped in the backseat. I said
7 what did you do then. He said I played possum keep from
8 getting shot I recon playing possum.

9 Q What was his demeanor while you were talking to him
10 that day?

11 A He was fidgety with his arm in the cuffs. He was
12 constantly pulling on them. He was shot in his left
13 bicep, but he would -- I said -- I asked him during the
14 interview are you in pain. He told me no. He even let me
15 touch the bullet that was lodged in his bicep. He said
16 it's right there at the skin and it was like he was trying
17 to pop it out pressing like that. And I was like is that
18 it right there and he said that's it. So he let me feel
19 the bullet. I come back and since he was pulling on them
20 handcuffs, I grabbed his hands and made sure that the
21 handcuffs was secured on him. In my mind, I just realized
22 what all he done and I didn't want him to pop out of the
23 cuffs or try to slip out. I wanted to make sure that he
24 was secured.

25 Q During the course of your asking him questions, did

1 you ever ask him when he was referred to the police
2 whether or not he knew that he was wanted?

3 A He said he knew.

4 Q Okay. And when he indicated that when the police --
5 when he was in the car he indicated he jumped in the
6 backseat?

7 A At the end he jumped in the backseat.

8 Q And what did he say he did?

9 A Playing possum.

10 Q After talking to him that day did you ask him whether
11 or not he would reduce -- he would give you a written
12 statement?

13 A I did. I asked him at the end when he did all of
14 that, when he said all that to us. I said could you write
15 that down for me. And at that time he said he was in pain
16 from his arm, so he didn't want to write.

17 Q And did you memorize that in any way on that document
18 I've already -- you shown me?

19 A Just wrote on the document that refuse to write but
20 gave a verbal statement.

21 Q So he acknowledged giving a verbal statement?

22 A Right.

23 Q And then what was the next?

24 A Has anybody made any threats, promise or coercion to
25 you for your verbal statement. And his answer outside of

1 it is no and he initial it. We dated it and timed it.

2 Q And at that point did he actually sign at the bottom
3 of the paper?

4 A He did.

5 MRS. CAMPBELL: All right. At this time I offer
6 State's Exhibit 134 into evidence.

7 THE COURT: Any objection?

8 MS. WILLIAMS: No objection, Your Honor.

9 THE COURT: It's admitted.

10 (WHEREUPON, State's Exhibit No. 134 was admitted
11 into evidence.)

12 BY MRS. CAMPBELL:

13 Q As far as explaining, what the word coercion means to
14 him, did you make any attempts to do that?

15 A We let him know that it was no pressure, no threats,
16 no promises giving to you for your statement. He
17 acknowledged he understood.

18 Q Okay. Once he'd given a statement to you that day,
19 was he then transported anywhere?

20 A Yes, ma'am, we transported him back to the detention
21 center. Normally, in the detention center from the
22 sheriff's office, we maneuver through a hallway. It's
23 normally just two of us maneuvering, but with him that
24 day, I used two officers from City of Columbia to help
25 transport along with Detective Gilliam. We all walked him

1 back to the jail.

2 Q So you decided you wanted five people to walk him
3 back to the jail.

4 A Yes, on this particular occasion because of
5 everything that went on, him trying to run. Him trying to
6 escape. I didn't want any incidents further. Once I got
7 to the jail, I contacted our lieutenant over the jail. We
8 booked him in and I asked him to step out and I told him
9 the events that's happened that day with Mr. Durham. And
10 that he need to be very careful with him for escape risk.

11 Q Okay. And at that point he was left at the Lexington
12 County detention center?

13 A Yes, ma'am.

14 Q Later that day did you meet with other officers from
15 your department to go over what was being done?

16 A We did. We debriefed that afternoon or that night
17 excuse me -- debriefed what everything we had to do,
18 anything we needed to do. The debriefing was late. One
19 other choice that we wanted to go talk to was his
20 girlfriend Kiane Warner.

21 Q Let me back up. And at that point did other officers
22 gotten written statements from some other people at the
23 scene such as Officer Cavanaugh?

24 A Right. We gathered at our detective table and
25 brought all the statements back from other police

1 officers, other witnesses, other officers that gave
2 testimony or gave statements. And they brought it all
3 back to us and we sit at our detective table, all right
4 what's next. We got CSI came back in. They collected the
5 evidence. They collected photographs, the guns from the
6 police officers. We're running a checklist in our mind of
7 things we need to do before anybody goes home that night.

8 Q And you mention at that point in time about Kiane
9 Warner?

10 A At that point Kiane Warner's name came up. And we
11 realized that she was the girlfriend of Keylan and we
12 needed ---

13 Q In fact earlier you said it was his sister he was --
14 apartment he going pass, was it his sister or Kiane's?

15 A Kiane's, I'm sorry. I said sister, but it's Kiane's,
16 so we made contact with her.

17 Q How did you make with her?

18 A By a phone number. We had a phone number to her and
19 we called her and said realize it's late. She said she
20 was just about ready to go to bed. And I said while this
21 is still fresh in your mind, I like to come over with
22 another detective and let's go through your statement for
23 today. Once again, I told her who I was and that we're
24 just investigating a police shooting only, that is our
25 role of today's events.

1 Q And did you make arrangements to meet her that night?

2 A We made arrangements to meet her. She gave us an
3 address and we went to her house and met her outside the
4 house and got her statement.

5 Q Is this the same house ---

6 A No, it was different place. It was a relative's
7 house.

8 Q And you can't say what she said to you, but was she
9 willing to give information that day?

10 A She did give us information. Yes, she did.

11 Q And did she actually fill out a statement as well?

12 A She gave a statement as well.

13 Q At some point did you try to make contact with the
14 second person in the vehicle Quintin Warner?

15 A I did. Actually, one of the other detectives went to
16 the hospital to interview him that afternoon why I was
17 interviewing Mr. Durham. The next day is when I went to
18 talk to Mr. Warner at the hospital.

19 Q And how many gunshot wounds did Mr. Warner sustain?

20 A He had two flesh wounds. One to the back of his neck
21 and one to his thigh. And one shot to his left shoulder
22 back. It's upper back shoulder.

23 Q And when you say flesh wounds, what does that mean?

24 A Flesh wound is where you can see where the bullet
25 went across his leg and across his neck. I mean just left

1 engraving on his leg and his neck.

2 Q When you went to the hospital to talk to him, was he
3 willing to talk to you?

4 A When we was at the hospital, I talked with him just
5 briefly, introduce myself again. And the detective I was
6 with was Shannon Dikes. And Shannon knew -- met with him
7 from that night before. We went back there. I wanted
8 Shannon to go because he had a rapport with him. And he
9 come in and Shannon introduced me. Once again, I told him
10 we're just there to investigate events of the police
11 shooting, that's our role in this case. And he
12 acknowledged that. We talked just briefly on him, but he
13 said he was in a lot of pain at this point and was
14 medicated.

15 Q You can't say what he said to you. Was he willing to
16 give you information and did give you information that was
17 useful in your investigation?

18 A He did give us information that was useful in the
19 investigation. And I told him when he get out, I gave him
20 my business card to call me.

21 Q I want to move your attention to August 8th of 2014.
22 Did you make contact with a Keith Thrower?

23 A Yes, I did.

24 Q And where did that contact take place?

25 A SLED headquarters.

1 Q And why did you make contact with Keith Thrower on
2 August the 8th?

3 A Keith was one of the SLED agents that was involved in
4 the shooting, so I wanted to make contact with him to get
5 his statement. And I wanted their use of force policy
6 from SLED as well.

7 Q And does he give you a written statement as well?

8 A He did, he gave me a written statement.

9 Q Then moving on to August 14th 2014, did you make
10 contact with Quinten Warner again?

11 A I did.

12 Q And at that point did he want to give you any further
13 information?

14 A He did. He did want to give me further information.
15 I talked with him by phone. And he wanted to meet me
16 along with the Detective Barr at a government agents
17 building.

18 Q Okay. And did you make contact with him?

19 A I did.

20 Q And you can't say what he said to you, but did he
21 give you any more information than you had the other day?

22 A He gave us by drawing a schematics on a piece of
23 paper what happened and where they parked at and where
24 they end up at.

25 Q And did he ever give you a written statement though?

1 A No, never gave me a written statement.

2 Q As far as in preparation for trial, was he available
3 for trial?

4 A No, he is not.

5 Q Why not?

6 A Mr. Warner was involved in an incident on the 27th or
7 26th of December at the Red Roof Inn. During that
8 incident, he encountered another male. There was actually
9 two males he encountered. He pulled a gun on one. One of
10 the males had a CWP and pulled the gun back on him, they
11 fired. Mr. Warner was fatally wounded.

12 Q So he died as a result of that?

13 A He died as a result of his wounds.

14 Q And that was December 26th of 2014?

15 A Yes, ma'am.

16 Q On August the 20th 2014, did you get a search warrant
17 for the Hyundai Sonata?

18 A Yes.

19 Q Mr. Durham was driving?

20 A Yes.

21 Q And what were you trying to get at that point?

22 A At that point we wanted to get the computer from the
23 car. And I'm not a car guy and I'm not a I.T. guy, but
24 one our traffic units had mentioned to me that you can
25 download the computer from the car and tells you exactly

1 what happened, what it's doing, even accelerator, which
2 gear it was in, what the car was doing at the time. So
3 attempted to get the computer downloaded to give us all
4 that information at that time.

5 Q And were you able to get any information?

6 A Could not. I called Jim Hudson's foreman to come out
7 there of Hyundai and to pull that computer. He tried to
8 download it there at our evidence storage and could not
9 get it. He took it out of the car for me and I
10 transported it back to his shop and they put it on a
11 computer there. And the information it just shows that
12 the computer was taken out of the front of that car and
13 guess what was going in the front of that car was
14 projectiles and it hit at least the wiring harness and the
15 computer. So it just shows once it went in reverse
16 everything failed.

17 Q So you weren't able to get any information?

18 A No, ma'am.

19 Q The evidence as far as the shell casings and
20 projectiles that were recovered, were those forwarded to
21 the Georgia Bureau of Investigation?

22 A Yes, they were.

23 Q And did they actually do the ballistics in this case?

24 A Yes, they did.

25 Q And they also had the opportunity to do DNA. Was

1 there any necessity to do DNA in this case, was there any
2 dispute of who was shooting?

3 A No, no. We knew that each officer who shot through
4 our crime scene unit, that did an outstanding job for that
5 large of a crime scene, a whole parking lot. And most of
6 the time as we invest as detectives police shootings, it's
7 very seldom -- any shooting not just police, into a car is
8 very seldom that you get a projectile or two back. In
9 this case, we got a bunch of them back and it was
10 outstanding job.

11 Q Okay. Did you ever collect any projectiles from the
12 defendant Keylan Durham specifically -- how many times was
13 he shot?

14 A Just once.

15 Q And it was in his arm?

16 A In his arm left bicep.

17 Q And were you ever able to collect that projectile?

18 A I got a call from Alvin S. Glenn from the medical
19 staff that they had just took that projectile out of his
20 arm because it bothered him. And he signed it out for us
21 to get and that's what we went over -- I got ahold of or
22 CSI person and we went that day to collect that
23 projectile.

24 Q And how many projectiles were actually collected from
25 Mr. Warner?

1 A Mr. Warner was one and that's the one from the left
2 shoulder back.

3 Q Did you also receive a statement from Investigator
4 Britt in this case?

5 A I did. I receive a statement from him as well as a
6 statement from Marcus on his shooting as well.

7 Q And at some point did you try to make contact with
8 some of these officers or what was the purpose of making
9 contact with them again at a later date?

10 A With us involved police officer shooting and when I
11 saw us, I'm talking about Lexington policy. If we're
12 involved in a shooting, we will talk to you two days
13 later, two sleep cycles we want the officer to have to go
14 through before you get their statement. We got statements
15 days later after this involvement. We did have our CSI
16 people collect their guns standard practice and we also
17 had told them that we'll be back to get an interview from
18 you. It won't be today, won't be tomorrow, but we'll be
19 back in touch with you. Once we got the initial
20 interview, what I like to do is call the defendant or the
21 subject back and ask them to meet with me on a second
22 interview just in case something they learned. It just
23 gives them chances anything different. No, everything the
24 same, have you anything different, no. All three came
25 back to me or two of them came back to me and I called

1 Richland County and they just told me that his statement
2 was suffice for this.

3 Q So there were no changes?

4 A Right. As an investigation too, I'll give you an
5 example of somebody's robbed right there on that scene,
6 the most time they can tell me is how big that gun barrel
7 is, that they was actually robbed. They can tell me most
8 that hole was that big. But then when you go back to them
9 in a couple of days later, they can give you more
10 information because they done went through their sleep
11 cycles.

12 Q Okay. And was that pretty much the gist of your
13 involvement in this case?

14 A Yes, ma'am.

15 Q And all the other officers from Lexington and from
16 other agencies ---

17 A We collected all the evidence, all the statements,
18 all the police officer statements, all officers on scene
19 statements, which was nine at the very beginning when they
20 went to pick him up. Canvased the apartment complex. We
21 got everything that was involved. And after I met with
22 the officers on the second time and there was nothing else
23 new, we put together our report and got everything ready
24 to turn over to the Richland County Solicitor's office
25 which we did.

1 Q And as far as the statements being consistent
2 including the lay witnesses?

3 A My opinion all the statements consistent with the
4 events that happen that afternoon.

5 MRS. CAMPBELL: Thank you, sir.

6 THE COURT: Cross-examination.

7 MS. WILLIAMS: May it please the Court.

8 THE COURT: Yes.

9 CROSS-EXAMINATION

10 BY MS. WILLIAMS:

11 Q Good afternoon, Investigator Moore.

12 A Good afternoon.

13 Q You stated that on August 6, 2014, you were
14 originally just notified that Richland County needed
15 assistance in an officer involved shooting?

16 A My first phone call that's all I knew. Didn't know
17 exactly what I had, didn't know if we was going over there
18 to assist him with security or what, that's the initial
19 thing I had is proceed to this address.

20 Q But ultimately you ended up taking the lead on the
21 Lexington County investigation?

22 A Yes, ma'am, I was notified later on that night that.

23 Q Okay. And when you arrived, you were notified they
24 wanted you to -- they wanted Lexington County to take
25 statements from the officers that were there, but did not

1 shoot their weapon?

2 A Right, that's correct. The ones that was on scene
3 give us a statement what they've seen.

4 Q And then you also got two lay witnesses?

5 A Yes, ma'am, I did.

6 Q Okay. You said for all of these you separated these
7 witnesses before speaking to them?

8 A I initially came up to him and identify myself. And
9 then say are you willing to write a statement, here's the
10 statement form. And sat in the car sometimes I fill it
11 out for them. Sometimes they fill it out themselves, the
12 police officers I'm talking about.

13 Q And you said this is a Lexington County policy?

14 A Right.

15 Q Why?

16 A We just separate the witnesses. You don't want one
17 like example if I'm asking you something and when I ask
18 you something, the guy sitting next to you shakes his
19 head, yes, that's correct. I don't want that, I just want
20 what you know, not what somebody might be doing. And it
21 could be something totally innocent but their body
22 language reads out to them.

23 Q And so one of the other could accidentally adopt the
24 memory of somebody else?

25 A Yes, ma'am.

1 Q Okay. Now, you stated that you also took a statement
2 from or met with Keylan Durham a little bit later on in
3 the afternoon?

4 A That same afternoon, yes, ma'am.

5 Q And you had a chance to observe him?

6 A Yes, ma'am.

7 Q And you had stated on direct that he appeared
8 straightforward to you when you were going through the
9 advice of rights. And he told you that he was just trying
10 to get away?

11 A In the statement that he gave me, we wrote out that
12 he was just getting out, getting away.

13 Q Getting away. And you stated that you thought he
14 was, you know, at that time when he was reversed he was
15 paranoid just trying to get away from police. And he
16 stated that they started shooting at him and...

17 A When he driving the car backwards into a police
18 officer, yes, ma'am, that's what happened.

19 Q Well, he didn't state that he knew that that was what
20 that was. He just stated that they began shooting at him?

21 A Yes, ma'am.

22 Q Okay. In fact, he didn't tell you that he was trying
23 to hit any police officers?

24 A Oh, no, he didn't say that, no.

25 Q He didn't say he was trying to kill anyone?

1 A No.

2 Q Okay. He was just trying to get away. And you said
3 right before the car hit -- the Sonata hit the electrical
4 pole, he said he jumped in the back seat and was playing
5 possum?

6 A Yes, ma'am.

7 Q What do you take playing possum to mean?

8 A Acting dead. And I found it ironic that he jumped in
9 the backseat and behind Quinten Warner, he jumped in
10 behind him into the backseat.

11 Q Yeah, that's not necessarily a smart thing when the
12 car is going in reverse.

13 A Whether he hit -- I'm not sure if he jumped in as
14 soon as it hit or when he realize it was going to hit, I
15 I'm not sure.

16 Q Okay. But that doesn't make much sense to you?

17 A Didn't make no sense to me.

18 Q Okay. And they call it playing possum. You agree
19 with me they call it playing possum because when a possum
20 is -- there's an attacker or predator out there, their
21 defense mechanism is to play dead and hopefully it will go
22 away?

23 A That's the why I took it, yes, ma'am.

24 Q Okay. All right. You stated that you received
25 statements from Keith Thrower, Investigator Britt and

1 Officer Brown?

2 A Yes, Marcus Brown.

3 Q Those weren't on Lexington County letterhead like the
4 other ones that you had had?

5 A No, ma'am.

6 Q Okay. So they typed these up for you and gave them
7 to you?

8 A The attorneys probably did for the departments.

9 Q Okay. So they had an opportunity to speak with an
10 attorney and go over everything?

11 A Yes, ma'am.

12 Q Okay. And make sure that everything was ---

13 A Once again that's our policy as well. Our department
14 attorney anything we're involved in will be with us during
15 any procedure, so giving a statement is what they get paid
16 to do.

17 Q Because attorneys help people when they're trying to
18 be clear and accurate and what they're saying?

19 A Yes, ma'am.

20 Q So it's helpful to have an attorney there. Is that
21 why the policy is there because it's helpful to have an
22 attorney when questioned?

23 A Yes, ma'am.

24 Q And you said you met with Special Agent Thrower and
25 Officer Brown again just to verify everything was okay?

1 A Once again, it's just something that I like to do is
2 anything new meet with them down the road before I do
3 anything whether it's making charges or move the paperwork
4 up to the Solicitor's office is there anything new. And
5 another thing I do that -- in this particular case, I
6 wanted to make sure that the officer's head when I talk to
7 him he's clear and there's no -- maybe a posttraumatic
8 syndrome with them, you know, make sure they're okay in
9 doing things and they're all right. And that was just me
10 being a fellow officer to them at that point are you okay,
11 how are you doing, what are you doing since you been on
12 administrative leave, that's how I open it up. And at the
13 end is there anything new that you like to tell us?

14 Q Okay. So they all had an opportunity to speak with
15 you and change -- fix anything that might have been
16 different that they remember different?

17 A Except Justin Britt, I never spoke to him. I just
18 got his paperwork and that's a policy of Richland County.
19 They do their own shooting and they do that. Our policy
20 with Lexington County is SLED's going to come in and do
21 our shooting investigation.

22 Q Now, you did try to get a second interview with
23 Investigator Britt?

24 A I called his major and just offer it to him. I
25 didn't never thought they would say nothing other than

1 what they said is that his paperwork is -- y'all have his
2 paperwork that's it.

3 Q And they'll stand on that statement?

4 A They stand on that, yes, ma'am.

5 Q But all three of these officers and in fact any of
6 the officers they had your contact information?

7 A All three.

8 Q So if they thought about something later, they can
9 certainly contact you and let you know?

10 A Yes, ma'am.

11 Q And you never received anything besides those
12 statements?

13 A That's it.

14 Q And ---

15 A Now, that also goes well whoever I spoke to I gave
16 them my card to contact me that includes suspects as well.

17 Q Okay, great. You been in the courtroom since the
18 being of the trial?

19 A Yes, ma'am.

20 Q Because you're the lead investigator, you're aware of
21 everything that's going on?

22 A I'm the lead for Lexington County for the shooting
23 and that's all our involvement is and the evidence
24 gathering on the shooting of the today of August 6th.

25 Q Okay. So you were in here for Corporal Britt's

1 testimony?

2 A Yes.

3 Q And his testimony was that he had gotten out of his
4 vehicle and had headed towards the Sonata to aid Marcus
5 Brown at the -- once it had just parked?

6 A I believe that's it correct, yes, ma'am.

7 Q But in his statement it stated ---

8 MRS. CAMPBELL: Objection, Your Honor. She's
9 trying to impeach another witness through another witness.

10 MS. WILLIAMS: He's the lead investigator and
11 I'm just asking if he's aware of the inconsistency.

12 THE COURT: I'm aware of who he is and I've
13 heard the question. And the objection is sustained.

14 MRS. CAMPBELL: Thank you.

15 THE COURT: You cannot pit witnesses.

16 BY MS. WILLIAMS:

17 Q You stated that Keylan -- that you got a call from
18 Alvin S. Glenn?

19 A Yes, ma'am.

20 Q And that they had removed the bullet from Keylan's
21 arm?

22 A Yes, ma'am.

23 Q And that he had signed it out and wanted it to go to
24 you?

25 A He signed out as a release of the evidence because it

1 was bothering him. They got their signature. And it was
2 just medical calling me saying that, hey, we got this,
3 what you want to do with it. And I was like please save
4 it, I'm on the way.

5 Q Okay.

6 MS. WILLIAMS: Beg the Court's indulgence.

7 (WHEREUPON, a pause in the proceedings.)

8 BY MS. WILLIAMS:

9 Q Just real quick. You had tried to get the computer
10 out of the vehicle?

11 A Right.

12 Q And -- but the only information you could get was
13 that it was in reverse and then system failure?

14 A It showed error on all sensors whatever -- like I
15 said, I'm not a computer person or automobile mechanic,
16 but it showed all sensors error down.

17 Q And that was because it had been shot?

18 A It -- whether the harness or the computer itself or
19 both was indicated failure. I don't know if the wiring
20 was shot or the computer at that nature. I don't know.

21 MS. WILLIAMS: Thank you. No further questions.

22 THE COURT: Redirect.

23 MRS. CAMPBELL: Thank you, Your Honor.

24 REDIRECT EXAMINATION

25

1 BY MRS. CAMPBELL:

2 Q She asked you some questions specifically about your
3 conversation with Mr. Durham and I want to make sure -- it
4 was a bit confusing. In the highlighted portions, can
5 you -- basically go through how he told you what he told
6 you and what he said in the highlight part?

7 A Yes, he said -- you just want me to read the
8 highlight or start from the Wal-Mart?

9 Q You can do either whatever you're comfortable with.
10 I want to make sure they understand it in the context it
11 was given to you.

12 A I asked what happened out there. He said he was
13 driving Kiane's car 2011 Hyundai. He said I was going to
14 do something to include selling some things at Wal-Mart
15 parking lot on Bush River. So he could get some gas
16 money. He said all day he has been seeing cops, four
17 Lexington County cops he said. And he saw undercover cops
18 when he pulled into Brook Pine apartment. I said
19 undercover. He said yes. You know feds, cops. He said
20 then he passed the apartment to see if they would continue
21 or would follow him. As he pulled into the parking lot
22 space, he saw a police with a gun draw beside his door
23 while he was trying to open his door. Ask him did you see
24 the officer's badge, he first said, yes, and then he
25 realized what he said. He recanted it and said no. I

1 asked him were you trying to get away. He said he was
2 trying to get out.

3 Q And specifically did you ask him this next line
4 that's highlighted right there?

5 A Yes, I asked him you know you are wanted. He replied
6 yes.

7 Q And then finally he said the last line starting on
8 second to the last as he described his...

9 A His erratic driving. He said once he came to a stop,
10 he jumped in the backseat and put his hands up. After
11 that, he said he played possum.

12 Q Okay. And when you said as he described his erratic
13 driving were those his words?

14 A Erratic driving.

15 MRS. CAMPBELL: Thank you, Your Honor.

16 THE COURT: Anything further?

17 MS. WILLIAMS: Just briefly.

18 THE COURT: Sure.

19 RECROSS-EXAMINATION

20 BY MS. WILLIAMS:

21 Q Again, with all that, I know he had stated to you
22 that he was wanted again state he was trying to hit police
23 officers?

24 A No, ma'am, he never said one time he was trying to
25 strike a police officer.

1 MS. WILLIAMS: Thank you. No further questions.

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

3 (WHEREUPON, the witness leaves the witness
4 stand.)

5 THE COURT: We'll take a little break and then
6 do another witness. Please go to jury room. Please do
7 not discuss the case.

8 (WHEREUPON, the jury retire to the jury room.)

9 THE COURT: How many more State's witness do
10 y'all anticipate?

11 MRS. CAMPBELL: One to two.

12 THE COURT: All right, one to two. And not
13 necessarily this evening, but is defense ready to move
14 forward?

15 MS. PINNOCK: With presenting a case, Your
16 Honor?

17 THE COURT: Yes.

18 MS. PINNOCK: At this point I'm not sure we're
19 going to be presenting a case, but we can have a solid
20 answer for you.

21 THE COURT: Just asking. They hadn't gotten
22 through yet, but I want you to be ready when the time
23 comes.

24 MS. PINNOCK: We'll be ready.

25 (WHEREUPON, a break was taken.)

1 THE COURT: Bring the jury in.

2 (WHEREUPON, the jury came into open court.)

3 THE COURT: All right. Your next witness.

4 MRS. CAMPBELL: May it please the Court.

5 THE COURT: Yes.

6 MRS. CAMPBELL: State calls Investigator

7 Gilliam.

8 THE CLERK: Do you swear or affirm that the
9 testimony that you're about to give in this case, to be
10 the truth, the whole truth and nothing but the truth so
11 help you God?

12 THE WITNESS: I do.

13 THE CLERK: Have a seat in the witness box
14 please. State your name for the record.

15 THE WITNESS: Emmitt Gilliam.

16 WHEREUPON,

17 Emmitt Gilliam,

18 after first having been duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MRS. CAMPBELL:

21 Q Sir, where are you employed?

22 A City of Columbia Police Department.

23 Q What do you do there?

24 A I'm an investigator.

25 Q And how long have you been in law enforcement?

1 A Twenty-one years.

2 Q As an investigator with CPD, what are your duties
3 include?

4 A Include investigate crimes where -- investigate
5 crimes see what charges we can do. Basically, I
6 investigate crimes to see if the charges worthy or not to
7 prosecute anybody.

8 Q I want to turn your attention back to August the 4th
9 of 2014? Did you become involved in that case that day?

10 A Yes, ma'am.

11 Q And can you tell the jury how you became involved?

12 A I was called out by **Sergeant Thomas** in reference to a
13 carjacking case.

14 Q And where did you go?

15 A I initially went to the scene where another vehicle
16 was involved in this that crashed on Monticello Road.

17 Q Let me back up a minute. About what time in the
18 morning is this that you got the call?

19 A I got a call around three something in the morning.
20 I think I arrived there at 3:35.

21 Q And when you got there what did you observe?

22 A A black Camaro that was wrecked on Monticello Road
23 and they did have an individual in custody.

24 Q And who was the individual that they had in custody
25 at that point?

1 A Devontae Bryant.

2 Q And during the course of being briefed on this case,
3 did you become aware that there was a second individual
4 that had gotten away?

5 A That is correct.

6 Q Once you made contact with Devontae Bryant there on
7 Monticello Road, did you have him transported anywhere?

8 A Yes, I had him transported back to west region.

9 Q And where is west region?

10 A It's in the Harbison area, the substation out there.
11 It's off of Broad River Road.

12 Q What was the purpose of having Mr. Bryant transported
13 back to the substation?

14 A A couple reasons. One thing is the victims of
15 another -- the carjacking -- this case lives close
16 proximity of where this happened as well the individual
17 that called the police during -- before the chase happened
18 lives off of Columbianna Drive and the third thing is we
19 had a shoplifting case that happened at Wal-Mart right
20 there in Harbison.

21 Q And the case in Wal-Mart is that in Richland County
22 or in Lexington County?

23 A Lexington.

24 Q So would that have to be prosecuted in Lexington?

25 A That's correct.

1 Q Once you got to the west substation, what if
2 anything, did you advise him on?

3 A I advised Mr. Bryant of his Miranda rights.

4 Q And what's the purpose in doing that when you have a
5 defendant in custody?

6 A To make sure he understands his rights that, you
7 know, that we speaking about an incident occurring -- I'm
8 sorry providing him Miranda rights is just to make sure he
9 understands his rights are, to talk to me, if you don't
10 want to talk to me, that, you know, no pressure or
11 anything will be done towards him for not speaking to me
12 at all.

13 Q And you been in the courtroom when you gone through
14 the Miranda rights with Mr. Durham. Those the advice of
15 rights you went through with Mr. Devontae Bryant?

16 A That's correct.

17 Q And did he indicate to you whether or not he
18 understood his rights that night?

19 A Yes, he did.

20 Q And did he want to talk to you?

21 A Yes.

22 Q Did anyone threaten him or pressure him to make him
23 talk?

24 A None whatsoever.

25 Q Was there any force or any promises given to him?

1 A No, ma'am.

2 Q And did he in fact talk to you about the events of
3 that night?

4 A Yes, ma'am.

5 Q You can't say what he said to you, but did he gave
6 you a statement?

7 A Yes.

8 Q In that statement, did he implicate himself as well
9 as someone?

10 A That is correct.

11 Q During the course of that conversation with Mr.
12 Bryant was he able to -- were you trying to get
13 information about the second person?

14 A Yes.

15 Q And was he able to give you a nickname that you were
16 able to use?

17 A Yes.

18 Q And what was the nickname?

19 A Key Man.

20 Q Key Man. Based on that information, what did you do?

21 A I know the name from the area I start off when I come
22 to the City of Columbia. I know it from that area. I
23 went to a data base and pull some information up on it.

24 Q And that include a picture?

25 A Yes.

1 Q Of a person you knew as Key Man?

2 A That is correct.

3 Q With that picture, what did you do?

4 A Well, before that, I asked him how long he know Key
5 Man and he said two or three years. So that was no
6 purpose for me to actually do a photo lineup on him
7 because he know this person two or three years. I then
8 showed him the picture of the person I know as Key Man.

9 Q And you're just doing that to confirm that you were
10 talking about the same person?

11 A That is correct.

12 Q And the person's picture you showed him -- that you
13 showed to Devontae Bryant whose picture was it?

14 A It's Keylan Durham.

15 Q That night did Mr. Bryant also provide you with a
16 buckle swab?

17 A Yes.

18 Q And what's the purpose of getting a buckle swab.

19 A The purpose of buckle swabs is to see if the DNA in
20 any of the vehicles that was from the Camaro and also the
21 Oldsmobile was later he told us where it was, see if his
22 DNA was actually in any of those vehicles.

23 Q And is that standard?

24 A Yes.

25 Q Okay. And he voluntarily gave that to you?

1 A Yes.

2 Q That night was he charged with any crimes?

3 A Yes, he was charged with accessory after the fact.

4 Q Accessory to...

5 A I'm sorry accessory to the fact of a class A felon.

6 Q And that would be the carjacking?

7 A That's correct.

8 Q And that's the carjacking at the In-Town Suites we're
9 here about?

10 A That is correct.

11 Q Was he also able to give you any information that you
12 then got officers to followup on as far as the location
13 of the Oldsmobile? You can't say what he said.

14 A Yes.

15 Q And did you relay that information to officers?

16 A That is correct.

17 Q And that next morning was that car recovered?

18 A Yes.

19 Q Okay. That morning did you also make contact with --
20 later that morning after talking with Mr. Bryant for a
21 period of time, did you make contact with the victims in
22 this case?

23 A Yes, I did.

24 Q And what was the purpose of you making contact with
25 them?

1 A Officer Van -- I can't pronounce his name.

2 Q Van Valkenburgh.

3 A Van Valkenburgh had already got a written statement
4 from them. When I read it, it was not notarized. So I
5 just wanted to go back and confirm -- at least initial
6 parts -- initial statement with them to say, you know,
7 this is what you saying.

8 Q And when you met with them again, did you want to
9 show them any kind of photographs?

10 A Yes, I did.

11 Q And what photographs were those?

12 A Photo lineup of Mr. Durham -- with Mr. Durham.

13 Q And who did you show the photo lineup to first, you
14 recall?

15 A Ms. Lashonda Edwards.

16 Q Was Mr. Marck Drastich right there when you were
17 showing her?

18 A No, he was actually on the other side of the room. I
19 had him turn his back while I did this interview because
20 Ms. Edwards was kind of scared of going out the room --
21 going back on the outside at the time.

22 Q She was still scared?

23 A Yes.

24 Q But he -- and was Ms. Edwards able to pick anyone?

25 A No.

1 Q And then did you perform the same procedure with
2 Mr. Marck Drastich?

3 A Yes.

4 Q And when you showed him the photographs, tell the
5 jury exactly how you went about it, what, if any,
6 information you gave them?

7 A When I showed him the photo lineup, I laid six
8 pictures out for it and ask him if he identify anybody.
9 He notice anybody that participate in the crime against.
10 He looked at them and he picked picture two, which is Mr.
11 Durham.

12 Q This is Marck Drastich picture number five on his?

13 A Okay, I'm sorry five, yes.

14 Q And did you have him memorialize that in anyway?

15 A Yes, I had him to write his name, date and time as
16 well.

17 Q And at any point did you tell him who to pick?

18 A No, ma'am.

19 Q Did you influence him in anyway?

20 A None whatsoever.

21 Q And did he pick out Mr. Durham as the person that had
22 carjacked him?

23 A That is correct.

24 Q And kidnapped him and attempted to rob him?

25 A Yes.

1 Q Did you also follow up on some information from Mr.
2 Drastich about what type -- some of his personal items in
3 the car?

4 A Yes.

5 Q And significantly was there a certain type of money
6 that was in the car?

7 A Yes, Euro or European money.

8 Q Did he indicate whether or not he also had some
9 personal papers in the car?

10 A Yes.

11 Q And were you also aware that Ms. Edwards license had
12 been taken?

13 A That is correct.

14 Q And that was in the car?

15 A Yes.

16 Q Later that same day did you talk to a witness name
17 Zane Harris?

18 A Yes.

19 Q Where did that take place?

20 A At his residence.

21 Q And did you get some information from him?

22 A Yes, after looking at the video from Wal-Mart and his
23 initial statement -- I'm sorry back up. His initial
24 statement I talked to him after I talked to the two
25 victims. I went up to his apartment and talked to him and

1 he gave me a description of the individual that he went
2 inside the Wal-Mart -- for him to purchase alcohol. After
3 I did that and got more information about Mr. Durham,
4 that's when I came back later, I think, the next day the
5 5th and showed him six picture photo ray.

6 Q It's actually on August the 11th, I believe, that you
7 actually showed him a photo lineup?

8 A Yes.

9 Q And was Mr. Harris able to identify anyone in that?

10 A Yes, he was able to identify Mr. Durham as the person
11 who actually attempted to purchase him alcohol and also
12 driving the Oldsmobile.

13 Q On the evening of the 4th?

14 A Yes.

15 Q In the early morning hours?

16 A Yes.

17 Q Did you also talk -- and when you showed him that
18 photo lineup, did you influence him in any way, tell him
19 who to pick anything like that?

20 A No, ma'am.

21 Q Did you also make contact with Cullen Bennecker?

22 A Yes.

23 Q And did you also get information from him about what
24 had happened that night?

25 A That's correct.

1 Q Did you have any significant contact with Mr. Durham
2 that night?

3 A Yes, they were both outside of the Shell gas station
4 when he pulls up in the Oldsmobile and they discussed with
5 him about purchasing some alcohol for them. He told them
6 to follow him down to Wal-Mart. At that time that's when
7 -- I can't pronounce his name.

8 Q Bennecker?

9 A Bennecker went inside with Mr. Durham.

10 Q And at some point during this day, did you also go
11 and review some video from the Wal-Mart?

12 A Yes, ma'am.

13 Q Okay. Were you able to get video surveillance from
14 them?

15 A Yes, ma'am.

16 Q And when you reviewed it, did you recognize anyone on
17 it?

18 A Yes, ma'am.

19 Q Who did you recognize as going into the Wal-Mart that
20 night?

21 A Mr. Keylan Durham.

22 Q And how long have you known Keylan Durham?

23 A Probably about seven or eight years.

24 Q You had an opportunity to review the video?

25 A Yes.

1 MRS. CAMPBELL: Your Honor, at this time we ask
2 to publish.

3 THE COURT: It's in evidence. You may do so.

4 MRS. CAMPBELL: Thank you.

5 THE COURT: You have a copy of the video?

6 MR. STEADMAN: Your Honor, we're playing the
7 copy because the one we already had loaded not working
8 right now.

9 MRS. CAMPBELL: May the witness step down.

10 THE COURT: Yes.

11 MRS. CAMPBELL: Just go on the other side and
12 make sure you don't block anybody.

13 THE COURT: What's the length of the video?

14 MRS. CAMPBELL: There's several different
15 angles, Your Honor, showing him on the outside and then on
16 the inside.

17 THE COURT: Five, 10, 15, 20, half an hour, two
18 hours?

19 MR. STEADMAN: Probably about half an hour, Your
20 Honor.

21 THE COURT: Okay.

22 BY MRS. CAMPBELL:

23 Q What area of the store does this show?

24 A This is the parking lot at Wal-Mart. This is the
25 entrance to the front door where you see Mr. Durham and, I

1 think, Mr. Harris coming in the front door walking
2 together, see black frame glasses, white shirt and blue
3 jean pants. And that is Mr. Harris on the other side.
4 This is Mr. Durham back in the electronic section
5 attempting to purchase the camera with a -- it doesn't
6 have nothing on it. As well as he got two hats sitting on
7 the counter, seeing him put two hats on the counter. He
8 goes and get the Nikon camera with accessories with it,
9 back camera now two hats, put everything inside a bag. He
10 had some type of gift card. He leaving with the items.
11 She goes behind him. This is the inside of the front door
12 as you will see him run out, pull his pants up, angle from
13 the outside, running back to the car. That's when he
14 parked the car, black Camaro behind him. And there go
15 Mr. Harris.

16 Q Go back to the first. After getting a copy of the
17 video surveillance, did you get some search warrants that
18 day for the cars?

19 A Yes.

20 Q And specifically what two cars were you getting
21 search warrants to search?

22 A After the Camaro which was right there on Monticello
23 Road, we had transported to headquarters. And once we
24 locate the victim's car the 1995 Oldsmobile Ninety-Eight,
25 they also transported to headquarters.

1 Q And when you got them to headquarters, are you the
2 one who processed them or did somebody else?

3 A Somebody processed them. I just signed the search
4 warrant.

5 Q And then those two vehicles certain evidence was
6 collected from those?

7 A Yes.

8 Q And specifically in the Oldsmobile you had an
9 opportunity to review the pictures?

10 A Yes.

11 Q Was there a hat in the backseat?

12 A That is correct.

13 Q Is that initially collected by crime scene?

14 A No, it wasn't.

15 Q And tell the jury how you ended up with it?

16 A The same victims came back and told me -- came up to
17 the police department say, hey, you forgot the hat that
18 was left in the vehicle. And at that time that's when I
19 took possession of it after the search warrant was closed.

20 Q So after the vehicle was returned back to the victim
21 the Oldsmobile?

22 A Yes, the Oldsmobile.

23 Q And I show you State's Exhibit Number 53 do you
24 recognize that?

25 A Yes.

1 Q And is that the hat that the victims actually
2 returned to you after they got the car back?

3 A Yes.

4 MRS. CAMPBELL: Your Honor, at this time we
5 offer State's Exhibit 53 into evidence.

6 MS. PINNOCK: No objection, Your Honor.

7 THE COURT: It's admitted.

8 (WHEREUPON, State's Exhibit No. 53 was admitted
9 into evidence.)

10 BY MRS. CAMPBELL:

11 Q Turning your attention to August the 6th, did you
12 become aware that Keylan Durham had been found?

13 A Yes.

14 Q And at that point between August 4th and August the
15 6th, were their warrants taken out for him?

16 A Yes, it was.

17 Q And the warrants for the carjacking and kidnapping?

18 A That's correct.

19 Q And those reported to the fugitive task force?

20 A Yes, ma'am.

21 Q And they were the ones that were actually tasked with
22 arresting Mr. Durham on the 6th; is that correct?

23 A Yes, ma'am.

24 Q And did you get informed of that what had happened
25 out at Brook Pines?

- 1 A Yes, ma'am.
- 2 Q And what did you do when you got informed of that?
- 3 A Myself and Investigator Moore went to the crime scene
- 4 itself basically speak to the girlfriend as well.
- 5 Q And whose the girlfriend?
- 6 A Kiane Warner.
- 7 Q And why were you trying to make contact with Kiane
- 8 Warner?
- 9 A We believe that he was staying with her at the time.
- 10 We just see want to talk to her to see if she had any
- 11 information knowing about this carjacking.
- 12 Q Was Ms. Warner cooperative with you?
- 13 A Yes.
- 14 Q And in fact while you were there, did you talk to her
- 15 about searching the premises?
- 16 A That is correct.
- 17 Q And I show you what's been marked as State's Exhibit
- 18 Number 55, do you recognize this?
- 19 A Yes.
- 20 Q And is that the consent to search form she signed
- 21 that day?
- 22 A That's correct?
- 23 Q And I believe it's dated August 6th at around 1500?
- 24 A Yes, ma'am.
- 25 Q What time is that for me?

1 A That's three o'clock p.m.

2 MRS. CAMPBELL: Your Honor, at this time I offer
3 State's Exhibit 55.

4 MS. PINNOCK: No objection.

5 THE COURT: Admitted.

6 (WHEREUPON, State's Exhibit No. 55 was admitted
7 into evidence.)

8 BY MRS. CAMPBELL:

9 Q While you were there at some point that Investigator
10 Moore brings something to your attention?

11 A Yes, ma'am, Ms. Warner wanted to go upstairs and get
12 the baby a bottle. They went upstairs Investigator Moore
13 going upstairs. She wanted to grab her purse. And at
14 that time she said let me check to make sure none of this
15 is nothing -- a purse or a bag. And at that time she said
16 she opened it up and she saw the Euro, the European money.
17 And at that time she calls me to come upstairs.

18 Q And was that significant to you?

19 A Yes.

20 Q Let me show you State's Exhibit 6 and 7. Do you
21 recognize that?

22 A Yes, ma'am.

23 Q And is that in fact the Euro money we're talking
24 about?

25 A That is correct.

1 Q In addition to that, did you also find other items
2 belonging to one of the victim's in this case in her
3 apartment?

4 A Yes, ma'am.

5 Q I'm going to show you what's been marked as State's
6 Exhibits 57 and 56. Pursuant to her consent to let you
7 search, did you find these items as well.

8 A Yes, ma'am.

9 Q And what are those items, sir?

10 A One is eligibility for exchanged visitors. It's like
11 a Visa card. The second is the victims pool operating
12 card, the Euro and the Prince William Health District card
13 with the victim's name a Mr. Marck ---

14 Q Marck Drastich.

15 A Marck Drastich, I'm sorry.

16 MRS. CAMPBELL: Your Honor, at this time I offer
17 56 and 57.

18 MS. PINNOCK: No objection, Your Honor.

19 THE COURT: It's admitted.

20 (WHEREUPON, State's Exhibit No. 56 and 57 were
21 admitted into evidence.)

22 BY MRS. CAMPBELL:

23 Q And again this is in Ms. Warner's apartment?

24 A That's correct.

25 Q And who was living there with her?

- 1 A Keylan Durham and a child.
- 2 Q And just to be clear this is the same money you
- 3 just...
- 4 A Yes, ma'am, that is the same.
- 5 Q Just copied it on this piece of paper?
- 6 A That's correct.
- 7 Q And were these papers ultimately returned to the
- 8 victim after you made a copy of it?
- 9 A Yes.
- 10 Q But as in this that was one of the items that
- 11 Mr. Marck Drastich said he was missing that was in the
- 12 car?
- 13 A Yes.
- 14 Q And then State's Exhibit 56 it's the certificate
- 15 eligibility for exchange visitor made out to Marck
- 16 Drastich?
- 17 A That's correct.
- 18 Q And that was found in Ms. Warner's apartment. You
- 19 can't say what she said to you, but did she ever give you
- 20 information that was useful in this investigation?
- 21 A Yes, ma'am.
- 22 Q For the record, the In-Town Suites originally there
- 23 was some thought it was in Lexington County?
- 24 A Yes, ma'am, my understanding was that was Lexington
- 25 County. We initiated the warrant for the Lexington County

1 side. I think, after we had served the warrants on them,
2 I was notified by the captain of that region said that is
3 Richland County. At that time I did contact the
4 Solicitor's office, both jurisdictions and notified them,
5 hey, we have to change the warrants from Lexington to
6 Richland other than what happened at Wal-Mart, which is
7 still in Lexington.

8 Q Okay. And that day prior to talking to Ms. Warner,
9 did you also advise her of her rights?

10 A Yes, ma'am.

11 Q In the same manner you had Devontae Bryant?

12 A Yes, ma'am.

13 Q Did you become aware during the course of the
14 investigation whether or not the camera that was taken
15 from the Wal-Mart was recovered?

16 A Yes, during the search warrant. I had the report as
17 well. I took that case as well. The information they
18 gave me the serial number of the camera because once they
19 tried to scan for a receipt, it brings up a serial number.
20 And when we inventoried the Camaro, we did find the camera
21 as well as accessory tool.

22 Q And the camera was found in the Camaro?

23 A That's correct.

24 Q At some point did a citizen come forward and actually
25 provide you with some additional belongings that had come

1 from the cars that he found onside of the road?

2 A Yes, ma'am. Actually, the evidence clerk remember
3 Mr. Marck Drastich's name and she saw that somebody turned
4 in some stuff they had found on the side of the road. And
5 while I was down there doing some other -- she said you
6 need to look at this because I think this is part of your
7 victim stuff, which was found on the 2700 block of Two
8 Notch Road.

9 Q And I show you State's Exhibit 54 do you recognize
10 that?

11 A Yes, ma'am.

12 Q And once you documented these items were they also
13 returned?

14 A Yes.

15 MRS. CAMPBELL: Your Honor, at this time we
16 offer State's Exhibit 54.

17 MS. PINNOCK: No objection.

18 THE COURT: It's admitted.

19 (WHEREUPON, State's Exhibit No. 54 was admitted
20 into evidence.)

21 BY MRS. CAMPBELL:

22 Q Did you also get some medical records from the victim
23 Mr. Marck Drastich?

24 A That's correct.

25 Q And did you actually see any kind of injury on him?

1 A He had some type of laceration to his lip.

2 Q Okay. And the Camaro in this case did it belong to
3 either Devontae Bryant or to the defendant?

4 A No.

5 Q The person that you saw in the video you recognized
6 him?

7 A Yes, ma'am.

8 Q And who is that?

9 A Devontae excuse me I'm sorry -- Keylan Durham he's
10 sitting at defense counter -- between his defense
11 counselor.

12 Q What is he wearing?

13 A Wearing blue shirt and blue tie.

14 MRS. CAMPBELL: Thank you. I have nothing
15 further, Your Honor.

16 THE COURT: Cross-examination.

17 MS. PINNOCK: Thank you, Your Honor. Please the
18 Court.

19 CROSS-EXAMINATION

20 BY MS. PINNOCK:

21 Q So you are the lead investigator for this case?

22 A Yes, ma'am.

23 Q Everybody reports to you, you're the point person.
24 You're delegating responsibilities. Everything is your
25 call?

1 A Yes, for the carjacking, yes.

2 Q Okay. On that night -- well, as an investigator on
3 any case, you have lots of duties. You can either
4 delegate or you can do it yourself?

5 A Yes.

6 Q Part of your duties are interviewing witnesses?

7 A Uh-huh.

8 Q Going out to scenes?

9 A Uh-huh.

10 Q Potentially to collecting evidence?

11 A Yes.

12 Q Doing follow ups if you need to do follow ups?

13 A Yes.

14 Q Okay. And that's also -- you can make sure you have
15 as much information as you need and you have the right
16 information that you need?

17 A That is correct.

18 Q And you do everything in your power to make sure the
19 information that you get is accurate information?

20 A Yes.

21 Q If you're interviewing witnesses, you want to make
22 sure you get exactly what they know so you know what's in
23 that person's mind?

24 A Yes.

25 Q Because that's very important when you're talking to

1 witnesses?

2 A That is correct.

3 Q Because you don't want, you know, Joe telling Brian
4 to tell Tim to tell you something. You want to talk to
5 Joe?

6 A Automatically, yes.

7 Q Okay. And when you talk to the middle person, you
8 want to know what they know?

9 A Yes.

10 Q Not what the first person told them or what they
11 know?

12 A Yes.

13 Q In interviewing witnesses, like I said, it's very
14 important, which is why you take statements?

15 A Uh-huh.

16 Q Sometimes they're written down?

17 A Uh-huh.

18 Q Sometimes they're oral statements. And as policy for
19 the City Columbia, you actually record -- don't y'all
20 record statements?

21 A It's not policy. It's just we have opportunity to
22 record, we can. Now, since we got video in our interview
23 rooms, we record now, but it's not policy.

24 Q You have video in your interview room?

25 A Now, we do, not then.

1 Q Good to know. But on August 4th 2014, you had audio
2 recording, right?

3 A I had mines that night, yes, that morning.

4 Q So you had that on you when you went to speak to Ms.
5 Edwards and Mr. Drastich?

6 A Yes.

7 Q And on that night -- what time was it when you met
8 with them?

9 A Probably close to five something in the morning.

10 Q Okay. And that was on five o'clock in the morning on
11 the 4th?

12 A On the 4th, yes.

13 Q Okay. So you went to the In-Town Suites to talk to
14 them?

15 A That's correct.

16 Q You went up to their room?

17 A To their room, yes.

18 Q And you sat down and you talked to both of them to
19 the same time?

20 A Well, what I did with them the other officer already
21 got a statement from them and I reviewed the statement. I
22 just want to make sure on my recording was what are they
23 exactly saying cause they already gave a statement, so I
24 can swear them to that statement. That was the initial
25 statement that they did.

1 Q Okay. But you didn't take that initial statement?

2 A No.

3 Q So your first conversation with them was together?

4 A That's it, yes, ma'am.

5 Q And then every time you met with them after that they
6 were together?

7 A Somewhat. Only when I talk to him, I had her write a
8 statement on the 8th. When I showed the photo lineup,
9 they both in the same room, but she on one side of the
10 room, he's on the other side.

11 Q So somewhat together but in the same together?

12 A In the room, yes, I'm sorry.

13 Q How many times did you talk to them total?

14 A Let's see the 4th, 5th, 8th. I'm thinking three that
15 I actually talk to them. Now, they came back to pick some
16 stuff up, I think, a couple times after that.

17 Q Okay. So you spoke to them three times. The first
18 time we know that they're together?

19 A Yes.

20 Q And at that point, you know, you already have the
21 initial statement?

22 A That's correct.

23 Q You reviewed them?

24 A Uh-huh.

25 Q You want to follow up to make sure that's what they

1 were going to be saying to you?

2 A Yes.

3 Q And during your conversation with Ms. Edwards, isn't
4 it true that she told you she didn't 100 percent remember
5 the person shirt being white?

6 A I'm not exactly sure what she said. I remember her
7 saying something to the effect of ---

8 Q She wasn't sure.

9 A --- she's not sure, but she wasn't looking at him.
10 She didn't want to look at him in the face or something to
11 that nature.

12 Q Did you review the statements -- did you listen to
13 the recording before you came?

14 A I listen to several recordings.

15 Q Did you listen to your conversation with Ms. Edwards
16 and Mr. Marck Drastich before coming to the trial?

17 A Yes, I have listen to it.

18 Q How recently?

19 A Probably about three days.

20 Q Okay. So you're saying that she said that she
21 couldn't tell you the color of his shirt because she
22 wasn't looking at him?

23 A Well, no, ma'am, I'm not saying that. What I'm
24 saying is I'm listening to several conversations not just
25 theirs. Everybody else I talk to as well as reading

1 stuff.

2 Q I listen ---

3 A I mean, if she said that part, she didn't know, she
4 probably did. I can't really remember all. But as an
5 investigator, if she didn't remember what it look like
6 still yet, I'm still going to offer her a photo lineup to
7 look at.

8 Q And I understand that completely, that's a few days
9 down the road?

10 A Yes.

11 Q Now, that night she told you she didn't know what
12 color the shirt was?

13 A If I'm correct, I think so.

14 Q But her husband said it was white, so she just went
15 ahead and figured it was white?

16 A She probably, yes.

17 Q Okay. And on that evening, the description was
18 provided to you that there was a brown wig involved?

19 A Yes.

20 Q And you reviewed the statement that said there's a
21 black cap involved?

22 A Yes.

23 Q Okay. And at no time did anybody mention a
24 camouflage hat?

25 A Not at the time, no.

1 Q Okay. And that was on the 4th?

2 A Yes.

3 Q Now, you spoke to Devontae that morning or early
4 morning at some point?

5 A Yes.

6 Q And he ended up taking you to what hotel?

7 A The West Gate it's off Columbianna Drive. It's
8 actually probably not even a quarter of a mile from where
9 the incident had occurred at.

10 Q But you personally rode out there with Devontae
11 Bryant?

12 A He was in the patrol car, yes, and he showed us the
13 area.

14 Q Okay. So the car -- the blue car was recovered on
15 that night?

16 A That morning, yes.

17 Q That morning?

18 A Yes.

19 Q And that was on the 4th?

20 A Yes.

21 Q What day was it released to Ms. Edwards?

22 A I have to look at the tow slip. I think, it was
23 released on the 5th.

24 Q You know what time?

25 A It was in the afternoon I know that for a fact.

1 Q So that's on the 5th. You show Mr. Drastich and Ms.
2 Edwards a photo ray on the 5th?

3 A Yes, I apologize. I released a car to them on the
4 4th.

5 Q On the 4th, okay?

6 A I apologize.

7 Q No problem just trying to get the dates right. So
8 they get the car back on the 4th. They're looking at the
9 photo lineup on the 5th?

10 A That's correct.

11 Q Ms. Edwards is unable to pick out a picture?

12 A That is correct.

13 Q And then the sixth goes by and 7th goes by and you
14 take another statement on the 8th?

15 A I get an official written statement, yes.

16 Q But on that date Mr. Drastich did not write his own
17 statement, right?

18 A On the 8th, no, she wrote it for him.

19 Q So they're together?

20 A Yes, he wanted someone to write it for him and I let
21 her write it. If I'm correct, it's recorded as well.

22 Q And that was recorded also?

23 A I believe that's recorded. When his statement -- let
24 me think. No, ma'am. I don't think so. I apologize I'm
25 getting confused on those recordings.

1 Q There was a lot of them?

2 A Yes.

3 Q What day did -- if the car is released on the 8th,
4 I'm sorry on the 4th -- what day did Ms. Edwards and Mr.
5 Drastich come back with a hat and say, hey, you forgot
6 this?

7 A The same day.

8 Q On the 8th?

9 A No, no, no.

10 Q On the 4th?

11 A The 4th, yes.

12 Q And they gave it to you?

13 A Yes.

14 Q What day did you put it in evidence?

15 A I think, it's the 8th because I actually held on to
16 it because I was meant to put it in. I forgot and I left
17 it in the trunk of my car. So when I realize I left it,
18 that's when I went and turned it in.

19 Q So they come up with this item that's in their car on
20 the 4th?

21 A Yes, after we release it, yes, ma'am.

22 Q Okay. Then the statement on the 8th is the first
23 time we hear anybody mention a camouflage hat?

24 A I believe so.

25 Q Okay. A few things did you go out to Game Stop?

1 A Yes.

2 Q You did. Was there any video you collected at Game
3 Stop?

4 A Yes, but he couldn't pick him out of a lineup, so we
5 never chart.

6 Q I'm sorry what.

7 A He couldn't pick the person who actually shoplifted
8 from them from Game Stop.

9 Q At what point did you put in your notes that you went
10 to Game Stop?

11 A No, no, I went out there for a separate case and --
12 and actually it's dealing with something earlier.

13 Q Okay. Did you go to Wal-Mart in West Columbia?

14 A No, I did not go over there.

15 Q Okay. Did you go to the apartments behind or beside
16 wherever Devontae said he was?

17 A He said he was in Brook Pines over there by his
18 girlfriend apartment.

19 Q He hung out at somebody's house for two hours?

20 A No, ma'am.

21 Q Did you get the name of that person?

22 A No, ma'am.

23 Q Okay. Did you show Ms. Edwards a photo of Devontae?

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

25 Q Okay. And that's because Devontae said it was

1 Keylan?

2 A That and plus the other factors in the case where the
3 Wal-Mart the clothes he wear and also the other
4 individuals purchasing alcohol stated this is who he was
5 and what he was wearing.

6 Q Right. But those are the other individuals with the
7 Wal-Mart buying beer. They weren't at the hotel?

8 A No, no, I just wanted a description they gave and
9 what he was wearing as well.

10 Q Got you.

11 A And if it's correct the call came in at 1:20 and I
12 believe they made it to Wal-Mart like 1:24 I believe.

13 Q Okay.

14 MS. PINNOCK: Beg the Court's indulgence.

15 (WHEREUPON, a pause in the proceedings.)

16 BY MS. PINNOCK:

17 Q And Mr. Marck Drastich did not view a lineup of
18 Mr. Bryant either, did he?

19 A No, ma'am. No, ma'am.

20 Q Okay. And you didn't do any searching on Little Kev
21 at Pine Hurst?

22 A I'm sorry say that again.

23 Q Little Kev from Pine Hurst?

24 A Little Kev -- actually, he changed that from Lo Kel,
25 then he finally said it was Key Man.

1 Q Did you look up Little Kev?

2 A No.

3 Q Okay. And that's the first conversation you had with
4 Devontae Bryant?

5 A Right.

6 MS. PINNOCK: Thank you. I don't have anything
7 else.

8 THE COURT: Redirect.

9 MRS. CAMPBELL: Yes, Your Honor, just a couple.

10 REDIRECT EXAMINATION

11 BY MRS. CAMPBELL:

12 Q According to your notes from when you first made
13 contact with the victims, I believe that would have been
14 the morning of the 4th?

15 A Yes.

16 Q And she said she didn't mention -- no one mentioned a
17 camouflage hat until they brought it back to you?

18 A Yeah.

19 Q Is that your notes where it indicate what they said?

20 A Sure did. She did mention it in my notes.

21 Q So that would have been on the other morning of the
22 4th?

23 A Yes.

24 Q When you talk to them?

25 A Yes.

1 Q She gave you a description of the camouflage hat?

2 A (No response.)

3 MRS. CAMPBELL: Thank you, Your Honor.

4 THE COURT: Anything further?

5 RECROSS-EXAMINATION

6 BY MS. PINNOCK:

7 Q That conversation is recorded, right?

8 A The first conversation?

9 Q Yes, with Mr. Marck Drastich and Ms. Edwards?

10 A Yes. Yes.

11 THE COURT: You may step down, sir.

12 (WHEREUPON, the witness leaves the witness
13 stand.)

14 THE COURT: Next witness.

15 MRS. CAMPBELL: Your Honor, may we approach?

16 THE COURT: Yes.

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

20 THE COURT: Ladies and gentlemen, let me have
21 you step to the jury room for a few minutes. We're going
22 to press a little bit. Please do not discuss the case.

23 (WHEREUPON, the jury retire to the jury room.)

24 THE COURT: Okay. All right, Mrs. Campbell.

25 MRS. CAMPBELL: Your Honor, I anticipate we will

1 be resting. I would just like to have the opportunity to
2 look at the evidence and double check to make sure there's
3 nothing. I can't think of anything at this point.

4 THE COURT: All right. While you're doing that,
5 I can address the defendant. You need the defense to
6 assist you with that?

7 MRS. CAMPBELL: No, I don't.

8 THE COURT: You'll swear him.

9 THE CLERK: Raise your right hand. Do you swear
10 or affirm that the testimony that you're about to give in
11 this case to be the truth, the whole truth, and nothing
12 but the truth so help you God?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Mr. Durham, we're -- the State
15 indicates that they're resting after they take a look to
16 make sure that they have all the evidence in that they
17 intend to offer. So we are right at the point or soon
18 will be at the point where you'll have a right to present
19 your defense. And at this time I need to explain to you
20 some of your constitutional rights. If you don't
21 understand anything that I say, let me know and I'll be
22 happy to explain it to you in greater detail. What is
23 your full name?

24 THE DEFENDANT: Keylan Jambre Durham.

25 THE COURT: All right. Mr. Durham, you have the

1 right to claim the protections given to you by the Fifth
2 Amendment to the Constitution of the United States. This
3 means in this -- this amendment states in part that no
4 person in a criminal case can be compelled to be a witness
5 against themselves. That means that in this case you do
6 not -- that you have the right to claim the protections of
7 the Fifth Amendment and not testify, but you do have the
8 right to testify if you would like to, but no one can make
9 you testify. Do you understand what I mean?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: If you decide to testify, you'll be
12 subject to the same rules that govern all of the witnesses
13 and you may be examined and cross-examined on any relevant
14 issues in the case. And if you have convictions involving
15 dishonesty or false statement or for crimes punishable by
16 imprisonment for more than one year and I determine that
17 the probative value of admitting this evidence outweighs
18 its prejudicial effect to you, the Solicitor's then will
19 be able to introduce your record to attack your
20 credibility. Now, if you decide to testify, that must be
21 your decision of free and voluntary and intelligently made
22 decision made by you with knowledge of the protections
23 given to you by the Fifth Amendment to the Constitution
24 and the consequences of your decision to testify.

25 If you decide not the testify, I will instruct

1 the jurors that they cannot give the fact that you did not
2 testify any consideration whatsoever and there is to be
3 absolutely no prejudice to you because you did not
4 testify. It's left entirely up to you whether or not you
5 testify. You may talk to your lawyers, friends, family
6 anyone else, but in the final analysis, it's up to you
7 whether or not you testify. Do you understand what I
8 mean?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Have any questions about what I've
11 explained?

12 THE DEFENDANT: No, sir.

13 THE COURT: Have you talked with your lawyers
14 about whether or not you should take the stand and
15 testify?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Have you made a decision about it?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: You plan to testify or not testify?

20 THE DEFENDANT: No, sir.

21 THE COURT: You not going to testify?

22 THE DEFENDANT: No, sir.

23 THE COURT: All right. You need to talk to your
24 lawyers any more about that?

25 THE DEFENDANT: No, sir.

1 THE COURT: You made up your mind?

2 THE DEFENDANT: Yes.

3 THE COURT: You talk with them already and you
4 made up your mind you're not going to testify?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right. Okay. Thank you. Given
7 that fact and the State thinks that they're through, you
8 all ready with any other witnesses or not going to put up
9 any?

10 MS. PINNOCK: Your Honor, at this time we don't
11 plan to do anything.

12 THE COURT: All right. On this issue of jury
13 view, is that still a live issue? If it is, I'll be happy
14 to hear your argument and the State's argument as well on
15 that.

16 MR. BAILEY: Thank you so much, Your Honor.
17 I'll be willing to speak for the defense on that one.
18 Your Honor, I know I sent y'all kind of a sort of motion.
19 You talked about doing jury views previously. So you've
20 done already many more than I have because I've never
21 actual done a site -- I never done a site visit or asked
22 for one for a jury. Your Honor, as you know the statute
23 14-7-1320, which says the jury may view place, property or
24 thing. It permits a jury view of a crime scene or an
25 incident to assist jurors in understanding of the

1 evidence. And, you know, this is a case where our client
2 is charged with attempted murder of three people in a
3 vehicle that was going in reverse.

4 We think that it would greatly benefit, would
5 greatly help the jury when it comes to seeing distances,
6 landmarks, layouts. And as you seen, we've had a lot of
7 witnesses. We made obviously very quick time, but we've
8 had a lot of witnesses and there were varying accounts and
9 sometimes contradictory accounts about the sequence of
10 events, what would, you know, that the distance, the time
11 frame. We would ask Your Honor that the jury have a
12 chance to see this for themselves.

13 My understanding under the law is that the jury
14 is allowed or, you know, if the Court finds -- I want to
15 be clear I understand that it's pure in the Court's
16 discretion, that the jury can visit a scene or have a view
17 if the jury needs or can use the scene in helping
18 determine what happened. They are obviously the finders
19 of fact. And specifically it says if it relates to the
20 controversy between parties and if it's necessary to
21 adjust decision, we would say that this is at the very
22 heart of the controversy between the parties on
23 Mr. Durham's charges that he's facing on attempted murder.

24 The State has boldly asserted that he attempted
25 to run over three police officers intentionally with a

1 vehicle in reverse with his car. This was a situation
2 involved at least 21 shots. There were two
3 investigations. One internal by Richland County, two by
4 Lexington County Sheriff's Department. I believe that
5 this was done because this was a complicated scene because
6 this was a convoluted thing and was obviously, you know,
7 mayhem on this scene and it was hard.

8 It took, I guess, more than a dozen law
9 enforcement people to investigate and figure out what
10 happened. We went to the scene last week and that was
11 when it became important to me. I saw this scene myself.
12 I looked at it. I would see the tree. I could see. I
13 can see the post, which is now up again. And we stood in
14 the place and it didn't even occur to me until I saw it.
15 I said this is it. This is real. There is no substitute
16 for the real thing. I believe that from a lot of the
17 statements, from a lot of the sketches that it can be
18 confusing and unclear. And I believe that they can get an
19 objective accurate view of the scene if they go. I don't
20 think there's any substitute. We can't recreate it in the
21 courtroom. I honestly think it would make a huge
22 difference and that's why we ask for a site visit, Your
23 Honor. We were there. It is completely different from
24 these little Google maps or any terrible sketch I draw or
25 any of these pictures. And I think that it would really

1 put these events which are involved and complicated in the
2 right context.

3 THE COURT: All right. Mrs. Campbell.

4 MRS. CAMPBELL: Your Honor, I think I put it in,
5 I don't know if they're marked in, but over like a 100
6 photos of the scene. I think the crime scene investigator
7 said it's a panorama of the entire area. It shows it as
8 it was not as it is now. And he's already just said that
9 it's different now than it was then. Additionally, Your
10 Honor ---

11 THE COURT: Did someone say that?

12 MRS. CAMPBELL: What?

13 THE COURT: Did someone say that it's different
14 now?

15 MR. BAILEY: No, Your Honor.

16 THE COURT: She has the floor.

17 MR. BAILEY: Sorry.

18 MRS. CAMPBELL: He said the pole was up, I
19 believe, which it would not have been at the time. Your
20 Honor, there have been a number of literally 100
21 photographs entered at the scene. There have been
22 measurements submitted and we feel like that is
23 sufficient, but whatever you feel like is appropriate we
24 are fine with.

25 THE COURT: All right. This case -- I guess, I

1 asked a question early on why are we having a trial and
2 I'm almost tempted to ask the same question why have we
3 had a trial. If the -- if why we had a trial ties in with
4 the defense's position that the defendant is not guilty
5 because it's a contested area, that's difficult to
6 imagine why someone would back a car up at a high rate of
7 speed trying to get away from police officers. And so
8 therefore he could not have intended to commit the crime
9 or if the -- because officers fired shots in self-defense
10 or that, of course, wouldn't be self-defense, I don't
11 think you all are requesting self-defense at least you
12 haven't. So tying all into what would really serve the
13 purpose of having a jury view. I mean, a jury view is not
14 a guided tour where you go in and someone narrates this
15 was here and this was there. And this car was over here
16 and that car was over there and the officers are standing
17 here. And the people were in that apartment on their
18 balcony up there. And the girlfriend lived over there.
19 You know, that's the testimony. All that comes through
20 the course of a trial, that's why you have a trial.

21 Now, the interesting case that Judge Jefferson
22 had on this where people were -- where a shooting happened
23 in an apartment and let's see -- mother lived with her
24 husband, the victim, and her son in Charleston. And she
25 was washing her hair in the kitchen sink when the victim's

1 son came in and told her something was missing from his
2 room. And mother said she would be with him when she
3 finished washing her hair. And she waited and left and
4 went to where he was and she said she heard some scuffling
5 around, heard a loud pop as she was trying to finish her
6 hair, and it came from her son and the victim was her
7 husband, I guess. And the victim approached her and said,
8 Faye, that boy shot me. That ended up with a murder
9 charge against him.

10 And during the trial, the defendant says the
11 judge abused her discretion by not having a jury view
12 because the diagram misled or confused the jury regarding
13 the lay out of the house. The jury was unable to hear
14 what it was like inside the house. Evidence admitted at
15 trial didn't help the jury appreciate the proximity and
16 size of rooms in the house. And the evidence failed to
17 depict the stairway and vestibule where the shooting
18 occurred. Sited the statute that you just did ---

19 MR. BAILEY: I'm sorry, Your Honor, you want me
20 to site the statute?

21 THE COURT: No, sir. They went on in the case
22 and sited the statute 14-7-1320 and State vs. Mahoney.
23 And during the mother's testimony the State put in a
24 diagram showing the lay out and they acknowledged that it
25 wasn't drawn to scale, but it was to show the locations of

1 the rooms. And the defendant didn't object to this
2 diagram, but suggested to Judge Jefferson if it's going to
3 be introduced, it will give more weight to request for a
4 jury scene visit, crime scene visit. She admitted the
5 diagram and denied the request for a visit.

6 The appellate court concluded the jury knew the
7 diagram wasn't to scale, but it correctly portrayed the
8 lay out of the house. Jury wasn't mislead or confused.
9 They acknowledged to the testimony that the officers and
10 others that it's a confined area. And the officer
11 testified that his crime scene photographs and all and
12 show the area of where the crime occurred. And Judge
13 Jefferson said I was concerned about the representations
14 regarding the scale of the drawing, but as we got further
15 in the trial, it became apparent to me that the pictures
16 have been presented at the scene are accurate. They are
17 accurate in scale and they give a very clear impression of
18 the tightness of this abode, the word she used. The
19 pictures are incredibly accurate in terms of scale and the
20 narrowedness of the porch, the narrowness of the confines
21 where the incident took place. And they were not -- I
22 think there would be some basis for the jury to go and see
23 it.

24 In this instance, I don't think it's necessary
25 and I would find for the record that it is not necessary

1 to a just decision in this case. Photographs are accurate
2 and sufficient to aid the jury in their decision making as
3 fact finders and the motion is denied.

4 And the Court in affirming her that we cannot
5 conclude the trial court improperly denying the jury
6 request. It's a matter of discretion of the trial court
7 and they cited another case. I think holding that the
8 trial court properly denied a jury view of the crime scene
9 in a murder case where the jury requested to view the
10 scene that night due to their concerns and a witness lacks
11 sufficient lighting to identify the defendant because a
12 photograph of the area was admitted evidence that
13 indicated a street light was in the area and the witness
14 testified he had enough light. Now, that's in the Court
15 of Appeals decision.

16 The last jury view that I had that was the State
17 vs. Parvin case that we tried right next door. He was
18 convicted of double murder shooting out in northeast. We
19 allowed the jury view because it was a confined area and
20 just distances from where one person fatally shot versus
21 the other and also his claim of self-defense, but here we
22 have a defendant who is not in effect contesting not
23 through any evidence. I mean, of course, you
24 cross-examine the witnesses. I'm having -- really having
25 a hard time to figure out anything -- any possible benefit

1 the jury can get out of going out there and just driving
2 through this apartment complex or riding through the
3 apartment complex and trying to figure out -- if that's
4 what they try to do, try to match it with the testimony
5 without any guidance from the lawyers. At least when you
6 have photographs and things here that they're going to
7 look at before they deliberate, at least they'll have
8 lawyers arguing based on tangible evidence that either can
9 side point to in making their arguments, but to just ride
10 through that apartment complex and this happen August of
11 2015.

12 MR. BAILEY: Fourteen.

13 THE COURT: 2014, so a year and a half ago in
14 the heat of the summer. And now we're here spring and
15 another season year and a half later. And, you know, I
16 heard the arguments about the shooting and all kids and
17 babies and everybody's around. And as if we were ride
18 through there, there be kids patrolling through the
19 neighborhood, of course, that was during the summer. If
20 we go through tomorrow morning, you might not spot a
21 child, that wouldn't help the defense in that argument.
22 Unless, we go at the time the school buses let people off
23 or something, if they ride the buses out there. I'm just
24 trying to understand what real benefit could come from
25 wasting time to go out there, but I'll be happy to hear

1 one more shot from you.

2 MR. BAILEY: Thank you, Your Honor. I
3 appreciate that. When we made -- we've made pretty good
4 time in three days. So I feel like, you know, our
5 efficient schedule would allow it and that's not my
6 primary reason.

7 THE COURT: It's not a matter of time. You
8 absolutely correct. I started out saying this is going to
9 go into next week and I'm wondering whether or not I
10 needed to call our Horry County and say I'm not coming.
11 So we're ahead of schedule.

12 MR. BAILEY: Your Honor, we would argue that
13 with the photos and the things that are already in
14 evidence in addition to and especially the evidence that
15 is in testimony from both direct and the evidence that
16 came out in the testimony of the witnesses during
17 cross-examination, we would argue that these things
18 working in conjunction with a site visit would put things
19 in better context and help the jury make a decision for
20 themselves as to what could happen as to what they believe
21 did happen. Again, there were inconsistencies in varying
22 stories as to what happened with the different witnesses
23 and I believe that it really could ---

24 THE COURT: Timing not a big deal. I mean, it
25 take an hour. They can come at 9:30. We can put them on

1 a bus or whatever ride up there and ride through that
2 parking lot. And they'll be back here by 10:30. I'm not
3 concern about that. You all have a bus some place or an
4 inmate van or what do you all take them in?

5 MR. BAILEY: I'm sorry.

6 THE COURT: What do you all take them in the
7 inmate van or rent them from the rental car place?

8 DEPUTY: We have juror vans.

9 THE COURT: Jury vans. They don't get used that
10 often I imagine, might be a good time to use it. Go
11 ahead.

12 MR. BAILEY: Your Honor, again Mr. Durham and
13 this has been, you know, stated although he hasn't taken
14 the stand. He is charged with three attempted murders.
15 All happening at high speed in a reversing car. You know,
16 this involves, you know, without giving away sort of too
17 much. You know, we still yet to argue in our closing
18 arguments, but, Your Honor, I think that goes right to the
19 heart of whether or not he could have attempted to murder
20 three police officers that were shooting at him at the
21 time. And I think that -- if we see the scene, it will
22 help the jury. As for as improper ---

23 THE COURT: You going to have to kill one -- if
24 you try to run over one and then as a consequence of that,
25 then the car spins and then you keep -- then you endanger

1 others, that's a factual consideration for the jury.

2 MR. BAILEY: Yes, sir. We believe they can
3 also -- the jury also might make a decision that based on
4 even the first officer and therefore all the officers, but
5 I would like to say I appreciate you setting that case
6 law. It didn't even occur to me as of what was proper or
7 improper or appealable or what we're entitled to. I was
8 just looking to the discretion of the Court, that's how I
9 read the statute. But we would ask ---

10 THE COURT: Because the defendant doesn't get a
11 chance to ride out there. This is just the jury going.

12 MR. BAILEY: That's fine with us, Your Honor.

13 THE COURT: Okay. Mrs. Campbell.

14 MRS. CAMPBELL: Your Honor, I may not oppose it
15 if he had pointed out one specific. All he says is there
16 inconsistencies and I'm not aware of what material
17 inconsistencies he's talking about as far as the attempted
18 murder, but he's been general. He doesn't have any
19 specifics that it would help him with and about that ---

20 THE COURT: As I said to you earlier, I'm
21 waiting for some reason to -- I mean some basis in the
22 evidence that it would point out that it would be
23 something other than wasting time.

24 MR. BAILEY: Yes, Your Honor, I understand. I
25 can give it to you now. I was also kind of holding some

1 for closing arguments purposes and obviously I'm not
2 modeling to the others. Some of the individuals said that
3 the cars stopped, that definitely happened. Some said
4 that the car did not stop that they continued in reverse.

5 THE COURT: You can't recreate any of that.
6 It's a year and a half ago.

7 MR. BAILEY: Right, yes, sir. But you can see
8 the damage to the tree, which is still there which I got
9 to see up close. You can determine once you see the
10 scene.

11 THE COURT: They're not going to know -- I mean,
12 you want me to take them to a special tree or -- that's
13 the problem.

14 MR. BAILEY: I understand it's not ---

15 THE COURT: I did one in Holly Hill, I was in
16 Berkeley County and I did one in Holly Hill someone got
17 cut at a night club. We went to the club on a jury view
18 for the jurors to see this club. Of course, we're there
19 in the middle of the day. The cutting took place at
20 midnight on a Saturday night. Here we are in this club in
21 the middle of the day, of course, they got the benefit of
22 seeing how the club looked. But, you know, I've done them
23 in Horry County in civil cases. We ride through a parking
24 lot. So, you know, we can ponder. We can have the bus --
25 the van lined up to go at 9:30 in the morning or 9:15 and

1 then we can think about it overnight. I mean, I have no
2 problem. I understand he's facing 245 years in prison.
3 And, of course, in the end what's the point he wasn't
4 trying to escape. He wasn't trying to get out of there.
5 He accidentally put it in reverse. You know, what is the
6 point. We're still -- the fact remains as to -- based on
7 what's in evidence, what he did and the consequences of
8 what he did. Now, what that amounts to as far as the law
9 and the jury saying well that amounts to the attempted
10 murder versus whatever they are not guilty, that's another
11 thing. We have the jury sitting there, I thought we let
12 them go already. They're still in there. We'll talk some
13 more about that.

14 MR. BAILEY: Thank you, Your Honor.

15 MRS. CAMPBELL: Your Honor, I didn't get to talk
16 to the court reporter, but I did review her marks and it
17 looks like there quite a few that are not in evidence.

18 THE COURT: We'll have you all rest in the
19 presence -- the State's going to rest, the defense going
20 to rest and we'll tell them -- I'm still pondering the
21 jury view. I'm leaning 65 percent toward granting the
22 view. And you lined up all the bailiffs and everybody you
23 ride slowly through there.

24 MRS. CAMPBELL: You're leaning towards that, we
25 would join in the motion to see the scene, make it a joint

1 motion.

2 THE COURT: All right. So makes it 99 percent
3 then.

4 MR. BAILEY: Thank you, Your Honor.

5 THE COURT: All right. So we'll tell them to
6 come at 9:30 and that's what we anticipate is going to
7 happen and then we do closing arguments after that which
8 will probably be around 11, 11:30.

9 MRS. CAMPBELL: I need to get with the court
10 reporter about what's in and what's out, about 50 percent
11 of it's not in. So I just need to -- if we could have the
12 opportunity, she just couldn't talk.

13 THE COURT: Or you can just offer everything in
14 that's based on exhibits and I can -- you offer them in
15 and then we can settle it.

16 MRS. CAMPBELL: We offered everything in except
17 for the one top sheet on the one redacted we're taking
18 that out.

19 THE COURT: Any objection to any of those
20 exhibits?

21 MS. PINNOCK: The evidence items or the large
22 exhibits?

23 THE COURT: Whatever's in dispute. I'm saying
24 let's just get -- you rest and we can settle that. You've
25 offered everything in.

1 MRS. CAMPBELL: We offered it all, Your Honor.
2 I do believe that there was ---

3 THE COURT: I can rule at any point in time
4 prior to closing arguments.

5 MRS. CAMPBELL: Okay, that's fine as long as you
6 let me follow up on that.

7 THE COURT: You can follow up.

8 MS. PINNOCK: The only objections we would have
9 are the ones we previously made.

10 MRS. CAMPBELL: We redacted the bond and
11 substituted that out and I don't know of anything else
12 that didn't come in.

13 MS. PINNOCK: On the record objections.

14 MRS. CAMPBELL: And I think we need to
15 substitute two numbers on the record and that's it. We
16 can do that at a later time.

17 THE COURT: They're repeating renewing
18 objections that they already made basically. All right,
19 bring them on in Mrs. Shirley.

20 MRS. CAMPBELL: You want me to rest now.

21 THE COURT: Yes, and then the defense will and
22 then I can tell them what we're going to do.

23 MRS. CAMPBELL: Thank you.

24 (WHEREUPON, the jury came into open court.)

25 THE COURT: All right. Thank you. From the

1 State.

2 MRS. CAMPBELL: Your Honor, at this time the
3 State would rest its case.

4 THE COURT: All right. Ladies and gentlemen,
5 you've heard the State's case. The Court will note
6 motions for the record and address them in a little while.
7 And it's now the defense's turn.

8 MS. PINNOCK: Your Honor, at the time the
9 defense rest its case.

10 THE COURT: All right. Ladies and gentlemen,
11 the State has rested, the defense has rested, that means
12 you've heard all of the evidence in the case. What we're
13 going to do next is the parties have agreed for you to see
14 a jury view, which means the jury to go through the
15 apartment complex there at Brook Pines apartments on Broad
16 River Road. Then we'll have closing arguments, jury
17 charge and deliberations. All of that will take place
18 tomorrow. Unless, you all just want to ride out there
19 tonight. So we'll do all that tomorrow. So we'll start
20 tomorrow morning at 9:15, that should only take an hour or
21 so. And then we'll do closing arguments in the morning as
22 well and then you'll get the case.

23 JUROR: Y'all transport us out there?

24 THE COURT: Yeah, we have a plan for it. Don't
25 go out there tonight looking around. They have jury buses

1 here or jury vans, I think, they are that you all will be
2 transported and I'll give you some procedural safeguards
3 regarding how it is to be conducted. And I'll give the
4 same to the bailiffs who will take you there.

5 JUROR: So we'll still come up here in the
6 morning or just meet downstairs.

7 THE COURT: No, no, you report in the jury room
8 at 9:15 into the jury room and then we'll come in and I'll
9 give you some instructions and then you'll -- that will
10 take place. So that's it for the day. Thank you very
11 much. We'll see you all tomorrow.

12 (WHEREUPON, the jury excused for the day.)

13 THE COURT: How about motions made at the close
14 of the State's case?

15 MS. PINNOCK: Thank you, Your Honor. Please the
16 Court. Your Honor, first I like to renew all of our
17 previous motions and objections. Our pretrial motions to
18 exclude testimony and evidence being introduced regarding
19 the shoplifting at Wal-Mart as well as the car chase with
20 the black Camaro. We do believe that under -- they're
21 initial irrelevant -- they don't meet the definition of
22 relevancy under 401 and 402. And if Your Honor had deemed
23 them relevant, we did not believe that they satisfied an
24 exception under 404 and then failed the balancing test on
25 403. Your Honor, we would renew our objection to all of

1 that information coming in during the trial for the
2 carjacking and attempted murders on August 4th and
3 August 6th. And all of our objections to the evidence
4 being presented associated with those cases, Your Honor.
5 And, Your Honor, also at this point because the State has
6 closed its case, I move for a directed verdict on all the
7 charges. I will start with the attempted murder charges,
8 Your Honor. I don't believe that there's any evidence in
9 the record that would suggest that there is a specific
10 intent to kill anyone of these law enforcement officers.
11 The testimony that's been presented the core has been the
12 car was driving erratically. Everything happened quickly.
13 The car was spinning out of control and it was traveling
14 across the parking lot. So I think with that evidence
15 offered ---

16 THE COURT: I thought I heard the main victim
17 say their car was coming dead at him at a high rate of
18 speed ---

19 MS. PINNOCK: Your Honor, that was the
20 testimony.

21 THE COURT: --- and hit him.

22 MS. PINNOCK: There is, I believe, some question
23 with that individual with Officer Brown that could be more
24 appropriate question for the jury.

25 THE COURT: Well, then that means I can't grant

1 the motion if it's more appropriate for the jury, then
2 it's not for me to weigh the credibility of his testimony
3 versus what someone else might have said.

4 MS. PINNOCK: Yes, sir, Your Honor, but my
5 argument -- I still stand on my argument for Officer --
6 SSA Thrower and Deputy Britt for Richland County. So I do
7 not -- again, I do not believe there's any evidence in the
8 record that would suggest an intent to kill those
9 officers. All of the testimony regarding at least those
10 two are that the car was moving erratically fast out of
11 control across the parking lot. So I don't believe the
12 State has ---

13 THE COURT: Once you put all that in a chain of
14 motion, you know, and someone -- if they believe that he
15 just -- if you just floor a car going in reverse and floor
16 it, then where do you think it's going to go. I mean, how
17 can you control the -- it's tragedy -- asking for tragedy
18 to happen or just a total reckless disregard. So, you
19 know, such that it can be raised to the level of criminal
20 intent. But I understand your point, that's a good
21 argument to make to the jury, but I don't believe that it
22 gives me a basis to throw the case out.

23 MS. PINNOCK: And for the -- we are specifically
24 I will make a directed verdict motion for the kidnapping
25 for Ms. Edwards. Your Honor, I looked at the statute and

1 arguably, I think, the kidnapping statute has just been
2 stretched so broad that it literally covers everything.
3 Any assault case can be a kidnapping, any domestic
4 violence case can be a kidnapping, any purse snatching can
5 be a kidnapping. So, Your Honor, when I was looking at
6 the statute, I went back pulled the baseline definition of
7 how that -- how the language in the statute is defined.
8 And, Your Honor, if you take the definition of sees, sees
9 means to take hold of suddenly and forcibly, confine to
10 keep or restrict. Inveigle persuade someone to do
11 something by means of deception. The decoy more or entice
12 from intended course. Kidnap take someone away by force
13 and legally. And abduct to take someone away from a place
14 by force. The testimony of Ms. Edwards is that a person
15 approached their vehicle as he sat in the parking lot,
16 approach the passenger side of the vehicle. There was an
17 interaction with Mr. Marck Drastich at that point. The
18 person who came up to the vehicle was circling around to
19 her side. She clearly said at that point she gets out of
20 the car and she stands there because she was not going
21 anywhere with that person. And then she throws her hands
22 up and says take the car. So she did not testify that she
23 was being confined in that area. She obviously based on
24 her testimony voluntarily got out the car and walked away
25 from the car. So, Your Honor, I would make a motion

1 directly on that charge for Ms. Edwards.

2 THE COURT: I agree with you that kidnapping now
3 isn't like kidnapping use to be back in the day or at
4 least in the western movies to be kidnapping and they have
5 to tie someone up and tie them to a tree or something of
6 that nature. The definition has been greatly expanded in
7 modern times. And, of course, kidnapping also called for
8 life imprisonment up until about 20 years ago and they
9 modified the statute and change it from life to 30 years.
10 And that happened within your lifetime not as a lawyer but
11 in your lifetime. Let me hear the State's response.

12 MRS. CAMPBELL: Your Honor, the witness was
13 asked that basically when you first came up to the car and
14 she was in the driver's seat and her husband was there.
15 And then he ends up punching her husband in the mouth and
16 specifically was asked the question did you feel like you
17 could leave at that point and why not and she answered it,
18 that she couldn't go at that point, wasn't until he
19 started coming towards her that she fled. And the
20 testimony says that she was actually confined to the car,
21 I believe, for a longer period of time than her husband
22 was when he punched him in the mouth.

23 THE COURT: The essence of the kidnapping
24 statute even the confine definition is to limit, restrict
25 or enclose within bounds to imprison or keep you shut in.

1 You're right, I mean, when a person's movement is
2 restricted have the threat of a gun, that can be
3 kidnapping. The limitation of freedom of movement is a
4 kidnapping, that's the confined part of it. And you may
5 have a question, well, how long do you have -- must
6 someone be confined in order for it to be kidnapping.
7 Those are sort of questions for -- it's a question of law,
8 but also a question for the jury because if the jury buys
9 your version of the facts with regarding to her movement
10 not being restricted, she -- he tried to get out and he
11 pushed them back in. She was terrified and, I think, she
12 was under control longer than he was according to her
13 testimony. He was able get away and run and she was
14 frozen. And she negotiated for her safety, but for a
15 period of time, it appears she was confined sufficient to
16 deny your motion.

17 MS. PINNOCK: Thank you, Your Honor.

18 THE COURT: How about requested charges is it
19 straight up and down on everything or what?

20 MRS. CAMPBELL: Your Honor, I was just handed a
21 request to charge from the defense and I think they're
22 asking for assault and battery first and assault and
23 battery second. I think on the one with Marcus Brown
24 since he was hit, I'm not objecting to a lesser-included.
25 I think the case law says that they should be -- they

1 requested. I just think that Marcus Brown's charge it
2 should be attempted murder then ABHAN, then assault and
3 battery first, but I know that there has to be a battery,
4 I believe or some kind of injury.

5 THE COURT: Attempted murder. What's the other
6 one?

7 MRS. CAMPBELL: Assault and battery high and
8 aggravated nature.

9 THE COURT: ABHAN.

10 MRS. CAMPBELL: And then A and B first.

11 THE COURT: A and B first.

12 MRS. CAMPBELL: I would say that -- if I recall,
13 I don't want it to be an assault charge, but ABHAN there
14 has to an actual injury. The other person that actually
15 sustained an injury in this case would be Marcus Brown.
16 So the lesser-included should be those two on him. And
17 then on the others lesser-included should go from
18 attempted murder to assault and battery first.

19 THE COURT: On the other two.

20 MRS. CAMPBELL: On the other two, I would agree
21 with that.

22 THE COURT: Attempted murder to assault and
23 battery first degree?

24 MRS. CAMPBELL: Yes, sir.

25 THE COURT: Is that the ten year?

1 MRS. CAMPBELL: That's the ten year.

2 THE COURT: Ten year and ABHAN is 20 years?

3 MRS. CAMPBELL: ABHAN is 20.

4 THE COURT: And does that coincide with what you
5 all think or you think something else?

6 MS. PINNOCK: Your Honor, we were also asking
7 for assault and battery second degree.

8 THE COURT: What's that?

9 MS. PINNOCK: What's the penalty?

10 THE COURT: Yeah, what's the difference between
11 first degree and second?

12 MS. PINNOCK: First degree is the offer attempt
13 result and the -- it would result in great bodily injury.
14 Assault and battery second degree is what's considered
15 moderate bodily injury. The offer attempt to cause
16 moderate bodily injury.

17 THE COURT: So that would be as to which victim?

18 MS. PINNOCK: I think, it would apply to -- it
19 could apply to Officer Brown, Your Honor, if the jury did
20 not believe that his injuries were life threatening or his
21 life is not in danger. I think that they could consider
22 the injury to which was armed to be moderate bodily injury
23 because he did have to get medical treatment for it. And
24 I think if the jury could -- you know, they believe that
25 the car was going to strick the -- Agent Thrower and

1 Deputy Britt they could, you know, think is there going to
2 be ---

3 THE COURT: Deputy Britt?

4 MS. PINNOCK: Yes, sir, Deputy Britt. I'm sorry
5 Corporal Britt.

6 THE COURT: What's your rank?

7 CORPORAL BRITT: Corporal.

8 MS. PINNOCK: I'm sorry.

9 THE COURT: You can't demote anyone, can you?

10 MS. PINNOCK: I apologize. But I do think the
11 jury could find that moderate bodily injury would have
12 resulted not great bodily injury.

13 THE COURT: All right. What do you say about
14 it, Solicitor?

15 MRS. CAMPBELL: Whatever you think's
16 appropriate, Your Honor?

17 THE COURT: My view of jury charges is that the
18 jury -- I've seen so many reversals especially come out of
19 Richland County where the judge tries to micromanage the
20 charges too much. I mean, if the -- if it's possible for
21 a jury to find something based on the evidence, the jury
22 should be given the option and not the judge trying to
23 limit options by the jury. So I'm pro-defense with giving
24 many charges as long as there's some evidence because I
25 think in the end the jury would get it right. Just

1 because I give them a charge on something, doesn't mean
2 they're going to buy it. It's better to give them the
3 option. So we'll give them all of that. But you want
4 that as to ---

5 MS. PINNOCK: Assault and battery first degree
6 for all three of the law enforcement officers and the
7 assault and battery second for all three also.

8 THE COURT: You can't have moderate injury to
9 someone who wasn't injured.

10 MS. PINNOCK: It's the offer or attempt to
11 offer.

12 MRS. CAMPBELL: That language is...

13 MS. PINNOCK: I'm not a fan of that statute.

14 THE COURT: All right.

15 MRS. CAMPBELL: It's the offer or.

16 THE COURT: Well, I'll give it to them on all of
17 them.

18 MS. PINNOCK: Thank you, Your Honor.

19 MRS. CAMPBELL: And then we could do the ABHAN
20 on the one -- Marcus.

21 THE COURT: ABHAN on Marcus and on the man who
22 got hit with the gun the victim.

23 MRS. CAMPBELL: His charge is assault and
24 battery first.

25 THE COURT: Okay. And that's the only charge?

1 MRS. CAMPBELL: That's the only one.

2 THE COURT: All right.

3 MS. PINNOCK: We were also -- I would assume
4 that there be a general identity charge?

5 THE COURT: Well, they have to prove that he's
6 the one who did it. If you want identification charge,
7 we'll give it.

8 MS. PINNOCK: Yes, sir.

9 MRS. CAMPBELL: We'll just ask for the standard
10 charge, Your Honor.

11 THE COURT: Okay.

12 MS. PINNOCK: And a charge on specific intent,
13 Your Honor, I have one that I took the language out of
14 State vs. King.

15 THE COURT: The mathematic they can't dissect
16 his brain and try to figure out what he's going to do?

17 MS. PINNOCK: No, sir, mine is much much shorter
18 than that.

19 THE COURT: We have an intent to charge.

20 MS. PINNOCK: Mine is just for specific intent
21 for the attempted murders language taken out of King.

22 THE COURT: Attempt you said.

23 MS. PINNOCK: What did I say?

24 THE COURT: I thought you were talking about
25 intent.

1 MS. PINNOCK: I'm sorry that is a request to
2 charge for attempt.

3 THE COURT: Attempt regarding who?

4 MS. PINNOCK: Just the definition of attempt.

5 MRS. CAMPBELL: What attempt charge do we have?
6 Attempted armed robbery? The gist of the context of armed
7 robbery.

8 MS. PINNOCK: Just attempted murder, just the
9 definition of attempt or did I hand up the wrong thing.

10 THE COURT: All right. We'll see how it fits in
11 to whatever.

12 MRS. CAMPBELL: And the only other one, Judge, I
13 did hand up on that I gotten from the judges book off
14 judicial online whatever on the criminal intent.

15 THE COURT: All right. Well, that's what I
16 thought she was talking about criminal intent, that we
17 can't dissect his brain to figure out what he intended to
18 do, but they used common sense in trying to figure all
19 that out the essence of that charge.

20 MR. STEADMAN: And, Your Honor, based on the
21 fact they keep talking about 21 shots and all that and I
22 don't know if this is appropriate, this is just basically
23 the law on if a person justified in firing the first shot,
24 is justified in continuing to shoot to the apparent danger
25 to his life by the deceased. I anticipate hard to believe

1 the overkill by the defense.

2 THE COURT: You want me to charge that?

3 MS. PINNOCK: Your Honor, I believe this is a
4 self-defense.

5 THE COURT: It is.

6 MS. PINNOCK: I don't think that applies here,
7 it's not a self-defense case.

8 MRS. CAMPBELL: It's a justified shooting acting
9 in self-defense.

10 MS. PINNOCK: The officers are not charged with
11 anything. They're not on trial.

12 MRS. CAMPBELL: If they're not going to argue
13 it, I don't have a problem with it.

14 MS. PINNOCK: I'm not saying we're not going to
15 argue anything, but they're not entitled to a charge.
16 They're not charged with anything. They're not the ones
17 on trial. They have no rights when it comes having a
18 charge ---

19 THE COURT: All right. We'll think about it. I
20 don't think we're going to charge that. We'll think about
21 it. I want to balance out the agree and disagree. You
22 all have lost a lot -- so you got to win some, I agree.

23 MRS. CAMPBELL: But you would agree it's a
24 correct statement of the law.

25 THE COURT: Well, it is a correct statement of

1 the law, but it is a self-defense where a person defending
2 themselves they have a right to continue shooting until
3 the danger is over, but to use it to say if an officer
4 believes that he's in danger, he has a right to continue
5 shooting until the danger is over.

6 MRS. CAMPBELL: Only if justified in firing the
7 first shot.

8 THE COURT: I mean, I don't know how that fits
9 into ---

10 MRS. CAMPBELL: And I understand, Judge, if you
11 don't have a problem with me arguing it rather than you
12 ---

13 THE COURT: Well, you can definitely argue it
14 even in the context of that's the law with regard to
15 self-dense, but it's not a self-defense case. You can --
16 I think the principle applies. You know, the whole notion
17 of 21 shots. I mean, that's -- you all argue that's the
18 jury, that's the lynch pin of your defense, but I don't
19 know about charging that as far as the defense. We'll
20 look at it though, but you can argue whatever.

21 MRS. CAMPBELL: Thank you, Your Honor. And,
22 Judge, I think there just two exhibit numbers that need to
23 be changed on the record.

24 THE COURT: All right.

25 MRS. CAMPBELL: The court reporter needs to

1 substitute the board that was marked as 128 to 132. The
2 photo was marked as 129 with the witness Phipps, I believe
3 needs to go to 133.

4 THE COURT: All right. Any objection to that?

5 MS. PINNOCK: No, Your Honor.

6 (WHEREUPON, State's Exhibits No. 128 is
7 substituted and becomes State's Exhibit 132, which is
8 in evidence.)

9 (WHEREUPON, State's Exhibit No. 129 is
10 substituted and becomes State's Exhibit 133, which is
11 in evidence.)

12 THE COURT: All right. Any objection to that?

13 MS. PINNOCK: No, Your Honor.

14 THE COURT: What else we have?

15 MRS. CAMPBELL: And I think everything else is
16 in.

17 THE COURT: All right.

18 MRS. CAMPBELL: Thank you very much.

19 THE COURT: With regard to the jury view what do
20 you want them to see? What do you want them to do?

21 MR. BAILEY: Your Honor, obviously as I said
22 before, you done more than us, but I like them to ideally
23 come into the parking lot to get out, walk around or stand
24 and, you know, get out of the car and stand and, you know,
25 get out of the car and stand there and look at it and have

1 the proper amount of time ---

2 THE COURT: Who knows where they are to go
3 because you all can't guide them.

4 MR. BAILEY: No, no, of course, not.

5 THE COURT: So who knows where they are to go.

6 MS. PINNOCK: We can provide the address, Your
7 Honor.

8 MR. BAILEY: [REDACTED] Brook Pines ---

9 MS. PINNOCK: [REDACTED] Brook Pines.

10 MR. BAILEY: Sorry.

11 THE COURT: Joe, who's going to take them
12 tomorrow?

13 DEPUTY: Myself and Officer Brown probably
14 another sergeant out there with us too.

15 THE COURT: And the bailiffs because
16 instructions you can't talk during jury view. You done
17 them before.

18 DEPUTY: Yes, sir.

19 THE COURT: You take them, it's fine for them to
20 get out, but that's it. There is nowhere to go.

21 DEPUTY: We are just chauffeurs.

22 THE COURT: I'll explain to them that when they
23 go they would get out and look at one of the scenes in
24 question. They'll get back in and they'll return.
25 They'll, I guess, five minutes is enough for them to stand

1 and look around. Is that long enough for you all.

2 MR. BAILEY: Yes, Your Honor.

3 THE COURT: I just want to be clear on where
4 they're going cause I know I've -- it's a pretty big
5 complex.

6 MR. BAILEY: If we need to agree on or both look
7 at the same map and agree that's where they're going, we
8 can. I'm sure that it wouldn't be hard to find.

9 THE COURT: You all can do that and then share
10 with it them and Mr. Brown and they know where to drive
11 and know where to go. So two vans holds how many people?

12 DEPUTY: About 13 passengers. People kind of
13 big we just split them up.

14 THE COURT: All right. And you take bailiffs
15 with you or no?

16 DEPUTY: We'll have a bailiff on each van with
17 us.

18 THE COURT: Okay. All right. You all going or
19 Mr. Barnes going to take that job?

20 BAILIFF SUTTON: It's whoever you appoint,
21 Judge.

22 THE COURT: I'm appointing the two of you.

23 BAILIFF SUTTON: We'll be there.

24 THE COURT: All right. Don't let someone bump
25 you out of it now.

1 BAILIFF SUTTON: No.

2 THE COURT: I appoint you all. All right, so
3 what else today.

4 MR. BAILEY: Nothing from us, sir.

5 THE COURT: All right. So we'll reconvene at
6 9:30.

7 MRS. CAMPBELL: You want us to report at 9:30.

8 THE COURT: At 9:15 and be ready to go.

9 MRS. CAMPBELL: And as far as lawyers going on
10 the scene, we don't allow that? I don't see any purpose
11 in I'm just asking.

12 MR. BAILEY: Either way is fine with us, sir.

13 THE COURT: I think as a jury view there just be
14 a temptation of the non-verbal communications. The one in
15 Berkeley I went. I can't recall whether the defense went
16 or not. All of us might have gone, but I don't care to go
17 on this one. I think it's -- you all don't want to go, do
18 you? You all were there last week.

19 MR. BAILEY: We've seen it before.

20 THE COURT: The lawyers will not go.

21 MRS. CAMPBELL: Thank you.

22 MR. BAILEY: Thank you.

23 (WHEREUPON, the proceedings were concluded for
24 the day to be reconvened on April 14, 2016.)

25 THE COURT: Anything from either side?

1 MRS. CAMPBELL: Not about the jury, Your Honor.

2 THE COURT: All right.

3 MS. PINNOCK: No, Your Honor.

4 THE COURT: If we can have the bailiffs who are
5 going to come in so I can give them an oath. I'm going to
6 give you all the jury oath regarding taking the jury to
7 the scene. Raise your right hands for me. These are all
8 the folks who are going jurors and the bailiff -- two
9 bailiffs and transporting law enforcement officers. Do
10 you swear that you will keep the jurors sworn of this jury
11 -- I'm sorry do you swear that you will keep the jurors
12 sworn of this jury during the time you escort them to the
13 property described in this case. That you will return
14 them to the jury room and that you will allow no one to
15 speak to them including yourself nor allow them to speak
16 to each other concerning the case while you have them in
17 your custody. You accept this oath you indicate by saying
18 I do.

19 DEPUTY BROWN: I do.

20 DEPUTY BROOKS: I do.

21 DEPUTY GRAVELY: I do.

22 DEPUTY DOUDOUKJIAN: I do.

23 BAILIFF SUTTON: I do.

24 BAILIFF BURGESS: I do.

25 THE COURT: All right, thank you. Bring the

1 jury in and give them some instructions as well and then
2 we'll be ready to check out.

3 (WHEREUPON, the jury came into open court.)

4 THE COURT: Okay. Good morning. All right.
5 Ladies and gentlemen, I'm giving you the instructions
6 concerning the jury view. You will now be taken to the
7 scene of the alleged offenses, the offenses that allegedly
8 occurred around Brook Pines apartment on Broad River Road.
9 While you are on your way to and from the scene and while
10 at the scene, you're not allowed to discuss the case with
11 each other or with anyone else. And you're not allowed to
12 have any discussions with anyone else concerning the case.
13 You're not allowed to ask any questions of anyone who may
14 be there or ask any questions of the folks who are
15 escorting you to the scene. The parties have agreed that
16 the scene that you'll be taken to will be the apartment
17 area -- around number ---

18 MRS. CAMPBELL: I believe [REDACTED] and [REDACTED].

19 THE COURT: Is that correct?

20 MR. BAILEY: I thought it was [REDACTED] [REDACTED].

21 THE COURT: All right, [REDACTED] and [REDACTED], I guess,
22 they are near each other. I don't know. The parties
23 agree in general where you are going around that
24 apartment. [REDACTED] and [REDACTED] and the parking lot surrounding
25 that area. And when you return, then we'll proceed with

1 this case. Have a good trip. You may return to the jury
2 room and be on your way.

3 (WHEREUPON, the jury retire to the jury room and
4 then will proceed to jury view.)

5 THE COURT: And we've indicated they'll be there
6 looking about five minutes, Mr. Burgess, so we agree
7 they'll be looking about five minutes.

8 BAILIFF BURGESS: Okay.

9 THE COURT: All right. Don't stay all day.
10 Don't stay all day. They suppose to look around five
11 minutes.

12 BAILIFF BURGESS: Okay, all right.

13 THE COURT: Anything else we need to talk about?

14 MRS. CAMPBELL: Your Honor, last night looking
15 over everything as far as the charge to the jury,
16 reasonable doubt we would just request Darby reasonable
17 doubt. I got a copy. I printed it out of the judge's
18 book.

19 THE COURT: All right.

20 MRS. CAMPBELL: And also they handed up an
21 attempt and I did look at the judge's book last night and
22 just printed out the attempt that, I think, is in there
23 and those are both out of that book. Those may already be
24 in your thing.

25 THE COURT: The reasonable doubt charge that I

1 give is a combination of the two.

2 MRS. CAMPBELL: Perfect, that's all I wanted.

3 THE COURT: With regard to the attempt, the
4 attempt relates to more specifically to attempted armed
5 robbery charge the -- at least the intent part of the
6 attempt definition, the intent part of the attempted
7 murder definition is that you do not have to intend for a
8 person to die, but be guilty of a specific intent to kill
9 is not part of the offense of attempted murder. So the so
10 the -- each offense has its own definition in the context
11 of this case.

12 MS. PINNOCK: Your Honor, I would just like to
13 mention to the Court that we would ask for a specific
14 intent charge for the attempted murder State vs. King was
15 reversed because the Court found an error and the judge
16 did not charge specific intent for the attempted murder.
17 So I believe the current case law does require a charge
18 directly on the specific intent definition for attempt
19 murder.

20 THE COURT: You ask for specifically intend to
21 kill the person?

22 MS. PINNOCK: Yes, sir.

23 THE COURT: All right. If that's what it is,
24 that's what it is. I'm not familiar with that one.

25 MRS. CAMPBELL: Your Honor, I know it's up on

1 appeal the Court did reverse and it says basically with
2 attempted murder you should charge there is a specific
3 intent to kill as part of the charge not as the only part
4 of the charge, but it's language included in it.

5 MS. PINNOCK: It's the definition.

6 MRS. CAMPBELL: In other words, the definition I
7 believe is what it says in the actual statute says with
8 specific intent to kill.

9 THE COURT: It's always been a specific intent
10 to kill is not an element of the attempted murder is
11 relative to the statute, but there must be a general
12 intent to commit serious bodily injury.

13 MS. PINNOCK: Yes, sir, and that was addressed
14 in King and they said that the language of the statute
15 they charge is necessary.

16 THE COURT: All right. We'll take a look at
17 State v. King.

18 MS. PINNOCK: Thank you.

19 THE COURT: Too much law to keep up with. All
20 right. Anything else?

21 MRS. CAMPBELL: No, sir.

22 MS. PINNOCK: No, sir.

23 THE COURT: Okay. All right. We'll be ready to
24 go when the folks come back.

25 MRS. CAMPBELL: Thank you, Your Honor.

1 MS. PINNOCK: Your Honor, can I ask will we be
2 notified when they get back or should we just hang round
3 and until they pop back up.

4 THE COURT: How do you want us to notify you?
5 10:30. All right.

6 (WHEREUPON, a break was taken.)

7 THE COURT: I saw the State vs. King. I'm glad
8 you all pointed that out. I hadn't seen that. It changes
9 quite a bit once they rewrote the statute, got rid of the
10 assault and battery with intent to kill. I reverse my
11 decision that will be affirmed.

12 MS. PINNOCK: Thank you, Judge.

13 THE COURT: Just review these options here with
14 Marck Drastich is either guilty of first degree burglary,
15 assault and battery first degree or not guilty or is there
16 ---

17 MS. PINNOCK: No, sir, I don't believe.

18 THE COURT: With Marcus Brown attempted murder,
19 ABHAN, assault and battery first degree and assault and
20 battery second degree or not guilty?

21 MS. PINNOCK: Yes, sir.

22 THE COURT: With Thrower and Justin Britt
23 attempted murder first -- assault and battery first
24 degree, assault and battery second degree or not guilty.

25 MS. PINNOCK: Yes, sir.

1 THE COURT: Okay. Who's going first?

2 MRS. CAMPBELL: I am, Your Honor.

3 THE COURT: All right.

4 MRS. CAMPBELL: I believe they get last closing
5 is that correct or because they did the motion we get last
6 closing?

7 MR. BAILEY: We still get last closing. The
8 Mouzon case says -- obviously says that's it's not
9 evidence to the jury.

10 MRS. CAMPBELL: I just want to make sure.

11 THE COURT: The jury view is not evidence and no
12 exhibits, so you're first. We'll be at ease waiting for
13 the defendant to come out.

14 (WHEREUPON, a break was taken.)

15 THE COURT: All right. Let's bring them on.

16 (WHEREUPON, the jury came into open court.)

17 THE COURT: All right. Ladies and gentlemen,
18 you've heard all the testimony. You evidenced all of the
19 evidence. It's now time for closing arguments. First
20 from the State.

21 MRS. CAMPBELL: May it please the Court.

22 THE COURT: Yes.

23 MRS. CAMPBELL: Good morning. The first thing I
24 want to do is to thank you for your service in this case.
25 I know when you showed up on Monday morning you may have

1 anticipated being on the contract case or a car wreck, but
2 as we've seen over the last several days as you heard a
3 lot of evidence, a lot of testimony, but this is a very
4 important case. It's important to the victims. It's
5 important to the citizens of Richland County. And it's
6 important to the defendant that he have his day in court
7 as he should.

8 Now, I'm going to have the opportunity to
9 address you and I'm going to talk to you a little bit
10 first about the law in the case. And then I'm going to
11 have the opportunity to talk to you a little bit about
12 what the facts are. Then you will hear from the defense
13 and I won't be able to rebut anything they say. This is
14 the last time the State will be up before you, but as you
15 listen to either one of us if I misquote the law, it's not
16 intentional. You listen carefully to what the judge tells
17 you and you take that law as he tells you it is after you
18 hear from both of us. And in that same vain if either
19 side mischaracterizes or misquotes the facts, you remember
20 because, ladies and gentlemen, in this courtroom the roles
21 are very separate as they should be. The State's role is
22 to bring forth whatever relevant admissible evidence can
23 go before you. The defense role is to defend her client.
24 The judge's role is to determine what actual evidence you
25 are allowed to hear. And then ultimately he's going to

1 explain to you what the law is that you must apply to the
2 facts. But the most important role in this courtroom,
3 ladies and gentlemen, is yours. No one disputes that.
4 Each of you individually and then after you've heard from
5 us and the judge charges you as a group collectively, you
6 must determine what the facts are that occurred back on
7 August the 4th and August the 6th.

8 The judge will instruct you. You must consider
9 the evidence. And what is evidence? Very simply, ladies
10 and gentlemen, it's the sworn testimony. Witnesses come
11 before you. It's the exhibits from the State, that is the
12 evidence that you are to consider and the judge will
13 instruct you on that. You must base your verdict on that,
14 not on questions by the defense because if the answer is
15 no, then the question has no basis. Not on innuendo,
16 conjecture, speculation or just plain wishful thinking,
17 that is not evidence.

18 Now, the first thing I want to do is apologize
19 to you if over the course of this trial if anyone from our
20 office has done anything to offend you at times, our
21 question has been inartful, clumsy, you been sent back
22 into your jury room as a question of law come up, you been
23 here long hours every day, just like even in his opening
24 statement Mr. Steadman got up here and he was so focus on
25 what happened on August the 4th, he didn't even mention

1 what happened on August the 6th, please don't hold that
2 against the victims in this case. Don't hold that against
3 the State.

4 Now, in criminal cases, it's a little unique
5 because in criminal cases each and every witness must
6 appear before you. You've heard references to statements,
7 to recordings, but those aren't admissible because the law
8 recognizes the defendant as he should has an absolute
9 right to confront each and every witness against him.
10 They must actually appear and the reason for that is quite
11 simple. It's because you must just judge the credibility
12 of the witnesses. You haven't seen any video depositions.
13 You haven't heard of any statements coming in. The only
14 statement that's admissible is any statement made by the
15 defendant, but you must judge the credibility of those
16 witnesses. It's the defendant his right as it should be
17 to confront each and every witness against him.

18 The burden of proof on the State of South
19 Carolina to prove this defendant's guilt beyond a
20 reasonable doubt. It's on the State to prove it beyond a
21 reasonable doubt. There's no higher level of proof in any
22 courtroom and that's the way it should be. And, ladies
23 and gentlemen, I submit as you've heard over the last
24 several days the proof in this case is not just beyond a
25 reasonable doubt. In this case, the State welcomes that

1 burden of proof in this courtroom. Because I submit,
2 ladies and gentlemen, the evidence surrounding the events
3 of August the 4th through August the 6th is overwhelming,
4 but that's not the level we have to meet all that we have.

5 Now, what is proof beyond a reasonable doubt.
6 The judge will instruct you the easiest way to think about
7 it is proof beyond a reasonable doubt. If it's a
8 reasonable doubt where a reasonable man hesitate to act,
9 that's one definition, but our courts have gone a little
10 further then that in defining for you what is proof beyond
11 a reasonable doubt. Very simply, ladies and gentlemen,
12 proof beyond a reasonable doubt is proof that leaves you
13 firmly convinced of the defendant's guilt.

14 There are very few things in this world that we
15 know with absolute certainty. And in criminal cases, the
16 law does not require proof that overcomes every possible
17 doubt. If based on your consideration of the evidence you
18 are firmly convinced that the defendant is guilty of the
19 crime charged, you must find him guilty. If on the other
20 hand you think there's a real possibility that he is not
21 guilty, then you must give him the benefit of the doubt
22 and find him not guilty.

23 So very simply, ladies and gentlemen, and there
24 are a number of indictments and a number of charges y'all
25 are going to have to consider and I'm getting ready to

1 talk to you a little bit about those. Because typically
2 when a person goes out armed with a weapon and commits a
3 crime, there may be multiple offenses that occur. And you
4 must consider each and every one of those and all their
5 elements separately. The judge will instruct you each
6 indictment must be decided independent of every other
7 indictment whether or not the State has proved beyond a
8 reasonable doubt the elements of those offenses. And the
9 judge will instruct you and I'm going to talk to you a
10 little bit about what the law is, so that you can be
11 familiar with it. All we have to do is provide proof that
12 you leaves you firmly convinced of the defendant's guilt
13 and that's the level of proof as the judge will instruct
14 you.

15 Now, in every case if it's criminal in nature,
16 we must prove criminal intent and very simply the judge
17 will instruct you what is criminal intent. In order to
18 establish criminal liability, criminal intent is required.
19 For example, the mental state required to be proven by the
20 State for a particular crime might be purpose, intent,
21 knowledge, recklessness or criminal negligence. Criminal
22 intent must be proven by the State beyond a reasonable
23 doubt. It is always a matter that must be determined by
24 the jury for the circumstances surrounding the situation.

25 And the law recognizes there's no way to prove

1 intent to a mathematical certainty. There's no way that
2 medical science can dissect a person's brain and determine
3 what the person had in mind. So the law says that
4 criminal intent may be inferred from the circumstances
5 shown to have existed. This is how you make the
6 determination of whether or not the element required
7 intent was present. It is not necessary to establish
8 intent by direct and positive evidence, but intent may be
9 established by inference in the same way as any other fact
10 by taking into consideration the acts of the parties and
11 all the facts and circumstances of the case.

12 Criminal intent is a mental State, a conscious
13 wrongdoing. It is up to you to determine what the
14 defendant intended to do based on the circumstances shown
15 to have existed. Criminal intent can arise from an action
16 or a failure to act. It may arise from negligence,
17 recklessness or an indifference to duty or to the
18 consequences that is considered by the law to be the
19 equivalent of criminal intent. Negligence, recklessness
20 an indifference to duty or to consequences. If that
21 doesn't sum up this case, I don't know what does. That's
22 what necessary in order to establish criminal intent.

23 Now, there are a number of charges that arise
24 out of the first events on August the 4th and then some
25 that arise out of a second event from August the 6th. And

1 I'm taking these -- and I'm not sure what order the judge
2 is going to instruct you on. I'm just taking them because
3 the boards are lined up this way.

4 The first charge is kidnapping. And typically
5 when you think about kidnapping, I think of someone who's
6 put someone in the trunk of a car and transferred them
7 across state lines while tied up in the trunk. That is
8 not what the law of kidnapping is. The judge will
9 instruct that whoever shall unlawfully seize, confine,
10 inveigle, decoy, kidnap, abduct, carry away any other
11 person by any means whatsoever without authority of law
12 shall be guilty of kidnapping. And what do some of those
13 terms mean. We don't have to prove every one of those
14 terms. We just have to prove that what happened is within
15 the realm of any of these. And specifically in this case,
16 if you look at the terms seize and confine because it has
17 an or between them, so it's not that we have to prove all
18 of this happened. This is no situation I think of that
19 would, but that one of these happened.

20 And what is it to seize mean. If a person is
21 unlawfully seized, it is defined as to take whole of
22 suddenly or forcibly. In this case, when Mr. Marck
23 Drastich tried to get out of the car and he takes the gun
24 and smashes him in the face and forces him back in for
25 that moment, it's seized. And listen carefully to the

1 judge when he talks to you about kidnapping, he's not
2 going to say the kidnapping has to last an hour or a week
3 or a month. He's not even going to tell you it has to
4 last more than a second because once anyone's freedom is
5 taken from them for no matter what the amount of time,
6 then it is kidnapping.

7 In this case, you heard it was a couple of
8 minutes that they were confined in their car and that
9 takes me to the second definition because there's no
10 dispute I submit that his actions limited, restricted or
11 enclose within bounds and imprison or shut in or keep in.

12 Now, the defense may get up here and try to say
13 well, you know, Lashonda Edwards could have gotten away.
14 You heard her say she was scared. She was so scared she
15 wouldn't even look at him. She told you in her own words
16 we asked her did you feel like you were free to go. No,
17 he had a gun. I submit that's not -- well, that may be in
18 dispute.

19 Any actions by this defendant which in any way
20 limited, restricted or enclosed within bounds imprisoned
21 or shut in or keep in either Ms. Edwards or Mr. Marck
22 Drastich meets the elements of kidnapping. As Ms. Edwards
23 told you, she was actually still in the car along with a
24 Mr. Marck Drastich even after he hit him in the head with
25 a gun. So those are the definitions of kidnapping, but

1 the judge will instruct you as far as kidnapping. The
2 kidnapping is a continuing offense which commences when
3 one is wrongfully deprived of freedom and continues until
4 freedom is restored.

5 Lashonda Edwards took a chance. She got out of
6 there, but prior to that, she was in the car because he
7 had a gun and listen to her words were you free to go.
8 No. That's what she told you.

9 Armed robbery in this case is attempted armed
10 robbery and I'll get to the attempt in a minute. Very
11 simply, ladies and gentlemen, when this defendant came up
12 upon them, the first thing he did was demand money. What
13 you got? I need money. You remember the words don't let
14 me misquote. That was his intent. That's why he's
15 charged with two counts of attempted armed robbery because
16 there's two victims. He was demanding money from both of
17 them that was his intent. So a person commits robbery
18 while armed with a pistol, dirk, sling shot, metal
19 knuckles none of those apply. In this case, it was a
20 silver handgun.

21 If a person is armed with any kind of deadly
22 weapon or while allegedly either by actions or words he
23 was armed while using a representation of a deadly, the
24 law recognizes that when people try to rob people and
25 represent they had a weapon, they didn't have -- it can be

1 a toy gun. It doesn't even have to be a gun. It could be
2 a hand in a pocket. That bad things can happen. So it
3 doesn't have to be a real gun although that's not in
4 dispute in this case.

5 A deadly weapon or any object with a person
6 present during a commission of the robbery reasonably
7 believed to be a deadly weapon is guilty of armed robbery.
8 In this case, it was just an attempt and the judge will
9 instruct you on attempt. An attempt is an effort to
10 accomplish a crime which does not succeed. There must be
11 some overt act committed in the effort to commit the
12 crime. And he will go further and he will get to a point
13 where he says intent means intending the result which
14 actually occurs not accidentally or involuntarily.

15 If a person walks up armed with a gun and
16 demands money, I submit, ladies and gentlemen, that is
17 intentional, that is not accidental. It's not like
18 someone accidentally discharged a weapon. Intent may be
19 shown by acts and conduct of the defendant and other
20 circumstances from which you may naturally and reasonably
21 infer intent. His words speak volumes.

22 Now, in the events on August the 4th, he is also
23 charged with assault and battery in the first degree. And
24 what is assault and battery in the first degree that the
25 accused unlawfully offers or attempts to injure. It

1 doesn't have to have injury. Although in this case, he
2 was hit in the face. Remember, he had a cut and a
3 laceration on his lip.

4 Another person with the present ability and the
5 act is accomplished by means likely to produced death or
6 great bodily injury or again it's not both either one of
7 these had occurred during the commission of a robbery,
8 burglary, kidnapping or theft. So even if you find and I
9 submit and I'm not going to sit here and say a blow to the
10 face in and of itself would necessarily cause great bodily
11 injury or death, but that is not necessary for Mr. Marck
12 Drastich case because it occurred during the commission of
13 a robbery, burglary, kidnapping or theft. And again I
14 don't have to prove all the robbery, burglary, kidnapping
15 just one of those as a crime. So that is the definition
16 of assault and battery. Assault is the offer to do it.
17 The battery is the actual touching. And I submit nobody's
18 going to argue, that it is anything but that in that case.

19 And what is carjacking? Carjacking is a person
20 that's guilty of carjacking who takes or attempts to take
21 a motor vehicle from another person by force and violence
22 or by intimidation while the person is operating the
23 vehicle or while the person is in the vehicle. There is
24 no dispute that Ms. Edwards was behind the wheel.
25 Mr. Marck Drastich was in the passenger seat and the car

1 was ultimately taken when he couldn't get the money he
2 wanted. It doesn't matter -- and listen to the judge
3 carefully we don't have to prove that just his original
4 attempt was to commit armed robbery, that he didn't commit
5 a carjacking. The fact that he then took what he could
6 get and is a different offense, he's still guilty of
7 carjacking, listen to the judge.

8 Now, on August the 6th, there are three
9 indictments and that's where the three people that were
10 actually in harms way directly, perhaps there could have
11 been more because more people were out there, but it was
12 limited to those three people. And you've heard the
13 testimony, it's corroborated by independent witnesses
14 about what happened that day, who was in harms way. It
15 was Justin Britt. It was Marcus Brown and it was Keith
16 Thrower.

17 Now, what the is attempted murder. Attempted
18 murder is the attempt to kill another person with malice
19 aforethought either express or implied. And the judge
20 will instruct you you must find that there was a specific
21 intent to kill in order to find this. And how do you find
22 that. And, I guess, the easiest way for me to ever think
23 about it is this is attempted murder. What is murder. If
24 the person had died as a result of his actions that day,
25 would that be murder. That's perhaps the easiest way to

1 think about it, but the judge is going to instruct you on
2 the law that may help you in determining that. Because
3 what is the attempt to kill another person with malice
4 aforethought either expressed or implied. And it will be
5 defined in some of these ways.

6 Malice is an intentional doing of a wrongful act
7 without just cause or excuse. What is meant by the word
8 malice is a term of art, a technical term importing
9 wickedness and excluding just cause or excuse. It is
10 something that springs from wickedness from depravity,
11 from a heart devoid of social duty and fatally bent upon
12 mischief.

13 The words expressed or implied do not mean
14 different kinds of malice, but the merely manner in which
15 the only kind of malice known to the law may be shown to
16 exist. That is either by direct evidence or indirect
17 evidence which necessarily infers malice or by both. The
18 law recognizes express or implied is not different ways,
19 it's just the manner in which it's shown. The law
20 recognizes that it's very seldom that a person while armed
21 with a gun, walks up to another person with the intent to
22 shoot them and then says beforehand or while armed with a
23 knife, I am going to stab you, it just doesn't. Express
24 malice will be those words. Express malice is like lying
25 in weight something like that, but most of the time,

1 there's just inferred malice. You have to look at his
2 actions the same way we talked about criminal intent the
3 circumstances surrounding or his actions springing from
4 depravity or heart devoid of social duty and fatally bent
5 upon mischief.

6 Malice does not necessarily in part ill will
7 toward the individual injured, but signifies rather a
8 general malignant and recklessness of the lives and safety
9 of others. And if that doesn't sum up Keylan Durham in
10 his actions, I don't know what does. A condition of the
11 mind which shows a heart regardless of social duty and
12 fatally bent on mischief. Malice has been defined as the
13 wrongful intent to injure another and indicates a wicked
14 or depraved spirit, intent on doing wrong. Malice may be
15 inferred from conduct showing a total disregard for human
16 life, his actions.

17 As I listen to the defense in their opening,
18 they started out -- the first thing they said was 21
19 shots, 21 shots, yes, ladies and gentlemen. There were 21
20 shots that day because of his actions. There was no
21 allegation in this case. And think about it even Keylan
22 Durham when he's interviewed by Lexington doesn't say the
23 police were trying to hurt me, that I was in fear of my
24 life. He talks about how erratically he was driving.

25 What is malice aforethought. And very simply,

1 ladies and gentlemen, we don't have to prove
2 premeditation. We don't have to prove motive although the
3 motive is clear in this case. Keylan Durham proved time
4 and time again just in a three-day period that he would do
5 whatever it took and put anyone in harms way to make sure
6 he got away.

7 Malice aforethought does not require the malice
8 exist for any particular time before the act is committed,
9 but malice must exist in the mind of the defendant just
10 before and at the time the act is committed. Therefore,
11 there must be a combination of the previous evil intent
12 and the act. It doesn't have to be something he planned.
13 It doesn't have to be days, his actions and you heard from
14 the independent witnesses. He got out of that car and he
15 saw Marcus Brown coming towards him with his badge. And
16 he made that decision and he didn't care who he ran over
17 because he saw him. He even said in his statement he saw
18 the undercovers. He knew who they were. Although, he
19 recanted it.

20 Now, with the attempted murders, there are going
21 to be lesser-included. The defense is going to argue that
22 he was as they did in their opening, he was just trying to
23 get away. He didn't mean any ill will. I submit, ladies
24 and gentlemen, when you're trying to get away and you're
25 willing to run over any one and anything including any

1 children that might be in that parking lot, that might be
2 ill will.

3 On Marcus Brown indictment because he actually
4 sustained an injury, remember he was pinned up against the
5 car. He had to go to the hospital that day and get
6 treatment. He's still being treated to this day however
7 many months years later. He had an operation last week.
8 If you don't find that the defendant acted with malice and
9 very simply, ladies and gentlemen, an attempted murder,
10 there doesn't have to be an injury. There just has to be
11 the offer, listen carefully with the judge for attempted
12 murder it just means that they have the present ability.
13 There doesn't have to be an actual injury.

14 In this case, one of the officers sustained an
15 injury. So on his case, you must consider the
16 lesser-included crime of assault and battery of a high and
17 aggravated nature if you decide. And I submit, ladies and
18 gentlemen, we have proven malice. This cases reeks of
19 malice. If you decide that we haven't proven malice, then
20 you can do lesser-included.

21 And I submit the defense will get up here and
22 say, oh, it was just overlooked, that's all. It wasn't a
23 big deal, just find me guilty on that. Assault and
24 battery of a high and aggravated nature, if a person
25 unlawfully injures another person and this one you have to

1 have an actual injury, that's why this is the only
2 lesser-included this level that applies to Marcus. That
3 it was either great bodily injury or the act is
4 accomplished by means and likely to produce death or great
5 bodily injury. So there must be some type of injury and
6 that the acts will likely produce or could produce some
7 type of substantial risk of death or which causes serious
8 or permanent disfigurement or protracted lost or
9 impairment in the function of a bodily member or organ.
10 You heard the testimony. To this day, he is still dealing
11 with the injuries caused by this defendant back of 2014.
12 Protracted lost or impairment of the function that is a
13 lesser-included to consider for Marcus Brown.

14 On all of them another lesser-included and very
15 simply when there is a dispute is assault and battery in
16 the first degree. Remember, I've already talked about
17 this with Mr. Marck Drastich. If you find that you don't
18 think there's malice and I submit there is, then if you
19 find you want to consider the lesser-included accuses,
20 offers or attempts to injure another person and that's
21 offer or attempts, so there doesn't have to be injury in
22 this case.

23 Although, there was with him, there can be an
24 injury, but there doesn't have to be, is accomplished by
25 means likely to produce death or great bodily injury or

1 occurred during the commission of a robbery, kidnapping or
2 theft. And I submit, ladies and gentlemen, if anyone gets
3 up here argues that trying to run over people in a parking
4 lot, I don't care how small or how confined, I don't care
5 how fast or how slow the car is going by the way, running
6 over people with automobiles is likely to produce death or
7 great bodily injury and I submit if anyone argues
8 differently from that.

9 And finally as another lesser-included, you can
10 consider is assault and battery in the second degree. The
11 accused unlawfully injured another person or offers or
12 attempts to injure another person, so there can be an
13 injury or not again with the present ability to do so and
14 moderate bodily injury to another person results or could
15 have resulted. Moderate bodily injury is a physical
16 injury that involves prolonged loss of consciousness
17 because it's temporary or moderate disfigurement or
18 temporary loss and the function of the bodily organ or
19 injury that requires medical treatment, but the treatment
20 requires the use of regional or general anesthesia,
21 fracture, dislocation can be it. It doesn't include a
22 scratch, but this is the least of the assault defenses.

23 The defense is going to get up here and talk
24 about how they fired too many times. Don't hold Keylan
25 responsible because they overreacted. They shouldn't have

1 fired into his car like that. I believe their quote and
2 I'll get back to this was there was an innocent person in
3 passenger seat, that's true Quinten Warner didn't have
4 anything to do with the crimes Keylan Durham committed,
5 but who put Quinten Warner at risk. The law says when a
6 person is justifying the first shot, he's justifying and
7 continuing to shoot until it is apparent that the danger
8 to his life and body has ceased.

9 And finally, ladies and gentlemen, there is also
10 a gun charge. The judge will tell you that if a person
11 commits a violent crime and I submit carjacking, armed
12 robbery or attempted armed robbery, kidnapping all fit in
13 that category and he's armed, then he's guilty of that
14 offense but listen to the judge.

15 Now, while preparing for this trial, I started
16 looking at the evidence and what the witnesses said. And
17 you always kind of wonder and try to anticipate what the
18 defense is and typically in a case such as home invasion
19 or a carjacking or an armed robbery, you think well maybe
20 this is a case which is wrong ID. There's just one
21 uncorroborated witness who didn't really get very close or
22 get a good look at the person. And there's no other
23 evidence in the case and he's just wrong about his
24 identification, but that didn't really fit. So then I
25 thought well maybe it's just going to be one of those

1 where they're saying okay it was just like a drug deal
2 gone bad. The victim's just a drug dealer, he's making it
3 up, things went bad for him, but that doesn't work. So
4 then I thought, well, maybe it's just one of those cases
5 where they will and they are doing part of this. Just
6 argue that, you know, the State shouldn't have charged
7 what they charged. It's just a lesser-included. It
8 wasn't that bad. Don't worry about it. Just find him
9 guilty of the lesser-included or just submit like that.

10 But as I listened to opening argument and as I
11 listen to cross-examination, this case is unique because
12 the defense is kind of like, well, it's just a conspiracy,
13 I guess, to frame poor innocent Keylan Durham. It's a
14 conspiracy between Lashonda Edwards, who's never seen him
15 before in her life and to this day wouldn't look at his
16 face. It's a conspiracy with her husband who had just
17 recently come to this country. I guess, we just can't
18 believe him because he doesn't speak English that well, is
19 that where we are going.

20 This other conspiracy with these unknown people
21 Cullen Bennecker and Zane Harris, who have no idea those
22 people even exist and that they're in on it too. That
23 they're framing poor Keylan Durham and Zane Harris picks
24 him out. Cullen Bennecker sees the gun in the blue car
25 which amazingly Keylan Durham just happens to be driving.

1 And we know it's Keylan because when Gilliam finds out
2 about that whole shoplifting thing, he goes back and sees
3 the video. He's known him for seven or eight years and
4 recognizes him. So it's just a conspiracy. And then, oh,
5 Kiane got in on it. Kiane who came to court and told what
6 she knew, but she didn't want to be here and you can't
7 blame her. They have a child. But she did the right
8 thing and she told the truth. And she told you about how
9 he said, yeah, he was the one in the car. He burned the
10 cops, had her call to check to see if the Camaro had been
11 towed yet so he could get it back.

12 He gave her the Euro currency that belong to the
13 victim. He told her that she needed to get in that Camaro
14 to get in that purse where the \$77 was. Even she's in on
15 it.

16 And let's not forget Devontae Bryant his good
17 friend. Kiane Warner doesn't know him, but he does. He
18 is just framing him, who go to such an extent that
19 Devontae Bryant even implicated himself and got himself
20 arrested in this case in order to frame poor innocent
21 Keylan. And maybe that's not it. Because as I listened
22 in opening, all they talked about was how horrible the
23 police work was. You can't convict anybody. This is the
24 worse police work ever. So the police are now in on the
25 conspiracy. They even said it. Investigator Gilliam was

1 so focused, I guess, he had tunnel vision on this man, but
2 instead of just arresting the guy he had in custody would
3 be the easy thing to do. He goes out and he gets the
4 evidence. Remember with Kiane she even told -- he even
5 told her that he had to crawl over Devontae to get out of
6 the car after it wrecked. And that's pretty much
7 ultimately too, I guess, where they're going is just blame
8 Devontae he got caught. He's not as good a runner. Why
9 not blame Devontae, it's easy. He's there. And then they
10 just question everything. You can't believe anything
11 everybody's in on this is that even make sense is that the
12 theory. And then I thought what do you do to defend the
13 indefensible, go right back to that 21 shots. Focus on
14 the police, try your best despite the independent
15 witnesses to say they're wrong. Even Keylan Durham didn't
16 blame the police for their actions. I guess just muddy
17 the waters kind of throw it up against the wall and see
18 what sticks, do whatever it takes to divert your attention
19 from the facts, the cold-hard indisputable and I submit in
20 this case insurmountable facts.

21 I submit that when they get up here they're
22 going to talk about how it's horrible police work. That
23 when the officer process the car, I'm sure they're going
24 to say he didn't process enough. That he should have
25 tried to find fingerprints instead of trying to find DNA,

1 which is the reliable one. They're going to talk about
2 how when Investigator Gilliam went there and interviewed
3 the victims that they were in the same room, they could
4 have influenced each other. Remember there was a big big
5 debate about a black hat versus a camo hat and who said it
6 was a white shirt.

7 I submit, ladies and gentlemen, I'm begging
8 judge those victims what do they have to gain or lose to
9 get to come here in court after being terrorized. And you
10 heard the next day the reason Gilliam left them in the
11 same room was because she was still so scared. The person
12 that had robbed her was still on the loose and that's
13 where she lived. And how did she influence anyone. She
14 never looked at his face. She didn't get up here and tell
15 you I never looked at his face, but I can ID him. And
16 even if they separated them, all they would say is, oh,
17 well, they are married. They would have discussed it
18 anyway. Then she talked about how we never showed
19 anybody Devontae's lineup. Well, the only two people who
20 got a look at the person that robbed them, pick the person
21 that robbed them. And I'm sure they're going to say the
22 lineups too suggestive. It's not well done. This lineup
23 which is admitted for you to consider on both of them.
24 They are even different. He did different lineups, so you
25 can't say, oh, he just duplicated one and pointed to the

1 same one. Are they going to say his pictures fuzzier than
2 one of them, not as fuzzy as another one.

3 I beg you what does Zane Harris have to gain, so
4 he gets to come to court and be questioned. Judge their
5 credibility because in every case, ladies and gentlemen,
6 this case boils down to credibility who do you believe.
7 The judge will tell you can believe part of a witness, all
8 of a witness, none of the witness. You can believe one
9 against many, many against one. You could determine do
10 they have a bias or prejudice something to win or lose. I
11 submit this isn't a grudge match.

12 Zane Harris doesn't have anything against Keylan
13 Durham. He wants the person that had the gun and followed
14 him to his apartment caught. Mr. Marck Drastich, Ms.
15 Edwards they don't want some just innocent person off the
16 street. What do they have to gain or lose.

17 They going to get to here and talk about how,
18 well, maybe they shouldn't have interviewed Keylan the
19 same day. I mean, they waited on some of the police
20 officers to interview. They interviewed some that day,
21 some they didn't. They offered him a lawyer as they
22 should. They did their job in this case. He didn't want
23 one. He wanted to get his story out there.

24 Then at one point she's asking Investigator
25 Gilliam you didn't ever go to the Game Stop or to the Ale

1 House, that's not where these crimes occurred. Whether or
2 not Devontae was with him earlier in the day is not a
3 crime. We're only here to prove what happened around the
4 times of these events. DNA it's not his he couldn't be
5 the driver, but it kind of doesn't work for him either
6 because they're kind of saying it was Devontae. But,
7 guess what, his DNA wasn't in it either. And even more so
8 to show you how touch DNA works in the Oldsmobile
9 Lashonda's DNA wasn't there and neither was Marck
10 Drastich.

11 The car didn't miraculously drive off by itself.
12 You can see it the video and you can see Keylan Durham
13 Marck Drastich driving it. Did the job looking for the
14 evidence the fact that it's not there doesn't diminish all
15 the other evidence. We brought that before you because we
16 want you to have a full picture of everything.

17 They're going to point out there was no video
18 from Brook Pines. There wasn't. There was no video from
19 the In-Town Suites. There's not. The law does not
20 require -- listen carefully to the judge that the State
21 cannot prove a crime unless there's a video. And in this
22 case, you even have independent witnesses who don't know
23 each other from both days. And you have the evidence
24 that's linked directly to him, not Devontae. And you have
25 his own girlfriend. And I submit they're going to get up

1 here and say even when you do have a video and it's him
2 and he's been identified, you shouldn't believe it.

3 They're going to talk about how he's not here on
4 the shoplifting, no. Some of these charges were in
5 different counties. They may get up here and say, oh, you
6 know Ms. Edwards she voluntarily left the car. I submit
7 that's offensive to say it's not a carjacking and not a
8 kidnapping.

9 They're going to talk about Marcus Brown how in
10 his perception he thought the car was in forward at one
11 point when it was backed up against the tree and it
12 started to come down. And then he said it went backwards,
13 backwards. He talked about how the mirror was knocked
14 off. And you've got the mirror, you got all the pictures.
15 It's twisted around backwards. You think it knocked off.

16 And I submit, ladies and gentlemen, especially
17 when you're talking about these police officers, you
18 talking about credibility. That they all came in here and
19 said the exact same thing. It looks like a red flag. You
20 need to be concerned because when things happened say two
21 witnesses are at different street corners and they see a
22 car wreck, one may have received a light was yellow. One
23 may have received it was turning red. One may describe
24 the car as tan. One may say it was brown. It's not
25 because anyone's light. It's because their perception as

1 it should be is different it's the angle. I don't know
2 where they're going with all the shots into the front of
3 the car. Yes, these police officers were shooting. They
4 thought they were going to die. Keith Thrower probably
5 said it best when they said he was just trying to get
6 away. And he said something to the effect of, yeah, he
7 was willing to run over anybody that got in his way.

8 They're going to talk about these officers who
9 were reckless. They'll do anything to divert attention
10 from this defendant and think about it, whose actions.
11 Even by his own admission caused those shots to be fired.
12 They blame them because it's not him. It's never poor
13 innocent Keylan's fault.

14 And poor Quinten. And I submit, yeah, poor
15 Quinten he wasn't the player in this one. He did get shot
16 three times. He recovered from those wounds, but he got
17 shot three times. And they want to blame the police
18 because he had nothing to do with it. You think about it,
19 it's probable cause. What caused these whole series
20 varies of the events the shooting to happen. And in this
21 case, with these facts, with these officers, it was Keylan
22 Durham. His choices, conscious choices, got back in the
23 car. They're going to talk about the description that you
24 can't believe Mr. Marck Drastich. And I submit, ladies
25 and gentlemen, you don't even have to, but I submit he's

1 credible because you got all this other evidence I'm
2 getting ready to talk about, but why would he pick someone
3 that just happens to be the person that the co-defendant
4 said did it. It's miraculous that he's that good. It's
5 unbelievable that Zane Harris could do the same thing.
6 That's the defense.

7 They're going to talk about how, I believe, the
8 victim said he was clean shaven. He didn't see any facial
9 hair. This is how he looks now. You got the video see
10 how he look then. They're going to talk about how the
11 person that jumped he thought had dreads. Well, we know
12 one thing about this defendant even in the video at the
13 Wal-Mart he's got like some headset on, something hanging
14 down is that the perception of dreads. He carries a wig
15 with him. Oh, they said no DNA was on the wig. Nobody's
16 DNA was on the wig. That's their defense. Because,
17 ladies and gentlemen, I submit when you have indefensible,
18 you need to just attack everything and hope and pray.

19 Now, in opening argument, Ms. Williams got up
20 here -- and I got the court reporter to actually print
21 this out so I didn't misquote and there's some words in
22 between some of this. Her first words were 21 times,
23 that's how many times the defense -- how many times they
24 shot in that car where, yes, the driver was trying to get
25 away. So they acknowledge it was Keylan, but they also

1 were aware that there was an innocent passenger in that
2 vehicle as well. They even acknowledge that the passenger
3 was innocent, but not the driver. Those are their words.
4 That the passenger was innocent.

5 You heard from many witnesses from the State. I
6 just want to walk through kind of the events that night
7 time and the time we're talking about. Because as you
8 remember, you heard from Mr.Marck Drastich and Ms.
9 Edwards. They were out there that night, she just
10 finished up her midnight shift. I think she done midnight
11 rounds was the last thing she done. They gone across the
12 street to the Ale House to get something to eat and they
13 came back to get in their car. They were sitting in their
14 car talking. The children were inside. And as they were,
15 a man approached. They even talk about how he approached
16 quickly. Marck Drastich was face to face with this man.
17 Was it at night. Yes. Were they out there. Yes. Were
18 there lights there. Yes. Were they face to face so close
19 that when he tried to get out of the car? He mashed his
20 face and he went back in.

21 Lashonda gave you a description. And there's
22 been made about whether or not she said it was a white
23 T-shirt, whether or not she knew it was a white T-shirt.
24 Ladies and gentlemen, is not depositive of whether or not
25 it was Keylan Durham. Marck Drastich saw his face despite

1 the disguise of the wig, the glasses. The glasses that
2 you even see on him miraculously in the Wal-Mart video.

3 Cullen Bennecker and Zane Harris they're out and
4 what are they doing, they're trying to get somebody to buy
5 them some beer. They're under age. They meet them at a
6 gas station near the Wal-Mart. They say come on follow me
7 to the Wal-Mart. You got the video. And you didn't see
8 all the parts of the video. There more parts if you want
9 to see them, but you can actually see at one point Zane
10 and the defendant face to face out in the parking lot
11 talking for a period of time before he goes in. They go
12 in he suppose to buy, he doesn't. Instead, he goes back
13 in the back and gets a camera and then he gets a couple of
14 hats. He then offers to try to pay for them, it doesn't
15 work. He just takes -- the clerk goes running after him.
16 That's on the video. They may dispute it.

17 You heard about from Officer Jason Van
18 Valkenburgh. And at that time while he's inside, Zane's
19 inside remember Cullen he sees the gun in the front seat
20 and he decides then this is more than we bargained for.
21 So when they're supposed to follow them to the Ale House
22 because they're going to buy them beer at the Ale House,
23 these two take off. And they go to the Waffle House and
24 they go and eat, so a period of time elapsed. And then
25 when they come back to Paces Brook apartment, which is

1 right there. You got the map low and behold these two --
2 and it's the same two are yelling at him. And at that
3 point they did the right thing. They ran as fast as they
4 could into their apartment. They called the police. They
5 turned out the lights and they waited. And they said that
6 when the police came, they can actually here the screech,
7 I believe, of the wheels as those took off. Van
8 Valkenburgh goes to the In-Town Suites. He's taking a
9 report, taking statements from those two victims. And as
10 he's there, McMillian responds to the actual -- what's the
11 name of the apartment where these guys are, he goes to
12 that one. And when he gets there he sees a car in the
13 handicapped place. And as he approaches, he sees somebody
14 he thinks he has dreads with a white shirt jump into the
15 vehicle and it takes off.

16 And this all happens, ladies and gentlemen, in a
17 time period -- because if it's between 1:10 a.m. and
18 1:25 a.m., the carjacking in the In-Town Suites takes
19 place. That should be 1:20 excuse me. At 1:20 a.m. Van
20 Valkenburgh is dispatched. And then at 1:24 a.m. look at
21 the video, even if it's only a minute or two. That's at
22 1:24 they've already met up with the guys after doing that
23 and he's driving the blue car. 1:35 they drive out of the
24 Wal-Mart parking lot. Within an hour, he's ditched the
25 car. They find Zane Harris back at Paces Brook. As

1 McMillian approaches the car, the chase starts. Van
2 Valkenburgh is still taking the statement. That's the
3 chain of events and how quickly it occurs.

4 You heard from Officer Shellen. He found the
5 car you remember right there Wingate Inn behind the
6 Fazoli's right there on Columbia Drive the next day. You
7 heard from Officer Smith, he processed the car and
8 collected certain items. He didn't collect the camouflage
9 hat, remember that left and then they brought it back to
10 Investigator Gilliam later that day. He didn't realize
11 the significance of it. You know what else he didn't
12 collect, which is in the pictures. You can actually see
13 one of the hats he took from Wal-Mart in the back of the
14 car. It's a straw hat along with a wig and the camouflage
15 hat part of his uniform for his work.

16 You heard from Dr. Amick. He told you there's
17 no DNA. The State's not here to make up evidence against
18 him. We're just here to present it. We don't pick the
19 witnesses, he does. There's no DNA. There's no DNA from
20 the victims in the victims' car. There's no DNA from
21 Devontae Bryant in the victims' car. There's also no DNA
22 in the Camaro. You heard about how some people shed skin
23 cells more than others. And is it consistent because he
24 tells his own girlfriend we need to get the Camaro back.
25 I'm the one that got away from the police I burned them.

1 I had to crawl over Devontae to get out. His DNA isn't in
2 there either. So a negative doesn't mean it didn't
3 happen. It just means he doesn't shed DNA.

4 You heard Ms. Moore they went and talk to Kiane
5 that day, remember on the 6th and while there she went to
6 get a bottle for her baby. And then she went to open the
7 purse she found the Euros. You have a picture of that.
8 You heard from Investigator Gilliam who they didn't like
9 anything he did in this case because he did the right
10 thing. He didn't do the easy thing and just blame
11 Devontae H.e actually tried to corroborate him. And he
12 didn't just corroborate him because when they go to
13 Kiane's apartment and they got a search warrant that was
14 legal.

15 And this isn't Devontae's apartment, low and
16 behold more evidence right there. And when they talked to
17 Kiane, she tells them just what we talked about why does
18 Kiane want to implicate him. You heard from Kiane. And
19 you heard from Devontae. He was with him that night.
20 Yes, they been other places earlier, drop him off at the
21 In-Town Suites because he said he had something to take
22 care of. But he had a gun, he had it earlier in the day.
23 And by the way you know what's interesting in this case,
24 that gun wasn't recovered. And the gun think about it
25 Keylan Durham is so good that he even manage to take the

1 gun with him after crashing the Camaro. Did he get rid of
2 it then.

3 You heard from the officers Maurice Brown, Keith
4 Thrower, Jerry Hall, Brian Zwolak, Anna Balley, Justin
5 Britt. The ones that were actually right there and saw
6 stuff. They were more officers out there. You heard from
7 these and you heard from Investigator Moore, his
8 investigation corroborate just what they said. You heard
9 from Marcus Harvey and Dereka Brown. They don't have a
10 dog in this fight. They lived out there. They are on
11 their porch, but all of a sudden there's a shooting in the
12 parking lot and what do they see. And what do they have
13 to gain or lose. They told you what they saw.

14 Officers having jump out of his way, but he was
15 driving out of control. And as I listen to defense and
16 talk about these measurements in the different areas, it's
17 like the car couldn't have done all of that, but the car
18 did. You have scrape marks. You have the broken poles.
19 You have the messed up tree. And look at how high on that
20 tree. You know the officer said it kind of almost went up
21 on the tree, look how high that scrape is up. And you
22 think about it, he's in a 2011 Hyundai. It's got front
23 wheel drive. It's pushing up because he's going
24 backwards. And they're saying that this was just an
25 accident, that he didn't mean for it. He never took his

1 foot off the gas paddle, even after he ran into the tree.
2 He was still riding as hard as he could. And he loves to
3 jump around after he wrecks the car. He jumps into the
4 back seat as he said to play possum. You heard from
5 Shelby Derrick. They process the scene. You have all the
6 photographs of the scene documenting everything. Brought
7 in an independent agency to make sure there was no --
8 maybe an illusion to something wasn't done right, I don't
9 know how they feel about Lexington. Mike Phipps took
10 measurements. Tracy Barr he collected the guns. Tracy
11 Barr and John Moore interviewed the defendant.

12 You know what's interesting what the defendant
13 said is what he didn't say. And it was confusing after
14 cross-examination of Investigator Moore because they were
15 talking about what he done and then they started asking
16 him kind of questions and how do you go back and what's
17 the reason. And tell you exactly what was said. He was
18 driving -- this is what -- these are his words because
19 remember he didn't want to put it in writing. He was
20 driving Kiane's car 2011 Hyundai. He had to go and do
21 some things to include selling things at Wal-Mart's
22 parking lot on Bush River, so he could get gas money. All
23 day he had been seeing cops four Lexington County cops and
24 saw undercover cops when he pulled into Brook Pines
25 apartment. Officer asked him undercovers. He said, yeah,

1 you know, feds, cops. That's when he went past his
2 apartment to see if they would follow him. As he pulled
3 in the parking space, he saw police with a gun drawn
4 beside his door as he was trying to open. He asked him
5 did he see the officers badge and first remember he said,
6 yes. And then he recanted said, oh, no, no, I didn't.
7 And then he was asked were you trying to get away. He
8 said people were looking for him this morning. The
9 officer asked him do you know you're wanted. He replied
10 by saying yes. He described his frantic driving. He said
11 once he came to a stop, he jumped in the backseat and put
12 his hands up played possum.

13 At no point did he say police officers attacked
14 him. At no point did he say they shoot me before I even
15 move the car, even Keylan Durham. Although, they're now
16 being accused now of it. Didn't accuse the police.

17 What evidence do you have and I'm almost
18 through. You got the description from Ms. Edwards and
19 Mr. Drastich. And I submit, ladies and gentlemen, I do
20 not suppose anyone's going to get up here and say this
21 event didn't occur to them. I assume they're going to try
22 and say it was Devontae. There's by Drastich. There's an
23 ID by Harris, independent of each other. Those two
24 weren't in the same room. And what makes it credible is
25 Lashonda didn't pick him. There's no police misconduct

1 here. You see him driving the blue Oldsmobile into the
2 Wal-Mart at 1:24. The police were dispatched to the
3 carjacking at 1:20 in the morning. So the carjacking
4 occurred some five minutes, six minutes, seven minutes
5 before that on video at the Wal-Mart. There's a ID by
6 Gilliam. He drives out in the blue Olds at 1:35. The
7 Camaro follows with Devontae Bryant driving. He takes a
8 camera and the hat's in the videos. He dumps the car
9 though between that leaving that Wal-Mart parking lot and
10 going back to find those two guys Harris and Bennecker.

11 And I thought about it why would he do that. He
12 found a better one. Why do you still think he was
13 following them. They had what kind of a little car was
14 that a Nissan something R something. You see it on the
15 video. He had a new target. He had better opportunity
16 than some old '95 Olds.

17 Bennecker sees the gun on the front seat of the
18 Oldsmobile while he's waiting outside in the parking lot.
19 The wig and the hat are in the Oldsmobile the next day.
20 There's no gun. So whoever had that gun kept it with him
21 and the only person that got away from that chase by his
22 own admission to his girlfriend is Keylan Durham. The
23 chase, the Camaro 140 miles per hour lights on and off.

24 The miracle here, ladies and gentlemen, we
25 aren't here on worse charges, that's the absolute miracle.

1 You have that video, that dash cam. He had to take the
2 gun with him. He told Kiane he's in a chase that night.
3 He gave her the Euro money. The paperwork is in their
4 apartment. He told Kiane the money was in the purse in
5 the Camaro.

6 When the police go to arrest him, he runs. I
7 knew I was wanted. He describes his erratic driving. And
8 then the two independent witnesses Mr. Harvey and
9 Ms. Brown, who both described what they saw and who was at
10 fault.

11 All this evidence will be back with you. Back
12 in August of 2014, this defendant made choices and he hurt
13 people and he scared people. All we ask is that you hold
14 him responsible for his choices. Thank you.

15 THE COURT: We will take a few minutes before
16 proceeding. Please go to the jury room. Please do not
17 discuss the case.

18 (WHEREUPON, the jury retire to the jury room.)

19 THE COURT: We'll take five minutes.

20 (WHEREUPON, a break was taken.)

21 THE COURT: All right. Bring them on.

22 (WHEREUPON, the jury came into open court.)

23 THE COURT: All right. The defense, Ms.

24 Pinnock.

25 MS. PINNOCK: Thank you, Your Honor. May it

1 please the Court. It's technically afternoon now, so good
2 afternoon. On Tuesday morning, Mrs. Williams stood before
3 you and told you that you were listening to two separate
4 cases. And there's still two separate cases. And the
5 State has a responsibility to prove every element of every
6 offense that he was charged with. And you heard Ms.
7 Campbell tell you in this case they welcome the burden.
8 The don't have a choice. She can't reject it. I don't
9 feel like trying to prove something today. The law is
10 that they have to prove it, so saying to you today that
11 they welcome the burden in this case means nothing that --
12 when somebody who's charged with possession of marijuana.
13 The State still has to prove it. So that does not make
14 this case any different. It doesn't make this case any
15 more special because we're standing here welcoming our
16 burden. It is her burden. It's been her burden since we
17 came into this courtroom and it's still her burden. And
18 she has to prove to you beyond a reasonable doubt that
19 Keylan is guilty of all of these charges by proving every
20 single element of each charge.

21 There's been a lot of talk about what the State
22 doesn't have to prove based on the law and I don't have
23 words. I don't have a megatron TV. I don't have any of
24 that stuff. But there's been a lot of talk about we don't
25 have to prove this. We don't have to show this to you.

1 Here's what we have to prove over here. It's bits and
2 pieces of what they're taking from the evidence. And I
3 will agree the evidence comes from the witness stand. It
4 comes from what's been presented to you. What I say and
5 what she says is not evidence. The evidence is what you
6 heard under sworn testimony from that witness stand and
7 the items you're going to take with you in the jury room,
8 that's what the evidence is. So you can't pick and choose
9 what you want to be the evidence in your case. You can't
10 pick this piece because it fits nicely in my story over
11 here and then just ignore everything else because it
12 doesn't try to fit. And that's the case we're dealing
13 with.

14 There was information on August 4th that was
15 provided to law enforcement. And Ms. Williams told you on
16 Tuesday that policies weren't followed. You know law
17 enforcement made bad decisions. I'm not saying they're
18 bad cops. We're human beings, but people make mistakes.
19 So I'm not blaming Investigator Gilliam being this
20 horrible investigator, but people make mistakes. And the
21 mistakes were made, policies and procedures were not
22 followed. And that's why Keylan has one charge with the
23 carjacking and the kidnapping and the attempted armed
24 robberies and you remember all the charges. All of those
25 charges from the 4th, they're all on him. When the person

1 who made makes sense was sitting in his office blaming it
2 first on Little Kev and then blaming it on Keylan.

3 I'm not trying to create any conspiracy. I'm
4 not a conspiracy theorist. I don't believe that
5 conspiracies are happening all around us. I don't believe
6 that Marck Drastich and Lashonda Edwards are in a
7 conspiracy with law enforcement to bring down Keylan
8 Durham. And don't get me wrong Keylan is no angel. He's
9 on video in Wal-Mart. That's what they spent a lot of
10 time establishing to you. They pulled their TV over here
11 for you to watch the video from inside of the Wal-Mart.
12 That's a shoplifting that has nothing to do with what
13 happened at the In-Town Suites, nothing.

14 They showed you a video of this car chase that
15 has nothing to do with what happened at In-Town Suites,
16 but they want you to see all of those things and hopes
17 that you will dislike him enough, that you'd look past the
18 fact that part the story doesn't make sense. That's all
19 that information is for. It proves nothing. What they
20 spent a lot of time showing to you and providing from
21 testimony on that stand, Keylan had Euro's on him. At
22 some point Kiane told you that he handed him those Euro's,
23 that European money he handed them to her. That's what
24 they have proven to you. That she got it from him.

25 They have proven to you that he was inside of

1 Wal-Mart. They have proven to you that Kiane said he was
2 driving the Camaro. And they have proven to you that at
3 some point in this evening he was seen driving this car.
4 And Zane Harris and Cullen Bennecker they're not involved
5 in this conspiracy doesn't exist either. They identified
6 who they saw at the gas station, plain and simple.
7 There's no conspiracy. So that's what they've proven to
8 you, but the law requires them to prove, for you to
9 convict Keylan is that he's the one who had the gun at the
10 hotel who took the car. That's what they have to prove,
11 not that he was in it later, not that he had of something
12 that was stolen later. That he's the one that took it.
13 And they have given you nothing to prove that he's the one
14 that took it.

15 Now, there are some issues that we have asked
16 Investigator Gilliam about because you heard from
17 Investigator Moore from Lexington County yesterday.
18 Nobody is saying Investigator Moore is a bad cop. He is a
19 good investigator. I liked talking to him. He's a
20 genuinely nice guy. He testified yesterday and he told
21 you some of the important things about interviewing
22 witnesses is that you separate them because you don't want
23 person A to influence person B. You want to know what
24 that person knows and only what that person knows. You
25 don't want them influencing each other accidentally, but

1 we know that Mr. Drastich and Ms. Edwards were interviewed
2 together.

3 We know it might seem small and the State might
4 try to make it insignificant, but we know that there is
5 discrepancies in the person that was at the car, what they
6 look like, what they were wearing. Discrepancies in that
7 person and the man that they arrested because the man that
8 was described looks nothing like the man that they
9 arrested. So what happened, I don't know what happened,
10 but you did hear from the man who's blaming it on Keylan
11 black male, thin build, clean shaven. He was wearing a
12 wig and the hat is important also. They say this big
13 argument about a hat and a shirt. Yeah, the hat is
14 important. The first description that came out about the
15 hat, a black cap Mr. Drastich's statement. Ms. Edwards
16 says nothing about a hat, nothing, no description
17 whatsoever.

18 On the 8th after they received the car back,
19 they leave, they come back to the police station because,
20 hey, there's a hat sitting in our backseat. Then we move
21 from black hat, to camouflage hat, not saying they're
22 doing it on purpose, but that's being influenced to say
23 things to fit the story. If you're provided the evidence
24 in front of you, it's easy to describe it. The first
25 description on that night by Marck Drastich does not match

1 Keylan Durham. It doesn't.

2 And I do want to bring up is a problem. I am
3 not an ID expert. Those people exist. But you don't have
4 to be an ID expert to see that one of these things is not
5 like the other. Your eyes are drawn to it. The first
6 place you look is to the one picture that doesn't match
7 the other one. This is not proper. I'm not surprised
8 that he picked out this picture is the first place people
9 look. And Lashonda Edwards did not pick out her
10 assailant. She gave a description down to somebody
11 wearing black rim glasses, but then couldn't pick out
12 somebody in a lineup. And now they're saying because she
13 didn't look at his face. She looked at his face and she
14 didn't pick out anybody because he wasn't in the lineup.
15 She looked dead in his face. Described the wig being in
16 his face, trying to move it out of the way while talking
17 to them and fail to pick out the person because he wasn't
18 in the lineup. I'm not blaming or accusing Marck Drastich
19 of trying to set Keylan up. I see how we ended up where
20 we ended up and it's not his fault. I get it because
21 these were his options and it's not surprising. You don't
22 have to be an expert to see that is not right.

23 If clean shaven -- August 4th 2014, the person
24 was clean shaven, by August 8th 2014 when we take -- when
25 Investigator Gilliam takes the last statement, nobody

1 bothers to talk about facial hair because it doesn't match
2 Keylan Durham. Keylan's not clean shaven. He said he was
3 clean shaven. The person he described is not the person
4 they arrested. Even after viewing the picture, he could
5 not give a detailed description of him. Even after
6 viewing the picture, it's not the person that was at the
7 car.

8 So I'm not going to stand here and tell you that
9 something horrible didn't happen to Lashonda Edwards and
10 Marck Drastich. They were robbed at gun point. The
11 State -- and they didn't show you a board of this one.
12 The State has to prove the identity of the person who did
13 this beyond a reasonable doubt. If there's a question,
14 that's reasonable doubt. If there's hesitation, that is
15 reasonable doubt. And it doesn't have to be ten minutes
16 of hesitation. When you're sitting in the room, you're
17 looking at the sheets. If you hesitate for one second,
18 that is reasonable doubt. So that's also their burden,
19 hold them to it. They welcome it, hold them to it.

20 Zane Harris and Cullen Bennecker, Mr. Harris
21 picked Mr. Durham's picture out of the line up at a gas
22 station, has nothing to do with what happened at the
23 hotel. Cullen Bennecker did not do a lineup, but he
24 testified that while Mr. Harris and the people -- the
25 person they met at the gas station were inside, he walked

1 around to check out the blue car. And the pictures of the
2 car of the blue car were submitted into evidence. You all
3 can look at this. He described that the -- he saw a
4 silver pistol in a holster on the passenger seat of the
5 blue vehicle, that's what he testified to. Nowhere does
6 he say that I saw a brown wig thrown across the same chair
7 that this gun is sitting in. There's no wig. This
8 picture just thrown haphazardly on this seat. The same
9 seat that Cullen Bennecker says he saw a gun and that's
10 when he was at the Wal-Mart. And we know everybody left
11 Wal-Mart. Mr. Harris and Mr. Bennecker went their way.
12 They said the other two individuals went the other way.

13 They went to Waffle House and got some food and
14 I have no idea where this whole idea that somebody's being
15 followed to be robbed came from, but that never happened.
16 Nobody is being followed and stake out at a Waffle House
17 while they were eating dinner, that didn't happen, so they
18 go their way. The other two cars going the opposite
19 direction. When Mr. Durham is identified as driving that
20 car, that wig is not in there. It was not seen by
21 anybody. It was not placed there by anybody. And
22 Mr. Bennecker, she's absolutely right has no dog in this
23 fight. He described what he saw and he didn't describe
24 seeing that because that was not in that car when Mr.
25 Durham is said to be driving that car.

1 I'm not sure why Dr. Amick testified. DNA is
2 not an issue, but I do want to just point out that because
3 something doesn't exist, a negative doesn't prove a
4 positive that makes sense. Because DNA is not there, it
5 does not reach the conclusion that, well, he still had it.
6 Because DNA being present, you can argue that somebody was
7 in possession of it. Somebody touched it. When it's not
8 present, it doesn't go either way. It is a scientific
9 fact that you can touch items and not leave your DNA. I'm
10 not gone argue with science, I'm not a scientist. I know
11 that's a fact. Dr. Amick has testified to that before.
12 It is true, it is a scientific fact you can touch
13 something. It does not mean your DNA is there. But if
14 your DNA is not there, it also means that you possibly
15 didn't touch it. So it doesn't do anything. It means
16 nothing. So I'm really not sure why he testifies other
17 than to say the DNA is not there.

18 So we have no DNA from anybody not uncommon. We
19 have Devontae saying it's Keylan. It's Little Kev first,
20 but then we're going to change it to Keylan. We have the
21 identification that -- y'all are reasonable people you see
22 there's something wrong with that.

23 So then we get arrest warrants and this is how
24 we come to August 6th. The 21 shots, the eight seconds
25 and Keylan is charged with three counts of attempted

1 murder. And the more I thought about this case, hearing
2 the testimony especially from Agent Thrower and Corporal
3 Britt and Officer Brown, the more I thought about it, I
4 have to catch myself because I had to remind myself that
5 they're not on trial.

6 They gave statements saying what they believe
7 was happening when it was happening. They gave statements
8 to Investigator Moore and other investigators at Lexington
9 County Sheriff's Department during a shooting
10 investigation, not during an attempted murder
11 investigation, during a shooting investigation that
12 ultimately determined whether or not they were going to
13 remain law enforcement officers or if they violated the
14 department policy. So that's not the issue.

15 With policies, it is all about what the officers
16 believe was happening. If they believe that they were in
17 danger, then they can be cleared of pulling their weapon
18 and pulling the trigger. If they believed that somebody
19 was trying to injure them, they can be justified if they
20 believed that they were in danger. But the law y'all have
21 to consider for the attempted murder has nothing to do
22 with what they believed happened, nothing to do with how
23 they felt about it, nothing to do with whether or not they
24 violated their policy.

25 The attempted murder, the law that y'all have to

1 think about and y'all have to look at the facts presented
2 to you to decide on, have to do with what Keylan was
3 thinking. If he had the specific intent to kill, if when
4 he put that car in reverse was he trying to run over
5 Officer Brown, was he trying to run over Corporal Britt,
6 was he trying to run over Agent Thrower, that's what the
7 question is. It's not what they perceived to be happening
8 because everybody saw something different. Everybody's
9 feelings about it were different, but question in this
10 courtroom what they have to prove to you and they haven't
11 given you any evidence that he intended to kill somebody.

12 The only evidence that we have is that every law
13 enforcement officer that they talk to on that scene was
14 present to serve warrants, were told that he was going to
15 run, with a very high likelihood that he was going to run.
16 And when they pulled into the parking lot, that's exactly
17 what he did. He pulled out to run, not kill somebody.
18 That is one step away from murder, putting a car reverse
19 to run away is not one step away from murder. It's not
20 trying to kill somebody. His intent was to run away and
21 that's what y'all's question is. That's the only question
22 for that set of charges. None of that stuff matters.
23 They have their own investigation, that's why the
24 Lexington County Sheriff's Department was involved. They
25 discharged their weapons and they were investigated. And

1 this hit me last night, it's not about what they said they
2 thought. It's about what Keylan was thinking. What did
3 his actions show that he was thinking and his thinking was
4 he was going to run.

5 Investigator Derrick and the entire crime scene
6 investigating team did an amazing job. Investigator Moore
7 said that he was proud of his team and they did their job.
8 Nobody's going to pretend that they didn't. Nobody is
9 going to try to suggest to you that they didn't. They did
10 their job and they did it well when they were
11 investigating the shooting. And part of the investigation
12 that they did, they went out to the scene. They processed
13 the car. They processed it on scene, towed it away,
14 processed it when they got back to headquarters. And then
15 took it apart to process it some more, to see what they
16 could find to turn over for the shooting investigation.
17 And some of the things that Investigator Derrick said, you
18 know, I asked her about where the gunshot, where the holes
19 were in the car because we know that Officer Brown was
20 shooting into the windshield of this vehicle. This is
21 going -- Corporal Britt and Agent Thrower they get to the
22 parking lot I'm sorry -- Corporal Britt is inside the
23 parking lot. Agent Thrower arrives in the parking lot.
24 The car is already in motion, reversing according to
25 everybody on scene at a high rate of speed, engine

1 revving, tires squealing, shoots back and that's when
2 Officer Brown gets his arm clipped.

3 At that point that's when he starts to fire at
4 the building and again that's because he believed he was
5 in danger. And I'm not trying to convict him of anything
6 obviously because that's not a criminal charge, that's a
7 policy, investigation that they've already been through.
8 So he believes that he is in danger. He pulls his trigger
9 multiple times at this car and it's going in reverse.
10 Officer Balley testified that she was shooting into the
11 windshield and so I asked Investigator Derrick how many
12 shots into the windshield were on the driver side.

13 I tried to listen to the rule on
14 cross-examination you don't ask a question unless you
15 really need to know something, so there's a point in all
16 this. It's not the best picture. It's not a
17 straightforward picture, but you can see three gunshot
18 wounds I'm sorry -- gunshot holes into the windshield of
19 the driver side of this car and that's important. Keylan
20 Durham was driving that car. If somebody is to aim to
21 drive in a certain direction, if somebody is going to stop
22 and purposely come at you at a high rate of speed, they
23 have to be able to see it.

24 If Keylan Durham was sitting up in this car when
25 these shots were coming in the windshield, he would be

1 dead. He would not be sitting at the table with us if he
2 was sitting up looking at what was happening in front of
3 him or behind him when he was going towards that tree.
4 When he bounced off the tree, the shots kept happening.
5 He saw nothing. If he was sitting up, he be dead. He
6 ducked down because shots coming in the windshield, that's
7 just common sense.

8 And then Investigator Derrick talked about the
9 damage that was done to the car when it hit the tree. And
10 Mrs. Campbell asked her, you know, which side of the car
11 was damaged in her opinion after the car hit the tree.
12 Because I would suspect and I don't know this for sure, I
13 don't know why I should ask the questions, but she did.
14 But I had the same questions, so I suspect she asked it
15 for this reason. This is car hit the tree so hard that it
16 broke. The tire is broken off. It's not flat. It's not
17 loose. It's broken. To the point that when the car hit
18 the pavement, it hit with such force and such speed that
19 there are scratches where the metal of this vehicle was
20 going across the pavement that hit the light post.
21 There's no tire on this car. You're not turning this car
22 to hit anybody. This car is out of control. As you heard
23 the testimony, like a slingshot. The second it hit the
24 ground like a slingshot across the parking lot, it was
25 never intentionally pointed at Agent Thrower or Corporal

1 Britt, it's just impossible.

2 Keylan Durham didn't make the right decisions.
3 At no point under any circumstances should anybody run
4 from the police. I'm not going to stand up here and
5 condone it. It's stupid. It's reckless and it's
6 dangerous, but running from the police does not equal
7 attempted murder. Running from the police is not
8 attempted murder. It's running from the police. And
9 there's all these questions to all these law enforcement
10 officers about how they were dressed. You know, did you
11 have your vest on that said, you know, sheriff or police
12 or SLED. That doesn't matter either. He knew that there
13 was somebody coming up. He saw the car pull up behind
14 him. They pulled up right behind him. And Officer Brown
15 says when the car pulled up, he jumps out and starts
16 approaching the driver side of the car. And at that point
17 the reverse light comes on. The car is moving and the car
18 is angling in such a way to avoid hitting somebody. If
19 there was this depraved mind, he would have rammed into
20 the car with Officer Balley who was sitting right behind
21 him. He was trying to get away. He angled out of the
22 parking space trying to not hit people. He didn't try to
23 kill anybody. He tried to run away.

24 I'm not going to respond to things that were
25 alleged that we were going to be submitting to you and

1 arguing to you, that our position on this is very very
2 simple. They have responsibilities. They are bound by
3 the law as are you to certain things in this courtroom.
4 Everybody has a job. They present the evidence. You
5 judge the evidence. You judge the evidence and you apply
6 the law that Judge Newman will give you.

7 I'm not going to give you the law because that
8 is what he does, that is his job. So when he gives it to
9 you, go back and remember all the testimony that you've
10 heard because the inconsistencies they matter. The
11 inconsistencies are what reasonable doubt is. That's what
12 it is. If there's a question unanswered, that is
13 hesitation. You don't have all the answers from
14 August 4th 2014. You don't have all the answers, that's
15 reasonable doubt. That's hesitation based on the things
16 that don't make sense.

17 Everybody comes to their own conclusion. You
18 are a jury. Everybody is a human being. Everybody has an
19 individual opinion on everything, but you're also required
20 to come to a decision as a group. It's not majority
21 rules. You know, it's not do more of us agree than
22 others. Everybody has to agree, but you're not required
23 to change your mind just because the majority might want
24 you to. You don't have to agree just because everybody
25 else agrees. It's okay to disagree. People disagree

1 every day and it's okay.

2 So individually come to your decision and at the
3 end of the day if you're standing by yourself, that's okay
4 too because the State has not proven Keylan Durham guilty
5 beyond a reasonable doubt of attempted armed robbery.
6 They have not proven him guilty beyond a reasonable doubt
7 of kidnapping. They have not proven him guilty beyond a
8 reasonable doubt of carjacking or assault and battery
9 first degree on Marck Drastich. And they have not proven
10 by any evidence that he has intended to kill Keith
11 Thrower, Marcus Brown or Justin Britt. The only
12 information you have about Keylan's mind set on that day
13 came from the testimony of Investigator Moore when he told
14 you that Keylan told him on August the 6th 2014, that he
15 was trying run away. Thank you.

16 THE COURT: Let's just stand for a few moments.

17 (WHEREUPON, a pause in the proceedings.)

18 THE COURT: Mr. Foreman and members of the jury
19 -- someone mind moving the easel. Mr. Foreman and members
20 of the jury, you've heard the testimony and the evidence
21 and the arguments of the State and the defendant. I will
22 now explain to you the law that applies to this case.
23 Under the Constitution and laws of South Carolina, you are
24 the finders of the facts in this case. I do not have the
25 right to pass upon the facts or to express any opinion

1 that I might have as to them because this is a matter
2 solely for you, the jury, to determine. As jurors then,
3 it is your duty to determine the effect, the value, the
4 weight and the truth of the evidence presented during this
5 trial.

6 As the trial judge, it's my responsibility to
7 preside over the trial of this case and to rule upon the
8 admissibility of the evidence offered during the trial.
9 You are to consider only the testimony which has been
10 presented from this witness stand together with any
11 exhibits which have been made part of the record.

12 I have the additional duty to charge you the law
13 applicable to this case. And as the presiding judge, I am
14 the sole judge of the law of this case. It is your duty
15 as jurors to accept as correct and apply the law as I now
16 state it to you and then reach your verdict. And finally
17 I charge you in this regard, that you should not be
18 concerned with what you think the law ought to be, but
19 rather what I charge you that the law is.

20 You are also the judges, the sole judges of the
21 credibility that is the believability of the witness who
22 have testified and of the evidence presented during this
23 trial. In passing upon the credibility, you can take into
24 consideration many things such as the demeanor or manner
25 of testifying, whether the witness had reason to be bias

1 or prejudice, whether the testimony of a witness was
2 contradicted on the one hand or supported and corroborated
3 on the other hand. Bearing in mind and considering all
4 things that you should give the defendant the benefit of
5 any reasonable doubt. It becomes your duty as jurors to
6 analyze and to evaluate the evidence and determine that
7 the evidence which convinces you of its truth.

8 Now, the fact that the defendant did not testify
9 is not a factor whatsoever that you should consider in
10 your determination in this case. The defendant has a
11 constitutional right to remain silent and the fact that he
12 did not testify should not be considered in any way in
13 your deliberations. In fact, it should not even be
14 discussed in your deliberations. The burden of proof is
15 on the State to prove the defendant guilty beyond a
16 reasonable doubt.

17 Now, normally a person cannot give opinion
18 testimony. Normally, when a person testifies, they must
19 testify as to what they either saw, heard, sense by smell
20 or something of that nature. However, there is a
21 exception when a person is qualified because of education
22 or experience, they're permitted to give their opinions in
23 certain areas if the Court qualifies them that way. In
24 this case, we've had witnesses who have been qualified to
25 give opinion testimony. This does not mean that you must

1 accept the opinions, but it is evidence for you to use in
2 anyway you see fit and to give it the weight and the
3 credibility you believe is appropriate. Credibility or
4 testimony of an expert witness is to be given no greater
5 weight then that of other witnesses simply because the
6 witness is an expert. Further, you're not required to
7 accept the opinion of an expert even though it is
8 uncontradicted.

9 The indictments in this case allege numerous
10 defenses -- numerous offenses against the defendant. The
11 charges are attempted armed robbery of Lashonda Edwards,
12 attempted armed robbery of Marck Drastich, kidnapping of
13 Lashonda Edwards, kidnapping of Marck Drastich, carjacking
14 without injury of Lashonda Edwards, assault and battery
15 first degree of Marck Drastich, attempted murder of Marcus
16 Brown, attempted murder of Keith Thrower, attempted murder
17 Justin Britt and possession of a weapon during commission
18 of a violent. Each indictment alleges a separate and
19 distinct offense. You must decide each indictment
20 separately on the evidence and the law applicable to it
21 uninfluenced by your decision as to any other indictment.
22 The defendant may be convicted or acquitted on any or all
23 of the offenses charged. You will be asked to write a
24 separate verdict of guilty or not guilty for each
25 indictment.

1 Now, the fact that the defendant was arrested,
2 charged and indicted is not evidence and cannot be
3 considered by you as evidence of guilt in this case. Nor
4 does it create any presumption or inference of guilt. An
5 indictment is simply the formal written instrument which
6 contains the charge made against the defendant. An
7 indictment is a formal document by which a case is brought
8 into court.

9 The defendant has pled not guilty to the charges
10 in the indictment, that plea places the burden on the
11 State to prove the defendant guilty. A person charged
12 with committing criminal offenses in South Carolina is
13 never required to prove himself innocent. I charge you
14 that it is an important rule of the law that the defendant
15 in a criminal trial no matter what the seriousness of the
16 charge or charges may be will always be presumed to be not
17 guilty of the crimes for which the indictments were issued
18 unless guilt has been proven by evidence satisfying you of
19 that guilt beyond a reasonable doubt.

20 The presumption of innocence does not end when
21 you begin your deliberations, but it accompanies the
22 defendant throughout the trial until you reach a verdict
23 of guilt based on evidence satisfying you of that guilt
24 beyond a reasonable doubt. The presumption of innocence
25 is like a robe of righteousness placed about the shoulders

1 of the defendant, which remains with the defendant until
2 it has been stripped from the defendant by evidence
3 satisfying you of that the defendant's guilt beyond a
4 reasonable doubt.

5 Now, the presumption of innocence is not just a
6 legal theory or mere legal, it's not just a legal phrase.
7 It is a substantial right to which every defendant is
8 entitled, unless you, the jury, are satisfied from the
9 evidence of the defendant's guilt beyond a reasonable
10 doubt. The State must prove the defendant guilty beyond a
11 reasonable doubt.

12 So what is a reasonable doubt in the law. A
13 reasonable doubt is a doubt which makes an honest,
14 sincere, conscientious juror in search of the truth to
15 hesitate to act. Proof beyond a reasonable doubt is
16 therefore the proof of such a convincing character, that a
17 reasonable doubt person will not hesitate to act and rely
18 upon it in the most important of his her own affairs.
19 Proof beyond a reasonable doubt can also be described as
20 proof that leave you firmly convinced of the defendant's
21 guilt.

22 Now, there are very few things in this world
23 that we know with absolute certainty. And in criminal
24 cases, the law does not require proof that overcomes every
25 possible doubt. If based on your consideration of the

1 evidence you are firmly convinced that the defendant is
2 guilty, then you must find the him guilty. If on the
3 other hand you think there's a real possibility that he is
4 not guilty, then you must give him the benefit of the
5 doubt and find him not guilty.

6 The defendant is charged with attempted arm
7 robbery. In order to prove attempted arm robbery, the
8 Sate must first prove beyond a reasonable doubt that the
9 defendant took or attempted to take personal property from
10 the person or presence of another person. Property is in
11 presence of a person if it is within the person's reach,
12 inspection, observation or control, so that the person
13 could if not overcome with violence or prevent by fear
14 keep possession of the property.

15 The State must also prove beyond a reasonable
16 doubt that the defendant carried or attempted to carry
17 away the property intending to permanently deprive the
18 owner of the property and to keep the property for the
19 defendant's own use. The slightest removal of the
20 property or the complete possession of the property even
21 for an instant by the defendant is sufficient to show a
22 taking and carrying away of the property. The taking and
23 carrying away or attempt to take and carry away the
24 property must have been done with violence or by putting
25 the owner of the property in fear of violence. Finally,

1 the State must prove beyond a reasonable doubt that the
2 defendant was armed with a deadly weapon during the
3 attempted robbery. A deadly weapon is any instrument
4 which is likely to cause death or great bodily injury,
5 whether an instrument has been used as a deadly weapon
6 depends on the facts and circumstances of each case.

7 The defendant is charged with kidnapping.
8 First, attempted armed robbery two counts, kidnapping two
9 counts. The defendant is -- the State must prove beyond a
10 reasonable doubt that the defendant knowingly and
11 unlawfully seized, confined, kidnapped or carried away
12 another person without authority of law. To do a thing
13 unlawfully is to do it willfully against the law knowingly
14 meaning with knowledge, conscientiously not accidentally.
15 Seize means to take hold of sudden or forcibly. Confine
16 means to limit, restrict or enclose within bounds in
17 prison or shut -- or shut or keep in. Kidnap is to remove
18 a person against his will by unlawful force or by fraud.
19 Carry away means to remove. The State does not have to
20 prove that the defendant did all of these things instead
21 of find beyond a reasonable doubt that the defendant did
22 any of these things, you may find the defendant guilty of
23 kidnapping.

24 Something done without authority of law is
25 something which the law does not sanction, permit, allow,

1 condone or provide justification for. Kidnapping does not
2 have to be for any person or monetary gain or for any
3 illegal purpose, but maybe for any reason whatsoever.
4 Kidnapping is a continuing offense which commences once --
5 one is wrongfully deprived of freedom and continues until
6 freedom is restored. The defendant is charged with
7 carjacking without injury. In order to prove carjacking,
8 the State must prove beyond a reasonable doubt that the
9 defendant took or attempted to take a motor vehicle from
10 another person by force and violence or by intimidation
11 while the person was operating the vehicle or while the
12 person was in the vehicle.

13 The defendant is charged with assault and
14 battery first degree as to Marck Drastich. The State must
15 prove beyond a reasonable doubt that the defendant
16 unlawfully injured another person Mr. Marck Drastich. And
17 the act occurred during the commission of a robbery and
18 burglary, kidnapping or theft. The defendant may also be
19 convicted of assault and battery first degree regarding
20 Mr. Drastich if he unlawfully offered or attempted to
21 injure him with the present ability to do so and the act
22 was either accomplish by means likely to produce death or
23 great bodily injury or occurred during the commission of a
24 robbery, burglary, kidnapping or theft. Great bodily
25 injury means bodily injury which causes a substantial risk

1 of death or which causes serious permanent disfigurement
2 or protracted lost or the impairment of the function of a
3 bodily member or organ.

4 The defendant is charged with three counts of
5 attempted murder involving Marcus Brown, Keith Thrower and
6 Justin Britt. In order to prove attempted murder, the
7 State must prove beyond a reasonable doubt that the
8 defendant with intent to kill attempted to kill Marcus
9 Brown, Keith Thrower and or Justin Britt with malice
10 aforethought either expressed or implied.

11 Malice is hatred, ill will or hostility towards
12 another person. It is the intentional doing of a wrongful
13 act without just cause or excuse and with an intent to
14 inflict an injury or under circumstances that the law will
15 infer an evil intent. Malice does not necessarily impart
16 ill will toward the individual injured, but signifies
17 rather a general malignant, recklessness of the lives and
18 safety of others or a condition of mind that shows heart
19 regardless of social duty and fatally bent on mischief.

20 Malice aforethought does not require that the
21 malice exist for any particular time before the act is
22 committed, but malice must exist in the mind of the
23 defendant just before and at the time that the act is
24 committed. Therefore, there must be a combination of
25 previous evil intent and the act. Malice aforethought may

1 be expressed or inferred. These terms expressed and
2 inferred do not mean different kinds of malice, but merely
3 the manner in which the malice may be shown to exist, that
4 is either by direct evidence or by inference from the
5 facts and circumstances which are proved.

6 Express malice was shown when a person speaks
7 words which express hatred or ill will for another or when
8 the person prepared beforehand to do the act which was
9 later accomplished. For example, lying in wait for a
10 person or any other acts of preparation going to show that
11 the deed was within the defendant's mind would be
12 expressed malice. Malice may be inferred from conduct
13 showing a total disregard for human life. Malice may also
14 be inferred when the deed is done with a deadly weapon. A
15 deadly weapon is any instrument which is likely to cause
16 death or great bodily harm. Whether an instrument has
17 been used as a deadly weapon, depends on the facts and
18 circumstances of each case and ordinary object may become
19 a deadly weapon when the facts show that they have been
20 used to inflict serious bodily injury or death.

21 If facts are proved beyond a reasonable doubt
22 sufficient to raise an inference of malice to your
23 satisfaction, this inference would be simply an
24 evidentiary fact to be considered by you, the jury, along
25 with the other evidence in the case and you may give it

1 the weight you decide it should receive.

2 Evidence of character of the act and the
3 character of the instrument used, the manner in which it
4 was used purpose to be accomplished and the resulting
5 wounds or injuries may be considered in determining the
6 intent with which the act was committed. Intent may be
7 inferred when it is demonstrated that the defendant
8 voluntarily and willfully commits an act. A natural
9 tendency of which is to destroy the life of another.

10 As to the meaning of attempt, an attempt is an
11 effort to accomplish a crime which does not succeed. An
12 attempt includes a specific intent to do a particular
13 criminal act along with an act falling short of the act
14 intended. The State must show more than mere preparation
15 in intent. There must be some overt act in an effort to
16 commit a crime. Intent means intending the result which
17 actually occurs not accidentally or involuntarily. Intent
18 may be shown by the acts and conduct of the defendant and
19 other circumstances from which you may naturally and
20 reasonably infer intent.

21 If you determine that the State has not proven
22 attempted murder as to Marcus Brown, Justin Britt and
23 Keith Thrower, you may consider -- must consider whether
24 the State has proven beyond a reasonable doubt whether the
25 defendant is guilty of a lesser-include offenses.

1 As to Marcus Brown if you find that -- if you
2 determine that the State has not proven attempted murder
3 beyond a reasonable doubt, you should then consider
4 whether the State has proven beyond a reasonable doubt
5 that the defendant is guilty of the lesser-included
6 offenses of assault and battery of a high and aggravated
7 nature or assault and battery first degree or assault and
8 battery second degree. Of course, you cannot find the
9 defendant guilty of any criminal offense unless you are
10 convinced of guilt beyond a reasonable doubt.

11 As to assault and battery of a high and
12 aggravated nature, the State must prove beyond a
13 reasonable doubt that the defendant unlawfully injured
14 another person and either great bodily injury to the
15 person resulted or the act is accomplished by means likely
16 to produce death or great bodily injury. Great bodily
17 means great bodily injury which causes a substantial risk
18 of death or which causes serious permanent disfigurement
19 or protracted loss or impairment of the function of a
20 bodily member or organ. As to assault and battery first
21 degree, the State must prove beyond a reasonable doubt
22 that the defendant unlawfully offered or attempted to
23 injure another person with a present ability to do so and
24 the act was accomplished by means likely to produce death
25 or great bodily injury.

1 As to the offense of assault and battery second
2 degree, the State must prove beyond a reasonable doubt
3 that the defendant unlawfully injured another person or
4 offered or attempted to injure another person with the
5 present ability to do so. And either moderate bodily
6 injury to another person or persons resulted or moderate
7 bodily injury to another person or persons could have
8 resulted. Moderate bodily injury means physical injury
9 requiring treatment to an organ system of the body other
10 than the skin, muscles, connective tissues of the body
11 except when there is a penetration of the skin, muscles
12 and connective tissues that require surgical repair of a
13 complex nature or when treatment of the injuries requires
14 the use of regional or general anesthesia.

15 As to Justin Britt and Keith Thrower, if you
16 determine that the State has not proven attempted murder
17 beyond a reasonable doubt, you should then consider
18 whether the State has proven beyond a reasonable doubt
19 that the defendant is guilty of the lesser-included
20 offenses of assault and battery first degree or assault
21 and battery second degree. Of course, you cannot find the
22 defendant guilty of any offenses unless you are convinced
23 of guilt beyond a reasonable doubt. Again, as to the
24 assault and battery first degree, the State must prove
25 that the defendant unlawfully offered or attempted to

1 injure another person or persons with the present ability
2 to do so and the act was accomplished by means likely to
3 produce death or great bodily injury.

4 As to the offense of assault and battery second
5 degree again, the State must prove beyond a reasonable
6 doubt that the defendant unlawfully injured another person
7 or offered or attempted to do -- to injure another person
8 or persons with a present ability to do so. And either
9 moderate bodily injury to another person or persons
10 resulted or moderate bodily injury to another person or
11 persons could have resulted.

12 The defendant is also charged with possession of
13 a weapon during the commission of or attempt to commit
14 violent crime. The State must prove beyond a reasonable
15 doubt that the defendant was in possession of a firearm or
16 visibly displayed what appeared to be a firearm during the
17 commission of a violent crime. A firearm means any
18 revolver, pistol or any weapon which would -- is designed
19 to or may be readily converted to expel a projectile. In
20 order to find the defendant guilty of possession of a
21 weapon during the commission of a violent crime, you must
22 first find the defendant guilty of either committing a
23 violent crime or attempting to commit a violent crime.

24 Attempted arm robbery, kidnapping, carjacking
25 and attempted murder are violent crimes. The State must

1 prove beyond a reasonable doubt that the weapon furthered
2 or advanced or helped in the commission of the crime.

3 In order to establish criminal liability,
4 criminal intent is required. The State must prove beyond
5 a reasonable doubt criminal intent. Criminal intent is
6 always a matter that must be determined by the jury from
7 the circumstances surrounding the situation. There's no
8 way to prove intent to a mathematical certainty. There's
9 no way medical science can dissect a person's brain and
10 determine what the person had in mind. So the law says
11 that criminal intent may be inferred from circumstances
12 shown to have existed. This is how you make a
13 determination of whether or not the element requiring
14 intent was present. It is not necessary to establish
15 intent by direct and positive evidence, but intent may be
16 established by inference in the same way as any other act
17 by taking into consideration the acts of the parties and
18 all the facts and circumstances of the case.

19 Criminal intent is a mental state, a conscious
20 wrong doing. It is up to you to determine what the
21 defendant intended to do based on the circumstances shown
22 to have existed. Criminal intent can arise from action or
23 a failure to act. May arise from negligence, recklessness
24 or an indifference to duty or to consequences that is
25 considered by the law to be the equivalent of criminal

1 intent.

2 An issue in this case is identification of the
3 defendant as to the person who committed the crimes
4 charged. The State has the burden of proving identity
5 beyond a reasonable doubt. You must be satisfied beyond a
6 reasonable doubt of the accuracy of the identification of
7 the defendant before you may convict the defendant.
8 Identification testimony is expression of belief or
9 impression by a witness. You must determine the accuracy
10 identification of the defendant. You must consider the
11 believability of each identification witness in the same
12 way as any other witness. You may consider whether the
13 witness had an opportunity, an adequate opportunity to
14 observe the offender at the time of the offense. This
15 will be effected by things like how long or short a time
16 is available or how far or close the witness was, lighting
17 conditions and whether the witness had the chance to see
18 or know the person in the past.

19 Once again, I instruct you that the burden of
20 proof on the State extends to every element of the crimes
21 charged and this specifically includes the burden of
22 proving beyond a reasonable doubt the identity of the
23 defendant as the person who committed the crimes. If
24 after examining the testimony you have a reasonable doubt
25 as to the accuracy of the identification, you must find

1 the defendant not guilty.

2 Now, while argument of counsel is a beneficial
3 part of every trial, you should remember that the
4 statements made by counsel are not evidence and presented
5 their arguments. Counsel offered and referred to the
6 evidence. However, you should base your verdict on the
7 evidence as you remember it. Therefore, if there are any
8 conflicts between the recollection of counsel about the
9 evidence and your own recollection, you should rely on
10 your own understanding of the evidence.

11 Mr. Foreman and members of the jury, I am
12 required to charge you the law as I have done through
13 these instructions. They are now being given to help
14 guide you to adjust a lawful verdict. Whether some of
15 these instructions will apply, will depend upon what you
16 find to be the facts. The fact that I have instructed you
17 on various subjects in this case must not be taken as
18 indicating an opinion of the Court as to what you should
19 find to be the facts or what your verdict should be.

20 In conclusion, you been chosen and sworn to give
21 the parties in this case a fair and impartial trial. When
22 you done so, you will have complied with your oath and no
23 one will have a right to criticize your verdict. You must
24 not be influenced by opinions or expressions of opinion
25 you may have heard outside of the courtroom. Rather

1 should base your verdict solely on the evidence, testimony
2 of the sworn witnesses who took the stand. The exhibits
3 received into evidence and the law which I have stated.
4 You should not be swayed by caprice, passion, prejudice or
5 improper sympathy for or against anyone in this case.
6 Remember, you have no friends to reward or enemies to
7 punish and all parties are entitled to a fair and
8 impartial trial.

9 It is your duty as jurors to consult with one
10 another and to deliberate in an effort to reach an
11 agreement. Each of you must decide this case for your
12 yourself, but only after an impartial consideration of all
13 of the evidence with your fellow jurors.

14 In the course of your deliberations, do not
15 hesitate to re-examine your own views and change your
16 opinion if you become convinced that it is erroneous.
17 However, do not surrender your honest conviction as to the
18 weight or effect of the evidence solely because of the
19 opinion of your fellow jurors or for the mere purpose of
20 returning a verdict.

21 As stated earlier, you are the judges, judges of
22 the facts. Your verdict must be represent the considered
23 judgment of each juror. In other words, your verdict must
24 be unanimous. Now, you may have noticed that I have read
25 these instructions. I do so to give you the law as

1 accurately as possible. I will give you a copy of these
2 instructions to have in the jury room. You may refer to
3 these instruction to assist in your deliberations. You
4 must consider the instructions as a whole and may not
5 follow some and ignore others. And, Mr. Foreman, it will
6 be your duty to preside over the deliberations of the
7 jury. If during your deliberations, you should desire to
8 communicate with the Court, please reduce your message or
9 question to writing, signed by your foreperson and pass
10 the note to the bailiff who will bring it to my attention.
11 I will then respond as promptly as possible either in
12 writing or by having you return to the courtroom.

13 Now, you've heard the evidence and you have
14 heard the law whatever your verdict, Mr. Foreman, you'll
15 indicate it by writing a verdict form, and then sign and
16 date your verdict. And this is the verdict form that
17 should be self-explanatory and detail and check whichever
18 box that applies to whatever charge you're considering.

19 Remember that although the foreperson is the
20 only juror who writes the verdict, it is not his alone.
21 The verdict has to be unanimous. Mr. Foreman, you're not
22 authorized to write the verdict until all of you have
23 agreed on the verdict. Ladies and gentlemen, I'm going to
24 send you now to your jury room. All of you except the
25 alternates, but do not begin your deliberations until you

1 have received a copy of this jury charge, the exhibits,
2 and the verdict form. Once you receive these things, that
3 will be your signal to begin your deliberations.

4 Now, we've selected 14 jurors, but we can only
5 use 12 to deliberate. So if there are any problems with
6 the first 12 jurors to cause you to be able to continue
7 with the deliberations because of sickness, illness or
8 anything whatsoever, if cannot continue with the
9 deliberations, please let me now at this time while we
10 have those two alternates sitting back there. If you have
11 any reason why you cannot continue with the deliberations,
12 please raise your hand. No hands are raised, that means
13 all jurors are good to go, that means that once the first
14 12 goes in the two alternates will remain. The bailiffs
15 will retrieve from the jury room anything that you might
16 have had in there including the lunch that we have gotten
17 for you.

18 Now, once you begin deliberations, you will
19 deliberate until you have reached a verdict. After you
20 verdict reached a verdict, you will knock on the door and
21 you will advise the bailiff. And we will bring you out to
22 receive your verdict.

23 Now, we understand certainly that you been in
24 here for a while. And you've ordered lunch and it's right
25 at that time, but once you begin deliberating, you'll need

1 to stay in the jury room. You can eat and talk, talk and
2 eat whichever you work that fine. If it's your -- if you
3 need to walk outside for five minutes before you come in
4 and eat and deliberate, you can let me know that otherwise
5 you need to go to the jury room and deliberate.

6 Mr. Foreman, do you need any kind of break before you
7 start deliberating in the jury room?

8 JURY FOREMAN: We like to go outside.

9 THE COURT: All right. Before you begin
10 deliberating, we'll have the bailiffs walk with you so you
11 can get some fresh air and all that. And then come back
12 and get into it, get at it. The alternates will remain
13 while the jury retire. Again, when you come back, don't
14 begin deliberating until you received the instructions,
15 the verdict form and the exhibits. You free to go.

16 (WHEREUPON, the jury retire to the jury room.).

17 THE COURT: Are there any additions or
18 exceptions to the charge?

19 MRS. CAMPBELL: None from the State.

20 MS. PINNOCK: No, Your Honor.

21 THE COURT: All right. You all review these
22 exhibits and see what's what and make sure everything is
23 good. We don't want to repeat any diasters.

24 Alternates, thank you all very much. We picked
25 14. Quite often during a long trial someone gets sick and

1 got to go, many things happen, but you all made it
2 through, so you can't participate in the deliberations,
3 but thank you very much. If you'll wait outside for a
4 moment, they'll get your things and then they'll have you
5 go downstairs and release you from jury duty. I trust
6 that you all have gained some benefit from being here,
7 learning about what goes on throughout our county from
8 various times of day and night on and off the interstate
9 and in the apartment complexes various other places
10 including Wal-Mart. All right. So thank you very much
11 and you all good to go.

12 (WHEREUPON, the alternates are dismissed.)

13 (WHEREUPON, the jury began deliberations at
14 1:26.)

15 THE COURT: I understand there is a verdict.
16 You can bring them in.

17 (WHEREUPON, the jury came into open court at
18 3:30 with a verdict.)

19 THE COURT: Mr. Foreman, if you'll stand for me.
20 Have you reached a verdict?

21 JURY FOREMAN: Yes, Your Honor.

22 THE COURT: Is it unanimous?

23 JURY FOREMAN: Yes, sir.

24 THE COURT: All right. If you'll pass it up,
25 you may be seated.

1 The defendant will stand.

2 You may publish the verdict.

3 THE CLERK: Indictment numbers 2015-GS-40-00001,
4 2015-GS-40-00004, 2015-GS-40-00005, 2015-GS-40-00006,
5 2015-GS-40-00007, 2015-GS-40-00008, 2015-GS-40-8388,
6 2015-GS-8389, 2016-GS-40-0525, 2016-GS-40-0526, the State
7 of South Carolina vs. Keylan Jambre Durham: We, the jury,
8 by unanimous consent hereby find the defendant as follows,
9 on attempted armed robbery against Marck Drastich guilty,
10 on attempted armed robbery against Lashonda Edwards
11 guilty, on kidnapping of Marck Drastich guilty, on
12 kidnapping of Lashonda Edwards guilty, on carjacking
13 without injury of Lashonda Edwards guilty.

14 On assault and battery first degree of Marck
15 Drastich guilty, on attempted murder of Marcus Brown
16 guilty of attempted murder, on attempted murder of Keith
17 Thrower not guilty, on attempted murder of Justin Britt
18 guilty of assault and battery first degree, on possession
19 of a weapon during the commission of a violent crime
20 guilty. This is signed foreperson juror number 218
21 April 14th 2016.

22 Mr. Foreman, are these your verdicts and the
23 verdicts of the entire jury?

24 JURY FOREMAN: Yes, ma'am.

25 THE COURT: Thank you. Any poling requested?

1 MS. PINNOCK: Yes, Your Honor.

2 THE COURT: Madam clerk, if you will pole each
3 juror individually.

4 THE CLERK: Yes, Your Honor.

5 Jury number 218, were these your verdicts?

6 JURY FOREMAN: Yes.

7 THE CLERK: Are they still your verdicts?

8 JURY FOREMAN: Yes.

9 THE CLERK: Juror number 259, were these your
10 verdicts?

11 JUROR: Yes.

12 THE CLERK: Are they still your verdicts?

13 JUROR: Yes.

14 THE CLERK: Juror number 62, were these your
15 verdicts?

16 JUROR: Yes.

17 THE CLERK: Are they still your verdicts?

18 JUROR: Yes.

19 THE CLERK: Juror number 310, were these your
20 verdicts?

21 JUROR: Yes.

22 THE CLERK: Are they still your verdicts?

23 JUROR: Yes.

24 THE CLERK: Juror number 269, were these your
25 verdicts?

1 JUROR: Yes.

2 THE CLERK: Are they still your verdicts?

3 JUROR: Yes.

4 THE CLERK: Juror number 269, were these your
5 verdicts?

6 JUROR: Yes.

7 THE CLERK: Are they still your verdicts?

8 JUROR: Yes.

9 THE CLERK: Juror 174, were these your verdicts?

10 JUROR: Yes.

11 THE CLERK: Are they still your verdicts?

12 JUROR: Yes.

13 THE CLERK: Juror number 65, were these your
14 verdicts?

15 JUROR: Yes.

16 THE CLERK: Are they still your verdicts?

17 JUROR: Yes.

18 THE CLERK: Juror number 255, were these your
19 verdicts?

20 JUROR: Yes.

21 THE CLERK: Are they still your verdicts?

22 JUROR: Yes.

23 THE CLERK: Juror number 309, were these your
24 verdicts?

25 JUROR: Yes.

1 THE CLERK: Are they still your verdicts?

2 JUROR: Yes.

3 THE CLERK: Juror number 143, were these your
4 verdicts?

5 JUROR: Yes.

6 THE CLERK: Are they still your verdicts?

7 JUROR: Yes.

8 THE CLERK: Juror number 112, were these your
9 verdicts?

10 PROSPECTIVE JUROR: Yes.

11 THE CLERK: Are they still your verdicts?

12 JUROR: Yes.

13 THE CLERK: Juror number eight, were these your
14 verdicts?

15 THE COURT: She was a juror after -- she was
16 selected said victim was a victim of armed robbery, so she
17 was removed and we picked an alternate by lot.

18 THE CLERK: Juror number 42, were these your
19 verdicts?

20 JUROR: Yes.

21 THE CLERK: Are they still your verdicts?

22 JUROR: Yes.

23 THE CLERK: The jury has been poled.

24 THE COURT: All right. Thank you. The verdict
25 is indeed the unanimous verdict of the jury. Any

1 posttrial motions?

2 MS. PINNOCK: Yes, Your Honor, please the Court.
3 Your Honor, at this time we would renew all of your
4 previous objections and all of our previous motions
5 specifically, Your Honor, prior bad acts. We do believe
6 that the car chase and the shoplifting were inadmissible
7 in this trial. It did not satisfy any exception under
8 404(b). And while, Your Honor, and it was improper
9 character evidence used to -- used to convict Mr. Durham
10 of the current charges. We just renew all of our previous
11 motions and objections at this time.

12 THE COURT: Any response by the State?

13 MRS. CAMPBELL: No, Your Honor.

14 THE COURT: Well, all the evidence tied
15 together. He attempted to rob them, kidnap them,
16 carjacked him and then the continuous chain took the car
17 over to Wal-Mart, caught on camera in the Wal-Mart, that
18 was the best place, most immediate at the point in time to
19 identify him. Since, the defense argued identity there's
20 no evidence that he was the one, that evidence placed him
21 there and connected the evidence immediately following the
22 initial crime. And then you followed -- bothered these
23 other boys. And everyone called the police it appeared
24 and the police got in hot pursuit. And they chased him
25 trying to catch him and he got away, but his passenger

1 didn't. And all the evidence was found in the vehicle
2 that connected the robbery and the shoplifting and the
3 statement of the passenger that he was the one who was
4 driving. I can certainly understand your hoping that that
5 evidence didn't exist, but that was important evidence
6 that established critical elements of the crime. Based on
7 all that, I respectfully deny the motion.

8 MS. PINNOCK: Thank you, Your Honor.

9 THE COURT: Mr. Foreman and members of the jury,
10 I certainly want to thank you for your effort. Once you
11 find a person guilty, then I have the responsibility of
12 imposing a sentence. You have no role in that process.
13 From my experiences that jurors are interested in seeing
14 it through to the end, so we will move into that process
15 now the sentencing phase of this matter.

16 If the defendant will come forward.

17 Any further presentation by the State?

18 MRS. CAMPBELL: May it please the Court, Your
19 Honor.

20 THE COURT: Yes.

21 MRS. CAMPBELL: As far as his prior record
22 starting -- his juvenile record starting in 2007. He was
23 convicted of unlawful carrying of a weapon. In 2009, he
24 was convicted of possession of marijuana. In 2011, he was
25 convicted of burglary in the second degree, receiving

1 stolen goods, unlawful carrying of a weapon and possession
2 of cocaine and maybe crack cocaine, I'm not sure which.
3 He received an active sentence of seven years on that.
4 In 2013, he was convicted on shoplifting and then a second
5 shoplifting conviction, Your Honor. In 2013, he was
6 convicted for failure to stop for a blue light. In 2014,
7 driving under suspension third offense and giving false
8 information. Your Honor, in addition to this and the two
9 days prior, he did have pending in our office another
10 carjacking, another strong armed robbery and I think a
11 larceny charge. And he has a separate pending burglary
12 larceny charge. And he was also violated on probation
13 earlier this year. Your Honor, if I could just have a
14 moment to check with the victims to see if any of them
15 would like to speak.

16 THE COURT: All right.

17 MS. PINNOCK: Your Honor, I don't want to speak
18 out of turn, but just so the record is clear, the other
19 pending charge is not a carjacking in the Solicitor's
20 office. He is charged with assault and battery first and
21 strong arm robbery and then theft of a motor vehicle.
22 There is no other carjacking.

23 THE COURT: All right.

24 MRS. CAMPBELL: Your Honor, I just spoke to Ms.
25 Edwards, I don't think she wishes to address the Court,

1 but she did want me to advise the Court that she just
2 wanted to make sure the defendant understood what he did
3 and to make sure -- she just doesn't want it to happen to
4 anybody else.

5 THE COURT: All right. And, Officer, what else
6 would you like to tell me about it. You're a victim of
7 attempted murder among other things involved this case.

8 MARCUS BROWN: Yes, sir, Your Honor. I like the
9 Court to know that on that day we went to arrest the
10 defendant here we did not go there to try to hurt or harm
11 him. We just went there to do our job, which is to effect
12 the arrest. He decided to try to avoid arrest. And when
13 I looked in the mirror, he clearly saw me and put the car
14 in reverse and gun the engine, striking me. If I hadn't
15 moved out of the way, I would have been dead. There's
16 doubt in my mind that he knew what he was doing. And if
17 he's released or given a light sentence, there's no doubt
18 in my mind that we'd be back in this courtroom sometime in
19 the future in reference to him killing somebody or gravely
20 hurting somebody. It's just my hope that the Court would
21 give him the maximum sentence that the law allows and
22 that -- so that you can protect the citizens of Richland
23 County.

24 THE COURT: All right. It's quite apparent from
25 the record that the convictions from 2007, 2009, 2011,

1 2013, that he was apparently giving light sentences
2 considering all the crimes that he committed.

3 MARCUS BROWN: Yes, sir.

4 THE COURT: And she said in 2011 he got a seven
5 year sentence. And then again somehow he's out and in
6 2013 he commits these other crimes and he's on probation
7 now. So I certainly understand that when -- who knows
8 what the original charges were on these crimes. We just
9 know what he pled guilty to, but it does have -- an often
10 it has an affect later on when other victims occurred when
11 they get light sentences and you're back out doing the
12 same thing, so I certainly appreciate what you're saying.
13 Certainly, the jury appreciates it because attempted
14 murder is a relatively new statute and try to -- using a
15 car as a deadly weapon is kind of hard sometimes for
16 people to get a grasp of -- the jury got a grasp of this
17 and found him guilty based on the evidence.

18 MARCUS BROWN: Thank you, Your Honor.

19 MRS. CAMPBELL: Just for the record, it was
20 seven year sentence suspended to four years.

21 THE COURT: Where's Mr. Britt, you want to add
22 anything? Officer Justin Britt. I'm use to see him in
23 more pleasant circumstances than being a victim of a
24 crime.

25 JUSTIN BRITT: I would say that we -- as we

1 said, we do this job a lot and we arrest a lot of people,
2 a lot of warrants. And this is the first time that I've
3 ever been involved in something that involved a shooting
4 and it was out of control. It was something that I
5 haven't seen before. And so I would ask that the maximum
6 sentence be given to him. I forgive him for what he did
7 that day, but I ask for ---

8 THE COURT: We went sort of went to this before
9 we started with the trial when I asked him whether he sure
10 he wants a trial. The maximum sentences, I think, we
11 added up to 225 years, is that what it is now. Maybe, it
12 was that at that time, but some of the lesser-included
13 reduces it down may be 200 or 185 or 150. And you said
14 maximum, that's what it is. We have a lot of leeway
15 between running up to that some, so I understand what you
16 mean.

17 JUSTIN BRITT: Yes, sir.

18 THE COURT: All right. Thank you. What else
19 from the State?

20 MRS. CAMPBELL: That's all from the State, Your
21 Honor.

22 THE COURT: All right, the defense.

23 MS. WILLIAMS: Thank you, Your Honor. May it
24 please the Court. I'm going to give you some information
25 about Keylan's childhood and a little bit kind of

1 background on him from that. He was born and raised in
2 Columbia. He unfortunately -- his father, biological
3 father was physically abusive and so his mother managed to
4 get him and his older sister out of the home when he was a
5 small boy. So he never had any kind of relationship with
6 his biological father.

7 He is from looking at pass things and
8 evaluations it seems that as he grew up he struggled in
9 school, things did not necessarily come that easily from
10 looking. He was a borderline low-average intelligence and
11 those things could easily frustrate him and he had a hard
12 time excelling in that area. He does still have a sister
13 in the area. The reason you don't see them here today is
14 speaking with him family has been something that's very
15 important to him, but he didn't want us contacting them.
16 He didn't want them here. He didn't want to put them
17 through this experience. So that is why they are not here
18 today and why we haven't contacted them to come speak on
19 his behalf. That was his hope to not have them -- have to
20 be involved with this. I also in speaking with him things
21 that he has told me he said that, I guess, where the
22 things that he hopes most for the future is that his son
23 **K.J.** **[REDACTED]**, does not end up going through the
24 situations that he's gone through. That he makes good
25 choice and is successful in his life. Does he hope that

1 at some point he will be able to have some sort of
2 relationship with his son. He's two years old.

3 THE COURT: How old is the defendant?

4 THE DEFENDANT: He's 24.

5 MS. WILLIAMS: But everything from childhood
6 things that I've seen even to speaking to his girlfriend
7 Ms. Warner, you know, he can be easy going. He's a very
8 quiet spoken man, getting him to open up and trust is
9 something that I think he has a hard time with. But we
10 have gotten to know him and I think he wishes the best for
11 his child. I think he wishes the best and cares very
12 deeply for his girlfriend Ms. Warner and his family.

13 THE COURT: What does he think about the
14 victims?

15 MS. WILLIAMS: I have not asked him about that,
16 Your Honor.

17 THE COURT: I can appreciate who he -- the folks
18 that you're telling me that he's concerned about, but my
19 concern is much broader than that as you can understand.

20 MS. WILLIAMS: I do, Your Honor. That just give
21 you some background on his childhood.

22 MS. PINNOCK: Your Honor, I'll just add very
23 briefly for Keylan. I represented him from the day that
24 he was arrested. And as Ms. Williams said, getting him to
25 open up and trust people is a challenge. You know, we've

1 had our good days and we've had our bad days. But I
2 honestly cannot stand here and say that I think I'm
3 standing beside evil an individual. I have witnessed him
4 with his girlfriend. I have witness him with his son.
5 And what Mr. Bailey and I were talking about it, he's been
6 in jail since his son was six months old. He is now two.
7 And Ms. Warner -- his name is KJ. He loves his son, but
8 we're in a situation where at two years old. He's -- he
9 doesn't know his dad and it's actually hard to witness
10 when we ---

11 THE COURT: Okay. This is where you asked me
12 the other day can he hold his baby and I said fine with
13 me. Whatever happened with that?

14 MS. PINNOCK: Ms. Warner brought KJ in. They
15 were talking. He was being a very adorable two year old.

16 THE COURT: I mean, he did get that opportunity
17 the officer there didn't prevent you from letting him hold
18 his baby?

19 MS. PINNOCK: No, sir.

20 THE COURT: All right.

21 MS. PINNOCK: And we appreciate that and I know
22 he appreciates that. And I know Ms. Warner appreciates
23 that because, you know, that is this young family. So,
24 you know, aside from the allegations, aside from the
25 jury's verdict, we understand that the jury has come back

1 with a verdict, but we got to see the Keylan Durham who
2 loves his girlfriend and loves his child.

3 THE COURT: And what's the idea about this case
4 then? We started out I just raised the question why are
5 we having a trial and that's the question I asked you all
6 on Monday and, I guess, the response kind of escapes me
7 right now.

8 And certainly I respect fully the constitutional
9 rights for a person to have a jury trial. And no one
10 should suffer any punishment sentence wise when they
11 exercise their constitutional right and I would never do
12 that. But considering the evidence in this case why are
13 we having a trial. He's caught on video. The lady's --
14 the man's money is in his pocket -- I mean, gave it to his
15 girlfriend. All these people he interacted with and the
16 defense is -- well, he wasn't identified. Why do we spend
17 this week here dealing with this in a trial, that's just a
18 question that I have. You don't even have to answer it,
19 but go ahead.

20 MS. PINNOCK: Well, Your Honor, I don't think I
21 will.

22 THE COURT: Because all of what you all are
23 telling me about his -- he didn't want his family here.
24 He didn't want to put them through this. He -- what's his
25 thoughts about the victims. Certainly, they had to come

1 and go through all of this including the fierce
2 interrogation by counsel and relive this experience and
3 all, but he didn't want his family to go through this. Is
4 that what you said?

5 MS. PINNOCK: I believe, what we were getting at
6 with that is he didn't want his family to sit here and
7 listen to all the horrible things that he was being
8 accused of. You know, he has a four-year relationship
9 with Ms. Warner. You know, she stood by his side from day
10 one even though she got on the stand and testified for the
11 State. She's still standing by his side. You know, I
12 don't know how much she knows about what the allegations
13 in the case were. You know, she gave her statement to law
14 enforcement originally. She consented to search her
15 house. She was cooperative with law enforcement.

16 THE COURT: She did -- she's a great State's
17 witness, that's the best kind of witness the State can
18 ever have. His girlfriend and the mother of his child who
19 he basically confessed to in some respects, so that again
20 just answer my question about and came time to present a
21 defense, there's no defense presented. He just -- of
22 course, I know the consequences of a trial is that he's
23 here and he's about to get sentenced. And, I guess, I'm
24 just listening to looking for the answer to that question
25 and Mr. Bailey seemed like he may want take a stab at it

1 at least.

2 MR. BAILEY: Thank you, sir. I don't want to
3 say that I've got answers necessarily, but, you know,
4 sometimes like a lot of young men Keylan's age that make
5 mistakes, it is hard to conceive going to jail for
6 multiple decades and that's sort of the toughest parts
7 about this job especially with young men.

8 And there was -- and we weren't in a position
9 where there was a resolution with the State or any kind of
10 agreement that could be reached. And there were -- we
11 were sort of getting closer to a potential non-trial
12 resolution the day before the trial. And, you know, it
13 just -- it wasn't conceivable before to -- more than a
14 decade is hard for a young man who has only done, I think,
15 at most four years to take in. I mean, that's the best
16 answer I could give, Your Honor.

17 THE COURT: If you could envision a lion at the
18 zoo or wherever and if you had your hand -- the State is
19 the lion and your hand is the lion's mouth and you're
20 trying to get the lion to negotiate with you and the State
21 is the lion and then if the lion doesn't negotiate with
22 you, then you punch the lion in the nose and fight the
23 lion. Is that what this is about? He wasn't in the best
24 negotiating position considering the overwhelming evidence
25 that the State had so ---

1 MR. BAILEY: Well, we end up fighting the lion
2 quite a bit sometimes, Your Honor, but I don't think it
3 was not maliciousness on the part of Mr. Durham, that he
4 -- it wasn't that he wanted to put, you know, create
5 hardship for the State or for the victims. I don't think
6 it was out of complete utter sensitivity. I think it was
7 numbers, sir.

8 THE COURT: Again, he has a constitutional right
9 to a trial, I'm fine with that. And if I didn't have a
10 trial, we had to be doing something here this week, so
11 that's good. I love trials. He has three lawyers who you
12 all suppose to be advising him and hopefully he's listen
13 to some of that advise. Maybe in the end, it was good a
14 decision. Mr. Thrower back there he had his life on the
15 line on that day. He was found not guilty of him as a
16 victim. Justin Britt reduce charges. Maybe, the State
17 didn't want to reduce those charges. Everything else
18 seems pretty clear as a whistle, if a whistle is clear,
19 but go ahead, Ms. Pinnock, let me hear the rest of it.
20 Then I want to hear from -- see what Mr. Durham has on his
21 mind.

22 MS. PINNOCK: Your Honor, the only thing I would
23 add during throughout representing him, trying to learn as
24 much as I could about him. I'm a pretty good Facebook
25 stalker. So I was able to get on to Ms. Warner's Facebook

1 page because he doesn't have an active page. So when I
2 was up there, I saw pictures again that just reiterate
3 this loving young family. There are photographs that were
4 posted the day before he was arrested that are just him
5 and his son doing things that you would expect anybody
6 with a six-month-old child to be doing. So, Your Honor,
7 there is a side to Keylan, a side from what was going on
8 in this case. There is a side to him that, I think, does
9 have, you know, potential for the future. My fear is that
10 his son's going to grow up like he grew up without a
11 father in his life and he never have the opportunity to
12 known his dad. But I would hate to see that happen for
13 his son because it's not anything that he brought upon
14 himself.

15 THE COURT: All right. You mean nothing that
16 the six year old -- six month old brought on himself?

17 MS. PINNOCK: Yes, sir.

18 THE COURT: I understand. Mr. Durham, what's on
19 your mind?

20 THE DEFENDANT: I just want to say I apologize
21 for putting these people through this. I really feel I'm
22 not guilty, but I'm willing to accept consequences they
23 got against me. I can't too much complain for the
24 officer. I wasn't really trying to hurt nobody. I was
25 trying to get away. I was trying to get -- I didn't want

1 to get shot. It's just a lot on my mind right now.

2 THE COURT: Well, you're trying to get away both
3 times. I think on that video first one we saw you were --
4 did he go through some parking lots and yards.

5 MRS. CAMPBELL: Neighborhoods and yards.

6 THE COURT: Neighborhoods and yards. I mean,
7 your idea getting away is do whatever is necessary to get
8 away.

9 THE DEFENDANT: I ain't necessarily meant -- I
10 just didn't really want to get shoot. Once I seen how
11 they unfold and they jumped out with guns, I just jumped
12 in the backseat.

13 THE COURT: Where did you get that on your mind
14 that they were coming to shoot you?

15 THE DEFENDANT: I just know Richland County.
16 They going to shoot them guns when they jump out stop,
17 freeze...

18 THE COURT: You jump out they say freeze, they
19 going to shoot you?

20 THE DEFENDANT: When they jump out with the gun
21 ---

22 THE COURT: This is 2014, wasn't it?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: This is not 2016 now. This is
25 before all the those cases came up. This is 2014 you

1 weren't concerned back then about being shot just because
2 police is trying to arrest you, were you?

3 THE DEFENDANT: I just want to explain little
4 bit about situation of the attempt murder. I still
5 apologize for ---

6 THE COURT: Well, you may not understand the
7 law. Under the law is -- you could pull out a gun and
8 start shooting in here and you may not intend to hit
9 anybody and ten people might be dead and you can say,
10 well, I didn't intend to hit anyone. I just wanted to
11 work my way out of here. But the law with definitions
12 for these kinds of things and the definition of what you
13 did just added up to that crime. But the jury understood
14 your perspective on the people who were not in the line of
15 fire of your vehicle that morning that day. So they
16 understood part.

17 THE DEFENDANT: Yes, sir. And to the victim I
18 apologize they had to go through what they went through.
19 I know that's a scary situation. I apologize to them.

20 THE COURT: And where are you from?

21 THE DEFENDANT: From here, but I was born
22 Atlanta, Georgia, raised up here.

23 THE COURT: Did you go to -- what school did you
24 go to?

25 THE DEFENDANT: Perry, C.A. Johnson.

1 THE COURT: And how far did you go at C.A.
2 Johnson?

3 THE DEFENDANT: By the time, I got to the 11th
4 it was -- 11th.

5 THE COURT: And when did you first go to jail?

6 THE DEFENDANT: I was young probably about 14 or
7 15.

8 THE COURT: And what did you go to jail for?

9 THE DEFENDANT: Unlawful carrying of a weapon
10 under age of 21 something like that.

11 THE COURT: So now you've had like four or five
12 different weapons charge, what's with all of that?

13 THE DEFENDANT: Well, you see that being around
14 the wrong people at the wrong time.

15 THE COURT: So your first case with weapons you
16 were 14 and then, of course, she started out in 2007. How
17 old would you have been then?

18 THE DEFENDANT: 2007?

19 THE COURT: Yeah. That's eight years -- eight
20 or nine years ago.

21 MS. PINNOCK: I believe, that is the juvenile
22 conviction.

23 THE COURT: Oh, that's juvenile?

24 MS. PINNOCK: Yes, sir.

25 THE COURT: And then in 2011 a weapon not

1 stopping for the blue light, false arrest of police. I
2 mean, these are serious. I mean, everybody wants me to
3 give you the max, that's 200 something years.

4 THE DEFENDANT: Yes, sir.

5 THE COURT: What you think about all that?

6 THE DEFENDANT: It's a whole lot of time.

7 THE COURT: I know. All right. Anything else
8 you want to tell me that I need to think about?

9 MS. PINNOCK: Just to end with up until these
10 allegations, there is nothing violent in his history up
11 into August of 2014. He's never been convicted of
12 anything that's considered a violent offense. The longest
13 extent that he did do in 2011 was a four year sentence.
14 Since that point, Your Honor, the only thing that was on
15 his record obviously that stand out to me is two failures
16 to stop for a blue light, which he was on probation for.
17 I believe, Your Honor, mentioned that he was on probation
18 currently. He is not. You actually did his probation
19 violation back in August.

20 THE COURT: I did?

21 MS. PINNOCK: Yes, sir, in August of 2014.

22 THE COURT: What was the -- what did I do?

23 MS. PINNOCK: It was a one year suspended
24 sentence, Your Honor. You just ---

25 THE COURT: Revoked it?

1 MS. PINNOCK: Yes, sir. But that was just after
2 he got arrested, so the new arrest was the reason for the
3 violation. So he is not on probation currently, Judge.
4 We would ask you to show as much leniency as you can. He
5 is looking at a very substantial number of years. I would
6 ask you to consider ---

7 THE COURT: One thing a judge don't want to know
8 about -- one thing a judge doesn't want to be known for is
9 being lenient.

10 MS. PINNOCK: Well, Your Honor, we're asking for
11 mercy. I guess, I used the wrong word.

12 THE COURT: We are merciful, but never lenient.

13 MS. PINNOCK: I used the wrong word. We're
14 asking for as much mercy as you can show for Keylan. I
15 don't think we have anything else to add.

16 MS. WILLIAMS: The one last thing I would say is
17 that we have things from the evaluations and things that
18 happened when he was juvenile, but there's a very long
19 period of time where we don't have any kind of real
20 understanding. He wasn't evaluated or diagnosed with
21 anything in particular. Although, Alvin S. Glenn has had
22 him on anti-hallucination drugs from March of this year
23 even.

24 MRS. CAMPBELL: I can address that. The one
25 thing I did not bring up is he does have a number of

1 charges while he was in Alvin S. Glenn right after he was
2 locked up. He would take feces and spread it all over the
3 cell. He was acting out constantly. They had a real hard
4 time with him. There's a letter I have in his file from
5 Alvin S. Glenn where they talk about the problem they had
6 just controlling him while he was in jail. He is on
7 medication and has been doing better since then.

8 THE COURT: What kind of medicine are you on?

9 THE DEFENDANT: Zyprexa, sir.

10 THE COURT: What does that do?

11 THE DEFENDANT: Keep me calm.

12 THE COURT: So when you not on medicine,
13 assuming you're in the streets some place, what's ---

14 THE DEFENDANT: I just out on drugs that really
15 threw me off badly. At the time when I got locked up, I
16 really couldn't control -- I couldn't really be in the
17 room like I was. I really couldn't get no sleep.

18 THE COURT: You mean at the jail?

19 THE DEFENDANT: Yes, sir. At the time I got
20 locked up, I really -- I was hyperactive, mind had just
21 got shot. I really just had lost it for a minute.

22 MRS. CAMPBELL: We did have information he may
23 have been having withdrawals from street drugs.

24 MS. WILLIAMS: But he is doing better on the
25 medications.

1 THE COURT: What was that with you just kind of
2 just going crazy out there that night going 120 miles an
3 hour chasing the police, going in Wal-Mart, grabbing stuff
4 not paying for it, robing these people. What's going on?
5 Hitting the man in the mouth with a pistol. I mean, at
6 that point in time what was going on with you not
7 specifically as it relates to these crimes but just what
8 was the trouble.

9 THE DEFENDANT: Truth be told, sir, I really
10 can't speak on that situation. I ain't -- I ain't did
11 that, sir, I ain't gone lie to you.

12 THE COURT: I understand that. I said you don't
13 have to speak on the crime. I'm not trying to get you to
14 confess. You saying you're not guilty. I'm -- you're
15 guilty the jury has said that, but you don't have to say
16 that you are. I'm just saying what was going on with you
17 during that time.

18 THE DEFENDANT: I really too much can't remember
19 nothing.

20 MS. PINNOCK: Your Honor, we have information
21 from Ms. Warner that he was involved with drug use some
22 mixture or something that I don't know what it is. And as
23 Ms. William said he has done so much better since he has
24 started being treated. And they're actually addressing
25 whatever issues were going on, but when he was arrested,

1 we do have information from Ms. Warner that he was using.
2 I'm not 100 percent sure what he was using, but there was
3 some drug use around that time.

4 THE COURT: It have to be something because
5 people just don't act like that. I mean, unless they just
6 maniac -- not maniac. What's the word? I don't know the
7 word. All right. Well, what else? Let's wrap this up.
8 what else?

9 MS. PINNOCK: We don't have anything else, Your
10 Honor.

11 THE COURT: All right. For the assault and
12 battery first degree the maximum on those are ten years?

13 MRS. CAMPBELL: Yes, sir.

14 THE COURT: So the sentence each one of those
15 are ten years, that's for the assault and battery on
16 Justin Britt and also on Marck Drastich. Then for
17 kidnapping, that's zero to 30.

18 MRS. CAMPBELL: Yes, sir.

19 THE COURT: Sentence on each kidnapping is 22
20 years, attempted armed robbery that's up to 20?

21 MRS. CAMPBELL: Yes, sir.

22 THE COURT: Sentence on each of those are 20
23 years. On the carjacking carries up to 20 as well
24 sentence is 20 years carjacking. And the attempted murder
25 the sentence is 24 years, possession of a weapon during a

1 violent crime the sentence is five years. He is given
2 credit for the time that he's served. All these offenses
3 are -- at least the attempted murder is a most serious,
4 violent and most serious, which are no parole offenses.
5 Kidnapping, I believe, is the same much or -- and how much
6 credit is he due?

7 MS. PINNOCK: Your Honor, he has credit from
8 August 6th 2014. I apologize, I don't have an exact of
9 that date for you. I mean ---

10 MRS. CAMPBELL: I thought he was revoked on his
11 probation.

12 MS. PINNOCK: I'm sorry.

13 MRS. CAMPBELL: He was revoked on his probation
14 during that time. He would not get credit for that.

15 MR. BAILEY: We do probation rev's every Friday.

16 MRS. CAMPBELL: I understand what happened. I'm
17 saying he doesn't get credit, he was in the department of
18 corrections and I'll get those times to you.

19 THE COURT: So whatever the end effect of it
20 will be so long down the road, I'm just going to check on
21 the box defendant is to be given credit for time served
22 pursuant to 24-13-40 to be calculated and applied by the
23 department of corrections. Good luck to you, Mr. Durham,
24 hopefully things will get sorted out for you.

25 MS. PINNOCK: Your Honor, just one more -- well,

1 two more things for the kidnapping make a finding it's not
2 sexual in nature on both of those, so he would not be
3 required to register.

4 THE COURT: It's not sexual in nature. I agree
5 with that. There's something I need to write on the
6 sentencing sheet or just make that finding.

7 MS. PINNOCK: There is a box, I think, you have
8 to check that he's not required. They require a finding
9 that he's not required to because they assume that he
10 would be.

11 THE COURT: I don't see that box. Maybe, it's
12 on a different sentencing sheet. It's not on the
13 sentencing sheet that was handed to me which appears to be
14 a 2009 sentencing sheet, so I'll get that information from
15 another sentencing sheet.

16 MS. PINNOCK: Yes, sir. And if I need to do an
17 order, I can write up an order.

18 THE COURT: It's not related to any sex offense.

19 MS. PINNOCK: All sentences are concurrent?

20 THE COURT: All sentences are concurrent unless
21 otherwise stated.

22 MS. PINNOCK: Thank you, Your Honor.

23 MRS. CAMPBELL: Is the five year doesn't it have
24 to be consecutive?

25 THE COURT: See possession of a weapon during

1 the commission of a violent crime.

2 MRS. CAMPBELL: I could be wrong, Your Honor.

3 THE COURT: I don't think it's mandatory that it
4 be consecutive.

5 MS. PINNOCK: I don't believe it is, Your Honor.

6 THE COURT: The five year sentence is mandatory
7 unless a longer mandatory minimum term is provided by the
8 law of a violent crime. The Court may impose this
9 mandatory five year sentence to run consecutive or
10 concurrent. A 24 year non-parole offense, he just -- he
11 has enough time don't worry about it.

12 MS. PINNOCK: Thank you, Your Honor.

13 THE COURT: Good luck to you, sir.

14 Ladies and gentlemen of the jury, this is the
15 way it goes. I know you all didn't know what you were
16 coming in here for, but unfortunately we see these cases
17 continuously all the time. Of course, each one has its
18 own unique feature. It's just a sad situation, but as sad
19 as his background may be and all that, it's all said and
20 done when people are out as the victims were sitting in a
21 hotel parking lot, people at Wal-Mart and people in their
22 apartment complex parking lot and people on I-20 and 26
23 and all that. You just can't be allowed to be free to
24 injure and kill people. He has to be locked up, that's
25 the way it is. So thank you very much for your

1 participation. Thank you on behalf of State and the
2 defense. And I believe you all are done. I like to speak
3 with the foreperson before you all leave for a few
4 minutes. I'll speak to you out there. Let's see do you
5 get the foreperson to sign the original indictments?

6 THE CLERK: Yes, Your Honor.

7 THE COURT: Regarding what the conviction is
8 for?

9 THE CLERK: I'll get him to sign it.

10 THE COURT: So thank you very much.

11 END OF REQUESTED TRANSCRIPT

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

I, Keshia Reed, Court Reporter in and for the State of South Carolina At Large, do hereby certify that the above-entitled cause was heard as hereinafter set out; that I was authorized to and did transcribe the said proceedings; and that the foregoing and annexed paged, numbered 1 through 787, inclusive, constitute a true and accurate transcription of my stenographic report of the said cause taken during the said hearing. In the Court of General Sessions for Richland County, South Carolina, on the 11-14th day of April, 2016.

I do further certify that I am neither of kin, counsel nor interest to any party hereto. In witness whereof, I have hereunto affixed my signature this 21st day of January 2017.


Keshia Reed, Court Reporter

STATE OF SOUTH CAROLINA)

County of Richland)Kelton Durham 347264)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2019CP400 1125

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lee Correctional Institution
2. Name and location of Court which imposed sentence Richland County
Court of General Sessions
3. Name(s) of co-defendant(s) (if any) Devontae Bryant
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2015-GS 40-1, 4, 5, 6, 7
 - (b) 2015-GS 40-8, 8388, 8389

(c) 2016 GS-40-0525, 0526

5. The date upon which sentence was imposed and the terms of the sentence:

- (a) _____
- (b) _____
- (c) _____

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty _____
- ☒ (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

yes conviction

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. Appeal Dismissed
- ii. _____
- iii. _____

(c) the date of each such result:

- i. April 11, 2018
- ii. _____
- iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. Dismissed After consideration of Appellant's pro se Brief And renewal
- 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:

- (a) Judge erred in instructing the jury on inferring malice →
 (b) Counsel erred by not objecting to An improper charge. Possession →
 (c) Ineffective Assistant Counsel

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Judge Clifton Newman Instructed Jury To interpret one side of the →
 (b) The Appellate Court had deemed it Appropriate That A →
 (c) Ineffective Assistant Counsel →

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
 (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:

- i. _____
 ii. _____
 iii. _____
 iv. _____

- (b) the name and location of the Court in which each was filed:

- i. _____
 ii. _____
 iii. _____
 iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

Yes

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. The trial judge seemed in failing to exclude evidence of the defendant's character
- ii. Improper character evidence
- iii. _____

(b) the proceedings in which each ground was raised:

- i. Dismissed Petition to be Relieved of Guilt
- 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) _____
 (b) _____
 (c) 4/1 _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? yes
 (b) your trial, if any? yes
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
yes

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. Tracy E. Pinnock
Richland County public defenders office 1701 Main St, suite 103 Columbia S.C. 29201
- ii. Rebecca S. Williams
Attorney At Law 3400 Broad River Rd Columbia, SC 29212
- iii. Rhodes Bailey Chief public defender 1701 Main St Columbia S.C. 29201
- E. Susan B. Hackett South Carolina indirect defense PO. Box 11589 Columbia S.C. 29211

(b) the proceedings at which each such attorney represented you:

- i. Tracy E. Pinnock
Trial : sentencing
- ii. Rebecca S. Williams
Trial : sentencing
- iii. Rhodes Bailey
Trial : sentencing
- E.) Susan B. Hackett
Direct Appeal

19. State clearly the relief you seek in filing this application:

Appellant respectfully requests This Court Reverse his Conviction
And Remand For A New Trial.

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

County of Richland)

VERIFICATION

I, Kaylan Durham, 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.

Kaylan Durham

SWORN to and subscribed before me this 27
 day of Dec, 2018.

Debra Eastman (L.S.)
 Notary Public

My Commission Expires: 3/3/2024

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Keylin Durham, 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.

Keylin Durham
Applicant

SWORN or affirmed to and subscribed before me this

27 day of Dec, 2018.

Debra Eastbridge
Notary Public

My Commission Expires: 3/3/2024

Attachment

4.) Attempted Arm Robbery

a.) Attempted Arm Robbery

b.) "

c.) Kidnapping

d.) Kidnapping

e.) Assault: Battery 1st

f.) Attempted Murder

g.) Carjacking

h.) Possession of a Weapon during a Violent Crime

i.) Assault: Battery 1st

5.) Attempted Arm Robbery

Attempted Arm Robbery

April 14, 2016 20 yrs

Kidnapping

April 14, 2016 20 yrs

Kidnapping

April 14, 2016 22 yrs

Kidnapping

April 14, 2016 22 yrs

Assault: Battery 1st

April 14, 2016 10 yrs

Attempted Murder

April 14, 2016 24 yrs

Carjacking

April 14, 2016 20 yrs

Possession of a Weapon during a Violent Crime April 14, 2016 5 yrs

Assault: Battery 1st April 14, 2016 10 yrs

6.) B.) After a plea of not Guilty - I was found Guilty.

7.) Yes

8.) South Carolina Court of Appeals

i. ~~South Carolina~~

Appeal Dismissed

April 11, 2018

Dismissed After Considerations of Appellants pro se Brief had been Pursuant to Andlers V. ~~Channing~~
386 U.S. 738 (1967)

9.) 798/A

- 10.) a) Judge erred in instructing the Jury On infering Malice From The use of a deadly weapon.
- b.) Counsel erred by not objecting to The improper From the use of a deadly weapon. _{charge}
- c.) Ineffective ~~assitance~~ assistance of Counsel
- d.) Counsel Also erred by not Conducting A Appropriate investigation both factual, and legal.
- e.) ~~improper~~ character Evidence

- 11.) A) Judge Clinton Newman instructed Jury to interpret and side of the law when the law stated Another. Jury charge instructing that Malice must be inferred From the use of a deadly is no longer good law in South Carolina where evidence is presented that would Redress, Mitigate, excuse or justify the Homicide. See State v. Belcher. 385 S.C. 597, 60 S.E.2d (2009).
- B) Trial Counsel erred by not objecting to The improper charge so therefore The issue couldn't be raised on my direct appeal. Trial Counsels shall object to issues in order to be reviewed on appeal. so i was deprived of a Fair Trial appeal.



19-1125

State of South Carolina
County of Richland

Keshlan Durham #347264

V.
State of South Carolina

In the Court of Common Pleas

Amendment to application for
Post Conviction Relief

This matter comes before the Court pursuant to an Application for
Post Conviction Relief filed January 4th 2019. Applicant Amends his
petition by adding the following specific allegations of ineffective assistance
of trial counsel: Appellate Counsel.

RICHLAND COUNTY
FILED

2019 APR 12 PM 4:15

DEANETTE W. GORRIN
Clerk
C.C.P. & J.S.

- 1.) Ineffective assistance of ^{Trial} Counsel for failure to provide applicant with a ~~complete~~ copy of discovery, and review it with him prior to trial.
- 2.) Ineffective assistance of trial counsel for failure to do a proper investigation to prepare applicant for trial.
- 3.) Ineffective assistance of trial counsel for failure to object to slurring video that was played during trial.
- 4.) Ineffective assistance of counsel for failure to impeach certain witnesses for contradictory testimonies.

- 5.) Judge erred in allowing defense to submit a video that no longer exists: ~~has~~ been dismissed to convict applicant.
- 6.) Ineffective assistance of counsel, in failure to suppress evidence.
- 7.) Ineffective assistance of counsel for failing to give applicant advice about the Jackson vs. Denno hearing.
- 8.) Ineffective assistance of appellate counsel for failure to bring up all Merit issues for applicant during direct appeal.
- 9.) Ineffective assistance of counsel for failure to file all viable contemporaneous objections at trial.
- 10.) Ineffective assistance of counsel for failure to advise ^{applicant} about the the new evidence that was brought in the day trial started.
- 11.) Judge erred in denying Counsel pretrial motion; and allowed the state to produce inadmissible evidence during trial therefore defendant was deprived a fair trial.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH JUDICIAL CIRCUIT
)

Keylan Durham, #347264,)
) 2019-CP-40-1125
)

Applicant,)
)

v.)

State of South Carolina,)
)

Respondent,)
)

**RETURN
(COUNSEL APPOINTED)**

RICHLAND COUNTY
FILED
2019 JUL 15 AM 11:21
JEANETTE W. McBRIDE
C.C.P., G.S., & F.C.

In response to Keylan Durham's (Applicant) action for post-conviction relief (PCR) commenced February 26, 2019, the State makes this return:

I. Procedural History

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was indicted at the January 2015 term of the Richland County Grand Jury for three counts of attempted murder (2015-GS-40-0006, -0007, -0008), two counts of kidnapping (2015-GS-40-8388, -8389), first-degree assault and battery (2015-GS-40-0001), carjacking (2015-GS-40-0005), and possession of a weapon during the commission of a violent crime (2015-GS-40-0004). Applicant was represented by Assistant Public Defenders Tracy Pinnock, Rhodes Bailey, and Rebecca Williams all of the Fifth Circuit Public Defender's Office.

Applicant's case proceeded to a jury trial April 11-14, 2016, before the Honorable Clifton Newman. The jury convicted Applicant as indicted on the following charges: two counts of attempted armed robbery, two counts of kidnapping, carjacking, first-degree assault and battery, one count of attempted murder, and the weapons charge. The jury convicted Applicant of the lesser-included offense of first-degree assault and battery on the second attempted murder charge.

SCANNED

The jury acquitted Applicant of the third attempted murder charge. Judge Newman sentenced Applicant to concurrent terms of imprisonment for: ten years' for each first-degree assault and battery; twenty-two years' for each kidnapping; twenty years' for carjacking; twenty-four years for attempted murder; and five years' on the weapons charge. Applicant appealed.

Appellate Defender Susan B. Hackett perfected Applicant's appeal by filing an *Anders*¹ brief to the court of appeals. The court of appeals dismissed the appeal in an unpublished decision. *State v. Keylan J. Durham*, Op. No. 2018-UP-149 (S.C. Ct. App. filed April 11, 2018). The case was remitted back to the circuit court on April 27, 2018.

Applicant timely commenced this PCR action on February 26, 2019.

II. Facts

Applicant's charges stem for events that occurred on August 4 and 6, 2014. On August, 4, Applicant approached a car idling in the parking lot of the In-Town Suites. Marck Drastich and his wife, Lashonda Edwards, were talking inside the car, a mid-nineties Oldsmobile. The couple had just returned home from the Ale House. Edwards was in the driver's seat, and Drastich was in the passenger seat. Applicant approached Drastich wearing a white shirt, wig, hat, glasses, and brandishing a silver handgun. Drastich told Applicant he did not have any money and tried to exit the car. When Drastich tried to exit, Applicant struck him in the face with the gun. Applicant then turned his attention towards Edwards, and Drastich was able to escape. Edwards exited and Applicant took the Oldsmobile. (Tr. 134–42, 180–89). Drastich identified Applicant out of a photo-lineup, and also made an in-court identification of Applicant as the person who robbed him. (Tr. 147–51). Edwards was unable to identify the assailant. (Tr. 196).

¹ *Anders v. California*, 386 U.S. 738 (1976).

Officer Jason Van Valkenburgh responded to the carjacking call. Drastich informed him there was a “blacked out sports car” waiting nearby during the carjacking. (Tr. 162–64). While conducting his investigation, Van Valkenburgh learned of a call concerning a civil disturbance at Paces Brook Apartments, which was across the street from In-Town Suites, involving a black Camaro. (Tr. 164). Then, Van Valkenburgh saw a black Camaro drive by at a high rate of speed. Van Valkenburgh then began chasing the Camaro. (Tr. 165–66). In addition to his testimony regarding the pursuit, the State introduced the dash-cam video from Van Valkenburgh’s patrol car into evidence. (Tr. 166–68). The Camaro eventually wrecked and the two occupants fled on foot. After an ensuing foot chase, the officers caught one of the men, Devontae Bryant. (Tr. 170). Once arrested, Bryant implicated Applicant as the driver of the Camaro. (Tr. 271).

Bryant testified at trial, stating he and Applicant went to In-Town Suites in the Camaro. According to Bryant, Applicant told him he was “about to go handle something.” (Tr. 271). Bryant did not see Applicant exit the Camaro with a gun or wig. (Tr. 272). However, the next time Bryant saw Applicant, Applicant was in “an old kind of car” at a gas station; Bryant was driving the Camaro. (Tr. 272). Bryant followed Applicant from the gas station to Wal-Mart, and Bryant saw Applicant go inside Wal-Mart while Bryant waited in the Camaro. Thereafter, Bryant followed Applicant to a hotel, where Applicant parked the older looking car. Applicant then got back into the Camaro, and Bryant moved to the passenger seat. Applicant then drove the Camaro to an apartment complex. (Tr. 272–74).

At the gas station, Cullen Bennecker and Zane Harris asked Applicant to buy them some beer. Applicant was driving an Oldsmobile. Applicant agreed but asked them to follow him to Wal-Mart. When Applicant and Harris went inside Wal-Mart, Bennecker stayed in the parking lot and noticed a black Camaro pull up. Additionally, Bennecker noticed a silver pistol holster in the

Oldsmobile's driver seat. When Harris and Applicant returned, Applicant invited Harris and Bennecker to join him at Ale House. (Tr. 173–76, 212–15). Bennecker and Harris agreed; however, instead they went to Waffle House. Thereafter, they returned to Harris's apartment at Paces Brook. Upon exiting their car, they saw headlights enter the complex's parking lot. The Camaro entered the parking lot and Applicant and another man tried to waive Bennecker and Harris down. Bennecker and Harris ran into the apartment and called the police. (Tr. 176–77, 215). Harris identified Applicant as the man he interacted with that night. (Tr. 216–17).

The Camaro pulled into Paces Brook, and Applicant exited the car. Soon after, a police officer approached Applicant. Applicant ran back to the Camaro, which started the high speed chase. The Camaro wrecked during the chase. A search of the Camaro revealed a camera still in its box, allegedly stolen from Wal-Mart. (Tr. 372).

Officer Mark Sjolund spotted the Oldsmobile in the parking lot of the Wingate Inn two days later on August 6. (Tr. 244–45). The police found a brown wig in the Oldsmobile. (Tr. 377).

Applicant's girlfriend, Kiane Warner, testified for the State at trial. She recalled seeing Applicant in a black Camaro, but could not recall a timeframe seeing him in the car. (Tr. 252). Warner testified Applicant told her he had just taken the cops "on a high speed chase and when he got on the highway, he hit a curb," on August 4, 2014. Applicant also told Warner he climbed over Bryant to exit the car. Additionally, Applicant gave Warner some European currency. (Tr. 253–56).

On August 6, the police arrived at Warner's apartment looking for Applicant; however, Applicant was not there. She told them he was with her brother, Quinten Warner, in her car. (Tr. 256–61). Several officers arrived at Warner's apartment looking for Applicant. In the parking lot of Warner's apartment complex, Applicant tried to evade law enforcement again, this time in

Warner's car. However, he struck a light pole and was apprehended. Before he wrecked, Applicant struck Officer Marcus Brown in his attempt to flee. (Tr. 293). Brown then fired several shots into the car. (Tr. 293). Investigator Justin Britt and Agent Keith Thrower were at the scene to locate Applicant, and also claimed Applicant nearly struck them with the car as Applicant was trying to flee. (Tr. 327, 452).

III. Current Application

Applicant alleges he is being held in custody unlawfully, alleging:

1. Ineffective assistance of counsel;
2. The trial court erred by instructing the jury it could infer malice from the use of a deadly weapon;
3. Counsel erred by not objecting to the improper charge; and
4. Counsel failed to investigate the factual and legal circumstances surrounding the case.

Applicant requests relief in the form of a new trial.

Attached to this return and incorporated herein are the Richland County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records which includes an entire trial transcript, and the records of this PCR action.

IV. Response to Allegation of Ineffective Assistance of Counsel

The State interprets Applicants allegations as ineffective assistance of counsel. Applicant's allegations of ineffective assistance of trial counsel are without merit. To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984); *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). "The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases." *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). To establish

prejudice, the applicant must prove “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.

Counsel must, at a minimum, make some effort to interview potential witnesses identified by the defendant, and make an independent investigation of the facts and circumstances of the case. *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011); *Walker v. State*, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014). However, counsel is presumed to have adequately assisted and exercised reasonable professional judgment in making decisions in the case. *Edwards*, 392 S.C. at 456, 710 S.E.2d at 64. “[W]here counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel.” *Whitehead v. State*, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

Section 16-3-29 of the South Carolina Code defines attempted murder as follows, “A person who, with intent to kill, attempts to kill another person with malice aforethought, either expressed or implied, commits the offense of attempted murder.” (underline added). Applicant’s trial occurred in April 2016. At the time of trial the relevant case law addressing the attempted murder statute was the court of appeal’s opinion in *State v. King*, 412 S.C. 403, 772 S.E.2d 189 (Ct. App. 2015). The court of appeals held in *King*, “[T]he Legislature intended to require the State to prove specific intent to commit murder as an element of attempted murder.” 412 S.C. at 411, 772 S.E.2d at 193. In the instant case, trial counsel successfully argued for the trial court to give a specific intent charge when charging the jury on attempted murder. However, trial counsel was without the guidance of our Supreme Court’s opinion affirming the court of appeal’s decision as modified. *State v. King*, 422 S.C. 47, 810 S.E.2d 18 (2017). In *King*, our Supreme Court suggested our General Assembly “re-evaluate the language following ‘malice aforethought’ as the

inclusion of the word ‘implied’ in section 16-3-29 is arguably inconsistent with a specific-intent crime.” 422 S.C. at 64 n.5, 810 S.E.2d at 27 n.5. Our Supreme Court further noted:

[I]f there is no evidence that one charged with attempted murder had express malice and a specific intent to kill, we believe the crime would involve a lower level of intent and, thus, would fall within the lesser degrees of the assault and battery offenses codified in section 16-3-600.

Id. However, courts have “never required an attorney to anticipate or discover changes in the law, or facts which did not exist, at the time of the trial.” *Thornes v. State*, 310 S.C. 306, 310, 426 S.E.2d 764, 765 (1993).

State v. Belcher, stands for the proposition that the “use of a deadly weapon” implied malice instruction should not be charged when “evidence is presented that would reduce, mitigate, excuse or justify” the alleged crime. 385 S.C. 597, 610, 685 S.E.2d 802, 809 (2009).

Here, Applicant was not prejudiced by trial counsel’s conduct, even if allegedly deficient, because the trial court’s attempted murder jury charge required the jury to find Applicant must have a specific intent to kill to be guilty of attempted murder. Express malice is defined as, “The intent to kill . . . arising from a deliberate, rational mind.” *BLACK’S LAW DICTIONARY* 1101 (10th ed. 2014). The trial court charged specific intent to kill is an element of attempted murder; therefore, the jury must have found Applicant acted with express malice to be convicted of attempted murder. The lack of prejudice is evinced by the jury’s finding of a specific intent to kill Brown convicting Applicant of attempted murder; finding Applicant guilty of the lesser-included offense of first-degree assault and battery as to Britt; and finding Applicant not guilty of attempted murder as to Thrower. *See Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625 (stating to establish prejudice, the applicant must prove “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different”).

Applicant cannot satisfy either requirement of *Strickland*. However, the record likely does not refute or disprove Applicant's allegations of ineffective assistance of trial counsel; therefore, the State requests an evidentiary hearing to fully resolve the issues. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

V. Any Future Amendments

Applicant must specify any claims he 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 the Uniform Post-Conviction Procedure Act² and Rule 71.1 of the South Carolina Rules of Civil Procedure. *See also* Rules 15(a)–(b), SCRPC. 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, SCRPC. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. *See* Rule 15(a), SCRPC.

VI. Any and All other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

VII. Conclusion

WHEREFORE, the State requests an evidentiary hearing be held on the claims of ineffective assistance of counsel.

² S.C. Code Ann. §§ 17-27-10 to -160.

Respectfully submitted,

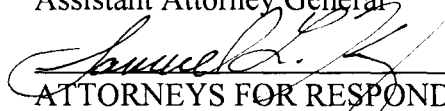
ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

SAMUEL L. KEY
Assistant Attorney General

By:


ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

July 11, 2019



State of South Carolina)
)
County of Richland)

In the Court of Common Pleas
Fifth Judicial Circuit
2019-CP-40-1125

Keylan J. Durham,)
)
 Applicant,)
)
 vs.)
)
 State of South Carolina,)
)
 Respondent.)

Transcript of Record

May 9, 2023
Columbia, South Carolina

B E F O R E:

The Honorable Daniel Coble, Judge

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

Michael H. Lifsey, Esquire
Attorney for the Applicant

D. Russell Barlow, III, Assistant Attorney General
Attorney for the Respondent

Elizabeth B. Harris, CVR-M-CM
Circuit Court Reporter

I N D E XWitness/Description Page No.

Keylan J. Durham

Direct Examination by Mr. Lifsey 6

Cross-examination by Mr. Barlow. : 15

Tracy Pinnock

Direct Examination by Mr. Barlow 25

Cross-examination by Mr. Lifsey. 32

Certificate Page. 39

E X H I B I T SNo. Description Page No.

No Exhibits Introduced.

1 THE COURT: Yes, sir.

2 MR. BARLOW: Thank you, Your Honor. May it please the
3 court? Russ Barlow on behalf of the State of South
4 Carolina. This is the post-conviction relief matter of
5 *Keylan J. Durham v. the State*, case number 2019-CP-40-01125
6 out of Richland County. Applicant was indicted at the
7 January 2015 term of the Richland County Grand Jury for
8 three counts of attempted murder, 2015-GS-40-006, 007,008;
9 two counts of kidnapping, 2015-GS-40-8388 and 8389; first
10 degree assault and battery, 2015-GS-40-0001; carjacking,
11 2015-GS-40-0005; and possession of a weapon during the
12 commission of a violent crime, 2015-GS-40-0004. Applicant
13 was represented by assistant public defenders Tracy
14 Pinnock, Rhodes Bailey, and Rebecca Williams, all of the
15 Fifth Circuit Public Defender's Office.

16 Applicant's case proceeded to a jury trial April 11th
17 through the 14, 2016, before the Honorable Clifton Newman.
18 The jury convicted applicant as indicted on the following
19 charges: two counts of attempted murder -- I'm sorry,
20 excuse me, two counts of attempted armed robbery, two
21 counts of kidnapping, carjacking, first degree assault and
22 battery, and one count of attempted murder, and the weapons
23 charge. The jury convicted applicant of the
24 lesser-included offense of first degree assault and battery
25 on the second attempted murder charge, and the jury

1 acquitted applicant of the third attempted murder charge.
2 Judge Newman sentenced applicant to concurrent terms of
3 imprisonment for ten years for each first degree assault
4 and battery, twenty-two years for each kidnapping, twenty
5 years carjacking, twenty-four years for attempted murder,
6 and five years on the weapons charge.

7 Applicant timely filed an appeal. Appellant defender
8 Susan B. Hackett perfected applicant's appeal by filing an
9 Anders brief to the Court of Appeals. The Court of Appeals
10 dismissed the appeal in an unpublished decision; it was
11 *State v. Keylan J. Durham*, opinion number 2018 UP 149,
12 filed by the South Carolina Court of Appeals on April 11,
13 2018. The case was -- or the remittitur was issued and
14 returned to the circuit court on April 27, 2018.

15 Applicant timely commenced this PCR action on February
16 26th of 2019. Applicant asserts that he is being held in
17 custody unlawfully, and in his original application he
18 amended -- or, excuse me, the original application was
19 ineffective assistance of counsel, failure to object to the
20 jury instruction that the jury could infer malice from the
21 use of a deadly weapon, and failure to investigate the
22 factual and legal circumstances surrounding the case.

23 On April 12, 2019, applicant amended his allegations
24 to include failure to provide a complete discovery and
25 review discovery before trial, failure to properly

K. DURHAM - DIRECT EXAMINATION BY MR. LIFSEY

5

1 investigate and prepare applicant for trial, failure to
2 object to the shoplifting video being played for the jury,
3 failure to impeach witnesses for contradictory testimony,
4 failure to give applicant advice about the *Jackson v. Denno*
5 hearing, failure to make all contemporaneous objections,
6 and failure to advise applicant of the new evidence brought
7 in the day -- the day trial started. He also included an
8 ineffective assistance of counsel of appellate counsel in
9 which he claims failure to raise all meritorious issues on
10 appeal.

11 Applicant requests relief in the form of a new trial,
12 and before this court, Your Honor, are the Richland County
13 clerk of court records, applicant's records from the
14 Department of Corrections, applicant's appellate records,
15 which includes the entire trial transcript and the record
16 of this PCR action.

17 And at this time, we would just ask counsel to
18 indicate which allegations he intends to move forward on.

19 MR. LIFSEY: May it please the court, Your Honor?

20 THE COURT: Yes, sir.

21 MR. LIFSEY: My name is Mike Lifsey. I was appointed
22 to represent Mr. Durham on this matter.

23 Your Honor, usually I file amended applications on the
24 client's behalf, but I'll be honest with you. He had --
25 between his original application and his pro se amended

K. DURHAM - DIRECT EXAMINATION BY MR. LIFSEY

6

1 application that was filed before I was appointed, he, he
2 lays out a pretty good list of issues. So after talking to
3 him, I didn't feel the need to. So, we're ready to proceed
4 on those matters.

5 THE COURT: Okay. Call your first witness.

6 MR. LIFSEY: All right, call Keylan Durham to the
7 stand, please.

8 THE COURT: All right, Mr. Durham, be seated. We'll
9 get you sworn in.

10 KEYLAN DURHAM, BEING DULY SWORN,

11 TESTIFIES AS FOLLOWS:

12 THE COURT: All right, state your name for the record.

13 WITNESS: Keylan Durham.

14 THE COURT: Can you spell that, too, please?

15 WITNESS: K-e-y-l-a-n D-u-r-h-a-m.

16 THE COURT: All right. Thank you, sir.

17 DIRECT EXAMINATION BY MR. LIFSEY:

18 Q. Mr. Durham, where are you being held right now?

19 A. Broad River Correctional Institution.

20 Q. Okay. How long have you been in the South Carolina
21 Department of Corrections?

22 A. Seven years, 2016.

23 Q. Are you there because of the convictions in -- here in
24 Richland County?

25 A. Yes, sir.

K. DURHAM - DIRECT EXAMINATION BY MR. LIFSEY

7

1 Q. You heard the list of convictions the attorney general
2 read off. Is that what you were convicted of?

3 A. Yes, sir.

4 Q. All right. Who represented you at trial on these
5 charges?

6 A. Ms. Tracy Pinlock (sic) and I forgot the other names.
7 I forgot the other names.

8 Q. That's all right. It's two other lawyers were
9 involved?

10 A. Yes, sir.

11 Q. Is that what you remember? Okay. All right. You
12 filed an application for post-conviction relief. Is that
13 right?

14 A. Yes, sir.

15 Q. All right. First of all, are you aware of what the
16 remedy is for post-conviction relief, what you win if ---

17 A. Explain it to me.

18 Q. All right. Are you aware that -- you remember you and
19 I talked about what happens if you win this PCR hearing?

20 A. Yes, sir.

21 Q. And you're aware that you've got to go back to square
22 one. Is that right?

23 A. Yes, sir.

24 Q. All right. Could get better, could get worse. Goes
25 back to square one, right?

K. DURHAM - DIRECT EXAMINATION BY MR. LIFSEY

8

1 A. Yes, sir.

2 Q. You still want to go forward with the PCR today?

3 A. Yes, sir.

4 Q. Let's talk about your representation by these lawyers.
5 How often did you talk to your lawyers?

6 A. Out of two years, I talked to them probably, like, two
7 or three times.

8 Q. Your first lawyer you mentioned by name, Ms. Tracy
9 Pinnock. Is that right?

10 A. Yes, sir.

11 Q. Was she your lawyer from the beginning?

12 A. Yes, sir.

13 Q. How many times do you think you saw her in the three
14 years you're represented -- she represented you?

15 A. . Probably about two or three times.

16 Q. What were your meetings like? Did y'all communicate
17 well? Did you -- what did you talk about?

18 A. That first time she came to check on me, we, we didn't
19 talk about much, and then the second time I think she came
20 and -- she came and see me and asked me what I had, like --
21 asked me what I had in mind so she can go holler at the
22 solicitor, talk to the solicitor, I guess come up with
23 something. And I think she came back and see me after
24 that, after, I guess, after we talked the last time. I
25 think the solicitor said something about fifty years or

K. DURHAM - DIRECT EXAMINATION BY MR. LIFSEY

9

1 something like that, and from there I told her ---

2 Q. You said what? What number did she say?

3 A. I think she said something about solicitor was talking
4 about, something about fifty years or something, and I said
5 something about going to trial.

6 Q. Okay.

7 A. Basically I was...

8 Q. Did you talk to her about -- do you do discovery? She
9 show you all the discovery?

10 A. I think that third -- I think that third time after
11 she came, she came to see me that last time with them other
12 two -- with them other two lawyers and we, we sat in a
13 little multipurpose room. I ain't really felt comfortable
14 the whole time about my whole case. I never really said
15 nothing, like, gave no information about my case to them,
16 like...

17 Q. Why didn't you feel comfortable? What was the
18 problem? What was the problem? Why didn't you feel
19 comfortable?

20 A. I don't know. I just ain't felt -- I just felt she
21 wasn't in my best interest, so I ain't felt comfortable
22 just talking about my case, talking about certain things
23 about the case to her.

24 Q. Did she do things that made you not feel comfortable?

25 A. I can't say she did things made me not feel

K. DURHAM - DIRECT EXAMINATION BY MR. LIFSEY

10

1 comfortable. It just -- it wasn't really nothing like --
2 she ain't never really come talk to me about nothing far as
3 where we was at in the case, far as certain evidence,
4 didn't -- like, what they had or none of that. I just -- I
5 ain't felt comfortable.

6 Q. That third visit you described.

7 A. Yeah.

8 Q. Where you went over evidence and talked about the
9 trial, when was that in relation to the trial? How soon --
10 how long before the case was called to trial?

11 A. I want to say it had to been some time during -- I
12 think I went to trial April. It had to been some time
13 during March or April.

14 Q. So you're saying, then, it was pretty close to when
15 you tried the case, when your case went to trial?

16 A. Yeah. You could say it was pretty close.

17 Q. Was that the first time you had had a long, detailed
18 discussion with your lawyer?

19 A. Right.

20 Q. How did that make you feel as to the confidence you
21 had in your attorneys?

22 A. Say how it make me feel?

23 Q. Yeah. How did it make you feel? Did you feel like
24 you had confidence in your attorneys?

25 A. No, not really. Not really. I think that's when I

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11

1 tried to file the motion. I tried to file -- I ain't -- I
2 ain't going to say I tried to file a motion. We and this
3 old school dude that was in the county, we filed a motion
4 to -- I think I tried to get rid of her, like get her
5 relieved as my counsel, and the motion I filed, like, it
6 got denied when I -- when I went up. I tried to do that, I
7 think, a little before trial, a little before my trial.

8 Q. Okay.

9 A. Yeah, I tried to file a motion to get a new lawyer,
10 something like that, but it ain't work in my favor.

11 Q. All right. So, let's talk about the actual trial.
12 You have complaints about things your lawyers did during
13 the trial?

14 A. A couple.

15 Q. Okay. This is your chance to say it, okay, so let's
16 talk about it. Tell the judge what you think your lawyers
17 did that was improper during the trial.

18 A. I ain't going to say it ain't proper. When they were
19 showing that video to the jury, like, basically, like,
20 killing my character, saying that this is me on video doing
21 -- matter of fact, they were showing -- they were showing
22 the video to the jury like that, to these twelve people,
23 like, this is me going in this store committing this crime
24 wearing a white shirt and blue jeans and whatever they say
25 I had on, I was trying to tell one of the lawyers -- I

K. DURHAM - DIRECT EXAMINATION BY MR. LIFSEY

12

1 forgot her name -- to say something about the blue jeans
2 because I ain't -- I know I ain't had on no blue jeans in
3 no video.

4 Q. So, are you talking about the video that allegedly ---

5 A. The shoplifting video.

6 Q. --- showed you shoplifting at the Walmart?

7 A. Yes, sir.

8 Q. And what do you say your lawyers did wrong about that
9 video?

10 A. No, she told me -- she told me, like, hold on, wait.
11 I guess about what I was trying to say. She told me to
12 hold on and wait, but...

13 Q. So, you want -- you wanted her to fight to keep that
14 out? Is that what you're saying?

15 A. I wanted -- I really wanted to say something about
16 that, basically her to say something about the video.

17 Q. Okay. All right, what else do you think your lawyers
18 did wrong?

19 A. I ain't know nothing about -- I ain't know nothing
20 about, like, five -- I knew -- I knew something about the
21 first what you call it, the first initial statement my
22 codefendant wrote. I ain't found out nothing -- I ain't
23 found out about the other five statements he wrote until,
24 like, my -- the day of trial. That's when they came up
25 with some more evidence, some new evidence.

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13

1 Q. And you had not ---

2 A. So, basically I felt ---

3 Q. --- seen that?

4 A. I felt like she should -- she could at least gave me
5 my whole motion of discovery where I could have knowed that
6 so we could attack that, but, yeah, they let my codefendant
7 get on the stand and, and, I guess, whatever he said. But
8 basically what I'm trying to say is he, he wrote,
9 altogether he wrote six statements.

10 Q. Okay. You're saying you weren't ---

11 A. And I felt she should have said something about that.

12 Q. You said you weren't aware of those statements prior
13 to the trial?

14 A. No, sir.

15 Q. Your lawyer never showed you any of those statements?

16 A. No, sir.

17 Q. All right. Do you have other complaints about things
18 your lawyers did or didn't do during the trial?

19 A. Yes, a couple complaints, but through it all --
20 through it all, I just really -- how can I explain it? I
21 think I was just really -- but -- forced in trial. I, I
22 think I was just really forced to trial, like -- because it
23 wasn't -- I ain't say nothing about them trying two
24 different cases in one trial. I don't think I said -- I
25 don't think I said nothing to them about that, but I think

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14

1 I could -- I think I should have said something about that
2 two.

3 Q. You mean two -- when you talk about two different
4 trials at once, the judge wasn't -- this isn't the same
5 judge as it was -- the judge was the time of your trial.
6 Explain what you mean by that.

7 A. When I got charged with the City of Columbia and I got
8 charged with Richland County, basically they, like, tried
9 both of them, both of them cases, but they tried two
10 different cases in one trial. Like, I ain't never seen
11 that before, but basically if they don't get me on this set
12 of charge, they can railroad me on this set of charges. It
13 just really -- they killed my character. I don't -- I
14 don't think it was no win situation. I was in a lose-lose
15 situation. I could -- it could -- I think they could've
16 been tried at least differently.

17 Q. So, you're, you're, you're saying the trial -- the
18 case that involved the alleged robbery could have been
19 separate from the case involving police officers, the
20 chase, and trying to arrest you. Is that what you're
21 saying?

22 A. Yes, sir.

23 Q. You raised some objections. I know you're not a
24 lawyer, but you did -- you did complain about them not
25 objecting to the jury charge in your application. Is that

K. DURHAM - DIRECT EXAMINATION BY MR. LIFSEY

15

1 right?

2 A. I think that's what my -- what you call him, my
3 appellate lawyer?

4 Q. Yeah.

5 A. Yeah. That was -- she -- that was what she filed in
6 the *Anders* brief.

7 Q. Yes, and your appellate lawyer indicated there was an
8 issue regarding, regarding something she couldn't raise.
9 Is that correct?

10 A. Right.

11 Q. In that regards, was the charge -- she mentioned that
12 *Belcher*, the case. Is that correct?

13 A. Yes, sir.

14 Q. Anything else you want to raise or complain about your
15 lawyers?

16 A. I can't say too -- I can't really complain too much
17 because they, they, they fought a little. I think they
18 fought a little bit, but I guess -- I guess they wasn't --
19 we wasn't ready.

20 Q. Okay. Okay.

21 MR. LIFSEY: Answer any questions the attorney general
22 has.

23 MR. BARLOW: May it please the court?

24 THE COURT: Yes, sir.

25 CROSS-EXAMINATION BY MR. BARLOW:

K. DURHAM - CROSS-EXAMINATION BY MR. BARLOW

16

1 Q. Good after -- or good morning. How are you today?

2 A. I'm doing all right.

3 Q. All right, Mr. Durham, you're here today alleging
4 ineffective assistance of trial counsel, correct?

5 A. Yes, sir.

6 Q. I know that your attorney has explained to you what
7 this court can grant you, but I want to go over it one more
8 time just to make sure that you have a complete
9 understanding of what this court can grant you today. Do
10 you know what a PCR relief is?

11 A. Post-conviction relief.

12 Q. Right.

13 A. Yes, sir.

14 Q. And do you know what that relief is?

15 A. Explain it to me.

16 Q. So, you go back to square one; if this court grants
17 you relief, you go back to square one. You leave SCDC.
18 You go back to the county jail. All indictments come back
19 on. You, you go back for a brand new trial on all the
20 indictments that you originally faced. Do you understand
21 that?

22 A. Yes, sir.

23 Q. And how many years did you get in your sentence?

24 A. Twenty-four. Altogether, it added up, like, a 100
25 something, but they ran concurrent.

K. DURHAM - CROSS-EXAMINATION BY MR. BARLOW

17

1 Q. Right.

2 A. And my highest number was twenty-four.

3 Q. Okay. Do you know what the maximum or the potential
4 maximum is that you are facing at a new trial on all of
5 those indictments?

6 A. No, sir.

7 Q. Okay. So assault and battery first degree, do you
8 know what the maximum is?

9 A. Ten. Zero. I'm not -- I'm not sure.

10 Q. Maximum is ten years.

11 A. Yes, sir.

12 Q. Okay, and possession of a weapon during the commission
13 of a violent crime?

14 A. Zero to five, something like that.

15 Q. So, five maximum. Carjacking?

16 A. Zero to twenty, zero to thirty.

17 Q. Twenty and attempted murder?

18 A. Zero to thirty.

19 Q. Thirty, and kidnapping?

20 A. Zero to thirty.

21 Q. Thirty, and armed robbery?

22 A. Ten to thirty.

23 Q. Okay. So, at trial you're looking at about
24 approximately 200, almost 200 or a little over 200 years,
25 correct?

K. DURHAM - CROSS-EXAMINATION BY MR. BARLOW

18

1 A. Yes, sir.

2 Q. Do you still wish to proceed?

3 A. Yes, sir.

4 Q. Okay. So, how many times did your attorneys speak
5 with you?

6 A. About, about three times.

7 Q. And was that all ---

8 A. I'd say three.

9 Q. --- three attorneys at the same time?

10 A. No. I seen -- I seen -- I seen the last two, like,
11 the third time she came to see me.

12 Q. So, you had never met the -- so, Ms. -- which attorney
13 did you meet initially?

14 A. First?

15 Q. Yeah.

16 A. Ms. Tracy.

17 Q. Okay, and Ms. Tracy came to visit you two to three
18 times. Is that your testimony?

19 A. Yes, sir.

20 Q. Okay, and the third time is when you met the other two
21 attorneys, correct?

22 A. Yes, sir.

23 Q. Okay, and you testified that they forced you to go to
24 trial.

25 A. I think I, I said -- I think I said I was forced to

K. DURHAM - CROSS-EXAMINATION BY MR. BARLOW

19

1 trial because I tried to file a motion to get a new lawyer,
2 but it didn't work. She delayed me -- denied my motion, so
3 I was forced to stay with my -- the lawyer I had, which was
4 Tracy.

5 Q. Right, but that's not -- that's not Ms. Pinnock's
6 decision. That was the court's decision, correct?

7 A. Yes, sir.

8 Q. Okay. So, is it your contention that the court forced
9 you to go to trial or that Ms. Pinnock forced you to go to
10 trial?

11 A. I'd have to say the court.

12 Q. Okay. One of your allegations is that you -- they
13 failed to review discovery with you, and is that all of
14 the discovery? They never reviewed discovery with you at
15 all?

16 A. Yeah, we had -- we had a motion discovery. We sat
17 down and, like I said, we sat down in the multipurpose
18 room and talking and whatever, but I never knew about some
19 of the stuff that was missing out my motion discovery
20 until...

21 Q. Do you recall what was in your discovery?

22 A. Do I recall what was in it? A lot of stuff was in it.

23 Q. One of your allegations is that they gave you no info
24 about the case. Tell me -- tell me about that.

25 A. I said they gave me no -- they gave me no info about

K. DURHAM - CROSS-EXAMINATION BY MR. BARLOW

20

1 the case? I say on that, on that I say, like, far as
2 preparing for trial, we sat there. I think we could have
3 came up with some -- with a better strategy than one we --
4 than we went up and did. Like, I ain't know nothing about
5 suppressing and a lot of y'all language. This stuff, I
6 ain't -- I ain't know a lot about what lawyers supposed to
7 do, like, in a trial and stuff they supposed to bring up.

8 But, like, when we went to trial, like, I remember my
9 mugshot, it was something about the mugshot that wasn't
10 right. I don't know if I told one of them about it, to say
11 anything about it, but it was a lot of -- it was a lot of
12 -- it was a lot of stuff in the trial that wasn't -- that
13 wasn't right.

14 Q. So, did you review this mugshot? Was that in your
15 discovery?

16 A. No, it what's in my discovery. Like the pictures,
17 like, they had, like, six pictures and, like, five, five of
18 the pictures was, like, dark-skinned fellows and I'm'll say
19 I'm light-skinned. Like mine, my, my picture stood out
20 like a sore thumb, and for some reason the victim pointed
21 my picture out.

22 But basically what I'm trying to say with the mugshot,
23 like, the mugshot wasn't even right. I think they should
24 have said something about-- I said something about the
25 *Jackson v. Denno* hearing, something like that, but

K. DURHAM - CROSS-EXAMINATION BY MR. BARLOW

21

1 basically I was trying to say the mugshot wasn't right. It
2 was a lot of stuff.

3 Q. So, the *Jackson v. Denno* hearing, I know that in your
4 original -- or actually your amended allegations, you
5 raised the *Jackson vs. Denno* hearing. Do you recall the
6 court providing a break so that your trial attorneys could
7 explain it to you?

8 A. No.

9 Q. It was page 537, 538 of the transcript.

10 I want to come back to the video. Did you -- you said
11 in your direct that you weren't wearing blue jeans.

12 A. Right.

13 Q. When did you watch that video?

14 A. I didn't. They were -- they were showing the video to
15 the jury, but I, I know exactly what I had on, and I know
16 that this video that they talking about is not right. That
17 person wearing blue jeans, who they say wearing blue jeans
18 going, going in this place, committing this crime, I know
19 that wasn't me, but somehow they trying to say that was me
20 walking in Walmart committing this crime.

21 And later on down the line, that same -- that same
22 video that they use in my trial is, like, is, is dismissed.
23 It was -- I had pending charges in Lexington County, too.
24 That same charge I'm telling you about today is -- like,
25 got dismissed after I went to trial, like, six months after

K. DURHAM - CROSS-EXAMINATION BY MR. BARLOW

22

1 trial.

2 Q. What was the Lexington charge?

3 A. I had a couple charges. Shoplifting and it was a --
4 it was -- it was, like, three of them.

5 Q. Those were noll prossed because of your trial,
6 correct?

7 A. Say it again?

8 Q. Those were dismissed because of your trial that you
9 went to, correct?

10 A. I wouldn't say they was dismissed because of my trial.
11 I had had pending charges. I, I -- matter of fact, they
12 tried to get me to go to -- ain't no trial. They got me to
13 go to Lexington County. They tried to get me to plead to
14 three zero to tens ran concurrent with what I was doing,
15 but I, I turned down a plea and she was, like -- the
16 solicitor was, like, next it was going -- it was going to
17 be serious.

18 Well, long story short, I never end up going back to
19 Lexington County. They shot me a yellow envelope and
20 stating all my charges in Lexington County has been
21 dismissed.

22 Q. Because you had gone to trial and been convicted on
23 the Richland County charges, correct?

24 A. I wouldn't say that. Those charges ain't had nothing
25 to do with Richland County. Those charges was in Lexington

1 County.

2 Q. And I believe on direct you -- there was some
3 testimony about failure to object to the shoplifting video
4 being played, correct?

5 A. Right.

6 Q. Okay. Do you recall them objecting?

7 A. I can't recall it.

8 Q. Multiple times. In one argument, page 72 to 78 of the
9 record, page 223 to 226 of the record, page 228 of the
10 record, and again on page 228 to 229, do you recall them
11 objecting to the video?

12 A. I don't -- I don't got my transcript in front of me,
13 so I can't recall what you're talking about.

14 Q. Would you like one?

15 A. If you could give you a copy.

16 MR. BARLOW: Your Honor, may I approach?

17 THE COURT: Yes, sir.

18 Q. Do you want me to call out those page numbers so you
19 can look?

20 A. Yes, sir.

21 Q. Page 72 to 78 was the initial argument on the video.

22 (A PAUSE.)

23 A. Yeah, I see what you saying about where she tried to
24 exclude the evidence.

25 Q. Right. So, she objected to the evidence coming in,

K. DURHAM - CROSS-EXAMINATION BY MR. BARLOW

24

1 the video being played.

2 A. Okay.

3 Q. So, you would agree with me that they did object to
4 that?

5 A. Right. I can't take that from them.

6 Q. Okay. Did you want to look at the other objections?

7 MR. LIFSEY: Your Honor, I certainly don't want to
8 inhibit however the solicitor -- the attorney general wants
9 to cross-examine, but I think the court has the record and
10 can look at what the record says or doesn't say.

11 MR. BARLOW: Thank you, Your Honor.

12 A. Okay, I see what you just said, the statements they
13 made.

14 Q. All right.

15 MR. BARLOW: Beg the court's indulgence.

16 (A PAUSE.)

17 MR. BARLOW: Your Honor, I think that's all.

18 MR. LIFSEY: I don't have any further questions for
19 this witness.

20 THE COURT: All right, thank you, sir. You can go sit
21 back with your lawyer, okay?

22 WITNESS: Okay.

23 (THE WITNESS EXITS THE STAND.)

24 MR. LIFSEY: Your Honor, I don't really have any
25 additional witnesses. Obviously, I want to argue the issue

T. PINNOCK - DIRECT EXAMINATION BY MR. BARLOW

25

1 regarding the jury charge.

2 But it's my understanding is you're ready to call Ms.
3 Pinnock. We can explore that issue with -- through her
4 rather than me calling her.

5 THE COURT: If you need a rebuttal, we'll allow it if
6 necessary.

7 MR. LIFSEY: Thank you.

8 MR. BARLOW: Your Honor, the state would call Tracy
9 Pinnock.

10 THE COURT: Very well.

11 TRACY PINNOCK, BEING DULY SWORN,

12 TESTIFIES AS FOLLOWS:

13 THE COURT: State your name for the record.

14 WITNESS: Tracy Pinnock.

15 DIRECT EXAMINATION BY MR. BARLOW:

16 Q. Good morning, Ms. Pinnock.

17 A. Good morning.

18 Q. How long have you been practicing law?

19 A. I believe it will be fourteen years in November.

20 Q. And how much of that has been criminal?

21 A. My entire career.

22 Q. And were you appointed in this case?

23 A. Yes, I was.

24 Q. And roughly how long before the trial were you
25 appointed?

T. PINNOCK - DIRECT EXAMINATION BY MR. BARLOW

26

1 A. Mr. Durham's case was assigned to me in August of
2 2014.

3 Q. And during that time, did you receive discovery?

4 A. I did.

5 Q. And did you review the discovery with the applicant?

6 A. I did.

7 Q. Do you recall how many times you met with applicant?

8 A. Give me one second.

9 (A PAUSE.)

10 A. What I have in my notes is at least eighteen, eighteen
11 times.

12 Q. Okay, and just to step back real quick, you were
13 appointed in -- excuse me -- August of 2014. This went to
14 trial in 2016, correct?

15 A. Yes, April of 2016.

16 Q. So, almost two years, just shy?

17 A. Yes.

18 Q. Of a couple months, okay, and over that time, you met
19 with him eighteen times?

20 A. Yeah, approximately.

21 Q. Okay.

22 A. Yes.

23 Q. Can you give us a brief overview of your understanding
24 of the state's evidence in this case?

25 A. What I can recall is we were dealing with two separate

T. PINNOCK - DIRECT EXAMINATION BY MR. BARLOW

27

1 incident dates. One case involved a carjacking of two
2 individuals sitting in the car in a parking lot somewhere.
3 I can't remember where. I believe they said they were
4 approached by two individuals. There was a weapon
5 involved. I cannot recall if they described, you know,
6 one, one person or the other holding the weapon, but I do
7 know there was a gun involved. Some items were taken, and
8 the two individuals fled the scene. For the -- and then
9 they provided the, you know, description to law
10 enforcement. Photo lineups were done.

11 And then there was a second incident date in which all
12 of the listed victims in that case were law enforcement,
13 and it was said that when they were trying to arrest Mr.
14 Durham, he tried to flee the scene. They alleged that he
15 tried to run them over with the car, so that's where he got
16 the three counts of attempted murder.

17 Q. There was video of this?

18 A. Of the shooting incident?

19 Q. Right.

20 A. Or the second incident ---

21 Q. Right.

22 A. --- where there were shots fired? No, there was no
23 video.

24 Q. There was no video at all?

25 A. No, not that I recall.

T. PINNOCK - DIRECT EXAMINATION BY MR. BARLOW

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1 Q. Do you recall if -- and you -- there were two victims
2 that were in the carjacking. Do you recall them ID'ing the
3 applicant in a photo lineup?

4 A. There was a photo lineup done; Mr. Durham's picture
5 was picked out of that lineup. If I recall correctly, we
6 challenged the lineup during the trial because we did think
7 there were problems with it, but ultimately it was
8 introduced.

9 Q. Do you recall -- well, let me ask you this. Based on
10 the state's evidence, were you able to craft a defense
11 strategy?

12 A. Yes, we did.

13 Q. And did you discuss that with the applicant?

14 A. We did.

15 Q. What was your defense strategy in this case?

16 A. So if memory serves me correctly, for the first
17 incident it was challenging the identification. I haven't
18 read the entire transcript, so I couldn't tell you exactly
19 how we did it, but it was mainly challenging the
20 identification that was done. And for the second incident,
21 it was, in a nutshell, intent. Does that answer your
22 question?

23 Q. Sure.

24 A. Okay.

25 Q. There on direct with applicant, do you recall him

1 trying to remove you as his attorney?

2 A. I do.

3 Q. Okay, and there was also some testimony that this was
4 only one trial. Do you recall -- do you have a strategic
5 reason as to why you could not sever the charges or the
6 trials?

7 A. So, we, we did talk about not -- I don't know if I
8 talked about it with Mr. Durham or not, but we discussed it
9 amongst ourselves -- myself, Ms. Williams, and Mr. Bailey
10 -- about the possible consequences of trying sever the
11 cases. And because of the nature of the charges and their
12 classification, it would have opened him up to being served
13 with life without parole if he was convicted on both. So,
14 we made the decision not to sever.

15 Q. That was your strategic reason, correct?

16 A. It was.

17 Q. Okay. There was some testimony on direct that you --
18 that he was not comfortable with you. Did, did you ever
19 feel that you could not communicate with him?

20 A. I mean, I represented him for a while. There are
21 things, you know, we talked about. We had agreements,
22 disagreements. All I can say about that is he did request
23 that I file a motion to relieve. That was heard on April
24 4th of 2016 in front of the Honorable Judge Gee. It was
25 denied at that point.

T. PINNOCK - DIRECT EXAMINATION BY MR. BARLOW

30

1 And then the trial started shortly after that, and
2 then I did later find out after the trial was over that Mr.
3 Durham had filed a grievance. I found out after he had
4 been convicted by the jury. I believe I got that letter in
5 my office on that Monday after I came back to the -- to
6 work. I think I took that Friday off. Came back to work
7 that Monday, and he had filed a grievance at that point
8 that I responded. So, clearly there were some issues that
9 he was trying to address that I didn't know about until
10 after the fact.

11 Q. And I believe on his direct, he testified that new
12 evidence brought in the day of trial was the -- he did not
13 know about the codefendant's statement. Did you review
14 that with him?

15 A. So, looking back at the, the transcript, I didn't have
16 -- and I didn't have an independent memory of it, but it
17 does look like they -- we always say, you know, dump
18 evidence on us at the last minute. It does seem that they
19 gave us two or three discs of statements from the
20 codefendant on the day that the trial started. We
21 addressed it on the record.

22 I, I didn't see -- and I might have missed it; if you
23 can point me in a, you know, a particular page -- I didn't
24 see where the judge made any particular ruling on that, but
25 it was something that happened. We got two or three new

T. PINNOCK - DIRECT EXAMINATION BY MR. BARLOW

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1 discs that we did not have before the day the trial
2 started.

3 Q. I guess, let's talk about the failure to object to the
4 jury instruction. Have you read the jury instruction?

5 A. Yes.

6 Q. And did you note in the jury instruction where the
7 judge instructed that the jury can infer malice from the
8 use of a deadly weapon?

9 A. I did.

10 Q. And is there a reason why you didn't object to that?

11 A. I, I just missed it.

12 Q. You were familiar with *Belcher* at that time, though?

13 A. Yes.

14 Q. Did the judge instruct on specific intent?

15 A. Not that I recall; not that I recall. Is it in there?

16 MR. BARLOW: Your Honor, may I approach?

17 THE COURT: You may.

18 (A PAUSE.)

19 A. Okay. Thank you.

20 Q. So, the judge -- I'll give you time to review it.

21 A. Thank you.

22 (A PAUSE.)

23 A. Yes, it seem -- appears that the judge did charge a
24 specific intent.

25 Q. Okay.

T. PINNOCK - DIRECT EXAMINATION / CROSS-EXAMINATION 32

1 MR. LIFSEY: May I just ask -- I'm sorry to interrupt
2 -- what page of the transcript?

3 WITNESS: 745.

4 MR. LIFSEY: Thank you. I'm sorry.

5 Q. Did the jury convict the applicant of the three
6 attempted murders?

7 A. No. He was only convicted on one attempted murder.
8 One was a not guilty, and the other one he was convicted of
9 a lesser-included assault and battery first.

10 Q. So with that, would you consider that the jury did not
11 stick on or hold onto that -- the malice?

12 A. I don't know if I can answer that.

13 MR. BARLOW: Thank you, Your Honor.

14 MR. LIFSEY: May it please the court?

15 THE COURT: Yes, sir.

16 CROSS-EXAMINATION BY MR. LIFSEY:

17 Q. Ms. Pinnock, I want to ask you a couple of questions
18 based on what the solicitor said. First of all, you
19 mentioned additional discovery being dumped on y'all at the
20 last minute.

21 A. Yes.

22 Q. And that included statements of the codefendant ---

23 A. Yes.

24 Q. --- correct, and obviously that was important
25 testimony.

T. PINNOCK - CROSS-EXAMINATION BY MR. LIFSEY

33

1 A. It was. I don't recall how long the interviews were,
2 but there was at least two discs of recorded interviews
3 that we did not have prior to that day.

4 Q. And that was -- that day, you mean the day of the
5 trial?

6 A. Yes. We had started. I believe we had selected a
7 jury, but I don't think that they have been sworn, but we
8 had been -- our case had been called. We had started the
9 process, and that afternoon we had been provided those
10 discs.

11 Q. And you said, you told the attorney general that you
12 addressed it. What does that mean?

13 A. So looking back, it -- I believe, you know, I was
14 trying to renew my discovery requests because we had just
15 been given this information. I brought up to the judge
16 that we had met with the solicitors prior to the trial
17 starting, gone through their file. They did not have those
18 discs in there, and then all of a sudden they appeared, you
19 know, on that day when we were -- when we had started the
20 trial.

21 I don't recall if I asked for any relief; I'd have to
22 go back and read. I haven't read the whole transcript
23 through, but I did address it, and then I feel like we just
24 kind of moved on from it. I don't recall asking for
25 anything specific.

T. PINNOCK - CROSS-EXAMINATION BY MR. LIFSEY

34

1 Q. Did you move the case be continued so you and your
2 client could discuss this additional evidence?

3 A. I did not.

4 Q. All right. You, you mentioned the -- the attorney
5 general asked you about motion to sever.

6 A. Yeah.

7 Q. And you said you decided not to make the motion to
8 sever. Is that correct?

9 A. Correct.

10 Q. All right. Now, obviously you're, you're an
11 experienced trial lawyer. You mentioned you had tried
12 criminal cases for over a decade, correct?

13 A. Yes.

14 Q. Obviously there are reasons we move to sever the
15 cases, correct?

16 A. Correct.

17 Q. And, and one of those reasons, and I guess I would
18 argue the most important reason is the more incidents a
19 jury hears about a client, the more negatively they look to
20 the client. Is that correct?

21 A. I would agree, yes.

22 Q. So, when you made -- I understand your concern about
23 potentially a life without parole case, but were there also
24 negatives in proceeding with it and one incident when you
25 hear this long string of problems?

T. PINNOCK - CROSS-EXAMINATION BY MR. LIFSEY

35

1 A. Is there -- yes.

2 Q. I mean, because certainly then the jury's hearing not
3 just about either a, a, a attempted armed robbery or
4 robbery or an incident where somebody gets into an
5 altercation with police and a chase. They're hearing about
6 it all together. So, that itself is a negative, correct?

7 A. Yes. I would agree.

8 Q. And before you could get the potential life without
9 parole issue, you would have to have been convicted of one
10 of those things, correct?

11 A. Yes.

12 Q. And obviously -- I mean, wouldn't you agree that the
13 odds of him being convicted of one becoming less if they
14 don't hear about the other one as well?

15 A. I mean, yes, I would agree.

16 Q. Did you discuss at any point the strategic decision
17 with the client?

18 A. I do not recall if I discussed it with Mr. Durham now.

19 Q. All right. I want to ask you about the jury charge,
20 and I don't want to beat that dead horse, but it's a kind
21 of important issue here. I mean, your theory in this case
22 as to the attempted murders was -- I mean, what, what was
23 your theory? Didn't y'all argue sort of the police
24 provoked some of this?

25 A. I think we did. I know part of our thing was -- or

T. PINNOCK - CROSS-EXAMINATION BY MR. LIFSEY

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1 part of our position was the officers were responding for
2 an arrest, you know, having knowledge and information about
3 Mr. Durham. You know, they responded to the scene with
4 twenty-plus different law enforcement, jumped in front of a
5 moving car, and then claimed that their lives had been
6 threatened by somebody when they were the ones that jumped
7 in front of the moving car. So, that's how we were kind of
8 looking at that particular case.

9 Q. If the jury had believed that as to all the counts,
10 that would reduce mitigating -- or excuse Mr. Durham's
11 conduct, correct?

12 A. Correct.

13 Q. And *State v. Belcher*, which I know the court knows,
14 but if I could just for the record indicate that *Belcher* --
15 I am referring to *State v. Belcher*, 385 SC 597, 685 SE 2d
16 802, was a 2009 case prior to this trial ---

17 A. Yes.

18 Q. --- correct, and at the time of the trial, the rule
19 was a, excuse me, a -- that, that if the jury's not allowed
20 -- judges are not supposed to charge malice being inferred
21 from the use of a deadly weapon when evidence is presented
22 that would reduce mitigating excuse or justified. Is that
23 correct?

24 A. Correct.

25 Q. That was not done in this case?

T. PINNOCK - CROSS-EXAMINATION BY MR. LIFSEY

37

1 A. It was not.

2 Q. All right.

3 MR. LIFSEY: Give me one -- if I may, the court's
4 indulgence?

5 (A PAUSE.)

6 MR. LIFSEY: I don't have any other questions, Judge.
7 Thank you.

8 MR. BARLOW: Nothing further.

9 THE COURT: All right, thank you. You may step down.

10 (THE WITNESS EXITS THE STAND.)

11 MR. BARLOW: Your Honor, the state rests.

12 MR. LIFSEY: I, I don't have anything further for
13 witnesses, Judge.

14 THE COURT: All right, any -- would you prefer to send
15 proposed orders, or is there any argument you'd like to sum
16 up the case with?

17 MR. LIFSEY: Whatever the court feels is appropriate.
18 I don't -- I don't feel -- let me -- I'll just say this.

19 I think obviously some of these issues are credibility
20 matters that the judge as the finder of fact has to make
21 credibility decisions on. And, and some of them are legal
22 matters in which it's certainly interpretation of the
23 *Belcher* case and how it applies to the judge's instruction.
24 I would concede certainly the judge instructed -- gave a
25 specific intent instruction. I argue that does not do away

1 with the error in instructing malice as to that charge.
2 That -- that's our argument on that issue.

3 MR. BARLOW: And, Your Honor, I believe it's a
4 harmless error review in this case, but if we could be
5 allowed to maybe submit a memo in support of our positions
6 on the *Belcher* issue to you?

7 THE COURT: Why don't we do this? I'm going to take
8 this issue under advisement. Obviously if you could just
9 send proposed orders specifically addressing that issue,
10 then -- that seems to be a key issue. Obviously I won't --
11 from your previous motions and everything you've turned in,
12 I will address the other issues as well. So, if we can do
13 that, I'll take it under advisement.

14 I'll give you thirty days. If you need more time,
15 we'll just -- that will just give us a deadline. We'll
16 follow back up in thirty days. If you need an additional
17 thirty days, that won't be a problem, but just so we don't
18 lose track of the case, and I'll take this under advisement
19 while I review that material.

20 MR. BARLOW: Thank you, Your Honor.

21 THE COURT: All right. Thank you for being here
22 today.

23 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH 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 HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE 9TH DAY OF MAY, 2023.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

/S/Elizabeth B. Harris, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

JULY 21ST, 2023

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Keylan J. Durham, #347264,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH JUDICIAL CIRCUIT
)

) CASE NO. 2019-CP-40-1125
)

) **ORDER OF DISMISSAL**
) **WITH PREJUDICE**
)

2023 SEP 12 PM 2:05

RICHLAND COUNTY
FILED

This matter comes before the Court by way of Keylan J. Durham's (Applicant) application for post-conviction relief (PCR) filed on February 26, 2019, challenging his trial for three counts of Attempted Murder, two counts of Kidnapping, one count of Assault and Battery—1st Degree, one count of Carjacking, and one count of Possession of a Weapon During the Commission of a Violent Crime. On April 12, 2019, Applicant filed *pro se* amendments to his PCR application. Respondent, the State of South Carolina, made its Return on July 15, 2019, requesting an evidentiary hearing to resolve the claims as set forth in the application.

An evidentiary hearing was convened on May 9, 2023, at the Richland County Courthouse before the Honorable Daniel Coble. Applicant was present and represented by Michael H. Lifsey, Esquire. Assistant Attorney General D. Russell Barlow, II, represented Respondent. At the hearing, Applicant proceeded on the claims in his original and amended applications. In support of these claims, Applicant testified on his own behalf, and Respondent presented testimony from Assistant Public Defender Tracy E. Pinnock, Esquire (Trial Counsel).

Following a thorough review of the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any

constitutional violations or deprivations entitling him to relief and, accordingly, denies and dismissed this action with prejudice.

PROCEDURAL HISTORY

The records before this Court establish Applicant is confined in the South Carolina Department of Corrections pursuant to the Richland County Clerk of Court orders of commitment. Applicant was indicted at the January 2015 term of the Richland County Grand Jury for three counts of Attempted Murder (2015-GS-40-0006, -0007, -0008), two counts of Kidnapping (2015-GS-40-8388, -8389), Assault and Battery—1st Degree (2015-GS-40-0001), Carjacking (2015-GS-40-0005), and Possession of a Weapon During the Commission of a Violent Crime (2015-GS-40-0004). Applicant was represented by Assistant Public Defenders Tracy E. Pinnock (Trial Counsel), J. Rhodes Bailey, and Rebecca S. Williams, all from the Fifth Circuit Public Defender's Office.

Applicant's case proceeded to a jury trial on April 11–14, 2016, before the Honorable Clifton Newman. The jury convicted Applicant as indicted on the following charges: two counts of Attempted Armed Robbery, two counts of Kidnapping, Carjacking, Assault and Battery—1st Degree, one count of Attempted Murder, and Possession of a Weapon During the Commission of a Violent Crime. The jury convicted Applicant of the lesser-included offense of Assault and Battery—1st Degree on the second Attempted Murder charge. The jury acquitted Applicant of the third Attempted Murder charge. Judge Newman sentenced Applicant to concurrent terms of imprisonment for ten years for each Assault and Battery—1st Degree; twenty-two years for each Kidnapping; twenty years for Carjacking; twenty-four years for Attempted Murder; and five years for Possession of a Weapon During the Commission of a Violent Crime.

Applicant filed a timely notice of appeal. Appellate Defender Susan B. Hackett (Appellate Counsel) perfected Applicant's appeal by filing an Anders¹ brief to the court of appeals. The South Carolina Court of Appeals dismissed the appeal in an unpublished decision. State v. Keylan J. Durham, Op. No. 2018-UP-149 (Ct. App. filed April 11, 2018). The Remittitur was returned to the circuit court on April 27, 2018.

FACTS GIVING RISE TO THE CONVICTION

Applicant's charges stem from events that occurred on August 4 and 6, 2014. On August 4th, Applicant approached a car idling in the parking lot of the In-Town Suites. Marck Drastich (Drastich) and his wife, Lashonda Edwards (Edwards), were talking inside the car, a mid-nineties Oldsmobile. The couple had just returned home from the Ale House. Edwards was in the driver's seat, and Drastich was in the passenger seat. Applicant approached Drastich wearing a white shirt, wig, hat, and glasses, and brandishing a silver handgun. Drastich told Applicant he did not have any money and tried to exit the car. When Drastich tried to exit, Applicant struck him in the face with the gun. Applicant then turned his attention towards Edwards, and Drastich was able to escape. Edwards exited, and Applicant took the Oldsmobile. (Trial Tr. pp. 134–42, 180–89). Drastich identified Applicant out of a photo lineup and also made an in-court identification of Applicant as the person who robbed him. (Trial Tr. pp. 147–51). Edwards was unable to identify the assailant. (Trial Tr. p. 196).

Officer Jason Van Valkenburgh (Van Valkenburgh) responded to the carjacking call. Drastich informed him there was a "blacked out sports car" waiting nearby during the Carjacking. (Trial Tr. pp. 162–64). While conducting his investigation, Van Valkenburgh learned of a call concerning a civil disturbance at Paces Brook Apartments, which was across the street from In-

¹ Anders v. California, 386 U.S. 738 (1976).

Town Suites, involving a black Camaro. (Trial Tr. p. 164). Then, Van Valkenburgh saw a black Camaro drive by at a high rate of speed. Van Valkenburgh then began chasing the Camaro. (Trial Tr. pp. 165–66). In addition to his testimony regarding the pursuit, the State introduced the dash-cam video from Van Valkenburgh's patrol car into evidence. (Trial Tr. pp. 166–68). The Camaro eventually wrecked, and the two occupants fled on foot. After an ensuing foot chase, the officers caught one of the men, Devontae Bryant (Bryant). (Trial Tr. p. 170). Once arrested, Bryant implicated Applicant as the driver of the Camaro. (Trial Tr. p. 271).

Bryant testified at trial, that he and Applicant went to In-Town Suites in the Camaro. According to Bryant, Applicant told him he was "about to go handle something." (Trial Tr. p. 271). Bryant did not see Applicant exit the Camaro with a gun or wig. (Trial Tr. p. 272). However, the next time Bryant saw Applicant, Applicant was in "an old kind of car" at a gas station; Bryant was driving the Camaro. (Trial Tr. p. 272). Bryant followed Applicant from the gas station to Wal-Mart, and Bryant saw Applicant go inside Wal-Mart while Bryant waited in the Camaro. Thereafter, Bryant followed Applicant to a hotel, where Applicant parked the older-looking car. Applicant then got back into the Camaro, and Bryant moved to the passenger seat. Applicant then drove the Camaro to an apartment complex. (Trial Tr. pp. 272–74).

At the gas station, Cullen Bennecker (Bennecker) and Zane Harris (Harris) asked Applicant to buy them some beer. Applicant was driving an Oldsmobile. Applicant agreed but asked them to follow him to Walmart. When Applicant and Harris went inside Wal-Mart, Bennecker stayed in the parking lot and noticed a black Camaro pull up. Additionally, Bennecker noticed a silver pistol holster in the Oldsmobile's driver seat. When Harris and Applicant returned, Applicant invited Harris and Bennecker to join him at Ale House. (Trial Tr. pp. 173–76, 212–15). Bennecker and Harris agreed; however, instead, they went to Waffle House. Thereafter, they returned to

Harris's apartment at Paces Brook. Upon exiting their car, they saw headlights enter the complex's parking lot. The Camaro entered the parking lot, and Applicant and another man tried to waive Bennecker and Harris down. Bennecker and Harris ran into the apartment and called the police. (Trial Tr. pp. 176–77, 215). Harris identified Applicant as the man he interacted with that night. (Trial Tr. pp. 216–17).

The Camaro pulled into Paces Brook, and Applicant exited the car. Soon after, a police officer approached Applicant. Applicant ran back to the Camaro, which started the high-speed chase. The Camaro wrecked during the chase. A search of the Camaro revealed a camera still in its box, allegedly stolen from Walmart. (Trial Tr. p. 372).

Officer Mark Sjolund spotted the Oldsmobile in the parking lot of the Wingate Inn two days later, on August 6. (Trial Tr. pp. 244–45). The police found a brown wig in the Oldsmobile. (Trial Tr. p. 377).

Applicant's girlfriend, Kiane Warner (Kiane), testified for the State at trial. She recalled seeing Applicant in a black Camaro but could not remember a timeframe seeing him in the car. (Trial Tr. p. 252). Kiane testified that Applicant told her he had just taken the cops "on a high-speed chase, and when he got on the highway, he hit a curb" on August 4, 2014. Applicant also told Kiane he climbed over Bryant to exit the car. Additionally, Applicant gave Kiane some European currency. (Trial Tr. pp. 253–56).

On August 6, the police arrived at Kiane's apartment looking for Applicant; however, Applicant was not there. Kiane told them that Applicant was in her car with her brother, Quinten Warner (Warner). (Trial Tr. pp. 256–61). Several officers arrived at Warner's apartment looking for Applicant. In the parking lot of Warner's apartment complex, Applicant tried to evade law enforcement again, this time in Warner's car. However, he struck a light pole and was

apprehended. Before he wrecked, Applicant struck Officer Marcus Brown (Brown) in his attempt to flee. (Trial Tr. p. 293). Brown then fired several shots into the car. (Trial Tr. p. 293). Investigator Justin Britt and Agent Keith Thrower were at the scene to locate Applicant, and also testified Applicant nearly struck them with the car as Applicant was trying to flee. (Trial Tr. pp. 327, 452).

CURRENT ACTION BEFORE THIS COURT

In his application for post-conviction relief, Applicant alleged he was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel;
2. The trial court erred by instructing the jury it could infer malice from the use of a deadly weapon;
3. Counsel erred by not objecting to the improper charge; and
4. Counsel failed to investigate the factual and legal circumstances surrounding the case.

On April 12, 2019, Applicant filed *pro se* amendments to his PCR application, adding additional claims for relief:

1. Ineffective Assistance of Counsel
 - a. Failure to provide complete discovery and to review discovery before trial;
 - b. Failure to properly investigate and prepare Applicant for trial;
 - c. Failure to object to the shoplifting video being played for the jury;
 - d. Failure to impeach witnesses for contradictory testimony;
 - e. Failure to give Applicant advice about the Jackson v. Denno hearing;
 - f. Failure to make all contemporaneous objections; and
 - g. Failure to advise Applicant of the new evidence brought in the day trial started.
2. Ineffective Assistance of Appellate Counsel
 - a. Failure to raise all meritorious issues.

Before this Court are Applicant's application for post-conviction relief, Applicant's amended PCR application, the Richland County Clerk of Court general sessions records from the

underlying conviction, the complete trial transcript, Applicant's complete records from his appeal, and Applicant's records from the South Carolina Department of Corrections.

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act² (the Act) provides that any person who has been convicted of a crime may seek post-conviction relief based upon the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right and raises a

² S.C. Code Ann. §§ 17-27-10 to -160.

question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland v. Washington to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction. 466 U.S. 668, 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. Id. at 687–88; accord. Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Strickland, 466 U.S. at 700; see also Bell v. Cone, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable." (citation and internal quotation marks omitted)).

Regarding the deficiency prong of the Strickland analysis, the proper measure of performance is whether counsel provided representation within the reasonable range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. When analyzing counsel's performance, the reviewing court will strongly presume counsel provided adequate assistance, and the applicant is responsible for rebutting that presumption "by proving that his attorney's representation was unreasonable under prevailing professional norms and that the challenged action was not sound strategy." Kimmelman v. Morrison, 477 U.S. 365, 384

(1986); cf. Cullen v. Pinholster, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to act reasonably considering all the circumstances in order to overcome the presumption of adequate representation).

Furthermore, the reviewing court will scrutinize counsel's performance in a highly deferential manner, make every effort "to eliminate the distorting effects of hindsight," and "evaluate the conduct from counsel's perspective at the time" in light of then-existing circumstances. Strickland, 466 U.S. at 689. In order to establish counsel's performance was deficient, the applicant must demonstrate "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 687. Accordingly, counsel's performance will be considered deficient only when it was objectively incompetent under prevailing professional norms and *not* when it simply "deviated from best practices or most common custom." Harrington v. Richter, 562 U.S. 86, 105 (2011).

Beyond satisfying the burden required by the deficiency prong, an applicant also bears the burden of establishing prejudice in order to be entitled to relief as "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." Strickland, 466 U.S. at 691. To meet this burden, counsel's deficient performance must have prejudiced the applicant to such an extent, there is a reasonable probability the result of the proceeding would have been different but for counsel's unprofessional errors. Cherry, 300 S.C. at 117–18, 386 S.E.2d at 625; see Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) ("To establish a claim of ineffective assistance of trial counsel, a PCR applicant has the burden of proving counsel's representation fell below an objective standard of reasonableness and, but for counsel's errors, there is a reasonable probability the result at trial would have been different."). Importantly, "[t]he likelihood of a different result must be

substantial, not just conceivable." Richter, 562 U.S. at 112.

Finally, the Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689–90. Courts must be wary of second-guessing counsel's trial tactics, and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant's burden of proving both Strickland components is heavy in light of the strong presumption that counsel's conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. Id. at 686; see Nix v. Whiteside, 475 U.S. 157, 175 (1986) (noting that under Strickland, the "benchmark" of the right to counsel is the "fairness of the adversary proceeding"); cf. United States v. Morrow, 977 F.2d 222, 229 (6th Cir. 1992) ("[T]he threshold issue is not whether [the applicant's] attorney was inadequate; rather, it is whether he was *so manifestly* ineffective that defeat was snatched from the hands of probable victory.").

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged and elected to pursue various claims of ineffective assistance of counsel and ineffective assistance of appellate counsel through the post-conviction relief action presently before this Court. In analyzing these claims, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety. This Court additionally heard the testimony presented at the evidentiary hearing and was able to observe the witnesses, which allowed the Court to evaluate and scrutinize their credibility.

Upon conducting and completing its analysis, this Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. See Rule 71.1(e), SCRPC (stating that in a post-conviction relief action, "[t]he applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."); Lucero v. State, 414 S.C. 238, 244, 777 S.E.2d 409, 412 (Ct. App. 2015) ("In a PCR proceeding, the applicant bears the burden of establishing that he or she is entitled to relief."); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) ("The burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application.").

Accordingly, set forth below are the relevant findings of facts and conclusions of law as required by § 17-27-80 of the South Carolina Code:

INITIAL FINDINGS

As a matter of general impression, this Court finds Trial Counsel's testimony at the evidentiary hearing **credible** and **persuasive**, where she presented well-recalled testimony of relevant background, facts, and discussions leading up to and during the trial. This Court finds Applicant's testimony at the evidentiary hearing **not credible**. This Court further finds applicable the strong presumption that at all stages of Trial Counsel's representation of Applicant that she rendered adequate assistance and exercised reasonable professional judgment in her representation. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, *supra*). The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689, 104 S.Ct. 2052; see Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL ALLEGATIONS ON THE MERITS

Allegation 1a: Failure to provide complete discovery and to review discovery before trial.

Allegation 1g: Failure to advise Applicant of the new evidence brought in the day trial started.

Applicant alleges Trial Counsel was constitutionally ineffective for failing to review and provide a copy of his discovery. Applicant also alleges Trial Counsel failed to advise him of the new evidence brought in the day trial started. This Court finds these allegations are without merit.

An applicant who alleges his or her defense attorney was ineffective in failing to spend more time preparing or providing a copy of the discovery materials must demonstrate prejudice by showing what evidence could have been discovered or what other defenses could have been pursued. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)), abrogated on other grounds by Smalls, 422 S.C. 174, 810 S.E.2d 836. Furthermore, an applicant must also show how the new evidence or defenses would have resulted in a different outcome. Id. (citing David v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

At the evidentiary hearing, Applicant testified on direct examination that Trial Counsel showed him the discovery the third time she met with him. (PCR Tr. p. 8). Applicant testified that he only knew of his co-defendant's first statement and did not know about the five other statements the co-defendant wrote. (PCR Tr. p. 12). Applicant testified that those statements were brought in on the day of trial. (PCR Tr. p. 12).

On cross-examination, Applicant testified that they reviewed discovery, but it was not the

complete discovery. (PCR Tr. p. 19).

On direct examination, Trial Counsel testified that she met with Applicant at least eighteen times. (PCR Tr. p. 26). Trial Counsel testified that she received discovery and reviewed it with Applicant. (PCR Tr. p. 26).

On cross-examination, Trial Counsel testified that the statements on the co-defendant were given to them the day trial started. (PCR Tr. pp. 32 – 33). Trial Counsel testified she did not think the jury was sworn, but they provided the remaining statements the day the trial process started. (PCR Tr. p. 33). Trial Counsel testified that she did not request a continuance. (PCR Tr. p. 34).

This Court finds Applicant has failed to overcome the strong presumption that Trial Counsel rendered adequate assistance. See Butler, 286 S.C. at 442, 334 S.E.2d at 814. In addition, Applicant has not presented any new evidence or defenses that could have been discovered by Trial Counsel's further review of the discovery, nor has he explained how further review would have changed the outcome of his trial. See Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (where applicant failed to show ineffective assistance of counsel based on lack of preparation by neglecting to show evidence of what counsel failed to discover or what defenses counsel could have pursued had he more fully prepared for the case); Skeen v. State, 325 S.C. 210, 214-15, 481 S.E.2d 129, 132 (1997) (where applicant failed to show ineffective assistance of counsel when he did not present evidence showing how additional preparation would have impacted the trial).

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation 1b: Failure to properly investigate and prepare Applicant for trial.

Applicant alleges Trial Counsel was constitutionally ineffective for failing to investigate and prepare Applicant for trial. This Court finds this allegation is without merit.

To prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris, 377 S.C. at 75–76, 659 S.E.2d at 145–46 (citing Jackson v. State, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Harris, 377 S.C. at 75–76, 659 S.E.2d at 145–46. Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

On direct examination, Applicant testified that he believed they could have come up with a better trial strategy than the one they had. (PCR Tr. p. 20). Applicant testified that he could not "really complain too much" about Trial Counsel because she "fought a little bit."

This Court finds Applicant has failed to overcome the strong presumption that Trial Counsel rendered adequate assistance. See Butler, 286 S.C. at 442, 334 S.E.2d at 814. In addition, Applicant has not presented any new evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared, nor has he explained how further review would have changed the outcome of his trial. See Harris, 377 S.C. at 75–76, 659 S.E.2d at 145–46 (citing Jackson v. State, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998)); Skeen v. State, 325 S.C. 210, 214–15, 481 S.E.2d 129, 132 (1997) (where applicant failed to show ineffective assistance of counsel when he did not present evidence

showing how additional preparation would have impacted the trial).

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation 1c: Failure to object to the shoplifting video being played for the jury.

Applicant alleges Trial Counsel was constitutionally ineffective for failing to object to the shoplifting video being played for the jury. This Court finds this allegation is without merit.

On direct examination, Applicant testified that Trial Counsel should have said something about the video.

On cross-examination, Applicant testified that he did not remember that Trial Counsel objected to the video multiple times throughout the trial.

This Court finds that the record refutes Applicant's claim that Trial Counsel did not object to the video evidence. In fact, Trial Counsel objected multiple times during the trial to the video evidence. (Trial Tr. pp. 72 – 78; 223 – 226; 228 – 229). Consequently, this Court finds Applicant has failed to overcome the strong presumption that Trial Counsel rendered adequate assistance. See Butler, 286 S.C. at 442, 334 S.E.2d at 814. This Court finds the record conclusively refutes any merit to this allegation, and Applicant has failed to meet his burden.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation 1d: Failure to impeach witnesses for contradictory testimony.

Applicant alleges Trial Counsel was constitutionally ineffective for failing to impeach witnesses for contradictory testimony.

Applicant failed to present any evidence, testimony, or legal authority at the evidentiary hearing regarding this allegation. Therefore, the Court deems it abandoned. "When a party provides no legal authority regarding a particular argument, the argument is abandoned and the court will not address the merits of the issue." Palmer v. State, 427 S.C. 36, 47, 829 S.E.2d 255, 261 (Ct. App. 2019) (citing State v. Lindsey, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011)).

Allegation 1e: Failure to give Applicant advice about the Jackson v. Denno hearing.

Applicant alleges Trial Counsel was constitutionally ineffective for failing to give advice on the Jackson v. Denno hearing. This Court finds this allegation is without merit.

On cross-examination, Applicant testified that Trial Counsel should have had a Jackson v. Denno hearing on the mugshot used. (PCR Tr. p. 20). Applicant testified that he did not recall the trial court pausing so that Trial Counsel could explain the Jackson v. Denno hearing. (PCR Tr. p. 21).

This Court finds that the record refutes Applicant's claim. The trial court took a break so that Trial Counsel could explain the Jackson v. Denno hearing. This Court finds Trial Counsel was able to thoroughly cross-examine and recross-examine the witness. (Trial Tr. pp. 546, l. 1 – 551, l. 3; 551, l. 19 – 554, l. 6). Ultimately, the trial court found Applicant's statement was given freely and voluntarily. (Trial Tr. p. 554, l. 16 – 20). Applicant has the burden to prove every allegation in his application. See Butler, 286 S.C. at 441, 334 S.E.2d at 814. This Court finds Applicant has failed to meet his burden.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation 1f: Failure to make all contemporaneous objections.

Applicant alleges Trial Counsel was constitutionally ineffective for failing to make all contemporaneous objections.

Applicant failed to present any evidence, testimony, or legal authority at the evidentiary hearing regarding this allegation. Therefore, the Court deems it abandoned. "When a party provides no legal authority regarding a particular argument, the argument is abandoned and the court will not address the merits of the issue." Palmer v. State, 427 S.C. 36, 47, 829 S.E.2d 255, 261 (Ct. App. 2019) (citing State v. Lindsey, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011)).

Allegation 1h: Failure to object to the trial court's instructing the jury it could infer malice from the use of a deadly weapon.

Applicant alleges Trial Counsel was constitutionally ineffective for failing to object to the trial court's jury instruction that it could infer malice from the use of a deadly weapon. This Court finds this allegation is without merit.

Prior to Applicant's trial, in State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009), the South Carolina Supreme Court addressed the "half-truth" created by charging that malice could be inferred from the use of a deadly weapon when there was evidence in the record to reduce, mitigate, excuse or justify the killing. After a lengthy discussion, the Court overruled prior precedent and held:

Under our policy-making role in the common law, we hold that the "use of the deadly weapon" implied malice instruction has no place in a murder (or assault and batter with intent to kill) prosecution where evidence is presented that would reduce, mitigate, excuse or justify the killing (or the alleged assault and battery with the intent to kill).

Belcher, 685 S.E.2d at 809.

This Court finds that Trial Counsel erred in failing to argue that the lower court should not have given the inference of malice instruction involving a deadly weapon when evidence was presented that could reduce, excuse, justify or mitigate the homicide. On direct examination, Trial Counsel testified that she was familiar with Belcher, but she did not object because she missed it. (PCR Tr. p. 31).

On cross-examination, the following colloquy occurred:

- Q: All right. I want to ask you about the jury charge, and I don't want to beat that dead horse, but it's a kind of important issue here. I mean, your theory in this case as to the attempted murders was -- I mean, what, what was your theory? Didn't y'all argue sort of the police provoked some of this?
- A: I think we did. I know part of our thing was -- or part of our position was the officers were responding for an arrest, you know, having knowledge and information about Mr. Durham. You know, they responded to the scene with twenty-plus different law enforcement, jumped in front of a moving car, and then claimed that their lives had been threatened by somebody when they were the ones that jumped in front of the moving car. So, that's how we were kind of looking at that particular case.
- Q: If the jury had believed that as to all the counts, that would reduce mitigating -- or excuse Mr. Durham's conduct, correct?
- A: Correct.
- Q: And State v. Belcher, which I know the court knows, but if I could just for the record indicate that Belcher -- I am referring to State v. Belcher, 385 SC 597, 685 SE 2d 802, was a 2009 case prior to this trial ---
- A: Yes.
- Q: --- correct, and at the time of the trial, the rule was a, excuse me, a -- that, that if the jury's not allowed -- judges are not supposed to charge malice being inferred from the use of a deadly weapon when evidence is presented that would reduce mitigating excuse or justified. Is that correct?
- A: Correct.

(PCR Tr. pp. 35 – 36).

Whether failure to object constitutes deficient performance generally hinges on whether a

valid trial strategy was utilized. See Thompson v. State, 423 S.C. 235, 241, 814 S.E.2d 487, 490 (2018) (finding Counsel was deficient because the failure to object was not related to an otherwise valid trial strategy); Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) (where "counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel"). Here, Trial Counsel did not articulate a valid strategy in not objecting to the jury charge. Thus, this Court finds Trial Counsel was deficient for not objecting to the jury charge.

In determining whether a defendant was prejudiced by improper jury instructions, the court must find that by 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).

While this Court finds Trial Counsel was deficient in failing to object to the jury charge of malice, this Court cannot find that Applicant suffered any prejudice from the erroneous jury charge. Further, this Court finds Trial Counsel's error to be harmless error. Here, Applicant was charged with three counts of attempted murder, and the jury only found Applicant guilty of one count of attempted murder. Importantly, the jury convicted Applicant of the lesser included assault and battery—1st on one of the attempted murder charges and acquitted Applicant on the other attempted murder charge. This Court highlights the jury's conviction of the lesser included assault and battery—1st because malice is not an element of this charge. This Court finds that there is not a reasonable likelihood that the jury applied the improper instruction in a way that violates the Constitution.

Moreover, the implied malice from the use of a deadly weapon was not the only implied malice evidence presented at the trial. Officer Marcus Brown (Brown) testified that he thought they had Applicant blocked in a parking space when he got out of his unmarked patrol car. (Trial Tr. p. 292). Brown testified to the following events:

Well, he was in a parking space. You parked in the space and my partner came in at an angle like this. So as I got out the vehicle, I guess, her front bumper was probably a couple of feet away from his rear bumper off to As I exited the vehicle, I looked the side catercorner. at the -- at that time I can only see one person. I was keying in on the driver because that's who we had the I thought we had them pretty well blocked warrants for, so I was thinking he was just going to run off and in, jump out the car and start running. And I'm a little bit quicker than my partner, so I thought I could quickly get to him as he was exiting the car and tackle him or something right there in the parking lot. So as I'm getting out of the vehicle, I look at the rear of the vehicle , I'm looking at the driver in the side mirror. He looks down in the mirror, then I see the red lights come on - - not red lights reverse lights. I hear the car engine like he's gunning the motor. And as he throws it it clicks into gear and I see the back end raise in gear, up and it's coming straight back for me. At that time I jumped to the side as far as I could because I'm next to the patrol car. I was sandwich in between the vehicle. The rear bumper hit me and spun me around to the patrol car. He was trying to turn out. So when he turned out, the side of the car pinned me up against the vehicle and the mirror clipped my arm and broke the mirror off. He kept on going pass me. I was able to draw my gun at that time or probably around the same time and I fired several shots as he drove pass me. He hit a tree. It impacted -- he was going so fast the impact of the tree, the car went up the tree, so the back of the vehicle was up off the ground and we closed in. At that time another officer was coming at the same time to try to catch him. As he pulled in and he got out his vehicle, the vehicle came down off the tree and spun around and came back at us again. We fired again. The other officer fired and it hit a parked car, kept going until it hit. As he hit the parked car, between hitting another car because he almost hit another officer and that's when that officer fired again, fired his shots. In between him hitting a tree and hitting a I fired again because he was coming at the parked car, other officer. When he hit the parked car and spun he went at another officer and I fired again, around, fired some more, went through the telephone pole, cut it completely in half.

(Trial Tr. pp. 292 – 294).

Based on this testimony, the malice, in this case, was not proven solely or necessarily from the use of a deadly weapon – because a vehicle is not necessarily a deadly weapon – rather, malice is implied from the Applicant's actions when he made the decision to put the vehicle in reverse and gun it in the direction of Brown. Applicant did not stop after he hits the officer and a tree—rather, he continues to attempt to flee while striking a parked car and then a light pole, all while officers are around his vehicle. Applicant's actions and conduct clearly demonstrated a "wanton or reckless disregard for human life." See State v. Wilds, 355 S.C. 269, 276-77, 584 S.E.2d 138 (Ct. App. 2003) ("Implied malice is when circumstances demonstrate a 'wanton or reckless disregard for human life' or 'a reasonably prudent man would have known that according to common experience there was a plain and strong likelihood that death would follow the contemplated act.'") (internal citations omitted). Therefore, this Court finds that even though the deadly weapon instruction was objectionable, there is no reasonable probability that instruction affected the result of the proceeding.

Accordingly, this Court finds Trial Counsel was deficient for not objecting to the jury charge of implied malice from the use of a deadly weapon; however, Applicant has failed to show any prejudice from Trial Counsel's deficiency. Thus, this allegation must be **DENIED** and **DISMISSED**.

ALLEGATIONS NOT ENUMERATED IN APPLICATION BUT RAISED AT THE PCR HEARING

Allegation: Failure to move to sever trial.

Applicant alleges Trial Counsel was constitutionally ineffective for failing to motion to sever the trial. This Court finds this allegation is without merit.

On direct examination, Applicant testified that he did not think he ever said anything to Trial Counsel about both trials being tried together, but he should have. (PCR Tr. pp. 13 – 14).

Applicant testified that they railroaded him and killed his character. (PCR Tr. p. 14).

On direct examination, Trial Counsel was asked if there was a strategic reason for not moving to sever, and she testified that she could not recall if she discussed it with Applicant, but she did discuss the consequences of severing the trials. (PCR Tr. p. 29). Trial Counsel testified that it would have opened Applicant up to life without parole. (PCR Tr. p. 29).

Strickland requires that trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel's conduct can satisfactorily account for the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a particular defendant. 466 U.S. at 688-689. "Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." Id. at 691. Therefore, judicial scrutiny of counsel's performance must be highly deferential. Id. at 689. Where counsel articulates a valid strategic reason for her action or inaction, counsel's performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992).

This Court finds Trial Counsel clearly articulated a strategy in which she did not move to sever the trials because the consequences to Applicant were the possibility of life without parole. As this strategy was objectively reasonable, this Court will not second guess counsel's tactics. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992) ("Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel.").

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and

DISMISSED.

INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL

Allegation 2a: Failure to raise all meritorious issues.

Applicant alleges Appellate Counsel was constitutionally ineffective for failing to raise all meritorious issues. This Court finds this allegation is without merit.

Applicant failed to present any evidence, testimony, or legal authority at the evidentiary hearing regarding this allegation. Therefore, the Court deems it abandoned. "When a party provides no legal authority regarding a particular argument, the argument is abandoned and the court will not address the merits of the issue." Palmer v. State, 427 S.C. 36, 47, 829 S.E.2d 255, 261 (Ct. App. 2019) (citing State v. Lindsey, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011)).

|CONCLUSION PAGE FOLLOWS|

CONCLUSION

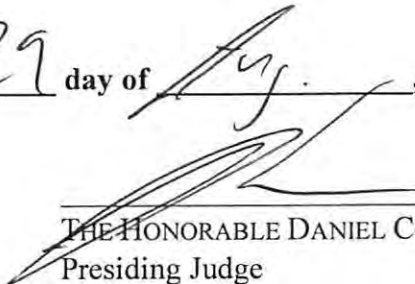
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be **DENIED and DISMISSED WITH PREJUDICE.**

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 29 day of Aug., 2023.


 THE HONORABLE DANIEL COBLE
 Presiding Judge
 Fifth Judicial Circuit

, South Carolina

**CERTIFIED TRUE COPY
 OF ORIGINAL FILED,
 Jeannette W. McBride
 C.C.C.P.&G.S.
 RICHLAND COUNTY
 SOUTH CAROLINA**

WITNESSES

(S) Emmit D Gilliam Jr
 – Columbia Police Department

ARREST WARRANT NUMBER

2014A4021601898

ACTION OF GRAND JURY**TRUE BILL**

Foreperson of Grand Jury

Date:

MAR 16 2016

VERDICT*Guilty*

Foreperson of Petit Jury

Date:

DOCKET NO. 2015GS4000001**AMENDED****The State of South Carolina****County of****Richland****COURT OF GENERAL SESSIONS****JANUARY TERM 2015**

42

THE STATE
vs.

Keylan Jambri Durham

Indictment for
ASSAULT & BATTERY 1ST DEGREE

SC Code: 16-03-0600(B)(1)

CDR Code: 3412

After being fully advised as to my
 legal rights, I hereby waive presentment
 to the Grand Jury.

Defendant

I
 hereby appear in my own proper person and plead
 guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

SCANNED

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

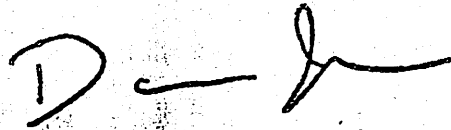
INDICTMENT

At a Court of General Sessions, convened on January 14, 2015, the
Grand Jurors of Richland County present upon their oath:

AMENDED
ASSAULT AND BATTERY 1ST DEGREE

That Keylan Jambri Durham did in Richland County on or about August 4, 2014, commit an assault and battery upon the victim, Malek Drastich, by unlawfully injuring or offering or attempting to injure the victim and the act was accomplished by means likely to produce death or great bodily injury or the act occurred during the commission of a robbery, burglary, kidnapping or theft. All in violation of S.C. Code of Laws, §16-03-0600(c)).
clothin

Against the peace and dignity of the State, and contrary to the
statute in such case made and provided.



DAN JOHNSON, SOLICITOR

WITNESSES

(S) Emmit D Gilliam Jr
- Columbia Police Department

ARREST WARRANT NUMBER**2014A4021601900****ACTION OF GRAND JURY****TRUE BILL**

Connie Lumpkin
Foreperson of Grand Jury

Date: **JAN 14 2015**

VERDICT*Guilty*

Virginia D. Robert
Foreperson of Petit Jury

Date:

DOCKET NO. 2015GS40 00004**The State of South Carolina****County of****Richland****COURT OF GENERAL SESSIONS****JANUARY TERM 2015****42****THE STATE****vs.****Keylan Jambri Durham**

**Indictment for
WEAPONS / POSS. WEAPON DURING
VIOLENT CRIME, IF NOT ALSO
SENTENCED TO LIFE WITHOUT PAROLE
OR DEATH**

SC Code: 16-23-0490**CDR Code: 0549**

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

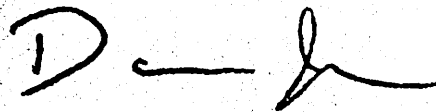
INDICTMENT

At a Court of General Sessions, convened on January 14, 2015, the
Grand Jurors of Richland County present upon their oath:

**POSSESSION OF A WEAPON DURING THE COMMISSION
OF A VIOLENT CRIME**

That Keylan Jambri Durham did in Richland County, on or about August 4,
2014, possess a firearm, or visibly display what appeared to be a firearm,
or visibly displayed a knife, during the commission or attempted
commission of a violent crime, in violation of Section 16-23-0490, S. C.
Code of Laws, 1976, as amended

Against the peace and dignity of the State, and contrary to the
statute in such case made and provided.



DAN JOHNSON, SOLICITOR

WITNESSES

(S) Emmit D Gilliam Jr
 – Columbia Police Department

ARREST WARRANT NUMBER

2014A4021601901

ACTION OF GRAND JURY**TRUE BILL**

Connie Lempke
 Foreperson of Grand Jury

Date: JAN 1 1 2015

VERDICT*Guilty*

Virginia D. Robert
 Foreperson of Petit Jury

Date:

DOCKET NO. 2015GS40 00005

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

JANUARY TERM 2015

42

THE STATE

vs.

Keylan Jambri Durham

Indictment for
 CARJACKING / TAKE OR ATTEMPT A
 VEHICLE FROM PERSON BY FORCE
 WITHOUT GREAT BODILY HARM

SC Code: 16-03-1075(B)(1)

CDR Code: 2599

After being fully advised as to my
 legal rights, I hereby waive presentment
 to the Grand Jury.

Defendant

I
 hereby appear in my own proper person and plead
 guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

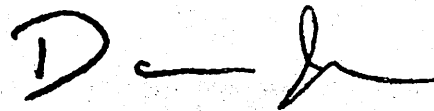
INDICTMENT

At a Court of General Sessions, convened on January 14, 2015, the
Grand Jurors of Richland County present upon their oath:

CARJACKING WITHOUT INJURY

That Keylan Jambri Durham did in Richland County on or about the August 4,
2014, take and/or attempt to take one 2013 Chevrolet Camaro from Lashonda
Edwards by force and violence or by intimidation while said victim was operating
and/or in the vehicle, in violation of Section 16-3-1075(B)(1), S. C. Code of Laws,
1976, as amended.

Against the peace and dignity of the State, and contrary to the
statute in such case made and provided.



DAN JOHNSON, SOLICITOR

WITNESSES

(S) Christopher Lindler
– Richland County Sheriff

DOCKET NO. 2015GS40 00007

The State of South Carolina

County of

Richland

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I _____
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

ARREST WARRANT NUMBER

2014A4010600893

COURT OF GENERAL SESSIONS

JANUARY TERM 2015

42

THE STATE
vs.

Keylan Jabari Durham

ACTION OF GRAND JURY

TRUE BILL

Connie Lumpkin
Foreperson of Grand Jury
Date: JAN 14 2015

VERDICT

Guilty

Virginia D. Roberts
Foreperson of Petit Jury
Date:

Indictment for
ATTEMPTED MURDER

SC Code: 16-03-0029
CDR Code: 3410

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

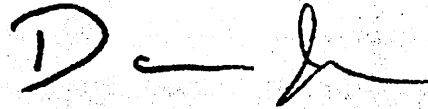
INDICTMENT

At a Court of General Sessions, convened on January 14, 2015, the
Grand Jurors of Richland County present upon their oath:

ATTEMPTED MURDER

That Keylan Jabari Durham did in Richland County on or about August 6, 2014, did with the intent to kill, attempt to kill Marcus Brown with malice aforethought, either expressed or implied. All in violation of SC Code of Laws § 16-3-29 (1976, as amended)

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



DAN JOHNSON, SOLICITOR

WITNESSES

(S) Christopher Lindler
– Richland County Sheriff

ARREST WARRANT NUMBER

2014A4010600894

ACTION OF GRAND JURY

TRUE BILL

Connie Lempfen
Foreperson of Grand Jury

Date: JAN 14 2015

VERDICT

Guilty of Assault & Battery, 1st Degree

Virginia O. Robert
Foreperson of Petit Jury

Date:

DOCKET NO. 2015GS40 00008

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

JANUARY TERM 2015

42

THE STATE
vs.

Keylan Jabari Durham

Indictment for
ATTEMPTED MURDER

SC Code: 16-03-0029
CDR Code: 3410

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

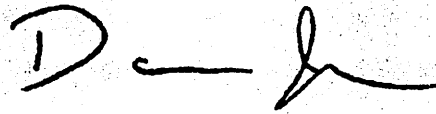
INDICTMENT

At a Court of General Sessions, convened on January 14, 2015, the
Grand Jurors of Richland County present upon their oath:

ATTEMPTED MURDER

That Keylan Jabari Durham did in Richland County on or about August 6,
2014, did with the intent to kill, attempt to kill JUSTIN BRITT with malice
aforethought, either expressed or implied. All in violation of SC Code of
Laws § 16-3-29 (1976, as amended)

Against the peace and dignity of the State, and contrary to the
statute in such case made and provided.



DAN JOHNSON, SOLICITOR

WITNESSES

(S) Emmit D Gilliam Jr
 – Columbia Police Department

ARREST WARRANT NUMBER

2014A4021601895

ACTION OF GRAND JURY

TRUE BILL

Connie L. Sample
 Foreperson of Grand Jury

Date:

JAN 14 2015

VERDICT

Guilty

Virginia O. Robert
 Foreperson of Petit Jury

Date:

DOCKET NO. 2015GS40 08388

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

JANUARY TERM 2015

42

THE STATE
 vs.

Keylan Jambri Durham

Indictment for
 KIDNAPPING / KIDNAPPING

SC Code: 16-03-0910
 CDR Code: 0095

After being fully advised as to my
 legal rights, I hereby waive presentment
 to the Grand Jury.

Defendant

I
 hereby appear in my own proper person and plead
 guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

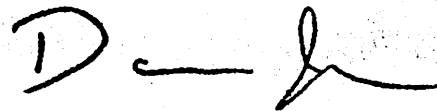
INDICTMENT

At a Court of General Sessions, convened on January 14, 2015, the
Grand Jurors of Richland County present upon their oath:

KIDNAPPING

That Keylan Jambri Durham did in Richland County on or about August 4, 2014, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Lashonda Edwards, without authority of law, in violation of Section 16-03-0910, S. C. Code of Laws, 1976, as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



DAN JOHNSON, SOLICITOR

WITNESSES

(S) Emmitt D Gilliam Jr
– Columbia Police Department

ARREST WARRANT NUMBER

2014A4021601896

ACTION OF GRAND JURY

TRUE BILL

Connie L. Smith
Foreperson of Grand Jury
Date: JAN 14 2015

VERDICT

Guilty

Viggo D. Roberts
Foreperson of Petit Jury
Date:

DOCKET NO. 2015GS40 08389

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

JANUARY TERM 2015

42

THE STATE
vs.

Keylan Jambri Durham

Indictment for
KIDNAPPING / KIDNAPPING

SC Code: 16-03-0910
CDR Code: 0095

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

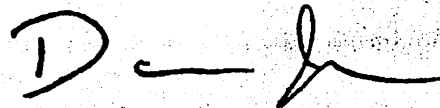
INDICTMENT

At a Court of General Sessions, convened on January 14, 2015, the
Grand Jurors of Richland County present upon their oath:

KIDNAPPING

That Keylan Jambri Durham did in Richland County on or about August 4,
2014, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry
away one Malek Drastich, without authority of law, in violation of Section
16-03-0910, S. C. Code of Laws, 1976, as amended

Against the peace and dignity of the State, and contrary to the
statute in such case made and provided.



DAN JOHNSON, SOLICITOR

885

WITNESSES

(s) ED Gilliam

CPD

ARREST WARRANT NUMBER

DP16016

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

JAN 21 2016

VERDICT

Guilty

Foreperson of Petit Jury

Date:

DOCKET NO. 2016GS4000525

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

JANUARY TERM 2016

42

THE STATE

vs.

Keylan Jambri Durham

Indictment for
ROBBERY / ATTEMPTED ARMED, OR
ALLEGEDLY ARMED, ROBBERY

SC Code: 16-11-0330(B)

CDR Code: 0026

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

SCANNED

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on January 20, 2016, the
Grand Jurors of Richland County present upon their oath:

ATTEMPTED ARMED ROBBERY

That Keylan Jambri Durham did, in Richland County on or about August 4, 2014, while armed with a deadly weapon, or while alleging, either by action or words, using a representative of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon did attempt to take and carry away the personal property of Lashonda Edwards or in the immediate presence of Lashonda Edwards with intent to deprive him/her of possession by use of force, threats, or intimidation, in violation of Section 16-11-0330(B), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



DAN JOHNSON, SOLICITOR

887

WITNESSES

(S) ED GILLIAM
- CPD

ARREST WARRANT NUMBER

DP16017

ACTION OF GRAND JURY

TRUE BILL

Ruth P. Whaley
Foreperson of Grand Jury

Date: JAN 21 2016

VERDICT

Guilty

Virginia D. Roberts
Foreperson of Petit Jury
Date:

DOCKET NO. 2016GS4000526

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

TERM JANUARY 2016

42

THE STATE
vs.

Keylan Jambri Durham

Indictment for
ROBBERY / ATTEMPTED ARMED, OR
ALLEGEDLY ARMED, ROBBERY

SC Code: 16-11-0330(B)
CDR Code: 0026

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CANNE

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

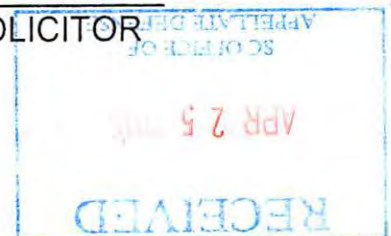
At a Court of General Sessions, convened on January 20, 2016, the
Grand Jurors of Richland County present upon their oath:

ATTEMPTED ARMED ROBBERY

That Keylan Jambri Durham did, in Richland County on or about August 4, 2014, while armed with a deadly weapon, or while alleging, either by action or words, was armed while using a representative of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon attempt to take and carry away the personal property of Malek Drastich from or in the immediate presence of Malek Drastich with intent to deprive him/her of possession by use of force, threats, or intimidation, in violation of Section 16-11-0330(B), S. C. Code of Laws, 1976, as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


DAN JOHNSON, SOLICITOR



STATE OF SOUTH CAROLINA

COUNTY OF
STATERickland

VS

Keylan J. Durham

AKA:

Race:

Black

Sex:

Male

Age:

DOB:

SS#:

Address:

City, State, Zip:

DL#

SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO:

Possession Weapon During Violent Crime

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☐ §17-25-45(CSC 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:

Solicitor

SC Bar #

Defendant

Attorney for Defendant

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 _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2015-GS-40-0007☒ 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 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 ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms:

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

Recipient:

May serve W/E beginning _____

Substance Abuse Counseling ☐

*Fine:

§14-1-206 (Assessments 107.5%)

§14-1-211 (A)(1)(Conv. Surcharge)

§14-1-211 (A)(2)(DUI Surcharge)

§56-5-2995 (DUI Assessment)

§56-1-286 (DUI Breath Test)

§47.12 (Public Def/Prob)

§14-1-212 (Law Enforce. Funding)

§14-1-213 (Drug Court Surcharge)

§50-21-114 (BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

§90.7(SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

Clerk of Court/Deputy Clerk

Court Reporter:

Jeanette McBride

Presiding Judge

Judge Code:

Sentence Date

C. J. W. W.
2129
April 17, 2016

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

AKA: _____
 Race: Black Sex: Male Age: _____
 DOB: _____ SS#: _____
 Address: _____
 City, State, Zip: _____
 DL# _____ SID# _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Carjacking

In violation of § 16-03-1075 (B)(1) of the S.C. Code of Laws, bearing CDR Code # 2599
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
 (CSC w/minor 1st or Lewd Act)

The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
 for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are
 incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2015-GS-40-0007

☒ 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 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 ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms:

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

Recipient:

May serve W/E beginning _____

Substance Abuse Counseling ☐

*Fine:

§14-1-206 (Assessments 107.5%)	\$	_____
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ _____
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$ _____
§56-5-2995 (DUI Assessment)	\$12	\$ _____
§56-1-286 (DUI Breath Test)	\$25	\$ _____
§47.12 (Public Def/Prob)	\$500	\$ _____
§14-1-212 (Law Enforce. Funding)	\$25	\$ _____
§14-1-213 (Drug Court Surcharge)	\$100	\$ _____
§50-21-114 (BUI Breath Test Fee)	\$50	\$ _____
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ _____
§90.7(SCCJA Surcharge)	\$5	\$ _____
3% to County (if paid in installments)	\$	_____
TOTAL	\$	_____

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ Beginning _____
 \$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
 \$47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/Deputy Clerk
 Court Reporter: Jeannette McBride

Presiding Judge C. NewtonJudge Code: 2127Sentence Date April 14, 2016

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

2015 -GS- 40 - 0005

A/W#:

2014A4021601901

Date of Offense:

8-4-14

S.C. Code §:

16-03-1075 (B)(1)

CDR Code #:

2599

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

VS.

AKA: Richard
 Race: Black Sex: Male Age:
 DOB: SS#:
 Address:
 City, State, Zip:
 DL# * SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Attempted Murder

In violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
 (CSC w/minor 1st or Lewd Act)

The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

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 years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended with probation for
 months/years and subject to South Carolina Department of Probation, Parole and Pardon 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 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 ☐ OrderedPTUP Total: \$ plus 20% fee: \$ days/hours Public Service EmploymentPayment Terms: Obtain GED ☐☐ Set by SCDPPPS Attend Voc. Rehab. Or Job Corp. Recipient:

May serve W/E beginning
 Substance Abuse Counseling ☐

*Fine: \$
 §14-1-206 (Assessments 107.5%) \$
 §14-1-211 (A)(1)(Conv. Surcharge) \$100 \$
 §14-1-211 (A)(2)(DUI Surcharge) \$100 \$
 §56-5-2995 (DUI Assessment) \$12 \$
 §56-1-286 (DUI Breath Test) \$25 \$
 §47.12 (Public Def/Prob) \$500 \$
 §14-1-212 (Law Enforce. Funding) \$25 \$
 §14-1-213 (Drug Court Surcharge) \$100 \$
 §50-21-114 (BUI Breath Test Fee) \$50 \$
 §56-5-2942(J) (Vehicle Assessment) \$40/ea \$
 §90.7(SCCJA Surcharge) \$5 \$
 3% to County (if paid in installments) \$
 TOTAL \$

Random Drug/Alcohol Testing ☐
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ Beginning
 \$ Paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel,
 §47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/Deputy Clerk
 Court Reporter:

Presiding Judge
 Judge Code: 2127
 Sentence Date April 14, 2016

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

VS.

AKA:

Race:

Sex:

Age:

DOB:

SS#:

Address:

City, State, Zip:

DL#

SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADSTO: Attempted Murder Assault + Battery 1stIn violation of § 16-3-600 of the S.C. Code of Laws, bearing CDR Code # 3410 3412☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45The 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:

Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2015-GS-40-0007☒ 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 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 ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning _____
Substance Abuse Counseling ☐

*Fine:

\$14-1-206 (Assessments 107.5%)	\$	_____
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$
\$14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
\$56-5-2995 (DUI Assessment)	\$12	\$
\$56-1-286 (DUI Breath Test)	\$25	\$
\$47.12 (Public Def/Prob)	\$500	\$
\$14-1-212 (Law Enforce. Funding)	\$25	\$
\$14-1-213 (Drug Court Surcharge)	\$100	\$
\$50-21-114 (BUI Breath Test Fee)	\$50	\$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
\$90.7(SCCJA Surcharge)	\$5	\$
3% to County (if paid in installments)		\$
TOTAL		\$

Random Drug/Alcohol Testing ☐
 Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ Beginning _____
 \$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
 \$47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/Deputy Clerk
Court Reporter:

Presiding Judge

Judge Code:

Sentence Date

G. News
2127
April 14, 2016

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

VS

AKA: _____
 Race: Black Sex: Male Age: _____
 DOB: _____ SS#: _____
 Address: _____
 City, State, Zip: _____
 DL# _____ SID# _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Kidnapping

In violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
 (CSC w/minor 1st or Lewd Act)

The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
 for a determinate term of 22 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are
 incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2015-GS-40-0007

☒ 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 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 ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms:

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

Recipient:

May serve W/E beginning _____

Substance Abuse Counseling ☐

*Fine:	\$	_____
§14-1-206 (Assessments 107.5%)	\$	_____
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
§47.12 (Public Def/Prob)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$
§14-1-213 (Drug Court Surcharge)	\$100	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
§90.7(SCCJA Surcharge)	\$5	\$
3% to County (if paid in installments)	\$	\$
TOTAL	\$	_____

Random Drug/Alcohol Testing ☐
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ Beginning _____
 \$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
 §47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/Deputy Clerk
 Court Reporter: Feel

Presiding Judge G. Ward
 Judge Code: 2127
 Sentence Date April 14, 2016

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

AKA:

Race:

Sex:

Age:

DOB:

SS#:

Address:

City, State, Zip:

DL#

SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO:In violation of § 16-63-0910 of the S.C. Code of Laws, bearing CDR Code # 0095☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
for a determinate term of 22 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are
incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2015-GS-40-0007☒ 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 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 ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning _____
Substance Abuse Counseling ☐

*Fine:

\$14-1-206 (Assessments 107.5%)	\$	_____
\$14-1-211 (A)(1)(Conv. Surcharge)	\$	_____
\$14-1-211 (A)(2)(DUI Surcharge)	\$	_____
\$56-5-2995 (DUI Assessment)	\$	_____
\$56-1-286 (DUI Breath Test)	\$	_____
\$47.12 (Public Def/Prob)	\$	_____
\$14-1-212 (Law Enforce. Funding)	\$	_____
\$14-1-213 (Drug Court Surcharge)	\$	_____
\$50-21-114 (BUI Breath Test Fee)	\$	_____
\$56-5-2942(J) (Vehicle Assessment)	\$	_____
\$90.7(SCCJA Surcharge)	\$	_____
3% to County (if paid in installments)	\$	_____
TOTAL	\$	_____

Random Drug/Alcohol Testing ☐
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ Beginning _____
\$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
\$47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/Deputy Clerk

Court Reporter:

Presiding Judge

Judge Code:

Sentence Date

C. Weir
2127
April 14, 2016

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

VS.

AKA: _____
 Race: Black Sex: Male Age: _____
 DOB: _____ SS#: _____
 Address: _____
 City, State, Zip: _____
 DL# _____ * SID# _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Attempted Armed Robbery

In violation of § 16-11-0330(B) of the S.C. Code of Laws, bearing CDR Code # 0026
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
 (CSC w/minor 1st or Lewd Act)

The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
 for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are
 incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2015 - GS - 40 - 0007
☒ 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 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 ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms:

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

Recipient:

May serve W/E beginning _____
 Substance Abuse Counseling ☐

*Fine: \$ _____
 §14-1-206 (Assessments 107.5%) \$ _____
 §14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ _____
 §14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____
 §56-5-2995 (DUI Assessment) \$12 \$ _____
 §56-1-286 (DUI Breath Test) \$25 \$ _____
 §47.12 (Public Def/Prob) \$500 \$ _____
 §14-1-212 (Law Enforce. Funding) \$25 \$ _____
 §14-1-213 (Drug Court Surcharge) \$100 \$ _____
 §50-21-114 (BUI Breath Test Fee) \$50 \$ _____
 §56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
 §90.7(SCCJA Surcharge) \$5 \$ _____
 3% to County (if paid in installments) \$ _____
 TOTAL \$ _____

Random Drug/Alcohol Testing ☐
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ Beginning _____
 \$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
 §47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/Deputy Clerk
 Court Reporter: Reed

Jeanette McBride

Presiding Judge
 Judge Code:
 Sentence Date

C. W. Wynn
2127
April 14, 2016

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

VS.

AKA: Richard
 Race: Black Sex: Male Age:
 DOB: SS#:
 Address:
 City, State, Zip:
 DL# * SID#
 *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
TO: Attempted Armed RobberyIn violation of § 16-11-0330 (B) of the S.C. Code of Laws, bearing CDR Code # 0026
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
 (CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
 for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended with probation for
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are
 incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2015-GS-40-0007
☒ 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 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 ☐ Ordered PTUP Total: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine: \$
 §14-1-206 (Assessments 107.5%) \$
 §14-1-211 (A)(1)(Conv. Surcharge) \$100 \$
 §14-1-211 (A)(2)(DUI Surcharge) \$100 \$
 §56-5-2995 (DUI Assessment) \$12 \$
 §56-1-286 (DUI Breath Test) \$25 \$
 §47.12 (Public Def/Prob) \$500 \$
 §14-1-212 (Law Enforce. Funding) \$25 \$
 §14-1-213 (Drug Court Surcharge) \$100 \$
 §50-21-114 (BUI Breath Test Fee) \$50 \$
 §56-5-2942(J) (Vehicle Assessment) \$40/ea \$
 §90.7(SCCJA Surcharge) \$5 \$
 3% to County (if paid in installments) \$
 TOTAL \$

Clerk of Court/Deputy Clerk: Jeanette McBride gpp
Court Reporter:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016 -GS- 40 - 0526A/W#: DP16017
Date of Offense: 8-4-14
S.C. Code §: 16-11-0330 (B)
CDR Code #: 0026

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS(CSC w/minor 1st or Lewd Act)

(defendant's initials)

Recommendation by the State.

 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.Presiding Judge: C. N. Nouri
Judge Code: 2127
Sentence Date: Apr 14, 2016