

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Dorchester County

Honorable Paul M. Burch, Circuit Court Judge

DAMON RILEY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2024-000771

APPENDIX

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ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF DORCHESTER

2016-GS-18-1105

2016-GS-18-1106

2016-GS-18-1107

State of South Carolina)

) TRANSCRIPT OF RECORD

-vs-

)

) August 19, 2019 - Vol 1 of 3

Damon Riley)

) St. George, South Carolina

B E F O R E:

The Honorable Maite Murphy, Judge

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

Mike Spears, Esquire
Attorney for the State

Chad D. Shelton, Esquire
Attorney for the Defendant

Reported By:

Yvestre Torres, OCR
Circuit Court Reporter for the
First Judicial Circuit

EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>

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DIRECT EXAMINATION - BY MR. SPEARS

1 THE COURT: Good morning, everyone. Please
2 have a seat. Good morning, Solicitor. I understand we
3 have some pre-trial motions for the first trial of this
4 week.

5 MR. SPEARS: Yes, Your Honor. This is
6 in the case of State v. Damon Riley. The first motion
7 is a motion to suppress statements by the Defendant.
8 We're requesting a Jackson v. Denno hearing.

9 THE COURT: All right. You may call your
10 first witness.

11 MR. SPEARS: State calls Nick Santana.

12 MR. NICK SANTANA, was called as a witness,
13 being duly sworn, was examined and testified as follows:

14 THE COURT: Your witness.

15 DIRECT EXAMINATION

16 BY MR. SPEARS:

17 Q. Nick, where do you work?

18 A. For the Naval Information Warfare Center.

19 Q. And where did you work before that?

20 A. The Summerville Police Department.

21 Q. When did you work there?

22 A. From August of 2007 to March of 2018.

23 Q. And what was your position at the Summerville
24 Police Department?

25 A. When I left the Summerville Police Department,

DIRECT EXAMINATION - BY MR. SPEARS

1 I was a lieutenant in investigations?

2 Q. Now, did you participate in the investigation
3 of a shooting that occurred on June 5th of 2016?

4 A. Correct, I did.

5 Q. And who was the main suspect of that
6 investigation?

7 A. Mr. Damon Riley.

8 Q. Was he arrested?

9 A. He was.

10 Q. When was he arrested?

11 A. He was arrested on June 10, 2016.

12 Q. And did you have the opportunity to speak with
13 Mr. Riley after he was arrested?

14 A. Yes, sir.

15 Q. And just to clarify, was this before or after his
16 arrest?

17 A. After his arrest.

18 Q. Where did you speak with him?

19 A. At the Summerville Police Department.

20 Q. And in your training and experience, did he have
21 the odor of marijuana on him, or the odor of alcohol on
22 him?

23 A. No, sir.

24 Q. Did he show any signs of intoxication?

25 A. No, sir.

DIRECT EXAMINATION - BY MR. SPEARS

1 Q. How long did you speak with him?

2 A. No more than an hour.

3 Q. And was he read his Miranda rights?

4 A. Correct. He was read his Miranda rights.

5 Q. Was he presented with a Miranda form?

6 A. Yes, sir.

7 MR. SPEARS: Your Honor, may I have this
8 marked as State's Exhibit 1?

9 THE COURT: Yes, sir.

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

11 MR. SPEARS: May I approach the witness,
12 Your Honor?

13 THE COURT: You may.

14 BY MR. SPEARS:

15 Q. Mr. Santana, I'm showing you what's been marked
16 as State's Exhibit 1 for identification purposes.
17 Do you recognize this?

18 A. Yes, sir.

19 Q. What is this?

20 A. This is an advisement of rights form, a Miranda
21 rights waiver of rights form.

22 Q. And on that form, can you tell us the --
23 I'm sorry. Is this the form that you provided with
24 Mr. Riley at that time?

25 A. Yes, sir.

DIRECT EXAMINATION - BY MR. SPEARS

1 Q. And has it been materially changed? Is this
2 a fair and accurate representation of that form?

3 A. It is, yes, sir.

4 MR. SPEARS: Judge, we would request to
5 enter State's 1 into evidence.

6 THE COURT: Any objection?

7 MR. SHELTON: No objection.

8 THE COURT: All right. It's in.

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

10 BY MR. SPEARS:

11 Q. Now, Mr. Santana, can you please tell me Line 1,
12 beside the initial?

13 A. It says, "I have the absolute right to remain
14 silent. I do not have to answer any questions or give
15 a statement, and this fact cannot be used against me."

16 Q. And did Mr. Riley sign or put his initials by
17 there?

18 A. Signed and acknowledged.

19 Q. And how about Line 2, would you read that to the
20 Court?

21 A. "If I do answer questions or give a statement,
22 anything I say can and will be used against me in
23 a court of law."

24 Q. And whose initials are beside that?

25 A. Mr. Riley.

DIRECT EXAMINATION - BY MR. SPEARS

1 Q. And Line 3?

2 A. "I have the right to consult with a lawyer of my
3 choice if I answer a question or give a statement and
4 also to have him present while I'm being questioned."

5 Q. And Line 4?

6 A. "If I wish to talk to a lawyer or have him
7 present, but I'm unable to afford to hire a lawyer,
8 one will be appointed to represent me free of charge."

9 Q. And Line 5?

10 A. "If I decide to answer questions or give a
11 statement without having a lawyer present representing
12 me, I have the absolute right during this interview
13 to stop answering questions and to remain silent."

14 Q. And whose signatures are beside that?

15 A. Mr. Riley initialed all of those lines.

16 Q. Did he provide his full signature at any point
17 in time on that form?

18 A. Correct. After I read those points to him,
19 I advised -- a full understanding of his rights, which
20 I then advised him, and then he signed that he
21 understood.

22 Q. At any point in time, did you threaten Mr. Riley
23 for his cooperation?

24 A. No, sir.

25 Q. Did you attempt to bribe him or offer him

1 anything?

2 A. No, sir.

3 Q. Did -- before he spoke with you, did he ask to
4 talk with his lawyer?

5 A. No, sir.

6 Q. And what did he tell you after he signed that
7 form?

8 A. So -- well, after the initial part is the
9 advisement of rights, which he understood. And then
10 I go through a waiver of rights, and he -- would you
11 like me to read it?

12 Q. That's fine. What was the nature of your
13 conversation after he waived his Miranda rights?

14 A. It was in reference to a shooting that occurred
15 on June 5th in the town of Summerville, county of
16 Dorchester County, in the state of South Carolina.

17 Q. I understand. And did he admit to anything?

18 A. He did not.

19 Q. Okay. Was he willing to put what he told you
20 in a written statement after that?

21 A. No, sir.

22 Q. All right.

23 MR. SPEARS: Your Honor, may I publish the
24 evidence to the Court?

25 THE COURT: You may.

CROSS-EXAMINATION - BY MR. SHELTON

1 MR. SPEARS: Please answer any questions
2 the defense might have for you.

3 THE WITNESS: Yes, sir.

4 CROSS-EXAMINATION

5 BY MR. SHELTON:

6 Q. I guess it's Mister now, right?

7 A. Yes, sir.

8 Q. Okay. Can I call you detective?

9 A. You can call me detective. That's fine.

10 Q. Mr. Santana, so when Damon was taken into
11 custody, were you on scene when he was taken into
12 custody?

13 A. Correct, I was.

14 Q. You were?

15 A. Yes, sir.

16 Q. And you're aware that the officer said he smelled
17 marijuana from the back passenger area?

18 A. Correct.

19 Q. And that is where Damon was found, correct?

20 A. Correct.

21 Q. And then in talking with you, you, I guess,
22 brought up the handgun that was found and marijuana,
23 and that he stated the gun wasn't his. It must have
24 been one of his boys' guns. He advised the cops smelled
25 weed in the car because they smoked weed in it.

1 A. Yes, sir.

2 Q. Is that correct?

3 A. Yes, sir.

4 Q. Okay. So we have another officer saying that he
5 smelled marijuana, and then Mr. Riley admits to smoking
6 weed, correct?

7 A. Correct.

8 Q. Did the -- the top of that form, did you fill
9 that out?

10 A. Yes, sir.

11 Q. And so ---

12 MR. SHELTON: May I approach, Your Honor?

13 THE COURT: You may.

14 BY MR. SHELTON:

15 Q. So on the top of this form it says, "Are you
16 under the influence of alcohol or medication?" And you
17 stated, no?

18 A. Correct.

19 Q. And did -- there's nothing in here saying if
20 you're under the influence of illegal drugs or drugs?

21 A. No, sir.

22 Q. Okay. Did you get any calls or anything from
23 attorneys? Any attorney that was representing Damon,
24 did you get any calls or anything?

25 A. No, sir.

REDIRECT EXAMINATION - BY MR. SPEARS

1 Q. Okay.

2 MR. SHELTON: No further questions.

3 THE COURT: Any redirect?

4 MR. SPEARS: Briefly, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. SPEARS:

7 Q. Mr. Santana, when you were providing Mr. Riley
8 with the Miranda form, did you see any signs of
9 intoxication?

10 A. No, sir.

11 Q. Would you have continued the interview if you had
12 seen signs, or was concerned that he was intoxicated?

13 A. Not at all, no, sir.

14 MR. SPEARS: No more questions, Your Honor.

15 THE COURT: You may step down.

16 THE WITNESS: Thank you.

17 THE COURT: Any other witnesses?

18 MR. SPEARS: No, Your Honor.

19 THE COURT: Anything further?

20 MR. SHELTON: No witnesses, Your Honor.

21 THE COURT: I'll be happy to hear your
22 argument.

23 MR. SHELTON: Thank you, Your Honor.

24 Obviously, Detective Santana has his opinion as to
25 whether he was under the influence of drugs or alcohol.

1 However, Damon does state to Detective Santana that
2 he did smoke weed in the car. They smelled weed.
3 And, therefore, our argument is that he was under the
4 influence of drugs. And, therefore, this statement
5 should be suppressed, Your Honor.

6 THE COURT: Solicitor.

7 MR. SPEARS: Judge, I mean, no signs of
8 intoxication were noticed. He actually wrote at the top
9 of the form, is he under the influence? The answer was
10 no. He willingly waived his rights. If there's the
11 odor of marijuana earlier in the car -- the detective
12 also said they were talking for over an hour. There's
13 no substantial information to show that he was under the
14 influence at that point in time. And we don't believe
15 it should be suppressed. Direct testimony shows that
16 he was not.

17 THE COURT: All right. Based upon the
18 standard in the Jackson v. Denno, by the preponderance
19 of the evidence, the Court does find that the
20 Defendant's statement is voluntary and given in
21 compliance with Miranda. The form does indicate that
22 he has a 12th-grade education. He was not under the
23 influence of alcohol or any kind of medication.

24 Detective Santana testified that he did not
25 appear to be intoxicated in any manner. And, certainly,

1 initials and signatures by each of the right advising
2 him of his rights and the waiver of rights were both
3 signed by the Defendant along with Detective Santana
4 and a witness. So, I do find that it's voluntary
5 and admissible. Anything further?

6 MR. SPEARS: No hearings, Your Honor.
7 I believe that's all, unless -- if we could just clarify
8 a few facts on the record.

9 THE COURT: Certainly.

10 MR. SPEARS: In our discussions in this
11 trial, Attorney Shelton and I were consenting to a chain
12 of custody portion of testimony. There would be a
13 witness the State would provide from IBIS to show that
14 a weapon was sent there, actually activated to other
15 crimes, and then sent over to SLED.

16 In order to prevent possible testimony
17 coming out that the State does not want to prejudice
18 the Defendant in any way, we're consenting to keeping
19 that witness out and having the chain go straight to
20 SLED.

21 THE COURT: Is that correct?

22 MR. SHELTON: That is correct, Your Honor.

23 THE COURT: All right. Anything else?

24 MR. SPEARS: Judge, I think ---

25 MR. SHELTON: Just sequestration.

1 THE COURT: Certainly, other than,
2 of course, the victim and the case officer.

3 MR. SPEARS: Yes, Your Honor.

4 THE COURT: All right.

5 MR. SPEARS: Judge, I think that's all we've
6 got.

7 (End of Transcript of Record)

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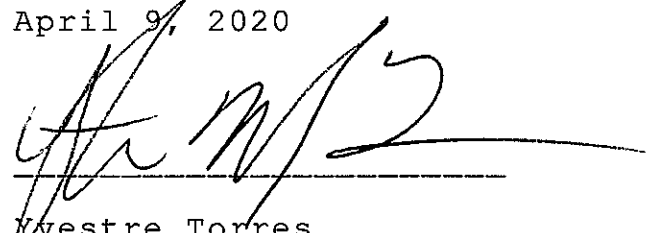
CERTIFICATE OF REPORTER

State of South Carolina)
County of Dorchester)

I, the undersigned, Yvestre Torres, Circuit Court Reporter for the First 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 case, relative to appeal, in the Circuit Court for Dorchester County, South Carolina, on the 19th of August, 2019.

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

April 9, 2020



Yvestre Torres

Circuit Court Reporter

STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF DORCHESTER

2016-GS-18-1105

2016-GS-18-1106

2016-GS-18-1107

State of South Carolina)

) TRANSCRIPT OF RECORD

-vs-)

) August 20, 2019 - Vol 2 of 3

Damon Riley)

) St. George, South Carolina

B E F O R E:

The Honorable Maite Murphy, Judge

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

Mike Spears, Esquire
 George Smythe, Esquire
 Attorneys for the State

Chad D. Shelton, Esquire
 Michael Barrett, Esquire
 Attorneys for the Defendant

Reported By:

Yvestre Torres, OCR
 Circuit Court Reporter for the
 First Judicial Circuit

Jury No.	Name	Race	Gender	Jury No.
16	Darcie Bartlett	W	F	1
156	Sherri Sparrow	W	F	2
58	Rex Elser	W	M	3
167	Keith Thompson	B	M	4
61	Gary Fassett	W	M	5
115	Eric Metz	W	M	Def. Strike
181	Joe Woodard, Jr.	W	M	6
143	Nikennya Robinson	B	F	Plt. Strike
49	Pamela Dickovick	W	F	7
171	Karissa Turbeville	W	F	Def. Strike
67	Drew Garlock	W	M	Plt. Strike
66	Elizabeth Foster	W	F	8
152	Linda Shaw	W	F	9
6	Cheria Anderson	W	F	Def. Strike
3	Sara Allday	W	F	10
110	Fletcher McBride	B	M	Def. Strike
86	William Johnson	W	M	Plt. Strike
51	Donna Drake	W	F	11

1	94	Michael King	W	M	12
2	173	Brenda Vanderkooy	W	F	Alt. No. 1
3	172	Shirley Tuten	A	F	Def. Strike
4	19	Gerald Bernhard	W	M	Alt. No. 2
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1 THE CLERK: At this time, I will call the
2 roll. And I'm going to ask you to stand, give me the
3 information from the monitor, or the card we talked
4 about downstairs. But before that, I need to administer
5 an oath to all of the jurors. So if all of the jurors
6 would stand and raise your right hand.

7 (Thereupon, the jury panel was duly sworn.)

8 THE CLERK: Let the record reflect that
9 everyone is seated. As I call your name, please stand
10 and give the information from the monitor. Kharey
11 Adams, Juror No. 1.

12 THE JUROR: I'm employed by DLA Solutions.
13 I'm a pharmacy technician, and I am single.

14 THE CLERK: Thank you. Juror No. 3,
15 Sara Allday.

16 THE JUROR: I'm employed by Supply --
17 Solutions. I'm a frontline leader, and I am single.

18 THE CLERK: Juror No. 6, Cheria Anderson.

19 THE JUROR: I'm employed by T-Mobile.
20 I'm an agent. My spouse is employed by the state.
21 He's a corrections officer.

22 THE CLERK: Juror No. 8, David Angell.

23 THE JUROR: I'm employed by I-COR
24 Incorporated. My job is desktop support analyst, and my
25 spouse is deceased.

1 THE CLERK: Juror No. 12, Joshua Baerg.

2 THE JUROR: I'm employed by Middleton
3 Inn Company. I'm the accounting manager. My spouse
4 is employed by Naval Nuclear Laboratories, and she is
5 a project supervisor.

6 THE CLERK: Juror No. 16, Darcie Bartlett.

7 THE JUROR: I am employed by Costco, and my
8 job is retail strategy manager. And my spouse is
9 employed by the Department of Defense, and he is
10 a scientist.

11 THE CLERK: Juror No. 19, Gerald Bernhard.

12 THE JUROR: I was employed -- I'm retired.
13 I was employed by Gas Electrical Contractors
14 Incorporated. I'm married. My wife is employed by
15 Shear Perfection, and she's a hairdresser.

16 THE CLERK: Thank you. Juror No. 29,
17 Donald Buck.

18 THE JUROR: I'm employed by the U.S.
19 Department of Defense. I'm a physician. My wife is
20 a homemaker.

21 THE CLERK: Juror No. 39, Elizabeth Connell.

22 THE JUROR: I'm retired from the Department
23 of Defense. My husband is retired from the United
24 States Army.

25 THE CLERK: Juror No. 40, Melissa Connell.

1 THE JUROR: I'm employed by Simply Elegance
2 as a bookkeeper. My spouse is on disability.

3 THE CLERK: Juror No. 41, Angel Cook.

4 THE JUROR: I'm a stay-at-home mom.
5 My husband works for the South Carolina Federal Credit
6 Union. He's a corporate banker.

7 THE CLERK: Juror No. 42, Bruce Cook.

8 THE JUROR: I work at Boeing, hazmat
9 department. My wife is a bookkeeper for a construction
10 company.

11 THE CLERK: Juror No. 49, Pamela Dickovick.

12 THE JUROR: I'm employed by ATP Gun Shop and
13 Range. I'm an office manager. My husband is retired
14 from the U.S. Coast Guard.

15 THE CLERK: Juror No. 50, Brooke Doggett.

16 THE JUROR: I am employed by ReMax. I'm
17 a realtor. My husband is a bartender.

18 THE CLERK: Juror No. 51, Donna Drake.

19 THE JUROR: I'm self-employed. I own a food
20 truck. My husband works for Langsis [ph.] Corporation.
21 He's a safety coordinator supervisor.

22 THE CLERK: Juror No. 58, Rex Elser.

23 THE JUROR: I am retired. I was employed
24 by Steel Technologies Incorporated as a sales engineer.
25 My wife is retired. She was employed -- she was

1 a dietician.

2 THE CLERK: Juror No. 61 Gary Fassett.

3 THE JUROR: I am retired. I worked in
4 international marketing. My wife is also retired,
5 and she was a computer programmer.

6 THE CLERK: Juror No. 62, Bambi Faulk.

7 THE JUROR: I am employed by SOS Security.
8 I do security for Verizon Wireless.

9 THE CLERK: Are you married?

10 THE JUROR: Oh, no. Single.

11 THE CLERK: Thank you. Juror No. 63,
12 Patrice Felder.

13 THE JUROR: I'm employed by Dorchester
14 County Drug Commission. I'm a clinical counselor.
15 My husband is self-employed. He's a truck driver.

16 THE CLERK: Juror No. 66, Elizabeth Foster.

17 THE JUROR: I'm a full-time student at
18 Trident Tech. My husband is disabled.

19 THE CLERK: Juror No. 67, Drew Garlock.

20 THE JUROR: I'm employed by Gunner Masters
21 as an installer. My wife is a stay-at-home mom.

22 THE CLERK: Juror No. 69, Kathy Gee.

23 THE JUROR: I'm employed by Change
24 Healthcare. I'm a late payment reconciliation clerk.
25 My husband works for Republic Services. He's a

1 commercial sanitation driver.

2 THE CLERK: Juror No. 75, Jeremy Graham.

3 THE JUROR: I'm self-employed in residential
4 construction, remodel homes. Divorced.

5 THE CLERK: Juror No. 77, Jarrette
6 Hankerson.

7 THE JUROR: I'm employed by Sports and Bolts
8 [ph.], and I am single.

9 THE CLERK: Juror No. 86, William Johnson,
10 Jr.

11 THE JUROR: I'm a pastor in a baptist church
12 in Goose Creek. And my wife works for Dorchester County
13 II Schools in the cafeteria.

14 THE CLERK: Juror No. 88, Stephen Jones.

15 THE JUROR: I'm a self-employed independent
16 distributor for Bimbo Bakeries, and I'm single.

17 THE CLERK: Juror No. 91, Andrew Karns.

18 THE JUROR: I'm employed by the U.S.
19 Department of State. I'm a lead IT specialist. My wife
20 is employed by Dorchester District II as a substitute
21 teacher.

22 THE CLERK: Juror No. 94, Michael King.

23 THE JUROR: I am employed by Volvo Cars.
24 I build the new cars. My wife works at American
25 Automated Payroll. She's a payroll specialist.

1 THE CLERK: Thank you. Juror No. 96,
2 Hollan Kreil.

3 THE JUROR: I'm employed by Goodwill
4 Industries. My job is food service, and I am single.

5 THE CLERK: Juror No. 97, Damon Lam.

6 THE JUROR: I'm employed by the Department
7 of Defense. I'm an IT security manager. My wife is
8 employed by Ro Sham Beaux. She puts together
9 chandeliers.

10 THE CLERK: Juror No. 98, Anthony LaRocca.

11 THE JUROR: I'm employed by Robert Bosch
12 as a mechanic. My wife is employed by Robert Bosch
13 as a mechanic too.

14 THE CLERK: Juror No. 102, Shayla Lawrence.

15 THE JUROR: I'm employed by V and D
16 Machines. I'm a specialty manager. My husband also
17 works for V and D Machines as a marketing manager.

18 THE CLERK: Juror 108, Katrina Madden.

19 THE JUROR: I'm a clinical research
20 coordinator at the neurology department at MUSC.
21 My spouse is employed by ICL. He is a mechanical
22 operator.

23 THE CLERK: Juror 110, Fletcher McBride, Jr.

24 THE JUROR: I'm retired from the South
25 Carolina Department of Corrections as a captain, and I'm

1 single.

2 THE CLERK: Thank you. Juror 115, Eric
3 Metz.

4 THE JUROR: I'm employed by Kolter Group,
5 a national home building. I'm the vice president of
6 procurements. My spouse is employed by Dorchester
7 District II School Systems as a teacher.

8 THE CLERK: Juror 128, Gerald Nesmith, Jr.

9 THE JUROR: I'm employed at Charleston
10 County Facilities. I am a facilities supervisor for
11 the Charleston Center. My wife is disabled.

12 THE CLERK: Juror 129, Henry Nguyen.

13 THE JUROR: I'm a lawyer -- and my wife
14 works there too.

15 THE CLERK: Thank you. Juror 137, Ann Ray.

16 THE JUROR: I'm employed in a shipyard as
17 a pharmacy technician, and I'm single.

18 THE CLERK: Juror 139, Robert Rhoton.

19 THE JUROR: I'm employed by the City of
20 North Charleston Fire Department. My job is deputy
21 chief of operations. My spouse is employed by
22 Charleston County as a deputy coroner.

23 THE CLERK: Juror 143, Nikennya Robinson.

24 THE JUROR: I'm employed at Hardees as
25 a cook, and I am single.

1 THE CLERK: Juror 148, Elise Scott.

2 THE JUROR: I'm a student at the College
3 of Charleston, and I'm single.

4 THE CLERK: Juror 149, Gerald Scott.

5 THE JUROR: I am retired from Dorchester
6 District II Schools. I was a high school teacher.
7 My wife works for Dorchester II, and she's a third grade
8 teacher.

9 THE CLERK: Juror 152, Linda Shaw.

10 THE JUROR: I am employed by the South
11 Carolina Department of Transportation as an assistant
12 resident construction engineer, and I am not married.

13 THE CLERK: Juror 156, Sherri Sparrow.

14 THE JUROR: I'm a self-employed business
15 owner, a licensed massage therapist and divorced.

16 THE CLERK: Juror 162, Daniel Taylor.

17 THE JUROR: I am employed at Perdue. I work
18 with the chickens. My wife is employed at Smithfield.
19 She's a pig farmer.

20 THE CLERK: Juror 163, Eric Taylor.

21 THE JUROR: I work for Dorchester District
22 II as a maintenance guy. My wife is employed by Keller
23 Interiors.

24 THE CLERK: Juror 167, Keith Thompson.

25 THE JUROR: I am employed by CMOP VA,

1 a pharmaceutical company. My job is a strapper.

2 I'm married. My wife takes care of her mom.

3 THE CLERK: Thank you. Juror 171, Karissa
4 Turbeville.

5 THE JUROR: I work for Technion as a
6 competence manager. And my husband works at JR
7 Construction as a superintendent.

8 THE CLERK: Juror 172, Shirley Tuten.

9 THE JUROR: I'm employed by Palmetto Primary
10 Care Physicians. I'm a medical assistant. My husband
11 is retired from Airgas [ph.].

12 THE CLERK: Juror 173, Brenda Vanderkooy.

13 THE JUROR: I am self-employed with
14 Dorchester Sign Company. I do sign work, and I don't
15 have a spouse.

16 THE CLERK: Juror 177, Daryl White.

17 THE JUROR: I'm employed by Trident
18 Hospital. I'm a technologist. My wife is chef,
19 self-employed.

20 THE CLERK: Juror 181, Joe Woodward, Jr.

21 THE JUROR: I'm employed by Republic
22 Services. I'm a commercial driver. My wife is employed
23 by Q-West Boats, and she is in production.

24 THE CLERK: Thank you. Was there any name
25 I did not call? All right. Thank you all very much.

1 I'll let the judge know we're ready for her.

2 (Pause.)

3 THE COURT: Good morning, everyone. Please
4 have a seat. Good morning, ladies and gentlemen of the
5 jury panel. My name is Maite Murphy, and I am a circuit
6 court judge from here in Dorchester County. And it's
7 a pleasure to be here with you this week for a term
8 of general sessions court.

9 General sessions, of course, is also
10 commonly referred to as criminal court. Your service
11 this week will conclude on Friday. So you're actually
12 a little bit ahead of the game since today is Tuesday.
13 You've already knocked out one day of your potential
14 jury service.

15 Ladies and gentlemen, our term this week,
16 we will have a trial this week, which I anticipate
17 should finish up at the latest Thursday morning. So it
18 should be a short week of service if you are selected.
19 And I can tell you just for planning purposes in case
20 you have any potential conflict that you can let me
21 know.

22 As you've already noticed, the jury
23 selection process is done in two stages. You've been
24 through the initial stage, the roll call process.
25 And now I have certain questions that I must ask you

1 in accordance with state law to see if you qualify to
2 be qualified as jurors in this court.

3 Ladies and gentlemen, these questions can be
4 a tad personal at times. And, certainly, I don't want
5 to embarrass anyone, or cause anyone any embarrassment
6 whatsoever. But it is absolutely essential and
7 important that we have complete and accurate information
8 for each of you.

9 So if the question does apply to you, please
10 make a mental note, either stand at the appropriate
11 time, or at the end of the questioning period, I will
12 ask a very broad general question. And if you have
13 concerns at that juncture to please come forward, and
14 let me what your situation is, if the question does
15 apply to you.

16 Ladies and gentlemen, you've met some of the
17 people here in the courtroom this morning that help us
18 pretty much run the court. Ms. Cheryl Graham is your
19 elected clerk of court, and she does a fabulous job in
20 keeping us all together and where we need to be. So you
21 can thank her for being here. But, more importantly,
22 you can actually thank her for helping us run such an
23 effective courtroom.

24 THE CLERK: Thank you.

25 THE COURT: We also have here in the

1 courtroom members of the sheriff's department for
2 security purposes, and of course, attorneys that have
3 matters before the Court and clients with different
4 matters that may come before the Court. We have our
5 clerk of court again, our court reporter and members
6 of their staff.

7 If you need anything throughout this week,
8 or for some reason you need to talk to me, please
9 contact some of these fine folks, and they will be happy
10 to assist you.

11 Ladies and gentlemen, here are the questions
12 regarding qualifications to serve as jurors in this
13 court. Is there any member of the jury panel who is not
14 a citizen of the United States? If so, please stand.
15 I find that there is no one standing. Is there any
16 member of the jury panel not a resident and citizen of
17 Dorchester County? If so, please stand. I find that
18 there is no one standing.

19 MR. SPEARS: Your Honor.

20 THE COURT: Oh, yes, sir. Would you come
21 forward.

22 THE JUROR: Yes, ma'am.

23 THE CLERK: What is your name?

24 THE JUROR: Daniel Taylor.

25 THE COURT: Mr. Taylor.

1 THE JUROR: Yes, ma'am.

2 THE COURT: You are No. 163 -- oh, no, 162,
3 actually. You're Daniel, right?

4 THE JUROR: Yes, ma'am.

5 THE COURT: All right, sir, where do you
6 live?

7 THE JUROR: I live in Dillon.

8 THE COURT: In Dillon?

9 THE JUROR: Yes, ma'am.

10 THE COURT: Did you recently move there?

11 THE JUROR: Yeah. I changed my address this
12 year. That's what my brother was telling me you would
13 say, probably it was because I changed it this year.
14 That's the reason why I probably got selected. Because
15 I lived in Dorchester County until 2018, last year.
16 I got recently married on December 1st of 2018, getting
17 ready to kick off 2019.

18 THE COURT: Well, congratulations on almost
19 a one-year anniversary. You're free to go since you're
20 a resident of Dillon County. Have a good day.

21 THE JUROR: Thank you, ma'am.

22 THE COURT: Is there any member of the jury
23 panel who is unable to read, write, speak or understand
24 the English language? If so, please stand. I find that
25 there is no one standing. Does any member of the jury

1 panel have less than a sixth-grade education or its
2 equivalent? If so, please stand. I find that there
3 is -- yes, sir, would you come forward.

4 THE CLERK: Juror 129.

5 THE COURT: Good morning, sir. You're
6 Mr. Nguyen?

7 THE JUROR: Yes, ma'am.

8 THE COURT: Yes, sir. Would you come
9 forward just a little bit so the court reporter can hear
10 what you're saying.

11 THE JUROR: Yes, ma'am.

12 THE COURT: Can you tell me your situation?
13 Are you able to read?

14 THE JUROR: A little bit.

15 THE COURT: A little bit.

16 THE JUROR: Yes, ma'am.

17 THE COURT: How is your English?

18 THE JUROR: I think a little bit too.

19 THE COURT: A little bit too. Where are you
20 from?

21 THE JUROR: I'm from Vietnam.

22 THE COURT: Vietnam, okay. And have you
23 been here for a while?

24 THE JUROR: Twenty years.

25 THE COURT: Twenty years. Do you have a job

1 here in the states? Do you work?

2 THE JUROR: Yes, ma'am.

3 THE COURT: What type of work do you do?

4 THE JUROR: Nail technician.

5 THE COURT: Oh, okay. And so you,
6 obviously, interact with the public on a regular basis?

7 THE JUROR: Yes, ma'am.

8 THE COURT: And you're able to understand
9 what I'm asking you; is that correct?

10 THE JUROR: I think 90 percent.

11 THE COURT: Ninety percent.

12 THE JUROR: Yes, ma'am.

13 THE COURT: Are you comfortable just in
14 every day conversation with people? You said 90
15 percent, yes?

16 THE JUROR: Yes, ma'am.

17 THE COURT: Okay. So if there's something
18 you don't understand, would you feel comfortable just
19 raising your hand and letting me know?

20 THE JUROR: Yes, ma'am.

21 THE COURT: Okay. All right. So it sounds
22 like -- you obviously work. You've been here for 20
23 years, and you certainly seem to communicate very well
24 with me. So if you have any questions, please stop
25 and ask. Otherwise, I think you're fine to stay, okay.

1 THE JUROR: Yes, ma'am.

2 THE COURT: Thank you. Is any member of
3 the jury panel unable, because of mental or physical
4 infirmities, to render efficient jury service?
5 For example, does any member of the jury panel have
6 a medical condition which would prevent you from serving
7 on a jury this week? If so, please stand. I find that
8 there is no one standing.

9 Has any member of the jury panel been
10 convicted of, by guilty plea or a trial, in a state
11 or federal court of record for a crime punishable by
12 imprisonment for more than one year, and your civil
13 rights have not been restored by pardon or amnesty?

14 Punishable by more than one year means that
15 you could have received a sentence of more than one
16 year, regardless of what sentence you may have actually
17 received. If this applies to you, please stand.
18 Yes, sir, would you come forward.

19 THE CLERK: Juror 67.

20 THE COURT: Good morning, sir. How are you
21 today?

22 THE JUROR: I'm doing good.

23 THE COURT: Is this you right here?

24 THE JUROR: I was convicted, and they
25 dropped it.

1 THE COURT: So you're good to go. Thank
2 you. It is okay. Is there any member of the jury panel
3 a clerk, a deputy clerk of court, constable, sheriff
4 or other commissioned law enforcement officer, probate
5 judge, county commissioner, magistrate or other county
6 officer employed within the walls of any courthouse?
7 If so, please stand. I find that there is no one
8 standing.

9 Is there any member of the jury panel who
10 has previously served on jury duty in circuit court,
11 not in federal court, municipal court or in magistrate
12 court during this calendar year? If so, please stand.
13 I find that there is no one standing.

14 Has any member of the jury panel served as
15 a member of the Dorchester County grand jury during the
16 past several years? If so, please stand. I find that
17 there is no one standing.

18 Ladies and gentlemen, we now move to the
19 jury exemptions. State law provides for several
20 exemptions for jury service. An exemption does not mean
21 that you're not qualified to serve. It simply means
22 that you have a right to say I choose not to serve.
23 For those of you who are over the age of 65, you may
24 choose this exemption.

25 However, we would certainly encourage you

1 to stay and serve, if you're so inclined, because,
2 obviously, by reaching the age of 65, you've gained
3 a lot of experience and wisdom. So we would certainly
4 encourage you to stay, if you're so inclined. Is there
5 anyone who is over the age of 65 that wishes to exercise
6 that exemption? I find that there is no one standing.

7 Another exemption concerns prior jury
8 service. No person is required to serve as a juror more
9 often than once every three calendar years. Therefore,
10 if any member of the jury panel has served on jury duty
11 during the last two calendar years, you may be exempt
12 from jury service this week, if you choose to be
13 exempted.

14 Please remember that this exemption does not
15 apply if your prior jury service was in federal court,
16 municipal court or in magistrate court. If this
17 exemption applies to you, and you wish to exercise it,
18 please stand. I find that there is no one standing.

19 Persons who have served as grand jurors in
20 the last five calendar years may also be exempt from
21 jury service. If any member of the jury panel has
22 served on a grand jury during the last five calendar
23 years, you may be exempt from jury service this week.
24 If this exemption applies to you, and you wish to
25 exercise it, please stand. I find that there is no one

1 standing.

2 The next exemption deals with those of you
3 who have small children. Please listen very carefully
4 to this exemption, as it has several parts, all of which
5 must apply for you to be exempted on this basis.

6 You may be exempt from jury service if you
7 have a small child or small children under the age
8 of seven years, you have legal custody of your child
9 or children, you have the principal care, custody and
10 control of your child or children, and you are unable
11 to make adequate arrangements for the care of your child
12 or children while performing jury service. If all of
13 these requirements apply to you, and you wish to be
14 exempt on this basis, please stand.

15 THE JUROR: My daughter is seven ---

16 THE COURT: Ma'am, hold on a second.
17 Please come forward. You may come forward, ma'am.

18 THE CLERK: Juror 41,

19 THE COURT: Good morning, Ms. Cook.

20 THE JUROR: My daughter is seven, and
21 I don't have any way for her to get home from school,
22 except for me.

23 THE COURT: Okay. All right. It doesn't
24 apply because she's -- it's under the seven years
25 of age. Is there anyone that you can call if you're

1 selected to give her a ride home?

2 THE JUROR: Not really.

3 THE COURT: Okay.

4 THE JUROR: My husband works for the credit
5 union, you know, of South Carolina. And he's not able
6 to get off.

7 THE COURT: Get off?

8 THE JUROR: Yes, ma'am.

9 THE COURT: All right. What I can do is
10 I can transfer you to a different term of court so you
11 can plan ahead.

12 THE JUROR: Yes, ma'am.

13 THE COURT: And that way you can have
14 a different week. And you can kind of plan ahead when
15 she's on a break or something of that nature.

16 THE JUROR: My mother is a teacher ---

17 THE COURT: What's a good week or month for
18 you?

19 THE JUROR: School break.

20 THE COURT: What's the next school break?

21 THE JUROR: Probably Christmas.

22 THE COURT: We do have December. So we'll
23 transfer you to December 16th. Thank you.

24 THE JUROR: Thank you so much.

25 THE COURT: You are free to go.

1 THE CLERK: Juror No. 50.

2 THE COURT: Good morning. Are you
3 Ms. Doggett?

4 THE JUROR: Yes, ma'am.

5 THE COURT: And you have children under
6 the age of seven?

7 THE JUROR: One.

8 THE COURT: Okay. And how old is that
9 child?

10 THE JUROR: He is seven.

11 THE COURT: Well, it has to be under the age
12 of seven. So is he in school?

13 THE JUROR: Yes.

14 THE COURT: Okay. Do you have anybody that
15 can pick him up after school?

16 THE JUROR: No, I work from home.
17 My husband leaves at three to go to work.

18 THE COURT: All right. Well, here's what
19 I can do since this exemption doesn't technically apply
20 to you. If you can't make arrangements this week, I'll
21 give you a different term of court where you can come
22 back. Now, of course, that may be a longer week where
23 you may be here all week. But I can transfer your
24 service to a different week.

25 THE JUROR: That's fine because my older son

1 is moving to college today, so we'll be out of town
2 also.

3 THE COURT: All right. So you've got two
4 things going on. What's a good week for you so you can
5 plan ahead and serve?

6 THE JUROR: Any school break is fine;
7 summer, spring break, Christmas break.

8 THE COURT: How about December 16th?

9 THE JUROR: Okay.

10 THE COURT: All right. So we will have you
11 back December 16th. Thank you.

12 THE JUROR: Thank you.

13 THE COURT: The next exemption involves
14 those of you who may be attending school at this time,
15 or working in some capacity with a school. If this
16 exemption applies to you, and you wish to be exempted,
17 I can transfer your service to another term of court,
18 at which time it will not conflict with your school
19 responsibilities.

20 Is there any member of the jury panel who
21 is a full-time student, schoolteacher, school crossing
22 guard, school bus driver, or who serves in any other
23 school-related function who is unable to serve on jury
24 duty this week as a result of that school involvement?
25 If so, please stand. Yes, sir, would you come forward.

1 THE CLERK: Juror 163.

2 THE COURT: Good morning.

3 THE JUROR: Good morning.

4 THE COURT: You're Mr. Taylor?

5 THE JUROR: Yes, ma'am.

6 THE COURT: Yes, sir. And you're working
7 in the school system?

8 THE JUROR: I do.

9 THE COURT: And what's your ---

10 THE JUROR: I'm the maintenance guy.

11 THE COURT: Okay. Is there a different time
12 that you would like to serve, maybe December so you can
13 plan ahead? I can transfer your service.

14 THE JUROR: Summertime is best.

15 THE COURT: Summertime is better?

16 All right.

17 THE JUROR: Yes, ma'am.

18 THE COURT: Actually, I can give you
19 the choice. You know, there should be no negative
20 consequences when you're serving on jury duty with the
21 school. It should be a short trial if you want to stay
22 this week, or I can transfer your service.

23 THE JUROR: Transfer. It's the first week
24 of school.

25 THE COURT: It makes it tough, I'm sure.

1 THE JUROR: I have so many work orders right
2 now.

3 THE COURT: Oh, I can imagine. All right.
4 How about December 16th?

5 THE JUROR: We should be off.

6 THE COURT: That should be about Christmas
7 break time.

8 THE JUROR: Yeah.

9 THE COURT: Okay. All right. You will
10 receive a new summons. Thank you. Is there any member
11 of the jury panel who is employed with the department
12 of corrections or the penitentiary? If so, if you wish
13 to be exempt on this basis, please stand. I find that
14 there is no one standing. Oh, yes, sir.

15 THE CLERK: Juror 110.

16 THE COURT: Good morning, sir. How are you
17 today?

18 THE JUROR: All right.

19 THE COURT: You are Mr. ---

20 THE JUROR: McBride.

21 THE COURT: Mr. McBride. You work at the
22 department of corrections?

23 THE JUROR: I retired three years ago.

24 THE COURT: Okay. That technically doesn't
25 apply to you.

1 THE JUROR: I just wanted to make sure.

2 THE COURT: I appreciate that. Let me ask
3 you the next question. Obviously, by having worked
4 there in that capacity, this is a criminal case, do you
5 think you can set that experience aside and listen to
6 the evidence that comes directly from the witness stand?

7 THE JUROR: Yes.

8 THE COURT: Would you be fair and impartial
9 to both sides?

10 THE JUROR: Yes.

11 THE COURT: Will you follow the law I give
12 to you?

13 THE JUROR: Yes.

14 THE COURT: Thank you. Is there any juror
15 who performs services for a business, commercial or
16 agricultural enterprise, which you're so essential to
17 the operation of the enterprise that if you were
18 required to perform jury duty, the enterprise would have
19 to close or stop functioning? If so, please stand.
20 I find that there is no one standing.

21 Is there any juror who is a primary
22 caretaker of a severely disabled person who is unable
23 to care for himself or herself and cannot be left
24 unattended? If so, please stand. I find that there
25 is no one standing.

1 Finally, is there any juror who is a primary
2 caretaker of a person age 65 or over? If so, if you
3 wish to be exempt on this basis, please stand. I find
4 that there is no one standing.

5 Ladies and gentlemen, that concludes the
6 statutory list of qualifications and exemptions for jury
7 service. It may be that you are qualified for jury
8 service and no exemption applies to you. However, jury
9 service this week would constitute an extreme hardship
10 upon you for a particular reason. I cannot permanently
11 excuse a qualified juror from jury service. But under
12 extreme and compelling circumstances, I can transfer
13 that juror to another term of court, particularly those
14 jurors who have not been previously transferred.

15 Please understand that general inconvenience
16 is not a sufficient reason to transfer your service to
17 another term of court. To justify a transfer to another
18 term of court, again it must be a compelling reason to
19 your service.

20 Ladies and gentlemen, now is also the chance
21 for those of you who did not respond earlier to any
22 questions that I asked, and those of you who have a
23 compelling reason to request a transfer of your jury
24 service to another week to come forward. If you believe
25 that you're disqualified or exempt from jury service,

1 or if you have any questions as to whether you're
2 disqualified or exempt from jury service, or if you need
3 to be transferred to another term of court, please come
4 forward at this time. Yes, ma'am.

5 THE CLERK: Juror 77.

6 THE COURT: Good morning, sir. How are you
7 today? You're Mr. Hankerson?

8 THE JUROR: Yes, ma'am. I had just started
9 working this week. I had to call out for the rest of
10 the day to come here.

11 THE COURT: Okay. Well, let me ask you a
12 question first about this. Is this you? We have this
13 information. Is that your date of birth?

14 THE JUROR: Um-huh.

15 THE COURT: Do you recall having anything
16 in your background as far as any convictions? Do you
17 recall that?

18 THE JUROR: Um-huh.

19 THE COURT: What kind of sentence did you
20 get?

21 THE JUROR: Probation.

22 THE COURT: You're on probation for that?

23 THE JUROR: No, I'm off.

24 THE COURT: But you did your probation.

25 Okay. Well, that would actually disqualify you.

1 So, I'm going to go ahead and let you go, okay.

2 THE JUROR: All right.

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

4 THE JUROR: All right.

5 THE CLERK: Juror 62.

6 THE COURT: Good morning, ma'am. You're
7 Ms. Faulk?

8 THE JUROR: Yes, ma'am. Earlier you said
9 it had to be seven. I have a nine-year old. And I just
10 got off work at six o'clock this morning, third shift.
11 I'm half asleep. I don't have a caretaker to pick him
12 up from school today.

13 THE COURT: Okay. Here's what I can do.
14 If you have somebody, can you call them and have them
15 pick him up if you're selected for this trial?

16 THE JUROR: No, ma'am.

17 THE COURT: Okay. What I can do is I can
18 transfer your service to another week, and you can plan
19 ahead, so you can have child care, or I can do it during
20 a break in school.

21 THE JUROR: Yes, ma'am.

22 THE COURT: Is that better for you?

23 THE JUROR: Yes, ma'am.

24 THE COURT: All right.

25 THE JUROR: It just started yesterday,

1 and my daughter just went off to USC College, and that
2 was my helper ---

3 THE COURT: Okay.

4 THE JUROR: --- around the house.
5 So, I don't have her home.

6 THE COURT: So what we'll do is we'll do
7 December 16th so you can have them both home, and your
8 older daughter can help you out a little bit.

9 THE JUROR: Yes, ma'am.

10 THE COURT: All right. So we'll transfer
11 your service. So you'll receive a new summons.

12 THE JUROR: I appreciate that. Thank you
13 so much.

14 THE COURT: Good luck.

15 THE CLERK: Juror No. 58.

16 THE COURT: Mr. Elser, how are you?

17 THE JUROR: Good, Your Honor. The fact
18 that we are next-door neighbors, I don't see that
19 as affecting me personally, but just wanted to air
20 on the side of caution.

21 THE COURT: No, I appreciate that. He's my
22 next-door neighbor, and he puts up with all our teenage
23 boys and dogs. Sir, I will just ask you, can you set
24 that relationship aside and listen to the evidence
25 solely as it comes from the witness stand?

1 THE JUROR: Yes.

2 THE COURT: And will you be fully fair
3 and impartial to both the State and to the defense?

4 THE JUROR: Yes, ma'am.

5 THE COURT: And will you follow the law
6 as I give it to you?

7 THE JUROR: Yes.

8 THE COURT: All right. Thank you, sir.
9 Would Juror 42 please come forward, Bruce Cook.

10 THE COURT: Good morning, sir. Come on up
11 a little bit. Mr. Cook, I have this information here.
12 I don't know if it's you or not. Is this you?

13 THE JUROR: I see that. That's not me.
14 What is this?

15 THE COURT: It's in Middleton PD.

16 THE JUROR: That is me. Oh, wait.
17 What year?

18 THE COURT: 2003.

19 THE JUROR: I left there. I lived here
20 at that time.

21 THE COURT: What about that, from '87?

22 THE JUROR: Oh, that's definitely not me.

23 THE COURT: Let me look at the identifying
24 information here just to make sure because you may want
25 to get your information fixed. This is your date of

1 birth?

2 THE JUROR: Yes. That date is wrong.

3 THE COURT: That date is wrong. Do you have
4 a relative with that date?

5 THE JUROR: No.

6 THE COURT: Okay. But that's not your ---

7 THE JUROR: Social Security number.

8 THE COURT: Looks like your state ID,
9 maybe your driver's license number.

10 THE JUROR: I'll find out right now.

11 THE COURT: Well, here's your social.
12 Is that your social?

13 THE JUROR: Yeah.

14 THE COURT: That's weird. But you told me
15 that wasn't you in any of those.

16 THE JUROR: No.

17 THE COURT: You may want to call and get
18 this squared away because you got information on there
19 that may be wrong.

20 THE JUROR: Who would I call?

21 THE COURT: I want you to talk to the
22 solicitor's office after the trial, and you can call
23 them and see why it's popping up.

24 THE JUROR: Okay.

25 THE COURT: Thank you. No. 86. Juror No.

1 86, please come forward, Mr. Johnson. Good morning,
2 sir.

3 THE JUROR: Good morning.

4 THE COURT: How are you this morning?
5 Mr. Johnson, I've got -- sometimes, this information
6 is completely incorrect, so please don't be offended.
7 But is this your identifying information, let's see,
8 back in '92?

9 THE JUROR: The case was dismissed.

10 THE COURT: All right. And then there was
11 that charge.

12 THE JUROR: Yeah.

13 THE COURT: You got a probationary sentence
14 on that?

15 THE JUROR: Yes.

16 THE COURT: Okay. Well, that would actually
17 disqualify you. So, I am going to let you go, okay.

18 THE JUROR: Okay. I've got a letter from
19 the government.

20 THE COURT: There was a pardon?

21 THE JUROR: Yes, ma'am.

22 THE COURT: Oh, okay.

23 THE JUROR: Would you like to see it?
24 I have it with me.

25 THE COURT: Yeah, if you have it with you

1 I would like to see it. That would be fantastic,
2 and thank you for being well prepared. Very good.
3 You are good to go. Thank you, sir. Appreciate it.

4 Thank you, ladies and gentlemen. The jury
5 panel is now qualified. Solicitor, you may call your
6 first case.

7 MR. SPEARS: Thank you, Your Honor.
8 The State calls Damon Riley, under indictment numbers
9 2016-GS-18-1105, charging him with attempted murder;
10 1106, charging him with attempted murder; and 1107,
11 charging him with possession of a firearm during the
12 commission of a violent crime. Your Honor, he's pled
13 guilty [sic.] to these charges, and we're proceeding
14 with trial.

15 THE COURT: Pled not guilty.

16 MR. SPEARS: Not guilty, Your Honor.

17 THE COURT: Ladies and gentlemen of the jury
18 panel, we're about to begin the trial of the state of
19 South Carolina versus Damon Ratiek Riley. Before we
20 begin the trial of this case, or the jury selection in
21 the trial of this case, I'm going to read to you the
22 indictments in this case. And that is solely for the
23 purpose to see if you have any information about the
24 case, know anything about the case, or have any concerns
25 regarding any kind of knowledge or experience about the

1 case whatsoever.

2 Please know that these indictments are
3 merely the charging documents, which brings the case
4 into this courtroom and are not evidence of any of the
5 allegations that they may contain.

6 The first indictment is indictment number
7 2016-GS-18-1106 for attempted murder. And it states
8 that the Defendant, Damon Ratiek Riley, did in
9 Dorchester County, South Carolina, on or about June
10 the 5th of 2016, did with the intent to kill, attempt
11 to kill one Carsheme Dinkins with malice aforethought
12 by firing a gun at him. This offense being in violation
13 of the South Carolina Code of Laws as amended.

14 The next indictment is indictment number
15 2016-GS-18-1105, and that's also for attempted murder.
16 And it states that the Defendant, Damon Ratiek Riley,
17 did in Dorchester County, South Carolina, on or about
18 June the 5th, 2016, did with the intent to kill, attempt
19 to kill one Kimberlee Felder with malice aforethought
20 by firing a gun at the victim. This offense being in
21 violation of the South Carolina Code of Laws as amended.

22 The third indictment is indictment
23 2016-GS-18-1107. And it states that in Dorchester
24 County, on or about June the 5th, 2016, the Defendant,
25 Damon Ratiek Riley, did visibly display, or have in his

1 possession a gun during the commission of a violent
2 crime as defined by Section 16-1-60 of the South
3 Carolina Code of Laws as amended, to wit attempted
4 murder, thereby violating the South Carolina Code of
5 Laws as amended. And that indictment is for possession
6 of a firearm or a knife during the commission of a
7 violent crime.

8 Again, the sole purpose of reading these
9 indictments to you is to see if you've heard anything
10 about this case, or know anything about this case.

11 Before we begin the questioning on that,
12 I'm going to ask the solicitor to please stand and
13 introduce himself and the members of his office, please.

14 MR. SPEARS: Good morning. My name is Mike
15 Spears. I'm an assistant solicitor in Dorchester
16 County, first circuit solicitor's office. With me is
17 George Smythe. He is also an assistant solicitor there.
18 Our elected solicitor is David Pasco. Other assistant
19 solicitors in our office are Don Sorenson, Kelly
20 LaPlante, Jim Adams, Baker Allen, Nick Young. And our
21 juvenile prosecutors are Vergil Deas and Jillian
22 Frederick.

23 THE COURT: Thank you, Solicitor. Ladies
24 and gentlemen of the jury panel, anyone related by blood
25 or marriage, or have a close personal or social

1 relationship, or has ever been represented by any member
2 of their office, or had a case against them or
3 prosecuted by any of them? If so, please stand. I find
4 that there is no one standing. Counsel for the defense,
5 if you would please do the same.

6 MR. SHELTON: Thank you, Your Honor.
7 I'm Chad Shelton. I have a solo practice in downtown
8 Summerville, Law Office of Chad D. Shelton. With me who
9 is going to be helping with the case is Michael Barrett.
10 His law firm is the Barrett Law Center. Also helping me
11 is my paralegal, Whitney Shelton and Fulton Chase [ph.].

12 THE COURT: Thank you, Mr. Shelton. Ladies
13 and gentlemen, same question applies. Anyone related
14 by blood or marriage, or have a close personal or social
15 relationship with any of the members of the Shelton Law
16 Firm or the members helping him, or has ever been
17 represented by them, or had a case against them? If so,
18 please stand. I find that there is no one standing.

19 Ladies and gentlemen, I'm going to read to
20 you a list of potential witnesses in this case. And if
21 you're in the courtroom, if you would please stand so
22 the jury can see you. I'll ask you the same question
23 after, if you're related by blood or marriage, have any
24 close personal or social relationship with any of the
25 following people; Kimberlee Felder. There's Ms. Felder

1 back there. Thank you, ma'am. Sergeant Chris Hirsch,
2 Jacob Cramer, Adam Canfield, Brian Summerfold,
3 Dr. Fernando Herrera, Sergeant Wade Rollings, Chad
4 Smith, Lieutenant Richard Gebhardt, Nick Santana,
5 Kevin Dutrieux, and Floyd Riley.

6 Anyone related by blood or marriage, or have
7 a close personal or social relationship with any of the
8 potential witnesses? If so, please stand. I find that
9 there is no one standing.

10 Is there any member of the jury panel who
11 is a member of, or a contributor to any group which has
12 as primary concern the promotion of law enforcement
13 or victim's rights. These groups would include, but are
14 not limited to, MADD, SADD or Citizens Against Violent
15 Crime? If so, please stand. I find that there is no
16 one standing.

17 Is there any member of the jury panel who
18 has heard anything about this case, read anything about
19 this case, or have any information whatsoever about this
20 case, either before today or even during your time here
21 in the courthouse this morning? If so, please stand.
22 I find that there is no one standing.

23 Is there any member of the jury panel that
24 was a member of the grand jury, which issued the
25 indictments in this case? If so, please stand. I find

1 that there is no one standing.

2 Ladies and gentlemen of the jury panel,
3 I have read to you the indictments in this case so you
4 know what type of case this is, an allegation of
5 attempted murder and someone with possession of a weapon
6 during the commission of a violent crime.

7 I'm going to ask you, is there anything in
8 your past experience, whether it's your past experience,
9 your family's past experience, friends, neighbors,
10 acquaintances, anything that has impacted you where you
11 think your ability to be fully fair and impartial to
12 both the State and to the defense would in any way be
13 impaired by your experiences because of the type of case
14 that this is, if you would please stand. I find that
15 there is no one standing.

16 Is there any member of the jury panel aware
17 of any bias or prejudice towards either the State or the
18 Defendant in this case? If so, please stand. I find
19 that there is no one standing.

20 Ladies and gentlemen, I failed to introduce
21 you to Mr. Damon Ratiek Riley, who is the gentleman
22 seated who is seated here at counsel's table on my
23 right, with the blue shirt. Anyone related by blood
24 or marriage, or has any close personal or social
25 relationship with Mr. Riley? If so, please stand.

1 I find that there is no one standing.

2 Has any member of the jury panel formed
3 or expressed any opinion about any issue or potential
4 matter in this case? If so, please stand. I find that
5 there is no one standing.

6 Ladies and gentlemen, considering what you
7 have heard and the type of case that this is, is any
8 member of the jury panel know of any reason whatsoever
9 why he or she should not serve as a juror in this case,
10 with a particular emphasis being placed on your ability
11 to be fully fair and impartial to both the State and
12 to the defense? If so, please stand. I find that there
13 is no one standing.

14 Ladies and gentlemen, that would conclude
15 the list of questions before we begin the selection
16 of the trial in this case. Just bear with us, ladies
17 and gentlemen of the jury panel, for just a moment.
18 It takes us a minute to put your names in somewhat of
19 an electronic -- then we get a list and pull your names
20 from it. So please bear with us for just a moment.

21 (Pause.)

22 THE COURT: Ladies and gentlemen, if you
23 need to run out to the restroom, just make sure you let
24 the bailiffs know so we have an accurate count when you
25 come right back in.

1 MR. SPEARS: Your Honor, may we approach?

2 THE COURT: Certainly.

3 (Off-the-record conversation held at sidebar.)

4 (Back on the record.)

5 THE COURT: Ladies and gentlemen, while we
6 wait for everyone to return to the courtroom, I'll share
7 with you a story that will hopefully make you appreciate
8 your time here in Saint George a little bit. As a
9 member of the judiciary, we're required to go to Reno,
10 Nevada for judicial training. And as part of that, you
11 meet judges from all over the country and some different
12 countries.

13 I met a judge from Alaska while I was there.
14 And, basically, he let me know that for him to be able
15 to perform his jury service, he has such a large
16 territory that he covers, to get sufficient jurors
17 to show up to court they have to provide transportation
18 for them, most of which, for most of them, it implies
19 that they have to do a two-hour snowmobile ride,
20 a two-hour dogsled ride and a two-hour airplane ride.

21 And they are all given a firearm, not to
22 protect them against anything that may happen in court,
23 but against potential bear attacks. So consider
24 yourselves lucky to have this nice facility that's easy
25 to get here in Dorchester County.

1 (Pause.)

2 THE COURT: It looks like we have everyone
3 back in the courtroom. Juror No. 110, would you come
4 forward one more time, please, sir, Mr. McBride. I just
5 got information that you may know one of the witnesses,
6 not the actual witness, but the father of the victim?

7 THE JUROR: Yes, ma'am.

8 THE COURT: Are you aware? Are you friends
9 with her father?

10 THE JUROR: We go to the same church.

11 THE COURT: You go to the same church.
12 Do you socialize in each other's homes?

13 THE JUROR: No.

14 THE COURT: But you see each other at
15 church?

16 THE JUROR: Yes.

17 THE COURT: Would you consider yourself
18 a close friend of his?

19 THE JUROR: He's a deacon at my church.

20 THE COURT: Oh, okay. Well, let me ask you
21 this. Has he discussed this case with you at all?

22 THE JUROR: No.

23 THE COURT: Do you know anything about the
24 case whatsoever.

25 THE JUROR: Not really, no.

1 THE COURT: Not really, other than what's
2 been told to you here in court?

3 THE JUROR: Well, it was on the news one
4 time a while back.

5 THE COURT: Okay. Well, anything about that
6 -- obviously, you know, sometimes the news isn't
7 completely accurate. Let me ask you this question.
8 Do you think you can set your relationship aside with
9 her father in this case and listen to the evidence
10 solely as it comes from the witness stand?

11 THE JUROR: Yeah.

12 THE COURT: Can you be fully fair and
13 impartial to both the State and the defense?

14 THE JUROR: Yes.

15 THE COURT: And only follow the law as
16 I give it to you?

17 THE JUROR: Uh-huh.

18 THE COURT: Is that a yes?

19 THE JUROR: Yes.

20 THE COURT: Thank you, sir. Stay with us.

21 THE JUROR: That is it?

22 THE COURT: That's it. Counsel, ready to
23 proceed?

24 MR. SPEARS: Ready, Your Honor.

25 MR. SHELTON: Yes, Your Honor.

1 THE CLERK: As I call your name, please come
2 forward, through the gate, and stand right here and turn
3 around and face the back. You don't have to say a word.

4 THE COURT: Make sure you bring your
5 personal belongings with you in case you're selected
6 on the jury.

7 THE CLERK: Juror No. 16, Darcie Bartlett.
8 Just stand right here. What sayeth the State?

9 MR. SPEARS: Please present the juror.

10 THE CLERK: The defense?

11 MR. SHELTON: Please seat Ms. Bartlett.

12 THE CLERK: Have a seat in the jury box
13 to your left. Juror 156, Sherri Sparrow. What sayeth
14 the State?

15 MR. SPEARS: Please present the juror.

16 THE CLERK: The defense?

17 MR. SHELTON: Please seat Ms. Sparrow.

18 THE CLERK: Have a seat in the jury box.
19 Juror No. 58, Rex Elser. What sayeth the State?

20 MR. SPEARS: Please present the juror.

21 THE CLERK: The defense?

22 MR. SHELTON: Please seat Mr. Elser.

23 THE CLERK: Have a seat in the jury box.
24 Juror 167, Keith Thompson. What sayeth the State?

25 MR. SPEARS: Please present the juror.

1 THE CLERK: The defense?

2 MR. SHELTON: Please seat Mr. Thompson.

3 THE CLERK: Have a seat in the jury box.

4 Juror No. 61, Gary Fassett. What sayeth the State?

5 MR. SPEARS: Please present the juror.

6 THE CLERK: The defense?

7 MR. SHELTON: Please seat Mr. Fassett.

8 THE CLERK: Have a seat in the jury box.

9 Juror 115, Eric Metz. What sayeth the State?

10 MR. SPEARS: Please present the juror.

11 THE CLERK: The defense?

12 MR. SHELTON: Please excuse this juror.

13 THE CLERK: Have a seat back in the

14 audience. Juror 181, Joe Woodard. What sayeth

15 the State?

16 MR. SPEARS: Please present the juror.

17 THE CLERK: The defense?

18 MR. SHELTON: Please seat Mr. Woodard.

19 THE CLERK: Have a seat in the jury box.

20 Juror 143, Nikennya Robinson. What sayeth the State?

21 MR. SPEARS: Please strike the juror.

22 THE CLERK: Have a seat back in the

23 audience. Juror No. 49, Pamela Dickovick. What sayeth

24 the State?

25 MR. SPEARS: Please present the juror.

1 THE CLERK: The defense?

2 MR. SHELTON: Please seat Ms. Dickovick.

3 THE CLERK: Have a seat in the jury box.

4 Juror No. 171, Karissa Turbeville. What sayeth the
5 State?

6 MR. SPEARS: Please present the juror.

7 THE CLERK: The defense?

8 MR. SHELTON: Please excuse this juror.

9 THE CLERK: Have a seat back in the
10 audience. Juror No. 67, Drew Garlock. What sayeth
11 the State?

12 MR. SPEARS: Please excuse the juror.

13 THE CLERK: Have a seat back in the
14 audience. Juror No. 66, Elizabeth Foster. What sayeth
15 the State?

16 MR. SPEARS: Please seat the juror --
17 present the juror.

18 THE CLERK: The defense?

19 MR. SHELTON: Please seat Ms. Foster.

20 THE CLERK: Have a seat in the jury box.
21 Juror 152, Linda Shaw. What sayeth the State?

22 MR. SPEARS: Please present the juror.

23 THE CLERK: The defense?

24 MR. SHELTON: Please seat Ms. Shaw.

25 THE CLERK: Have a seat in the jury box.

1 Juror No. 6, Cheria Anderson. What sayeth the State?

2 MR. SPEARS: Please present the juror.

3 THE CLERK: The defense?

4 MR. SHELTON: Please excuse Ms. Anderson.

5 THE CLERK: Have a seat back in the
6 audience. Juror No. 3, Sara Allday. What sayeth the
7 State?

8 MR. SPEARS: Please present the juror.

9 THE CLERK: The defense?

10 MR. SHELTON: Please seat Ms. Allday.

11 THE CLERK: Have a seat in the jury box.

12 Juror No. 110, Fletcher McBride. What sayeth the State?

13 MR. SPEARS: Please present the juror.

14 THE CLERK: The defense?

15 MR. SHELTON: Your Honor, could we approach?

16 THE COURT: You may.

17 (Off-the-record conversation held at sidebar.)

18 (Back on the record.)

19 MR. SHELTON: Please excuse this juror.

20 THE CLERK: Have a seat back in the
21 audience. Juror No. 86, William Johnson, Jr.

22 What sayeth the State?

23 MR. SPEARS: Please excuse the juror.

24 THE CLERK: Have a seat back in the
25 audience. Juror No. 51, Donna Drake. What sayeth

1 the State?

2 MR. SPEARS: Please present the juror.

3 THE CLERK: The defense?

4 MR. SHELTON: Please seat Ms. Drake.

5 THE CLERK: Have a seat in the jury box.

6 Juror No. 94, Michael King. What sayeth the State?

7 MR. SPEARS: Please present the juror.

8 THE CLERK: The defense?

9 MR. SHELTON: Please seat Mr. King.

10 THE CLERK: Have a seat in the jury box.

11 Juror 173, Brenda Vanderkooy. What sayeth the State?

12 MR. SPEARS: Please present the juror.

13 THE CLERK: The defense?

14 MR. SHELTON: Please seat Ms. Vanderkooy.

15 THE CLERK: Have a seat. Juror No. 172,

16 Shirley Tuten. What sayeth the State?

17 MR. SPEARS: Please present the juror.

18 THE CLERK: The defense?

19 MR. SHELTON: Please excuse this juror.

20 THE CLERK: Have a seat back in the

21 audience. Juror No. 19, Gerald Bernhard. What sayeth

22 the State?

23 MR. SPEARS: Please present the juror.

24 THE CLERK: The defense?

25 MR. SHELTON: Please seat the juror.

1 THE CLERK: Have a seat in the jury box.

2 Thank you, Judge.

3 THE COURT: Is there any exceptions
4 or objections to the selection of this jury from either
5 the State or the defense?

6 MR. SPEARS: None from the State,
7 Your Honor.

8 MR. SHELTON: None, Your Honor.

9 THE COURT: Solicitor, would y'all please
10 approach for one second.

11 (Off-the-record conversation held at sidebar.)

12 (Back on the record.)

13 THE COURT: Ladies and gentlemen that were
14 not selected for the trial of this case, it's your lucky
15 day because you have fulfilled your jury service. This
16 will be the one trial that we need a jury for this week.
17 So you are free to go. If you need an excuse for work
18 or school or anything, please see the clerk's office,
19 and they'll be happy to provide that for you.

20 (Pause.)

21 THE COURT: Welcome, ladies and gentlemen
22 of the jury. Before we get started with the trial
23 of this case, actually, it's perfect timing because
24 it's about 12 o'clock, so I'm sure that you're starving.
25 It's kind of a long morning, so it's a good time for us

1 to take our lunch break before we start with the opening
2 statements of counsel.

3 If you would go with the bailiffs, they'll
4 show you where your jury room is. And then you can
5 report back to your jury room after lunch. If you need
6 any recommendations of where to go to lunch, those nice
7 ladies will be happy to help you in that regard.

8 I'm going to give you an instruction to
9 please not discuss this case with anyone, or allow
10 anyone to discuss this case with you, that includes
11 amongst yourselves. You're not to talk about this case
12 because you are to make your determination of the facts
13 solely from what you hear from the witness stand and not
14 be influenced by any outside sources.

15 So if you see anyone while you're at lunch
16 that's involved in the case, any of the attorneys,
17 parties, or anything, and they don't speak to you,
18 they're not being rude. They're following the Court's
19 instructions because they are not to have contact with
20 you while your jury service is being performed.

21 So, if you would, please be back in your
22 jury room at 1:15. That should give you sufficient time
23 to park, find some lunch, and get back in your jury
24 room. Have a nice lunch.

25 (Jury exits the courtroom at 12:09 p.m.)

1 THE COURT: All right. Can we have
2 Mr. Riley in the courtroom, please. Mr. Riley, can you
3 please come forward and be sworn, please.

4 (Whereupon, Mr. Floyd Riley was duly sworn.)

5 THE COURT: Mr. Riley, it's been brought to
6 my attention that you had some potential contact with
7 some of the jurors that were entering the courtroom,
8 and that you had tried to maybe enter the jury room
9 and had some sort of contact with the potential jurors.
10 That is strictly prohibited, and I will not allow it.

11 I will use my contempt powers and hold you
12 in jail and find you in contempt of court if I catch
13 you having any contact with any jurors in this case.
14 Do I make myself very clear? You're not to interfere
15 in this judicial process. You're not to have any kind
16 of interference or contact with the jurors. Do you
17 understand what I'm telling you?

18 MR. RILEY: Yes.

19 THE COURT: All right, sir. You will be
20 sequestered, which means that you will be separated from
21 the other witnesses, which will mean all the witnesses.
22 But when you come in to testify, of course, you can
23 testify if you're called to testify. But you're not to
24 have any contact with any of the jurors or any of the
25 other witnesses. Do you understand me?

1 MR. RILEY: Yes.

2 THE COURT: All right, sir. Thank you.
3 Anything further before we break for lunch?

4 MR. SPEARS: Nothing from the State,
5 Your Honor.

6 MR. SHELTON: Nothing, Your Honor.

7 THE COURT: All right. We'll be adjourned
8 until 1:15.

9 MR. SPEARS: Thank you, Judge.

10 (Recess taken.)

11 (Back on the record.)

12 (State's Exhibits Nos. 2 through 46 were marked for
13 identification.)

14 (Defendant's Exhibit Nos. 1 and 2 were marked for
15 identification.)

16 THE COURT: Thank you, everyone. Please
17 have a seat. Are the parties ready to proceed?

18 MR. SPEARS: Yes, Your Honor.

19 MR. SHELTON: Yes, Your Honor.

20 THE COURT: Okay. Let's have our jury,
21 please.

22 (Jury enters the courtroom at 1:30 p.m.)

23 THE COURT: Welcome back, ladies and
24 gentlemen of the jury. Madam Clerk, if you'll please
25 swear in the jury.

1 THE CLERK: Yes, ma'am. If you'll please
2 stand and raise your right hand.

3 (Whereupon, the jury panel was duly sworn.)

4 THE COURT: Ladies and gentlemen of the
5 jury, thank you for accepting the important
6 responsibility of jury service, for your contribution
7 today to our system of justice. What I will now state
8 to you is intended to serve as an introduction to the
9 trial of this case. These remarks are not a charge
10 on the law of this case. I will instruct you on the law
11 of this case at the end of the trial, before you retire
12 to consider your verdict.

13 This is merely an explanation of the
14 procedure that we will follow so you may better
15 understand what is going on during the trial of this
16 case. You may not take notes during the trial of this
17 case. The Defendant in this case is charged by
18 indictments filed in this court with the crime of two
19 counts of attempted murder and one count of possession
20 of a firearm or knife during the commission of a violent
21 crime.

22 The elements of each of these indictments
23 will be explained to you later. The indictments are
24 simply the charge by which the case is brought into
25 court, and it's not in any way any evidence of any

1 of the allegations that they contain. The Defendant
2 has pled not guilty to these indictments. The State,
3 therefore, has the burden of proving each of the
4 elements of each indictment beyond a reasonable doubt.

5 It will be your duty, ladies and gentlemen,
6 to decide whether the State has met that burden. Your
7 purpose as jurors is to find and determine the facts.
8 You're the sole judges of the facts. If at any time
9 I make any comment regarding the facts, you must
10 disregard that. You are to determine the facts from
11 the testimony that you hear, any other evidence that
12 is introduced into court.

13 It is up to you to determine the inferences
14 which you may feel may be properly drawn from the
15 evidence. It is especially important that you perform
16 your duty of determining the facts diligently and
17 conscientiously because ordinarily there's no way
18 to correct an erroneous determination of the facts by
19 a jury.

20 On the other hand, and with equal emphasis,
21 the same law that makes you the judges of the facts,
22 makes me the judge of the law. The law as given by the
23 Court is the only law that you may consider. You must
24 accept it and follow it, even though you may disagree
25 with it. I cannot tell you what the facts are, and you

1 cannot disagree with me about what the law is, or what
2 the law should be.

3 Your job is to take the law as I give it to
4 you, and apply it to the facts as you find them from the
5 testimony of the witnesses and from any other evidence
6 that was properly introduced during the trial of this
7 case.

8 After doing that, you will render your
9 verdict under the solemn oath that you just took as
10 jurors. Until I advise you to begin your deliberations,
11 you must not discuss this case with anyone, including
12 your fellow jurors, your friends, your family members,
13 and anyone involved in this case. This includes any
14 discussion which may be face to face, anything by
15 telephone, e-mail, text, blog or any other method of
16 communication.

17 You may not use a computer, a cell phone,
18 or any other electronic device with communication
19 capabilities at any time while you're in the courtroom,
20 or during your deliberations. During your breaks for
21 meals or overnight, if necessary, of course, you may use
22 these devices.

23 However, you may not at any time use these
24 devices to get or send information about the case.
25 This includes any information about a party, a witness,

1 any attorneys or any court officers, any potential news
2 accounts about the case, any research on any topics that
3 may be raised, or any topics that you think might be
4 helpful in deciding the case, any testimony that's
5 presented by any of the witnesses.

6 During the trial, please do not read, listen
7 to, or watch any potential news reports about this case.
8 This would include anything that's in the newspapers,
9 TV, internet, radio, or any other format. You must not
10 consider anything that you may have read or heard about
11 this case outside of this courtroom, whether before
12 or during the trial of this case.

13 After that case is submitted to you,
14 you must discuss it only in your jury room with your
15 fellow jurors. The attorneys and the parties in this
16 case, again, have been instructed not to talk to you.
17 So again if you see them coming in and out of the
18 courthouse, and they don't speak to you, they're not
19 being unfriendly, they're following the Court's
20 instructions.

21 It is important that you keep an open mind
22 and not decide any issue in the trial until all of the
23 evidence have been presented, the parties have made
24 their closing arguments, and I have instructed you on
25 the law of this case. It is your solemn responsibility

1 to determine the guilt or the innocence of the
2 Defendant. And your verdict must be based on the
3 evidence that is presented during this trial and on the
4 law as I instruct you during and at the close of the
5 trial.

6 In just a moment the solicitor will make
7 what is called an opening statement, in which the
8 solicitor will explain to you what the issues in the
9 case are, or at least what the solicitor thinks the
10 issues in the case are. The attorney for the defense
11 may also make an opening statement, although they're
12 not required to do so.

13 What the attorneys tell you during their
14 opening statements is not evidence in this case.
15 It's only their contention as to what the issues are.
16 The evidence in this case will be presented to you by
17 the testimony of sworn witnesses from the witness stand,
18 and any exhibits that are properly introduced during
19 the trial of this case.

20 From time to time during the trial, you may
21 hear one of the lawyers say something like may we
22 approach the bench, or we have a matter of law.
23 Or sometimes myself, I, might find it necessary to
24 excuse you from the courtroom for a short while so that
25 the attorneys and I can discuss a matter of law.

1 The reason for this is because you're the
2 judges of the facts in this case. And sometimes when
3 I'm discussing matters of law with the attorneys, it may
4 be necessary for me to make some comments as to the
5 facts in connection with ruling whether or not a
6 particular law applies.

7 I'm not supposed to tell you what I think
8 the facts are. So, I'll excuse you from the courtroom
9 for a short while, while these discussions take place
10 so that you in no way will be influenced by anything
11 I might say or do in connection with the facts of this
12 case.

13 In determining what the true facts are in
14 this case, you must decide whether the testimony of the
15 witnesses is believable. It will be my duty and my
16 responsibility to rule as a matter of law whether
17 certain testimony is admissible at all or not. But once
18 a testimony is admitted, whether or not you believe it,
19 is solely for you to determine.

20 In deciding whether to believe a witness,
21 you have a right to consider the interest of any
22 witness, the bias of any witness, the prejudice of any
23 witness, the opportunity for the witness to have seen
24 the matters and things about which the witness may
25 testify, and the way that the witness acts on the

1 witness stand.

2 You have the right to consider anything that
3 is in the record that will help you evaluate the
4 testimony of the witnesses. That means it is your duty
5 to pay close attention to these witnesses, to observe
6 the witnesses, to listen to the witnesses, and pay close
7 attention to the attorneys and to the Court.

8 Please don't let your thoughts wander.
9 But give strict attention to the testimony in this case,
10 so at the end of the trial, after the testimony and the
11 arguments of counsel, and after you have been instructed
12 on the law of this court, you will be in a position to
13 determine the facts of the case and apply the law to the
14 facts of the case and render a verdict under the solemn
15 oath that you just took.

16 Further, when we get into the trial,
17 I'll appoint a jury foreperson to act as somewhat
18 of a liaison to the Court. And I'll explain the duties
19 of the foreperson at a later time. But, basically, the
20 foreperson will write the verdict on the verdict form.
21 And if there's anything that the jury needs, or somehow
22 needs to contact me, that jury foreperson would write
23 a note to the Court.

24 In order to preserve everyone's rights,
25 are there any exceptions or objections to the opening

OPENING STATEMENTS - BY MR. SMYTHE

1 remarks from the State or the defense?

2 MR. SPEARS: None from the State,
3 Your Honor.

4 MR. SHELTON: None, Your Honor.

5 THE COURT: All right. Solicitor, you may
6 proceed.

7 MR. SMYTHE: Thank you, Your Honor. Good
8 afternoon, ladies and gentlemen. Thank you for being
9 with us this week. My name is George Smythe. I'm with
10 the solicitor's office trying this case with Mike
11 Spears.

12 We are here to try the case of Damon Riley,
13 the state of South Carolina versus Damon Riley.
14 Mr. Riley is seated right over there. He's charged
15 with two counts of attempted murder and possession of
16 a weapon during the commission of a violent crime.

17 Let's talk about attempted murder. The
18 state of South Carolina defines it as you would expect.
19 The attempt to kill another with malice aforethought.
20 Malice aforethought is a legal term. The judge is going
21 to tell you more about it. It basically means you had
22 the specific intent to kill another when you took that
23 action.

24 We can prove these charges beyond
25 a reasonable doubt. That does not mean beyond every

OPENING STATEMENTS - BY MR. SMYTHE

1 single solitary doubt one might have. Beyond a
2 reasonable doubt. A good way to think about it for now
3 is if at the end of the trial you've seen all of the
4 witnesses, seen all of the evidence, seen everything the
5 defense has to present, you're firmly convinced of the
6 Defendant's guilt, you must return a verdict of guilty.

7 So let's go back three years. It's a long
8 time ago. Three years. June of 2016. Kimberlee
9 Felder, our victim, is going out for a night with her
10 friends, one of her best friend's birthday. She goes
11 out to the club, has some fun, sees some friends, sees
12 Damon Riley's sister. She's not drinking. So at some
13 point later in the night, she's driving home with her
14 husband, Carsheme Dinkins, in the passenger seat.

15 They are driving southbound down Old Trolley
16 Road. As they are approaching the intersection of
17 Travelers Boulevard and Old Trolley Road, she hears this
18 noise. Starts out quiet, ping, ping, gets louder, ping,
19 bang. It gets louder. She realizes it's gunfire.
20 She looks to her left. She sees Damon Riley hanging out
21 the window of the car, littering her car with gunfire.

22 She's shot in the face, right here in the
23 middle of her face. Her husband is shot in the arm.
24 She blacks out. She gets thrown in the back of the car
25 by her husband. He drives this tattered car to Trident

1 Medical Center.

2 Through good fortune and good doctors,
3 she survives. She's okay today. And you may think,
4 hold on, you just said she saw Damon Riley hanging out
5 at the back of that car -- hanging out on the side of
6 that car. How does she know it's him?

7 Well, ladies and gentlemen, Damon Riley
8 is her second cousin. She's known him her whole life.
9 She used to babysit him when she was a child. Sees him
10 at family events; sees him on holidays. She knows
11 exactly who it was. You're going to see a few things
12 from this witness stand.

13 You're going to hear Ms. Felder talk about
14 it, talk about that night. You will hear from the
15 officers who responded. You'll hear from the officers
16 who arrested Damon Riley a week later about how he had
17 a gun at his feet, a 9-mm gun, that when it's sent off
18 to an investigating agency, it's matched without a doubt
19 to shell casings found at the scene. You're going to
20 see all this from the witness stand, from our evidence.
21 And after all of that, I'm confident you'll return
22 a verdict of guilty. Thank you.

23 THE COURT: Counsel.

24 MR. SHELTON: Thank you, Your Honor. May it
25 please the Court.

OPENING STATEMENTS - BY MR. SHELTON

1 THE COURT: Yes, sir.

2 MR. SHELTON: Mr. Spears, Mr. Smythe.

3 They moved the target. They had the Summerville Police,
4 the solicitor's office has a statement by Kimberlee
5 Felder, and they moved the target, and they based their
6 whole investigation on this statement.

7 Pin the tail on the donkey. It's a kids'
8 game, right. We all know what this is. It's kids at
9 a party who have a donkey up on the wall without a tail.
10 The kids put the blindfold on, turn them around, and
11 they have a tail in their hand that they are going to
12 pin on that donkey, right. So they get dizzy.
13 Sometimes, they go up, and they put it in different
14 places. Very rarely do they get it exactly right on the
15 tail, or right on the donkey where the tail is supposed
16 to be, right.

17 So they'll get it sometimes a little bit
18 over on the donkey. Sometimes, they will get it a
19 little bit passed the donkey. But what makes the adults
20 laugh, what everybody enjoys is looking for that one kid
21 that goes, and he gets so dizzy, out of place, and he
22 puts it way far away, right. Everybody starts laughing,
23 and that's a joke.

24 This case, the donkey is the case. It's
25 their case. The tail is the evidence. Kim's statement

OPENING STATEMENTS - BY MR. SHELTON

1 is that outlier tail, and Damon is not laughing. Kim's
2 statement is that outlier tail, the one that doesn't
3 match up with the other evidence. And so you will get
4 -- you will hear evidence.

5 You will hear some evidence come in about
6 SLED ballistic results. You'll see the scene. So you
7 will see all this. And, you know, with the evidence
8 that's gathering together, sometimes that evidence hits
9 when you move that target. Sometimes when you move that
10 target, it will hit a couple of those -- that piece of
11 evidence. But when you look at it, when you go back,
12 and you see, and you'll hear it, you'll see that this
13 target has moved. And they, the State, have moved that
14 target.

15 I want you to pay attention to two things.
16 There's two parts; Kim's statements, what she said
17 happened that night. And I submit to you that there are
18 inconsistencies. There are things that just don't make
19 sense. How a normal person would react, and the
20 evidence on scene. The evidence is not bias. There are
21 just things that don't make sense. And then I'm going
22 to ask you to pay attention to the investigation.

23 The investigation is easy because they did
24 nothing. All they had was a statement, and that was it.
25 They didn't follow up; they didn't do any other

DIRECT EXAMINATION - BY MR. SMYTHE

1 investigation on that statement. They moved the target.

2 I am proud to represent Damon. And when you
3 hear all this, just keep an open mind. I'm firmly
4 convinced that you will not believe that the State has
5 proven their case. They haven't proven their case
6 beyond a reasonable doubt, and I believe you will be
7 too. And I will ask you at the end of this case to find
8 Damon not guilty. Thank you.

9 THE COURT: Solicitor, you may call your
10 first witness.

11 MR. SMYTHE: Thank you, Your Honor. May it
12 please the Court.

13 THE COURT: Yes, sir.

14 MR. SMYTHE: State calls Adam Canfield.

15 MR. ADAM CANFIELD was called as a witness,
16 being duly sworn, was examined and testified as follows:

17 THE COURT: Your witness.

18 MR. SMYTHE: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY MR. SMYTHE:

21 Q. Officer Canfield, where do you work?

22 A. Summerville Police Department.

23 Q. And what is your position there?

24 A. I am a corporal for Team One supervisor.

25 Q. How long have you been with Summerville Police

1 Department?

2 A. Almost five years.

3 Q. And did you work in law enforcement before that?

4 A. I did military police, going on 14 years now.

5 Q. In the five years you've worked for Summerville,
6 did you become familiar with Old Trolley Road?

7 A. Yes.

8 Q. Would you say very familiar?

9 A. Yes, we patrolled daily.

10 Q. Are you familiar with the intersection of Old
11 Trolley Road and Travelers Boulevard?

12 A. I am.

13 MR. SMYTHE: May I approach the witness,
14 Your Honor?

15 THE COURT: You may.

16 BY MR. SMYTHE:

17 Q. Officer Canfield, I'm showing you what's been
18 marked as State's 2. Do you recognize this?

19 A. Yes, it's the intersection of Travelers
20 Boulevard, Trolley and Midland.

21 Q. And how do you recognize that?

22 A. It's an areal view, and I'm familiar with the
23 area. It's where I patrol.

24 Q. Is it a fair and accurate representation of the
25 intersection of Old Trolley Road and Travelers

DIRECT EXAMINATION - BY MR. SMYTHE

1 Boulevard?

2 A. It is.

3 Q. As it appeared in 2016?

4 A. Yes.

5 MR. SMYTHE: Your Honor, at this point,
6 I offer State's 2 into evidence.

7 THE COURT: Any objection?

8 MR. SHELTON: No objection.

9 THE COURT: All right. It's in.

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

11 MR. SMYTHE: May I publish to the jury?

12 THE COURT: You may.

13 BY MR. SMYTHE:

14 Q. So, Officer Canfield ---

15 THE COURT: You may step down, if you need
16 to.

17 THE WITNESS: Okay. Thank you. Your Honor,
18 do you mind if I stand on that side?

19 THE COURT: Yes, you can stand on that side.

20 BY MR. SMYTHE:

21 Q. Can you tell the Court and the jury about what
22 you responded to on June -- were you on duty June the
23 5th, 2016?

24 A. I was.

25 Q. And can you tell the jury about what you

1 responded to?

2 A. I was sitting in the parking lot of Ace Hardware,
3 working on a report around 3 a.m., 3:30 a.m., when
4 I heard a series of what I believed to be gunshots
5 coming from the area of the intersection of Trolley
6 and Travelers. I then left that area to patrol,
7 to investigate what I heard.

8 And when I came to the intersection of Trolley --
9 so, I was up this way on Trolley. Up this way on
10 Trolley is where the Ace was. So, I patrolled down this
11 way. When I came to the intersection, I stopped my car
12 here. This is an Arby's. I stopped my car here, got
13 out on foot, started to walk around the area.

14 That's where -- when I was on Travelers Boulevard
15 is where I located broken glass and what appeared to
16 be blood. It was red. And also found multiple shell
17 casings in this area and in the intersection.

18 Q. Just go back real quick. Did you see anybody
19 at the scene?

20 A. I did not, other than, you know, people pulling
21 in the gas station. Nobody in this area right here.

22 Q. Okay. And can you show the jury where you
23 stopped, where you parked your vehicle?

24 A. I stopped right here, just before the stopped car
25 right here.

DIRECT EXAMINATION - BY MR. SMYTHE

1 Q. Okay. And you said you found what appeared to be
2 glass and blood?

3 A. Yes, just before.

4 Q. Where did you find that?

5 A. Just before the stop bar here is where I saw
6 the glass and what appeared to be blood mixed in with
7 the glass.

8 Q. Did you -- you said you found shell casings?

9 A. Yes, sir.

10 Q. Do you remember where you found that?

11 A. I don't know the exact locations. But there were
12 multiple shell casings found in this area of the
13 intersection and down Trolley Road as well.

14 Q. That would be towards the bottom of the map?

15 A. Down this way.

16 Q. And did you do anything else at the scene that
17 night?

18 A. I put up crime scene tape, secured the area just
19 so we could secure the crime scene, and stayed there for
20 security until a detective showed up.

21 Q. And you didn't see anything besides what you've
22 already stated to the jury?

23 A. No.

24 Q. Okay.

25 MR. SMYTHE: No further questions,

1 Your Honor.

2 THE COURT: Cross-examination.

3 CROSS-EXAMINATION

4 BY MR. SHELTON:

5 Q. Officer Canfield, you were one of the first on
6 scene?

7 A. Yes, sir.

8 Q. Did, at some point in time, the news show up out
9 there?

10 A. There was a news vehicle that showed up, but
11 I believe he was just going to work. I had to stop him
12 and keep him from coming to the crime scene. And then
13 later, I believe the news showed up.

14 Q. Okay. Did you interview any witnesses or talk
15 to anybody out there?

16 A. No, sir.

17 Q. Okay. But there were multiple officers on scene?

18 A. Yes, sir.

19 Q. How many were sitting in Ace Hardware?

20 A. I believe it was just me and another officer.

21 Q. Okay. So you guys rushed up right to the area?

22 A. Yes, sir.

23 Q. Did that officer -- other officer, is that the
24 one that went down Midland Parkway?

25 A. Yes.

CROSS-EXAMINATION - BY MR. SHELTON

1 Q. Okay.

2 A. Yes, I believe that's what he did.

3 Q. Okay. So he went down Midland Parkway.

4 He didn't find anybody, correct?

5 A. I don't believe so.

6 Q. Okay. Here's a little bit of a different map.

7 A. Okay.

8 Q. Do you recognize this?

9 A. Yes. It looks like a Google map of the area of
10 Summerville where I was.

11 Q. Right here?

12 A. Yes.

13 Q. Okay.

14 MR. SHELTON: Your Honor, at this point,
15 just for identification, Defendant's 2 for
16 identification.

17 THE COURT: If it's for identification,
18 then you can't publish it to the jury.

19 MR. SHELTON: Okay.

20 BY MR. SHELTON:

21 Q. So can you tell me where you were -- where Ace
22 Hardware is at on this map?

23 A. One second. Let me get a look at this map.
24 It would be a little bit higher up this way.

25 Q. Okay. And can you mark where you -- where the

1 shooting was?

2 A. (Indicating.) Right there, Midland Parkway.
3 That's where I found casings.

4 Q. Okay. And then you found casings further up Old
5 Trolley Road, correct?

6 A. Yes.

7 Q. How far up Old Trolley Road?

8 A. I don't know the exact distance, but I believe
9 almost all the way up to Pivotal Fitness, right there
10 on Trolley.

11 Q. And the Pivotal Fitness, that's on -- so Old
12 Trolley Road is a four-lane road with a middle
13 intersection, correct?

14 A. Yes.

15 Q. So about five lanes is Old Trolley Road?

16 A. Yes.

17 Q. If Pivotal Fitness is on ---

18 MR. SMYTHE: May I approach, Your Honor?

19 THE COURT: You may.

20 (Off-the-record conversation held at sidebar.)

21 (Back on the record.)

22 BY MR. SHELTON:

23 Q. So Pivotal Fitness is -- so you have Arby's
24 on the right of Old Trolley if you're coming from Ace
25 Hardware, correct?

1 A. Correct.

2 Q. So it's on the right side. Pivotal Fitness is
3 on the left side?

4 A. Correct.

5 Q. And it's about two to three businesses passed
6 Midland Parkway?

7 A. Correct.

8 Q. Okay. So it's a pretty good distance down,
9 what would you say, 200, 300 feet -- yards?

10 A. Yeah, 200 to 300. I would say about 100 to 200
11 yards.

12 Q. Okay, 100 to 200 yards. And you found shell
13 casings on that side of the road?

14 A. There were casings found leading from the
15 intersection all the way up on the right side of the
16 road.

17 Q. Okay. So there was no -- nothing on the left
18 side of the road?

19 A. Not to my knowledge. I can only tell you what
20 I saw. I don't know what other officers saw. But what
21 I saw with my eyes were shell casings on the right side
22 leading up to that area.

23 Q. Okay. Did you see any shell casings? Did you
24 canvas the area back behind the Arby's?

25 A. Yeah. There actually was one shell casing found

1 underneath my car. I did not hit it, but it was
2 underneath about two -- probably two feet underneath
3 my car. When I was walking back, I saw the glimmer
4 of it. I didn't touch that one.

5 Q. And where was your car parked?

6 A. At the stop bar that I showed earlier, right in
7 front of the Arby's on Trolley Road.

8 Q. Okay. So the majority of the shell casings were
9 from the stop bar on?

10 A. Up towards, yes.

11 Q. Okay. And did you mark these shell casings?

12 A. I did not.

13 Q. You didn't take any pictures?

14 A. I did not.

15 Q. Your testimony was that there was some blood on
16 the ground, or what appeared to be blood?

17 A. Yes.

18 Q. And there was some glass that was on the ground?

19 A. Yes.

20 Q. You didn't see any cars take off from that?

21 A. I did not.

22 Q. Okay.

23 MR. SHELTON: Beg the Court's indulgence.

24 BY MR. SHELTON:

25 Q. How long did it take you to get from Ace Hardware

REDIRECT EXAMINATION - BY MR. SMYTHE

1 to the intersection?

2 A. I would say once I realized what I was hearing,
3 once I put the car in drive and went down there,
4 probably no more than 30 seconds to a minute, depending
5 on, you know -- I don't know exactly how fast I put it
6 into gear. I think I probably processed it a little
7 bit, so 30 seconds to a minute.

8 Q. And at 3:30 in the morning it's not very busy?

9 A. No traffic.

10 Q. Okay.

11 MR. SHELTON: No further questions.

12 THE COURT: Any redirect?

13 MR. SMYTHE: Yes, Your Honor. May I
14 approach the witness?

15 THE COURT: You may.

16 REDIRECT EXAMINATION

17 BY MR. SMYTHE:

18 Q. So, Officer Canfield, just to clarify, can you
19 tell the jury one more time which way did you come from?

20 A. (Indicating.) This is the Arby's here.

21 Q. Yes.

22 A. I came from this direction, Ace.

23 Q. Okay. And then you found the bullets, or the
24 shell casing in which part of the road?

25 A. So, I found shell casings in this area, and then

1 the right side of the road down here. And like I said
2 earlier, my car was parked here. There was one shell
3 casing located underneath my car.

4 Q. What town is the intersection in?

5 A. Town of Summerville.

6 Q. What county?

7 A. Dorchester County.

8 Q. You said a minute ago that it took you about
9 30 seconds to a minute to get down the intersection.
10 Is that from when you heard the shots, or from when
11 you started the car and put it in drive?

12 A. From when I heard the shots.

13 Q. Okay.

14 A. So like I said earlier, process it, kind of,
15 you know, I am not 100 percent sure, what did I hear,
16 and then go. So it probably took 30 seconds to a
17 minute. But once I got it in -- once I put it in drive,
18 I was there pretty quick.

19 Q. Okay.

20 MR. SMYTHE: No further questions, Judge.

21 THE COURT: Thank you, Officer. You may
22 step down.

23 THE WITNESS: Thank you.

24 THE COURT: You may call your next witness.

25 MR. SPEARS: Thank you, Your Honor.

DIRECT EXAMINATION - BY MR. SPEARS

1 State calls Kimberlee Felder.

2 MS. KIMBERLEE FELDER was called as a
3 witness, being duly sworn, was examined and testified
4 as follows:

5 THE COURT: Your witness.

6 MR. SPEARS: Thank you, Your Honor.

7 DIRECT EXAMINATION

8 BY MR. SPEARS:

9 Q. Good afternoon, Kim.

10 A. Good afternoon.

11 Q. Can you please tell the jury how old you are.

12 A. I am 35.

13 Q. And where are you from?

14 A. I'm from Summerville, South Carolina.

15 Q. How long have you lived in the area?

16 A. Pretty much all of my life, with the exception
17 of college and coming back and forth.

18 Q. Where did you go to college?

19 A. South Carolina State University.

20 Q. And what do you do for a living now?

21 A. I'm a travel business owner.

22 Q. How long have you done that?

23 A. Since December of 2015.

24 Q. Okay. And just kind of what does that involve,
25 just to clarify for the jury?

DIRECT EXAMINATION - BY MR. SPEARS

1 A. We book dream vacations for our clients. We are
2 a concierge service. We book weddings, honeymoons,
3 anniversaries, concerts, NFL tickets, just any type
4 of travel arrangements that you might have.

5 Q. And, Kim, are you married?

6 A. I was married. I'm not married at this time.

7 Q. How long were you married?

8 A. We were married for four years.

9 Q. Do you have any kids together?

10 A. We do. We have three children.

11 Q. How old are they?

12 A. Six, four, and three.

13 Q. What are their names?

14 A. Jyrie, Giselya, and Zarayah.

15 Q. Okay. What's the name of your ex-husband?

16 A. Carsheme Dinkins.

17 Q. Gotcha. Now, Kim, let's go back to June 4th,
18 2016. Where were you living at that time?

19 A. I was living in Saint George, South Carolina.

20 Q. Okay. And who all lived with you there?

21 A. I was taking care of my two grandparents that
22 have dementia full time. Carsheme and I were living
23 there and also our three children. Yeah, three
24 children.

25 Q. And do you recall how old your kids were then?

DIRECT EXAMINATION - BY MR. SPEARS

1 A. My baby was four months old. My middle child
2 was a year and a half, and my son was three years old.

3 Q. And were you married at that time?

4 A. Yes, we were married.

5 Q. Okay. So the night of June 4th, 2016, did you
6 have any plans that night?

7 A. Yes. My best friend that I've been best friends
8 with since we were in fourth grade, we always spent our
9 birthdays together. So we decided to go out to a club
10 that night for her birthday celebration.

11 Q. What's her name?

12 A. Regina Wright.

13 Q. And what about Carsheme? Did he have any plans
14 that night?

15 A. He did not go. He stayed at my mother's house
16 with the children, which was in Summerville.

17 Q. And so you had plans to go out with Regina.
18 And how did that start? What did y'all do that night?

19 A. Well, we called each other and planned to meet up
20 at the bar that was three minutes away from where my mom
21 lives, and it was called Suite 221.

22 Q. Around what time that night did you get there,
23 do you recall?

24 A. I know that I nursed her and laid her down.
25 So it was probably after ten, if I'm correct on that.

DIRECT EXAMINATION - BY MR. SPEARS

1 Q. Okay. Do you recall about how long you stayed
2 at the club?

3 A. We did stay until the club ended. I know that
4 I had a specific amount of time before I had to be back
5 because I was nursing my daughter exclusively.
6 So, I know I couldn't have been gone for an extended
7 amount of time.

8 Q. So you all went out and celebrated her birthday.
9 Were you all drinking that night?

10 A. I was not drinking because I was nursing my
11 four-month-old baby. My best friend drank heavily
12 that night. So, I was driving her vehicle.

13 Q. And with all your kids -- I'm sorry if I'm
14 getting too personal. Did you nurse all your children?

15 A. I did. I nursed all three of my children.

16 Q. So what did y'all do when you were at 221?

17 A. Socialize, just laugh. My best friend doesn't
18 live in the state of South Carolina anymore. So we
19 don't really get that much time together, so just a lot
20 of laughing and catching up.

21 Q. Did you see anybody there?

22 A. I did. That night, I did see Damien's [sic.]
23 sister. She was also at that same location.

24 Q. And what was her name?

25 A. I don't know what her name is. I have seen her

DIRECT EXAMINATION - BY MR. SPEARS

1 several times. I know her face.

2 Q. Gotcha. Now where did you go after you left
3 the club? Around what time -- you said it closed down,
4 just a general time.

5 A. Probably closer to 3, 2:30.

6 Q. And what did y'all do after that?

7 A. We went to the Waffle House. My best friend
8 wanted to get some food to help her sober up.

9 Q. And what did y'all do when y'all got to the
10 Waffle House?

11 A. Well, she was very intoxicated, so she did not
12 get out the car. She sent me inside. I got her one
13 bowl of grits and came back into the car -- came back
14 to her car with the food.

15 Q. Okay. And did y'all leave the Waffle House
16 together?

17 A. No, I took her car back to my home, and she got
18 into the car with her sister and her sister's boyfriend.

19 Q. Okay.

20 A. I took her car.

21 Q. And what was the idea behind you taking her car?

22 A. She just was way too drunk to drive. She's my
23 best friend. So, I couldn't let her drive in the state
24 she was in.

25 Q. And when you took her car, where did you go?

1 A. I went directly back to my children.

2 Q. Okay. And what did you do when you got there?

3 Who was there when you got there?

4 A. My ex-husband was there when I got there. I left
5 my car at the Waffle House. So, I knew that if I left
6 it, it might get towed. So, I woke him up. We got in
7 the car together, and we proceeded to go back to the
8 Waffle House where I left his truck.

9 Q. And who was driving?

10 A. I was.

11 Q. Where was he in the car?

12 A. He was in the passenger seat.

13 Q. Kim, just go ahead and describe to the jury what
14 happened next.

15 A. We came out of my parents' subdivision. We came
16 to the second light. And as we were sitting at the
17 light, I could hear sounds of, like, a ting, ting, ting.
18 I didn't know what the sound was. So, I looked over my
19 left shoulder, and there was a car approaching on the
20 side of us. And, at that time, I met eyes with Damien
21 Riley, my cousin.

22 Q. Now, speaking of Damien Riley. How are you
23 related to him?

24 A. His grandfather and my grandmother are brothers
25 and sisters.

DIRECT EXAMINATION - BY MR. SPEARS

1 Q. And how long have you known him?

2 A. All his life.

3 Q. How often did y'all see each other growing up?

4 A. Very often. Every Sunday, I would come to Saint
5 George with my dad just so that I could spend time with
6 him and his siblings. We were really, really close
7 growing up.

8 Q. And how recently had you seen him before?

9 A. Well, I had my baby, so I was primarily in the
10 house. On social media several times, but I hadn't seen
11 him personally maybe, probably six months before I had
12 my last child.

13 Q. Is there any animosity between you and Damien
14 Riley?

15 A. Not between him and I, no.

16 Q. How about him and Carsheme?

17 A. Yes. He did have a fight with my ex-husband.

18 Q. Okay. So you say you heard this ting, ting
19 sound. You turned and looked?

20 A. Yes.

21 Q. What shoulder of yours did you look over?

22 A. I looked over my left shoulder.

23 Q. And you saw him?

24 A. Yes.

25 Q. What was he doing?

1 A. Half of his body was projected out of the car,
2 and I could see him making this intense grimace.
3 And there was a light flashing off of the end of the
4 gun. And I had tunnel vision because I could see his
5 face that was illuminating from the shots. And I just
6 couldn't believe that my cousin would even be willing
7 to shoot at me, somebody that I've known all my life.

8 Q. And do you recall how many times he shot?

9 A. No.

10 Q. Did you focus on anything else at that point
11 in time?

12 A. Right into his eyes, something I'll never forget.

13 Q. Do you know -- and you say he was leaning out
14 of the car. What car are you referring to? Was it your
15 car?

16 A. No. He was in -- I don't know what the make
17 and model of the car that he was in. But he was in
18 the rear passenger side. He was in the back seat from
19 the passenger side. But his body was out so much that
20 I could see him very clearly.

21 Q. So did you see who was driving the car?

22 A. I did not.

23 Q. Did you see who was in the passenger seat?

24 A. I did not.

25 Q. Were you focused on anything but him?

DIRECT EXAMINATION - BY MR. SPEARS

1 A. No.

2 Q. And I'm sorry if I've already asked this
3 question, but do you recall just how many shots he had
4 -- he took?

5 A. I do not know.

6 Q. Was it like one?

7 A. It was several lights flashing that I could see
8 coming off of the end of the gun.

9 Q. So what happened after you saw him leaning
10 out the car shooting, and what was he shooting at?

11 A. Us, which was a shock.

12 Q. So what happened?

13 A. When -- I just couldn't stop looking. I just
14 continued -- I just couldn't stop looking at him. I was
15 just stunned. But eventually, I guess, after I got
16 shot, my head went down, but I never ever lost
17 consciousness at all that entire time. After I got shot
18 in the face, my head went down.

19 My ex-husband took the wheel and swung it to the
20 right-hand side. And then he took me out of the car,
21 put me in the back seat, and I called my mother and my
22 father, which I just left them less than three minutes
23 ago. And I could feel my jaw -- my right jaw hanging.
24 And I called my parents and told them that I was going
25 to die because I got shot in the face, and I let them

1 know that Damien had shot me.

2 Q. And you said you called your mom while you're
3 holding your jaw like that. Were you able to talk
4 articulately?

5 A. It was more of a muffle, more like sounding
6 like this because I couldn't -- I never had any pain.
7 I didn't even feel it.

8 MR. SPEARS: May I approach, Your Honor?

9 THE COURT: You may.

10 BY MR. SPEARS:

11 Q. Kimberlee, with Stylus pointer, can you show the
12 jury on this map -- do you recall this intersection?

13 A. I do.

14 Q. Where were you on the night -- I guess, the early
15 morning of June 5th, at this point in time?

16 A. We were sitting right in this right lane here,
17 sitting at the light. And they came, just like this
18 car here, from behind us, and were already shooting
19 as we were sitting at this location.

20 Q. And was the car still in that location when you
21 got shot?

22 A. When we got shot, my ex-husband took the wheel.
23 And he turned over to the right, so we ended up probably
24 about right there.

25 Q. And what happened to the car that the Defendant

DIRECT EXAMINATION - BY MR. SPEARS

1 was in after that?

2 A. I don't know which direction he went. I do not
3 recall.

4 Q. You say that you ---

5 A. I was fighting for my life at this point,
6 getting in the back seat.

7 Q. And you say that Carsheme put you in the back
8 seat?

9 A. Yes.

10 Q. Okay. Is the man who shot you in the courtroom
11 today?

12 A. He is.

13 Q. Can you point him out for the jury?

14 A. (Pointing.) This is Damien Riley here.

15 Q. Now what did Carsheme do after the shooters drove
16 off, and he put you in the back seat?

17 A. Well, we were initially going to go to
18 Summerville Medical, but he knew that Summerville
19 Medical did not have a trauma team. So we ended up
20 driving from this location. We went this way. This is
21 Midland Parkway, onto Ladson Road. We went to Trident
22 Hospital.

23 Q. And what do you recall from the ride to the
24 hospital?

25 A. Miserable. They had shot the tires off of the

1 two left sides of our vehicle. So we were basically
2 on the rim the entire time, so we couldn't get there
3 very quickly.

4 So, basically, I was on the phone with my parents
5 the entire time, praying that I lived, letting them know
6 how much I loved them, letting them know, please take
7 care of my children because they would have been the
8 caretakers of my three small children at the time, just
9 staying on the phone with them praying, and just trying
10 to fight for my life.

11 Q. Now at any point in time during all these events,
12 did Carsheme have a gun on him?

13 A. No.

14 Q. Did you have a gun on you?

15 A. No.

16 Q. Did Carsheme -- were any shots fired from your
17 car ---

18 A. No.

19 Q. --- from Regina's car?

20 A. No.

21 Q. Did you finally make it to the hospital?

22 A. Yes.

23 Q. What do you recall from going into the hospital?

24 A. I was still conscious, so I reached for the --
25 when we got to the emergency side of Trident Hospital,

DIRECT EXAMINATION - BY MR. SPEARS

1 I reached for the door handle. And Carsheme ran inside
2 to let the medical staff know that I was coming in.
3 And as I was getting out of the car, they helped me,
4 and I came into the entrance of the emergency room.
5 I could hear the nurses saying, you're going to live ---

6 MR. SHELTON: Objection. Hearsay.

7 THE COURT: Sustained.

8 BY MR. SPEARS:

9 Q. Can you just describe to the jury after you got
10 to the hospital what your recovery was like. First
11 and foremost, let's go back. Where did you get hit?

12 A. (Indicating.) I was shot right here in my face.

13 Q. And what type of injuries did you sustain from
14 that?

15 A. Extremely severe. My -- I lost a lot of bone.
16 I did not have a sinus cavity. This part of my face
17 on the anterior was basically nonexistent. I have
18 an artificial plate from this bone all the way down
19 and across. I had a tracheotomy. I also have had 14
20 surgeries and office procedures to try to rebuild the
21 structure of my face. I also have no bone. I lost my
22 gum tissue that -- I lost my teeth as a young person.

23 And other things that I lost was the ability to
24 take care of my children. Financially, I couldn't work.
25 I couldn't keep a job because I had so many surgeries.

CROSS-EXAMINATION - BY MR. SHELTON

1 I was in an extreme financial situation. I also was
2 not able to take care of my grandparents that depended
3 on me for all meals, to get them out of bed, in bed.
4 They solely depended upon me, and I was not able to
5 nurse my four-month old anymore. And I had my tubes
6 tied, so I'm not able to have any more children.

7 Q. And about how long was your recovery?

8 A. My recovery lasted at least two years. I'm still
9 suffering. I still have pain every day. Every single
10 day when I wake up, my jaw -- I have to stretch my jaw.
11 I can't eat certain foods because I don't have the
12 strength in my jaw to chew.

13 MR. SPEARS: Court's indulgence, Your Honor.

14 THE COURT: Yes, sir.

15 MR. SPEARS: Kim, please answer any
16 questions that the defense might have for you.

17 THE WITNESS: I will.

18 THE COURT: Cross-examination.

19 CROSS-EXAMINATION

20 BY MR. SHELTON:

21 Q. Kim, State's 2, so this is the intersection.
22 Where was Club 221?

23 A. It was further down, probably a mile and a half,
24 maybe two miles pass ---

25 Q. Right at Dorchester Road?

CROSS-EXAMINATION - BY MR. SHELTON

1 A. Yes, at the end of Trolley and Dorchester Road.

2 Q. Okay. So the Waffle House, that was maybe
3 a block from Club 221, correct?

4 A. Yes.

5 Q. Okay. And your -- is it your mother's house,
6 your parents' house?

7 A. Yes.

8 Q. Was Brandywine the ---

9 A. Brandymill.

10 Q. Brandymill. So that is maybe two miles down the
11 road?

12 A. From Suite 221?

13 Q. From this intersection.

14 A. Probably not even a mile.

15 Q. Not even a mile down the road. So you -- it is
16 your testimony that you went from Club 221 to the Waffle
17 House?

18 A. Correct.

19 Q. And were you driving your truck at that point
20 in time?

21 A. Yes.

22 Q. And who was driving the Mercedes?

23 A. My best friend, Regina.

24 Q. Okay. And her sister was there?

25 A. Yes.

1 Q. Did her sister go to Club 221 with you?

2 A. Yes. She didn't ride with us, but we met there.

3 Q. At Club 221?

4 A. Yes.

5 Q. And so at some point, you decided that you were
6 going to get out of your car and take Regina's car?

7 A. I decided to drive her car because she was too
8 drunk to drive.

9 Q. Okay. Did she park?

10 A. No -- yes, she did park at the Waffle House, yes.

11 Q. Okay. So at that point in time, you got out of
12 your car, got in her car to go down to pick up Carscheme?

13 A. Yes, after I got the Waffle House for her.

14 Q. Right. So you didn't get back in your car at
15 that point in time?

16 A. No.

17 Q. And so from Dorchester Road, that's maybe four
18 to five miles, maybe, from your parents' house?

19 A. Probably not even that far, maybe two or three.

20 Q. Okay. And I think it's your testimony that the
21 club ended at 2:30?

22 A. Probably so, but we talked. We were still inside
23 talking.

24 Q. Inside the club and talking?

25 A. Yes.

CROSS-EXAMINATION - BY MR. SHELTON

1 Q. Okay. And it's your testimony Carsheme stayed
2 with the children?

3 A. Yes.

4 Q. And you were married at this point in time?

5 A. Yes.

6 Q. It's also your testimony that you know Damon very
7 well?

8 A. Correct.

9 Q. It's your testimony that you didn't know his
10 sister's name?

11 A. No.

12 Q. Okay. But you know Damon since he's been a baby?

13 A. Correct.

14 Q. Okay.

15 A. This is a sister that did not grow up in the
16 house with him.

17 Q. Okay. You know his grandfather?

18 A. Correct, yes.

19 Q. It's your testimony that as the car -- when
20 you're at the intersection, the car is coming behind
21 you, and you hear the gunshots as the car is approaching
22 you?

23 A. Correct.

24 Q. And you hear ting, ting, ting, specifically,
25 on your car?

1 A. Yes.

2 Q. Or Regina's car?

3 A. Yes, Regina's car.

4 Q. Okay. It's -- I mean, it's a dumb question,
5 but it's 3:40, 3:30 in the morning, it's dark?

6 A. Correct.

7 Q. Okay. And so this gunshot -- gunshots, when
8 they're coming out, it's pretty bright, correct?

9 A. Correct.

10 Q. And this is not the first time you've testified,
11 correct?

12 A. Correct.

13 Q. And you've testified previously that it was like
14 lightning?

15 A. Yes, it was very bright of a flash.
16 It illuminated him.

17 Q. Okay. So it was so bright that you don't know
18 what type of car that the shooting was coming from,
19 correct?

20 A. I was not focused on the car. All I could see
21 was these two eyes that I've seen my entire life.

22 Q. Okay. And so you can't say if it was an SUV,
23 you can't say if it's a car, if it's a four door?

24 A. I cannot say what type of car he was in, no.

25 Q. Okay. And you're not even sure how many people

1 were shooting?

2 A. I don't know how many other people were shooting.
3 I know, for a fact, that I saw Damien Riley. I will
4 never forget it.

5 Q. But it's your testimony that you or Carsheme
6 were not shooting?

7 A. Correct.

8 Q. You or Carsheme didn't call 911, correct?

9 A. Correct.

10 Q. You talked to the police about this?

11 A. My jaw was wired shut immediately, so I was not
12 able to give an immediate response after surgery.

13 Q. After surgery, after the police came to you,
14 you gave a statement, correct?

15 A. Correct.

16 Q. Did you write a statement?

17 A. I'm not sure. I was on heavy medication at the
18 time. I probably didn't write anything, everything was
19 probably verbalized.

20 Q. Do you remember that ride from this intersection
21 to Trident Medical?

22 A. Absolutely.

23 Q. Because you were on the rims?

24 A. Correct, and on the phone with my parents.

25 Q. Did you ever talk about going to the fire station

1 that were down off Ladson Road?

2 A. No.

3 Q. You didn't tell Carsheme, let's go to Summerville
4 Medical?

5 A. No.

6 Q. And Summerville Medical is -- I mean, you can
7 almost see it from that intersection, correct?

8 A. Correct. Summerville Medical doesn't have
9 a trauma department there.

10 Q. But it's a hospital.

11 A. Correct.

12 Q. It has doctors.

13 A. Right.

14 Q. And I think it's your testimony today that you
15 don't know where that car went?

16 A. No.

17 Q. You don't remember if it went down Travelers
18 Boulevard, down Midland Park, down Old Trolley?

19 A. I do not know.

20 Q. Did you ever see the other vehicle turn?

21 A. No.

22 Q. You never saw the other vehicle turn to the
23 right?

24 A. Once we got shot, and my ex-husband turned our
25 car, and we went a little to the right, no, I did not

CROSS-EXAMINATION - BY MR. SHELTON

1 see. I did not see.

2 Q. Would it help you to see a transcript from the
3 first trial ---

4 A. No.

5 Q. --- maybe to refresh your memory?

6 A. No, because the facts don't lie.

7 Q. Okay. Well, let's have you ---

8 MR. SHELTON: May I approach, Your Honor?

9 THE COURT: You may approach.

10 BY MR. SHELTON:

11 Q. To yourself, can you read Line 3 to Line 10?

12 A. (Witness reading to herself.)

13 Q. Okay. So does that refresh your memory?

14 A. Yes, it's consistent with what I said.

15 Q. So -- well, you just testified that you didn't
16 see them turn their vehicle. But in the first trial,
17 you did say that they turned their vehicle?

18 A. What I stated was there was a bullet hole that
19 was coming directly into the car, and that was their
20 final attempt to try to kill us, which it was.

21 Q. Okay.

22 A. That gunshot had to have come from straight into
23 our vehicle.

24 Q. So that's based off you looking at evidence?

25 A. That's based upon the fact that there is one

1 specific bullet hole that's on the right side of the
2 car, because they had to have looked and made one final
3 shot into our vehicle, that was the last attempt to try
4 to kill us.

5 Q. Okay. And so the night of, when you were shot
6 in the face, you were put in the back of the car,
7 you didn't look over your car, correct?

8 A. Correct.

9 Q. Okay. So you're trying to explain some evidence
10 that you saw later on, correct?

11 A. Correct.

12 Q. Okay. So you see some evidence that the
13 solicitor's office, the police, had provided to you,
14 correct?

15 A. No, no. I need to clarify. This is evidence
16 that I saw while I was -- when I was getting out of
17 the car into the hospital.

18 Q. So you're ---

19 A. It was a hole about this big that you could see
20 clearly on the front side of the vehicle.

21 Q. Okay. So you're shot, you're holding your
22 mouth up, you're talking to your mom about you dying,
23 and you're looking over your car?

24 A. I didn't say I looked over my car. It's one
25 specific huge hole that you can see very clearly in

1 the front dash.

2 Q. So you're focused on your car. You're not
3 focused on getting into the hospital because you felt
4 like you were dying?

5 A. I glanced and I noticed. It was very noticeable.
6 There wasn't a second thought to be had to see this huge
7 shot in the front seat of the driver's side.

8 Q. Did you ever see the pictures in this case?

9 A. I have seen some things.

10 Q. And you talked to the solicitor's office about
11 this case?

12 A. Of course. It's a three-year-old case.

13 Q. You talked to the police about this case?

14 A. No.

15 Q. Did the police show you the pictures, or the
16 solicitor's office show you the pictures?

17 A. I can't remember who showed it.

18 Q. Okay. You indicated that Damon and Carsheme
19 were in a fight?

20 A. Correct.

21 Q. Were fighting with each other?

22 A. Correct.

23 Q. Okay. Was there an opportunity that you had
24 to go with Mr. Floyd Riley to the police station?

25 A. What do you mean?

1 Q. Prior to all this -- I'm sorry. Prior to all
2 this, was there an opportunity that you had to go to
3 the police station with Mr. Floyd Riley?

4 A. Why would I be going to the police station
5 with Mr. Floyd Riley, my uncle?

6 Q. To pick up your vehicle.

7 A. Oh, yes.

8 Q. You remember that?

9 A. Yes.

10 Q. Okay.

11 A. It wasn't my vehicle. It was Carsheme's vehicle.

12 Q. Okay. And so you went to pick up this vehicle,
13 and you told the police that Damon stole this vehicle,
14 correct?

15 A. I'm not sure at that time. That doesn't have
16 anything to do with the fact that Damien shot me.
17 That car is not even mine.

18 Q. Well, do you remember when the police corrected
19 you that it was Carsheme that was driving?

20 A. I have no idea who was driving. That case
21 happened between Carsheme and Damien. I was not on
22 the scene; I was not there. I cannot attest to anything
23 that I don't know.

24 Q. Okay. So it's your testimony you don't remember
25 telling the police that Damon stole Carsheme's truck?

CROSS-EXAMINATION - BY MR. SHELTON

1 A. No.

2 Q. So this is like lightning flashes? These
3 gunshots are lightning flashes?

4 A. Correct.

5 Q. And you are sure that you saw Damon?

6 A. I've never been more sure of anything in my
7 entire life.

8 Q. With this light flashing in your face,
9 you're sure?

10 A. Absolutely. This is somebody that I have known
11 his entire life.

12 Q. You ever been camping?

13 A. No.

14 Q. You ever had a light shine in your face?

15 A. I don't know.

16 Q. Right after you've been shot, your head went
17 down, but you never lost consciousness, correct?

18 A. Correct, never.

19 Q. Did you hit the gas?

20 A. When my head went down -- I don't know.

21 Q. Okay. You were stopped -- you were at a complete
22 stop, correct?

23 A. Yes.

24 Q. When this car was shooting at you, you were at
25 a complete stop?

1 A. Correct.

2 Q. Okay. So you didn't jerk forward, you didn't try
3 to get away when the shots were coming at you?

4 A. I was in too much of a state of shock.

5 Q. Okay.

6 A. I just couldn't stop looking at him.

7 Q. You never pulled into the Arby's parking lot back
8 then, nothing like that?

9 A. No.

10 Q. Carsheme never did that?

11 A. No.

12 Q. Do you know if there were sparks coming off the
13 rim as you were driving down Ladson Road?

14 A. I was inside the vehicle. I can't tell you if
15 there were sparks or not.

16 Q. Okay. Do you remember if he had to stop at any
17 stop signs -- stoplights because there's quite a few
18 stoplights down Ladson Road in College Park?

19 A. We did have a delay as we were turning onto
20 Highway 78. We did have to slow down at a light,
21 I do remember.

22 Q. Okay. And this was Regina's car?

23 A. Correct.

24 Q. It's not a car that you typically drive?

25 A. Right.

DIRECT EXAMINATION - BY MR. SMYTHE

1 MR. SHELTON: No further questions.

2 THE COURT: Any redirect?

3 MR. SPEARS: None, Your Honor.

4 THE COURT: You may step down, ma'am.

5 Thank you. You may call your next witness.

6 MR. SMYTHE: State calls Dr. Fernando
7 Herrera.

8 DR. FERNANDO HERRERA was called as a
9 witness, being duly sworn, was examined and testified
10 as follows:

11 THE COURT: Your witness.

12 MR. SMYTHE: Thank you, Your Honor.

13 DIRECT EXAMINATION

14 BY MR. SMYTHE:

15 Q. Good afternoon, Dr. Herrera.

16 A. Good afternoon.

17 Q. Where do you work, sir?

18 A. The Medical University of South Carolina.

19 Q. And what is your position at the medical
20 university?

21 A. I'm a plastic reconstruction surgeon.

22 Q. And how long have you been there?

23 A. Seven years to date, just about.

24 Q. Did you practice anywhere before that?

25 A. I was in training prior to that point.

1 Q. Can you tell me about your practice? What kind
2 of -- are you mostly a cosmetic surgeon?

3 A. So, I'm mostly a reconstructive surgeon,
4 probably about 90 percent reconstructive.

5 Q. Okay. What kind of patients do you normally see
6 in that reconstructive practice?

7 A. Sure. Basically, a wide variety of patients,
8 from trauma to cancer reconstruction, extremities
9 and facial injuries.

10 Q. Were you working as a plastic surgeon at MUSC
11 in June of 2016?

12 A. Yes.

13 Q. Do you recall treating Kimberlee Felder?

14 A. I do.

15 Q. And could you tell the jury about your treatment
16 of Ms. Felder. What were her injuries?

17 A. Sure. When I had met her initially, she had
18 sustained an injury to her face.

19 Q. What kind of injury was that?

20 A. Well, it was a ballistic injury from a gunshot.
21 And she had soft tissue and very bad fractures of her
22 maxilla and mandible.

23 Q. And so what is a maxilla?

24 A. It's your upper jaw.

25 Q. Okay. And then the mandible is the lower jaw?

DIRECT EXAMINATION - BY MR. SMYTHE

1 A. The lower jaw.

2 Q. And can you tell us about the injuries to both
3 jaws, please.

4 A. Sure. They were what we call comminuted,
5 which means a lot of fractures due to the bullet injury,
6 the path of the bullet, making it a complicated fracture
7 to repair. She had some soft tissue injuries that we
8 were able to repair most of those, primarily, with small
9 local flaps.

10 Q. And do you remember -- it was a long time ago.
11 Do you remember how long after she was injured -- do you
12 know how long after she was injured you first saw her?

13 A. I believe I was called to see her that evening
14 or that afternoon. So within -- probably within 12
15 hours.

16 Q. What kind of state was she in? Was she talking
17 to you?

18 A. She was not. Currently, at that time,
19 she intubated and sedated because of all the injuries
20 to her face. She didn't have a safe airway, so they
21 had to put the tube in at the time of her injury.

22 Q. The first time you saw her, what kind of surgery
23 -- what kind of care did you perform?

24 A. So initially we took her that afternoon --
25 that evening, and irrigated the wounds, looked at

1 all the fragments, try to remove the nonvital bones,
2 repair the tissue from the skin muscle in her mouth,
3 the mucosa, and stabilize the fractures with what we
4 call arch bars and wire her jaw shut. And prior to
5 that, the trauma people had obtained an airway for her,
6 so we could wire her mouth shut and stabilize her
7 fractures.

8 Q. So she has a device that wires her jaw shut,
9 and a tube in her throat?

10 A. Correct.

11 Q. How was she going to eat?

12 A. So in that type of injury, you have to eat
13 a liquid diet for roughly four to six weeks.

14 Q. Is that how long Ms. Felder had her mouth wired
15 shut?

16 A. Yes.

17 Q. Okay. And so you're saying that you went in
18 there and cleaned her up. Did you then perform this
19 reconstructive surgery of putting her mouth back
20 together?

21 A. I did. So her mandible, she had a complex
22 injury on the right side that required actually a plate.
23 And so we did that two days later. We revised the wires
24 on the upper part, and then put a large what we call
25 a reconstructive plate across the fracture of the

DIRECT EXAMINATION - BY MR. SMYTHE

1 mandible.

2 Q. And did Ms. Felder come to you after that --
3 that's sort of a big surgery.

4 A. Sure.

5 Q. Did she come to you after that as well?

6 A. Yes.

7 Q. And what was that for?

8 A. I saw her initially after that as she healed,
9 removing the wires, allowing her to start moving her
10 jaw. And then, ultimately, I did some scar revisions
11 on her face for her.

12 Q. And about -- for how long did you see her for
13 scar revisions and things like that?

14 A. We really started scar revisions about a year
15 after all her injuries, so actually June of 2017 was
16 the last operation I did on her.

17 Q. Okay.

18 THE COURT: Solicitor, I hate to interrupt
19 you, but could counsel please approach.

20 MR. SMYTHE: Yes, ma'am.

21 (Off-the-record conversation held at sidebar.)

22 (Back on the record.)

23 THE COURT: You may proceed.

24 MR. SMYTHE: Yes, ma'am. Doctor, I have
25 no further questions. Would you please answer any

CROSS-EXAMINATION - BY MR. SHELTON

1 questions the defense might have.

2 THE WITNESS: Yes, sir.

3 MR. SMYTHE: Thank you.

4 THE COURT: Cross-examination.

5 CROSS-EXAMINATION

6 BY MR. SHELTON:

7 Q. Dr. Herrera, you just testified that there was
8 a lot of fractures down the path of the bullet.

9 A. Yes.

10 Q. Okay. So could you tell the path of the bullet?

11 A. It appeared to enter from the left and go to the
12 right based on what we could see on the CT scan and her
13 injury.

14 Q. From the left down to the right. Was there
15 a bullet -- there was an actual bullet recovered?

16 A. There was actually a bullet fragment that we
17 recovered.

18 Q. Okay. And this may be a typo, or may be just
19 confused a little. Did you review any of, I guess,
20 other doctors -- you guys kind of work as a team, right?

21 A. Sometimes, yes.

22 Q. Okay. Was there another laceration? So there
23 was a laceration to the upper lip -- left upper lip?

24 A. Correct.

25 Q. Was there another laceration on the right side?

CROSS-EXAMINATION - BY MR. SHELTON

1 A. There was another laceration, I believe.

2 Q. Okay. And you don't know what happened?

3 A. No, sir.

4 Q. Okay.

5 MR. SHELTON: No further questions.

6 THE COURT: Any redirect?

7 MR. SMYTHE: No, Your Honor.

8 THE COURT: Thank you, Doctor. You may step
9 down.

10 MR. SPEARS: Your Honor, may we approach?

11 THE COURT: You may.

12 (Off-the-record conversation held at sidebar.)

13 (Back on the record.)

14 THE COURT: Ladies and gentlemen, we've been
15 going a couple of hours. This might be a good time for
16 us to take a brief afternoon break. If you would please
17 go to your jury room. Please remember my previous
18 instruction not to discuss this case with anyone,
19 or allow anyone to discuss the case with you. We'll
20 take about a ten-minute break and be right back with
21 you.

22 (Jury exits the courtroom at 2:54 p.m.)

23 THE COURT: That will be ten minutes.

24 MR. SPEARS: Thank you, Your Honor.

25 MR. SMYTHE: Thank you, Judge.

DIRECT EXAMINATION - BY MR. SMYTHE

1 (Recess taken.)

2 (Back on the record.)

3 THE COURT: Are the parties ready?

4 MR. SPEARS: Yes, Your Honor.

5 MR. SHELTON: Yes, Your Honor.

6 THE COURT: All right. Let's have our jury,
7 please.

8 (Jury enters the courtroom at 3:17 p.m.)

9 THE COURT: Welcome back, ladies and
10 gentlemen of the jury. We're ready to proceed. You may
11 call your next witness.

12 MR. SMYTHE: Thank you, Your Honor.

13 State calls Kevin Dutrieux.

14 MR. KEVIN DUTRIEUX was called as a witness,
15 being duly sworn, was examined and testified as follows:

16 THE COURT: Your witness.

17 MR. SMYTHE: Thank you, Your Honor.

18 DIRECT EXAMINATION

19 BY MR. SMYTHE:

20 Q. Good afternoon, Officer Dutrieux.

21 A. Good afternoon, sir.

22 Q. Where do you work, sir?

23 A. Summerville Police Department.

24 Q. And how long have you worked there?

25 A. Twelve years.

DIRECT EXAMINATION - BY MR. SMYTHE

1 Q. And what is your job with Summerville? What do
2 you do for them?

3 A. Currently, I'm assigned to the traffic division
4 as a supervisor with that division.

5 Q. And what are some of the duties that go along
6 with that job?

7 A. Check collision reports, work collisions.
8 I supervise six other individuals throughout the day
9 and enforce traffic safety laws.

10 Q. Okay. You were working for Summerville in June
11 of 2016?

12 A. Yes, sir.

13 Q. Did you have the opportunity to respond to
14 a shooting on June 5th of 2016?

15 A. Yes, sir, I did.

16 Q. And what did you respond to?

17 A. I responded to Trident Medical Center in
18 reference to being dispatched for two shooting victims
19 there that had been involved in a shooting on Trolley
20 Road.

21 Q. So you did not go to the scene?

22 A. No, sir.

23 MR. SMYTHE: May I approach the witness,
24 Your Honor?

25 THE COURT: You may.

1 BY MR. SMYTHE:

2 Q. Officer Dutrieux, I'm showing you what's been
3 marked as State's 3 through 6.

4 A. Yes, sir.

5 Q. What are those?

6 A. The first picture is an image of Ms. Kimberlee
7 Felder, who had been -- had a bullet hole just below
8 her nose, and then an exit and entry wound just below
9 her nose where her jaw had been shattered from the
10 impact of being shot by a bullet.

11 Q. Okay. And looking at all those pictures, are
12 those a fair and accurate representation of the victims,
13 as you saw them that night?

14 A. Yes, sir.

15 MR. SMYTHE: Your Honor, I now offer these,
16 State's 3 through 6 into evidence.

17 THE COURT: Any objection?

18 MR. SHELTON: No objection.

19 THE COURT: All right, they're in.

20 (State's Exhibit Nos. 3 through 6 were admitted into
21 evidence.)

22 MR. SMYTHE: May I publish to the jury?

23 THE COURT: You may.

24 BY MR. SMYTHE:

25 Q. Officer Dutrieux, these photographs that we're

DIRECT EXAMINATION - BY MR. SMYTHE

1 showing, did you take those photographs?

2 A. Yes, I did.

3 Q. And did you speak with the victims?

4 A. I was able to speak with Mr. Carsheme Dinkins.
5 But I was unable to speak to Ms. Kimberlee Felder due
6 to her being intubated at the time when I got there.

7 Q. The first photo I'm showing you is State's
8 Exhibit 4. What do we see here?

9 A. That would be Mr. Carsheme Dinkins, one of
10 the victims of the shooting. And on his left forearm,
11 in the elbow area, you can see a bullet hole where he
12 had been shot. I was unable to get a picture of the
13 exit wound because I didn't observe an exit wound from
14 the entry.

15 Q. And State's Exhibit 5, what is this?

16 A. That's the entry wound, just a closer image
17 of the entry wound.

18 Q. And State's Exhibit 6?

19 A. That is just another scratch to me. It looks
20 like -- I couldn't tell if it was a bullet wound, or if
21 it was a glass scraping, but it was definitely fresh.

22 Q. And which victim is that?

23 A. That would be Mr. Carsheme Dinkins.

24 Q. And, finally, State's Exhibit 3. What do we see
25 here?

CROSS-EXAMINATION - BY MR. SHELTON

1 A. That was Ms. Kimberlee Felder when I arrived
2 on scene and was able to try to talk to her,
3 but I couldn't in the emergency room. The hole under
4 her nose is where -- the entry and exit wound for
5 her nose. And then her jaw where it was shattered,
6 and her being intubated to where I could not obtain
7 a statement from her.

8 Q. Okay. Officer Dutrieux, did you have any other
9 involvement in this case, other than taking these
10 pictures and going to the hospital?

11 A. No, no, sir.

12 MR. SMYTHE: Officer, I have no further
13 questions. Please answer any questions the defense
14 might have.

15 THE WITNESS: Yes, sir.

16 THE COURT: Cross-examination.

17 MR. SHELTON: Yes. Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. SHELTON:

20 Q. Officer Dutrieux, I think you indicated that
21 Ms. Felder had an entrance and an exit wound?

22 A. It appeared to be on one side, and then the other
23 side, yes, sir.

24 Q. Okay. And did you collect any bullet fragments
25 or anything from her that was removed from her?

CROSS-EXAMINATION - BY MR. SHELTON

1 A. No, sir, not at the time. I was only there
2 briefly while they were performing care on Ms. Felder.
3 I did not collect any of the fragments, no, sir.

4 Q. Okay. So from your observation, it looked like
5 it entered here and exited there?

6 A. It looked like, yes, sir.

7 Q. Okay. So it went into the left side and out the
8 right side?

9 A. I believe -- if I looked at the pictures,
10 I believe so, yes, sir.

11 Q. And so you did speak with Mr. Dinkins?

12 A. Yes, sir, I did.

13 Q. Did you get a written statement?

14 A. From Mr. Dinkins?

15 Q. Yeah.

16 A. No, sir.

17 Q. And he refused to provide a written statement?

18 A. Yes, sir.

19 Q. Did you do any -- have you performed gunshot
20 residue kits before?

21 A. In training, I did once before, yes, sir.

22 Q. Okay. And so that's to be able to tell
23 if someone has fired a weapon, correct?

24 A. Yes, sir.

25 Q. Or if a weapon has been fired near them?

1 A. Yes, sir.

2 Q. Did you perform a gunshot residue test on
3 Mr. Dinkins?

4 A. No, sir, I did not.

5 Q. Did you ask the hospital staff or anybody to bag
6 Ms. Felder's hands to perform a gunshot residue test on
7 her?

8 A. No, sir, I did not.

9 Q. You indicated that you work traffic now?

10 A. I'm currently in the traffic division, yes, sir.

11 Q. Okay. Do you respond to calls to businesses?

12 A. I guess, yeah. In traffic, we still are patrol
13 officers. So if the patrol team is busy, and a call
14 comes out, I'm not going to not go to a call. So, yes,
15 if it's an alarm, it could even be a domestic violence
16 issue, I'm still going to respond to those calls.
17 It's just not traffic related, so, yes, sir.

18 Q. Okay. Are you aware of this Club 221?

19 A. Yes, sir, down on Dorchester Road.

20 Q. Yes. And is this club in operation now?

21 A. I don't believe so. I think Dorchester County
22 Council pulled their business license.

23 Q. And there were numerous calls out to Club 221,
24 correct?

25 A. That's not our jurisdiction. That's in the

DIRECT EXAMINATION - BY MR. SMYTHE

1 jurisdiction of the sheriff's department.

2 Q. Okay. But you weren't tasked with any
3 investigation in this case?

4 A. No, sir, besides going to the hospital and
5 meeting with the victims and trying to get photographs.

6 Q. Okay.

7 MR. SHELTON: No further questions.

8 THE COURT: Any redirect?

9 MR. SMYTHE: No, Your Honor.

10 THE COURT: You may step down, sir.

11 Thank you.

12 THE WITNESS: Thank you, ma'am.

13 THE COURT: You may call your next witness.

14 MR. SMYTHE: State calls Chris Hirsch.

15 MR. CHRIS HIRSCH was called as a witness,
16 being duly sworn, was examined and testified as follows:

17 THE COURT: Your witness.

18 MR. SMYTHE: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY MR. SMYTHE:

21 Q. Sergeant Hirsch, where do you work?

22 A. I work at the Summerville Police Department.

23 Q. And what is your position at Summerville Police
24 Department?

25 A. I'm a sergeant in the criminal investigation

1 division.

2 Q. What are some of your duties there?

3 A. As a sergeant with the CID, I assign cases to
4 other detectives. I read every single report that comes
5 through to determine if there is enough solvability
6 factors for a case to be assigned. There's currently
7 eight other detectives in the division that I'm in
8 charge of, and again, I assign cases out.

9 Q. And how long have you been a detective?

10 A. Five years with Summerville.

11 Q. Okay. Did you work for Summerville in June
12 of 2016?

13 A. I did.

14 Q. Did you respond to a shooting on Old Trolley Road
15 June 5th of 2016?

16 A. I did.

17 Q. Could you tell the jury about what you responded
18 to?

19 A. So on June 5th, 2016, I received a call from my
20 then sergeant, Santana. He advised me that there had
21 been a shooting on Trolley Road and Travelers Boulevard.
22 He requested that I respond to the incident location to
23 help gather information.

24 Sergeant Santana, he was the on-call detective
25 down in Summerville. There's always a detective on

DIRECT EXAMINATION - BY MR. SMYTHE

1 call, and it's for a week. And during that week, if
2 there's an incident that happens during nighttime hours,
3 you're the on call. You have to respond out to the
4 scene.

5 In a case like this, more than one detective
6 is needed, which is why I was called out to the scene.
7 And then Sergeant Santana responded to the hospital
8 to be with the victims.

9 Q. And at the scene ---

10 MR. SMYTHE: May I approach the witness,
11 Your Honor?

12 THE COURT: You may.

13 BY MR. SMYTHE:

14 Q. What do you remember about the scene that night,
15 or is that early morning?

16 A. When I responded to the scene, the patrol units
17 had already roped off the crime scene tape up around the
18 area. There were no other vehicles allowed to enter
19 through the crime scene. I met with Lieutenant
20 Tumbleston [ph.] He was the lieutenant for the
21 nightshift patrol team. He kind of briefed me on the
22 situation and kind of walked me to where some of the
23 shell casings were found ---

24 Q. But ---

25 A. --- on Trolley Road and Travelers.

1 Q. Excuse me. But by the time you got there,
2 everything had already been marked and taped off,
3 it was just full of police officers?

4 A. Correct.

5 Q. Did you respond to anywhere else that night?

6 A. When I was on scene, I was in constant contact
7 with Sergeant Santana, who was at the hospital. After
8 I left the scene on Trolley Road, I responded back to
9 Summerville Police Department.

10 Q. And what did you observe there?

11 A. So at the hospital, Ms. Felder was -- I guess,
12 her testimony that the car was driven from the scene
13 to the hospital. Sergeant Santana had that vehicle that
14 was involved in the incident towed from the hospital
15 back to Summerville Police Department. And that's where
16 I ended up meeting the tow truck driver to secure the
17 vehicle.

18 Q. Okay.

19 MR. SMYTHE: Beg the Court's indulgence.
20 May I approach the witness, Your Honor?

21 THE COURT: You may.

22 BY MR. SMYTHE:

23 Q. Sergeant Hirsch, I'm showing you what's been
24 marked as State's 7 through 23. Would you take a look
25 at those, please. Do you recognize those?

DIRECT EXAMINATION - BY MR. SMYTHE

1 A. I do.

2 Q. Are those pictures a fair and accurate
3 representation of the car, as you saw it that night?

4 A. They are.

5 MR. SMYTHE: At this point, Your Honor,
6 I would like to enter 7 through 23 into evidence.

7 THE COURT: Any objection?

8 MR. SHELTON: No objection.

9 THE COURT: All right, they're in.

10 (State's Exhibit Nos. 7 through 23 were admitted into
11 evidence.)

12 MR. SMYTHE: May I publish them?

13 THE COURT: You may.

14 BY MR. SMYTHE:

15 Q. I'm showing you State's Exhibit 7. What do we
16 see here?

17 A. So that's going to be the vehicle in question
18 that is involved in the shooting on Trolley and
19 Travelers Boulevard. That's what the victims were
20 located in.

21 Q. Anything of note in this picture?

22 A. The front tire of the vehicle is flat, shredded.
23 It appears there's a couple of windows that appear to
24 be shot out as well.

25 Q. I'm showing you State's 8. What do we see here?

1 A. So this is kind of backwards, the back shot from
2 the vehicle. So the driver's side and the passenger's
3 side of the window, you can see ---

4 Q. You're actually able to draw there.

5 A. So you've got a window that's shot out there.
6 There also appears to be bullet holes on the vehicle
7 itself. And the tire that I showed before is flat.

8 Q. I'm showing you State's Exhibit 9. What do we
9 see here?

10 A. So this is the driver's side window. It appears
11 to be shot out as well. You can observe all the glass
12 kind of ran in the floorboard of the vehicle. This is
13 where the window was -- some of the remnants of where
14 the glass should have held in place.

15 Q. This is the close up. Again, State's Exhibit 10,
16 more of the same?

17 A. Same.

18 Q. Do y'all ever find any bullet casings in the car?

19 A. So there were some -- there were no casings
20 located inside the car.

21 Q. Okay. Showing you State's Exhibit 11. What do
22 we see here?

23 A. That's the back passenger's side window.
24 That's, you know, blood in the back seat.

25 Q. So you're saying blood is on the back seat of the

DIRECT EXAMINATION - BY MR. SMYTHE

1 car. What side are we looking at?

2 A. This is going to be behind the driver's side.

3 Q. Again, State's Exhibit 12. What do we see here?

4 A. It's another picture through the driver's side
5 window, just more blood scattered throughout the
6 vehicle.

7 Q. State's Exhibit 13. Anything of note in this
8 picture?

9 A. The window is busted out here. And then also the
10 pillar of the vehicle sustained some damage. It appears
11 to be from a bullet.

12 Q. It may be hard to see, but do you see under
13 the door handle on that door? What do you see there?

14 A. It appears to be another entrance where a bullet
15 entered the vehicle.

16 Q. Okay. State's Exhibit 14.

17 A. And that's just an overall picture of the back
18 seat, and, you know, all of the blood that was located
19 in the back. You can still see some of the glass
20 fragments on the floorboard. This is right behind
21 the driver's seat.

22 Q. Okay. State's Exhibit 15. What do we see here?

23 A. Those are up-close photos of where bullets
24 entered the vehicle.

25 Q. So those are entrance -- not wounds in the car,

1 but entrance marks?

2 A. Correct.

3 Q. And again, State's 16.

4 A. That's going to be another entrance where
5 a bullet entered the vehicle.

6 Q. State's 17?

7 A. The same thing.

8 Q. And 18, what do we see here?

9 A. So this is the front of the vehicle. It appears
10 that there's another bullet that hit the vehicle on the
11 front hood of the vehicle.

12 Q. Are you able to tell which direction it was
13 coming from?

14 A. Direction, as in?

15 Q. Where ---

16 A. It appears to be on -- maybe on the passenger's
17 side of the vehicle.

18 Q. But are you able to tell from looking at -- that
19 night, were you able to tell which direction that it's
20 fired from?

21 A. It appears to be fired -- the vehicle is
22 stationary on Trolley Road. As Ms. Felder testified,
23 it appeared that it would have to be after the vehicle
24 had passed by, shooting back towards the vehicle.

25 Q. State's 19, what do we see here?

DIRECT EXAMINATION - BY MR. SMYTHE

1 A. So that's the trunk of the vehicle.

2 Q. And State's 20, the close up?

3 A. That was an actual -- there was a box. There was
4 some property in the trunk of the vehicle, and that's
5 a bullet hole through one of the boxes.

6 Q. State's 21?

7 A. I'm not sure if that's the driver's side
8 or passenger's -- driver's side or behind the driver's
9 side.

10 Q. Was that under the black next to the ---

11 A. This right here is going to be a bullet that
12 was recovered during a search warrant of that vehicle.

13 Q. That's an actual projectile?

14 A. I believe so, yes.

15 Q. Maybe you'll see it more clearly. State's 22,
16 is that the same projectile?

17 A. It is.

18 Q. Finally, State's 23, what do we see here?

19 A. So that's going to be a tooth that was recovered
20 on the floorboard of the driver's side of the vehicle.

21 Q. Sergeant Hirsch, you stated that you, during
22 a search warrant inventory of the car, found some
23 projectiles?

24 A. Correct.

25 Q. And you saw numerous signs of entry into the car

CROSS-EXAMINATION - BY MR. SHELTON

1 for bullets?

2 A. Correct.

3 Q. Did you find any shell casings in the car?

4 A. None were located.

5 Q. Did you find any signs that bullets have been
6 fired out of the car, shots have been fired out of the
7 car?

8 A. Didn't locate any of that here.

9 Q. Okay. No exit wounds?

10 A. No, sir.

11 MR. SMYTHE: Beg the Court's indulgence.
12 Sergeant, I have no further questions. Please answer
13 any questions the defense might have.

14 THE COURT: Cross-examination.

15 MR. SHELTON: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. SHELTON:

18 Q. Sergeant Hirsh -- sorry. This is new for me,
19 so bear with me. So that's the back of the car?

20 A. Yes, sir.

21 Q. Okay. And there are no bullet holes in the very
22 back of that car?

23 A. Not in the back.

24 Q. On the fender on the driver's side, but nothing
25 on the very back of that car?

1 A. Correct.

2 Q. The back window is not shattered out?

3 A. No, sir.

4 Q. And that was State's 8. Let's go to State's 18
5 just real quick. So that's the front of the car.

6 Was that an entry hole, or was that, like, it skipped?

7 A. From the picture, it looks like it skipped.

8 Q. Yeah. So it skipped?

9 A. Yes, sir.

10 Q. Okay. So that wasn't a hole in the car?

11 A. Correct.

12 Q. Okay. So let's count these bullet holes inside
13 of the car, okay. So we have one, correct, through
14 State 17? We have State's 16; that's two, correct?

15 A. Yes, sir.

16 Q. And then State's 15 is three and four?

17 A. Yes, sir.

18 Q. And you recovered two bullet projectiles?

19 A. I believe so, yes.

20 Q. No other bullet projectiles were found on scene?

21 A. No, sir, not that I'm aware of.

22 Q. We have State's 7. So that's the front of the
23 car. That front driver's side window was shot out?

24 A. Yes, sir.

25 Q. And so that would be five?

1 A. Yes, sir.

2 Q. All the other windows, there's no bullet holes,
3 no shattering of any of the other windows, except for
4 State's 13, that back window?

5 A. Correct.

6 Q. Okay. So that would be six?

7 A. Yes, sir.

8 Q. And Kim was shot once, correct?

9 A. Correct.

10 Q. That would be seven. And Carsheme was shot once?

11 A. Correct.

12 Q. And that would be eight?

13 A. Correct.

14 Q. You were on scene that night?

15 A. Yes, sir.

16 Q. There were 25 casings?

17 A. I don't know the exact number, but there were
18 multiple shell casings.

19 Q. Multiple -- I may be wrong on the exact number.

20 A. Yeah.

21 Q. Did you collect the casings?

22 A. I did not.

23 Q. Okay. And there was another -- a shot into the
24 Arby's window?

25 A. Yes, sir.

CROSS-EXAMINATION - BY MR. SHELTON

1 Q. So that would be eight. So out of all the
2 multiple shots -- casings, we have three projectiles
3 found?

4 A. Correct.

5 Q. And eight bullet holes?

6 A. Yes, sir.

7 Q. Were you involved in the collecting of the
8 casings?

9 A. Yes, sir.

10 Q. I'm sorry. I already asked that. Okay.
11 These projectiles, they were submitted to SLED,
12 correct?

13 A. I believe they were.

14 Q. Okay. Did you take over as the lead
15 investigator?

16 A. No, sir.

17 Q. Okay. But you're an investigator -- were you
18 an investigator at the time, I guess?

19 A. Yes, sir, I was.

20 Q. Okay. And so you're still an investigator right
21 now?

22 A. Correct.

23 Q. Okay. Did you ever go down Ladson Road and look
24 for any evidence?

25 A. No, sir, I did not.

1 Q. Okay. To your knowledge, did anybody go down
2 Ladson Road?

3 A. To my knowledge, I don't believe anybody did.

4 Q. You've handled gunshot residue tests?

5 A. I have.

6 Q. It's a pretty simple process; is that correct?

7 A. Correct.

8 Q. It's the swab of someone's hands, correct?

9 A. Sure.

10 Q. Okay. No gunshot residue was done in this case,
11 that you're aware of?

12 A. Not that I'm aware of, no, sir.

13 Q. Okay. And I'm not going to put it back up on
14 the screen. I just want clarification real quick.

15 MR. SHELTON: May I approach, Your Honor?

16 THE COURT: You may.

17 BY MR. SHELTON:

18 Q. State's 13, that's the back door?

19 A. Behind the driver's side, yes, sir.

20 Q. Behind the driver's side?

21 A. Yes.

22 Q. And there's blood on the inside handle, correct?

23 A. Yes, sir, there is.

24 Q. Okay. Was there any swabs done of the DNA or the
25 blood that was in this car?

CROSS-EXAMINATION - BY MR. SHELTON

1 A. I'm unaware, sir.

2 Q. Would that have been tasked with you
3 collecting that evidence?

4 A. No that would have been tasked with our crime
5 scene investigator. I believe he's a witness in this
6 case as well.

7 Q. Okay. The tires were blown out, so they were
8 on the rims?

9 A. Yes, sir.

10 Q. To your knowledge, no calls or anybody calling in
11 that there's a car going down Ladson Road on their rims?

12 A. Not to my knowledge, no.

13 Q. And then the -- and the one, I guess, gunshot
14 to the very front of the car?

15 A. Yes, sir.

16 Q. And I think it was your testimony, based off what
17 Ms. Felder said, it would have appeared that it was
18 after the shooting -- after the initial shooting?

19 A. Yeah, I don't want to misspeak.

20 Q. It's stationary ---

21 A. It appeared that is -- I will try and explain.
22 It appeared that Ms. Felder's vehicle was at a
23 standstill. The vehicle that was shooting would have
24 driven by her and continued to fire shots after the
25 vehicle already passed by.

REDIRECT EXAMINATION - BY MR. SMYTHE

1 Q. And that would be based off Ms. Felder's
2 statement?

3 A. Yes, sir.

4 Q. Okay.

5 MR. SHELTON: No other questions.

6 THE COURT: Any redirect?

7 MR. SMYTHE: Yes, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. SMYTHE:

10 Q. Looking at State's Exhibit 7, and really with
11 regard to any time you see a window shot out, are you
12 able to tell how many bullets have gone through that
13 window?

14 A. There's no way to tell.

15 Q. I've seen that tire. That looks pretty shout
16 out. Is there any way to tell how many bullets it's
17 taken to shoot that tire out?

18 A. Not to my knowledge.

19 Q. Take a look at State's 13. I'm going to try
20 to zoom in. Beneath that door handle, does that appear
21 to be one entrance that has yet broken through the door
22 paneling?

23 A. It appears that there's two.

24 Q. Okay. And so both of those -- does it appear
25 to you that they have been -- that the projectiles have

DIRECT EXAMINATION - BY MR. SPEARS

1 broken through the inside of the door panel?

2 A. In those pictures, no.

3 Q. So would those projectiles be recovered?

4 A. I'm not sure if they were or not.

5 Q. We're still zoomed in here. Where are those
6 projectiles coming from? Are they coming from inside
7 the car, behind the car?

8 A. It would be from the outside coming into the
9 vehicle.

10 Q. Okay. Was that the case with all of the signs
11 of gunfire you found on this car?

12 A. Yes, sir.

13 MR. SMYTHE: No further questions, Judge.

14 THE COURT: You may step down, sir.

15 Thank you. You may call your next witness.

16 MR. SPEARS: Thank you, Your Honor.

17 State calls Jacob Cramer.

18 MR. JACOB CRAMER was called as a witness,
19 being duly sworn, was examined and testified as follows:

20 THE COURT: Your witness.

21 MR. SPEARS: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY MR. SPEARS:

24 Q. Officer Cramer -- is it Officer Cramer?

25 A. Yes, sir.

1 Q. Where do you work?

2 A. I work for Summerville Police Department.

3 Q. And what's your rank there?

4 A. I'm a field training officer.

5 Q. All right. How long have you worked there?

6 A. Five years.

7 Q. And what are some of the nature of your duties
8 at Summerville?

9 A. As well as a field training officer, I'm also
10 with the canine unit. So my duties are focus patrol
11 in high-crime areas, traffic stops, backing patrols,
12 and if they need as far as canine.

13 Q. And what was your rank back in 2016?

14 A. Patrolman first class.

15 Q. Let's go back to the morning of 2016. Did you
16 respond to a shooting on that day, June 5th, 2016?

17 A. Yes, sir, I believe so.

18 Q. All right. And what was the nature of that call
19 that you responded to?

20 A. Shots heard on Trolley Road. Myself and another
21 officer actually heard the shots, and we responded to
22 the area before the call even came out.

23 Q. And what did you do when you responded to the
24 scene there?

25 A. We just looked around the area. We get shots

DIRECT EXAMINATION - BY MR. SPEARS

1 heard calls a pretty good bit, and we look around the
2 area to see if we could find anything. We got
3 information that there was a shooting, so we started
4 looking in the area even more. We found some shell
5 casings. So we shut down the road. And at that point,
6 I did scene security, help put out the police line tape
7 to shut the road down because we had shell casings in
8 the middle of Trolley Road.

9 MR. SPEARS: Judge, if I may approach?

10 THE COURT: You may.

11 BY MR. SPEARS:

12 Q. Officer, this has been marked already as State's
13 Exhibit 2. Does this scene look familiar to you?

14 A. Yes, sir, that's Trolley and Travelers -- Trolley
15 and Midland Parkway.

16 Q. Is this the scene that you responded to -- the
17 area that you responded to?

18 A. Yes, sir, that's Arby's -- that's Arby's,
19 the church, Burger King and the gas station.

20 Q. And you said there were some shell casings on the
21 scene there. What area were they in that you recall?

22 A. Yes, sir. The shell casings were -- I don't
23 remember exactly which lane, but they were in this lane
24 of Trolley Road.

25 Q. Were they starting at the intersection and going

1 down Trolley?

2 A. Yes, sir, through this area.

3 Q. After you secured the scene, did you look around
4 for any other evidence, aside from shell casings?

5 A. Yes, sir. Since there were so many shell
6 casings, we checked the businesses, the storefronts,
7 you know, in case a round was caught. And I checked
8 in front of this church, around to this building,
9 the Burger King, the gas station, as well as Arby's.

10 MR. SPEARS: And, Judge, if I may approach
11 again?

12 THE COURT: You may.

13 BY MR. SPEARS:

14 Q. And this area by the gas station, did you find
15 any projectiles or bullet markings?

16 A. No, sir.

17 Q. And did you find any shell casings in this area
18 of Midland Parkway?

19 A. No, sir.

20 Q. Did you find any weapons in this area?

21 A. No, sir, we did not.

22 Q. How about any bullet markings on this building,
23 or anything like that?

24 A. No, sir.

25 Q. All right. And then down here in this area,

DIRECT EXAMINATION - BY MR. SPEARS

1 you said you looked there?

2 A. Yes, sir.

3 Q. Was there any bullet markings or projectiles
4 found in that area?

5 A. No, sir, there was not.

6 Q. How about at the Arby's?

7 A. Yes, sir. At the Arby's, I believe it was this
8 window right here. I'm not sure exactly which -- there
9 was a bullet hole through the glass, and a hole in the
10 sheet rock inside the building, where it appeared that
11 the bullet went through the window. It was close to the
12 door on this side.

13 Q. Officer, I am showing you what's been marked
14 as State's 24 and 25.

15 MR. SPEARS: If I may approach, Your Honor?

16 THE COURT: You may.

17 BY MR. SPEARS:

18 Q. Do you recognize this?

19 A. Yes, sir. That's the bullet hole I was just
20 talking about that went through the window into the
21 wall.

22 Q. Are these photos a fair and accurate
23 representation of the photo -- of the bullet hole
24 you saw in that Arby's?

25 A. Yes, sir.

1 Q. All right.

2 MR. SPEARS: Judge, I would request State's
3 Exhibits 24 and 25 put into evidence.

4 THE COURT: Any objection?

5 MR. SHELTON: No objection.

6 THE COURT: All right, they're in.

7 (State's Exhibit Nos. 24 and 25 were admitted into
8 evidence.)

9 MR. SPEARS: May I publish, Your Honor?

10 THE COURT: You may.

11 BY MR. SPEARS:

12 Q. And before I put those up, could you just show
13 us again where on that Arby's the bullet hole was?

14 A. This is the road here. So it would have been
15 right in this area somewhere. I am not sure exactly --
16 on the side of the Arby's.

17 Q. On the side facing the intersection?

18 A. Yes, sir, right there.

19 Q. Now on State's 24, would you look at this,
20 and could you just kind of describe what you're seeing
21 here, the nature of this photograph. What's the damage
22 in that window there?

23 A. Well, you could see the smaller hole in the front
24 and going into a bigger hole behind it where it appeared
25 to go around it from the outside in.

DIRECT EXAMINATION - BY MR. SPEARS

1 Q. And this is State's 25. Just again give us an
2 idea of more of the trajectory.

3 A. Yes, sir.

4 Q. And you can push on the screen if you want to
5 circle anything.

6 A. Well, because how this picture was taken from the
7 outside of the store into the store, the smaller hole
8 being in the front, and then they get larger behind it.
9 This is as the bullet was going into the Arby's.

10 Q. And if it hit that wall, on that side of the
11 Arby's, and comes through that window, would it point
12 to that intersection?

13 A. Yes, sir.

14 Q. All right.

15 A. It was -- it would be kind of a path like this.
16 (Indicating.)

17 Q. Officer, let's go forward to June 10th of 2016,
18 so a number of days later. Did you respond to a call
19 on that day?

20 A. Yes, sir.

21 Q. And what was the nature of your response to that
22 call?

23 A. I was called out for a warrant service to try
24 to apprehend a suspect, or a wanted person.

25 Q. And was it just you, or was more law enforcement

1 involved?

2 A. There was a lot more law enforcement involved.
3 Our emergency services unit was as well as the narcotics
4 division. There were multiple law enforcement, or parts
5 through our agency that were involved.

6 Q. And do you recall where this was?

7 A. Boone West Apartments.

8 Q. What city is that in?

9 A. It's in Summerville.

10 Q. Okay. Did you perform a stop that day?

11 A. Yes, sir, I did.

12 Q. And what was the nature of that stop?

13 A. The nature of the stop was surveillance for a
14 wanted subject that was seen getting into a car leaving
15 Boone West Apartments. I was given the description of
16 the car that the suspect was seen getting into. And
17 I conducted a traffic stop on the vehicle just around
18 the corner from where it was seen leaving and located.

19 There were five individuals in the car. I had
20 gotten four identification cards from four of the
21 individuals, and one from the -- and no ID from the
22 person that was sitting in the back passenger side of
23 the car. And that was the suspect that we were looking
24 for.

25 Q. Now who was the individual that you were looking

DIRECT EXAMINATION - BY MR. SPEARS

1 for?

2 A. Damon Riley.

3 Q. Okay. And how many individuals were in the car
4 again?

5 A. Five total.

6 Q. And the individual you were looking for, Damon
7 Riley, as you said, was the one that didn't provide you
8 with a card, correct?

9 A. Yes, sir.

10 Q. What did you do -- where in the vehicle was he
11 located?

12 A. He was in the back passenger seat -- back
13 passenger side seat, which is where I made my approach to
14 make contact with everybody in the car from that window.

15 Q. And what did you do when you were able to verify
16 that was him?

17 A. I wasn't able to verify it was him right away.
18 I got the IDs from the other four individuals. I went
19 back to my vehicle, brought up another picture of
20 Mr. Riley, and then walked back to the car. And he was
21 wearing a hat that covered down a partial of his face
22 as well as sunglasses. And when I asked him to step
23 out, that was when I ---

24 MR. SHELTON: Objection.

25 THE COURT: Would you all approach.

DIRECT EXAMINATION - BY MR. SPEARS

1 (Off-the-record conversation held at sidebar.)

2 (Back on the record.)

3 BY MR. SPEARS:

4 Q. Officer, so you were able to identify him, right?

5 A. Yes, sir.

6 Q. What did you do after you identified him?

7 A. He was taken into custody.

8 Q. Okay. Who was in -- was everybody left in the
9 car when he was taken into custody?

10 A. Yes, sir, he was. The other four individuals
11 were still inside the vehicle.

12 Q. Now was there anyone else there at the scene
13 assisting you at that point in time after he had been
14 identified?

15 A. There was. There were multiple other officers
16 that started arriving on scene.

17 Q. Were they all with you, or did some of them stay
18 with that car?

19 A. I believe Sergeant Charpette [ph.] was. He kept
20 eyes on the vehicle as we got Mr. Riley put into a
21 different car.

22 Q. Now when you got Mr. Riley out of the car, did he
23 tell you anything?

24 A. Yeah. I asked him his name -- because he had
25 given me a name, a first name, last name, date of birth,

DIRECT EXAMINATION - BY MR. SPEARS

1 and everything while I was at the car before I left the
2 first time. And when we got him out of the car and
3 everything, I asked him what his name was again,
4 and that's when he told me who he was.

5 Q. Okay. Did he tell you anything else?

6 A. Without looking at my report, I can't say exactly
7 what it was. But it was something along the lines of he
8 was the one we were looking for.

9 Q. Would your report refresh your memory?

10 A. It would.

11 MR. SPEARS: Court's indulgence, Your Honor.

12 THE COURT: Would you approach, Counsel.

13 MR. SPEARS: Yes, ma'am.

14 (Off-the-record conversation held at sidebar.)

15 (Back on the record.)

16 BY MR. SPEARS:

17 Q. Officer, I'm showing you what's been marked as
18 State's 38 for identification purposes only. I'm not
19 showing this to the jury. Would this refresh your
20 memory?

21 A. Yes, sir.

22 Q. Just take your time.

23 A. I have it right here. I quoted where he said --
24 I asked the subject what his name was, and he stated,
25 "Damon Riley. I know I got warrants, just put me in the

1 car."

2 Q. So after he was put in the car, what did you do?

3 A. After he was put in the car, we removed the other
4 individuals from the car. At that point, it was treated
5 as a felony traffic stop. They were all pulled out
6 at gunpoint and each one was detained individually,
7 pulled behind until the car was completely cleared.

8 Q. And did y'all search the car after that?

9 A. Yes, sir, I did.

10 Q. What did you find in the car?

11 A. Inside the car, underneath the passenger side
12 front seat, I located a Glock 19 handgun.

13 Q. Officer, I'm going to show you what's been marked
14 as State's 26, 27, 28, and 29. What are these?

15 A. These are the photographs I took after locating
16 the vehicle that I stopped as well as photos of the
17 inside of the car that I took after I located the
18 firearm.

19 Q. And are these photos a fair and accurate
20 representation of the scene as you recall it?

21 A. Yes, sir, they are.

22 MR. SPEARS: Your Honor, I would request
23 26 to 29 be placed into evidence.

24 THE COURT: Any objection?

25 MR. SHELTON: No objection.

DIRECT EXAMINATION - BY MR. SPEARS

1 THE COURT: All right, they're in.

2 (State's Exhibit Nos. 26 through 29 were admitted into
3 evidence.)

4 BY MR. SPEARS:

5 Q. Officer, also was there anything else that you
6 found in the car aside from the handgun?

7 A. Yes, sir. And I don't remember exactly how far
8 it was, and I didn't have a tape measurer at the time.
9 But in very close proximity to where I located the
10 firearm under the seat, I located Mr. Riley state's
11 identification card.

12 Q. When you say you found it under the seat,
13 what seat did you find it under?

14 A. It was underneath the passenger side seat of
15 the vehicle. So it couldn't be underneath the back
16 passenger seat because I couldn't get underneath that.
17 But underneath the passenger -- it would be the seat
18 in front of where Mr. Riley was sitting.

19 Q. Now this is State's 26. Can you explain to the
20 jury a little bit what we're looking at here?

21 A. This is the back passenger seat where Mr. Riley
22 was sitting. This would be the back of the front seat.
23 And then this is the rear passenger where Mr. Riley's
24 feet would have been, and then this is the firearm.

25 Now it was further underneath the seat when I was

1 searching the car. When I found it, I pulled it out,
2 so I realized what it was. And that is when I stopped
3 what I was doing and I got my camera and photographed
4 everything before it was taken.

5 Q. And where in this photo did you find his ID?

6 A. It was further underneath his seat. But it would
7 have probably been up in this area underneath the seat.

8 Q. Now did you check the car to see if that area was
9 accessible from the front passenger seat?

10 A. I did. From the seat, there was no way to be
11 able to put anything in the front of the seat because
12 of the structure of the car as well as all the wires
13 and everything hanging underneath the seat.

14 Q. And just for my own clarification purposes.
15 So if someone was sitting here in this passenger seat,
16 would they be able to tuck something underneath?

17 A. Not to get to where I located the firearm.

18 Q. Now this is just another view of State's 27,
19 right there. What are we looking at here?

20 A. The same thing. This is the seat where
21 Mr. Riley was sitting. This is the firearm here,
22 and this is where I'm trying to get to. That's the
23 headrest of the front passenger side seat. This would
24 be the center console. But underneath the seat,
25 how this hump is right here, there was, like, another

DIRECT EXAMINATION - BY MR. SPEARS

1 hump that went in the opposite direction underneath
2 the car seat.

3 Q. And on State's 29, explain what we're looking
4 at here.

5 A. This is the back of the vehicle, and this would
6 be the rear passenger side door here. That's the car
7 that we had stopped.

8 Q. Thank you, Officer. Now what did you do with
9 that gun after?

10 A. It was placed in evidence.

11 Q. Did you recover the gun?

12 A. Yes, sir, I did.

13 Q. Officer, this is what's been marked as State's
14 Exhibit 33A, B and C. Now without showing the jury,
15 can you look through this and tell me if you recognize
16 it?

17 A. Yes, sir. It appears to be the same firearm
18 I located that afternoon.

19 Q. Has this firearm been materially altered in any
20 way since your recovery?

21 A. It shouldn't have been. It should have been
22 locked away in our evidence.

23 Q. Do you recognize it as being the same handgun?

24 A. Yes, sir, I do.

25 MR. SPEARS: Your Honor, I would request

DIRECT EXAMINATION - BY MR. SPEARS

1 State's 33A, B, and C be placed into evidence.

2 THE COURT: Any objection?

3 MR. SHELTON: No objection.

4 THE COURT: All right, it's in.

5 (State's Exhibit Nos. 33A through C were admitted into
6 evidence.)

7 BY MR. SPEARS:

8 Q. And if you could, just publish to the jury what's
9 in the box there, and if you can clarify if there's any
10 safety mechanisms on it.

11 A. It's a Glock 19 handgun and an extended magazine.
12 Do you want me to show it to them?

13 Q. Yes.

14 A. Okay. The extended magazine and the Glock 19
15 handgun.

16 Q. Just for everyone's comfort level, is there any
17 safety mechanism -- what's the safety mechanism on this
18 gun?

19 A. This gun is locked. There's no way a round can
20 be chambered in this gun to be fired in any kind of way
21 at this point.

22 Q. Now, Officer, let's just be clear. You didn't
23 actually see the Defendant manipulate or hold the
24 handgun, correct?

25 A. No, sir, I did not.

CROSS-EXAMINATION - BY MR. SHELTON

1 Q. Okay. But in proximity, as you just showed us
2 on those photos, about how close was it to him?

3 A. It was a Kia car. It was pretty small on the
4 inside. So it would have almost been right between his
5 feet.

6 Q. And what was located beside it again?

7 A. His state's identification card.

8 MR. SPEARS: Court's indulgence, Your Honor.

9 THE COURT: Yes, sir.

10 MR. SPEARS: Officer, I'm going to grab that
11 evidence box. Please answer any questions the defense
12 might have for you.

13 THE WITNESS: Absolutely.

14 THE COURT: Counsel, before you go, can you
15 just identify, for the record, A, B, C.

16 MR. SPEARS: Your Honor, the box is listed
17 as 33A; the magazine is 33B; and the Glock itself is
18 33C.

19 THE COURT: Thank you. Cross-examination.

20 MR. SHELTON: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. SHELTON:

23 Q. Officer Cramer, you were involved in multiple
24 parts of this trial, correct?

25 A. Yes, sir.

1 Q. So June 5th -- was it June 5th, the morning of?

2 A. The morning of the actual shooting itself?

3 Q. Yes. So that was June 5th, correct, 2016?

4 A. I believe so, yes, sir.

5 Q. Were you one of the first on scene?

6 A. I was, yes, sir.

7 Q. You were the first on scene?

8 A. I wasn't the first on scene, but I was one of the
9 first.

10 Q. Okay. About how far away were you?

11 A. I couldn't put an exact measurement on it,
12 maybe a mile at most.

13 Q. Okay. Did you see a car speeding away from this
14 intersection?

15 A. I did not.

16 Q. Okay. You helped, I guess, in securing the crime
17 scene and shell casings and that sort of thing?

18 A. Yes, sir.

19 Q. Did you collect any of the shell casings?

20 A. I did not collect any shell casings, no, sir.

21 Q. Okay. Did you go and look for any suspects,
22 anything like that?

23 A. No, sir. I was stuck at the crime scene until
24 all the evidence was collected and everything was done
25 out there.

CROSS-EXAMINATION - BY MR. SHELTON

1 Q. Okay. So you were just trying to -- directing
2 traffic ---

3 A. Yes, sir.

4 Q. --- keeping everybody safe that's out there?

5 A. Yes, sir.

6 Q. Okay. And this crime scene, it was a long crime
7 scene?

8 A. It was.

9 Q. Went from Arby's down to Pivotal Fitness?

10 A. Yes, sir.

11 Q. Okay. So that's a pretty long crime scene to
12 protect?

13 A. It is.

14 Q. Okay. June 10th was when you pulled over the car
15 that Mr. Riley was riding in?

16 A. Yes, sir.

17 Q. Five days later, still in the state of South
18 Carolina, City of Summerville, correct?

19 A. Yes, sir.

20 Q. And I think your testimony was that there's
21 surveillance on a wanted subject?

22 A. Yes, sir.

23 Q. And that wanted subject got into this car.
24 You then performed the traffic stop?

25 A. Yes, sir.

1 Q. Now this gun it has an extended magazine,
2 correct?

3 A. Yes, sir.

4 Q. It would be pretty noticeable if somebody's
5 walking with this gun?

6 A. It probably would be, yes, sir.

7 Q. Okay. It's difficult to hide in your pants or in
8 your pockets. You didn't get any calls he had a firearm
9 on him?

10 A. No, sir, I didn't. That wasn't told to me that
11 he had a firearm.

12 Q. Okay. So there was no firearm that was observed
13 of him coming out of the apartment?

14 A. No, sir, there wasn't.

15 Q. When you asked Mr. Riley to step out of the car,
16 he voluntarily stepped out?

17 A. He did. We didn't have to use any kind of force
18 on him.

19 Q. No force whatsoever. He voluntarily took off his
20 sunglasses and his hat?

21 A. Yes, sir.

22 Q. Okay. He didn't attempt to flee in any way?

23 A. He didn't. He was straightforward on scene.

24 Q. And cooperative?

25 A. Yes, sir.

CROSS-EXAMINATION - BY MR. SHELTON

1 Q. There were, I think you said, four other people
2 in the car?

3 A. Yes, sir.

4 Q. And I'm assuming the front driver, passenger,
5 and then two people in that back seat?

6 A. Yes, sir.

7 Q. It's not a very big car. Were they pretty close?

8 A. Yes, sir.

9 Q. Okay.

10 A. Shoulder to shoulder.

11 Q. When you pulled Mr. Riley out, were there
12 multiple police officers on scene?

13 A. There was. I believe there was three of us on
14 the stop.

15 Q. Okay. You went back to -- before you pulled him
16 out, you went back to your car?

17 A. Yes, sir, to look at another picture of Mr. Riley
18 to make sure.

19 Q. And were you the only officer on scene at that
20 point?

21 A. At that point, I wasn't. There was another
22 officer there, Officer Burke [ph.]. He was also there
23 on scene.

24 Q. Okay. But there were four other people in the
25 car?

1 A. Yes, sir.

2 Q. So five total, okay. There were at least two
3 other people in the back seat that had access to that
4 area underneath the front passenger?

5 A. Yeah. Well, maybe one other possible person
6 in the middle because their feet -- one of their feet
7 would have probably been sharing one of the same
8 footboard as Mr. Riley was.

9 Q. Right. And people can pass things to each other
10 within the car?

11 A. I suppose they could, yes, sir.

12 Q. Okay. The night of June 5th, you were about
13 a mile away. Do you know how long it took you to get
14 there?

15 A. I couldn't say for sure, sir, no.

16 Q. I'm sure when you heard shots fired, you put
17 on your blue lights and you took off, right?

18 A. Well, any time we get all kinds of fireworks
19 calls, shots heard calls, it's not uncommon to hear
20 stuff like that. But I think there was a whole -- there
21 was probably a phase where myself and Officer Canfield
22 were kind of like did we, you know -- wondering if what
23 we heard was actually what we heard.

24 Q. Okay. So it was you and Officer Canfield in the
25 Ace Hardware?

REDIRECT EXAMINATION - BY MR. SPEARS

1 A. Ace Hardware parking lot, yes, sir.

2 Q. And so -- but you guys were not the two first
3 on scene?

4 A. I can't say who was the first on there.
5 I know Officer Canfield got there before I did.

6 Q. Okay.

7 A. But I'm not sure exactly. I believe other
8 officers came in from different directions as well.

9 Q. And there was one officer that went down Midland
10 Parkway?

11 A. I believe so, yes, sir.

12 Q. Looking for people. Okay.

13 MR. SHELTON: No further questions.

14 THE COURT: Any redirect?

15 MR. SPEARS: Very briefly, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. SPEARS:

18 Q. Officer, on June 10th at the scene of Mr. Riley's
19 arrest, who -- and you might have already told me this,
20 but who found the gun?

21 A. I did.

22 Q. Okay. And you said that when Mr. Riley was
23 arrested that there was another officer actually
24 watching the car with the other individuals in it,
25 right?

DIRECT EXAMINATION - BY MR. SMYTHE

1 A. There was.

2 Q. Okay. But you didn't hear any report of a gun
3 at that point, did you?

4 A. No, sir.

5 Q. Okay.

6 MR. SPEARS: No further questions.

7 THE COURT: You may step down, sir.

8 Thank you. You may call your next witness.

9 MR. SMYTHE: States call Wade Rollings.

10 MR. WADE ROLLINGS was called as a witness,
11 being duly sworn, was examined and testified as follows:

12 THE COURT: Your witness.

13 MR. SMYTHE: Thank you, Your Honor.

14 DIRECT EXAMINATION

15 BY MR. SMYTHE:

16 Q. Good afternoon, Sergeant Rollings.

17 A. Hello, sir.

18 Q. Where is it that you work, sir?

19 A. Summerville Police Department.

20 Q. And what is your position at Summerville?

21 A. I'm a sergeant with crime scene.

22 Q. And what are some of the duties that you hold
23 as a sergeant of crime scene?

24 A. I manage over the criminal unit, the evidence
25 unit and the lab. So we will process crime scenes,

DIRECT EXAMINATION - BY MR. SMYTHE

1 collect evidence, do some things in the lab like dusting
2 for latent prints.

3 Q. And how long have you been in that position?

4 A. Roughly five and a half years.

5 Q. So you were working at Summerville in crime scene
6 in June of 2016?

7 A. Yes, sir.

8 Q. Did you respond to a call about a shooting on
9 Old Trolley Road June 5, 2016?

10 A. Yes, sir.

11 Q. Can you tell the jury about what you were
12 responding to?

13 A. Detective Harrison [ph.], he was my old partner
14 at the time. It was his on call, but I went up there
15 to assist him. And I remember that we had shell casings
16 on Trolley Road, basically, from where the Arby's is
17 down to Pivotal Fitness, which I would say maybe 100
18 yards.

19 Q. Okay. And looking at ---

20 MR. SMYTHE: May I approach, Your Honor?

21 THE COURT: You may.

22 BY MR. SMYTHE:

23 Q. Can you point out where you remember you found
24 shell casings?

25 A. Yes, sir. (Indicating.) This would be Arby's

1 right here. So the corner of Trolley Road and Travelers
2 Boulevard, so roughly here towards the intersection all
3 the way down. And Pivotal Fitness is actually beyond
4 here.

5 Q. Okay.

6 A. This is the Burger King. This is the automotive
7 shop or the tire shop, Pivotal Fitness would be right
8 here.

9 Q. And did you collect any evidence at the scene?

10 A. Yes, sir. I collected several shell casings,
11 and I believe a couple of fragments of bullets as well.

12 Q. Okay.

13 MR. SMYTHE: May I approach the witness,
14 Your Honor?

15 THE COURT: You may.

16 BY MR. SMYTHE:

17 Q. Sergeant, I'm showing you what's been marked
18 as State's 36.

19 A. Yes, sir.

20 Q. Do you recognize that?

21 A. I do.

22 Q. And what is that?

23 A. This is a package that we sent to SLED and has
24 been returned. And I actually opened this yesterday
25 just to make sure all the items were in there.

DIRECT EXAMINATION - BY MR. SMYTHE

1 My initials and date are up here. And this contains
2 shell casings, spent rounds and live rounds that were
3 collected from the scene.

4 Q. Could you open it up?

5 A. Do you have a letter opener or something?

6 Q. When you open it, can you show it to the jury,
7 please?

8 A. Yes, sir. Okay.

9 Q. Can you take a look through that without showing
10 it to the jury.

11 A. Um-hum.

12 Q. So what do we have in there?

13 A. Quite a few spent shell casings, some live rounds
14 that appear to have misfired. There's a mark on the
15 back of the actual projectile that were ejected. There
16 is also a biohazard container from the projectile that
17 was actually removed from the victims at the hospital.

18 Q. As far as the shell casings go, are these the
19 same shell casings that you collected in the early
20 morning of June 5, 2016?

21 A. Yes, sir.

22 Q. And how do you know that?

23 A. Because they have my packaging and my handwriting
24 on there.

25 Q. Have they been materially altered in any way?

1 A. No, sir.

2 MR. SMYTHE: At this point, Your Honor,
3 we offer State's 36 into evidence.

4 THE COURT: Any objection?

5 MR. SHELTON: No objection.

6 THE COURT: All right, it's in.

7 (State's Exhibit No. 36 was admitted into evidence.)

8 MR. SMYTHE: May I publish them to the jury?

9 THE COURT: You may.

10 BY MR. SMYTHE:

11 Q. Sergeant, may I open this bag?

12 A. Sure. Yes, sir.

13 Q. Sergeant, I'm showing you what's been marked
14 as State's 37.

15 MR. SMYTHE: May I approach the witness,
16 Your Honor?

17 THE COURT: You may.

18 BY MR. SMYTHE:

19 Q. State's 37, do you recognize this?

20 A. Yes, sir. That's one of my packaging as well.
21 And a small biohazard sticker with my handwriting marked
22 as tooth.

23 Q. And could you open it up and look at it without
24 showing it to the jury. What's inside there?

25 A. It's a tooth that was recovered on the

DIRECT EXAMINATION - BY MR. SMYTHE

1 floorboard. I believe it was the passenger side
2 floorboard of the vehicle when we did a search of that
3 vehicle.

4 Q. Is that the same tooth that you found?

5 A. Yes, sir.

6 Q. How do you know?

7 A. Because I packaged it in the container that it's
8 in, sealed it, and then placed it here.

9 Q. Has it been materially altered in any way?

10 A. No, sir.

11 MR. SMYTHE: At this time, I offer State's
12 37 into evidence.

13 MR. SHELTON: No objection.

14 THE COURT: It's in.

15 (State's Exhibit No. 37 was admitted into evidence.)

16 BY MR. SMYTHE:

17 Q. I'm showing you what's been marked as State's 34.
18 What is that?

19 A. I believe these are the shell casings that were
20 sent to Charleston County Sheriff's Office to be entered
21 in IBIS.

22 Q. Okay.

23 MR. SMYTHE: Beg the Court's indulgence,
24 Your Honor.

25 BY MR. SMYTHE:

DIRECT EXAMINATION - BY MR. SMYTHE

1 Q. Looking at 34, how do you recognize this?

2 A. That's the ---

3 Q. Open that without showing it to the jury, please.

4 A. The actual label originally placed on here is our
5 case number. The item states ammunition description.
6 So it was submitted and transferred into evidence.

7 These are spent shell casings that were actually sent
8 to Charleston County to be entered into the IBIS System.

9 Q. And are those the same ones that you collected?

10 A. Yes.

11 Q. From this case?

12 A. Yes, sir.

13 Q. Have they been materially altered in any way?

14 A. No, sir.

15 MR. SMYTHE: At this time, I would offer
16 State's 34 into evidence.

17 THE COURT: Any objection?

18 MR. SHELTON: No objection.

19 THE COURT: All right, it's in.

20 (State's Exhibit No. 34 was admitted into evidence.)

21 BY MR. SMYTHE:

22 Q. Showing you what's already in evidence as State's
23 33A, B, and C. Do you recognize this?

24 A. That's one of our gun boxes, yes, sir. With the
25 case number on it as well. This is a Glock firearm with

DIRECT EXAMINATION - BY MR. SMYTHE

1 an extended magazine. And then there's a red gun lock
2 through the barrel.

3 Q. Is that the same gun that was collected and sent
4 to crime scene as part of the Damon Riley case?

5 A. It was. It was actually Officer Cramer who
6 recovered that on a different case number that came
7 from the vehicle Mr. Riley was in that I believe and
8 is associated with this case.

9 Q. And how do you know it's the same one?

10 A. Because it's been entered again with our evidence
11 sticker on here, our case number is written on it.
12 It's been sent to SLED and returned, and it has SLED's
13 ILAB number attached here.

14 Q. Okay. So with all this evidence that we've
15 showed you; the gun, the shell casings, the projectiles,
16 the rounds that were not able to fire, all of them were
17 sent to crime scene?

18 A. Yes, sir.

19 Q. And what did you do with all of those?

20 A. Originally, some of the shell casings were sent
21 to Charleston County IBIS, and then they were sent to
22 SLED. The firearm was sent as well. And then I believe
23 Detective Brooks [ph.] had a notice from SLED saying
24 that the shell casings matched the weapon.

25 Q. But all of the evidence was eventually sent to

1 SLED?

2 A. Yes, sir.

3 Q. Was it all sent at first?

4 A. No, sir, not at first.

5 Q. But all the projectiles, all the casings,
6 all the live rounds and the firearm and the magazine
7 were all sent to SLED?

8 A. Yes, sir.

9 Q. Did you have any other involvement in this case?

10 A. Other than in November of 2017 or 2018,
11 we actually sent the remaining projectiles up there.
12 And Detective Hirsch also got a buccal swab that's
13 a known standard DNA swab from our victim, and we sent
14 that up there as well.

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

16 BY MR. SMYTHE:

17 Q. You mentioned that buccal swab.

18 A. Yes, sir.

19 Q. Have you received anything from SLED back about
20 that swab?

21 A. To my knowledge, no, sir.

22 MR. SMYTHE: No further questions,
23 Your Honor.

24 THE COURT: Cross-examination.

25 MR. SHELTON: Yes.

CROSS-EXAMINATION - BY MR. SHELTON

1 CROSS-EXAMINATION

2 BY MR. SHELTON:

3 Q. Sergeant Rollings, was there some DNA that was
4 sent off to SLED?

5 A. I believe so. I know the known standard where
6 we had blood from the roadway or the vehicle.

7 Q. Okay. But none of that have been back?

8 A. No, sir.

9 Q. Sergeant Peterson [sp.], or is it Detective
10 Peterson?

11 A. Detective Peterson, yes, sir.

12 Q. He was kind of the lead in collecting some of the
13 evidence?

14 A. Yes, sir.

15 Q. Okay. Did you go on scene and help collect some
16 of the shell casings?

17 A. Yes, I did. He called me because it was such
18 a large scene.

19 Q. Okay. Yeah, it was a large scene from the
20 intersection of that Arby's all the way down to the
21 Pivotal Fitness?

22 A. Yes, sir.

23 Q. And there's two to three businesses in between
24 there?

25 A. Yes, sir.

1 Q. Okay. Did you -- I know there's pictures taken
2 of the casings, correct?

3 A. Yes, sir.

4 Q. Did you document where each casing was found
5 on scene?

6 A. I can't remember if I did or not, or if Detective
7 Peterson did. Usually, in our photographs we will,
8 and then narrate we found case X -- like, evidence
9 marker one was here, evidence marker two was here.

10 Q. Okay. But you're not aware that you did this?

11 A. No, sir.

12 Q. Okay. And you're not aware if it's been done?

13 A. No, sir, I'm not.

14 Q. Did you process the red Mercedes?

15 A. I assisted.

16 Q. Okay. There were two projectiles found in the
17 red Mercedes?

18 A. Yes, sir.

19 Q. Did you open up the doors? Did you do anything
20 to try to get any projectiles that maybe didn't go
21 through the door?

22 A. No, sir.

23 Q. You ran forensics?

24 A. Yes, sir.

25 Q. DNA has come a long way.

CROSS-EXAMINATION - BY MR. SHELTON

1 A. Yes, sir.

2 Q. There's something called touch DNA?

3 A. Yes, sir.

4 Q. And that is based off somebody touching an item.

5 Maybe this would put my DNA on there but maybe not.

6 But there's a possibility that on some items, you can
7 touch it, and your DNA will be left on there?

8 A. Yes, sir.

9 Q. Do you -- to your knowledge, has the casings been
10 tested for DNA?

11 A. No, sir.

12 Q. Has the gun been tested for DNA?

13 A. Not to my knowledge, no, sir.

14 Q. What about fingerprints?

15 A. We tried the fingerprints, I know that.

16 Q. Okay. There's no fingerprints identifiable?

17 A. Nothing viable, no, sir.

18 MR. SHELTON: Beg the Court's indulgence.

19 BY MR. SHELTON:

20 Q. The resubmitting of evidence in November 2018,
21 that was after the first trial in this case?

22 A. Yes, sir.

23 Q. Okay. Thank you.

24 MR. SHELTON: No further questions.

25 THE COURT: Any redirect?

1 MR. SMYTHE: None, Your Honor.

2 THE COURT: You may step down, sir.

3 Thank you.

4 THE WITNESS: Thank you.

5 THE COURT: Would counsel approach.

6 (Off-the-record conversation held at sidebar.)

7 (Back on the record.)

8 THE COURT: Ladies and gentlemen, it's about
9 4:30 in the afternoon. I know it's been a long day,
10 and many of you don't live very close to the courthouse.
11 So it's a good time for us to take our afternoon recess.
12 If you would please be back in your jury room at 9:30 in
13 the morning, and we will proceed with the trial of this
14 case.

15 Please remember my previous instruction
16 not to discuss this case with anyone, or allow anyone
17 to discuss the case with you. Please don't do any
18 independent research or anything about this case.
19 Again, you must make your determination of the facts
20 only from what you hear in the courtroom. Have a nice
21 evening, and we'll see you in the morning.

22 (Jury exits the courtroom at 4:36 p.m.)

23 THE COURT: All right. Counsel, anything
24 further before we recess for the evening?

25 MR. SPEARS: Nothing, Your Honor.

1 MR. SHELTON: No, Your Honor.

2 THE COURT: And the Defendant is in custody?

3 MR. SHELTON: Yes, Your Honor.

4 THE COURT: All right. We'll see everyone
5 at 9:30.

6 MR. SPEARS: Thank you, Judge.

7 (End of Transcript of Record)

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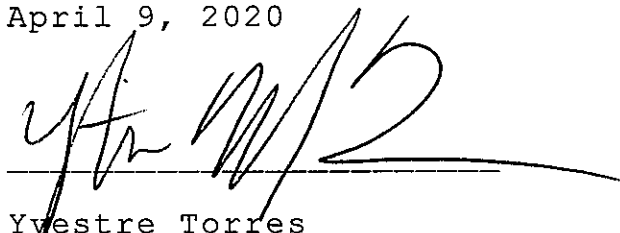
CERTIFICATE OF REPORTER

State of South Carolina)
County of Dorchester)

I, the undersigned, Yvestre Torres, Circuit Court Reporter for the First Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Dorchester County, South Carolina, on the 20th of August, 2019.

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

April 9, 2020

A handwritten signature in black ink, appearing to read 'Yvestre Torres', is written over a horizontal line.

Yvestre Torres

Circuit Court Reporter

STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF DORCHESTER

2016-GS-18-1105

2016-GS-18-1106

2016-GS-18-1107

State of South Carolina)

) TRANSCRIPT OF RECORD

-vs-)

) August 21, 2019 - Vol 3 of 3

Damon Riley)

) St. George, South Carolina

B E F O R E:

The Honorable Maite Murphy, Judge

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

Mike Spears, Esquire
George Smythe, Esquire
Attorneys for the State

Chad D. Shelton, Esquire
Michael Barrett, Esquire
Attorneys for the Defendant

Reported By:

Yvestre Torres, OCR
Circuit Court Reporter for the
First Judicial Circuit

EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
S-1	Advisement of Rights		207
S-30	CD		241
S-35	Cell Phone		210
S-39	Snapchat Stills		242
S-40	Snapchat Stills		242
S-41	Snapchat Stills		242
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1 THE COURT: Good morning, everyone.
2 Please have a seat. We just need to get the Defendant.

3 (Pause.)

4 THE COURT: All right. Counsel, it's my
5 understanding that, Mr. Sheldon, you wish to place your
6 objections with Snapchat video on the record.

7 MR. SHELTON: Yes, Your Honor. I would like
8 to place those on the record. And then when it comes up
9 in testimony, all we would have to do is just object,
10 and renew our objection without having to go into
11 details, if that's okay, Your Honor.

12 THE COURT: Yes, sir.

13 MR. SHELTON: Judge, the objection to the
14 Snapchat is a 404(b) and a 403 objection, specifically,
15 as to character. We discussed this earlier in chambers.
16 And, at that point in time, Your Honor asked me was
17 there something that you can prove that this is a bad
18 act.

19 At the time, I had nothing that I could
20 respond to. After some reflection, I do -- what I would
21 say is that this does show him, Mr. Riley, in a car
22 with a firearm and waiving it around. That could be
23 an unlawful carrying. The firearm is not in a secure
24 location. That could be considered a crime, unlawful
25 carrying. And so, therefore, it is showing a crime.

1 It is showing a bad act.

2 And so for that reason, I think that
3 it would be character evidence that would be coming
4 in play. And so that's my additional, part two, my
5 previous objection. And then the 403 is that it's just
6 going to prejudice the jury, highly prejudicial, showing
7 a gun, waiving it around. And I just -- the probative
8 value is not outweighed by the prejudicial value.

9 THE COURT: Thank you, Mr. Shelton.
10 Counsel.

11 MR. SPEARS: Your Honor, in regards to the
12 video, first and foremost, 403 prejudicial versus
13 probative, the testimony in the case has already shown
14 that that gun was found near him but in a car with
15 multiple other people.

16 The video of the Snapchat says Glizzy 19
17 on it. It has him waiving it around and everything like
18 that. The State simply wants to use it for him to show
19 off that he is holding a Glock 19. And in doing so,
20 showing that this same make and model gun with an
21 extended magazine that he's got previous video of him
22 holding, is the gun that was found beside his ID in the
23 car, excluding the other people potentially possessing
24 it.

25 The probative value is there. Showing the

1 connection of him owning and possessing this gun
2 multiple times, that gun matches the shell casings
3 at the scene. It's part of the case-in-chief.

4 In regards to the unlawful carrying of
5 a gun, there's no evidence that the vehicle is moving
6 in any way, shape or form. There's no evidence that
7 he doesn't have a concealed weapons permit, that he
8 is unlawfully carrying this in any way, shape or form.

9 It's simply a video of him showing off
10 a Glock 19, same make, model, size, with an extended
11 magazine as the gun that he was found with around other
12 people that matches the shell casings at the scene.

13 THE COURT: Thank you, Counsel. Obviously,
14 relevant -- evidence, obviously, isn't adherently
15 prejudicial, or the State wouldn't want to put it in.
16 However, I must balance the consideration of the
17 probative value as to whether that outweighs the
18 prejudicial effect.

19 When it's offered to prove something other
20 than character, as it is in this case, it's being
21 offered to prove possession of the gun by the Defendant.
22 Considering the fact that the actual gun was found
23 in proximity of the Defendant with four other people,
24 I think the probative value outweighs the prejudicial
25 effect, and the gun will come in -- the video will come

1 in.

2 And, of course, I did ask you to redact
3 the portion that had any kind of gang relation name
4 or whatever that was on that Snapchat.

5 MR. SPEARS: Yes, Your Honor. Initially,
6 the video showed Glizzy Gang 19. The word gang has been
7 redacted, blotted out. So it just says Glizzy 19.

8 THE COURT: Anything further before bringing
9 the jury out?

10 MR. SHELTON: Nothing, Your Honor.

11 MR. SPEARS: Nothing, Your Honor.

12 THE COURT: Let's have our jury, please.

13 (Jury enters the courtroom at 9:50 a.m.)

14 THE COURT: Good morning, ladies and
15 gentlemen of the jury. I hope that you had a nice
16 evening. We're now ready to proceed with the trial
17 of this case. You may call your next witness.

18 MR. SPEARS: Thank you, Your Honor.
19 State calls Nick Santana.

20 MR. NICK SANTANA was called as a witness,
21 being duly sworn, was examined and testified as follows:

22 THE COURT: Your witness.

23 MR. SPEARS: Thank you, Your Honor.

24 DIRECT EXAMINATION

25 BY MR. SPEARS:

1 Q. Good morning, Mr. Santana.

2 A. Good morning.

3 Q. Where are you employed?

4 A. I work for the Navy.

5 Q. And how long have you worked there?

6 A. Just almost a year and half.

7 Q. Where did you work before that?

8 A. I worked at the Summerville Police Department.

9 Q. And how long were you in law enforcement?

10 A. Almost 11 years.

11 Q. What was your rank at the Summerville Police
12 Department when you left?

13 A. When I left, I was the lieutenant over the
14 criminal investigations unit.

15 Q. And as a lieutenant over criminal investigations,
16 can you tell the jury just a little bit about what you
17 do there?

18 A. Sure. So any time a police officer takes a report,
19 it's funneled through the channel. And the lieutenant
20 over that division kind of reads the report, sees if
21 it needs any corrections, would issue those cases to
22 detectives to investigate, or to other patrol officers
23 to investigate. They're in charge of on-calls. So any
24 kind of after-hours crimes that have been committed that
25 might need a detective, they're responsible for that,

DIRECT EXAMINATION - BY MR. SPEARS

1 the overall administrative work, you know, timekeeping,
2 things of that nature.

3 Q. And did you investigate a shooting that occurred
4 in the Trolley Road area on June 5th of 2016?

5 A. Yes, sir.

6 Q. All right. Can you just tell the jury about your
7 initial response to that?

8 A. Sure. So, I was the on-call detective that we --
9 at that time, I was a sergeant, and I was on on-call
10 rotation. You're on-call -- each detective is on-call
11 for about a week at a time for anything after hours.

12 At that time, I was the on-call detective. I was
13 notified in reference to a shooting that occurred on
14 Trolley Road near Midland Parkway. I was also advised
15 that there's victims. The victims from that shooting
16 were at Trident Hospital. So, I responded to the
17 hospital and started my investigation from there.

18 Q. So did you go to the scene first or the hospital
19 first?

20 A. I went to the hospital first.

21 Q. Did you send anybody to the scene?

22 A. Correct. So as part of, you know, a case like
23 this where you might have multiple areas to investigate,
24 I notified other detectives and crime scene to respond
25 to the actual scene of the shooting.

DIRECT EXAMINATION - BY MR. SPEARS

1 Q. And what did you do when you reached the
2 hospital?

3 A. When I first got there, I met with an officer,
4 Officer Drayton [ph.]. He was securing a vehicle that
5 had been -- a vehicle that was involved in this incident
6 that had been driven by the victim, Ms. Felder.
7 That was secured, and I also spoke to the officer who
8 was on scene with another victim.

9 Q. And you said the victims were there. How many
10 victims were there?

11 A. Two.

12 Q. And who are they?

13 A. They were Carsheme Dinkins and Ms. Kimberlee
14 Felder.

15 Q. And without telling us what they said, can you
16 just -- did you have a chance to speak with them?

17 A. I spoke with Mr. Dinkins. I was unable to speak
18 with Ms. Felder. My understanding, at the time, she was
19 either getting prepped for surgery or in surgery.
20 She had sustained injuries to her face.

21 Q. And what did you do after you left the hospital?

22 A. So after the initial investigation at the
23 hospital, I was able to obtain a name. Mr. Damon Riley
24 was a suspect in the case. So, I returned to the police
25 department and obtained attempted murder warrants for

DIRECT EXAMINATION - BY MR. SPEARS

1 his arrest as well as possession of a firearm.

2 Q. Now as the lead investigator, did you talk with
3 the other individuals you sent to process the scene?

4 A. Correct, I did.

5 Q. Okay. And was any evidence collected from the
6 scene?

7 A. Yes. So the vehicle itself -- this incident
8 took place, the occupants, the victims, was occupying
9 a vehicle, so the vehicle was evidence. That was taken
10 back to the police department to search for any evidence
11 in the vehicle. And there were multiple shell casings
12 retrieved from the incident location that were placed
13 into evidence.

14 Q. Were any blood cultures tested?

15 A. There was blood taken from the scene and placed
16 into evidence.

17 Q. Did you review the evidence that was taken from
18 the scene?

19 A. Yes, sir.

20 Q. All right. Now you said that you got warrants.
21 What did you do after that?

22 A. Okay. We put it in the database to let other
23 officers, other agencies know that somebody is wanted.
24 After doing that, I spoke to other witnesses in
25 reference to this case to obtain information. I spoke

1 to -- the vehicle that was being occupied by the
2 victims, I spoke to the owner, spoke to a friend of
3 Ms. Felder, just continued on to the investigation,
4 located some more information on the suspect, Mr. Riley.

5 Q. And did you attempt to identify any other
6 suspects?

7 A. Throughout the investigation, correct.

8 Q. Were you able to get any sort of identifying
9 information on other suspects that could have been
10 in the vehicle?

11 A. None other than Mr. Riley.

12 Q. Now during your investigation, were you able
13 to determine if Mr. Riley had any nicknames or alias?

14 A. I did. He went by "Black."

15 Q. And let's go forward to June 10th, a few days
16 later. What happened on June 10th?

17 A. On June 10th, we received information that
18 Mr. Riley was in Summerville at an apartment complex.
19 Within, you know, hours of receiving that information,
20 Mr. Riley was in a vehicle that left the apartment.
21 He was stopped and subsequently arrested. And once he
22 was taken back to the police department, I made contact
23 with Mr. Riley and conducted an interview after he was
24 placed under Miranda.

25 Q. And where did the arrest take place?

DIRECT EXAMINATION - BY MR. SPEARS

1 A. It was on Boone Hill Road.

2 Q. And what city is that in?

3 A. It's in Summerville.

4 Q. Did he have any weapons on him at the time?

5 A. When Mr. Riley was pulled over, they located
6 a Glock handgun in his vicinity, next to his South
7 Carolina identification.

8 Q. So you said you got to speak with him after he
9 was arrested. Was he provided with his Miranda rights?

10 A. Correct, he was.

11 MR. SPEARS: Court's indulgence, Your Honor.
12 May I approach the witness, Your Honor?

13 THE COURT: Yes, sir.

14 BY MR. SPEARS:

15 Q. I'm showing you what's been marked as State's
16 Evidence No. 1. Do you recognize this?

17 A. Yes, sir.

18 Q. And what is this?

19 A. This is the advisement of rights form that was
20 provided to Mr. Riley prior to speaking to him, Miranda
21 warnings.

22 Q. And did he sign that form?

23 A. He did.

24 MR. SPEARS: Judge, at this time, I request
25 State's 1 be placed into evidence.

DIRECT EXAMINATION - BY MR. SPEARS

1 THE COURT: Any objection?

2 MR. SHELTON: No objection.

3 THE COURT: All right, it's in.

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

5 BY MR. SPEARS:

6 Q. Now can you just tell the jury a little bit about
7 the nature of your conversation with Mr. Riley?

8 MR. SHELTON: Your Honor, at this time,
9 I will just renew my objection.

10 THE COURT: Yes, sir. And for the same
11 reasons, your objections are overruled.

12 BY MR. SPEARS:

13 A. So after -- Mr. Riley and I went over the
14 advisement rights. He understood his rights and wished
15 to speak to me to talk about this incident. I asked
16 if he knew why -- excuse me. I asked if Mr. Riley knew
17 why he was here, if he knew why he was here. He advised
18 that he did. His mother told him he was wanted.

19 He advised he was going to turn himself in,
20 but he wasn't coming back into town until the following
21 week. I advised if he knew either victims in this case,
22 Carsheme Dinkins or Kimberlee Felder. He advised that
23 he did. He knew who both of them were. I tried to --
24 I inquired about, you know, were there any reasons
25 for him to be involved, or why would he be accused

DIRECT EXAMINATION - BY MR. SPEARS

1 of shooting Mr. Riley -- I'm sorry, Mr. Dinkins and
2 Ms. Felder. He provided maybe an ongoing dispute,
3 you know, from an earlier incident.

4 He advised that -- I tried to obtain -- he said
5 it wasn't him. I asked for an alibi information.
6 He provided an alibi information that I was able to
7 follow up on. I asked him, you know, what he knew about
8 the incident location. He advised that his mother told
9 him -- when I asked him about the incident, he advised
10 he didn't see any shooting.

11 He advised that his mother told him that
12 Kimberlee and Carsheme were at a light and someone
13 rolled to the light and shot people up. He advised that
14 when he was being pulled over by the police officer when
15 he was arrested, when he was pulled over on the traffic
16 stop, he advised that he thought about "going out"
17 instead of going to jail.

18 Q. Now he said he was in Columbia at that time.
19 Was he able to provide you with any receipts or anything
20 like that from his time?

21 A. No, sir.

22 Q. Were you able to find anything that verified
23 his claim that he was in Columbia at the time?

24 A. I was unable to locate any evidence of that.

25 Q. And he said he wasn't -- he didn't turn himself

1 in because he was planning on coming back in town.

2 Where was he arrested?

3 A. In Summerville.

4 Q. All right. Moving on, were any personal
5 belongings found on him at the time of his arrest?

6 A. When he was arrested, there was a cell phone that
7 was of Mr. Riley's.

8 MR. SPEARS: May I approach the witness,
9 Your Honor?

10 THE COURT: You may.

11 BY MR. SPEARS:

12 Q. I'm showing you what's been marked as State's 35.
13 You can take a look at that. Do you recognize this?

14 A. Can I open it?

15 Q. Yeah.

16 A. I do.

17 Q. And what is this?

18 A. This was a cell phone taken from Mr. Riley.

19 Q. And what did you do with that cell phone after
20 it was taken from Mr. Riley?

21 A. I obtained a search warrant for the physical
22 phone itself, for contents on the actual physical phone,
23 and a search warrant for information, like, site tower
24 locations, where, you know, it's not actual evidence
25 on the phone, but from a phone carrier.

DIRECT EXAMINATION - BY MR. SPEARS

1 Q. Were you able to get any information back
2 in regards to the cell tower location?

3 A. I was unable to.

4 Q. Okay. But who did you send that to?

5 A. To T-Mobile.

6 Q. Were they able to provide anything?

7 A. They were not. At the time the incident
8 occurred, the phone number wasn't registered with
9 their database.

10 Q. So when you say getting information off the
11 phone, did you do that yourself, or did you give it
12 to someone else to do?

13 A. To someone else.

14 Q. Okay. I will take that back.

15 MR. SPEARS: Judge, at this time, I would
16 request State's 35 into evidence.

17 THE COURT: Any objection?

18 MR. SHELTON: No objection. What's the
19 number again?

20 THE COURT: 35.

21 MR. SPEARS: 35.

22 MR. SHELTON: Thank you.

23 (State's Exhibit No. 35 was admitted into evidence.)

24 BY MR. SPEARS:

25 Q. Now were you ever able to speak with Kimberlee?

1 A. I was, on June 15th.

2 Q. And during that -- did that further your
3 investigation at all?

4 A. It did. Ms. Felder, I met with her at the
5 medical university downtown. She was still being
6 seen for the injuries she sustained from the shooting.
7 Her mouth was wired shut, so communication was a little
8 difficult. But she did advise, you know, that she was
9 driving the vehicle that was shot that night. She
10 advised that she physically saw her cousin, Mr. Riley --
11 Mr. Damon Riley, the Defendant, fire a gun from another
12 vehicle.

13 She advised that the night when she was stopped
14 at the red light, she remembers hearing sounds. So she
15 looked, you know, to inquire about the sounds, looked
16 over, and that's when she saw Mr. Riley hanging out of
17 the -- firing a gun from another vehicle. She looked
18 over, she saw him hanging out of the back passenger
19 window shooting at her vehicle. She advised that she
20 was conscious and alert, you know, the whole time during
21 this incident.

22 Q. Did you speak with anybody in regards to who also
23 would have been in Club 221 that night?

24 A. I didn't.

25 Q. Were you able to get any, like, videos from the

DIRECT EXAMINATION - BY MR. SPEARS

1 club or anything like that?

2 A. No, sir.

3 Q. Is that necessary for your investigation?

4 A. No, sir.

5 Q. During the course of your investigation, were you
6 able to find the name of Damon Riley's sister?

7 A. I was.

8 Q. And what is that name?

9 A. Tiara [ph.].

10 Q. Were you ever able to find her and speak with
11 her?

12 A. No, sir.

13 Q. All right. Now while you were at MUSC, did you
14 collect any evidence from there?

15 A. I did -- having a bullet fragment that was
16 removed from Ms. Felder. I took possession of that
17 and placed it in evidence.

18 MR. SPEARS: Court's indulgence.

19 THE COURT: Yes, sir.

20 MR. SPEARS: Please any questions the
21 defense might have.

22 THE WITNESS: Yes, sir.

23 THE COURT: Cross-examination.

24 CROSS-EXAMINATION

25 BY MR. SHELTON:

1 Q. This isn't the first trial, correct?

2 A. Correct.

3 Q. You testified once before?

4 A. Yes, sir.

5 Q. And you remember testifying in that first trial
6 about accepting Kim's statement on its face?

7 A. Yes, sir.

8 Q. Do you remember testifying about that?

9 A. Yes, sir.

10 Q. So you didn't question her statement in any way?

11 A. Yes, sir.

12 Q. You accepted it on its face because she's
13 describing her cousin, who she knew, shooting her?

14 A. Yes, sir.

15 Q. Okay. So you accepted that?

16 A. Yes, sir.

17 Q. Kim, at some point in time, you learned was
18 on the phone talking to her mother?

19 A. Yes, sir.

20 Q. Did you ever try to verify that?

21 A. No, sir.

22 Q. You never pulled her cell phone records?

23 A. No, sir.

24 Q. Carsheme Dinkins was the person you talked to
25 at Trident?

CROSS-EXAMINATION - BY MR. SHELTON

1 A. Correct.

2 Q. And you initial -- you immediately that night,
3 the next day, got warrants for Damon Riley ---

4 A. Yes, sir.

5 Q. --- based off talking to Carsheme?

6 A. Yes, sir.

7 Q. Are you familiar with Carsheme prior to this
8 incident?

9 A. I don't recall ever having personal dealings with
10 him.

11 Q. Are you aware that he was shot after this
12 incident?

13 A. I don't believe so.

14 Q. Okay. You're not aware of that?

15 A. No.

16 Q. Okay. But you learned that Kim went to Waffle
17 House?

18 A. Yes, sir.

19 Q. She was at Suite 221. Did you ask her for
20 receipts?

21 A. No, sir.

22 Q. Did you ask her to verify anything as far as time
23 frame and when she was there?

24 A. No, sir, not at the club.

25 Q. Or at Waffle House, you didn't ask her for those?

1 A. Right, right.

2 Q. You get a chance to read all the reports, right?

3 A. Yes, sir.

4 Q. The supplemental reports and that sort of thing
5 from the night of?

6 A. Yes, sir.

7 Q. And there is an officer that observed a red car
8 fleeing the scene, correct?

9 A. Correct.

10 Q. Do you recall that?

11 A. I don't recall which officer. I have the report
12 here.

13 MR. SPEARS: Judge, may we approach?

14 THE COURT: You may.

15 (Off-the-record conversation held at sidebar.)

16 (Back on the record.)

17 THE COURT: Counsel, would you repeat the
18 question for him.

19 MR. SHELTON: I'm sorry.

20 BY MR. SHELTON:

21 Q. You're aware that there was an officer that
22 observed a red car?

23 A. Can you tell me which -- this officer says it's
24 dark colored.

25 Q. Okay. I'm sorry. It might be a dark-colored

1 car.

2 A. Page 5?

3 Q. Yes, Page 5.

4 A. Yes, sir. Oh, I'm sorry. There you go.

5 Q. Red vehicle?

6 A. My correction.

7 Q. Okay. And are you aware if that officer ever
8 was able to catch up to the red vehicle?

9 A. He was not.

10 Q. Okay. Kim indicated that the tires were blown
11 out, so it was a long ride. Did CarsHEME verify that?

12 A. No, sir.

13 Q. Okay. You saw the rims on the car?

14 A. Correct.

15 Q. And they were down to the rims?

16 A. Correct.

17 Q. Okay. Or the tires on the car, they were down
18 to the rims?

19 A. Yes, sir.

20 Q. And they passed -- from that incident location,
21 they would have passed Summerville Medical going down
22 Midland Parkway?

23 A. Yes, sir, if they went down, yes, sir.

24 Q. Okay. Did Kim give you the name Tiara as the
25 sister?

1 A. She did.

2 Q. Okay. So she provided you the name of Tiara?

3 A. Yes, sir.

4 Q. Okay. So she remembered on that day that it was
5 Tiara that was at the club?

6 A. Yes, sir.

7 Q. Okay. There were, I guess, officers that found
8 some witnesses on scene at the Kangaroo gas station?

9 A. Yes, sir.

10 Q. Did you ever talk with those witnesses?

11 A. No, sir.

12 Q. Get any statements from those witnesses?

13 A. No, sir.

14 Q. An you're aware that there is a statement --
15 a witness observed the red car pull into the parking
16 lot of Arby's?

17 A. Correct.

18 Q. Back into the parking lot of Arby's?

19 A. Correct.

20 Q. And then take off?

21 A. Correct.

22 Q. And that didn't necessarily match with what Kim
23 was saying or Carsheme?

24 A. To me, I mean, they advised that Ms. Felder
25 was driving the vehicle upon the shooting, you know,

CROSS-EXAMINATION - BY MR. SHELTON

1 realized that she was shot. He pulls over Midland --
2 I mean, the incident occurred right here. This is an
3 Arby's. They went down this road. He put her in the
4 back seat. To me, it was a pretty similar statement.

5 Q. Okay. So they drove down that road. He got out
6 of the passenger seat. He went around the car, into the
7 driver's seat, grabbed Kim, put her in the back seat,
8 and then went to the hospital?

9 A. Yes, sir.

10 Q. Okay. But other officers are saying they got
11 to the scene within 30 seconds, correct?

12 A. Right.

13 Q. And they didn't see any cars, correct?

14 A. Correct.

15 Q. Okay. You mentioned that there were no other
16 suspects. Did you submit identifying information to
17 SLED? Is that your job?

18 A. Yes. Yes, sir.

19 Q. Okay. So if somebody is labeled as a suspect,
20 or somebody is labeled as a victim, that would be coming
21 from you?

22 A. Correct, yes, sir.

23 Q. Okay. And do you get a copy of those SLED
24 reports when they come back?

25 A. I do.

1 Q. Do you have the SLED reports with you?

2 A. I have a report.

3 Q. Would it help refresh your memory to see ---

4 A. I don't have access since I'm not there anymore.

5 Q. And there's a SLED report where you have a second
6 suspect, correct?

7 A. No, sir.

8 Q. SLED report from November 20th of 2017?

9 A. There's not another suspect name. I see what
10 you're saying, okay. On the top right?

11 Q. Yes.

12 A. It says Calvin Elmore.

13 Q. Okay. So there's a second suspect that's been
14 provided to SLED?

15 A. Correct.

16 Q. Did Kim have any marks or burns on her face from
17 the gun being shot?

18 A. She did.

19 Q. She did? The gun was in close range, in close
20 proximity to her? I mean, so she had, like, stippling,
21 some marks as far as gunpowder on her face?

22 A. No.

23 Q. Okay. Kim states that the car pulled up next
24 to her in a lane, correct?

25 A. Correct.

1 Q. She was stopped?

2 A. Correct.

3 Q. And a car pulled up next to her, and Damon Riley
4 is already leaning out of the car, correct?

5 A. Correct.

6 Q. Those lanes are normal lanes, correct?

7 A. Correct.

8 Q. So they're pretty close, correct?

9 A. Correct.

10 Q. Okay. And she didn't have any shots or any
11 gunshot powder or anything showing -- she, obviously,
12 had a wound. But she didn't have any stippling,
13 anything that looked like a gunshot was fired in close
14 range?

15 A. I can't -- I'm not a gunfire expert. I can't
16 testify to how close range you have to be for stippling.
17 But my understanding through my time in law enforcement,
18 you have to be pretty close. And I would assume that
19 the glass was shattered, and the window was up. So she
20 wouldn't have obtained any gunpowder or stippling,
21 as you're indicating.

22 Q. And you went to the hospital, did you see any
23 glass or anything in her face?

24 A. No, sir. I didn't see Ms. Felder at the
25 hospital.

1 Q. Okay. At Midland Parkway, there's shell casings
2 going all the way from the intersection down to Pivotal
3 Fitness, correct?

4 A. Correct.

5 Q. And Ms. Felder indicates that they went down
6 Midland Parkway?

7 A. Correct.

8 Q. And the shooting all occurred right there at that
9 intersection?

10 A. Correct, yes, sir.

11 Q. As a lead detective, did you tell the forensics,
12 everybody on scene, to mark where all these shell
13 casings are found?

14 A. I didn't tell them to do that. And I know they
15 would. It would be, like, normal protocol.

16 Q. Normal protocol. So when you're going back
17 and reviewing evidence, if you don't have a map, or you
18 don't have a description of where everything was found,
19 wouldn't you think that would be something that would
20 be important for you to look into?

21 A. Potentially, yes, sir.

22 Q. Okay. There's nothing in this case as far as
23 a map or a description of where all these casings were
24 found?

25 A. No, sir.

CROSS-EXAMINATION - BY MR. SHELTON

1 Q. And it came to your attention at one point that
2 there was a difference -- there were at least 40-caliber
3 bullet casings and 9-mm bullet casings?

4 A. Yes, sir.

5 Q. So, initially at first, there was at least two
6 different types of guns, correct?

7 A. Correct, yes, sir.

8 Q. And so when you don't have the information --
9 you're going to be able to tell that on scene because
10 you could tell 40-mm and 9-mm casing?

11 A. Yes, sir.

12 Q. So that didn't cause any pause to want to find
13 out where the 9-mm was found and where the 40-mm were
14 found?

15 A. Like specific locations, no.

16 Q. Okay. You didn't need that, correct?

17 A. No, sir.

18 Q. Okay. You didn't -- this might be silly, but you
19 didn't continue as lead investigator once you left?

20 A. No, sir.

21 Q. So anything that happened afterward or items
22 that were obtained, that wouldn't have fallen on you
23 to follow up on or look into evidence?

24 A. No, sir.

25 Q. Okay. Is it your testimony that you couldn't

1 find the phone number for Tiara, or couldn't get a hold
2 of her?

3 A. Correct, no, sir.

4 Q. How did you attempt to speak to Tiara?

5 A. We have, like, a local database that we could run
6 names through, locate phone numbers. At that time that
7 it was utilized, I was unable to locate her information.

8 Q. Okay. You got a statement from Damon three years
9 ago. So it's not that long in time as far as
10 technology, but this was not recorded?

11 A. No, sir.

12 Q. Recorded in any way?

13 A. No, sir.

14 Q. Video camera, a recording device, nothing to
15 record this statement, this interview with Mr. Riley?

16 A. No, sir.

17 Q. And I think you testified at the first trial
18 that it wasn't a policy of Summerville to even have
19 that recorded?

20 A. Correct.

21 Q. Okay. You worked a lot of cases after this
22 in 2016?

23 A. Yes, sir.

24 Q. You worked cases before this?

25 A. Yes, sir.

CROSS-EXAMINATION - BY MR. SHELTON

1 Q. And so you, obviously, lived it. So you'll have
2 some memory of it. But a lot of what you're testifying
3 to is based off looking at your report?

4 A. Yes, sir, that's right.

5 Q. Okay. So you've got to trust your notes?

6 A. Yes, sir.

7 Q. There was some media attached to this case,
8 correct?

9 A. Can you ---

10 Q. Media showing up on scene, right?

11 A. Okay. Yes, sir.

12 Q. And then there was a "wanted" and that sort
13 of thing put out for Damon Riley?

14 A. Yes, sir.

15 Q. Okay. So the fact that his mother was telling
16 him that they were looking for him, that's not unusual?

17 A. No, sir.

18 Q. Okay. Additionally, Kim is a family member
19 of Mr. Riley?

20 A. Correct.

21 Q. So for the family to have specific information
22 about the case is not unusual?

23 A. Specific information about the case, I would
24 say -- I'm not trying to be argumentative. But some
25 information is not released. Everything that we do

1 in our case is not released to Ms. Felder. She wouldn't
2 know every step, or person we talked to.

3 Q. Right. And not necessarily the details of the
4 shooting?

5 A. Correct. Like, the actual incident that occurred
6 to her could be told to family members.

7 Q. Right. And Carsheme could have. He's married
8 to her.

9 A. Yes, sir.

10 Q. So he could have told family members?

11 A. Correct.

12 Q. He could have told other family members?

13 A. Sure.

14 Q. And that's how Damon knew information about the
15 case, correct?

16 A. It's a possibility, yes, sir.

17 Q. Two more questions. You can't -- as you
18 testified earlier, you can't tell where each individual
19 casing was found in the road?

20 A. If I looked at the photograph, I mean, you would
21 see it. But as far as, like, a diagram, no, sir.

22 Q. Okay. And you also can't tell when those shell
23 casings got there?

24 A. I wouldn't be able to, no, sir.

25 Q. Okay.

REDIRECT EXAMINATION - BY MR. SPEARS

1 MR. SHELTON: No further questions.

2 THE COURT: Any redirect?

3 MR. SPEARS: Yes, Your Honor.

4 REDIRECT EXAMINATION

5 BY MR. SPEARS:

6 Q. Just a few points of clarification, Mr. Santana.
7 You mentioned y'all were talking about you accepting
8 Kimberlee's statement about Damon on its face. Did you
9 still continue your investigation?

10 A. Yes, sir.

11 Q. Where did your investigation lead you?

12 A. To Mr. Riley.

13 Q. All right. Now you were asked about if you tried
14 to verify her talking with her mom on the way there.
15 Would that be a pivotal turning point in the
16 investigation?

17 A. No, sir.

18 Q. Also in regards to -- you were asked if Carsheme
19 verified that it was a long ride to the hospital, and
20 you said, no. Did you specifically ask him if it was,
21 or did you not bring that up?

22 A. No, I didn't bring it up. I know where the
23 hospital was; I know where the incident location was.
24 So, I knew the distance between the two.

25 Q. And we're talking about Kim remembering the name

1 of Damon's sister that she saw at Club 221, Tiara.

2 How long ago did this shooting happen again?

3 A. Roughly -- a little over three years.

4 Q. Also in regards to Page 5 that Mr. Shelton had
5 you look at, about a witness in the area that the other
6 officer spoke with. Apparently, it's already on record
7 that the witness said that vehicle turned around in the
8 Arby's. Can you show me -- can you tell us wherein she
9 says on Page 5 that the vehicle turned around in the
10 Arby's parking lot?

11 A. On Page 5, it says the south side of the Arby's
12 parking lot -- the south side of the parking lot of
13 Arby's.

14 Q. Does it say that it was in the parking lot,
15 or was that the south side of it?

16 A. The south side of the parking lot.

17 Q. Okay. And where on this map did the shooting
18 occur?

19 A. Right around here. (Indicating.)

20 Q. Right around here.

21 MR. SPEARS: And if I may approach, Judge?

22 THE COURT: You may.

23 BY MR. SPEARS:

24 Q. All down here, is that where the shell casings
25 were found?

REDIRECT EXAMINATION - BY MR. SPEARS

1 A. Correct.

2 Q. Okay. And right around here you say is where
3 the car was?

4 A. Correct.

5 Q. Okay. You were asked about officers who
6 responded to the scene so quickly not seeing a car.
7 On your testimony on cross, when Mr. Shelton asked you,
8 there was an officer who saw a red sedan leave?

9 A. Yes, sir.

10 Q. And then you were asked about Calvin Elmore
11 in the SLED sheet?

12 A. Yes, sir.

13 Q. Was this one of the suspects that you looked
14 into during your investigation?

15 A. No, sir.

16 Q. Were you able to possibly find any other
17 corroborating evidence that he was involved in this?

18 A. No, sir.

19 Q. Okay. And you say there were photographs of the
20 shell casings at the scene.

21 A. Correct.

22 Q. So it's not like everything was just left
23 undocumented?

24 A. Correct.

25 Q. Did you review those?

1 A. Yes, sir.

2 Q. Did you see any sort of difference on this map
3 of locations of shell casings, like, one type of caliber
4 in an area?

5 A. No, sir.

6 Q. Okay.

7 MR. SPEARS: Court's indulgence.

8 THE COURT: Yes, sir.

9 BY MR. SPEARS:

10 Q. Just for a brief point of clarification, if we
11 looked on the map, and we're pointing at what?

12 A. This is the south.

13 Q. Gotcha.

14 A. This is north and south.

15 Q. Gotcha. So this area right here would be the
16 south side of the parking lot?

17 A. Yes, sir.

18 Q. Okay.

19 MR. SPEARS: No more questions, Your Honor.

20 THE COURT: You may step down, sir.

21 Thank you.

22 THE WITNESS: Thank you.

23 THE COURT: You may call your next witness.

24 MR. SPEARS: State calls Captain Rick
25 Gebhardt.

DIRECT EXAMINATION - BY MR. SPEARS

1 MR. RICHARD GEBHARDT was called as a
2 witness, being duly sworn, was examined and testified
3 as follows:

4 THE COURT: Your witness.

5 MR. SPEARS: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MR. SPEARS:

8 Q. Mr. Gebhardt, where do you work?

9 A. I work for the Summerville Police Department,
10 sir.

11 Q. And what is your current rank there?

12 A. I'm a captain over the criminal investigation
13 division.

14 Q. And how long have you worked there?

15 A. I have been employed with them for 12 years.

16 Q. Excuse me for a second. I have to get my notes.

17 A. Yes, sir.

18 Q. Can you just tell the jury what some of your
19 duties are there?

20 A. Currently, my duties are managing and supervising
21 the day-to-day operations of the criminal investigation
22 division, which includes the detectives, the narcotics
23 vice unit, and school resource officers. I am also
24 a firearms instructor, where I am responsible for
25 maintaining and qualifying all the officers on various

1 weapons within the department, including handguns,
2 shotguns, and the rifle platforms. And I am a training
3 officer as well. So, I conduct in-service training
4 as needed by the department.

5 Q. Captain, what was your position back in 2016?

6 A. Back in 2016, I was a patrol lieutenant.
7 I was the watch commander over one of the nightshifts,
8 and I was on the emergency services unit, which is the
9 tactical team.

10 Q. And as a part of your job, do you have any
11 training in cell phone technology?

12 A. Yes, I do. Back in 2009, I attended a
13 certification class through the public agency training
14 council where I was trained in how to obtain forensic
15 information from mobile devices.

16 Q. And can you tell us what a cell phone extraction
17 is? What does it involve?

18 A. What a cell phone extraction involves is using
19 a forensic utility to obtain information on the phone
20 to put it in a more palatable manner to be able to read
21 than just the zeros and ones in binary code. It allows
22 a user-friendly format to be able to see what
23 information can be on the phone. And there's different
24 methods you could use to get deleted data that may not
25 be visible to the naked eye if you were to scroll

DIRECT EXAMINATION - BY MR. SPEARS

1 through everything.

2 Q. Did you receive a cell phone as a part of an
3 investigation on Damon Riley back in 2016?

4 A. Yes, I did.

5 MR. SPEARS: If I may approach the witness,
6 Your Honor?

7 THE COURT: You may.

8 BY MR. SPEARS:

9 Q. I'm showing you what's already been placed
10 in evidence as State's 35. Can you tell us if you
11 recognize this?

12 A. May I open the device, sir?

13 Q. Yes.

14 A. Yes, sir. This is the device that I processed.

15 Q. And just for clarification, what were you
16 checking on the back of that?

17 A. I'm sorry. I was checking the serial number,
18 which is unique to each device that's inside of the
19 device, behind the battery.

20 Q. And who did you receive that phone from?

21 A. I received that from Sergeant Santana, who was
22 the detective sergeant at the time.

23 Q. What did you do with that phone? How did you
24 process it?

25 A. May I refer to my notes?

1 Q. Yes, sir.

2 A. Okay. One of the first things I did was verify
3 the make and model of the phone. It's a Samsung Galaxy
4 Core Prime, which is model SMG360T, and the serial
5 number as well to make sure that it coincided with the
6 search warrant that was provided to me as well, which
7 was signed by Judge Hill with the Summerville Municipal
8 Court.

9 I powered on the phone, and noticed it was
10 branded for T-Mobile service at first, and made sure
11 it was in airplane mode. It was already in airplane
12 mode. But the reason why you want to make sure it's in
13 airplane mode is what that does is it prohibits a signal
14 from being sent to the device or coming from the device.
15 So it preserves all the data in there. A kill signal
16 can't be sent to it, so all the information will be
17 preserved.

18 So what I did then is I had a department-issued
19 laptop computer that had the forensic utility Secure
20 View 3 by Susteen on there. And I just connected the
21 phone to the computer with a micro USB cable, initiated
22 the device, you know, the program, and selected the
23 information that I wanted it to extract and I did so.

24 The first one I did was a logical extraction,
25 which collects the live information on the phone.

DIRECT EXAMINATION - BY MR. SPEARS

1 And what that does is it gets stuff like call logs,
2 short messaging services or text messages, multimedia
3 messages, images, videos, contacts, all the stuff
4 that you can actively see on the device.

5 And then I conducted a physical extraction
6 as well, which is a bit-by-bit copy of the memory,
7 which can allow you to find files that could be either
8 hidden or deleted in the past.

9 Q. And you said the phone was already in airplane
10 mode?

11 A. Correct, yes, sir.

12 Q. All right. And you said that when it's in
13 airplane mode, no signal can come to or from it, so it's
14 not pinging off of anything at that point?

15 A. Correct. What that does is it shuts off all the
16 internal antennas on the phone, so there's no cellular
17 service, and no WIFI service can go from or to the
18 device.

19 Q. Now were you given any context about the
20 reasoning behind this extraction?

21 A. Just the information that was contained in the
22 search warrant.

23 Q. Gotcha. Did you review the information that you
24 processed from this phone?

25 A. Yes, sir, I did.

1 Q. Okay. Were you able to find any photos on the
2 phone?

3 A. Yes, I was.

4 Q. I'm showing you ---

5 MR. SPEARS: If I may approach?

6 THE COURT: You may.

7 BY MR. SPEARS:

8 Q. Showing you what's been marked as State's 45.
9 Do you recognize this image?

10 A. Yes, sir.

11 Q. Was this on the phone that you performed the
12 extraction on?

13 A. Yes, sir, it was.

14 Q. Do you recognize -- is this a fair and accurate
15 representation of the photo that you found on that
16 phone?

17 A. Yes, sir, it is.

18 MR. SPEARS: Your Honor, at this time,
19 we request State's 45 into evidence.

20 THE COURT: Is that without objection?

21 MR. SHELTON: Correct.

22 THE COURT: All right, it's in.

23 (State's Exhibit No. 45 was admitted into evidence.)

24 BY MR. SPEARS:

25 Q. Do you recognize one of the individuals in this

1 photo?

2 A. I do.

3 Q. And who?

4 A. Damon Riley.

5 Q. Is he in the courtroom today?

6 A. He is.

7 Q. All right, where?

8 A. He is seated right there in the white shirt
9 and tie.

10 Q. We don't have to put it on the overhead.

11 A. Okay.

12 Q. You could just show the jury which individual
13 on here is Mr. Riley.

14 A. White shirt.

15 Q. All right. Now when you were reviewing the
16 information on the phone, were you able to find any
17 identifying information on there?

18 A. Yes, sir, I was.

19 Q. And what were you able to find?

20 A. Through the course of reviewing text messages
21 or SMS, short message service, within the device, there
22 were several references to the person on the phone whose
23 name was Damon and also Black G, which is Mr. Riley's
24 street name ---

25 Q. All right.

1 A. --- at the time.

2 Q. Were you able to find -- actually, you've already
3 said you were able to find messages on the phone,
4 correct?

5 A. Yes, sir.

6 MR. SPEARS: May I approach the witness,
7 Your Honor?

8 THE COURT: You may.

9 BY MR. SPEARS:

10 Q. Now, I'm showing you what's been marked as
11 State's 44.

12 A. Yes, sir.

13 Q. Do you recognize this?

14 A. Yes, sir, I do.

15 Q. And was this -- is this a fair and accurate
16 representation of a text message conversation on that
17 phone?

18 A. Yes, it is.

19 MR. SPEARS: Judge, I would request State's
20 44 into evidence.

21 THE COURT: Any objection?

22 MR. BARRETT: No objection, Your Honor.

23 THE COURT: All right, it's in.

24 (State's Exhibit No. 44 was admitted into evidence.)

25 BY MR. SPEARS:

DIRECT EXAMINATION - BY MR. SPEARS

1 Q. Now in reviewing this, can you just tell us what
2 you're looking at here ---

3 MR. SPEARS: Actually, may I publish to the
4 jury, Your Honor?

5 THE COURT: You may.

6 BY MR. SPEARS:

7 Q. Are you able to see that, Captain?

8 A. Yes, sir, I am.

9 Q. Okay. Is it too dark or too bright?

10 A. Just right, sir.

11 Q. Just right. All right.

12 A. Just right.

13 Q. Could you just tell us what we're looking
14 at here?

15 A. Yes, sir. What this is, is a representation of
16 some of the messages that were obtained from the phone
17 during the execution of the search warrant. No. 238,
18 where it says sent, that is a message that came from
19 this Galaxy Core Prime phone of which I conducted
20 a search warrant. And the green bubble would be what
21 was sent from -- the message that was sent from the
22 phone.

23 The grey one is the message that was received,
24 and you see No. 239, where it says read, and that was
25 on June 4, 2016 at about 11:15 p.m.

1 Q. All right. So can you tell us that message that
2 was received?

3 A. Yes. The message that was received says, "which
4 way you headed?"

5 Q. And when was that received?

6 A. That was read on June 4, 2016 at 11:15 p.m.

7 Q. And what was the response?

8 A. The response was Sville.

9 Q. And what does that spell?

10 A. Summerville.

11 Q. Okay. And when was that response done?

12 A. That response was on June 4, 2016 at about 11:25
13 p.m.

14 Q. And just for clarification across the board,
15 you don't know who sent that message. It was just
16 sent from that phone, correct?

17 A. Correct, yes, sir.

18 Q. Were you able to process any videos off of this
19 phone?

20 A. Yes, sir, I was.

21 MR. BARRETT: I would like to renew the
22 objection to admission of the video.

23 THE COURT: The same ruling applies.
24 Your objection is overruled.

25 MR. BARRETT: Thank you, Your Honor.

DIRECT EXAMINATION - BY MR. SPEARS

1 BY MR. SPEARS:

2 Q. I'm now showing you what's been marked as State's
3 30. Do you recognize this?

4 A. Yes, sir, I do.

5 Q. And how do you recognize that?

6 A. This is the DVD that I initialed the other day
7 on August 19th that contains the videos that I obtained
8 from the phone when I executed the search warrant.

9 Q. And were you able to review the DVD in its
10 entirety?

11 A. Yes, sir.

12 Q. And the video on that DVD, is that a fair and
13 accurate representation? Has it been changed materially
14 at all from the video you found on the phone?

15 A. No.

16 Q. Okay. I asked you two separate questions.

17 A. Yes.

18 Q. Is that a fair and accurate representation
19 of what's on the phone?

20 A. Yes.

21 Q. Has it been materially altered in any way?

22 A. No.

23 Q. Okay.

24 MR. SPEARS: Your Honor, I would request
25 State's 30 into evidence.

DIRECT EXAMINATION - BY MR. SPEARS

1 THE COURT: It's in, subject to your
2 objection.

3 (State's Exhibit No. 30 was admitted into evidence.)

4 BY MR. SPEARS:

5 Q. And before we play this, I asked you if it had
6 been altered in any way. Is there any alteration on
7 this?

8 A. Yes, sir, there is.

9 Q. Okay. Now do you recognize the individual
10 in this video?

11 A. I do.

12 Q. And who is that?

13 A. That is the Defendant, Mr. Riley.

14 Q. And the word Glizzy, is that a nickname for
15 anything?

16 A. Glizzy is a street name for a Glock handgun.

17 Q. Now ---

18 MR. BARRETT: Your Honor, the same objection
19 to the video.

20 THE COURT: Yes, sir, same ruling.

21 MR. BARRETT: Thank you, Your Honor.

22 BY MR. SPEARS:

23 Q. Now, Captain, I'm showing you State's 39 through
24 43.

25 A. Yes, sir.

DIRECT EXAMINATION - BY MR. SPEARS

1 Q. Can you tell us what these are?

2 A. Yes, sir. These are still images taken from that
3 video that was just shown.

4 MR. SPEARS: And, Your Honor, I would
5 request State's 39 through 43 be placed into evidence.

6 THE COURT: Yes, sir, and that's subject
7 to your objection.

8 (State's Exhibit Nos. 39 through 43 were admitted into
9 evidence.)

10 MR. SPEARS: Thank you, Your Honor.
11 Judge, may I publish these to the jury?

12 THE COURT: You may.

13 BY MR. SPEARS:

14 Q. Actually, I want you to keep these stills up here
15 with you, Captain?

16 A. Yes, sir.

17 Q. I'm going to take a slight detour ---

18 A. Okay.

19 Q. --- on your questioning here. Can you just tell
20 us about your work history before you joined the
21 Summerville Police Department?

22 A. Yes, sir. My law enforcement career began in
23 1997 when I was a member of the United States Air Force
24 Security Forces. During my time there, my duties
25 stateside were military police, law enforcement and

1 security, where I was trained in various weapon
2 platforms such as the M16, the M4, the M9 Beretta
3 handgun, M249 Squad Automatic Weapon, which is a machine
4 gun, the M16 machine gun, hand grenades, LAW rockets,
5 which are light antitank weapons.

6 While I deployed, we did infantry duty, where
7 I was exposed to other weapon systems as well, including
8 Chinese and Russian AK47s, AK74s, European G3A3s, G36Ks,
9 various weapons.

10 When I separated honorably from the Air Force
11 in 2001, I got hired by the North Charleston Police
12 Department, where again, I had to carry a sidearm on
13 my day-to-day duties. After departing from North
14 Charleston Police Department, I was employed by the
15 Isle of Palms Police Department where I obtained the
16 rank of sergeant.

17 While I was there in 2005, I became a firearms
18 instructor through the South Carolina Criminal Justice
19 Academy. Part of my duties there were to maintain and
20 be able to qualify officers in firearm such as the duty
21 handgun and the shotgun.

22 While I was also employed there in 2005, I became
23 what is known as a Glock armorer. And what that entails
24 is knowing the Glock firearm inside and out to be able
25 to take it down, break it down to it's smallest piece

DIRECT EXAMINATION - BY MR. SPEARS

1 so I can inspect the weapon for serviceability,
2 make repairs as need, and ensure it's serviceable.

3 Since then, I also became a rifle and select fire
4 instructor through the South Carolina Criminal Justice
5 Academy. What that allows me to do is instruct and
6 train officers in the ability to use long guns such
7 as rifles or select fire weapons that have the ability
8 to be either single fire, three-round burst, or a fully
9 automatic in the course of their duties.

10 Q. So in all -- and this might be a redundant
11 question, but does this history involve specialized
12 training in firearms?

13 A. Yes, sir, it does.

14 Q. Okay. Can you explain to us some of the
15 different makes of firearms or brands of firearms?

16 A. As with any other item, different companies try
17 to put their different spin on items so they can market
18 it to a certain group of people. So you have several
19 different firearms, a lot of which I carried in the
20 past, like the G3A3 and the G36K were made by H and K,
21 European rifles.

22 But my first service gun I ever carried was
23 a Beretta 92FS in the United States Air Force, and that
24 was a single-action and double-action handgun, 9-mm.
25 It had an exposed barrel on the top. It had a different

1 takedown system. So different companies will try to
2 make a firearm that they feel is either better or more
3 affordable than another company. They all want to put
4 their own twist on it to make it unique and readily
5 identifiable to the purchaser.

6 Q. Now -- and you've kind of already touched on
7 this. You talked about different models within those
8 makes?

9 A. Correct.

10 Q. Like what, for example?

11 A. Like, Glocks, for example. Our duty weapon
12 at the Summerville Police Department for, you know,
13 uniform patrol is the Glock 22. It's a 40-caliber
14 semiautomatic handgun. It's got an internal -- all
15 internal workings, the safety -- there's two internal
16 safeties. The external safety on the trigger is
17 a double trigger. But that's a 40-caliber handgun.

18 Within the Glock field, there's the Glock 22,
19 which is a full size, the Glock 23, which is also
20 a 40-caliber handgun which is a compact version of
21 the handgun. So it's a little bit smaller, easier
22 to conceal, round capacity inside of the magazine.

23 And then you have the subcompact of that,
24 which is the Glock 27, which is even smaller, easier
25 to conceal, and even smaller round capacity. So within

DIRECT EXAMINATION - BY MR. SPEARS

1 each caliber certain manufacturers will develop
2 different models to suit different purposes.

3 Q. And in a firearm like the Glock, can you tell us
4 the difference between a 40-caliber or a 9-mm or a 45?

5 A. Yes. The caliber is the size of a bullet that
6 is fired from the weapon. So the bigger -- normally,
7 the bigger caliber of the bullet, the larger the handgun
8 could be. So the barrel will be indicative of the
9 caliber that the firearm is.

10 So if you have a 40-caliber weapon, the barrel
11 will have to be able to shoot a 40-caliber bullet,
12 which is 0.40 inches, which is the U.S. equivalent
13 of a 10-mm in Europe, the 10-mm handgun.

14 Q. And what's the difference in size of a 9-mm
15 to a 40-caliber?

16 A. Approximately one millimeter.

17 Q. Professional work aside, do you use firearms
18 in your personal life?

19 A. Yes, sir, I do.

20 Q. How long have you been doing that?

21 A. I have been doing that for 19 years.

22 Q. Have you ever been previously qualified as
23 an expert in general sessions court regarding firearm
24 identification?

25 A. Yes, sir, I have.

CROSS-EXAMINATION - BY MR. BARRETT

1 MR. SPEARS: Your Honor, at this time,
2 I would like to present Captain Gebhardt as an expert
3 in firearms identification.

4 THE COURT: Any voir dire?

5 MR. BARRETT: Yes, Your Honor.

6 THE COURT: All right. You may proceed.

7 CROSS-EXAMINATION

8 BY MR. BARRETT:

9 Q. Lieutenant Gedhardt -- Captain Gebhardt, correct?

10 A. Yes, sir.

11 Q. I'm sorry.

12 A. That's all right.

13 Q. You said you were a certified Glock armorer ---

14 A. Yes, sir.

15 Q. --- certification from 2005?

16 A. I have recertified several times since then.

17 Q. Okay.

18 A. Initial certification in 2005.

19 Q. When was your last certification?

20 A. My last certification was in 2016, August 2016.

21 Q. Are they required on a regular basis the
22 recertification, or just come back every so often?

23 A. Every three years, we're required. And I
24 apologize, it's September of 2016. That's my last
25 recertification.

CROSS-EXAMINATION - BY MR. BARRETT

1 Q. Okay. And when you took that course, they cover
2 very specific stuff in the Glock armorer's manual,
3 correct?

4 A. Correct, yes, sir.

5 Q. They cover maintenance of Glocks?

6 A. Correct.

7 Q. Repairs of Glocks?

8 A. Correct.

9 Q. Diagnostics?

10 A. Correct.

11 Q. Safety?

12 A. Yes.

13 Q. Always safety?

14 A. Yes.

15 Q. Sight rule and installation?

16 A. Correct.

17 Q. Did they cover anything else in that manual?

18 And I can provide you with an older manual.

19 A. Not that I can recall. That pretty much touched
20 everything that we covered.

21 Q. So they never actually cover Glock identification
22 in the Glock armorer's course?

23 A. No, sir.

24 Q. They just deal with innards and all the fun stuff
25 that people never really want to think about?

1 A. Correct.

2 Q. Okay. How many times have you testified
3 in general sessions court to identify guns?

4 A. This is my second.

5 Q. And the first time was this previous trial?

6 A. Correct.

7 Q. So for this trial and this case only, is the only
8 time you've ever done it? For this case ---

9 A. For this case, yeah.

10 Q. --- whether or not it's the first trial or second
11 trial, is the only case you've ever done it on?

12 A. Correct.

13 Q. Okay. And this is the only time you've done it,
14 and it's only been for Glocks, not any other weapons
15 platform?

16 A. Correct.

17 Q. Have you ever published a book, paper, pamphlet,
18 magazine, or article on the identification of firearms?

19 A. No, sir.

20 Q. Have you ever done that for Glocks specifically?

21 A. No, sir.

22 Q. All right. And I'm guessing, if you got them
23 published that they're obviously not peer reviews ---

24 A. Correct.

25 Q. --- so got that one. Including the military

CROSS-EXAMINATION - BY MR. BARRETT

1 training and then your DOD training you said you had,
2 how many hours do you think you have had of total
3 firearms training in your career?

4 A. Honestly, sir ---

5 Q. Ballpark is good.

6 A. Ballpark?

7 Q. I would guess every year in the military is
8 probably about 50 hours of training, formal firearm
9 training?

10 A. Formal firearm. Well, it depended on what
11 mission we were doing at the time, because as I was
12 getting close to separation, the whole mission of
13 security forces had changed more towards airbase-ground
14 defense. So we did a lot of what we call ground combat
15 skills training, which is infantry work. The Air Force
16 just calls it ground combat skills. So it just depended
17 upon what the mission was. But I have conducted
18 thousand of hours of firearms training.

19 Q. Okay. I apologize for smiling and laughing while
20 you're saying that.

21 A. That's all right.

22 Q. But as a 22-year infantryman, I find a little
23 humor in your comments, but that's just us right now.

24 A. Oh, I understand.

25 Q. All right. How many hours of formal firearms

1 identification have you received in your career to be
2 able to say -- you've probably looked at Russian tanks
3 before, and they say this is how you tell this model,
4 or this is how you tell this Russian plane or Soviet
5 block plane. How many hours have you gone and done that
6 with all the weapon systems that are out there firearms
7 wise?

8 A. Less than ten.

9 Q. So less than ten hours of actual training?

10 A. Yes, sir.

11 Q. Formal training?

12 A. Yes, sir.

13 Q. Okay. Have you ever been trained to identify
14 a Glock by model number besides using the little plate
15 they have on the side of the weapon?

16 A. No.

17 Q. So zero hours of training in that?

18 A. Correct.

19 Q. Kind of just look at it, spitball guess,
20 think you know what it is kind of thing?

21 A. Not spitball.

22 Q. What would you call it then?

23 A. I would call it educated processing, be able
24 to figure it out through several identifying features.

25 Q. Okay. Besides your -- I believe it's every three

CROSS-EXAMINATION - BY MR. BARRETT

1 years you said for the Glock armorer's course?

2 A. Correct, sir.

3 Q. How many hours of continuing education do you
4 do every year or so often on firearms identification?

5 A. Zero.

6 Q. So over your -- I didn't do the number of years.
7 Let's say it's 20-plus years between the military
8 and law enforcement, you've done ten hours of formal
9 firearms identification?

10 A. Formal, yes, sir.

11 Q. Okay. And you've testified it's been the M4, M9
12 Beretta, the M249, the -- you didn't say M240, did you?

13 A. M16.

14 Q. M16?

15 A. Yes, sir.

16 Q. Okay. Various other Russian weapon systems?

17 A. Correct.

18 Q. AK47, 74, TKM, RPK. So all those weapons ---

19 A. No.

20 Q. No RPK?

21 A. No, sir.

22 Q. I'm sorry.

23 A. That's all right.

24 Q. Just naming all the ones I thought you had said.

25 A. Okay.

1 Q. It was a long list. So with all those weapon
2 systems, it's a total of ten hours?

3 A. Correct.

4 Q. That's not a lot of time to spend on each weapon
5 system?

6 A. Formal hours.

7 Q. Formal.

8 A. Yes, sir.

9 Q. Okay. So it would be fair to say that you have
10 a common knowledge of what a weapon appears like,
11 mostly by brand, or get some brands, very similar
12 Glockes, I will concede, are very identifiable and
13 distinguishable?

14 A. Can you repeat that, please?

15 Q. You have a common knowledge of identification
16 ability for firearms, is what I would call it. You can
17 look at a Glock, and say that's a Glock?

18 A. I wouldn't call it common, but I have knowledge.

19 Q. Just like a -- and I guess what I'm getting at,
20 in a lot of traffic cases I do, somebody can look at --
21 a cop can look at a car and say it's speeding, but they
22 can't tell you the exact speed because they don't have
23 a radar gun to measure it. You've never done that?

24 A. That's a whole different ball game. That doesn't
25 apply ---

REDIRECT EXAMINATION - BY MR. SPEARS

1 Q. We're arguing in a circle, and we'll just stop
2 that one to make this a little quicker.

3 MR. BARRETT: Your Honor, that's all I have
4 for the witness.

5 THE COURT: Any further voir dire?

6 MR. SPEARS: Very briefly, Your Honor.

7 REDIRECT EXAMINATION

8 BY MR. SPEARS:

9 Q. You were asked about training, specific formal
10 training, and identifying firearms, but you mentioned
11 thousands of hours being around firearms.

12 A. Yes, sir.

13 Q. So during training ---

14 A. Yes.

15 Q. --- with the firearm, not formal, do you learn
16 the specks of each firearm?

17 A. Yes, sir, we do. And part of our -- part of our
18 duties on the tactical team, and I was the commander for
19 the last three years of our tactical team, we conducted
20 firearms training at least once a month. So at a
21 minimum, we had four hours of exposure to various
22 firearms each month over the last three-plus years.

23 And including my 12 years on the tactical team,
24 we had exposure to several weapon systems, different
25 makes, models, calibers quite frequently.

1 Q. And when you're exposed to them, do you just go
2 out to the range and shoot them and come back, or do you
3 familiarize yourself with them?

4 A. We familiarize ourselves with them as well.

5 MR. SPEARS: Your Honor, at this time,
6 with his training and life experience and long history
7 and previous qualification, I would request he be
8 qualified as an expert.

9 MR. BARRETT: Your Honor, the defense
10 objects. At this point, while we will admit he can
11 probably identify certain handguns like a Glock,
12 anything beyond that would be out of the scope of his
13 training. Ten hours over 20-something years, half an
14 hour a year, we don't believe he has the qualification,
15 Your Honor.

16 THE COURT: And based upon Rule 702 in the
17 qualifications of experts, basically, his totality of
18 the circumstance, based on his training and experience
19 in the field, I will qualify him as a firearms expert.
20 Obviously, any deficiency in the amount of training
21 would go to the weight of evidence and not the
22 admissibility, so I will find him qualified.

23 Ladies and gentlemen of the jury, normally
24 a person cannot give opinion testimony. Normally when
25 a person testifies, they must testify as to what they

DIRECT EXAMINATION - BY MR. SPEARS

1 either saw, heard, sense by smell, or something of that
2 nature.

3 However, when there's an exception, when
4 someone is qualified because of their education or their
5 experience, they're permitted to give their opinion in
6 certain areas if the Court qualifies them in that area.
7 Captain Gebhardt will be qualified as a firearms expert
8 to give opinion testimony in that area.

9 That does not mean that you must accept
10 the opinion. But it's evidence for you to use in any
11 way that you see fit and give it the weight and the
12 credibility that you deem is appropriate. You may
13 proceed.

14 MR. SPEARS: Thank you, Your Honor.

15 DIRECT EXAMINATION

16 BY MR. SPEARS:

17 Q. And, Captain, I got a little distracted.
18 Could you tell me the evidence numbers on the photos
19 I handed you up last?

20 A. Yes, sir. They are State's Exhibits 39, 40, 41,
21 42, and 43.

22 Q. Now just so we're back on the same page, what are
23 these again?

24 A. These are still images from the video that was
25 just shown in court.

1 Q. Okay. And were you able to look at these?

2 A. Yes, sir, I was.

3 Q. Did you -- were you able to determine in your
4 professional capacity the make and model of the handgun
5 that is being held by the Defendant in that video and
6 those stills of that video?

7 A. Yes, this is Glock model 19.

8 Q. All right. And how were you able to determine
9 this?

10 A. There are several unique factors or identifiers
11 that Glock handguns have. The shape of the trigger
12 guard is indicative of a Glock. The location of the
13 serial number on the firearm is indicative of a Glock.
14 The size of the frame, and the slide of the firearm
15 are indicative of the compact brand of Glocks, which
16 the 9-mm is a 19.

17 By looking down at the barrel, you can tell
18 it's a 9-mm and not a 40. Like right there, if you look
19 at this photo -- I'm sorry to digress a little bit.
20 That is an aftermarket magazine that's coming out of the
21 bottom of the firearm. That is not the standard issued
22 Glock magazine.

23 The trigger guard, which is what protects
24 the trigger from getting accidentally pulled, the shape
25 of that makes it a Glock. The shape of the slide and

DIRECT EXAMINATION - BY MR. SPEARS

1 the frame as well make it a Glock. And you can see
2 at the underneath side of the firearm, a silver tab
3 right there. And that's where Glock puts one of the
4 serial numbers on the weapon, on a little metal tab
5 right there. And the lack of tactical rail lights
6 on the frame as well makes it either a first or second
7 generation Glock 19.

8 MR. SPEARS: If I may approach up there,
9 Your Honor?

10 THE COURT: You may.

11 BY MR. SPEARS:

12 Q. When you say lack of tactical rail lights, you're
13 referring to this right here? Where are you referring
14 to?

15 A. If I may?

16 Q. You can actually mark on that.

17 A. Oh, okay. Right there. (Indicating.)

18 Q. Okay.

19 A. That's where the newer generations have an
20 adapter where you can put a tactical light on the
21 weapon. And the lack of that shows it's a generation
22 one or two.

23 Q. So it's your testimony today that the handgun
24 in this video is a Glock 19?

25 A. Correct.

DIRECT EXAMINATION - BY MR. SPEARS

1 Q. In regards to the text on there, you previously
2 testified that Glizzy is vernacular for Glock, correct?

3 A. Yes, sir.

4 Q. All right. And it says Glizzy 19 on there.
5 In your professional capacity, what do you believe
6 that would mean?

7 A. That would be a Glock 19.

8 Q. What caliber is Glock 19 chambered with?

9 A. Glock 19 is chambered in 9-mm.

10 MR. SPEARS: Court's indulgence, Your Honor.

11 THE COURT: Yes, sir.

12 BY MR. SPEARS:

13 Q. Now, I'm going to be showing you what's been
14 marked as State's 33A, B and C.

15 MR. SPEARS: If I may approach, Your Honor?

16 THE COURT: You may.

17 BY MR. SPEARS:

18 Q. Can you tell us what's in there, what State's 33,
19 I believe it's C, is?

20 A. 33C is a Glock 19 firearm.

21 Q. And is that an earlier or a later generation?

22 A. It's an earlier generation.

23 Q. How can you tell?

24 A. Again, the lack of -- it's clear. The lack
25 of the tactical light adapter there, and the format

CROSS-EXAMINATION - BY MR. BARRETT

1 of the pistol grip here, the way the stippling is
2 makes it indicative of an earlier model.

3 Q. And what is 33B?

4 A. 33B is an aftermarket magazine.

5 Q. All right.

6 MR. SPEARS: Please answer any questions
7 that the defense might have for you.

8 THE WITNESS: Yes, sir.

9 THE COURT: Cross-examination.

10 MR. BARRETT: Yes, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. BARRETT:

13 Q. Captain Gebhardt, I apologize if I slur a little
14 bit or misspeak. I got dentures in that I'm not used
15 to. They keep breaking. Also if a tooth flies off
16 in the middle of this, I apologize. It happened in
17 July in Boston on cross-examination, so it's kind of
18 embarrassing. But bear with me if that happens.

19 I'll try to act cool and act like it didn't happen.

20 This shooting occurred on the 5th of June, 2016?

21 A. According to the search warrant, yes, sir.

22 Q. Okay. And my client was arrested on the 10th
23 of June, 2016?

24 A. Yes, sir.

25 Q. And you got the search warrant for the phone on,

1 I believe, it was the 15th and executed it shortly
2 thereafter, if not then?

3 A. Correct, yes, sir.

4 Q. Okay.

5 A. According to my report, I received it on the
6 13th, but I don't think I executed it until the 15th.

7 Q. Okay. It was after the arrest of my client?

8 A. Correct, yes, sir.

9 Q. Okay. The shell casings from the scene on
10 the morning of the 5th were, obviously, collected before
11 the arrest and, obviously, collected before the Snapchat
12 video. And they already knew they had some 9-mm casings
13 and some 40-caliber casings, correct?

14 A. I am not familiar with the details of the case,
15 yes, sir.

16 Q. But all the casings were in evidence at that
17 point. They didn't go back 20 days later and find
18 casings on the side of the road?

19 A. Correct.

20 Q. Okay. And can you tell 9-mm casings, they're
21 different from 40-caliber casings because they're
22 typically stamped on the back. Something says 9-mm
23 Winchester, 9-mm Black Wolf, or some abbreviation for
24 the brand and the caliber?

25 A. Correct.

CROSS-EXAMINATION - BY MR. BARRETT

1 Q. So the police department already knew they had
2 9-mm casings going into this investigation? They
3 already knew they had 40-caliber casings going into this
4 investigation?

5 A. Yes, sir.

6 Q. All right. Is it fair to say going into the
7 examination of the Snapchat video, you already knew
8 you were looking for a 9-mm handgun?

9 A. No, sir.

10 Q. You didn't know what kind of casings that were
11 there, despite the fact that you're in charge of all --
12 I think you said you were the crime scene unit?

13 A. At that time, I was not, sir. I was a nightshift
14 road lieutenant at that time. So, I knew nothing about
15 the investigation.

16 Q. Not a thing?

17 A. Other than what was handed to me in the search
18 warrant.

19 Q. Okay. How common are Glock 19s?

20 A. They're fairly common.

21 Q. By fairly common, there are millions of them out
22 there?

23 A. I don't know if I would say millions, but they're
24 a popular handgun.

25 Q. A quick call to Glock says that they can't tell

1 you how many millions without doing hours on hours
2 of research.

3 A. Fair enough.

4 Q. I mean, that was a curiosity question. I wanted
5 to know.

6 THE COURT: Counsel, is there a question,
7 or are you testifying?

8 MR. BARRETT: I'm going forward, Your Honor.

9 BY MR. BARRETT:

10 Q. Can you tell the difference between a frame on
11 a Glock 19 and a Glock 23, same generation?

12 A. No.

13 Q. Okay. Can you tell the difference between
14 the frame on a Glock 23 and a Glock 32?

15 A. I would have to see what a Glock 32 is. I don't
16 have the exact model.

17 Q. It's the 357 SIG.

18 A. No. No, sir.

19 Q. Okay. Can you tell the difference between
20 the Glock 19 and a Glock 38, 45 GAP?

21 A. No -- well, yes, you can. The Glock -- which
22 one? I'm sorry.

23 Q. The Glock 38, which is the 45 GAP, not the ACP.

24 A. Yes, it would be slightly bigger.

25 Q. How would it be slightly bigger?

CROSS-EXAMINATION - BY MR. BARRETT

1 A. Well, the round is larger, so the handgrip would
2 be a little bit bigger.

3 Q. Okay. Actually, all of them, except for the
4 Glock 38, have the exact same frame because it's a mass
5 production ---

6 THE COURT: Sir, you can ask questions.
7 You can't testify.

8 MR. BARRETT: Yes, Your Honor.

9 MR. BARRETT:

10 Q. Besides reading what's printed on the side of the
11 weapon, is there any other way to tell the difference
12 externally for Glocks?

13 A. Yes.

14 Q. And how is that?

15 A. The size of the barrel opening?

16 Q. How do you traditionally measure the size of the
17 barrel opening?

18 A. With a ruler.

19 Q. You don't use something to put into the barrel?

20 A. I personally don't, no.

21 Q. Is that something they teach you at the Glock
22 armorer's course, to use a ruler?

23 A. No.

24 Q. So when you're measuring the barrel of a Glock,
25 how do you get -- this is going to sound like a silly

1 question, but I want to get it out there. How do you
2 get what caliber it is?

3 A. When you measure it, it's the diameter of
4 the interior of the barrel, the opening. On a 9-mm,
5 for example, it's usually -- it's a fraction of a
6 millimeter, either below or above 9-mm because it's
7 going to be ---

8 Q. A fraction of a millimeter, or something like
9 less than that?

10 A. A fraction of a millimeter.

11 Q. Okay.

12 A. Yes, sir.

13 Q. All right. In this case, for this Glock 19,
14 what you're claiming is the Glock 19 in the Snapchat
15 video, you're measuring off the video itself, not from
16 the firearm itself?

17 A. Correct.

18 Q. What's the measure of uncertainty in measuring
19 something from a still shot?

20 A. I don't know, sir.

21 Q. Okay. So if you're measuring it, you could have
22 an error by the writing device you're using if that's
23 half a millimeter wide? Do you follow what I'm saying?

24 A. No.

25 Q. All right. I'll try to keep this as simple

CROSS-EXAMINATION - BY MR. BARRETT

1 as possible because it's very detailed. When you're
2 measuring something on a map -- you probably had land
3 nav in the military?

4 A. Yes, sir.

5 Q. The point instrument you're writing with it has
6 a certain width to it no matter what.

7 A. Correct.

8 Q. And that could be a fraction of a millimeter.
9 The measuring device you're using, the protractor ---

10 A. Correct.

11 Q. --- has a hashmark on it. And it has a certain
12 width to it, fractions of a millimeter.

13 A. Correct.

14 Q. Okay. Using a picture from an older camera,
15 there's going to be some optimal distortion. All cell
16 phone cameras have them, panoramic view ---

17 MR. SPEARS: Judge, is this a question?

18 MR. BARRETT: It's getting there,
19 Your Honor.

20 THE COURT: Please ask questions,
21 don't testify.

22 MR. BARRETT: Yes, Your Honor.

23 BY MR. BARRETT:

24 Q. How much human error can go into measuring
25 a still picture from a kind of older, not so good,

1 video?

2 A. I don't know.

3 Q. So this could be -- you said it's one millimeter
4 off from being, basically, a 10-mm or a 40-caliber.
5 The handgun in the video could be a 10-mm or 40-caliber?

6 A. Well, no, sir, not that video.

7 Q. Why not?

8 A. The totality of circumstances with the
9 measurements that I made -- all the measurements that
10 I made and calculated came out to it being a 9-mm
11 barrel.

12 Q. Okay. Moving on. Earlier you spoke of tactical
13 rail lights on Glocks.

14 A. Yes, sir.

15 Q. Why would you want a flashlight on a handgun?

16 A. There's various reasons. One reason is tactical
17 operations. It allows you to have a free hand so you're
18 not holding a flashlight in one hand and a weapon in
19 another.

20 Q. In law enforcement purposes, it also allows
21 you to illuminate what you're shooting at?

22 A. Illuminate a possible threat, correct.

23 Q. I withdraw this line of questioning. I'm sorry.
24 I'm going to stop with that one. You agree with me that
25 guns, particularly handguns in general, are direct line

1 of sight weapons?

2 A. Correct.

3 Q. We're not lobbying them over buildings at people?

4 A. Correct.

5 Q. If you were shooting at me, and hope you never
6 have to, I never want you to. If you were shooting at
7 me straight on, how is the round going to impact me?

8 A. Well ---

9 Q. Is it going to hit me straight on and go usually
10 straight through?

11 A. Not -- well, it depends on the round if it's
12 going to go straight through. If it's a hollow point,
13 it may open up. It could be deflected by bone or
14 something else in your body. It may not go straight
15 through.

16 Q. But if you shoot me straight in the stomach,
17 let's say, the entrance wound would be going straight
18 and more like this ---

19 MR. SPEARS: Judge, may we approach?

20 THE COURT: Yes, sir.

21 (Off-the-record conversation held at sidebar.)

22 (Back on the record.)

23 MR. BARRETT: Thank you, Your Honor.

24 THE COURT: You may proceed.

25 BY MR. BARRETT:

1 Q. Bottom line what I was asking you, and I
2 apologize if I got confusing. If you're
3 shooting straight at me, do you expect the round to
4 go straight and hit me?

5 A. The laws of gravity take effect, and there is
6 a little bit of drop in the bullet as it travels.
7 But, ideally, with a handgun, as point of impact is
8 what you would like.

9 Q. Okay. Thank you.

10 A. You're welcome.

11 Q. Moving on. Again, I know this is going to sound
12 silly. Once a window has been shot out the vehicle,
13 I mean, shattered out, it's no longer there, there's
14 no way to count how many times rounds have passed back
15 and forth through that window?

16 A. Correct.

17 Q. Okay. And if you were firing from inside of
18 a vehicle, and you were using a revolver, would there
19 be any shell casings left in the vehicle, assuming you
20 didn't reload?

21 A. If you didn't reload, no.

22 Q. Okay. Glocks have different magazines, correct?

23 A. Yes, sir.

24 Q. In this instance, we have a video with an
25 extended magazine, 30-something rounds, I believe it is?

CROSS-EXAMINATION - BY MR. BARRETT

1 A. Extended, yes, sir.

2 Q. Okay. It's not a standard issue Glock magazine?

3 A. Correct.

4 Q. For the Glock 19, what is the standard issue
5 magazine?

6 A. Oh, gosh. Without seeing the spec sheet
7 in front of me, I couldn't tell you, sir.

8 Q. 17 or 19 rounds, probably?

9 A. I think it's 15.

10 Q. Fifteen.

11 A. I think so. I know the Glock 17 is 17 rounds,
12 and the 19 is smaller. I think it's 15 rounds because
13 the Glock 23 is 13 rounds, I believe.

14 Q. Okay. If I have a Glock 19, and it comes with
15 a 15-round magazine, and I've got an extended round
16 magazine, what does it take for me to change those out?

17 A. Like conduct a magazine change, or using
18 a different weapon?

19 Q. Conduct a magazine change.

20 A. You would have to hit the magazine release on
21 the weapon, which would hopefully have the one that's
22 inside fall to the ground due to effects of gravity.
23 And then you would insert the newer one inside the
24 weapon.

25 Q. That would take a total of how many seconds

1 or minutes?

2 A. Shouldn't take more than a couple of seconds
3 for someone who's trained in firearms.

4 Q. Okay. So this is -- magazines are very
5 interchangeable items, they're very common?

6 A. Yes.

7 Q. And are magazines typically very expensive?

8 A. No, sir. I mean, expensive is ---

9 Q. It's a relative term, I understand.

10 A. --- a relative term.

11 Q. But we're not talking \$300 magazines?

12 A. Oh, no, sir.

13 Q. Okay. We're talking \$18.99 at your local gun
14 store?

15 A. Depending on which one you get, yes, sir.

16 Q. Okay. One last question.

17 A. Yes, sir.

18 Q. You testified you've been shooting a lot of guns,
19 you're familiarized with a lot of weapons. When you
20 find a new weapon to you ---

21 A. Yes, sir.

22 Q. --- when you're at the gun range, do you
23 typically get a picture taken with it, or have friends
24 who get pictures taken with new weapons?

25 A. I don't anymore, no, sir. When I was younger,

CROSS-EXAMINATION - BY MR. BARRETT

1 maybe.

2 Q. But you did?

3 A. Yes, sir.

4 Q. Show it to your friends?

5 A. Maybe, back then, not now.

6 MR. BARRETT: That's it, Your Honor.

7 THE COURT: Thank you, sir.

8 MR. BARRETT: Thank you, Officer.

9 THE WITNESS: Thank you, sir.

10 THE COURT: Any redirect?

11 MR. SPEARS: None, Your Honor.

12 THE COURT: You may step down, sir.

13 Thank you.

14 THE WITNESS: Thank you, ma'am.

15 THE COURT: Ladies and gentlemen of the
16 jury, I need to refresh my brain before we go onto
17 our next witness. All right. So we'll take about
18 a ten-minute break. Please remember my previous
19 instruction not to discuss the case amongst yourselves
20 or anyone else. We'll be right back with you.

21 (Jury exits the courtroom at 11:25 a.m.)

22 THE COURT: All right. We'll be at ease
23 for a few minutes.

24 MR. SPEARS: Thanks, Judge.

25 (Recess taken.)

DIRECT EXAMINATION - BY MR. SPEARS

1 (Back on the record.)

2 THE COURT: Thank you, everyone. Please
3 have a seat. Anything before we bring the jury out?

4 MR. SPEARS: Nothing, Your Honor.

5 MR. SHELTON: No, Your Honor.

6 THE COURT: Let's have our jury, please.

7 (Jury enters the courtroom at 11:45 a.m.)

8 THE COURT: Welcome back, ladies and
9 gentlemen of the jury. We're ready to proceed. You may
10 call your next witness.

11 MR. SPEARS: Thank you, Your Honor.
12 State calls Agent Chad Smith.

13 MR. CHAD SMITH was called as a witness,
14 being duly sworn, was examined and testified as follows:

15 THE COURT: Your witness.

16 MR. SPEARS: Thank you, Your Honor.

17 DIRECT EXAMINATION

18 BY MR. SPEARS:

19 Q. Agent Smith, where do you work?

20 A. I'm employed with the South Carolina Law
21 Enforcement Division, commonly known as SLED.
22 Specifically, I work at SLED's forensic service
23 and laboratory in Columbia in the firearms department.

24 Q. And how long have you worked there?

25 A. It will be 11 years this November.

DIRECT EXAMINATION - BY MR. SPEARS

1 Q. Can you please give the jury an idea of your
2 educational background?

3 A. I attended Clemson University where I earned
4 a bachelor's of science degree in biological sciences.
5 And then I worked for Clemson University for a number
6 of years before coming on board with SLED.

7 My training period with SLED lasted between
8 three to five years. Specifically, for me, it lasted
9 three and a half years. It is supervised by the court
10 qualified examiners of the firearms department.
11 It involves extensive reading and studying. It involves
12 examinations and tests given during that time.

13 I also attended various classes and seminars
14 during the training period, two were at several firearms
15 manufacturing facilities. Later in my training, I was
16 able to help the other examiners prepare their casework.
17 And at the end of the training, I received a
18 comprehensive multipart examination, which I
19 successfully completed, and then I began to receive my
20 own casework.

21 Q. And as a part of your job, after all that
22 training, have you received any continuing education?

23 A. We do. We try to go to training as much as
24 it allows. There's a professional organization known
25 as Association of Firearm and Tool Mark Examiners,

DIRECT EXAMINATION - BY MR. SPEARS

1 which I am a member of. We try to send at least
2 several people from our department to the annual
3 training conference for that association every year.

4 Q. And have you ever testified in general sessions
5 -- have you ever been qualified in general sessions
6 court as an expert in firearms analysis?

7 A. Yes, sir.

8 Q. How many times?

9 A. Over 60.

10 MR. SPEARS: Judge, at this point in time,
11 I request Agent Chad Smith be qualified as an expert
12 in firearms analysis.

13 THE COURT: Any voir dire?

14 MR. SHELTON: No objection.

15 THE COURT: Court finds that he's qualified.

16 MR. SPEARS: Thank you, Your Honor.

17 BY MR. SPEARS:

18 Q. Agent Smith, can you just describe to us the
19 different types of firearm analyses you're able to
20 perform as a part of your job?

21 A. My responsibilities include examination of
22 firearms, ammunition components, such as bullets and
23 cartridge cases. We also do serial number restorations
24 for firearms that have obliterated serial numbers.
25 We also do distance determination, muzzle to target

DIRECT EXAMINATION - BY MR. SPEARS

1 distance determination for shotgun pellets.

2 Typically, on a day-to-day basis what I do is try
3 to examine ammunition components and try to determine if
4 they were fired by a particular firearm.

5 Q. And are you able to determine if a certain bit
6 of ammunition was fired by a particular firearm?

7 A. Not always. A lot of times, we are. It just
8 depends on how well the firearm marks that evidence
9 and, you know, what condition the evidence is in.
10 But we are able to make determinations if a gun was
11 fired -- a particular cartridge case, or bullet was
12 fired by a particular gun is one of the conclusions
13 that we will reach.

14 Q. And if we have two different parts of ammunition
15 components, the casing and a projectile, how would you
16 determine if a projectile was fired from a specific gun?

17 A. A projectile bullet, that's the part that goes
18 down to the barrel of the gun towards its target.
19 What we can use to try to determine if a particular
20 gun fired that bullet, usually we use the marks called
21 rifling.

22 Rifling is something that firearms barrel
23 manufacturers put into the barrel of a bore, which
24 is the interior of the barrel where the bullet travels
25 down. And what that rifling does is engage the bullet,

1 a spin, the rotational movement on that bullet so that
2 it basically stabilizes it once it exits the barrel,
3 and goes to its target.

4 So it's a lot like a football quarterback
5 wanting a nice tight spiral of that football to reach
6 an intended target. So what happens is the rifling is
7 made up of a series of what's called lands and grooves.
8 So when they put the rifling into the barrel, they can
9 impress those grooves in there, or they can remove metal
10 to make grooves.

11 So you have the leftover part, which is the
12 raised portion; that's called land. So the material
13 that's removed or impressed, the lower portion, is the
14 groove. So that basically engages that bullet. And the
15 rifling is put in a, basically, spiralling pattern down
16 that barrel, so that when a bullet is fired and engage
17 the rifling, then the bullet spins.

18 Q. Now in regards to a shell casing, how are you
19 able to determine if that had been fired by a specific
20 firearm?

21 A. Well, there are a number of marks that we can use
22 on a cartridge case. Typically, we use the rear portion
23 or the base portion of the cartridge case, comes in
24 contact, what's known as part of a gun called a breech
25 face.

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1 Basically, the breech face is what supports that
2 cartridge during firing. So when a cartridge is fired,
3 the cartridge case itself slams up against the breech
4 face. And then a lot of times there's some movement
5 depending on what type of gun it is. And so the marks
6 that are on the breech face created from manufacturing
7 is basically what we're using.

8 Those breech face marks, they're imparted onto
9 the cartridge case. And they're tiny, microscopic
10 marks. So we use what's called a comparison microscope
11 to look at those markings.

12 So we can test fire a gun, compare samples that
13 were known to have come from that gun, we test fire
14 them, and the unknown samples being the evidence using
15 the comparison microscope. So basically a comparison
16 microscope is two that's connected by an optical bridge
17 system so you can look in there, and you can move these
18 samples around and adjust the lighting.

19 And you're looking for those markings that are
20 imparted onto a cartridge case from the gun and can
21 replicate onto other fired evidence. Besides the breech
22 face, we can fire pin impressions. So that's the part
23 of the gun that actually ignites the cartridge. There's
24 a part of the cartridge case itself called a primer.

25 So the fire pin hits the primer, and there's

DIRECT EXAMINATION - BY MR. SPEARS

1 a tiny, basically, a controlled explosion that happens
2 which ignites the gunpowder in the cartridge case.
3 And that causes the projectile of the bullet to leave
4 the cartridge case.

5 So we can use fire pin impressions. There are
6 also other marks we can use, depending on what kind
7 of gun. We can use ejector marks or extractor marks.
8 They're put onto a cartridge case from the cycling
9 of the gun.

10 So, basically, those are just parts that in
11 a semiautomatic weapon that remove the cartridge case
12 out of the gun and basically ejects it from the gun.
13 So, basically, anything that comes in contact with the
14 cartridge case or bullet, we can potentially use to try
15 to determine if it was fired by a specific gun.

16 Q. Now, I'm going to be showing you what's been
17 marked as State's Evidence 36 and 34.

18 MR. SPEARS: If I may approach the witness,
19 Your Honor?

20 THE COURT: You may.

21 BY MR. SPEARS:

22 Q. There's a lot here in 36. Take your time
23 and look through that.

24 (Pause.)

25 BY MR. SPEARS:

DIRECT EXAMINATION - BY MR. SPEARS

1 A. Yes, State's Exhibit 34 are four cartridge cases,
2 9-mm Luger caliber cartridge cases that were submitted
3 for examination. State's Exhibit 32 is ---

4 Q. I believe all of those in the larger bag were
5 marked as 36 for the purpose of this trial.

6 A. Yes, sir. State's Exhibit 36 contains numerous
7 cartridge cases, 9-mm Luger caliber as well as 40 Smith
8 and Wesson caliber as well as fire projectiles and two
9 fired bullets and some led pieces that were submitted
10 also for examination.

11 Q. Were you able to perform an analysis on all
12 the evidence within State's 36 and 34?

13 A. Yes, sir.

14 Q. And within State's 36, the fired bullets,
15 were you able to determine what caliber they are?

16 A. Yes. They were most consistent with being a 40
17 Smith and Wesson or 10-mm auto caliber. And how we were
18 able to determine that is we can weigh projectiles.
19 We can also measure them, if they're in good enough
20 shape. We can measure the diameter of them to try to
21 get a measurement and just basically other
22 characteristics.

23 We can try to give a determination as to what
24 caliber they may be. So in this specific instance,
25 I was able to determine they're 40 Smith and Wesson

DIRECT EXAMINATION - BY MR. SPEARS

1 or 10-mm auto. Both of those calibers share the same
2 characteristics for their bullets.

3 Q. And the -- what you qualify as a few pieces
4 of led, did you attempt to perform analysis on caliber
5 from that projectile?

6 A. Yes, sir. There were two pieces of led that were
7 submitted. And for both of these pieces of led, I was
8 able to determine that -- really, I couldn't determine
9 the origin or specific caliber. They were too damaged.
10 They didn't have any marks of value on them. So they
11 could have been parts of bullets at one time. I really
12 just couldn't tell.

13 Q. And the one to your right with your hands on
14 it right there, that's packaged a little differently.
15 What is that packaging on there?

16 A. This specific packaging, it came in a particular
17 container, a screw-top plastic specimen container along
18 with a biohazard specimen bag. And it has an evidence
19 label of being recovered -- has the victim's name listed
20 on there as being recovered, I'm assuming from the
21 victim.

22 Q. But you weren't able to determine the caliber
23 of that piece of led, were you?

24 A. No, sir. It was just too damaged. Again, it was
25 just a portion of led. So it could have been part of

DIRECT EXAMINATION - BY MR. SPEARS

1 a bullet at one time, or it could have originated from
2 some other source. I really couldn't tell, basically,
3 due to its damage.

4 Q. All right. Now sticking to State's 36, that
5 larger bag, did you perform an analysis on the shell
6 casings and misfired rounds in that larger bag?

7 A. Yes, sir.

8 Q. And what calibers of casings and rounds were
9 in that bag?

10 A. There were two different calibers. There were
11 9-mm Luger caliber cartridge cases as well as 40 Smith
12 and Wesson caliber cartridge cases.

13 Q. And on the 40 Smith and Wesson caliber cartridge
14 cases, did you have a gun to compare that to?

15 A. No, sir. No 40-caliber firearm was submitted.

16 Q. Were you able to come to a conclusion as to
17 whether those rounds were fired from the same gun
18 or different guns?

19 A. Basically -- again looking at those cartridge
20 cases under the microscope and looking for those marks
21 that's created by a gun during the firing, I try to
22 determine possibly how many guns were involved, even
23 though I don't have an actual gun to compare it to.
24 So within those groups of 40 Smith and Wesson caliber
25 cartridge cases, I was able to determine that three guns

DIRECT EXAMINATION - BY MR. SPEARS

1 -- three different firearms were involved firing those
2 40 Smith and Wesson cartridge cases.

3 Q. All right. Now in regards to the 9-mm rounds
4 in State's 36 and 34, did you perform analysis on all
5 of those together?

6 A. Yes, sir.

7 Q. Were you able to determine if those were fired
8 from separate guns or the same gun?

9 A. I was able to conclude that all of the 9-mm
10 caliber cartridge cases that were submitted were fired
11 by the same firearm.

12 Q. And how many 9-mm cartridge casings were there
13 total?

14 A. There were 13 all together.

15 Q. Now, I'm showing you what's been marked as
16 State's 33.

17 MR. SPEARS: If I may approach, Your Honor?

18 THE COURT: You may.

19 BY MR. SPEARS:

20 Q. And, Agent Smith, what is this?

21 A. Ladies and gentlemen, as I've said before, this
22 firearm is safe to handle. It has a cable lock going
23 through its barrel, so it cannot be loaded or fired.
24 This is the firearm that was submitted for examination
25 in comparison with the other evidence.

DIRECT EXAMINATION - BY MR. SPEARS

1 Q. And were you able to determine if those thirteen
2 9-mm cartridge casings, which you say were fired from
3 the same gun, to a reasonable degree a scientific
4 certainty? Were you able to determine what gun they
5 were fired from?

6 A. Yes, sir. I was able to determine that the 13
7 cartridge cases, 9-mm Luger caliber that were submitted,
8 were fired by this particular firearm. Again, how I can
9 determine that is I can compare those 9-mm cartridge
10 cases that were submitted with each other, and then
11 I can compare those with test fires from this gun.

12 So, I compare, you know, test fires that I know
13 I fired from the firearm with each other, again with the
14 cartridge cases that were submitted, and determine that
15 they were fired by this particular firearm.

16 Q. And when you were analyzing that gun, did any
17 particular quirks happen?

18 A. Yes, sir. I did notice that during test firing
19 that -- it was also submitted with this magazine.
20 A magazine is what holds the cartridges units of
21 ammunition for firing. I was able to determine that
22 with this particular magazine, there were some issues,
23 some malfunctions, during my test firing.

24 And I attributed those malfunctions due to this
25 magazine. Basically, the magazine had a weak spring

DIRECT EXAMINATION - BY MR. SPEARS

1 inside here. You load the cartridges fire in so every
2 time you fire, another cartridge case would move up --
3 I mean, the other cartridge would move up, ready to be
4 fired. So the spring was weak in here, and also there
5 was some damage to what's known as the magazine feed
6 lips, which basically hold that cartridge in place until
7 it's ready to be fired from the gun. There's some
8 damage to that area.

9 And so it was causing the gun to -- some issues
10 that I noticed were that the slide, which is this
11 portion here, would lock back early during firing.
12 It's not supposed to do that. It's supposed to lock
13 back on the last round fired. So, I would have more
14 cartridges ready to be fired in that magazine, and then
15 the slide would lock back early. So it's not -- again,
16 not supposed to do that.

17 And I also had issues with cartridges feeding
18 into the chamber, which is the part of the barrel that
19 holds the cartridge for firing. So the issues with
20 getting that cartridge into the chambers itself, again
21 I attributed that to being magazine related.

22 Q. And with either of those issues, how would
23 you clear the issue? Would it take a long procedure,
24 or would you rack the slide?

25 A. No, you could clear this firearm fairly easy.

DIRECT EXAMINATION - BY MR. SPEARS

1 In my particular case, what I would do is just try
2 to collect test fires. I would remove the magazine.
3 And then if there was a cartridge case that was jammed
4 or whatever, or an unfired cartridge that hadn't been
5 fired yet that was jammed, you could easily remove
6 it from the firearm without having to disassemble it
7 or anything like that. So it can be done fairly
8 quickly.

9 Q. And if you don't do it in a professional setting,
10 do you necessarily have to remove the slide to clear it?

11 A. No, sir. It depends on, again, what type of
12 malfunction or jam you may have. You may have to
13 disassemble or partial disassembly. But with this type
14 of gun it probably wouldn't come to that. You could
15 probably just lock the slide back, if it hadn't been
16 locked back already. And you could probably just clear
17 the malfunction fairly simply.

18 Q. And you say there were thirteen 9-mm rounds?

19 A. Thirteen fired 9-mm cartridge cases that were
20 submitted.

21 Q. And what is the capacity of that magazine?

22 A. According to my examination, I was able to
23 determine that this magazine actually holds 34 9-mm
24 cartridge cases. So if you had one in the chamber,
25 and you have a fully-loaded magazine, all total that

1 gun could hold 35 cartridges.

2 Q. But if there was a malfunction, would you be able
3 to continue without clearing it?

4 A. You would probably -- you would have to remedy
5 that malfunction before firing again because malfunction
6 would basically in that particular instance cause the
7 gun to be temporarily inoperable, and you would have to
8 -- if something was jammed, or if the gun wouldn't fire,
9 then you would really have to fix it again before it
10 would be ready to fire.

11 That doesn't necessarily mean you have to take
12 all -- you have to get your cartridges out of the
13 magazine or anything like that. But you would have to
14 either remove the cartridge case, if it was still stuck
15 in the gun. Or if it was an unfired round, you would
16 still have to remove it before firing.

17 Q. So it's your testimony today that State's 33,
18 the Glock 19, fired the 9-mm shell casings in State's
19 34 and 36?

20 A. Yes, sir.

21 MR. SPEARS: Court's indulgence, Your Honor.
22 Agent Smith, please answer any questions the defense
23 might have for you.

24 THE COURT: Cross-examination.

25 MR. SHELTON: Thank you, Your Honor.

CROSS-EXAMINATION - BY MR. SHELTON

1 CROSS-EXAMINATION

2 BY MR. SHELTON:

3 Q. There were two projectiles that you were able
4 to examine, correct?

5 A. There were two bullets, fired bullets, that I
6 could tell were bullets that I examined. And I received
7 two other pieces of evidence that could have been
8 projectiles or parts of a projectile that I examined
9 as well. Those were the two pieces of led.

10 Q. So the two bullets that you were able to identify
11 as bullets and compare, I guess ---

12 A. Yes, sir.

13 Q. --- those were 40 caliber or 10-mm?

14 A. That's correct.

15 Q. And a 9-mm, that handgun could not have fired --
16 the handgun that you examined could not have fired those
17 bullets?

18 A. That's correct. Those bullets would have been
19 too large for the firearm that was submitted. And also
20 one of the bullets, State's Exhibit -- was my Item 10,
21 the rifling characteristics would have been wrong for
22 a Glock.

23 Again, going back to those lands and grooves,
24 manufacturers can put -- specify what number of lands
25 and grooves they can have. They can have a lot or just

1 a few. The Glock that was submitted had six lands
2 and grooves, and it was polygonally rifled, which is
3 a different type of rifling than what's called
4 conventional. So polygonal, it has rounded edges,
5 whereas the conventional, they're basically sharp
6 corners. So we can tell that by looking at bullets
7 and looking at guns.

8 So, basically, we can exclude some firearms
9 on those class characteristics, number of lands
10 and grooves, what type of rifling. So in this case,
11 one of those 40-caliber bullets has the wrong rifling
12 characteristics than what the Glock would have.
13 But again, going back to just caliber, it was the wrong
14 caliber as well.

15 Q. And there were no bullets that were submitted
16 to you that you could analyze that matched that 9-mm
17 gun?

18 A. That's correct. None of the projectiles that
19 I received I was able to identify to the firearm.
20 Again, the two bullets would have been class wrong,
21 caliber wrong. And the two pieces of led, I really
22 can't do anything with. I couldn't determine caliber
23 or any other characteristics.

24 Q. And I think your testimony was there was thirteen
25 9-mm rounds -- casings?

CROSS-EXAMINATION - BY MR. SHELTON

1 A. Yes, sir, cartridge cases.

2 Q. That you analyzed, correct?

3 A. Yes, sir.

4 Q. There were fourteen 40-caliber casings that you
5 collected -- analyzed?

6 A. I believe there were twelve 40 cartridge cases.
7 I also received two misfired 40 Smith and Wesson caliber
8 cartridges. When I say misfire, that means those
9 cartridges were not fired. The gun -- I mean, the
10 cartridge itself was still intact. So it actually did
11 not ignite. The bullet did not leave the cartridge
12 case. So there was a strike on the primer, so it looked
13 like it got hit by a firing pin. But for whatever
14 reason, it was a light strike. The cartridge did not
15 fire.

16 Q. And those were the 40-caliber rounds?

17 A. Those were 40 Smith and Wesson caliber, correct.

18 Q. And you didn't -- there was nothing submitted
19 of misfired 9 caliber -- 9-mm? I'm sorry.

20 A. No. The only 9-mm fired -- evidence that were
21 submitted were the fired cartridge cases. So there was
22 no misfired 9-mm cartridges.

23 Q. Your testimony was comparing those 40-caliber
24 cartridge casings, there's three handguns, correct,
25 three guns?

1 A. That's correct, based on the differences of the
2 characteristics. Again, looking under the microscope
3 you can tell differences, firing pin differences,
4 different types of firing pins. There were three guns
5 that fired that 40 cartridge cases.

6 Q. The projectiles, the bullets that were found,
7 you get evidence from another agency, correct?

8 A. That's correct. Another agency, police
9 department, or sheriff's office, they would be
10 submitting the evidence to the laboratory for analysis.

11 Q. And they describe -- they usually have
12 a description with the evidence that's submitted?

13 A. That's correct. They would have some sort of
14 description. Some descriptions are more -- are longer,
15 or more descriptive than others, some can be very
16 simple. But again, whatever is submitted to the
17 laboratory would have -- there would be a list of items
18 we have to inventory check when we actually get ready
19 to work a case.

20 Q. And so the two projectiles that were found that
21 you analyzed, one was from the vehicle or the trunk?

22 A. Yes, sir, that is my Item 10.

23 Q. Yes. And then Item 11 was listed as from
24 the rear driver's side floor?

25 A. Yes, sir.

CROSS-EXAMINATION - BY MR. SHELTON

1 Q. Okay. Were there any location in the cartridges
2 -- the casings?

3 A. I believe -- unless there was something listed
4 possibly on the packaging itself, on the list that we
5 received with the items listed on there, they did not
6 have -- some of them may have marker numbers and some
7 other information. But other than that, there was no
8 other information on the submission of documents.

9 Q. Okay. When a gun is fired -- an automatic gun is
10 fired, and, I guess, the casings get ejected, correct?

11 A. That's correct.

12 Q. Okay. And so is there a typical way that the
13 casings get ejected?

14 A. Well, that basically depends on the gun itself.
15 For instance, in the submitted firearm, the ejection
16 port, which is this area here, was on the right side
17 of the gun. So typically that cartridge case once
18 it's fired would be ejected out to the right.

19 Depending on how you hold the gun, it could
20 change. If you hold it more to the side, it could eject
21 more up, you know, there's more variables involved.
22 But typically a semiautomatic pistol is going to eject
23 wherever the ejection port is. And most of the times,
24 that's going to be on the right side.

25 Q. Okay. And as far as distance, how far of

1 a distance would you expect the casings to go?

2 A. That could vary also depending on how powerful
3 the ammunition is and other factors. If it's going
4 to hit something or roll. There's basically numerous
5 factors as to where a cartridge case could end up after
6 it's fired from a gun.

7 You also have people. If there's people around,
8 they could kick the cartridge cases around. If the
9 surface that it lands on is sloped, it can roll.
10 If it's a hard surface, it can bounce. So really,
11 they're too numerous to tell based on there's too many
12 variables.

13 Q. Would you expect it to go 100 yards?

14 A. I would not expect a cartridge case to travel
15 that far. In my experience, it's really just a few
16 feet. But it could travel, you know, a couple of yards.
17 Really it just depends on how powerful the ammunition
18 is, what kind of caliber you're firing. But it
19 certainly shouldn't travel 100 yards.

20 Q. And this may sound like a dumb question.
21 Is there a time stamp when a gun is shot on the casings
22 to tell when that gun was shot?

23 A. No, sir. We cannot determine when a cartridge
24 case was fired, or when a gun was fired. That is
25 something we can't do.

CROSS-EXAMINATION - BY MR. SHELTON

1 Q. Okay. When there's a gunshot, it's an explosion,
2 correct?

3 A. More or less. It's a controlled explosion when
4 that cartridge is ignited. So there is -- a gas is
5 formed, and that forces the bullet down the barrel.
6 So, in essence, it's an explosion.

7 Q. So there is, I guess, flames coming out of the
8 front of the gun, out of the barrel?

9 A. There can be. Some gasses, unburnt powder,
10 basically anything that's left over in that cartridge
11 case can come out after the bullet is fired. There can
12 be what's known as a muzzle flash, which is -- it looks
13 sort of like a flame. Again, that can -- how hard that
14 flame is, how bright it is, all that is dependent on the
15 caliber and types of ammunition. But typically there's
16 some sort of muzzle flash.

17 Q. And depending on the lighting around you, depends
18 on whether you can see that, or how bright it is?

19 A. That would be correct. Usually, if it's darker
20 you could see it. If it's light outside, you probably
21 wouldn't see as much. Certainly, if it's dark you might
22 be able to see it.

23 MR. SHELTON: No further questions.

24 THE COURT: Any redirect?

25 MR. SPEARS: Very, very briefly, Your Honor.

1 REDIRECT EXAMINATION

2 BY MR. SPEARS:

3 Q. Agent Smith, in regards to the muzzle flash,
4 if say a handgun was fired in quick succession in the
5 dark, would that flash illuminate things around it,
6 potentially?

7 A. I don't know. Again, depending on what sort
8 of ammunition you were firing, it certainly shouldn't
9 illuminate like a flashlight as well as it wouldn't
10 last very long either. A muzzle flash happens very,
11 very quickly.

12 Q. But multiple muzzle flashes, would that light
13 reflect off things around it?

14 A. It certainly could. I don't know. That's really
15 outside of my area of testing.

16 Q. I apologize.

17 A. No. Personal experience with shooting firearms,
18 you can get some very bright muzzle flash depending
19 on what kind of gun you're firing and ammunition.
20 If you shot very fast, the cartridges -- shooting very
21 fast, it seems like you probably could get some bright
22 muzzle flashes. But again it wouldn't last very long.

23 MR. SPEARS: No more questions, Your Honor.

24 THE COURT: Thank you, Agent. You may step
25 down.

1 THE WITNESS: Thank you.

2 MR. SPEARS: Your Honor, I'm going to grab
3 all of this.

4 THE COURT: Would counsel please approach.
5 (Off-the-record conversation held at sidebar.)

6 (Back on the record.)

7 THE COURT: Solicitor, any further
8 witnesses?

9 MR. SPEARS: State rests, Your Honor.

10 THE COURT: Thank you, Solicitor. Ladies
11 and gentlemen of the jury, it's about 12:20, so it's
12 actually perfect timing at this juncture for us to take
13 our lunch break. We've got a couple of things to take
14 care of outside of your presence that's not related to
15 this case, and I would hate to keep you waiting in the
16 jury room any more than necessary.

17 If you would please be back in your jury
18 room at 1:45 that should give everyone a chance to get
19 everything that needs to be done, done. Please have
20 a nice lunch. Again, please remember my previous
21 instruction not to have any conversations with anyone
22 about the case, and that includes amongst yourselves.
23 Have a nice lunch.

24 (Jury exits the courtroom at 12:21 p.m.)

25 THE COURT: Any motion?

1 MR. SHELTON: Move for a directed verdict
2 at this point, Your Honor. The State hasn't met
3 their burden as far as the elements of the crime.

4 THE COURT: At this juncture, obviously,
5 it's whether the existence or nonexistence of evidence.
6 There has been sufficient competent evidence on each
7 element of each indictment, both direct and
8 circumstantial evidence on each. So your motion
9 is respectfully denied.

10 MR. SHELTON: Thank you.

11 THE COURT: So, Mr. Shelton, a couple
12 of things. Obviously, before we get started, before
13 lunch, I'm going to put your client under oath and
14 question him regarding his right to testify, so maybe
15 just have him prepped for that.

16 MR. SHELTON: We talked about it.

17 THE COURT: Okay. And then also you had
18 indicated that Mr. Riley was a potential witness.
19 Considering the circumstances of what happened on
20 Tuesday morning, if you intend on calling him, I'm going
21 to ask you to please proper his testimony prior to that
22 so that we can see what the purpose and relevancy of his
23 testimony is.

24 Apparently, he wasn't a live witness.
25 I don't want him to get on the witness stand and cause

1 any problems with the jury in some sort of attempt to
2 have any improper influence, or any kind of contact
3 considering his actions during the jury entry of the
4 jury selection process.

5 MR. SHELTON: Yes, Your Honor. I don't
6 intend on calling him.

7 THE COURT: Okay.

8 MR. SHELTON: And if Mr. Riley indicates
9 to you that he is going to testify, then we would rest.

10 THE COURT: Okay. Well, easy enough.
11 What we'll do then is -- do you want to go ahead and
12 talk to him now, do you want me to put him under oath?

13 MR. SHELTON: I could talk to him briefly.

14 THE COURT: Sure.

15 (Pause.)

16 MR. SHELTON: We are ready, Your Honor.

17 THE COURT: Mr. Riley, if you would please
18 stand.

19 (Whereupon, Mr. Damon Riley was duly sworn.)

20 THE COURT: Mr. Riley, at this time,
21 I'm going to explain to you certain of your rights.
22 If you do not understand anything that I say, please let
23 me know. If you want me to explain anything in further
24 detail, please let me know. Do you understand?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: We have now reached the stage
2 of the trial where you may present your defense.
3 You have the right to claim the protections given to you
4 by the Fifth Amendment of the Constitution of the United
5 States. This amendment states, in part, that no person
6 shall be compelled in any criminal case to be a witness
7 against himself. This means that you cannot be required
8 to testify in this case.

9 You have the right to testify on your own
10 behalf. However, no one can make you testify. This
11 is a personal right, and no one can waive this right,
12 except for you. If you decide to testify, you'll be
13 subject to the same rules that govern other witnesses,
14 and you may be examined and cross-examined on any
15 relevant issue in this case.

16 In addition, if you have any convictions
17 involving dishonesty or false statement, or for crimes
18 punishable by imprisonment for more than one year,
19 and I determine that the probative value of admitting
20 this evidence outweighs the prejudicial effect to you,
21 the solicitor will be able to introduce your record
22 to attack your credibility.

23 If you decide to testify, that decision
24 on your part must be made freely, voluntarily and
25 intelligently with the knowledge of the protections

1 given to you by the Fifth Amendment, and the
2 consequences of your decision to testify.

3 If you decide not to testify, I will
4 instruct the jury that they cannot give the fact
5 that you did not testify any consideration whatsoever,
6 and that there is to be absolutely no prejudice to you
7 because you did not testify. It is left entirely up
8 to you whether or not you wish to testify. You can talk
9 to your attorneys, your family, your friends, or anyone
10 else. But the final decision is entirely up to you.
11 Do you understand what I have explained to you?

12 THE DEFENDANT: Yes, ma'am, I do.

13 THE COURT: Have you discussed this matter
14 with your attorneys?

15 THE DEFENDANT: Yes, I have.

16 THE COURT: Do you need any more time
17 to talk to your attorneys?

18 THE DEFENDANT: No, ma'am.

19 THE COURT: Do you wish to testify?

20 THE DEFENDANT: No, ma'am.

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

22 All right. So, Counsel, what we'll do -- have everybody
23 submitted any proposed jury instructions that they wish
24 for me to consider?

25 MR. SPEARS: Yes, Your Honor.

1 THE COURT: Mr. Shelton, do you have any?

2 MR. SHELTON: I don't have any, just lesser
3 included.

4 THE COURT: Based on what?

5 MR. SHELTON: Your Honor, I guess, if
6 the jury believes it was not malice aforethought into
7 the shooting of Kim. Her testimony is not believable,
8 you know, as to the way that it incurred. Then it could
9 be considered an assault and battery. And so, I would
10 just ask that you consider the lesser included assault
11 and battery.

12 MR. SPEARS: And, Judge, if I may. In the
13 State's jury charge request, we also requested assault
14 and battery, aggravated.

15 THE COURT: So, y'all consent to those
16 instructions? Y'all want to -- I will look at what
17 you just submitted. And if y'all would come back in
18 chambers, say at -- I said 1:45 for the jury. Why don't
19 y'all come back at 1:30. We can have them printed out,
20 and we could talk about any discrepancies. And if y'all
21 are both on the same page, I'll take a look at what you
22 submitted, and we'll go from there.

23 MR. SPEARS: Yes, ma'am.

24 MR. SHELTON: Yes.

25 THE COURT: Thank you.

1 (Recess taken.)

2 (Back on the record.)

3 THE COURT: Thank you, everyone. Please
4 have a seat. All right. We've had an opportunity
5 to have a charge conference in chambers and both of
6 the parties have reviewed the proposed jury instructions
7 along with the verdict form. I understand there are no
8 objections; is that correct?

9 MR. SPEARS: Correct, Your Honor.

10 MR. SHELTON: Your Honor, for purposes
11 of the record, there's an objection to the charge
12 of transferred intent on the attempted murder,
13 as we feel a strict intent -- so that you can't transfer
14 malice aforethought to somebody else that may have
15 gotten hit or hurt. So it's our argument, but I
16 understand that the judge -- Your Honor is clear,
17 it's the law, and so chargeable.

18 THE COURT: Thank you, sir. And the Court
19 does find that it is still a good law, and certainly
20 that there is facts to support it to warrant charging
21 that to the jury. Anything further?

22 MR. SPEARS: Nothing, Your Honor.

23 MR. SHELTON: No, Your Honor.

24 THE COURT: All right. So, I will bring the
25 jury out. You have already rested in front of the jury,

1 correct?

2 MR. SPEARS: Yes, Judge.

3 THE COURT: And so I will let you rest,
4 and we'll proceed to closing.

5 MR. SHELTON: Yes, Your Honor.

6 THE COURT: Let's have our jury, please.

7 (Jury enters the courtroom at 2:04 p.m.)

8 THE COURT: Welcome back, ladies and
9 gentlemen of the jury. I hope that you had a nice
10 lunch. Before we get started, ma'am, here on the end,
11 in the blue shirt. What is your name?

12 THE JUROR: Pamela Dickovick.

13 THE COURT: Ms. Dickovick, since you are
14 seated in that chair, I'm going to appoint you as our
15 foreperson of the jury. And, basically, your duties
16 are the same as any other juror, but you would be
17 responsible for writing the actual verdict on the
18 verdict form and on the indictment, and I'll explain
19 that to you.

20 You're the liaison to the Court, but of
21 course, your vote is just as equal as anybody else's.
22 But I didn't want to forget to appoint a foreperson.
23 You can see it's a very scientific process of selecting
24 our foreperson by you sitting in a chair. So you are
25 duly appointed. All right. The State has rested their

CLOSING ARGUMENTS - BY MR. SPEARS

1 case. Counsel for the defense, is the defense
2 presenting any evidence?

3 MR. SHELTON: No, Your Honor. We rest.

4 THE COURT: Thank you, sir. Ladies and
5 gentlemen of the jury, both sides have rested their
6 case. It is now time for us to proceed with closing
7 arguments. Please pay close attention.

8 MR. SPEARS: Good afternoon, ladies and
9 gentlemen. As you know by now, my name is Mike Spears.
10 I'm the representative of the State in this case.
11 I wanted to start by thanking y'all for being here.
12 I understand, I think everybody in this courtroom
13 understands, jury duty isn't easy.

14 It gets in the way of life. No one wants
15 to be separated from their jobs, their families, to come
16 up here. But it is an integral part of the judicial
17 system. If there weren't juries, then everything would
18 come to a screeching halt. And I think I can talk for
19 everyone here when I say that we really do appreciate
20 you being here. Thank you.

21 So let's get started. This is closing
22 arguments. All the evidence that has been submitted
23 in this case is here. There aren't going to be any more
24 evidence. No more testimony; no more exhibits. Here's
25 where we get to actually talk about what we've seen,

1 all right.

2 And the judge is going to charge you
3 with the law at the end of all of this. But I'm going
4 to give you a brief preview of that law that's going
5 to help the context of what we're going to be seeing
6 going forward.

7 As you heard, we're here because of two
8 counts of attempted murder and one count of unlawful --
9 possession of a deadly weapon during the commission of
10 a violent crime. Now in South Carolina, for attempted
11 murder, the code tells us it is unlawful to attempt
12 to kill another person with specific intent to kill
13 and malice aforethought.

14 Now that specific intent to kill basically
15 means that the act must be done with the deliberate
16 intent to unlawfully kill. So it sounds kind of
17 redundant, but bear with me. Keep that in mind when
18 we're going over the evidence going forward.

19 When it come to possession of a deadly
20 weapon during the commission a violent crime, I think
21 that's about as straightforward in the title as you can
22 get, all right, the possession of a weapon while you're
23 committing a violent crime. It's unlawful to do that.

24 So if you are attempting to kill someone,
25 and you're in possession of a handgun when you did

CLOSING ARGUMENTS - BY MR. SPEARS

1 it, then you're guilty of possession of a weapon during
2 the commission of a violent crime.

3 There's going to be some more charges in
4 regards to things like transferred intent. Transferred
5 intent means that if your intent to commit a crime goes
6 towards one person, and it actually ends up hitting
7 another person, then your intent that you had for the
8 first individual is still there.

9 A good example is if I threw a rock off
10 an overpass, attempting to break somebody's windshield
11 and I miss, and I broke somebody else's windshield,
12 the intent still carries. It doesn't matter that
13 I didn't intend to break the other windshield.
14 It doesn't matter if I didn't have anything against
15 that person. My intent to commit that crime was still
16 there. That's the doctrine of transferred intent.

17 And, lastly, hand of one, hand of all,
18 all right. If a crime is committed by two or more
19 persons, who act together in committing the crime,
20 then the act of one is the act of all, all right.
21 A person who joins others to commit an unlawful act
22 is responsible for the conduct of all persons who commit
23 that act, who have joined together to commit that act.

24 Legal stuff out of the way. All right.
25 Now you saw in just a brief two days a lot of testimony

1 and exhibits, and it's a lot to take in. But we're
2 going to start with Kimberlee Felder. She's still
3 right there. She sat right there and introduced
4 herself, told you who she is, where she's from,
5 that she's a travel agent.

6 We talked about what happened to her.
7 How on June 5th, 2016, in the morning of June 5th,
8 she went out late in the evening of June 4th. She was
9 with her friend Regina, best friends since they've been
10 kids. They were celebrating their birthdays together,
11 went to Club 221. They're just having fun. She was
12 nursing; she wasn't drinking. And there, they saw Damon
13 Riley's sister, all right.

14 Now at that time, her and her husband,
15 Carsheme had her kids at her grandparents house in
16 Summerville. That's just where they were for that time,
17 okay. Now when they saw his sister there, all right,
18 that stuck out in her mind. She remembers that, and we
19 all know what memory is like. Sometimes you forget
20 things; sometimes you remember things. It's difficult
21 to remember back three years.

22 There's some days -- a week ago, I couldn't
23 tell you what I had for dinner, but then four years ago,
24 I can tell you an embarrassing moment I had that just
25 wakes me up in the middle of the night for no reason.

CLOSING ARGUMENTS - BY MR. SPEARS

1 When they left 221, they drove over
2 to Waffle House. At that point in time, Regina,
3 Kim realized, is too far gone. Doesn't need to be
4 driving, all right. Got her some grits, put her in her
5 sister's car, sent her home. This was three-ish in the
6 morning. You can tell she wasn't keeping a stopwatch at
7 the time, just one of those nights. It's not something
8 she would expect to be permanently burned in her memory.

9 She went and picked up Carsheme, all right.
10 Now we saw this photo before, but this kind of stood out
11 to me. All of this, you're going to be able to take
12 back in the jury room with you. So you can't see it
13 very well now. This is State's 20. This is Carsheme.

14 And what stuck out to me about her saying
15 that she woke him up while he was looking after the
16 kids is that look at what he's wearing. He's got his
17 slippers on; he's got his basketball shorts on. This is
18 the outfit of a man who just got woken up in the middle
19 of the night to go pick up his truck to make sure it
20 doesn't get towed, all right. You can see right there
21 on his left arm, that's a bullet wound right there.

22 So that's when they're going down Trolley
23 Road, and they're stopping at this light. We'll move
24 this so I don't block y'all's view. Remembers being in
25 that lane, and then she starts hearing a noise, ting,

1 ting, all right. That's how she phrased it. That's how
2 she could articulate it. She hadn't been shot at
3 before. She didn't recognize it.

4 The window was up. You saw the glass from
5 the broken driver's side window inside the car, on the
6 corner here, on the driver's side window. The window
7 was up, so it's not like someone was shooting the gun
8 directly in her ear at that point in time. It was an
9 odd sound. That's how she was able to articulate it,
10 all right.

11 And she looks out that window, and she sees
12 this car coming down this way, all right. And you heard
13 her as well as I did, right there, her focus zoomed
14 in. It's like she was looking through a telescope.
15 She saw a familiar face in an extremely odd situation.
16 She zoomed in on that one piece of familiarity, trying
17 to understand what's actually happening, all right.

18 She told us until the day she dies, "I know
19 for a fact I saw Damien Riley. I will never forget it."
20 That's who she was paying attention to. He was leaning
21 out the back passenger seat of this car, he was firing
22 at her and Carsheme.

23 One interesting thing about State's 8 is
24 we've been over this before, but see these bullet holes,
25 there's two right there from this back window, here and

CLOSING ARGUMENTS - BY MR. SPEARS

1 there. They go up the side of the car. See this car
2 is positioned right here, going that way, and someone
3 drives up to shoot at it. These bullets traveled up
4 the side of that car, like someone is driving by.
5 And again, here's a better view of the tire on that
6 side. And then there's that other one on the very front
7 after it's gone passed.

8 Remember, there's shell casings all the way
9 down here. So if the car is here as that other car
10 drives by, there's an opportunity, rounds are still
11 being fired right in front of that car to get hit.
12 Now Carsheme grabs the wheel. They go a bit that way,
13 is what she told us. She doesn't -- she remembers being
14 awake. But, obviously, more important things had taken
15 root in her mind. So she can't remember exactly if she
16 was pressing the gas or not, or she didn't really notice
17 what type of car it was.

18 She was staring at her cousin, her second
19 cousin, but her cousin. And the important thing that
20 I want to bring everybody's attention back to are these
21 two photos from the Arby's. It's the only projectile
22 we were able to find outside of the one in Kimberlee,
23 two in the car, in searching this whole area. And it
24 was right here in this window. Officer Cramer told us
25 that. And if you look here how the bullet goes in

1 through the window, kind of like a target, the bullet
2 right there, comes in right there and goes to the door.

3 So the car was right here, and another
4 vehicle had been turned that way by a husband trying
5 to turn the wheel from the passenger seat, where would
6 they be aiming as they're driving off? There's a lot
7 more of the vehicle. And again, this is y'all's
8 evidence now.

9 Look over it, see where the bullet holes
10 are, look at the damage of the glass that came into
11 the front, notice how every bullet hole on the side
12 of this car is an entrance wound. I'm using the word
13 "wound" wrong there. But the bullet had gone into the
14 car.

15 If you look through all these photos of this
16 vehicle, all the ones taken, there's no splayed out
17 metal through a door, or an entrance mark on the inside
18 of the door. Everything is coming from the outside in.

19 So what happened then. She remembers
20 Carscheme putting her in the back seat of the car.
21 And y'all, these photos are gory. I understand.
22 I don't enjoy showing you. I don't think anyone enjoys
23 looking at gory things. But it's the evidence of the
24 crime that was committed, and that's an important part
25 of this.

CLOSING ARGUMENTS - BY MR. SPEARS

1 So look at the back seat of this car.
2 There's -- in all this evidence, one person suffered
3 an injury that could equate to this much blood.
4 It wasn't Carsheme with the bullet hole in his arm.
5 It was Kimberlee. So he puts her in the back of the
6 car, and they drive up to Midland Parkway, straight
7 that way.

8 When the initial responding officer
9 shows up, he remembers seeing a red sedan go off.
10 Now, she remembers the ride; she remembers being
11 miserable; she remembers the fact that there was
12 a tire blown out. It's torture for her. She's calling
13 her mom. She's saying good-bye.

14 She gets to the hospital, gets care,
15 and then she's put in a coma, and she was getting her
16 medical attention. But that's where her memory ends.
17 That's the end of her testimony, except for what she has
18 subsequently been through. Her jaw was wired shut for
19 four months.

20 She had to wear -- she had to drink a purely
21 liquid diet. You saw the damage. And I don't think
22 anybody in this courtroom would disagree that something
23 terrible happened to Kimberlee Felder. I think that's
24 across the board, obviously.

25 So when she was at that intersection,

1 and I just put the photo of the car up there, showed
2 you the bullets coming up the side. When she heard
3 that noise, she told you, she was sitting right here,
4 she looked over her left shoulder, and that's when she
5 saw him, okay.

6 Again, I'm sorry for these photos.
7 You won't have to look at them too many more times,
8 if you don't want to. There's the hole in her lip,
9 all right, Right there. She's looking over her
10 shoulder. That's when she gets hit, all right.

11 Now, the doctor said it went from left
12 to right, okay. Left to right. So if you're looking
13 over your shoulder this way, and someone is shooting
14 at you from that way, the bullet hits you right here,
15 it's going to go to the right.

16 Aside from the bullet holes in this car,
17 what else did we not see? There's no shell casings
18 in the car. Let me rephrase what I've said. There's
19 obviously bullet holes in the car. Aside from any
20 evidence of bullets being shot out of the car, in
21 regards to puncture wounds on the inside of the car,
22 or existing wounds on the outside doors of the car,
23 there's no shell casings in the car either.

24 All these shell casings that were found,
25 and every officer would tell you, one, Officer Canfield,

CLOSING ARGUMENTS - BY MR. SPEARS

1 told you he parked on top of one. And they went all
2 down this way, right in this area where he said that
3 blood and glass was found, right in the area where the
4 door got opened and pulled Kimberlee out of the car so
5 he could put her in the back seat.

6 Everything that Kimberlee told us in regards
7 to that night, she told us how she was feeling, what was
8 running through her head, her thoughts at the time, her
9 desire to get back to her kids. And what was the goal
10 when she was at the party is that once she got Regina
11 done, she went back to check on her baby, all right.

12 She's telling you from her memory what went
13 on. This isn't a script that she read. She's telling
14 you how she felt; she's telling you what she desired.
15 And what stood out to me, and I said it before, was how
16 her memory zones in on certain particular things.

17 She remembers seeing the notch on the front
18 of the hood of the car. She remembers talking to her
19 mom. She doesn't remember when the tire got shot out.
20 But, you know, one would assume when the rest of the
21 bullets hit the car. She doesn't remember how long
22 it took. She just remembers it being miserable getting
23 to the hospital, all right. She remembers holding her
24 jaw. She doesn't remember the type of car that drove
25 by.

CLOSING ARGUMENTS - BY MR. SPEARS

1 Well, I drive by a lot of cars every day.
2 I don't remember those. And in a tense situation like
3 that, time didn't really slow down for her but in one
4 aspect, the one aspect that she's paying attention to.
5 She was paying attention to Damon Riley.

6 Through the muzzle flashes of the gun,
7 she saw him hanging out of that car window. And don't
8 forget there were thirteen 9-mm shell casings found at
9 that scene. There were multiple 40-caliber rounds found
10 at that scene. Damon Riley was in the back passenger
11 seat of the car. There wasn't a lot of flashing going
12 on at this point in time.

13 Those two projectiles found inside the car
14 were 40 caliber, so there was also a 40-caliber gun
15 shooting at this car, okay. And those two projectiles
16 didn't match to the same gun. Just like how Chad Smith
17 told us that the 40 calibers came back with 3 separate
18 guns, okay. Multiple flashes, multiple shots.
19 She doesn't remember if Damon Riley was carrying more
20 than one gun. She remembers a gun.

21 She doesn't remember looking at anybody else
22 in the car, but she remembers the flashing. So if 13
23 rounds from his 9-mm wasn't enough, what about the rest
24 of the rounds from the 40-caliber guns that were also
25 being shot at her and her husband -- her then husband.

CLOSING ARGUMENTS - BY MR. SPEARS

1 What we didn't hear from was Carsheme,
2 and I wish we could have. Carsheme and Kimberlee are
3 divorced now. They have kids together, but she is the
4 sole custodian. Carsheme is gone. I wish I could tell
5 you how they knew Kimberlee and Carsheme were there.

6 I could show you that she remembers Damon
7 Riley's sister, how they were in town for Regina's
8 party, and they were at a club just down the road from
9 there, that she was going back and forth to her
10 grandparents' house, who also happen to be family with
11 Damon Riley, so they were in this area.

12 And they obviously weren't being quiet
13 or subtle. They were out having a good time. Now,
14 I submit to you that Damon found out. It's not a big
15 area to canvas. Kimberlee said Regina and her have
16 been friends for their entire lives. It's not like
17 she is an unknown person to the family, and she got
18 to a stranger's car with tinted windows and tried
19 to hide where she was in any way, shape or form.

20 Whether they rolled up on her there
21 or somewhere else, they found her. They found her,
22 and that's when the firing started. And Mr. Smith made
23 a good point. The back of the car doesn't have any
24 bullet holes. The back windshield is not blasted out
25 because they had verified who's in the familiar-looking

1 car, and they got close enough.

2 That's when the sounds came. That's when
3 whether it was the sound of the gunshots, or the glass
4 falling apart from the back window, that's when the
5 tings got louder, and they turned into bangs.
6 She looked, and she saw him.

7 There was a question asked about when
8 the shell casings were fired, and I found that one
9 interesting too. When we were able to connect the gun
10 to the shell casings, the 9-mm shell casings at the
11 scene, Agent Smith, he told us correctly what was the
12 truth. We don't know -- we can't determine
13 scientifically when they were fired. But we had
14 officers up this way hearing gunshots. And they
15 reported to have around all these shell casings found
16 right here.

17 We have a woman who got shot in her face,
18 in her teeth right here, telling officers that her
19 cousin shot her. All around that scene where that
20 shooting happened were these shell casings. And so
21 while I cannot tell you at the specific time when these
22 casings were fired from that handgun, I can tell you
23 that it fits the evidence. They're right here with
24 everything else.

25 I want to go into a few more things.

CLOSING ARGUMENTS - BY MR. SPEARS

1 I don't want to make this too long and drawn out for
2 everyone. You've seen the same evidence that I have,
3 all right. But we've heard in Mr. Shelton's opening
4 about he asked us to look at the evidence we are going
5 to get, and look for the investigation because there
6 wasn't one, all right. And I disagree. I respectfully
7 disagree.

8 In this investigation, there were witnesses,
9 all right. Those witnesses have spoken. In this
10 investigation, he went over, and he sent people to that
11 scene to solidify the scene, close it down, pick up the
12 evidence, the shell casings. He told us, you know,
13 photos were taken, all right.

14 The blood right in that intersection was
15 picked up. It's not back yet from SLED. It's not.
16 The standard was taken from Ms. Felder. It was sent
17 up to SLED for testing to see if the DNA matched the
18 blood from the scene. But again, kind of like the back
19 of the car, the blood right here, the only testimony
20 is Ms. Felder got shot in the face, and then was moved
21 out of her car to the back seat. Whose blood would
22 it be? I wish we had it. I don't think it would be
23 pertinent to this case, but it just would have been
24 nicer.

25 That does not affect the rest of the

1 evidence. Look at the rest of the investigation.
2 Warrants were put out, he was found, all right.
3 Other suspects were looked into, and then no extra
4 evidence to show probable cause of their arrest was
5 done, all right. So then, he was found. His cell phone
6 was taken from him, and he was found with this gun.

7 Now it was in the back below the passenger
8 seat, right there. You saw the photos. We went over
9 them a lot. They're going to be in here. I won't bore
10 you with making you look at them again. But this was
11 found beside his ID underneath the passenger seat, okay.
12 This gun was taken into evidence, and that gun was
13 compared with the shell casings. That's all part of the
14 investigation, ladies and gentlemen.

15 It's not like Detective Santana, former
16 Detective Santana, sat back. This evidence came from
17 that investigation. Videos were found on the cell
18 phone. Experts were used to determine ballistics,
19 all right. We were told that the State moved the
20 target. When Mr. Shelton was talking with Nick Santana
21 on the stand, he asked him, did you talk with Carsheme?
22 Did you talk with Kimberlee? And from that alone,
23 without asking anything else, you decided it was Damon
24 Riley, all right.

25 Well, there's no target, ladies and

CLOSING ARGUMENTS - BY MR. SPEARS

1 gentlemen. That's called a suspect. And then the rest
2 of the investigation from the evidence found points
3 directly back to that same suspect. Not only is there
4 an eyewitness from here, he was found with a handgun.
5 The handgun was next to his ID.

6 There's a video on his phone -- there's
7 a video on his phone, and again, this gun is locked,
8 of a Glock 19, which is a 9-mm with an extended
9 magazine. And this same Glock 19 matches 13 of the
10 shell casings that were found at that scene right there.
11 There was no target that was moved. There was a
12 suspect, and the evidence came out, and went right back
13 to him right there.

14 When Detective Santana met with Mr. Riley,
15 what did Mr. Riley say? I was out of town. Then again
16 we've also got in evidence text messages from that very
17 same phone asking right before 12 o'clock that night,
18 where are you headed? Sville. Not Cola, not Dirty
19 Myrtle, Sville. Summerville. The detective looked
20 further into possible alibis. Nothing was able to come
21 from that.

22 Now what did Kim tell us about the
23 relationship with Mr. Riley? She didn't know that there
24 was any real animosity there, but there was between him
25 and Carsheme. You heard from the stand from her right

1 there, the person with the best possible knowledge
2 of that issue.

3 And, at that point, when she was staring
4 at her cousin, she told law enforcement that it was him
5 -- after she was staring at her cousin. I'm sorry.
6 She told law enforcement that it was him. And three
7 years later in this courtroom, she still said it was
8 him. Her story didn't change. Nothing had come to
9 light that made her rethink what she remembers directly.

10 If there was no animosity, what benefit
11 would she have, having gone through the horrific thing
12 she did, to point at somebody else, other than the
13 person that she saw that day.

14 Ladies and gentlemen, I submit to you here
15 that the evidence is clear. It's all right here; photos
16 and the text messages and the ballistics and the
17 testimony you've heard. Damon Riley was in the back
18 seat of the car that drove by Kimberlee Felder and
19 Carsheme Dinkins. Damon Riley fired that handgun at
20 Kimberlee Felder and Carsheme Dinkins, and then he drove
21 off.

22 Damon Riley was found with that handgun
23 a number of days later, five days later. And that
24 handgun matched the casings at the scene. That handgun
25 was with him in a car with a bunch of people, but his

CLOSING ARGUMENTS - BY MR. SHELTON

1 phone is covered up in that video and other photos
2 of him with a conveniently dark extended magazine gun.

3 The intent was there. He fired those
4 rounds. Just because he wasn't alone doesn't mean he's
5 not guilty. He was identified there. He attempted to
6 kill Carsheme Dinkins; he attempted to kill Kimberlee
7 Felder. He did that with a deadly weapon. At the end
8 of the day, ladies and gentlemen, it all comes back to
9 the same point. Damon Riley is guilty. Thank you.

10 THE COURT: Counsel.

11 MR. SHELTON: Thank you, Your Honor. May it
12 please the Court.

13 THE COURT: Yes, sir.

14 MR. SHELTON: So, I had a game. I talked
15 to you guys about pin the tail on the donkey in the
16 opening. So now I'm bringing another game out. Let me
17 see if I can do this right. You all have seen and heard
18 about Jenga, right? So the State's case is based off
19 three things, three things; Carsheme and Kim's
20 statements, the police investigation, and this 9-mm
21 gun, okay.

22 So we take out Kim and Carsheme's
23 statements. We take that out. The case can still
24 stand. This is the case. The case can still stand,
25 right. But that investigation was based off Kim and

CLOSING ARGUMENTS - BY MR. SHELTON

1 Carsheme's statements. It's based off that. You take
2 that investigation out, and the case falls.

3 So Kim. Let's talk about Kimberlee Felder,
4 and the things that just don't make sense. She drove
5 her friend's car instead of her own from the Waffle
6 House. So her testimony was that they went from Suite
7 221 to the Waffle House, realized her friend was drunk.
8 She was already in her car -- her truck.

9 And instead of taking her truck back to go
10 get Carsheme and pick up her friend's car, she just hops
11 in her friend's car and takes that back, go get Carsheme
12 to then go get her truck. That doesn't make sense.
13 It's not believable. Things don't make sense.

14 The timeline versus the distance. So,
15 I submit to you, you go to a bar, it closes at 2:00 a.m.
16 They're no going to let you sit around and be in that
17 lounge until 2:30. They're kicking people out because
18 those employees want to go home. Those employees don't
19 want to stick around while they're not making any money,
20 and let you sit there and talk to your friends, okay.
21 So they're kicking people out.

22 So you're going to Waffle House, maybe
23 a couple of blocks, okay. A couple of blocks you could
24 see it, a block maybe, from Suite 221. You go to Waffle
25 House, get grits, and Kim testified -- I said, so what

CLOSING ARGUMENTS - BY MR. SHELTON

1 it's, like, five or six miles, your parents' house?

2 She said, no, it's more like four. So it's closer.

3 That Waffle House is closer to her parents' house.

4 So her parents' house is four miles down the
5 road at 2:00 a.m., 2:30 a.m. now, there's no traffic.

6 That's going to take 10 minutes, 15 minutes. So you're
7 at 2:30, maybe 2:45, pick up Carsheme, go another not
8 even five miles -- three miles. One stop light.

9 You're at 2:45, 2:50, maybe three o'clock, not 3:40.

10 There's a difference there. There's 40
11 minutes because the police officers testified the
12 shooting, 3:40, at 3:40. So there's a good chunk of
13 time that something is happening. Something is going
14 on. Hearing shots hit the car from behind but no
15 gunshot from the back.

16 And your memory is what matters, what you
17 heard. But she said that she heard ting, ting, ting,
18 ting, then turned around. If she heard ting, ting,
19 ting from a car coming, because she's stationary,
20 from a car coming at her, ting, ting, ting from back
21 there, that far back, the angles, you're going to have
22 gunshots in the back of the car. They're going to be
23 hitting that back window. There's going to be gunshots
24 and gunshot holes in the back of that car, but there's
25 not.

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1 States there was one shooter. She saw one
2 shooter. There's four guns. Four types of different
3 guns. The State's expert testified four guns close
4 proximity of their cars. When you become a jury member,
5 you don't have to lose your every day experiences, okay.

6 You're sitting in traffic -- you're sitting
7 next to a car right next to you at a stop light, you
8 could see that car. There's maybe, maybe a foot, maybe
9 between cars. But her testimony is Damon was outside
10 that window leaning out. So he's leaning out of a car
11 that's stationary right in the next lane. How close
12 is he going to be?

13 You could -- the Grey Poupon commercial,
14 right. You can ask somebody for Grey Poupon, and they
15 can hand it to you. You can hand people things in the
16 next car over. But if you're leaning over, and you have
17 your arm extended like Kim says, you're hitting her car
18 with your gun, not the bullets. It doesn't make sense.
19 There's something else going on here.

20 Officer Canfield testified he arrived on
21 scene in 30 seconds. Thirty seconds. He was right down
22 the street. Right down the street. In that 30 seconds
23 -- because he didn't see a car leave. In that 30
24 seconds, if we want to believe Kim's statement, Carsheme
25 was able to help her pull the car over to the side,

CLOSING ARGUMENTS - BY MR. SHELTON

1 he was able to get out of the passenger side, had to
2 go around, either front or back, he had to then grab
3 her, put her in the back seat, and then get back in
4 the driver's seat and take off without Officer Canfield
5 seeing him in 30 seconds from the last gunshot -- from
6 the gunshots.

7 Because Officer Canfield, he didn't testify
8 how many gunshots he heard. I submit to you 25 bullet
9 casings, twelve 40 rounds, thirteen 9-mm. That's not
10 several shots; that's a lot. And he would have
11 testified to that, if that's what he heard.

12 Drove out on blown out tires and rims.
13 There was another officer that came on scene, right.
14 He saw the red car pass by. Saw the red car drive by,
15 and it was blown out rims, blown out tires. It was
16 riding on the rims. And Midland Parkway, I submit to
17 you, jury members, to use your experience with Midland
18 Parkway and how long it is.

19 But that officer, as the officer testified,
20 went down Midland Parkway to look for that car. And he
21 didn't see one that had the tires blown out and the
22 rims. And she went all the way from the scene to
23 Trident Medical. He drove passed Summerville Medical
24 Center because, apparently, they don't have trauma,
25 but they're a hospital.

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1 Drove past a hospital with doctors;
2 drove past two fire stations off Ladson Road. Granted,
3 maybe they don't know that fire station -- that
4 firefighters are first-aid responders, but doctors.
5 They drove past doctors, if we want to believe Kim's
6 statement. They drove past doctors.

7 Called her mother instead of 911, sitting
8 in the back of a seat -- back of a car that's riding on
9 rims, thinks she's going to die, and she calls her mom.
10 Doesn't call 911, calls her mom. And that surprise
11 testimony that she was able to look at her car, and she
12 thought she was dying, and she was holding her chin up,
13 and as she's walking into Trident Medical, she looks
14 her car over and sees that hole.

15 So why is Kimberlee Felder not believable?
16 Damon and her husband, Carsheme, are fighting. She's
17 going to protect her husband. She's going to protect
18 him. She lied about Damon before to protect Carsheme.
19 You guys get to judge credibility, believable, and
20 whether you believed her in denying that statement.
21 You guys get to judge that.

22 She testified that she doesn't know the name
23 of Damon's sister, but it's her cousin. Damon is her
24 cousin, but she's Damon cousin. She claims she's known
25 Damon since he was a baby, but she didn't know the

CLOSING ARGUMENTS - BY MR. SHELTON

1 sister. She didn't know the sister's name at all that
2 she happen to see in this club. But then Santana
3 testified that Kimberlee told him Damon's sister's
4 name is Tiara.

5 Three years later, are you going to forget a
6 family member's name? Maybe you could forget a client's
7 name, a passerby, but a family member that you're now
8 claiming set this whole thing up, gave out your
9 identity. You're not going to remember her name on the
10 stand yesterday.

11 She's driving her friend's car. How would
12 Damon know? It's not her car. So she wants us to
13 believe that she's sitting in a strange car that's not
14 hers, that she's not known to drive, and Damon knows
15 it from the distance away and shooting behind her.
16 This is a brand new car to them. They're not in the
17 Dodge Durango, the truck. They're not in Carsheme's
18 car. If they were in Carsheme's car, it might be
19 different.

20 But this is -- they're coming up to
21 apparently a strange car, and then they're starting to
22 shoot. Couldn't identify the type of car the shooter
23 was in, or any other passengers or driver's in the car
24 because she had tunnel vision.

25 The muzzle flash is bright as lightning.

1 And I asked her about if she's ever been camping.
2 Flashlight. If you get a flashlight in your eyes, you
3 can't see behind that flashlight. She's saying there's
4 a muzzle flash. You can't see what's behind that muzzle
5 flash, that lightning, that bright light.

6 It's also like when you get up in the middle
7 of the night to go to the bathroom. It's dark when you
8 get up, but you can still see objects in your bedroom.
9 Your eyes have gone to that light. You could see
10 objects in your bedroom. You go in to use the bathroom,
11 you turn on the light, right before you turn the light
12 off and you get back in your bedroom, and you can't see
13 any of those objects, because the eyes have changed.
14 You've gotten used to that light.

15 You see a muzzle flash, it's bright.
16 You're seeing darkness to light back to darkness.
17 You're not going to see what is behind all that.
18 You're not going to see it. Couldn't stop looking
19 at his eyes. I submit to you, ladies and gentlemen,
20 if someone is shooting at you, you're not going to
21 continue to stare at them. You start hearing gunshots,
22 you're going to put your head down. You're going to
23 duck. You're not going to continue to stare at the
24 person that is supposedly shooting and pointing a
25 handgun at you. You are not going to continue to stare

CLOSING ARGUMENTS - BY MR. SHELTON

1 at them as they continue to shoot. You are going to get
2 down. That's why what she's saying is not believable.

3 Was shot on the left side of her face,
4 but says she was looking straight at the shooter.
5 So, Mr. Spears, help me out with this because he said
6 she was looking this way. You're looking this way,
7 and you got hit in the side of the face, it goes down
8 at the angle. You're looking this way, you're not
9 looking at who it is that's shooting you. If you're
10 looking this way, you're seeing out the side of your
11 eyes. You're not looking straight at him. You're
12 looking straight at him, that gunshot is going to come
13 straight back. It's not going to go down at an angle.

14 Don't believe Kim's timeline. Don't believe
15 it. Why should we believe this timeline? Doesn't make
16 sense. It's not believable. Why should we believe that
17 she was at Suite -- Lounge 221. Did you hear any other
18 witnesses that verified that. Any other witnesses come
19 here yesterday or today and testify that they were at
20 Suite 221 with Kim? Any other witnesses come and say
21 that they were at Waffle House with Kim? Why are we
22 believing this? It's not believable. It doesn't make
23 sense. Why are we believing this?

24 So Summerville Police. They protect us.
25 They really, really do. But there's just some evidence

CLOSING ARGUMENTS - BY MR. SHELTON

1 that doesn't make sense. And they didn't do the
2 investigation and look into this. The shell casings
3 all the way down by Pivotal Fitness. You heard the
4 SLED agent testify they're not going to go 100 feet.
5 You heard Rollings testify that -- 100 yards. It was
6 a 100-yard crime scene. This was a long crime scene.
7 The police officers all testified how long of a crime
8 scene this was.

9 Gunshots at that intersection, how Kim
10 describes it, does not make sense to have shell casings
11 100 yards down the road. It just does not make sense.
12 They didn't question it; they didn't look into it.

13 The witness that noticed the red car back
14 into the parking lot at Arby's. Santana, the lead
15 investigator, never questioned that witness, never went
16 to talk to him. He testified to that. Back into the
17 parking lot at Arby's. That's not what Kim said.
18 So, I'm not going to investigate it. I'm not going
19 to look into it.

20 Mercedes is not a known car for Kim
21 or Carsheme to drive. Question things. How are you
22 going to know coming down the road that Kim or Carsheme,
23 whoever your target is, is sitting in that car that they
24 are not known to drive? Question things. Damon knew
25 he had warrants. Why would he knowingly get in a car

CLOSING ARGUMENTS - BY MR. SHELTON

1 with a gun used in that shooting? Why would he do that?
2 And throw his ID down on the ground next to it.
3 Why would he do that if he was involved? It doesn't
4 make any sense.

5 Twenty-five casings, four guns, two
6 recovered bullets. There is a bullet that went in
7 Arby's. Did they go into the wall and grab that bullet,
8 compare that? Did they go into the car, get all the
9 bullets out of the side of the car that might still be
10 in there, still some evidence? They didn't get any of
11 that. Four guns, two recovered bullets. The two
12 bullets are the 40 caliber, not the 9-mm. Only the
13 40-caliber bullets were found, only. There's no
14 misfired 9-mm casings -- bullets. Sorry. There's no
15 9-mm misfired.

16 The agent from SLED, he testified about
17 how it misfired on him, but we don't see any of those,
18 the misfired with the 40 cal. This is common sense.
19 It may be 3:40 in the morning, I don't know, but Ladson
20 Road is a long road. Going down the road on rims.
21 No tires blown out. You're going to see sparks; you're
22 going to see marks on the road. Do we hear about any
23 calls, any witnesses? No witness, no calls. Nothing
24 about a car driving down all of Ladson Road on rims.

25 And the police officer testified that he

CLOSING ARGUMENTS - BY MR. SHELTON

1 went down -- there was testimony by the police officer
2 going down Midland. And he didn't see a car driving
3 on rims. I'm sure he would have stopped it. Officers
4 arrived within 30 seconds, and didn't see any other cars
5 involved in the shooting, including the car driving on
6 rims. Also testified that he saw a car go across,
7 right. Testified that one officer saw a car go across
8 but nobody stopped.

9 So what did they -- what they didn't do.
10 Summerville Police, what they didn't do. Mark where
11 the casings were found. I know it's three years ago,
12 but 2016, a diagram, something to help us out.
13 They know on scene -- they know on scene that they
14 have two types of bullet casings, a 9-mm and a 40 cal.
15 They know it. Mark this. Give us a diagram. Show us
16 where the 9-mm, where the 40 cal is. Are they all
17 together? Nothing. Describe what's out at Pivotal
18 Fitness. Is that the 9-mm?

19 Investigate Waffle House or Suite 221,
20 all right. I mean, Detective Santana said he came up,
21 he went there and talked with them. There's no video,
22 audio. But he didn't ask for receipts, if she used her
23 card. They didn't do any of that. They don't have any
24 witnesses coming up here to say that she was there.
25 How do we even know she's there? It's based off what

CLOSING ARGUMENTS - BY MR. SHELTON

1 she is saying. There's nothing there to corroborate
2 that. No other witnesses.

3 Question Santana about when he talked to
4 those two witnesses at the Kangaroo. They're not here.
5 They didn't come to testify. We have one person, other
6 than police officers, that were on scene. One person,
7 and that's Kim. It's not enough. Didn't investigate
8 Kimberlee or Carsheme's phone records. Investigate.
9 Maybe there's something there. Maybe there's something
10 there that then proves that they're at Waffle House,
11 at Suite 221, that she called her parents, her mother,
12 instead of 911. Investigate it, question it.

13 No DNA, no fingerprints. GSR. No gunshot
14 residue. It's an easy test. The officer testified to
15 that. Easy test. Carsheme's right there. Swab your
16 hands, easy test. Didn't do it. No DNA. Yes, there's
17 what appears to be blood and glass on the ground.
18 Didn't test it. Test the blood. This is the
19 government. Are we going to require them to do this?

20 Didn't investigate any other people in the
21 car. I don't know how close you're paying attention,
22 but an officer that pulled over the car with Damon
23 in it, he gave the names. He gave the names of all
24 the people that were in the car. He got all the IDs,
25 all those four other people he got.

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1 And Santana when I asked about a suspect,
2 that's the name that he put, that he submitted to SLED
3 as a suspect, did you investigate him? No. No, because
4 it didn't match up with Kim or Carsheme's story, so why
5 investigate them. I don't want to find something that's
6 going to hurt that story.

7 Had Damon's phone and text messages.
8 But didn't provide any phone calls or texts between
9 Damon and Tiara. They pulled off these text messages.
10 They had the officer there testify that he saw. He had
11 the phone; he had the text messages. So where's the
12 link? That's an easy one. You have the evidence.
13 That's the link right there, right? That's what you
14 need. Why is it not presented? It's not there.
15 There is no link.

16 Didn't investigate any other possibilities,
17 other than Kimberlee's statement. They didn't.
18 They didn't do anything. They didn't question it.
19 Didn't question it. And there's no Carsheme. Where
20 is Carsheme? He's a victim. Where is Carsheme?
21 No Carsheme.

22 So the third piece, right, the Glock 19.
23 All right, let's talk about that. There's four other
24 people in the car with the gun. There's four other
25 people. There's no DNA, no fingerprints on the gun

CLOSING ARGUMENTS - BY MR. SHELTON

1 or the shell casings. They had shell casings, touch
2 DNA, DNA on the gun. Run it. DNA was submitted
3 to SLED. Run it. You want to convict somebody,
4 run the evidence.

5 Don't know how or when the shell casings
6 got to the scene. They heard a couple several gunshots.
7 We don't know when these casings where shot. They could
8 have been in a car. They could have been dumped out
9 some other time. We don't know that the 9-mm was used
10 in this incident. 40 cal is what's found in the car.
11 No bullets were found from the 9-mm on scene, in Arby's,
12 or in the Mercedes. 40 cal, not 9-mm. It's a red
13 herring. 9-mm. Nothing is found on scene. Bullets.
14 No 9-mm bullets that match that gun.

15 So Snapchat. So let's talk about the
16 Snapchat video, okay. We don't know the date or time
17 this video was taken. No offense to my client, okay,
18 but as you can observe, he's a lot bigger in this video.
19 How long ago was this video taken? How long before 2016
20 was this video taken? We don't have a date or time that
21 this video was taken.

22 Officer testified he took pictures of guns,
23 of himself with guns, of his friends with guns.
24 It's not uncommon. It's not uncommon to take pictures
25 of yourself with guns. And he never said the gun in

1 the video is this gun in evidence. He said he believes
2 it to be a Glock 19.

3 He measured the picture. So you're
4 measuring a photo that you don't know the angles,
5 but you're measuring it to be able to say it's a Glock
6 19. It's a Glock. Is it a Glock 19? Is it this Glock
7 19? There's no serial numbers that can be identified.
8 Nothing to say that it's this Glock 19. Nothing.
9 The extended mag is a common item. A Glock is a common
10 item.

11 So Carsheme, why was he fighting with Damon?
12 Why? Some questions that we don't have answers.
13 Why was he fighting with Damon. That's what Kim said.
14 They were fighting. So why were they fighting? Who
15 else was he fighting with? Where is he? Where is he?
16 Where is he? The State can't find him. Where is he?
17 He's a victim, and he is not coming to testify. Where
18 is he? Why is he not here? It doesn't make sense that
19 he's not here. He gave a statement to the police,
20 so why is he not here? Why didn't he testify?

21 Why did he pass Summerville Medical? Was he
22 throwing things out the window? Was he getting rid of
23 his gun, his shell casings? Was he dropping somebody
24 off? Was he hiding out? Why did he pass Summerville
25 Medical?

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1 Okay, him and Kimberlee are divorced now.
2 Okay. Him and Kimberlee are divorced. But on June 5,
3 2016, he was not. That was his wife, and he refused to
4 write a statement at the hospital. She was in surgery,
5 and he refused to write a statement.

6 Ladies and gentlemen, the police just took
7 what Kim had to say and run with it and didn't do any
8 investigation. They took it at face value. They didn't
9 question. They didn't question, and we deserve better.
10 We deserve them to do that questioning. If they want to
11 say what the target is, what the evidence is, we deserve
12 them to question it, and they didn't do that in this
13 case. They didn't do that.

14 This is not a civil case where it's just
15 51 percent you believe that he did it, may or may not
16 have done it. It's not a may or may not. It's not even
17 preponderance of the evidence. It is a high, high bar
18 that they have to overcome. Beyond a reasonable doubt.
19 The State has that burden.

20 When someone's liberty is at stake, the
21 State has that burden. We have to hold it to them.
22 We have to. The State has not done that. The State
23 has not gone above that burden. There is reasonable
24 doubt.

25 You can use your verdict to tell them

1 that they have not met that burden. You can do that.
2 And I ask that you do that. And I ask that you find
3 Damon not guilty. Thank you.

4 THE COURT: Counsel, can you all briefly
5 approach.

6 (Off-the-record conversation held at sidebar.)

7 (Back on the record.)

8 THE COURT: Ladies and gentlemen of the
9 jury, it's now time for me to charge you on the law
10 in this case. I remind you that during this trial you
11 and I have certain duties to perform. As the trial
12 judge, it's my responsibility to preside over the trial
13 of this case. And I also have the duty to rule on the
14 admissibility of the evidence offered during this trial.
15 You are to consider only the evidence before you.
16 If there was any testimony ordered stricken from the
17 record in this case during this trial, you must
18 disregard that testimony.

19 You are to consider only the testimony which
20 has been presented from the witness stand, any exhibits
21 which have been made a part of the record in this case,
22 and any stipulations of counsel. I have the additional
23 duty to charge you the law applicable to this case.
24 As the presiding judge, I'm the sole judge of the law
25 in this case. And it is your duty as jurors to accept

1 and apply the law as I now state it to you.

2 If you already have an idea as to what the
3 law is, or what the law ought to be, and it does not
4 agree with what I now tell you the law is, you must
5 abandon this idea because you're sworn to accept the
6 law and apply the law exactly as I state it to you.

7 In every case tried in this court before
8 a jury, the jury becomes the sole and exclusive judge
9 of the facts in the case. The trial judge cannot
10 comment on, intimate, state, or make any statement
11 to the trial jury about the facts in the case.

12 Since you, the jury, are the sole judge
13 of the facts in the case, you're not to infer from what
14 I have said during the progress of this trial in ruling
15 upon the admissibility of evidence or otherwise or
16 anything that I say now during the course of these
17 instructions that I have any opinion about the facts
18 in this case. The law does not allow me to have an
19 opinion about the facts in this case.

20 This matter is solely for you, the jury,
21 to determine. As jurors, it is your duty to determine
22 the effect, value, weight and truth of the evidence
23 presented during this trial. The indictments in this
24 case charge the Defendant with the following:
25 Possession of a firearm during the commission of

1 a violent crime and two counts of attempted murder.

2 I remind you that the fact that the
3 Defendant was arrested, charged and indicted in
4 this case is not evidence in this case, and cannot
5 be considered by you as evidence of guilt in this case,
6 nor does it create any presumption or inference of
7 guilt.

8 The documents of the indictments are simply
9 the formal written instruments, which contain the
10 charges made against the Defendant. They are the formal
11 documents by which the case is brought into court.
12 The indictments in this case alleged several different
13 offenses against the Defendant. Again, the charge
14 are attempted murder, two counts, and possession
15 of a firearm during the commission of a violent crime.

16 Each indictment charges a separate and
17 a distinctive act. You must decide each indictment
18 separately on the evidence of the law applicable to it,
19 uninfluenced by your decision as to any other
20 indictment. The Defendant may be convicted or acquitted
21 on any or all of the offenses charged. You'll be asked
22 to write a separate verdict of guilty or not guilty for
23 each indictment.

24 The Defendant has pled not guilty to these
25 indictments, and that places the burden on the State

1 to prove the Defendant guilty. A person charged with
2 committing a crime or committing a criminal offense
3 in South Carolina is never required to prove himself
4 innocent.

5 I charge you that this is an important
6 rule of the law that the Defendant in a criminal trial,
7 no matter what the seriousness of the charge may be,
8 will always be presumed innocent of the crime for which
9 the indictment was issued, unless guilt has been proven
10 by evidence satisfying you of that guilt beyond a
11 reasonable doubt.

12 The presumption of innocence does not end
13 when you begin your deliberations, but accompanies the
14 Defendant throughout the trial, until you reach your
15 verdict of guilt based on evidence satisfying you of
16 that beyond a reasonable doubt. The presumption of
17 innocence is like a robe of righteousness placed about
18 the shoulders of the Defendant, which remains with the
19 Defendant until it has been stripped from the Defendant
20 by evidence satisfying you of the Defendant's guilt
21 beyond a reasonable doubt.

22 The presumption of innocence is not a mere
23 legal theory. It's not just a legal phrase. It is a
24 substantial right for which every Defendant is entitled
25 to, unless you, the jury, are satisfied from the

1 evidence of the Defendant's guilt beyond a reasonable
2 doubt.

3 The State has the burden of proving the
4 Defendant guilty beyond a reasonable doubt. Some of you
5 may have served as jurors in civil cases where you were
6 told that it was only necessary to prove that a fact is
7 more likely true than not true, such as by the greater
8 weight or the preponderance of the evidence.

9 In criminal cases, the State's proof must be
10 more powerful than that. It must be beyond a reasonable
11 doubt. What is a reason doubt in the law? A reasonable
12 doubt is the kind of doubt that would cause a reasonable
13 person to hesitate to act. Proof beyond a reasonable
14 doubt is proof that leaves you firmly convinced of the
15 Defendant's guilt.

16 There are very few things in this world that
17 we know with absolute certainty. In criminal cases, the
18 law does not require proof that overcomes every possible
19 doubt. If based on your consideration of the evidence,
20 you're firmly convinced that the Defendant is guilty
21 of the crime charged, you must find the Defendant
22 guilty.

23 If, on the other hand, you think there's
24 a real possibility the Defendant is not guilty, you must
25 give the Defendant the benefit of the doubt, and find

1 him not guilty.

2 There are two types of evidence which
3 generally are presented during a trial, direct evidence
4 and circumstantial evidence. Direct evidence is the
5 testimony of the person who claims to have actual
6 knowledge of the facts, such as an eyewitness.

7 Circumstantial evidence is proof of a chain
8 of facts and circumstances indicating the existence
9 of a fact. The law makes absolutely no distinction
10 between the weight, or to the value given to either
11 direct or circumstantial evidence, nor is a greater
12 degree of certainty required of circumstantial evidence
13 than of direct evidence.

14 You should weigh all of the evidence in
15 this case. After weighing all the evidence, if you're
16 not convinced of the guilt of the Defendant beyond
17 a reasonable doubt, you must find the Defendant not
18 guilty.

19 Necessarily, you must determine the
20 credibility of witnesses who have testified in this
21 case. Credibility simply means believability.
22 It becomes your duty as jurors to analyze and to
23 evaluate the evidence and determine which evidence
24 convinces you of its truth.

25 In determining the believability of

1 witnesses who have testified in this case, you may
2 believe one witness over several witnesses, or several
3 witnesses over one witness. You may believe a part of
4 the testimony of a witness and reject the remaining part
5 of the testimony of that same witness. You may believe
6 the testimony of a witness in its entirety, or reject
7 the testimony of a witness in its entirety.

8 You may consider whether any witness has
9 exhibited to you any interest, bias, prejudice or any
10 other motive in this case. And you may also consider
11 the appearance and the manner of the witness as they
12 are on the witness stand.

13 Normally, a person cannot give opinion
14 testimony. Normally, when a person testifies they must
15 testify as to what they either saw, heard, sense by
16 smell, or something of that nature. However, there is
17 an exception when someone is qualified because of their
18 education or experience. They're permitted to give
19 their opinion in certain areas, if the Court qualifies
20 them that way.

21 Although, an expert is qualified to give
22 opinion testimony, that does not mean that you must
23 accept those opinions, but it is evidence for you to
24 use in any way that you see fit and give it the weight
25 and the credibility that you believe is appropriate.

1 I instruct you and emphasize that the fact
2 that the Defendant did not testify is not a factor to
3 be considered by you in any way in your deliberations
4 and in your consideration of the question of guilt or
5 innocence of the Defendant. It must not be considered
6 by you in any manner whatsoever. The Defendant has the
7 constitutional right to remain silent. In the assertion
8 of this right, it must not be considered by you in your
9 deliberations.

10 I repeat, under your oath, you're not
11 to draw any conclusion whatsoever from the fact that
12 the Defendant in this case did not testify. The fact
13 that the Defendant did not testify should not even
14 be discussed in the jury room. The burden of proof,
15 as I have stated to you, is on the State, and the
16 Defendant is not required to prove his innocence.
17 The burden of proof remains on the State to prove
18 guilt beyond a reasonable doubt.

19 In order to establish criminal liability,
20 criminal intent is required. For example, the mental
21 state required to be proven by the State for a
22 particular crime might be purpose, intent, knowledge,
23 recklessness, or criminal negligence. Criminal intent
24 must be proven by the State beyond a reasonable doubt.
25 Criminal intent is always a matter that must be

1 determined by the jury from the circumstances
2 surrounding the situation.

3 There's no way to prove intent to
4 a mathematical certainty. There's no way medical
5 science can dissect a person's brain and determine what
6 the person had in mind. So the law says that criminal
7 intent may be inferred from the circumstances shown
8 to have existed. This is how you make a determination
9 of whether or not the elements requiring intent was
10 present.

11 It is not necessary to establish intent
12 by direct and causative evidence. But intent may be
13 established by inference in the same way as any other
14 fact by taking into consideration the act of the party
15 and all of the facts and circumstances of the case.

16 Criminal intent is a mental state,
17 a conscious wrongdoing. It is up to you to determine
18 what the Defendant intended to do based on the
19 circumstances shown to have existed. Criminal intent
20 could arise from action or a failure to act. It may
21 arise from negligence, recklessness or indifference
22 to duty, or to consequences that is considered by the
23 law to be equivalent of criminal intent.

24 A statement alleged to have been made by the
25 Defendant has been admitted into evidence in this case.

1 While the Court has determined that the statement is
2 admissible, I instruct you that you make the ultimate
3 decision of whether or not the Defendant made the
4 statement.

5 If the Defendant didn't make the statement,
6 you must determine whether the statement was made by
7 the Defendant voluntarily and of his own free will.
8 This means that the statement was not caused by
9 pressure, force, fear, threats, coercion, intimidation,
10 or by hope of a promise of leniency or reward of any
11 kind.

12 In determining whether the statement was
13 voluntary, you should consider both the characteristics
14 of the Defendant and the details of the questioning.
15 Some of the factors that you must consider are, one,
16 the age of the Defendant; two, the Defendant's education
17 or lack of education; three, the Defendant's mental
18 ability or capacity; four, the Defendant's IQ or
19 intelligence; five, the Defendant's background and
20 environment; six, the place and length of the detention;
21 seven, the nature of the questioning; and, eight,
22 the advice or lack thereof to the Defendant of his
23 constitutional rights, including but not limited to,
24 the right to remain silent, that any statement could
25 be used against him in a court of law, the right to

1 have an attorney present, and that if he could not
2 afford an attorney, a lawyer would be appointed to
3 represent him without any cost, that he could stop
4 making his statement at any time.

5 You must carefully consider all of these
6 surrounding circumstances before you give any weight
7 to the alleged statement. The State has the burden
8 of proving beyond a reasonable doubt that the alleged
9 statement was voluntary.

10 If you determine it was, you may give the
11 statement -- you may give the statement any further
12 consideration that you deem proper. You must decide
13 what weight, if any, should be given to the alleged
14 statement. If you determine the alleged statement
15 was not a free and voluntary statement of the Defendant,
16 you should not consider the statement at all.

17 Ladies and gentlemen, the charge of
18 attempted murder is found in Section 16-29 of the South
19 Carolina Code of Laws as amended, which state, "a person
20 who, with specific intent to kill, attempts to kill
21 another person with malice aforethought commits the
22 offense of attempted murder."

23 In order to prove attempted murder,
24 the State must prove beyond a reasonable doubt that,
25 one, the Defendant performed an act or acts which tend

1 to, but failed to kill another human being, and, two,
2 that such an act or acts were done with expressed
3 malice, meaning the act or acts were done with
4 deliberate intention of unlawfully to kill.

5 Ladies and gentlemen, unlawfully means
6 without just cause in the law. Attempted murder is
7 a crime of specific intent, meaning the Defendant
8 consciously intended the completion of the act
9 comprising of the attempted offense, which here was
10 murder. The State has the burden of proof beyond
11 a reasonable doubt to prove intent.

12 If you find that the State has failed
13 to prove beyond a reasonable doubt that the Defendant
14 committed attempted murder, you may consider whether
15 the State has proven beyond a reasonable doubt that
16 the Defendant committed assault and battery of a high
17 and aggravated nature.

18 Included within the offense of attempted
19 murder, is the lesser offense of assault and battery
20 of a high and aggravated nature. To prove assault
21 and battery of a high and aggravated nature, the State
22 must prove beyond a reasonable doubt that the Defendant
23 unlawfully injured another person, and, (a), great
24 bodily injury to another person resulted, or, (b),
25 the act was accomplished by means likely to produce

1 death or great bodily injury.

2 Great bodily injury means bodily injury
3 which causes a substantial risk of death, or which
4 causes serious permanent disfigurement or protracted
5 loss, or impairment of the function of a bodily member
6 or organ. If the Defendant, with malice aforethought,
7 attempts to kill another person, but by mistake injures
8 or kills a different person, the Defendant still has
9 the intent to kill.

10 The intent to kill is merely transferred
11 from the original person the Defendant attempted to kill
12 to the actual person killed or injured. The Defendant
13 would be guilty of assault and battery with intent to
14 kill just as if the attempt had resulted in the death
15 or injury of the person the Defendant intended to kill.

16 If a crime is committed by two or more
17 people who are acting together in committing a crime,
18 the act of one is the act of all. A person who joins
19 with another to commit an unlawful act is criminally
20 responsible for everything done by the other person
21 which happens as a probable or natural consequence
22 of the act done in carrying out the common plan and
23 purpose.

24 For example, when two people can be guilty
25 of killing another person when only one of the two had

1 a gun, there was only one bullet, and only one of the
2 two fired the shot that caused the death, if two or more
3 people are together, acting together, assisting each
4 other in committing the offense, the act of one is the
5 act of all, or as it is sometimes said, the hand of one
6 is the hand of all.

7 Prior knowledge that a crime is going
8 to be committed without more is not sufficient to make
9 a person guilty of that crime. Mere knowledge that
10 another person is going to commit a crime, even if the
11 Defendant is present when the crime is committed, is not
12 sufficient to convict the Defendant as a principal.

13 Guilt as a principal is shown by actual
14 or constructive presence at the scene as a result
15 of a prior arrangement. Therefore, a finding of a prior
16 arranged plan or common scheme is necessary for finding
17 guilt as a principal. The State must prove beyond
18 a reasonable doubt by the competent evidence the theory
19 of the hand of one is the hand of all.

20 A principal in a crime is one who either
21 actually commits the crime, or who is present, aiding,
22 abetting, or assisting in committing the crime. When
23 a person doesn't act in the presence of, or in the
24 assistance of another, the act is done by both.

25 Where two or more acting with a common plan

1 or intent are present in the commission of a crime,
2 it does not matter who actually commits the crime,
3 all are guilty. The hand of one is the hand of all.
4 Presence at the commission of a crime means to be
5 sufficiently near to aide and abet and assist in the
6 commission of the crime.

7 However, mere presence at the scene of
8 a crime is not sufficient to convict one as a principal
9 on the theory of aiding and abetting. Intent is also
10 a necessary element for there must have been a common
11 design or intent to commit the crime, and the crime must
12 have been committed pursuant thereto with the person
13 aiding and abetting by some overt act.

14 Intent means intending the result which
15 actually occurs, not accidentally or voluntarily.
16 Intent may be shown by acts of conduct of the Defendant
17 and by other circumstances from which you may naturally
18 and reasonably infer intent. The State must prove these
19 elements beyond a reasonable doubt.

20 The Defendant is charged with possession
21 of a weapon during the commission of or attempt to
22 commit a violent crime. The State must prove beyond
23 a reasonable doubt that the Defendant was in possession
24 of a firearm, or visibly displayed what appeared to be
25 a firearm during the commission of a violent crime.

1 A firearm means any machine gun, automatic
2 rifle, revolver, pistol, or any weapon which will
3 is designed to, or may be readily converted to expel
4 a projectile. In order to find the Defendant guilty
5 of possession of a weapon during the commission of
6 a violent crime, you must first find the Defendant
7 guilty of either committing a violent crime,
8 or attempting to commit a violent crime.

9 Attempted murder and assault and battery
10 of a high and aggravated nature are violent crimes.
11 The State must prove beyond a reasonable doubt that
12 the weapon further advanced or helped in the commission
13 of a crime.

14 Ladies and gentlemen, during this trial,
15 you heard testimony or comments about this case having
16 been previously tried. While you're deliberating,
17 you're not to consider this fact. This is not to come
18 into your deliberations whatsoever that this case has
19 been heard before.

20 Ladies and gentlemen, when you retire to
21 your jury room to consider your verdict, your verdict
22 must be a unanimous one. Of course, that means that
23 all 12 of you must agree on the verdict. When you
24 reach a verdict, if you would please knock on the door,
25 we'll bring you in to receive your verdict.

1 Madam Forelady, in the jury room you will
2 have the verdict form along with the indictments in
3 this case. The verdict form is rather self-explanatory.
4 You just follow the instructions. It goes for each
5 indictment. First, it goes to the indictment of
6 attempted murder of Carsheme Dinkins. When you have
7 a unanimous verdict, you will circle the appropriate
8 verdict, not guilty or guilty.

9 If you find he's not guilty of the attempted
10 murder, then you can go on to consider the assault
11 and battery of a high and aggravated nature, the lesser
12 included. If you find him guilty on that one, then you
13 can move on to the next one. So it's self-explanatory
14 as to how you do it.

15 The third charge, of course, is for the
16 possession of a violent crime -- possession of a firearm
17 during the commission of a violent crime. Again,
18 he must have been found guilty of the attempted murder,
19 assault and battery of a high and aggravated nature
20 for you then to be able to consider the third one,
21 for the possession of a weapon during the commission
22 of a violent crime.

23 Once you've come to the verdict, and you
24 circled the appropriate verdict, sign and date the
25 verdict form. You will also have the indictments back

1 in the jury room with you. There's a section on the
2 front that says verdict. If you would just write
3 the appropriate verdict, sign and date as the jury
4 foreperson.

5 I'm going to ask you to go into your jury
6 room one last time. Don't begin your deliberations
7 just quite yet in case I forgot to instruct you on
8 a particular issue in the law. And when you receive
9 all of the evidence, the verdict form and the
10 indictments, then you may begin your deliberations.
11 Thank you.

12 (Jury exits the courtroom at 3:32 p.m.)

13 THE COURT: Any exceptions or objections
14 to the charge on the law from the State or the defense?

15 MR. SPEARS: None, Your Honor.

16 MR. SHELTON: Just the prior objection.

17 THE COURT: All right. Thank you, sir.
18 If y'all would please get together and make sure we
19 have all of the exhibits to take them back.

20 (Recess taken.)

21 (Back on the record.)

22 THE COURT: Thank you, everyone. Please
23 have a seat. Anything before I bring the jury out?

24 MR. SPEARS: Nothing, Your Honor.

25 MR. SHELTON: No, Your Honor.

1 THE COURT: Let's have our jury, please.

2 (Jury enters the courtroom at 5:12 p.m.)

3 THE COURT: Ladies and gentlemen of the
4 jury, I'm in receipt of your two questions, which I will
5 mark as a Court's exhibit. The first one requested
6 a smoke break, which we have granted. I must also
7 advise you that if there are any breaks where anybody
8 needs to leave to smoke, the rest of you may not
9 deliberate unless all 12 of you are present during
10 that deliberative process.

11 The next question says can we have the
12 testimony of arresting officer and interrogator
13 and his statements from the arrest. I'm taking that
14 to be Detective Santana's testimony that did the
15 Miranda, and the interrogation of the actual arresting
16 officer at the scene of the car, that would be Deputy
17 Cramer; is that correct, or do you want both?

18 THE JUROR: The canine.

19 THE COURT: Pardon me?

20 THE JUROR: The canine officer.

21 THE COURT: The canine officer, so that
22 would be Cramer. Would the attorneys please approach.

23 (Off-the-record conversation held at sidebar.)

24 (Back on the record.)

25 THE COURT: Madam Forelady, was there

1 another question?

2 THE FORELADY: There was the report that
3 the officer -- the canine officer when he asked, do you
4 remember what he said when he got out of the car.
5 And he read it, and that's where there's some debate
6 as to what he said when he got out of the car.

7 THE COURT: Okay. Well, let me ask
8 you this. We're having some audio difficulties.
9 The testimony from yesterday, apparently, in order to
10 replay to the actual sound of it, we will have to get
11 a different SD card and turn off the machines and replay
12 it. Would y'all be satisfied if we read the
13 transcription of what was said?

14 THE FORELADY: The report itself wasn't
15 introduced as evidence.

16 THE COURT: Right. You have all the
17 evidence that was properly introduced.

18 THE FORELADY: If we can just hear it again
19 because I think we all know what we're wanting to hear.

20 THE COURT: Okay. So we'll find that
21 portion of it. Is that the only thing you need to hear?

22 THE FORELADY: I think so.

23 (Pause.)

24 THE COURT: Thank you for your patience,
25 ladies and gentlemen of the jury. We have found the

1 area that you're looking for, for that testimony.

2 (Testimony played back for the jury.)

3 (Jury returns to deliberate at 5:45 p.m.)

4 (Recess taken.)

5 (Back on the record.)

6 THE COURT: Thank you, everyone. Please
7 have a seat. Anything before I bring the jury out?

8 MR. SPEARS: Nothing, Judge.

9 MR. SHELTON: No, Your Honor.

10 THE COURT: Let's have our jury, please.

11 (Jury enters the courtroom at 9:34 p.m.)

12 THE COURT: Madam Forelady, it's my
13 understanding that the jury has reached a verdict.

14 THE FORELADY: Yes, ma'am.

15 THE COURT: Would you please hand it to
16 the bailiff. Madam Clerk, would you please publish
17 the verdict.

18 THE CLERK: In the matter of state of
19 South Carolina versus Damon Riley, indictment numbers
20 2016-GS-1105, 1106 and 1107, as to indictment
21 2016-GS-18-1106, the charge of attempted murder of
22 Carsheme Dinkins, we, the jury, unanimously find the
23 Defendant guilty.

24 As to indictment 2016-GS-18-1105, the charge
25 of attempted murder of Kimberlee Felder, we, the jury,

1 unanimously find the Defendant guilty. As to indictment
2 2016-GS-18-1107, the charge of possession of a firearm
3 during the commission of a violent crime, we, the jury,
4 unanimously find the Defendant guilty. Dated August 21,
5 2019, signed by jury foreperson, Pamela Dickovick.

6 THE COURT: Would you do the pulling,
7 please.

8 THE CLERK: Yes, ma'am. As I call your
9 juror number and name, if you'll please stand. Juror
10 No. 16, Darcie Bartlett. Was this your verdict in the
11 jury room?

12 THE JUROR: Yes.

13 THE CLERK: Is it still your verdict?

14 THE JUROR: Yes.

15 THE CLERK: Thank you. Number 156, Sherri
16 Sparrow. Was this your verdict in the jury room?

17 THE JUROR: Yes.

18 THE CLERK: Is it still your verdict?

19 THE JUROR: Yes.

20 THE CLERK: Thank you. Number 58,
21 Rex Elser. Was this your verdict in the jury room?

22 THE JUROR: Yes.

23 THE CLERK: Is it still your verdict?

24 THE JUROR: Yes.

25 THE CLERK: Thank you. 167, Keith Thompson.

1 Was this your verdict in the jury room?

2 THE JUROR: Yes.

3 THE CLERK: Is it still your verdict?

4 THE JUROR: Yes.

5 THE CLERK: Thank you. Number 61, Gary
6 Fasset. Was this your verdict in the jury room?

7 THE JUROR: Yes.

8 THE CLERK: Is this still your verdict?

9 THE JUROR: Yes.

10 THE CLERK: Thank you. 181, Joe Woodard,
11 Jr. Was this your verdict in the jury room?

12 THE JUROR: Yes.

13 THE CLERK: Is it still your verdict?

14 THE JUROR: Yes.

15 THE CLERK: Thank you. Number 49, Pamela
16 Dickovick. Was this your verdict in the jury room?

17 THE FORELADY: Yes.

18 THE CLERK: Is it still your verdict?

19 THE FORELADY: Yes.

20 THE CLERK: Thank you. Number 66, Elizabeth
21 Foster. Was this your verdict in the jury room?

22 THE JUROR: Yes.

23 THE CLERK: Is it still your verdict?

24 THE JUROR: Yes.

25 THE CLERK: Thank you. 152, Linda Shaw.

1 Was this your verdict in the jury room?

2 THE JUROR: Yes.

3 THE CLERK: Is it still your verdict?

4 THE JUROR: Yes.

5 THE CLERK: Thank you. Number 3, Sara

6 Allday. Was this your verdict in the jury room?

7 THE JUROR: Yes.

8 THE CLERK: Is it still your verdict?

9 THE JUROR: Yes.

10 THE CLERK: Thank you. Number 51, Donna

11 Drake. Was this your verdict in the jury room?

12 THE JUROR: Yes.

13 THE CLERK: Is it still your verdict?

14 THE JUROR: Yes.

15 THE CLERK: Number 94, Michael King.

16 Was this your verdict in the jury room?

17 THE JUROR: Yes, ma'am.

18 THE CLERK: Is it still your verdict?

19 THE JUROR: Yes, ma'am.

20 THE CLERK: Thank you.

21 THE COURT: Thank you, ladies and gentlemen
22 of the jury. If you'll please return to your jury room.
23 I'll be in there momentarily to release you.

24 (Jury exits the courtroom at 9:37 p.m.)

25 THE COURT: Counsel, anything before

1 I release the jury?

2 MR. SPEARS: Nothing from the State,
3 Your Honor.

4 MR. SHELTON: Nothing further.

5 THE COURT: Solicitor, would you please
6 prepare the sentencing sheet.

7 MR. SPEARS: Yes, Your Honor. Getting those
8 brought up right now.

9 THE COURT: Thank you.

10 (Pause.)

11 THE COURT: Thank you, everyone. Please
12 have a seat. Some of the jury members wanted to come
13 and see, so we'll wait for them. Do we have the
14 sentencing sheet?

15 MR. SPEARS: Yes, Your Honor.

16 THE COURT: Thank you. Are the parties
17 ready to proceed?

18 MR. SPEARS: Yes, Your Honor.

19 THE COURT: All right. Solicitor, I'll be
20 happy to hear from you.

21 MR. SPEARS: Your Honor, Ms. Felder is still
22 in the courtroom. She would like to speak when it's
23 appropriate. The State would like to bring to the
24 Court's attention that Mr. Riley has also got two
25 attempted murder charges pending in Berkley County

1 involving a shooting of the same individual, Carsheme
2 Dinkins and hitting another bystander.

3 His record, while not long, is still there.
4 He has got a 2007 open container, 2013 unlawful carrying
5 of a weapon, and a 2014 possession of less than one gram
6 of marijuana.

7 Judge, the State is truly concerned about
8 the nature of this charge that happened on a public
9 street while early in the morning, and the one-time
10 nature of the attack on these two people, not to mention
11 the fact that the pending charges -- I won't go into
12 them much. But there's a serious concern for public
13 safety at this point in time.

14 The State would request, Judge, you provide
15 a consecutive time in your sentence. If you would like
16 to hear from Ms. Felder.

17 THE COURT: Yes. Come on up, Ms. Felder.
18 Good evening, ma'am.

19 MS. FELDER: Good evening.

20 THE COURT: What would you like to tell me?

21 MS. FELDER: I would like to thank you for
22 your time, and thank you for the jury's time. I would
23 just like to express that I do forgive him. And I do --
24 will pray for him. My life will never be the same.
25 I will never be able to get back the moments that were

1 taken from me with my last child.

2 I will never be able to feel the same way.

3 I will never have the safety that I've had before.

4 I will never -- my family will never have the peace that
5 we once had in our lives. My life is forever changed.

6 My spirit is different. I believe in God; I trust
7 in God completely. And I'm hoping today because --
8 I'm sorry.

9 THE COURT: Take your time.

10 (Pause.)

11 MS. FELDER: We were a family, a family
12 that spent countless hours together. When his brother
13 got killed, we all banded together as a family unit.
14 We cry together; we pray together; we laugh together;
15 we ate together. He would bring his children to
16 associate with my children. We were a family unit.

17 This family unit will never, ever be
18 the same. We will never be able to have a bond.
19 My children will never be able to bond with the children
20 that are from this family ever again. We are forever
21 split. So, I'm asking, Your Honor, if you could please,
22 for my safety, for my every day pain, that he experience
23 the same every day pain that I have to. If you would
24 please grant him the maximum possible sentence allowed
25 for all charges. Thank you for your time.

1 THE COURT: Thank you, ma'am.

2 MR. SPEARS: Nothing more from the State,
3 Your Honor.

4 THE COURT: Defense?

5 MR. SHELTON: Thank you, Your Honor.

6 May it please the Court. Just for purposes of the
7 record, we renew all objections, renew all pre-trial
8 objections and trial objections, Judge.

9 Damon is 29 years old. He graduated
10 high school. He has five kids, three through nine.
11 The youngest was actually born while he was
12 incarcerated. He's been continuously incarcerated since
13 June 10th of 2016 when he was arrested for this charge.

14 Judge, the assistant solicitor indicated he
15 has those charges in Berkeley County. Your Honor, I've
16 been in constant contact with that attorney, his public
17 defender, in Berkeley County. And it's my understanding
18 -- I know we're not trying that case, but there's
19 pictures of him in Savannah, Georgia on the night that
20 apparent shooting happened.

21 And through our investigation, we talked
22 with family members of Carsheme who doesn't believe that
23 Damon was a part of this. Obviously, Damon has always
24 said that he is not a part of this. We respect the
25 jury's decision. However, Your Honor, we just would

1 ask you to consider the fact that the first trial was
2 a mistrial. Obviously, we couldn't get 12 people to
3 agree. They were out for four hours -- five and a half
4 hours in this case.

5 So there are some evidentiary things that
6 have come out that -- while the jury has reached a
7 verdict in this case, there's obviously some evidentiary
8 stuff. So, Judge, we would just ask that you take that
9 into consideration in an appropriate sentence.

10 THE COURT: Anything further?

11 MR. SHELTON: No, Your Honor.

12 THE COURT: Mr. Shelton, although the jury
13 deliberated for a while, it certainly just tells me that
14 they took their responsibility seriously and entered
15 a thoughtful and careful consideration. I certainly
16 have no criticism of the jury's verdict, or them taking
17 their time in making their decision.

18 Certainly, I think the evidence was there to
19 convict, just as they did. What your client did to that
20 family and to Ms. Felder is just unbelievable. Driving
21 down the street in a public road like that and shooting
22 like that, it's just not warranted. It's not safe for
23 the community.

24 And although he doesn't have a prior --
25 an extensive prior record, he does have a prior record.

1 And, obviously, these charges are extremely serious
2 in nature. On indictment 2016-GS-18-1105, you're hereby
3 committed to the state department of corrections for
4 a period of 30 years. You do get credit for the time
5 that you have served.

6 On indictment 2016-GS-18-1106, attempted
7 murder, you're hereby committed to the state department
8 of corrections for a period 30 years. And on indictment
9 2016-GS-18-1107, possession of a firearm during the
10 commission of a violent crime, you're hereby committed
11 to the state department of corrections for a period
12 of five years.

13 The attempted murder charges are consecutive
14 to each other. And the possession of a weapon for the
15 commission of a violent crime is concurrent to the other
16 two.

17 MR. SHELTON: Thank you, Your Honor.

18 THE COURT: We are adjourned.

19 (End of Transcript of Record)
20
21
22
23
24
25

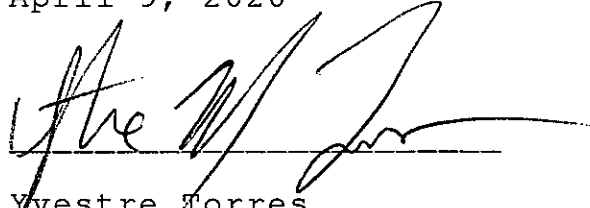
CERTIFICATE OF REPORTER

State of South Carolina)
County of Dorchester)

I, the undersigned, Yvestre Torres, Circuit Court Reporter for the First Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Dorchester County, South Carolina, on the 21st of August, 2019.

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

April 9, 2020



Yvestre Torres

Circuit Court Reporter

WITNESSES

Nicholas Santanna

Bunnerville Police Department
16-061377

ARREST WARRANT NUMBER
K203679

Arrested: June 10, 2016

ACTION OF GRAND JURY

TRUE BILL

T-X
Foreperson of Grand Jury
Date: November 3 2016

VERDICT

Guilty

Pamela A. Dierkerich
Foreperson of Petit Jury
Date: 08/21/2019

DOCKET NO. 2016GS18-1105

The State of South Carolina
County of DORCHESTER

COURT OF GENERAL SESSIONS

November 7 2016 TERM

THE STATE
vs.

Damon Ratiek Riley

Indictment for
Attempted Murder

SC Code: 16-3-29

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
heraby appear in my own proper person
and plead guilty to the within indictment or
to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED - RECORDED
2016 NOV -3 PM 4: 02
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

RECEIVED

OCT 24 2019
SC Court of Appeals

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

INDICTMENT
2016GS18-1105

As a Court of General Sessions, convened on November 3 2016 the Grand Jurors of DORCHESTER County present upon their oath:

ATTEMPTED MURDER

that the defendant, Damon Ratiek Riley, did in Dorchester County, South Carolina on or about June 5, 2016 did with the intent to kill, attempt to kill one Kimberlee Felder with malice aforethought by firing a gun at the victim. This offense being in violation of Section 16-3-29 of the South Carolina Code of Laws, as amended.

RECEIVED

OCT 24 2019

CC Court of Appeals

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Michael Spears, Solicitor

STATE OF SOUTH CAROLINA

COUNTY OF Dorchester
 STATE VS.
Damon Ratiek Riley
 AKA:
 Race: BLACK Sex: M Age: 29
 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 THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS18-1105
 A/W#: K203679
 Date of Offense: 6/5/2016
 S.C. Code §: 16-3-29
 CDR Code #: 3410

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OCT 24 2019

SENTENCE SHEET

SC Court of Appeals

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-3-29 of the S.C. Code of Laws, bearing CDR Code # 3410
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Spears, Michael 102370 SC Bar# Defendant Shelton, Chad SC076247
 Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 30 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: 8/21/19 - 2016 GS 18 1104
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (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: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____
 §14-1-206 (Assessments 107.5 %) \$ _____
 §14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100
 §14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
 §56-5-2995 (DUI Assessment) \$12 \$ _____
 §56-1-286 (DUI Breath Test) \$25 \$ _____
 Proviso (Public Def/Probation) \$500 \$ _____
 §14-1-212 (Law Enforce. Funding) \$25 \$ 25
 §14-1-213 (Drug Court Surcharge) \$150 \$ _____
 §50-21-114(BUI Breath Test Fee) \$50 \$ _____
 §56-5-2942(J) (Vehicle Assessment) \$40/ca \$ _____
 3% to County (if paid in installments) \$ 3.75

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk: Cheryl Graham

Court Reporter: Justine Dama

SCCA/217 (04/2018)

Presiding Judge: Walter Murphy

Judge Code: 2166

Sentence Date: 8/21/19

☐ Appointed PD or appointed other counsel,
 Proviso requires \$500 be paid to Clerk
 during probation and shall be collected before
 any other fees.

WITNESSES

Nicholas Santanna

Summerville Police Department
16-051377

ARREST WARRANT NUMBER
K203680

Arrested: June 10, 2016

ACTION OF GRAND JURY

TRUE BILL

T-7K

Foreperson of Grand Jury
Date: November 3 2016

VERDICT

Guilty

Pamela A. Dzhovick

Foreperson of Petit Jury
Date: 08/21/2019

DOCKET NO. 2016GS18-1106

The State of South Carolina
County of DORCHESTER

COURT OF GENERAL SESSIONS

November 7 2016 TERM

THE STATE
vs.

Damon Ratiek Riley

Indictment for
Attempted Murder

SC Code: 16-3-29

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.

FILED - RECORDED
2016 NOV -3 PM 4:07
RECEIVED
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY
OCT 24 2019
SC Court of Appeals

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

INDICTMENT
2016GS18-1106

RECEIVED

OCT 24 2019

As a Court of General Sessions, convened on November 3 2016 the Grand Jurors of
DORCHESTER County present upon their oath: *Court of Appeals*

ATTEMPTED MURDER

In that the defendant, Damon Ratiek Riley, did in Dorchester County, South Carolina on or about June 5, 2016 did with the intent to kill, attempt to kill one Carsheme Dinkins with malice aforethought by firing a gun at him. This offense being in violation of Section 16-3-29 of the South Carolina Code of Laws, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Michael Spears, Solicitor

STATE OF SOUTH CAROLINA

COUNTY OF Dorchester
 STATE VS.
Damon Ratiek Riley

AKA: _____

Race: BLACK Sex: M Age: 29

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 THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS18-1106A/W#: K203680Date of Offense: 6/5/2016S.C. Code § : 16-3-29CDR Code #: 3410

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OCT 24 2019

SENTENCE SHEET SC Court of Appeals

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-3-29 of the S.C. Code of Laws, bearing CDR Code # 3410
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: _____

Spears, Michael

102370

SC Bar#

Defendant

Shelton, Chad
Attorney for Defendant

SC076247

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 30 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: 8/21/19 - INDICTMENT - 2016 GS18 1105☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (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: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____

§14-1-206 (Assessments 107.5 %) \$ _____

§14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100

§14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso (Public Def/Probation) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25

§14-1-213 (Drug Court Surcharge) \$150 \$ _____

§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ 3.75TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk _____

Court Reporter: _____

SCCA/217 (04/2018)

Presiding Judge _____

Judge Code: 2166Sentence Date: 8/21/19

☐ Appointed PD or appointed other counsel,
 Proviso requires \$500 be paid to Clerk
 during probation and shall be collected before
 any other fees.

WITNESSES

Nicholas Santanna

Summerville Police Department
16-051377**ARREST WARRANT NUMBER**
K203681

Arrested: June 10, 2016

ACTION OF GRAND JURY**TRUE BILL**T-R
Foreperson of Grand Jury
Date: November 3 2016**VERDICT**

Guilty

Pamela A. Dzhevich
Foreperson of Petit Jury
Date: 08/21/2019**DOCKET NO. 2016GS18-1107****The State of South Carolina**
County of DORCHESTER**COURT OF GENERAL SESSIONS**

November 7 2016 TERM

THE STATE
vs.

Damon Ratiek Riley

Indictment forPossession of a Firearm or Knife During
the Commission of a Violent Crime

SC Code: 16-23-490

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.

FILED - RECORDED
2016 NOV -3 PM 4:07
RECEIVED
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY
OCT 24 2019
Court of Appeals

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

INDICTMENT
2016GS18-1107

RECEIVED

OCT 24 2019

SC Court of Appeals

As a Court of General Sessions, convened on November 3 2016 the Grand Jurors of DORCHESTER County present upon their oath:

**POSSESSION OF A FIREARM OR KNIFE DURING THE COMMISSION OF A
VIOLENT CRIME**

That in Dorchester on or about June 5, 2016, the defendant, Damon Ratiek Riley, did visibly display or have in his possession a gun during the commission of a violent crime as defined by Section 16-1-60, Code of Laws of South Carolina, 1976, as amended, to wit: Attempted Murder, thereby violating Section 16-23-490, Code of Laws of South Carolina, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Michael Spears, Solicitor

STATE OF SOUTH CAROLINA

COUNTY OF Dorchester
 STATE VS.
Damon Ratiek Riley

AKA:

Race: BLACK Sex: M Age: 29

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 of a Firearm or Knife During the Commission of a Violent Crimein violation of § 16-23-490 of the S.C. Code of Laws, bearing CDR Code # 0549

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: _____

102370

SC076247

Spears, Michael

SC Bar#

Defendant

Shelton, Chad
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:8/21/19 - 2016 43181104 + 2014 45181105☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDoc.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (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: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§14-1-206 (Assessments 107.5%)	\$	\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100</u>
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso (Public Def/Probation)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25</u>
§14-1-213 (Drug Court Surcharge)	\$150	\$
§50-21-114(BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
3% to County (if paid in installments)	\$	\$ <u>3.75</u>

TOTAL

\$ 128.75

Clerk of Court/ Deputy Clerk

Court Reporter: _____

SCCA/217 (04/2018)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS18-1107A/W#: K203681Date of Offense: 6/5/2016S.C. Code § 16-23-490CDR Code #: 0549

RECEIVED

OCT 24 2019

SENTENCE SHEET

SC Court of Appeals

☒ CONVICTED OF or ☐ PLEADS

Presiding Judge

Judge Code: 2146Sentence Date: 8/21/19

☐ Appointed PD or appointed other counsel,
 Proviso requires \$500 be paid to Clerk
 during probation and shall be collected before
 any other fees.

WITNESSES

P Alger

Dorchester County Sheriff

13-012570

ARREST WARRANT NUMBER

2013A1810300886

Arrested: October 24, 2013

ACTION OF GRAND JURY

Annee G. Chambers

Foreperson of Grand Jury

Date: December 5, 2013

VERDICT

TRUE BILL

Foreperson of Petit Jury

Date:

DOCKET NO. 2013GS18-1771

The State of South Carolina

County of DORCHESTER

COURT OF GENERAL SESSIONS

December 9, 2013 TERM

THE STATE

vs.

Damon Ratiek Riley

Indictment for

UNLAWFUL CARRYING OF PISTOL

SC Code: 16-23-20

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.

RECEIVED
OCT 24 2013
SC Court of Appeals

FILED - RECORDED
2013 DEC -5 PM 4:13
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

INDICTMENT
2013GS18-1771

At a Court of General Sessions, convened on December 9, 2013 the Grand Jurors of
Dorchester County present upon their oath:

RECEIVED

OCT 24 2019

SC Court of Appeals

UNLAWFUL CARRYING OF PISTOL

That in Dorchester County, South Carolina, on or about October 23, 2013, the
Defendant, Damon Ratlek Riley, did unlawfully carry about his person a pistol in
violation of Section 16-23-20, of the South Carolina Code of Laws, as amended.

Against the peace and dignity of the State, and contrary to the statute in
such case made and provided.



Kyle Ward, Solicitor

Time Served
STATE OF SOUTH CAROLINACOUNTY OF Dorchester
STATE VS.Damon Ratiek Riley

AKA:

Race: BLACK Sex: M Age: 24DOB: 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: Unlawful Carrying of Pistol

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS18-1771A/W#: 2013A1810300886Date of Offense: 10/23/2013S.C. Code §: 16-23-20CDR Code #: 0044

RECEIVED

SENTENCE SHEET

OCT 24 2019

☐ CONVICTED OF orSC Court of Appeals
PLEADSIn violation of § 16-23-20 of the S.C. Code of Laws, bearing CDR Code # 0044☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §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:

Ward, Kyle101005
SC Bar#Damon Riley
DefendantAl Ch
Attorney for Defendant76426
SC Bar#WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☒ County Detention Center,
for a determinate term of 2 (3) 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 the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

PTUP days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: Cheryl Graham

SCCA/217 (03/2011)

Presiding Judge Theresa MurphyJudge Code: 2166Sentence Date: 6/12/14

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

County of Dorchester)Damon R. Riley)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina A.G. O)

APPLICATION FOR

POST-CONVICTION RELIEF

2022-CP-18-00712**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 Lieber Correctional Institute 136 Wilborn Ave
Ridgerville, S.C. 29472
2. Name and location of Court which imposed sentence Court of General
Sessions, Circuit Court.
3. Name(s) of co-defendant(s) (if any) No
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2016-GS-18-1105
 - (b) 2016-GS-18-1106

5. The date upon which sentence was imposed and the terms of the sentence:

(a) August 21/2019

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty yes

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. The South Carolina Court of Appeals

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. Affirmed

ii. _____

iii. _____

(c) the date of each such result:

i. March 1, 2022 - Filed April 6, 2022

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. 2022-UP-165

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) 6th Amendment
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See memorandum of Law in support
- (b) Post-conviction Relief Application
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? yes
- (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? _____
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. NO
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. NO
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. NO
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. NO
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. NO
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. NO
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. NO
- 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) NO

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____

(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. Chad D. Shelton, Esquire
Michael Barrett, Esquire

ii. Joanna K. Delany

iii. _____

- (b) the proceedings at which each such attorney represented you:

i. Trial
Trial

ii. Appeal

iii. _____

19. State clearly the relief you seek in filing this application:

Neutral

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

County of Ridgewell)

VERIFICATION

I, Damon R. Riley #381176, 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.

Damon R. Riley

SWORN to and subscribed before me this 25th
day of April, 2022.

Lid K. Barma (L.S.)
Notary Public

My Commission Expires: 6-20-26

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Damon R. Rile #381176, 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.

Damon R. Rile
Applicant

SWORN or affirmed to and subscribed before me this
25th day of April, 2022.

Linda K. Ba
Notary Public

My Commission Expires: 6-20-26

2022 APR 28 PM 3:08
CLERK OF COURT
CLERK OF COURT
CLERK OF COURT

April th 25 2022/

Damon R. Riley # 381176
 Lieber Corr, Inst
 P.O. Box 205
 Ridgenville, SC. 29472

Dear Honorable Clerk of Court
 Dorchester County.

Enclosed Please a copy of
 the original Post - Conviction
 Relief Application Requesting
 A clocked Dated stamped,

Respectfully Submitted
S/Damon R Riley

C:C: D'R:R:
 C:C: H:C:C:D:C:

State of South Carolina) In The Court of Common
 County of Dorchester) Pleas
 Damon R. Riley) C/A 2022-CP-18-00712
 Applicant)
 Vs) Memorandum of Law
) In Support of Post-
 State of South Carolina) Conviction Relief
 (Respondent)

To: Respondent's

This matter comes before ~~this~~
 Court pursuant to Post-Conviction
 Relief Application S.C. Code of
 Law Ann § 17-27-20 § 17-27-80).

STATEMENT OF THE CASE

on June 10, 2016; A shooting occur
 in the county of Dorchester S.C.,
 And the Applicant was Arrested for
 (2) Count's of Attempted murder and
 possession of a weapon during the
 commission of a Violent Crime in
 the county of Dorchester S.C.,

Argument 1

Counsel provided ineffective assistance by failure to conduct an independent Pre-Trial investigation Request for a chain of Custody Report from the hospital.

The applicant contends that there is evidence that Dr. Herrera testified during applicant trial that he had recovered a Bullet Fragment from the victim, and counsel failure to investigate for a chain of custody Report to see who had handle the evidence that was recovered by Dr. Herrera and who did he give the evidence to after his recovery of evidence.
see At trial transcript Pg (131)

L-(14) Was there

L-(15) A bullet—there was an actual bullet recovered?

L-(16) There was actually a bullet fragment that we

L-(17) recovered.

Pg 137 (L-(24) And did you collect

392
Any bullet fragments

L-(25) or anything from her that was removed from her?

A 138 L-(1) NO, Sir, Not at the time.

To establish counsel was inadequately prepared for trial, an applicant must present evidence of what counsel could have discovered or what other defense could have pursued had counsel been more fully prepared. Jackson v State, 329 S.C. 345, 495 SE2d 768 (1998); morehead v State, 329 S.C. 329, 496 SE2d 415 (1998) (Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result); Davis v State, 326 S.C. 283, 486 SE2d 747 (1997).

Ineffective assistance of counsel
The most common, and most general claim, is ineffective assis-

tance of counsel. The applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 LEd. 2d 674, 692, (1984) Butler v State 286 S.C. 441, 334 S.E2d 813 (1985).

First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." performance must have prejudiced the applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Cherry, 300 S.C. at 117-18, 386 S.E2d at 625. However, courts presume that counsel rendered adequate assistance

and made all significant decision in the exercise of reasonable professional Judgment Butler, *id.* The applicant must overcome this presumption to receive relief. *Cherry v State*, 300 S.C. 115, 386 SE2d 624 (1989).

Argument (2)

Counsel provided ineffective assistance of counsel by failure request Brady material Rule (5) most favor to the defendant chain of Custody Report verify Sergeant Hirsh collecting any evidence.

The applicant contends that counsel did provide ineffective assistance of counsel by failure request for Brady material Rule (5) most favor to the defendant which the defendant never review Rule 5 Brady material with trial counsel before trial.

Ineffective assistance of Counsel The most common, and most general claim, is ineffective assistance of counsel. The Applicant must prove that

"counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 LEd 2d 674, 692 (1984) Butler v State, 286 S.C. 441 334 SE.2d 813 (1985).

First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness" under professional norms." Cherry, 300 S.C. at 117, 385 SE.2d at 625 citing Strickland. Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18; 386 SE.2d at 625. However, courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, *Id.* The applicant must overcome this presumption to receive relief. Cherry v State, 300 S.C. 115, 386 SE.2d 624 (1989).

Argument(3)

Counsel provided ineffective assistance of counsel by failure to object to the (2) counts Attempted murder Jury instruction.

The applicant contends that there is no state witness came forth and testify that they witness see the applicant shot both victims with A 9mm handgun, and counsel prejudice applicant by failure to object to the Judge jury instruction on the Law of Attempted murder with malice cause bodily injuries to harm both the victims with A 9mm handgun.

Ineffective Assistance of Counsel

The most common, and most general claim, is ineffective assistance of counsel. The Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the

trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed2d 674, 692. (1984); Butler v State 286 S.C. 441, 334 S.E2d 813 (1985).

First, the Applicant must prove that Counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under Professional Norms." Cherry, 300 S.C. at 117, 385 S.E2d at 625, citing Strickland. Second, Counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for Counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E2d at 625. However, Courts presume that Counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler,

Id. The Applicant must overcome this presumption to receive relief. Cherry v State 300 S.C. 115, 386 SE2d 624 (1989).

Applicant contends that he should be entitled to an evidentiary hearing to fully resolve the issues. Cite at Sharper v State, 279 S.C. 264, 305 SE2d 247 (1983)

Conclusion

Wherefore Applicant should be entitled to A Newtrial.

Dated
April 25th 2022.

Respectfully Submitted
S/ Pamar R Riley

State of South Carolina ~~in~~ The Court of Common
 County of Dorchester, Pleas

Damon R. Riley
 Applicant

C/A 2022-CP-18-00712

AFFIDAVIT OF SERVICE

VS

State of South Carolina
 Respondent

FILED
 2022 APR 28 PM 3:09

2022 APR 28 PM 3:09

FILED

I Damon R. Riley Hereby served
 A true copy of the Post-Conviction
 Relief Application by placing a
 true copy in the United States mail
 addressed below,

s/ Damon R. Riley

Date April 25th 2022

(1) Damon R. Riley # 381176
 Lieber Community INST
 P.O. Box 205
 Ridgeville, S.C. 29477

Cheryl Gramham
 5200 E. J. Bilton Blvd
 St George, S.C. 29477

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

Damon Riley,

Applicant,

v.

State of South Carolina.

2024 JAN 10 PM 3

CHEVYL GRAHAM
CLERK OF COURT
DORCHESTER CO. S.C.COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
Case No.: 2022-CP-18-00712**AMENDED POST-CONVICTION
RELIEF APPLICATION**

The Applicant, by and through his undersigned attorney, hereby amends his PCR application filed on April 28, 2022 to add the following allegations:

1. Ineffective assistance of counsel for

- (a) Applicant's trial counsel did not meet with Applicant a sufficient number of times in order to be adequately prepared to try his case.
- (b) Applicant's trial counsel did not share a copy of Rule 5 material given to him by the State with Applicant.
- (c) Applicant's trial counsel failed to properly investigate and challenge ballistics and DNA evidence at trial.
- (d) Applicant's trial counsel failed to object to and argue effectively against the second count of Attempted Murder in which the alleged victim failed to testify.
- (e) Applicant's trial counsel failed to object to the judge charging the jury on the "hand of one is the hand of all" when the State was proceeding on the theory that Applicant was the shooter.
- (f) Applicant's trial counsel was ineffective for failing to request a jury charge on circumstantial evidence in conformity with *State v. Logan*, 405 S.C. 83, 747 S.E.2d

444 (2013) and in failing to object to the circumstantial evidence charge given by the trial judge.

- (g) The ineffective assistance of counsel as described above, both individually and in cumulative effect, resulted in prejudice to the Applicant and absent such ineffective assistance of counsel, the results of his trial would have been different.
2. Furthermore, the Applicant requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. *See Simpson v. Moore*, 367 S.C. 587, 627 S.E.2d 701 (2006).

Respectfully submitted,



MICHAEL H. LIPSEY
PO BOX 548
CHESTER, SC 29706
803-899-5040
MICHAEL.LIPSEY@GMAIL.COM
SC BAR NO. 015154
ATTORNEY FOR APPLICANT

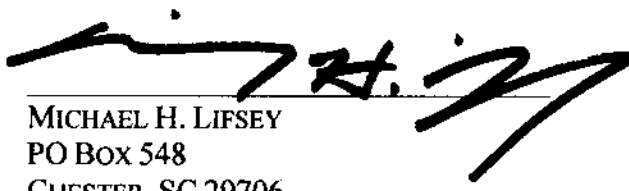
JANUARY 8, 2024

CERTIFICATE OF SERVICE

I certify that I have served this document via first class mail on:

Bryan T. Hall
Assistant Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

This 8th Day of January, 2024.



MICHAEL H. LIFSEY
PO Box 548
CHESTER, SC 29706
803-899-5040
MICHAEL.LIFSEY@GMAIL.COM
SC BAR No. 015154
ATTORNEY FOR APPLICANT

January 8, 2024

2024 JAN 10 PM 3:08
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	)	FOR THE FIRST JUDICIAL CIRCUIT
	)	
Damon Riley, #381176,	)	Case No.: 2022-CP-18-00712
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	(Counsel Appointed)
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The State of South Carolina (“Respondent” or “the State”) hereby makes its Return¹ to the post-conviction relief (“PCR”) action filed by Damon Riley (“Applicant”) on April 28, 2022. Respondent would respectfully show this Court:

I. PROCEDURAL HISTORY

Applicant is presently confined to the South Carolina Department of Corrections. On November 3, 2016, the Dorchester Grand Jury indicted Applicant for two (2) counts of attempted murder (2016-GS-18-1105; -1106) and possession of a weapon during the commission of a violent crime (2016-GS-18-1107).

On August 19-21, 2019, Applicant proceeded to a jury trial before the Honorable Maite Murphy. Assistant Solicitor Michael T. Spears prosecuted the case. Applicant was represented by Chad D. Shelton, Esquire. Applicant was convicted as indicted. Judge Murphy sentenced Applicant to thirty (30) years for the attempted murder charges and five (5) years for the possession

¹ Respondent’s Return was due to be filed within ninety days of receipt. *See* Rule 12(a), SCRPC (“[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial.”) Now, having completed the Return required in this matter, and in light of no demonstrable prejudice to Applicant as a consequence of the delay, Respondent respectfully asks this Court to accept this Return as timely filed. *See* S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that “respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application”); *Guinyard v. State*, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the trial court may extend the time for filing and that the time limit prescribed by the statute is not mandatory, but discretionary with the trial court).

of a weapon during the commission of a violent crime charge; the sentences were ordered to be served consecutively.

On October 15, 2019, a notice of appeal was filed² on Applicant's behalf by Chad Shelton, Esquire. On October 13, 2020, a brief was filed on Applicant's behalf by Appellate Defender Joanna K. Delany. Applicant's appeal raised the following issue(s):

Whether the court erred, in [Applicant's] trial for attempted murder and possession of a weapon during the commission of a violent crime, where it admitted video footage and photographs of [Applicant] posing with a gun in a moving car[,] in violation of § 16-23-20, since the prior bad act evidence should have been excluded pursuant to Rules 404 and 403, SCRE?

Following briefing and without oral argument, the South Carolina Court of Appeals affirmed Applicant's conviction. *State v. Riley*, Op. No. 2022-UP-165 (S.C. Ct. App. filed April 6, 2022). The Remittitur was issued to the circuit court on April 25, 2022.

II. FACTUAL HISTORY

At trial, Kimberlee Felder, Applicant's cousin, testified that she and her husband, Carsheme Dinkins, were driving to Waffle House, after a night out, to pick up his truck so it would not get towed. R. 61. Before they arrived, they were at a red light and Felder heard sounds of another car approaching the driver's side. *Id.* Felder testified she saw her cousin, Applicant, leaning out of the car window, and Applicant fired gunshots at her and Dinkins. R. 63. Felder was shot in the face, and Dinkins was shot in the arm. R. 64; 92. Dinkins drove himself and Felder to the hospital. R. 66.

Jacob Cramer, a law enforcement officer, testified he heard the shots and responded to the scene. R. 113. Cramer found shell casings at the scene. R. 114. Chris Hirsch, a law enforcement

² Notice of appeal was timely filed within ten (10) days after the denial of Applicant's motion to reconsider sentence (denied on October 7, 2019).

detective, testified he was briefed on the scene where the casings were found, and returned to the Summerville Police Department (“SPD”) after investigating. R. 98-99. The vehicle that had carried the victims was towed from the hospital to the SPD where it was searched, and bullets were found therein. R. 99; 104-05. The evidence did not indicate that shots had been fired from inside the victim’s vehicle. R. 105. Nick Santana, a SPD detective, testified he obtained arrest warrants for attempted murder after speaking to an officer on the scene and the victims. R. 158-160.

Cramer conducted a traffic stop of a vehicle that matched the description of a vehicle Applicant was seen getting into. R. 118-119. There were five persons in the car, including Applicant. R. 119. Cramer testified Applicant was ordered out of the car, and when asked his name replied, “Damon Riley. I know I got warrants, just put me in the car.” R. 122-23. Cramer found a Glock 19 gun beside Applicant’s ID card behind the passenger seat of the car, where Applicant had been sitting. R. 124. Chad Smith, an expert in firearms analysis, testified that all thirteen (13) .9mm cartridges found at the scene were fired from Applicant’s gun. R. 239-40. A search warrant was obtained for Applicant’s phone, in which text messages indicated he was headed to Summerville on the night of the shooting. R. 195. A video of Applicant holding and pointing a gun was found in his cellphone; it was determined the gun in the video was a Glock 19. R. 213.

III. CURRENT APPLICATION

In his current application for post-conviction relief, Applicant alleges he is being held unlawfully based on the following:³

Ineffective assistance of counsel

- a. Failure to investigate the chain of custody for the bullet fragments Detective Hirsch found at the scene.
- b. Failure to request Rule 5 and *Brady*⁴ discovery material.
- c. Failure to adequately prepare for trial.

³ Unless quoted, Applicant’s allegations have been summarized for brevity and clarity.

⁴ *Brady v. Maryland*, 373 U.S. 83 (1963).

d. Failure to object to the jury being charged on two (2) counts of attempted murder.

Applicant requests relief as follows: new trial.⁵

Attached to this Return and incorporated herein are the records of the Dorchester County Clerk of Court regarding the subject convictions, the trial transcript, the appellate records, Applicant's records from the South Carolina Department of Corrections, and the application for post-conviction relief. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

IV. RESPONSE TO INEFFECTIVE ASSISTANCE OF COUNSEL ALLEGATION

Ineffective Assistance of Counsel, Generally.

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like other defendants, the right to “assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure the trial is fair. *Strickland v. Washington*, 466 U.S. 668, 685 (1984). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. *See* generally S.C. Code Ann. § 17-27-20(A) (2014) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a prima facie violation of this constitutional right and raises a 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 PCR action, Applicant bears the burden of proving the allegations in his application by a preponderance of the evidence. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must

⁵ If this Court finds a defect in the original proceedings, the appropriate remedy would be to grant a new trial on the original indictments. *Gilstrap v. State*, 252 S.C. 625, 628, 168 S.E.2d 88, 89 (1969) (stating that even under the assumption that all the allegations were true, the relief to be granted on PCR is remand for a new trial); *Smith v. State*, 413 S.C. 194, 195, 775 S.E.2d 696, 696 (2015) (“We now clarify the proper remedy is a new trial.”).

prove “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” *Strickland*, 466 U.S. at 668; *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. To obtain relief, a PCR applicant must prove (1) counsel’s performance fell below an objective standard of reasonableness, measured under “prevailing professional norms,” and (2) the applicant sustained prejudice as a result of counsel’s performance. *Strickland*, 466 U.S. at 687-88; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Id.* (citing *Strickland*, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.* at 117-18.

Failure to Investigate / Failure to Adequately Prepare

“A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State.” *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). “[W]hile the scope of a reasonable investigation depends on a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case.” *Ard v. Catoe*, 372 S.C. 318, 331–32, 642

S.E.2d 590, 597 (2007) (internal quotation marks omitted) (emphasis omitted). “In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” *Strickland*, 466 U.S. at 691.

In order 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. *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 v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018)). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result. *Moorehead v. State*, 329 S.C. 329, 496 S.E.2d 415 (1998). The applicant must further present evidence demonstrating 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.

Our Supreme Court has cautioned reviewing courts not to lose sight of the reasonableness standard regarding counsel’s duty to investigate. *Ard*, 372 S.C. at 331, 642 S.E.2d at 597 (“this duty is limited to a reasonable investigation”). Reviewing courts “should keep in mind that counsel’s function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case.” *Strickland*, 466 U.S. at 690. Thus, in applying the *Strickland* standard to a claim of failure to investigate, counsel’s decision not to undertake a particular investigation must be evaluated with heavy deference to counsel’s judgment. *Bagwell v. State*, 410 S.C. 259, 265, 763 S.E.2d 630, 633 (Ct. App. 2014).

Applicant alleges counsel was ineffective for failing to investigate the chain of custody for bullet fragments recovered from the scene of the crime. The record likely refutes this allegation as

it shows counsel engaged in discussions with the solicitor regarding trial testimony about chain of custody. R. 14. Regardless of such investigation, the victims saw Applicant shoot them and evidence recovered from Applicant's cellphone corroborate victim's testimony. Thus, Applicant cannot show how further investigations of chain of custody would have resulted in a different outcome. However, because the record likely does not disprove Applicant's allegations, the State requests an evidentiary hearing.

Failure to Request Rule 5 and Brady Materials

Rule 5 governs information that must be disclosed by the prosecution upon the defendant's request. *See generally* Rule 5, SCRCrimP. A *Brady*⁶ violation claim is based upon the requirement of due process. *Gibson v. State*, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). The *Brady* disclosure rule requires the prosecution to provide to the defendant any evidence in the prosecution's possession that may be favorable to the accused and material to guilty or punishment. *State v. Kennerly*, 331 S.C. 442, 452, 503 S.E.2d 214, 220 (Ct. App. 1998) (citing *Brady v. Maryland*, 373 U.S. 83, 87 (1963)). Favorable evidence includes both exculpatory evidence and evidence which may be used for impeachment. *United States v. Bagley*, 473 U.S. 667, 676 (1985). Applicant must prove (1) the evidence was favorable; (2) it was in the possession of or known to the prosecution; (3) it was suppressed by the prosecution; and (4) it was material to guilt or punishment. *Gibson*, 334 S.C. at 324, 514 S.E.2d at 324.

Cases in which the defendant made "no request" or only a "general request" for Brady material is one of three categories of *Brady* violations identified by the United States Supreme Court in *United States v. Agurs*, 427 U.S. 97 (1976). In "specific request" and "general- or no request" situations, "favorable evidence is material, and constitutional error results from its

⁶ *Brady v. Maryland*, 373 U.S. 83 (1963).

suppression by the government, if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.” *Gibson*, 334 S.C. at 524, 514 S.E.2d at 324-25 (citing *Kyles v. Whitley*, 514 U.S. 419, 432-36 (1995)). The court must consider the suppressed evidence collectively, not on an item-by-item basis. *Kyles*, 514 U.S. at 436-38.

Applicant alleges counsel was ineffective for failing to request Rule 5 and *Brady* materials from the solicitor. Because the record does not disprove or dispute this allegation, the State requests an evidentiary hearing to fully resolve the issue.

Failure to Object

Failing to object does not automatically constitute ineffective assistance of counsel. *See Millidge v. State*, 422 S.C. 366, 374, 811 S.E.2d 769, 800-01 (2018) (stating an applicant must prove both deficiency and prejudice to establish ineffective assistance of counsel for failing to preserve an issue); *see also id.* at 380. (“[T]he proper inquiry for determining prejudice...is whether there is evidence in the record to support the trial court’s finding... if so, an appellate would necessarily have affirmed the trial court’s [ruling]....”). An ineffective assistance claim based on failure to object is tied to the admissibility of the underlying evidence. *Hough v. Anderson*, 272 F.3d 878, 898 (7th Cir. 2001). “If evidence admitted without objection was admissible, then the complained of action fails both prongs of *Strickland*: failing to object to admissible evidence cannot be professionally unreasonable, nor can it prejudice the defendant against whom the evidence was admitted.” *Id.*

Applicant also asserts counsel was ineffective for failing to object to the court charging the jury on two (2) counts of attempted murder. One of the victims testified she saw Applicant pull up beside them in a vehicle and shoot at them. Officer Santana testified the warrants obtained for

attempted murder were based on his investigations after the shooting, at which the injured victims identified Applicant as the shooter. There is evidence on the record to support the court's jury charge for two (2) counts of attempted murder. Applicant has not shown an objection counsel should have made but did not. Further, Applicant cannot show that he was prejudiced by counsel's failure to object to the jury charge because he has not demonstrated a reasonable probability the outcome of the trial would have been different if counsel had objected. Thus, Applicant cannot meet his burden under *Strickland*.

V. REQUEST FOR AN EVIDENTIARY HEARING

Because the record likely does not refute or disprove Applicant's claim, additional testimony is likely needed to resolve Applicant's allegations. 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").

VI. ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Applicant's attorney is required to file amendments to this application, as necessary. Rule 71.1(a), SCRCP; *see* Rule 11, SCRCP. *Pro se* filings should 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, or alternatively, the State will request a continuance in the matter.⁷

⁷ *See Love v. State*, 428 S.C. 231, 245, 834 S.E.2d 196, 203 (2019) (Kittredge, J., dissenting) ("If, however, the proposed amendment... would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.")

Pursuant to S.C. Code Ann. § 17-27-150 (2014), Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing.

VII. GENERAL DENIAL

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

VIII. CONCLUSION

WHEREFORE, the State respectfully requests this Court convene an evidentiary hearing on the allegation of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

DON ZELENKA
Deputy Attorney General

BRYAN T. HALL
Assistant Attorney General

By:



ATTORNEYS FOR THE STATE
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29212

October 24, 2023

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS

2022-CP-18-00712

Damon R. Riley, #381176

Applicant,

vs

CERTIFICATE OF SERVICE BY MAIL

State of South Carolina,

Respondent,

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Mr. Michael H. Lifsey, Esquire
PO Box 548
Chester, SC 29706

DATED this the 25th day of October, 2023.



William Corbett Jr,
Legal Assistant For Respondent

State of South Carolina	)	Court of Common Pleas
	)	First Judicial Circuit
County of Dorchester	)	Case No. 2022-CP-18-00712
	)	
	)	
Damon Riley,	)	
	)	
Applicant,	)	
	)	
-vs-	)	Transcript of Record
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

February 8, 2024
St. George, South Carolina

B E F O R E:

The Honorable Paul M. Burch, Judge

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

Michael Lifsey, Esquire
Attorney for the Applicant

Bryan T. Hall, Esquire
Attorney for the Respondent/State

Proceedings taken down electronically

Transcribed by:
Krystal J. Smith
Official Circuit Court Reporter III

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21	dashes	--	intentional or purposeful interruption	
22			or change in thought	
23	ellipses	. . .	trailing off	
24	[ph]		phonetically written	
25	[sic]		written as said	

1 FEBRUARY 8, 2024

2 (WHEREUPON, the proceedings began at 9:43 A.m.)

3 THE COURT: All right.

4 MR. HALL: Good morning, Your Honor. May it please the
.5 Court. Assistant Attorney General Bryan Hall for the State.

6 Your Honor, this is the case of Damon Riley versus State
7 of South Carolina, Docket Number 2022-CP-18-00712. Mr. Riley
8 was indicted by the Dorchester County Grand Jury back in
9 November of 2016 for two counts of attempted murder. Those
10 indictment numbers are 2016-GS-18-1105 and 1106, as well as
11 possession of a weapon during the commission of a violent
12 crime, 2016-GS-18-1107.

13 He proceeded to a jury trial before the Honorable Maite
14 Murphy between August 19th and 21 of 2019. Michael Spears
15 prosecuted the case, and Mr. Riley was represented by Chad
16 Shelton. Mr. Riley was convicted and sentenced to 30 years
17 for attempted murder and 5 years for the weapons charge.

18 He filed a motion to reconsider the sentence, which was
19 denied on October 7th of 2019, and he filed an appeal on
20 October 15th of 2019, raising the issue of whether the Court
21 erred in admitting footage and photos of Mr. Riley posing with
22 a gun in a moving car since the evidence was a prior bad act
23 and should have been excluded. The Court of Appeals affirmed
24 the conviction and sentences, and the Remittitur was sent on
25 April 25th of 2022.

1 This PCR was filed on April 28th of 2022, and Mr. Riley
2 is raising allegations of ineffective assistance of counsel
3 for failure to investigate chain of custody for bullet
4 fragments Detective Hirsch found at the scene; failure to
5 request Rule 5 and Brady discovery material; failure to
6 adequately prepare for trial; and failure to object to the
7 jury being charged on two counts of attempted murder.

8 We received an amended application from opposing counsel,
9 and he's -- he's -- he amended his application to raise the
10 following allegations: ineffective assistance of counsel for
11 failure to meet a sufficient number of times to be adequately
12 prepared; failure to share a copy of Rule 5 material given to
13 counsel by the State; failure to properly investigate and
14 challenge ballistics and DNA evidence; failure to object to
15 and argue effectively against the second count of attempted
16 murder in which the alleged victim failed to testify; failure
17 to object to the judge charging the jury on hands of one,
18 hands of all when the State was proceeding on the theory that
19 Mr. Riley was the shooter; and failure to request a jury
20 charge on circumstantial evidence in conformity with *State v.*
21 *Logan*.

22 Mr. Riley is present and represented by Michael Lifsey,
23 and the State is ready to proceed.

24 THE COURT: Counsel?

25 MR. LIFSEY: Thank you, Your Honor. We're ready to

DAMON RILEY - DIRECT BY MR. LIFSEY

1 proceed. I'd call Mr. Riley to the stand.

2 THE COURT: Come around to be sworn, Mr. Riley.

3 THE CLERK: Please raise your right hand. State your
4 full name for the record.

5 THE APPLICANT: My name is Damon Riley.

6 THE CLERK: Do you solemnly swear or affirm to tell the
7 truth, the whole truth, and nothing but the truth, so help you
8 God?

9 THE APPLICANT: I swear to tell the truth.

10 THE CLERK: Thank you. Have a seat.

11 DAMON RILEY, being first duly
12 sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. LIFSEY:

15 Q: Could you state your full name, Mr. Riley?

16 A: My name is Damon Ratiek Riley.

17 Q: Mr. Riley, where are you being held incarcerated right
18 now?

19 A: I'm currently incarcerated at Ridgeland Correctional
20 Facility.

21 Q: What kind of sentence are you doing at Ridgeland
22 Correctional?

23 A: Right now, I'm doing time for two counts of attempted
24 murder. Basically, concurrent -- consecutive sentences of 30,
25 and possession of a firearm in commission of a violent crime

DAMON RILEY - DIRECT BY MR. LIFSEY

1 with additional 5 years.

2 Q: All right. So a 30 -- basically a 30 and a 5 consecutive

3 basically is what you have?

4 A: No. I have two 30s.

5 Q: Two 30s?

6 A: And a 5.

7 Q: Gotcha. All right. So who represented you at your --

8 did you have a trial or did you plead guilty?

9 A: I had a trial.

10 Q: All right. Who represented you at your trial?

11 A: Chad Shelton.

12 Q: Tell me about how you got him to be your lawyer.

13 A: Okay. Well, initially, I was appointed a public

14 defender, which was Ash Chisholm. I went to trial with him,

15 had a mistrial. Filed a motion to relieve counsel, and then I

16 got appointed Mr. Shelton. Never got in front of no judge or

17 nothing like that, and they appointed me him.

18 Q: What do you mean? I mean, did -- what -- what -- did

19 y'all -- you complained at some point about your first lawyer?

20 A: Yes. I complained about Mr. Ash Chisholm and how he

21 represented me, and they basically got him off of my case and

22 appointed me Mr. Shelton.

23 Q: But you ever had a hearing on that?

24 A: Never had a hearing.

25 Q: All right. So Mr. Shelton was not retained? He was an

DAMON RILEY - DIRECT BY MR. LIFSEY

1 additional appointed lawyer?

2 A: Right. Pro bono or something like that.

3 Q: I gotcha. All right. Well, how many times did you meet

4 with Mr. Shelton prior to your trial?

5 A: One time.

6 Q: Do you know when he was appointed, how far in advance it

7 was of your trial? How did you find out about all that?

8 A: Okay. So I want to say I got appointed to him, like,

9 that December of 2019. So around February, I got a letter

10 stating that he was going to be the one to represent me and so

11 forth from that point on, you know. We proceeded on, and we

12 ended up in trial. So --

13 Q: You went to trial in August; is that right?

14 A: Yes, sir.

15 Q: So how many -- how many times -- I'm sure I already asked

16 this or you already said this, but how many times did you meet

17 with him in person about this case?

18 A: Once.

19 Q: Where was that meeting held?

20 A: That was at the -- down here at the courthouse.

21 Q: Okay. Were you in custody or were you out on bond?

22 A: No, I never made bond. I was incarcerated.

23 Q: You were in jail the entire time?

24 A: Yes, sir.

25 Q: All right. Tell me about that one meeting y'all had.

DAMON RILEY - DIRECT BY MR. LIFSEY

1 What did you discuss?

2 A: Basically, he explained to me that he would be
3 representing me in my trial, taking over the case. He was
4 waiting for some paperwork to be passed over from my prior
5 attorney -- attorney, and then we was going to go forward with
6 that.

7 Q: All right. Did he discuss with you the elements of the
8 crimes the State had to prove or the defenses you could raise
9 or anything like that?

10 A: No. It was more, you know, questioning me about what
11 took place in the first trial and trying to see what I learned
12 or what I've known personally, you know. So I kind of, like,
13 went with him what I experienced from my first trial and the
14 things that I think would be in my favor -- you know what I'm
15 saying? -- going back to trial again.

16 So we talked about it and it was just, like, I didn't get
17 no Rule 5. I didn't get the transcript from the first trial
18 because a lot of runarounds. The -- the reporter -- she ended
19 up either retiring or quitting or something. So I was just
20 going through a lot trying to get the transcript and the right
21 paperwork, you know, that I needed to prepare for trial.

22 Q: Well, that was going to be my next question. Are they --
23 before your trial started -- we'll get into what happened in
24 the trial in just a minute, but before the trial started, were
25 there things you wanted him to do that he did not do or things

DAMON RILEY - DIRECT BY MR. LIFSEY

1 that you wanted him to give you that he did not give you?

2 A: Correct. I asked for things pertaining to, like, DNA,
3 you know. Get the -- the transcript first, because, you know,
4 a lot of things that were said, arguments, things that was
5 raised during the trial, that would be something that we would
6 need.

7 So being that we had Mr. Smith, someone from SLED, come
8 and testify about certain things dealing with DNA and
9 ballistics, my attorney questioned the State about these
10 things, and that kind of, like, raised a lot of things that
11 lead to a mistrial. Mr. Shelton never followed up to do any
12 of those things when it came to DNA, ballistics, or doing a
13 proper investigation, period, you know.

14 Q: You mentioned your discovery. Did you request that at
15 some point?

16 A: Yes, I did request a Rule 5 motion and discovery, *Brady*
17 *v. Maryland*, so I can get all the evidence that was going to
18 be in my favor and also what the State having so I can be
19 prepared for trial.

20 Q: Did you request that from your -- from the solicitor?

21 A: From my -- my attorney, and I also filed motions on my
22 behalf myself.

23 Q: Did you ever get -- did you ever get that?

24 A: No.

25 Q: All right. One of the things you told me you were

DAMON RILEY - DIRECT BY MR. LIFSEY

1 concerned about was his challenging of the ballistics and DNA
2 evidence. Could you explain to the Court what your problem
3 was for that and what your thoughts are on that issue?

4 A: All right. My problem with that was when my attorney
5 originally questioned the State about DNA and ballistics,
6 there was a lot of things that he did not have, you know.
7 Fingerprints. Did they do any GSR kits, gun, gunpowder
8 residue, actually sending the gun off and doing the testings
9 on the gun?

10 Come to find out, multiple firearms was used in the
11 shooting. We had a doctor get on the stand and testify
12 saying, yeah, we recovered bullet fragments from the victim,
13 and then we had a leading detective come right behind him and
14 say we never got any of them.

15 So that right there, you failed to investigate DNA to
16 prove what the victim ever was hit with. You know what I
17 mean? Like, where's -- where's this coming from to prove that
18 I'm guilty for doing something when there ain't no evidence to
19 support it.

20 Q: Gotcha. All right. You were charged in this case with
21 two counts of attempted murder; is that right?

22 A: Yes, sir.

23 Q: What was your issue regarding one of those two counts?
24 You said you had some kind of problem with how he handled one
25 of those two counts of attempted murder?

DAMON RILEY - DIRECT BY MR. LIFSEY

- 1 A: Well, he failed -- he failed to object to the second
2 count of attempted murder, basically violating my
3 constitutional rights, not giving me the -- the full ability
4 to confront any accuser or witnesses against me, which would
5 be my Sixth Amendment, if I'm reading that right. So he never
6 objected to that. You know, he allowed them to basically
7 charge the jury with attempted murder for a victim that never
8 showed up.
- 9 Q: I was going to say, specifically what do you think he
10 should have done with it?
- 11 A: He should have objected to it, you know, due to the fact,
12 and tell them, you know, there's no one here basically for us
13 to confront, you know, and he's accusing my client and
14 basically we ain't never even talked to this guy, you know.
15 They took his word and they locked me up, and that was that.
- 16 Q: All right. I want to make sure I understand. The
17 State's theory in this case is that you were the shooter; is
18 that right?
- 19 A: Yes, sir.
- 20 Q: Is that what they argued in their opening and their
21 closing statements? That you were the shooter; correct?
- 22 A: Yeah. That's what the State was arguing.
- 23 Q: All right.
- 24 A: That I was the shooter.
- 25 Q: The State -- did the State at any point argue that

DAMON RILEY - DIRECT BY MR. LIFSEY

1 anybody else was shooting?

2 A: No, but they kind of, like, talked around multiple people
3 being involved, but they never arrested anybody else. So I
4 think that's where they kind of, like, painted this theory of
5 hands of one, hands of all, you know.

6 Q: Well, I was going to ask you about that. I mean, this --
7 wasn't the State's theory there were multiple people in the
8 car, but you were the only one shooting? Is that right?

9 A: Correct. When, they pulled the car over, it was me and
10 four occupants inside the vehicle. I was a passenger in the
11 vehicle. They found a firearm inside the vehicle.

12 Initially, they charged me with unlawful carrying of a
13 firearm, which was the firearm they found in the vehicle.
14 Later on, they dropped the charge. I didn't discover that
15 they dropped the charge until they found me guilty in court on
16 the attempted murder and possession of a firearm in the
17 commission of a violent crime, which I didn't understand how I
18 ended up back in trial the second time, and the first time I
19 was on trial for two counts of attempted murder and not a
20 pistol. No firearm was even charged to the jury, and the
21 second time I come back, I'm being charged with a firearm and
22 just --

23 Q: Gotcha. All right. What other complaints -- do you have
24 any other complaints you want to make about your lawyers and
25 how your -- how your lawyer's performance was?

DAMON RILEY - DIRECT BY MR. LIFSEY

1 A: I mean, honestly, he did not do a good job at all. Even
2 after me being sentenced and having to reach back out to him
3 trying to get files and stuff, he told me it was destroyed.
4 He went as far as taking pictures of something, pictures of, I
5 guess, supposed to be the files inside a box, sending it to
6 me, telling me I had to pay \$1,000 to get something that's
7 entitled to me that was supposedly destroyed.

8 I mean, he -- he really did not do anything in my favor,
9 and the outcome could have been way better if he would have at
10 least did a thorough investigation on my behalf to make sure
11 DNA and ballistics, objected to that second count of attempted
12 murder. You know, they gave me 30 additional years for
13 somebody I never got to confront.

14 Q: Anything else you wanted --

15 A: That's it.

16 Q: -- to tell me about this?

17 A: That's it.

18 Q: All right.

19 MR. LIFSEY: Please answer any questions the Attorney
20 General's Office has for you.

21 CROSS-EXAMINATION

22 BY MR. HALL:

23 Q: How are you doing, Mr. Riley?

24 A: I'm all right. How are you doing?

25 Q: Good. You said you met with Mr. Shelton one time?

DAMON RILEY - CROSS BY MR. HALL

1 A: Yes, sir.

2 Q: How long was that meeting?

3 A: Probably, like, a couple minutes. Maybe 5 minutes, 10

4 minutes.

5 Q: Okay. But you had gone to trial before, and it was a

6 mistrial; right?

7 A: Yes, sir.

8 Q: Okay. And so you discussed with your last attorney the

9 evidence the State had against you; right?

10 A: My last attorney as in Mr. Shelton or --

11 Q: Mr. Chisholm.

12 A: -- or Mr. Chisholm? Mr. Chisholm, I really didn't have

13 to discuss. You know, we kept a correspondence back and

14 forth, building a defense strategy throughout the whole

15 process of me being incarcerated, you know. So --

16 Q: Well, let me ask you this, Mr. Riley. So because you had

17 gone through trial before, you knew what evidence the State

18 had against you; right?

19 A: Right.

20 Q: Okay. Mr. Riley, do you know the victim in this case,

21 Kimberly Felder?

22 A: Yes, I do know the victim.

23 Q: Who is she?

24 A: The victim is my cousin.

25 Q: The victim is your cousin. And do you know the other

DAMON RILEY - CROSS BY MR. HALL

1 victim in this case, Carsheme Dinkins?

2 A: Yes, I do know Mr. Dinkins.

3 Q: Who is he?

4 A: He was actually married to my cousin.

5 Q: Okay. So your cousin and her husband were the victims?

6 A: Yes.

7 Q: Okay. And isn't it true that you pulled up next to your
8 cousin and her husband at a stoplight and shot into their car?

9 A: No, sir.

10 Q: Well, that's what your cousin testified to at trial?

11 A: Yeah. She testified that in both trials.

12 Q: Okay.

13 MR. HALL: I beg the Court's indulgence.

14 THE COURT: Yes, sir.

15 BY MR. HALL:

16 Q: Okay. Do you recall saying on the day that you were
17 arrested, when you -- you -- when you and other people that
18 were in the car were ordered out of the car, stating that your
19 name was Damon Riley and you know you had warrants and you
20 told the officers to just put you in the car?

21 A: No, I don't remember that.

22 Q: Okay. Well, that's what Officer Kramer testified to at
23 your trial. And isn't it true that the Glock 19 gun that was
24 used in this shooting was found on you the day that you were
25 arrested?

DAMON RILEY - CROSS BY MR. HALL

1 A: That is not true.

2 Q: Okay. Well, Officer Kramer testified that the Glock 19
3 gun and your ID were found in the place where you were seated
4 in the car, and that's at page 124 of the record on appeal.

5 And isn't it true that -- that Chad Smith, who is an
6 expert in firearms analysis, testified at your trial that all
7 13 nine-millimeter cartridges that were found at the scene
8 were determined to be fired by that same gun that was found
9 when you were arrested? Isn't that true?

10 A: No. He testified basically and stated, you know, the
11 firearm -- he -- he talked about the firearm. They recovered
12 20-something shell casings. I don't know about 13, but it was
13 20-something shell casings that were recovered. And he spoke
14 on the malfunctions of the gun when he went to test fire it,
15 and he also spoke about several different shell casings that
16 was not nine-millimeter bullets, .40 caliber, 10-millimeters,
17 45s as well. One gun, a lot of shell cases.

18 Q: Okay. So your cousin, who was the victim, did she
19 identify you at trial?

20 A: She identified me at trial.

21 Q: Okay.

22 A: She did.

23 Q: Okay. And she -- and she identified you as the shooter;
24 right?

25 A: Yes.

DAMON RILEY - CROSS BY MR. HALL

1 Q: Okay.

2 MR. HALL: No further --

3 A: She identified me as the shooter.

4 MR. HALL: No further questions, Your Honor.

5 THE COURT: Thank you.

6 MR. LIFSEY: I don't have anything further, Judge.

7 THE COURT: All right.

8 THE APPLICANT: Thank you.

9 MR. LIFSEY: I don't have any additional witnesses.

10 MR. HALL: The State calls Chad Shelton.

11 THE COURT: Come around and be sworn, please, Mr.
12 Shelton.

13 THE CLERK: Raise your right hand. State your full name
14 for the record.

15 THE WITNESS: Chad Daniel Shelton.

16 THE CLERK: Do you solemnly swear or affirm to tell the
17 truth, the whole truth, and nothing but the truth, so help you
18 God?

19 THE WITNESS: I do.

20 THE CLERK: You can have a seat.

21 CHAD SHELTON, being first duly
22 sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. HALL:

25 Q: How are you doing, Mr. Shelton?

CHAD SHELTON - DIRECT BY MR. HALL

1 A: Good. How are you?

2 Q: Good. Mr. Shelton, how long have you been practicing
3 law?

4 A: Sixteen-and-a-half years now.

5 Q: Okay. And how many of those years were devoted to
6 criminal law?

7 A: First nine and a half were in the Public Defender's
8 Office in Berkeley County. So that was the -- so for the
9 whole sixteen-and-a-half years. Since I went out in private
10 practice, I also do criminal law.

11 Q: Okay. And did you represent Mr. Damon Riley?

12 A: I did, yes.

13 Q: And can you tell us how you got involved in this case?

14 A: At that time, I was on the conflict list in Dorchester
15 County, the 608, and I was appointed to his case in December
16 of 2019.

17 Q: Okay. And how many times did you meet with Mr. Riley
18 during the course of your -- of your representation of him?

19 A: Excuse me. December of 2018. I'm sorry. I don't have
20 the exact number, but it had to have been at least close to
21 ten times, eight to ten times.

22 Right when I was appointed, it was a -- it was a
23 different case because it was a mistrial. And within the
24 first three months of being appointed, they were trying to put
25 the case back on the trial docket. So there was a lot of

CHAD SHELTON - DIRECT BY MR. HALL

1 prep. There was a lot of work that was going into the very
2 beginning, and we moved for continuances, but this was a trial
3 that happened within eight months of being appointed.

4 Q: But in those eight months, did you have time to meet with
5 Mr. -- Mr. Riley?

6 A: Definitely, yes.

7 Q: And did you request discovery materials from the State?

8 A: Yes.

9 Q: And did you receive those materials?

10 A: Yes.

11 Q: And are you aware of anything that was missing from that
12 discovery?

13 A: Nothing that I'm aware of.

14 Q: Okay. And did you review that discovery with Mr. Riley
15 during your meetings with him?

16 A: Yes.

17 Q: Can you tell us what evidence the State had against Mr.
18 Riley?

19 A: Essentially, he -- it -- his cousin was pointing out that
20 he was -- he shot at her and her husband at the time. And
21 then later on, Damon was found with a nine-millimeter at his
22 feet in the back seat of the car, and that nine-millimeter was
23 linked to shell casings found on the scene.

24 Q: Okay. And did you discuss that with Mr. Riley?

25 A: Yes.

CHAD SHELTON - DIRECT BY MR. HALL

1 Q: Did you discuss with him defenses to this -- to the
2 charge?

3 A: Yes. He'd actually been to trial already before, and
4 there was a mistrial. There was -- my understanding was one
5 holdout juror in that one, but I'm not a hundred percent sure.
6 So -- and he -- so he was -- he was confident that we could
7 win at trial based off that previous trial.

8 Q: Okay. And did he ask you to investigate anything
9 regarding this case?

10 A: Yes. He gave me some names and people to talk to
11 regarding the character of his cousin. I did obtain an
12 investigator. Before I got funds for an investigator, she did
13 reach out to his family and talked to people that he asked us
14 to. Nothing of too much value came from any of that
15 investigation that he had asked.

16 Q: Okay. Did you engage in plea negotiations with the
17 State?

18 A: There were discussions, but really, the amount of time
19 that they were asking for, in the 30-year range, and given
20 that Damon had already gone to trial and had a mistrial and
21 was pretty confident, he did not really want to discuss
22 anything as far as that time, a significant amount of time.

23 Q: Okay.

24 A: And I did talk to him about it or at least approached it
25 with him, but anything other than probation or getting out of

CHAD SHELTON - DIRECT BY MR. HALL

1 jail was not something that he was wanting to talk about.

2 Q: Okay. I want to talk a little bit about trial. Was the
3 State's theory that Mr. Riley was the shooter?

4 A: Yes.

5 Q: Okay.

6 MR. HALL: I beg the Court's indulgence.

7 BY MR. HALL:

8 Q: Do you recall at trial Detective Chris Hirsch testifying
9 to shell casings that were found at the scene?

10 A: I could be refreshed if I had the trial transcripts, but
11 I believe so.

12 Q: Yes.

13 A: Yes, sir.

14 MR. HALL: I beg the Court's indulgence.

15 BY MR. HALL:

16 A: By officers that first arrived on scene?

17 Q: Yes.

18 A: Yes.

19 Q: If I could direct your attention to page 141 of the
20 record on appeal? And we'll back -- we'll back up. We'll go
21 to page 138 of the record on appeal, beginning at line 12.

22 This is the testimony of Sergeant Wade Rawlings of the
23 Summerville PD, and we'll move to line 18. He was questioned
24 as far as the shell casings go.

25 Are there -- are these the same shell casings that you

CHAD SHELTON - DIRECT BY MR. HALL

1 collected in the early morning of June 5th, 2016? He
2 answered, yes, sir.

3 How do you know that? Because they have my packaging and
4 my handwriting on there.

5 And he was questioned have they been materially altered
6 in any way, and he testified, no, sir.

7 You did not object to that for chain of custody concerns.
8 Did you believe that there were chain of custody concerns --

9 A: No.

10 Q: -- based on that testimony?

11 A: No, I did not.

12 Q: Okay. And on the next page or at page 141, beginning at
13 line 1, he was questioned, look at 34, referring to State's
14 Exhibit 34. How do you recognize this?

15 Beginning at line 4, he answered, the actual label
16 originally placed on here is our case number. The item states
17 ammunition description. So it was submitted and transferred
18 into evidence. These are spent shell casings that were
19 actually sent to Charleston County to be entered into IBIS
20 system.

21 And -- and he was questioned are those the same ones that
22 you collected? He answered yes.

23 From this case? Yes, sir.

24 Have they been materially altered in any way? He
25 answered, no, sir.

CHAD SHELTON - DIRECT BY MR. HALL

1 And you did not object. Did you believe there was a
2 chain of custody concern regarding that exhibit?
3 A: No.
4 Q: Okay. And the State proceeded on a theory that Mr.
5 Riley was the shoot -- was the shooter, but I believe there
6 was -- was there a hands of one, hands of all charge given to
7 the jury?
8 A: Yes. There were -- there were multiple guns, potential
9 guns that were used in the shootings.
10 Q: Okay. And you did not object to that charge. Why didn't
11 you?
12 A: I -- I didn't object. I don't know why I didn't,
13 honestly. We had a charging conference and -- which would
14 have been off the record. I'm not sure if I just didn't put
15 my objection later on, but I did not object.
16 Q: Would that have made -- would an objection have made a
17 difference in this case?
18 A: Not as far as this case, no. The judge was going to
19 charge the hand of one, hand of all.
20 Q: Okay. And did Mr. Riley's cousin identify him as the
21 shooter at trial?
22 A: Yes.
23 Q: Okay. And she identified him as the shooter of both her
24 and her husband; correct?
25 A: Yeah, it was a drive-by. So there was multiple people

CHAD SHELTON - DIRECT BY MR. HALL

1 shooting, and, yes, he was -- he -- she saw him. She was able
2 to identify him directly. I obviously questioned that
3 credibility, but that's what she testified to.

4 Q: Okay. And at page 297 on the record on appeal, the judge
5 charged the jury on two counts of attempted murder, and you
6 did not object to that charge. Did you believe there was a
7 basis to object to that?

8 A: I think there would have been. Looking back through the
9 record, I wish I would have made more of an argument on one of
10 the attempted murders based off the one victim did not come
11 and testify about any of his injuries. So -- but based off
12 the evidence that was presented, I think that there was at
13 least enough for the jury to have heard that. I believe I
14 argued it in closing though. So . . .

15 Q: Okay. And did his cousin's testimony support the charge
16 for two counts of attempted murder?

17 A: Yes, it did.

18 Q: All right. He also alleges that you failed to request a
19 Logan charge for circumstantial evidence. Was this a
20 circumstantial evidence case?

21 A: I didn't see it as a circumstantial evidence case.

22 Q: Okay.

23 A: And there was direct testimony from the actual victim
24 regarding Mr. Riley being the shooter?

25 A: Correct.

CHAD SHELTON - DIRECT BY MR. HALL

1 Q: Okay.

2 MR. HALL: I beg the Court's indulgence.

3 BY MR. HALL:

4 Q: Was it necessary to investigate DNA evidence in this
5 case?

6 A: I don't believe there was any DNA that was presented.

7 Q: Okay.

8 A: I may be wrong.

9 Q: But do you think that that it was necessary to
10 investigate that based on the evidence the State had against
11 Mr. Riley?

12 A: No.

13 Q: Okay.

14 MR. HALL: No further questions, Your Honor.

15 Please answer any questions opposing counsel has.

16 MR. LIFSEY: May it please the Court, Your Honor?

17 THE COURT: Sure.

18 CROSS-EXAMINATION

19 BY MR. LIFSEY:

20 Q: Mr. Shelton, let me ask you just a couple of questions.

21 You indicated you had multiple meetings with him prior to the
22 trial?

23 A: Yes.

24 Q: Do you have documentation of what dates those were?

25 A: I don't have dates, but I have probably about -- I have

CHAD SHELTON - CROSS BY MR. LIFSEY

1 ten pages of notes, and the handwriting indicates at least
2 different dates. I also have a letter from Mr. Riley
3 indicating that he appreciated the very long meeting that we
4 had prior to trial.

5 Q: All right. Let me ask you about -- this was a retrial;
6 is that correct?

7 A: That's correct.

8 Q: Did you attempt to get the transcript from the first
9 trial and did you get it?

10 A: Yes, I did.

11 Q: Did you share that with your client?

12 A: We went over it. So just based off being able to make
13 copies of it, I didn't feel I was able to make copies of it.

14 Q: So --

15 A: The rules.

16 Q: -- just to verify, you did not give him a physical copy
17 of his transcript?

18 A: Not that I remember.

19 Q: How about the discovery in the case? Did you give him a
20 physical copy of the discovery?

21 A: Yes, I did.

22 Q: Let me ask you about -- the State's theory in this whole
23 case was that my client -- our client -- your client and my
24 client --

25 A: Yes.

CHAD SHELTON - CROSS BY MR. LIFSEY

- 1 Q: -- shot the two victims in this case; is that right?
- 2 A: That's correct.
- 3 Q: That there was a car that was being driven by other
- 4 people as part of their theory; is that right?
- 5 A: That's correct.
- 6 Q: But that he was the only one to have shot; correct?
- 7 A: I don't remember that --
- 8 Q: Well, let me ask you --
- 9 A: -- that he was the only one to shoot.
- 10 Q: Let me ask you this. Did not the victim -- the victim
- 11 that appeared -- obviously, there were two victims, but the
- 12 victim that appeared and testified identified him as the
- 13 shooter; is that correct?
- 14 A: She only identified him as the shooter.
- 15 Q: Correct.
- 16 A: Yeah.
- 17 Q: And basically, the State's case was, if I understand it,
- 18 in summary was eyewitness says he shot me, and a gun in close
- 19 proximity has some degree of matching to it. Is that the
- 20 basic State's case?
- 21 A: Correct, yes.
- 22 Q: So -- and he was tried by himself; correct?
- 23 A: Correct.
- 24 Q: All right. So I'm trying to figure out why it would have
- 25 been appropriate for the judge to charge the hand of one is

CHAD SHELTON - CROSS BY MR. LIFSEY

1 the hand of all. Do you -- do you have any theories? I'm not
2 --
3 A: My -- my only --
4 Q: I'm only asking about it.
5 A: My only theory is that he -- that the victim saw his face
6 and so knew that he was involved in it, whether he was the one
7 actually shooting or not. He was also found where the gun was
8 found. It was a -- he was in the back seat when there was
9 multiple people there. So I was calling into question whether
10 the other people could have thrown the gun down when he got
11 pulled out by the police. So just that type of credibility.
12 Q: Let me ask you this, and I'm not asking you if you
13 remember in great detail, but in general, do you remember the
14 solicitor, either in his opening statement or in his closing
15 argument, making any allegation that anyone had ever shot
16 besides your client?
17 A: I don't believe so.
18 Q: And you mentioned in your direct examination testimony
19 that if you had to do it over again, you would have made more
20 -- made a more thorough directed verdict motion in regards to
21 the second attempted murder for the victim that did not
22 appear; is that right?
23 A: That's correct.
24 Q: And what would that have been based on? Basically, that
25 the absence of any real testimony as to the extent of

CHAD SHELTON - CROSS BY MR. LIFSEY

1 injuries? Is that it?

2 A: Correct. Yeah. There was -- there was no -- there was
3 practically -- the -- we weren't able to cross-examine the
4 person that was making the allegations of the attempted murder
5 because he didn't appear. The State didn't produce that.
6 There was no medical evidence as far as there was no testimony
7 from any doctors or anything saying what that person's
8 injuries were. And so, looking back on it, I wish I would
9 have made more of a directed verdict.

10 MR. LIFSEY: Can I have just one second, Judge?

11 I don't have any further questions.

12 MR. HALL: Just briefly, Your Honor, redirect.

13 REDIRECT EXAMINATION

14 BY MR. HALL:

15 Q: Mr. -- Mr. Shelton, you made a motion for a directed
16 verdict?

17 A: Yes, sir.

18 Q: Did you make a motion for a directed verdict?

19 A: Yes.

20 Q: And what was the trial judge's ruling on that motion?

21 A: She denied that.

22 Q: Okay.

23 A: That's correct.

24 Q: And that motion -- so do you think -- based on her denial
25 of that motion, do you think that an objection to two counts

CHAD SHELTON - REDIRECT BY MR. HALL

1 of attempted murder would have been successful?

2 A: Most likely not, no.

3 Q: Okay. And regarding the hands of one charge, do you
4 think if you had objected to that charge, the outcome of this
5 -- how do you think the outcome of this case would have been?

6 A: As far as appeals or as far as like --

7 Q: As far as outcome.

8 A: That would have -- it would have been charged, the hand
9 of one, hand of all.

10 Q: I'm sorry. Let me rephrase. If you had objected to the
11 hands of one, hands of all charge, do you think that would
12 have changed the outcome of this case based on the evidence
13 that was presented at trial?

14 A: And it was granted?

15 Q: And it was -- and it was sustained.

16 A: Then I don't know.

17 Q: But there was evidence that -- that Mr. Riley -- direct
18 testimony that Mr. Riley was the shooter.

19 MR. LIFSEY: I think that's argumentative, and I object
20 to that question.

21 THE COURT: I couldn't hear you.

22 MR. LIFSEY: I don't think it -- first of all -- and
23 maybe I cut you off, and I apologize if I did. I don't think
24 that was really a question. I think that was more of an
25 argument in response, but perhaps if the attorney general

CHAD SHELTON - REDIRECT BY MR. HALL

1 would just rephrase that.

2 MR. HALL: I'll rephrase it. That's fine.

3 THE COURT: Okay.

4 MR. LIFSEY: All right.

5 MR. LIFSEY: And I'm sorry if I jumped the gun a minute.

6 MR. HALL: No. You're good. I'll rephrase.

7 BY MR. HALL:

8 Q: Let me ask you this. Do you think -- if you had objected
9 to the hands of one, hands of all charge, do you think that
10 objection would have been sustained by the trial judge?

11 A: I -- I don't -- no, I don't.

12 Q: Okay.

13 MR. HALL: No further questions, Your Honor.

14 MR. LIFSEY: I don't have anything further, Judge.

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

16 THE WITNESS: Thank you.

17 MR. HALL: No further witnesses from the State, Your
18 Honor. We would just ask briefly for a moment for closing
19 arguments, and we'll allow Mr. Lifsey to go first, since they
20 have the burden.

21 THE COURT: If you so desire.

22 MR. LIFSEY: Thank you, Judge, just very briefly.
23 Obviously, a lot of these are credibility issues, and you're a
24 finder of fact and you have to make those decisions as to
25 credibility.

1 I would -- the one -- the one issue that I would speak of
2 very briefly and ask the Court to consider in light of the
3 entirety of the record is whether or not a hand of one, hand
4 of all charge is appropriate in this case. And in your
5 analysis of whether it was or was not, which we argue it was
6 not, I would ask the Court to review both the opening by the
7 State and the closing by the State. In fact, review openings
8 and closings of both parties.

9 Throughout the course of this trial, there is -- there
10 was no contention that anyone else shot beyond my client.
11 There is testimony that other people drove him, and if those
12 other people had been tried with him in some sort of either
13 accessory or as a principal under the -- under accomplice
14 liability, I think a hand of one, hand of charge -- hand of
15 one is the hand of all charge would have been appropriate.

16 But in this case, the State says roughly -- though I
17 trust you to review everything, but roughly, we've got an
18 eyewitness that says he shot him. He shot her. Shot them,
19 and we've got the gun that he shot with.

20 So it doesn't seem to me that a hand of one, hand of all
21 is appropriate, and it is our argument that it would have been
22 confusing to the jury and allowed them to assess blame to him
23 if they, for example, had believed that he was just in the car
24 and that she had misidentified someone.

25 So that -- I'd like you to consider that when you -- when

1 you ultimately decide how to rule in this case. Thank you,
2 Judge.

3 THE COURT: All right.

4 MR. HALL: Judge, you heard the testimony of counsel. As
5 opposing counsel mentioned, this will come down to your
6 findings regarding credibility.

7 Regarding the one issue of hand of one, hand of all,
8 counsel testified that he didn't believe an objection to that
9 charge would have been successful. The standard there is
10 whether the appellate courts, if he had made the objection,
11 would have affirmed.

12 Regardless of counsel's decision not to object there, Mr.
13 Riley can't prove prejudice. There was direct testimony from
14 a reliable witness here who was the defendant's own cousin,
15 who saw him at close proximity shoot at her and her husband,
16 and that testimony alone was direct testimony of Mr. Riley
17 being the shooter in this case.

18 And so, regardless of the hands of one, hands of all
19 charge, there is no prejudice here because he was identified
20 as the shooter, and that same victim testified at trial. And
21 so, regardless of whether counsel should or shouldn't have
22 objected to that charge, there's -- Mr. Riley can't prove
23 prejudice. He can't prove that if counsel had objected to
24 that charge, not only would that objection have been
25 successful, but that it would have changed the outcome in this

1 case.

2 And we ask that you deny Mr. Riley's application.

3 THE COURT: All right. I'll take a look at those
4 transcripts. I'll have my law clerk get in touch with you
5 about any further response we may need from you or any
6 documents.

7 MR. HALL: Thank you, Your Honor.

8 MR. LIFSEY: Thank you, Your Honor.

9 (WHEREUPON, the proceedings ended at 10:25 a.m.)

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11 --- END REQUESTED TRANSCRIPT ---

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STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

Damon Riley, SCDC #381176,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Case No. 2022-CP-18-00712

ORDER OF DISMISSAL

CERTIFIED COPY

FILED
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CLERK OF COURT

This matter is before the Court pursuant to an application for post-conviction relief (“PCR”) filed by Damon Riley (“Applicant”) on April 29, 2022. On February 8, 2024, an evidentiary hearing convened before the Honorable Paul M. Burch. Applicant was present and represented by Michael H. Lifsey, Esquire. Assistant Attorney General Bryan T. Hall represented Respondent. At the hearing, Applicant testified on his own behalf. Respondent called as a witness Chad D. Shelton, Esquire (“Counsel”). Following a thorough review of the trial transcript and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant did not meet his burden of proof. Thus, this Court denies relief and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections (“SCDC”) serving a thirty (30) year sentence. In November 2016, the Dorchester County Grand Jury indicted Applicant for two counts of attempted murder (2016-GS-18-1105; -1106) and possession of a weapon during the commission of a violent crime (2016-GS-18-1107). The indictment arose from an incident in which Applicant shot his cousin and her husband at a traffic light. On August 19-21, 2019, Applicant proceeded to a jury trial before the Honorable Maite Murphy. Assistant Solicitor Michael Spears prosecuted the case, and Applicant was represented by Chad D. Shelton,

Esq. ("Counsel"). Applicant was convicted as indicted. Judge Murphy sentenced Applicant to thirty (30) years for each count of the attempted murder, ordered to be served consecutively to each other and concurrent to a five (5) year sentence for possession of a weapon during the commission of a violent crime. On October 7, 2019, Judge Murphy denied Applicant's motion to reconsider the sentence.

On October 24, 2019, a notice of appeal was filed on Applicant's behalf. Applicant was represented on appeal by Appellate Defender Joanna K. Delany, who raised the following issue:

Whether the court erred, in Appellant's trial for attempted murder and possession of a weapon during the commission of a violent crime, where it admitted video footage and photographs of Appellant posing with a gun in a moving car in violation of § 16-23-20, since the prior bad act evidence should have been excluded pursuant to Rules 404 and 403, SCORE?

On April 6, 2022, following briefing and without oral argument, the South Carolina Court of Appeals affirmed Applicant's convictions and sentences, determining the trial court properly found the evidence was offered to show identity and the danger of unfair prejudice did not outweigh the probative value of the evidence. *State v. Riley*, 2022-UP-165 (S.C. Ct. App. filed April 6, 2022). The Remittitur was sent on April 25, 2022.

CURRENT APPLICATION

Applicant timely commenced this PCR action on April 29, 2022, alleging he is being held in custody unlawfully for the following reasons:

Ineffective Assistance of Counsel

- a. Failure to investigate the chain of custody for bullet fragments Detective Hirsch found at the crime scene.
- b. Failure to request Rule 5 and *Brady* material.
- c. Failure to adequately prepare for trial.
- d. Failure to object to the jury being charged on two (2) counts of attempted murder.

Respondent filed a return. Applicant, through counsel, amended his application to add the following allegations:

Ineffective Assistance of Counsel

- e. Failure to meet a sufficient number of times to be adequately prepared to try the case.
- f. Failure to share with Applicant a copy of Rule 5 material received from the State.
- g. Failure to object to and argue effectively against the second (2nd) count of attempted murder in which the alleged victim failed to testify.
- h. Failure to object to the trial judge charging the jury on the “hand of one, hand of all” when the State proceeded on a theory that Applicant was the shooter.
- i. Failing to request a jury charge on circumstantial evidence in conformity with *State v. Logan*.

Before this Court are the Dorchester County Clerk of Court records of the subject conviction; Applicant’s records from SCDC; the appellate records; the trial transcript; and the records of the current PCR action.

TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

At the evidentiary hearing, Applicant testified he was initially represented by Ashley D. Chisolm (“Chisolm”), Esquire, of the Public Defender’s Office. Applicant testified he proceeded with Chisolm to a jury trial that resulted in a mistrial. After which, Applicant moved to relieve Chisolm, and Chad Shelton (“Counsel”) was then appointed. Applicant testified he met with Counsel once at the courthouse. Applicant testified Counsel did not discuss with Applicant the elements of the offenses and did not provide Applicant with a copy of Rule 5 materials and transcript from his first trial. Applicant testified he wanted Counsel to get a copy of the transcript but the court reporter either retired or quit. Applicant testified Counsel questioned him about what happened at Applicant’s first trial.

Applicant averred there were lots of issues with investigations in the case such as no gunshot residue, fingerprints, or gun tests. Applicant testified he believed there was no evidence to support the charges and averred Counsel should have objected to the second count of attempted murder since the victim did not testify at trial. Applicant averred Counsel should have objected to the “hand of one, hand of all” charge since the State argued Applicant was the shooter. Applicant

testified he believed Counsel did not do a good job representing him. On cross-examination, Applicant testified he knew of the State's evidence from his prior mistrial. Applicant also testified he knew the victims in this case: his cousin and her husband.

Counsel testified he was appointed to represent Applicant after a conflict arose between Applicant and his previous attorney. Counsel testified he met with Applicant eight (8) to ten (10) times prior to trial. Counsel testified he requested and received discovery materials from the State and reviewed those materials with Applicant. Counsel testified the State's evidence included testimony from the victim who identified Applicant as her cousin and the shooter, and law enforcement found a .9mm gun in a car with Applicant that matched the shell casings found at the crime scene. Counsel testified he discussed trial defenses with Applicant. Regarding investigations, Counsel testified Applicant gave witness names regarding the character of the victim, and an investigator did not find any helpful information after speaking to the witnesses. Counsel testified he did not investigate DNA evidence because there was no reason to investigate DNA evidence in Applicant's case as there was no DNA evidence presented at trial. Counsel testified he discussed a plea offer with a thirty (30) year range, but Applicant was uninterested in a plea.

Counsel testified he did not object to testimony on shell casings because Counsel did not believe there were any concerns regarding chain of custody. Counsel testified he did not know why he did not object to the "hands of one, hands of all" charge but believed it was unlikely an objection would have made a difference. Counsel testified he wishes he would have made more of an argument on the second count of attempted murder but believed the victim's testimony was sufficient for the second count to reach the jury. Counsel further testified it was unlikely an objection would have been successful if he had argument more on the second attempted murder

charge. Regarding the *Logan* charge, Counsel testified he did not request a *Logan* charge because Applicant's case was not a circumstantial evidence case.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the trial transcript in its entirety and has heard the testimony at the PCR hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony. After a careful review based on the *Strickland* standard set forth below, this Court finds Applicant has failed to carry his burden of proof. Below are this Court's findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

Ineffective Assistance of Counsel

In a PCR action, an applicant bears the burden of proving the allegations. Rule 71.1(e), SCRPC; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). An applicant alleging ineffective assistance of counsel must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. at 441, 334 S.E.2d at 813. "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). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Butler*, 286 S.C. at 441, 334 S.E.2d at 813. An applicant must overcome this presumption to receive relief. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989).

To establish ineffective assistance of counsel, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness (i.e. deficient performance) and

(2) the applicant sustained prejudice as a result of counsel's deficient performance. *Strickland*, 466 U.S. at 687–88; *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625. Applicant must prove prejudice by showing “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.

Failure to Investigate

This Court finds Applicant failed to prove counsel was ineffective for failing to investigate the case, DNA and ballistics evidence, and shell casings. A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State. *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). While the scope of a reasonable investigation depends on a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case. *Ard v. Catoe*, 372 S.C. 318, 331–32, 642 S.E.2d 590, 597 (2007). Counsel's duty to investigate is limited to reasonable investigations. *Id.*, 372 S.C. at 331, 642 S.E.2d at 597.

This Court finds Counsel conducted reasonable investigations in accordance with prevailing professional norms. This Court finds **credible** Counsel's testimony that he did not believe investigations into DNA evidence were necessary. This Court finds **credible** Counsel's testimony that an investigator interviewed the witnesses Applicant provided, and such investigations proved unhelpful to Applicant's case. Further, this Court finds Applicant failed to prove he was prejudiced by failing to present evidence of information Counsel could have discovered that would have resulted in a different outcome. Thus, Applicant has failed to meet his

burden.

Failure to Spend Adequate Time and Adequately Prepare for Trial

This Court finds Applicant failed to prove Counsel was ineffective for failing to spend adequate time on the case and failing to adequately prepare for trial. “[B]revity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation.” *Smith v. State*, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (2012). Applicant must prove prejudice by showing evidence of how additional preparation or communication would have resulted in a different outcome. *Id.*; see *Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (applicant failed to show counsel was ineffective 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).

This Court finds Counsel’s preparation was sufficient in accordance with prevailing professional norms. This Court finds **credible** Counsel’s testimony that met with Applicant a number of times prior to trial. This Court finds **credible** Counsel’s testimony that he reviewed discovery materials with Applicant and discussed trial defenses. Further, this Court finds Applicant failed to prove prejudice by presenting evidence of what Counsel could have discovered or what defenses could have been developed had Counsel prepared more. Thus, Applicant failed to meet his burden.

Failure to Request and Share Rule 5 and Brady Materials

This Court finds Applicant failed to prove Counsel was ineffective for failing to request and share with Applicant Rule 5, SCRCrimP, and *Brady*¹ materials. This Court finds **credible** Counsel’s testimony that he requested and received Rule 5 and *Brady* materials from the State.

¹ *Brady v. Maryland*, 373 U.S. 83 (1963).

This Court also finds **credible** Counsel's testimony that he reviewed those materials with Applicant. Thus, Applicant has failed to meet his burden.

Failure to Object to Testimony Regarding Shell Casings

This Court finds Applicant failed to prove Counsel was ineffective for failing to investigate and object to shell casings Detective Hirsch, and other officers, found at the crime scene. At trial, Det. Hirsch testified that he was briefed on the situation and shown where some of the shell casings were found. (R. 98). At trial, Sergeant Wade Rollings testified that the shell casings he collected from the crime scene were the same ones presented to him by the State, and the package containing the shell casings was not materially altered in any way. (R. 138-39; 141). This Court finds **credible** Counsel's testimony that he did not object to the testimony because he did not have any concerns regarding chain of custody for the shell casings. Further, this Court finds Applicant failed to prove he was prejudiced by showing a reasonable probability the result of trial would have been different but for Counsel's failure to investigate and object to the shell casings for chain of custody concerns. Thus, Applicant failed to meet his burden.

Failure to Object to the Jury Charge on Two (2) Counts of Attempted Murder

This Court finds Applicant failed to prove Counsel was ineffective for failing to object to the trial judge charging the jury on two (2) counts of attempted murder. Failing to object does not automatically constitute ineffective assistance of counsel. *See Millidge v. State*, 422 S.C. 366, 374, 811 S.E.2d 769, 800-01 (2018) (stating an applicant must prove both deficiency and prejudice to establish ineffective assistance of counsel for failing to object). The proper inquiring for determining prejudice is whether there is evidence in the record to support the trial court's finding, such that "an appellate court would necessarily have affirmed the trial court's ruling." *See id.* at 380, 811 S.E.2d at 800.

At trial, Kimberlee Felder (“Felder” or “the victim”), Applicant’s cousin, testified she saw Applicant pull up to her car at a traffic light and shoot at her and her husband, Carsheme Dinkins (“Dinkins”). (R. 61-63). Felder testified that she was shot in the face. (R. 64). Officer Kevin Dutrieux, who responded to the medical center after the shooting, testified that he observed Dinkins had been shot in the arm. (R. 92). The trial judge charged the jury on two counts of attempted murder. (R. 297).

This Court finds **credible** Counsel’s testimony that testimony presented at trial was sufficient to permit the trial judge to charge the jury on two (2) counts. This Court finds **credible** Counsel’s testimony that although he wished he had argued against the second count of attempted murder more, it is unlikely the objection would have been successful. Further, this Court finds Applicant failed to prove he was prejudiced by Counsel’s failure to object because there is evidence in the record to support a charge on two (2) counts of attempted murder, such that an appellate court would have affirmed the trial court’s ruling. *Cole*, 338 S.C. at 101, 525 S.E.2d at 512 (“the law to be charged must be determined from the evidence presented at trial”). Thus, Applicant failed to meet his burden.

Failure to Object to the Trial Judge’s “Hand of One, Hand of All” Charge

This Court finds Applicant failed to prove he was prejudiced by Counsel’s failure to object to the trial judge’s jury charge on the “hands of one, hands of all” theory of accomplice liability. This Court finds **credible** Counsel’s testimony that although he did not know why he did not object to the “hands of one, hands of all charge,” it is unlikely an objection would have made a difference in the case since the victim identified Applicant as the shooter. This Court finds Applicant failed to prove he was prejudiced by showing a reasonable probability the result of trial would have been different but for Counsel’s failure to object. Thus, Applicant failed to meet his burden.

Failure to Request a Logan Charge on Circumstantial Evidence

This Court finds Applicant failed to prove Counsel was ineffective for failing to request a jury charge in conformity with *State v. Logan*, 405 S.C. 83, 747 S.E.2d 444 (2013). In *Logan*, the Supreme Court held that criminal defendants *may* request the trial court to charge the jury that “to the extent the State relies on circumstantial evidence, all of the circumstances must be consistent with each other, and when taken together, must point conclusively to the guilt of the accused beyond a reasonable doubt.” *Id.* 405 S.C. at 99, 747 S.E.2d at 452 (emphasis added). The Court stated while its holding does not prevent the trial court from issuing a circumstantial evidence charge pursuant to *State v. Grippon*, 327 S.C. 79, 489 S.E.2d 462 (1997), a trial court could not prevent a defendant from requesting the *Logan* circumstantial evidence charge if he chose to do so. *Logan*, 405 S.C. at 99-00; 747 S.E.2d at 452-53.

In Applicant’s trial, Counsel did not request a *Logan* charge, and the trial judge charged the jury on circumstantial evidence as follows:

Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. The law makes absolutely no distinction between the weight, or value given to either direct or circumstantial evidence, nor is a greater degree of certainty required of circumstantial evidence than direct evidence.

You should weigh all of the evidence in this case. After weighing all of the evidence, if you’re not convinced of the guilt of the Defendant beyond a reasonable doubt, you must find the Defendant not guilty.

(R. 300). This Court finds **credible** Counsel’s testimony that he did not request a *Logan* charge because Applicant’s case was not a circumstantial evidence case. This Court also finds the State did not have to rely on circumstantial evidence because there was direct evidence presented through the testimony of the victim. (R. 61-63). Further, this Court finds Applicant failed to prove he was prejudiced by Counsel’s failure to request a *Logan* charge because the trial court’s circumstantial evidence charge conforms to *Grippon*. *Grippon*, 327 S.C. 79, 489 S.E.2d 462

(holding while direct and circumstantial evidence carry the same value, a jury cannot accurately analyze the two types of evidence the same; circumstantial evidence requires the jurors to connect the collateral facts to prove defendant's guilt beyond a reasonable doubt). Thus, Applicant failed to meet his burden.

CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice.

Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty (30) days of receipt by counsel of written notice of entry of judgment. *See* Rule 203, SCACR. Applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Rule 71.1(g), SCRCR. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and
2. Applicant must be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED THIS 21st day of April, 2024.

Proctor, South Carolina

Paul M. Burch
PAUL M. BURCH
Presiding Judge
First Judicial Circuit