

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Colleton County

Honorable J. Derham Cole, Circuit Court Judge

KELVIN GANTT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-001339

APPENDIX

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STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF COLLETON

2017-GS-15-0699

2017-GS-15-0700

State of South Carolina)

) TRANSCRIPT OF RECORD

-vs-

)

) June 17, 2019-Volume 1 of 3

Kelvin Gant

)

) Colleton County, South

) Carolina

B E F O R E:

The Honorable Steven H. John, Judge

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

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Reported By:

Rebecca Hill

Transcribed By:

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

Jury No.	Name	Race	Gender	Jury No.
196	Taylor Varn	W	F	1
155	Kristina Pye	W	F	Def. Strike
93	Joshua Herndon	W	M	Def. Strike
156	Tracie Ramsey	W	F	2
128	Michelle Martin	W	F	3
129	Stephen Mauncy	W	M	Def. Strike
175	Kendell Simmons	B	M	4
144	Dahquan Pearce	B	M	5
32	Andrew Chase	W	M	6
53	Penny Dubois	B	F	Def. Strike
18	Robert Benton, Jr.	W	M	Def. Strike
184	Debra Stevenson	W	F	Def. Strike
120	Jacob Loiselle	W	M	7
159	John Reed	B	M	8
66	Joseph Frazier	B	M	9
152	Sarah Pratz	W	F	10
15	Mary Behling	B	F	Def. Strike
190	Sharon Thorson	W	F	11

1	123	Connie Lyons	W	F	12
2	183	Paula Stephens	B	F	Def. Strike
3	198	Jason Walling	W	M	Alt. No. 1
4	89	Diresert Haynes	B	F	Alt. No. 2
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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
S-1	Photograph	40	
S-2	Photograph	40	
S-3	Photograph	40	

1 THE COURT: Let me talk about two things
2 very briefly. One of them is the use of cell phones.
3 There's an order from the chief justice in the state
4 of South Carolina that prohibits the use of any cell
5 phone or communication device, and I say communication
6 device because some people are using their watch that
7 has a communication device now, from using them in any
8 courtroom in the state of South Carolina.

9 If you are actually on a jury -- if you are
10 on a jury on a specific case, you will not be allowed
11 to have that cell phone or communication device on your
12 person. You can choose not to bring it to the
13 courthouse. If you do, you will surrender it to the
14 bailiff that controls your jury room. They will lock
15 it up. They will give it to you at lunch and when you
16 go home for the evening.

17 Besides the order of the chief justice,
18 the other reason is, as a juror, you must make your
19 decision solely and completely on the facts and evidence
20 you hear in the courtroom and from no other source.
21 You are not researching; you are not investigating;
22 you are not to look up anything; you are not to instant
23 message your best friend and ask them what they think.
24 It will be the jurors hearing the evidence on that case
25 in the courtroom making that decision.

1 The other thing is the use of your time.
2 I understand you have lives outside of this courthouse.
3 You will not be here unless it is absolutely necessary
4 for the operation of the court, that is picking a jury,
5 or to actually be on a jury. Other than that, you will
6 be excused to go back to your regular activities.

7 Now to facilitate that, the clerk of court
8 has a call back system. They gave you that phone number
9 and will utilize that if you are on a jury. If you are
10 on a jury on a particular case, I will tell you when to
11 come, when to report, that sort of thing.

12 But if you are not on that case, and we
13 generally excuse you, we will tell you to call back
14 after a certain time, like tonight after six or tomorrow
15 after 12 noon, some time of day to call back. You call
16 back that number, you listen to the recorded
17 instructions, you follow them, and you either call back
18 again, or you report at the time indicated on the
19 recording.

20 Now when we ask for you to come back, if you
21 encounter any kind of difficulty in getting back to the
22 courthouse, your car has some kind of mechanical
23 breakdown, or whatever the situation is, please call
24 the main number of the clerk's office. Don't call that
25 recording, you are not talking to anybody. Call the

1 main number of the clerk's office. Speak to someone.
2 Tell them who you are, that you are a juror, what your
3 problem is, when you expect to arrive back at the
4 courthouse.

5 Because if we ask for you to come back
6 and you don't show up, then I am going to have to ask
7 one of the fine deputies from the Colleton County
8 Sheriff's Office to go out and find you and bring you
9 in. I don't want to do that, but I will do that.
10 So please if you have a problem communicate with us.

11 All right, let's go over the general
12 qualification questions. Hopefully, they will be
13 self-explanatory, or I will sufficiently explain those
14 to you. If you need to respond to the question, answer
15 the question, I will need for you to stand up and give
16 us your name and your juror number.

17 Is there any member of the jury panel who's
18 not 18 years of age? Any member of the jury panel who's
19 not a citizen of the United States of America? Any
20 member of the jury panel who's not a resident of
21 Colleton County?

22 The next question has three parts. If you
23 have one of the item, you are qualified to be a juror.
24 At the end of the question, if for some reason you don't
25 even have one of them, then I will ask that you stand

1 and identify yourself.

2 Is there any member of the jury panel who's
3 not a qualified elector? That is, are you registered
4 to vote? If they had an election in Colleton County
5 today, could you vote, or do you have a South Carolina
6 driver's license, or do you have an identification card
7 issued by the state of South Carolina? If you have one
8 of them, you are qualified. If you don't even have one
9 of them, please stand. Yes, ma'am, your name and juror
10 number, please.

11 THE JUROR: Chelsea Halyard-Mack, 79.

12 THE COURT: Seventy-nine, okay. All right.
13 You are not registered to vote?

14 THE JUROR: In Tennessee. I am a Tennessee
15 resident now.

16 THE COURT: Okay. What's on your driver's
17 license?

18 THE JUROR: Sir?

19 THE COURT: What's on your driver's license?

20 THE JUROR: Tennessee.

21 THE COURT: All right. When did you move
22 to Tennessee?

23 THE JUROR: About a year ago.

24 THE COURT: All right. Do you have your
25 license with you?

1 THE JUROR: No, it's in the car.

2 THE COURT: In the car, okay.

3 THE JUROR: The car is not here.

4 THE COURT: Okay, I am going to excuse
5 you to go get that. You are going to come back, and you
6 are going to show it to the clerk of court, showing you
7 are a resident of the state of Tennessee, and with that,
8 you will be excused. Thank you, ma'am.

9 THE JUROR: All right. Thank you.

10 THE COURT: Anyone else? Is there any
11 member of the jury panel who is a commissioned law
12 enforcement officer with the powers of arrest, meaning
13 you are employed by some city, state, county, federal
14 agency with the powers of arrest? Any member of the
15 jury panel who's currently a prison guard in the state
16 or the federal system? All right.

17 Next four questions. I'm going to ask those
18 four questions together. At the end of those four
19 questions, if any one of those four questions pertains
20 to you, then I will ask that you stand and identify
21 yourself.

22 Is there any member of the jury panel who
23 has less than a sixth grade education or its equivalent?
24 If you are currently employed, or employed for some
25 period of time, most likely I'm going to find it to

1 be equivalent.

2 Is there any member of the jury panel who
3 is unable to read, write, speak or understand the
4 English language? Any member of the jury panel who
5 has been convicted or pled guilty in a state or federal
6 court of a crime punishable by imprisonment for more
7 than one year, and your civil rights have not been
8 restored by pardon or amnesty? It does not mean you
9 have to have served a year in jail, that was the
10 possible punishment. You could have gotten probation
11 or some other kind of alternative sentence.

12 Is there any member of the jury panel who
13 is not able, by reason of a physical or mental
14 infirmity, to render efficient jury service? Now our
15 legislature has determined that this excuse needs to be
16 in writing, needs to be authored or written by a medical
17 doctor, a medical professional, stating what your
18 problem is and why you cannot render efficient jury
19 service. If anyone needs to answer any of those four
20 questions, please stand at this time.

21 Solicitor, do you have any information you
22 need to bring to the Court's attention at this time?

23 MR. UTSEY: Yes, Your Honor. May I
24 approach?

25 THE COURT: Yes, sir. Jury No. 104,

1 could you come forward, please. That's Regina Jenkins.
2 Could you come forward, please, just come right over
3 here. Ms. Jenkins, stand right there. You just have
4 to keep your voice low. Tell me your birthday.

5 THE JUROR: [REDACTED].

6 THE COURT: Okay. And your Social Security
7 Number.

8 THE JUROR: [REDACTED].

9 THE COURT: Okay. So, Ms. Jenkins, this
10 would have been in 2009, here in Colleton County.
11 It was a breach of trust. So that would disqualify you
12 from jury service. Just give your badge to the deputy,
13 and you're excused. Just give it to the deputy.

14 THE JUROR: Okay.

15 THE COURT: You're excused. Thank you,
16 ma'am. No. 104 is excused. No. 177, Mr. Clyde Smalls,
17 177, Clyde Smalls. You just stand right next to the
18 court reporter, come over here next to the court
19 reporter. Mr. Smalls, could you tell me your birthday,
20 please.

21 THE JUROR: [REDACTED] [REDACTED].

22 THE COURT: And your Social Security Number.

23 THE JUROR: [REDACTED].

24 THE COURT: Okay. This would have been
25 in 1998 in Atlantic Beach. Were you convicted of that,

1 in 1998, Atlantic Beach?

2 THE JUROR: I was -- but I was picked up,
3 but I was not -- didn't serve any time.

4 THE COURT: Okay. It does show that you
5 served, that you had a sentence, but it was suspended
6 to probation. But the sentence that you could have
7 gotten was more than one year, so that will disqualify
8 you. I know you didn't serve, okay.

9 THE JUROR: Okay.

10 THE COURT: So you are excused. You just
11 give your badge to the deputy, okay. Thank you, sir.
12 All right. Jury No. 184, Debra Stevenson. All right,
13 Ms. Stevenson, I'm going to start off by saying this may
14 or may not be you. If you can tell me your birthday,
15 please.

16 THE JUROR: [REDACTED].

17 THE COURT: All right. And how about your
18 Social Security Number.

19 THE JUROR: [REDACTED].

20 THE COURT: It's not you. Thank you very
21 much. Thank you, ma'am.

22 MR. UTSEY: Thank you, Your Honor.

23 THE COURT: All right, ladies and gentlemen,
24 we are going to go over certain exemptions that our
25 state legislature has set forth. These are particular

1 to the juror. If you wish to be excused, you will need
2 to claim the exemption. Is there any member of the jury
3 panel who is more than 65 years of age, and you do not
4 wish to serve? If so, please stand.

5 Is there any member of the jury panel who
6 has served as a juror in circuit court in the past three
7 years? That means you had come to the courthouse here
8 and gone through the same process within the past three
9 years, if so please stand.

10 Is there any member of the jury panel who
11 has served as a juror on the Colleton County grand jury
12 within the past five years? If you wonder what the
13 difference is, if you get on the grand jury, you serve
14 one day a month for the entirety of a year.

15 Is there any member of the jury panel who
16 has a child under the age of seven for whom you have the
17 legal custody and the duty of care? And the final part
18 of that is you stay at home and take care of that child
19 under the age of seven, if so please stand.

20 Is there any member of the jury panel who
21 is a primary caretaker for a person who is 65 years
22 of age or older, and that person cannot take care
23 of themselves, or you are the primary caretaker of
24 a severely disabled person? Once, again, this is your
25 sole job and responsibility. You take care of that

1 person that cannot take care of themselves. You do not
2 work otherwise, if so please stand.

3 Now this may not apply at this point in time
4 because of the school year. It's not an exemption
5 anyway. Our legislature has determined if you are a
6 full-time student or a full-time teacher you could
7 postpone your jury service to a time that you are not
8 in school and we are having court, and that usually
9 means in the summer when you should be enjoying your
10 summer vacation. So, if there's a full-time student
11 or a full-time teacher who is currently working,
12 and you want to postpone your jury service to a week
13 we are having court, please stand. All right.

14 I told you that I understand that you have
15 lives outside of this courthouse. If this particular
16 week is some extreme hardship on you, either personally
17 or because of your business, I will be glad to listen
18 to you to transfer you, I cannot excuse you, transfer
19 you to another week of court. So, if you want to be
20 considered to be transferred to another week of court,
21 please stand at this time. Very good.

22 All right. What we are going to do at this
23 point in time is the clerk of court is -- her staff
24 is going to put all your names in a computer program,
25 and we are going to then select a jury for the first

1 case to be tried. Did you retrieve your driver's
2 license?

3 THE JUROR: No, sir. The car isn't out
4 there, and I tried to call, no answer.

5 THE COURT: All right. Well, where is your
6 driver's license?

7 THE JUROR: In the car that's not here.
8 I got dropped off.

9 THE COURT: You got dropped off, okay.
10 All right. I will let you continue to try and
11 communicate with them so they can bring it. I do want
12 you to show that to the clerk of court, that driver's
13 license, before you are excused. Once you do that,
14 you will be excused from jury duty, okay.

15 THE JUROR: Okay.

16 THE COURT: Thank you, ma'am. All right.
17 So, we will take a short break for about ten minutes.
18 We will come back in the courtroom, and then we will
19 go through the selection process for the first case
20 to be tried. Thank you very much.

21 (Recess taken.)

22 (Back on the record.)

23 THE COURT: Thank you very much. You may
24 be seated. All right.

25 THE CLERK: If I call your name, please

1 remain in the courtroom. After we are done, anyone's
2 name who's not called may leave, and you will be
3 instructed when to call back. Taylor J. Varn.

4 THE COURT: Just stand if your name is
5 called. Please stand and remain standing, so we know
6 you are here. Thank you.

7 THE CLERK: Kristina H. Pye, Joshua W.
8 Herndon, Tracie T. Ramsey, Michelle G. Martin, Stephen
9 E. Mauney, Kendell A. Simmons, Dahquan J. Pearse, Andrew
10 D. Chase, Penny A. Dubois, Robert N. Benton, Jr., Debra
11 H. Stevenson, Jacob A. Loiselle, John H. Reed, Joseph D.
12 Frazier, Sarah V. Pratz, Mary H. Behling, Sharon S.
13 Thorson, Connie D. Lyons, Paula J. Stephens, Jason H.
14 Walling, Diresert G. Haynes, Samuel James, Mary G.
15 Stynchcomb, Bonnie C. Priester, Logan Ackerman, Bobbie
16 F. Stroud, Alexa B. Hunt, Jason Way, Joseph S. Fox,
17 Jennifer B. Pearce, Christopher A. Eichorn, Chelsea A.
18 Halyard-Mack ---

19 THE COURT: She's excused.

20 THE CLERK: You excused her, okay. Shalika
21 T. Powell, Charles D. Bridge, Jr., Reginald W. Thomas,
22 Elizabeth A. Hunter, Nicole Y. Perritte, Zachary S.
23 Crosby, Chelsie L. Dantzler, James D. Gentry, Jr.,
24 Brian W. Benton, Beverley K. Pool, and Patricia Simmons.

25 THE COURT: All right. Those that are

1 standing, you are going to remain with us, and we
2 are going to go through a further selection process,
3 and from your number, most likely, only 14 of you will
4 remain with us. Still most of you will be excused,
5 but the ones that are standing, I'm going to ask you
6 in a minute to sit down. The ones that are now seated,
7 you will stand up. The standing, sit down; the seated,
8 stand up. All right, good.

9 The jurors that are standing, your name
10 was not called for further selection process. I'm going
11 to excuse you for the balance of the afternoon, call
12 back that jury information line tomorrow by 12 noon.
13 Call that jury information line tomorrow by 12 noon.
14 With that, you are now excused. Where's the indictment?

15 MR. UTSEY: Right here, Your Honor.
16 May I approach?

17 THE COURT: Yes, sir, please. All right,
18 Solicitor, I will be glad to hear from you.

19 MR. UTSEY: Thank you, Your Honor.
20 The State would like to make a motion to amend as
21 far as the indictment goes with possession of a weapon
22 during a violent crime. In the paragraph below the
23 heading, it does say attempted murder, and I wish
24 to amend it to attempted murder. The M and N are ---

25 THE COURT: Scribner's error, and you wish

1 to correct the spelling.

2 MR. UTSEY: That's correct, Your Honor.

3 THE COURT: Any objection to that from
4 the defense?

5 MS. DOVELL: No objection, Your Honor.

6 THE COURT: All right, very good.

7 All right, ladies and gentlemen, the state of South
8 Carolina has charged this defendant, Mr. Kelvin Gant,
9 with two crimes. One of them is attempted murder
10 and the other is possession of a weapon during the
11 commission of a violent crime.

12 Now what I'm going to do, and first, I will
13 tell you the indictment. The indictment is merely the
14 charging document. The document which brings the matter
15 to court. It is not evidence. It cannot be considered
16 by anyone as evidence. It is how the matter comes to
17 court.

18 To this indictment, the defendant has pled
19 not guilty. The State has charged that in the
20 indictment for attempted murder, that in Colleton
21 County, South Carolina, on or about June 24, 2017,
22 the defendant, Kelvin Gant, did, with intent to kill
23 and with malice aforethought, attempt to willfully kill
24 Herbert Brown, all in violation of the code law of the
25 state of South Carolina, 1976, as amended.

1 Regarding the possession of a weapon during
2 the commission of a violent crime, the State alleges
3 that in Colleton County, South Carolina, on or about
4 June 24, 2017, the defendant, Kelvin Gant, did possess
5 a firearm and visibly displayed what appeared to be
6 a firearm, or visibly displayed a weapon during the
7 commission of a violent crime, to wit, attempted murder,
8 and Kelvin Gant was convicted of committing or
9 attempting to commit a violent crime as defined in the
10 code law of the state of South Carolina, 1976, as
11 amended.

12 Any member of the jury panel that knows
13 anything about this particular case, has any information
14 about this case, they need to bring it to the Court's
15 attention at this time. Very good. I'm going to read
16 to you a list of possible or potential witnesses, and it
17 does not mean that all these people are going to be
18 called as witnesses, but these are possible witnesses
19 that could be called in this case.

20 At the end of it, I will ask if you know any
21 of them. Shatoya, S-H-A-T-O-Y-A Grey, currently with
22 the Walterboro Police Department, formerly with the
23 Colleton County dispatch; Angela Stallings, Colleton
24 County Sheriff's Office; Mike Bascom, Colleton County
25 Fire and Rescue; Chad McDowell, currently with the

1 Jasper County Sheriff's Office, formerly with the
2 Colleton County Sheriff's Office; Jerry Polk, Colleton
3 County Sheriff's Office; Dr. Brent Jewett, J-E-W-E-T-T,
4 a doctor at Trident Medical Center, Charleston, South
5 Carolina; Kevin Smalls, Colleton County Sheriff's
6 Office; Paul Bagley, Colleton County Fire and Rescue;
7 Herbert Brown of Ruffin, South Carolina; Karen Holmes
8 of Ruffin, South Carolina; Edward Marcurella,
9 M-A-R-C-U-R-E-L-L-A, Colleton County Sheriff's Office;
10 Phil Roberson, formerly with the Colleton County
11 Sheriff's Office; Brian Barnedo [ph.], Colleton County
12 Sheriff's Office; Richard Haley, Colleton County
13 Sheriff's Office; Kelvin Gant, Ruffin, South Carolina;
14 Jahleel Dubois, D-U-B-O-I-S, Ruffin; Rasheen Shuler,
15 Ruffin; Ruben Boatwright, Ruffin; Maurice Dubois of
16 Ruffin; Derrick Young of Ruffin; Randolph "Coot"
17 McFadden of Ruffin; Karen Ulmer, Zoning and Floodplain
18 Administrator, Colleton County Planning and Development;
19 Angel Fraser, Colleton County Sheriff's Office dispatch;
20 and Scott Feather, Colleton County Fire and Rescue.

21 Is there any member of the jury panel that's
22 related by blood or marriage, close personal friends,
23 acquaintances of, knows any of these potential
24 witnesses? If so, please stand. All right. Very good.
25 Sir, your name and jury number, please.

1 THE JUROR: Brian Benton, No. 17.

2 THE COURT: Okay. All right. And who is
3 it that you might know, please, sir?

4 THE JUROR: Jerry Polk.

5 THE COURT: All right, sir. Assuming that
6 person is to be a witness in this case, can you give
7 to the state of South Carolina and to the defendant
8 a fair and impartial trial? Can you be a fair and
9 impartial juror in this case?

10 THE JUROR: I know him personally. I know
11 Jerry ---

12 THE COURT: I appreciate that. But just
13 assume he's going to be a witness.

14 THE JUROR: Yes.

15 THE COURT: The qualification question
16 is can you give to the state of South Carolina and
17 to the defendant a fair and impartial trial? Can you
18 be a fair and impartial juror?

19 THE JUROR: Yes, sir.

20 THE COURT: Thank you very much. Yes,
21 ma'am, name and jury number, please.

22 THE JUROR: Kristina Pye, 155.

23 THE COURT: And who is it that you might
24 know, please?

25 THE JUROR: Angel Fraser.

1 THE COURT: All right, ma'am. Assuming
2 that person is a witness in this case, can you give
3 to the state of South Carolina and to the defendant
4 a fair and impartial trial? Can you be a fair and
5 impartial juror in this case?

6 THE JUROR: I can.

7 THE COURT: Thank you, very much. Yes,
8 ma'am, name and jury number.

9 THE JUROR: Shalika Powell, 150.

10 THE COURT: All right, ma'am. And who is
11 it that you might know, please?

12 THE JUROR: Ruben Boatwright.

13 THE COURT: All right, ma'am. Assuming
14 getting that person to be a witness in this case,
15 can you give to the state of South Carolina and to the
16 defendant a fair and impartial trial? Can you be a fair
17 and impartial juror in this case?

18 THE JUROR: Yes, sir.

19 THE COURT: Thank you very much, ma'am.
20 Yes, sir, your name and jury number, please.

21 THE JUROR: Robert Benton, 18.

22 THE COURT: All right.

23 THE JUROR: And Jerry Polk is who I know.

24 THE COURT: All right, sir. Very good.

25 Can you give to the state of South Carolina and to the

1 defendant a fair and impartial trial? Can you be a fair
2 and impartial juror in this case?

3 THE JUROR: Yeah.

4 THE COURT: Thank you, sir. All right,
5 yes, sir.

6 THE JUROR: Joshua Herndon, No. 93,
7 Officer Smalls and Officer Barnedo.

8 THE COURT: All right. Very good. Can you
9 give to the state of South Carolina and to the defendant
10 a fair and impartial trial? Can you be a fair and
11 impartial juror in this case?

12 THE JUROR: Yes, sir, I can.

13 THE COURT: Thank you very much. Yes, sir.

14 THE JUROR: Reginald Thomas, 189. I have
15 either heard or met half the people from Ruffin there,
16 but I can give an impartial jury.

17 THE COURT: And I appreciate you can,
18 but I have to ask you the qualification question.
19 Can you give to the state of South Carolina and to
20 the defendant a fair and impartial trial? Can you be
21 a fair and impartial juror in this case?

22 THE JUROR: Yes, sir.

23 THE COURT: Thank you very much. All right.
24 Is there any member of the jury panel that's ever had
25 any matters handled by the solicitor's office?

1 So, Solicitor, what I'm going to ask that you do,
2 because I don't want to forget one of the counties,
3 stand up and tell us all the counties in your circuit.

4 MR. UTSEY: Yes, sir, Your Honor. That will
5 be Beaufort County, Jasper, Allendale, Hampton and
6 Colleton.

7 THE COURT: All right. So any of those
8 counties, that's what the solicitor's office covers,
9 all those counties. So is there any member of the jury
10 panel, either you yourself or a member of your immediate
11 family, ever had any matters handled by the solicitor's
12 office in any of those counties? If so, please stand.
13 Yes, ma'am, your name and jury number, please.

14 THE JUROR: Kristina Pye, 155.

15 THE COURT: All right. Very good. And just
16 -- I don't want you to tell me anything about it.
17 I just want you to answer was it yourself or a family
18 member?

19 THE JUROR: Myself.

20 THE COURT: Very good. Can you give to the
21 state of South Carolina and to the defendant a fair and
22 impartial trial? Can you be a fair and impartial juror
23 in this case?

24 THE JUROR: Yes, sir.

25 THE COURT: Thank you very much, ma'am.

1 Is there any member of the jury panel that's related
2 by blood or marriage, close personal friends,
3 acquaintances of anybody employed by the solicitor's
4 office in any of those counties? If so please stand.

5 Is there any member of the jury panel that's
6 related by blood or marriage, close personal friends,
7 acquaintances of anybody employed with the public
8 defender's office in any of those counties? If so
9 please stand.

10 Is there any member of the jury panel,
11 either yourself or a member of your immediate family,
12 ever had any matter of any kind handled or worked on
13 by the public defender's office in any of those
14 counties? Please stand.

15 Is there any member of the jury panel
16 that you believe you have any kind of personal,
17 political, religious, philosophical belief that
18 you believe would prevent you from being a fair
19 and impartial juror in this case? If so please stand.

20 Is there any member of the jury panel that
21 you yourself were a former law enforcement officer,
22 or you have a current family member or a former family
23 member who is now or was in the past in law enforcement?
24 If any of that applies to you, please stand at this
25 time. Yes, sir, your name and jury number again.

1 THE JUROR: Brian Benton, No. 17, and my
2 uncle is in law enforcement.

3 THE COURT: Where at?

4 THE JUROR: Berkley County.

5 THE COURT: In Berkley County, all right.

6 THE JUROR: Yes, sir.

7 THE COURT: Can you give to the state of
8 South Carolina and to the defendant a fair and impartial
9 trial? Can you be a fair and impartial juror in this
10 case?

11 THE JUROR: Yes, sir.

12 THE COURT: Thank you. Yes, ma'am.

13 THE JUROR: Jennifer Pearce, 143.

14 THE COURT: And is this yourself or a family
15 member?

16 THE JUROR: My spouse is retired from
17 Walterboro public safety police officer.

18 THE COURT: All right, ma'am. Can you give
19 to the state of South Carolina and to the defendant a
20 fair and impartial trial? Can you be a fair and
21 impartial juror in this case?

22 THE JUROR: Yes, sir.

23 THE COURT: Thank you very much. Yes, sir?

24 THE JUROR: Zachary Crosby, 42.

25 THE COURT: And who is it, do you know?

1 THE JUROR: Parents, step-dad.

2 THE COURT: All right. And what law
3 enforcement agency were they associated with?

4 THE JUROR: He's a Colleton County sheriff's
5 deputy.

6 THE COURT: All right. Currently?

7 THE JUROR: Yes, sir.

8 THE COURT: All right. Very good. Can you
9 give to the state of South Carolina and to the defendant
10 a fair and impartial trial? Can you be a fair and
11 impartial juror in this case?

12 THE JUROR: Yes, sir.

13 THE COURT: Thank you very much. All right.
14 Yes, ma'am, name and jury number, please.

15 THE JUROR: Patricia Simmons, 176.
16 My father was a retired deputy in Colleton County.

17 THE COURT: All right. Very good. Can you
18 give to the state of South Carolina and to the defendant
19 a fair and impartial trial? Can you be a fair and
20 impartial juror in this case?

21 THE JUROR: Yes, sir.

22 THE COURT: Thank you very much. All right.
23 Is there any member of the jury panel that, either you
24 yourself or member of your immediate family, is a member
25 of any kind of victim's rights or law enforcement

1 support organization? I'm going to give you a couple
2 of examples, not an exhausted list of any kind, I'm just
3 trying to give you a couple of examples here; Citizens
4 Against Violent Crime, Mothers Against Drunk Driving,
5 South Carolina Law Enforcement Officer's Association,
6 South Carolina Sheriff's Association. Either you
7 yourself or a member of your immediate family a member?
8 If so please stand. All right.

9 The incidents or incident involved in this
10 matter may be associated with, and I will give you a
11 couple of street addresses, and there might be some kind
12 of establishment, a club or a store, something that's
13 associated with these street addresses; [REDACTED] or [REDACTED]
14 Road in Ruffin and [REDACTED] Highway in Ruffin.
15 So whatever businesses associated with these addresses,
16 is there any member of the jury panel that frequents
17 those places? If so please stand. Very good.
18 All right.

19 The next question I'm going to ask you,
20 ladies and gentlemen, is whether you yourself or a
21 member of your immediate family, has ever been the
22 victim of a crime? Now, I am not going to ask you
23 what occurred. I do not want you to volunteer any
24 information to me about what occurred.

25 The question will be straightforward.

1 Was it yourself or a family member? And then I will ask
2 the qualification question. So is there any member of
3 the jury panel, either you yourself or a member of your
4 immediate family, ever been the victim of a crime?
5 If so please stand. All right, ma'am. Again, you have
6 to tell us your name and jury number.

7 THE JUROR: Yes, sir. Kristina Pye, 155.

8 THE COURT: And was it yourself or a family
9 member?

10 THE JUROR: Myself.

11 THE COURT: Can you give to the state of
12 South Carolina and to the defendant a fair and impartial
13 trial? Can you be a fair and impartial juror in this
14 case?

15 THE JUROR: Yes, sir.

16 THE COURT: Thank you very much. Yes,
17 ma'am, your name and jury number, please.

18 THE JUROR: Paula Stephens, 183.

19 THE COURT: Was it yourself or a family
20 member?

21 THE JUROR: Myself.

22 THE COURT: Can you give to the state of
23 South Carolina and to the defendant a fair and impartial
24 trial? Can you be a fair and impartial juror in this
25 case?

1 THE JUROR: Yes.

2 THE COURT: Thank you very much. Before
3 I ask my last question, further questions from the
4 State?

5 MR. UTSEY: No, Your Honor.

6 THE COURT: From the defense?

7 MS. DOVELL: No, Your Honor.

8 THE COURT: All right, ladies and gentlemen,
9 I'm going to ask you my general or catch-all question,
10 what I classify as my catch-all question. Do you know
11 of any reason, have any question in your mind, any doubt
12 in your mind that you believe you cannot give to the
13 state of South Carolina or to the defendant a fair and
14 impartial trial? That is for any reason whatsoever
15 you believe you cannot be a fair and impartial juror
16 in this case. If so please stand. Very good.

17 All right, ladies and gentlemen, how the
18 process is going to work. Again, your names were placed
19 in a random order by the clerk of court's computer
20 program. What the clerk's representative is going to
21 do is call out your name.

22 If and when your name is called, you will
23 stand up, you will come forward, you will come through
24 the door there at the divider between the panel and the
25 front. You will come forward, you will come to a place

1 right in front of the desk where the clerk of court is.
2 You will turn and face to the back of the courtroom.

3 At that point in time, the clerk of court
4 will ask of the State to present or excuse the juror.
5 After that, the clerk will inquire of the defense to
6 seat or excuse the juror.

7 If you are excused by either, you will go
8 back and have a seat from whence you came. If you are
9 presented by the State, if you are seated by the
10 defense, the clerk will instruct you to go to the jury
11 box and have a seat as a member of the jury.

12 So if you have any personal item, purse or
13 whatever that might be, you bring that along with you.
14 In case you are presented and seated, you can go
15 directly to the jury box. Madam Clerk.

16 THE CLERK: Juror 196, Taylor Varn.

17 THE COURT: Turn around and face them.
18 There you go, good. All right.

19 THE CLERK: What say you for the State?

20 MR. UTSEY: Please present this juror,
21 Your Honor.

22 THE CLERK: What say you for the defendant?

23 MS. DOVELL: Please seat this juror.

24 THE CLERK: Please have a seat in the jury
25 box. Number 155, Kristina H. Pye. What say you for the

1 State?

2 MR. UTSEY: Please present this juror.

3 THE CLERK: What say you for the defendant?

4 MS. DOVELL: Please excuse this juror.

5 THE COURT: You can go back and have a seat.

6 Thank you, ma'am.

7 THE CLERK: Juror 93, Joshua W. Herndon.

8 What say you for the State?

9 MR. UTSEY: Please present this juror.

10 THE CLERK: What say you for the defendant?

11 MS. DOVELL: Please excuse this juror.

12 THE COURT: You can go back and have a seat.

13 THE CLERK: Juror 156, Tracie T. Ramsey.

14 What say you for the State?

15 MR. UTSEY: Please present this juror.

16 THE CLERK: What say you for the defendant?

17 MS. DOVELL: Please seat this juror.

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

19 Juror 128, Michelle G. Martin. What say you for the

20 State?

21 MR. UTSEY: Please present this juror.

22 THE CLERK: What say you for the defendant?

23 MS. DOVELL: Please seat this juror.

24 THE JUROR: Juror 129, Stephen E. Mauney.

25 What say you for the State?

1 MR. UTSEY: Please present this juror.

2 THE CLERK: What say you for the defendant?

3 MS. DOVELL: Please excuse this juror.

4 THE CLERK: Juror 175, Kendell A. Simmons.

5 What say you for the State?

6 MR. UTSEY: Please present this juror.

7 THE CLERK: What say you for the defendant?

8 MS. DOVELL: Please seat this juror.

9 THE CLERK: Juror 144, Dahquan J. Pearse.

10 What say you for the State?

11 MR. UTSEY: Please present this juror.

12 THE CLERK: What say you for the defendant?

13 MS. DOVELL: Please seat this juror.

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

15 Juror 32, Andrew D. Chase. What say you for the State?

16 MR. UTSEY: Please present this juror.

17 THE CLERK: What say you for the defendant?

18 MS. DOVELL: Please seat this juror.

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

20 Juror 53, Penny A. Dubois. What say you for the State?

21 MR. UTSEY: Please present this juror.

22 THE CLERK: What say you for the defendant?

23 MS. DOVELL: Please excuse this juror.

24 THE CLERK: You may have a seat. No. 18,

25 Robert N. Benton, Jr. What say you for the State?

1 MR. UTSEY: Please present this juror.

2 THE CLERK: What say you for the defendant?

3 MS. DOVELL: Please excuse this juror.

4 THE CLERK: Have a seat. No. 184, Debra H.

5 Stevenson. What say you for the State?

6 MR. UTSEY: Please present this juror.

7 THE CLERK: What say you for the defendant?

8 MS. DOVELL: Please excuse this juror.

9 THE CLERK: Juror 120, Jacob A. Loiselle.

10 What say you for the State?

11 MR. UTSEY: Please present this juror.

12 THE CLERK: What say you for the defendant?

13 MS. DOVELL: Please seat this juror.

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

15 Juror 159, John H. Reed. What say you for the State?

16 MR. UTSEY: Please present this juror.

17 THE CLERK: What say you for the defendant?

18 MS. DOVELL: Please seat this juror.

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

20 Juror 66, Joseph D. Frazier. What say you for the

21 State?

22 MR. UTSEY: Please present this juror.

23 THE CLERK: What say you for the defendant?

24 MS. DOVELL: Please seat this juror.

25 THE CLERK: Please have a seat in the jury

1 box. Juror 152, Sarah V. Pratz. What say you for the
2 State?

3 MR. UTSEY: Please present this juror.

4 THE CLERK: What say you for the defendant?

5 MS. DOVELL: Please seat this juror.

6 THE CLERK: Please have a seat in the jury
7 box. Juror 15, Mary H. Behling. What say you for the
8 State?

9 MR. UTSEY: Please present this juror.

10 THE CLERK: What say you for the defendant?

11 MS. DOVELL: Please excuse this juror.

12 THE CLERK: You may have a seat. Juror No.
13 48, Kevin E. Dennis.

14 THE COURT: Okay, that's not good. Did he
15 just leave? Go to the next one.

16 THE CLERK: Juror 190, Sharon S. Thorson.
17 What say you for the State?

18 MR. UTSEY: Please present this juror.

19 THE CLERK: What say you for the defendant?

20 MS. DOVELL: Please seat this juror.

21 THE CLERK: Please have a seat in the jury
22 box. Juror 123, Connie D. Lyons. What say you for the
23 State?

24 MR. UTSEY: Please present this juror.

25 THE CLERK: What say you for the defendant?

1 MS. DOVELL: Please seat this juror.

2 THE CLERK: Please have a seat in the jury
3 box. Judge, that is 12.

4 THE COURT: All right. We are going to have
5 two alternates. It will be one and two on each.
6 Thank you.

7 THE CLERK: Juror 183, Paula J. Stephens.
8 What say you for the State?

9 MR. UTSEY: Please present this juror.

10 THE CLERK: What say you for the defendant?

11 MS. DOVELL: Please excuse this juror.

12 THE CLERK: Juror 198, Jason H. Walling.

13 What say you for the State?

14 MR. UTSEY: Please present this juror.

15 THE CLERK: What say you for the defendant?

16 MS. DOVELL: Please seat this juror.

17 THE CLERK: Sir, have a seat in the jury
18 box.

19 THE COURT: That's the first alternate.

20 THE CLERK: Yes, sir. Juror No. 89,
21 Diresert G. Haynes.

22 THE COURT: How do you pronounce your first
23 name, please, ma'am?

24 THE JUROR: Die-ree-sa.

25 THE COURT: Write that down.

1 THE CLERK: What say you for the State?

2 MR. UTSEY: Please present this juror.

3 THE CLERK: What say you for the defendant?

4 MS. DOVELL: Please seat this juror.

5 THE CLERK: Ma'am, please have a seat.

6 That would be your two alternates.

7 THE COURT: Very good. Thank you, ma'am.

8 All right. Is there any objection to the jury as
9 impaneled from the State?

10 MR. UTSEY: No objection, Your Honor.

11 THE COURT: From the defense?

12 MS. DOVELL: None from the defense,
13 Your Honor.

14 THE COURT: Very good. I find the jury has
15 been properly impaneled pursuant to Batson v. Kentucky
16 and JEB v. Alabama. All right, ladies and gentlemen,
17 I'm going to send you to the jury room in just a few
18 minutes, and I'm going to ask that you do one thing
19 for the Court, and that is going to be to select your
20 foreperson for this particular jury.

21 So let me tell you very briefly what the
22 foreperson's duties and responsibilities are. If we
23 are here in the courtroom, and the jury needs attention
24 in some matter, the witness needs to speak up or the
25 lawyers or whatever it is, the foreperson raises their

1 hand, gets the Court's attention, we will handle
2 the matter, whatever it is.

3 If you are back in the jury room, a pad
4 and pen will be provided to you. You write out the
5 note, you sign it, you knock on the door and let the
6 bailiff know that you have a note, and they will bring
7 it to me, and we will handle that matter, whatever it
8 is.

9 When we have gone through the evidentiary
10 portion of the trial, we have heard all of the
11 witnesses, we have heard the closing arguments of the
12 attorneys, I have given you the law that you will apply
13 to the facts and the evidence you have heard in the
14 case. After that, I will submit the case to you,
15 give the case to you for your deliberations and
16 unanimous decision in this particular matter.

17 Now, in that regard, when the jury is
18 deliberating, the foreperson's duties and responsibility
19 change in this regard. The foreperson is going to act
20 like the chairperson at a meeting, guide the
21 discussions, if necessary. Now the foreperson's voice
22 and vote, that carries no more weight than any other
23 member of the jury. Everybody is equal in that regard.
24 But somebody needs to remain in charge. Again,
25 the foreperson's duty is to guide the discussions,

1 if necessary.

2 Once the jury has well and truly
3 deliberated, you have reached your unanimous decision
4 in this particular matter, the foreperson will take the
5 verdict form that the Court will provide to you, check
6 the appropriate block or write out the appropriate word,
7 signifying the unanimous verdict of the jury.

8 Thereafter, sign their name as the foreperson, so when
9 it comes out and it's read by the clerk of court, that
10 will indicate the unanimous verdict of the jury in this
11 particular matter.

12 So, with that, I'm going to ask that you
13 go to your jury room, select your foreperson, knock
14 on the door, let the bailiff know who it is. The two
15 alternates, you all can vote on the foreperson, but
16 being the alternates, the two of you cannot be the
17 foreperson. Everybody else is eligible. So please
18 retire to the jury room and select your foreperson.
19 Thank you.

20 (Jury exists courtroom at 3:51 p.m.)

21 THE COURT: All right. The remainder of the
22 jury panel that we did not use for this particular case,
23 I'm going to excuse you for the balance of the day.
24 Please call back that juror information line tomorrow
25 after 12 noon, follow those instructions, whatever they

1 may be. With that, you are now excused. Thank you.

2 All right. Counsel, while the jury is
3 picking their foreperson, with this -- I know you have
4 the motion regarding the YouTube video in this matter.
5 Are there any other outstanding motions from the State
6 or the defense that we need to cover before we go into
7 that, from the State?

8 MR. UTSEY: Your Honor, we also -- I believe
9 Ms. Dovell wants to make a motion about the photographs.
10 That's the only other thing we have a pre-trial motion
11 about it.

12 THE COURT: Okay. All right. Have we
13 marked those photographs with the court reporter yet?

14 MR. UTSEY: We will do that right now,
15 Your Honor.

16 (State's Exhibits 1 through 3 were marked for
17 identification.)

18 THE COURT: All right. Very good.

19 MS. DOVELL: Your Honor, I would ask for
20 (indiscernible.)

21 THE COURT: Any problem with that?

22 MR. UTSEY: I have no objection to that,
23 Your Honor. Besides the victim in the case, Officer
24 Kevin Smalls.

25 THE COURT: All right. Very good. I will

1 allow that person to be present during the entirety of
2 the trial. Thank you. With that, can we -- whenever
3 the jury knocks on the door and let's us know who the
4 foreperson is, can you all let me know, even if we are
5 doing something, because I don't want to keep them
6 waiting? Thank you. All right. Do we have those
7 photographs marked?

8 MR. UTSEY: Yes, Your Honor.
9 May I approach?

10 THE COURT: Sure.

11 MR. UTSEY: And I did show these to defense
12 counsel.

13 THE COURT: All right. Very good.
14 So, I have in front of me State's Exhibits 1, 2 and 3.
15 Counsel, do you know what those are?

16 MS. DOVELL: Yes, Your Honor. I have had
17 a chance to view those.

18 THE COURT: All right. So assuming that
19 they are before me because you have an objection to
20 one or more of them.

21 MS. DOVELL: Yes, Your Honor. I move to
22 suppress the photo of Mr. Brown, the victim in the case.
23 The State intends to introduce the video, the body
24 camera video, of Lieutenant Jerry Polk. I will have
25 a motion about that, not about its admission but about

1 certain things that should be redacted.

2 I think that the members of the jury and
3 the Court have an adequate opportunity to view Mr. Brown
4 on that video. So, basically, what happens on the video
5 is Lieutenant Polk arrives on scene, Mr. Brown is lying
6 on the ground, he's speaking with Mr. Brown, you see him
7 lying on his side, you see his bloody shirt.

8 It's, basically, like, from the -- hit the
9 ground running, it's the crime scene, and I don't see
10 any reason why the jury needs to have a photo of
11 Mr. Brown when they will have ample opportunity to view
12 him on screen.

13 THE COURT: All right. Before I hear from
14 the State, Counsel, the jury has selected Juror No. 123,
15 Connie D. Lyons, as the foreperson, 123, Ms. Lyons,
16 as the foreperson. So can we tell the jury panel that
17 they are -- are they going to have to come through the
18 courtroom, or can they go some other way?

19 All right. Tell them they are excused.
20 I want them in the jury room by 9:30 tomorrow morning,
21 in the jury room by 9:30, okay. Thank you. All right,
22 let's hear from the State.

23 MR. UTSEY: Yes, sir, Your Honor.
24 Your Honor, I would argue -- as Your Honor knows,
25 all evidence that is relevant is admissible. Here,

1 Your Honor, I would argue that these photos, they are
2 highly probative of what happened. Yes, the jury will
3 see it on body cam, but the jury -- I believe the jury
4 also has the right, as a fact finder, to bring back the
5 photos with them in their deliberation room, Your Honor.

6 THE COURT: All right. You are arguing
7 that they are relevant. Why are they relevant?

8 MR. UTSEY: The reason they are relevant
9 is because it goes to show that the victim, Herbert
10 Brown, was shot, Judge, and that is an element that
11 I have to prove that the defendant, Kelvin Gant,
12 intended to kill Herbert Brown. And I do believe they
13 are relevant because it shows an element of the crime
14 that took place, Your Honor. And that is the main
15 reason for relevance.

16 THE COURT: All right. Very good.

17 MS. DOVELL: Your Honor.

18 THE COURT: Yes, ma'am.

19 MS. DOVELL: I'm sorry. If I may reply.
20 I apologize if I failed to mention any legal basis for
21 my argument. My basis would be that it is in violation
22 of Rule 403. It's becoming cumulative at this point.
23 It runs the danger of being more prejudicial than
24 probative of anything.

25 We understand Mr. Brown was shot.

1 He's going to tell us about it; he's going to be on
2 video telling us that my client, allegedly, shot him.
3 He's going to be laying there with the blood on his
4 shirt. I think we run the risk of something being
5 cumulative and/or prejudicial than probative, the jury
6 can sit there and stare at a picture.

7 THE COURT: All right. Thank you, ma'am.
8 All right. As to State's Exhibit 2, marked State's
9 Exhibit 2, I'm not going to allow State's Exhibit 2 into
10 evidence. I do find State's Exhibit 2 to be cumulative,
11 and, therefore, I'm not going to allow it.

12 As to State's Exhibits 1 and 3, first, I do
13 find they are relevant. I have examined them, and the
14 analysis of whether the probative value may outweigh any
15 prejudice to the defendant. I think it sets forth the
16 scene for the jury. The jury is to -- needs the facts
17 and evidence presented so they can determine whether
18 or not the State can prove the defendant guilty of the
19 crimes charged beyond a reasonable doubt.

20 I do find those to be -- State's 1 and 3
21 to be relevant, and I do find them to be more probative
22 than prejudicial in that matter to help the jury reach
23 its ultimate conclusion as to whether or not the State
24 can prove its case beyond a reasonable doubt. I will
25 allow 1 and 3, and not 2. Thank you very much.

1 MR. UTSEY: Thank you, Your Honor.

2 MS. DOVELL: Thank you, Your Honor.

3 THE COURT: All right. So the remaining
4 motion then involves the YouTube video; is that correct?

5 MR. UTSEY: That is correct, Your Honor.
6 I think we are also going to have -- I forgot about
7 one more motion, Judge. It is the Jerry Polk body cam.
8 Ms. Dovell is sending her redactions. I don't think
9 we can agree on that, Judge. I only want the first,
10 like, nine and a half minutes played of the body cam,
11 that's it, and so we were going to let you watch it,
12 Judge, and you can ---

13 THE COURT: So how much -- and I'm sorry.
14 The State wants to play the first nine and a half
15 minutes?

16 MR. UTSEY: Yes, Your Honor, that's correct.

17 THE COURT: And the defense?

18 MS. DOVELL: Your Honor, I am not opposed
19 to playing the video. I do have a few seconds and
20 a couple of minutes to be redacted, and I would like
21 the Court to consider those. Another motion, as well,
22 is to settle my client's record before he decides.

23 THE COURT: Okay. Well, we will need to
24 do that at the time he decides whether or not he's going
25 to testify. We will deal with his record at that point

1 in time.

2 MS. DOVELL: All right. Thank you.

3 THE COURT: All right. I just assumed that
4 you all have exchanged the NCIC report.

5 MR. UTSEY: Yes, sir.

6 MS. DOVELL: Yes, sir.

7 THE COURT: All right. And I'm sorry,
8 the redactions that you want, do they come within
9 the first nine and a half minutes?

10 MS. DOVELL: They do, Your Honor.

11 THE COURT: All right. Very good. So how
12 are we going to play this?

13 MR. UTSEY: I will set it up right now,
14 Judge.

15 MS. DOVELL: And, Your Honor, would you like
16 me to go ahead and give the Court a heads up as to which
17 seconds?

18 THE COURT: Well, is he going to be able to
19 -- might just have to just say you need to stop at that
20 point in time or that's the point because unless it's,
21 you know, unless it's obvious. I don't know how else
22 I am going to know. Just tell me ahead of time.

23 MS. DOVELL: Okay.

24 THE COURT: I am not sure that's what's
25 going to alert me to where it is in the video.

1 MS. DOVELL: I will be on my toes.

2 Thank you.

3 THE COURT: All right. Thank you.

4 Whenever it is that defense counsel indicates that
5 there's some issue or there's a part that needs to be
6 redacted, you want to stop at that time so you can talk
7 about it?

8 MR. UTSEY: Yes, Your Honor. And we have
9 agreed to fast forward the one next, Your Honor.

10 THE COURT: Okay. Good.

11 (Video played in the courtroom.)

12 MS. DOVELL: Yes, Your Honor, that was that
13 little part right there. He talks about it stings like
14 hell. It's just three seconds. It's 2 minutes and 28
15 seconds to 2 minutes and 31 seconds.

16 THE COURT: State's argument?

17 MR. UTSEY: I just argue, Your Honor,
18 he's describing how he feels.

19 THE COURT: I will allow it.

20 (Video continued to be played in the courtroom.)

21 MS. DOVELL: Your Honor, this is another
22 point. It's hard to hear in here, but it's a lot easier
23 -- well, it's easier for me to hear it in the office.
24 Basically, the officer says what about these three
25 people over here, and he says -- I can't really

1 understand -- and then he asks, so everyone can identify
2 Kelvin Gant. And what Mr. Brown says is if they choose
3 to.

4 I don't think it's appropriate for the jury
5 to hear that because Mr. Brown is giving his own opinion
6 about whether or not these individuals actually saw the
7 shooting. All three of them deny having seen the
8 shooting. One individual says he was in the club.
9 Yet two other people -- the young lady, I don't know
10 where she was, she was somewhere there, the gentleman
11 was sitting in the car.

12 THE COURT: The State will call on those
13 three people as witnesses?

14 MR. UTSEY: That's a no, Your Honor.
15 They are not.

16 THE COURT: All right. Very good. At this
17 point, then you are just going to redact the whole
18 question and the answer.

19 MR. UTSEY: Okay.

20 MS. DOVELL: Yes, Your Honor. I think
21 that's 3 minutes and 35 seconds to 4 minutes ---

22 THE COURT: I will leave it to the State
23 to do that. Just redact the whole question and answer.

24 MR. UTSEY: Yes, sir.

25 THE COURT: And then the officer's statement

1 after, just that whole section.

2 MR. UTSEY: Yes, sir.

3 THE COURT: All right. Very good.

4 Go ahead.

5 (Video continued to be played in the courtroom.)

6 MS. DOVELL: Your Honor, that's another
7 little part right there.

8 THE COURT: Yes, ma'am?

9 MS. DOVELL: That's another little part.
10 It's about seven minutes, ten seconds. Lieutenant Polk
11 says in response to a question, "Oh, I know what I'm
12 looking for it, and I got good help on the way."
13 These are pretty much self-serving statements.

14 I don't think the jury needs to hear that
15 the law enforcement officer has confidence in what he's
16 doing, and that they're getting an air of some sort of
17 authority to the whole investigation of what is going
18 on.

19 THE COURT: Solicitor?

20 MR. UTSEY: Your Honor, I will argue that
21 the two law enforcement officers that Jerry Polk was
22 talking about, they are going to be here. They are
23 going to testify, and the jury can judge their
24 credibility based on how they feel about it.

25 THE COURT: All right. I'm going to allow

1 it. I don't find those statements to be prejudicial
2 to the defendant in any way. Thank you very much.

3 (Video continued to be played in the courtroom.)

4 MS. DOVELL: And, Your Honor, this is
5 another little section here. Mr. Brown wailing in the
6 background, Lieutenant Polk, "Oh, it's just burning."
7 Again, I think it is prejudicial. The jury is going
8 to hear him wailing. There are parts of the video where
9 you can hear him, and he's being moved around. I mean,
10 the man was shot; we know he was shot. I just think
11 that it's sort of a cultivation of sympathy for the
12 jury to hear, sort of wails.

13 THE COURT: I appreciate that, ma'am,
14 but it's what was happening at the time, and I don't
15 find that to be prejudicial to the defendant. It's the
16 result of him being shot, and I'm going to allow it.

17 MS. DOVELL: Thank you, Your Honor.

18 MR. UTSEY: Thank you, Your Honor.

19 (Video continued to be played in the courtroom.)

20 MS. DOVELL: And, Your Honor, that was
21 a part right there. Again, we got -- first of all,
22 Lieutenant Polk is kind of repeating things over again.
23 And he says, you know, I think he lives in the Quarters,
24 which gives some kind of air of familiarity with my
25 client. And I don't think the jury needs to hear that

1 Mr. Polk is familiar with him in one way, shape or
2 another.

3 THE COURT: What about that, Solicitor?

4 MR. UTSEY: I'm going to redact that,
5 Your Honor.

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

7 (Video continued to be played in the courtroom.)

8 MR. UTSEY: 9:45 is where I want it,
9 Judge.

10 THE COURT: Okay. That's where you want
11 it to stop?

12 MR. UTSEY: Yes, Your Honor, that's correct.

13 THE COURT: Okay. Do you want any further
14 video played, ma'am, or are you fine stopping here at
15 this point?

16 MS. DOVELL: I'm fine stopping right here,
17 Your Honor. I think I can elicit questions.

18 THE COURT: All right. Very good.

19 MR. UTSEY: Thank you, Your Honor.

20 THE COURT: Thank you very much.

21 MR. UTSEY: I believe our next pre-trial
22 motion, Your Honor, will be the YouTube video. It was
23 a song posted by -- or a music video posted on YouTube.
24 It's labeled K-Gunna .45. It's a rap song that has been
25 sung by the defendant, if you would like to hear that,

1 Your Honor.

2 THE COURT: All right. Well, I will.
3 I would like to hear -- you have been fairly descriptive
4 in your motion to admit the YouTube video, as well
5 as the opposing motion to suppress the video as filed
6 by the defense as direct evidence. What would be the
7 purpose of this YouTube video?

8 MR. UTSEY: As direct evidence ---

9 THE COURT: As direct evidence, not talking
10 about cross-examination or potentially in reply.
11 As direct evidence, would you intend to use the YouTube
12 video in the presentation of the case?

13 MR. UTSEY: Yes, Your Honor.

14 THE COURT: All right. Tell me why it would
15 be relevant for direct evidence?

16 MR. UTSEY: I believe, Your Honor, it would
17 be relevant for direct evidence under 404(b), common
18 scheme or plan or intent. In the music video, which
19 I talk about in the motion, Your Honor, which you've
20 read, the common scheme or plan, I believe there's a lot
21 of similarities between the music video and the actual
22 shooting of Herbert Brown that night.

23 And, for example, Kevin Smalls, who's the
24 case officer here, Your Honor, he finds two .45 caliber
25 shell casings five feet from the body. The name of the

1 song is .45. And Kelvin Gant then raps in the song
2 about always having a .45 on me, and in the main chorus,
3 I mean, he even says .45 homicide, which this was an
4 attempted murder, and it happened by Serpentine Lane.

5 And in Herbert Brown's case, Serpentine Lane
6 is approximately 100 to 200 yards from the scene of the
7 crime. And that would be my argument as far as common
8 scheme or plan, and the same thing with intent.
9 I believe the defendant had the intent because --
10 especially, to carry a .45 because he talks about it
11 in the song how he carries a .45.

12 He talks about putting your brains on your
13 boot or your sneakers, and he talks about committing
14 a murder, which he tried -- which the State is alleging
15 that he did in this case, Your Honor.

16 THE COURT: All right. Why don't you go
17 ahead and play it.

18 MR. UTSEY: Yes, sir.

19 MS. DOVELL: And, Your Honor, I would like
20 the State to lay some kind of foundation for it.
21 How they came across it? When was it posted? Where was
22 it posted?

23 THE COURT: Well, I will hear your
24 arguments.

25 MS. DOVELL: Thank you, Your Honor.

1 MR. UTSEY: And if defense counsel does
2 wish, Your Honor, we do have Brian Barnedo here with
3 the sheriff's office who is here to testify as far
4 as to foundation.

5 THE COURT: All right. Go ahead.

6 (Video played in the courtroom.)

7 MR. UTSEY: And that's the video,
8 Your Honor.

9 THE COURT: All right. Very good. Let me
10 hear arguments from the defense as to relevancy
11 regarding direct presentation of evidence.

12 MS. DOVELL: Yes, Your Honor. I have a lot
13 of issues with direct presentation of evidence. First,
14 where to start. It's just irrelevant. Yes, Your Honor,
15 this is a music video that was produced by a production
16 company titled Pyrex Visions.

17 There's a music group. So this is very much
18 a work of art. This is not some kind of statement by my
19 client that he carries a .45, or that he wants to kill
20 anybody, or that he intends to participate in any kind
21 of activity of that sort.

22 The video also has references to drugs
23 and to gangs, which I also think is highly prejudicial
24 because that's not in any way part of this case at all.
25 When we talk about relevancy, it's whether or not it

1 tends to make an issue in the case more likely or fact
2 of consequence to determine the case -- determination
3 in the case more probable or not. And in this case
4 having a music video does not make anything more
5 probable than if it were played than if it weren't
6 played.

7 It's irrelevant; it's highly prejudicial.
8 Let's say that the Court does find there were some sort
9 of probative value, the prejudice to my client is far
10 outweighed by any kind of probative value. You got my
11 client, he is rapping, the name that he used as an
12 artist is K-Gunna. That's not a street name. That's
13 a performing name that he has.

14 We haven't heard any testimony from any
15 officers or anything -- this video was found on YouTube.
16 It was not something that was posted to my client's
17 Facebook page. It's not something he's espousing as his
18 own personal lifestyle or philosophy. It is a video,
19 a work of art, an artistic presentation, a pretty
20 dramatic one at that.

21 When you look up the video on YouTube,
22 or you look up Pyrex Visions, this video comes up along
23 with a slew of other videos that have been produced by
24 Pyrex. And it appears that there are several local
25 artists that Pyrex Visions has produced videos for.

1 And there are scenes around Colleton County in some
2 of the videos, one even including the courthouse.

3 So it's not something that my client,
4 like, videos himself, you know, I am going to go kill
5 somebody, they are holding their cell phones out and
6 doing a self photo of this or anything where he's got
7 a friend to hold the camera up to him where he says,
8 I'm going to kill Herbert Brown, or anybody who crosses
9 me, you're dead.

10 It's not a personal statement by my client.
11 It is a video production. It also -- they are really
12 admitting this to show my client's character. Whether
13 or not he has a propensity to act in a way that is
14 violent, whether or not he has the propensity to carry
15 a weapon, and that is really what's not allowed by Rule
16 404 at all.

17 If you look at Rule 404(a), character
18 evidence, generally, a person's character or trait of
19 character is not admissible for the purpose of proving
20 action in conformity therewith, and that is exactly what
21 this video is about.

22 I don't intend to put my client's character
23 in question -- that's a different issue than what we're
24 doing with the direct presentation. But they are trying
25 to show that my client has the propensity to act in

1 a certain way. But the defense of my client is not
2 self-defense. It's just not him; it's not him at all.

3 The only evidence in this case is Mr. Brown.
4 Mr. Brown is the only one making the accusation against
5 my client. And so if my client decides to testify,
6 or whether he does not decide to testify, the State
7 is intending to introduce evidence of my client being
8 a violent person, just to say that, oh, Mr. Brown
9 was shot, he says it's Kelvin, it's got to be Kelvin.
10 Look, it's .45 homicide. That's what he's talking about
11 on there, and that's improper and inadmissible character
12 evidence.

13 We don't have any foundation about whether
14 -- when this video was posted. But I believe that the
15 video was posted in August of 2016, if my memory serves
16 correctly, which is almost a year before this incident
17 took place. And that isn't even to say when the video
18 was produced. I don't know when it was made.

19 I don't even know -- I mean, my client may
20 have gotten money to produce this -- to be a part of
21 this video. I don't know. I mean, I think that what
22 the State is trying to do is say that anybody who has
23 ever, you know, acted in a movie or who plays a
24 recurring role as a villain, or an author who writes
25 about violent crimes, heaven forbid that person ever

1 gets in trouble in the future because your artistic
2 presentation is then going to be used as character
3 evidence against you in the future.

4 I know -- I mean, hip-hop is still popular.
5 I know in the 90s we listened to Dr. Dre, Snoop Dog.
6 The name of their label was Death Row, and they rapped
7 about things that were not necessarily socially
8 acceptable, but that became very popular.

9 And I think that to use an expression and
10 a video of my client, to try to use that against him
11 at trial is absolutely more prejudicial than probative
12 of any issue in question here, as well as an effort
13 to enter inadmissible character evidence of my client.

14 THE COURT: All right. As direct evidence,
15 I do find that it would be more prejudicial than
16 probative in this particular matter. And I'm not going
17 to allow the State to use it in their direct
18 presentation of evidence.

19 Should the defendant testify, decide to
20 testify in this case, I will make a determination at
21 that point in time whether or not I will allow the
22 playing of the video, if he testifies. At the present
23 time, I am not allowing it. Thank you very much.

24 MR. UTSEY: Thank you, Your Honor.

25 MS. DOVELL: Thank you, Your Honor.

1 THE COURT: Further motions from the State?

2 MR. UTSEY: Your Honor, I believe that's
3 everything.

4 THE COURT: Further motions from the
5 defense?

6 MS. DOVELL: Your Honor, let me check my
7 list just to make sure that we have all of our -- so
8 as far as the YouTube video goes, I also -- my motion
9 is the same as far as reference to my client's
10 performing name of K-Gunna.

11 THE COURT: I'm not allowing any reference
12 to the YouTube video questioning, presentation to the
13 jury in the direct presentation of evidence to the jury.

14 MS. DOVELL: Okay.

15 THE COURT: I'm leaving open should your
16 client decide to testify. Should he respond to the
17 Court's questioning and informing of his constitutional
18 rights that he wants to testify, then we will take up
19 the issue of whether or not the Court will allow the
20 playing of this video at that point in time regarding
21 any cross-examination of the defendant. Thank you very
22 much.

23 MS. DOVELL: Thank you, Your Honor.

24 MR. UTSEY: Thank you, Your Honor.

25 MS. DOVELL: I think the only other thing

1 I have right now is based on the notice that the State
2 has provided to me about their interviews with their
3 witnesses. I have spoken with the solicitor about this,
4 but just to put it on the record, I just would like the
5 State to caution their witnesses against testifying
6 about things that they do not have personal knowledge
7 about; hearsay, word on the street, or I know something
8 when they don't actually know.

9 THE COURT: Well, I appreciate that,
10 and I'm sure the State will properly try to caution the
11 witnesses against any improper statements, but we can't
12 cover everything, and I can't expect them to control
13 everything that comes from the witness's mouth.
14 So if there's something that you find objectionable
15 to, I'm going to leave it to you to raise the objection
16 at the time.

17 MS. DOVELL: Thank you, Your Honor.

18 THE COURT: Thank you very much.
19 Anything else?

20 MR. UTSEY: No, Your Honor.

21 MS. DOVELL: Nothing further.

22 THE COURT: All right. Very good. I want
23 to be able to come in the courtroom at 9:30. Make sure
24 you are present before then and ready to go, all right.

25 MR. UTSEY: Yes, sir.

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THE COURT: Thank you very much.

MR. UTSEY: Thank you, Judge.

(End of proceedings.)

CERTIFICATE OF TRANSCRIBER

CASE: STATE V. GANT

2017-GS-15-0699 & 0700

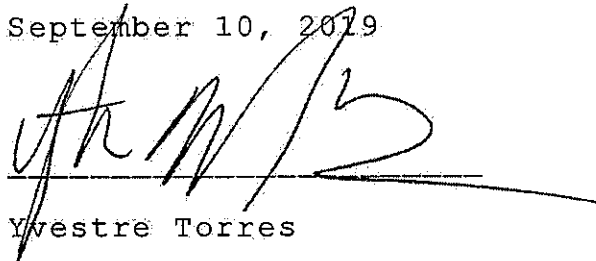
DATE OF PROCEEDING: JUNE 17, 2019

State of South Carolina)

County of Colleton)

I, Yvestre Torres, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information; and that I am neither counsel for, related to, nor employed by any of the parties to this case, and I have no interest, financial or otherwise, in its outcome.

September 10, 2019



Yvestre Torres

Circuit Court Reporter

STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF COLLETON

2017-GS-15-0699

2017-GS-15-0700

State of South Carolina)

) TRANSCRIPT OF RECORD

-vs-)

) June 18, 2019-Volume 2 of 3

Kelvin Gant)

) Colleton County, South

) Carolina

B E F O R E:

The Honorable Steven H. John, Judge

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

Ceth Utsey, Esquire
Katherine Orville, Esquire
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Reported By:

Rebecca Hill

Transcribed By:

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

	<u>EXHIBITS</u>			
	<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
1				
2				
3	S-1	Photograph		85
4	S-2	Photograph		85
5	S-3	Photograph		98
6	S-4	Photograph	67	98
7	S-5	Photograph	67	103
8	S-6	Polk body cam	67	161
9	S-7	Map	67	89
10	S-8	Photograph	67	116
11	S-9	Photograph	67	137
12	S-10	Photograph	67	137
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1 (State's Exhibits 4 through 19 were pre-marked for
2 identification.)

3 (Defendant's Exhibit 1 was pre-marked for
4 identification.)

5 THE COURT: All right, Mr. Dennis.

6 MR. DENNIS: Yes, sir.

7 THE COURT: Come on down, please.

8 Mr. Dennis, you were on the jury panel, and your
9 name was called yesterday, and you were not excused.
10 You obviously left.

11 MR. DENNIS: Yes, sir.

12 THE COURT: You have been called to be
13 a juror on this particular case, if you had been here.
14 Why weren't you here?

15 MR. DENNIS: I did not hear my name called,
16 sir.

17 THE COURT: Clearly, it was called.
18 There's no question about it.

19 MR. DENNIS: It's my fault.

20 THE COURT: I am taking this that you are,
21 you know, it's some kind of punishment to be on the
22 panel. The fact of the matter is you should be serving
23 on this case. Do you understand that?

24 MR. DENNIS: Yes, sir.

25 THE COURT: All right. Jurors that I did

1 excuse are to call back today at 12 noon.

2 MR. DENNIS: Yes, sir.

3 THE COURT: Call back that information line
4 at 12 noon and follow those instructions.

5 MR. DENNIS: Yes, sir.

6 THE COURT: You can go. Thank you very
7 much.

8 MR. DENNIS: Thank you, sir.

9 THE COURT: All right, Counsel, you all
10 indicated that you had some matter regarding this case
11 before the jury came in.

12 MR. UTSEY: Yes, Your Honor, just very
13 briefly. I have a 911 call that I plan on putting
14 in without the transcript -- the 911 call into evidence
15 without the transcript.

16 THE COURT: Okay.

17 MR. UTSEY: And then publishing the 911 call
18 with the transcript. And defense counsel had indicated
19 to me that I don't believe she did have a problem with
20 that, Judge. I just kind of wanted to make sure I was
21 doing it the right way with the Court.

22 THE COURT: Okay. Is there an objection
23 to the process being suggested by the State from the
24 defense?

25 MS. DOVELL: No objection, Your Honor.

1 THE COURT: All right. Just so that
2 I understand it ---

3 MR. UTSEY: Yes, sir.

4 THE COURT: --- you all had a transcript
5 made of the 911 call?

6 MR. UTSEY: That's correct. It will play
7 on the screen with the 911 call.

8 THE COURT: And -- all right.
9 So, Ms. Dovell, you have seen that?

10 MS. DOVELL: Yes, Your Honor, I have seen
11 it.

12 THE COURT: And you have no problem with
13 that?

14 MS. DOVELL: I don't have any problems.

15 THE COURT: All right. Very good.
16 That's fine.

17 MR. UTSEY: Thank you, Your Honor.

18 THE COURT: With that, first, I will ask
19 are all the jurors here? All right. Very good.
20 The State ready for the jury to come in?

21 MR. UTSEY: Yes, Your Honor.

22 THE COURT: And the defense?

23 MS. DOVELL: Yes, Your Honor.

24 THE COURT: Very good. Ask the jury to come
25 in, please.

1 (Jury enters courtroom at 9:40 a.m.)

2 THE COURT: All right. Good morning,
3 ladies and gentlemen.

4 THE JURORS: Good morning.

5 THE COURT: We are going to start the trial
6 of this case. The very first thing that's going to
7 happen is the clerk of court is going to administer your
8 oath to you, so if you would all please stand at this
9 time.

10 (Whereupon the jury panel was duly sworn.)

11 THE COURT: Thank you very much. Again,
12 is there any member of the jury panel that did not
13 affirmatively take the oath just given by the clerk
14 of court, please stand? No jury having stood, I find
15 the jury is properly sworn in this matter.

16 Now, I told you yesterday, ladies and
17 gentlemen, the State has brought charges against the
18 defendant, and that being the charge of attempted murder
19 and possession of a weapon during the commission of
20 a violent crime, attempted murder being defined as
21 a violent crime.

22 Those charges, when the State brought those
23 charges against the defendant, as we sometimes say
24 levied against the defendant, and the defendant pled not
25 guilty to those charges, that immediately put the burden

1 of proof upon the state of South Carolina to prove
2 the defendant guilty beyond a reasonable doubt.

3 Now please remember I read to you the
4 charges, the allegations, remember those are merely
5 the charges, that's not evidence. The evidence that
6 will be presented in this matter will come to you from
7 the witness stand, from the persons testifying under
8 oath, any other kind of maybe some type of documentary
9 or physical evidence that might be introduced.
10 That would be evidence that you will consider.

11 But when the defendant pled not guilty,
12 and the burden of proof went on the state of South
13 Carolina to prove the defendant guilty beyond a
14 reasonable doubt, it became the State's burden to prove
15 those charges.

16 The defendant has nothing to show to you;
17 the defendant has nothing to prove to you. I tell
18 juries all the time a defendant need not even show up
19 for trial because they don't have to prove anything
20 to you.

21 It is the State's burden to prove the
22 defendant guilty of the crimes charged by the evidence
23 it presents beyond a reasonable doubt, and it will be
24 your job to look at all the evidence presented to see
25 if the State has, indeed, proved the defendant guilty

1 of the crimes charged beyond a reasonable doubt.

2 You, in effect, will be the judges of the
3 facts of this case. I will not indicate to you in any
4 way what I think the facts of this case are because
5 it's not my job, not my responsibility. It will be your
6 job and your responsibility to view and examine all of
7 the evidence and decide whether or not the State proved
8 the defendant guilty beyond a reasonable doubt.

9 Now in doing that, one of your duties
10 and responsibilities will be to judge the credibility,
11 that is, the believability of the witnesses that come
12 before you and testify under oath. And if you are
13 thinking how do I judge somebody's credibility and
14 believability? You do it every single day of your life.

15 When somebody tells you something, you are
16 automatically judging in your own mind whether or not
17 you believe them. You use your good common sense,
18 your good judgment that you use when conducting your
19 own affairs. That is what we are going to be asking
20 you to do.

21 Use your good common sense, apply them
22 to the facts and the evidence, judge the credibility
23 and believability, and at the very end, in conjunction
24 with the law, I will give you the law at the end,
25 you combine the two, and see did the State prove

1 the defendant guilty of the crimes charged beyond
2 a reasonable doubt.

3 How the case will proceed. After these
4 comments, we will have some brief opening statements
5 by the attorneys, then we will have the presentation
6 of the evidence, witnesses coming before you,
7 presentation maybe of some physical evidence, then we
8 will have the closing arguments of the attorneys, and
9 then I will give you the law that you will apply to the
10 facts and the evidence you heard, and then I will give
11 the case to you for your deliberations and unanimous
12 decision in this particular matter.

13 I am going to ask you not to talk about
14 the case until I give it to you at the very end.
15 If you start talking about the case when you have
16 only heard one or two witnesses or some of the evidence,
17 and you would not have heard the law that you have
18 to apply. So don't talk about the case until I give
19 it to you at the very end.

20 I told you I wouldn't make any comments on
21 the facts and the evidence. Sometimes during the course
22 of the trial, the attorneys raise certain objections
23 or motions, they want the Court to rule on something.
24 If I rule on that matter that's been raised by the
25 attorneys in your presence, I don't send you to the jury

1 room so I can talk about it more fully with the lawyers.

2 If I rule on it in your presence, please
3 remember I am only making a decision whether or not that
4 matter is something that you should hear. The weight
5 it has, the credibility it has, the believability it
6 has, that is all for you to decide. I am only making
7 the decision whether it is proper for you to consider
8 or not.

9 We understand we have asked you to combine
10 together and reach a unanimous decision, and, you know,
11 sometimes figuring out where you are going to go to
12 dinner is a difficult thing when you are trying to get
13 a couple of people to do it.

14 But we know from the selection process that
15 we have picked a group of citizens from this county that
16 can examine the facts and the evidence in this case and
17 reach a common conclusion as to whether or not the State
18 can prove the defendant guilty of the crimes charged
19 beyond a reasonable doubt, and I know that you will
20 accomplish your duties as you have sworn to do so.

21 All right. With that, Solicitor.

22 MR. UTSEY: Thank you, Your Honor.

23 May it please the Court.

24 THE COURT: Yes, sir.

25 MR. UTSEY: Good morning, y'all.

—OPENING STATEMENT BY MR. UTSEY—

1 THE JURORS: Good morning.

2 MR. UTSEY: Stay awake, stay awake.

3 That's what Herbert Brown kept telling himself when
4 he was on the ground with a gunshot wound to his stomach
5 that was done by the defendant, Kelvin Gant, sitting
6 right over there.

7 On June 24, 2017, it was a Saturday.

8 It was a normal day for Mr. Herbert Brown. He and Karen
9 Holmes, they live together, they have been together
10 about 20 years, and they live down in Ruffin, South
11 Carolina, where some of you might know.

12 It is a real small community, and they own
13 a little store out there. It's a little corner store
14 that sells candy, snacks, drinks, and it's also a store
15 where people come at nighttime, Friday or Saturday
16 nights. They drink alcohol in the parking lot.

17 It's a place where people go in Ruffin,
18 part of that small community, people will go, you know,
19 to go somewhere in Ruffin, South Carolina because we all
20 know there's not many places to go in Ruffin. So they
21 will go sit in this parking lot, and it's the type
22 of place where everybody knows everybody that comes,
23 you know, to the store at night.

24 On June 24, 2017, it was a completely normal
25 day until around 9:30 p.m. that night. And Herbert

OPENING STATEMENT BY MR. UTSEY

1 Brown, which you will hear from, you will hear him
2 testify. At 9:30 p.m., he and Karen Holmes, who is the
3 owner of the store, his significant other, they have
4 been together for 20 years.

5 He and Karen Holmes are sitting inside the
6 store, and this store, y'all, is the size of a bedroom.
7 I mean, it's literally 10 x 15 feet, not big at all.
8 It's a little brick building. And he's sitting inside
9 the store, and he hears several gunshots ring out around
10 9:30, okay, 9:30 that night.

11 So he calls the police. The police come
12 to the scene, you know, to investigate the several
13 gunshots that rang out. The police come to the scene.
14 They find shell casings on the road beside the store,
15 around the store they find shell casings. They
16 investigate, trying to call the people. They can't
17 really find any real evidence so they leave because
18 nobody will talk to them.

19 So they leave the scene after collecting
20 all the shell cases. And dispatch, 911, gets another
21 call around 11:20, 11:30, and this time this call
22 there's a lot more panic because it's Karen Holmes
23 calling.

24 She calls 911 when she hears two gunshots
25 ring out of the house -- of the store. She's inside

OPENING STATEMENT BY MR. UTSEY

1 the store, Herbert Brown was inside the store, but he
2 decided to walk outside. Around 11:20, 11:15, he
3 decides to walk outside, and he's talking to some people
4 in a Dodge Charger, and Karen Holmes is inside.

5 She hears two gunshots ring out. She runs
6 outside and sees Herbert Brown on the ground bleeding --
7 I mean, with a gunshot wound straight to the stomach.
8 And you will hear from Karen Holmes, and you will hear
9 from Herbert Brown that after the police left at 9:30
10 that night that Kelvin Gant, the defendant sitting right
11 over there, came to the store because he was mad about
12 the cops being called. This is before the shooting
13 actually happened. This is between 9:30 and 11:30,
14 somewhere in that time frame.

15 And Herbert Brown and Karen Holmes told him
16 to go home. They have known him for forever, since he
17 was a boy. And then Karen Holmes hears two gunshots
18 ring out, right outside in the front yard of the store.
19 I mean, no more than 20 feet from the store, right
20 outside in the parking lot.

21 And Herbert Brown is on the ground,
22 bleeding out. Karen Holmes calls 911, and she calls
23 911, and she's desperate. She keeps telling them please
24 hurry up, please hurry up, send an ambulance, send an
25 ambulance, he's bleeding.

OPENING STATEMENT BY MR. UTSEY

1 And Herbert Brown, who you will hear
2 testify, tells the police everything that happened,
3 and he kept telling himself to stay awake, just stay
4 awake, stay awake, the whole time he's on the ground,
5 stay awake, stay awake. And he did stay awake.
6 And thank goodness he did stay awake because now he's
7 here to testify to tell you what happened that night
8 to him, and I want you to listen to him.

9 Now, I've charged Kelvin Gant with attempted
10 murder and possession of a weapon during a violent
11 crime. And it's my job to prove to you beyond a
12 reasonable doubt, like the judge said, that Kelvin Gant
13 attempted to kill Herbert Brown, and he had possession
14 of a weapon when he was attempting to kill Herbert
15 Brown, which is the possession of a weapon during
16 a violent crime.

17 Now in order for me to prove to you
18 attempted murder, I have to prove that Kelvin Gant
19 had the intent to kill Herbert Brown with malice,
20 with malice. That's what I have to prove.

21 Now what is malice? Malice is a total
22 disregard for human life. It's something me and you
23 see as hate or ill will towards somebody. And this does
24 not have to develop over time; it can happen instantly,
25 just like it did in this case with Kelvin Gant.

OPENING STATEMENT BY MR. UTSEY

1 It happened instantly when he decided to pull that
2 trigger, not one time but two times.

3 And the possession of a weapon during
4 a violent crime charge, if you all find him not guilty
5 on the attempted murder, then you all have to find him
6 not guilty on the possession of a weapon during a
7 violent crime because, obviously, if he's not guilty
8 on attempted murder, I can't prove that he had the
9 possession of a weapon in the commission of a violent
10 crime because he's not guilty on attempted murder,
11 if that's what you all decide.

12 So if you all come back with a not guilty
13 on the attempted murder, you all have to come back
14 with a not guilty on the possession of a weapon during
15 a violent crime also.

16 However, at the end of this trial, I am
17 going to come back, and we are going to do a closing
18 argument, and I am going to ask you all for one thing,
19 and the only thing I want, and it's you all's job to
20 do this, that's why you all are here, the only thing
21 I want is the truth, for you all to listen to the
22 witnesses, listen to Herbert Brown who just stayed
23 awake the entire time so he can speak his truth today.
24 Thank you.

25 THE COURT: Ms. Dovell.

OPENING STATEMENT BY MS. DOVELL

1 MS. DOVELL: May it please the Court.

2 THE COURT: Yes, ma'am.

3 MS. DOVELL: Good morning.

4 THE JURORS: Good morning.

5 MS. DOVELL: Kelvin Gant did not shoot
6 Herbert Brown. There are some facts that aren't
7 in dispute. Herbert Brown was shot outside his store
8 on Smyly Road on June 24, 2017, he does know who Kelvin
9 Gant is, 911 was called, and Herbert Brown has accused
10 Kelvin Gant of shooting him from his first interactions
11 with law enforcement.

12 I will not be able to tell you who shot
13 Herbert Brown; I will not be able to tell you why he has
14 wrongly accused Kelvin of shooting him. And as Judge
15 John informed you earlier, it's not my burden to do
16 that. But what I can tell you is that the investigation
17 of this case, or the lack thereof, has left me with lots
18 of questions.

19 There's no gun in evidence; there's no
20 gunshot residue, no fingerprinting, no forensic evidence
21 in this case. There seems to have been no follow up
22 with people who are on the scene that night. There are
23 no witnesses to the shooting, just Herbert Brown.

24 As you listen to the evidence presented
25 today in the trial and tomorrow throughout this trial,

ANGELA STALLINGS - DIRECT BY MR. UTSEY

1 you should have some questions too. And you should
2 come to the conclusion that Kelvin Gant is not guilty
3 of shooting Herbert Brown.

4 THE COURT: All right. Solicitor, your
5 first witness, please.

6 MR. UTSEY: Yes, Your Honor. The State
7 calls Angela Stallings.

8 THE COURT: Okay. All right, ma'am,
9 come all the way around up front.

10 MS. DOVELL: That's not her.

11 MR. UTSEY: That's not her, Your Honor.

12 THE COURT: Okay. I'm sorry. All right.
13 You're Angela Stallings. All right. Come around all
14 the way up front.

15 MR. UTSEY: Thank you, Your Honor.

16 ANGELA STALLINGS, was called as a witness,
17 being duly sworn, was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. UTSEY:

20 Q. Ms. Stallings, where do you work?

21 A. The Colleton County Sheriff's Office.

22 Q. And how long have you worked for the Colleton
23 County Sheriff's Office?

24 A. Since 2015 this last go around.

25 Q. What was your first go around?

—ANGELA STALLINGS - DIRECT BY MR. UTSEY—

1 A. 2001.

2 Q. Okay. And what is your position currently
3 for the Colleton County Sheriff's Office?

4 A. Currently, I am a captain with the sheriff's
5 office, and I oversee the communications division
6 and the criminal investigations division.

7 Q. And can you tell us some of your duties
8 as overseeing the communications division?

9 A. Yes. I have a lieutenant that is immediately
10 under me that handles the day-to-day operations. As the
11 captain, one of my duties is to supervise the lieutenant
12 and handle most, if not all, of the requests that come
13 in regarding our phone records. I pull them from our
14 recorder system for different reasons; FOIA requests,
15 criminal investigations, civil investigations.

16 Q. Okay. And can you explain to us some of the
17 duties real quick that a 911 communications dispatcher
18 has?

19 A. Yes. Our communications center actually
20 dispatches for seven agencies within our county.
21 They are responsible for dispatching for the Colleton
22 County Sheriff's Office, Colleton County Fire and
23 Rescue, Walterboro Police Department, Walterboro Fire
24 Department, Cottageville Police Department, Edisto
25 Police Department and Edisto Fire Department.

ANGELA STALLINGS - DIRECT BY MR. UTSEY

1 We answer all 911 calls that come into the county
2 regardless of what agency they are for, and we dispatch
3 the appropriate agencies, depending on the type of
4 emergency that comes in. On occasion, we also assist
5 South Carolina Probation and Parole with radio traffic
6 when they are in our county working cases, the South
7 Carolina Department of Natural Resources.

8 And we are also responsible of transferring
9 out emergency and non-emergency calls to surrounding
10 counties that may come into our PSAP.

11 Q. Okay. And are you also the custodian of records
12 for dispatch for the 911 calls?

13 A. I am.

14 Q. Okay. And are you familiar with the 911 calls
15 that occurred on the night of June 24, 2017?

16 A. Yes, I am.

17 Q. And were these phone calls recorded on that
18 night?

19 A. They were.

20 Q. Okay. And when someone calls 911, is the 911
21 call recorded at the same time as they are talking
22 to you -- as they are talking to the dispatcher on
23 the phone?

24 A. Yes.

25 Q. Okay. And are these recordings kept in the

ANGELA STALLINGS - DIRECT BY MR. UTSEY

1 ordinary course of business?

2 A. Yes, they are.

3 Q. And at our request, did you review and initial
4 both of these 911 calls?

5 A. Yes, I did.

6 MR. UTSEY: May I approach the witness,
7 Your Honor?

8 THE COURT: You may.

9 BY MR. UTSEY:

10 Q. Can you tell me what those are, Captain
11 Stallings?

12 A. These are two 911 calls that came in regarding
13 this incident.

14 Q. Okay. And how do you recognize those 911 calls?

15 A. Both of them have my initials and date on them.

16 Q. Okay. And are they a fair and accurate
17 reflection of the 911 calls that were recorded on the
18 night of June 24, 2017?

19 A. Yes, they are.

20 MR. UTSEY: Your Honor, at this time,
21 I would ask permission to publish to the jury the
22 exhibits what would have been marked -- well, actually,
23 first, Your Honor, I would like to ask that these be
24 admitted into evidence as State's Exhibits 1 and 2.

25 THE COURT: Can you read the State's exhibit

1 numbers on both of them, please.

2 THE WITNESS: Yes. They are State's Exhibit
3 No. 1 and State's Exhibit No. 2.

4 THE COURT: All right. Any objections
5 to State's 1 and 2 coming into evidence?

6 MS. DOVELL: No, Your Honor.

7 THE COURT: All right. They are in
8 evidence, without objection. You may proceed.

9 (State's Exhibit Nos. 1 and 2 were admitted into
10 evidence.)

11 MR. UTSEY: Thank you, Your Honor. Now, may
12 I have permission to publish State's Exhibits 1 and 2?

13 THE COURT: You may do so.

14 MR. UTSEY: Thank you, Your Honor.

15 THE COURT: Solicitor.

16 MR. UTSEY: Yes, Your Honor. And also,
17 for the record, Your Honor, I am publishing, which we
18 discussed earlier, the 911 call with the transcript.

19 THE COURT: All right. Very good.
20 And these are the ones approved by the defense, correct?

21 MR. UTSEY: That is correct.

22 MS. DOVELL: Yes, Your Honor.

23 THE COURT: All right. Very good.

24 (Pause.)

25 MR. UTSEY: I apologize, Your Honor.

1 THE COURT: That's all right.

2 (911 call began to play for the jury.)

3 MR. UTSEY: I apologize, Your Honor, now the
4 screen is turned off.

5 THE COURT: It's all right. If we have to
6 choose between the two, we will do the sound.

7 MR. UTSEY: Yes, Your Honor. So we will
8 play the sound, Judge.

9 THE COURT: All right. Very good.

10 (911 call played in full for the jury.)

11 MR. UTSEY: And, Your Honor, I am now going
12 to play the second 911 call, which has been premarked
13 as State's Exhibit -- marked as State's Exhibit No. 2.

14 THE COURT: All right.

15 (911 call played in full for the jury.)

16 MR. UTSEY: Your Honor, the State has no
17 more questions for this witness.

18 THE COURT: All right. Cross-examination.

19 MS. DOVELL: No questions for Captain
20 Stallings.

21 THE COURT: All right. Very good. You wish
22 the witness to be excused?

23 MR. UTSEY: Yes, Your Honor.

24 THE COURT: Any objection?

25 MS. DOVELL: None from the defense,

KAREN HOLMES - DIRECT BY MS. ORVILLE

1 Your Honor.

2 THE COURT: All right, ma'am, you are
3 released from your subpoena. Now go back to your
4 regular duties. Thank you.

5 THE WITNESS: Thank you.

6 THE COURT: Did you hand the exhibits to the
7 court reporter?

8 THE WITNESS: Yes, sir, I did.

9 THE COURT: Okay, great. Your next witness,
10 please.

11 MS. ORVILLE: Your Honor, the State calls
12 Karen Holmes.

13 KAREN HOLMES, was called as a witness, being
14 duly sworn, was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MS. ORVILLE:

17 Q. Ms. Holmes, I am going to have you speak up
18 and say your name again real loud.

19 A. Karen Holmes.

20 Q. Thank you. Ms. Holmes, you live here in the
21 county?

22 A. Yes, ma'am.

23 Q. Where do you live?

24 A. I live at [REDACTED] Highway, Smoaks,
25 South Carolina.

KAREN HOLMES - DIRECT BY MS. ORVILLE

1 Q. You live out in Smoaks, okay. And how long
2 have you lived in Colleton?

3 A. About 27 years.

4 Q. Twenty-seven years, okay. And what do you do
5 for a living?

6 A. I am a housewife.

7 Q. I'm sorry. I can't hear you.

8 A. I am a housewife.

9 Q. You are a housewife. And do you run any sort
10 of business?

11 A. I have a little store here.

12 THE COURT: You can't move the microphone.

13 Can you move the chair closer? Thank you.

14 BY MS. ORVILLE:

15 A. I have a store in Ruffin.

16 Q. There you go. I can hear you real well now.
17 You have a store in Ruffin, okay. And you -- back
18 in 2017, you had a different store; is that right?

19 A. Yes.

20 Q. Okay. And where was that store?

21 A. That store was on Smyly Road.

22 Q. On Smyly Road. And that's here in Colleton
23 still, right?

24 A. Yes.

25 Q. Okay. What part of Colleton is that in?

KAREN HOLMES - DIRECT BY MS. ORVILLE

1 A. Ruffin.

2 Q. Ruffin, okay. Give me just a second. I am going
3 to show you something.

4 MS. ORVILLE: Your Honor, may I approach
5 the witness?

6 THE COURT: Yes, ma'am.

7 BY MS. ORVILLE:

8 Q. Ms. Holmes, I am going to show you this map.
9 Do you recognize this?

10 A. Yes.

11 Q. Okay. And what is it?

12 A. A map of the area the store is in.

13 Q. Okay. And it's a fair and accurate map of the
14 area by your store?

15 A. Yes, ma'am.

16 Q. All right.

17 MS. ORVILLE: Your Honor, the State would
18 move Exhibit 7 into evidence.

19 THE COURT: Any objection?

20 MS. DOVELL: No objection.

21 THE COURT: State's 7 is in evidence without
22 objection. You may proceed.

23 (State's Exhibit No. 7 was admitted into evidence.)

24 MS. ORVILLE: Your Honor, may I publish
25 Exhibit 7 to the jury?

KAREN HOLMES - DIRECT BY MS. ORVILLE

1 THE COURT: You may do so.

2 MS. ORVILLE: All right.

3 BY MS. ORVILLE:

4 Q. All right, Ms. Holmes, I am going to stand right
5 here so I am not blocking anybody in talking to you.

6 Where is your store on this map?

7 A. (Indicating.)

8 Q. Right there. Okay, that little store.

9 A. Right.

10 Q. Okay. And this is -- is this Smyly Road?

11 A. This is Smyly Road.

12 Q. Okay. Perfect. So for now, I am going to set
13 this down. I just wanted everybody to have a picture
14 of where your store was. Okay. And what kind of store
15 was it? What kind of things did you sell?

16 A. Candy, sodas, chips, and hot dogs.

17 Q. Okay. And what kind of hours was it open?

18 A. From maybe four, five, sometimes earlier.

19 Q. Okay.

20 A. It depends on how I felt.

21 Q. Okay. And would it stay open late?

22 A. Yes, sometimes 11, 12, sometimes 1, had been
23 open to 2.

24 Q. Okay. So it's just kind of while people are
25 there?

KAREN HOLMES - DIRECT BY MS. ORVILLE

1 A. As long as the people come, then I will stay
2 open.

3 Q. Okay. That makes sense. And so it's open
4 at night sometimes. Is there any lighting around
5 the store?

6 A. Yes, it's just a light in the front of the yard
7 that light up the whole area.

8 Q. The whole area, okay. Could you see well if you
9 were outside at night?

10 A. Yeah.

11 Q. Okay. And I know you said you sold, like,
12 candies and sodas, and people would come around.
13 Was it like a hang out?

14 A. Yeah, it was like a little hang out because there
15 was a slab on the side, and a lot of people sat on the
16 slab and talked, listened to music, drank beer.

17 Q. Okay.

18 A. You know, just hanging out.

19 Q. Sure. Okay. Do you know Herbert Brown?

20 A. Yes.

21 Q. Okay. And who is he to you?

22 A. He is my common law.

23 Q. Yeah, your common law. Does that mean you all
24 just have been together forever?

25 A. Forever.

KAREN HOLMES - DIRECT BY MS. ORVILLE

1 Q. Okay. About how long?

2 A. About 26 years.

3 Q. All right, so a long time.

4 A. Something like that, close.

5 Q. Something like that. Yes, ma'am. And do you
6 know a man named Kelvin Gant?

7 A. Yes, I know Kelvin Gant.

8 Q. How long have you known Mr. Gant?

9 A. Wow. I have known him since he's been at least
10 eight, nine, maybe ten years old.

11 Q. Okay. So a lot of years.

12 A. A long time.

13 Q. Okay. And were you all close with Mr. Gant?

14 A. When he got older, we got a little closer,
15 you know. But I know his mother, his father, I know
16 his whole family.

17 Q. Okay. And would he ever come to the store
18 at all?

19 A. Yeah, yeah, lots of times.

20 Q. Okay.

21 A. Lots of times.

22 Q. So you would recognize him when you saw him?

23 A. Yeah.

24 Q. Okay. And so I am going to take you back to
25 the night of June 24, 2017, okay.

KAREN HOLMES - DIRECT BY MS. ORVILLE

1 A. Okay.

2 Q. Can you describe that day for me at the store?

3 A. Yes. There was a lot of people outside.

4 Q. Okay.

5 A. About maybe 20, 30 people outside.

6 Q. Okay.

7 A. Just hanging around. And a couple of shots came,
8 it started -- somebody started shooting. I don't know
9 who it was.

10 Q. Okay. About when? Was it light? Was it dark?

11 A. It was still light out.

12 Q. It was ---

13 A. It was, like, a little bit, maybe around --
14 I don't know because it was light when it first started
15 shooting.

16 Q. When the first shot, okay.

17 A. Okay.

18 Q. So -- but was it evening, was it like noon?

19 A. It was in the evening.

20 Q. Evening, okay.

21 A. It was in the evening.

22 Q. Okay. And what did you do when you heard
23 that first set of shots?

24 A. I ducked down and made it inside of the building,
25 and I called the police.

KAREN HOLMES - DIRECT BY MS. ORVILLE

1 Q. You called the police, okay.

2 A. Yeah.

3 Q. And did the police ever come to the store?

4 A. Yeah, they came to the store.

5 Q. Okay.

6 A. And they looked in the road and picked up the
7 casings and all of that stuff.

8 Q. Okay.

9 A. And they left.

10 Q. Okay. And what happened after the police left?

11 A. About maybe 20, 25 minutes later this guy came
12 down, him and Kelvin, they came down to the store.

13 Q. Okay. So you said him and Kelvin. Who is him?

14 A. Mo.

15 Q. Mo, okay. And did you know Mo?

16 A. Yeah, I knew him. I knew all of them.

17 Q. You knew all of them, okay.

18 A. Uh-huh.

19 Q. And where did they come from? Was there
20 somewhere nearby they were hanging out?

21 A. They lived in a house on Serpentine and Smyly
22 Road. Everybody hangs out there, you know.

23 Q. Okay. Everybody hangs out there?

24 A. Yeah.

25 Q. Okay. I am going to show you on this map again.

KAREN HOLMES - DIRECT BY MS. ORVILLE

1 I will bring it back over here. I think that might be
2 the best way to do it. Is that house on this map?

3 A. (Indicating.) Yeah, it's over here.

4 Q. Are you pointing to this house?

5 A. Yeah, that house right here.

6 Q. Okay. So this is your store right here?

7 A. Uh-huh.

8 Q. And this is the house that Mo and Kelvin came
9 from?

10 A. Yeah.

11 Q. Okay. And how far apart do you feel like those
12 are, if you had to estimate?

13 A. Wow. It's -- I don't know maybe an eighth
14 of a mile.

15 Q. Okay. Is that, like, a football field distance,
16 or a couple of football fields?

17 A. No, it's closer than a football field.

18 Q. Closer than a football field, okay. Perfect.

19 A. Might be a football field.

20 Q. Might be a football field, okay.

21 A. Might be.

22 Q. Okay. So they walked down to the store, okay.
23 So tell me what happened when Mo and Kelvin walked down
24 to the store.

25 A. So Herbert and Mo, they was arguing about --

KAREN HOLMES - DIRECT BY MS. ORVILLE

1 because Mo thought that he called the police on them
2 because, I guess, the police went to that house instead
3 of coming to the store.

4 Q. Okay. So first ---

5 A. From the first incident.

6 Q. Okay. So when you called the police the first
7 time ---

8 A. Yeah, they must have went there first.

9 Q. --- they accidentally went to Mo's house? Okay.

10 A. Yeah. So he was mad, "You called the police
11 on me." So him and Herbert got a little confrontation.

12 Q. Okay.

13 A. And he left.

14 Q. He left?

15 A. Yeah.

16 Q. Mo left?

17 A. Because I told him go home. Herbert didn't
18 call the police. I told him I did.

19 Q. Okay.

20 A. And he turned around and he left.

21 Q. Mo left, okay.

22 A. Right. But Kelvin he just kept instigating,
23 just kept coming back arguing and arguing and arguing
24 with Herbert. And Herbert never said a word to him,
25 and he turned around, and I made him leave, "Go home,

KAREN HOLMES - DIRECT BY MS. ORVILLE

1 Kelvin," I kept telling him, "Go home." And he looked
2 at me, he said, "I am home, I am already home," and down
3 the road he went.

4 Q. Okay.

5 A. So about maybe, wow, maybe about 20 minutes later
6 or 10 minutes later, I heard the gunshots.

7 Q. Okay. And where were you? You are hearing these
8 gunshots, are you outside?

9 A. I was inside.

10 Q. You are inside. So you are inside the store,
11 and you hear gunshots. Did you know who was shot?

12 A. No, because I never heard Herbert ever raise
13 his voice because when I heard him yell, I didn't even
14 know who it was. I just ran out to see who it was.

15 Q. Okay. So you heard a yell after the gunshots?

16 A. Yeah, right.

17 Q. But you said you never heard Herbert raise his
18 voice?

19 A. I didn't know it was him, and when I came out
20 he was laying on the side between the two cars.

21 Q. Okay.

22 A. And I asked him, I said, "Who shot you, who shot
23 you?" And ---

24 Q. I am going to let him testify to what he said.

25 A. Oh, okay.

KAREN HOLMES - DIRECT BY MS. ORVILLE

1 Q. That's okay. You are fine, you are fine.

2 MS. ORVILLE: Your Honor, may I approach
3 the witness?

4 THE COURT: Yes, ma'am.

5 BY MS. ORVILLE:

6 Q. I am going to show you a couple of photos.

7 Do you recognize these?

8 A. Yes.

9 Q. Do you? Okay.

10 A. Yeah.

11 Q. What are they?

12 A. Herbert laying down with a gun -- with the blood
13 on him.

14 Q. And how do you know that? Did you see it?

15 A. Yeah.

16 Q. Okay. And are they a fair and accurate
17 representation of what you saw that night?

18 A. Yes.

19 MS. ORVILLE: Your Honor, the State would
20 move Exhibits 3 and 4 into evidence at this time.

21 THE COURT: All right. I am going to allow
22 State's 3 and 4 into evidence over the objection of the
23 defense based on my prior ruling. Thank you very much.

24 (State's Exhibit Nos. 3 and 4 were admitted into
25 evidence.)

KAREN HOLMES - DIRECT BY MS. ORVILLE

1 MS. ORVILLE: Thank you, Your Honor.

2 May I have permission to publish these to the jury?

3 THE COURT: You may do so.

4 MS. ORVILLE: All right.

5 BY MS. ORVILLE:

6 Q. So, Miss Karen, I am just going to ask you again
7 while I am holding these pictures up -- I'm sorry.
8 I keep doing this. I don't want to have my back to
9 anybody. So these pictures, this is Herbert in these
10 pictures?

11 A. Yes, that's him.

12 Q. And this is what he looked like with his gunshot
13 wound?

14 A. Yeah.

15 Q. Okay. He was laying between the cars, you said?

16 A. Yeah.

17 Q. Okay. So you saw Herbert laying between the
18 cars, and what did you do then?

19 A. I ran to the road ---

20 Q. You ran to the road.

21 A. --- to see who did it.

22 Q. Okay. And did you see anything?

23 A. I could see a shadow at first.

24 Q. Okay.

25 A. I could see somebody because he had on black.

KAREN HOLMES - DIRECT BY MS. ORVILLE

1 I could see somebody walking, but I could not make out
2 who it was.

3 Q. Okay. So they had on black ---

4 A. Until he got under the light because there's
5 a light that's twisted a little towards the road.

6 Q. A light. So is it a light like a street light,
7 or a light on a house?

8 A. It's a light that's in a yard.

9 Q. In a yard of a house?

10 A. Yeah.

11 Q. Okay. Can you see that on this map? Let me
12 bring it to you again. Well, I know you would not see
13 the light, but can you see the -- do you know which
14 house it was?

15 A. Oh, yeah. (Indicating.) It was this house right
16 here.

17 Q. This house right here?

18 A. Yeah.

19 Q. So the light from this house?

20 A. Yeah, it was shining to the road.

21 Q. Shining to the road.

22 A. And that's where he was at.

23 Q. That's where you saw someone walking away wearing
24 black?

25 A. That's where I saw him.

KAREN HOLMES - DIRECT BY MS. ORVILLE

1 Q. Okay. And by him, who do you mean?

2 A. Kelvin Gant.

3 Q. Kelvin Gant, okay. And you recognized him
4 because he got under the light at that point?

5 A. Yeah.

6 Q. Okay. Was there any -- so, at that point,
7 after you had seen him under the light, what did you do?

8 A. I went back to Herbert.

9 Q. Okay.

10 A. And I was on the phone. I went back to Herbert.

11 Q. You were on the phone, is that what you said?

12 A. Yeah.

13 Q. So you called 911?

14 A. Yeah, because he had -- you told me I can't say
15 what he said.

16 Q. Yes, ma'am.

17 A. Okay.

18 Q. So you called 911?

19 A. And I gave him the phone.

20 Q. You let him talk?

21 A. He spoke to the operator.

22 Q. Okay. And did the police and ambulance ever get
23 there?

24 A. Finally.

25 Q. Finally, okay. And did they take Herbert to the

KAREN HOLMES - DIRECT BY MS. ORVILLE

1 hospital?

2 A. Yeah.

3 Q. Okay. And these two cars that he was laying
4 between, who's cars were they, if you know?

5 A. Okay, one was mine, and the other one was
6 Randolph McFadden.

7 Q. Okay. So one was yours. And so did you go
8 with Herbert to the hospital?

9 A. They wouldn't let me take the car because it
10 was part of the scene of the crime.

11 Q. Okay. And, eventually, were you able to go be
12 with Herbert?

13 A. Yeah.

14 Q. Okay. And did you ever reopen that store?

15 A. I think I opened it, like, maybe two days later.

16 Q. Okay, a couple of days later.

17 A. Yeah.

18 Q. So the last thing I am going to ask you,
19 actually, the second to last thing.

20 MS. ORVILLE: Your Honor, may I approach
21 the witness?

22 THE COURT: Yes, ma'am.

23 BY MS. ORVILLE:

24 Q. I am just going to ask if you recognize this
25 picture.

KAREN HOLMES - DIRECT BY MS. ORVILLE

1 A. Oh, yeah, that's the store.

2 Q. That's the store, okay. And is it a fair
3 and accurate representation and picture of your store?

4 A. Yeah, definitely.

5 Q. Okay.

6 MS. ORVILLE: And, Your Honor, the State
7 would move Exhibit 5 into evidence.

8 THE COURT: Any objection?

9 MS. DOVELL: None, Your Honor.

10 THE COURT: It's in evidence without
11 objection.

12 (State's Exhibit No. 5 was admitted into evidence.)

13 MS. ORVILLE: Thank you, Your Honor.
14 May I publish to the jury?

15 THE COURT: You may do so.

16 MS. ORVILLE: All right.

17 BY MS. ORVILLE:

18 Q. So this is just a picture of your store,
19 the store that we have been talking about?

20 A. Yeah.

21 Q. Okay. So it's small, right?

22 A. Yeah, it's very small.

23 Q. Okay. All right. So now the last question
24 I'm going to ask you, Ms. Holmes, is looking around
25 the courtroom today, do you see Kelvin Gant, the man

KAREN HOLMES - CROSS BY MS. DOVELL

1 who you saw walking from your store?

2 A. Yes.

3 Q. Okay. Where is he?

4 A. Over there.

5 Q. Can you say that again?

6 A. He's right over there.

7 Q. Okay. And what is he wearing?

8 A. White shirt.

9 Q. Okay. Thank you.

10 MS. ORVILLE: Nothing further from the State
11 at this time, Your Honor.

12 THE COURT: Cross-examination.

13 MS. DOVELL: May it please the Court.

14 THE COURT: Yes, ma'am.

15 CROSS EXAMINATION

16 BY MS. DOVELL:

17 Q. Good morning, Ms. Holmes.

18 A. Good morning.

19 Q. My name is Helen Dovell. I represent Kelvin.
20 I've got some questions for you.

21 A. Okay.

22 Q. Ms. Holmes, about how long did you operate
23 that club on Smyly Road?

24 A. Before that happened?

25 Q. Yes, ma'am.

KAREN HOLMES - CROSS BY MS. DOVELL

1 A. About maybe five months, four or five months,
2 something like that.

3 Q. Okay. So you were aware that this property
4 is not zoned for food and beverage service, correct?

5 A. No. I don't know anything about that kind
6 of stuff.

7 Q. Okay. All right. So you don't have a zoning
8 permit, or didn't have a zoning permit to operate that
9 business?

10 A. No, I didn't. I guess I didn't.

11 Q. And you testified that you served food at the
12 club?

13 A. Yeah.

14 Q. All right. Did you -- you didn't apply for
15 a DHEC food permit, did you?

16 A. I didn't sell food; I sold hot dogs. And that
17 was it.

18 Q. Okay. And chips and candy and all?

19 A. Yeah.

20 Q. Okay. So you didn't have a DHEC permit, then?

21 A. I didn't know I needed one.

22 Q. Okay. And you also sold alcohol there, correct?

23 A. No, not really. They would bring their own
24 alcohol, and I had my own personal alcohol there,
25 and they would drink some of that also.

KAREN HOLMES - CROSS BY MS. DOVELL

1 Q. Okay.

2 A. We all drank up at the club.

3 Q. Yes, ma'am. Thank you. And you sold cigarettes
4 there?

5 A. Loosies, yeah.

6 Q. But you didn't have a cigarette or tobacco
7 license to do that?

8 A. I didn't know I needed one.

9 Q. Okay. So you have a new club on Lowcountry
10 Highway now?

11 A. Yeah.

12 Q. All right. And are you serving food there?

13 A. No.

14 Q. No. No hot dogs, no nothing?

15 A. No, no. Chips, pickles, pickled eggs, chocolate
16 candy, and I have two pool tables.

17 Q. And you don't have a zoning permit to operate
18 this business there, do you?

19 A. I didn't know I needed one. I just have
20 a business license.

21 Q. You have a business license?

22 A. Yeah.

23 Q. And who's that issued through?

24 A. What do you mean?

25 Q. You said you had a business license.

KAREN HOLMES - CROSS BY MS. DOVELL

1 A. Yeah.

2 Q. But who gave you the license?

3 A. Yeah, I got it from Charleston.

4 Q. From Charleston?

5 A. Yeah.

6 Q. Okay.

7 A. I don't know what you call ---

8 Q. Ma'am, I am asking you questions.

9 A. I know. I don't understand really the question
10 because I don't know where the license come from or
11 anything like that. I am not into all of that stuff.

12 Q. Okay. All right. And you serve alcohol at this
13 club?

14 A. No, not really.

15 Q. So you don't have an alcohol license of any kind
16 here?

17 A. No, not yet.

18 Q. And you sell cigarettes here, too?

19 A. Loosies.

20 Q. And you don't have a tobacco or cigarette
21 license. Okay. Ms. Holmes, you spoke with several
22 members of law enforcement on the night of June 24,
23 2017, correct?

24 A. No.

25 Q. Well, okay, I will back up. You spoke with 911?

KAREN HOLMES - CROSS BY MS. DOVELL

1 A. Right.

2 Q. Okay. And you spoke with Lieutenant Polk?

3 A. I don't ---

4 Q. He was the deputy who arrived first on scene?

5 A. I don't remember.

6 Q. You don't remember speaking with him at all?

7 A. Yeah, I don't remember. Maybe if I see his face
8 I might remember.

9 Q. Okay. And you spoke with Lieutenant Smalls?
10 Lieutenant Smalls is right here. You spoke with him
11 that night?

12 A. I don't remember. So much was going on I really
13 don't remember.

14 Q. So you don't remember?

15 A. No.

16 Q. Okay. All right. Lieutenant Smalls, you don't
17 remember him asking you to write a statement?

18 A. No, I don't.

19 Q. Okay.

20 A. It's been a while ago. I don't remember
21 everything.

22 Q. Okay.

23 MS. DOVELL: May I approach the bench,
24 Your Honor?

25 THE COURT: You all come over here.

KAREN HOLMES - REDIRECT BY MS. ORVILLE

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

2 (Back on the record.)

3 MS. DOVELL: Beg the Court's indulgence,
4 Your Honor.

5 THE COURT: Yes, ma'am.

6 MS. DOVELL: I don't have any other
7 questions for Ms. Holmes.

8 THE COURT: Any redirect?

9 MS. ORVILLE: Just briefly, Your Honor.

10 REDIRECT EXAMINATION

11 BY MS. ORVILLE:

12 Q. Ms. Holmes, you may not remember exactly which
13 law enforcement officers you spoke with, but you spoke
14 to officers that night?

15 A. I probably did, but I don't remember who.

16 Q. Sure.

17 A. I don't remember too much of all that.

18 Q. All the details?

19 A. Yeah.

20 Q. Sure. And that's because the man you have been
21 with for 20 plus years has been shot?

22 A. I was panicky basically ---

23 MS. DOVELL: Objection, Your Honor.
24 She's leading the witness.

25 MS. ORVILLE: I apologize, Your Honor.

KAREN HOLMES - REDIRECT BY MS. ORVILLE

1 I will not.

2 THE COURT: Let the witness testify.

3 BY MS. ORVILLE:

4 A. I was just -- I am a panicky kind of person,
5 and everything just went -- I don't really care to
6 remember that night, to be honest.

7 Q. I understand. And you do remember seeing --
8 I apologize. I will rephrase. But you do remember
9 seeing someone walking away?

10 A. I know that for a fact.

11 Q. And who again was it that you saw?

12 A. It was Kelvin.

13 Q. Okay. Thank you.

14 A. I know him almost his whole life.

15 MS. ORVILLE: Thank you, Your Honor.

16 Nothing further from the State.

17 THE COURT: Anything on those questions just
18 asked?

19 MS. DOVELL: No more questions, Your Honor.

20 THE COURT: You may step down.

21 THE WITNESS: All right.

22 THE COURT: Your next witness.

23 MR. UTSEY: The State calls Deputy Chad
24 McDowell.

25 CHAD MCDOWELL, was called as a witness,

CHAD MCDOWELL - DIRECT BY MR. UTSEY

1 being duly sworn, was examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MR. UTSEY:

4 Q. Good morning, Mr. McDowell. Who do you currently
5 work for?

6 A. Jasper County Sheriff's Office.

7 Q. And what's your job with the Jasper County
8 Sheriff's Office?

9 A. I am a detective on the crime suppression unit.

10 Q. Okay. And who did you work for before you went
11 to the Jasper County Sheriff's Office?

12 A. Colleton County Sheriff's Office.

13 Q. And how long did you work for the Colleton County
14 Sheriff's Office?

15 A. Approximately three years.

16 Q. Okay. And what was your position with them?

17 A. I was a road deputy.

18 Q. Okay. And what were some of your duties as
19 a road deputy for the Colleton Sheriff's Office?

20 A. Check on public and private properties,
21 protect them as well as answer calls for service.

22 Q. Okay. And let me turn your attention to the
23 night of June 24, 2017. And I am going to turn your
24 attention specifically around 9:30 p.m. Can you tell
25 me what happened around that time?

CHAD MCDOWELL - DIRECT BY MR. UTSEY

1 A. We received a call for service in regards
2 to a shooting incident that occurred in the Ruffin
3 community. I responded with several other units.

4 Q. Okay. Do you remember where that was in the
5 Ruffin community?

6 A. Near the intersection of Cricket and Smyly Road.

7 Q. Okay.

8 A. And I don't know the exact address.

9 Q. Okay. Is that in Colleton County?

10 A. It is.

11 Q. Okay. And did Lieutenant Kevin Smalls,
12 he's seated right there, respond to the scene
13 with you that night?

14 A. Yes, he did.

15 Q. Okay. Can you tell me, I guess, what kind
16 of call -- so you got a call to several gunshots.
17 What did you -- did you find anything? Did you find
18 any evidence on the scene?

19 A. I believe we found several shell casings.

20 Q. Okay. Where did you locate the shell casings?

21 A. They were in the roadway, spanning from Cricket
22 Lane to in front of a nightclub that was in the area.

23 Q. Okay.

24 MR. UTSEY: And, Your Honor, may I approach?

25 THE COURT: Yes, sir.

CHAD MCDOWELL - DIRECT BY MR. UTSEY

1 BY MR. UTSEY:

2 Q. I am going to show you -- can you show me on this
3 map where you found the gunshots -- the shell casings
4 for the jury?

5 A. (Indicating.) So they started in front of
6 Cricket Lane.

7 Q. Okay.

8 A. And spanned down towards -- this is actually --
9 (Indicating.) Yeah, they were spanned right down here.

10 Q. Okay. But it started over here on Cricket Lane?

11 A. Yes, from Cricket to right here in front of the
12 club.

13 Q. Okay. And point out the club for me.

14 A. (Indicating.) It would be this building right
15 here.

16 Q. Okay.

17 A. This is caddy-corner to the intersection.

18 Q. Okay. Thank you. All right. So when you all
19 were out there, Mr. McDowell, did you all speak to
20 anyone at the store? Do you remember?

21 A. I don't remember speaking to anyone at the store.

22 Q. Okay.

23 A. Somebody yelled to us from the store, telling
24 us that the shooting occurred further down the road,
25 but I could not tell you who that was..

CHAD MCDOWELL - DIRECT BY MR. UTSEY

1 Q. Okay. So did you all investigate any further
2 after you all found the shell casings?

3 A. Yes, we -- I mean, at that point, is when we
4 began looking for the shell casings. Once we found the
5 shell casings, we went up to the corner of Serpentine
6 and Smyly.

7 Q. Okay. And who's house is that at the corner
8 of Serpentine and Smyly, do you know?

9 A. I don't know.

10 Q. Okay. Do you know who you all spoke with at
11 Serpentine or saw at Serpentine and Smyly? Was it just
12 a group of people?

13 A. It was a large group of people. Several people
14 fled from the area when we arrived. I don't know
15 exactly who we spoke to.

16 Q. Okay. Do you remember seeing Kelvin Gant there?

17 A. I remember seeing several people. I can't say
18 that I remember seeing him specifically.

19 Q. Okay. All right. So what happened after you
20 all left the scene from the 9:30 p.m. call?

21 A. We responded to several other calls for service
22 that night. I believe we were actually in the Green
23 Pond area, whenever the next call in the same area
24 came out for another shooting incident, this time with
25 a victim.

CHAD MCDOWELL - DIRECT BY MR. UTSEY

1 Q. Okay. And do you know around about what time
2 that was?

3 A. Probably around 11, 11:30, sometime in that area.

4 Q. Okay. All right, so tell me what happened when
5 you got the call that shots were fired at 11:30?

6 A. I responded from the Ritter Road and Bowman Lane
7 intersection. When I arrived on scene, Lieutenant
8 Jerry Polk was already on the scene. I assisted him
9 and attempted to locate shell casings as well as
10 gathering information as far as names of potential
11 witnesses, talking with them. I basically assisted
12 Lieutenant Jerry Polk in any way I could.

13 Q. Okay. And was anyone forthcoming with any
14 information to you at the scene?

15 A. Absolutely not.

16 Q. Did anyone write a statement for you that was
17 on the scene?

18 A. No, everyone refused to write a statement.

19 MR. UTSEY: May I approach, Your Honor?

20 THE COURT: Yes, sir.

21 MR. UTSEY: Please let the record reflect,
22 Your Honor, I am handing the witness State's Exhibit --
23 what has been pre-marked as State's Exhibit Nos. 8, 15
24 and 17, Your Honor.

25 THE COURT: Okay.

CHAD MCDOWELL - DIRECT BY MR. UTSEY

1 BY MR. UTSEY:

2 Q. Deputy McDowell, do you recognize those?

3 A. Yes, I do.

4 Q. And what are they?

5 A. They are photographs that were taken at the crime
6 scene that night.

7 Q. Okay. And are they a fair and accurate
8 representation of what was happening that night
9 at the store?

10 A. Yes, sir.

11 MR. UTSEY: Your Honor, at this time,
12 the State would move to enter into evidence what has
13 been marked as State's Exhibit 8 -- oh, Your Honor,
14 may I approach to show defense counsel the photos?

15 THE COURT: Yes, please. Any objection?

16 MS. DOVELL: No objection, Your Honor.

17 THE COURT: Into evidence without objection.
18 (State's Exhibit Nos. 8, 15 and 17 were admitted into
19 evidence.)

20 THE COURT: You may proceed.

21 MR. UTSEY: Thank you, Your Honor.
22 Permission to publish to the jury?

23 THE COURT: Yes, sir.

24 BY MR. UTSEY:

25 Q. All right, Mr. McDowell, I am going to get you

CHAD MCDOWELL - DIRECT BY MR. UTSEY

1 to go through these with me, since we don't have
2 the projector anymore. All right. Can you just kind
3 of show me in this scene where was the victim -- do you
4 remember seeing the victim in this photo?

5 A. Yeah, when I arrived on scene the victim was
6 laying just to the side of the front passenger side
7 tire of that white Dodge Charger.

8 Q. Okay. And how far was he from the car, do you
9 remember?

10 A. It was not very far at all.

11 Q. Okay.

12 A. Probably less than a foot from the vehicle.

13 Q. Okay. All right. And can you tell me what
14 these two white things are right here?

15 A. Those are placards that we use to mark shell
16 casings.

17 Q. Okay. So how far were the shell casings found
18 from where the victim was laying?

19 A. Approximately five feet.

20 Q. Okay. And in this photo -- can you describe
21 that photo for me?

22 A. Those are three of the vehicles that were left
23 in the parking lot, two were left and the white Dodge
24 Charger, where the victim was found. I believe the
25 middle vehicle belonged to someone who was still on

CHAD MCDOWELL - DIRECT BY MR. UTSEY

1 the scene. The vehicle to the right, which is the white
2 Ford Ranger, we were advised was not supposed to be
3 there, and they weren't sure who it belonged to.

4 Q. Okay. And show me on this piece of paper where
5 the victim was?

6 A. (Indicating.) It was to the front passenger
7 side of this white Charger, between that and, I think,
8 was a Nissan.

9 Q. Okay. And that's the store there?

10 A. (Indicating.) That's the corner store right
11 there.

12 Q. Okay. All right. And in this picture just tell
13 me what those are real quick.

14 A. Again, that's the placards that we use to mark
15 the shell casings on the scene.

16 Q. Okay. And why do you all mark the shell casings,
17 I guess?

18 A. Potential evidence.

19 Q. Okay. All right. Mr. McDowell, so what happened
20 after you, I guess, after you all marked the shell
21 casings, which you testified to, did you do -- and
22 talked to witnesses, did you do anything else on the
23 scene?

24 A. Yes, sir, I did. I received a photo of the
25 alleged suspect.

CHAD MCDOWELL - CROSS BY MS. DOVELL

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

2 THE COURT: Certainly. You all come over
3 here and talk to me for a second.

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

5 (Back on the record.)

6 THE COURT: All right. The jury will
7 disregard that last answer. Go ahead and ask your
8 questions.

9 MR. UTSEY: Thank you, Your Honor. I have
10 no further questions.

11 THE COURT: Cross-examination.

12 (Pause.)

13 THE COURT: Any cross-examination?

14 MS. DOVELL: Yes, Your Honor. I beg the
15 Court's indulgence.

16 CROSS EXAMINATION

17 BY MS. DOVELL:

18 Q. Good morning, Deputy McDowell.

19 A. Good morning.

20 Q. Or Detective McDowell now.

21 A. Yes, ma'am.

22 Q. Okay. Detective McDowell, your testimony is that
23 you went to the corner of Cricket and Smyly before going
24 to Serpentine and Smyly?

25 A. We went to both of them at approximately the same

CHAD MCDOWELL - CROSS BY MS. DOVELL

1 time. I don't remember if we went to Serpentine before
2 going to Cricket or vice versa.

3 Q. Okay. And, Deputy McDowell, your testimony
4 is that you helped at the crime scene that night?

5 A. Yes, ma'am.

6 Q. Okay. You helped look for shell casings?

7 A. I attempted to.

8 Q. And you looked near the front of the Charger,
9 like, kind of the area between the store and the
10 Charger?

11 A. I did.

12 Q. Okay. Did you look around any of the other
13 areas for casings?

14 A. Well, I looked at the other corner of the store,
15 not the area right in front of the Charger. Lieutenant
16 Jerry Polk was already right there.

17 Q. Okay.

18 MS. DOVELL: May I approach, Your Honor?

19 THE COURT: Yes, ma'am.

20 BY MS. DOVELL:

21 Q. And I am going to show you State's Exhibit 15.
22 When you said you searched the corner of the store,
23 can you show the jury where you mean?

24 A. (Indicating.) I searched on this corner. I was
25 back and forth between the two. But since Lieutenant

CHAD MCDOWELL - CROSS BY MS. DOVELL

1 Polk was already over here with the victim, I searched
2 on this side.

3 Q. Thank you. And you were there when the first
4 shell casing was found?

5 A. Are you referring to the first shooting incident
6 of the night?

7 Q. Oh, I'm sorry. I will back up. I should say
8 this. You were present when both shell casings from
9 the shooting of Mr. Brown were found?

10 A. I was -- I mean, I was in the area. Like I said,
11 I was back and forth between talking to potential
12 witnesses and assisting any other way I could.

13 Q. Okay. And you said you were speaking with people
14 at the scene?

15 A. Yes, ma'am.

16 Q. Do you recall speaking with a gentleman named
17 Rasheen Shuler?

18 A. Not right off.

19 Q. Okay. Do you remember speaking to a taller guy
20 with a basketball jersey?

21 A. Yes.

22 Q. Okay. And you didn't ask him if he knew Kelvin
23 Gant though?

24 A. I don't remember. I don't recall.

25 Q. And you called in dispatch for a DMV check on

CHAD MCDOWELL - CROSS BY MS. DOVELL

1 Mr. Shuler?

2 A. Yeah, I probably did. I think I ran everybody's
3 name and date of birth that night.

4 Q. And, at some point, dispatch sent you the
5 driver's license information for Kelvin Gant, right?

6 A. They did.

7 Q. So you had an address for Mr. Gant that was
8 on the ---

9 A. It should have been on his DMV record.

10 Q. And Mr. Gant and Mr. Shuler were on the -- lived
11 on the same road, or at least had addresses on the same
12 road?

13 A. That's correct.

14 Q. Did you ask Mr. Shuler if he knew where Kelvin
15 might be?

16 A. I don't recall.

17 Q. And did you ask him if he had seen Kelvin at
18 the club that night?

19 A. Again, I don't recall. I don't recall asking
20 him any questions about Kelvin, specifically.

21 Q. And Mr. Shuler was present when you all arrived
22 the first time about the shots fired in the roadway,
23 tall guy with a basketball jersey?

24 A. Again, I don't recall if he was or not.

25 Q. Okay. So you had an address for Kelvin Gant,

1 correct?

2 A. Yes.

3 Q. Did you go out to that address to see if you
4 could find him?

5 A. I don't think so. I don't remember. I know
6 I didn't at that immediate time.

7 Q. All right. And so, Detective McDowell, you wrote
8 an incident report about this incident, correct?

9 A. As supplemental to the incident report, yes.

10 Q. Okay. And when you write these supplemental
11 reports, you are writing them accurately?

12 A. Yes.

13 Q. Because you know that in the future we have
14 to depend on them, correct?

15 A. Right.

16 Q. All right. And when you spoke with Mr. Shuler --
17 excuse me. Did you -- and you spoke with the other
18 people on the scene, correct?

19 A. Yes.

20 Q. There is, I think, her name is Trinidad Shaday
21 [ph.] Richardson?

22 A. Uh-huh.

23 Q. Did you follow up with her at all after the night
24 of the incident?

25 A. No.

CHAD MCDOWELL - REDIRECT BY MR. UTSEY

1 Q. Okay. Did you follow up with Mr. Shuler after
2 the incident?

3 A. No.

4 Q. And there is a gentleman named Randolph, I think
5 his badge says "Coot" McFadden. Did you speak with him?

6 A. If he was there, I did. I don't remember names.

7 Q. All right. And you remember a bullet being
8 lodged in the Charger?

9 A. There was a bullet hole. I don't remember
10 if there was a bullet lodged in it or not, but there
11 was a bullet hole in the Charger.

12 Q. The bullet was never retrieved from the Charger,
13 was it?

14 A. I didn't retrieve it. I can't say if it ever
15 was or not.

16 Q. And if you had followed up with anybody,
17 you would have written a supplement about that,
18 correct?

19 A. Yes.

20 Q. Okay.

21 MS. DOVELL: Beg the Court's indulgence.
22 No further questions, Your Honor.

23 THE COURT: Redirect.

24 MR. UTSEY: Very briefly, Your Honor.

25 REDIRECT EXAMINATION

CHAD MCDOWELL - REDIRECT BY MR. UTSEY

1 BY MR. UTSEY:

2 Q. The witnesses on the scene, like Mr. McFadden,
3 that Ms. Dovell was talking about, did they want to tell
4 you anything?

5 A. No witnesses wished to speak to me.

6 Q. Did they want to write you a statement?

7 A. No, I asked for written statements and everyone
8 refused.

9 MR. UTSEY: I have no further questions,
10 Your Honor.

11 THE COURT: Anything on those questions?

12 MS. DOVELL: No, Your Honor.

13 THE COURT: All right. Do you wish the
14 witness to be excused?

15 MR. UTSEY: Yes, Your Honor.

16 THE COURT: Any objection?

17 MS. DOVELL: Yes -- well, I do not mind
18 as being excused for now, but he's still subject to
19 my subpoena and subject to recall.

20 THE COURT: All right. Apparently,
21 the defense has issued a subpoena, sir, and you are
22 subject to that, but you are free to leave at this time.
23 Thank you very much.

24 THE WITNESS: Thank you, Your Honor.

25 THE COURT: All right, Solicitor, who's your

KEVIN SMALLS - DIRECT BY MR. UTSEY

1 next witness?

2 MR. UTSEY: The State will call Kevin
3 Smalls.

4 KEVIN SMALLS, was called as a witness, being
5 duly sworn, was examined and testified as follows:

6 THE COURT: Go ahead.

7 MR. UTSEY: Thank you, Your Honor.

8 DIRECT EXAMINATION

9 BY MR. UTSEY:

10 Q. Who do you work for, Mr. Smalls?

11 A. Colleton County Sheriff's Office.

12 Q. And what is your position with the Colleton
13 County Sheriff's Office?

14 A. I'm actually the lieutenant over road patrol.

15 Q. Okay. And what was your position on June 24th
16 of 2017?

17 A. At that time, I actually was the sergeant.

18 Q. Okay. And what were some of your duties
19 as a sergeant?

20 A. Duties as the sergeant; answer call for service,
21 service and protect the citizens of Colleton County,
22 also supervise that actual team that I had.

23 Q. Okay. And how long have you been working
24 for Colleton County Sheriff's Office?

25 A. Seven years.

—KEVIN SMALLS - DIRECT BY MR. UTSEY—

1 Q. Okay. All right. I am going to turn your
2 attention to that night, on June 24, 2017. Can you tell
3 me what happened around 9:30 p.m.?

4 A. If I am not mistaken, we received a call in
5 reference to shots being fired in the Ruffin area.
6 We were told that it was off Smyly Road. At this time,
7 if I am not mistaken, I believe on another call,
8 responded out there. Upon arrival, I actually saw
9 a group of people at a residence that's at the corner
10 of Smyly Road and Serpentine.

11 I actually made contact with them at the time
12 when I exited my patrol vehicle. I saw a group of them,
13 actually, run off in the wood lines. I began to ask
14 a general question, what's going on, did anyone hear
15 anything in reference to shots fired, anybody know
16 anything?

17 I can't tell you who the male was, but a male
18 actually spoke to me, but people were uncooperative,
19 very uncooperative, in reference to what was going on.

20 Q. Okay. And you did collect several shell casings,
21 right?

22 A. Yes, sir. After leaving that location, actually
23 -- well, Detective McDowell, actually, responded to me.
24 It was such a group, a large group of people, and then
25 people, like I said, was fleeing. We, actually,

—KEVIN SMALLS - DIRECT BY MR. UTSEY—

1 relocated from there and went further down the street
2 of Serpentine -- I'm sorry, Smyly.

3 We, actually, was in front of the little store
4 where this incident occurred and Cricket Lane, which
5 is a little dirt lane, that's adjacent to the club.
6 We, actually, located several shell casings further
7 closer in front of the club, and then also by the dirt
8 road.

9 Q. Okay.

10 MR. UTSEY: May I approach the witness,
11 Your Honor?

12 THE COURT: Yes, sir.

13 BY MR. UTSEY:

14 Q. I want you to go through this map with me,
15 Mr. Smalls.

16 A. Yes, sir.

17 Q. All right. Tell me where you all found the shell
18 casings at?

19 A. (Indicating.) Okay, you have Cricket Lane
20 that's right here, this little building is, actually,
21 the incident location, the incident we are here for.
22 We, actually, found the shell casings here in this
23 area in front of the club and also here, Cricket Lane.

24 Q. Okay. And tell me where the house that you
25 all went to also is?

KEVIN SMALLS - DIRECT BY MR. UTSEY

1 A. (Indicating.) Actually, right here you can see
2 it. You have Smyly Road right here, Serpentine is the
3 house sitting, actually, around the corner of it.

4 Q. Okay. And did you see the defendant,
5 Kelvin Gant, at the house?

6 A. Actually, he was one of the people that was
7 there.

8 Q. Okay. And can you identify him?

9 A. Yes, sir.

10 Q. Okay. And tell me where he is in the courtroom?

11 A. (Indicating.) He's actually sitting over here.

12 Q. And what is he wearing?

13 A. Actually, a white shirt. I believe he has
14 on black pants.

15 Q. Okay.

16 MR. UTSEY: Your Honor, please let the
17 record reflect that Lieutenant Kevin Smalls has
18 identified the defendant, Kelvin Gant.

19 THE COURT: You may proceed.

20 BY MR. UTSEY:

21 Q. All right. So you said no one would cooperate.
22 So what did you all do when you all didn't have anyone
23 cooperating with you all, as far as the 9:30 p.m.?

24 A. Actually, when no one cooperated with us at
25 that location, we went further down, like I stated,

KEVIN SMALLS - DIRECT BY MR. UTSEY

1 and we then began to search the immediate area to see
2 what we can find. We found shell casings. We actually
3 walked through a bit of the roadway.

4 We collected and actually contacted the
5 detective, as we are supposed to do. It's protocol.
6 Let him know, hey, this is what we got, you know,
7 and advised him of it. We were advised to go ahead
8 and collect the shell casings for evidence.

9 Even -- if I am not mistaken, even at the club,
10 nobody would even cooperate or anything like that.
11 I only recall speaking to people, but just from
12 a distance.

13 Q. Okay. And so did you all leave the location
14 after that?

15 A. Yes, sir. After that, we left and actually
16 went back to respond to other calls that we had.

17 Q. Okay. All right. And then tell me what happened
18 around 11:30 p.m. that night?

19 A. Actually, Deputy McDowell and myself we were,
20 actually, at, if I am not mistaken, Ritter Road and
21 Bowman Lane. We were there in reference to racing,
22 which is a big incident we had going on in Colleton
23 County.

24 There were so many people out there. We were
25 actually trying to clear the roadway due to citizens

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1 in the area complaining of trying to sleep. There's
2 a lot of elderly people in that area. At this time,
3 we are trying to get them out there when they dropped
4 the emergency tones. The emergency tones is usually
5 something, a high-priority call comes out.

6 At this time, it stated that it was shots fired
7 again in that same area, and that this time it included
8 a victim. We then left from that area, ran Code 3 blue
9 lights and sirens from Ritter Road and Bowman Lane,
10 the Green Pond area, all the way to Smyly Road, to this
11 incident.

12 Q. Okay. And is Smyly Road in Colleton County?

13 A. Yes, sir.

14 Q. Okay. All right. So tell me what happened
15 when you got there?

16 A. When I arrived on the scene fire and rescue was
17 already on the scene. They, actually, was attending
18 to the victim. Lieutenant Polk, who actually was my
19 lieutenant, my supervisor at that time, was on the
20 scene.

21 If I am not mistaken, he was already talking
22 to people, actually, he had already spoken with the
23 victim. Immediately then, I just came to assist in
24 any way I can. He stated that he was trying to find
25 shell casings. Then, we began trying to look for it

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1 and trying to find that because it was evidence.

2 Q. Okay. And when you arrived on scene, did you
3 notice a light in the parking lot?

4 A. Yes, sir. Actually, like you stated in your
5 opening, the building is very, very small. There's
6 actually a, being called an SCE&G light, or whatever
7 the case may be, a street light that's there, that's
8 shining down. So this is the club, it's actually right
9 there. It's very bright, illuminates that whole
10 immediate area.

11 Q. Okay. All right. So you stated that you helped
12 -- began searching for shell casings. Did you all find
13 any shell casings?

14 A. Yes, sir.

15 Q. And where did you all find those shell casings?

16 A. They, actually, were approximately maybe five
17 feet away from where the victim ---

18 Q. Okay.

19 A. --- was laying.

20 Q. Okay. And what kind of shell casings were those?

21 A. They were .45 caliber.

22 Q. How do you know they were .45-caliber shell
23 casings?

24 A. Actually, on the brim of it -- it actually stamps
25 on there and tells you the type of bullet that it is and

—KEVIN SMALLS - DIRECT BY MR. UTSEY—

1 also possibly the make of the company.

2 Q. Okay. And did you collect those shell casings?

3 A. Yes, sir.

4 Q. Did you take those shell casings back to
5 evidence?

6 A. Yes, sir. Those shell casings were submitted
7 into evidence at the Colleton County Sheriff's Office.

8 Q. Okay. Did those shell casings ever leave
9 evidence?

10 A. From that point, the evidence custodian,
11 I believe Sergeant Steve Bazzle [ph.] would then take
12 those to SLED where it was checked, ran through the
13 AFIS system, or whatever they have.

14 Q. Okay. And do you know what that system checks
15 for?

16 A. It actually checks to see, if I am not mistaken,
17 if it has been connected to any other cases that,
18 I believe, is nationwide that they do it for.

19 Q. Okay.

20 A. Yes, sir.

21 Q. And, as far as your knowledge goes, you are not
22 aware that it was connected to any other cases, or there
23 wasn't a report that came back on it?

24 A. No, sir.

25 Q. Okay.

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1 A. To my knowledge.

2 Q. All right. So then the shell casings were
3 brought back into evidence at the Colleton County
4 Sheriff's Office?

5 A. That's correct, sir.

6 Q. Okay.

7 MR. UTSEY: May I approach, Your Honor?

8 THE COURT: Yes, sir.

9 BY MR. UTSEY:

10 Q. Do you recognize those, Lieutenant Smalls?

11 A. Yes, sir, I do.

12 Q. And what is it?

13 A. Actually, this is the actual package that
14 I placed the shell casings in on that night.

15 Q. Okay. And how do you know that's the actual
16 package?

17 A. Okay. One of the things is our signature,
18 along with our call sign, is on there. Not only that,
19 when we place something into evidence we actually seal
20 it up, put the evidence tape, and then we also have
21 our signatures that are written over it, along with
22 our badge numbers. So that way in the event, like this,
23 if the evidence is split, then you see where half of
24 your name, half of your badge number is on it.

25 Q. Okay. And so on scene, when you collected the

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1 shell casings, that is the actual paper bag that you
2 put the shell casings in, correct?

3 A. Yes, sir.

4 Q. Okay.

5 MR. UTSEY: Your Honor, at this time,
6 the State would move to put the shell casings into
7 evidence.

8 THE COURT: What are they marked as?
9 State's -- what's the exhibit number on them?

10 MR. UTSEY: Nineteen, Your Honor.

11 THE COURT: All right. Any objection?

12 MS. DOVELL: No objection, Your Honor.

13 THE COURT: All right. State's 19 is
14 in evidence without objection.

15 (State's Exhibit No. 19 was admitted into evidence.)

16 THE COURT: You may proceed.

17 MR. UTSEY: Thank you, Your Honor.

18 BY MR. UTSEY:

19 Q. All right. So let me take you back to when you
20 arrived on scene, Lieutenant Smalls. Did you see the
21 victim, Herbert Brown?

22 A. Yes, sir.

23 Q. Okay. And where was Herbert Brown?

24 A. Actually, he was laying on the ground next
25 to a -- it was a white-colored Dodge Charger.

KEVIN SMALLS - DIRECT BY MR. UTSEY

1 Q. Okay. And I am going to show you ---

2 MR. UTSEY: May I approach the witness,
3 Your Honor?

4 THE COURT: Yes, sir.

5 BY MR. UTSEY:

6 Q. Your Honor -- I'm sorry. Lieutenant Smalls,
7 I am showing you what has been marked as State's Exhibit
8 No. 15. Can you tell me where the victim was when you
9 saw him?

10 A. Yes, sir. (Indicating.) In between these two
11 vehicles there.

12 Q. Okay. In between the white Dodge Charger
13 and that vehicle?

14 A. Yes, sir. I think that's a Nissan.

15 Q. Okay.

16 A. Looks like a Nissan.

17 Q. All right. Thank you.

18 (Pause.)

19 MR. UTSEY: May I approach the witness,
20 Your Honor?

21 THE COURT: Yes, sir.

22 MR. UTSEY: Your Honor, I am handing
23 Lieutenant Smalls what has been marked as State's
24 Exhibits 9, 18, 16, 14, 13, 12, 11 and 10.

25 THE COURT: All right.

—KEVIN SMALLS - DIRECT BY MR. UTSEY—

1 BY MR. UTSEY:

2 Q. Lieutenant Smalls, can you go through those for
3 me real quick, and just tell me what those are. Do you
4 recognize those photos?

5 A. Yes, sir.

6 Q. Okay. And tell me what they are.

7 A. These photos are actually photos from the scene
8 that I actually took.

9 Q. Okay. So you actually took the photos at the
10 scene?

11 A. Yes, sir.

12 Q. Okay. So all those photos that you went through,
13 are those a fair and accurate representation of the
14 photos -- of what you saw on the scene, the photos you
15 took on scene?

16 A. Yes, sir, that's correct.

17 Q. Okay.

18 MR. UTSEY: Your Honor, at this time,
19 the State would move into evidence the photos that
20 I just handed to Lieutenant Smalls.

21 THE COURT: Any objection?

22 MS. DOVELL: No objection.

23 THE COURT: All right. So 9, 10, 11, 12,
24 13, 14, 16 and 18 are in evidence without objection.

25 (State's Exhibits 9 through 14, 16 and 18 were admitted

KEVIN SMALLS - DIRECT BY MR. UTSEY

1 into evidence.)

2 THE COURT: You may proceed.

3 MR. UTSEY: Thank you, Your Honor.

4 May I approach the witness?

5 THE COURT: You may do so.

6 BY MR. UTSEY:

7 Q. All right, Mr. Smalls, I am going to go through
8 these with you. All right. State's Exhibit No. 9 is
9 what I am showing you. Can you tell me what that is?

10 A. Yes, sir. This is a -- the white Dodge Charger
11 that was parked there, where the victim was laying next
12 to. There is a bullet hole actually on the passenger
13 side, if I am not mistaken, the lower part of the door.

14 Q. Okay. State's Exhibit No. 10, can you tell the
15 jury what that is?

16 A. Yes, sir. Actually, this is the victim's shirt
17 that he was wearing that fire and rescue actually
18 removed from him.

19 Q. Okay. And that was just laying on the ground,
20 and you observed it?

21 A. Yes, sir, laying next to the vehicle.

22 Q. Okay. All right. And I am showing you what
23 has been marked as State's Exhibit No. 11. Can you
24 just tell the jury what that is?

25 A. Yes, sir. It is one of the spent round shell

—KEVIN SMALLS - DIRECT BY MR. UTSEY—

1 casings that we located that was near the victim
2 and the vehicle.

3 Q. Okay. So it is one of those rounds in that
4 package right there?

5 A. That's correct.

6 Q. Okay. I am now showing you what has been marked
7 as State's Exhibit 12. Can you explain what that is?

8 A. Yes, sir. Also it is another one of the spent
9 rounds that we located, which is in evidence.

10 Q. Okay. All right. I am now handing you what
11 is marked as State's Exhibit 13. Can you just tell
12 me a little bit about that scene?

13 A. Yes, sir. It is, actually, now showing the same
14 vehicle again. You can see the bullet holes in there
15 also where the victim was laying, the little pieces that
16 you see, some of these white pieces are actually -- came
17 from fire and rescue, their medical equipment that were
18 used, I guess, to bandage him up. The bag is actually
19 the bag that I used to place the T-shirt into evidence.

20 Q. Okay. All right. I am now showing you State's
21 -- what has been marked as State's Exhibit 14. I think
22 this is just a different angle. Can you just tell me
23 where the victim was laying in that one and where the
24 bullet hole is in the Dodge Charger?

25 A. Yes. You are correct. It's just another angle.

KEVIN SMALLS - DIRECT BY MR. UTSEY

1 (Indicating.) The victim actually was laying here;
2 the bullet hole is here.

3 Q. Okay. And tell me -- and just one more quick
4 question. I know you can't see it on the picture,
5 but where would the shell casings be, kind of out
6 of the picture?

7 A. (Indicating.) Right here.

8 Q. Right in here?

9 A. Yes, correct, yes, sir.

10 Q. All right. I am showing you what has been marked
11 as State's Exhibit 16, and this is just -- this is the
12 same view from a different angle as well. Can you just
13 explain this briefly?

14 A. That's correct. It's just like one of the
15 similar pictures before and showing the bullet hole,
16 the vehicle, and, actually, in here the two that were
17 using as little placards was actually showing where
18 the shell casings were actually laid at.

19 Q. Okay. All right. This is my last picture
20 for you, State's Exhibit 18. Can you just tell --
21 what do you have a picture of in that picture?

22 A. And once again was showing the angle, showing
23 the vehicle, you see the bullet holes, where the victim
24 laid, you see the pool of blood and his shirt.

25 Q. Thank you, Lieutenant Smalls. All right.

KEVIN SMALLS - CROSS BY MS. DOVELL

1 Lieutenant Smalls, did you see -- did you ever see
2 Kelvin Gant on scene when you arrived there at the
3 store at 11:30 p.m.?

4 A. No, sir.

5 Q. Okay. Did you speak to any witnesses that were
6 at the store?

7 A. I can't recall.

8 Q. Okay.

9 A. I can't recall if I did.

10 Q. Okay. Do you remember if anyone cooperated with
11 you at the store, or cooperated with law enforcement?

12 A. No, sir. No one did.

13 Q. Okay. How long did you remain on the scene,
14 do you remember that?

15 A. I believe I remained on the scene until after
16 he was already transported, after we collected the
17 evidence from that point, photographs were taken,
18 and I then left.

19 Q. Okay.

20 MR. UTSEY: I have no further questions
21 at this time, Your Honor.

22 THE COURT: Cross-examination.

23 CROSS-EXAMINATION

24 BY MS. DOVELL:

25 Q. Lieutenant Smalls, you testified earlier that you

—KEVIN SMALLS - CROSS BY MS. DOVELL—

1 responded to that shots fired incident in the roadway
2 near Cricket Lane and Smyly Road?

3 A. Yes, ma'am.

4 Q. And when you responded to that, you had your body
5 camera rolling for that entire incident, correct?

6 A. Yes, ma'am.

7 Q. And, in fact, has a separate incident number from
8 the incident related to the shooting of Herbert Brown?

9 A. Okay.

10 Q. Okay. I had previously asked you to review
11 your body camera footage from that evening.

12 MS. DOVELL: May I approach the witness,
13 Your Honor?

14 THE COURT: Yes, ma'am.

15 BY MS. DOVELL:

16 Q. I am showing Lieutenant Smalls what's previously
17 been marked is Defendant's Exhibit 1 for identification.
18 Lieutenant Smalls, what is this disc?

19 A. Yes, ma'am, it's the footage of my body cam.

20 Q. Okay. Thank you.

21 MS. DOVELL: Your Honor, I understand we are
22 having some technical difficulty with the bulb in here.
23 Ms. Grant tells me that she thinks that it is now
24 working. May I beg the Court's indulgence ---

25 THE COURT: All right, so do you intend

~~KEVIN SMALLS - CROSS BY MS. DOVELL~~

1 to introduce that into evidence at this time?

2 MS. DOVELL: I do intend to introduce this
3 into evidence, Your Honor.

4 THE COURT: Show it to the State. Is there
5 any objection to that?

6 MR. UTSEY: No objection, Your Honor.

7 THE COURT: What's the exhibit number?

8 MS. DOVELL: The exhibit number is Defense's
9 Exhibit 1, Your Honor.

10 THE COURT: Defendant's 1 is in evidence
11 without objection. You may publish.

12 MS. DOVELL: Thank you, Your Honor.

13 (Defendant's Exhibit 1 was admitted into evidence.)

14 MS. DOVELL: For the record, I am going
15 to play from 2 minutes and 32 seconds to 5 minutes
16 and 20 seconds.

17 THE COURT: Any objection to that from
18 the State?

19 MR. UTSEY: I have no objection, Your Honor.

20 THE COURT: All right. Go ahead.

21 (Body camera CD played for the jury.)

22 BY MS. DOVELL:

23 Q. And, Lieutenant Smalls, did you recognize
24 Kelvin Gant in that footage?

25 A. Yes, ma'am.

KEVIN SMALLS - CROSS BY MS. DOVELL

1 Q. All right. I am going to rewind it to 3 minutes
2 and 52 seconds. Okay. In this photo, can you describe
3 where Kelvin Gant is located?

4 A. Leaning up against that vehicle.

5 Q. Okay. And what is -- can you describe what
6 he has on?

7 A. To me, it looks like he has a dark-colored shirt
8 on, maybe blue shorts, looks like he has flip-flops on.

9 Q. Okay. All right. And you came to this house
10 on the corner of Serpentine and Smyly, and then you
11 went down to the store at Cricket and Smyly?

12 A. Yes, ma'am.

13 Q. Okay. And was this your only encounter with
14 Kelvin Gant that night?

15 A. Yes, ma'am.

16 Q. Okay. And you said there were two -- you said
17 Bravo Mikes. What does that mean?

18 A. Bravo Mikes is what we call -- is a black male.
19 It's actually how we use the call signs. If it's
20 a white male, Whiskey Mike. That's what we use.

21 Q. Okay. And you said that you saw two black
22 males running from this location?

23 A. That's correct.

24 Q. Okay. All right. So after this, you went down
25 to the club on Smyly Road, when you saw Karen Holmes

KEVIN SMALLS - CROSS BY MS. DOVELL

1 there?

2 A. Okay.

3 Q. All right.

4 A. I can't recall.

5 Q. Let's -- why don't we go ahead and play that.

6 MS. DOVELL: Your Honor, I am going to move
7 to admit. I mean, it's 9 minutes and 30 seconds to
8 10 minutes and 23 ---

9 THE COURT: The whole thing is in.
10 You could play what you want to.

11 MS. DOVELL: Okay. Thank you, Your Honor.
12 For the record, that's 9 minutes and 30 seconds to 10
13 minutes 23.

14 (Body camera CD played for the jury.)

15 BY MS. DOVELL:

16 Q. Okay. And who's that lady you all were speaking
17 with?

18 A. I believe that's Ms. Holmes.

19 Q. Okay.

20 A. I am assuming.

21 Q. All right.

22 THE COURT: All right. Have you finished?

23 MS. DOVELL: Finished with that one disc,
24 Your Honor, yes.

25 THE COURT: All right. Give the exhibits

—KEVIN SMALLS - CROSS BY MS. DOVELL—

1 to the court reporter, please.

2 BY MS. DOVELL:

3 Q. And, Lieutenant Smalls, after that, you and
4 Deputy McDowell collected the shell casings in the
5 roadway?

6 A. Yes, ma'am.

7 Q. And then you all left?

8 A. Yes, ma'am.

9 Q. Okay. All right. And so later on you responded
10 to the club on Smyly when Mr. Brown was shot?

11 A. Yes, ma'am.

12 Q. And you saw Mr. Brown as the paramedics arrived?

13 A. Yes, ma'am.

14 Q. And the Dodge Charger he was lying next to?

15 A. Yes, ma'am.

16 Q. And as you testified before, you took photographs
17 at the scene, correct?

18 A. Yes, ma'am.

19 Q. All right.

20 MS. DOVELL: May I approach the witness,
21 Your Honor?

22 THE COURT: Yes, ma'am.

23 BY MS. DOVELL:

24 Q. Lieutenant Smalls, is this one of the photographs
25 you took that evening?

—KEVIN SMALLS - CROSS BY MS. DOVELL—

1 A. Oh, yes, ma'am.

2 Q. Okay.

3 MS. DOVELL: I would like to mark this
4 as Defense's Exhibit 2.

5 (Defendant's Exhibit 2 was marked for identification.)

6 BY MS. DOVELL:

7 Q. And what do you see here?

8 A. It's a sign.

9 Q. What do you interpret it as reading?

10 A. Yes, ma'am. Cold drinks, ice, I guess,
11 cigarettes and snacks.

12 Q. Okay. And where is that located on the property?

13 A. If I am not mistaken, it's, I am thinking, by the
14 roadway.

15 Q. Okay. All right.

16 MS. DOVELL: Your Honor, I move to admit
17 Defense's Exhibit 2 into evidence.

18 THE COURT: Any objection?

19 MR. UTSEY: No objection, Your Honor.

20 THE COURT: It's in evidence without
21 objection.

22 (Defendant's Exhibit 2 was admitted into evidence.)

23 THE COURT: You may proceed.

24 MS. DOVELL: Permission to publish to the
25 jury?

—KEVIN SMALLS - CROSS BY MS. DOVELL—

1 THE COURT: You may do so.

2 BY MS. DOVELL:

3 Q. And as you arrived on scene, you took those
4 photos, correct?

5 A. Yes, ma'am.

6 Q. And the photographs of the bullet hole in the
7 Charger, did you all retrieve the bullet from the
8 Charger?

9 A. Not on scene, none of us did. I don't know
10 if CID did, but I didn't.

11 Q. Now who is CID?

12 A. That's our investigation unit, our division,
13 you could say.

14 Q. And did you call anybody from CID to come out
15 that night?

16 A. Yes, ma'am, I did.

17 Q. Who was that?

18 A. Actually, it was Sergeant Roberson.

19 Q. Okay. And did he actually come on scene
20 that night?

21 A. No, ma'am. Actually, I believe he went to the
22 victim, if I'm not mistaken.

23 Q. Okay. And when you say went to the victim,
24 where was that?

25 A. I believe at the hospital.

KEVIN SMALLS - CROSS BY MS. DOVELL

1 Q. Okay. And even though Mr. Brown had already
2 identified the suspect, Sergeant Roberson went to the
3 hospital anyway?

4 A. Yes, ma'am. That's a whole other division,
5 not being funny, I'm just saying.

6 Q. Right. But in all fairness, there was evidence
7 to be collected at the scene of the incident, correct?

8 A. Yes, ma'am.

9 Q. There were shell casings that you all collected,
10 that you collected, correct?

11 A. Yes, ma'am.

12 Q. There's a suspect, potentially, at large in the
13 area?

14 A. Yes, ma'am.

15 Q. And there's that T-shirt that needed to be
16 collected, as well as general investigation of the crime
17 scene that still could have been done. Is that a yes?

18 A. What's was the question -- okay, yes, ma'am.

19 Q. Yes, okay. All right. So it's fair enough
20 to say that no investigator from the sheriff's office
21 ever went to the club scene that night?

22 A. I don't know if one went after we left to look
23 over things. I can't answer that, but not while we were
24 on scene.

25 Q. Okay. But you are the case officer for this

KEVIN SMALLS - CROSS BY MS. DOVELL

1 case, correct?

2 A. If I'm not mistaken, I believe Lieutenant Polk
3 is.

4 Q. But you are serving in the capacity as case
5 officer today, correct? Fair enough to say that no
6 investigator collected any evidence from this crime
7 scene?

8 A. Collected the evidence, which was submitted
9 into evidence at the sheriff's office. That's the
10 only transaction that took place, yes, ma'am.

11 Q. All right. Thank you. And you said that those
12 were .45-caliber shell casings?

13 A. Yes, ma'am. The ones that I just -- that's
14 in the packet that I collected?

15 Q. Uh-huh.

16 A. Yes, ma'am.

17 Q. What caliber were the shell casings that you
18 all collected from the roadway earlier?

19 A. Earlier that night?

20 Q. Uh-huh.

21 A. If I am not mistaken, I think they were 9
22 millimeters. I can't recall the other ones. There were
23 two different sets.

24 Q. Okay. But you remember one was a 9. All right.
25 Was the gun ever retrieved that fired at Herbert Brown?

KEVIN SMALLS - CROSS BY MS. DOVELL

1 A. No, ma'am.

2 Q. So you don't actually know whether those shell
3 casings came from the weapon that fired at Mr. Brown?

4 A. You are talking about the -- from the previous
5 incident?

6 Q. No, from the ones that were found right by the
7 Charger. You don't actually know that.

8 A. I don't actually know it, but due to the fact
9 it's in the proximity where they are from him.

10 Q. And did you look in any other areas for shell
11 casings that evening?

12 A. As a matter of fact, if I am not mistaken,
13 Lieutenant Polk had us on the opposite side of the
14 building, in that immediate area looking around and
15 even around the corner of the lighted area. And if
16 I am not mistaken, I think on the other side of the
17 vehicle, if I am not mistaken. I know we were searching
18 in those areas -- in those immediate areas trying to
19 find them, and those were the only two that we found.

20 Q. Okay.

21 MS. DOVELL: May I approach the witness,
22 Your Honor?

23 THE COURT: Yes, ma'am.

24 BY MS. DOVELL:

25 Q. I am going to show you State's Exhibit 15.

—KEVIN SMALLS - CROSS BY MS. DOVELL—

1 So would you show the jury whereabouts you all had
2 looked, where Lieutenant Polk had you all looking
3 around?

4 A. (Indicating.) If I am not mistaken, we were also
5 in this area here, on the other side. Also in the front
6 in this immediate area, and then we started looking over
7 this area here.

8 Q. All right. And you prepared a CID request form,
9 correct?

10 A. You are talking for evidence?

11 Q. For evidence, correct.

12 A. Okay. Yes, ma'am. We must do it every time
13 you submit evidence.

14 Q. Okay. And you testified that they were sent
15 up to SLED for processing, the shell casings?

16 A. Yes, ma'am.

17 Q. Okay. Did you request that they be processed
18 for fingerprints?

19 A. I can't recall.

20 Q. Okay. I am going to -- I have a copy of a CID
21 services request. Lieutenant Smalls, you testified
22 a second ago that you prepared a services request form
23 that goes with the evidence?

24 A. Yes, ma'am.

25 Q. I am going to show you this form. Do you see

KEVIN SMALLS - CROSS BY MS. DOVELL

1 anywhere on there where you requested that they be
2 processed for fingerprints?

3 A. It would be processed and analyzed.

4 Q. But nothing -- it does not specify what it's
5 to be processed or analyzed for?

6 A. Yeah, it would just be processed and analyzed.

7 Q. Okay. So do you know whether or not the shell
8 casings where ever processed for fingerprints?

9 A. I don't know. You would have to check with CID.

10 Q. Okay. All right. And while you were on scene,
11 you testified that you don't recall whether or not you
12 spoke with any of the witnesses?

13 A. No, ma'am, I don't recall. There were several
14 people on the scene. I don't recall.

15 Q. Okay. Was Karen Holmes still on the scene when
16 you were there?

17 A. Yes, ma'am.

18 Q. Okay. And you asked her to write a statement?

19 A. I can't recall if I did or not.

20 Q. Okay.

21 MS. DOVELL: Your Honor, I would just like
22 to -- I have got -- let me mark this for identification
23 as Defense 3.

24 (Defendant's Exhibit 3 was marked for identification.)

25 MS. DOVELL: This is a recording of the body

KEVIN SMALLS - CROSS BY MS. DOVELL

1 camera from the crime scene from Lieutenant Smalls.

2 THE COURT: All right. Has he identified
3 it?

4 MS. DOVELL: Actually, I have not had him
5 identify this one, Your Honor.

6 THE COURT: He has to identify it, then.

7 MS. DOVELL: Yes, sir. All right.

8 BY MS. DOVELL:

9 Q. And your testimony is that you don't recall
10 whether or not you asked Karen Smalls [sic.] to write
11 a statement?

12 A. You mean Karen Holmes?

13 Q. That's right, Karen Holmes. I'm sorry.

14 A. No, ma'am, I can't recall.

15 Q. Okay. All right. So you saw Kelvin Gant at
16 [REDACTED] earlier in the evening, correct?

17 A. Yes, ma'am.

18 Q. Did you -- once you left the scene at the club,
19 did you go back to [REDACTED]?

20 A. I don't believe I did. After that we left.

21 Q. Okay. And you are aware that there was an
22 address that had come out with DMV information with
23 Mr. Gant's address, like home address, correct?

24 A. You are talking about the second incident?

25 Q. At the second incident, Lieutenant McDowell --

KEVIN SMALLS - CROSS BY MS. DOVELL

1 excuse me -- Detective McDowell testified that he
2 received DMV information.

3 A. Which he received, yeah, but I did not receive
4 it.

5 Q. But that information was not shared with you?

6 A. It often was, but I'm just saying I did not
7 receive it.

8 Q. Well, did you go to any address associated
9 with Kelvin Gant that night to look for him?

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

11 Q. All right. And, to your knowledge, nobody went
12 back to [REDACTED] to talk to anybody there?

13 A. Like I said, I am unaware if someone did.
14 They may have; CID, one of the investigators.

15 Q. But that night, no one went back to [REDACTED]?

16 A. Not to my knowledge, no, ma'am.

17 Q. Not to see if Kelvin Gant was there?

18 A. Not to my knowledge, no, ma'am.

19 Q. Okay. And nobody went back to any address
20 that was given to Kelvin Gant?

21 A. Not to my knowledge, no.

22 Q. Okay. Now there were other people on scene.
23 You do not remember speaking with anybody else on scene,
24 any of the other individuals who were on scene?

25 A. I know that Detective McDowell spoke to a lot

KEVIN SMALLS - REDIRECT BY MR. UTSEY

1 of people. Again, there were a lot of people on the
2 scene, a lot of people that were uncooperative.
3 I remember -- I recall him saying that they were being
4 uncooperative. I mean, I may have. I just can't
5 recall.

6 MS. DOVELL: Beg the Court's indulgence,
7 Your Honor.

8 THE COURT: Yes, ma'am.

9 MS. DOVELL: No further questions at this
10 time for Lieutenant Smalls.

11 THE COURT: Redirect.

12 MR. UTSEY: Yes, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. UTSEY:

15 Q. All right. Lieutenant Smalls, that body cam we
16 saw earlier out there shows you down the street at Ruben
17 Boatwright's house; is that correct?

18 A. That's correct.

19 Q. And what time was that?

20 A. After 9 o'clock.

21 Q. Okay.

22 A. Between 9 and 9:30, somewhere in that area.

23 Q. And you saw the defendant, Kelvin Gant, there,
24 right?

25 A. Yes, sir.

KEVIN SMALLS - REDIRECT BY MR. UTSEY

1 Q. Okay. And what time did you go to the shooting
2 of Herbert Brown?

3 A. It was after 11, sometime, 11:30 or so,
4 between 11 and 12.

5 Q. So about two hours apart?

6 A. That's correct.

7 Q. And how far down the street is Ruben Boatwright's
8 house from the store?

9 A. Maybe it would take him maybe two minutes or
10 three minutes of walking distance. It's right there.

11 Q. Okay.

12 A. Maybe 150 yards or so, 200.

13 Q. Okay. All right. Let me ask you something
14 as far as the evidence goes. Have you been trained
15 to collect evidence?

16 A. Yes, sir.

17 Q. Okay. And did you collect evidence in this case?

18 A. Yes, sir, I did.

19 Q. And you took it back to the evidence locker
20 at the Colleton County Sheriff's Office?

21 A. Yes, sir, it was secured.

22 Q. Okay. And you followed -- when you were on the
23 scene, you followed all the leads that you had as far
24 as witnesses go, correct?

25 A. Yes, sir.

KEVIN SMALLS - REDIRECT BY MR. UTSEY

1 Q. And no one was being cooperative?

2 A. Yes, sir.

3 Q. Okay.

4 MR. UTSEY: I have no further questions.

5 THE COURT: Anything on those questions
6 just asked?

7 MS. DOVELL: No, Your Honor.

8 THE COURT: All right, sir, you may step
9 down. All right, ladies and gentlemen, we're going
10 to take a break at this time. Go to your jury room.
11 Do not talk about the case, and we will call you back
12 out shortly. Thank you.

13 (Recess taken.)

14 (Jury exits courtroom at 11:45 a.m.)

15 (Back on the record.)

16 (Jury enters courtroom at 12:05 p.m.)

17 THE COURT: All right. Next witness.

18 MR. UTSEY: Yes, sir. State calls Richard
19 Haley.

20 RICHARD HALEY, was called as a witness,
21 being duly sworn, was examined and testified as follows:

22 THE COURT: Go ahead, Solicitor.

23 MR. UTSEY: Thank you, Your Honor.

24 DIRECT EXAMINATION

25 BY MR. UTSEY:

KEVIN SMALLS - REDIRECT BY MR. UTSEY

1 Q. Mr. Haley, who do you work for?

2 A. Colleton County Sheriff's Office.

3 Q. How many years have you worked for the Colleton
4 County Sheriff's Office?

5 A. Eleven.

6 Q. Tell me your current position with the Colleton
7 County Sheriff's Office.

8 A. I am the IT specialist.

9 Q. Okay. And as an IT specialist, tell me some
10 of your duties.

11 A. I maintain all PCs, car videos, body cam videos
12 for the sheriff's office.

13 Q. So you maintain those records for the sheriff's
14 office; is that correct? And how long have you done
15 that with the Colleton County Sheriff's Office?

16 A. Ever since I did my post.

17 Q. Okay. And -- all right. I am going to ask you
18 -- in particular, are you familiar with how the Colleton
19 County Sheriff's Office creates and maintains a record
20 of the body camera that's worn by the officers?

21 A. Yes.

22 Q. Okay. And can you tell me about that?

23 A. When the officers get the videos on the body
24 cams, when they go to download, they place them into
25 a dock.

—KEVIN SMALLS - REDIRECT BY MR. UTSEY—

1 Q. Okay.

2 A. And that dock actually offloads directly to
3 the server that is in the sheriff's office.

4 Q. Okay.

5 MR. UTSEY: May I approach the witness,
6 Your Honor?

7 THE COURT: Yes, sir, please.

8 BY MR. UTSEY:

9 Q. All right, I am handing you what has been
10 premarked as State's Exhibit No. 6. Can you tell
11 me what that is, Mr. Haley?

12 A. That is the DVD with the body cam video from
13 Jerry Polk.

14 Q. Okay. And did I ask you to review that body
15 camera footage?

16 A. Yes.

17 Q. Okay. And was that record, that body cam
18 footage, made at, or near the same time, as the offense
19 that occurred?

20 A. Yes, it was.

21 Q. Okay. And was that recording made in the regular
22 practice of the Colleton County Sheriff's Office?

23 A. Yes, it was.

24 Q. Okay. And are body camera recordings important
25 to the Colleton County Sheriff's Office?

KEVIN SMALLS - REDIRECT BY MR. UTSEY

1 A. They are very important.

2 Q. Why are they important?

3 A. They actually show firsthand video of the
4 incident as the officers actually see them.

5 Q. Okay. And is every officer's body camera,
6 when it's turned on, is that recording kept in the
7 ordinary course of business for the Colleton County
8 Sheriff's Office?

9 A. Yes, it is.

10 MR. UTSEY: Your Honor, at this time,
11 I would like to offer State's Exhibit No. 6 into
12 evidence.

13 THE COURT: Any objection?

14 MS. DOVELL: No objection, Your Honor.

15 THE COURT: All right. It's in evidence
16 without objection.

17 (State's Exhibit No. 6 was admitted into evidence.)

18 MR. UTSEY: Thank you, Your Honor.
19 May I approach the witness?

20 THE COURT: Yes, sir.

21 MR. UTSEY: Permission to publish to the
22 jury, Your Honor?

23 THE COURT: You may do so.

24 (Body cam footage played in open court for the jury.)

25 MR. UTSEY: Your Honor, I don't have any

MIKE BASCOM - DIRECT BY MS. ORVILLE

1 more questions for Mr. Haley.

2 THE COURT: All right. Cross-examination.

3 MS. DOVELL: No questions for Mr. Haley,
4 Your Honor.

5 THE COURT: Do you wish the witness to be
6 excused?

7 MR. UTSEY: Yes, Your Honor.

8 THE COURT: All right. Any objection?

9 MS. DOVELL: No, sir.

10 THE COURT: All right. You may go back to
11 your regular activities, sir. Thank you. You all come
12 and talk to me for one second, please.

13 MR. UTSEY: Yes, sir.

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

15 (Back on the record.)

16 THE COURT: All right. Your next witness,
17 please.

18 MS. ORVILLE: Mike Bascom.

19 MIKE BASCOM, was called as a witness, being
20 duly sworn, was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MS. ORVILLE:

23 Q. Could you state your name for the record?

24 A. It's Mike Bascom.

25 Q. Mike Bascom. And who do you work for,

MIKE BASCOM - DIRECT BY MS. ORVILLE

1 Mr. Bascom?

2 A. Colleton County Fire and Rescue.

3 Q. Fire and rescue. And what do you do for them?

4 A. I am a firefighter and paramedic.

5 Q. Okay. And how long have you been with fire
6 and rescue?

7 A. For the county, ten years.

8 Q. Ten years, all right. And have you been an EMT
9 or a paramedic or a firefighter for longer than that?

10 A. Yes, ma'am.

11 Q. Okay. How long have you been?

12 A. Fifteen years all together.

13 Q. Fifteen years. And have you always done the dual
14 role?

15 A. Yes.

16 Q. Okay. Could you tell us a little bit about the,
17 like, the experience and training you get to become
18 a paramedic and a firefighter?

19 A. A fireman, it's, like, you can take accelerated
20 courses, like an eight-week course ---

21 Q. Okay.

22 A. --- at the fire academy, and you come out with
23 a certification, basically, for a fireman. And for
24 the paramedic part of it, you have this, it's almost
25 like a two-year degree.

MIKE BASCOM - DIRECT BY MS. ORVILLE

1 Q. Almost like a two-year degree. Okay.

2 And are there different levels, or anything like that,
3 of training?

4 A. Yes. You have to go from a -- you can go from
5 an EMT basic to an advanced EMT, which is what they call
6 intermediate, and then it goes to EMT paramedic.

7 Q. Okay. And so paramedic is the highest training
8 you can have?

9 A. Yes.

10 Q. Okay. And back in June -- on June 24th of 2017,
11 were you on duty with fire and rescue?

12 A. Yes, ma'am.

13 Q. And what level of training had you had up to that
14 point, what was your position?

15 A. Paramedic.

16 Q. Paramedic, all right. And could you tell us --
17 do you remember being called out to Ruffin for a gunshot
18 wound?

19 A. Yes, I remember that one.

20 Q. Okay. And could you just tell us about that
21 night? Do you know what the address was where you were
22 called out?

23 A. I don't recall the address; it was in Ruffin.

24 Q. It was in Ruffin, okay. And -- so what did you
25 do when you got called out to Ruffin?

MIKE BASCOM - DIRECT BY MS. ORVILLE

1 A. We got called out for a gunshot wound, and we
2 ended up standing by because the sheriff's office wasn't
3 there yet for our scene security ---

4 Q. Okay.

5 A. --- so we stood by. We were, like, half a mile
6 from the scene.

7 Q. Okay.

8 A. And then they had the scene secure, so we went
9 on in.

10 Q. Okay. So you go -- you wait and don't go in
11 until the scene is secure?

12 A. Yes.

13 Q. Okay. So you did that. And what happened once
14 you got on the scene?

15 A. We got there. We found a patient that was laying
16 on his right side.

17 Q. Okay.

18 A. And from what we could see it was only blood
19 on his shirt.

20 Q. Okay.

21 A. So we had to cut the shirt off to find out what
22 it was.

23 Q. Sure.

24 A. And we found the gunshot wound to the upper left
25 abdomen.

MIKE BASCOM - DIRECT BY MS. ORVILLE

1 Q. Okay. And did you -- were you made aware of who
2 the person was who had the gunshot wound?

3 A. The sheriff's office said it was Mr. Brown,
4 which is what his name was.

5 Q. Okay. So when you arrived on the scene and you
6 are starting to treat someone, is there a process,
7 sort of a checklist, that you all go through?

8 A. Yes. It's like a -- it's a trauma checklist
9 that we go through.

10 Q. Okay.

11 A. You start from head to toe, and once you find
12 an injury that's of significance, you stop there pretty
13 much.

14 Q. Okay. So when you assessed ---

15 A. And you fix that problem.

16 Q. Okay. And you fix that problem. And when you
17 assessed Mr. Brown, where did you stop? Which injury
18 was significant enough to stop?

19 A. The gunshot to the upper left abdomen.

20 Q. Okay. I am going to show you a couple of photos
21 that were placed into evidence, State's Exhibits 3 and
22 4, and just ask you if these are an accurate depiction
23 of the gunshot wounds that you saw?

24 A. Yes.

25 Q. Okay. And can you, actually, just look at these

MIKE BASCOM - DIRECT BY MS. ORVILLE

1 pictures and point out for us where we would have seen
2 the wound?

3 A. (Indicating.)

4 Q. Right there, okay. So that little spot that
5 I am seeing, is that the gunshot wound?

6 A. That looks like it.

7 Q. It looks like it.

8 A. It's hard to tell from the angle.

9 Q. All right. It's a small picture, I know that.
10 Okay. And then that also is just another angle?

11 A. Yes.

12 Q. Okay. So that was Mr. Brown who you treated
13 on scene. So can you tell me once you found the gunshot
14 wound, what did you do?

15 A. Put a sterile dressing on it to secure it so
16 it would not be bleeding, roll him back over to check
17 the other side. Looked for an exit wound, but we did
18 not find one. So we got him loaded up in the ambulance
19 and did a little bit more of looking around, made sure
20 we did not see anything else, got some IV started and
21 then transported him to the helipad and had him flown
22 out.

23 Q. Okay. So he went to the helipad, not just to the
24 regional medical center, correct?

25 A. Yes, just the helipad.

MIKE BASCOM - CROSS BY MS. DOVELL

1 Q. Just to the helipad. Okay. And did Mr. Brown's
2 injuries appear to be potentially life threatening?

3 A. Yes.

4 Q. Okay.

5 MS. ORVILLE: Your Honor, just a moment's
6 indulgence. Mr. Bascom, I don't have any further
7 questions for you, at this time. Please answer anything
8 Ms. Dovell has for you.

9 THE WITNESS: Okay.

10 THE COURT: Cross-examination.

11 MS. DOVELL: Thank you, Your Honor.

12 CROSS EXAMINATION

13 BY MS. DOVELL:

14 Q. Mr. Bascom, no controlled substances were
15 administered to Mr. Brown while your team transported
16 him, correct?

17 A. No, ma'am.

18 Q. Thank you very much.

19 MS. DOVELL: No further questions.

20 THE COURT: Any redirect?

21 MS. ORVILLE: No, Your Honor.

22 THE COURT: You wish the witness to be
23 excused?

24 MS. ORVILLE: Yes, Your Honor.

25 THE COURT: Any objection?

1 MS. DOVELL: No objection.

2 THE COURT: All right. You are released
3 from your subpoena. You may go back to your regular
4 duties.

5 THE WITNESS: Thank you, sir.

6 THE COURT: All right, ladies and gentlemen,
7 we are going to break for lunch at this point in time.
8 I am going to have you -- we will come back to the
9 courtroom at two o'clock. So go back to your jury room,
10 and don't talk about the case.

11 If you happen to have lunch together, or you
12 see another juror out there, remember, you can't talk
13 about the case. You just have to wait until the very
14 end to do that. With that, I will see you at two
15 o'clock. Thank you very much.

16 (Jury exits courtroom at 12:30 p.m.)

17 THE COURT: At this point in time, anything
18 else from the State before we break?

19 MR. UTSEY: Your Honor, I know your law
20 clerk came and talked to me about this, about having
21 a clean computer for the jury, I think, in the jury
22 room.

23 THE COURT: Right.

24 MR. UTSEY: And, Judge, usually what we do,
25 I thought about it after I talked to her, and usually

1 what we do is bring them back out here ---

2 THE COURT: Okay.

3 MR. UTSEY: --- and watch it out here.

4 It's whatever your judgment ---

5 THE COURT: It's ---

6 MR. UTSEY: I just don't have ---

7 THE COURT: And I appreciate that.

8 You know, I find it's sometimes more time consuming ---

9 MR. UTSEY: Yes, sir.

10 THE COURT: --- than it needs to be when we
11 could send a laptop in for them to play what they want
12 to play.

13 MR. UTSEY: Yes, sir.

14 THE COURT: But I will give them
15 instructions in the closing that if they want to
16 see anything, they will have to come out and do that.
17 I would just suggest that you all might explore finding
18 an old laptop that is disabled, and all it can do
19 is play videos. I mean, you all change computer
20 equipment ---

21 MR. UTSEY: I will certainly look for one,
22 Your Honor.

23 THE COURT: And that way the jury can handle
24 it the way they want to, and you don't have to keep
25 bringing them in and out.

1 MR. UTSEY: Yes, sir.

2 THE COURT: All right.

3 MR. UTSEY: Yes, sir.

4 THE COURT: What I will do is I will just
5 tell them if they want to see anything, they will have
6 to come out, and we will play it for them, okay.

7 MR. UTSEY: Yes, sir. Thank you, Judge.

8 THE COURT: Anything else from the defense?

9 MS. DOVELL: Your Honor, I just want to
10 clarify something. Earlier when I had that video
11 playing for Kevin Smalls from the first incident,
12 my intention was only to admit into evidence the two
13 portions that I played, not the entire disc.

14 THE COURT: Well, you didn't -- that was
15 not how the Court took it, and I admitted the entirety
16 of that in evidence.

17 MS. DOVELL: Because I -- the solicitor
18 agrees with me that he was of the understanding that
19 it was only those two portions because there are things
20 in there, there's a lot of dead time, there are things
21 that I would have redacted out.

22 THE COURT: Well ---

23 MS. DOVELL: And, Your Honor, I would just
24 like ---

25 THE COURT: Okay. Is there no objection

1 from the State?

2 MR. UTSEY: Your Honor, I have no objections
3 because I know Ms. Dovell would have redacted a good bit
4 of stuff out.

5 THE COURT: All right. Okay. You need
6 to be more clear.

7 MS. DOVELL: Yes, sir.

8 THE COURT: Because you asked to introduce
9 it, and I allowed the whole entirety of the document in,
10 all right. So, with that, tell me exactly what time
11 frame from that exhibit. Tell me the defense's exhibit
12 number.

13 MS. DOVELL: Yes, Your Honor. It's
14 Defense's Exhibit 1.

15 THE COURT: All right. And what are the
16 exact times that are coming into evidence?

17 MS. DOVELL: The exact times in evidence,
18 Your Honor, would be 2 minutes, 32 seconds to 5 minutes,
19 20 seconds.

20 THE COURT: All right.

21 MS. DOVELL: And 9 minutes, 30 seconds to
22 10 minutes, 23 seconds.

23 THE COURT: 10 minutes, 33 seconds?

24 MS. DOVELL: Twenty-three, Your Honor.

25 THE COURT: Twenty-three seconds.

1 All right. Now as to that then, regarding Defendant's
2 1, is there any other portion of that that the State
3 wants in evidence?

4 MR. UTSEY: No, Your Honor.

5 THE COURT: All right. Very good.

6 So Defendant's 1 is redacted, and all that is now
7 in evidence are those portions just stated by defense
8 counsel.

9 MS. DOVELL: Thank you, Your Honor.

10 MR. UTSEY: Thank you, Your Honor.

11 THE COURT: All right. Anything else?

12 MS. DOVELL: Nothing further, Your Honor.

13 I still have not heard back from the bail bondsman.

14 THE COURT: All right. Thank you.

15 I appreciate it. We will see you at two o'clock.

16 MR. UTSEY: Yes, sir.

17 MS. DOVELL: Yes, sir.

18 THE COURT: Thank you.

19 (Recess taken at 12:35 p.m.)

20 (Back on the record at 2:00 p.m.)

21 (Jury enters courtroom at 2:00 p.m.)

22 THE COURT: All right, Solicitor.

23 Are you ready for the next witness?

24 MR. UTSEY: Yes, Your Honor.

25 THE COURT: All right.

HERBERT BROWN - DIRECT BY MR. UTSEY

1 MR. UTSEY: The State calls Herbert Brown.
2 Please come forward, Mr. Brown.

3 HERBERT BROWN, was called as a witness,
4 being duly sworn, was examined and testified as follows:

5 THE COURT: Go ahead, Solicitor.

6 MR. UTSEY: Thank you, Your Honor.

7 DIRECT EXAMINATION

8 BY MR. UTSEY:

9 Q. How old are you, Mr. Brown?

10 A. Fifty-six.

11 Q. Fifty-six. And how long have you lived in
12 Ruffin, South Carolina?

13 A. About 20 years.

14 Q. Okay. And is Ruffin the type of community where
15 everybody knows everybody?

16 A. Yes.

17 Q. Okay. How many -- so it's a very small
18 community, correct?

19 A. Uh-huh.

20 THE COURT: You need to answer out loud,
21 sir.

22 THE WITNESS: Yes.

23 BY MR. UTSEY:

24 Q. How many children do you have, Mr. Brown?

25 A. I have one biological child.

HERBERT BROWN - DIRECT BY MR. UTSEY

1 Q. Okay.

2 A. And I have three step kids.

3 Q. Okay. Do you take care of those step kids?

4 A. I did.

5 Q. Okay. All right. Let me turn your attention,
6 Mr. Brown, to the day of June 24, 2017. I am going
7 to take you -- I guess, where were you that day,
8 tell me that?

9 A. Where was I?

10 Q. Yes.

11 A. Well, I was in Ruffin at night.

12 Q. Okay. And is Ruffin in Colleton County?

13 A. Yes, it is.

14 Q. Okay. And where were you at that night in
15 Ruffin?

16 A. I was at, what would you call it, a little
17 community store there.

18 Q. Okay. And who owns that community store?

19 A. The store itself is owned by Karen Holmes.

20 Q. Okay. And do you know Karen Holmes?

21 A. Yes, I do.

22 Q. How do you know Karen Holmes?

23 A. We're what you would call us -- we, basically,
24 go together, what do you call it, not married but the
25 other thing.

HERBERT BROWN - DIRECT BY MR. UTSEY

1 Q. So you all were dating?

2 A. Yeah, basically, yeah..

3 Q. Do you all live together also?

4 A. Yes, we do.

5 Q. Okay. How long have you all been together?

6 A. Right about 19 years.

7 Q. Okay, so, I mean, a while?

8 A. Yes.

9 Q. Okay. All right. Tell me what happened that
10 night around 9:30 p.m.

11 A. Around 9:30, okay. I got there late. I came
12 in because there were a lot of people outside, so I went
13 inside the building.

14 Q. How many people would you say were outside?

15 A. Outside the building itself, pretty close to 20,
16 25 people.

17 Q. Okay. All right. So you keep going, Mr. Brown.

18 A. And so once I got inside the building, there were
19 some ladies inside the building itself. So, at that
20 moment, they wanted me to make them a few sandwiches.

21 Q. Okay.

22 A. Which I was doing, okay, and so I was doing that.
23 The people outside were doing whatever they were doing,
24 and then all of a sudden some gunshots went off.

25 Q. Okay. How many gunshots would you say you heard

HERBERT BROWN - DIRECT BY MR. UTSEY

1 around about?

2 A. It was at least between nine or ten of them.

3 Q. Okay.

4 A. Many of them going off.

5 Q. Did they sound close to you?

6 A. Yeah, they were close, yeah. It was right
7 outside the building itself.

8 Q. Okay. And you were inside of the store at that
9 time, right?

10 A. Yes, I was.

11 Q. All right. So what did you do at that point
12 when you heard the nine ---

13 A. When I heard it?

14 Q. Yes.

15 A. Okay. When I first initially heard it,
16 everybody ducked down.

17 Q. Okay.

18 A. And then my old lady, which is Karen, she looked
19 outside, and then she told me to call the police.

20 Q. Okay.

21 A. So, I got on the phone and I called them.
22 And once I called them, about ten minutes, everybody
23 cleared out.

24 Q. Okay.

25 A. So, I don't know how long it took for them to

HERBERT BROWN - DIRECT BY MR. UTSEY

1 come, which they showed up, and they did -- whatever
2 they had to do, they did it.

3 Q. Okay.

4 A. And so it was two officers, so they left.
5 Once they left, sat around there, I don't know, between
6 30 minutes and an hour.

7 Q. All right. So between 30 minutes and an hour
8 after 9:30, they're gone?

9 A. After the officers left.

10 Q. Okay.

11 A. And so all of a sudden, one fellow showed up,
12 you know, came toward me arguing at me.

13 Q. Who is this fellow that came towards you arguing
14 at you?

15 A. Initially, a fellow we call Mo.

16 Q. Mo?

17 A. Initially.

18 Q. Okay.

19 A. He was the first one.

20 Q. Okay. And was there anybody with Mo?

21 A. At that moment, he was by himself.

22 Q. Okay. At that moment, he was by himself?

23 A. Yeah.

24 Q. All right. So tell me what happened from there?

25 A. And so he came up, so before he could get to

HERBERT BROWN - DIRECT BY MR. UTSEY

1 me ---

2 Q. Okay.

3 A. --- my old lady, which is Karen, she got in
4 between. At this time, I was sitting in the chair.
5 I never moved.

6 Q. Okay.

7 A. But she got, you know, in front of him. She was
8 talking to him or what have you and turned him around,
9 and told him, you know, that she called the police,
10 you know, because she told me to call the police.

11 Q. Okay. And how long have you known this Mo
12 person?

13 A. How long have I known him?

14 Q. Yeah.

15 A. 12, 13 years.

16 Q. Okay. All right. So you all told Mo to go.
17 So what else happened after that?

18 A. He turned around. As he was leaving, Kelvin came
19 out. He was on the highway. So he came out, I see him
20 about 15, 20 feet. (Indicating.) Mo was over here;
21 Kelvin came from this direction.

22 Q. Kelvin who?

23 A. Gant.

24 Q. Okay.

25 A. I was still sitting in the chair. I hadn't moved

HERBERT BROWN - DIRECT BY MR. UTSEY

1 out the chair. So he came towards me, and said, hey,
2 you called the man on us. So, I am still sitting in the
3 chair. So, I put my hand up like this, right, basically
4 asking what are you talking about?

5 So he took his hand and swung it at my hand,
6 and that's when my lady, Karen, she got in the way
7 again. And she told him to go ahead and go on,
8 that she called the police or what have you, and she
9 told him to go home, and he told her he was home.

10 Q. Okay. So she told him to go home, and he told
11 her ---

12 A. He was home.

13 Q. All right. How long have you known Kelvin Gant?

14 A. At least 19, 20 years. I've seen him around
15 at least 19, 20 years.

16 Q. Okay. So you have seen him around the Ruffin
17 area for 19 ---

18 A. Yeah. I mean, I have seen him since he's been
19 a little boy.

20 Q. Since Kelvin was a little boy?

21 A. Yeah.

22 Q. Okay. Did you ever talk to Kelvin when he was
23 a little boy or anything like that?

24 A. No. I mean, you know, they were little kids,
25 and we were adults so we see him in passing.

HERBERT BROWN - DIRECT BY MR. UTSEY

1 Q. Okay.

2 A. But as far as holding conversations with him, no.

3 Q. Okay. But you know who Kelvin Gant is?

4 A. Yeah, I know him, his parents. I know all of
5 them.

6 Q. Okay. All right. So tell me what happened after
7 Mo and Kelvin -- you said Kelvin slapped your hand.
8 Tell me what happened after that?

9 A. Well, after he did that, Mo yelled at him
10 and said come on. By now Karen is interfering,
11 and she is pushing him back towards the highway,
12 and once she did that, he turns around and they leave,
13 right.

14 Q. Okay.

15 A. So now after they left, now we're down to about,
16 looked like three vehicles out there, and it's just
17 five of us out there, so we weren't doing anything.
18 Karen and another fellow went inside the building,
19 two more individuals were sitting in a car.

20 Q. Okay. What car were they sitting in?

21 A. They were sitting in a Dodge Charger.

22 Q. Okay.

23 A. So, I got up out of the chair. I went back
24 inside the building.

25 Q. Okay.

HERBERT BROWN - DIRECT BY MR. UTSEY

1 A. And I sat down with Karen and the other fellow,
2 maybe about ten minutes, they was in there.

3 Q. And you were just talking to them?

4 A. Yeah, they were in there playing with their
5 little phones, you know.

6 Q. Okay.

7 A. I don't know what they were doing, so I got up
8 and left out of the building.

9 Q. Okay.

10 A. So, I went back outside where the other two
11 people were at in the Charger. I leaned on the car,
12 and they were inside the car, basically, doing the
13 same thing.

14 Q. Okay.

15 A. So, I stood there. I don't know how long it was,
16 a few minutes.

17 Q. And let me ask you something, Mr. Brown.
18 Is there a street light in that parking lot?

19 A. Yeah, it's directly over the building.

20 Q. Does it light up the entire parking lot?

21 A. The entire parking lot, yeah.

22 Q. All right. Go ahead, Mr. Brown.

23 A. So, I stood there. And, you know, it's quiet.
24 In the country, it's real quiet.

25 Q. That's right.

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1 A. So, I stood there just looking around.
2 And, I don't know, something in the back of my mind
3 said look back towards the building because I was
4 looking at the highway at the time. So when I turned --
5 I didn't turn my body around; I turned my head around,
6 and I looked. And when I looked at the building itself,
7 I looked and I saw Kelvin coming. He was maybe a foot
8 past the building, but he's coming directly towards me..

9 Q. And this is Kelvin Gant, right?

10 A. Yes, yes.

11 Q. Okay.

12 A. And so I said, well, being that I knew the young
13 man, I said, well, he's just coming back to argue or
14 what have you, like he did initially.

15 Q. That's right.

16 A. So he came towards me. I looked -- I mean,
17 I'm looking at him, he's looking at me.

18 Q. How far is he away from you at this point?

19 A. (Indicating.) At that point, about that far.

20 Q. Okay.

21 A. Yeah. So he continued to walk. He got close
22 to me, and he did not walk directly up to me.
23 He was kind of, you know, coming from an angle.

24 Q. Okay.

25 A. And once he did that, all of a sudden, I don't

HERBERT BROWN - DIRECT BY MR. UTSEY

1 know how many feet it was, four or five feet,
2 whatever. When he got close enough ---

3 Q. All right. Tell me -- all right. Was he this
4 close at that point, or he was closer?

5 A. He was closer than that.

6 Q. All right. Was he ---

7 A. A little closer than her.

8 Q. Okay. All right. A little closer than the court
9 reporter?

10 A. Yeah. We, basically, were able to look at each
11 other dead in the eyes.

12 Q. All right. Face to face?

13 A. Yeah.

14 Q. All right. So tell me what happened at that
15 point?

16 A. And then I looked at him. And I don't know,
17 my eyes went down towards his waistline.

18 Q. Okay.

19 A. And that's when I saw the handle of his gun
20 sticking down in the center of his pants.

21 Q. Okay.

22 A. And once I saw that, I don't know how many
23 seconds happened after that, all of a sudden, I heard
24 bam, and the bullet, whatever, hit me so hard, until --
25 it literally took -- because at that time, I was kind

HERBERT BROWN - DIRECT BY MR. UTSEY

1 of a heavy-set fellow, right. It literally turned
2 my entire body around.

3 Q. How much do you think you weighed at that time,
4 Mr. Brown?

5 A. They said I was, like, about 286, 287 pounds.

6 Q. And how much do you weigh now, if you don't mind
7 me asking?

8 A. Right now, 240. I gained some weight.

9 Q. Okay.

10 A. Because, initially, once I got out of the
11 hospital, I was, like 208 pounds.

12 Q. All right. So tell me what happened when you
13 saw him pull the gun out of his waist? Tell me what
14 happened from there?

15 A. He pulled the gun out, like it leaned back,
16 and all of a sudden I heard bam. Once it spent me
17 around, because I had my hands on the car itself.
18 Once I stopped spinning, I was on the ground looking
19 towards the building, and how that happened, I don't
20 know to this day.

21 And so what I did once I was on that ground,
22 I yelled because I figured he was going to, you know,
23 do it again. And, I guess, that's when, I don't know
24 which direction he went in, and that's when, I guess,
25 they came outside and saw me laying on the ground.

HERBERT BROWN - DIRECT BY MR. UTSEY

1 Q. Okay. Did you see Kelvin Gant run off from you?

2 A. No, I didn't.

3 Q. Okay.

4 A. Like I said, I couldn't have seen because I was
5 looking at the building.

6 Q. Okay. All right. Can you identify the person
7 who pulled out the gun ---

8 A. Yes, of course.

9 Q. --- and shot you?

10 A. (Indicating.) Yes, right there. Kelvin Gant,
11 sitting right over there in that chair.

12 Q. Tell me what he's wearing.

13 A. He's wearing a white shirt with a short haircut
14 right now at this time.

15 Q. And how long have you known him?

16 A. Like I said, between 19, 20 years.

17 Q. Tell me what happened, Mr. Brown, when you were
18 on the ground, at that time?

19 A. When I was on the ground itself?

20 Q. When you were on the ground.

21 A. Okay. When I was on the ground, I yelled
22 and Karen and another young man and a couple of people,
23 one of the fellows who was sitting in the car, I guess
24 he got out, and all of them came out. And Karen came
25 and asked, you know, what happened and all this stuff.

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1 And she was running back and forth to see, you know,
2 if she could see, you know, who had done it.

3 So that's when I asked Randolph to put a chair
4 under my head because by now I'm getting weak, and
5 I don't know, it's like I am phasing, you know, starting
6 to phase out.

7 Q. Okay.

8 A. And so I told him -- while I was doing that,
9 I said to myself if I, basically, went on out I was not
10 going to wake back up. So from that point on, I decided
11 that I wasn't going to do that, and I stayed awake all
12 the way until I made it to the hospital, and they did
13 what they had to do.

14 That's when they finally, you know, the doctor
15 told me -- you know, they gave me whatever medicine
16 for me to go to sleep. But I stayed awake from the
17 beginning all the way to that point. So everything
18 that happened in between, I was awake and conscious
19 to what was going on around me.

20 Q. Did -- when you were transported, were you
21 transported to the Colleton Medical Center first?

22 A. They took -- okay. What they did, well, they had
23 me in an ambulance and what have you. They took me,
24 but once I got to Colleton County, they airlifted me.
25 The helicopter -- they took me straight to the pad.

HERBERT BROWN - DIRECT BY MR. UTSEY

1 Q. Okay.

2 A. They put me directly in the helicopter and took
3 me to Trident from there. I never made it to the
4 hospital itself.

5 Q. How long did you stay in Trident?

6 A. I went twice.

7 Q. Okay.

8 A. So the first time, I think I was in there,
9 like, two weeks. And came back to county, then they
10 had to reoperate on me. So, I went back to Trident
11 again. I think I stayed there another couple of weeks,
12 so at least a month.

13 Q. Okay.

14 A. Maybe a little over a month at Trident.

15 Q. All right, Mr. Brown.

16 MR. UTSEY: May I approach, Your Honor?

17 THE COURT: Yes, sir.

18 BY MR. UTSEY:

19 Q. All right, Mr. Brown. I am going to show you the
20 map, State's Exhibit No. 7. Can you show me -- I want
21 you to show me and show the jury where you saw -- when
22 you turned around where you saw Kelvin Gant, if you can?
23 First, I need you to identify where the store is.

24 A. (Indicating.) It's right here.

25 Q. Okay. It's right here?

HERBERT BROWN - DIRECT BY MR. UTSEY

1 A. Yeah, it's right there.

2 Q. All right. And you were in front of the store,
3 right?

4 A. (Indicating.) I was right over here, not exactly
5 in front of the door.

6 Q. Okay. And where did you see Kelvin Gant?

7 A. (Indicating.) He came from over here.

8 Q. Okay. He came from the right side of the store?

9 A. That side of the building, yeah.

10 Q. And then he walked in front of the store to you?

11 A. Basically, yeah.

12 Q. Okay. And the first time you saw Mo and Kelvin,
13 where did they come from that first time?

14 A. (Indicating.) The first time, they came from
15 this direction over here.

16 Q. Okay. So they came from the road the first time?

17 A. Yeah, they came from the road. Came from this
18 direction, and then got turned around. Kelvin came from
19 over here. We got 10, 15 feet down from where Mo came.
20 Originally, he came from the -- basically, like, almost
21 to the angle of the building itself.

22 Q. Okay. All right, Mr. Brown, I am also going
23 to show you what has been marked at State's Exhibit 15,
24 and I want you to show the jury right here where you
25 were standing when you were talking to the people in the

HERBERT BROWN - DIRECT BY MR. UTSEY

1 Dodge Charger.

2 A. (Indicating.) Right here. I was leaning on this
3 right here, on the roof.

4 Q. Okay. So you were leaning on the passenger side?

5 A. Yeah.

6 Q. Okay. And tell me, with this picture, you can
7 see the building in the background. I am trying to let
8 the jury see it too. You can see the building in the
9 background right here. Tell me in this picture too,
10 where Kelvin Gant came from, if you can.

11 A. (Indicating.) Came from right over here.

12 Q. Yes.

13 A. Walked past my car, got right in here, and came
14 between there.

15 Q. Okay.

16 A. My car was -- walked past my car.

17 Q. Okay.

18 A. Right there.

19 Q. Okay. Do you also know Kelvin Gant's family,
20 Mr. Brown?

21 A. Yeah, yeah.

22 Q. Okay. And, generally, on a Friday or Saturday
23 night, you all go up to the store?

24 A. Yes.

25 Q. Do you know everyone -- pretty much everyone

HERBERT BROWN - DIRECT BY MR. UTSEY

1 there?

2 A. Yeah.

3 Q. Okay. And did you have to go through rehab
4 because of this?

5 A. Yeah.

6 Q. A lot of it?

7 A. A lot of it, yeah. I couldn't walk.
8 They wouldn't let me walk -- they wouldn't let me stand
9 on my leg more, like, six weeks because my pelvis was
10 cracked, so they wouldn't let me stand up on that.
11 Then by laying in the hospital, both my feet swelled up,
12 so I couldn't walk on them for another month and a half,
13 almost two months.

14 Q. Did you think you were going to die that night?

15 A. I knew I was going to die that night. I mean,
16 the way -- because, I mean the way I felt, once I got
17 to a point where I would go out, come back, go out
18 and come back, and there was nobody around, there was
19 no doctor, nobody that would do anything, that could
20 do anything, and I know how long it takes, you know,
21 for them to get out there. And I don't know -- I guess,
22 it was luck that they were still in the area because
23 they initially would take them the same time, or else
24 I wouldn't be here today.

25 Q. And who sat with you that entire time you were

HERBERT BROWN - CROSS BY MS. DOVELL

1 on the ground bleeding, do you remember?

2 A. Are you talking about before ---

3 Q. Before Colleton County Fire and Rescue got there,
4 before the deputies showed up, who sat beside you?

5 A. Nobody. Karen was running back and forth,
6 calling people and stuff, trying to get somebody
7 out there.

8 Q. Okay. So Karen was running back and forth,
9 calling, trying to get them to come out?

10 A. Everybody else was just standing around.

11 Q. Okay.

12 MR. UTSEY: May I have the Court's
13 indulgence, Your Honor?

14 THE COURT: Yes, sir.

15 MR. UTSEY: I have no further questions,
16 Your Honor. And I would also like to say for the record
17 that the defendant [sic.] did identify Kelvin Gant as
18 the person who shot him.

19 THE COURT: Yes, sir.

20 MR. UTSEY: Thank you, Your Honor.

21 THE COURT: All right. Cross-examination.

22 MS. DOVELL: May it please the Court.

23 THE COURT: Yes, ma'am.

24 CROSS EXAMINATION

25 BY MS. DOVELL:

HERBERT BROWN - CROSS BY MS. DOVELL

1 Q. Good afternoon, Mr. Brown.

2 A. How are you doing?

3 Q. Fine, thank you. My name is Helen Dovell.

4 I represent Kelvin Gant. Mr. Brown, the shooter was
5 between you and the club when the first shot was fired?

6 A. Between me and the club.

7 Q. I'm just trying to ---

8 MS. DOVELL: May I approach the witness,
9 Your Honor?

10 BY MS. DOVELL:

11 A. No, he wasn't between me and the club.
12 No, he wasn't.

13 Q. Okay.

14 A. He was directly in front of me. When he shot
15 the first shot, he was directly in front of me.
16 The club was behind the both of us.

17 Q. Okay. When you say he was directly in front
18 of you ---

19 A. You know what I am saying. I know what you're
20 saying, no. The angle that I told you initially about.
21 (Indicating.) When I turned around I was like this,
22 he was like this, you know what I'm saying, that's why
23 I'm saying directly in front of me because we were like
24 this. It was on an angle, but basically in front of
25 each other.

HERBERT BROWN - CROSS BY MS. DOVELL

1 Q. Okay. Was he, like, on the side of the club
2 or on the side of the roadway?

3 A. Either one. We were both in the yard itself.
4 The club was behind us, the road was in front of us.

5 Q. Okay. So your testimony is that he came from
6 in front of the club?

7 A. No.

8 Q. He came from the side of the club?

9 A. He came ---

10 Q. And he walked in front of the club to get
11 to where you were; is that right?

12 A. You can say that, basically, just like that,
13 like a snake motion, like an S motion. Basically came
14 from the side of the building. He made his turn,
15 and then he came between the cars.

16 Q. Where was he when the first shot was fired,
17 like physically located, sir?

18 A. Physically? Like I said, right there. I can't
19 give you exact numbers on feet, but we are fairly close
20 to each other. I'll put it like this, we wasn't far
21 enough away for me to get away from him.

22 Q. Okay.

23 MS. DOVELL: I think I'm not necessarily
24 being clear. So, Your Honor, may I approach the witness
25 with the photo?

HERBERT BROWN - CROSS BY MS. DOVELL

1 THE COURT: Yes, ma'am.

2 BY MS. DOVELL:

3 Q. And, Mr. Brown, I apologize if you've already
4 answered this. I was trying to see the photo.

5 A. Go ahead. You want me to show you where he was
6 at?

7 Q. Don't mark on the photo.

8 A. I'm not going to.

9 Q. Yes, please show me where he came.

10 A. Okay. (Indicating.) See right here?

11 Q. Yes.

12 A. Where these two buildings are?

13 Q. Yes.

14 A. Came between these two buildings here.

15 Q. Okay.

16 A. Came between these two buildings, came directly,
17 like you said, in front of the building. And once he
18 got to this point, and my car is here, and he got about
19 right there, and he came on an angle. He came on an
20 angle. I was standing right here. So once he got --
21 you see about right here where this car is at here?

22 Q. Okay.

23 A. We're parallel with each other.

24 Q. Okay. All right. And so he was -- you're saying
25 when the shooting first shot, he was right towards,

HERBERT BROWN - CROSS BY MS. DOVELL

1 like, the back of your car?

2 A. He hadn't made it to the back yet. He was,
3 like, in the center, with this car it's longer.

4 Q. Okay.

5 A. So he was about right here by my front door.

6 THE COURT: I know he's explaining this
7 to you, Ms. Dovell, but the jury has no clue.

8 MS. DOVELL: Yes, okay. Will you please
9 show the jury.

10 THE WITNESS: Okay.

11 THE COURT: Do you want to stand up and get
12 in front of them?

13 THE WITNESS: Okay.

14 THE COURT: You have to speak up.

15 THE WITNESS: Okay. There's these two
16 buildings here, right. When he came, he came in between
17 these two buildings, came across in front of my car.
18 Once he got in front of my car, he turned on an angle.
19 He comes directly towards me. He turned on an angle.
20 Once he got to the center of my front door -- I was
21 still leaning on this car, on the Charger.

22 Once he got to that point, we looked at each
23 other, then all of a sudden, like I said, I looked down
24 and saw the weapon. And, at that moment, pulled it out,
25 bam, bam. Spent me around. After that, I did not know

HERBERT BROWN - CROSS BY MS. DOVELL

1 what had happened.

2 MS. DOVELL: Thank you very much.

3 BY MS. DOVELL:

4 Q. Okay. Mr. Brown, the night of the shooting,
5 Lieutenant Polk was the first officer on scene.

6 Do you remember him arriving?

7 A. No, I do not.

8 Q. Okay. So you don't remember telling him that
9 the suspect ran off?

10 A. No, I don't.

11 Q. And you didn't see what direction the suspect
12 ran?

13 A. No, I don't. One thing I remember I was laying
14 on the ground, and asked me some questions, and a few
15 seconds later, they put me on a stretcher.

16 Q. Okay. All right. So you didn't see whether
17 he ran off to the right, to the left?

18 A. No, I did not.

19 Q. Okay. And, Mr. Brown, what drugs were you using
20 at the time of the incident?

21 A. What?

22 Q. What drugs?

23 A. Why would you ask me something like that?

24 Q. Medications, I am asking.

25 A. Oh, what type of -- I take -- well,

HERBERT BROWN - CROSS BY MS. DOVELL

1 I'm a diabetic, high-blood pressure. I take arthritis
2 medication, pain relievers, and insulin.

3 Q. Okay. And how long have you suffered from
4 diabetes?

5 A. How long?

6 Q. Yes.

7 A. Offhand 10, 15 years.

8 Q. Okay. And high-blood pressure?

9 A. Not as long, but not high but what you call it,
10 borderline.

11 Q. Okay. And so back to the night of the incident,
12 you met with the solicitor a couple of weeks ago,
13 correct?

14 A. Yes, I did.

15 Q. Okay. And you mentioned to him that a person
16 named Derrick left the club around the same time that
17 Mo and Kelvin did?

18 A. Uh-huh.

19 Q. Who is Derrick?

20 A. Who is Derrick?

21 Q. Yes. What's his last name?

22 A. I don't know. I think it's -- I am not exactly
23 sure. I haven't called his name that often, so I am
24 not exactly sure as to his last name.

25 Q. Okay. And you said that Mo, Kelvin and Derrick

HERBERT BROWN - CROSS BY MS. DOVELL

1 left at the same time. Was he with them?

2 A. I can't say that. They all left together,
3 so I don't know.

4 Q. Okay.

5 A. I don't know if Derrick was there first or not,
6 but I know he was leaning on the car, initially.
7 Before I got shot and all that, he was leaning on the
8 car. He was leaning on my car, Derrick, so Derrick had
9 to be there first.

10 Q. And this was before you were shot?

11 A. Yeah.

12 Q. Okay.

13 MS. DOVELL: Court's indulgence, Your Honor.

14 THE COURT: Yes, ma'am.

15 MS. DOVELL: No further questions for
16 Mr. Brown.

17 THE COURT: Redirect.

18 MR. UTSEY: No, Your Honor.

19 THE COURT: You may step down, sir.

20 MR. UTSEY: The State now calls Dr. Jewett,
21 Your Honor.

22 THE COURT: All right. Very good.

23 DR. BRENT JEWETT, was called as a witness,
24 being duly sworn, was examined and testified as follows:

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

BRENT JEWETT - DIRECT BY MR. UTSEY

1 Go ahead.

2 MR. UTSEY: Thank you, Your Honor.

3 DIRECT EXAMINATION

4 BY MR. UTSEY:

5 Q. Dr. Jewett, where do you currently work?

6 A. I work at Trident Medical Center in North
7 Charleston.

8 Q. Okay. And what's your occupation at Trident
9 Medical Center?

10 A. I am a trauma surgeon.

11 Q. And how many years have you been working
12 at Trident Medical Center?

13 A. Three years full time.

14 Q. Okay. And are you a licensed medical doctor
15 in South Carolina?

16 A. Yes, sir.

17 Q. And can you tell me a little bit -- can you tell
18 me about your education?

19 A. Sure. I did my under grad up in Allentown,
20 Pennsylvania called Muhlenberg. I then went to Drexel
21 University College of Medicine for medical school,
22 in Philadelphia. I graduated there in '09. I then went
23 on to medical -- MUSC for general surgery residency,
24 which was five years, and I completed two years of
25 additional fellowship in trauma and critical care.

BRENT JEWETT - DIRECT BY MR. UTSEY

1 Q. Okay. And tell me a little bit about your
2 training.

3 A. Sure. So in 2009, I started with Medical
4 University of South Carolina as a general surgery
5 resident that was five years long. I completed the
6 general surgery program there, and I stayed on at the
7 medical university and completed another two years of
8 training in trauma and critical care.

9 Q. And last, but not least, can you tell me about
10 your experience in the trauma field?

11 A. Sure. True experience really begins in general
12 surgery. You are exposed to a great deal of trauma
13 as a resident, and then as a fellow, you are with the
14 trauma program daily in ICU trauma folks, trauma
15 surgeons at the medical university.

16 And then from there, once I finished, and I was
17 double board certified in general surgery and trauma,
18 and I began to work at Trident Medical Center for the
19 last three years.

20 Q. Okay.

21 A. I see trauma patients every day.

22 Q. And tell me, I guess, or tell the jury what
23 trauma is to you.

24 A. Sure. So a trauma surgeon is a surgeon who takes
25 care of the critically injured. We see all manners

BRENT JEWETT - DIRECT BY MR. UTSEY

1 of injuries, penetrating injuries such as gunshot wounds
2 or stabs, blunt injuries such as falls, car crashes.

3 We take care of those trauma patients when they
4 arrive at the hospital. And whether they are on the
5 floor or whether they are in the ICU, as a team, we take
6 care of those patients until they leave to go home or
7 to go to rehab or what have you.

8 Q. Okay. And is there a difference between a trauma
9 surgeon, such as yourself, and a regular emergency room
10 doctor?

11 A. Yeah. So an emergency room doctor is a medical
12 doctor. They are not a surgeon. They do see patients
13 in an emergency-like setting. Trauma surgeons are
14 surgeons who operate on patients, and we are frequently
15 in the emergency room, but we are not in the emergency
16 room full time like an emergency room doctor.

17 Our trauma bay -- in the emergency room, and we
18 will see patients that come in from there, and then we
19 disposition them either to the operating room or the
20 intensive care unit. So we are surgeons; they're
21 medicine doctors.

22 Q. Okay. And I am going to turn your attention
23 to the night of June 25th of 2017. Did you have the
24 occasion to treat Herbert Brown?

25 A. Yes, sir.

—BRENT JEWETT - DIRECT BY MR. UTSEY—

1 Q. And what time, or around what time, did Herbert
2 Brown come into Trident?

3 A. My review of the records and my recollection,
4 about one o'clock in the morning.

5 Q. Okay. And where did you see Herbert Brown
6 in Trident? Where would you first observe him in
7 Trident?

8 A. So, Mr. Brown is a trauma patient coming in
9 by helicopter, coming as a trauma patient. We have
10 a multi-disciplinary trauma team that's waiting to
11 receive patients like Mr. Brown, which is in the
12 emergency room. And so when he arrives, we -- as soon
13 as he hits the door and comes into our trauma bay,
14 is when we would receive him.

15 Q. Okay. And tell us about the condition of
16 Mr. Brown when he came into the trauma bay.

17 A. Sure. We were given some information prior
18 to when a patient comes into the hospital, from the
19 outside. We knew that he was coming by helicopter.
20 We knew that he had sustained a gunshot wound, and we
21 were told pre-hospital, before he came in, that he had
22 hypotension, meaning that his blood pressure was low.
23 They were giving him fluids to try to increase the blood
24 pressure.

25 So from this information, pre-hospital

BRENT JEWETT - DIRECT BY MR. UTSEY

1 information, we knew that he had sustained a gunshot
2 wound, that his blood pressure was low and these are
3 very critical findings, critical injuries. So this
4 is a very, you know, seriously injured patient.

5 Q. And what did you observe when you first saw
6 Mr. Brown? What did you observe was wrong with him?

7 A. So every patient that comes in to the trauma bay,
8 we begin with a primary survey. A primary survey
9 assesses if they can breathe, if they have good
10 circulation, if they can follow commands. This is,
11 basically, to identify any immediate life-threatening
12 situation that could be corrected.

13 This is followed by a secondary survey. This is
14 a head-to-toe examination of the patient. What we
15 identified at that time, my review of the records,
16 is that he sustained a gunshot wound to the left upper
17 quadrant of his abdomen. And he also had a glancing,
18 or a superficial gunshot wound, to the right buttock.
19 Those were his injuries.

20 Q. Did you consider his injuries, upon your
21 observation, to be life threatening?

22 A. Yes.

23 Q. And what -- in terms of treatment, what did you
24 do for Mr. Brown?

25 A. So any trauma patient in his situation would

—BRENT JEWETT - DIRECT BY MR. UTSEY—

1 receive additional fluids. He would receive a full
2 head-to-toe examination. Given that the gunshot wound
3 was on the left side of his abdomen, and the X-rays that
4 we had obtained would show that there was ballistic
5 fragment in the right side of his abdomen, we assumed
6 that this bullet had gone in the left side and had
7 causes damage -- potential life-threatening damage
8 to the internal structures.

9 And given his low-blood pressure when he was
10 in transit to the hospital and these findings, we made
11 the decision to proceed to the operating room, to open
12 up his belly, identify and fix any life-threatening
13 issues.

14 Q. Okay. And you say you made the decision to open
15 his belly and fix the issues. Can you tell us the
16 issues that you fixed when you did the surgery?

17 A. Sure. So when we went to the operating room,
18 I made an incision down the lower part of his abdomen,
19 we opened up his abdomen. There was what's called
20 hemoperitoneum blood in the abdomen. That's not
21 supposed to be there. We identified a ballistic wound
22 to the left side, the left part of the colon, this is
23 the descending colon, the left side of the abdomen.
24 So there was a ballistic wound there.

25 There was also a ballistic wound to the

—BRENT JEWETT - DIRECT BY MR. UTSEY—

1 midportion of his small bowel. Given these wounds,
2 we had to resect the left colon, the descending part
3 of that colon, remove that piece and put that back
4 together. And then we also had to remove a piece of
5 the small intestine due to the injury and put that back
6 together.

7 There was also some bleeding in what's called
8 the retroperitoneum, which is on the left posterior,
9 or the back part of the abdomen, some bleeding there,
10 which was handled. And then we were able to wash out
11 his abdomen and close him and take him over to the CAT
12 scan to identify further injuries.

13 Q. Okay. And how long did Mr. Brown stay in the
14 hospital after that surgery?

15 A. He was admitted on the 25th of June, and in
16 review of the records, he left on July 6th.

17 Q. Okay. And did he have any problems during those
18 couple of weeks that you know of?

19 A. His hospital course, several things. We caught
20 an ileus. An ileus is a slowing of the intestine.
21 It's a slowing process after you remove a portion of
22 an intestine like that. It typically takes the
23 intestine a while to get back on line and function
24 normally. So he was experiencing some ileus during
25 that time.

BRENT JEWETT - DIRECT BY MR. UTSEY

1 He also had a fever. This led to kind of
2 a workup to identify the fever. Then he also had
3 a wound infection, meaning that the skin that we had
4 closed, there was a wound infection there, so we had
5 to open up some of those, and the staples. I closed
6 the skin and treatment with antibiotics, and then
7 a wound VAC. So there were major complications.

8 And the other thing that he suffered was that
9 this bullet not only affected the intestine, but it
10 injured his pelvis. So it caused several pelvic
11 fractures on the right side, which was identified by
12 CAT scan, and orthopedic surgery was consulted for that.

13 We did not have to do an operation for that,
14 but he did require antibiotics. And then his right leg,
15 in order to allow this to heal, the orthopedic surgeon
16 said that he should keep no weight on that leg for a
17 while as it heals. So he did have to go to physical
18 therapy and recover from that pelvic injury.

19 Q. And did you ever see Mr. Brown again after
20 he left the hospital that first time?

21 A. I can't recall. I would have to check my office
22 notes to see if I saw him in the office.

23 Q. Okay.

24 MR. UTSEY: May I have the Court's
25 indulgence, Your Honor?

EDWARD MARCURELLA - DIRECT BY MS. ORVILLE

1 THE COURT: Yes, sir.

2 MR. UTSEY: That's all, Your Honor.

3 THE COURT: All right. Cross-examination.

4 MS. DOVELL: No questions, Your Honor.

5 THE COURT: All right. Do you wish the
6 witness to be excused?

7 MR. UTSEY: Yes, Your Honor.

8 THE COURT: All right. Doctor, you are
9 released. Go back to your regular duties.

10 THE WITNESS: Yes, sir.

11 THE COURT: All right. Next witness,
12 Solicitor.

13 MS. ORVILLE: The State calls Ed Marcurella.

14 THE COURT: All right.

15 EDWARD MARCURELLA, was called as a witness,
16 being duly sworn, was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MS. ORVILLE:

19 Q. Detective Marcurella, what -- who do you work
20 for, first of all?

21 A. Colleton County Sheriff's Office.

22 Q. Okay. And what is your current position with
23 the sheriff's office?

24 A. Sergeant in the criminal investigations division.

25 Q. Okay. So that would make you an investigator?

EDWARD MARCURELLA - DIRECT BY MS. ORVILLE

1 A. Yes, ma'am.

2 Q. Okay. And how long have you been in law
3 enforcement overall?

4 A. Overall, 32 years in public safety.

5 Q. Okay. And what about with the investigations
6 division?

7 A. Last four years.

8 Q. Last four years, okay. And what are just sort
9 of some of your general duties as an investigator with
10 the sheriff's department?

11 A. Currently, I'm in charge of investigating child
12 victim crimes and special victim crimes.

13 Q. Okay. Back in June, it may have been July
14 at this point, of 2017, were you involved in the arrest
15 of Kelvin Gant?

16 A. I was.

17 Q. Okay. Could you tell us about how you came
18 to be involved in that?

19 A. Information was received at the sheriff's office
20 that Mr. Gant was at a hotel here in Walterboro, South
21 Carolina. And members of the criminal investigations
22 division went to that location, knocked on the door.
23 Mr. Gant answered the door. He was placed under arrest.

24 Q. Okay. And then did you take him to the detention
25 center?

EDWARD MARCURELLA - CROSS BY MS. DOVELL

1 A. I did not, but somebody took him to the detention
2 center.

3 Q. Okay. And did you see the man who you all
4 arrested here in the courtroom today?

5 A. Yes, ma'am.

6 Q. Could you point him out for me?

7 A. (Indicating.) He's between the two defense
8 attorneys in the white shirt.

9 MS. ORVILLE: Your Honor, let the record
10 reflect that Investigator Marcurella has identified
11 the defendant.

12 BY MS. ORVILLE:

13 Q. Is that the individual who you knew by the name
14 of Kelvin Gant?

15 A. Yes, ma'am.

16 Q. All right.

17 MS. ORVILLE: I beg the Court's indulgence.

18 THE COURT: Yes, ma'am.

19 MS. ORVILLE: No further questions,
20 Your Honor.

21 THE COURT: Cross-examination.

22 MS. DOVELL: Thank you, Your Honor.

23 CROSS EXAMINATION

24 BY MS. DOVELL:

25 Q. Good afternoon, Detective Marcurella?

EDWARD MARCURELLA - CROSS BY MS. DOVELL

1 A. Good afternoon.

2 Q. You are not the original detective assigned
3 to this case, correct?

4 A. I was the original.

5 Q. You were the original detective assigned to
6 this case, but you were not on call the night of the
7 incident, were you?

8 A. No, ma'am, I was not, no.

9 Q. Okay. And as part of the investigation,
10 you reviewed the body camera footage?

11 A. I did.

12 Q. Okay. And the shell casings had been collected
13 that night, correct?

14 A. Yes, ma'am.

15 Q. And were they submitted for processing?

16 A. I could not answer that question for you.

17 Q. Okay. So you don't know whether or not the
18 fingerprint -- whether or not the shell casings were
19 ever analyzed for fingerprints?

20 A. They would have been admitted into evidence by
21 the road patrol officer on scene, and I could not tell
22 you what happened as far as when it went to evidence.

23 Q. Okay. Well, once they are in evidence, as an
24 investigator in the case, you can -- it's up to you
25 to decide whether or not things need to be further

EDWARD MARCURELLA - CROSS BY MS. DOVELL

1 evaluated, correct?

2 A. Yes, ma'am.

3 Q. Okay. Did you send the shell casings to SLED
4 for fingerprint analysis?

5 A. No, ma'am. It would have been useless.

6 Q. Okay. And after the incident, did you conduct
7 a follow-up interview with Mr. Brown?

8 A. I believe I did, yes, ma'am.

9 Q. And when was that?

10 A. I could not recall exactly.

11 Q. And you have been in law enforcement for 32
12 years?

13 A. No, ma'am. I have been in law enforcement 17
14 years. I spent 32 years in criminal -- in public
15 safety.

16 Q. Okay. But in that time, you received extensive
17 training, correct?

18 A. More or less, yes, ma'am.

19 Q. And you have written many reports?

20 A. Yes, ma'am, I have.

21 Q. And you wrote a report in this case, correct,
22 of supplement, correct?

23 A. Yes, ma'am.

24 Q. Okay. In fact, you wrote an investigative
25 supplement, correct?

EDWARD MARCURELLA - CROSS BY MS. DOVELL

1 A. Yes, ma'am.

2 Q. And an arrest supplement?

3 A. If you're holding it, yes, ma'am.

4 MS. DOVELL: Your Honor, may I approach
5 the witness?

6 THE COURT: Yes, ma'am.

7 BY MS. DOVELL:

8 Q. We have here investigative and arrest, correct?

9 A. Yes.

10 Q. Okay. And did you author any other reports
11 besides those?

12 A. No, ma'am, not to my recollection, no.

13 Q. Now, if you had conducted a follow-up interview
14 with the victim in the case, wouldn't that have been
15 important to document?

16 A. Yes, ma'am.

17 Q. And your testimony is that you may have had
18 a follow-up interview with him?

19 A. Again, I am saying may. I don't recall,
20 it's been two years.

21 Q. Okay. But you did not document it in any way,
22 shape or form, if you did?

23 A. If I had, I would have documented it, generally.

24 Q. Okay. And there's no written statement from
25 Mr. Brown in the case file, correct?

EDWARD MARCURELLA - CROSS BY MS. DOVELL

1 A. No, not to my recollection, no.

2 Q. Okay. Did you conduct a follow-up interview
3 with Karen Holmes?

4 A. No, ma'am.

5 Q. Did you conduct an interview with Randolph
6 McFadden?

7 A. I have no idea who that is.

8 Q. Okay. Well, you said that you watched the body
9 cameras, correct?

10 A. Correct.

11 Q. And there were individuals who were still
12 on scene after the shooting, correct?

13 A. Yes, ma'am.

14 Q. But you don't recall any of those individuals'
15 names?

16 A. No, ma'am, I don't.

17 Q. And you did not follow up or interview any
18 of those people, correct?

19 A. No, ma'am.

20 Q. Okay. So you received information that Kelvin
21 was staying with his girlfriend at a hotel here in
22 Walterboro?

23 A. I don't know who he was staying with.
24 He was in the room by himself.

25 Q. Okay. And he came right to the door, correct?

EDWARD MARCURELLA - CROSS BY MS. DOVELL

1 A. Yes.

2 Q. Okay. And when you were there, you had
3 an opportunity to look through the room, correct?

4 A. Correct.

5 Q. And, in fact, there was a search warrant
6 that was done on the room, correct?

7 A. If you say there was, there was.

8 Q. And you were part of the execution of the
9 search warrant, correct?

10 A. I was present at the time of the arrest.

11 Q. Okay. But you are the case officer,
12 you understand that there was a search warrant
13 executed after his arrest, correct, and photos
14 were taken of the hotel room?

15 A. Yes, ma'am.

16 Q. Okay. And was a weapon found in the hotel room?

17 A. Not to my recollection.

18 Q. Okay. And the hotel room was set up sort of like
19 an apartment, correct?

20 A. Meaning what?

21 Q. There were -- there was, like, a Foreman grill
22 on the scene. There were plates hanging on the wall,
23 correct? Indicia that somebody had been living there
24 for a while, correct?

25 A. I don't recall the inside of the building.

EDWARD MARCURELLA - CROSS BY MS. DOVELL

1 If you have a picture, I will look at it.

2 Q. Okay. And did you test Kelvin Gant for gunshot
3 residue?

4 A. No, ma'am.

5 Q. And, to your knowledge, were any deputies sent
6 out to [REDACTED] Road to conduct further investigation
7 after the night of the incident?

8 A. Not to my knowledge, no.

9 Q. And, to your knowledge, did anyone -- any of the
10 deputies look for Kelvin Gant the night of the incident?

11 A. I could not answer that question. I don't know.

12 Q. So there was no law enforcement effort the night
13 of the shooting to apprehend the suspect?

14 A. Again, I can't answer ---

15 MR. UTSEY: Objection, Your Honor.

16 That's been asked and answered.

17 THE COURT: She could ask the question.
18 He's already answered it, but if you want to ask
19 it again, go ahead.

20 BY MS. DOVELL:

21 Q. So there was no law enforcement effort the night
22 of the shooting to apprehend the suspect?

23 A. Again, I can't answer that question. I don't
24 know.

25 Q. But you are the case officer. If somebody had

EDWARD MARCURELLA - CROSS BY MS. DOVELL

1 made an effort to apprehend the suspect, wouldn't they
2 have reported that to you?

3 A. Again, I can't answer that question. I don't
4 know.

5 MS. DOVELL: Court's indulgence, Your Honor.

6 THE COURT: Yes, ma'am.

7 BY MS. DOVELL:

8 Q. Detective Marcurella, why wasn't Kelvin Gant
9 tested for GSR?

10 A. It was a period of days from the time of the
11 shooting to the arrest. SLED only allows after six
12 hours.

13 Q. Okay. And you said that you were there for
14 the arrest, correct?

15 A. I was.

16 Q. What was the date of the arrest?

17 MS. DOVELL: Your Honor, may I approach
18 the witness?

19 THE COURT: Yes, ma'am.

20 BY MS. DOVELL:

21 Q. Detective Marcurella, I am just going to hand
22 you your investigative supplement here.

23 A. The arrest report.

24 Q. Well ---

25 A. If you hand me the arrest report ---

EDWARD MARCURELLA - REDIRECT BY MS. ORVILLE

1 MS. DOVELL: One moment, Your Honor.

2 BY MS. DOVELL:

3 Q. Excuse me, Detective Marcurella. Here's your
4 arrest supplement.

5 A. Yes, ma'am. June 26th.

6 Q. Okay. So June 26, he was arrested?

7 A. Correct.

8 MS. DOVELL: I don't have any other
9 questions, Your Honor.

10 THE COURT: Redirect.

11 MS. ORVILLE: Yes, Your Honor, briefly.

12 REDIRECT EXAMINATION

13 BY MS. ORVILLE:

14 Q. Detective Marcurella, just to clarify, you were
15 not on scene the night of the incident?

16 A. No, ma'am, I was not.

17 Q. And that's -- is that because you were not
18 on call, I believe?

19 A. Right, I was not the on-call detective that
20 night.

21 Q. Okay. And so is that -- does that contribute
22 to why you don't know what certain law enforcement
23 officers did that night?

24 A. Correct.

25 Q. Okay. And, just to clarify, you were there

EDWARD MARCURELLA - REDIRECT BY MS. ORVILLE

1 for the arrest?

2 A. I was.

3 Q. And who did you arrest?

4 A. Kelvin Gant.

5 MS. ORVILLE: Thank you. Nothing further.

6 THE COURT: Anything on those questions just
7 asked?

8 MS. DOVELL: Nothing further, Your Honor.

9 THE COURT: Do you wish the witness to be
10 excused?

11 MR. UTSEY: Yes, Your Honor.

12 THE COURT: Any objection?

13 MS. DOVELL: I still have him under my
14 subpoena, Your Honor.

15 THE COURT: All right. So you want him
16 to remain under subpoena; is that correct?

17 MS. DOVELL: Yes, Your Honor.

18 THE COURT: All right, sir. You are still
19 under subpoena, but you may go back to your regular
20 duties. Thank you.

21 THE WITNESS: Thank you.

22 THE COURT: Your next witness.

23 MR. UTSEY: Your Honor, the State rests
24 at this time.

25 THE COURT: Very good. Are there matters

1 of law at this time from the defense? Are there matters
2 of law?

3 MS. DOVELL: No, that's fine, Your Honor --
4 oh, except to renew all motions that I made previously.

5 THE COURT: So you obviously have some
6 matters of law at this time.

7 MS. DOVELL: Yes, Your Honor.

8 THE COURT: Thank you very much. All right,
9 ladies and gentlemen, at this stage of the proceedings
10 in any criminal case, there are matters of law that
11 the Court must take up, and I have to do that outside
12 of your presence. I have to talk freely with counsel
13 and make comments, and I told you I can't make any
14 comments on the facts in front of you.

15 So you have to go to your jury room.
16 We will try to do this as quickly as possible.
17 We will call you back out in just a minute, all right.
18 Thank you very much.

19 (Jury exits the courtroom at 3:00 p.m.)

20 THE COURT: All right. Motions,
21 Ms. Dovell?

22 MS. DOVELL: Your Honor, I would just like
23 to renew all of the objections I had to admitting
24 certain bits of evidence, certain portions of evidence
25 pre-trial. And I would also move for a directed

1 verdict.

2 THE COURT: All right. We will do one at
3 a time. Regarding your matters to renew any objections,
4 those have been made. The Court has ruled on those,
5 and they are in the record. Go ahead.

6 MS. DOVELL: Thank you very much, Your
7 Honor. As far as the directed verdict, the testimony
8 of Mr. Brown is the only evidence against Kelvin Gant.
9 There have been some credibility issues, I think, with
10 other witnesses, namely, Karen Holmes, and I would ask
11 the Court to give a directed verdict in favor of Kelvin
12 Gant.

13 THE COURT: All right. When ruling on
14 a motion for directed verdict, the Court is concerned
15 with the existence or non-existence of evidence.
16 As I have already told the jury, it's their job to judge
17 credibility and believability. The Court does not look
18 at that. What I do look at is whether or not the
19 evidence exists and leave the determination of
20 credibility and believability to the jury.

21 If the State has failed to produce evidence,
22 or the evidence merely raises a suspicion that the
23 defendant is guilty of the crime charged, then directed
24 verdict would be proper.

25 In this particular case, the Court finds

1 that there's more than sufficient direct evidence and
2 some substantial circumstantial evidence reasonably
3 tending to prove the guilt of the defendant. I don't
4 intend to review all of the testimony in this matter.

5 Suffice it to say that the testimony of the
6 victim in this matter is more than sufficient to send
7 this case to the jury, and would be more than sufficient
8 to sustain the jury's verdict, not that we are at that
9 stage. Therefore, I respectfully decline to grant your
10 motion for a directed verdict. Further motions?

11 MS. DOVELL: Yes, Your Honor, further
12 motions. We need to take up my client's prior record
13 to settle that matter.

14 THE COURT: All right. Do we have -- so
15 he's ready for the Court to examine him as to his right
16 to testify in this case?

17 MS. DOVELL: Yes, Your Honor. And I believe
18 we still need to take up the matter of whether or not
19 the 45 video would be admissible.

20 THE COURT: I will take that up, if he
21 decides to testify.

22 MS. DOVELL: Thank you, Your Honor.
23 I believe at this point that's where we are.

24 THE COURT: All right. Very good.
25 Mr. Gant, stand up. Place him under oath, Madam Clerk.

1 KELVIN GANT, being duly sworn, was examined
2 and testified as follows:

3 THE COURT: All right, Mr. Gant, at this
4 point in time, I am going to explain to you certain
5 of your constitutional rights. If at any point in time
6 you do not understand me, you have a question, there's
7 anything that you are confused about, you need to
8 indicate that to me. You could raise your hand;
9 you could tell your attorney. But unless you indicate
10 that to me, I have no idea that you have a question
11 or don't understand. Are we in agreement?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. Very good. Now we
14 have reached the stage of the trial where you could
15 present your defense. You have the right to claim
16 the protection given to you by the Fifth Amendment
17 of the constitution of the United States of America,
18 which states, in part, that no person shall be compelled
19 in any criminal case to be a witness against themselves.
20 That means nobody can make you testify in this case.
21 You can testify if you want to, but nobody can make
22 you do that. Do you understand?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: All right. Now if you decide
25 to testify, you are going to be subject to the same

1 rules you have seen on all the other witnesses that have
2 come in here. You will be examined or asked questions
3 by your attorney. Then you will be cross-examined
4 or asked questions by the State as to any matters that
5 the Court deems relevant to this particular matter.
6 Do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Now, Solicitor, is there any
9 matter regarding the prior record that you intend
10 or want to ask the defendant about?

11 MR. UTSEY: Your Honor, it is the possession
12 of cocaine charge, which he got on March 2nd of 2017.

13 THE COURT: All right.

14 MR. UTSEY: That is the only charge,
15 Your Honor.

16 THE COURT: All right. Very good.
17 Any objection to that from the defense?

18 MS. DOVELL: Yes, Your Honor, I do object
19 to it. I believe that we have a -- do an analysis
20 of whether or not the admission of the prior record
21 would be more prejudicial than probative. In a case
22 where it's just one person's word against another,
23 essentially, the admission of any kind of prior record
24 is going to be highly prejudicial to my client.

25 On the drug case, I have a feeling that

1 it's easy for people, and this is based on discussions
2 in the course of this investigation, that when you ask
3 people, well, what are your thoughts? Well, one person
4 has a record and the other person doesn't have a record,
5 and it's very easy to tip the scale against the person
6 who does have a prior record, even though it is for
7 a misdemeanor drug charge.

8 I would ask Your Honor to please exclude
9 any mention of my client's prior cocaine possession
10 charge ---

11 THE COURT: All right.

12 MS. DOVELL: --- under Rule 403.

13 THE COURT: All right. First, under 609,
14 I do find that this is evidence, that the accused has
15 been convicted of a crime that is proper under 609.
16 Now as to the -- and it fits the time limit; it fits
17 the requirements regarding the statutory penalty.

18 Now as to whether or not under 403 that
19 it would be inadmissible, an analysis on whether or
20 not the probative value would outweigh its prejudicial
21 effect. The jury is called upon to examine the
22 evidence. And in looking at 609, I have to look at the
23 impeachment value of this prior crime, the point in time
24 of the conviction, and where we are in regards to this
25 case, if there is any similarity that might call for

1 a cautionary instruction from the Court, if it was
2 some other kind of possession of a weapon during the
3 commission of a violent crime or something like that.

4 The importance of the testimony, as you
5 indicated, credibility and believability and, you know,
6 whether or not the credibility is important to this
7 particular case. I do find in this particular case that
8 it is an important factor for the jury's determination
9 regarding this particular matter. I find it to be
10 proper, and I will allow the State to ask if he has
11 been convicted of this crime in the past.

12 Obviously, if he admits that he has been
13 convicted of that crime, the State will not be allowed
14 to go any further. If he were to deny it, then they
15 would be allowed to present proof, such as a certified
16 record showing the conviction.

17 So, I am going to allow it. So, Mr. Gant,
18 I will allow the State to ask if you have been convicted
19 of that crime in the past. Do you understand that, sir?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you understand that if
22 you admit that you have been convicted of that crime,
23 that's the end of it. The State can't ask you any
24 further questions about that. Do you understand?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: If you were to deny it,
2 then they would be able to present the proof of it.
3 Do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right. Now if you decide
6 to testify, that's got to be your decision. You are
7 welcome to get the advice of your attorney. You know,
8 if you have a family member you wanted to talk to that's
9 right here that you could talk to, that would be fine,
10 but it's your decision, understanding the protection
11 is given to you by the constitution and whether or
12 not you wish to testify in this case.

13 Now, I will tell you that if you decide
14 not to testify, I will give a specific instruction
15 to the jury. I will tell them they cannot talk about
16 it, they cannot use it mentally, that it is not part
17 of this case. And I will be very specific with them
18 about that, that that is not a factor that they can
19 consider in any way in making this decision.
20 That will be part of the Court's charge on instructions
21 to them. Do you understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: All right, sir. Have you
24 understood my questions today?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you want to ask your attorney
2 or anyone else a question before I ask you what you want
3 to do?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right. Go ahead.

6 MS. DOVELL: Your Honor, if we could have
7 a brief period of time to confer with Mr. Gant. I had
8 rather hoped that we would go ahead and have a motion
9 on the admissibility of the 45 video ---

10 THE COURT: I appreciate that, and I
11 understand that, but I'm telling you that I will make
12 that decision after he decides whether or not he wants
13 to testify, all right.

14 MS. DOVELL: Understood, Your Honor.
15 May we still have a brief moment?

16 THE COURT: Sure. We will take a short
17 recess for about five minutes, okay.

18 MS. DOVELL: Thank you.

19 THE COURT: Thank you very much.

20 (Recess taken.)

21 (Back on the record.)

22 THE COURT: Do you wish to testify on this
23 case?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. Very good.

1 Thank you very much. All right. So what matters do
2 you want to take up, Ms. Dovell, before the jury comes
3 in?

4 MS. DOVELL: First ---

5 THE COURT: You can have a seat, Mr. Gant.

6 MS. DOVELL: Your Honor, first of all,
7 it's been brought to my attention that a witness who
8 has been subpoenaed to attend tomorrow morning has gone
9 out of state. This is a first-time experience for me.
10 I believe I need to get the sheriff's office to go and
11 look for this witness or to attempt to try to find this
12 witness.

13 And to that extent, I'm not sure whether
14 that requires a court order or who I need to contact
15 with the sheriff's office to try to locate my witness.

16 THE COURT: Okay. Well, the first thing
17 you need to show me is a copy of your subpoena and the
18 affidavit of service showing that the person was served
19 with the subpoena.

20 MS. DOVELL: Yes, sir. May I approach,
21 Your Honor?

22 THE COURT: Yes, ma'am. You will need that
23 marked as a defendant's exhibit for identification.

24 MS. DOVELL: I will show it to the
25 solicitor.

1 MR. UTSEY: I have no objection, Your Honor.

2 THE COURT: All right.

3 (Defendant's Exhibit 4 was marked for identification.)

4 THE COURT: And the person who served this
5 affidavit ---

6 MS. DOVELL: Your Honor, she's here.

7 She's our investigator, Rockell, "Rocky" Boot.

8 THE COURT: All right, Ms. Boot, raise your
9 right hand, please.

10 ROCKELL BOOT, being duly sworn, was examined
11 and testified as follows:

12 THE COURT: You handed this document to
13 Ms. Dovell, and it purports to bear your signature,
14 saying that you served Mr. Rasheen Shuler on June 15,
15 2019, at Serpentine Lane with this subpoena; is that
16 correct?

17 MS. BOOT: Correct.

18 THE COURT: And you knew that individual
19 to be Rasheen Shuler?

20 MS. BOOT: Correct.

21 THE COURT: All right. Thank you, ma'am.
22 And how is it that you come about the information,
23 Ms. Dovell, that you believe the person will not appear
24 tomorrow morning?

25 MS. DOVELL: My client spoke with

1 Mr. Shuler's brother, who informed him that he had gone
2 to Florida.

3 THE COURT: All right. What I'm going
4 to require then is I'm going to require the deputy
5 sheriff of Colleton County to go out this afternoon
6 to Serpentine Lane and to try and locate Mr. Rasheen
7 Shuler. I want -- do you have an address?

8 MS. DOVELL: Yes, Your Honor. I believe his
9 residence, or at least his family stays, at [REDACTED]
10 Road in Ruffin, South Carolina.

11 THE COURT: How do you spell that name?

12 MS. DOVELL: The road name, sir?

13 THE COURT: Yes, ma'am.

14 MS. DOVELL: [REDACTED] [REDACTED]

15 THE COURT: All right. And to inquire as
16 to whether Mr. Rasheen Shuler is present. And if he is,
17 you are to command him to be in court by 9 o'clock in
18 the morning. If he's not, you will report back to the
19 Court tomorrow morning prior to 9:30 as to the results
20 of trying to find Mr. Rasheen Shuler. Are we clear
21 about that? Very good. Anything else?

22 MS. DOVELL: As far as that goes, no,
23 Your Honor. I do want to make -- I do think that we
24 need to raise and have a ruling on the admissibility
25 of the 45 video.

1 THE COURT: All right. As to that
2 particular issue, should the defendant testify, and he's
3 so indicated he wishes to testify, I am not going to
4 allow the State to play the video unless there are
5 issues raised by his testimony, either direct or
6 cross-examination, in which he would deny the use or
7 rather that he was familiar with a .45 weapon handgun,
8 and that if he disavows or claims to be of a kind
9 and gentle spirit, and has no ill will towards anyone,
10 the reason I would allow the video in that point would
11 be solely as to the issue and credibility of Mr. Gant,
12 and I will address that.

13 Solicitor, I'm going to leave it to you
14 depending upon the answers, either in direct examination
15 or in cross-examination, but you will not bring up the
16 video or the street name of the defendant until you
17 address that matter with the Court and get the Court's
18 approval to do so prior to doing that.

19 MR. UTSEY: Yes, Your Honor, I understand.

20 THE COURT: All right. Very good.
21 Anything else, Ms. Dovell?

22 MS. DOVELL: Your Honor, before we bring
23 the jury in I just want to make sure I have the audio,
24 video set up to make sure it's playing before I recall
25 Lieutenant Smalls.

KEVIN SMALLS - FURTHER CROSS BY MS. DOVELL

1 THE COURT: All right.

2 (Pause.)

3 THE COURT: Which exhibit is this?

4 MS. DOVELL: This is Defendant's Exhibit
5 No. 3, Your Honor.

6 THE COURT: Okay. And so Defendant's 3,
7 that was the one that the witness had not viewed before.

8 MS. DOVELL: That's correct, Your Honor.

9 THE COURT: Has he now viewed it?

10 MS. DOVELL: He has now viewed it,
11 Your Honor.

12 THE COURT: All right. Very good. Ask the
13 jury to come in.

14 (Jury enters courtroom at 3:30 p.m.)

15 THE COURT: All right, Ms. Dovell.

16 MS. DOVELL: Thank you very much,
17 Your Honor. Defense calls -- recalls Kevin Smalls.

18 THE COURT: Please come around.

19 KEVIN SMALLS, was called as a witness,
20 previously duly sworn, was examined and testified
21 as follows:

22 FURTHER CROSS EXAMINATION

23 BY MS. DOVELL:

24 Q. Lieutenant Smalls, earlier you testified that you
25 did not recall speaking with Karen Holmes while you were

—KEVIN SMALLS - FURTHER CROSS BY MS. DOVELL—

1 at the scene after the shooting, correct?

2 A. Yes, ma'am.

3 Q. Okay.

4 MS. DOVELL: May I approach the witness,
5 Your Honor?

6 THE COURT: Yes, ma'am.

7 BY MS. DOVELL:

8 Q. During our break, Lieutenant Smalls, have you
9 had an opportunity to view the body camera footage?

10 A. Yes, ma'am.

11 Q. And it's marked as Defense's Exhibit 3?

12 A. Yes, ma'am.

13 Q. And you had an opportunity to initial and date?

14 A. Yes, ma'am.

15 Q. All right.

16 MS. DOVELL: Your Honor, I would like
17 to move into evidence a portion of Lieutenant Smalls'
18 body camera footage, starting at 5 minutes and 13
19 seconds and stopping after Ms. Holmes' response to
20 Mr. Smalls, and I will give that time to the court
21 reporter.

22 THE COURT: All right. I appreciate that.

23 (Defendant's Exhibit 3 was admitted into evidence.)

24 THE COURT: Solicitor, if there's any other
25 time that you wish to play, you are allowed to do so.

KEVIN SMALLS - FURTHER REDIRECT BY MR. UTSEY

1 MR. UTSEY: Yes, sir.

2 THE COURT: Thank you very much.

3 You may proceed.

4 MS. DOVELL: Thank you, Your Honor.

5 Your Honor, it's 15 minutes and 13 seconds.

6 (Body camera footage played for the jury.)

7 MS. DOVELL: And that ends, Your Honor,
8 at 15 minutes and 26 seconds.

9 THE COURT: All right. Very good.

10 MS. DOVELL: I have nothing further
11 witnesses -- no further questions for this witness.

12 THE COURT: Cross-examination.

13 MR. UTSEY: Yes, Your Honor.

14 FURTHER REDIRECT EXAMINATION

15 BY MR. UTSEY:

16 Q. Mr. Smalls, can you tell me what you had to
17 eat that night two years ago?

18 A. No, sir, I can't.

19 Q. So you are testifying that you didn't remember
20 talking to Karen Holmes for what 30 seconds two years
21 ago?

22 A. That's correct.

23 Q. And that body cam does show you talking to
24 Karen Holmes?

25 A. Yes, sir.

KELVIN GANT - DIRECT BY MS. DOVELL

1 Q. Okay.

2 MR. UTSEY: I have no further questions,
3 Your Honor.

4 THE COURT: Anything on those questions?

5 MS. DOVELL: No, Your Honor.

6 THE COURT: All right. You may step down,
7 sir. Thank you. You all need to come around and talk
8 to me for a second.

9 MS. DOVELL: Yes, sir.

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

11 (Back on the record.)

12 THE COURT: Your next witness, please,
13 ma'am.

14 MS. DOVELL: Defense calls Kelvin Gant.

15 THE COURT: Please come around and be sworn.

16 KELVIN GANT, was called as a witness, being
17 duly sworn, was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MS. DOVELL:

20 Q. Mr. Gant, will you please spell your first
21 name and your last name for the record.

22 A. K-E-L-V-I-N G-A-N-T.

23 Q. Thank you. Kelvin, did you shoot Herbert Brown?

24 A. No, ma'am, I did not.

25 Q. Okay. Let me back up. Where are you from,

KELVIN GANT - DIRECT BY MS. DOVELL

1 Kelvin?

2 A. I'm from Ruffin.

3 Q. And do you live there now?

4 A. Yes, ma'am.

5 Q. Where were you on the evening of the June 24,
6 2017?

7 A. Ruben Boatwright's house.

8 Q. And where is Ruben Boatwright's house?

9 A. It's on Serpentine Lane.

10 Q. And does it sit directly on Serpentine Lane,
11 or is it on the corner?

12 A. It's on the corner of Serpentine.

13 Q. Okay. Do you recall the address of that house?

14 A. No, ma'am.

15 Q. All right. And about how far down the road from
16 Mr. Brown's club and Ms. Holmes' club would you say his
17 house is?

18 A. Probably a quarter mile.

19 Q. Okay. And why were you at Ruben Boatwright's
20 house?

21 A. Just chilling with my fellows. We was just
22 chilling out.

23 Q. Okay. And who was there?

24 A. Me, Jahleel, Derrick Young and Joshua Dubois.

25 Q. Well, what is Jahleel's last name?

KELVIN GANT - DIRECT BY MS. DOVELL

1 A. Dubois.

2 Q. Okay. And what time did you arrive there?

3 A. I arrived there around probably about five in
4 the afternoon.

5 Q. Okay. And how long were you there?

6 A. I was there to around about 11:30.

7 Q. Is that 11:30 p.m.?

8 A. Yes, ma'am.

9 Q. Okay. And did you encounter deputies while
10 you were at Ruben Boatwright's house?

11 A. Yes, ma'am.

12 Q. Okay. All right.

13 MS. DOVELL: Beg the Court's indulgence,
14 Your Honor.

15 THE COURT: Yes, ma'am.

16 MS. DOVELL: Your Honor, I'm going to put
17 on the screen a portion of Defense's Exhibit 1, that's
18 already been admitted into evidence.

19 THE COURT: All right. Very good.

20 (Body camera footage played for the jury.)

21 BY MS. DOVELL:

22 Q. Kelvin, do you see yourself in this frame?

23 A. Yes, ma'am.

24 Q. And which person are you?

25 A. Leaning on the car in the back.

KELVIN GANT - DIRECT BY MS. DOVELL

1 Q. Okay. And, Kelvin, what do you have on your
2 feet?

3 A. I have on a flip-flop and a Nike shoe.

4 Q. All right. And what are you doing in that
5 picture?

6 A. Standing up.

7 Q. Okay. Are you standing, or are you leaning
8 on that car?

9 A. Yes, ma'am, leaning on the car.

10 Q. Okay. And why do you have on one tennis shoe
11 and one flip-flop?

12 A. Because I had gotten shot in my foot.

13 Q. And when was that?

14 A. That was, like, May 9th, May 8th, somewhere
15 around there.

16 Q. All right. So of 2017?

17 A. Yes, ma'am.

18 Q. Okay. And where did the bullet go into your
19 foot?

20 A. Do you want me to show it?

21 MS. DOVELL: Your Honor, I would like
22 for Mr. Gant to show the jury ---

23 THE COURT: I'm sure he can describe it.

24 MS. DOVELL: Okay.

25 BY MS. DOVELL:

KELVIN GANT - DIRECT BY MS. DOVELL

1 Q. Well, Mr. Gant, could you describe for the jury
2 where on your foot the bullet entered.

3 A. In my big toe, on the other side.

4 MS. DOVELL: And, for the record,
5 Your Honor, Mr. Gant is pointing to his right foot,
6 and he's pointing to his big toe. Kelvin, would you
7 mind stepping down here? Your Honor, may he step down
8 to show the jury?

9 THE COURT: Yes, ma'am.

10 MS. DOVELL: All right.

11 BY MS. DOVELL:

12 Q. So, Kelvin, has his shoe on. But would you
13 please show the members of the jury where on your foot
14 you got shot?

15 A. (Indicating.) Right here.

16 Q. Okay.

17 A. (Indicating.) Right here, over here.

18 Q. Okay. I'm going to need you to come right over
19 here probably, and maybe you can hold your foot up.
20 If you need to, lean on me for a second to show the
21 jury.

22 A. (Indicating.) Right over here.

23 Q. Okay. Where did the bullet exit?

24 A. At the bottom.

25 Q. At the bottom of your foot?

KELVIN GANT - DIRECT BY MS. DOVELL

1 A. Yes.

2 Q. Okay. You can return. And were you on crutches
3 for a little while?

4 A. Yes.

5 Q. At the time of this incident, were you on
6 crutches?

7 A. No, ma'am.

8 Q. Okay. Were you advised -- so when you received
9 this wound, what happened? Where did you go?

10 A. I went to the hospital, Walterboro Hospital.

11 Q. Okay. And were you advised to receive further
12 treatment after that?

13 A. Yes, ma'am.

14 Q. Did you?

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

16 Q. Okay. And why was that?

17 A. Because I didn't want to have surgery, get cut
18 on my foot.

19 Q. Okay. I understand. All right. So back to
20 June 24, 2017.

21 (Body camera video played for the jury.)

22 BY MS. DOVELL:

23 Q. Who is this person here?

24 A. That's Jahleel.

25 Q. Jahleel Dubois?

KELVIN GANT - DIRECT BY MS. DOVELL

1 A. Yes, ma'am.

2 Q. Okay. All right. Did you at any time that
3 evening leave Ruben Boatwright's house to go down
4 to Ms. Holmes' club?

5 A. No, ma'am.

6 Q. All right. When did you leave Ruben's house?

7 A. I left Ruben's house around 11:25, around there,
8 11:30, 11:25.

9 Q. Okay. And who did you leave with?

10 A. Jahleel.

11 Q. Okay. And where did you go?

12 A. I went to my auntie house.

13 Q. And how far away is your auntie's house
14 from Ruben's?

15 A. In a car, it's probably, like, about three
16 minutes.

17 Q. And did you leave your auntie's house after
18 you arrived there?

19 A. No, ma'am.

20 Q. And when were you arrested?

21 A. I was arrested on the 26th.

22 Q. Why were you at the Southern Inn?

23 A. Because that's who -- that was my girlfriend
24 at the time.

25 Q. Okay. Why didn't you just stay there on the

KELVIN GANT - DIRECT BY MS. DOVELL

1 night of the incident?

2 A. Because I didn't have a ride to get there,
3 so I had to stay at my auntie house.

4 Q. Okay. And are you and this girlfriend still
5 together?

6 A. No, ma'am.

7 Q. And how often had you stayed there before
8 the incident?

9 A. The majority of the time we was talking.

10 Q. Okay. When you had this wound to your foot,
11 how would you describe the way that you were moving
12 around?

13 A. I was limping real bad.

14 Q. Okay. And, Kelvin, do you have any prior
15 convictions?

16 A. Yes, I have a cocaine charge.

17 Q. What kind of cocaine charge; possession
18 of cocaine?

19 A. Yes, ma'am.

20 Q. Kelvin, did you shoot Herbert Brown?

21 A. No, ma'am.

22 Q. All right. Kelvin, I would like for you
23 to answer any -- I don't have any further questions
24 at this time. I would like you to answer any questions
25 that Mr. Utsey might have.

KELVIN GANT - CROSS BY MR. UTSEY

1 THE COURT: Cross-examination.

2 MR. UTSEY: Thank you, Your Honor.

3 May it please the Court.

4 CROSS-EXAMINATION

5 BY MR. UTSEY:

6 Q. How long have you lived in Ruffin, Kelvin?

7 A. All my life.

8 Q. All your life. So you know everybody around
9 there, correct?

10 A. Yes.

11 Q. Okay. How long have you known Karen Holmes?

12 A. I have known Ms. Karen for a good while.

13 Q. For -- I mean, for around 20 years?

14 A. Since I started running around, about nine.

15 Q. Okay. And you also know Herbert Brown;
16 isn't that correct?

17 A. I really didn't know him until, like, probably
18 five years, like, the last five years.

19 Q. Okay.

20 A. I never really knew him.

21 Q. So you have known him for five years?

22 A. Yes.

23 Q. Okay. And you would see him around Ruffin;
24 isn't that correct?

25 A. Yes, I see him.

KELVIN GANT - CROSS BY MR. UTSEY

1 Q. And you know who he is, and he knows who you are,
2 correct?

3 A. Uh-huh.

4 Q. Okay.

5 THE COURT: You need to answer yes or no.

6 THE WITNESS: Yes, yes.

7 THE COURT: The court reporter can't ---

8 THE WITNESS: Okay. I'm sorry. Yes.

9 THE COURT: That's all right.

10 BY MR. UTSEY:

11 Q. Would you ever go down to that store in Ruffin,
12 on Smyly Road?

13 A. One time I did, but after a while I had stopped
14 going down there.

15 Q. All right. So you have only been in that store
16 one time, that's what you are saying?

17 A. No, I say I used to go.

18 Q. You used to go.

19 A. At one time I used to, yes.

20 Q. Okay. And why would you all go down there?

21 A. To get beer, but I usually just go get a beer
22 and go. I would be in and out.

23 Q. Were you drinking on the night of June 24,
24 2017 at Ruben Boatwright's house, is what you claim?

25 A. Yes.

KELVIN GANT - CROSS BY MR. UTSEY

1 Q. And so you were drinking, and you had a gunshot
2 wound to your foot, correct?

3 A. Yes.

4 Q. But you were fine to drink beer, right?

5 A. Yes.

6 Q. Okay. And how far is Ruben Boatwright's house?

7 A. At least a quarter mile.

8 Q. A quarter mile. Can you walk from Ruben
9 Boatwright's house to the store?

10 A. No.

11 Q. No, you can't walk a quarter mile?

12 A. No, not on my foot.

13 Q. And how long was it on June 24th until when
14 you shot your foot? What was the time ---

15 A. From May 9th, May 11th, around that time.

16 Q. From May 9th?

17 A. Yeah.

18 Q. All right. And that night at Ruben's house,
19 I want you to take me through it. So you said you
20 got there at five o'clock, correct?

21 A. That afternoon.

22 Q. All right, that afternoon. So what did you
23 all have to eat that night? Did you all cook out,
24 you all do anything?

25 A. Nah.

KELVIN GANT - CROSS BY MR. UTSEY

1 Q. All right.

2 A. No, sir.

3 Q. So what kind of beer were you drinking that
4 night?

5 A. Bud Light.

6 Q. All right. How many beers did you have that
7 night?

8 A. I don't know, probably about five, six beers.

9 Q. Okay. And did you do any drugs that night?

10 A. No.

11 MS. DOVELL: Objection, relevance,
12 Your Honor.

13 THE COURT: He's already answered it before
14 you objected to it. I will sustain the objection.
15 Go ahead.

16 BY MR. UTSEY:

17 Q. All right. And what time did you say you were
18 at Ruben's until?

19 A. I was at Ruben's -- I have been there at five,
20 and I left around, like, 11:25, 1130.

21 Q. You left at the same time Herbert Brown was shot,
22 correct?

23 A. Yes.

24 Q. Okay. What were you wearing that night?

25 A. Some shorts.

KELVIN GANT - CROSS BY MR. UTSEY

1 Q. Okay. And how many people would you say were
2 there?

3 A. At least four.

4 Q. At least four people. And can you tell me those
5 names?

6 A. Jahleel, Joshua, and Derrick Young.

7 Q. And Derrick Young. All right. Who is Mo?
8 Tell me who Mo is.

9 A. That's my friend.

10 Q. All right. Well, was Mo over there too?

11 A. No, sir.

12 Q. You never saw Mo?

13 A. I didn't -- yeah, I seen him, but he wasn't
14 over there at that time. He must have left.

15 Q. Okay. So Mo was there, but then Mo left?

16 A. Uh-huh. He wasn't there when the officer
17 was there; he was there earlier that day.

18 Q. Okay. What do you call Karen Holmes?

19 A. I used to call her mom deuce.

20 Q. You used to call her what?

21 A. Mom.

22 Q. Mom?

23 A. Mom deuce, yes.

24 Q. And you never -- you testified you never went
25 to the club that night?

KELVIN GANT - CROSS BY MR. UTSEY

1 A. Never.

2 Q. Okay. You stayed at Ruben Boatwright's house
3 a quarter mile away from the scene the entire night?

4 A. Never went down there.

5 Q. Okay. So did you see the cops come at 9:30?

6 A. Yes.

7 Q. Okay. And did you hear all the gunshots at 9:30?

8 A. No.

9 Q. You didn't hear any gunshots?

10 A. Uh-uh.

11 Q. From a quarter mile away? Okay.

12 A. No, no.

13 Q. And who gave you a ride from Ruben Boatwright's
14 house at 11:25?

15 A. Jahleel Dubois.

16 Q. Okay. And where did he take you?

17 A. My auntie house in Quarters.

18 Q. All right. And tell me where Quarters is.

19 I don't know where it is.

20 A. That's in Ruffin.

21 Q. Okay. All right. Is that a well-known area
22 in Ruffin?

23 A. Yes.

24 Q. Okay. How far is Quarters away from Ruben
25 Boatwright's house?

KELVIN GANT - CROSS BY MR. UTSEY

1 A. I would say about a mile and a half.

2 Q. Okay. So it's right down -- the Quarters
3 is right down the street, then?

4 A. Yes, sir.

5 Q. Why didn't you receive further treatment on
6 your gunshot wound in your foot?

7 A. Oh, because I didn't want to get surgery.
8 I don't believe in getting cut.

9 Q. Okay. So you would rather limp than get surgery?

10 A. Yes.

11 Q. Okay. So in this video that Ms. Dovell played
12 earlier, you are standing there drinking a beer,
13 correct?

14 A. Uh-huh.

15 Q. So you could stand on it fine?

16 A. I was actually leaning on the car.

17 Q. Okay.

18 A. I didn't have no pressure on it.

19 Q. All right. So you always had to be leaning
20 on something?

21 A. Uh-huh.

22 MR. UTSEY: I have no further questions,
23 Your Honor.

24 THE COURT: Redirect.

25 MS. DOVELL: I don't have any other

1 questions, Your Honor.

2 THE COURT: All right. You may step down,
3 sir. Based on discussions earlier, Ms. Dovell, you are
4 asking the Court to recess for today?

5 MS. DOVELL: Yes, Your Honor, I am.

6 THE COURT: All right, ladies and gentlemen,
7 we are going to stop. Unfortunately, it started pouring
8 down raining right at the moment. But, anyway, we're
9 going to stop for the evening. I want you back tomorrow
10 morning. We will come back in the courtroom at 9:30.

11 Please, remember, don't talk about the
12 case, don't allow anybody to talk to you about it.
13 What I told you, do not research it, do not investigate
14 it. You can't go look up anything; you can't ask
15 anybody about this matter. Your husband -- you see your
16 husband, wife, boyfriend, girlfriend, person down the
17 street, can't talk about the case because they will give
18 you their opinion about it. They don't have one.

19 You shouldn't have an opinion about this
20 because you have not heard all the evidence, and you
21 certainly have not heard the law that you have to apply
22 to the facts and evidence you heard.

23 So with that, I will see you back tomorrow
24 morning at 9:30. Thank you very much.

25 (Jury exits courtroom at 3:55 p.m.)

1 THE COURT: Anything further from the State
2 at this point in time?

3 MR. UTSEY: No, Your Honor.

4 THE COURT: From the defense?

5 MS. DOVELL: Your Honor, I just want
6 to update the Court that I did speak with Mr. Smith.
7 He is willing to stay on -- I have informed him that
8 Your Honor would take my client into custody once the
9 jury begin deliberations.

10 THE COURT: Thank you very much, ma'am.
11 I appreciate that very much.

12 MS. DOVELL: Yes, sir.

13 THE COURT: Anything else?

14 MS. DOVELL: Yes, Your Honor, just briefly.
15 I was wondering if we could address the order of closing
16 arguments.

17 THE COURT: What's going to happen is the
18 State is going to open in full, you're going to give
19 your complete argument, and then they will be able to
20 reply.

21 MS. DOVELL: Thank you very much,
22 Your Honor.

23 THE COURT: All right.

24 MR. UTSEY: Thank you, Your Honor.

25 THE COURT: Very good. Yes, sir?

1 MR. UTSEY: Your Honor, I do have a matter
2 to bring to the Court's attention.

3 THE COURT: Sure.

4 MR. UTSEY: Ms. Tamika Leggett [ph.],
5 Your Honor, spoke to ---

6 MS. LEGGETT: Your Honor, my apologies,
7 but I was here earlier.

8 THE COURT: Right.

9 MS. LEGGETT: And I went out the courthouse,
10 and I walked outside, and I saw a man I recognized as
11 a church member at our church who plays the guitar,
12 and I spoke to him, and he spoke back to me, recognized
13 me, and I kept walking.

14 We had no further interaction. I came back
15 just a few minutes ago and realized he's on the jury,
16 and I wanted to bring it to the Court's attention.
17 I just didn't want anything to go wrong.

18 THE COURT: All right. Well, do you know
19 what the fellow's name is?

20 MS. LEGGETT: I don't really know his name.
21 All I know is he plays the guitar at our church.

22 THE COURT: Okay. All right.

23 MS. LEGGETT: He's the second black male
24 from the very end where the foreperson sits on the
25 bottom row. He's wearing a blue windbreaker.

1 I don't know what his name is.

2 THE COURT: Anybody in the courtroom know
3 who this individual is? No. All right. So tomorrow
4 morning, before we start at 9:30, I would like for you
5 to be present, and we will try and identify whoever that
6 juror is, and bring that fellow in, and I will ask him
7 about did you have a conversation, and ask him about
8 it, and make sure that there aren't any issues.
9 And then, obviously, I will send him back, and then
10 I will hear from the State and the defense at that point
11 in time, okay.

12 MS. LEGGETT: Yes, Your Honor.

13 MR. UTSEY: Thank you, Your Honor.

14 THE COURT: All right. So just be back
15 tomorrow morning at 9:30, please.

16 MS. LEGGETT: Yes, sir.

17 THE COURT: Yes, ma'am.

18 MS. DOVELL: I do have one other matter.
19 In the State's opening argument, the solicitor said that
20 he wanted the jury to seek the truth. And so I would
21 just ask the Court to caution the State about using such
22 language. I know that -- the Supreme Court cautioned
23 the Court about removing all jury -- all jury
24 instructions such as seek the truth or render a just
25 verdict, had those removed from the jury instructions.

1 And so I would ask the State to not talk
2 about a search for the truth because that's seems to be
3 an addition to their actual job, which is to make sure
4 the State proves the case beyond a reasonable doubt.

5 THE COURT: Solicitor?

6 MR. UTSEY: Your Honor, if Ms. Dovell
7 doesn't want me to use it, I will not use the truth.

8 THE COURT: All right. Very good. Clearly,
9 the jury's job is to decide whether or not the State has
10 proven the defendant guilty beyond a reasonable doubt.
11 So we will stick to that, okay. Anything else, ma'am?

12 MS. DOVELL: Nothing further, Your Honor.

13 THE COURT: All right. I will see you all
14 tomorrow morning at 9:30. Thank you very much.

15 MR. UTSEY: Thank you.

16 (End of proceedings.)

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CERTIFICATE OF TRANSCRIBER

CASE: STATE V. GANT

2017-GS-15-0699 & 0700

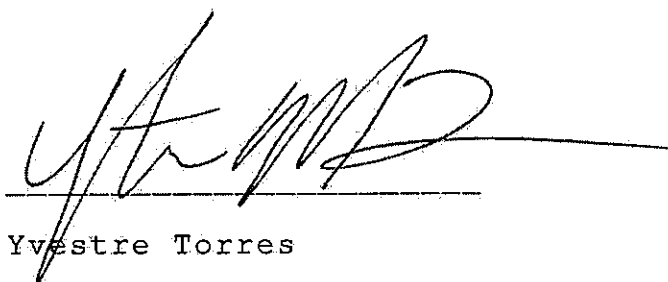
DATE OF PROCEEDING: JUNE 18, 2019

State of South Carolina)

County of Colleton)

I, Yvestre Torres, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information; and that I am neither counsel for, related to, nor employed by any of the parties to this case, and I have no interest, financial or otherwise, in its outcome.

September 10, 2019



Yvestre Torres

Circuit Court Reporter

STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF COLLETON

2017-GS-15-0699

2017-GS-15-0700

State of South Carolina)

) TRANSCRIPT OF RECORD

-vs-)

) June 19, 2019-Volume 3 of 3

Kelvin Gant)

) Colleton County, South

) Carolina

B E F O R E:

The Honorable Steven H. John, Judge

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1 THE COURT: Any matters from the State
2 before we get started?

3 MR. UTSEY: No, Your Honor. I do believe
4 Ms. Dovell went to make a copy of the case for you,
5 Your Honor, because we did want to speak about the
6 requested charge. I believe Ms. Dovell actually wanted
7 to talk about that.

8 After reading your instructions yesterday,
9 Your Honor, the State is fine with what you want
10 to charge. I just want to make sure specific intent
11 is charged in the attempted murder charge. I believe
12 we also have some matters with a couple of jurors,
13 Your Honor.

14 THE COURT: Okay. All right.

15 MR. UTSEY: I will go get Ms. Dovell,
16 Your Honor, if you would like.

17 THE COURT: Please, if you don't mind.
18 Go to the jury room and ask Mr. John Reed to come out,
19 please. And then, ma'am, when he comes in, I will need
20 you to tell me is that the person that you had contact
21 with.

22 MS. LEGGETT: Yes, sir.

23 THE COURT: Okay. Mr. Reed, would you come
24 on in. You can just pick a chair over there and have
25 a seat, all right. Ma'am, is this the individual?

1 MS. LEGGETT: Yes, sir. Yes, sir.

2 THE COURT: All right. So, Mr. Reed,
3 apparently, you are part of the services at a church
4 that this young lady goes to. Sir, is that correct?

5 THE JUROR: Yes.

6 MS. LEGGETT: Elizabeth Church.

7 THE JUROR: Yes, sir.

8 THE COURT: I'm sorry?

9 THE JUROR: Yes, sir.

10 THE COURT: All right. Very good.
11 Yesterday, apparently, the two of you saw each other;
12 is that correct?

13 THE JUROR: No, sir.

14 THE COURT: You didn't see her, all right.
15 Did you recognize -- did she wave to you or anything
16 like that?

17 THE JUROR: No, sir.

18 THE COURT: All right. So you did not have
19 any contact with her?

20 THE JUROR: No, sir.

21 THE COURT: All right. Very good. Go back
22 to the jury room.

23 THE JUROR: Yes, sir.

24 THE COURT: Obviously, based on that, I find
25 there is no contact with the juror. What was the other

1 issue?

2 MR. UTSEY: Your Honor, the second juror
3 is No. 123, Connie Lyons.

4 THE COURT: Okay. And what was the matter
5 there?

6 MR. UTSEY: Her husband, Mr. Walter Lyons,
7 who we talked to earlier this morning, sat in the
8 courtroom all day, and we just wanted to make sure they
9 didn't talk about what he saw in the courtroom.

10 THE COURT: Okay. All right. Is Connie D.
11 Lyons' husband in the courtroom today?

12 MR. UTSEY: Yes, Your Honor.

13 THE COURT: All right. Could you come
14 forward, please, if you don't mind. Just come around
15 right up here, right in front of the clerk up here.
16 And, Mr. Lyons, it's an open courtroom, you are welcome
17 to come and watch. I don't have any problem with that.
18 I just need to ask you. Your wife, obviously --
19 apparently, your wife is a juror on this particular
20 case; is that correct?

21 MR. LYONS: Yes, sir.

22 THE COURT: All right, sir. And can you
23 tell me your full name just for the record.

24 MR. LYONS: Walter Marion Lyons.

25 THE COURT: All right. And if you have been

1 in the courtroom, you have heard the Court instruct
2 the jury that, you know, they are not researchers,
3 they are not investigators, they can't look up anything,
4 they can't talk to anybody, and I said, you know,
5 when I excused them yesterday, if they see a husband,
6 wife, boyfriend, girlfriend, person down the street,
7 can't talk with them about it.

8 MR. LYONS: Right.

9 THE COURT: Did you hear that?

10 MR. LYONS: Yes, sir.

11 THE COURT: All right, sir. Did y'all
12 follow those instructions?

13 MR. LYONS: Yes, we did.

14 THE COURT: And your wife did not talk
15 to you about this case?

16 MR. LYONS: No, sir.

17 THE COURT: All right. Now once it's
18 over with, y'all are free to talk about it as much
19 or as little as you want to.

20 MR. LYONS: I understand.

21 THE COURT: But until it's over with,
22 you can't, okay.

23 MR. LYONS: Yes, sir.

24 THE COURT: Very good. Thank you very much.

25 MR. LYONS: Yes, sir.

1 THE COURT: Does the State or defense wish
2 me to call out Ms. Lyons and inquire of her also?

3 MR. UTSEY: No, Your Honor.

4 MS. DOVELL: Your Honor, just out of an
5 abundance of caution.

6 THE COURT: All right. Very good.
7 Ask Ms. Connie Lyons to come out, please. Juror Connie
8 Lyons. All right, Ms. Lyons, just come around. Come up
9 here in the jury box and just have a seat.

10 THE JUROR: All right.

11 THE COURT: Just have a seat anywhere.
12 It does not really matter.

13 THE JUROR: All right.

14 THE COURT: Now, Ms. Lyons, we understand
15 that your husband has been here viewing the proceedings;
16 is that correct?

17 THE JUROR: Yes, sir.

18 THE COURT: And I told him it's an open
19 courtroom, he's free to, just welcomed him to do so.

20 THE JUROR: Yes, sir.

21 THE COURT: But remember my instructions
22 that you could not talk to him about this and could
23 not have any -- receive any input from him. Do you
24 understand?

25 THE JUROR: Yes, sir.

1 THE COURT: And did you follow those
2 instructions?

3 THE JUROR: Yes, sir, I absolutely did.
4 We had car trouble.

5 THE COURT: Okay. Not a problem.
6 And, again, he's welcome to come and watch. No problem
7 about that, and you are welcome to talk about it as much
8 as you want to once it's over with, but beforehand you
9 can't, okay.

10 THE JUROR: Yes, sir.

11 THE COURT: Thank you very much. You can
12 go back and have a seat in the jury room. Thank you,
13 ma'am. All right. Based on the information we have
14 received from the two jurors, any issues from the State?

15 MR. UTSEY: No, Your Honor.

16 THE COURT: From the defense?

17 MS. DOVELL: No, Your Honor.

18 THE COURT: All right. Very good. I find
19 there's been no improper contact, and everyone has
20 followed the instructions of the Court. All right.
21 So is the State ready to proceed at this point in time?

22 MR. UTSEY: Yes, Your Honor.

23 THE COURT: And the defense?

24 MS. DOVELL: No, Your Honor, I'm not ready
25 to proceed.

1 THE COURT: Okay. Why might that be?

2 MS. DOVELL: Your Honor, I -- well, for one
3 thing, I have not received a report from the sheriff's
4 office about the witness, Rasheen Shuler, who was
5 subpoenaed. I believe that he probably is in Florida,
6 and I have not heard anything back about that.

7 But, additionally, I have subpoenaed another
8 witness in this case, and beg the Court's indulgence to
9 find that subpoena, but he was asked to be here at nine
10 o'clock today.

11 I have been informed by other people who
12 are here around the courtroom that he's on his way,
13 that he's been on his way for about 45 minutes now,
14 Your Honor.

15 THE COURT: So you have doubts as to whether
16 or not he's going to come?

17 MS. DOVELL: That's right, Your Honor..

18 THE COURT: All right.

19 MS. DOVELL: And I would like a continuance
20 until we can locate him. I believe he's local, and he
21 is on his way. Maybe he's having some problems and some
22 difficulty. But I believe that he is a material witness
23 to my client's defense.

24 THE COURT: Did we hear anything or find
25 out any matter regarding Rasheen Shuler?

1 THE DEPUTY: I did make contact with the
2 sheriff's department dispatch.

3 THE COURT: Yes, ma'am.

4 THE DEPUTY: And they were going to send
5 a road deputy out yesterday to the residence.

6 THE COURT: And did you hear back from them?

7 THE DEPUTY: I have not heard anything, sir,
8 but I did make contact.

9 THE COURT: If you don't mind, if you would
10 communicate with them and see what the result of that
11 road deputy trying to find him was, okay.

12 THE DEPUTY: Yes, sir.

13 THE COURT: All right. Now as to that
14 second person, as we did yesterday, I need a copy of the
15 subpoena and the affidavit of service, who was served
16 and subpoenaed.

17 MS. DOVELL: Yes, Your Honor. Your Honor,
18 I have my legal assistant investigator, Rocky Boot,
19 downstairs keeping an eye out for him.

20 THE COURT: All right.

21 MS. DOVELL: I'm going to share with the
22 solicitor a copy of the subpoena.

23 THE COURT: All right. Very good.
24 And Ms. Boot is coming?

25 MS. DOVELL: Yes, Your Honor. She's on her

1 way up.

2 THE COURT: All right. Did you actually
3 serve a subpoena on Mr. Jahleel Dubois?

4 MS. BOOT: I gave it to a Mike Smith at
5 [REDACTED].

6 THE COURT: Okay. And who is Mike Smith?

7 MS. BOOT: He's a resident of [REDACTED]

8 THE COURT: All right. So -- and how do
9 we know that Mr. Jahleel Dubois, and I'll just spell
10 it, D-U-B-O-I-S, was also living there at that [REDACTED]
11 [REDACTED] in Ruffin, South Carolina?

12 MS. BOOT: I asked him.

13 THE COURT: Okay. You asked Mr. Smith?

14 MS. BOOT: Yes, sir.

15 THE COURT: Okay. And -- all right.
16 I appreciate that. All right.

17 MS. DOVELL: Your Honor, if it pleases
18 the Court.

19 THE COURT: Yes, ma'am, Ms. Dovell.

20 MS. DOVELL: I would like to add too that
21 I have previously met with Jahleel Dubois, and he gave
22 us the address of [REDACTED] as well.

23 THE COURT: Okay. And I appreciate that,
24 and I'm sure Mr. Mike Smith is a wonderful, responsible
25 person, but what evidence do you have that Mr. Jahleel

1 Dubois was actually served with the subpoena?

2 MS. DOVELL: Well, Your Honor, I have
3 spoken with my client. He's a friend and acquaintance
4 of my client, and I believe that he has told me that
5 he was served the subpoena, that he got a subpoena,
6 and he was to be here.

7 THE COURT: So you have spoken with Jahleel
8 Dubois, and he acknowledged to you that he ---

9 MS. DOVELL: Not to me ---

10 THE COURT: No, ma'am, I'm speaking to
11 you ---

12 MS. DOVELL: Yes, sir.

13 THE COURT: --- not your client.

14 MS. DOVELL: No, sir, I have not spoken
15 to Jahleel Dubois since I have met with him -- well,
16 I take that back. In other efforts to serve a subpoena
17 on him prior to Saturday's efforts, I had spoken with
18 him on the telephone.

19 He was going to come meet me in the office,
20 and I was going to serve him. I did not speak with him
21 -- I have not spoken with him since Saturday, Your
22 Honor, although, I have attempted to get in touch with
23 him.

24 There's a gentleman here in the courtroom,
25 Your Honor, who has Facebook messengered him, I guess

1 is the right way of saying it, that he said he is on
2 his way, for whatever that's worth.

3 THE COURT: All right. What's the State's
4 position about the service?

5 MR. UTSEY: Your Honor, I don't believe
6 there is any evidence that Jahleel Dubois ever got
7 served the subpoena, of course, besides the word
8 of Kelvin Gant, Ms. Dovell's client. I would object,
9 Your Honor, and just say it's time to roll.

10 THE COURT: All right, sir. Very good.
11 Ms. Dovell, I appreciate the efforts that you have
12 made regarding the service of this. It is now 9:50.
13 I'm going to give you until 10:10 to have Mr. Dubois
14 here. I do not find that he was properly served with
15 the subpoena.

16 Further, you brought up issues of service
17 of another individual yesterday afternoon. Did that
18 not cause you to think maybe I better communicate last
19 night with everybody I want to call and make sure they
20 are coming? Did you do that?

21 MS. DOVELL: Yes, Your Honor. I did make
22 a phone call to Jahleel Dubois at the number I had.
23 There was a voice message that said this is Jahleel
24 Dubois. I could not leave a message because the mailbox
25 was full.

1 THE COURT: All right.

2 MS. DOVELL: I did attempt to reach him.

3 THE COURT: You attempted but you were not
4 able to communicate with him?

5 MS. DOVELL: That is correct, Your Honor.

6 THE COURT: All right. We will give you
7 until 10:10. If he's not here by 10:10, we are going
8 to resume this trial.

9 MS. DOVELL: Thank you, Your Honor.

10 THE COURT: Thank you very much.

11 MR. UTSEY: Thank you, Your Honor.

12 THE COURT: All right. So we will be
13 at ease until then.

14 MR. UTSEY: Yes, sir.

15 THE COURT: Tell the jury that the Court
16 has some matters, and he will be going forward at 10:10,
17 all right. Thank you.

18 (Off the record.)

19 (Back on the record.)

20 (Jury enters courtroom at 10:10 a.m.)

21 THE COURT: All right, Ms. Dovell, your next
22 witness, please, ma'am.

23 MS. DOVELL: Thank you, Your Honor.

24 Defense calls Jahleel Dubois.

25 THE COURT: Please come around to be sworn.

JAHLEEL DUBOIS - DIRECT BY MS. DOVELL

1 JAHLEEL DUBOIS, was called as a witness,
2 being duly sworn, was examined and testified as follows:

3 DIRECT EXAMINATION

4 BY MS. DOVELL:

5 Q. Good morning, Mr. Dubois. Would you mind
6 spelling your first name for the court reporter as well?

7 A. J-A-H-L-E-E-L.

8 Q. Thank you very much. Mr. Dubois, how do you know
9 Kelvin Gant?

10 A. I grew up with him.

11 Q. How do you know Karen Holmes?

12 A. That's my cousin's mother.

13 Q. And how do you know Herbert Brown?

14 A. That's her husband.

15 Q. All right. Mr. Dubois, what were you up to
16 on the evening of June 24, 2017?

17 A. Mr. Ruben Boatwright's house.

18 Q. And about what time did you arrive at Ruben's?

19 A. Around three.

20 Q. And about how long were you at Ruben's that day?

21 A. The whole day, basically.

22 Q. Okay. Mr. Dubois, I'm going to put a video
23 on the screen and ask you to identify somebody in
24 the video.

25 A. All right.

JAHLEEL DUBOIS - DIRECT BY MS. DOVELL

1 THE COURT: What exhibit?

2 MS. DOVELL: Oh, excuse me, Your Honor.
3 This is Defense's Exhibit 1. I'm showing it to the
4 solicitor.

5 THE COURT: Okay.

6 BY MS. DOVELL:

7 Q. Mr. Dubois, do you recognize this person here
8 on the left of the screen?

9 A. The light's not on. It looks like me.

10 Q. I will play it forward a little bit to see if we
11 can get a better view. And I fast forwarded it a little
12 bit. Do you recognize the person walking up on the
13 screen now?

14 A. Yeah, that's me.

15 Q. Okay. Thank you.

16 A. Yes, ma'am.

17 Q. I'm going to rewind a little bit. Do you see
18 Kelvin Gant in this frame? I will play it forward
19 a little. Do you see Kelvin in this frame, in this
20 shot? How about right here?

21 A. I don't see ---

22 THE COURT: You need to speak up, sir.

23 BY MS. DOVELL:

24 Q. Do you need to get closer, or you just can't
25 see the screen, or it's just a bad view?

JAHLEEL DUBOIS - DIRECT BY MS. DOVELL

1 A. It's kind of -- it's dark because I can't
2 really recognize the people in the back. Basically,
3 if I answer it, I will be going on body shapes.

4 Q. Okay. All right. Well, I will just play this,
5 and then we will see if the lighting is a little bit
6 better.

7 A. All right. I believe that's him in the back,
8 right?

9 Q. So your testimony is you believe that's Kelvin
10 Gant standing behind the man in the black?

11 MR. UTSEY: Objection, Your Honor.

12 THE COURT: You answered the question
13 for him, ma'am. The jury will disregard that.

14 BY MS. DOVELL:

15 Q. Do you see a person who looks like Kelvin Gant
16 in this still?

17 A. Behind the ---

18 MR. UTSEY: Objection, Your Honor,
19 she's leading.

20 MS. DOVELL: Do you recognize ---

21 THE COURT: Ma'am.

22 MS. DOVELL: Yes, Your Honor. I'm sorry,
23 Your Honor.

24 THE COURT: Let the witness testify.
25 It's not your job to testify.

JAHLEEL DUBOIS - DIRECT BY MS. DOVELL

1 MS. DOVELL: Yes, Your Honor.

2 BY MS. DOVELL:

3 Q. Mr. Dubois, who is the person leaning up against
4 the dark vehicle, standing kind of behind the large
5 gentleman in black?

6 A. That's Derrick Young in the front, and I believe
7 that's Kelvin Gant behind him.

8 Q. Okay. Thank you, Mr. Dubois. All right.

9 THE COURT: Are you done with the video?

10 MS. DOVELL: Yes, Your Honor, I am.

11 MS. DOVELL:

12 Q. Mr. Dubois, how long were you around Kelvin Gant
13 on June 24, 2017?

14 A. Basically, the whole day.

15 Q. Do you recall whether or not Kelvin Gant left
16 Ruben's that evening -- afternoon?

17 A. No, ma'am.

18 Q. To your knowledge, did he go to the club at
19 the corner of Cricket and Smyly that night?

20 A. No, ma'am.

21 Q. Around what time did you leave Ruben's?

22 A. Between 11:10, 11:20.

23 Q. Okay. And did you leave with anyone?

24 A. I took Kelvin Gant home.

25 Q. And where did you take him?

JAHLEEL DUBOIS - CROSS BY MR. UTSEY

1 A. On Quarters Drive to his auntie's house.

2 MS. DOVELL: Your Honor, I don't have
3 any other questions for Mr. Dubois. Please answer
4 any questions Mr. Utsey would have.

5 THE COURT: Cross-examination.

6 MR. UTSEY: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. UTSEY:

9 Q. Mr. Dubois ---

10 A. Yes, sir.

11 Q. --- how long have you known Kelvin Gant?

12 A. All of his life.

13 Q. And you all hang out pretty much every weekend,
14 every day; is that correct?

15 A. Every day when I don't have to work.

16 Q. You all hang out every day?

17 A. When I don't have to work.

18 Q. Okay. And where do you all usually hang out at?

19 A. Ruben Boatwright's house.

20 Q. All right. So Ruben Boatwright's house is you
21 all's hangout spot?

22 A. Basically, the whole street, the whole Serpentine
23 -- Serpentine is the hangout spot. That's where
24 everybody be at.

25 Q. Okay. Ruben Boatwright's house is approximately

JAHLEEL DUBOIS - CROSS BY MR. UTSEY

1 an eighth of a mile from the store, a quarter of a mile?

2 A. It's right there, but, you know.

3 Q. All right. So around 9:30 that night -- you saw
4 the video that Helen Dovell showed you. Around 9:30
5 p.m. that night, the cops came to Ruben Boatwright's
6 house, right?

7 A. 9:30.

8 Q. All right. And how many shots did you hear
9 around 9:30?

10 A. None. I was in the basement.

11 Q. Okay. So you were inside at that time?

12 A. Yes, sir.

13 Q. Okay. And Kelvin Gant was in the basement
14 with you too at 9:30?

15 A. Yeah -- you said 9:30 in the video, as in when
16 the video was shown that was 9:30?

17 Q. No. I'm asking you where were you when the shots
18 rang out?

19 A. I didn't hear no shots.

20 Q. And you were in the basement, correct?

21 A. Yeah.

22 Q. And you testified that Kelvin Gant was also
23 in the basement?

24 A. We was in the basement.

25 Q. Okay. What were you all doing in the basement?

JAHLEEL DUBOIS - CROSS BY MR. UTSEY

1 A. There was a party.

2 Q. Okay. Tell me who all was there in the basement
3 with you all?

4 A. My brother, Derrick Young, Maurice Dubois.

5 Q. Okay.

6 A. This girl named Shaday [ph.]. I believe Ruben
7 was in the house. Kelvin Gant was there. There was
8 a few more people. I can't recollect names right now,
9 but there was a few more people.

10 Q. All right. That morning, that Saturday morning,
11 what did you do that Saturday morning?

12 A. Saturday morning?

13 Q. Yes.

14 A. I was home.

15 Q. Okay. What time did you wake up that morning?

16 A. That was like a year or two ago. I can't really
17 give you an exact answer.

18 Q. Okay. But you can remember exactly what happened
19 from 5 to 11:30, correct?

20 A. 5 to 11:30?

21 Q. Yeah, 5 p.m. to 11:30 p.m., you can remember?

22 A. Right, right.

23 Q. Okay. All right. That's what I want to make
24 sure. All right. So you don't know what you did
25 for lunch either, right?

JAHLEEL DUBOIS - REDIRECT BY MS. DOVELL

1 A. It was two years ago, right.

2 Q. Okay. All right. So why didn't you come forward
3 to the police?

4 A. For what?

5 Q. To tell them what happened, to tell them Kelvin
6 Gant was with you.

7 A. I mean ---

8 Q. Why didn't you come forward to the police
9 and tell them?

10 A. Tell them that he was with me?

11 Q. Yeah, tell them that he was with you.
12 Whenever he was arrested, why didn't you come forward
13 to the police?

14 A. Nobody came forward to the police, am I right?

15 Q. But he's a close friend, correct?

16 A. Right.

17 MR. UTSEY: I have no further questions,
18 Your Honor.

19 THE COURT: Redirect on those questions?

20 MS. DOVELL: Just briefly, Your Honor.

21 REDIRECT EXAMINATION

22 BY MS. DOVELL:

23 Q. Mr. Dubois, did anyone from law enforcement
24 ever make contact with you about this incident?

25 A. No one contacted me.

1 MS. DOVELL: Nothing further, Your Honor.

2 THE COURT: You may step down.

3 Further witnesses on behalf of the defense?

4 MS. DOVELL: Defense rests, Your Honor.

5 THE COURT: Reply witnesses from the State?

6 MR. UTSEY: No, Your Honor.

7 THE COURT: Very good. All right,
8 ladies and gentlemen, that is the evidentiary portion
9 of this case. You will receive no more evidence in
10 this particular matter. Where we are now is at the
11 end of the State's case, when all the evidence is in.
12 There is, again, a matter of law that I have to take
13 up with the attorneys outside of your presence.
14 We will discuss that.

15 Also, I must discuss with them the charge
16 on the law, what I'm going to be instructing you as the
17 law in this case in this particular matter. So, we will
18 do that. I will do it as quickly as I can, and we will
19 call you back out.

20 And when we call you back out, what we will
21 have are closing arguments of the attorneys, then we
22 will have the charge on the law, and then I will give
23 the case to you for your deliberations and unanimous
24 decision in this particular matter. So, Madam Forelady,
25 if you will take the jury back to the jury room, please.

1 Remember, don't talk about the case.

2 (Jury exits courtroom at 10:28 a.m.)

3 THE COURT: All right, Ms. Dovell.

4 MS. DOVELL: Your Honor, I would like
5 to renew my motion for a directed verdict. Now at
6 the close of my case, I have had my client testify.
7 He has denied any involvement being there. He has
8 a witness who has presented an alibi, who was with
9 him the whole night, took him to his auntie's house,
10 he's not in the vicinity of Cricket and Smyly at the
11 time of the incident. And I would like to renew my
12 motion for a directed verdict for lack of evidence
13 to support the cause of attempted murder, possession
14 of a weapon during the commission of a violent crime.

15 THE COURT: Anything from the State?

16 MR. UTSEY: Your Honor, I'll argue that
17 in view of the evidence in the light most favorable
18 to the State. The State has proven the elements beyond
19 a reasonable doubt -- the State has proven the elements
20 and the preponderance of the evidence.

21 Your Honor, I would argue that we have
22 testimony from Herbert Brown that states that Kelvin
23 Gant was five feet away from him whenever he was shot
24 in the stomach, which is the main testimony in this
25 case, Your Honor, as you know.

1 And that goes to show intent, that goes
2 to show that he intended to kill him. And we have
3 testimony from the doctor stating that it was a
4 life-threatening injury, and I believe that is enough
5 to give it to the jury.

6 THE COURT: All right. Very good.
7 Again when, as I indicated previously at the end of the
8 State's case, ruling on the motion for directed verdict,
9 the Court is concerned with the existence or
10 non-existence of evidence, not with its weight, not with
11 its credibility or believability. That is for the jury
12 to determine. The defendant would be entitled to a
13 directed verdict when the State fails to produce
14 evidence of the offense charged.

15 If the evidence merely raises a suspicion
16 that the accused is guilty, the motion could be granted.
17 In this particular matter, the Court must view the
18 evidence in the light most favorable to the non-moving
19 party, that is, to the State.

20 Looking at the evidence presented,
21 whether or not the evidence exists, there is evidence
22 from the victim in this matter that clearly identifies
23 the defendant as the person who perpetrated the crime
24 upon him.

25 There's more than sufficient evidence

1 that he knows the defendant, has had contact with
2 the defendant before. There is evidence indicated
3 from the State that the wounds were life threatening.

4 Clearly, there's more than sufficient
5 evidence in the record, if that record is -- if that
6 evidence is believed by the jury, to convict the
7 defendant of the crime charged beyond a reasonable
8 doubt, both crimes. Therefore, I respectfully decline
9 to grant your motion for a directed verdict.
10 Further motions?

11 MR. UTSEY: Your Honor, Kevin Smalls,
12 who is sitting with me, Your Honor, I believe saw
13 Mr. Jahleel Dubois nod his head at the juror.

14 THE COURT: All right. Do you need to talk
15 to the lieutenant first? Why don't you talk to him
16 first before you bring the matter to the Court.

17 MR. UTSEY: Yes, Your Honor. Thank you,
18 Your Honor.

19 (Pause.)

20 MR. UTSEY: Your Honor, Ms. Karen Holmes,
21 in the back, is the one who saw it, and Kevin Smalls
22 also saw it, Judge.

23 THE COURT: All right. And do you know
24 which juror they witnessed, indicated some kind of
25 contact with?

1 MR. UTSEY: Your Honor, it was an
2 African-American male. I do not know which one. It was
3 a red shirt, Your Honor. He was wearing a red shirt.
4 He was facing the back corner.

5 THE COURT: In the back corner, red shirt
6 in the back corner.

7 MR. UTSEY: Yes, sir.

8 THE COURT: All right. From that
9 description, Deputy, can you pick out that juror
10 from the jury room.

11 THE DEPUTY: Yes, sir.

12 THE COURT: Please do so. Please bring him
13 out.

14 (Pause.)

15 THE COURT: All right, sir. Could you come
16 around and just have a seat somewhere in the jury box,
17 if you would. Just come on in and have a seat in the
18 jury box anywhere, it does not really matter.
19 All right, sir. Can you tell me your name, please, sir?

20 THE JUROR: Joseph Frazier.

21 THE COURT: I'm sorry?

22 THE JUROR: Joseph Frazier.

23 THE COURT: All right, 66. Very good.
24 Mr. Frazier.

25 THE JUROR: Yes, sir.

1 THE COURT: Do you know the last witness
2 that testified, and forgive me if I'm not pronouncing
3 the name correctly, but Jahleel Dubois? Do you know
4 him?

5 THE JUROR: Yeah, I recognized him.

6 THE COURT: Oh, you recognized him.

7 THE JUROR: Yeah, I recognized him.

8 THE COURT: All right. Sorry. I'm having
9 problems hearing today. I don't know why. Anyway,
10 there's been some indication that when Mr. Dubois
11 got off the witness stand that he looked towards you,
12 and he or you all nodded. Did that occur?

13 THE JUROR: Yes, sir.

14 THE COURT: All right, sir. Now you
15 understand that you must decide this case only on
16 the facts and the evidence presented, and you must
17 be impartial, that is, fair to the State and to the
18 defendant. Do you understand?

19 THE JUROR: Yes, sir.

20 THE COURT: The fact that you know the
21 witness -- now, I read out -- at the very beginning,
22 do you remember me reading out these names of all
23 the witnesses at the very beginning? When all of you,
24 not just this 14 group, but all of the 40 something
25 people were sitting out there, I asked you all a bunch

1 of questions. Do you remember that?

2 THE JUROR: Yes, sir.

3 THE COURT: All right, sir. And in doing
4 that, I read out, basically, a laundry list of names.
5 Do you remember me doing that?

6 THE JUROR: He goes by something else.
7 We're talking about something else.

8 THE COURT: Okay. I appreciate that.
9 But at the very beginning, I read out a bunch of names
10 when I was qualifying the whole jury, do you remember
11 that?

12 THE JUROR: Yes, sir.

13 THE COURT: Okay. And I read out
14 Mr. Jahleel Dubois's name, and then asked you all
15 if you knew any of the witnesses. Do you remember
16 me doing that?

17 THE JUROR: Yes, sir.

18 THE COURT: All right. When I read out
19 Jahleel Dubois' name, you did not stand up and say
20 I know Jahleel Dubois.

21 THE JUROR: No, sir.

22 THE COURT: All right, sir. Why not?

23 THE JUROR: Because he goes by something
24 else.

25 THE COURT: Okay. He goes by something

1 else, so you did not know him.

2 THE JUROR: No, sir.

3 THE COURT: Okay. He goes by some nickname,
4 street name, and that's how you know him?

5 THE JUROR: Yeah.

6 THE COURT: Okay. And you did not know
7 him as Jahleel Dubois?

8 THE JUROR: I don't know him, yes, sir.

9 THE COURT: All right, sir. Very good.
10 I understand that. You all come over here and talk
11 to me for a second.

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

13 (Back on the record.)

14 THE COURT: All right, Solicitor, I need
15 to ask you a question.

16 MR. UTSEY: Yes, sir.

17 THE COURT: In the exercise of the strikes
18 of the jury.

19 MR. UTSEY: Yes, sir.

20 THE COURT: If this particular potential
21 juror, or now juror, would have properly informed the
22 Court at that point in time that he knew the defendant
23 -- I'm sorry, he knew the witness, Jahleel Dubois,
24 and he said, he remembered me reading out the names,
25 but he just did not know him by that name. If he had

1 said I know that fellow, would the State have struck
2 that juror from this case?

3 MR. UTSEY: Hundred percent, Your Honor.

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

5 MR. UTSEY: Yes, sir.

6 THE COURT: All right, Ms. Dovell, let me
7 hear from you why the Court should not excuse this juror
8 and substitute in an alternate?

9 MS. DOVELL: Your Honor, I basically --
10 I don't believe you asked him if he could be fair
11 and impartial.

12 THE COURT: And that's not the point,
13 and I deliberately did not. The point is through
14 inadvertence, unintentionally, he did not, while under
15 oath, respond properly to the Court's questioning of the
16 jury panel. The Court has now discovered information
17 that he did not, again unintentionally, truthfully
18 answer the question when the Court was qualifying this
19 jury.

20 It has no bearing as to whether or not he
21 now believes he can be fair and impartial. It's the
22 fact that he did not truthfully answer the question
23 to the Court. Again, the Court finds him to be
24 unintentional and not deliberate, but he did not do
25 that. So that's the point. So, I will be glad to hear

1 from you.

2 MS. DOVELL: Your Honor, I understand.
3 Obviously, I would like to keep this juror. He's one
4 of the ones we selected. In fairness to the State,
5 and the State would have exercised a strike in this
6 matter, I feel like that's the only appropriate thing
7 to do at that point is to have an alternate.

8 THE COURT: All right. Thank you, ma'am.
9 Civil and criminal court is different. In civil court,
10 we draw out the alternate when there's more than one.
11 We draw out the alternate in the order in which they
12 are chosen. In criminal court, by statute, it is by
13 draw. So easiest way to do it, Madam Clerk ---

14 THE CLERK: Yes, sir.

15 THE COURT: The two alternates, one is
16 Jason Walling.

17 THE CLERK: Yes, sir.

18 THE COURT: And the other one is Diresert
19 Haynes. Okay. What I need for you to do is on a little
20 slip of paper write each one of their names, and then
21 we will fold it up. You are going to put it in a cup,
22 and you are going to draw out one of them, and then
23 we will figure out who the alternate is going to be
24 substituted in.

25 I don't know why there's such a difference

1 between civil and criminal court, but there it is.
2 So by rule of civil procedures, you do it one way,
3 and by statute you do it another way in criminal court.
4 All right. Here's the cup right there. Drop them in
5 there, shake it up, just pick one out. Could you read
6 the name, please, ma'am.

7 THE CLERK: Jason Walling.

8 THE COURT: All right. Thank you, ma'am.
9 So with that, I am going to substitute Mr. Walling in
10 for Mr. Joseph Frazier. So, Deputy, if you would call
11 out Mr. Joseph Frazier and Jason Walling, if you would.
12 Just call them both out.

13 (Pause.)

14 THE COURT: Gentlemen, you all can just
15 sit anywhere in there, just right there. First,
16 Mr. Frazier.

17 THE JUROR: Yes, sir.

18 THE COURT: I understand it was complete
19 inadvertence, and you did not do it deliberately,
20 not assigning any kind of fault here at all, but if
21 you had known, you know, the nickname or the street name
22 of Mr. Dubois and been able to tell the Court that you
23 knew a potential defense witness, the State would have
24 excused you from this case, okay.

25 You would not have been on the case to begin

1 with. And because of that, then I am going to have to
2 substitute in an alternate. So, I'm going to excuse you
3 from your jury service. You are finished. I appreciate
4 your service. I appreciate your willingness to serve.
5 And, again, no fault. I appreciate it. It's just how
6 it happened, okay, and I appreciate it. With that,
7 you are now excused, all right. Thank you very much.

8 All right. Mr. Walling, and I will tell
9 the panel as a whole, you are one of the two alternates
10 by draw. Your name was drawn out, and I am going to
11 substitute you in as one of the regular members of the
12 jury to take the place of Mr. Frazier. So you are now
13 one of the regular members of the 12 members of the
14 jury. So you can go back and have a seat. Thank you,
15 sir. Any other motions from the State?

16 MR. UTSEY: No, Your Honor.

17 THE COURT: Any other motions from the
18 defense?

19 MS. DOVELL: No, Your Honor.

20 THE COURT: All right. Very good.

21 So, I have looked at the case that you have submitted
22 to me, Ms. Dovell, and looked at your request to charge.
23 Did you give a copy of that request to charge to the
24 State?

25 MS. DOVELL: Yes, Your Honor, I did.

1 THE COURT: All right. Very good. So as to
2 your request to charge for intent, some of what you have
3 suggested, now, I am not saying exact words I am going
4 to use and some of it I am not. I will tell you what
5 I am going to charge regarding intent.

6 In order to establish criminal liability,
7 criminal intent is required. Criminal intent must be
8 proven by the State beyond a reasonable doubt.

9 Criminal intent is always a matter that must
10 be determined by the jury from the circumstances
11 surrounding the situation. There's no way to prove
12 intent to a mathematical certainty. There's no way
13 medical science can look into a person's brain to
14 determine what a person had in mind.

15 You take into consideration the action
16 of the parties and all the facts and circumstances
17 of the case. Criminal intent is a mental state,
18 a conscious wrongdoing. It is up to you to determine
19 what the defendant intended to do based on the
20 circumstances shown to have existed. Again, that must
21 be proven beyond a reasonable doubt. That's the Court's
22 intention regarding the charge on intent. Objection
23 to that from the State?

24 MR. UTSEY: No objection, Your Honor.

25 THE COURT: From the defense?

1 MS. DOVELL: None, Your Honor, as long as
2 specific intent is addressed with the attempted murder
3 charge.

4 THE COURT: It is.

5 MS. DOVELL: Thank you.

6 THE COURT: And what I'm going to do,
7 I'm going to go over that now with you all.
8 Reformulated the attempted murder charge a little bit.
9 Basically, in attempted murder, the State has to prove
10 the defendant attempted to kill another person with
11 malice aforethought.

12 Malice is hatred, ill will or hostility
13 towards another person. It's the intentional doing
14 of a wrongful act without just cause or excuse, and with
15 an intent to inflict an injury or under circumstances
16 that the law would infer an evil intent.

17 Malice aforethought does not require that
18 malice exist for any particular time before the act
19 is committed. Malice must exist in the mind of the
20 defendant just before and at the time the act is
21 committed. It has to be the combination of a previous
22 evil intent and the act.

23 In the context of attempted murder, malice
24 aforethought is the deliberate attempt to unlawfully
25 kill a human. Attempted murder is the performance

1 of an act or acts which intend but fail to kill a human
2 being. When such acts are done with expressed malice,
3 namely with deliberate attempt to unlawfully kill,
4 a specific intent to kill is an element of attempted
5 murder.

6 Specific intent means that the defendant
7 consciously intended the acts comprising the attempted
8 offense. Intent means intending the result which
9 actually occurs, not accidentally or involuntary.
10 Evidence of the character of the act, the character of
11 the instrument used, the manner in which it was used,
12 the purpose to be accomplished, and the resulting wounds
13 or injuries may be considered in determining the intent
14 with which the act was committed. That's my intention.
15 Objection to it from the State?

16 MR. UTSEY: No objection, Your Honor.

17 THE COURT: From the defense?

18 MS. DOVELL: None, Your Honor.

19 THE COURT: Very good. All right. You all
20 had a question, and I believe the defense -- I want to
21 make clear the defense requested the lesser included
22 charge of assault and battery high and aggravated
23 nature; is that correct, Ms. Dovell?

24 MS. DOVELL: Your Honor, after conferring
25 with my client, we would like the Court to go forward

1 on the charge of attempted murder only and possession
2 of a weapon during the commission of a violent crime.
3 We would also like an alibi charge in light of the
4 testimony.

5 THE COURT: Well, that's something we need
6 to talk about. Did you file with the clerk of court
7 and serve a copy on the defendant [sic.] the affirmative
8 defense of alibi?

9 MS. DOVELL: Your Honor, I did not file
10 anything. I followed what was required of me in Rule
11 5, and I gave the solicitor written notice of who
12 I intended to call, Jahleel Dubois ---

13 THE COURT: And did you specifically tell
14 them that you intended to raise the defense of alibi?

15 MS. DOVELL: I did not specifically say
16 the word alibi, Your Honor.

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

18 MR. UTSEY: Your Honor, I do not have my
19 e-mail in front of me. I do not believe Helen Dovell
20 told me, or said the word alibi in her e-mail. She did,
21 however, tell me, Your Honor, that Jahleel Dubois would
22 be testifying that Kelvin Gant was with him from 5 until
23 11:30 that night, which I took to mean as an alibi.

24 THE COURT: All right. Despite the fact
25 that the defense did not properly inform the State

1 of the defense of alibi, I will so include that in the
2 charge. So you are withdrawing your request for the
3 lesser included offense of assault and battery high
4 and aggravated nature; is that correct?

5 MS. DOVELL: Yes, Your Honor.

6 THE COURT: State's position?

7 MR. UTSEY: Your Honor, I would like
8 the lesser included charge of assault and battery
9 high and aggravated nature charge.

10 THE COURT: All right. Assault and battery
11 high and aggravated nature. A person commits the
12 offense of assault and battery high and aggravated
13 nature if the person unlawfully injures another person
14 and great bodily injury to another person results,
15 or the act is accomplished by means likely to produce
16 death or great bodily injury.

17 Great bodily injury means bodily injury
18 which causes a substantial risk of death or which
19 causes serious permanent disfigurement or protracted
20 loss or impairment or function of a bodily member
21 or organ.

22 What's your argument, Ms. Dovell, that all
23 of the elements of assault and battery high and
24 aggravated nature are contained within the charge
25 or crime of attempted murder?

1 Obviously, there's more that's required
2 of attempted murder than aggravated -- I'm sorry,
3 assault and battery high and aggravated nature.
4 But all of the elements of assault and battery high
5 and aggravated nature, are they not contained within
6 attempted murder?

7 MS. DOVELL: The elements are contained
8 within attempted murder as a lesser included charge,
9 Your Honor.

10 THE COURT: Okay.

11 MS. DOVELL: My argument against it is,
12 of course, like you said, the attempted murder does
13 require a higher finding of -- a higher requisition
14 intent, specific intent. My concern is not -- we did
15 not raise -- it's not self-defense. We are not saying
16 that there were actions, any actions, that my client
17 took that resulted in the injury to Mr. Brown.

18 My concern is that a lesser included
19 offense may be seen as a compromise by the jury to reach
20 a verdict, and, you know, my client didn't do it,
21 Your Honor. And we would like to go forward on the
22 crime in which he was charged.

23 THE COURT: All right. Elements not being
24 an issue, the argument is the facts do not -- from the
25 defense, the facts do not support the charge of assault

1 and battery high and aggravated nature. What facts
2 would the State point to, to say that they were shown
3 by the State so that this lesser included offense should
4 be charged to the jury?

5 MR. UTSEY: Your Honor, the facts that the
6 State would point to is that Kelvin Gant unlawfully
7 injured Herbert Brown and great bodily injury resulted
8 to Herbert Brown in the fact that he was shot, and we
9 had the doctor's testimony saying that it was a
10 life-threatening injury.

11 And, Your Honor, it's also lesser included
12 -- in case they don't find the specific intent required
13 of the attempted murder, I think that's why I want the
14 lesser included of assault and battery high and
15 aggravated nature in there.

16 THE COURT: All right. As I have previously
17 indicated, specific intent means that the defendant
18 consciously intended the acts comprised in the attempted
19 offense, the attempted murder. That he intended the
20 result which actually occurred.

21 If you look at the testimony of the victim
22 in this matter, I do find that the facts that's
23 testified to do support the lesser included charge
24 of assault and battery high and aggravated nature.
25 The jury could conclude from the testimony presented

1 by the State that there was not this specific intent
2 to -- attempt to kill the victim in this matter.

3 Combine that with the arguments that the
4 victim testified to that he had with the defendant,
5 intervention by his common-law spouse, words that were
6 said that would indicate that there may not have been
7 a specific intent to kill. And, therefore, I am going
8 to charge to the jury the lesser included offense of
9 assault and battery high and aggravated nature and also
10 have a verdict form for that. All right.

11 At the request of the defense regarding
12 alibi, I would then charge the jury, the defendant has
13 raised the defense of alibi. Alibi means the defendant
14 was at another specified place at the time the crime
15 was committed, and that it was, therefore, impossible
16 for the defendant to have been at the scene of the
17 crime.

18 Mere denial of presence at the scene of
19 the crime does not constitute alibi. There's no burden
20 on the defendant to prove alibi. The burden is on the
21 State to prove beyond a reasonable doubt that the
22 defendant was actually present at the scene of the crime
23 and actually participated in it and was not somewhere
24 else.

25 In other words, the State has the burden

1 of disproving the defendant's alibi defense beyond
2 a reasonable doubt. Any objection to that from the
3 State?

4 MR. UTSEY: No objection, Your Honor.

5 THE COURT: From the defense?

6 MS. DOVELL: None, Your Honor.

7 THE COURT: Do you want me to go over
8 what I normally charge every time as far as presumption
9 of innocence or reasonable doubt? Do you all need that?

10 MS. DOVELL: Your Honor, I would like to
11 have the reasonable doubt charge.

12 THE COURT: Sure. The kind of doubt that
13 would cause a reasonable person to hesitate to act,
14 proof that leaves you firmly convinced of the
15 defendant's guilt, basically. All right. And I'm also
16 going to since the -- basically, it is the testimony of
17 the victim in this matter that identifies the defendant
18 as the perpetrator. I'm going to charge the charge on
19 identification also. All right.

20 One other thing I want to bring up,
21 prior record of the defendant. I'll instruct the jury
22 that during the course of the trial, with reference
23 to evidence or testimony presented, there's a prior
24 conviction of the defendant of another crime.
25 This evidence was admitted for a limited purpose.

1 You must not consider such evidence for any purpose,
2 except for the purpose for which it was admitted.

3 It may be considered by you only for the
4 purpose of evaluating the credibility or believability
5 of the testimony presented by the defendant and for
6 no other purpose. You cannot and you must not consider
7 a prior record of the defendant as any evidence of his
8 guilt of the charge for which he is now being tried.

9 You may give this evidence such weight
10 and such value, if any, to which you find it is entitled
11 on the sole issue of credibility of the testimony
12 offered by the defendant, but not as any evidence of his
13 guilt for the crime for which he is now being tried.

14 Objection by the State?

15 MR. UTSEY: No objection, Your Honor.

16 THE COURT: From the defense?

17 MS. DOVELL: None, Your Honor.

18 THE COURT: All right. Very good.

19 Let's take a short break. We will come back.

20 We will call the jury in, and I'll explain it to them.

21 (Recess taken.)

22 (Back on the record.)

23 THE COURT: All right. Is the State ready
24 for the jury to come in?

25 MR. UTSEY: Yes, Your Honor.

1 THE COURT: And the defense?

2 MS. DOVELL: Yes, Your Honor.

3 THE COURT: All right. Now it was my
4 intention to tell the jury that I had substituted in one
5 of the alternates and explain to them it just happens by
6 draw, not really any other selection. And that it was
7 done because -- just an unintentional information wasn't
8 shared with the Court unintentionally, nothing untoward
9 or wrong, but because of it, I had to substitute in an
10 alternate. Any problem with that?

11 MR. UTSEY: No objection, Your Honor.

12 THE COURT: From the defense?

13 MS. DOVELL: No objection, Your Honor.

14 I just want to make sure the jury knows nothing improper
15 was done by the defense.

16 THE COURT: I will make sure that they are
17 clear about that.

18 MS. DOVELL: Thank you.

19 THE COURT: All right. Ask the jury to come
20 in, please.

21 (Jury enters courtroom at 10:38 a.m.)

22 THE COURT: All right. First, ladies and
23 gentlemen, I wanted to let you know I have substituted
24 in one of the alternates as a regular member of the
25 jury. The reason that happened is it was just an

CLOSING STATEMENT BY MR. UTSEY

1 unintentional -- some information that wasn't shared
2 with the Court. It was unintentional, wasn't
3 deliberate, nothing wrong, but because of that, I felt
4 it was proper that we substitute in an alternate.

5 And how that happens is we picked one
6 or the other by draw. We put both the alternates' names
7 on a piece of paper and put them in a cup, and the clerk
8 of court drew one out and just happened to be that one
9 alternate. So that's how, by statute, it happens.

10 Where we are now is we are going to hear
11 the closing arguments of counsel. The State will open
12 in full; the defense will give you their full argument,
13 and then the State has the ability, because they have
14 to prove the case beyond a reasonable doubt, they have
15 the ability to reply.

16 With that, please remember you have already
17 heard all of the evidence in the case. Closing
18 arguments are important. They are each side's summation
19 to what they believe the evidence has shown to you,
20 remembering, of course, that you are the judges of the
21 facts. And their arguments to you, their suggestions,
22 while important, that's not evidence. You've heard all
23 of the evidence in this case already.

24 After that, I will give you the law that you
25 will apply to the facts and the evidence you've heard

~~CLOSING STATEMENT BY MR. UTSEY~~

1 in this case. And then I will submit the case to you
2 for your deliberations and unanimous decision. I expect
3 probably by that point in time lunch will have arrived,
4 and you all will do that first. All right. So with
5 that, Solicitor.

6 MR. UTSEY: Thank you, Your Honor.
7 May it please the Court.

8 THE COURT: Yes, sir.

9 MR. UTSEY: Good morning, y'all.

10 THE JURORS: Good morning.

11 MR. UTSEY: I told all of y'all at the
12 beginning of the trial that the victim, Herbert Brown,
13 kept telling himself to stay awake, stay awake, stay
14 awake. And he told you all that too on the stand,
15 stay awake.

16 Now, I have charged Kelvin Gant with two
17 offenses, attempted murder and possession of a weapon
18 during a violent crime. And as I have said earlier
19 in the trial, earlier in my opening arguments, the main
20 issue here is the attempted murder charge. That's the
21 issue because if you don't find him guilty on attempted
22 murder, you can't find him guilty on possession of
23 a weapon during a violent crime.

24 And attempted murder, which the judge
25 is going to tell you in his charging to you all after

CLOSING STATEMENT BY MR. UTSEY

1 we are done with closing, attempted murder is when
2 a person, with the intent, attempts to kill someone
3 with malice. That's attempted murder. That's the
4 definition.

5 And here the main issue in this case
6 is whether or not Kelvin Gant, sitting right over there
7 in the blue shirt, attempted to kill Herbert Brown.
8 That's the issue.

9 So the first thing that I have to prove
10 to you in order to prove that Kelvin Gant attempted
11 to kill Herbert Brown is identification. I have to
12 prove that Kelvin Gant, the man sitting over there in
13 the blue shirt, was at the scene and shot Herbert Brown.
14 That's the first thing I have to prove to you.

15 Now, I'm going to -- we are going to go
16 through the evidence, and I'm going to show you all
17 pieces of evidence and what came in, and you all heard
18 testimony, and I'm going to talk about all that with you
19 all. The first thing I'm going to show you all is the
20 911 call, when Karen Holmes called in to 911, and I want
21 you all to listen to that again first.

22 (911 call played for the jury.)

23 MR. UTSEY: Kelvin Gant. That's his name.
24 Kelvin Gant. That was seconds after the shooting.
25 That was when Herbert Brown was laying on the ground,

CLOSING STATEMENT BY MR. UTSEY

1 and Karen Holmes was right beside him, and she phoned
2 911. That was seconds after it happened.

3 And I also have to prove that, obviously,
4 Kelvin Gant was at the crime scene that night, which
5 Kelvin got up and testified he contends he was not.
6 He was at Ruben Boatwright's house, an eighth of a mile
7 down the street from 5 to 11:30.

8 And his friend, who he's known forever,
9 Jahleel Dubois, remembers 5 to 11:30 Kelvin Gant being
10 there, but he sure doesn't remember anything else of
11 what happened that day. But for some reason two years
12 ago he remembers 5 to 11:30.

13 Earlier that night, around 9:30 p.m.,
14 you all remember the officers coming up here and talking
15 about a ring of gunshots came out, like, around ten
16 gunshots came out around 9:30 p.m. that night. And the
17 officers came, investigated. Nobody talked to them;
18 nobody cooperated with them. They left.

19 And Karen Holmes sat right here on this
20 witness stand and told you that Mo and Kelvin came to
21 the store after the cops left because they were pissed
22 off about the cops being called. And they argued with
23 them. Her and Herbert Brown argued with Kelvin and Mo
24 at the store about the cops being called, and she told
25 them to leave.

CLOSING STATEMENT BY MR. UTSEY

1 And this is Karen Holmes, someone who --
2 I asked Kelvin Gant yesterday, I said what did you call
3 Karen Holmes, he said, mom. This is Karen Holmes, who's
4 lived in Ruffin, has known the defendant since he was
5 nine years old, and she sat right here and pointed him
6 out and told you he came to the store that night, but he
7 says he was at Ruben Boatwright's house.

8 And then, as far as identification goes,
9 the main witness in this case, and we all know it,
10 is Herbert Brown. He's -- if you believe Herbert Brown,
11 Kelvin Gant should be convicted of attempted murder.
12 Herbert Brown is a star witness. He's the star of the
13 show. And Herbert says the same thing as Karen did.

14 He says that Kelvin, Mo, and Derrick,
15 I think, Herbert says also came to the store after the
16 cops were called the first time. And he says they were
17 arguing about the cops being called. They were mad
18 about the cops being called. And Herbert Brown sat on
19 that stand, and he said I put my hand up, and Kelvin
20 slapped my hand, and then they left.

21 And what else did Herbert tell you happened
22 after that? Herbert said that he walked outside, he was
23 by a white Dodge Charger in the parking lot, and he
24 turned around and saw Kelvin Gant coming from behind --
25 from the right side of the building and came in front

CLOSING STATEMENT BY MR. UTSEY

1 of the building. And I don't know if you all remember,
2 he sat right here and drew it for you all where Kelvin
3 Gant came from. He saw the whole thing, turned around.

4 And he said Kelvin Gant was five feet from
5 me. He testified that he's known Kelvin Gant since he
6 was -- since Kelvin was a boy. And Kelvin testified
7 that he's known Herbert Brown for five years. And this
8 is all under -- don't forget also you have a street
9 light by the building that shines the entire parking
10 lot, and everybody knows everybody in Ruffin, South
11 Carolina.

12 And Kelvin Gant was five feet away from
13 Herbert Brown, and Herbert Brown testified he pulled
14 out his gun and he heard bam, bam. That's exactly what
15 Herbert said. Bam, bam. And then he said he spun
16 around and went down on the ground. And I asked
17 Herbert, I said, did you see him run away? He said,
18 no, I was on the ground, but he saw Kelvin Gant shoot
19 him, five feet away from him, somebody he's known since
20 he was a boy.

21 And also I want to point out this picture,
22 State's Exhibit No. 13. Herbert Brown said Kelvin Gant
23 was around five feet from him when he shot him. And he
24 said from me to the court reporter, Miss Becky, sitting
25 right there is what he said.

CLOSING STATEMENT BY MR. UTSEY

1 And the shell casings, as you can see,
2 here's the bloodspot of Herbert Brown right here.
3 And where are the two shell casings? Here and here,
4 right beside Herbert Brown, and that's the shell casings
5 Kevin Smalls collected.

6 Now the second issue I have to prove to you
7 in this case, after identification, I have to prove to
8 you whether Kelvin Gant had the intent to kill Herbert
9 Brown. And for you and for me it's pretty obvious when
10 somebody shoots somebody in the stomach they had the
11 intent to kill someone.

12 But we also have the testimony of the
13 doctor. And the doctor testified, Dr. Jewett, who sat
14 up here from Trident Medical Center, a trauma surgeon,
15 he testified that he was working at Trident at around
16 one in the morning, and the victim was flown in to
17 Trident Medical Center. And I asked him, I said,
18 are his injuries life threatening? He said, yes,
19 they were life threatening.

20 The bullet came in the stomach,
21 and a fragment was still over here on this side of the
22 stomach, and he had to cut a part of his colon and small
23 intestine, stitch him back up, and Herbert Brown
24 survived.

25 So the last element of attempted murder,

-CLOSING STATEMENT BY MR. UTSEY-

1 what I have to prove, is malice. I have to prove
2 that when Kelvin Gant shot Herbert Brown he had malice.
3 And what is malice? Malice is having hatred towards
4 someone, is having ill will towards someone. It's being
5 mean. Common sense. I mean, shooting someone is having
6 malice.

7 But what also goes towards malice is the two
8 shell casings that were found because Kelvin Gant did
9 not shoot once, he shot twice, which shows he had malice
10 to kill Herbert Brown.

11 And then as far as malice goes, you also
12 heard from Herbert Brown himself, that Kelvin Gant was
13 standing five feet from him and shot him point-blank
14 range in the gut. That's malice. That's Kelvin Gant,
15 and that's malice what I just told you.

16 And then we also have -- it goes towards
17 malice, I believe, Karen Holmes and Herbert Brown
18 testified that Kelvin Gant came to the store earlier
19 that night. And Kelvin, along with Mo and Derrick
20 and whoever else, but Kelvin came to the store that
21 night, and he was pissed off about the cops being
22 called. That's why this happened. He was pissed off
23 about the cops being called, and then he came back,
24 and he shot Herbert Brown.

25 I'm going to play you the body cam video

CLOSING STATEMENT BY MR. UTSEY

1 that you all saw earlier of when the officer first got
2 on scene, and he walks up to Herbert Brown when Herbert
3 Brown is laying on the ground. And I want you all to
4 listen to what Herbert Brown told the officer, when
5 Jerry Polk was standing over there with the flashlight,
6 and he's telling, you know, I see a little hole in your
7 stomach, and he's asking the questions. Who did Herbert
8 Brown tell Jerry Polk did it? This is minutes after
9 he was shot and laying on the ground.

10 (Video played for the jury.)

11 MR. UTSEY: Who shot you? Kelvin Gant.
12 Kelvin Gant did it.

13 (Video continued to be played for the jury.)

14 MR. UTSEY: All right, y'all, I'm going
15 to skip to the end of the video. I want to show you
16 all where Jerry Polk found the shell casings, when he
17 finds one of the shell casings.

18 (Video continues to be played for the jury.)

19 MR. UTSEY: See how close he is to Herbert
20 Brown when he found the shell casing? Herbert Brown
21 kept telling him he was five feet away when he shot him,
22 and the shell casing was right there. It matches up
23 with Herbert Brown's story.

24 Herbert Brown has known Kelvin Gant since
25 he was a boy; Karen Holmes has known Kelvin Gant since

CLOSING STATEMENT BY MS. DOVELL

1 he was a boy. Kelvin Gant testified that he called
2 Karen Holmes mom, and she said he was at that store
3 that night, before the shooting, and he says I was never
4 there. I was at Ruben Boatwright's house, an eighth
5 of a mile down the street.

6 Herbert Brown -- I think the most important
7 takeaway is Herbert Brown told the officer, you now
8 heard it on the body cam, minutes after he was shot,
9 Kelvin Gant shot me. Karen Holmes on the 911 call
10 that I've showed you all, Kelvin Gant, that's his name,
11 Kelvin Gant. She saw him down the street from the scene
12 when she was outside -- when Herbert Brown was shot.

13 And then what did Herbert Brown do?
14 He stayed awake, and he got to come here today, and he
15 got to tell his story to all of you because he stayed
16 awake, and he did not die that night. And he said the
17 same thing from when he was just shot, and he said the
18 same thing sitting on the stand. Thank you.

19 THE COURT: Ms. Dovell.

20 MS. DOVELL: May it please the Court.

21 THE COURT: Yes, ma'am.

22 MS. DOVELL: I still can't tell you who shot
23 Herbert Brown, and I still can't tell you why he's
24 wrongly accused Kelvin Gant. But I can tell you that
25 Kelvin Gant did not shoot Herbert Brown. Kelvin Gant

CLOSING STATEMENT BY MS. DOVELL

1 told you that himself.

2 I can tell you that Kelvin Gant had
3 a gunshot wound in his right foot. He showed you where
4 the gunshot wound came in the side of his foot and came
5 out the bottom of his foot. He wasn't able to be
6 hoofing it up and down Smyly Road that night, not to
7 complain about law enforcement being called and not to
8 go back and shoot Herbert Brown.

9 I can tell you that Jahleel Dubois is an
10 alibi witness for Kelvin Gant. What you are hearing
11 today to determine is whether the State can prove its
12 case beyond a reasonable doubt when all that's been done
13 is the State taking Herbert Brown's word at face value.

14 So this is, essentially, a case of Herbert's
15 word verses Kelvin's word. And you all don't know
16 Herbert Brown personally, and you don't know Kelvin Gant
17 personally. So how do you make a determination about
18 who's credible? What kind of objectives do you use?

19 Well, you have a couple of videos.
20 Mr. Utsey just played those videos for you. You also --
21 played a video for you, as well as the 911 call.
22 And you also have the video footage from [REDACTED] Road
23 where Kelvin Gant was earlier in the evening, where he
24 was run into earlier in the evening by law enforcement.
25 So you can use these things to help determine the

CLOSING STATEMENT BY MS. DOVELL

1 credibility.

2 Let's start with Karen Holmes' testimony
3 yesterday. She testified that she can't really remember
4 a whole lot about the night, but she can sure remember
5 the details that help Herbert. She testified that she
6 heard shots, didn't know what happened, came outside
7 the store, saw Herbert and ran to the roadway to look
8 and see if she could see anything. And she said it took
9 a little while, but she determined that it was Kelvin
10 Gant walking down the road. And she could see that
11 under a lamp light from two houses down the road.
12 And this is all supposedly before she calls 911.

13 So here's the house -- the club on Smyly.
14 And I believe she said that this is the house with the
15 lamp light. So she looked out from here and saw Kelvin
16 under a lamp light here.

17 Now you just heard the 911 call again.
18 You are going to have the 911 call in evidence,
19 but I want to point out a few things to you. From the
20 beginning, the dispatch asked do you know who it is?
21 She says, "He say the guy's name is K." He say, not she
22 say. He, meaning Herbert Brown, said it was "K."

23 At this point, she would have already gone
24 out to the roadway to see who was there. If she had
25 seen Kelvin, she would have known what name to give,

CLOSING STATEMENT BY MS. DOVELL

1 but she did not say that. Dispatch asked if the people
2 were in a vehicle, and Ms. Holmes says, I think they
3 are walking, but I don't know. I was inside.

4 Dispatch asked what the people were wearing
5 that went walking down the road, and Ms. Holmes says,
6 I did not see them. Dispatch asked, do you know where
7 Kelvin Gant went walking to? Does he live in the area?
8 I don't know. Does Herbert Brown -- does Herbert know
9 which way they went walking? I don't know, I don't
10 know, I don't know.

11 Now yesterday I was not trying to give
12 Lieutenant Smalls a hard time for not remembering
13 talking to witnesses two years later. I wanted you
14 to know that he asked Ms. Holmes to write a statement,
15 and she would not do it. She did not know what
16 happened. She was inside.

17 She had ample opportunity to talk to any
18 of the officers who were on scene that night and to
19 provide that very important detail that she saw Kelvin
20 Gant walking down the road after this shooting.
21 She told no one. And two years later, she comes to take
22 the stand and tell you that's what she saw.

23 And what about Herbert's credibility?
24 We just saw the video. He told Lieutenant Polk --
25 when Lieutenant Polk walked off, and he was asked

CLOSING STATEMENT BY MS. DOVELL

1 where's the shooter? He ran off. Well, Mr. Brown
2 doesn't remember that now, but he does remember,
3 as he testified yesterday, Karen Holmes walking around
4 the scene after the shooting, seeing what was going on.

5 He also has a lot more detail now than what
6 he gave on the night of the shooting about where the
7 shooter was located. He says the shooter came from the
8 right side of the building and then walked in an
9 S-shaped path between the cars, that he looked at him
10 in the face, and he saw him pull a gun, and he shot him
11 from about five feet away.

12 I got it, but there's something about that
13 crime scene that just doesn't add up to me. There's
14 been talk about the shell casings. Pardon me while
15 I'm finding the photo that I'm looking for. Mr. Utsey
16 just told you Herbert Brown says that the shooter was
17 five feet from him, and look at where the shell casings
18 were found. This is State's Exhibit 8. We have a photo
19 of the Dodge Charger, and here in front of the Dodge
20 Charger are where the shell casings were found.

21 And if the shooter stood between the store
22 and Mr. Brown, so if Mr. Brown was here, and the shooter
23 was somewhere over here, that would seem about right.
24 But Mr. Brown said the shooter was back here between
25 the cars.

CLOSING STATEMENT BY MS. DOVELL

1 I don't know a lot about guns, but it is
2 next to impossible for the shooter to have been back
3 here by the rear side of the cars and those shell
4 casings to be up there. And if the shooting occurred
5 there, well, here in front of the car, what about the
6 wound to his left side? The bullet went in the left
7 side, not the right side.

8 He was standing at the car, but the club
9 is right here, standing at the car. And if the shooter
10 was shooting from somewhere in between the cars, how did
11 the shell casings get up there? And there's just
12 something about that angle that doesn't add up. How the
13 bullet hit the car, how the bullet entered Mr. Brown.
14 None of it makes sense.

15 And if Mr. Brown is telling a questionable
16 version of what happened as far as the shooting goes,
17 then his identification of Kelvin Gant is not credible
18 either. There's a lot of talk about that lamp light.
19 You can see in the video it's still pretty dog-on dark
20 out there. It's still pretty shadowy.

21 And we know Herbert Brown and Karen Holmes,
22 they are running a shady club. You see the disco light
23 going on inside. It's not some quaint little country
24 meeting group; it's a club. And it's a club that's not
25 on the up and up. They did not pay for the permits

CLOSING STATEMENT BY MS. DOVELL

1 to run a legitimate business, permits that are required,
2 health and safety.

3 And like it or not having the right permits,
4 it's kind of a tax. And if you are not going to be
5 paying what is owed, then that's dishonest. There are
6 a lot of legitimate businessowners who do what they are
7 supposed to do. Herbert Brown and Karen Holmes, they're
8 not doing it.

9 They were, and they still are, benefitting
10 from sales that they should not be engaged in, and
11 skirting the requirements and payments that law-abiding
12 businessowners pay, dishonest, and that's another
13 objective that you can use to weigh Mr. Brown's
14 credibility.

15 Well, what do we know then about Kelvin?
16 You know Kelvin had the absolute constitutional right
17 to remain silent. He waived that right because he
18 wanted you to hear from him. He's told you he did not
19 shoot Herbert Brown. He also told you he does have
20 a drug conviction. Didn't hide that. And it's
21 a conviction for something that's not a crime of
22 dishonesty. Does not involve anything having to do
23 with honesty.

24 And he told you about the wound in his foot,
25 and that's important because he was wearing a tennis

CLOSING STATEMENT BY MS. DOVELL

1 shoe, and he was wearing a flip-flop. I want to play
2 that footage for you again.

3 (Pause.)

4 MS. DOVELL: I really do want to play this
5 footage for you again. I apologize. I'm not able to
6 get the disc to change.

7 (Video played for the jury.)

8 MS. DOVELL: This happened roundabout 9:30
9 in the evening, and that's two hours before Herbert
10 Brown was shot, two hours before Kelvin Gant was accused
11 of shooting him. You could see him limping from where
12 he was leaning against the car, and he limped over to
13 the next car, where he continues to lean against the
14 car with his injured foot. He's not making up a limp.
15 He has no reason to make that up. He had not been
16 accused yet, and this is objective footage from hours
17 before the incident of my client's injury.

18 Lieutenant Smalls said that when he showed
19 up there were people who ran off. Kelvin Gant wasn't
20 one of the people who ran off, not that he would have
21 a reason to. But even if he did, he couldn't have gone
22 anywhere with that foot. He was just hanging out with
23 his friends, just like the people down the street at
24 the club who was just hanging out at the club.

25 Kelvin, we also know he has an alibi,

CLOSING STATEMENT BY MS. DOVELL

1 and that is Jahleel Dubois. Jahleel testified for you
2 today that Kelvin was with him all day, that they were
3 in the basement, didn't even hear the shots fired, that
4 they were hanging out there. So not only did Kelvin not
5 go hoofing it down the road to Cricket and Smyly to
6 complain about law enforcement being called, much less
7 to shoot Herbert Brown, Jahleel says that he took him
8 to his auntie's house between 11:15, 11:20, and that
9 means he wasn't there. He wasn't at the scene where
10 Herbert Brown was shot outside of the club.

11 So what did the State do -- what did the
12 sheriff's office do to help you, to help you make this
13 determination? Well, didn't do much of an
14 investigation. They could not even get the on-call
15 investigator to come on scene that night, and this
16 is not even to collect evidence, not to help process
17 the scene, not even having a known suspect, not to
18 coordinate an effort to go out and apprehend the person
19 who had been named as a suspect. Didn't happen.

20 Detective Marcurella testified that no
21 gunshot residue test was run on Kelvin Gant's hands,
22 and that is because SLED has a six-hour time limit
23 policy between the time of the shooting and the time
24 a person is tested.

25 Well, maybe if the sheriff's office had

CLOSING STATEMENT BY MS. DOVELL

1 taken the effort to go down to [REDACTED], maybe try
2 to see if Kelvin was there, talk to anybody there.
3 They already had an address on [REDACTED] Road for Kelvin
4 Gant. Maybe if they had just gone down to Quarters Road
5 they would have found Kelvin. He was staying at his
6 auntie's house on Quarters Road.

7 If they had found Kelvin that night,
8 they could have done the gunshot residue testing on his
9 hands, they could have assessed his demeanor just hours
10 after the incident. They could have talked to people
11 who he was present with at the time that night.
12 But that didn't happen, and maybe if that part of the
13 investigation was done, we might not be here today.

14 You know, no one followed up at the house
15 on Smyly Road. The solicitor asked Jahleel Dubois why
16 he didn't step up, and he said, well, nobody did.
17 Law enforcement knew exactly who was at that house
18 at the corner of Smyly and Serpentine. They knew they
19 could have gone out and talk to any of those guys and
20 gotten statements.

21 Not only that, they did not follow up with
22 anybody who's at the scene that night, not any of the
23 witnesses who were there. Yeah, they weren't
24 cooperative that night, but it's two years later.
25 Go out and talk to them. See what's going on.

~~CLOSING STATEMENT BY MS. DOVELL~~

1 See if anything has changed.

2 And not only did they not follow up with
3 people at the scene, they did not even get a follow-up
4 statement from Herbert Brown or Karen Holmes. You know,
5 the sheriff's office, they did not ask Herbert to give
6 a description of the shooter. He said it was Kelvin
7 Gant. They automatically went with that. You call
8 somebody's name, known him for a while, must be him.

9 You know that bullet in the Dodge Charger,
10 probably still in the Charger for all we know. Nobody
11 made any effort to try to get that out. The bullets
12 weren't sent to SLED for fingerprint analysis. Yeah,
13 I know, Sergeant Marcurella testified that it would have
14 been useless. I don't know about that.

15 I think it's possible you could have gotten
16 a fingerprint off of a shell casing because how do you
17 load a magazine, you press the bullets in with your
18 thumb or your finger. It's possible. He didn't do it.

19 Just because the sheriff's office believes
20 Herbert Brown does not mean that you have to. I can't
21 tell you who shot Herbert Brown, and I can't tell you
22 why he's claiming it's Kelvin. You know, he says that
23 Kelvin wasn't the one in the roadway shooting earlier
24 with the shots fired, so why is he all up in arms about
25 him calling the law. It just doesn't make sense;

CLOSING STATEMENT BY MS. DOVELL

1 it doesn't make sense.

2 You know, maybe Mr. Brown's vision is
3 impaired, maybe the lighting isn't good, maybe after
4 suffering from diabetes and high-blood pressure for
5 years, there's something wrong with his vision.
6 I don't know. Or maybe there's something else going on.
7 I mean, it's a club. Maybe he's afraid of calling the
8 name of the real shooter, maybe he just has a grudge
9 against Kelvin. I don't know.

10 Judge John informed you at the beginning
11 of the trial that the defense doesn't have to show
12 anything, doesn't have to prove anything. And in your
13 deliberations to want to hear more from the defense,
14 or to expect that there's something that I should have
15 done, that's improper. For what we have is a
16 presentation of Kelvin Gant. He told you he didn't
17 shoot him, told you where he was.

18 Jahleel Dubois gives him an alibi, says he
19 was with me. And, yeah, you know, he may have grown up
20 with Kelvin Gant, but he's also kin to Karen Holmes in
21 some way. And then the undeniable fact that Kelvin Gant
22 has a hurt foot, and he was limping, and he wasn't going
23 back and forth up and down Smyly Road.

24 No one is happy that Herbert Brown was shot,
25 Not me, not Kelvin Gant. But to convict Kelvin Gant

CLOSING STATEMENT BY MR. UTSEY

1 is to make two victims out of this incident, a person
2 who was shot and a person who is wrongly accused.
3 Please find Kelvin Gant not guilty.

4 THE COURT: Final argument from the State.

5 MR. UTSEY: Thank you, Your Honor. I know
6 Ms. Dovell just told you that Karen Holmes -- for some
7 reason was talking about business licenses in this
8 trial. And Karen Holmes testified that she did not get
9 this license and that business license. I have no idea
10 what it has to do with the trial that Herbert Brown was
11 shot, but we talked about it.

12 So, Ms. Dovell just told you that Karen
13 Holmes not having a business license is dishonest,
14 that shows dishonesty for Karen Holmes. But what
15 I would say to you is Kelvin Gant having a possession
16 of a cocaine charge that he's convicted of on his record
17 also shows dishonesty, according to Ms. Dovell's
18 argument.

19 And as far as the statement goes, I want
20 to talk about Karen Holmes with you all. Ms. Dovell
21 said Karen Holmes didn't write a written statement.
22 I don't need her written statement. She came and
23 testified. She told you. I would rather hear from her
24 voice any day than read a written statement from Karen
25 Holmes. And she's met with us and talked to us the

CLOSING STATEMENT BY MR. UTSEY

1 entire time.

2 And as far as the investigation goes, no,
3 the on-call investigator did not come to the scene that
4 night because you heard testimony he went to the
5 hospital to meet the victim. That's where the on-call
6 investigator was. He was meeting with Herbert Brown,
7 or trying to.

8 So Kevin Smalls, who's trained to collect
9 evidence, which he testified, collected the shell
10 casings and the red T-shirt that had blood on it.
11 And as far as the investigation goes, you heard
12 testimony from every officer out there that they tried
13 talking to the witnesses on the scene, and no one would
14 cooperate with them. No one would talk to them.
15 Everybody said I didn't see anything, saw nothing.

16 But there is one person who did talk.
17 Herbert Brown. And there's a second person who talked.
18 Karen Holmes, who's known Kelvin Gant for 20 years,
19 and he called her mom. And then we have the fact that
20 Kelvin Gant was shot in his foot. But he testified that
21 he was drinking beer that night and was drinking Bud
22 Light. And you see him in the video standing in the
23 background, so standing outside in the yard drinking
24 Bud Light, but yet he's shot in the foot, and he can't
25 walk down the street.

CLOSING STATEMENT BY MR. UTSEY

1 And then you have Jahleel Dubois who has
2 known Kelvin Gant forever. They are best friends.
3 And the main point I'm just going to make about Jahleel
4 Dubois is that he cannot testify to what he did earlier
5 in the day, but he can testify to ~~exactly~~ what happened
6 between 5 and 11:30 and who was there. How is that?
7 He said he could not remember because it was two years
8 ago, but he sure remembered what happened between 5
9 and 11:30 that day.

10 And I asked Jahleel Dubois why didn't he
11 go talk to law enforcement. Since his best friend was
12 arrested for attempted murder, why didn't he go talk
13 to law enforcement and let them know? And he never did
14 talk to them until he got up here and testified that
15 Kelvin Gant was with him from 5 to 11:30, and they left
16 as soon as Herbert Brown was shot. How convenient.

17 As far as Mr. Brown goes you all,
18 and Ms. Dovell was talking about the shell casings,
19 how the shell casings kicked out and went somewhere
20 she didn't think it should. We found no testimony
21 on how shell casings should kick out of a gun and where
22 they should go. I know we have all probably shot a gun
23 in here. And you shoot a gun in the same place, and the
24 shell casing is going to land somewhere different every
25 time, even if you are staying in the same place.

CLOSING STATEMENT BY MR. UTSEY

1 But where were the shell casings?

2 Right beside Herbert Brown where he said he was shot
3 from five feet away. They weren't 40 feet away;
4 they were right beside him, where he said he was shot.

5 I ask that you go back to the jury room,
6 deliberate, and find the defendant guilty of attempted
7 murder and possession of a weapon during a violent
8 crime. Thank you.

9 THE COURT: All right. So, Madam Forelady,
10 ladies and gentlemen of the jury, I'm going to give you
11 a very short break for about five minutes. It's very
12 important that you apply the law that I give to you
13 to the facts that you have heard. And I'm going to
14 give you a short break before I do that, so about five
15 minutes. We will come back in, and I will charge you
16 with the law. Thank you very much.

17 (Recess taken at 12:30 p.m.)

18 (Back on the record.)

19 (Jury enters courtroom at 12:38 p.m.)

20 THE COURT: All right, ladies and gentlemen,
21 it's now my duty and responsibility to give you the law
22 that you will apply to the facts and the evidence you
23 have heard in this particular case. I told you at
24 the very beginning I would not indicate to you what
25 I believe the facts in this case are. That's not my

1 job, not my responsibility. It's your job and your
2 responsibility to be the judges of the facts.

3 Now in that same vein, if you came into the
4 courtroom with any preconceived ideas of what the law
5 is, what it ought to be, what it should be, what you
6 hoped it would be, you will disregard that. You will
7 take the law, as I now give it to you, and apply it to
8 the facts and the evidence you have heard in this case.

9 Now, I told you at the very beginning that
10 one of your jobs and duties and responsibilities would
11 be to judge the credibility, that is, the believability
12 of the witnesses that came before you and testified
13 under oath in this case.

14 Now in doing so, you could believe one
15 witness against several, several against one. You could
16 believe a portion of what a witness says, disregard the
17 remaining portion of it. If you've got a good and sound
18 reason for doing so, you could disregard in its entirety
19 the testimony of a particular witness.

20 You listen and decide whether or not the
21 witness has exhibited to you any kind of interest,
22 motive, bias, prejudice they might have in giving you
23 the testimony they gave you from the witness stand.
24 Obviously, the opportunity to know how they come about
25 that information. You could consider their demeanor.

1 How did they appear when they were giving you the
2 testimony under oath?

3 We are asking you, as I have told you
4 at the very beginning, use your good common sense,
5 use your good judgment in examining the facts and
6 evidence in this case. You don't have any friends
7 to reward; you don't have any enemies to punish.
8 Your verdict cannot be the result of any kind of
9 passion, prejudice, or sympathy. It has to be an
10 examination of the facts and evidence and decide whether
11 or not the State proved the defendant guilty beyond
12 a reasonable doubt.

13 Now in virtually every single criminal
14 case that's tried there's two kinds of evidence that's
15 presented. It's called direct and circumstantial
16 evidence. Direct evidence, that's when someone asserts
17 or claims to have actual knowledge of a fact. What took
18 place in their presence, what they saw, what they heard.

19 Circumstantial evidence. That's proof of
20 a chain of facts indicating the existence of a fact.
21 The law does not make any distinction between one or
22 the other. But to the extent that the State might rely
23 on any circumstantial evidence, all of the circumstances
24 have to be consistent with each other, and when taken
25 together point conclusively to the guilt of the accused

1 beyond a reasonable doubt.

2 The State has the burden of proving the
3 defendant guilty beyond a reasonable doubt, and it rests
4 on the State regardless of whether the State relies on
5 direct evidence, circumstantial evidence or some
6 combination of the two.

7 An issue of identification of the defendant
8 as the person who committed the crime charged has been
9 presented. The State, as with everything, has the
10 burden of proving identity beyond a reasonable doubt.
11 You have to be satisfied beyond a reasonable doubt of
12 the accuracy of the identification of the defendant
13 before you could convict the defendant of the crime
14 charged.

15 Identification testimony is an expression
16 or belief or impression of a witness. You determine
17 the accuracy of the identification by considering the
18 believability of the identification just like you would
19 everything else. You could consider whether or not
20 the witness had an adequate opportunity to observe
21 the defendant at the time of the offense. This will
22 be affected by things like how long or short a time
23 was available, how far or close the witness was,
24 the lighting conditions, whether the witness had
25 a chance to see or know the person in the past.

1 The burden of proof is on the state of South
2 Carolina and that includes proving beyond a reasonable
3 doubt the identity of the defendant as the person who
4 committed the crime.

5 Now, the defendant in this case has raised
6 the defense of alibi, meaning, the defendant states that
7 he was at another specified place at the time the crime
8 was committed, and that it was, therefore, impossible
9 for him to have been at the scene of the crime.

10 There is no burden, as I have told you,
11 on the defendant to prove anything, and there is no
12 burden on the defendant to prove alibi. The burden
13 is on the state of South Carolina to prove beyond
14 a reasonable doubt that the defendant was present at
15 the scene of the crime, actually participated in it,
16 and was not somewhere else. The State has, therefore,
17 then the burden of disproving the defendant's alibi
18 defense beyond a reasonable doubt.

19 In order to establish criminal liability,
20 criminal intent is required. Criminal intent, again,
21 has to be proven beyond a reasonable doubt by the State.
22 It's a matter that you have to determine from the
23 circumstances surrounding the situation. There's no way
24 to prove to a mathematical certainty. There's no way
25 medical science could look in somebody's brain and tell

1 you what they had in mind, what they intended. You take
2 into consideration all the acts of the parties and all
3 the facts and the circumstances.

4 Criminal intent is a mental state,
5 a conscious wrongdoing. It's up to you to determine
6 what the defendant intended to do based on the
7 circumstances shown to have existed, and again, it has
8 to be proved to you beyond a reasonable doubt.

9 There has been reference to a prior record
10 of the defendant. This was admitted for a limited
11 purpose. You must not consider this evidence for any
12 purpose except for the purpose for which it was
13 admitted. It may be considered by you only for the
14 purpose of evaluating the credibility or the
15 believability of the testimony presented by the
16 defendant, and for no other purpose.

17 You cannot, and you must not, consider
18 a prior record of the defendant as any evidence of the
19 guilt of the crime for which he is now being tried.
20 You give the evidence the weight and value you believe
21 it's entitled on the sole issue of credibility and
22 believability, and not as any evidence of his guilt
23 of the crime for which he's now being charged.

24 I told you at the very beginning, the
25 defendant pled not guilty to the charges brought against

1 him. That put the burden on the state of South Carolina
2 to prove the defendant guilty beyond a reasonable doubt.
3 It's called the presumption of innocence. The defendant
4 is presumed innocent of the crime, unless and until the
5 State can prove the defendant guilty beyond a reasonable
6 doubt.

7 This presumption of innocence lasts
8 throughout the entirety of the trial, it lasts until
9 your deliberations, unless and until you believe the
10 State has proved to you the guilt of the defendant
11 beyond a reasonable doubt.

12 This is not just some legal theory or legal
13 phrase. It is a substantial right to which the
14 defendant is entitled unless you, the jury, are
15 satisfied from the evidence of the defendant's guilt
16 beyond a reasonable doubt.

17 So what's reasonable doubt. The kind
18 of doubt that would cause an ordinary reasonable person
19 to hesitate to act. Proof beyond a reasonable doubt
20 is proof that leaves you firmly convinced of the
21 defendant's guilt.

22 Now, there are a few things we can know
23 with absolute certainty, and the law does not require
24 the state of South Carolina to give you that kind of
25 proof. What is required is based upon your

1 consideration of the evidence presented, you are firmly
2 convinced that the defendant is guilty of the crime
3 charged, you must find the defendant guilty.

4 On the other hand, based upon the evidence
5 presented, you are not firmly convinced that the
6 defendant is guilty of the crime charged, you must give
7 the defendant the benefit of the doubt and find him not
8 guilty.

9 What's the defendant charged with? One of
10 the charges is attempted murder. In order to prove this
11 crime, the State must prove that the defendant attempted
12 to kill another person with malice aforethought.
13 Malice, that's hatred, ill will, hostility towards
14 another person. It's the intentional doing of
15 a wrongful act, without just cause or excuse, and with
16 an intent to inflict an injury or under circumstances
17 that the law would infer an evil intent.

18 Malice aforethought does not require that
19 malice exists for any particular time before the act
20 was committed. But it has to exist in the mind of the
21 defendant just before and at the time it was committed.
22 It has to be this combination of an evil intent and
23 the act.

24 In the context of attempted murder, malice
25 aforethought is the deliberate attempt to unlawfully

1 kill a human being. Attempted murder is the performance
2 of any act or acts which tend but fail to kill a human
3 being when such acts are done with expressed malice,
4 namely with the deliberate attempt to unlawfully kill.

5 Specific intent to kill is an element
6 of attempted murder. Specific intent means the
7 defendant consciously intended the acts comprising of
8 the attempted offense. It means intending the result
9 which actually occurs, not by accident, not involuntary.
10 Evidence of the character of the act, the character of
11 the instrument used, the manner in which it was used,
12 the purpose to be accomplished, resulting wounds or
13 injuries may all be considered in determining the
14 attempt with which the act was committed.

15 Now if you find that the state of South
16 Carolina has not proven to your satisfaction beyond
17 a reasonable doubt you may consider what the law states
18 is a lesser included offense of attempted murder.
19 A lesser included offense of attempted murder is assault
20 and battery high and aggravated nature.

21 The elements of this that the State has
22 to prove to you beyond a reasonable doubt are a person
23 commits the offense of assault and battery high and
24 aggravated nature if the person unlawfully injures
25 another person and great bodily injury to another person

1 results, or the act is accomplished by means likely
2 to produce death or great bodily injury.

3 Great bodily injury means bodily injury
4 which causes a substantial risk of death or which causes
5 serious or permanent disfigurement or protracted loss
6 or impairment of a function of a bodily member or organ.

7 If you have a reasonable doubt as to whether
8 the defendant is guilty of a greater or a lesser
9 offense, you must resolve that doubt in favor of the
10 defendant, and find him guilty of the lesser offense,
11 if the State has proven that to you of that lesser
12 offense beyond a reasonable doubt.

13 The other offense that the defendant
14 is charged with is possession of a weapon during the
15 commission of or attempt to commit a violent crime.
16 Now to consider this, you must have already found the
17 defendant guilty of attempted murder or assault and
18 battery of a high and aggravated nature because both
19 of those are classified by the law as a violent crime.

20 If you find him guilty of one or the other,
21 then you could consider the possession charge.
22 If you find him not guilty of both, then you skip over
23 the possession charge because one of the elements is
24 violent crime. So the State has to prove beyond
25 a reasonable doubt that the defendant was in the

1 possession of a firearm or visibly displaying what
2 appeared to be a firearm during the commission of
3 a violent crime.

4 In order to find the defendant guilty
5 of the possession of a weapon during the commission
6 of a violent crime, as I have told you, you must first
7 have found the defendant guilty of committing or
8 attempting to commit a violent crime, and again,
9 attempted murder and ABHAN, are violent crimes.
10 And also the State has to prove beyond a reasonable
11 doubt that the weapon further advanced or helped
12 in the commission of a crime.

13 That, ladies and gentlemen, is the law which
14 you are going to apply to the facts and the evidence you
15 have heard in this case. Now, I have prepared for you
16 a verdict form, and it's pretty straightforward.
17 The state of South Carolina v. Kelvin Gant, the first
18 page, attempted murder.

19 On the charge of attempted murder, we,
20 the jury, by unanimous consent, find the defendant,
21 there's two choices, and put one or the other,
22 not guilty or guilty. If you find the defendant
23 guilty of attempted murder, you proceed to the charge
24 of possession of a weapon during the commission of a
25 violent crime. If you find him not guilty of attempted

1 murder, you must then proceed to assault and battery
2 of a high and aggravated nature.

3 On the lesser included charge of assault
4 and battery high and aggravated nature, we, the jury,
5 by unanimous consent, find the defendant, again two
6 choices, not guilty or guilty. If you find him guilty
7 of that, then you can proceed to the possession charge,
8 possession of a weapon during the commission of a
9 violent crime. If you find him not guilty of attempted
10 murder and assault and battery high and aggravated
11 nature, knock on the door and let the bailiff know you
12 have reached a unanimous verdict.

13 If you find him guilty, then you must decide
14 on the charge of possession during a violent crime, we,
15 the jury, by unanimous consent, find the defendant not
16 guilty or guilty.

17 So, Madam Forelady, when the jury
18 unanimously agrees on the verdicts of this matter,
19 you will take the verdict form, check the appropriate
20 block, sign your name, put today's date indicating that
21 is the unanimous verdict of the jury so that once the
22 clerk's representative reads the verdict, if called
23 upon, all the members of the jury could raise their
24 right hand and say, yes, that is my verdict.

25 Now one matter as to the evidence.

1 I'm going to send you into the jury room. Do not begin
2 your deliberations until I send in the verdict form
3 and all the evidence, then you begin your deliberations.
4 And whenever lunch comes in to you, you all take a break
5 and enjoy that, and then you could resume your
6 deliberations. The DVDs, if you want to watch anything
7 on those, you will have to write out a note, Madam
8 Forelady, and give it to the bailiff. It will come
9 to me. You will have to come out and look at it on
10 the screen out here, okay.

11 So with that, Madam Alternate, if you would
12 stay with us, please, ma'am. Please take all the other
13 members of the jury to the jury room, don't begin the
14 deliberations until I give you the evidence, all right.
15 Thank you.

16 (Jury exits courtroom at 12:55 p.m.)

17 THE COURT: All right. Now at this present
18 time, is there any reason that the Court should not
19 excuse the alternate at this point in time?

20 MR. UTSEY: I do not have a reason,
21 Your Honor.

22 MS. DOVELL: No reason, Your Honor.

23 THE COURT: All right. Very good. Ma'am,
24 I appreciate the fact that you were ready, willing and
25 able to be one of the jurors in this case, and as you

1 saw we had an occasion to have one of you substituted
2 in, again, it was just by random drawing. The clerk
3 just picked the other name. It could have been you,
4 and honestly, it does happen sort of quite a bit,
5 so we need alternates, and I appreciate you serving.

6 I'm going to excuse you from jury service
7 for the week. You are done. If you get called for jury
8 duty to circuit court in the next three years, you can
9 tell them you served. But, you know, if a local city
10 judge or magistrate or a federal judge calls, you have
11 to go see them, you just don't have to see us. All
12 right.

13 THE ALTERNATE: Thank you.

14 THE COURT: Thank you very much. They will
15 give you -- I'm sure you ordered lunch, they will give
16 it to you before you go, okay.

17 THE ALTERNATE: Thank you.

18 THE COURT: Thank you, ma'am. All right.
19 Exceptions, deletions, additions to the charge from
20 the State?

21 MR. UTSEY: No, Your Honor.

22 THE COURT: From the defense?

23 MS. DOVELL: None, Your Honor.

24 THE COURT: All right. Very good. Counsel,
25 if you all would come up and look at all the exhibits,

1 make sure we have all the proper exhibits going into the
2 jury room. We are sending in the DVDs. We are just not
3 sending in the recording. But, apparently, from now on
4 I think the State does have a computer that you all
5 could use so just think about it, that you need to have
6 redacted DVDs that goes in with the jury. All right.

7 MR. UTSEY: Yes, sir.

8 THE COURT: So the jury is out, you may take
9 the defendant into custody at this time. All right.
10 Do you have all the exhibits? All right. So if you
11 would hand those to the bailiff or the deputy, whoever
12 is going to take them into the jury room, then tell them
13 enjoy their lunch and begin their deliberations. All
14 right. Thank you very much. We will be at ease until
15 the jury needs us then.

16 (Recess taken at 1:00 p.m.)

17 (Back on the record.)

18 THE COURT: Counsel, I'm informed that the
19 jury wanted to play again an exhibit, there next to the
20 computer, so one of y'all will be prepared to play it.
21 Is the State ready for the jury to come in?

22 MR. UTSEY: Yes, Your Honor.

23 THE COURT: And the defense?

24 MS. DOVELL: Yes, Your Honor.

25 THE COURT: Ask the jury to come in, please.

1 (Jury enters courtroom at 1:52 p.m.)

2 THE COURT: All right, Madam Forelady,
3 the jury indicated that they wanted to see a portion
4 of the video again, and we are ready to prepare to play
5 it.

6 (Video played for the jury.)

7 THE COURT: There is a second part?

8 MS. DOVELL: Yes, Your Honor, from 9:30
9 to 10:23.

10 THE COURT: All right. Very good.

11 (Video played for the jury.)

12 THE COURT: All right, Madam Forelady,
13 we have played the portion of that exhibit that's in
14 evidence, so if there's anything else you want to see,
15 just let us know, all right. Thank you very much.
16 Again, we'll be at ease until the jury needs us.
17 Thank you very much.

18 (Recess taken.)

19 (Back on the record.)

20 THE COURT: Please be seated. Thank you
21 very much. All right. Counsel, I understand that the
22 jury would like to come in and have the Court recharge
23 them the law regarding attempted murder and assault and
24 battery high and aggravated nature, and I will go over
25 that with them. We will call them in. I want to make

1 sure that's exactly what they want, or if they want
2 anything else, and then we will go forward from there.
3 So ask the jury to come in, please.

4 (Jury enters at 2:45 p.m.)

5 THE COURT: All right, Madam Forelady,
6 I understand that the jury would like the Court to go
7 over the charge of attempted murder and the lesser
8 included offense of assault and battery high and
9 aggravated nature; is that correct?

10 THE FORELADY: Yes, sir.

11 THE COURT: All right. Very good.
12 So attempted murder. The State has to prove that the
13 defendant attempted to kill another person with malice
14 aforethought. So what's malice? Malice is hatred,
15 ill will, hostility towards another person. It's the
16 intentional doing of a wrongful act without just cause
17 or excuse, and with an intent to inflict an injury that
18 the law would infer an evil intent.

19 Now malice aforethought, that malice,
20 doesn't have to exist for any particular time except
21 right before the act is committed and at the time it's
22 committed. It has to be in the mind of the defendant.
23 That malice has to be in the mind of the defendant.
24 So there's a combination of the evil intent and the act.

25 Now in the context of attempted murder,

1 this malice aforethought is a deliberate attempt to
2 unlawfully kill a human being. Attempted murder is the
3 performance of an act or acts which tend but fail to
4 kill a human being when such acts are done with
5 expressed malice, namely a deliberate attempt to
6 unlawfully kill.

7 Specific intent to kill is an element
8 of attempted murder, and I will explain to you it's
9 not for assault and battery high and aggravated nature.
10 But specific intent to kill is an element of attempted
11 murder. Specific intent means the defendant consciously
12 intended the acts comprising the attempted offense.
13 Intent means intending the result which actually occurs,
14 not by accident, not involuntary.

15 Evidence of the character of the act,
16 the character of the instrument used to commit the
17 act, the manner in which it was used, the purpose to
18 be accomplished, the resulting wounds or injuries,
19 all those are things you could consider in determining
20 the intent with which the act was committed.

21 Now assault and battery high and aggravated
22 nature. If you find the State has not proved to you
23 beyond a reasonable doubt all those elements that we
24 just talked about for attempted murder you could look
25 at assault and battery high and aggravated nature.

1 Assault and battery. It's a lesser included offense,
2 meaning it has some of the elements of the greater but
3 not all of them. One of them was the specific intent.
4 There's no specific intent in assault and battery high
5 and aggravated nature.

6 What the State has to prove there is
7 a person commits the offense of assault and battery
8 high and aggravated nature if the person unlawfully
9 injures another person and great bodily injury to that
10 person results, or the act was accomplished by some
11 means likely to produce death or great bodily injury.

12 Great bodily injury means bodily injury
13 which causes a substantial risk of death or which
14 causes serious or permanent injury or protracted loss
15 or impairment of a function of a bodily member or an
16 organ. So those are the two. And, again, greater
17 and lesser.

18 If you have a reasonable doubt as to whether
19 the defendant is guilty of a greater or a lesser
20 offense, you have to resolve that doubt in favor of the
21 defendant and find him guilty of the lesser included
22 offense, if the State has proved that to you beyond
23 a reasonable doubt. So that's the differences between
24 the two. Did you need me to go over possession of
25 a weapon charge or not?

1 THE FORELADY: No, sir.

2 THE COURT: All right. Very good.

3 Thank you, ma'am. You all can resume your
4 deliberations.

5 (Jury exits at 2:50 p.m.)

6 THE COURT: Anything from the State
7 regarding that recharge?

8 MR. UTSEY: No, Your Honor.

9 THE COURT: From the defense?

10 MS. DOVELL: No, Your Honor.

11 THE COURT: All right. Again, we will be
12 at ease until the jury needs us. Thank you very much.

13 MR. UTSEY: Thank you, Your Honor.

14 MS. DOVELL: Thank you, Your Honor.

15 (Recess taken.)

16 (Back on the record.)

17 THE COURT: All right. I'm informed that
18 the jury has reached a verdict in this matter.
19 Is the State ready to proceed?

20 MR. UTSEY: Yes, Your Honor.

21 THE COURT: And the defense?

22 MS. DOVELL: Yes, Your Honor.

23 THE COURT: All right. Very good. I'm sure
24 I don't need to tell everyone, but I do it in every case
25 -- criminal case that I have. We have asked the jury

1 to do a difficult thing, and we will all receive the
2 verdict at the same time. Whatever the verdict is,
3 it will be received with respect and silence.

4 Thank you very much. Ask the jury to come in.

5 (Jury enters at 3:05 p.m.)

6 THE COURT: All right, Madam Forelady,
7 has the jury reached a verdict in this matter?

8 THE FORELADY: Yes, sir, we have.

9 THE COURT: All right. Could you hand
10 it to the clerk's representative, please, ma'am.

11 THE FORELADY: Yes, sir.

12 THE COURT: You may publish the verdict.

13 THE CLERK: South Carolina, Colleton,
14 State v. Kelvin Gant, in the court of general sessions,
15 2017-GS-15-0700, attempted murder. On the charge of
16 attempted murder, we, the jury, by unanimous consent,
17 find the defendant guilty, June 19, 2019, foreperson,
18 Connie D. Lyons.

19 State v. Kelvin Gant, verdict on possession
20 of a weapon during a violent crime, on the charge
21 of possession of a weapon during a violent crime, we,
22 the jury, by unanimous consent, finds the defendant
23 guilty, foreperson, Connie D. Lyons, June 19, 2019.

24 THE COURT: All right, Madam Forelady,
25 ladies and gentlemen of the jury, if that is your

1 verdict, if you would so indicate by the raising of your
2 right hand. Thank you. All members of the jury having
3 confirmed their verdict by the raising of their right
4 hand, does the State wish the jury polled?

5 MR. UTSEY: No, Your Honor.

6 THE COURT: Does the defense?

7 MS. DOVELL: Yes, Your Honor.

8 THE COURT: All right, Madam Clerk, you will
9 poll the jurors by their number only, please. Poll them
10 by their number only.

11 THE CLERK: Yes, sir. Juror No. 123.

12 THE JUROR: Yes.

13 THE CLERK: Is this your verdict?

14 THE JUROR: Yes.

15 THE CLERK: Is this still your verdict?

16 THE JUROR: Yes.

17 THE CLERK: Juror No. 196, is this your
18 verdict?

19 THE JUROR: Yes.

20 THE CLERK: Is it still your verdict?

21 THE JUROR: Yes.

22 THE CLERK: Juror No. 156, is this your
23 verdict?

24 THE JUROR: Yes.

25 THE CLERK: Is this still your verdict?

1 THE JUROR: Yes.

2 THE CLERK: Juror No. 128, is this your
3 verdict?

4 THE JUROR: Yes.

5 THE CLERK: Is it still your verdict?

6 THE JUROR: Yes.

7 THE CLERK: Juror No. 175, is this your
8 verdict?

9 THE JUROR: Yes.

10 THE CLERK: Is it still your verdict?

11 THE JUROR: Yes.

12 THE CLERK: Juror No. 144, is this your
13 verdict?

14 THE JUROR: Yes.

15 THE CLERK: Is it still your verdict?

16 THE JUROR: Yes.

17 THE CLERK: Juror No. 32, is this your
18 verdict?

19 THE JUROR: Yes.

20 THE CLERK: Is it still your verdict?

21 THE JUROR: Yes.

22 THE CLERK: Juror No. 120, is this your
23 verdict?

24 THE JUROR: Yes.

25 THE CLERK: Is it still your verdict?

1 THE JUROR: Yes.

2 THE CLERK: Juror No. 159, is this your
3 verdict?

4 THE JUROR: Yes.

5 THE CLERK: Is it still your verdict?

6 THE JUROR: Yes.

7 THE CLERK: Juror No. 152, is this your
8 verdict?

9 THE JUROR: Yes.

10 THE CLERK: Is it still your verdict?

11 THE JUROR: Yes.

12 THE CLERK: Juror No. 190, is this your
13 verdict?

14 THE JUROR: Yes.

15 THE CLERK: Is it still your verdict?

16 THE JUROR: Yes.

17 THE CLERK: And Juror No. 198, is this your
18 verdict?

19 THE JUROR: Yes.

20 THE CLERK: Is it still your verdict?

21 THE JUROR: Yes.

22 THE COURT: Thank you, ma'am. All the
23 jurors having confirmed their verdict in the polling,
24 is there anything as to the jury itself from the State?

25 MR. UTSEY: No, Your Honor.

1 THE COURT: From the defense?

2 MS. DOVELL: No, Your Honor.

3 THE COURT: All right. Very good. Ladies
4 and gentlemen of the jury, I want to thank you for your
5 service in this case. You did exactly what the Court
6 asked you to do, that is to examine the facts and the
7 evidence and to see whether or not the State had proven
8 the defendant guilty beyond a reasonable doubt.

9 We understand -- as I have told you earlier,
10 we ask you to do a difficult thing, and we understand
11 that. We appreciate your service very much. I'm going
12 to excuse you from your jury service for the week,
13 and you have an exemption from coming back to circuit
14 court jury duty for three years.

15 So if you are called by the clerk of court
16 in the next three years, you could tell the clerk that
17 you did serve and have that exemption. If a magistrate
18 or a federal judge asks you to go see them for jury
19 duty, you have to go see them. Thank you very much.
20 You are now excused. Thank you.

21 (Jury exits the courtroom at 3:15 p.m.)

22 THE COURT: All right. Ms. Dovell, I will
23 be glad to hear from you, ma'am.

24 MS. DOVELL: Thank you very much,
25 Your Honor. I would like to just renew any motions

1 that I made pre-trial and all objections I have made
2 throughout the course of the trial. I understand the
3 jury has spoken. The night of the incident my client
4 had an alibi witness. I would like to ask for a new
5 trial. The jury disregarded that evidence, and I would
6 like to ask for a new trial.

7 THE COURT: All right. Thank you, ma'am.
8 Regarding the motion for a new trial, I did find that
9 there was sufficient evidence to have the matter go
10 to the jury in the denial of your motion for directed
11 verdict.

12 In looking at all of the evidence in this
13 case, I do find that there is more than sufficient,
14 competent evidence to sustain the jury's verdict
15 of guilty of attempted murder and guilty of possession
16 of a weapon during the commission of a violent crime,
17 there being more than sufficient evidence elicited
18 by the State to prove the defendant guilty of both
19 crimes beyond a reasonable doubt. And, therefore,
20 I respectfully decline to grant your motion for a new
21 trial. Any other motions?

22 MS. DOVELL: No, Your Honor.

23 THE COURT: All right. Very good. Is the
24 State ready to proceed with sentencing?

25 MR. UTSEY: Your Honor, if we can just print

1 out the sentencing sheet.

2 THE COURT: All right. Very good.

3 MR. UTSEY: May I approach with the
4 sentencing sheet, Your Honor?

5 THE COURT: Yes, sir, please. Thank you.

6 MR. UTSEY: Thank you, Your Honor.

7 THE COURT: Glad to hear from the State.

8 MR. UTSEY: Yes, sir. Your Honor, I have
9 met with Mr. Herbert Brown and Karen Holmes, shoot,
10 I don't know how many times in the past couple of weeks.
11 They have always come to my office, and I believed them
12 from the very moment I met with them, Judge, and they
13 have told me -- Mr. Herbert Brown told the same story
14 the whole time. And Kelvin Gant, clearly, did not admit
15 his guilt. He was convicted.

16 I'm just glad, Your Honor, that Herbert
17 Brown got some justice because as we all know, Judge,
18 in Ruffin, South Carolina, there's no cameras or
19 anything like that out in the country. And it was
20 Herbert Brown's word and Karen Holmes, and I'm just --
21 I'm really happy that justice was done, Judge.

22 As far as the sentence goes, I will just
23 leave it in the Court's discretion at this time,
24 and what you think is best.

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

1 MR. UTSEY: Yes, sir.

2 THE COURT: All right, Ms. Dovell, I'm glad
3 to hear from you, ma'am.

4 MS. DOVELL: Thank you very much,
5 Your Honor. I have represented Kelvin Gant since the
6 time of his arrest. He is 30 years old, Your Honor.
7 He's going to turn 31 in a couple of days, on June 23rd.
8 He lives currently at [REDACTED] Road, in Ruffin,
9 still part of the Ruffin community.

10 And throughout the course of my
11 representation, I have gotten to talk to a lot of people
12 in the community about Kelvin. I have spoken with his
13 cousin who's like an uncle, even his uncle, Ruben
14 Boatwright.

15 I have obviously spoken to Jahleel Dubois;
16 I have spoken with several other friends. I have met
17 his significant other, Brittany. I have spoken with
18 her on several occasions, talked to another cousin,
19 sort of uncle figure, and I have really enjoyed getting
20 to know Kelvin. He's a charismatic person. He has
21 always been upbeat.

22 He's spent 278 days in the Colleton County
23 Detention Center before he was bonded out. And every
24 time I go to see him, he always had a smile on his face,
25 and he was always upbeat and happy. He was really

1 always involved in the investigation and in the defense
2 of his case as much as possible.

3 He tells me he's gone through the ninth
4 grade. He has completed the ninth grade. He has three
5 children, two of them live in the Walterboro area,
6 one lives in Colleton.

7 He worked construction for a while,
8 and he also worked with his brother in Charleston
9 doing roofing. He's also worked for a company doing --
10 pouring slabs. He has a very minimal prior record,
11 Your Honor. He, as you know, already has a conviction
12 for possession of cocaine. He has another charge
13 of unlawful carrying on his record, and he received
14 a probation sentence on those charges.

15 You've gotten a little taste of his --
16 the music that he makes. He tells me that in addition
17 to those videos that were made several years ago,
18 he also sings, and he does like to make music.

19 He went to the high school here locally,
20 and I believe that he was somewhat of a local high
21 school basketball standout, and that's something in
22 talking to his friends and family members is a talent
23 and a skill that has carried forward throughout his
24 life. They still get together and shoot hoops in the
25 Ruffin community.

1 Your Honor, obviously, my client pleaded not
2 guilty. The jury has spoken, and we understand that.
3 In light of my client's prior record -- lack of prior
4 record, I ask Your Honor to please consider a sentence
5 with a cap of ten years. I know that this is a very
6 serious charge, and this is not -- my request is not
7 meant to minimize the seriousness of the injury that
8 Herbert Brown sustained. It is not meant in disrespect
9 to him, but more as a request, a clemency and leniency,
10 for a young man who I think has a lot of talent.

11 He has a lot of people in the community
12 who love and care about him. And I would like to say
13 I also talked to his mom. I think there was a period
14 of time when he and his mother were estranged, and now
15 they are getting along, back together again.

16 And I have also spoken with his aunt,
17 Auntie Chisolm, in the community, and a cousin,
18 Latia [ph.] Chisolm, and I feel like if I talk a little
19 bit more, Your Honor, I could probably think of a lot
20 of other people who I have spoken to about Kelvin,
21 and, Your Honor, please consider a sentence with a cap
22 of ten years.

23 THE COURT: All right. Thank you, ma'am.
24 Ms. Dovell, you indicated your client had spent 278 days
25 in jail. Was he under electronic monitoring after he

1 got out of jail or not?

2 MS. DOVELL: No, Your Honor. He had
3 a \$50,000 cash surety bond condition of no contact
4 with the victim. I believe he complied with those
5 conditions. He has not had any contact with Mr. Brown,
6 and he did not have any violations.

7 THE COURT: Thank you, ma'am. I appreciate
8 it very much. 2017-GS-15-0700, the state of South
9 Carolina, County of Colleton verses Kelvin Gant
10 regarding attempted murder. I have taken into
11 consideration the limited prior record of the defendant.
12 Obviously, I have taken into consideration all the facts
13 and circumstances in this case. The maximum sentence
14 for attempted murder would be 30 years.

15 The Court finds the proper sentence in this
16 matter is the defendant is committed to the state
17 department of corrections for the determinate term of
18 20 years. The defendant is given credit for the time
19 he did serve in jail of 278 days.

20 2017-GS-15-0699, possession of a weapon
21 during the commission of a violent crime. The defendant
22 is committed to the state department of corrections for
23 the determinate term of five years, concurrent with
24 2017-GS-15-0700, again, credit for the 278 days in jail.
25 Thank you very much.

1 MR. UTSEY: Thank you, Your Honor.

2 MS. DOVELL: Thank you, Your Honor.

3 (End of proceedings.)

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CERTIFICATE OF TRANSCRIBER

CASE: STATE V. GANT

2017-GS-15-0699 & 0700

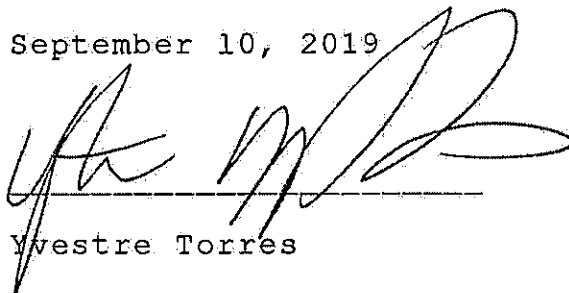
DATE OF PROCEEDING: JUNE 19, 2019

State of South Carolina)

County of Colleton)

I, Yvestre Torres, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information; and that I am neither counsel for, related to, nor employed by any of the parties to this case, and I have no interest, financial or otherwise, in its outcome.

September 10, 2019



Yvestre Torres

Circuit Court Reporter

WITNESSES

DOCKET NO. 2017GS1500699

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

The State of South Carolina
County of Colleton

Defendant

COURT OF GENERAL SESSIONS

October Term 2017

I hereby appear in my own proper person and plead guilty to the within indictment or to

ARREST WARRANT NUMBER

2017A1510100399

THE STATE

vs.

Kelvin Gantt

ACTION OF GRAND JURY

Indictment For

Possession of Weapon During
Violent Crime

SC Code: 16-23-490

CDR Code: 0549

Foreperson of Grand Jury

Date: 10/26/17

Defendant

VERDICT

Witness:

Foreperson of Petit Jury

Date:

INDICT

C.C.C. PLS. and G.S.

RECEIVED

JUN 27 2019

SC Court of Appeals

2017 OCT 26 AM 11:30

COLLETON COUNTY
GENERAL SESSIONS COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF COLLETON)

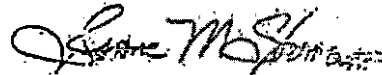
INDICTMENT
2017GS1500699

At a Court of General Sessions, convened on October 26, 2017, the Grand Jurors of Colleton County present upon their oath:

Possession of Weapon During Violent Crime

That in Colleton County, South Carolina, on or about June 24, 2017, the Defendant, Kelvin Gantt, did possess a firearm, visibly displayed what appeared to be a firearm, or visibly displayed a knife during the commission of a violent crime, to wit: Attempted Murder and Kelvin Gantt was convicted of committing or attempting to commit a violent crime as defined in Section 16-1-60, all in violation of Section 16-23-490, et al. of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

RECEIVED
OCT 28 2017
CLERK OF COURT

WITNESSES

DOCKET NO. 2017GS1500700

The State of South Carolina
County of Colleton

After being fully advised as to my
legal rights, I hereby waive
presentment to the Grand Jury.

Defendant

COURT OF GENERAL SESSIONS

October Term 2017

hereby appear in my own proper
person and plead guilty to the within
indictment or to

ARREST WARRANT NUMBER

2017A1510100398

THE STATE

vs.

Kelvin Gantt

ACTION OF GRAND JURY

True Bill

Indictment For

Attempted Murder

SC Code: 16-3-29

CDR Code: 3410

Defendant

Foreperson of Grand Jury

Date: 10/26/17

Witness:

VERDICT

C.C.C. PLS. and G.S.

Foreperson of Petit Jury

Date:

INDICT

RECEIVED

JUN 27 2019

SC Court of Appeals

2017 OCT 26 AM 11:30

COLLETON COUNTY
GENERAL SESSIONS COURT

STATE OF SOUTH CAROLINA)

COUNTY OF COLLETON)

INDICTMENT

2017GS1500700

At a Court of General Sessions, convened on October 26, 2017, the Grand Jurors of Colleton County present upon their oath:

Attempted Murder

That in Colleton County, South Carolina, on or about June 24, 2017, the Defendant, Kelvin Gantt, did, with intent to kill and with malice aforethought, attempt to willfully kill Herbert Brown, all in violation of Section 16-3-29, et al. of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

CLERK OF COURT

2017 OCT 26

FILED IN CASE NO. 2017GS1500700

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Colleton

STATE

VS.

Kelvin Gant

AKA:

Race: Black Sex: Male Age: 30

DOB: SS#:

Address:

DL# SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or☐ PLEADS

TO: Possession of a Weapon During Commission of a Violent Crime

In violation of § 16-23-490

of the S.C. Code of Laws, bearing CDR Code # 0549

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS☐ MOST SERIOUS☐ MANDATORY GPS ☐ §17-25-45

(CSC w/minor 1" or CSC w/minor 3")

The charge is: ☒ As indicted, ☐ Lesser Included Offense.☐ Defendant Waives Presentment to Grand Jury.

(def's initials)

The plea is: ☐ Without Negotiations or Recommendation.☐ Negotiated Sentence.☐ Recommendation by the State.

ATTEST:

Arthur C. Wright 102393

(Solicitor)

(SC Bar #)

(Defendant)

Helene D. Dorell 72094

(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 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: 2017-62-15-700☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.*278 days in jail*

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§14-1-206 (Assessments 107.5%)

§14-1-211 (A)(1)(Conv. Surcharge)

§14-1-211 (A)(2)(DUI Surcharge)

§56-5-2995 (DUI Assessment)

§56-1-286 (DUI Breath Test)

Proviso 61.6 (Public Def/Prob)

§14-1-212 (Law Enforce. Funding)

§14-1-213 (Drug Court Surcharge)

§50-21-114 (BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

\$100

\$100

\$12

\$25

\$500

\$25

\$150

\$50

\$40/cash

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☐ Obtain 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 Fund

Other: _____

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JUN 27 2019

SC Court of Appeals

☐ Appointed PD or appointed other counsel,

Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge: _____

Judge Code: _____

Sentence Date: _____

TOTAL

\$ 138.75

Clerk of Court/Deputy Clerk: *Patricia C. Short*Court Reporter: *M. Rebecca Hall*

MP-SCCA/217 (04/2018)

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Colleton

STATE

VS.

Kelvin Gantt

AKA:

Race:

Black

Sex: Male

Age: 30

DOB:

SS#:

Address:

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or☐ PLEADS

TO: Attempted Murder

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 ☐ §17-25-45

(CSC w/minor 1" of CSC w/minor 3")

The charge is: ☒ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury,

(def's initials)

The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

(Solicitor)

(SC Bar #)

(Defendant)

(Attorney for Defendant)

(SC Bar #)

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections☐ County Detention Center,for a determinate term of 20 ~~months~~ years or☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____ provided that upon the service of _____ days/months/years and or payment of \$ _____

plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

278 days in jail

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred☐ Def. Waives Hearing☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§14-1-206 (Assessments 107.5%)

§14-1-211 (A)(1)(Conv. Surcharge)

§14-1-211 (A)(2)(DUI Surcharge)

§56-5-2995 (DUI Assessment)

§56-1-286 (DUI Breath Test)

Proviso 61.6 (Public Def/Prob)

§14-1-212 (Law Enforce. Funding)

§14-1-213 (Drug Court Surcharge)

§50-21-114 (BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

\$100

\$100

\$12

\$25

\$500

\$25

\$150

\$50

\$40/each

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☐ Obtain 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 Fund

Other: _____

RECEIVED

JUN 27 2019

☐ Appointed PD or appointed other counsel. Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge: _____

Judge Code: _____

Sentence Date: _____

TOTAL

\$128.75

Clerk of Court/Deputy Clerk: _____

Court Reporter: _____

MP-SCCA/217 (04/2018)

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

Kelvin Grant (380542)

Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2022-CP-15-86

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Ridgeland C.I. / Jasper Co., South Carolina
2. Name and location of Court which imposed sentence Court of General Sessions
COLLETON CO., S.C.
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2017-GS-15-699 - Possession of weapons during violent crime
 - (b) 2017-GS-15-700 - Attempted murder
 - (c) /
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 19th day of June, 2019 Attempted murder - 20 Yr
 - (b) 19th day of June, 2019 (Poss. of weapon during V. Cr) 5 Yrs

(b) ~~On June 27, 1998, a sentence was imposed by the court.~~

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) _____

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty ☒ _____

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. South Carolina of Appeals

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. Denied

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. _____

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) N/A

- (b) N/A
- (c) N/A

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of Counsel
- (b) Trial Counsel was ineffective in the cross-examination State witnesses
- (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Case: Lucas Bailey vs. State No. 26975
- (b) _____
- (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
- i. /
- ii. N/A
- iii. N/A
- iv. N/A
- (b) the name and location of the Court in which each was filed:
- i. /
- ii. N/A
- iii. N/A

iv. _____
 (c) the disposition thereof:

i. _____
 ii. _____
 iii. _____
 iv. _____

(d) the date of each such disposition:

i. _____
 ii. _____
 iii. _____
 iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____
 ii. _____
 iii. _____
 iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____
 ii. _____
 iii. _____

(b) the proceedings in which each ground was raised:

i. _____
 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: Not Reviewable on Appeal

(a) N/A

(b) N/A

(c) N/A

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? N/A

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. Helen Doveil '259

ii. Katherine H. Hudgins, (259 P.O. Box 11589, Columbia, S.C. 29211)

iii. _____

(b) the proceedings at which each such attorney represented you:

i. Trial and Sentence (Hellen Doveil)

ii. Direct Appeal (Katherine H. Hudgins)

iii. _____

19. State clearly the relief you seek in filing this application:

Reversal of Conviction, Vacation of Sentence.

20. Are you now under sentence from any other court that you have not challenged?

No

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Colleton County)

VERIFICATION

I, Kelvin Gant, 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.

Kelvin Gant

SWORN to and subscribed before me this 24th
day of Jan., 2022.

Virginia Robinson (L.S.)
Notary Public

My Commission Expires: April 21, 2031



**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Kelvin Gant, 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.

Kelvin Gant
Applicant

SWORN or affirmed to and subscribed before me this

24th day of Jan., 2022.

Viggin Robinson
Notary Public

My Commission Expires: April 21, 2031

COLLETON COUNTY
COMMON PLEAS COURT

2022 FEB -9 AM 9:38

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

Kelvin Gantt, SCDC #380542,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT

Case No. 2022-CP-15-00086

**RETURN TO APPLICATION FOR
POST-CONVICTION RELIEF
AND MOTION FOR A MORE
DEFINITE STATEMENT**
(Counsel Already Appointed)

2022 JUN 17 AM 9:44

COLLETON COUNTY
COMMON PLEAS COURT

Respondent the State of South Carolina, making its return to the application for post-conviction relief filed by Applicant Kelvin Gantt¹ on February 9, 2022, and received by the South Carolina Attorney General's office on March 25, 2022, would respectfully show this court:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections. Applicant was arrested on June 28, 2017, following an investigation into the shooting of Herbert Brown. During its October 2017 term, the Colleton County Grand Jury indicted Applicant for attempted murder (2017-GS-15-00700) and possession of weapon during a violent crime (2017-GS-15-00699).

On June 17-19, 2019, Applicant proceeded to a jury trial before the Honorable Stephen H. John. Helen Dovell, Esquire, represented Applicant. Ceth Utsey and Katherine Orville of the Fourteenth Circuit Solicitor's Office prosecuted the case. The jury found Applicant guilty as indicted. Judge John sentenced Applicant to concurrent sentences of twenty years for the attempted murder charge and five years for the weapons charge.

¹ Applicant filed this post-conviction relief application *pro se*. Counsel, James K. Falk, Esquire, was appointed on June 1, 2022.

Applicant filed a timely notice of appeal and was represented by Appellate Defender Kathrine H. Hudgins of the South Carolina Commission on Indigent Defense – Division of Appellate Defense. On appeal, Applicant raised one issue:

Did the trial judge abuse his discretion by not properly evaluating the *Coff* factors and admitting [Applicant's] prior conviction for possession of cocaine?

Following further briefing, the Court of Appeals affirmed Applicant's convictions and sentences. *State v. Gantt*, 2021-UP-392, (S.C. Ct. App. filed November 3, 2021). The case was remitted back to the circuit court on November 24, 2021.

II. Facts Giving Rise to Convictions

On June 24, 2017, Herbert Brown went to the community store in the town of Ruffin that was owned by his long-time girlfriend, Karen Holmes. (R. 106). At approximately 9:30 PM, Holmes and Brown were inside the store when they heard nine-to-ten-gun shots coming from outside. (R. 24, 108). Holmes called the police. (R. 24). Law enforcement arrived at the store and began to search for shell casings. (R. 61). Several shell casings were located nearby the store. (R. 43-44). After locating the shell casings, law enforcement attempted to speak with a large group of people who had gathered at a nearby residence. (R. 45). Applicant was among the individuals gathered at the residence. (R. 60). Law enforcement left the residence when no one would cooperate with the investigation. (R. 61). About twenty minutes after the police left the area, Applicant and a man named Mo came to the store and began to argue with Holmes and Brown for calling the police. (R. 25-28, 110-12). Brown testified that he knew Applicant for about twenty years while Holmes had known Applicant since he was a child. (R. 23, 111). According to Holmes, Mo eventually left the store, but Applicant remained and continued to argue with Brown. (R. 27-28). Applicant eventually left the store after Holmes asked him to go home. (R. 28).

Brown and Holmes remained inside the store for approximately ten minutes after Applicant left. (R. 112). Brown eventually went back outside and saw Applicant approaching him. Brown testified that Applicant got close enough to him that the two men were able to "look at each other dead in the eyes." (R. 115, lines 10-11). Applicant then shot Brown. (R. 115-16). Brown suffered gunshot wounds to his stomach and his buttocks. (R. 135). After hearing a gunshot, Holmes exited the store and saw Applicant walking away from the scene. (R. 31-32). Holmes called 911. (R. 32). Lieutenant Jerry Polk was the first police officer to arrive. (R. 46).³ At trial, Polk's body camera was played for the jury. (R. 92). Polk spoke to Brown as soon as he arrived. Brown told Polk that he was shot by Applicant. (State's Exhibit #6). Brown was transported in an ambulance to the Colleton County hospital and then transported by helicopter to the Trident Medical Center in North Charleston. (R. 118-19). Once he arrived at Trident, Brown underwent emergency surgery. (R. 135-37). Brown was discharged from Trident approximately two weeks later. (R. 137).

Applicant testified in his own defense at trial. According to Applicant, he was at Ruben Boatwright's house on the night of the shooting. (R. 168). Applicant estimated that Boatwright's house was approximately a quarter of a mile from Holmes' store. (R. 168). Applicant claimed he was at Boatwright's house from 5:00 PM until 11:30 PM. (R. 169, 172). Applicant denied shooting Brown and denied ever going to Holmes' store the night of the shooting. (R. 167, 176, 180). However, Applicant admitted that he knew Holmes for approximately twenty years and knew Brown for five years. (R. 175).

III. Allegations Raised and Relief Sought in Post-Conviction Relief Application

Applicant timely commenced his PCR action on February 9, 2022. In his application, Applicant asserts he is being held in custody unlawfully based on the following:

1. Ineffective assistance of counsel

a. "Trial counsel was ineffective in cross-examination of state witness"

i. "Case: *Lucas Bailey v. State*, No. 26975"

Applicant requests relief as follows:

"Reversal of conviction, vacation of sentence".

Attached to this return and incorporated by reference are the Colleton County Clerk of Court records regarding the subject convictions; Applicant's records from the South Carolina Department of Corrections; a full and complete record of Applicant's direct appeal, including the trial transcript; and the records of the current PCR action. The State reserves the right to amend this return upon receipt of any relevant materials.

IV. Response to Allegations of Ineffective Assistance of Counsel

Applicant asserts trial counsel was ineffective in her cross-examination of State's witnesses, citing "*Lucas Bailey v. State*, No. 26975²." Without more definite facts and circumstances to support Applicant's claims, it is impossible for Respondent to respond specifically to these vague allegations. Instead, Respondent responds generally and moves for Applicant, through appointed counsel, to file an amended application with specific allegations.

Ineffective Assistance of Trial Counsel, Generally

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant—like all other defendants—the right to "assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that 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

² Respondent believes the case Applicant cites in his PCR application refers to *Bailey v. State*, 392 S.C. 422, 709 S.E.2d 671 (2011). However, without more definite facts and circumstances to support Applicant's claims of ineffective assistance of counsel, it is impossible for Respondent to adequately respond.

generally S.C. Code Ann. § 17-27-20(A) (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 post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985); Rule 71.1(e), SCRPC. The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction. 466 U.S. at 687. To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Id.* at 687–88; *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; see also *Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010). An applicant making a claim of ineffective assistance "must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment." *Strickland*, 466 U.S. at 690 (emphasis added). The reviewing court must then "determine whether, in light of all the

circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance” demanded of attorneys in criminal cases. *Id.*

Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a “strong presumption that counsel’s conduct falls within the wide range of reasonably professional assistance.” *Butler*, 286 S.C. at 445, 334 S.E.2d at 816. “The burden of rebutting this presumption ‘rests squarely on the [applicant],’ and ‘it should go without saying that the absence of evidence cannot overcome it.’” *Dunn v. Reeves*, No. 20-1084, 2021 WL 2742771, slip op. at *4 (U.S. July 2, 2021) (internal brackets omitted) (quoting *Burt v. Titlow*, 571 U.S. 12, 22–23 (2013)). In fact, “even if there is reason to think that counsel’s conduct ‘was far from exemplary,’ a court still may not grant relief if ‘the record does not reveal’ that counsel took an approach that *no competent lawyer would have chosen*.” *Id.* (emphasis added) (internal brackets omitted) (quoting *Titlow*, 571 U.S. at 23–24).

“When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109–10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” *Yarborough*, 540 U.S. at 6; see also *Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”).

Review of counsel’s actions is hallmarked by deference, as “it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is

all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." *Strickland*, 466 U.S. at 689. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. *Strickland*, 466 U.S. at 688–89; see *id.* at 691 ("Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another."). "Defense lawyers have 'limited' time and resources, and so must choose from among 'countless' strategic options." *Reeves*, slip op. at *4 (quoting *Harrington*, 562 U.S. at 106–107). "Such decisions are particularly difficult because certain tactics carry the risk of 'harm[ing] the defense' by undermining credibility with the jury or distracting from more important issues." *Id.* (quoting *Harrington*, 562 U.S. at 108). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. *Strickland*, 466 U.S. at 689. The ultimate question is not whether counsel's actions were reasonable, but whether there is any reasonable argument counsel satisfied *Strickland*'s deferential standard.

The second, or "prejudice" prong of *Strickland* is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. *Id.* at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance 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.E.2d at 625. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." *Strickland*, 466

U.S. at 694; *see id.* at 695 (explaining that, where a defendant challenges his conviction, he must show that there exists “a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt”).

In determining prejudice, the reviewing court must consider the totality of the evidence before the jury. *Id.* at 695. It is not sufficient “to show [counsel’s] errors had some conceivable effect” on the outcome of the proceeding—counsel’s errors must be “so serious as to *deprive the defendant of a fair trial.*” *Id.* at 687 (emphasis added). “An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment.” *Id.* at 691. Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

The *Strickland* standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690. Courts must be wary of second-guessing counsel’s trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant’s burden of proving both *Strickland* components is heavy in light of the strong presumption that counsel’s conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. Representation is constitutionally ineffective only if counsel’s conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. *Id.* at 686; *see Nix v. Whiteside*, 475 U.S. 157, 175 (1986) (noting that under *Strickland*, the “benchmark” of the right to counsel is the “fairness of the adversary proceeding”); *cf. United States*

v. Morrow, 977 F.2d 222, 229 (6th Cir. 1992) (“[T]he threshold issue is not whether [the applicant’s] attorney was inadequate; rather, it is whether he was so *manifestly* ineffective that defeat was snatched from the hands of probable victory.”)

Failure to be Adversarial to the State

Applicant alleges trial counsel was ineffective in her cross-examination of State’s witnesses, citing, “*Lucas Bailey v. State* No. 26975.” However, Applicant does not state with any specificity which State’s witness(es) counsel failed to effectively cross-examine, how the case cited in his application is applicable to his allegations of ineffective assistance of counsel, or how counsel’s alleged errors prejudiced Applicant.

The manner and extent of cross-examination should not be second-guessed. *See Sallie v. North Carolina*, 587 F.2d 636, 640 (4th Cir. 1978) (*Marzullo* is not intended to promote judicial second guessing on questions of strategy as basic as handling of a witness); *United States v. Nersesian*, 824 F.2d 1294, 3121 (2d Cir. 1987) (“decisions whether to engage in cross-examination and if so to what extent and in what manner, are . . . strategic in nature” and will not support an ineffective assistance claim); *Gustave v. United States*, 627 F.2d 901, 906 (9th Cir. 1980). *Strickland* requires that trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel’s conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. *Strickland*, 466 U.S. at 688-689.

Therefore, Respondent submits Applicant’s allegations lack merit. For the above-reasons, Applicant cannot satisfy either requirement of *Strickland*, nor show trial counsel was ineffective. However, Respondent requests an evidentiary hearing be held on this issue to fully resolve the matter. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an

evidentiary hearing shall be held when a PCR application “alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court”).

V. Motion for a More Definite Statement

The State submits Applicant’s allegations of ineffective assistance of counsel are without merit. However, it is impossible for the State to adequately respond to these claims because Applicant has failed to explain with specificity the facts upon which his claims are based. S.C. Code Ann. § 17-27-50 (requiring an applicant to “*specifically set forth the grounds upon which the application is based*”)(emphasis added); *see also Welch v. MacDougall*, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) (stating it is incumbent upon an applicant to make at least a *prima facie* showing entitling him to relief before an evidentiary hearing will be scheduled and held); *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”); Rule 8(a)(2), SCRPC (requiring all civil pleadings to include “a short and plain statement of the facts showing that the pleader is entitled to relief”); Rule 71.1(d), SCRPC (“Counsel shall insure that all available grounds for relief are included in the application and shall amend the application if necessary.”).

Accordingly, the State moves for Applicant, through appointed counsel, to amend his application to provide specific claims and facts to support these vague allegations pursuant to Rule 12(e), SCRPC, and the Post-Conviction Procedure Act.

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. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file

amendments to this application. *See* Rule 11, SCRCF. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. *Id.* at 245, 834 S.E.2d at 203 (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.”).

If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, the State reserves the right to move to dismiss this allegation or claim. S.C. Code Ann. §§ 17-27-10 to -160; Rule 71.1, SCRCF; *see also* Rules 15(a)-(b), SCRCF. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. *See* Rule 15(a), SCRCF.

Pursuant to S.C. Code Ann. § 17-27-150, 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. The State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State. *See Love*, 428 S.C. 231, 834 S.E.2d 196.

VII. Response to Any and All other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

VIII. Conclusion

WHEREFORE, the State respectfully requests this Court grant its motion for a more definite statement and allow the State an opportunity to respond to the more definite statement, if necessary. Once a more definite statement is provided, the State requests an evidentiary hearing be held on the claims of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON

Attorney General

W. JEFFREY YOUNG

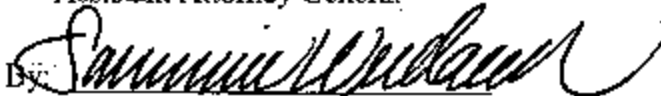
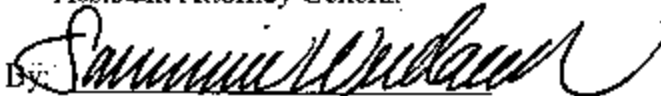
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON

Senior Assistant Deputy Attorney General

SAMANTHA J. WEIDAUER

Assistant Attorney General

By: 

ATTORNEYS FOR THE STATE

Office of the Attorney General

P.O. Box 11549

Columbia, S.C. 29211

June 8, 2022

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

Kelvin Gantt, #380542

Applicant,

 $\ddot{V}_i$

State of South Carolina

Respondent,

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL
CIRCUIT

Case No.: 2022-CP-15-00086

Certificate of Service by Mail

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 to the Application for Post-Conviction Relief and Motion for More Definite Statement in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

James K. Falk, Esquire
Falk Law Firm, LLC
Post Office Box 1058
Charleston, SC 29402

DATED this 8th day of June, 2022.

Vicki Hall

Vickie Hall, Legal Assistant
For Respondent

2022 JUN 17 AM 9:44

COLLETON COUNTY
COMMISSIONERS COURT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF COLLETON	)	FOR THE FOURTEENTH JUDICIAL CIRCUIT
	)	
Kelvin Gantt, SCDC #380542,	)	Case No. 2022-CP-15-00086
	)	
Applicant,	)	ORDER GRANTING RESPONDENT'S
	)	MOTION FOR A MORE
v.	)	DEFINITE STATEMENT
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

Before this Court is Applicant Kelvin Gantt's application for post-conviction relief and Respondent's return and motion for a more definite statement. For the reasons set forth below, Respondent's motion for a more definite statement is **GRANTED**.

COLLETON COUNTY
 COMMON PLEAS COURT
 2022 JUL 11 AM 9:22

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections. Applicant was arrested on June 28, 2017, following an investigation into the shooting of Herbert Brown. During its October 2017 term, the Colleton County Grand Jury indicted Applicant for attempted murder (2017-GS-15-00700) and possession of weapon during a violent crime (2017-GS-15-00699).

On June 17-19, 2019, Applicant proceeded to a jury trial before the Honorable Stephen H. John. Helen Dovell, Esquire, represented Applicant. Ceth Utsey and Katherine Orville of the Fourteenth Circuit Solicitor's Office prosecuted the case. The jury found Applicant guilty as indicted. Judge John sentenced Applicant to concurrent sentences of twenty years for the attempted murder charge and five years for the weapons charge.

II. Allegations Raised and Relief Sought in Post-Conviction Relief Application

Applicant timely commenced this PCR action on February 9, 2022. Applicant asserts he is being held in custody unlawfully, alleging:

1. Ineffective assistance of counsel

a. "Trial counsel was ineffective in cross-examination of state witness"

i. "Case: *Lucas Bailey v. State*, No. 26975"

Applicant requests relief as follows:

"Reversal of conviction, vacation of sentence".

Before this Court are the Colleton County Clerk of Court records regarding the subject convictions; Applicant's records from the South Carolina Department of Corrections; and the records of the current PCR action.

III. Respondent's Motion for a More Definite Statement

The Uniform Post-Conviction Procedure Act requires a PCR applicant to "specifically set forth the grounds upon which the application is based." S.C. Code Ann. §17-27-50. Where a PCR applicant fails to adequately set forth the grounds upon which he seeks relief, the court may at any time prior to entry of judgment "issue orders for amendment of the application or any pleading or motion[.]" S.C. Code Ann. §17-27-70(a); *See also* Rule 12(e), SCRCP (permitting the Court to order a more definite statement if a pleading "is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading."). The Court may, in its discretion, fix the time for which a more definite statement shall be made. Rule 12(e), SCRCP.

Based upon its review of the allegations, this Court finds that Applicant's initial allegations fall short of meeting the specificity requirements of the Uniform Post-Conviction Procedure Act requirement because they are too vague and provide no specific facts to support the claims. Therefore, a more definite statement is necessary and Applicant, through appointed counsel, shall amend the application where necessary to set forth *specific facts* upon which the allegations are based. *See* Rule 71.1(d), SCRCP ("Counsel shall insure that all available grounds for relief are included in the application and shall amend the application if necessary); *see also Coardes v. State*, 262 S.C. 493, 497, 206 S.E.2d 264, 265 (1974) ("[M]ere allegations of incompetency or

ineffectiveness of counsel will not ordinarily suffice as grounds for a new trial under the Post-Conviction Procedure Act. The bare assertion by the appellant that he was deprived of adequate and effective assistance of counsel is insufficient.”).

IV. Conclusion

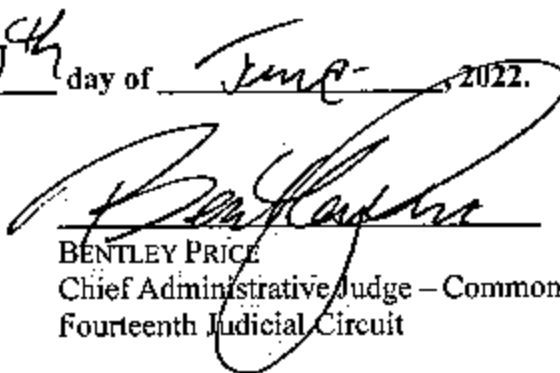
Based upon the foregoing, this Court finds and concludes that Applicant has not provided adequately specific allegations to support his request for post-conviction relief. Therefore, Respondent's motion for a more definite statement is **granted** and Applicant, through counsel, shall file an amended application for post-conviction relief within ninety days of service of this order. Applicant is cautioned that failure to comply with this order may result in such orders as it deems just, including the evidentiary hearing being continued, the tardy amendments being stricken, or dismissal of the action for post-conviction relief.

IT IS THEREFORE ORDERED:

1. Applicant shall have ninety days from the date of this order to file an amended application for post-conviction relief that specifically states the allegations upon which his claims rest.
2. Once amended, an evidentiary hearing on the allegations shall be convened.

AND IT IS SO ORDERED this 20th day of June, 2022.

Collier, South Carolina


BENTLEY PRICE
Chief Administrative Judge – Common Pleas
Fourteenth Judicial Circuit

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF COLLETON	)	FOR THE FOURTEENTH JUDICIAL CIRCUIT
	)	
	)	
Kelvin Gantt. #380542.	)	Case No.: 2022-CP-15-00086
Applicant.	)	
v.	)	APPLICANT'S AMENDED APPLICATION
State of South Carolina.	)	
Respondent.	)	
	)	

NOW COMES Applicant, Kelvin Gantt. amending his application filed February 9, 2022.

In addition to the allegations raised in his initial application, Mr. Gantt. through PCR Counsel, submits the following:

1. Ineffective assistance of counsel for failure to investigate the States witnesses before trial, including lay witnesses and investigators.
2. Ineffective assistance of counsel for failure to properly prepare Applicant's alibi witness to testify.
3. Ineffective assistance of counsel for failure to investigate GSR and fingerprint evidence.
4. Ineffective assistance of counsel for failure to obtain a favorable plea offer.
5. Ineffective assistance of counsel for failure to object to speak the truth language. (Tr. 79).
6. Ineffective assistance of counsel for failure to properly cross-examine and impeach Ms. Holmes and Mr. Brown.

Conclusion

Based upon the above, Mr. Gantt requests that this Court grant relief, vacate the convictions, and remand the case to the court of general sessions for a new trial.



Chelsey F. Marto
Attorney at Law
S.C. Bar No. #104191

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For Applicant Kelvin Gantt

April 30, 2024

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

) IN THE COURT OF COMMON PLEAS
) FOR THE FOURTEENTH JUDICIAL CIRCUIT
)
)

Kelvin Gantt, #380542,
Applicant.

) Case No.: 2022-CP-15-00086
)

v.
State of South Carolina,
Respondent.

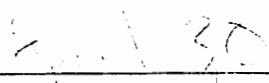
) Affidavit of Service by Mail
)
)
)

1. I am the attorney for Applicant in the above-captioned matter.
2. Regular communication by mail exists throughout the state of South Carolina and this is a proper circumstance of service by mail.
3. I have this day served a copy of the Amended Application on the above-captioned matter on the following person by depositing the same in the United States mail with the proper postage affixed thereto:

**Office of the Attorney General
Attn: Bryan Hall, Esquire
PCR Division
P.O. Box 11549
Columbia, SC, 29211**



Attorney for Applicant


_____, 2024

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

) IN THE COURT OF COMMON PLEAS
) FOR THE FOURTEENTH JUDICIAL CIRCUIT
)
)

Kelvin Gantt, #380542,
Applicant,

) Case No.: 2022-CP-15-00086
)

v.

State of South Carolina,
Respondent.

) **CONSENT ORDER**
) **SUBSTITUTING COUNSEL**
)
)

This matter comes before the Court by way of a post-conviction relief application. Mr.

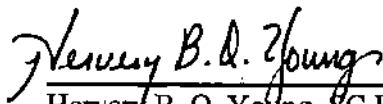
James Falk was originally appointed to represent Applicant in this matter. Mr. Falk is now deceased and unable to fulfill the requirements of his contract with the South Carolina Commission on Indigent Defense (SCCID). SCCID petitions to substitute Chelsey Marto, Esq. (Post Office Box 8795, Columbia, SC, 29201, info@chelseymarto.com) as the new attorney for applicant Kelvin Gantt. Ms. Marto agrees with the representation.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT Chelsey Marto, Esq., is substituted in as counsel of record.

AND IT IS SO ORDERED this 10 day of July, 2023.



CARMEN T. MULLEN
Chief Judge for Common Pleas
Fourteenth Judicial Circuit



Hervey B. O. Young, SC Bar #7013
SCCID, General Counsel

/s Chelsey F. Marto
Chelsey F. Marto, SC Bar #104191

2023 JUL 18 AM 11:33

COLLETON COUNTY
COMMON PLEAS COURT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
2022-CP-15-00086

VS.

State of South Carolina,
Defendant.

TRANSCRIPT OF HEARING

B E F O R E:

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

For the State -
Bryan T. Hall, Esquire
South Carolina Attorney General's Office
PO Box 11549
Columbia, South Carolina 29211
803-734-3737

Cathy L. Young, CVR-M
Official Circuit Court Reporter
Post Office Box 4604
Beaufort, South Carolina 29903

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No exhibits were introduced in this proceeding.

P R O C E E D I N G S

* * * * *

Kelvin Gant,
having been duly sworn,
testifies as follows:

MR. HALL: May it please the Court?

Assistant Attorney General Bryan Hall for the State,
Your Honor. This is the case of Kelvin Gant vs.
State of South Carolina, docket number 2022-CP-15-
00086. Back in October of 2017, the Colleton County
Grand Jury indicted Mr. Gant for attempted murder.
That's indictment number 2017-GS-15-00700. And
possession of a weapon during the commission of a
violent crime, 2017-GS-15-00699. Mr. Gant proceeded
to a jury trial between June 17th and 19th of 2019,
before the Honorable Steven John. Assistant
Solicitors Ceth Utsey and Katherine Orville
prosecuted the case and Mr. Gant was represented by
Helen Dovell. Mr. Gant was found guilty and Judge
John sentenced him to concurrent sentences of 20
years for attempted murder and five years for the
weapons charge. A notice of appeal was filed on
June 27th of 2019. On appeal, Mr. Gant was
represented by Appellate Defender Kathrine Hudgins,

1 who raised the following issue. Get the trial judge
2 to use his discretion by not properly evaluating the
3 Culp factors and admitting prior -- his prior
4 conviction for possession of Cocaine. The Court of
5 Appeals affirmed the convictions and determined the
6 trial judge had conducted the balancing test. The
7 remittitur was sent on November 24th of 2021, and
8 this PCR was timely filed on February 9th of 2022.
9 The State filed its return on June 17th of 2022,
10 moving for a more definite statement. On July 1st,
11 2022, the Honorable Bentley Price issued an order
12 granting the State's motion for a more definite
13 statement. And this application was amended and Mr.
14 Gant is proceeding on the following allegations:
15 Ineffective assistance of counsel for failure to
16 investigate the State's witnesses before trial,
17 including lay witnesses and investigators; failure
18 to properly prepare Mr. Best's alibi witnesses to
19 testify; failure to investigate gunshot residue and
20 fingerprint evidence; failure to obtain a favorable
21 plea offer; failure to object to truth-seeking
22 language in the Solicitor's opening statement; and
23 failure to cross-examine and impeach Mrs. Holmes and
24 Mr. Brown who was the victim in this case. Mr. Gant
25 is present and represented by Chelsey Marto. And,

1 Your Honor, we do have a court packet, if you would
2 like, that contains the records from his subject
3 convictions as well as the records from his current
4 PCR action.

5 THE COURT: Okay.

6 MR. HALL: As well as his appellate
7 records, I'm sorry.

8 And I will allow Ms. Marto to clarify
9 anything that I may have stated.

10 THE COURT: Ms. Marto?

11 MS. MARTO: Yeah, good afternoon, Judge.
12 We would just call Kelvin Gant to the stand.

13 THE COURT: All right.

14 **Kelvin Gant,**
15 **having been duly sworn,**
16 **testifies as follows:**

17 * * * * *

18 CLERK: You need to speak right into that
19 mic and could you state your name and spell it for
20 the record?

21 MR. GANT: Kelvin Gant, K-E-L-V-I-N
22 G-A-N-T.

23 **DIRECT EXAMINATION**

24 BY MS. MARTO:

25 Q. Good afternoon. How are you doing today?

1 A. I'm fine.

2 Q. Yeah. So, what did you go to trial on? What
3 charges?

4 A. Attempted murder.

5 Q. Okay. Who were you represented by?

6 A. Helen Dovell.

7 Q. Okay. And how was your working relationship
8 with her?

9 A. It was nice.

10 Q. How did you feel she did at trial?

11 A. Well, she did pretty well. She did pretty well,
12 but it's certain things like with the witness, Miss
13 Karen Holmes, when -- and it's on the record with
14 dispatch when this -- she called dispatch and
15 dispatch answered, did she seem as sure and she said
16 she didn't know. Dispatch asked her did you see
17 which way the shooter went? She said she did not
18 know, she was inside. And on the day of my trial,
19 June -- what was it -- June, I know it was June --
20 June 19, 2019, and she took the stand under oath and
21 literally said that she'd seen me under a spotlight,
22 you know, like two houses down. And so, if my
23 lawyer, Ms. Dovell, would of impeached her, it would
24 have came out more differently if she'd showed the
25 jury that this woman was lying under oath and it's

1 on the docket. And you know, I think it would have
2 been a more fair trial with the other half as her
3 being a main witness in my case.

4 Q. So, the first time you heard the witness say you
5 were right in front of her was at trial, right?

6 A. Uh huh.

7 Q. You didn't see any of that in any of the
8 discovery?

9 A. Right.

10 Q. And you think counsel should have done a better
11 job of impeaching her when it came to that point?

12 A. Yes, ma'am.

13 Q. Okay. How do you think that impacted your
14 trial?

15 A. It impacted it for the jury to see more of me
16 guilty instead of if she would've shown them that
17 and pressed her more and showed the jury that this
18 woman was lying under oath it maybe would've changed
19 the outcome. It would have been a more balanced
20 fair trial.

21 Q. Now you said you wanted counsel to investigate
22 the State's witnesses, right?

23 A. Mmm-hmm.

24 Q. What do you think that she should have
25 investigated?

1 A. Oh, she should have investigated more of the
2 crime scene with the officers that arrested me on
3 behalf of them not GS9 testing me, not getting the
4 gun shell casings, you know, testing them for
5 fingerprints, even the bullets that was in the Dodge
6 car so called being. She should have been more on
7 them to get those, 'cause with that -- I think
8 that's prejudicing me on behalf because maybe the
9 fingerprints of whoever did it is still on those
10 casings of the bullet that's inside the car.

11 Q. So, you think she should have investigated like
12 the physical evidence at the scene?

13 A. Uh-huh.

14 Q. Did you want counsel to talk to the State's
15 witnesses beforehand?

16 A. Yes, yes, 'cause it would have came out better
17 instead of right at trial.

18 Q. Now, you presented an alibi defense at trial,
19 correct?

20 A. Mmm-hmm.

21 Q. Okay. And who testified on your behalf?

22 A. Jaleel Dubois.

23 Q. And how do you think that testimony went?

24 A. It went fine.

25 Q. Do you think that there should have been more

1 preparation?

2 A. Yes, that too, yes, in a way. She could've met
3 up with him a little more earlier. Yes, come and
4 visit him to see what was going on.

5 Q. Now, you stated that you wanted counsel to
6 impeach Ms. Holmes, right?

7 A. Mmm-hmm. Yes, ma'am.

8 Q. You also stated in your amended application you
9 wanted her to impeach Mr. Brown as well, is that
10 correct?

11 A. Mmm-hmm.

12 Q. And what did you want her to do with Mr. Brown?

13 A. Just, she could've went more at him at angles,
14 like you know when he was showing the placing of the
15 scenes or whatever. Like, if the person shot from
16 this angle, how can the bullet casings get up to
17 this amount where there was at, you know. And even
18 with his diabetes, you know, all of that, you know.
19 It could have been beneficial for me if she'd more
20 pressed him with the issue of.

21 Q. And again, that's more doing with like
22 placement, right?

23 A. Yes, placements, Mmm-hmm.

24 Q. Now, did you get a plea offer in this case?

25 A. No, ma'am.

1 Q. Did you want a plea offer in this case?

2 A. Yes, ma'am.

3 Q. Did counsel ever get you a plea offer?

4 A. No, ma'am.

5 Q. And the last issue I have for you is Page 79 of
6 the transcript. Starting around line 16, it says
7 however, at the end of this trial, I'm going to come
8 back and we're going to do a closing argument and I
9 am going to ask you all one thing. The only thing
10 that I want and it's you all's job to do this,
11 that's why y'all are here. The only thing I want is
12 the truth, for you to listen to the witnesses,
13 listen to Mr. Brown who just stayed awake the entire
14 time so he could speak his truth today. Thank you.
15 Did you want counsel to object to that?

16 A. Yes.

17 Q. Okay. You think that that was an appropriate
18 statement by the State?

19 A. No, because it wasn't, like it wasn't ---
20 everything wasn't the truth.

21 Q. You think that it was burden shifting for the
22 State to say I want you to speak the truth?

23 A. Yes, because Ms. Karen Holmes didn't speak the
24 truth.

25 Q. No further questions, Your Honor.

1 MR. HALL: Briefly, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. HALL

4 Q. Mr. Gant?

5 A. Yes, sir.

6 Q. You know the victim in this case, Mr. Brown, Mr.
7 Herbert Brown?

8 A. Yes.

9 Q. And how long have you known him?

10 A. I known him for probably like four or five
11 years.

12 Q. Okay. And didn't Mr. Herbert Brown testify at
13 your trial that you shot him?

14 A. Yes.

15 Q. Okay. And just to clarify, you testified on
16 direct that you believe your attorney did well at
17 trial?

18 A. Yes, on certain matters.

19 Q. Okay. And -

20 MR. HALL: No further questions, Your
21 Honor.

22 MS. MARTO: No redirect.

23 THE COURT: Mr. Gant, when you spelled your
24 name, you spelled it with one t, is that -- is
25 it with one t or two ts?

1 MR. GANT: One t.

2 THE COURT: G-A-N-T

3 MR. GANT: Yes, sir.

4 THE COURT: Okay, because everything has
5 two ts on it.

6 MR. GANT: I don't know why they do it.

7 THE COURT: Okay. All right, thank you.
8 You may step down.

9 MS. MARTO: We'd call Helen Dovell, Judge.
10 (Swears witness.)

11 **Helen Dovell,**
12 **having been duly sworn,**
13 **testifies as follows:**

14 * * * * *

15 CLERK: Get as close to the mic as possible
16 and could you state and spell your name for the
17 record, please?

18 THE WITNESS: My name is Helen Dovell. My
19 first name is H-E-L-E-N, and my last name is Dovell
20 D as in delta, O, V as in victor, E-L-L.

21 **DIRECT EXAMINATION**

22 BY MS. MARTO:

23 Q. Afternoon, ma'am.

24 A. Good afternoon.

25 Q. You represented Mr. Gant at the trial, correct?

1 A. I did.

2 Q. Okay, and roughly how long did you have this
3 case before the trial?

4 A. About two years. The file was opened in the
5 summer of 2017.

6 Q. Roughly how many times did you meet with him?

7 A. Altogether, at least 15. When Kelvin was in
8 jail, I want to say I met with him about four times.
9 He posted bond, and after that, we spoke on the
10 phone probably no fewer than ten to 15 times. We
11 also met in person but mostly we spoke on the phone.

12 Q. Was there a plea offer in this case?

13 A. There was an offer but not one that Kelvin
14 thought was acceptable. In looking back over my
15 notes, at one point earlier on in the case before
16 all discovery was in, I have a note that Steve
17 Knight, who was originally prosecuting the case, had
18 mentioned something offhand. It wasn't in writing,
19 it wasn't formal, it was in a phone call. He said
20 something, like, maybe I could recommend 10 years.
21 And I would have relayed that to Kelvin. Later on,
22 as things -- as time went by, discovery is going on,
23 Steve Knight eventually talks to Herbert Brown and
24 Mr. Brown says that he wants 20 years. And again,
25 if 10 years is not going to work, certainly not 20.

1 And so, I would have relayed that to Kelvin as well.
2 When Ceth Utsey took over the case, we had like this
3 ambiguous 20 years. Again, nothing in writing,
4 nothing formal. I told Mr. Utsey that I didn't
5 think that that was like a real offer, the 20 years
6 that Steve had talked about. I asked Ceth to please
7 consider ABHAN for a range of five to 10 years,
8 because I believe that would have been acceptable to
9 Kelvin. And Mr. Utsey was not -- he said he would
10 look into it, he was not on board with that
11 ultimately. If he had been, I certainly would have
12 relayed that.

13 Q. So, how do you think the trial went overall?

14 A. Overall, the trial went about as expected. I
15 think there are always some things that I could have
16 done better. Specifically, in looking back at the
17 record and the points that you've raised, I do think
18 I should have objected to the truth-seeking
19 language. I didn't recall that until it was brought
20 to my attention. I don't know why I didn't object
21 at the time. If I had to speculate, if I can, it
22 probably would be because I didn't want to draw
23 attention to that right at the close of the
24 solicitor's opening statement and right before I'm
25 getting ready to go in front of the jury. I think

1 the law -- the case law is very clear about truth
2 seeking language when it comes from the trial judge
3 and opening remarks, that it's not proper for a
4 judge to state that it is the job of the jury to
5 seek the truth. And for that, I most certainly
6 would have objected. But again, I did not during
7 the solicitor's opening statement.

8 As far as Ms. Holmes' testimony, I could have
9 tried to refresh her recollection. When I look back
10 at the record, she testified I don't know when I
11 asked her or I don't remember when I asked her about
12 talking with officers or writing statements, and I
13 think that I could have stopped to refresh her
14 recollection by maybe playing the body cameras of
15 the officers. I did not do that.

16 As far as the 911 call though, I do think I made
17 good use of the 911 call, because she very clearly
18 says, I don't know, I don't know, I don't know, and
19 that was in evidence already. I don't feel like I
20 needed to necessarily ask her about that, but it was
21 argued during closing that she said whatever, as she
22 doesn't know who the shooter was, where the shooter
23 went, and I argued that during closing.

24 For Herbert Brown, I -- there just wasn't a lot
25 I could try to impeach him with. I did investigate

1 in the community. I talked to some people who lived
2 in Ruffin and nobody had anything to say about Mr.
3 Brown that was bad. There was some talk about maybe
4 he was -- he had a shady business side in my
5 conversation with my client and his family, but
6 there was nobody who I could get to come forward who
7 would say, yeah, he's selling drugs, or yeah, maybe
8 there's some shady dealings. So, I didn't really
9 get into that. I did ask him -- I cross examined
10 him on his health, whether he was on drugs -- or --
11 and he was like what do you mean? And so, I asked
12 him whelp, you took medication, you had diabetes and
13 maybe, you know, and he said, oh yeah. What I could
14 have done better is that when -- in the discovery,
15 there's no written statement from Herbert Brown, and
16 before the trial, the State met with Mr. Brown and
17 got like a better statement from him. I think by
18 the State prior to trial, I'm talking about Mr.
19 Utsey. Steve Knight had talked with Mr. Brown a
20 couple of times over the years, and he gave me some
21 loose information, but it really wasn't until right
22 before trial that the State really met with him and
23 I got a more detailed statement. I believe I found
24 out maybe a week or so before trial that Karen
25 Holmes was now saying that she recognized Kelvin and

1 saw him walking down the street, down Smiley Road
2 under the lamplight and that really was the first
3 time that I had heard that. And Mr. Brown had never
4 veered from what he had said initially, because
5 there's body camera footage when the officers arrive
6 on scene and Mr. Brown says something along the
7 lines of he came at me at an angle. And up until
8 the day of trial, that was my understanding is that
9 Mr. Brown came -- was standing in front of a chair,
10 next to a Dodge Charger and the shooter came at him
11 at an angle. At trial, he testified that the
12 shooter was standing right in front of him, about
13 five feet away, and that was the first time I'd
14 heard that. So, at trial kind of in surprise to me,
15 I continued to ask him questions like, right in
16 front of you? Show me on the map. Where was he
17 right in front of you? And perhaps what I should
18 have done is said, well, did you tell the solicitor
19 that Kelvin was right in front of you when he shot
20 you? And if he had answered yes, maybe I could have
21 asked for an in-camera hearing to get the solicitor
22 to say why he didn't tell me specifically that
23 Kelvin was directly in front of him, or maybe Mr.
24 Brown didn't tell the solicitor that, I don't know,
25 but I think I could have done a better job by not

1 really belaboring the issue. I was very surprised
2 that he said right in front, because I wanted to
3 make -- my plan was to get him to say on cross-
4 examination that he came at me at an angle. And
5 then to make an issue of the fact that there was
6 this photo of the Dodge Charger, where the only
7 angle the bullet could have come from was directly
8 from the front. And so, when he said he was right
9 in front of me, it really, it threw me for a loop
10 and that put a dent in my direct or in my cross-
11 examination.

12 Q. So you agree with Mr. Gant in your assertion
13 that this was brand new information about the
14 placement of where Mr. Gant was versus Mr. Brown?

15 A. Yes, that was the first time where -- that I
16 heard it. I heard at trial he said that he was
17 directly in front of me. And I don't believe the
18 State actually elicited that on direct. Like --
19 that he just said that he was in front -- he shot
20 me. I don't remember exactly what's in the
21 transcript, but I don't think he specified on direct
22 that Kelvin was directly in front of him. And so, I
23 asked the question and that I probably could have
24 done a better job of -- with that issue.

25 Q. Did you investigate any GSR fingerprint evidence

1 in this case?

2 A. No.

3 Q. Did you think that was an option in this case?

4 A. I didn't think that it was necessary, I thought
5 what was more telling is that law enforcement did
6 zero investigation on this case, that law
7 enforcement knew exactly who Mr. Brown was talking
8 about, they knew who the suspect was, and they
9 didn't go to where Kelvin was that night. They
10 didn't go to where he was earlier in the evening.
11 They didn't go to the address on Borders Road that's
12 actually on his DMV information, and that's why they
13 have no GSR is because they did not arrest Kelvin
14 until a day or two later. So, really there was no
15 reason at that point for GSR testing, because GSR
16 can be washed off, it can be transferred, I didn't
17 see any reason to have Kelvin or his clothes or
18 anything tested for GSR. And as far as fingerprints
19 go, honestly, I didn't think it was an issue. I did
20 cross examine one of the officers about did you have
21 the casings tested for fingerprints, and I think the
22 officer was very evasive. He was like I don't know,
23 it's up to investigations. When of course there was
24 no detective that was ever appointed to this case.
25 Q. And your defense at trial was an alibi defense,

1 correct?

2 A. That's right.

3 Q. And who did you have testify for that alibi
4 defense besides Mr. Gant?

5 A. Jaleel Dubois.

6 Q. Did you talk to him beforehand?

7 A. I did talk to him beforehand. The first time I
8 was really aware of Jaleel as an alibi witness was
9 probably a few months, two months before trial. He
10 came to my office on -- I just looked at this, on
11 April 8th of 2019 and he came to the office with
12 Kelvin. I had met with him individually by himself,
13 not with Kelvin in the room, and he confirmed that
14 Kelvin was with him that night at Reuben
15 Boatwright's house and that he took Kelvin to his
16 auntie's house on Borders Road probably about 11:20
17 or so. I did try numerous times after that to get
18 Jaleel to speak with me, his voicemail would be
19 full, I couldn't find him, couldn't get him in. We
20 really like never even served him personally with a
21 subpoena. I believe the subpoena was properly served
22 on him, because it was at his residence, but Jaleel
23 at some point did not seem quite as eager to testify
24 although he did come to court and he did testify,
25 but it was very difficult for me to get in contact

1 with him leading up to trial.

2 Q. And did you talk to any of the State's witnesses
3 prior to trial? Did you investigate them further
4 beyond just reviewing the discovery?

5 A. No.

6 Q. Do you think that specifically when it came to
7 Ms. Holmes and Mr. Brown, if you did, then you maybe
8 would have been more prepared for cross-examination?

9 A. Perhaps. I don't have a note about it, but I
10 think at some point I did ask the State whether I
11 could meet with Mr. Brown and Ms. Holmes and they
12 weren't interested in talking to me and can't force
13 them to do that.

14 MS. MARTO: One moment, Your Honor.

15 Nothing further, Your Honor.

16 **CROSS-EXAMINATION**

17 BY MR. HALL:

18 Q. Ms. Dovell, did I say it right?

19 A. You did, Dovell.

20 Q. Ms. Dovell, how long have you been practicing
21 law?

22 A. Nineteen years.

23 Q. Okay. And how much of that time has been
24 devoted to criminal law?

25 A. I'll say about 16.

1 Q. Okay. And you mentioned on direct that there
2 was an offer made by the solicitor and Mr. Gant
3 rejected it, is that right?

4 A. That's right. I mean -- for as much, as much as
5 it was an offer, it was not anything that was ever
6 formal. I passed along to Kelvin, like, well, he
7 said he could maybe offer 10 like in the beginning
8 or he could recommend 20 that, you know, that was
9 never anything we were interested in, so we didn't
10 pursue it further.

11 Q. And regarding the evidence in this case, the
12 state's main evidence in this case is the testimony
13 from Mr. Brown who testified that Mr. Gant shot him,
14 right?

15 A. Correct.

16 Q. And also the testimony of Ms. Holmes who was
17 present at the scene and testified at trial that Mr.
18 Gant was the shooter?

19 A. Yes.

20 Q. Okay. And I want to ask you about your cross
21 examination of those two witnesses. First, Ms.
22 Holmes, you did testify -- I'm sorry, you did cross-
23 examine her at trial regarding her business
24 practice?

25 A. I did.

1 Q. And do you believe that cross-examination was
2 effective to impeach her credibility?

3 A. I think so.

4 Q. And regarding Mr. Brown, he testified that you
5 cross-examined him on the medications that he was
6 taking and his health. Do you believe that cross-
7 examination was effective?

8 A. I think that was as effective as it could have
9 been.

10 Q. And regarding the solicitor's opening
11 statements. You testified on direct that of most of
12 the case law addressing that issue deals with the
13 trial judge's comments of truth seeking and the
14 trial judge's charges to the jury?

15 A. That's my understanding, yes.

16 MR. HALL: Okay. No further questions,
17 Your Honor.

18 MS. MARTO: No redirect.

19 THE COURT: Thank you, you may step down.

20 THE WITNESS: Thank you, Judge.

21 MS. MARTO: No further witnesses, Your
22 Honor.

23 THE COURT: All right.

24 MR. HALL: Nothing further from the State,
25 Your Honor.

1 THE COURT: Any argument?

2 MR. HALL: Ms. Marto can go first since
3 they have the burden.

4 **CLOSING ARGUMENTS BY MS. MARTO**

5 MS. MARTO: Judge, good afternoon. We've
6 raised six issues in this amended application, and
7 we'd rest on the testimony that was given at today's
8 hearings, specifically I think counsel did
9 acknowledge they could have done a better job cross
10 examining Ms. Holmes and Mr. Brown, and that the
11 placement of where Mr. Gant was in association with
12 them was brand new information that should have been
13 investigated before the trial. And so, we certainly
14 don't abandon the rest of these issues, but those
15 are the two main ones we'd like to argue, and we
16 request you grant relief in this case on the bases.
17 Thank you.

18 **CLOSING ARGUMENTS BY MR. HALL**

19 MR. HALL: Judge, just briefly addressing
20 Ms. Marto's argument. Counsel testified that she
21 believed her cross-examinations were effective.
22 Regarding investigations in this case, she testified
23 that she believed law enforcement should have --
24 that law enforcement was responsible for
25 investigating. Your Honor, I want to address just

1 to put the arguments on the record regarding the
2 solicitor's statements during opening arguments.
3 Does Your Honor have a copy of the transcript before
4 you?

5 THE JUDGE: I do.

6 MR. HALL: All right. If you have the
7 record on appeal, it's -- if you're looking at the
8 record, it's record page 10 and it's transcript page
9 79.

10 THE JUDGE: Beginning with It happened?

11 MR. HALL: Beginning with line 16 through
12 23.

13 THE JUDGE: Well, I mean the page begins It
14 happened instantly.

15 MR. HALL: Oh, yes, sir.

16 THE COURT: Okay. Line 16.

17 MR. HALL: Yes, sir. Line 16 through 23.
18 The real issue regarding that opening remark is line
19 21, I want is the truth. Where the Solicitor says
20 the only thing I want is the truth. Just to place
21 arguments on the record regarding that statement,
22 Your Honor, the standard for solicitor comments in a
23 trial is whether the Solicitor's comments so
24 impacted the trial with due process to result in a
25 denial of or so impacted the trial with unfairness

1 to result in a denial of due process, and that comes
2 from Fortune v. State.

3 Regarding the -- getting into the specifics
4 of what the solicitor said and what the case law
5 says about them, we would cite to State v. Aleksey,
6 343 S.C. 20, that's the 2000 Supreme Court case in
7 which the Supreme Court said that the trial judge's
8 truth-seeking language in their jury charge did not
9 result in prejudice and did not warrant reversal
10 where the charge was not given in the context of the
11 State's burden of proof. It was not given in the
12 charge regarding direct and circumstantial evidence.
13 Again, we would distinguish the Solicitor's comments
14 here from the holding in Aleksey, because one, these
15 comments were not made by the trial judge, they were
16 made by the Solicitor in opening, and the trial
17 judge generally tells the jurors not to consider the
18 statements of counsel as evidence in the case. And
19 so, there's no prejudice regarding Mr. Gant in that
20 regard. I would also argue State v. Busse (Ph), 439
21 S.C. 104. That's a 2023 Supreme Court case in which
22 the Supreme Court said essentially that the
23 solicitor should refrain from using first person
24 language; however, the court in that case did not
25 reverse the defendant's conviction in that case,

1 because the Solicitor -- the Supreme Court found
2 that the Solicitor's comments in that case
3 constituted -- by speaking in first person, the
4 Solicitor was speaking on behalf of the State as an
5 advocate and was not interjecting their own personal
6 views into their argument. And so, here we would
7 argue that the Solicitor by stating I and using that
8 first person language, they were speaking as an
9 advocate and the truth seeking language here did not
10 prejudice Mr. Gant in any way. And we would ask
11 that you deny his application on those grounds.
12 Your Honor, I do have clean copies of both the Busse
13 and Aleksey case if you would like a copy of those
14 to take a look at.

15 THE COURT: Okay.

16 MR. HALL: Your Honor, we're handing up the
17 Busse and the Aleksey cases, if you want to take a
18 look at those.

19 THE COURT: Thank you.

20 **REBUTTAL ARGUMENTS BY MS. MARTO**

21 MS. MARTO: Judge, just briefly in reply to
22 that issue, I think counsel probably testified that
23 A) you know, she should have objected in hindsight,
24 and B) she didn't have a basis for failing to
25 object, so we would acknowledge that as being, you

1 know, deficient performance. And I think the court
2 has made it quite clear that speak the truth
3 language is not permissible. I do think it
4 constitutes burden shifting or at least can
5 constitute burden shifting, and that counsel should
6 have objected to it regardless if it was the court
7 or the state says it. And it's our position that
8 it's prejudicial in this case. And so, for that we
9 would just request you grant relief.

10 **REBUTTAL RESPONSE BY MR. HALL**

11 MR. HALL: Judge, if I could respond
12 briefly to that argument. The Solicitor's comments
13 don't constitute burden shifting in this context.
14 If you read the opinion from Aleksey, the court in
15 Aleksey said that truth-seeking comments amount to
16 burden shifting when they're stated by the trial
17 judge in the actual charging of law, and they're
18 stated in the context of the trial judge telling the
19 -- and the trial judge explaining to the jury the
20 burden of proof in the case. As well as they are
21 improper if they are included in the direct and
22 circumstantial evidence charges. Here in this case,
23 the trial judge properly charged the jury on the
24 burden of proof in this case being the State's
25 burden beyond a reasonable doubt, as well as direct

1 and circumstantial evidence. The Solicitor's
2 comments appear -- an argument does not appear in
3 either the burden of proof or direct or
4 circumstantial evidence. As well -- further, the
5 solicitor's comments are distinguished from the
6 trial judge's charge under the law.

7 Further, the court in Aleksey also stated
8 that the charge, although this is not a charge, is
9 proper if given in the jury's role determining
10 witness credibility. And, Your Honor, if you read
11 the next line after the Solicitor made that comment,
12 he states for the jury to listen to witnesses.
13 Although the Solicitor's comment is not a jury on
14 the charge, the Solicitor's opening remarks is just
15 opening remarks and is not the trial judge's charge
16 on the law, we would ask for you to distinguish this
17 case from Aleksey in that regard. Further, counsel
18 testifying that although she believed that she
19 should have objected, again, the burden here in this
20 case is that the applicant must prove deficiency and
21 prejudice and there is no prejudice where under the
22 precedent of Aleksey that charge was -- that
23 statement was not made in a context of the State's
24 burden of proof of direct or circumstantial
25 evidence.

1 MS. MARTO: We just rest on prior
2 argumentation, Judge. Thank you.

3 THE COURT: I'll review it and issue an
4 Order.

5 MS. MARTO: Thank you, Judge.

6 MR. HALL: Thank you, Judge.

7 (Whereupon, the hearing was concluded.)

8 - - -END OF TRANSCRIPT- - -

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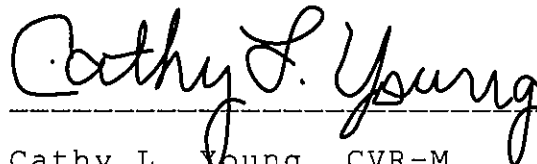
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CERTIFICATE OF REPORTER

I, Cathy L. Young, CVR-M, for the
Fourteenth Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a
true, accurate and complete Transcript of Record of
introduced in the hearing of the captioned case,
relative to appear, in the Circuit Court for
Colleton County, South Carolina, on the 6th day of
May, 2024.

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

A handwritten signature in black ink, reading "Cathy L. Young", is written over a horizontal dashed line.

Cathy L. Young, CVR-M

Court Reporter and Notary

Public in and for South Carolina

My Commission expires: 3-28-2029

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF COLLETON	)	The FOURTEENTH JUDICIAL CIRCUIT
Kelvin Gantt, SCDC #380542,	)	
	)	
Applicant,	)	
v.	)	ORDER OF DISMISSAL
	)	
State of South Carolina,	)	Civil Action No. 2022-CP-15-00086
	)	
Respondent.	)	

This matter came before the Court on May 6, 2024 for an evidentiary hearing pursuant to an application for post-conviction relief ("PCR") filed February 9, 2022 by Kelvin Gantt ("Applicant"). Applicant was present with counsel Chelsey F. Marto, Esq. Assistant Attorney General Bryan T. Hall represented Respondent.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections ("SCDC") serving a twenty (20) year sentence. In its October 2017 term, the Colleton County Grand Jury indicted Applicant for attempted murder (2017-GS-15-00700) and possession of a weapon during the commission of a violent crime (2017-GS-15-00699). These charges arose from a shooting incident in which Herbert Brown (victim) was shot on or around June 24, 2017. On June 17-19, 2019, Applicant proceeded to a jury trial before Circuit Judge Stephen H. John. Assistant Solicitors Ceth Utsey and Katherine Orville prosecuted the case. Applicant was represented by Helen Dovell, Esq. ("Counsel").

The jury convicted Applicant as indicted. Judge John sentenced Applicant to a concurrent sentence of twenty (20) years for attempted murder and five (5) years. On June 27, 2019, a notice of appeal was filed on Applicant's behalf by Counsel. On appeal, Applicant was represented by Appellate Defender Katherine H. Hudgins, who filed a brief raising the following issue:

Did the trial judge abuse his discretion by not properly evaluating the *Colf* factors and admitting Appellant's prior conviction for possession of cocaine?

Following briefing and without oral argument, the Court of Appeals affirmed Applicant's conviction and sentence, determining the trial court conducted a meaningful balancing test as required under Rule 609, SCRE, and *State v. Colf*, 337 S.C. 622, 525 S.E.2d 246 (2000). *State v. Gantt*, Op. No. 21-UP-392 (S.C. Ct. App. filed Nov. 3, 2021). The Remittitur was sent on November 11, 2021.

CURRENT APPLICATION

Applicant timely commenced this PCR action alleging he is being held in custody unlawfully due to the ineffective assistance of trial counsel for failure to adequately cross-examine the State's witnesses. On June 17, 2022, Respondent filed a return and a motion requesting a more-definite statement on Applicant's allegations. Applicant, through PCR counsel, amended his application to raise the following allegations:

Ineffective Assistance of Counsel

- a. Failure to investigate the State's witnesses before trial, including lay witnesses and investigators.
- b. Failure to properly prepare Applicant's alibi witness to testify.
- c. Failure to investigate GSR and fingerprint evidence.
- d. Failure to obtain a favorable plea offer.
- e. Failure to object to truth-seeking language in the solicitor's opening statement (Tr. 79).
- f. Failure to properly cross-examine and impeach Ms. Holmes and Mr. Brown.

At the evidentiary hearing, Applicant proceeded *solely* on the allegations contained in his amended application. Before this Court are the Colleton County Clerk of Court records of the subject conviction; Applicant's records from SCDC; the appellate record; the trial transcript; and the records of the current PCR action.

TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

Applicant's Testimony

At the evidentiary hearing, Applicant testified that he believed Counsel did well at trial but averred that Counsel should have impeached Ms. Holmes, who testified at trial that she saw Applicant at the crime scene. Applicant averred Ms. Holmes' testimony impacted his trial. Regarding investigations, Applicant averred Counsel should have investigated the crime scene and physical evidence, including GSR and bullets. Regarding the alibi witness, Jahleel Dubois, Applicant testified that he believed the testimony went "fine" but believed Counsel could have met with the witness earlier and prepared more. Regarding impeaching Mr. Brown, the victim, Applicant testified he believed Counsel should have questioned him more about the crime scene. Regarding a plea offer, Applicant testified that he wanted a plea offer but did not get one. Regarding the solicitor's opening statements, Applicant believed Counsel should have objected.

Trial Counsel's Testimony

Helen Dovell ("Counsel") testified she met with Applicant at least fifteen (15) times in preparation for trial. Regarding a plea offer, Counsel testified that after talking to the victim, the solicitor relayed an offer of twenty (20) years. Counsel testified she told the solicitor that she did not believe the twenty (20) year offer was a "real" offer. Counsel testified that she asked the solicitor for an offer of assault and battery of a high and aggravated nature ("ABHAN") for a five (5) to ten (10) year sentence, and the solicitor did not agree.

Counsel testified that the trial went as expected. Regarding the solicitor's use of truth-seeking language in opening statements, Counsel testified that, in hindsight, she believed she should have objected. Counsel also testified that she does not recall why she did not object but probably did not want to draw attention to the remarks. Counsel further testified that case law indicates it is improper for the trial judge to use truth-seeking language, and Counsel would have objected if the judge used such remarks.

Regarding Holmes, Counsel testified she learned a week before trial that Holmes would testify that she saw Applicant. Counsel testified that Holmes testified that she did not know whether she gave statements to law enforcement, and Counsel could have refreshed her recollection. Counsel testified that she believed she made good use of the 911 call in closing arguments by arguing that Holmes said she did not know Applicant. Regarding Brown, the victim, Counsel testified that she investigated Brown and spoke to people in the community but did not find anything to impeach him with. Counsel further testified that there were no statements made by Brown in discovery besides loose information. Counsel testified that she asked the State if she

could contact Brown and Holmes before trial, and both witnesses were uninterested in speaking to Counsel.

Regarding ballistics and physical evidence, Counsel testified that she understood the shooter came at the victim at an angle, and Counsel testified she believed that she could have done a better job of not belaboring the issue. Counsel testified that law enforcement did not conduct an adequate investigation. Regarding fingerprints, Counsel testified that she cross-examined the officer about whether bullet cartridges were checked for fingerprints. Regarding GSR, Counsel testified that she did not see a reason to investigate GSR because Applicant was arrested days after the shooting. Counsel testified that she did not believe investigations into GSR and fingerprints were necessary.

Regarding the alibi witness, Jahleel Dubois, Counsel testified she spoke with him two (2) months before trial. Counsel testified that Dubois came to Counsel's office with Applicant. Counsel testified that she spoke to Dubois alone and tried numerous times to get in contact with him after the meeting. Counsel testified that Dubois did not answer Counsel's calls, and his voice mailbox was always full. Counsel testified that Dubois was not eager to testify, which made it difficult for her to get in contact with him before trial.

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 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, Failure to Investigate Witnesses,
Failure to Investigate Physical Evidence***

This Court finds Applicant failed to prove Counsel was ineffective for failing to investigate, failing to investigate the State’s witnesses, and failing to investigate physical evidence. “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). Counsel’s duty to investigate is limited to reasonable investigations or a reasonable decision that makes particular investigations unnecessary. *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 597 (2007); *Strickland*, 466 U.S. at 691. 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). To prevail upon a claim that counsel did not investigate a case, an applicant must present evidence of what counsel could have discovered. *Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998).

This Court finds Counsel’s investigations, and decision not to undertake certain investigations, were reasonable under prevailing professional norms and thus, was not deficient. This Court finds credible Counsel’s testimony that that she investigated Brown by speaking to people in the community but did not find any impeachment material. This Court also finds credible Counsel’s testimony that she attempted to speak to Holmes and Brown, who were both

uninterested in speaking to her. This Court finds credible Counsel's testimony that that she did not believe there was a reason to investigate GSR because Applicant was arrested days after the shooting and GSR would not have been present. This Court finds credible Counsel's testimony that she did not believe investigations into GSR and fingerprints were necessary. This Court finds credible Counsel's testimony that she did not believe law enforcement investigated Applicant's whereabouts on the night of the shooting, and Counsel cross-examined law enforcement regarding whether fingerprints were found and processed on shell casings (R. 84). This Court further finds Applicant failed to prove he was prejudiced by Counsel's performance by producing any evidence of what information further investigations would have uncovered that would have changed the result of trial to a reasonable probability. Thus, Applicant failed to meet his burden.

Failure to Properly Prepare Applicant's Alibi Witness to Testify

This Court finds Applicant failed to prove Counsel was ineffective for failing to properly prepare alibi witness, Jahleel Dubois, to testify at trial. To prevail on a claim that counsel was not adequately prepared, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop if counsel had more fully prepared. Jackson, 329 S.C. at 353-54, 495 S.E.2d at 772; see Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995) (providing an applicant must produce witnesses at a PCR hearing to support a claim that counsel was ineffective for failing to interview or call potential witnesses). This Court finds credible Counsel's testimony that she made numerous attempts to get in contact with Dubois before trial but was unsuccessful. This Court finds credible Counsel's testimony that she spoke to Jahleel Dubois before trial but Dubois was not eager to testify and did not answer or return her phone calls. This Court finds Counsel's performance was reasonable under prevailing professional norms and thus, was not deficient. This Court further finds Applicant failed to prove prejudice by presenting evidence of information Counsel could have discovered from Jahleel Brown if Counsel had more adequately prepared and failed to produce the witness at the evidentiary hearing. Thus, Applicant failed to meet his burden.

Failure to Obtain a Favorable Plea Offer

This Court finds Applicant failed to prove Counsel was ineffective for failing to obtain a favorable plea offer. This Court finds Counsel's performance was reasonable under prevailing professional norms and thus, was not deficient. This Court finds credible Counsel's testimony that she engaged in plea bargaining with the solicitor. This Court find credible Counsel's testimony

that the solicitor made an offer of twenty (20) years for a plea, and Counsel asked for an offer of five (5) to (10) years for AHAN, which the solicitor rejected. Further, this Court finds Applicant failed to prove prejudice by showing a reasonable probability he would have accepted a favorable plea offer if offered, but for Counsel's failure to obtain a favorable offer. Thus, Applicant failed to meet his burden.

Failure to Object to Truth-Seeking Language in Solicitor's Opening Statements

This Court finds Applicant failed to prove Counsel was ineffective for failing to object to the solicitor's use of truth-seeking language in opening statements. Improper comments by a solicitor do not automatically require reversal if they are not prejudicial; the inquiry is whether the solicitor's comments so infected the trial with unfairness as to result in a denial of due process. *Fortune v. State*, 428 S.C. 545, 837 S.E.2d 37 (2019). In *Aleksey*, the Supreme Court held a trial judge's jury charge that stated the jury's single objective was to seek the truth did not warrant reversal because the charge did not prejudice the defendant by violating his due process rights when the charge was given in the context of witness credibility, was not given the court's charge on the state's burden of proof or the direct and circumstantial evidence charge, and was prefaced by a full and proper charge on the burden of proof and direct and circumstantial evidence. *State v. Aleksey*, 343 S.C. 20, 538 S.E.2d 248 (2000).

In opening remarks, the solicitor stated the following:

However, at the end of this trial, I am going to come back, and we are going to do a closing argument, and I am going to ask you all for one thing, and the only thing I want, and it's you all's job to do this, that's why you all are here, *the only thing I want is the truth*, for you all to listen to the witnesses, listen to Herbert Brown who just stayed awake the entire time so he can speak his truth today."

(Tr. 79) (emphasis added).

This Court finds Applicant failed to prove he was prejudiced by Counsel's failure to object to the solicitor's comments. This Court finds the solicitor's opening remarks were prefaced by a full and proper remark by the trial judge on the State's burden of proof beyond a reasonable doubt. (Tr. 70:22-71:2; 71:11-72:8). Before closing arguments, the trial judge instructed the jury that arguments of counsel are not evidence. (Tr. 302:21-23). At the conclusion of trial, the trial judge charged the jury on the law and gave a full and proper jury charge on reasonable doubt and direct

and circumstantial evidence, in which there is no mention of truth. (Tr. 328-33). Further, this Court finds the solicitor's comments are distinguishable from *Aleksey* because the comments were merely opening remarks by counsel and not a charge on the law by the judge.

This Court also finds the solicitor's use of first-person language in opening remarks does not warrant reversal because the solicitor merely used "I" while speaking in his role as an advocate on behalf of the State.¹ This Court finds the solicitor's comments did not so infect the trial with unfairness as to result in a denial of due process and thus, the comments do not warrant reversal. Further, Applicant failed to prove he was prejudiced by the comments by showing a reasonable probability the result of trial would have been different but for Counsel's failure to object. Thus, Applicant did not meet his burden.

***Failure to Properly Cross-Examine and
Impeach Karen Holmes and Herbert Brown***

This Court finds Applicant failed to prove Counsel was ineffective for failing to properly cross-examine and impeach State witnesses Karen Holmes and Herbert Brown. *Strickland* requires that trial counsel be given leeway to make reasonable strategic decisions. *Strickland*, 466 U.S. at 688-89 (stating "[n]o particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant"). Judicial scrutiny of counsel's performance must be highly deferential. *Id.* at 689.

This Court finds Counsel's cross-examination of Karen Holmes was reasonable under prevailing professional norms, and thus was not deficient. The record reflects Counsel cross-examined Holmes on her business operations and memory regarding a written statement Holmes gave to law enforcement. (Tr. 105-08). This Court finds credible Counsel's testimony that she tried to refresh Holmes' memory about the statement given to law enforcement, and Counsel believed she made good use of Holmes' 911 call in closing arguments.

This Court finds Counsel's cross-examination of Herbert Brown was reasonable under prevailing professional norms, and thus was not deficient. The record reflects Counsel cross-examined Brown about statements he made to law enforcement, the medications he was taking

¹ Although decided after Applicant's trial, the Supreme Court cautioned prosecutors about using first-person language in all phases of trial, but held prosecutors are permitted to use first-person language when speaking in their role as an advocate. *State v. Busse*, 439 S.C. 104, 886 S.E.2d 208 (2023).

around the time of the shooting, and his meetings with the solicitor. (Tr. 197-98). This Court finds credible Counsel's testimony that she investigated Brown by speaking to others in the community and could not find impeachment material. Further, this Court finds Applicant failed to prove prejudice by showing a reasonable probability the result of trial would have been different but for Counsel's cross-examination. Thus, Applicant failed to meet his burden.

CONCLUSION

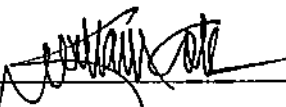
Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice.

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), SCRCP. 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!


 _____ 2093
 J. DERHAM COLE
 Presiding Judge, Fourteenth Judicial Circuit

August 2, 2024
 Spartanburg, South Carolina



STATE OF SOUTH CAROLINA
THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT

J. DERHAM COLE
JUDGE

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August 2, 2024

The Honorable Patricia C. Grant
PO Box 620
Walterboro, SC 29488-0028

Re: 2022-CP-15-00086
Kelvin Gantt, SCDC #380542 v. The State of South Carolina

Dear Clerk;

Enclosed please find for filing an order(s) with reference to the above-captioned case(s). Upon entry of the order(s), please serve notice upon the affected parties in accordance with *Rule 77(d) of the South Carolina Rules of Civil Procedure*. Thank you in advance for your usual and capable assistance in this matter.

With kindest personal regards, I remain,

Sincerely yours,

J. Derham Cole
Resident Judge
The Seventh Judicial Circuit