

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Hampton County

Honorable J. Derham Cole, Circuit Court Judge

MALCOLM ANTWON ORR,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-001396

APPENDIX

LARA M. CAUDY
Senior Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

DANIELLE E. DIXON
Assistant Attorney General
PO Box 11549
Columbia, SC 29211
(803)734-3737

I. MCDUFFIE STONE, III
Solicitor, Fourteenth Judicial Circuit
1 Elm Street W.
Hampton, SC 29924
(843) 779-8689

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA COURT OF GENERAL SESSIONS
COUNTY OF HAMPTON 2016-GS-25-00012
 2016-GS-25-00013

STATE OF SOUTH CAROLINA)
) TRANSCRIPT OF RECORD
)
) August 7-9, 2017
MALCOLM ORR,)
) Hampton, South Carolina
) Defendant.)

B E F O R E:

The Honorable Roger M. Young, Sr., Judge, and a jury

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

Isaac McDuffie Stone, III, Solicitor
Brian Hollen, Assistant Solicitor
Attorneys for the State

Robert Hughes, Deputy Public Defender
Attorney for the Defendant

Reported By:

Amanda Kelly Haffenden, RPR, CRR
Circuit Court Reporter for the
Ninth Judicial Circuit

E X A M I N A T I O N S

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
CATHERINE BOZARD	98	102	--	--
JOHN TOMPKINS	103	--	--	--
DERRICK HAMAN	114	121	--	--
QUINCY SMITH	123	135	151	153
JAMES DUNNE	157	168	--	--
BRAD DRAWDY	169	--	--	--
CHRIS HOUSEY	181	--	--	--
THEODORE COX	183	--	--	--
ISAIAH WARREN	185	192	--	--
CHAUNCEY SOLOMON	193	198	199	--
TODD SCHENK	200	210	--	--
BRITT DOVE	212	222	--	--
NEIL GREIFINGER	223	--	--	--
JEFFREY GRANDON	228	--	--	--
PERRY SINGLETON	230	--	--	--
KATIE McCALLISTER	232	--	--	--
SUZANNE CROMER	234	243	--	--
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JEFFREY MAXWELL	247	--	--	--

E X H I B I T S

<u>STATE'S</u>	<u>DESCRIPTION</u>	<u>MARKED</u>	<u>RECEIVED</u>
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2	Photograph of Crime Scene	104	--
4	Cellphone Found at Scene	219	218
8	Shell Casings	206	205
9	DMV Photograph of Defendant	180	179
10	Arrest Photograph of Defendant	191	190
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14	Recording and Transcript of Jail Phone Call	250	249
15	Text Message From Cellphone	221	220
16	Text Message from Cellphone	220	219
17	Red Bandanna	198	197
18	Photograph	108	107
19	Photograph	108	107
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21	Photograph	112	111
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1 (August 7, 2017.)

2 (11:32 a.m., in open court, jury panel
3 present.)

4 THE COURT: Well, good morning, folks. It is
5 still morning, but we're moving along this morning.

6 My name is Roger Young, and I am a circuit
7 court judge from Charleston. I'm visiting here this
8 week. I've actually got an assignment that brings me to
9 the Fourteenth Circuit a good bit for the next six
10 months, and it is my favorite area to hold court. I did
11 an entire year here about nine, ten years ago now, so
12 it's my turn to rotate back, so I truly do enjoy coming
13 to Hampton County.

14 As you probably have learned by now, we are
15 doing a week of criminal court. We have all big fancy
16 words for things, and our big fancy word for criminal
17 court is General Sessions Court, so this is technically
18 known as a week of General Sessions Court. We have one
19 trial that we are going to try for the week, and our plan
20 is we are going to qualify the jury, and then we are
21 going to draw the jury and then let you go home, and
22 we'll start the trial tomorrow morning.

23 Those of you that are not picked would then
24 be finished for the week. Those of you that are picked
25 will come back tomorrow morning. The good news is the

1 trial will be two days. You'll have the rest of the
2 afternoon free regardless, and then those of you who get
3 picked, we'll need you tomorrow and Wednesday, and then
4 you'll be finished for the week. So we try to minimize
5 the inconvenience as much as we possibly can, and when we
6 have you here, we try to have court going so we don't
7 take you away from the normal things that you do, work or
8 school or whatever it is that you do.

9 Now, the process that we're going to do has a
10 couple of parts to it. The first part is we're going to
11 qualify you as jurors. Then we will go over some
12 exemptions, and exemptions are basically things that the
13 legislature has said even though you are qualified, you
14 may ask to be transferred, or excused, in a couple of
15 instances, from jury service, even though you're
16 qualified.

17 Then once we get that panel together, I'll
18 ask some more questions that are case specific about the
19 trial that we'll be starting tomorrow morning, and once
20 we finish those questions, then we will go straight into
21 drawing a jury, and, again, we will start that jury trial
22 tomorrow morning.

23 Now, the clerk has told me she has put you
24 all under oath, and so I'm going to ask you some
25 questions, none of which is designed to pry into your

1 personal affairs or embarrass you in any way at all. I'm
2 simply required to ask these questions of you. They
3 determine the qualifications.

4 If there's any question that you feel like
5 you should respond to but you don't want to necessarily
6 stand up in front of a bunch of people and tell personal
7 information, like medical information or anything like
8 that, it's perfectly fine to come forward, and you can
9 talk to me outside of the presence of everybody else, but
10 we have to have it on the record, so we'll be over here
11 by the court reporter.

12 Please don't be shy and not respond if you
13 need to respond to something, but we will try to minimize
14 any embarrassment that you might have. Again, that's not
15 our purpose. In fact, every single question that I ask
16 you I'm required by law to ask you.

17 So the good part about qualifications for
18 jurors is that it's extremely easy to be qualified as a
19 juror in South Carolina. You have met the two most
20 important qualifications already, and that is you are
21 breathing and you showed up, so the rest of them are a
22 little more technical than that, but it's not real hard
23 to get qualified.

24 So the first question I've got to ask, is
25 there anyone here who is not at least 18 years old?

1 You've got to be at least 18 to serve as a juror in South
2 Carolina, so if that applies to anyone, will you please
3 stand. I find none.

4 Is there anybody here who is not a citizen of
5 the United States? If so, would you please stand. I
6 find none.

7 Is there anybody here who is not a resident
8 of Hampton County? If so, would you please stand. All
9 right. I find none.

10 Is there anybody here who is not able to
11 read, write, and understand the English language? If so,
12 would you please stand.

13 Somebody probably is sitting there right now
14 going, well, if you can't understand the English
15 language, how would you be able to respond to that
16 question? And that is a fair thought. I think it every
17 time I ask that question, and I usually just say if
18 you've been sitting next to somebody and they don't
19 really appear that they've been able to follow what we're
20 doing, if you could bring that to my attention, I would
21 really appreciate that, but if that applies to anyone,
22 would you please stand. I find none.

23 Is there anybody here who does not have at
24 least a sixth grade formal education or its equivalent?
25 If so, would you please stand. I find none.

1 Is there anybody here who has any sort of a
2 physical condition, a physical illness, an infirmity, or
3 any kind of mental health issues that might keep you from
4 being able to serve as a juror?

5 This is probably the first time nobody wants
6 to stand up and talk about that, and you're welcome to
7 come down. I tell you, a lot of times the most common
8 thing is somebody says, I have a back issue. I can't set
9 for a long period of time. That's not an unusual one.
10 These chairs -- whether that is something coming close to
11 comfort, I have to stand up. I've got a bad back, and
12 you'll see me stand up, but if you have a bad back or you
13 take medications that make you go to the bathroom more
14 regularly or frequently than others, then what we do is I
15 say if you'll just get my attention or the bailiff's
16 attention, let me know, and we will take a break.

17 I usually take a break about every hour and
18 15 minutes, hour and 30 minutes, but if anybody has any
19 kind of health conditions, mental health, physical health
20 that you think might affect your ability to serve as a
21 juror, why don't you come down.

22 MR. HUGHES: Could we approach also, Your
23 Honor?

24 THE COURT: Sure.

25 (At sidebar.)

1 THE COURT: All right. What's your name and
2 number?

3 A PROSPECTIVE JUROR: Donnie McClary, 144.

4 THE COURT: Okay. What's up?

5 A PROSPECTIVE JUROR: I have back problems.
6 I done had three hip surgeries.

7 THE COURT: You don't think you'd be able to
8 set --

9 A PROSPECTIVE JUROR: I can sit, but that's
10 about it.

11 THE COURT: So you are just bringing that to
12 my attention, or are you asking me to be excused?

13 A PROSPECTIVE JUROR: Just bringing it to
14 your attention.

15 THE COURT: Okay. Thank you very much.

16 A PROSPECTIVE JUROR: I had three new hip
17 surgeries and got a bad nerve in my back.

18 THE COURT: Okay. All right. Well, if you
19 need to stand up or anything, just feel free to.

20 Anyone else?

21 (At sidebar.)

22 Do you have anything on conviction of a
23 crime?

24 MR. STONE: We do.

25 THE COURT: Okay. Is there anybody who has

1 been convicted of a crime in either federal or state
2 court, a crime that was punishable by more than a year in
3 prison and you did not get your civil rights restored to
4 you either by a pardon or amnesty by a governor or a
5 president?

6 Let me break that down for you. Conviction
7 means you either went to trial and the jury found you
8 guilty or you pled guilty or it might mean that you pled
9 no contest, nolo contendere, or you might have even
10 offered this plea called an Alford plea, where you said,
11 I didn't do it, but I want to plead guilty anyway. Those
12 all count as convictions.

13 You sometimes have -- now, a conviction of a
14 crime punishable by more than a year in prison, the crime
15 had to carry that as a penalty. It's possible that you
16 didn't get that as a penalty. You might have gotten
17 probation. You might have gotten a fine or time served.
18 You could have gotten less than a year in jail, but if
19 you could have gotten more than a year in jail, that's
20 what we're talking about. It's either federal court or
21 state court, and it could be any state, and, then, again,
22 you didn't get pardon or amnesty by a governor or a
23 president, so if that applies to anyone, will you please
24 stand.

25 Yes. You want to come up?

1 (At sidebar.)

2 THE COURT: Your name and number?

3 A PROSPECTIVE JUROR: James Hiers, 105.

4 THE COURT: Okay. And let's see. All right.
5 That would be for housebreaking?

6 A PROSPECTIVE JUROR: Yes, sir.

7 THE COURT: You never got pardoned or
8 anything for that?

9 A PROSPECTIVE JUROR: No, sir.

10 THE COURT: All right. Well, then you are
11 excused from service this week. You're free to go.

12 A PROSPECTIVE JUROR: Thank you, sir.

13 (Juror dismissed.)

14 THE COURT: Okay. Yes. Your name and
15 number?

16 A PROSPECTIVE JUROR: Fredrick Madison, 141.

17 THE COURT: So you had the manufacturing
18 drugs, methamphetamine -- what was that? It was
19 manufacturing and possession of a scheduled substance
20 back -- you got three years?

21 A PROSPECTIVE JUROR: Uh-huh.

22 THE COURT: Okay. And no amnesty or pardon?

23 A PROSPECTIVE JUROR: Not yet.

24 THE COURT: All right. Well, then you are
25 free to go. Thank you.

1 Those are the only two you had?

2 MR. STONE: Yes, sir.

3 THE COURT: All right.

4 MR. STONE: There is a relative of a witness
5 that we're going to call, and she's a deputy sheriff's
6 wife, so if you want to bring her up or -- there's no way
7 she can serve, although I would be glad to have her, if
8 you want to handle that now. If you don't --

9 THE COURT: What was that number, 147?

10 MR. HOLLEN: Yes, sir.

11 THE COURT: Okay.

12 (End of sidebar.)

13 Is there anybody here who is a Clerk of
14 Court, a deputy Clerk of Court, a constable, a sheriff, a
15 commissioned law enforcement officer, in other words, you
16 took an oath when you began the job, a county councilman,
17 a magistrate or a county officer or you work inside of
18 the four walls of a courthouse? If so, would you please
19 stand. I find none.

20 Anybody already serve as a juror in a court
21 of record earlier this calendar year? A court of record
22 is where you have a court reporter present. It wouldn't
23 be a municipal court or magistrate court, even though a
24 lot of those nowadays do actually record their
25 proceedings. For purposes of this question, it would

1 either be this court, either civil or criminal, or
2 perhaps you got called to one of the federal courts
3 around the state, but if that applies to anyone, you
4 served as a juror from January 1 of this year until last
5 week, would you please stand. Okay. I find none.

6 Anybody here serve as a member of the Hampton
7 County grand jury in the last five years? If so, would
8 you please stand. Grand jury meets probably once a month
9 or so, once every couple of months, there's 18 of you,
10 and you review indictments. If you were on the grand
11 jury, you'd know what I was talking about. Okay? I find
12 none.

13 Now, we're going to move over into
14 exemptions, and exemptions simply state you're qualified
15 because you are all now qualified. So, officially, you
16 made the cut. I told you it's real easy to get there.

17 Exemptions say even though you're qualified,
18 in some instances the legislature says you can be excused
19 entirely, or, in a lot of them, we just transfer you to
20 another time for whatever reason, school or work or
21 something like that. If it's one of those where you have
22 been transferred from before to today, I probably can't
23 move you again. If you got transferred, the judge
24 probably told you what I am going to tell you now, and
25 that is we can usually only accommodate one transfer

1 unless it's some sort of problem, but if there is, you
2 know, that kind of thing applies, we can move you to
3 another date, but there are some that say you are excused
4 altogether.

5 Just because you are entitled to an exemption
6 doesn't mean you have to exercise that exemption.
7 Sometimes people get confused about that and say, I
8 really want to serve, and you can. In fact, this is
9 where I make my pitch for jury service, because the way
10 juries work is we're going to take 12 people, have you
11 set over here. You're going to listen to the witnesses
12 who are giving sworn testimony. There might be some
13 documents or pictures or videos, that sort of thing.

14 You're going to hear it. You're going to
15 hear the case. I'm going to tell you what the law is on
16 this kind of case and these charges, and then 12 of you
17 are going to go back into the jury room and come up with
18 a verdict, and, by and large, that's what we live with.

19 To me, the beauty of the jury system is that
20 we've got a wide, diverse group of people here. We've
21 got different races, different sexes, different
22 educational levels, different income levels. The only
23 thing that y'all have in common, really, are, you know,
24 that you live in Hampton County and you're registered to
25 vote, or you drive a motor vehicle. That's how you got

1 on the list in the first place, and you were willing to
2 show up and serve.

3 So we really need you because a lot of times
4 I think jurors are often concerned: Did we do the right
5 thing? And I run into people in the grocery store every
6 now and then or on the street and they say, Hey, you were
7 the judge and I was a juror back a couple years ago on
8 this case. And they say, Hey, did we do the right thing?

9 And I always tell them, look, 12 people all
10 heard the same evidence, and they came up with the same
11 verdict. I have a pretty good comfort zone in saying,
12 you know, this is the right thing. It just gets hard to
13 get 12 people to agree to anything. You know, it's hard
14 to get 12 people to agree that the sun rises in the east
15 in the morning, so if we can get 12 people that all came
16 up with the same verdict, that ought to give you a pretty
17 good idea about whether they did right thing.

18 I'll say this: All over this world -- we
19 have over 200 countries around the world, and there's
20 only a handful of them, less than 12, really, that say
21 when the government charges somebody with a crime, that
22 the person -- if they say, I didn't do it, not guilty,
23 the State has to prove that they are guilty.

24 Nobody has to prove that they are innocent
25 here. The government has to prove that they are guilty.

1 That is a burden that falls on the State, or the
2 government, and so the State has to prove it. Nobody has
3 to prove they're innocent.

4 That's a very rare thing, when you think
5 about it: Around the world, less than 12 countries do
6 that. On the civil side, it's even smaller than that.
7 Most of the time in a civil case, or in all those other
8 countries as well on criminal cases, it's either a judge
9 that decides the outcome or a panel of judges.

10 But our founding fathers felt it was so
11 important to have 12 people that come from the community,
12 listen to the evidence, and not have a government officer
13 decide what the outcome of the case is. They felt that
14 was so important they put it three times in the United
15 States constitution. It is also a right that you have as
16 a result of being a citizen and resident of South
17 Carolina. It's also, believe it or not, in the South
18 Carolina constitution.

19 So it's a big deal. It really is a big deal,
20 and we take it for granted, because we do it every week.
21 This same scene is taking place all over this state right
22 now, and all over the country, and so every time you do
23 something all the time, you tend to take it for granted.
24 And so we think, it's a jury trial. It's no big deal,
25 but it is a big deal because you are going to determine

1 what the outcome of this trial is.

2 And I understand that a lot of people get
3 this notice and they go, I don't want to do this, or, I
4 don't want to do it now. It's just not a good time. I
5 can do it some other time.

6 I get that. We're inconveniencing you on a
7 rather large scale; however, it's not just a
8 responsibility of citizenship. It's not just a duty of
9 citizenship. It's a privilege of citizenship to be on a
10 jury, and there are people all over this world that would
11 love to have the right, that if they got charged by the
12 government with a crime, to have the outcome determined
13 by people like you as opposed to people like me. Okay?

14 So I hope you'll think of it in that way,
15 that it's a privilege to serve on a jury, and if you
16 don't want to change -- you know, exercise an exemption,
17 you don't have to. So that's my pitch for jury service.
18 If you want to serve, we really do want you to serve. We
19 need you. It's the way it works in the system, and my
20 belief is that the wide, diverse group of people is the
21 magic of the jury system and how we come up with verdicts
22 that people can actually believe in and have confidence
23 in that the system works.

24 So that's my pitch for jury service. I'm
25 going to read these exemptions out, and if you want to or

1 need to exercise one of them, feel free to come up and
2 we'll discuss it. If you have one, again, you don't want
3 to exercise it, you just remain seated, but the first one
4 is for those of you that are over the age of 65, or 65
5 and older, and you don't want to serve this week, you are
6 excused from jury service.

7 So if that applies to anyone, will you please
8 stand. Okay. I find none.

9 Is there anybody here who already served as a
10 juror in the previous three calendar years? We don't
11 want to overwork you, and we understand, again, it's an
12 inconvenience to be here on some level, so if you served
13 as a juror in this courthouse in either 2016, 2015, or
14 2014, you are able to be transferred -- you'll be excused
15 from jury service. You get three years of exemptions and
16 you've severed.

17 So if that applies to anyone and you don't
18 wish to serve this week, please stand. Okay. I find
19 not.

20 Is there anybody here who is the caregiver
21 and custodian of children that are under the age of seven
22 and you can't find anybody else to take care of them this
23 week, and, of course, they can't be left alone, you are
24 also entitled to be excused from jury service. If that
25 applies to anyone, will you please stand. Okay. I find

1 none.

2 We have an exemption like that for people who
3 are caregivers on the opposite end of the age spectrum.
4 So if you are the caregiver for somebody who is 65 or
5 over and they can't be left alone and you can't find
6 anybody else to take care of them this week while you are
7 here, then you are also entitled to be excused from jury
8 service. So if that applies to anyone, will you please
9 stand. Okay. I find none.

10 Is there anyone here who is a full-time
11 student, a schoolteacher, you work in a school in some
12 capacity, you drive a school bus, have anything to do
13 with a school and because of your school-related duties
14 you can't serve this week? We'll transfer you to another
15 time. Most of those people get transferred to the
16 summer, and I don't think any school started just yet, so
17 hopefully if you got transferred from one, then this will
18 be probably about the last week you can do it before the
19 new school year, but if that applies to anyone, will you
20 please stand? We'll just transfer you folks to another
21 time.

22 Yes. Your name and number?

23 A PROSPECTIVE JUROR: Mary Tucker, 226.

24 THE COURT: And you are a --

25 A PROSPECTIVE JUROR: I'm a graduate student

1 in the north and I'm going back Wednesday.

2 THE COURT: What was your number again?

3 A PROSPECTIVE JUROR: 226.

4 THE COURT: Okay. We can excuse you then.
5 Thank you. Anyone else? All right.

6 Is there anyone here who is in a work
7 position, you perform some kind of business, you own a
8 business, because of work, either agricultural,
9 commercial enterprise, any kind of business-related
10 endeavor, if being on the jury this week is a tremendous
11 hardship, we can transfer you to another time.

12 I can't excuse you entirely. The best I can
13 do is transfer you to another time. If you have been
14 transferred to this week, I can't probably accommodate
15 you unless it's just an absolute last minute emergency.

16 Now, I will just reiterate a couple things,
17 and that is after we finish this, we'll be letting you go
18 within about 30 minutes, and you'll be free for the
19 afternoon. And then we'll have you back tomorrow, if you
20 get picked, and we'll need you Tuesday and Wednesday, in
21 all likelihood, and then you won't need to be coming back
22 on Thursday and Friday.

23 So this is not a bad week, all things
24 considered, for jury service, when it comes to
25 interrupting work. So you might want to keep that in

1 mind because if I do transfer you to another time, again,
2 the judge will probably say, I can't transfer you, and if
3 you're here all week, you're here all week, and there is
4 nothing I can do to help you out. But if there is
5 anybody that wants to talk to me about transferring
6 because of a work or economic hardship, please stand up
7 and come forward.

8 (At sidebar.)

9 All right. Your name and number?

10 A PROSPECTIVE JUROR: Whitney Bennett, number
11 10.

12 THE COURT: Okay. What's up?

13 A PROSPECTIVE JUROR: My niece died Saturday.

14 THE COURT: Okay. So you got funeral things
15 to work on this week?

16 A PROSPECTIVE JUROR: Yes.

17 THE COURT: All right. Then we'll excuse you
18 this week. You're free to go. Thank you.

19 Next? Yes, sir, your name and number?

20 A PROSPECTIVE JUROR: Caleb Wright, number
21 246. The company that I'm working for has a big
22 contract. We're setting up new accounts this week, and I
23 will have to be present with all my employees this week.

24 THE COURT: Have you been transferred before
25 this week?

1 A PROSPECTIVE JUROR: No, sir.

2 THE COURT: All right. We will transfer
3 you -- they'll just send you a notice of when the next
4 week is. You're free to go.

5 A PROSPECTIVE JUROR: Thank you so much.

6 THE COURT: Your name and number?

7 A PROSPECTIVE JUROR: Latoya Boles, number
8 12. My son has juvenile court, and I have to be there.

9 THE COURT: Is he being prosecuted?

10 A PROSPECTIVE JUROR: Well, I don't know --

11 THE COURT: Is he the one in trouble?

12 A PROSPECTIVE JUROR: Yes.

13 THE COURT: And the solicitor's office is
14 handling it?

15 A PROSPECTIVE JUROR: He's in Beaufort, yes.

16 THE COURT: All right. Well, we will excuse
17 you then. Thank you.

18 Anyone else? Okay. Is there anybody here
19 who is employed as a guard at a department of
20 corrections, at a penitentiary? If so, would you please
21 stand. Okay. I find none.

22 Does anybody have any kind of extreme or
23 compelling hardship or circumstances that maybe wasn't
24 covered by anything else that they want to bring to my
25 attention that might keep you from being able to serve on

1 the jury this week, either not covered, or you go, oh, I
2 really should have brought that to his attention earlier?

3 You want to come up?

4 (At sidebar.)

5 THE COURT: Yes. Your name and number?

6 A PROSPECTIVE JUROR: 180, Nikita Riley.

7 THE COURT: Okay.

8 A PROSPECTIVE JUROR: My son has a doctor's
9 appointment. It took him six months to get it. He has a
10 doctor'S appointment with a gastroenterologist.

11 THE COURT: Okay. We'll excuse you then.

12 A PROSPECTIVE JUROR: Okay. Thank you.

13 THE COURT: Yes, ma'am. Your name and
14 number?

15 A PROSPECTIVE JUROR: Manaka Green, 89.

16 THE COURT: What do you want to tell me?

17 A PROSPECTIVE JUROR: I know him. I know
18 about this case.

19 THE COURT: You know something about the
20 case?

21 A PROSPECTIVE JUROR: Uh-huh.

22 THE COURT: Okay. Can you tell me what you
23 know?

24 A PROSPECTIVE JUROR: I just know the people
25 involved.

1 THE COURT: Okay. All right. Well, we will
2 excuse you then. This is the only case, so you're free
3 to go. Thank you.

4 Anyone else? All right. Well, you are our
5 jury panel then. So thank you very much.

6 Now, what we're going to do is go into this
7 process of asking you questions about this case, and
8 there are -- I'm going to introduce you to the lawyers
9 and the litigants, parties involved, read you a list of
10 names of witnesses, ask you if you know anything about
11 the case, that sort of thing.

12 Again, nothing is designed to trick you or
13 embarrass you. We're simply trying to find 12 people
14 that really don't know anything about the case, and if
15 you know somebody that's involved in the case, if --
16 presumably, if you don't know them well enough that it
17 would affect your ability to be fair and impartial as a
18 juror, we can seat you. If you know the parties, you
19 know the witnesses that it would affect your ability to
20 be a fair and impartial juror, then we would not allow
21 you to serve.

22 But we're really just trying to find 12
23 people that don't know anything about the case and will
24 be able to help us determine what the outcome of the case
25 should be. This is a process we call voir dire, although

1 sometimes in the south you call it voir dire.
2 Technically, it's a French phrase, and it's just asking
3 questions, is what it really boils down to.

4 So the first thing I'm going to do is I'm
5 going to tell you what this case is about just a little
6 bit, solely for the purpose of finding out if you know
7 anything about it. There are some things that you need
8 to know about in a criminal case that are very important
9 and that you've got to keep in mind throughout the trial,
10 and I'm going to emphasize these things several times
11 between now and the end of the trial because they're
12 fundamental constitutional rights that the defendant has
13 and you have and I have and everybody in this courtroom
14 has as citizens of the United States. So we have to make
15 sure that you understand them and that you can follow the
16 instructions that the judge has and some things about
17 presumptions of innocence and things like that.

18 So there are two charges in this case, and
19 our defendant in this case -- or the parties are the
20 State of South Carolina versus Michael Antwan Orr. All
21 right?

22 Yes?

23 (Sidebar discussion with the attorneys.)

24 THE COURT: Now, in South Carolina, the
25 prosecutors are known as the solicitors, all right? We

1 have solicitors for different circuits, and the circuit
2 that you all reside in is the Fourteenth Judicial
3 Circuit, and the solicitor for the Fourteenth Judicial
4 Circuit is Mr. Duffie Stone, who is setting right here
5 beside you, and he is going to be prosecuting this case
6 on behalf of the state of South Carolina, along with this
7 young man from his office.

8 So would you stand up and you can both
9 introduce yourself.

10 MR. STONE: I'm Duffy Stone. I'm the
11 solicitor for the Fourteenth Circuit. This is Brian
12 Hollen. Brian is an assistant with my office, and he'll
13 be prosecuting this case as well.

14 Thank you, Your Honor.

15 THE COURT: Thank you. Now, the defendant in
16 this case is Mr. Malcolm Atwan Orr. He is standing there
17 next to his lawyer, who is Mr. Robert Hughes. Is there
18 any member of the jury panel who is related by blood or
19 marriage or acquainted in any way with either Mr. Malcolm
20 Atwan Orr or his lawyer, or perhaps you have been
21 represented by his lawyer somewhere in the past? If so,
22 would you please stand. Okay. I find none.

23 The charges that Mr. Orr is facing -- he has
24 two charges. One is for attempted murder and one is
25 possession of a weapon during the commission of a violent

1 crime. Now, the State of South Carolina has charged him
2 with these crimes, indicted him, which is the way that we
3 bring charges, and there are two indictments in this case
4 that have been presented to the grand jury.

5 Indictments are not evidence, all right?
6 They are simply the charging instruments that give this
7 Court jurisdiction to hear the case, and it lets Mr. Orr
8 know what he is to stand trial for. They are the only
9 two pieces of paper that will go back to the jury room
10 with you that are not evidence in the case.

11 They are simply here -- and the only reason
12 why they go back into the jury room is so that whoever
13 the foreman of the jury is can write the verdict, which
14 would either be guilty or not guilty. All right?

15 Mr. Orr pled not guilty to both of these
16 charges, and so it is incumbent upon the State of South
17 Carolina to provide him with a jury trial of 12 people,
18 and then the State of South Carolina has to prove to
19 those 12 people that he is guilty of those charges beyond
20 a reasonable doubt.

21 Mr. Orr does not have to prove that he is
22 innocent of the charges. The State has to prove that he
23 is guilty. The only thing Mr. Orr has to do is show up
24 for trial, and he's done that. He doesn't have to
25 testify. He doesn't have to put up evidence. The only

1 thing, again, he has to do is show up for court, and he's
2 done that. All right?

3 The State has the burden of proof in this
4 kind of case and the State has to prove to 12 of you that
5 he is guilty beyond a reasonable doubt. Now, what he is
6 charged with, I'm going to tell you just briefly what the
7 indictments allege, solely for the purpose of seeing if
8 anybody knows anything about the case. The attempted
9 murder indictment, which is 2016-GS-25-013, alleges that
10 on or about January 1, 2016, the defendant, Malcolm
11 Antwan Orr, did with the intent to kill and with malice
12 aforethought attempt to kill Officer Quincy Smith, to wit
13 the defendant did shoot the victim with a firearm, all in
14 violation of section 16-3-29 of the South Carolina Code
15 of Laws. Again, he pled not guilty to that charge.

16 The other count he is standing trial for is
17 indictment 2016-GS-25-012, which alleges that in Hampton
18 County, South Carolina, on or about January 1, 2016, the
19 defendant, Malcolm Atwan Orr, did possess a firearm or
20 did visibly display what appeared to be a firearm during
21 the commission of or attempted commission of a --
22 commission of a violent crime, to wit, attempted murder,
23 a violent crime for which he is accused of committing or
24 attempting to commit, all in violation of South Carolina
25 section 16-23-490, and he pled not guilty to that charge

1 as well.

2 So the State has to prove beyond a reasonable
3 doubt to whatever 12 people get picked that he is guilty
4 of each of these charges separately. They have to
5 provide evidence of each charge. Each stands alone.

6 Now, I read you those indictments and their
7 particulars to ask, is there any member of the jury panel
8 who knows anything at all about this case? If so, would
9 you please stand.

10 Okay. Let me get you all to come up.

11 (At sidebar.)

12 THE COURT: Yes, ma'am. Your name and
13 number?

14 A PROSPECTIVE JUROR: 244, Lisa Winn.

15 THE COURT: And what do you know about it?

16 A PROSPECTIVE JUROR: This occurred behind
17 one of our convenience store locations that the company I
18 work for owns.

19 THE COURT: So people have been talking about
20 it and all that?

21 A PROSPECTIVE JUROR: Yes.

22 THE COURT: Okay. All right. So 244. Okay.
23 Do you think that would affect your ability to be fair
24 and impartial in this case if you were to set as a juror?

25 A PROSPECTIVE JUROR: Probably so, yes. It

1 disrupted our business quite a bit.

2 THE COURT: All right. Thank you. You can
3 be seated. Next?

4 Your name and number?

5 A PROSPECTIVE JUROR: 134.

6 THE COURT: And what is your name?

7 A PROSPECTIVE JUROR: Tremayne Lee.

8 THE COURT: And what do you know about the
9 case?

10 A PROSPECTIVE JUROR: I was in Estill when it
11 happened.

12 THE COURT: So did you hear see it, hear it?
13 People been talking about it?

14 A PROSPECTIVE JUROR: I was there when the
15 police were looking for him.

16 THE COURT: So you were there when the police
17 were looking for him. Did you learn anything about it?

18 A PROSPECTIVE JUROR: No, I --

19 THE COURT: Did you know the defendant?

20 A PROSPECTIVE JUROR: Yeah. He's -- not by
21 blood, but family.

22 THE COURT: You know the family?

23 A PROSPECTIVE JUROR: Yeah.

24 THE COURT: Do you think that would affect
25 your ability to be fair and impartial in this case?

1 A PROSPECTIVE JUROR: He used to work on my
2 truck.

3 THE COURT: Okay. All right. Thank you.
4 You can be seated. Next?

5 A PROSPECTIVE JUROR: Charles Brown.

6 THE COURT: And your number?

7 A PROSPECTIVE JUROR: 17.

8 THE COURT: Okay. What do you know about it?

9 A PROSPECTIVE JUROR: I heard about it. I
10 was out there in the area where it happened, my sister's
11 store.

12 THE COURT: Did you see it happen?

13 A PROSPECTIVE JUROR: No. I didn't see it
14 happen.

15 THE COURT: You were just in the area?

16 A PROSPECTIVE JUROR: Yes, sir.

17 THE COURT: And people were talking about it?

18 A PROSPECTIVE JUROR: Yes, sir.

19 THE COURT: Did you know the defendant?

20 A PROSPECTIVE JUROR: Yes, sir.

21 THE COURT: Do you know the victim?

22 A PROSPECTIVE JUROR: I seen him around town.
23 I don't know the victim, but --

24 THE COURT: Do you think that that would
25 affect your ability to be a fair and impartial juror in

1 this case, what you know about the case?

2 A PROSPECTIVE JUROR: I don't know, really.
3 I would have --

4 THE COURT: How well do you know the
5 defendant?

6 A PROSPECTIVE JUROR: I mean, I've seen him
7 around town and things like that. My sister worked next
8 door.

9 THE COURT: Do you know him well enough that
10 you talk to him on the street when you see him?

11 A PROSPECTIVE JUROR: Not really.

12 THE COURT: What do you mean when you said
13 you talked to --

14 PROSPECTIVE JUROR: I talk to people around
15 town, his family and things like that. Like I said, my
16 sister work next door to where it happened at.

17 THE COURT: Okay. All right. So do you
18 think you would be able to set as a juror in this case,
19 be fair and impartial, or do you think --

20 A PROSPECTIVE JUROR: I should be able to.

21 THE COURT: Okay. Thank you.

22 Next? Your name and number?

23 A PROSPECTIVE JUROR: Kashandra Gordon, 81.

24 THE COURT: Okay. What do you know?

25 A PROSPECTIVE JUROR: Me and Quincy are

1 friends. I didn't know about the guy who did it or
2 anything, but I know when he was sick and he was down.

3 THE COURT: When you say Quincy --

4 A PROSPECTIVE JUROR: Quincy Smith.

5 MR. HUGHES: The victim.

6 THE COURT: Oh, okay. You were friends with
7 the victim?

8 A PROSPECTIVE JUROR: Yeah. I don't know
9 about the guy who did anything. I just know that he was
10 shot in the line of duty. That's just basically all I
11 know, but we and Quincy, we were good friends.

12 THE COURT: Did you know the defendant?

13 A PROSPECTIVE JUROR: No.

14 THE COURT: Did you talk to anybody about the
15 case?

16 A PROSPECTIVE JUROR: I mean, like, my sister
17 because they used to date kind of, for a couple years,
18 and I was telling her that he got shot and everything
19 like that. My sister used to date Quincy Smith, and
20 she's the only person I really talk to. We were making
21 sure that he was okay.

22 THE COURT: Okay. Do you think that would
23 affect your ability to be a fair and impartial juror in
24 this case?

25 A PROSPECTIVE JUROR: Yeah.

1 THE COURT: Okay. All right. Thank you.
2 You can be seated.

3 What's your number?

4 A PROSPECTIVE JUROR: 73.

5 THE COURT: And your name?

6 A PROSPECTIVE JUROR: Jesse Gifford.

7 THE COURT: What do you know?

8 A PROSPECTIVE JUROR: I was on the fire
9 department that responded to the call. My brother and
10 father were there. I wasn't actually on the scene, but I
11 was at the station. They were trying to fly the patient
12 out and weren't able to get the helicopter, but I was --

13 THE COURT: So they were first responders?

14 A PROSPECTIVE JUROR: Yes, sir.

15 THE COURT: So y'all talked about the case?

16 A PROSPECTIVE JUROR: Yes, sir. We had a
17 debriefing after the call.

18 THE COURT: Okay. You think that would
19 affect your ability to be fair and impartial in this
20 case?

21 A PROSPECTIVE JUROR: I mean -- I don't know.

22 THE COURT: Okay. All right. Thank you.
23 You can be seated. Yes?

24 A PROSPECTIVE JUROR: 77, Jacqueline Gohagan.
25 My husband is an officer with the Hampton County

1 sheriff's department and he responded to this incident.

2 THE COURT: So y'all talked about it?

3 A PROSPECTIVE JUROR: Well, I knew that he
4 went because an officer was shot. I knew he was going to
5 work because an officer was shot.

6 THE COURT: Later on, did he tell you what
7 they think happened or --

8 A PROSPECTIVE JUROR: No.

9 THE COURT: Your husband is with the
10 sheriff's department?

11 A PROSPECTIVE JUROR: Yeah. I think he's
12 here to testify.

13 THE COURT: Do you think that would affect
14 your ability to be fair and impartial in this case?

15 A PROSPECTIVE JUROR: Yeah. I'm not a fan of
16 people shooting police officers seeing I'm married to
17 one.

18 THE COURT: That's the one you were talking
19 about?

20 MR. STONE: Yes, sir.

21 THE COURT: All right.

22 Yes. Your name and number?

23 A PROSPECTIVE JUROR: 122, Kyle Johnson.

24 THE COURT: Okay.

25 A PROSPECTIVE JUROR: Yeah. The guy that --

1 I guess the one that was shot, I went to school with him.

2 I know him pretty well. We played sports together.

3 THE COURT: How well did you know him?

4 A PROSPECTIVE JUROR: If I seen him, good
5 enough to speak to him.

6 THE COURT: So how long ago were you in high
7 school together?

8 A PROSPECTIVE JUROR: I've been out eight
9 years now.

10 THE COURT: Okay. Well, do you think that
11 would affect your ability to be fair and impartial in
12 this case if you were to be a juror?

13 A PROSPECTIVE JUROR: Probably so.

14 THE COURT: Okay. All right. Than you. You
15 can be seated.

16 Yes, sir?

17 A PROSPECTIVE JUROR: Justin McAlhaney.

18 THE COURT: What is your number?

19 A PROSPECTIVE JUROR: 143.

20 THE COURT: What can you tell me?

21 A PROSPECTIVE JUROR: I know somebody in
22 Estill got shot in the arm and the leg, and I actually
23 visited him in the hospital after it happened.

24 THE COURT: So you know him pretty well?

25 A PROSPECTIVE JUROR: Yeah. I grew up with

1 him my whole life, pretty much.

2 THE COURT: So you don't think you would be
3 able to serve as a juror in this case?

4 A PROSPECTIVE JUROR: Yes.

5 THE COURT: Okay. Have a seat.

6 Yes. Your name and number?

7 A PROSPECTIVE JUROR: 181, Reginald Risher.
8 My brother works for the solicitor. I wondered if that
9 was going to be a conflict.

10 THE COURT: What does he do with the
11 solicitor?

12 MR. STONE: He's in charge of our juvenile
13 arbitration program.

14 THE COURT: Okay. All right. Thank you.
15 You can be seated.

16 Anyone else? All right.

17 All right. I already asked you if you knew
18 either the defendant or his lawyer or if you've been
19 represented by his lawyer before. Is there any member of
20 the jury panel who is related by blood or marriage, who
21 is acquainted with Mr. Stone or Mr. Hollen who is
22 prosecuting this case? If so, would you please stand.
23 Okay. I find none.

24 Is there any member of the jury panel, either
25 you or one of your immediate family members or a very

1 close personal friend, who has ever been prosecuted by
2 the Fourteenth Circuit solicitor's office, either by one
3 of these two gentlemen or by anybody in the office? If
4 so, would you please stand. All right.

5 Is there any member of the jury, either you
6 or one of your immediate family members or a close
7 personal friend, who has had any contact with any of the
8 prosecute prosecutors in the solicitor's office here in
9 Hampton County? If so, would you please stand. Well,
10 you already -- you're okay. You don't have to answer any
11 more.

12 Is there any member of the jury panel, either
13 you or one of your immediate family members or a close
14 friend, related by blood or marriage to anyone that is
15 employed by the South Carolina Law Enforcement Division,
16 which is commonly called SLED, or the Hampton County
17 sheriff's office or the Estill police department or any
18 other law enforcement department and you didn't already
19 disclose it to me when you came up in response to the
20 last question?

21 Okay. Let's start over here with you. Your
22 name and number?

23 A PROSPECTIVE JUROR: Ernestine King, 129.

24 THE COURT: Okay. And who do you know?

25 A PROSPECTIVE JUROR: I'm related to Sheriff

1 Washington.

2 THE COURT: You're related to -- how are you
3 related?

4 A PROSPECTIVE JUROR: T.C. by my dad.

5 THE COURT: Okay.

6 A PROSPECTIVE JUROR: Married my mom's first
7 cousin.

8 THE COURT: Do you think that would affect
9 your ability to be fair and impartial in this case?

10 A PROSPECTIVE JUROR: I really don't know.

11 THE COURT: All right. Your name and number?

12 A PROSPECTIVE JUROR: My name is Adrienne
13 Owen, 165. I don't know if it counts, but my boyfriend
14 and I have been together for 15 years, and he is the
15 cousin of T.C. Smalls, and his niece, Tara Frazier, works
16 for the Hampton County sheriff's office.

17 THE COURT: Would that affect your ability to
18 be fair and impartial in this case, either for or against
19 the State or for or against the defense?

20 A PROSPECTIVE JUROR: No.

21 THE COURT: Okay. Thank you. Your name and
22 number?

23 A PROSPECTIVE JUROR: Ron Sullivan, 217.

24 THE COURT: Okay.

25 A PROSPECTIVE JUROR: And I'm kin with Jake

1 Sullivan.

2 (At sidebar):

3 THE COURT: Okay. Tell me again what your --

4 A PROSPECTIVE JUROR: I'm kin to Jake
5 Sullivan in the courtroom right now. He's my cousin.

6 THE COURT: And who is --

7 MR. HUGHES: He's the gentleman sitting over
8 there.

9 THE COURT: So he's just employed by the
10 sheriff's office?

11 A PROSPECTIVE JUROR: Yes.

12 THE COURT: How are you related when you say
13 kin?

14 A PROSPECTIVE JUROR: He's my second cousin.

15 THE COURT: Would that affect your ability to
16 be fair and impartial in this case?

17 A PROSPECTIVE JUROR: No.

18 THE COURT: Okay. Thank you.

19 A PROSPECTIVE JUROR: 222, Janine Terry.

20 THE COURT: Okay.

21 A PROSPECTIVE JUROR: My husband works at the
22 federal prison in Estill.

23 THE COURT: What does he do there?

24 A PROSPECTIVE JUROR: He's a maintenance
25 supervisor, so basically he has inmates that work for

1 him, and Katie used to babysit my children.

2 THE COURT: Okay.

3 A PROSPECTIVE JUROR: I don't know if that
4 matters.

5 THE COURT: Would that affect your ability to
6 be fair and impartial in this case?

7 A PROSPECTIVE JUROR: No.

8 THE COURT: Okay. Thank you. You can be
9 seated. Next? Name and number?

10 A PROSPECTIVE JUROR: Carl Cook, 38.

11 THE COURT: Okay.

12 A PROSPECTIVE JUROR: The sheriff is my
13 cousin, and my brother is the chief of police of
14 Varnville, Tyrone Smith. He's the chief of police in
15 Varnville.

16 THE COURT: Okay. Do you think that would
17 affect your ability to be fair and impartial in this
18 case, either for or against the State or for or against
19 the defense?

20 A PROSPECTIVE JUROR: No, sir.

21 THE COURT: Okay. Thank you. Yes?

22 A PROSPECTIVE JUROR: Terry Smith, 208.

23 THE COURT: Okay. What do you want to tell
24 me?

25 A PROSPECTIVE JUROR: Terry is my cousin and

1 Perry Singleton is my uncle.

2 MR. STONE: He is, Your Honor. He is on our
3 witness list. He's a chain witness, but he's on our
4 witness list, Perry Singleton.

5 THE COURT: He's your cousin?

6 A PROSPECTIVE JUROR: Uncle.

7 THE COURT: Okay. All right. You can be
8 seated. Thank you.

9 Yes, your name and number?

10 A PROSPECTIVE JUROR: Reginald Risher, 181.
11 My son works for the Hampton police department.

12 THE COURT: Okay. Well, we're not going to
13 have you in this trial anyway, so you don't have to
14 answer anymore, okay? All right. Thank you.

15 Is there any member of the jury panel, either
16 you or a family member or a close friend, either by blood
17 or marriage, business associate, social friend,
18 acquaintance of Quincy Smith and you did not already tell
19 us about that?

20 A PROSPECTIVE JUROR: I just know him. I
21 went to school with him.

22 THE COURT: You went to high school?

23 A PROSPECTIVE JUROR: Uh-huh.

24 THE COURT: All right. Let me get your name
25 and number?

1 A PROSPECTIVE JUROR: Kelly Stanley, 209.

2 THE COURT: Okay. 209?

3 A PROSPECTIVE JUROR: Yes, sir.

4 THE COURT: And would that affect your
5 ability to be a fair and impartial juror in this case --

6 A PROSPECTIVE JUROR: No, sir.

7 THE COURT: -- either for or against the
8 State or for or against the defense? Okay. Thank you.

9 And your name and number?

10 A PROSPECTIVE JUROR: Pamuela Stokes, 212.

11 THE COURT: And do you know him?

12 A PROSPECTIVE JUROR: His grandmother is my
13 step aunt.

14 THE COURT: His grandmother is your step
15 aunt? Okay. Anyone else? You can be seated.

16 All right. I'm going to call out the names
17 of some people who might be called as witnesses in this
18 case. I would ask that when I call the name out, if you
19 are related by blood or marriage or acquainted with them
20 in any way, if you would please stand.

21 We already asked -- Lieutenant Brad Drawdy
22 with the Hampton police department? All right. Officer
23 Nick Ginn with the Hampton police department? Yes, your
24 name and number?

25 A PROSPECTIVE JUROR: 114, Robin Jarrell.

1 THE COURT: And how do you know Officer Ginn?

2 A PROSPECTIVE JUROR: He's my husband's
3 nephew.

4 THE COURT: All right. If he is called as a
5 witness, would that affect your ability to be fair and
6 impartial in this case either for or against the State or
7 for or against the defense?

8 A PROSPECTIVE JUROR: Not at all.

9 THE COURT: Thank you. Deputy Theodore Cox
10 with the Hampton County sheriff's office? I find none.
11 Lieutenant Nick Gohagan with the Hampton County sheriff's
12 office? Okay. You can sit down. Lieutenant Perry
13 Singleton with the Hampton County sheriff's office?

14 Yes, your name and number?

15 A PROSPECTIVE JUROR: 123, Luchelle Johnson.
16 My name is Luchelle Johnson, 123. He's my nephew by
17 marriage.

18 THE COURT: Okay. Deputy Antonio Griffin,
19 Hampton County sheriff's office? Lieutenant Chauncey
20 Solomon, Hampton County sheriff's office? I find none.
21 Captain Anthony Russell, Hampton County sheriff's office?

22 Yes, your name and number?

23 A PROSPECTIVE JUROR: 121.

24 THE COURT: Okay. And you know Captain
25 Russell how?

1 A PROSPECTIVE JUROR: Second cousin.

2 THE COURT: And if he's called as a witness
3 in this case, would that affect your ability to be fair
4 and impartial in this case?

5 A PROSPECTIVE JUROR: No.

6 THE COURT: Thank you.

7 Lieutenant Britt Dove with SLED, South
8 Carolina Law Enforcement? I find none. Special Agent
9 Katie McCallister from SLED?

10 A PROSPECTIVE JUROR: Yes, sir. The lady I'm
11 seeing, it's her daughter-in-law.

12 THE COURT: Okay. What is your name and
13 number?

14 A PROSPECTIVE JUROR: 147, Norman McMillan.

15 THE COURT: 147. All right. And so Katie
16 McCallister is, again --

17 A PROSPECTIVE JUROR: I'm dating her
18 daughter-in-law.

19 THE COURT: Okay. All right. If she is
20 called as a witness, would that affect your ability to be
21 fair and impartial in this case? I need you to say it
22 out loud.

23 A PROSPECTIVE JUROR: No, sir.

24 THE COURT: Okay. Captain Ryan Neill with
25 SLED? I find none. Special Agent Todd Schenk with SLED?

1 I find none. Special Agent James Talon with SLED? I
2 find none. Special Agent Tyler Sturkie with SLED? I
3 find none. Special Agent Suzanne Cromer with SLED? I
4 find none. Special Agent Sean Germann with SLED? I find
5 none.

6 Special Agent John Hiatt with SLED? I find
7 none. Special Agent Donna Money with SLED? I find none.
8 Special Agent Thomas Darnell with SLED? Dylan Hightower
9 with the Fourteenth Circuit Solicitor's Office? I find
10 none. Bill Carter with the Fourteenth Circuit
11 Solicitor's Office? I find none. Corporal Jeffrey
12 Maxwell, Beaufort County detention center? I find none.
13 Michael Hartley, Hampton County EMS? I find none.
14 Derrick Joseph Haman with Hampton County EMS? I find
15 none. Benjamin Rushing, Estill Fire and Rescue?

16 A PROSPECTIVE JUROR: He's my battalion
17 chief.

18 THE COURT: Your name and number again?

19 A PROSPECTIVE JUROR: Jesse Gifford, 73.

20 THE COURT: Okay. Thank you. Anyone else?

21 All right. That was Benjamin Rushing, right? All right.

22 Chris Housey, H-o-u-s-e-y, Estill fire and
23 residue? I find none. Perry Gifford, Estill fire and
24 rescue?

25 A PROSPECTIVE JUROR: That's my brother.

1 THE COURT: Okay. You're number 73 for the
2 record?

3 A PROSPECTIVE JUROR: Yes, sir.

4 THE COURT: All right. Robert Gifford?

5 A PROSPECTIVE JUROR: That's my brother.

6 THE COURT: All right. Katherine Bozard,
7 Hampton County dispatch? I find none. Linda Hopkins,
8 Hampton County dispatch? I find none. Diane Brown of
9 Estill?

10 Yes, your name and number?

11 A PROSPECTIVE JUROR: 244, Lisa Winn.

12 THE COURT: Okay. 244, you said? And how do
13 you know her?

14 A PROSPECTIVE JUROR: We work for the same
15 company.

16 THE COURT: You work for the same company?
17 How close? What is the company?

18 A PROSPECTIVE JUROR: Blue Rocks.

19 THE COURT: So you see her every day, that
20 kind of thing?

21 A PROSPECTIVE JUROR: Yes.

22 THE COURT: If she's called as a witness, do
23 you think that would affect your ability to be fair and
24 impartial?

25 A PROSPECTIVE JUROR: Yes.

1 THE COURT: All right. Thank you.

2 A PROSPECTIVE JUROR: 17, Charles Brown,
3 sister.

4 THE COURT: Yes, sir. And how do you know?

5 A PROSPECTIVE JUROR: My sister.

6 THE COURT: Your sister. Okay. All right.
7 Anyone else?

8 A PROSPECTIVE JUROR: Your Honor, I need to
9 talk with you and just ask you a question.

10 THE COURT: Okay.

11 (At sidebar):

12 THE COURT: Your name and number?

13 A PROSPECTIVE JUROR: My number is 156,
14 Charles Moore.

15 THE COURT: What do you need to tell me?

16 A PROSPECTIVE JUROR: You asked a question if
17 I was acquainted with the solicitor?

18 THE COURT: Uh-huh.

19 A PROSPECTIVE JUROR: Well, I don't want to
20 do anything to hurt the case, but I'll be honest and
21 everything, but when we were in that trial with my
22 brother-in-law --

23 THE COURT: Which one was that one?

24 MR. STONE: Oh, yes, sir. It was a murder.

25 THE COURT: So he prosecuted a family member

1 or your family was a victim?

2 A PROSPECTIVE JUROR: No, my family was a
3 victim.

4 THE COURT: Okay. Do you think that would
5 affect your ability to be fair and impartial for or
6 against the state or for or against the defendant?

7 A PROSPECTIVE JUROR: No, sir.

8 THE COURT: Okay. Thank you.

9 All right. Gail Francis from Estill? I find
10 none. Isaiah Warren from Estill? I find none. John
11 Andrew Tompkins from Estill? I find none. Dr. James
12 Dunne, Savannah Memorial Hospital? I find none.
13 Dr. Paul Balthrop, Memorial Hospital in Savannah,
14 Savannah Memorial? Sergeant Neil Greifinger with
15 Savannah Memorial Hospital security? Jeffrey Grandon,
16 hospital security at Savannah Memorial Hospital? All
17 right.

18 Has any member of the jury panel, either you
19 or one of your immediate family members or very close
20 personal friends, ever been the victim of a crime and you
21 have not already disclosed that to us in response to a
22 previous question?

23 Has any member of the jury panel, either you
24 or one of your family members or close personal friends,
25 ever been accused of a crime and you have not already

1 disclosed that to us? If so, would you please stand. I
2 find none.

3 Again, any member of the jury panel either
4 read anything or heard anything about this case other
5 than what you already disclosed to us? I find none. Any
6 member of the jury panel have any kind of personal or
7 political or religious beliefs or convictions that would
8 keep you from being able to be a fair and impartial juror
9 in this case, either for or against the State or for or
10 against the defendant?

11 I'll give you some examples of stuff that we
12 have, and this is by no means exclusive because every
13 time I say this, somebody comes up with something I never
14 would have thought of, but I told you at the beginning of
15 the trial, we're just looking for 12 people to hear the
16 evidence in this case, and if they know somebody that is
17 either a witness or that sort of thing, it wouldn't
18 affect their ability to be fair and impartial, because,
19 you know, a smaller community like this, a lot of people
20 know somebody.

21 It all depends on whether or not you know
22 them well enough that you couldn't go, Well, you know, I
23 know that so-and-so, and they would never tell the truth,
24 or maybe you feel like, Oh, I believe what they say
25 because I know them so well. Well, that person wouldn't

1 be a good juror -- it wouldn't be fair for one side or
2 the other. Sometimes you have people that say, well, you
3 know, I have read some verses in the Bible that say you
4 shouldn't set in judgment of other people, and they
5 really, truly believe that excludes them from jury
6 service.

7 And I'm not going to say that it does or does
8 not include jury service in that Bible verse, but that's
9 what they believe, and I'm not going to try to talk you
10 out of it. I'm just going to make sure that if you got
11 that kind of belief and you don't think you could be a
12 juror, then you need to let us know before we put you on
13 the jury, all right? Sometimes you have people that
14 belong to groups or organizations that say, well, you
15 know, The country is really not on the right track, and
16 if I ever get on a jury, I'm going to automatically vote
17 to convict everybody that is charged with a crime.

18 And there are some people that belong to
19 groups that are just the opposite and say, I don't think
20 the country is on the right track, and if I ever get on a
21 jury, I'm not convicting anybody of anything.

22 So it's on opposite ends of the spectrum.
23 Neither of those kinds of people should be allowed to be
24 on a jury because the State of South Carolina is entitled
25 to a fair trial. The defendant is also entitled to a

1 fair trial, so if you've got people that already have
2 their mind made up as to what the outcome of the trial
3 is, well, then, they're not getting a fair trial.

4 So those are just some examples that we
5 sometimes hear. You may have your own, and it's got
6 nothing to do with what I said. I'm just giving you a
7 couple examples of things that we commonly hear, but if
8 you know of any reason whatsoever why you don't think you
9 could be a fair and impartial juror, either for or
10 against the State or for or against the defendant and you
11 haven't already disclosed it to me, now is the time to
12 disclose it to me.

13 So if you feel like you got something you
14 should talk to me about, would you please stand up and
15 come forward and talk to me a little more privately. If
16 that applies to anyone, will you please stand? Okay.

17 Yes, sir. You want to come up?

18 (At sidebar):

19 THE COURT: Yes, your name and number?

20 A PROSPECTIVE JUROR: Kenard Sanders, 188.

21 THE COURT: Okay. What do you want to tell
22 me?

23 A PROSPECTIVE JUROR: I don't believe in
24 convicting nobody and putting them on a jury trial.

25 THE COURT: You think you would automatically

1 find him not guilty?

2 A PROSPECTIVE JUROR: Yeah.

3 THE COURT: Okay. All right. You can be
4 seated. Thank you.

5 (End of sidebar.)

6 Anyone else?

7 (At sidebar):

8 THE COURT: Did y'all have any other
9 questions? I think I covered all the questions.

10 All right. Why don't I give them a few
11 minutes break, and we'll go in the back and discuss
12 these, put on the record what we got.

13 (End of sidebar.)

14 THE COURT: All right. Here's what we'll do:
15 Normally we'd go straight into picking a jury now, but
16 I've had you here for about an hour and a half, so I'm
17 going to give you about a ten-minute break,
18 fifteen-minute break so everybody can use the rest room.
19 You come back, and then we'll go straight into drawing
20 the jury.

21 So I got 12:45. If you would, be back in
22 your seats at 1:00, and we'll go into picking the jury.

23 (Recess taken.)

24 THE COURT: Okay, folks. We are ready to go
25 now.

1 The way we do this in General Sessions court
2 is the clerk will call out your name. If you get called,
3 bring your belongings with you, come through the little
4 swinging doors right there, come walk towards the bench,
5 and then turn around and face back toward the rear of the
6 room.

7 And then the solicitor will have the
8 opportunity to go first and say either, Seat the juror,
9 or, Excuse the juror, and then if he says, Seat the
10 juror, then it passes over to the defense who, again, has
11 the option of seating or excusing the juror until all the
12 strikes have been exercised. So if you get picked,
13 you'll come and have a seat. If you don't get picked,
14 then you'll go back to your chair.

15 So if you're ready, Madame Clerk, we're going
16 to have five strikes each, and we're going to draw two
17 alternates with one strike each.

18 THE CLERK: When I call your name, please
19 come forward.

20 Number 233, William White.

21 (The juror, a black male, approaches.)

22 What says the State?

23 MR. STONE: Please seat Mr. White.

24 THE COURT: What says the defense?

25 MR. HUGHES: Seat the juror.

1 THE CLERK: Number 24, Carl Burrell.
2 (The juror, a black male, approaches.)
3 What says the State?
4 MR. STONE: Please present Mr. Burrell.
5 THE CLERK: What says the defense?
6 MR. HUGHES: Please seat the juror.
7 THE CLERK: Number 214, Angela Strother.
8 (The juror, a white female, approaches.)
9 What says the State?
10 MR. STONE: Please present Mrs. Strother.
11 THE CLERK: What says the defense?
12 MR. HUGHES: Please seat the juror.
13 THE CLERK: Number 123, Luchelle Johnson.
14 (The juror, a black female, approaches.)
15 What says the State?
16 MR. STONE: Please seat Mrs. Johnson.
17 THE CLERK: What says the defense?
18 MR. HUGHES: Please seat the juror.
19 THE CLERK: Number 238, Everette Williams.
20 (The juror, a black male, approaches.)
21 What says the State?
22 MR. STONE: Please present Mr. Williams.
23 THE CLERK: What says the defense?
24 MR. HUGHES: Please seat the juror.
25 THE CLERK: Number 148, Paul Mikell.

1 (The juror, a white male, approaches.)

2 What says the State?

3 MR. STONE: Please present Mr. Mikell.

4 THE CLERK: What says the defense?

5 MR. HUGHES: Please excuse the juror from the
6 trial of this case.

7 THE CLERK: Number 122, Kyle Johnson.

8 (The juror, a white male, approaches.)

9 What says the State?

10 MR. STONE: Please present Mr. Johnson.

11 THE CLERK: What says the defense?

12 MR. HUGHES: Please excuse the juror from the
13 trial of this case.

14 THE CLERK: Number 237, Arthur Williams.

15 (The juror, a black male, approaches.)

16 What says the State?

17 MR. STONE: Please present Mr. Williams.

18 THE CLERK: What says the defense?

19 MR. HUGHES: Please seat the juror.

20 THE CLERK: Number 56, Benita Drayton.

21 (The juror, a black female, approaches.)

22 What says the State?

23 MR. STONE: Please present Ms. Drayton.

24 THE CLERK: What says the defense?

25 MR. HUGHES: Please seat the juror.

1 THE CLERK: Number 72, Rogan Gibson.
2 (The juror, a white male, approaches.)
3 What says the State?
4 MR. STONE: Please present Mr. Gibson.
5 THE CLERK: What says the defense?
6 MR. HUGHES: Please seat the juror.
7 THE CLERK: Number 208, Chandra Spruils.
8 (The juror, a black female, approaches.)
9 What says the State?
10 MR. STONE: Please present Ms. Spruils.
11 THE CLERK: What says the defense?
12 MR. HUGHES: Please seat the juror.
13 THE CLERK: 144, Donnie McClary.
14 (The juror, a white male, approaches.)
15 What says the State?
16 MR. STONE: Please present Mr. McClary.
17 THE CLERK: What says the defense?
18 MR. HUGHES: Please seat the juror.
19 THE CLERK: Number 178, Sharon Rice.
20 (The juror, a black female, approaches.)
21 What says the State?
22 MR. STONE: Please present Ms. Rice.
23 THE CLERK: What says the defense?
24 MR. HUGHES: Please seat the juror.
25 THE CLERK: Number 156, Charles Moore.

1 (The juror, a white male, approaches.)

2 What says the State?

3 MR. STONE: Please present Mr. Moore.

4 THE CLERK: What says the defense?

5 MR. HUGHES: Please excuse this juror from
6 the trial of this case.

7 THE CLERK: Number 130, Melissa Kroupa.

8 (The juror, a white female, approaches.)

9 What says the State?

10 MR. STONE: Please present Ms. Kroupa.

11 THE CLERK: What says the defense?

12 MR. HUGHES: Please seat the juror.

13 THE COURT: All right. Calling for
14 alternates now.

15 Number 217, Ronald Sullivan.

16 (The juror, a white male, approaches.)

17 What says the State?

18 MR. STONE: Please present Mr. Sullivan.

19 THE CLERK: What says the defense?

20 MR. HUGHES: Please excuse the juror from the
21 trial of this case.

22 THE CLERK: Number 162, Ryan Noll.

23 (The juror, a white male, approaches.)

24 What says the State?

25 MR. STONE: Please present Mr. Noll.

1 THE CLERK: Does the defense have cause to
2 strike?

3 MR. HUGHES: No, ma'am.

4 THE CLERK: You can be seated. Number 169,
5 Keith Pauls.

6 (The juror, a white male, approaches.)

7 What says the State?

8 MR. STONE: Please present Mr. Pauls.

9 THE CLERK: What says the defense?

10 MR. HUGHES: Please seat the juror.

11 THE COURT: All right. Is there anything
12 from the defendant?

13 MR. HUGHES: No, Your Honor.

14 THE COURT: Anything from the State?

15 MR. STONE: No, sir.

16 THE COURT: Okay. Well, folks, you are our
17 jury now for the case, which I told you we will start in
18 the morning, tomorrow morning. I'm going to send you
19 right now with the bailiff, and he'll show you where you
20 are to report tomorrow morning and go in and out. You
21 won't come right to the courtroom. You'll report to the
22 jury room in the morning.

23 Now, let me give you some instructions, not
24 only for tonight. I'll repeat these probably every time
25 we take a break now that you're on the jury. It's not

1 proper for you to talk about the case with anyone,
2 including other members of the jury panel. When you go
3 home, I'm sure somebody is going to ask you if you got
4 picked, and you can say, Yes, I did get picked.

5 You can tell them it's an attempted murder
6 case, but I don't know anything about it, and the judge
7 told me I couldn't talk to you or anyone about it, and
8 the reason for that is real simple: It's just a matter
9 of fundamental fairness. You are going to be taking an
10 oath tomorrow morning before we begin in which you're
11 stating, I promise I'll make my decision based on what I
12 hear in this courtroom from witnesses that testify and
13 tell you what they heard, they saw, they touched, they
14 felt, they smelt.

15 You're going to see some documents. You'll
16 see some photographs. You'll see some videos. You're
17 going to make your decision based on that, not what
18 anybody in the community knows about the case, what they
19 think about it. It's not fair to you because whatever
20 anybody says is going to have some impact on you. It
21 might be big, it might be little, but it's going to have
22 some impact on you, so it's not going to be fair to you.

23 Most importantly, it's not going to be fair
24 to the State and the defendant in this case, Mr. Orr. We
25 need you to just keep an open mind until you've heard all

1 the evidence and so you don't discuss the case. Don't go
2 out and try to find out anything about the case.
3 Sometimes after people get picked on a jury they get kind
4 of invested in it, so they want to do a little
5 investigation.

6 So I told you a little about the case, but
7 now sometimes people want to go out to the crime scene
8 and things like that. If you need to go to a crime
9 scene, we'll take you to a crime scene, but if you don't
10 need to go, then we won't take you and you don't need to
11 do it on your own time. You don't need to try to figure
12 out anything about the case on the Internet. Sometimes
13 there are stories that the newspaper may have printed.

14 Nowadays, the Clerks of Courts' offices
15 sometimes have something in the way of filings. Don't
16 try to find out anything about that. Everything that you
17 need to know to make a decision we will tell you in this
18 courtroom, either by way of evidence or I will tell you
19 what the law is. You don't need to go out and try to
20 research what the law is in this kind of case. You just
21 go home, enjoy the rest of your afternoon. You can go
22 back to work if you want to or whatever you do, but, if
23 you would, be back in the jury room by 9:45 and we'll get
24 started at 10 o'clock.

25 We'll do some preliminary things this

1 afternoon and first thing in the morning, but we should
2 be ready to call the -- or do the opening arguments at 10
3 o'clock tomorrow morning. So go home. Enjoy your
4 afternoon, and come back fresh and ready, and we'll get
5 started by 10 o'clock. If you get here by 9:45, that
6 will give you a chance to get to know each other a little
7 bit, and we'll let you all pick -- see who the foreperson
8 of the jury is, okay?

9 So go with him right now, and that's where
10 you'll report. We'll see you tomorrow morning at 10
11 o'clock.

12 (Jury recessed.)

13 THE COURT: Okay. Now, the rest of you
14 folks, that is all we'll need you for this week. We
15 certainly appreciate you showing up and your willingness
16 to participate and help us out, but, again, this is the
17 only trial we will be moving forward with this week.

18 So you are welcome to come back tomorrow and
19 sit and watch the trial, if you want to, but you are free
20 to also go back and do whatever you want to for the rest
21 of the day and the rest of the week. You don't have to
22 call in, and you're disqualified from jury service for
23 the rest of year, but we thank you for your patience with
24 us today, and I hope you will get a chance to serve on
25 another day. You're free to go.

1 (Jury panel dismissed.)

2 THE COURT: Let me see the lawyers over here
3 for a second. I got a couple things I want to put on the
4 record.

5 (Discussion held at sidebar.)

6 THE COURT: Just for the record, I wanted to
7 put on there that we had agreed in chambers -- we had
8 gone over the strikes for cause, and all the parties
9 agreed on what strikes were agreed upon for the Court to
10 strike for cause. That was submitted to the clerk.

11 We also had in chambers a discussion about
12 the number of strikes, and the solicitor took the
13 position, or takes the position, that the statute
14 enumerates which specific offenses are covered by the
15 allowance of ten strikes as opposed to five. The defense
16 takes the position that they are entitled to ten under
17 the theory, presumably, that attempted murder replaces
18 manslaughter, or the seriousness of the crime deserves
19 ten, and I have declined and only allowed five strikes
20 for each side, and, nevertheless, you only used three
21 strikes anyway. So I don't know if that could ever be an
22 appealable issue, but it's on the record now.

23 As far as mental health issues go, I was
24 provided with a copy of your competency to stand trial
25 evaluation, and you had a criminal responsibility

1 evaluation. Both of those indicated that they were
2 evaluated, or he was evaluated for both things. Neither
3 report indicated any reason to believe he wasn't
4 competent to stand trial or assist you, nor did he have
5 criminal responsibility defenses available to him. We
6 can make a copy of those part of the record if you want
7 to.

8 Did you have any reason to believe that he
9 might need to be evaluated again tonight?

10 MR. HUGHES: No.

11 THE COURT: These were the ones that we
12 agreed would be struck for cause: Juror number 244, 134,
13 17, 81, 73, 77, 143, 181, 204, 212, 188, and 137.

14 Who were the reports done by? Do you have a
15 copy of those?

16 MR. STONE: I'll just make that a Court's
17 exhibit, Your Honor, if you'd like. It's probably a
18 better approach.

19 THE COURT: All right. And the last thing I
20 wanted to do was address the defendant about the
21 possibility of his -- making sure he understood his right
22 to testify or not testify on the record before we begin.

23 So, Mr. Orr, I need you to stand up. You're
24 getting ready to go on trial tomorrow. We'll start the
25 trial at 10 o'clock tomorrow morning. We're going to do

1 some pretrial things this afternoon and first thing in
2 the morning, but tomorrow morning, the trial begins, and
3 you face the possibility of up to 35 years in prison if
4 you are convicted.

5 Now, you will have some decisions that you
6 will have to make as a result of your plea of not guilty.
7 We empanelled a jury, and those folks will be the jury
8 that decides the outcome of the case.

9 The State has the burden of proof. You heard
10 me tell the jury that. You don't have to prove that
11 you're not guilty. The State has to convince these folks
12 that you are guilty beyond a reasonable doubt.

13 You have a constitutional right to testify,
14 if you want to, as part of your defense, and, if you
15 testify, you will be placed under oath. Your lawyer will
16 ask you questions, and then the State has the right to
17 cross-examine you. You have to answer those questions
18 truthfully, and if you have any prior convictions, which
19 I'm not aware of at this point, but if there are prior
20 convictions, we will discuss whether or not those would
21 be allowed into evidence as evidence for the jury to
22 consider for impeachment purposes only; in other words,
23 to say because you got convicted of a serious felony
24 before, it would be more likely that you're not telling
25 the truth. That's what impeachment means.

1 Most importantly, you have the right to also
2 not testify. If you don't want to testify, nobody can
3 make you, and the State does not or will not be allowed
4 to mention your failure to testify to the jury in any
5 way. They can't refer to it in any way. They have to
6 prove that you're guilty. You don't have to prove that
7 you're innocent, so if you decide you don't want to
8 testify, you don't have to call any witnesses.

9 You can still call witnesses and not testify.
10 You can put up witnesses and testify, and you could put
11 up no other witnesses and still testify; in other words,
12 you would be your only witness at this point. This is a
13 constitutional right that you have. I have it, everybody
14 has it, but you're the one that's on trial.

15 So tonight I want you to think long and hard
16 about that. I know you've talked with your lawyer about
17 it, and you probably have made some preliminary
18 decisions, but you're not bound to make a decision until
19 we get to the point in trial where I make a finding that
20 the State has put enough evidence up that it gets to go
21 to the jury. At that point, you have to decide whether
22 or not you want to put up a defense, which may or may not
23 include you testifying.

24 You do not have to tell me what your decision
25 is at this point. My sole purpose in speaking to you

1 about this right now is to say it is getting close to the
2 point, though, where you have to make that decision.

3 So think long and hard on that this afternoon
4 and tomorrow, and if you want to discuss that again with
5 your lawyer, you can, and if there is the availability to
6 talk with a family member, you can discuss it with them;
7 however, ultimately, it's your decision and your decision
8 alone. Your lawyer can't make it for you. You're the
9 defendant, and you have to make it.

10 Do you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Okay. I just wanted to give you
13 that so it didn't come up as a surprise for you tomorrow.
14 You got to sleep on it tonight, and, again, tomorrow
15 morning, you don't have to make a decision, but when the
16 State finishes putting up all of their evidence, at that
17 point we'll have this discussion again, and you'll have
18 to tell me whether or not you want to testify or not
19 testify.

20 All right? Okay. See y'all tomorrow at
21 9:30, and then you'll send me that tape, or access to it.

22 (At 12:38 p.m., proceedings recessed.)

23 (August 8, 2017.)

24 (In open court, jury not present.)

25 THE COURT: Before we deal with that juror

1 issue, let's deal with the defendant's motion to
2 suppress. So your motion?

3 MR. HUGHES: Thank you, Your Honor. Your
4 Honor, a video was taken that day by the victim. On the
5 video, the first part of it shows him communicating with
6 a third party, where she alleges that my client was
7 potentially involved in a strong-arm robbery.

8 There has been no arrest, no indictments,
9 nothing about a strong-arm robbery involving my client.
10 I would say that would be very prejudicial, would be
11 considered a potential prior bad act that has never been
12 adjudicated in any way, shape, or form. I move that that
13 be suppressed.

14 After the confrontation between my client and
15 the victim, there is another approximately ten to fifteen
16 minutes of video. On that video, there is communication
17 between the victim and dispatch, the victim and a
18 civilian bystander, and you can hear other civilians in
19 the background, none of which has any probative value
20 whatsoever, and because of some of the comments on there,
21 particularly one time where, Tell my family that I love
22 them, would be considered extremely prejudicial.

23 Any probative value as to ascription in this
24 matter would be greatly outweighed by the prejudicial
25 aspects of the blood, the tug on the heartstrings, and

1 the sheer fact that there is nothing there that the State
2 could use to point toward my client. I move that
3 anything after the interaction between the person on the
4 video and the victim be suppressed.

5 THE COURT: Mr. Solicitor?

6 MR. STONE: May it please the Court, Your
7 Honor: All of this falls under Rule 803(1) as far as
8 presence and suppression, and what you have in this video
9 is a contemporaneous recording of the event literally
10 from the police officer's perspective, from the very
11 beginning to the very end. The very beginning, when we
12 talk about him responding to the call, that's the purpose
13 of him being there; otherwise, it looks like he's just
14 rolling up on somebody walking down the street and he
15 starts yelling at him to stop.

16 I think the purpose of him going to the store
17 is because he was dispatched to the store, and we've got
18 a 911 dispatch that we plan on playing as well that
19 covers that. That's res gestae. That's all a part of
20 this particular crime, and I don't think you can leave
21 that out without leaving a question in the jurors' mind
22 of, What's the police officer doing there? Why is he
23 stopping some guy on the side of the road?

24 Also, part of that description is he's
25 wearing a hunting suit. He's wearing a red bandanna.

1 He's somebody they're looking for, so the point of that
2 first segment of the tape is to establish why the police
3 officer is there, what he's doing, why he's questioning
4 this man; otherwise, I think it draws a huge question to
5 the jury what's he doing trying to stop this guy to begin
6 with?

7 There's no question it's an exception to the
8 hearsay rule under 803(1). For anything to be
9 contemporaneous, it's got to be perceived. It's got to
10 be either immediately as it's happening or immediately
11 thereafter, and this is literally moments after it
12 happened. You can hear from the 911 that the dispatch
13 comes in at minute one, and it's about one or two minutes
14 later that he actually arrives on the scene. We're
15 talking about Estill. It's a relatively small town, and
16 he's relatively close to the location, so this is very
17 much in keeping with the time pattern of what's
18 happening.

19 That's from the front part of it. Second
20 part of it is also res gestae. The fact that he thinks
21 he's going to die is particularly relevant in a case
22 which we've charged attempted murder. The fact that
23 there's blood, again, is particularly relevant as to
24 somebody who has been shot in the face, the neck, and the
25 arm. All of that is relevant as to the charge of

1 attempted murder.

2 It is -- and I do not say this lightly. Is
3 it prejudicial? It's not nearly as prejudicial as the
4 film of the defendant shooting the officer in the face,
5 and when you look at it from that perspective, there can
6 be hardly anything on this video that is more prejudicial
7 than probative. All it does is show what happened to
8 this officer, when it happened, and what the immediate
9 reaction of it was, and every witness that is there that
10 you hear -- I think you hear Mr. Tompkins on that, and
11 you may be able to get a glimpse of him in the video.

12 He will testify, but all of that, again, is
13 contemporaneous. Everything is happening literally in
14 realtime, so I don't -- there's no hearsay objection
15 that's valid under 803(1). It's all res gestae. It's
16 all part of what the event is, and it's all relevant to
17 show what happened to this officer in the situation that
18 brings us here today, so I really can't argue it in any
19 other context other than those two issues.

20 THE COURT: Mr. Hughes, you want to respond?

21 MR. HUGHES: No, Your Honor. I think I said
22 it best to begin with.

23 THE COURT: All right. Well, there's
24 definitely probative value in both the things that you're
25 seeking to have the Court suppress. As the solicitor

1 says, the first part, res gestae, is somebody at the
2 store telling the police what happened and the
3 description of the person is -- had just left, and so
4 that's why the police officer is, in fact, searching for
5 somebody, and so that has probative value.

6 At the other end of the tape with the victim
7 telling the dispatcher, tell his family he loves them,
8 definitely he thought he was dying and had a possibility
9 of dying. So, you know, the charge is attempted murder,
10 and this would certainly counter any argument that it was
11 not a serious attempt to harm somebody. I don't know
12 what the defense is going to be, if, in fact, that might
13 be a defense, but the State has the obligation to put up
14 evidence showing that it was, in fact, an attempt to take
15 a life and the victim perceived -- he thought he was
16 dying, so in both cases, there's probative value. The
17 prejudicial effect, I don't believe, is that high. In
18 both cases, the probative value certainly outweighs any
19 prejudicial effect, so the motion is denied.

20 All right. Anything else from the defense?

21 MR. HUGHES: Yes, Your Honor. Yes, Your
22 Honor. I have talked to Solicitor Stone about his
23 witnesses. He tells me that with the exception of two
24 civilians who have nothing in common with each other that
25 all of his witnesses are law enforcement, or work with

1 law enforcement. Because of that, Your Honor, I will not
2 move to sequester the witnesses in this matter.

3 THE COURT: Very well. Anything else?

4 MR. HUGHES: That's all from the defense.

5 THE COURT: Anything further from the State
6 before I bring that juror in?

7 MR. STONE: Other than juror issue, Your
8 Honor, I have at this point given, I believe, the defense
9 all the rap sheets on all the witnesses. I do not
10 believe that there is any cross-examinable prior
11 convictions. If there are, we need to address them, but
12 I've already spoken to defense. I don't believe there
13 is, but I want to make sure the Court is aware of that,
14 that I have shown him the history, and I have conveyed to
15 him there is one person that has a pending charge that
16 does not have a rap sheet that reflects that, but I have
17 informed the defense of that as well, and I don't believe
18 he seeks to go into that. If he does, we need to have a
19 hearing, but otherwise, we do not.

20 THE COURT: All right. Thank you.

21 MR. HUGHES: Your Honor, I just checked with
22 my assistant. She just indicated that we don't have the
23 rap sheets, but considering the people in question in
24 this matter, Your Honor, we have no problem with any of
25 that -- I now have a copy of the rap sheets, Your Honor.

1 MR. STONE: We already gave him ones, but
2 that's --

3 MR. HUGHES: It may be out there on the web
4 somewhere, Your Honor, that we just haven't accessed, but
5 it's not a matter that I'm that concerned about.

6 THE COURT: All right. Very well. If you
7 change your mind and see something, let me know before a
8 particular witness gets called. All right? Let's bring
9 in Benita Drayton, juror 56.

10 (In open court, juror present.)

11 THE COURT: Ms. Drayton, yesterday I asked
12 the jury panel if there was any member of the jury
13 panel -- if you or any of your family members had ever
14 been prosecuted by the solicitor's office. You did not
15 respond.

16 Are you related to anyone that was prosecuted
17 by the solicitor's office? There's some question about
18 whether or not you may be related to somebody.

19 THE JUROR: The only person is my son. I
20 don't know if he was prosecuted for anything. You mean
21 on trial?

22 THE COURT: Yeah. So Rashad Marquis Bishop?

23 THE JUROR: That's my son.

24 THE COURT: That's your son?

25 THE JUROR: Uh-huh.

1 THE COURT: And he got prosecuted last year,
2 or sometime in the last year or so for attempted murder?

3 THE JUROR: Was it a gun charge?

4 THE COURT: What was the charge?

5 MR. STONE: It ended up being assault and
6 battery of a high and aggravated nature. I think it was
7 a plea, so that may be a little bit of confusion.

8 THE JUROR: Yeah.

9 THE COURT: So that is your son?

10 A PROSPECTIVE JUROR: Yeah.

11 THE COURT: Did you not understand what I was
12 asking?

13 THE JUROR: No, no.

14 THE COURT: Okay. All right. Well, then,
15 I'm going to excuse you from service on this case.

16 THE JUROR: Okay.

17 THE COURT: And you can go ahead and get your
18 testify and go, just don't talk to anybody on the jury
19 panel there. All right?

20 (Juror dismissed.)

21 THE COURT: We got two alternates here.
22 Would you draw one of those names out for me? I'm
23 putting those in a cup with the numbers of the juror on
24 there. She has picked number 169, Mr. Pauls. Mr. Pauls
25 will be seated as a regular juror then.

1 All right. Anything else before we bring the
2 jury in?

3 MR. STONE: Not from the State, Your Honor.

4 MR. HUGHES: Not from the defense, Your
5 Honor.

6 THE COURT: All right. You ready then?

7 MR. STONE: Yes.

8 THE COURT: All right. Let's bring the jury
9 in.

10 (In open court, jury present.)

11 THE COURT: Which one of you is Mr. Keith
12 Pauls? I had to dismiss Ms. Drayton from jury service,
13 and you got selected to be the alternate, so you are now
14 a regular juror. All right? Mr. Brian Noll, you're
15 still an alternate.

16 What is your name and number?

17 A JUROR: Carl Burrell, 24.

18 THE COURT: Congratulations. I just
19 appointed you the foreman of the jury. Now, you don't
20 get any extra pay. You just write what the verdict is on
21 the indictments at the end of the trial, all right?
22 Think you can handle that?

23 THE FOREPERSON: Yes, sir.

24 THE COURT: All right. You'll conduct the
25 jury deliberations. It's not a hard job, but somebody

1 has got to do it and make sure everybody has an
2 opportunity to speak during jury deliberations and that
3 sort of thing.

4 Folks, we're getting ready to start this
5 trial, and before we begin the trial, the very first
6 thing I need to do is have the clerk administer the oath
7 to you. So, Madame Clerk, if you would, please
8 administer the oath.

9 (Jury duly sworn.)

10 THE COURT: Okay. Well, welcome back, folks.
11 Now we're ready to begin the trial, and as I told you
12 yesterday, this is the case of the State of South
13 Carolina versus Malcolm Atwan Orr. You met Mr. Orr and
14 his lawyer yesterday, along with the solicitor and his
15 assistant who will be assisting him in the prosecution of
16 the case.

17 Mr. Orr was charged with attempted murder and
18 possession of a weapon during the commission of a violent
19 crime. He pled not guilty to those charges, and so it
20 becomes incumbent upon the State of South Carolina to
21 provide him with a jury trial. That's where you 12 folks
22 come in. The State of South Carolina accused him of
23 these crimes. He said he didn't do it, and so the State
24 has to prove to the 12 of you beyond a reasonable doubt
25 that he committed these offenses in order to convict him.

1 The only thing that you base your decision on is what you
2 hear in this courtroom from evidence, and you take that
3 evidence and you apply it to the law that I tell you
4 applies to this kind of case, and that's how you come up
5 with a verdict. There's always two sides to every story
6 on the evidence, so you have to keep an open mind until
7 you get to hear all of the evidence throughout the trial.

8 The way we work an adversarial trial, the
9 State has the burden of proof. They call witnesses
10 first. They get to ask the questions first. That's
11 called direct examination.

12 Then the defense has the opportunity to ask
13 questions of a witness. That's called cross-examination.
14 Then we usually have one round of followup, but it's this
15 process of calling witnesses, each side getting to ask
16 witnesses questions that brings out the truth, and you
17 decide what, amongst the conflicts of different things
18 that you may or may not hear throughout the trial, what
19 convinces you of its truth, and then you determine if the
20 State met the burden of proving that Mr. Orr committed
21 these crimes.

22 The burden of proof is something that you
23 hear a lot about in a trial. We have two different types
24 of trial. We have criminal court, and we have civil
25 court, and we're obviously doing criminal court this

1 week, but I'm just going to mention the civil court
2 because it gives you an idea of the difference of the
3 amount of evidence that the State has to present to you
4 in order to prove their case, as opposed to the kind of
5 case where somebody sued somebody over an automobile
6 accident or a breach of contract or that sort of thing.

7 Proof beyond a reasonable doubt has been
8 defined by our Courts as leaving you firmly convinced of
9 the guilt of the person, so you probably have heard the
10 phrase proof beyond a reasonable doubt in movies or in
11 books or on television shows or things like that but
12 probably never gave it a great deal of thought, but it
13 means, essentially, that the State has provided you with
14 enough evidence so that after you've heard of the
15 evidence you're firmly convinced of the defendant's
16 guilt.

17 Why this is important to stress this at the
18 beginning of the trial is what I told you yesterday: The
19 defendant does not have to prove that he is innocent.
20 The State has to prove that he is guilty. Mr. Orr
21 doesn't have to do a thing except show up for trial, and
22 he's done that. He's setting over there. He doesn't
23 have to put up a defense. He doesn't have to call any
24 witnesses. He doesn't have to testify. He can do all of
25 those things if he wants to, but he's not required to,

1 and if he does not present a defense and if he does not
2 testify, you are not to hold that against him in any way
3 while you are deliberating the verdict in this case.

4 He has a constitutional right to not testify
5 and not present any evidence, and you're not to hold that
6 against him. This case is -- the strength of this case
7 is solely rested on the State's burden of proving to you
8 guilt beyond a reasonable doubt. So a lot of times
9 you've heard phrases like that, which you take granted.
10 Proof beyond a reasonable doubt, and you go, Yeah, well
11 what does that really mean? What do I have that helps me
12 to understand that?

13 Well, that's why I talk about civil cases,
14 and, in civil cases, you have two parties: There's the
15 person that is suing and the person that got sued. We
16 call them the plaintiff and the defendant, and in a case
17 like that, the plaintiff, that's our big, fancy word for
18 the person that brings the lawsuit, they have the burden
19 of proof because they filed the lawsuit, but the burden
20 of proof in a civil case is not very high. It's just
21 called proof by a preponderance of the evidence, which is
22 sometimes also referred to as more likely true than not
23 true, and usually I give this exact same example when
24 we're doing a civil case because people hear what I'm
25 saying, but after you've heard it, you go, I got what you

1 said, but I'm not really sure I understand it, and that's
2 because a lot of us are visual learners.

3 I'm a visual learner, and it helps to see
4 things in order to understand it a little better. So you
5 may see the scales of justice with lady justice holding
6 her hands out there weighing things. That's a good
7 example. If you take a case like a civil case where you
8 have one party suing the other party, the plaintiff --
9 the scales start out evenly at the beginning of a trial,
10 and in a civil case, the party with the burden of proof
11 has to tip those scales just a little bit. That's called
12 a preponderance of the evidence, or is whatever they're
13 trying to prove more likely true than not true.

14 If they tip those scales, even if it's just
15 slightly, then they're entitled to a verdict, but at the
16 end of the trial, if the scales are still even, or maybe
17 the jury thinks they tip in favor of the defendant, that
18 plaintiff is not entitled to a verdict because he hasn't
19 met the burden of proof. It's not a very high burden,
20 but in a case like this, where the State has charged
21 somebody with committing a crime, it's a much higher
22 burden of proof. It's that proof beyond a reasonable
23 doubt.

24 So we start out with those same scales of
25 justice. The State on one hand, you got the defendant on

1 the other hand. Well, the State, in order to prove guilt
2 beyond a reasonable doubt, in other words, leave you
3 firmly convinced of that guilt, well, they have to tip
4 those scales quite a bit, all right?

5 So it's a much higher burden of proof in a
6 case where the State accuses somebody of committing a
7 crime, but the defendant never has to prove that he's
8 innocent. He doesn't have to prove he didn't do it.
9 He's just got to show up for trial, okay? And, again, I
10 stress, if he doesn't put up a defense, he doesn't
11 testify, you can't hold that against him while you are
12 deliberating whether or not the State met their burden of
13 proof. Okay?

14 Now, everybody in this courtroom, at least on
15 this side of that little gate right there, has a role. A
16 lot of those people are either witnesses or spectators,
17 and their role, they may or may not testify, but
18 everybody on this side pretty much has a role. I've got
19 a role; you've got a role; all of these folks have a
20 role.

21 I'm the trial judge. My job is two-fold:
22 First and foremost, it's to make sure that both sides get
23 a fair trial. I don't really know a whole lot more about
24 this case than what you know, and so I don't have an
25 interest in what the outcome of the case is. That's not

1 my job, to make sure that one side or the other prevails.

2 My job is to make sure the State of South
3 Carolina gets a fair trial and Mr. Orr gets a fair trial,
4 so we have rules of procedure, and I make sure we follow
5 those rules of procedure. We have rules of evidence. In
6 other words, I need to determine whether or not the
7 evidence that you hear is the kind of evidence that you
8 are supposed to be able to hear. We call it legally
9 competent evidence. That's another one of just our big,
10 fancy phrases but sometimes, really, what we're trying to
11 do in a trial is to make sure that you get evidence in
12 the correct legal form, but the rules are all designed
13 ultimately to make sure that it's reliable evidence and
14 it's in the best form that we can get it to you in, and
15 the best form, most of the time, is when somebody gets up
16 and testifies, they're put under oath, and they tell you,
17 I was there. This is what I heard, I saw, I touched, I
18 felt, I smelt.

19 All right? That's called direct evidence,
20 and it's usually the best kind of evidence, but there's
21 other kind of evidence too, and sometimes there's papers.
22 Sometimes there's pictures. Sometimes there's videos.
23 All of those are different types of evidence, but it's
24 part of my job to make sure that it is, you know,
25 authenticated, proper, and it's okay for you to hear.

1 And once I've made that decision, you decide how much
2 weight to give it, because you will probably hear people
3 testify and say, you know, one thing and then another
4 party says something either directly opposing it or maybe
5 it's just slightly different, so you have to reconcile
6 all that, but that's your job. It's not my job.

7 So my job is to preside over the trial, make
8 sure our rules of procedure are followed, and to make
9 sure you get to hear the evidence in the proper form. So
10 sometimes you'll hear a lawyer stand up and say, I
11 object.

12 That's kind of our code words for saying,
13 Judge, you need to make a ruling to make sure that this
14 evidence is proper for the jury to hear because at the
15 end of the day, when the case is over with, if there is
16 ever an appeal from a trial, the Court of Appeals or the
17 Supreme Court, whatever appellate Court might hear the
18 appeal, if there is any evidence in the record to back
19 whatever your decision is, they're bound by that, but
20 what usually happens is if they reverse it and say you
21 got to do it over again with a new jury, you know, and
22 defendant gets a new trial or the State gets a new trial,
23 however they come out with it, it's always, most of the
24 time, that the judge did not make the correct decision,
25 either on following procedure or letting evidence in or

1 keeping it out, that sort of thing.

2 So I sometimes can make that ruling based on
3 the context. In other words, I've been doing this for a
4 while, and so I kind of get the flow of it and go, Okay.
5 Sustained, or, Objection overruled. I can do that.

6 Sometimes I don't know what's coming up, and
7 so I might have the lawyers come over out of earshot and
8 say what it is that they are objecting to and I can then
9 make a ruling, but sometimes it's stuff that comes up as
10 a surprise, at least to me, and I have to send you out of
11 the room in order to be able to hear what the witness is
12 going to say, because, again, I just showed up here
13 yesterday. I don't know what the witnesses are going to
14 say, so I have to make a decision whether or not, again,
15 it's proper for you to hear it or not hear it, and so I
16 have to send you out so I have to hear what the witness
17 is going to say and I can make a ruling, and we bring it
18 back in and we either move on without hearing it or I let
19 the witness tell you.

20 So we're not trying to keep anything from
21 you, it's just we're trying to do this correctly one
22 time. That's my goal, just to do it one time, okay? So
23 lawyers aren't trying to keep you in the dark or
24 anything, they're just doing their job, and part of my
25 job is to rule on evidence.

1 The other thing I have as a job is to charge
2 you on the law on what applies to this kind of charge.
3 So we got the charge of attempted murder, the charge of
4 possession of a weapon during the commission of a violent
5 crime. At the end of the trial, I will explain to you
6 the elements of those crimes, so then you take the
7 evidence that you find and apply it to the law, and
8 that's how you come up with a verdict. All right?

9 So that's my job as the trial judge. Now,
10 there's another judge that's in this trial, and that's
11 you folks. All right? The 12 of you are acting as the
12 judges of the facts. I'm the judge of the law. You're
13 the judge of the facts, because you're going to hear the
14 evidence, and however the evidence comes out, if there's
15 a disagreement between what people saw and what they
16 heard, you have to resolve it, okay? I don't have a
17 say-so in it. I'm not allowed to comment on the
18 evidence. I'm not allowed to wink and tell you, Hey,
19 don't believe this, or, Believe this.

20 That's not my job, and I'm not allowed to do
21 it. The 12 of you, when you get back and discuss this
22 case at the end of the trial, have to make a decision as
23 to who to believe and what to believe, that sort of
24 thing, so you are judges of the facts, and, ultimately,
25 you are going to be the ones that come up with what the

1 verdict is in the case.

2 In other words, did the State meet their
3 burden of proof, all right? And that is solely your
4 decision. I don't have any input on that, so the 12 of
5 you will come up with a verdict. So that's your job.

6 The court reporter, her job is to take down
7 everything, make sure that if there is ever an appeal,
8 you know, we've got a record of it. The bailiffs, their
9 job is to help you and assist you. I always tell them
10 that their job is to make me look good, but, really,
11 their job is to help you out, and it's been my experience
12 over the years that whenever -- sometimes people like to
13 reach out to jurors after the trial. Clerks will
14 sometimes do that and say, Is there anything we can do to
15 make your experience any better?

16 The number one thing the jurors always say
17 is, The bailiffs really treated us well, so their job is
18 to assist you in any way, and I think I told you
19 yesterday when we were talking about medical conditions,
20 you know, I usually like to take a break about every
21 hour, hour and a half, but if you have to use the rest
22 room or, you know, if you have a bad back and need to
23 stand, you can stand up, but if you need to use the rest
24 room before it looks like I'm getting ready to take a
25 break, just kind of get word down to the bailiff, and

1 he'll get my attention and we'll have a break. That's
2 not a problem.

3 Okay? So we get to the trial, and in a few
4 minutes, I'm going to let the lawyers make opening
5 statements. Now, opening statements are just the lawyers
6 getting up and giving you a brief overview of what this
7 case is about. I told you what the charges are
8 yesterday, but they're going to kind of give you what I
9 always call the Reader's Digest condensed version, and
10 they'll just tell you a little bit about what this case
11 is about, about five minutes or so. It will help you
12 understand it, because we're going to -- this isn't going
13 to be a real long trial, and but it still gets told one
14 witness at a time, one photograph at a time, and so it
15 will help you understand where they're attempting to go,
16 from their perspective, anyway.

17 So we have that, where the lawyers are just
18 giving you a little opening statement. I want you to
19 understand and remember this, because this applies to
20 opening statements and closing statements and anything
21 that the lawyers say in between: The lawyers are not
22 witnesses. They were not there. They did not see what
23 happened. What they say is not to be considered by you
24 as evidence. All right? Evidence is, again, people
25 getting up on the witness stand and telling you what they

1 heard, they saw, they touched, they felt, they smelt, or
2 the photographs or documents that I let in. Those are
3 evidence, but lawyers talking, that's not evidence. All
4 right?

5 When a lawyer stands up and asks the witness
6 a question, that's not evidence. The answer that the
7 witness gives is evidence, okay? So when the lawyers are
8 getting up and telling you about the case here in just a
9 couple minutes, remember, that's not evidence. Don't
10 keep it as part of your deliberations later what the
11 lawyers say as being factually true or not true because
12 they're not witnesses, and they are not considered as
13 being able to give evidence, but it's just to help you,
14 all right?

15 Because the State has the burden of proof,
16 you'll hear from the solicitor first, and then you'll
17 hear from the defense lawyer, if he wants to. He's not
18 required to make an opening statement, but if he does,
19 you'll hear from him then, and then we'll move into the
20 trial, and in the trial, the State has the burden of
21 proof, so they call their witnesses first. They get to
22 ask the question first; they put in documents,
23 photographs, videos first. After you've heard from the
24 State, the defense will then have the opportunity to put
25 up any witnesses or evidence if they want to.

1 And, again, I stress they're not required to,
2 and if they don't, you're not to hold that against them,
3 but once you've heard all of the evidence, then we'll
4 come back, have closing arguments where the lawyers will
5 just rehash what you then have heard. They'll give you a
6 little preview of the law that I will charge you, and
7 then they will attempt to persuade you to render a
8 verdict on their client's behalf. And then I will charge
9 you on the law, and you will retire to consider what your
10 verdict will be.

11 All right? That's really how simple it gets.
12 I want to again stress to you that you're not to begin
13 deliberations or discussions until all of the evidence is
14 in, so whenever we take a break, either to go to the rest
15 room or for lunch or for the day, let your mind go free,
16 and don't start thinking about guilt or innocence because
17 you haven't heard all the evidence. It's really not
18 proper to talk, even amongst yourselves, while you're
19 back there because, again, you haven't heard all the
20 evidence, so preliminary discussions amongst you are
21 strictly prohibited.

22 Most importantly, keep an open mind, because
23 you'll find trials are like life, and you often get first
24 impressions about stuff, and then later on you get more
25 information, and you go, Oh, well, I didn't consider

1 that, and now I got to consider that.

2 And you may not change your mind from your
3 first impression, or you may, but you may change your
4 mind and come back to what your first impression was, so
5 there is a lot of life that goes on. We're not asking
6 you to do anything extraordinary. We're not asking you
7 to leave common sense at the doorstep. We're just asking
8 you to keep an open mind, follow the process. There's a
9 time-tested process. It really works well, and then
10 you'll make the decision at the end. Okay?

11 So I am now going to turn it over to the
12 lawyers to begin their opening statements, and we will
13 begin with the solicitor. If you are ready, you may
14 begin.

15 MR. STONE: May it please the Court, Your
16 Honor: Quincy, stand up, if you don't mind, sir. Quincy
17 is a police officer with the Estill police department,
18 and on January 1, 2016, Officer Smith did what he always
19 does: He answered the call. That was his job. This
20 time the call went to a store in Estill in which he was
21 asked to come and not only talk to the people who had a
22 problem, but find out what the problem was.

23 He answered the call. That's what we asked
24 him to do, and on January 1, 2016, that's what he did,
25 and as a result of him answering the call, this man over

1 here, Malcolm Orr, shot him not once, not twice, not
2 three times, but four times, shattering his arm and
3 shooting him in the chin, and but for the grace of God
4 and some very good doctors, Officer Smith is still with
5 us today, because when the bullet hit the chin, it didn't
6 go straight back. It bounced and it cut his neck, and
7 although he had to have surgery, it was life threatening,
8 it didn't kill him, and that's why Malcolm Orr is charged
9 with attempted murder instead of murder. Why? Because
10 Quincy Smith answered the call. He did what he was
11 supposed to do.

12 Now, what you will hear over the next days is
13 that Quincy Smith didn't have anything against Malcolm
14 Orr. He didn't even know who he was. All he knows is he
15 was called to the Bobops in Estill because there was a
16 man in a camouflage suit, a hunting suit, that was
17 wearing a red bandanna that was harassing people as they
18 were coming out of the store, trying to take things from
19 them.

20 When he responded, he went into the store,
21 and that's exactly the description he got, and the people
22 in the store pointed out Malcolm Orr, who was wearing a
23 hunting suit, who was walking away from the store, and a
24 red bandanna. The officer then approached him, and he
25 tried to get him to stop and he tried to get him to talk

1 to him.

2 Again, he didn't know Malcolm Orr. He didn't
3 know anything about him. He didn't have anything
4 personally against him, but what he also didn't know is
5 Malcolm Orr had a nine millimeter handgun in his right
6 pocket, loaded, and after the officer asked Malcolm Orr
7 to stop, he didn't. He asked him again and again and
8 again, and Orr never did stop.

9 And at some point, Officer Smith said, Take
10 your hands out of your pocket. I need to see what's in
11 your pocket.

12 And he didn't ask him once or twice or three
13 times, but about four times, and on the fourth time,
14 Malcolm Orr brought his hand out of his pocket, holding
15 the gun, and shot Quincy Smith in the face.

16 Now, as the judge told you, what I tell you
17 is not evidence, and you don't need to take my word for
18 it, because on that day, Quincy Smith was wearing a body
19 camera. The body camera was in his glasses, so you'll
20 see everything that I just told you, everything. You'll
21 see this event from the very beginning to the very end,
22 until Quincy is loaded into an ambulance and driven to
23 Savannah Memorial, and my job today, over the next
24 several hours, will be to prove to you this case beyond a
25 reasonable doubt.

1 My job is to prove to you that Malcolm Orr is
2 the person in that video, that Malcolm Orr shot Officer
3 Smith in the face and in the arm, and that he was
4 carrying a handgun when he did it, and I've got to prove
5 to you that beyond a reasonable doubt, and if I don't do
6 that, your job is to come back here and find him not
7 guilty.

8 But what I'm going to do is ask you at the
9 end of this trial the same thing I ask all jurors: When
10 you come back after you see the video, after you hear the
11 witnesses, after you know all there is to know about this
12 case, I'm going to ask you to come back here and give us
13 a verdict that speaks the truth, because that's your job.
14 I'm going to ask you to speak the truth.

15 Thank you.

16 MR. HUGHES: May it please the Court,
17 Mr. Stone: Good morning. We were introduced yesterday.
18 My name's Bob Hughes. I'm a lawyer with the public
19 defender's office, and my office is down in Ridgeland. I
20 promised my wife first thing I was going to tell you all
21 is I have high blood pressure and I'm taking medicine to
22 control it, but that high blood pressure causes my feet
23 to swell. Now, I own Edmond Allen shoes. I own Johnson
24 Murphy shoes, but today I'm wearing another name brand:
25 Crocs. I tell you all that so that y'all don't pay

1 attention to what that bearded lawyer sitting at that
2 table has got on his feet.

3 Now, I'm going to make y'all a promise, and
4 I'm going to tell y'all a secret. The first thing I'm
5 going to promise you is this is going to be like
6 absolutely nothing you've ever seen on television, and
7 the secret is some of this is boring. I know you're
8 thinking this is a trial. The solicitor just told you
9 all what this was about. How in the world can this be
10 boring?

11 We have to cross every T, and we have to dot
12 every I, and there are going to be witnesses that he
13 calls that come sit on the stand and say, I carried that
14 from point A to point B.

15 Thank you. No further questions.
16 Mr. Hughes, your witness.

17 Mr. Hughes will stand up. No questions. The
18 witness will go.

19 It's called the chain. The chain has to be
20 introduced, and that is what you're going to be sitting
21 there going, Why are they wasting my time? It's
22 something we have to do. I'm sorry, but it is.

23 I don't want to waste your time. I don't
24 want you to be bored, because if you're bored you're
25 going to be sitting there going, Okay. Oh, those are

1 ugly Crocs he's got on. Oh, let's see, it's -- oh, it's
2 only 8:30. We're not going to have lunch until later.
3 What am I going to go eat, or, even worse this afternoon,
4 oh, man, I shouldn't have eaten Kentucky Fried chicken.
5 I'm full. I need to take a nap. Will this guy ever shut
6 up?

7 Please remember, pay attention. I've never
8 been on a jury. I want to be on a jury. I want to know
9 what a jury thinks, because there is going to be
10 something said that y'all are going to hear that I don't
11 hear, that Solicitor Stone doesn't hear, and it's going
12 to mean something to you, but pay attention to
13 everything, not just that one thing. That's all I'm
14 asking. Pay attention.

15 Now, Officer Smith was wearing a video
16 camera. The solicitor and I agree on one thing: That is
17 the best video camera. We want every police officer to
18 have one. I want it because my job is the truth, and
19 nothing tells you the truth better than seeing it through
20 someone else's eyes. That's what you're going to get a
21 chance to do.

22 Now, after this is over, you and I are going
23 to have a talk. I'm going to point out some things which
24 you may or may not have noticed, but for me to do that,
25 you have to pay attention, and that's all I ask of

1 anybody. And I will be watching, the judge will be
2 watching, the solicitor will be watching, and it's going
3 to be boring at points, and I'm so sorry, but please pay
4 attention, and I'll come back and I'll talk with you when
5 this is over.

6 Thank you.

7 MR. STONE: State calls Catherine Bozard to
8 the stand.

9 CATHERINE BOZARD,
10 having been first duly sworn,
11 was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. STONE:

14 Q. Ms. Bozard, if I could get you to pull that
15 microphone a little closer to you so we can hear what you
16 have to say.

17 Who do you work with, ma'am?

18 A. I work with Hampton County 911.

19 Q. That's the dispatch center, I guess?

20 A. The communications center, the home of the 911
21 system. We take in all calls on our 911 telephones and
22 dispatch emergency personnel to all calls.

23 Q. So are you working not only with calls coming in,
24 but also radio traffic as well?

25 A. That's correct.

1 Q. When I say radio traffic, tell me what I'm talking
2 about. We're talking about radio back to law
3 enforcement, EMS?

4 A. And fire.

5 Q. And fire as well?

6 A. Yes.

7 Q. Is that for Hampton County?

8 A. Yes.

9 Q. How long have you been doing that?

10 A. Four-and-a-half years.

11 Q. Do you hold some supervisory role in this
12 position?

13 A. I am I'm now the 911 coordinator for Hampton
14 County.

15 Q. Now, the system itself is set up -- tell me a
16 little bit about that. The system is set up so that
17 specific calls addressing Hampton County that are coming
18 out of Hampton go to you; is that correct?

19 A. All calls in this county come through our system.

20 Q. And then what are you responsible for doing?

21 A. We're responsible for allocating calls and
22 dispatching the appropriate personnel for all emergency
23 situations.

24 Q. Now, these calls that are coming in and your radio
25 traffic and dispatch going back, can you speak back and

1 forth to the officers?

2 A. Yes, sir.

3 Q. And EMS as well?

4 A. That's correct.

5 Q. And, obviously, the 911 call people as well?

6 A. Yes.

7 Q. All right. Now, I've noticed on some 911 calls,
8 there is some noise or you can actually hear something
9 before the person picks up. How does that work?

10 A. Well, when the calls come in, they already are run
11 through the system two to three times before we actually
12 pick up the phone, so it has started recording anything
13 the person on the other end of the line has said.

14 Q. Are all those calls and the radio traffic
15 recorded?

16 A. Yes, sir.

17 Q. And it's recorded as it's happening, basically?

18 A. That's correct.

19 Q. These records of these recordings, are these kept
20 in the ordinary course of business in the dispatch
21 center?

22 A. That's correct.

23 Q. And you called it a hub, I believe?

24 A. Right.

25 Q. Let me ask you one other thing. I may not have

1 mentioned it. There is a reference in this to Echo
2 Seven. Do you know who that is?

3 A. Yes, I do.

4 Q. And who is that?

5 A. Officer Quincy Smith.

6 Q. Let me show you what's been marked as State's
7 Exhibit 1, ask have you reviewed this, ma'am?

8 A. Yes, I have.

9 Q. Is that a fair and accurate depiction of the radio
10 traffic and the 911 call happening January the 1st, 2016?

11 A. Yes, it is.

12 Q. Now, there is a transcript I know that is not on
13 this that is also being supplied in this case. Have you
14 reviewed that?

15 A. Yes, sir.

16 Q. Is that accurate as to what's on this 911 tape?

17 A. Yes, sir.

18 MR. STONE: Your Honor, at this time we move
19 State's Exhibit 1 in and ask to be able to publish not
20 only this piece of evidence, but also the exhibit which
21 is the transcript accompanying it.

22 MR. HUGHES: No objection.

23 THE COURT: It's admitted. You may publish.

24 (State's Exhibit No. 1 was marked for
25 identification and admitted into evidence.)

1 (Whereupon, the 911 call was played for the
2 jury.)

3 MR. STONE: Thank you. Ms. Bozard, if you
4 will, answer any questions defense has.

5 CROSS-EXAMINATION

6 BY MR. HUGHES:

7 Q. Just a few quick questions. What's Whiskey?
8 There was a called signed --

9 A. It's a phonetic letter for W.

10 Q. Who are they talking to?

11 A. The Gifford police officer.

12 Q. Okay. And Hotel is Hampton?

13 A. That's correct.

14 Q. Sierra is the sheriff's department?

15 A. That's correct.

16 Q. Echo is Estill?

17 A. Correct.

18 Q. I think that's everything. Was there anybody
19 else? EMS, what's that?

20 A. We have medic one, two and three.

21 MR. HUGHES: No further questions.

22 THE COURT: Redirect?

23 MR. STONE: No, nothing else. Thank you.

24 John Tompkins.

25 JOHN TOMPKINS,

JOHN TOMPKINS - DIRECT EXAMINATION

1 having been first duly sworn,
2 was examined and testified as follows:

3 DIRECT EXAMINATION

4 BY MR. STONE:

5 Q. Mr. Tompkins, first of all, is your last name
6 Tompkins? It's T-o-m-p-k-i-n-s?

7 A. That's correct.

8 Q. Mr. Tompkins, I know you've reviewed the 911 call
9 and the video. You're actually on this; is that correct?

10 A. Yes.

11 Q. Let me ask you to go back, if you will, to this
12 area in Estill on January the 1st, 2016. Were you
13 actually around the Bobops area around 11 o'clock that
14 day?

15 A. Yes. I was in the parking lot of the Bobops. I
16 had been there working on the gas station.

17 Q. What is your job, by the way? What do you do?

18 A. I do construction work. I was there remodelling
19 the bathroom.

20 Q. Actually inside the store?

21 A. Whenever this happened, I was beside the store,
22 outside.

23 Q. So when you're remodelling, do you have tools with
24 you to take in? Do you go back and forth to your truck,
25 or how does that work?

1 A. That is exactly what I was doing outside. I was
2 at my vehicle getting tools.

3 Q. Tell me the first thing that you noticed that was
4 unusual at that time.

5 A. Well, a little earlier, before this incident, I
6 had noticed a fellow come by and was kind of staring at
7 me, and I felt uncomfortable and later found out he was
8 wearing something over his face, and I found out it was
9 the same guy.

10 Q. What kind of clothes was he wearing?

11 A. Camouflage britches and some type of a coat, hoody
12 kind of thing.

13 Q. Is this in that parking lot you're in?

14 A. Yes.

15 Q. The Bobops -- let me ask you this: Where is the
16 Bobops located as to the party shop?

17 A. Directly next door, just west of the party shop.
18 Basically, in the same parking lot.

19 MR. STONE: Could I get you to mark this
20 please, ma'am? Well use this as an exhibit for right
21 now.

22 (State's Exhibit No. 2 marked for
23 identification.)

24 BY MR. STONE:

25 Q. Let me show you what's been marked as State's

1 Exhibit 2, and I think I've shown you a smaller version
2 of that, but do you recognize these areas?

3 A. Yes, yes.

4 Q. And do you recognize in particular the areas
5 around the store where you were?

6 A. Right, right, and this is the Bobops, and this is
7 the canopy in front of the station right here.

8 Q. Let me ask you, if I can, to get you to come off
9 the stand, if it's all right with Your Honor. Let me put
10 this right here --

11 MR. HUGHES: Your Honor, may I step over
12 there where I may observe?

13 THE COURT: Certainly.

14 BY MR. STONE:

15 Q. I'm going to ask you to keep your voice up. The
16 court reporter needs to hear you, as well as the jurors,
17 even the ones in the very back, okay? All right.

18 First of all, if you could, tell me what -- this
19 is a map of the area. Tell me where you were and what
20 the area is.

21 A. This is, of course, the party shop where the
22 incident took place, and this is the Bobops gas station.
23 This is the canopy in front of the station.

24 Q. Now, what is it -- when you say the canopy in
25 front of the station, is that what goes over the gas

1 pump? Is that what we're talking about?

2 A. Yes, yes. That's your pumps and all, and this is
3 the smaller canopy where they have diesel fuel and all.
4 I was parked right here at the end of the gas station.

5 Q. And that's on this side of Bobops? Bobops is
6 here, and then the party shop is here; is that correct?

7 A. Yes, and this is the lane where the shooting
8 actually happened at.

9 Q. This road right here?

10 A. Yes.

11 Q. All right, sir. And your truck is parked where,
12 here; is that correct?

13 A. That's right.

14 Q. Okay. All right. Go ahead and take the stand.
15 Thank you, sir.

16 What's the next thing -- after you see this man in
17 the camouflage walking -- with something on his face
18 walking by, what happens next?

19 A. Well, I went back to work. I didn't think a whole
20 lot about it, and a few minutes, I don't know how long,
21 but a few minutes later, I saw the police car come
22 whipping through the parking lot there, and he -- when he
23 went down the lane, I heard him, you know, hollering for
24 somebody to stop, and I looked down there and saw someone
25 on foot and the police car pulled up behind him, and,

1 again, I heard him. You know, he was hollering out the
2 window, evidently, at first, and I guess I really just --
3 his voice didn't sound that -- I don't know, that
4 aggravated, so I just didn't think that much about it,
5 and I turned and looked away, and when I looked away, I
6 heard the gunshots.

7 Q. Do you remember how many gunshots you heard?

8 A. I don't. It was numerous, but I don't know.

9 Q. What did you do right after that?

10 A. I actually ran in the station and told the gas
11 station attendant that -- I actually told her that I
12 thought the police officer might have shot someone. I
13 didn't know what had happened, and told her she needed to
14 lock the door and stay put, but she didn't.

15 And then I ran back outside to get my truck, and I
16 don't even remember making the 911 phone call, but I
17 understand that I did make the 911 phone call.

18 Q. After you make the 911 call, do you go to the
19 scene?

20 A. Yeah. I got in the truck and drove back there and
21 pulled up behind Quincy's automobile.

22 Q. Let me first show you what's been marked as
23 State's Exhibit 18. Is that a fair and accurate
24 depiction of the scene as you saw it when you got there?

25 A. Yes, yes, and my truck was pulled pretty -- must

1 be just out of that picture, unless it was taken after I
2 was already --

3 Q. Okay. And there's going to be some crime scene
4 tape. I know that came after the; is that right?

5 A. Yes.

6 Q. Let me show you what's been marked as State's
7 Exhibit 19. Is that a fair and accurate depiction of
8 Officer Smith's car?

9 A. Yes.

10 Q. And State's Exhibit 20, is that a fair and
11 accurate depiction of Officer Smith's car?

12 A. Yes. And in this photo, you can see -- back in
13 this area is where I then parked, about where that car
14 right there is sitting, somewhere in that area.

15 Q. All right.

16 MR. HUGHES: I have no objection to that,
17 Your Honor.

18 THE COURT: They're admitted.

19 (State's Exhibit Nos. 18, 19, and 20 were
20 marked for identification and admitted into evidence.)

21 MR. STONE: Publish this to the jury, at this
22 time.

23 THE COURT: You may.

24 BY MR. STONE:

25 Q. And, Mr. Tompkins, can you see that monitor from

1 where you're sitting?

2 A. Yes, sir.

3 Q. Is that the scene that you saw as you walked up
4 or -- I guess you pulled up in your truck; is that
5 correct?

6 A. I did, yes.

7 Q. Where is your truck in comparison to the car?

8 A. Oh, I pulled pretty much directly behind him.

9 Q. And I know, again, I'd asked you when we were
10 putting this in that there's some crime scene tape and
11 stuff, that came afterwards, but this is how the car
12 appeared when you got there; is that correct?

13 A. Yes, yes, sir. The door was open. He was in it.

14 Q. State's Exhibit 19? You just said that the door
15 was open. Where was Officer Smith when you got there?

16 A. He was seated in the driver's seat.

17 Q. And the door was open in the fashion it's in now?

18 A. Yeah, yes.

19 Q. And then State's Exhibit 20, this is the -- this
20 is how the police car appeared from the front; is that
21 correct? And you said something -- you pointed this out,
22 but the jury couldn't see the picture. Is your truck in
23 this --

24 A. In the far background, where those vehicles are
25 parked back there, that's the area that I was parked at,

1 but I do not see my truck. By this time, I was probably
2 already gone.

3 Q. Got you. Go back to State's Exhibit 19.

4 Now, when you got there, you said Officer Smith
5 was sort of in the apex of that door; is that correct?

6 A. Yeah, he was seated --

7 Q. What was he doing?

8 A. I could see through the back window that he was on
9 the radio.

10 Q. And that's as you pulled up?

11 A. Yes.

12 Q. What did you do after that?

13 A. I hollered out the window, Are you okay? Because
14 I didn't want to scare him, jumping out and running up to
15 the vehicle.

16 Q. Did you get any response?

17 A. No, I did not, and I just -- just as I hollered
18 the second time, Are you okay, he rolled out on to the
19 ground, so --

20 Q. Rolled out from the seat on the ground?

21 A. Yes, yes.

22 Q. What did you do at that point?

23 A. I got out and went to him.

24 Q. Tell me what condition he was in that you saw when
25 he was there.

1 A. He was shot badly in the neck. There was an open
2 wound on his neck, and his arm was broke between -- I
3 guess from -- a bullet wound had broke his arm, and he
4 was sort of flopping.

5 Q. I'm sorry?

6 A. He was flopping, his arm.

7 Q. That's how you knew it was broken?

8 A. Yeah. It was obvious.

9 Q. You made a motion toward the right side of your
10 neck. Is that where he was shot?

11 A. I believe it was on this side, yeah, pretty sure.

12 Q. Was he in full uniform when you saw him?

13 A. He was.

14 Q. What did you do? And I'm assuming he rolled out
15 of the car. Is he face down? Is he face up? How is he
16 sitting?

17 A. He was actually moving around quite a bit on the
18 ground. He was in distress.

19 Q. What did you do?

20 A. Well, he had pulled the radio out with him, and I
21 immediately kind of tried to make him be still and lay
22 down, but then I grabbed the radio and told them where we
23 were.

24 Q. So you actually called back in. That was your
25 voice?

1 A. On the radio, yes.

2 Q. All right. Let me show you what's been marked as
3 State's Exhibit No. 21. Could you identify that?

4 A. Yeah. He took it off of me.

5 Q. Is that a fair and accurate depiction of how it
6 looked when you took it off him?

7 A. Yes.

8 MR. STONE: At this time we move State's
9 Exhibit No. 21 into evidence.

10 MR. HUGHES: Without objection.

11 THE COURT: Admitted. You can publish.

12 (State's Exhibit No. 21 was marked for
13 identification and admitted into evidence.)

14 BY MR. STONE:

15 Q. He was wearing that when you got to the scene; is
16 that correct?

17 A. He was, and he told me it was uncomfortable on him
18 and he wanted it off.

19 Q. So you helped him take that off?

20 A. Yes.

21 Q. And I'm assuming it was left at the scene at that
22 point?

23 A. No idea. I didn't see what happened. I just took
24 it off and laid it aside and --

25 Q. After you've taken off the vest, you've taken --

1 he's bleeding, I'm assuming, from the neck area. His
2 arm's broken?

3 A. It really wasn't bleeding that terribly, so there
4 wasn't really anything to be done about it.

5 Q. All right. So what did you do?

6 A. I just tried to keep him calm and stayed there
7 with him and talked to him.

8 Q. Did you stay with him until EMS arrived?

9 A. I did, yes.

10 Q. All right.

11 MR. STONE: Mr. Tompkins, thank you, sir, if
12 you don't mind answering any other questions.

13 MR. HUGHES: No questions.

14 THE COURT: Why don't we take ten minutes.
15 Everybody can get a chance to use the rest room, and
16 we'll have you back in ten minutes. Again, don't begin
17 deliberations or discussions about the case. We'll have
18 you back in ten minutes.

19 (Recess taken.)

20 (In open court, jury not present.)

21 THE COURT: You didn't have any objection to
22 me dismissing the juror, did you?

23 MR. HUGHES: No, Your Honor.

24 THE COURT: All right. Thank you.

25 (In open court, jury present.)

DERRICK HAMAN - DIRECT EXAMINATION

1 THE COURT: All right. We will resume with
2 the State calling their next witness.

3 MR. STONE: Thank you. Derrick Haman.

4 DERRICK HAMAN,
5 having been first duly sworn,
6 was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. STONE:

9 Q. What do you do, sir?

10 A. I'm a paramedic.

11 Q. With who?

12 A. With Beaufort County EMS.

13 Q. In January of 2016, who were you with at that
14 time?

15 A. Hampton County EMS.

16 Q. Now, when you say paramedic, what exactly do you
17 mean? What is a paramedic? What does that mean?

18 A. A paramedic is a trained medical professional that
19 provides emergency medical care in a pre-hospital
20 setting.

21 Q. I understand when you're working on -- you work on
22 an ambulance; is that correct?

23 A. Yes.

24 Q. When you're working on an ambulance, there are a
25 couple levels of medics; is that correct?

1 A. Yes. You have EMTs who are basically trained in
2 first aid skills and nothing invasive. You have advanced
3 EMTs who can administer IVs and a few medications, and
4 then you have paramedics who can start IVs, establish
5 advanced airways. There's a ton of medications we can
6 give, especially when it comes to cardiac medications
7 and --

8 Q. And your job -- and you were actually working on
9 an ambulance in Hampton during January of 2016; is that
10 correct?

11 A. Yes.

12 Q. Did you get called to -- I guess it would be the
13 party shop or somewhere near there that morning in
14 Estill?

15 A. Yes.

16 Q. Tell me about that, if you don't mind.

17 A. We were dispatched to a gunshot wound. Without a
18 report, I can't tell you the exact location we were
19 dispatched to, but we were dispatched to a gunshot wound.
20 That was the information we had on the radio.

21 Q. I don't know -- have I shown you this map of the
22 area? Can you recognize any of these areas?

23 A. Yes.

24 Q. Okay. Let me ask you, if you will, to come off
25 the stand, if you will, please. This makes it a little

1 easier on me if you stand right there. Keep your voice
2 up.

3 I'm showing you what has been marked as State's
4 Exhibit 2. If you would, tell me where you responded to
5 on that map.

6 A. I responded to this area right here (indicating).

7 Q. All right. This is -- the red dot is Charles
8 party shop in Estill, and then there is, I guess, a road;
9 is that correct, going through that?

10 A. Yes.

11 Q. And --

12 A. We came in on this road right here (indicating).

13 Q. All right. And so you pulled in to here?

14 A. Yes.

15 Q. All right. All right, sir. Go ahead, take the
16 stand.

17 State's Exhibit 18, put that up for me. I don't
18 know if you can see it. Let me show you State's Exhibit
19 18 here. Was that the scene as you found it when you got
20 there?

21 A. Yes. We actually pulled the ambulance up right
22 beside his vehicle, and he was on the ground right beside
23 his vehicle.

24 Q. All right. When you're talking about his vehicle,
25 you're talking about -- let me show you State's Exhibit

1 19. That's the vehicle you're talking about?

2 A. Yes. That's the vehicle I'm talking about.

3 Q. And Officer Smith is where when you pull up?

4 A. He's laying on the ground by the open driver's
5 side door.

6 Q. All right, sir. What do you do once you find
7 Officer Smith there? What do you do? And, by the way,
8 are you by yourself? Do you have people with you or
9 what?

10 A. No. I had my partner with me, and the volunteer
11 fire department arrived on scene shortly after we did,
12 but initially me and my partner went over there and
13 immediately started treating Quincy following our local
14 protocols, which would be establishing C-spine
15 precautions and control bleeding and keeping his airway.

16 Q. Now, start with the C-spine. That's basically the
17 board you put him on; is that correct?

18 A. Yes.

19 Q. What's the purpose behind that?

20 A. The purpose behind that is if you have a broken
21 bone in your spine, it's supposed to immobilize you so
22 that you can't move and damage any of the spinal cord.

23 Q. Okay. And then next I think you talked about the
24 airways; is that correct?

25 A. Yes.

1 Q. What did you do there? What's the purpose behind
2 that?

3 A. Basically what we did for his airway was monitor
4 it because it was patent at the time.

5 Q. What do you mean by that?

6 A. By patent, I mean open and able to easily exchange
7 air on his own without assistance.

8 Q. So he was able to breathe?

9 A. Yes. He was breathing normal, and he had what
10 looked to be extensive trauma to the front of his neck,
11 so his airway was a real concern for us, but the only
12 thing we could do at the time was we tried to call for a
13 helicopter because they have a procedure where they can
14 basically induce someone into a coma-like state so they
15 can intubate them and secure their airway so nothing can
16 get in their airway except air.

17 Q. When you talk about intubate, what do you mean?
18 What is intubation?

19 A. Intubate is when you place an intubate tube into
20 somebody's trachea and inflate the cuff on it, and what
21 it does is it protects the airway so if they vomit or
22 there is blood or anything like that, it cannot get into
23 the airway and cause aspiration pneumonia.

24 Q. But you couldn't do that in this case?

25 A. No, because he was conscious and alert with intact

1 gag reflex. You cannot intubate somebody with an intact
2 gag reflex. You will induce vomiting.

3 Q. So that's the reason to put him into a coma, to
4 get that done?

5 A. Yes.

6 Q. The helicopter, I'm assuming, could not come that
7 day; is that correct?

8 A. That's correct. They reported back that due to
9 weather conditions they could not fly.

10 Q. What did you do at that point?

11 A. At that point, we loaded him up and immediately
12 started our transport to Savannah Memorial, which is a
13 level one trauma center, which is what he would require
14 for the extent of injuries he had.

15 Q. When you say level one trauma, what do you mean by
16 that?

17 A. What I mean by that is that is a trauma center
18 that has a trauma team on call -- actually on the
19 property 24-7, and they are also a teaching hospital.

20 Q. So you take -- you basically take him from Hampton
21 or Estill to Savannah Memorial?

22 A. Yes.

23 Q. Along the way, what type of treatment did you
24 provide?

25 A. We established IV access, started running fluids

1 on him. Without the report, I don't think he became
2 hypotensive, so --

3 Q. Let me give you that report so -- I don't want you
4 to -- ask you to refresh your memory on this for a few
5 minutes.

6 A. Okay. En route to the hospital, we put him on a
7 cardiac monitor, monitor his heart rhythm. We also
8 monitor additional vital signs, blood pressure, establish
9 IV access, started fluids on him as a KVO, or to keep
10 vein open, which is a slow infusion of approximately 125
11 milliliters an hour, and we also ran through our pain
12 control protocol and established med control contact to
13 receive orders to administer Fentanyl to him for pain
14 control.

15 Q. Let me start with his arm. What condition was his
16 arm in when you got there?

17 A. His arm looked to have a radius and ulna fracture.
18 That's a fracture of both the bones in the forearm with
19 an entry wound in the front of his forearm and an exit
20 wound in the back of his forearm.

21 Q. So both bones in the arm were broken?

22 A. Yes.

23 Q. And the neck, what condition was the neck in?

24 A. His neck was kind of flayed open so you could kind
25 of see the anatomy of his neck, so what we did there is

1 while we were C-spining him, we took bandages, a
2 five-by-nine, and placed it on there to control bleeding
3 and then put the C-collar on him so it would hold it in
4 place.

5 Q. And this is the condition you basically found him
6 in and then transported him to Savannah Memorial; is that
7 correct?

8 A. Yes.

9 Q. All right.

10 MR. STONE: Thank you, Mr. Haman. I don't
11 have any other questions. If you would, answer any
12 questions Mr. Hughes may have.

13 THE COURT: Mr. Hughes?

14 CROSS-EXAMINATION

15 BY MR. HUGHES:

16 Q. Good morning.

17 A. Good morning.

18 Q. You gave a detailed description of putting the
19 thing down the person's throat to assist in breathing but
20 that it wasn't needed.

21 A. No. Had we had the procedure to do it, we'd have
22 definitely done it because of the extensive damage to his
23 neck, but we did not have -- Hampton County EMS does not
24 carry necessary medications to perform that.

25 Q. But he was safely transported to Savannah

1 Memorial?

2 A. Yes. Because of the damage to his neck, we made a
3 plan to rendezvous with an ambulance in Jasper County if
4 his airway started to deteriorate where they could
5 perform that procedure or to Coastal Hospital in Jasper
6 County to perform that procedure should his airway
7 continue to deteriorate.

8 Q. But it didn't, and y'all safely transported him to
9 Savannah Memorial?

10 A. Yes.

11 Q. And the injury to his throat, I don't want to make
12 light of what you did, but it sounds to me like you
13 basically put a Band-Aid over it and put a collar on so a
14 Band-Aid would stay in place. Is that a simplified
15 version?

16 A. Yes. That's a simplified version.

17 Q. And you gave him pain medication for his arm and
18 for his other wounds?

19 A. Yes.

20 Q. And took him to the hospital?

21 A. Yes.

22 Q. When y'all got on scene, when you got to the
23 convenience store, did y'all go immediately to where he
24 was at?

25 A. We did not go to the convenience store. When we

~~QUINCY SMITH - DIRECT EXAMINATION~~

1 were pulling on scene, we saw the police car behind the
2 convenience store, so we immediately went to there.

3 Q. All right. And --

4 MR. HUGHES: No further questions, Your
5 Honor.

6 THE COURT: Redirect?

7 MR. STONE: No, sir. Nothing else. Thank
8 you.

9 THE COURT: You may step down.

10 MR. STONE: State calls Officer Quincy Smith.

11 QUINCY SMITH,

12 having been first duly sworn,

13 was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. STONE:

16 Q. Officer Smith, who are you with, sir?

17 A. I work for the Estill police department.

18 Q. And how long have you been in law enforcement?

19 A. I've been in law enforcement for about -- when I
20 first started, about two years, two or three years.

21 Q. And how long have you been with the Estill police
22 department?

23 A. Six months.

24 Q. In January of -- and that's as of January of 2016?

25 A. Yes. I started August 2015.

1 Q. All right. And then you've been with them
2 continuously since; is that right?

3 A. Yes.

4 Q. What was your job in January of 2016? What was
5 your responsibility?

6 A. Secure property in the town, answer calls for
7 service, anything that needs police presence or, you
8 know, law enforcement action.

9 Q. Let me talk to you specifically about January the
10 1st, 2016, about 11 o'clock, and we heard the 911, or the
11 dispatch out. Tell us what you were doing before you got
12 the dispatch.

13 A. Pretty much was riding around, patrolling the
14 area. I stopped on the north side of town near Dollar
15 General. I was waiting for a female officer in the town
16 of Gifford. She had to stop a vehicle. She was the only
17 officer working in town next door. She pulled a vehicle
18 over for -- the person in the vehicle was wanted, I
19 believe, out of another county, so I sat stationary near
20 Dollar General on the north side of town to make sure to
21 clear it, make sure she was all right so if she needed
22 me, I could get there in a quick fashion and hurry.

23 I waited there for a minute. She got on the
24 radio, said she had the guy in custody and she's en route
25 to the jail, so okay. I still sat there, you know, for a

1 second, try to run a little bit of traffic, and, if I
2 could, if anybody was, you know, speeding or anything,
3 and then I received a dispatch saying that be advised,
4 black male with camouflage clothing and a red bandanna
5 attempting to snatch another person's groceries and
6 then --

7 Q. Is that when you responded to the party shop, I
8 guess, area?

9 A. Yes, sir. Before I responded, I asked dispatch,
10 you know, to clarify what was he doing? It doesn't sound
11 right. So I said, Dispatch, what was he doing again?

12 She came back, called us back, said he attempted
13 to snatch another person's groceries. So at that time I
14 began driving toward the south side of town, toward
15 Bobops's gas station.

16 Q. How far away were you when you got the dispatch?

17 A. I'm less than a mile.

18 Q. You're right there pretty much when you get the
19 dispatch?

20 A. Yes, sir.

21 Q. So you arrive pretty quickly after the dispatch.
22 What do you do when you get there?

23 A. Prior to getting there, I activated my body
24 camera, which were located in my glasses.

25 Q. Tell me about that, if you can. How do you

1 activate the glasses on the body camera?

2 A. They look like regular reading glasses, but on the
3 inside, there is a button you push. When I cut the power
4 on, a red light will come on, and then when I'm ready to
5 record, I will push it and hold it, and the red light
6 will flash and turn off, and that's when I know it's
7 recording.

8 So after I did that, I continued down the street.
9 I got close to Dr. Tire.

10 Q. So you activated before you actually get --

11 A. Yes, yes. I wanted to capture everything before I
12 get to the scene because I didn't know what I had, so I
13 got close to Doctor Tire, got close to Bobops. I didn't
14 see anyone in the front of the store, so I turned on the
15 side street behind the store, and then I turned on the
16 alleyway beside the store, and then I saw two
17 individuals, one they described wearing the camouflage
18 clothing and a red bandanna was standing over in the
19 wooded area, talking to another person. So I exited my
20 vehicle. I go inside the store to confirm that was the
21 guy they was talking about.

22 So I got in the store, and a young lady came to
23 me, and she said -- well, older lady, she came to me and
24 said, Yeah. The guy over there, he was trying to snatch
25 a man's groceries.

1 I said, Okay. I'm going to go talk to him, exit
2 out of the store. I see the guy, Malcolm Orr. That's
3 the guy identified --

4 Q. Let me back up. You at this point did not know
5 his name; is that correct?

6 A. No.

7 Q. You don't know Malcolm Orr?

8 A. No. I never seen him before.

9 Q. When you get there -- and I know we viewed State's
10 Exhibit 2 before, but you actually go -- make sure I'm
11 clear about this, and I want to make sure you can see,
12 but you're coming down -- is this 321?

13 A. Yes. This is Highway 321. This is going south
14 toward Savannah. That is going north toward Columbia.

15 Q. So you put your glasses on sometime around here?

16 A. Some time around this area, I believe so.

17 Q. And at this point, where do you go?

18 A. Come down this road right here and there's Bobops.
19 I didn't see anybody here, so I turned down the side
20 street here, and then I turned into the alley right here.

21 Q. So this is sort of a big parking lot kind of
22 alleyway right behind it; is that right?

23 A. Yes, yes.

24 Q. That's where you parked when you went in the
25 store?

1 A. Yes, sir.

2 Q. You come out of the store. Do you walk or do you
3 get back in your car?

4 A. I come out of the store, and I enter to my
5 vehicle, and by that time, he had started walking off.
6 So I cut my blue lights on, and I come up, down the
7 street, and I don't know exactly where I stopped at, but
8 I stopped on this street right here.

9 And I get out the car, asked him, Come here, man,
10 for a second, you know, kept on walking.

11 And he was walking at this angle, and so when I
12 got out of my vehicle and I told him -- he wouldn't stop,
13 so I leave from my -- cover my door, and I walk around
14 him, you know, to try to look at his face and everything
15 because he had his back turned to me and everything, so
16 told him to stop.

17 I don't know how many times I told him to stop.
18 He would not stop, and then I noticed his hands was in
19 his pocket, and I said, Show me your hands.

20 Q. Go ahead and sit back down.

21 So what is he wearing when you see him?

22 A. Camouflage hoody. He had a red bandanna. I think
23 it was around his neck, though. It wasn't covering his
24 face.

25 Q. Okay. And camouflage hoody, kind of a jacket kind

1 of thing?

2 A. Yeah. Like a hunting jacket or some type of
3 clothing like that.

4 Q. All right. Where were his hands?

5 A. I believe one hand was up to his ear. The other
6 hand was in his coat pocket.

7 Q. And at that point in time, you're telling him to,
8 Show me your hands?

9 A. Yeah. At that time, I told him show me his hands,
10 and I made numerous commands to show me his hands. When
11 he finally did, he came out with a gun, you know, and
12 pointed at me and just started shooting. Nothing said,
13 just started shooting.

14 Q. Before he shot you, was there any type of
15 struggle, any fight, anything like that?

16 A. No. He was walking away. I couldn't put hands on
17 him because he was walking away, and there was still a
18 little gap between us, so I couldn't try to contain him
19 or anything like that. When I tried to give him
20 commands, to detain him to find out what was going on at
21 the store, he didn't give me that opportunity.

22 Q. All right. Now, the -- let me show you what has
23 been marked as State's Exhibit 39. Is this -- have you
24 ever viewed this disk, or this video?

25 A. Yes, I have.

1 Q. Is that a fair and accurate depiction of the scene
2 as your camera, your body camera glasses, caught it that
3 day?

4 A. Yes, sir, that's it.

5 Q. And there is also a transcript that goes along
6 with that. Have you reviewed that as well?

7 A. Yes.

8 Q. Is that a fair and accurate description of what
9 you hear on this video?

10 A. That is it.

11 MR. STONE: Your Honor, at this time we move
12 State's Exhibit 39 into evidence, and that is without
13 transcript, and the same way we did the 911; we have the
14 transcript, however, provided as an exhibit.

15 MR. HUGHES: I have no objection to that,
16 Your Honor.

17 THE COURT: All right. It's admitted. You
18 can publish.

19 (State's Exhibit No. 39 was marked for
20 identification and admitted into evidence.)

21 MR. STONE: I'll publish it to the jury at
22 this time, Your Honor.

23 (Whereupon, the video was played for the
24 jury.

25 BY MR. STONE:

QUINCY SMITH - DIRECT EXAMINATION

1 Q. And you're Echo Seven; is that correct?

2 A. Yes, I'm Echo Seven.

3 Q. Officer Smith, you were taken to Savannah Memorial
4 after this?

5 A. Yes, sir.

6 Q. How long were you in the hospital in Savannah?

7 A. I believe about a week. I was in there about a
8 week.

9 Q. And you were seen, I assume, in the emergency room
10 when you first got to Savannah Memorial, yes?

11 A. Yes.

12 Q. Do you recall anything about what they did as far
13 as treatment?

14 A. Honestly, I don't recall much. They put me
15 through -- I remember going through a scan and going
16 into, I guess, the operating room, and that's pretty much
17 all I remember.

18 Q. And then you stayed in the hospital for a week, I
19 guess; is that correct?

20 A. Yes, sir.

21 Q. Let me show you what's been marked as State's
22 Exhibit 22, ask if you can identify that, sir.

23 A. That is a photo of wounds to my neck.

24 Q. Let me put it in and show it to the jury. Is that
25 a fair and accurate depiction of how you looked, I guess,

1 after you were released from the hospital.

2 A. Yes, sir.

3 Q. I show you what's been marked as State's Exhibit
4 23 and 24. Are those fair and accurate depictions of how
5 your arm looked after the hospital stay?

6 A. Yes, sir.

7 Q. And State's Exhibit 25, what is that?

8 A. Oh, that's where they took the bullet out of my
9 back, the one that hit my neck.

10 Q. So the bullet in the back, they actually removed
11 that, and where did they remove it from?

12 A. From just below my right collarbone.

13 MR. STONE: Your Honor, at this time we move
14 State's Exhibit 22, 23, 24, and 25 into evidence.

15 MR. HUGHES: No objections.

16 THE COURT: It's admitted.

17 (State's Exhibits 22, 23, 24, and 25 were
18 marked for identification and admitted into evidence.)

19 BY MR. STONE:

20 Q. Let me first start with State's Exhibit 22. Can
21 you see that? Let me just hand you this. I'll hand you
22 this, if you will.

23 A. The front of my chin where my chin hair is, I
24 guess that's where the bullet struck me and then bounced
25 down. If you look forward, straight down, that's the

1 entry wound to my neck, and to the left, that's where I
2 had the surgery, I guess to stop the bleeding in my neck
3 that I had, internal bleeding.

4 Q. All right, sir. And then it looks like the cut
5 goes, I guess, on your right side, all the way down to
6 sort of -- I guess right near the bone here; is that
7 correct?

8 A. Yes, sir.

9 Q. Show you State's Exhibit 25. All right. That was
10 what you were describing as the bullet. That's the
11 bullet, I'm assuming, that hit here and went back. Where
12 was that removed from?

13 A. That hit me in the neck, and it traveled to my
14 back, just to my right side, just below my collarbone.

15 Q. So that's basically your right shoulder that we're
16 seeing there; is that right?

17 A. Yes, sir.

18 Q. And that's where the bullet was removed?

19 A. Yes, sir.

20 Q. All right. Now, going back to State's Exhibit 23,
21 and then go to State's Exhibit 24, tell me about that,
22 please.

23 A. That's the surgery, the long stitches. That's
24 where they cut my arm open and, I guess, tried to repair
25 my humerus and radial bone, but if you look to the top of

1 my arm, you see a little small hole?

2 Q. Yes.

3 A. That's where -- I can't tell if that's the entry
4 wound. It looks like an exit wound.

5 Q. But that's one of the bullet paths right there?

6 A. Yes.

7 Q. And this is your left arm, I think?

8 A. Yes. That's my left arm.

9 Q. And those were -- both bones were broken in that
10 left arm?

11 A. Yes, sir.

12 Q. Let me show you what's been marked as Exhibit 27.
13 I know you have viewed the video. Is that a fair and
14 accurate depiction of the scene that you saw in that
15 video and as you remember it?

16 A. Yes, sir, Mr. Malcolm Orr.

17 Q. Again, you did not know Malcolm Orr at that point;
18 is that correct?

19 A. I did not. Never seen him before until that day.

20 Q. Is this a fair and accurate depiction of that
21 scene as well? This is State's Exhibit 28.

22 A. Yes, sir.

23 Q. And State's Exhibit 29, is that a fair and
24 accurate depiction of the scene?

25 A. Yes, sir, that's it.

~~QUINCY SMITH - CROSS-EXAMINATION~~

1 Q. And State's Exhibit 30.

2 A. That's it.

3 Q. Fair and accurate depiction?

4 A. Fair and accurate.

5 Q. And, finally, State's Exhibit 32, is that a fair
6 and accurate depiction of the scene?

7 A. Fair and accurate.

8 MR. STONE: Your Honor, at this time, we move
9 State's Exhibit 27, 28, 29, 30, and 32 into evidence.

10 MR. HUGHES: No objection.

11 THE COURT: They are admitted. You may
12 publish them.

13 (State's Exhibits 27, 28, 29, 30, and 32 were
14 marked for identification and admitted into evidence.)

15 MR. STONE: Nothing further at this time.

16 THE COURT: Cross?

17 CROSS-EXAMINATION

18 BY MR. HUGHES:

19 Q. Good afternoon, Officer Smith.

20 A. Hello, sir.

21 Q. First of all, how are you?

22 A. I'm well, you know, trying to get past this
23 incident.

24 Q. How is your arm?

25 A. It's fine, still in the healing process.

1 Q. Okay. Here did you get the glasses?

2 A. I purchased them off Amazon for approximately 30
3 bucks.

4 Q. 30 bucks?

5 A. 30 bucks.

6 Q. And they're high definition?

7 A. High definition, high-quality sound as you all can
8 see in the video.

9 Q. And you didn't know my client?

10 A. No, sir. Never seen him until that day.

11 Q. Okay. I'm a little curious about your interaction
12 with him.

13 A. Okay.

14 Q. If I'm walking down the street and someone I don't
15 know says, Come here man, do I have to go talk to him?

16 A. I guess you don't have to. That's your choice,
17 but if someone is, I guess -- I was a police officer.
18 Assuming that a police officer says he wants to talk to
19 you, you know, something must be wrong. I would want to
20 know if --

21 Q. But do I have to talk to you?

22 A. You don't have to.

23 Q. Okay. They say, Come here a second, do I have to
24 go to them?

25 A. You don't.

1 Q. If a police officer tells me, Come here, do I have
2 to go talk to him?

3 A. It depends on the situation.

4 Q. You don't know him; he doesn't know you. You say,
5 Come here. He doesn't have to come there; is that
6 correct?

7 A. It depends on the situation, sir. I mean --

8 Q. How do you mean?

9 A. I mean, if somebody calls you, and apparently I
10 just had information that he was possibly attempting a
11 strong-arm robbery, so he doesn't know that. I mean, if
12 somebody asked me to come here, I would want to find out,
13 why does he want me there?

14 Q. But does he have to?

15 A. It depends on the situation. You don't have to, I
16 guess. If you don't want to, you don't have to.

17 Q. Did you ever tell him he's a suspect?

18 A. I never got the opportunity.

19 Q. Hey, man, come here. I want to talk to you about
20 something that happened at the store.

21 Did you have the opportunity to say that?

22 A. I never had a chance. He kept walking off.

23 Q. But you had the opportunity, didn't you?

24 A. I did not. I got shot, sir.

25 Q. Sir, we've seen the video. You have plenty of

1 time to tell him why you want to talk to him, didn't you?

2 A. He wasn't listening, sir.

3 Q. Okay. The next thing you say to him is, Come
4 here, as an order. Does he have to obey your order?

5 A. It depends on the situation. I'm trying to detain
6 him and talk to him about the situation that happened at
7 the store. He was identified as a person trying to
8 commit a crime.

9 Q. You don't ever tell him that, do you?

10 A. I didn't get the chance to.

11 Q. How far was it between you and him when you first
12 stopped your car?

13 A. I can't recall. I can't tell you the exact
14 measurement, sir.

15 Q. You're talking to him for about 20 seconds before
16 you got up to him, weren't you?

17 A. I don't know about talking. I just asked him to
18 come here. I don't know whether he heard me or not.

19 Q. At no point did you tell him why you wanted to
20 talk to him, did you?

21 A. I never got the chance. I asked him to come here
22 so I could tell him why I was there to talk to him.

23 Q. So the answer to the question is, you don't tell
24 him why you want to talk to him?

25 A. The answer to the question is, I never got the

1 chance to. I was going to tell him while I was trying to
2 call him, but he kept walking away -- he kept walking
3 away. I kept saying, Come here.

4 When I was saying, Come here, I need to talk to
5 you about a situation, he ignored my commands.

6 Q. You never say, I need to talk to you about a
7 situation?

8 A. Like I said, I didn't get a chance to. He kept
9 walking. When I was trying to catch up with him to tell
10 him the full, entire story, he kept on walking. He never
11 gave me the opportunity to tell him.

12 Q. Do you have the authority to stop anybody who is
13 walking down the street as a police officer?

14 A. Say that again?

15 Q. Do you have -- well, you might want to look at me
16 when I'm talking to you, sir.

17 A. I understand. I can hear you, if you don't mind.
18 I would prefer to look this way, if you don't mind, sir,
19 if that's okay, Your Honor.

20 THE COURT: Answer his questions. If you
21 need to explain an answer, you can explain it, but answer
22 his question. The solicitor will ask you anything he
23 feels is necessary on redirect.

24 THE WITNESS: Yes, sir.

25 BY MR. HUGHES:

1 Q. Do you have the authority to stop someone just
2 walking down the street?

3 A. If there is a reasonable suspicion that they may
4 have committed a crime.

5 Q. What gives you that authority?

6 A. The law.

7 Q. How so? What law?

8 A. I can't quote the law offhand, but there is a
9 reasonable suspicion in law. We learned and trained in
10 the academy. Whether I know the exact name of the law --
11 it's been taught to me.

12 Q. So you say you have the authority to just stop
13 someone on the street without giving them any explanation
14 whatsoever.

15 A. I did not say that. I said if a call came to me,
16 said that a person was suspicious, the law requires me to
17 go check that situation out. I can't ignore it.

18 Q. Okay. My question to you, sir, is did you ever
19 explain to him why you wanted to talk to him?

20 A. And I said, I never got the opportunity to. When
21 I was telling him, Come here, sir, when I was going to
22 explain it to him, hey, I'm here because such and such,
23 he never did. He just kept on walking.

24 Q. Okay.

25 A. And while I'm trying to get to that point, I never

1 got the opportunity to get to that point.

2 Q. You had plenty of time to say other things, didn't
3 you?

4 A. The only thing I recall is, Come here.

5 Q. If you don't what? You say, If you don't -- you
6 don't finish it. What do you mean? Then you follow up
7 with, You better stop.

8 A. Because -- okay, okay. I remember. Because at
9 this point now he was being resistive, and I was trying
10 to detain him because he was the suspect of a possible
11 crime that I am trying to investigate and figure out.

12 Q. If I remember correctly, you're still quite aways
13 away from him when you're doing this, and you never tell
14 him he's a suspect or anything?

15 A. I didn't get the opportunity to tell him because
16 he kept on walking, sir.

17 Q. Your next statement is, Or I will. Or I will
18 what?

19 A. I probably was going to Tase him because he's
20 actively resisting now.

21 Q. Okay. Can you see the video screen?

22 A. I can.

23 Q. Please play the first part of that tape.

24 MR. HUGHES: Your Honor, they're showing
25 right now State's 39 for the record.

1 THE COURT: All right.

2 BY MR. HUGHES:

3 Q. Do you see the video?

4 A. I can, sir.

5 Q. How is he actively resisting?

6 A. Well, that is an unknown threat right there, sir.

7 I notice his arm is in front of him. He's trying to
8 conceal his hand, and he's continually walking away.

9 Q. Doesn't he have the right to walk away from you?

10 A. Well, right now he's a suspect in a possible
11 strong-arm robbery.

12 Q. When did you tell him that?

13 A. I didn't get a chance to. You see he turned away
14 and walked.

15 Q. You talked to him quite a lot to his back. When
16 did you tell him that he was a suspect?

17 A. I said, Come here, sir.

18 Q. Sir?

19 A. I said, Come here, sir.

20 Q. Does he have to?

21 A. Well, right now I need to talk to him. It's in
22 the best interest of the law that I talk to him --

23 Q. Does he have to talk to you?

24 A. At this point, I'm trying to detain him, so he
25 doesn't have to speak, but I have to detain him.

1 Q. Why? When did you tell him you have to detain
2 him?

3 A. I didn't get a chance to. When I'm I trying to
4 walk up to him, you can see I'm still quite a distance
5 away from him. Whether he heard me or not, I don't know.

6 Q. Is there any law that says he has to talk to you?

7 A. Well, not that I know of at the moment, but I'm
8 trying to detain him. Didn't get a chance to explain --

9 Q. Did you ever tell him he's under arrest?

10 A. I didn't get a chance to, and at that point I
11 had -- I was trying to detain him, not arrest him,
12 because I don't know what's going on. I just got a call
13 about a guy matching his description, saying he was
14 attempting to strong-arm rob somebody.

15 Q. Officer Smith --

16 A. Yes, sir?

17 Q. -- do you ever tell him that?

18 A. I do not, but, as I was stating, I didn't get the
19 opportunity, but he wasn't under arrest, per se. I was
20 trying to detain him and talk to him because I got a call
21 about a man that's described in the video, which was
22 Malcolm Orr.

23 Q. Okay. Now, let me ask you another question. I'm
24 walking down the street. Someone I don't know says, Come
25 here, I want to talk to you, do I have to talk to him?

1 A. You don't have to talk to him, but that's a
2 different situation, sir.

3 Q. I'm not asking about this situation. I'm asking,
4 as a police officer -- your opinion, do I have to talk to
5 him?

6 A. You don't have to talk to me, but, like I said,
7 the situation is different.

8 Q. No, sir, it's not, but that's neither here nor
9 there. What I want to know is this: If I don't have to
10 talk to somebody, can they pull a weapon on me to make me
11 stop?

12 A. Say that again, sir.

13 Q. If I don't have to talk to somebody and I don't
14 want to talk to somebody, can they pull a weapon on me to
15 make me stop?

16 A. I understand that question. I guess not.

17 Q. Okay. Are you familiar with the concept of
18 self-defense?

19 A. I am.

20 Q. Okay. What's the first thing you have to do
21 before you try to claim self-defense?

22 A. Perceive a threat.

23 Q. Second?

24 A. I mean, what do you mean? If you perceive a
25 threat --

1 Q. Don't you have to try to escape from the
2 situation?

3 A. I understand.

4 Q. That would be a yes?

5 A. Yes.

6 Q. Okay. If somebody offers great bodily injury or
7 death to you, do you have the right to defend yourself to
8 the point of death?

9 A. You do.

10 Q. Okay. Now, you were carrying a Taser that day?

11 A. Yes.

12 Q. You have training with a Taser?

13 A. Yes.

14 Q. You've actually been shot with a Taser as part of
15 your training, correct?

16 A. Yes.

17 Q. Where did they shoot you with a Taser?

18 A. In my back.

19 Q. Did they shoot you in the face?

20 A. They did not.

21 Q. Why not?

22 A. Well, because, I mean, that would be
23 life-threatening injuries, I would believe.

24 Q. Okay.

25 MR. HUGHES: May I approach the witness, Your

1 Honor?

2 THE COURT: You may.

3 BY MR. HUGHES:

4 Q. I'm going to show you what's State's Exhibit
5 No. 30 and ask, what is in your hand?

6 A. A Taser is in my hand.

7 Q. And where is it pointed?

8 A. It's pointed at his chest.

9 Q. I show you State's 32. Where is that Taser
10 pointed?

11 A. Still pointed at his chest, sir.

12 Q. Continue the video, please. Watch the video. You
13 can stop.

14 You fired your Taser that day, didn't you?

15 A. I believe I did. I can't recall, per se.

16 Q. There is something green that flashes on there.
17 Is that the end of the Taser we see?

18 A. Possibly.

19 Q. You don't see it now, but --

20 A. Possibly.

21 Q. So somebody who looks through that video in slow
22 motion would see where that Taser is pointed?

23 A. I pointed at his chest. We are trained not to aim
24 it at somebody's head. We aim at their chest.

25 Q. So if a person is aimed at their head, there is a

1 chance of great bodily injury or death?

2 A. Yes.

3 Q. If you think it might be aimed at your head, would
4 you say you might have fear of that?

5 A. If you think it's aimed at a head, possibly, but
6 it wasn't aimed at his head. If it was aimed at his
7 head, you would know the difference because I would have
8 the Taser up closer to my eyes and you would see it
9 trained on his head. In the video, it's angled downward
10 towards his chest.

11 Q. Okay. Where is that person looking in State's No.
12 32?

13 A. He's looking at me.

14 Q. Is he looking at your Taser?

15 A. No.

16 Q. Okay. I'm coming down there. Now, we've seen the
17 video, and I believe the transcript of the video says
18 that your interaction with him lasted from 1:47 to 2:27
19 on the tape. That would be 40 seconds. In that time, do
20 you ever tell him that you want to talk to him about
21 something that happened at the store?

22 A. I didn't get the opportunity to. When I was
23 telling him to come here, if he would have stopped and
24 acknowledged that I was, you know, trying to contact him,
25 I would have said, Hey, this incident happened at the

1 store, but I didn't get that opportunity to.

2 Q. You had 40 seconds to say it?

3 A. He kept walking away and ignoring me.

4 Q. But you tried everything else to say to him, but
5 you never said you wanted to talk to him about what
6 happened at the store.

7 A. He kept ignoring me. I mean, I could have gotten
8 to it.

9 Q. And -- let's see. Within six seconds, let's see,
10 we go from, Come here, man. Come here for a second.
11 Come here. If you don't, you better stop, or I will --
12 all that happened within six seconds?

13 A. Yeah, because I started to perceive a threat. His
14 hand was in his pocket, and he kept ignoring me. I
15 didn't know what he was going to do. That's why I drew
16 my Taser instead of my firearm.

17 Q. But you don't tell him to take his hands out of
18 his pockets for 15 more seconds?

19 A. He was still walking away, and I didn't have an
20 angle on him. I saw his hand in front of his jacket. He
21 was concealing it. I saw the other hand up to his head.
22 I couldn't see the other one.

23 Q. He's talking on the phone. He's walking away.
24 He's no threat to you?

25 A. Say that again.

1 Q. He's walking away, he's talking on the phone.
2 What is the threat to you?

3 A. It's an unknown threat because his hand is
4 concealed, as you saw in the video. I didn't know what
5 he had, and all of a sudden he pulls out a gun.

6 Q. So if I'm walking down the streets with my hands
7 in my pocket, I'm a threat to you?

8 A. Not necessarily. It depends on the situation. I
9 got called there for a reason. The reason was strong-arm
10 robbery, okay? I didn't get anything about a weapon,
11 okay?

12 But usually when a robbery crime's committed,
13 there is a possibility a weapon could be involved that
14 hasn't been shown yet, which in the video shows a weapon
15 wasn't shown in the beginning, but it was shown in the
16 end.

17 Q. Okay. I just have one question.

18 A. Sure.

19 Q. How long would it have taken you to say, Come
20 here. I need to talk to you about something at the
21 store?

22 A. It probably wouldn't have taken long, but, as you
23 can see, things happened so fast. I'm trying to get the
24 right words out, but he's just not listening to me at
25 all, and I'm perceiving all this bad vibe and, you know,

1 everything that happened with hands being concealed, and
2 I think -- I'm trying to think about all this stuff as it
3 goes by.

4 Q. Does he run away from you?

5 A. No, he doesn't run. He's not trying to stop.

6 Q. Does he come at you in a threatening manner?

7 A. Well, he presented a gun. He did.

8 Q. He turned and faced you and came at you in a
9 threatening manner?

10 A. Sir, you showed the video. He turned to face me
11 and shot. That is a threatening manner.

12 Q. When you got out of the car, he was threatening
13 you?

14 A. I perceived a threat, not necessarily when I got
15 out of the vehicle, but when I was trying to get the
16 opportunity to explain to him, You need to talk to me for
17 a second about what happened; you know, they said you
18 tried to do something to somebody.

19 Q. Again, you keep saying about him coming to talk to
20 you. I want to know, what law gives you the authority to
21 make someone talk to you?

22 A. There is no law to make you come talk to me, but
23 as a law enforcement officer, I have to check that scene
24 out to make sure, you know, so I can prove or disprove he
25 was the person trying to commit a crime earlier.

QUINCY SMITH - REDIRECT EXAMINATION

1 Q. Are there procedures that require you to tell a
2 person why you're stopping them?

3 A. Yes. I didn't get that opportunity. You keep
4 asking me the same question, sir, but I keep explaining
5 to you, I didn't get the opportunity.

6 Q. I think you just did answer my question, sir.

7 A. Okay.

8 MR. HUGHES: No further questions, Your
9 Honor.

10 THE COURT: Redirect?

11 MR. STONE: Just briefly.

12 REDIRECT EXAMINATION

13 BY MR. STONE:

14 Q. Let me talk about the two hypotheticals from
15 defense counsel. First is, you're a police officer.
16 You're going to a scene. You're investigating a crime.

17 A. Yes.

18 Q. Let's say any suspect, not just Mr. Orr, but any
19 suspect, whether it's an armed robbery, strong-arm
20 robbery, rape, murder, anything, if you're going after
21 the person that was identified as the defendant --

22 A. Uh-huh.

23 Q. -- at any point in time, are you going to stop
24 before you actually make contact with the person?

25 A. I don't understand what you're trying to say.

1 Q. Let me ask you this: I think what defense counsel
2 wants you to say is you walked up to Mr. Orr. Mr. Orr
3 didn't want to talk to you, so despite the fact he was a
4 suspect in a strong-arm robbery, the defense seems to be
5 indicating that you should have just turned around and
6 walked away?

7 A. Exactly.

8 Q. Is that your job? Is that what we ask you to do?

9 A. No. I have to check the scene out. When someone
10 calls for an officer, by law I'm required to. If not,
11 I'll be punished, either charged with something or fired.

12 Q. Let me go further on this, on this other
13 hypothetical he asked. Say you were a citizen.

14 A. Yes.

15 Q. And somebody, another citizen, not even an
16 officer, walks up to you and says, Hey, I want to talk to
17 you, you, of course, do not have to talk to them; is that
18 correct?

19 A. No, I don't.

20 Q. At some point in time do you have the right to
21 pull out a gun and shoot him in the face?

22 A. Negative. No, sir.

23 MR. STONE: I don't have anything else, Your
24 Honor.

25 THE COURT: Recross?

RECROSS-EXAMINATION

BY MR. HUGHES:

Q. Are you telling me that if I'm walking down the street and some guy comes up to me, Hey, I want to talk to you, and I keep walking away and then he comes up beside me, pulls a weapon, points it at my face, I don't have the right to shoot him?

MR. STONE: Your Honor, I hate to object, and I didn't get into it the first time, but if we're arguing self-defense, one of the elements the defense is leaving out is whether or not the defendant brought on the problem to begin with, and that's a legal issue that you're going to have to determine before it gets to the jury, but any further questioning in this line without full clarification -- I'll let the Terry versus Ohio argument go by, but at this point in time, if the defense is going to argue self-defense, that needs to be a ruling that you make before we get much further, if this is going to be the line of questioning.

THE COURT: I'm not going to tell him how he has got to ask the questions. You can fill in on your line of questioning anything you feel like he left out.

Go ahead.

BY MR. HUGHES:

Q. If I'm walking down the street and someone yells

1 at me, Hey, stop, come here, I want to talk to you, I
2 keep walking and they walk up beside me with a weapon
3 pointed at my face, are you telling me I can't pull a
4 weapon and shoot them?

5 A. It depends. I'm a police officer, sir. I'm here
6 to protect --

7 Q. Sir, I didn't ask as a police officer. I just
8 want to know me, and someone else doing it to me, I don't
9 have the right to have self-defense?

10 A. If someone else is doing it to you and they're not
11 a law enforcement person there to assist you with
12 anything, no, you don't have the right to shoot them.

13 Q. If someone has got a gun pointed at me and they're
14 threatening to shoot me, I don't have the right to shoot
15 them?

16 A. If someone other than a law enforcement or some
17 type of personnel, you shouldn't have the right to shoot
18 them because you don't know the reason why they're
19 stopping you. A normal person coming up to you and you
20 don't recognize them or anything, then if you perceive a
21 threat from them, maybe you can defend yourself, but I
22 can't tell you you can shoot somebody. I mean, if
23 somebody is in a uniform that you recognize and know
24 they're there for a job and you shoot them, that's just
25 wrong.

1 MR. HUGHES: No further questions, Your
2 Honor.

3 THE COURT: All right. You can step down.

4 THE WITNESS: Thank you, sir.

5 THE COURT: All right, folks. This is where
6 we will break for lunch.

7 Let's see. It's 12:30. Let's be back in the
8 jury room at 2:00. I want to give you some instructions,
9 and that is, again, not to begin deliberations or
10 discussions. Don't talk to each other about the case or
11 anyone else, and if anybody does approach you and talk to
12 you about the case, please report that back.

13 Again, don't go and try to find out anything
14 about the case, and in this day and age, it's also
15 important to remind you about social media. Sometimes
16 when people get on juries, they want to go post things on
17 Facebook or Twitter or any number of social media. It is
18 inappropriate to post anything while you are on jury duty
19 about a case that you're a juror on.

20 After the case is over with, the trial is
21 over with, you can post whatever you want to, but during
22 the trial, it is improper, and I'm prohibiting you from
23 doing that, so please do not post anything on social
24 media. There is really no difference between if you went
25 out and started talking with a stranger about the case.

1 You can't do that, and you can't go to talk to people on
2 the Internet, and then people want to comment and we get
3 into that whole thing about you're making your decision
4 based on what you hear here, so please don't do that.

5 Again, if you would, be back in the jury room
6 at 2:00. We will resume shortly thereafter. So thank
7 you for your patience. We'll see you at 2:00.

8 (In open court, jury not present.)

9 THE COURT: All right. Anything we need to
10 take up before we break?

11 MR. STONE: Nothing from the State, Your
12 Honor.

13 MR. HUGHES: Nothing from the defense.

14 THE COURT: See you at 2:00.

15 (Recess taken.)

16 A F T E R N O O N S E S S I O N

17 (In open court, jury not present.)

18 MR. HUGHES: Before you bring the jury in,
19 Your Honor, at this time I must admit that I had a brain
20 freeze when the solicitor introduced the video, and for
21 some reason or another, even though we had a nice theory
22 about it earlier, that I objected to it strongly, I said
23 I have no objections, when, in fact, I actually did, and
24 at this time I would like to renew my objections nunc pro
25 tunc.

1 THE COURT: There's no objection from the
2 State?

3 MR. STONE: No, there's no objection from the
4 State on that.

5 THE COURT: It's admitted, but I will let the
6 record reflect that you objected pretrial, and I thought
7 you had misspoken when you said you didn't object when it
8 came in, but I will allow the record to reflect that you
9 did, in fact, and still continue to object to its
10 admission.

11 All right. Are we ready then?

12 MR. STONE: Yes, Your Honor. State's ready.

13 (In open court, jury present.)

14 THE COURT: All right, folks. Welcome back.
15 We're going to resume now with the State calling the next
16 witness.

17 MR. STONE: Thank you, Your Honor. Dr. James
18 Dunne.

19 JAMES DUNNE,
20 having been first duly sworn,
21 was examined and testified as follows:

22 DIRECT EXAMINATION

23 BY MR. STONE:

24 Q. Dr. Dunne, what do you do, sir?

25 A. I'm a trauma surgeon.

1 Q. And where is that?

2 A. I'm chief of trauma and surgical critical care at
3 Memorial University Medical Center in Savannah, Georgia.

4 Q. How long have you held that position?

5 A. Three years.

6 Q. And when you're chief of trauma care, what does
7 that mean, exactly?

8 A. I participate in the daily resuscitation and
9 stabilization, and, if surgery is needed, surgery on the
10 patients who sustain any form of trauma that are brought
11 into the hospital.

12 Q. What type of training and education do you have in
13 order to allow you to do that?

14 A. Four years of college, four years of medical
15 school, five years of general surgery residency, and two
16 years of additional training in surgical critical care
17 and trauma.

18 MR. STONE: At this time, Your Honor, we move
19 that Dr. Dunne be admitted as an expert in the field of
20 trauma surgery in the medical profession.

21 MR. HUGHES: With no objection whatsoever.

22 THE COURT: All right.

23 Folks, remember I told you when we were
24 talking preliminarily before the trial started that
25 normally witnesses get up and tell you what they heard,

1 they saw, they touched, they felt, they smelt. They're
2 not allowed to, generally speaking, give their opinion
3 about evidence. They're just allowed to tell you those
4 things that I just said.

5 The law says, however, that when somebody,
6 because of education or experience or training in some
7 field rises to the level of expertise, then they will be
8 allowed to come into court and testify not only to their
9 observations, but to their opinion the about the facts in
10 the case, and they can give you their opinion and the
11 basis for their opinion. This witness has now been
12 qualified as an expert in the field of trauma medicine
13 and will be allowed to testify about not only what he saw
14 and observed, but his opinions, as it may become relevant
15 to his testimony.

16 Now, the fact that somebody is called as a
17 witness and testifies and gives their opinion doesn't
18 mean that you have to blindly accept it. You decide how
19 much testimony -- or how much weight to give this
20 witness's testimony as you do all the others, and based
21 on all of the evidence that you hear throughout the
22 trial, you determine how much or little weight to give
23 his testimony. All right?

24 You may resume.

25 BY MR. STONE:

1 Q. Thank you.

2 Dr. Dunne, did you treat Quincy Smith on January
3 the 1st, 2016?

4 A. I did.

5 Q. And that was at Savannah Memorial Hospital?

6 A. Memorial University Medical Center, yes, sir.

7 Q. Sorry. Okay. Tell me what condition he arrived
8 in your care?

9 A. We first got notified he was a patient who
10 sustained multiple gunshot wounds, and we had been
11 notified ahead of time that the severest -- we have two
12 levels of alert for trauma, a first tier alert, which is
13 the most severe patients, and then second tier, which are
14 moderately injured patients. He was obviously a severe
15 alert and so we had our team ready and waiting in the
16 room prior to his arrival.

17 Q. So when you -- and when you're talking about the
18 room, you're actually in the ER --

19 A. Yes, sir.

20 Q. Are you actually in the operating room?

21 A. We start off in the emergency room. I resuscitate
22 him and stabilize him as best we can, and if we determine
23 he needs an operation, we move them straight from the
24 emergency room to the operating room.

25 Q. What specifically were his injuries when he got to

1 you?

2 A. He had multiple ballistic injuries, both on his
3 left upper extremity, his left arm, and his neck.

4 Q. And the arm, obviously that, I would imagine, is a
5 secondary concern as to the neck; is that correct?

6 A. That is correct, yes, sir.

7 Q. Then did you actually operate on the arm or was
8 that done by someone else?

9 A. That was done by someone else, sir.

10 Q. Tell me what specifically you did.

11 A. When he first came in, we were obviously concerned
12 about his airway because any time you have a gunshot
13 wound to the neck, you're worried about swelling,
14 potential closing off of the airway, so --

15 Q. I didn't mean to interrupt you, but I want to make
16 sure. Is that because there's blood pooling? Is that
17 just a swelling of the tissue, or how does that happen?

18 A. Swelling of the tissue as well as bleeding. If
19 you continue to bleed into your neck, the neck is a
20 confined space, so it can push or compress the other
21 organs in the neck, which is the feeding tube, the
22 esophagus, or the breathing tube, the trachea, and if the
23 airway closes off, you can't breathe.

24 Q. Okay. Go ahead.

25 A. In this case, it wasn't the case, so we attended

1 to the wounds in his neck to make sure that he wasn't
2 actively bleeding. He was oozing, or bleeding a little
3 bit from the neck, but it wasn't apparent that he had
4 an -- actively bleeding from the neck that we needed to
5 do something right then and there, so we were able to
6 examine him from head to toe, make sure there were no
7 other injuries except to the injury to his forearm and
8 his neck.

9 We did several X-rays, chest X-ray and a pelvis
10 X-ray to make sure he wasn't injured, and I think we were
11 able to give him a CAT scan to further delineate the
12 injury in his neck to make sure we can follow the path of
13 the bullet from entrance to exit. In this case the
14 bullet didn't exit. It was retained, but we could see
15 what structures were injured to determine if he needs an
16 emergency surgery or not.

17 Q. So you can actually see that before you decide on
18 surgery or not; is that correct?

19 A. That's correct.

20 Q. Now, the bullet itself, where was that lodged, do
21 you recall?

22 A. Yes. It was lodged just in the back in the
23 trapezius muscle, just underneath the skin on his back on
24 the right side.

25 Q. Could you tell the path of the bullet through, I

1 guess, the CAT scans?

2 A. With the CAT scan, we were able to tell the
3 direction the bullet traveled, yes.

4 Q. Now, as a result of those tests, what was the
5 approach that you took?

6 A. When we looked at the CAT scans, what we saw was
7 the path of the bullet, and the bullet was retained in
8 the back, and it comes very, very close to a major artery
9 and a major vein in the neck, which supplies blood to the
10 brain, and it looked like, on that scan, that he had
11 completely or partially separated or partially transected
12 the major vein to his brain, and the concern was that
13 that was going to continue to bleed and that was going to
14 cause a significant problem, potentially a
15 life-threatening problem. So we made the decision to go
16 to the operating room to explore and make sure that what
17 we saw in the CAT scan was what was actually going on.

18 Q. And so you operated on him, basically, at that
19 time; is that correct?

20 A. Yes. We took him from CAT scan straight to the
21 operating room.

22 Q. What did you find during the operation?

23 A. When we opened his neck, we found an almost
24 completely separated vein in his neck. We call it the
25 internal jugular vein, and there was clot in both sides

1 of that vein, and that's why he wasn't actively
2 breathing, but as we continued to explore the neck, that
3 clot burst loose and began to massively hemorrhage into
4 his neck. So we were able to tie off, or control that
5 bleeding with suture, and then we just wash the neck out,
6 take out the drain and close the skin.

7 Q. When you talk about the vein -- first of all, let
8 me make sure that I understand the difference between
9 veins and arteries. Tell me the difference between the
10 two. You've got two, what you're describing, pretty much
11 side by side; is that correct?

12 A. Yes, and they almost lay right on top of one
13 another. The vein is more toward the outside and the
14 artery is more toward the inside, toward the trachea.
15 Veins carry blood to the heart, back to the heart, and
16 arteries carry blood away from the heart to the other
17 portions of the tissue. Arteries have much higher
18 pressure in them because they're coming from the heart,
19 and the veins have much lower pressure, which is why that
20 was able to clot off in a fashion.

21 Q. And that's why there wasn't a lot of blood -- on
22 the initial testimony that you were not here for, there
23 was a lot of testimony there wasn't a lot of bleeding.
24 Is that why?

25 A. That would be the most logical reason, yes, sir.

1 Q. Now, clotting or tying off that vein, what does
2 that mean? Is that the condition he's in now?

3 A. Yes, sir. That vein is completely separated and
4 cannot recanalize, or that vein is going to be down for
5 the rest of his life.

6 Q. Now, I asked you earlier to kind of show me this
7 on a thing --

8 I'm going to mark this as an exhibit, Your
9 Honor. I'm showing you State's Exhibit 40. Would this
10 aid in your testimony to explain what you're discussing?

11 A. Sure.

12 Q. Let me ask you to do this, because they're not
13 going to be able to see. Let me ask you to come off the
14 witness stand, if it would be all right with Your Honor.

15 Thank you. I'm going to let you do this to
16 make sure everybody can see. Would you explain -- and
17 this is just a Styrofoam head. Would you explain the red
18 and the blue, please.

19 A. All right. So the red, obviously, is the artery,
20 and the blue is the vein. The artery comes in a crossing
21 over fashion across the neck and ends up just below the
22 angle of your mandible, or the angle of your jaw, as does
23 the vein. The vein is more closer to the skin. It's
24 right underneath the superficial muscle there of the skin
25 and the artery is behind it, so based on -- you want me

1 to tell you the path?

2 Q. Sure, please.

3 A. So there was a ballistic injury on the anterior
4 portion of the neck, the front of the neck, and it was
5 almost a straight line back to where the bullet was
6 lodged in his back. The bullet then injured the vein,
7 almost completely transected it, but did not hit the
8 artery. There was no injuries from the artery, and the
9 artery and the vein are almost right on top of one
10 another.

11 Q. Let me interrupt you just a second. You said
12 something. So the bullet wound actually goes into the
13 neck, basically. On me, it would be somewhere here, just
14 straight back?

15 A. No, you're on the right side.

16 Q. I'm sorry.

17 A. It would be here and going in a downward fashion
18 and lodged in the trapezius muscle in the back, so it
19 came like this.

20 Q. So there was injury to the officer's chin. Was it
21 glancing? Could you tell or anything by that or --

22 A. I couldn't tell.

23 Q. -- if it was the same bullet or not?

24 A. Yeah, right. All I know is it was not a ballistic
25 injury in the chin. It was more of an abrasion or a

1 laceration, if you will. Ballistic injuries tend to be
2 circular in nature, so it didn't look like -- it wasn't a
3 classic ballistic injury that I'm used to seeing in
4 trauma patients.

5 Q. That's fine. So as it goes through here, in these
6 areas, you're saying it clipped the vein, I guess, and
7 that's the red one?

8 A. No. The vein is the blue one; the artery is the
9 red one.

10 Q. Sorry. Okay. The vein is the low pressure, I'm
11 assuming?

12 A. Yes, sir.

13 Q. And that, you were able to tie off; is that
14 correct?

15 A. Uh-huh.

16 Q. The artery, on the other hand, is high pressure;
17 is that correct?

18 A. That's correct.

19 Q. Why is that high pressure?

20 A. Because it's directly coming off -- the artery
21 comes from here, off the aorta, and the heart's sitting
22 here. There's a big, huge artery that comes off called
23 the aorta, and this branch comes right off the aorta. So
24 you're having 160 or 170 millimeters of mercury, is what
25 the blood pressure was at that day.

1 Q. All right. So the bullet clipping the vein, then,
2 I'm assuming, is better than clipping the artery?

3 A. Well, you can still bleed to death from your vein.
4 In this instance, he didn't bleed to death because the
5 vein clotted, which was fortunate, but we've had patients
6 expire from gunshot wounds in a similar nature before.

7 Q. Thank you. I appreciate that, Doctor.

8 MR. STONE: Thank you, Doctor. I appreciate
9 your time, and we don't have any further questions.
10 Would you please answer any questions the defense has,
11 please.

12 THE COURT: Cross?

13 CROSS-EXAMINATION

14 BY MR. HUGHES:

15 Q. Just a quick one. How many wounds were there?

16 A. There were two on the arm and one in the neck and
17 then this abrasion/laceration thing.

18 Q. And the abrasion laceration came from the one that
19 got in the neck?

20 A. It extended from the tip of his chin down to about
21 the middle of his neck.

22 Q. But there was no bullet wound there?

23 A. It wasn't a circular ballistic wound that I'm used
24 to seeing, so I don't know what made this wound. I can't
25 comment on that because I'm not sure what that was from.

BRAD DRAWDY - DIRECT EXAMINATION

1 Q. Judging from the path of it, though, would it have
2 continued on into the body if it had been a bullet?

3 A. Yes. That's certainly possible, yes.

4 MR. HUGHES: No further questions, Your
5 Honor.

6 MR. STONE: Thank you, Dr. Dunne. Thank you
7 very much.

8 THE COURT: Thank you. You're free to go.
9 Next witness?

10 MR. STONE: Lieutenant Brad Drawdy.

11 BRAD DRAWDY,
12 having been first duly sworn,
13 was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. STONE:

16 Q. Lieutenant Drawdy, you're obviously with the
17 Hampton police department; is that correct?

18 A. Yes, sir.

19 Q. How long have you been with the Hampton police
20 department?

21 A. Going on 11 years.

22 Q. Let me ask you, make sure -- Hampton police
23 department, your jurisdiction is obviously the police
24 department, but if you did dispatch somewhere in Hampton
25 County, you can go as well, correct?

1 A. Yes, sir, mutual aid.

2 Q. On January the 1st, 2016, you were working for the
3 police department at that point?

4 A. Yes, sir.

5 Q. Tell me about -- where were you when the call
6 first came out, and how did you know that there was an
7 incident?

8 A. I was sitting on 601 south right there at the
9 DSS building, running traffic. As Officer Smith said
10 earlier, running traffic is, you know, running radar,
11 trying to catch speeders. Obviously, it's a holiday
12 weekend, so we try to keep people safe.

13 I just cleared up off a previous traffic stop, was
14 parking. I got out of my car to do something and heard
15 officer say, I'm hit. At the time I didn't even know it
16 was Officer Smith. Just heard, I'm hit, I'm hit. I did
17 hear that it was an Echo unit, so obviously I knew it was
18 Estill PD so --

19 Q. I didn't know that. So that's how that is
20 established?

21 A. Yes, sir.

22 Q. Echo Seven, for instance, it's an Estill police
23 officer, and his call number is seven?

24 A. Yes, sir, and we'd be Hotel for Hampton.

25 Q. I see. Okay.

1 A. And I just automatically -- on a call like that,
2 we're trained -- within the police department, we have
3 monthly training stuff, and we're trained at what we can
4 automatically go to and what we cannot. Some things, if
5 they request aid, obviously, we'd call our supervisor and
6 ask first, but in a situation like this, it's all hands
7 on deck.

8 We just go en route and notify our superior, and
9 as the video showed earlier, which is what I did, I went
10 en route, and I even said, Notify Hotel Two, which would
11 be Major Sullivan, and I just went on to the call. I
12 didn't even know who I was going to at the time or where
13 exactly I was going. I just went.

14 Q. When you went there, and specifically -- I keep
15 asking Mr. Mathis to move, and I apologize for that, but
16 I've got to -- let me see if I can get you -- can I get
17 you to come off the stand and show us these locations
18 because I want to make sure -- and this is State's
19 Exhibit 2. Could you tell us a little bit about -- you
20 need the microphone? Go ahead.

21 A. As I'm coming into Estill, I ask which way I'm
22 headed. They tell me go left. As I turn left, this is
23 321. I would be coming this way, and at that point in
24 time, I started -- I didn't know exactly where I was
25 going, but me and EMS and fire all arrived around the

1 same time and so I just followed them in, and I would
2 have parked my car, I believe, right around this tree. I
3 believe it happened right here, and I actually parked my
4 car here and went up immediately to his car and checked
5 on him.

6 Q. This is -- we've got this listed as East Railroad
7 Avenue. Is that Railroad Avenue there? Is that what
8 that is or --

9 A. I'm not sure. I'm not real familiar with Estill.
10 All I now is I turned directly -- if I'm looking at it,
11 it would be the left side of the package shop and went
12 down the dirt road, not the paved portion.

13 Q. I see. All right. And this area in the package
14 store and Bobops and all, that's all in Hampton County;
15 is that correct?

16 A. Yes, sir.

17 Q. All right. And so when you're coming that
18 direction, you're all in Hampton County the entire time
19 as well?

20 A. Yes, sir.

21 Q. Tell me what happens when you get to this scene.
22 You park your car. What do you find once you get there?

23 A. When I get there -- like I said, I'm arriving with
24 EMS and fire. I immediately see Officer Smith on the
25 ground, laying next to his car, as they described it with

1 the gunshot wound to his chin and neck area.

2 At that point in time, I realized who it is. I
3 didn't realize it up to that point, and, of course, my
4 concern is for him at that time. As soon as I realize
5 he's okay and he's talking, I then immediately start
6 processing the scene the same way you would a crime scene
7 and started asking where is his gun, his belt so I could
8 secure all that, because any time you have a shooting
9 incident, I don't know whether he discharged his at any
10 point in time or anything, but all that needs to be
11 secured. That way it can be processed like a crime scene
12 would be.

13 Q. Let me stop you right there. You can stay right
14 there. Let me show you what's been marked as State's
15 Exhibit 34. Can you identify that?

16 A. Yes, sir. That's the belt that I took off him. I
17 believe it was still around him, and I had to pull it off
18 of him and get it from around his waist.

19 Q. And that's a fair and accurate depiction of how
20 the belt looked when you got it off of his waist?

21 A. Yes, sir.

22 MR. STONE: Your Honor, at this time we move
23 State's Exhibit 34 into evidence.

24 MR. HUGHES: No objection.

25 THE COURT: Admitted.

1 (State's Exhibit 34 marked for identification
2 and admitted into evidence.)

3 MR. STONE: Ask if I can publish that to the
4 jury?

5 THE COURT: You may.

6 BY MR. STONE:

7 Q. Now, that is the condition you found Officer
8 Smith's gun and belt in when you got there; is that
9 correct?

10 A. Yes, sir.

11 Q. The gun appears to have a snap on it; is that
12 right?

13 A. Yes, sir.

14 Q. Is that something that all the duty weapons have?

15 A. That's going to be up to each individual
16 department and policy. That is pretty accurate of what
17 most of us carry around here. That should be a level
18 three holster, meaning you would actually have to
19 rock the tension of the belt forward, press a button, and
20 twist it to pull it out, so --

21 Q. Is there any indication whether or not the gun was
22 ever taken out of its holster?

23 A. Not -- no. No, sir.

24 Q. And that's how you found it when you got it off --
25 you actually took it off?

1 A. I did. I took the whole belt off and secured the
2 whole belt.

3 Q. After you secure the belt, what else do you do?

4 A. Well, as I'm securing the belt, I notice the Taser
5 is not in his Taser holder, and so -- holster, so I go
6 back and ask him where it's at, and that's when he tells
7 me it's over on Tyson Street and points. And, of course,
8 I don't know where Tyson Street is, but he points to the
9 general direction.

10 Q. Can you point to the general direction we're
11 talking about on this?

12 A. Yes, sir. We're all right here. EMS is all right
13 here. His car is right here, and he points over to -- in
14 this general direction over here, off to the left.

15 Q. Okay. All right. And then at that point in
16 time -- has EMS arrived yet?

17 A. Yes.

18 Q. You're a first responder; is that correct?

19 A. Well, I mean, we all got there around the same
20 time. EMS is actually -- typically, EMS stands by and
21 waits for law enforcement, but I believe the way the call
22 come out, we were all on top of it before they even
23 realized it, so they got out and started -- due to the
24 injuries, started providing aid, but then I believe it's
25 like a matter of 30 seconds before I'm on the scene. I

1 get there at the same time as fire did.

2 Q. And I believe Officer Smith had glasses on?

3 A. Yes, sir.

4 Q. Did he give those to you as well?

5 A. He gives them to me, and I take the glasses and
6 lay them in his car while going to secure his duty belt
7 and stuff in my vehicle.

8 Q. Got you.

9 A. And, of course, they continue to run until
10 Lieutenant Gohagan with the sheriff's office gets there.

11 Q. Got you. All right. Now, when you get into this
12 situation with this, do you at some point go down and try
13 to secure this scene where the incident actually took
14 place?

15 A. I do. After he tells me where the Taser is, you
16 can hear me on the video explaining that somebody needs
17 to go secure that Taser. At that point in time, a deputy
18 with the sheriff's office then heads over to that area.

19 Once I'm able to break free from Officer Smith, I
20 then go to that area, and I locate the Taser on the
21 ground, along with some spent shell casings, and I
22 immediately recognize this as being a crime scene area,
23 and so I then get the deputy from the sheriff's office,
24 which would be Deputy Griffin, to assist me with taping
25 off the area with crime scene tape to establish the crime

1 scene area.

2 Q. All right. Let me stop you there.

3 I show you what's been marked as State's
4 Exhibit 8. I don't know if you can see all of these, but
5 do these appear to be shells you saw at the scene that
6 day?

7 A. They resemble them, yes, sir.

8 Q. And there were six or eight, something like that?
9 There are eight shells in here?

10 A. I believe I was able to locate six myself, and
11 then I believe I started marking them with various
12 objects that I could find just so that we knew where they
13 were at.

14 Q. Now, on this particular map, where was that --
15 where were these shells located?

16 A. They would have been in the roadway around --
17 looking at it upside down here, probably somewhere in
18 between those two houses right there but in the roadway.

19 Q. And are the shells close together or spread apart
20 or how --

21 A. Some of them. Some of them are close together,
22 but, I mean, shell casings are unpredictable. They
23 don't --

24 Q. Got you. All right. You secure the crime scene,
25 and then at some point I think that's turned over to

1 SLED; is that correct?

2 A. It's actually turned over -- me, being from
3 Hampton, I knew it would not be our case, so as soon as
4 Lieutenant Gohagan from the sheriff's office arrives, I
5 knew that they would be the one requesting SLED, more
6 than likely. Everything was turned over to him. I do
7 all the IT for Hampton police department. I immediately
8 notified him about the glasses being potential evidence,
9 and he asked if there was a way to view it. I told him I
10 probably had something in my vehicle, and, sure enough, I
11 did have a cable in my car that allowed me to hook the
12 video up to my in-car --

13 Q. That's the USB port?

14 A. That's the USB port, yes, sir, and that particular
15 one happens to be the same one that operates our in-car
16 printer because we do tickets electronically.

17 Q. So you could actually plug the glasses into the
18 car at the time?

19 A. Yes, sir.

20 Q. All right. So you did that, I'm assuming.

21 A. I did.

22 Q. Were you able to watch the video?

23 A. I did.

24 Q. As a result of watching the video, were you able
25 to get a photograph of the person you were looking for?

1 A. Yes, sir.

2 Q. And where did that picture come from?

3 A. While watching it, I had Estill fire department
4 standing behind me, and they -- as we're watching it, and
5 I slow it down, they see the same images that they showed
6 you all earlier, the still shots, and they said, That's
7 Mack-Mack, and immediately they started trying to find
8 out who Mack-Mack was.

9 A few minutes later, they come to me and said
10 that Mack-Mack is Malcolm Orr. I don't know who Malcolm
11 Orr is. I'm not from Estill. I do not know who that is,
12 but we have access to what's called South Carolina DMV
13 online, and I can go and pull up somebody's picture,
14 their driver's license picture. So upon doing that, I
15 looked up Malcolm Orr from Estill -- I believe it's
16 Estill; it might be somewhere down that way -- and come
17 up with his picture.

18 Q. All right. Let me show you what's been marked as
19 State's Exhibit 9. Can you identify that?

20 A. That is the picture I pulled up on the DMV that
21 day.

22 Q. And is that a fair and accurate depiction of that
23 picture?

24 A. It is.

25 MR. STONE: All right. At this point, Your

1 Honor, we move State's Exhibit 9 into evidence.

2 MR. HUGHES: No objection.

3 THE COURT: It's admitted. You can publish.

4 (State's Exhibit 9 marked for identification
5 and admitted into evidence.)

6 BY MR. STONE:

7 Q. That's the photograph that you drew, basically,
8 off the online search; is that right?

9 A. Yes, sir.

10 Q. What happened with this picture once you guys get
11 the picture?

12 A. Once I got that picture, I was asked to head over
13 to Estill police department, at which time I did. I
14 pulled the picture off of his -- online and distributed
15 it to all the law enforcement -- actually, I gave it to
16 Lieutenant Gohagan, and they distributed to all the law
17 enforcement on the scene.

18 MR. STONE: All right, sir. Thank you very
19 much. Answer any questions the defense has. Let me get
20 that mike from you, and I'll get that out of Mr. Mathis's
21 way.

22 THE COURT: Cross?

23 MR. HUGHES: No questions, Your Honor.

24 THE COURT: You may step down.

25 MR. STONE: State calls Chris Housey to the

1 stand.

2 CHRIS HOUSEY,
3 having been first duly sworn,
4 was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. STONE:

7 Q. All right. Mr. Housey, what do you do, sir?

8 A. I work -- I drive a truck.

9 Q. I'm going to get you to pull that microphone a
10 little bit closer to you. What do you do now, sir?

11 A. I work -- I drive a truck.

12 Q. On January the 1st of 2016, who did you work for
13 then?

14 A. Fire department, first responder.

15 Q. What fire department?

16 A. Estill.

17 Q. Where are you from originally, sir?

18 A. Estill.

19 Q. Lived there all your life?

20 A. Yes, sir.

21 Q. When you -- I'm assuming at some point you get
22 called to the scene as a fire officer; is that correct?

23 A. Yes, sir.

24 Q. Does that accompany the rescue, or do you come on
25 a separate truck or how do you --

1 A. I came on POV in the car when I heard it.

2 Q. So you get the radio dispatch just like everybody
3 else does?

4 A. Yeah.

5 Q. You get to the scene. Did you view the video that
6 we've already put in evidence from the officers's
7 glasses?

8 A. Yes, I did.

9 Q. Did you see the person wearing the camouflage in
10 the video?

11 A. Yes, sir.

12 Q. Did you recognize that person?

13 A. Yes, sir.

14 Q. And do you recognize it because you know who he
15 was?

16 A. I see him, you know.

17 Q. What did you know him as?

18 A. They call him Mack-Mack.

19 Q. And is this somebody that you knew from living in
20 Estill?

21 A. I see him in Estill.

22 Q. Do you see him in the courtroom today?

23 A. Yes, sir.

24 Q. And can you point him out, please.

25 A. Yes, sir.

THEODORE COX - DIRECT EXAMINATION

1 Q. Point him out please.

2 A. Right there (indicating).

3 Q. The gentleman in the, I guess, green-type shirt?

4 A. Yes, sir.

5 Q. And that's the man you know as Mack-Mack?

6 A. Yes, sir.

7 Q. Did you convey that information to the officers at
8 the scene that day?

9 A. Yes, sir.

10 MR. STONE: Thank you, Your Honor. I don't
11 have anything else from this witness.

12 THE COURT: Cross?

13 MR. HUGHES: No questions, Your Honor.

14 MR. STONE: Thank you, sir. I appreciate it,
15 sir.

16 Teddy Cox.

17 THEODORE COX,

18 having been first duly sworn,

19 was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. STONE:

22 Q. I called you Teddy Cox. It's Theodore Cox; is
23 that correct?

24 A. Yes, sir.

25 Q. January 1, 2016 where were you working? Who were

1 you working for?

2 A. The fire department in Estill and the Cottageville
3 police department in Cottageville, South Carolina.

4 Q. Are you from Estill as well?

5 A. Yes, sir.

6 Q. Born and raised there?

7 A. Yes, sir.

8 Q. Did you respond or were you one of the officers
9 that responded to the scene that we've been talking
10 about, the party shop and Bobops?

11 A. Yes, sir. At the time I heard my fire department
12 pager go off. I went to the fire station in my patrol
13 vehicle from Cottageville, heard the situation officer
14 down. I then turned around and went in my patrol vehicle
15 straight to the scene.

16 Q. When you get to the scene, or at some point
17 thereafter, did they show you -- and I know we had
18 testimony a few minutes ago about this video from the
19 glasses. Did you see that video?

20 A. Yes, sir, I did.

21 Q. And did you recognize the person in the video
22 wearing the camouflage with the gun and the -- that
23 Officer Smith dealt with?

24 A. Yes, sir.

25 Q. And how do -- do you know that person?

1 A. Yes, sir. I know his family and went to school
2 with some family members.

3 Q. What do you know him as? What is his name?

4 A. Malcolm Orr.

5 Q. Did he have a nickname?

6 A. A lot of people call him in the street Mack-Mack.

7 Q. Do you see that man in the courtroom today?

8 A. Yes, sir.

9 Q. Could you point him out, please.

10 A. Right over there (indicating).

11 Q. What is he wearing?

12 A. Green shirt.

13 Q. All right, sir.

14 MR. STONE: I don't have any further
15 questions, Your Honor.

16 THE COURT: Cross?

17 MR. HUGHES: No cross, Your Honor.

18 THE COURT: You may step down.

19 MR. STONE: Thank you. State calls Isaiah
20 Warren.

21 ISAIAH WARREN,

22 having been first duly sworn,

23 was examined and testified as follows:

24 DIRECT EXAMINATION

25 BY MR. STONE:

1 Q. Mr. Warren, where do you live, sir?

2 A. I live on Church Avenue.

3 Q. What's the address there?

4 A. It would be [REDACTED].

5 Q. Church Avenue?

6 A. Yes, sir.

7 Q. All right, sir. And I -- go ahead. I'm sorry.

8 A. It's [REDACTED]. It used to be [REDACTED] -- [REDACTED].

9 Q. And they changed that name. Now it's Church
10 Avenue. It used to be Church Street; is that right?

11 A. Yes.

12 Q. All right. And I showed you a map earlier, which
13 I think is in State's Exhibit 2. I've got Isaiah
14 Warren's residence. That's Church Street. That's your
15 house; is that correct?

16 And I'll show you -- this is State's Exhibit
17 2. This red dot here, is this your house right here, or
18 do you need to me to show it to you closer?

19 A. Yes.

20 Q. That's your house right there?

21 A. Yes.

22 Q. All right, sir. Were you at home around 11:15 or
23 something like this on January the 1st of 2016?

24 A. Yes.

25 Q. What were you doing -- by the way, were you by

1 yourself or did you have somebody with you?

2 A. No, it was me and a friend sitting on the porch.

3 Q. How did you come about sitting on the porch?

4 A. Well, it just was me and him was sitting on the
5 porch, and I see all the policemen, and we just came out
6 on the porch.

7 Q. Now, where could you see the police officers?

8 A. I could have seen them from my kitchen window.

9 Q. You're close enough on that Church Street,
10 basically, to see, I think -- that main road, do you see
11 them through the main road, do you see them over to the
12 left, or how?

13 A. Well, if I go on the front porch, I can see the
14 main road.

15 Q. Got you.

16 A. But from the kitchen, I could see the dirt road.

17 Q. So you were close enough to be able to see the
18 officers coming? This is after everything happens you
19 see the police officers.

20 A. Yes.

21 Q. Tell me what happens. You're sitting on the front
22 porch. Do you see these officers? The police cars are
23 coming by, assuming you heard the sirens and stuff?

24 A. Yeah.

25 Q. Tell me what happens after that.

1 A. Well, we was sitting on the porch, and Malcolm
2 came up, and he asked for a change of pants. I told him
3 my pants was too big for him, and he hang around for a
4 few and he leave.

5 Q. What was he wearing when he came up is?

6 A. All I can remember was camouflage pants.

7 Q. Okay. And he asked you for your pants?

8 A. Yes.

9 Q. Did you give him your pants?

10 A. No.

11 Q. What did he do after he asked you -- by the way,
12 when he comes up to the house, you're on the front porch.
13 Does he come up the front, the back, or what?

14 A. No. He came up from the back.

15 Q. So that would have been -- go back to this map,
16 make sure -- can everybody see this? Okay.

17 So on State's Exhibit 2, that's basically coming
18 in from this back area, back here; is that correct?

19 A. Yes.

20 Q. Your front porch, I'm assuming, is facing this
21 main street over here?

22 A. Yes.

23 Q. Is that right?

24 A. Yeah.

25 Q. All right, sir. So he comes up to the back. Do

1 you see him when he comes up to the back, or when do you
2 first notice him?

3 A. No, I didn't see him until he got to the front.

4 Q. How do you know him?

5 A. That's my second cousin.

6 Q. Do you know him as -- you call him Malcolm? Do
7 you him Mack-Mack? What do you call him?

8 A. I call him Mack-Mack.

9 Q. So when Mack-Mack gets to the house, you're on the
10 front porch, he comes up to the front porch, what does he
11 do after you tell him you're not giving him his pants?

12 A. He ain't did nothing. He walked from the front
13 door -- from the front door to the back door couple of
14 times and he leave.

15 Q. When he goes to the front door and the back door,
16 what's he doing?

17 A. He ain't doing nothing but looking, looking out
18 the door.

19 Q. What's he looking out for? What is he looking
20 out, your windows, the doors? What is he doing?

21 A. No, looking out the back door.

22 Q. So he goes back to the back, looks out the back
23 door, comes back to the front?

24 A. Yes.

25 Q. Does he go back again and do it again?

1 A. I quite don't remember.

2 Q. All right. Tell me how he looked when he got
3 there. I know he's wearing camouflage pants, but how is
4 he acting?

5 A. He was sweaty.

6 Q. He was sweaty?

7 A. Yeah.

8 Q. Did you ask him anything? Did you ask him what he
9 was doing?

10 A. Yeah. I asked him what happened, but he never
11 would tell me.

12 Q. And does he ask your friend anything?

13 A. No. Well, he asked Beanie for his pants, and
14 Beanie told him no, he wouldn't give him his pants, and
15 he leave and then crossed the track.

16 Q. Now, at that point, does he have a camouflage
17 jacket on or is he down to a white shirt?

18 A. I never did see the jacket.

19 Q. Just the pants?

20 A. All I seen was the pants.

21 Q. When he left your residence, where did he go?

22 A. He went across the railroad track.

23 Q. Now, on this map, on 2, the railroad track is --
24 is it right here; is that correct, on the very top?

25 A. Yeah.

1 Q. So he heads, basically, out your front -- whose
2 house is this? Whose yard is this? He runs through a
3 back yard?

4 A. He run through Brooks yard.

5 Q. And that's here, that's in this area here?

6 A. Yes.

7 Q. And toward the railroad tracks this way, right?

8 A. Yeah.

9 Q. Okay. All right. Let me show you State's Exhibit
10 10. Do you recognize that?

11 A. Yeah.

12 Q. Is that a fair and accurate depiction of how
13 Mack-Mack, or Malcolm Orr, looked when you saw him?

14 A. Yeah.

15 MR. STONE: Your Honor, at this time we move
16 State's Exhibit 10 into evidence.

17 MR. HUGHES: No objection, Your Honor.

18 THE COURT: Admitted. You can publish.

19 MR. STONE: Thank you.

20 (State's Exhibit 10 was marked for
21 identification and admitted into evidence.)

22 BY MR. STONE:

23 Q. These are the clothes he was wearing when he got
24 to your house?

25 A. Yes.

1 Q. All right, sir. This man, do you see this man --
2 do you see Malcolm Orr, or Mack-Mack, in the courtroom
3 today?

4 A. Yes.

5 Q. Could you point him out for me?

6 A. Yeah, right there.

7 Q. And this is your second cousin, I believe?

8 A. Yes.

9 MR. STONE: Thank you, sir. I don't have any
10 further questions. Answer anything the defense may have.

11 THE COURT: Cross?

12 CROSS-EXAMINATION

13 BY MR. HUGHES:

14 Q. Good afternoon, Mr. Warren. Did Malcolm pull a
15 gun on you?

16 A. Huh?

17 Q. Malcolm pulled a gun on you that day?

18 A. No.

19 Q. He threatened you?

20 A. No.

21 MR. HUGHES: No further questions, Your
22 Honor.

23 THE COURT: Redirect?

24 MR. STONE: No, sir. Thank you, sir. I
25 appreciate it.

CHAUNCEY SOLOMON - DIRECT EXAMINATION

1 Lieutenant Chauncey Solomon.

2 CHAUNCEY SOLOMON,

3 having been first duly sworn,

4 was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. STONE:

7 Q. Lieutenant, what do you do?

8 A. I'm an investigator for the Hampton County
9 sheriff's office, narcotics investigator.

10 Q. How long have you been with the Hampton sheriff's
11 office?

12 A. On and off for about 23 years.

13 Q. And on January the 1st, 2016 I assume you were
14 with the sheriff's office at that point?

15 A. Yes.

16 Q. Tell me what your job was, or how you were
17 involved in this case.

18 A. Well, I was at home, of course. The sheriff
19 called me, Sheriff Smalls. He told me that an officer in
20 Estill was shot and he needed me to go to Estill. So, of
21 course, I went to Estill and got with the captain,
22 Anthony Russell, at the time.

23 We had a command post where we was setting up; you
24 know, getting some information together, what happened,
25 so we could figure out how we were going to try to find

1 out where the gentleman who actually did the shooting was
2 at.

3 Q. Now, were you involved in seeing the video,
4 anything like that?

5 A. At some point, yes.

6 Q. Now, you -- what type of -- how do you know who
7 you're looking for, I guess is my question?

8 A. Okay. Of course, you know, doing the strategy, we
9 passed out, you know, the right identification, some
10 papers with Malcolm Orr, with his picture.

11 Q. And let me show you what's been entered into
12 evidence as State's Exhibit 9. Is that the photograph
13 you guys were passing out?

14 A. Yes.

15 Q. All right, sir. And, again, when you get there,
16 most of the first responders, these other people, were
17 there; is that correct?

18 A. Everybody is already there, so, of course, you
19 know, it's already got started with, you know, the plan.

20 Q. I got you. What do you do at this point?

21 A. Well, me and the rest of the investigators from
22 the sheriff's office, along with some other investigators
23 from other agencies, we basically went out in the
24 community and started looking for Mr. Orr.

25 We started reaching out to people who we may know,

1 sources that we may know to try to figure out where he
2 could have gone, if anybody had seen him. At some point,
3 I actually reached out to his mother, which is Elaine.

4 Q. And at some point -- and I know this was on, I
5 think, the 911 thing we played initially. Supposedly,
6 there was instructions that he was somewhere near Keene
7 Avenue; is that right?

8 A. That's correct.

9 Q. All right. Now, let me ask you, if you could,
10 come down off the witness stand. I'll borrow your
11 microphone just a minute.

12 Having worked in Hampton County as long as you
13 have, I'm not sure -- can everyone see that? Tell me --
14 first of all, just orientate me to where the incident
15 took place and then where, we've already testified,
16 Mr. Warren's residence is. What do you do at this point?
17 What do you --

18 A. Okay. We here at the command post, at the
19 location a little further back.

20 Q. So you set up the command post actually at the
21 incident location; is that right?

22 A. Close to it, not exactly where it's at, but
23 almost, like, across the street from it, in this little
24 area right up in here.

25 So what we're doing, we're taking information from

1 maybe calls that's coming in, possible location. We
2 received information that he was on Keene Avenue, which
3 is -- if you go up here to 321 and go -- there's a place
4 right here where they -- a business right here of some
5 kind where they make poles. You can make a left turn and
6 go --

7 Q. Let me stop you on that left turn. Do you cross
8 over railroad tracks? Is that what that is on that map?

9 A. Yes, sir, railroad tracks.

10 Q. All right. Go ahead.

11 A. And there is a church over here called Martin
12 Temple. Maybe two blocks over is actually a little
13 residence that they say that he possibly was at.

14 Q. So you went to that location?

15 A. Myself and, I think it was, Lieutenant Perry
16 Singleton and some other investigators and police
17 officers, after we received that he may possibly be
18 there, we went there to see if we could find him.

19 Q. And were you able to find him?

20 A. Yes.

21 Q. Where did you locate him?

22 A. We actually went to the residence. Someone yelled
23 out and said he was in the back yard, so we kind of, you
24 know, went to the side. Some of us went to the left and
25 some of us went to the right, came around to the back

1 side, and he was in a wooded area over there by some -- a
2 dog pen.

3 Q. All right. And you apprehended him at that point?

4 A. Yes, I did.

5 Q. Go ahead and take the stand.

6 I show you what has been marked as State's Exhibit
7 10 and has already been entered into evidence. Is this
8 how Malcolm Orr looked when you arrested him?

9 A. Yes.

10 Q. And this is the outfit he was wearing at that
11 time?

12 A. That exactly was the outfit.

13 Q. All right. I'm going to hand you State's Exhibit
14 17. Can you tell me -- can you identify what's in that
15 bag?

16 A. It's a red bandanna.

17 Q. And where did you get that?

18 A. Well, when I arrested him, of course, him having
19 handcuffs, I did a pat-down to make sure that he didn't
20 have a weapon on him, things of that nature, and he had
21 this in his pocket. I think it was in his right pocket,
22 his front pocket. I actually pulled it out, and it was
23 the red bandanna.

24 MR. STONE: Your Honor, at this time we move
25 State's Exhibit 17 into evidence.

~~CHAUNCEY SOLOMON - CROSS-EXAMINATION~~

1 MR. HUGHES: No objection.

2 THE COURT: Admitted. You can publish.

3 (State's Exhibit 17 was marked for
4 identification and admitted into evidence.)

5 BY MR. STONE:

6 Q. Now, was it in this condition? Was it knotted
7 like it is now?

8 A. Yes.

9 Q. Okay. And this is the red bandanna that you got
10 out of the defendant's pocket?

11 A. That's the red bandanna that I got out of his
12 pocket.

13 Q. All right. And do you see the defendant in the
14 courtroom that you arrested and got the red bandanna out
15 of his pocket?

16 A. Yes, the gentleman that's sitting there with the
17 green shirt.

18 MR. STONE: Just so the record reflects, he's
19 identified the defendant, as the previous three witnesses
20 did as well, four witnesses.

21 Thank you, Lieutenant. Answer any questions
22 the defense has.

23 CROSS-EXAMINATION

24 BY MR. HUGHES:

25 Q. We've known each other quite a few years.

1 A. Hey, Bob.

2 Q. Hey, Chauncey. When you went to arrest him, did
3 he fire shots at you?

4 A. No, he didn't.

5 Q. Did he put up a fight?

6 A. No, sir, he didn't.

7 Q. Did he -- did y'all say, we're here to arrest you?
8 We're here to take you in or --

9 A. I think I actually told him he was under arrest.
10 I actually put the handcuffs on, and I said that to him.

11 MR. HUGHES: No further questions, Your
12 Honor.

13 MR. STONE: I apologize.

14 REDIRECT EXAMINATION

15 BY MR. STONE:

16 Q. Did he still have the gun on him when you arrested
17 him?

18 A. No, he didn't.

19 MR. STONE: Nothing else, Your Honor.

20 THE COURT: You may step down.

21 I'm sorry. Did you have any recross?

22 MR. HUGHES: No, Your Honor.

23 THE COURT: Okay. Go ahead.

24 MR. STONE: State calls Todd Schenk to the
25 stand.

TODD SCHENK - DIRECT EXAMINATION

1 TODD SCHENK,
2 having been first duly sworn,
3 was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. STONE:

6 Q. Who do you work with, sir?

7 A. I'm with the South Carolina Law Enforcement
8 Division, also known as SLED.

9 Q. Now, I'm wondering if I pronounced your last name
10 correctly.

11 A. Yes, sir.

12 Q. So you are a special agent with SLED?

13 A. Yes, sir.

14 Q. All right. Tell me, what was your role as far as
15 the investigation of this case?

16 A. I'm a crime scene investigator for SLED, so my job
17 was to show up and conduct a crime scene investigation at
18 the scene.

19 Q. And did you do that?

20 A. Yes, sir.

21 Q. Tell me, when you get there, has the scene already
22 been roped off, already had crime scene tape around it
23 and everything like that?

24 A. Yes, sir, it does.

25 Q. And I know Lieutenant Drawdy already spoke earlier

1 about finding shell casings. Were you the one that
2 secured all those items?

3 A. What will happen is, first, we want to photograph
4 everything on the scene to make sure we show where
5 everything is in relation to how the scene happened.
6 What we'll do is after we document it the proper way,
7 we'll put markers down, which are -- what you see on TV,
8 the yellow tents with the numbers and whatnot, we'll put
9 all those down and rephotograph everything, and then once
10 everything is documented the proper way then I'll secure
11 it.

12 Q. Okay. Let me first show you, then, what's been
13 marked as State's Exhibit 36 and State's Exhibit 35, ask
14 if you could identify those two.

15 A. Yes, sir. These were two photographs that were
16 taken while we were on scene.

17 Q. Is that a fair and accurate depiction of that
18 scene as you saw it that day?

19 A. Yes, sir.

20 MR. STONE: At this time, we move State's
21 Exhibit 35 and State's Exhibit 36 into evidence.

22 MR. HUGHES: No objection.

23 THE COURT: Admitted.

24 (State's Exhibits 35 and 36 were marked for
25 identification and admitted into evidence.)

1 BY MR. STONE:

2 Q. State's Exhibit 35, if you could, tell the jury
3 what that shows.

4 A. This shows all the evidence placards that we'll
5 put down on the scene. Each one in my notes I have
6 described as to what everything is. In the foreground,
7 you can see marker one and two, that is actually
8 suspected blood that is on the itself. So three and
9 four, if you don't mind if I could --

10 Q. No, absolutely, and what I want to make sure of
11 is -- can you blow that up at all, Donnie? If you can't,
12 I want to make sure -- one and two, it looks like they go
13 in order, sort of in maybe an S fashion; is that correct?

14 A. Yes, sir. I try to lay stuff out so when I take
15 the photographs it make sense as to which direction we're
16 going.

17 Q. Thank you. We've blown it up now a little bit, so
18 maybe that helps.

19 A. Sure.

20 Q. So markers at one and two, what is at markers one
21 and two?

22 A. Markers one and two were suspected blood that's on
23 the cement.

24 Q. What's after that?

25 A. Marker three is a Taser AFID, which is an

1 anti-felon identification device, and what happens -- or
2 disk, I'm sorry. When a Taser is fired, it fires out
3 confetti, and it's so that you can track which Taser
4 cartridge was used. So I go ahead and mark those that we
5 find, because sometimes you can find them. Sometimes
6 they go every which way. They're itty-bitty little
7 disks.

8 So marker three was actually Taser AFID.
9 Marker four was a fired cartridge case. It was a nine
10 millimeter cartridge case. Marker five was a Taser
11 cartridge door, which is -- on the front of the Taser,
12 there's two different colored doors. There's green --
13 there are different colors, and when the Taser is fired,
14 the doors come off of the Taser and that's when the
15 probes come out and that's when the AFIDs are ejected as
16 well, and so I marked the doors, just to show in the
17 general area of where the Taser was fired.

18 Q. When you're looking at a Taser, actually, you've
19 got big green doors, squares --

20 A. Yes, sir.

21 Q. Not a barrel?

22 A. No, sir. It's more of a block. It's a square,
23 and the doors open like bar doors off the front of the
24 Taser.

25 Q. All right. Go ahead. I'm sorry.

1 A. That's okay. So marker four -- I'm sorry. Marker
2 five was a Taser cartridge door. It was green in color.
3 Marker six, seven, and eight were all nine millimeter
4 cartridge cases, and a cartridge case means it's been
5 fired. It is a fired cartridge case. A cartridge case
6 means it's fired.

7 The marker nine is the other of the green Taser
8 doors. Marker ten is a Taser AFID, and in my note
9 section, I talk about the difference, so marker three was
10 the closest Taser door to where the suspected blood was,
11 and marker ten was the furthest Taser AFID from where the
12 suspected blood was, and that's just to show the distance
13 that it could cover when the AFIDS were shot out of the
14 Taser.

15 Marker 11 was the actual Taser. It's an X26P.
16 That's where the Taser was located on the ground, and you
17 can kind of see it. It's kind of a black object laying
18 on the ground there. Marker 12 was the top portion of a
19 cellphone. The cellphone appeared to be snapped in half,
20 and part of it was at marker 12.

21 Marker 13, 14, 15, and 16 were all fired cartridge
22 cases that were found on the scene, all nine millimeter
23 as well. Marker 17 was the actual Taser cartridge. So
24 in the background, you can see -- I think the last one
25 you can really see is 14, 15, and 16. That's in the pine

1 straw, up to the left. Way back in the background, you
2 can see the three yellow placards back there. You can't
3 really see the numbers, but you can see the placards
4 themselves. That's marker 17, 18, and 19, and that's the
5 actual Taser cartridge, and then 18 and 19 are two ends
6 of the Taser wires that would have attached, or came out
7 of the cartridge.

8 Q. All right. Let me go to State's Exhibit -- I
9 think that was State's Exhibit 36, and that's at the end
10 of that road --

11 A. Yes.

12 Q. -- is that correct, State's Exhibit 36? And
13 that's the end of the road. Let me ask you now if I can
14 show you what's been marked as State's Exhibit 8, if you
15 recognize those items, and if you need to cut open that
16 bag, that's perfectly fine.

17 A. I can if you like me to, but it's sealed with my
18 initials, and this is the container and my writing. This
19 is what I would have put the cartridge cases in, and
20 these are the envelopes that I collect the cartridge
21 cases in at the scene.

22 Q. I'm going to let you do that.

23 A. It's not the best cut. Sorry.

24 Q. Go back to 35, if you would. All right, sir.
25 Inside of, I think this is State's 8, are individual

1 packages; is that correct?

2 A. Yes, sir.

3 Q. And are these individual packages packages that
4 you basically created when you picked these up?

5 A. Yes, sir. So we make sure we put, obviously, what
6 we want to describe, what the piece of evidence is, and
7 then we'll also put the time we collect it, where it was
8 collected from, the date, and then I initial everything
9 that was collected.

10 Q. And so these are your initials and everything in
11 this. Do you then put it inside the envelope?

12 A. Yes, and we seal it. And then we get back to the
13 lab, we log everything in and put the lab number, item
14 number, and my initials on the container as well.

15 Q. All right.

16 MR. STONE: Your Honor, we have the expert
17 that tested this as well here and will testify, but at
18 this time I move State's Exhibit 8 into evidence.

19 MR. HUGHES: Without objection.

20 THE COURT: Admitted.

21 (State's Exhibit 8 was marked for
22 identification and admitted into evidence.)

23 BY MR. STONE:

24 Q. If you don't mind, please, if you come off the
25 stand, I'll give you this, and I'll hand you that. You

1 were showing us up there, but I don't think everybody got
2 here to see it. So these are individual packages. These
3 are all packages that you made; is that correct?

4 A. Yes, sir, they are.

5 Q. And how many are we dealing with here?

6 A. There should be eight cartridge cases.

7 Q. And these are all individually packaged that you
8 made?

9 A. Yes, sir.

10 Q. Now, tell me about -- when you say cartridge, what
11 exactly is that?

12 A. So a cartridge is -- some people say they're going
13 to go buy bullets. You don't buy bullets. The bullet is
14 what comes out of the end of this. This is called a
15 cartridge case. A full cartridge is loaded into the
16 magazine of a weapon. It has a bullet, the powder, the
17 cartridge case and the primer. When the bullet is fired,
18 the bullet obviously leaves the gun, the cartridge is
19 ejected from the gun, and this is what I find on scene
20 cartridge cases.

21 Q. When a cartridge is ejected out of a gun, is there
22 any real rhyme or reason where it goes?

23 A. Cartridge cases, there is no way to tell, and
24 they're kind of -- they'll bounce in any which way,
25 depending what it hits, if there's a wall in the way; it

1 depends. It can land any which way.

2 Q. And we're dealing with, I guess -- that appears to
3 be, basically, an asphalt road; is that correct?

4 A. Yes, sir, it is.

5 Q. So that's a hard surface?

6 A. They can bounce. They can go any which way; yes,
7 sir.

8 Q. All right. And you found these eight shells at
9 those points back there; is that correct?

10 A. Throughout them, yes, sir. Some of those are the
11 Taser doors, some are the AFIDs, but --

12 Q. But these shells are all in that; is that correct?

13 A. Yes, sir.

14 Q. If you're dealing with eight cartridges, what can
15 you tell us about that? What does that mean?

16 A. I can tell you that someone shot eight times, or
17 that eight shots were fired while on the scene --

18 Q. All right.

19 A. -- that we found.

20 Q. Okay. Go ahead. Let me show you what's been
21 marked as State's Exhibit 4 ask if you can tell me what
22 that is.

23 A. Yes, sir. That appears to be -- this appears to
24 be the cellphone that was collected. There's two
25 different pieces. One was at marker 12, and one was

1 later found at marker 21, and it was separated in half
2 like this.

3 Q. Okay. It would be kind of hard to see up on
4 State's Exhibit 35, but where is that -- where's that
5 located in that road? That's at two markers, are you
6 telling me?

7 A. Marker 21, which we found later when we researched
8 the scene, it was up in the pine straw, so it's not shown
9 in this photo. But if you see the Taser, the black
10 object on the ground at number 11, to the right of that
11 in this photograph, marker 12, that's part of the
12 cellphone.

13 Q. Up to the right -- actually, the top of the
14 marker, the top right marker; is that correct?

15 A. Yes, sir, right across from that mailbox.

16 Q. And how far away were these two pieces?

17 A. Directly? I didn't measure them directly. We do
18 take measurements on each piece of evidence.

19 Q. Right.

20 A. But they were a fairly decent ways apart.

21 Q. They weren't right beside each other?

22 A. No, sir.

23 Q. They were separated?

24 A. Yes, sir.

25 MR. STONE: Agent, if you will, answer any

1 questions defense may have. Thank you.

2 THE WITNESS: Yes, sir.

3 CROSS-EXAMINATION

4 BY MR. HUGHES:

5 Q. Good afternoon, Agent.

6 A. Good afternoon.

7 Q. And I'm not going to try to mess up your name.

8 A. It's okay.

9 Q. Can I see that picture that he was showing you?

10 A. Yes, sir.

11 Q. Maybe you can answer this for me. I understood --
12 well, I always thought that a Taser stayed together.

13 A. How do you mean?

14 Q. If you had the cartridge and you fire it that you
15 still have control and the cartridge stays inside the
16 Taser.

17 A. Sometimes it happens. Sometimes the cartridge can
18 come apart from the end of the Taser. It depends.

19 Q. Okay. And was that all the physical evidence
20 y'all found, or was there something else?

21 A. No, sir, this is it. We eventually went to the
22 department of corrections and got the clothing that the
23 suspect was wearing, but this is all we had at the scene.

24 Q. Are these in the same bag that you put them in?

25 A. The manilla envelopes are the bags I put them in.

1 Those are -- what will happen is, I'll send the evidence
2 over to our firearms department, and they'll take them
3 out and do whatever processing they need to do.

4 Q. I'm going to hand these back to you. You did not
5 do the writing on them?

6 A. No, sir. That's not done by me.

7 Q. Okay. That's done by SLED, though, probably?

8 A. It should be done by our firearms examiner.

9 Q. Now, there are eight cartridges there?

10 A. Yes, sir.

11 Q. That means that there are eight rounds somewhere.

12 A. Eight fired bullets?

13 Q. Yes.

14 A. Yes, sir, that is true.

15 Q. Did you all recover any bullets on the scene?

16 A. No, we did not.

17 Q. All right. Now, did you find any bullet marks on
18 the pavement or anything like that?

19 A. I don't remember finding any bullet marks, no,
20 sir.

21 Q. Okay. These are nine millimeter?

22 A. Yes, sir. These are all nine millimeter cartridge
23 cases.

24 Q. And if -- you would expect to find bullet marks if
25 the bullets were fired downward, right?

1 A. It depends.

2 Q. On the pavement?

3 A. It's theoretical that it could. If you shot a gun
4 at the cement, you theoretically could see it, but I
5 wouldn't say that it would always show up.

6 Q. I'm not asking as an expert, but approximately how
7 far will a bullet travel if fired horizontally?

8 A. I couldn't tell you.

9 Q. I'm not asking you to tell me something you can't
10 tell me, but that is all the physical evidence you found?

11 A. Yes, sir, it is.

12 MR. HUGHES: No further questions, Your
13 Honor.

14 MR. STONE: Thank you, Agent. Lieutenant
15 Britt Dove.

16 BRITT DOVE,
17 having been first duly sworn,
18 was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. STONE:

21 Q. Lieutenant Dove, what do you do, sir?

22 A. I'm currently assigned to lieutenant in the South
23 Carolina Law Enforcement Division, the computer crime
24 center.

25 Q. And what exactly do you do with the computer

1 crimes?

2 A. As a lieutenant, I manage and supervise the
3 day-to-day operations, budgets, personnel, assignment
4 issues. Also, I do forensic examinations on computers
5 cellphones, tablets, GPS systems, along with doing some
6 investigations.

7 Q. So you have actually done some investigations in
8 computer forensics, I guess; is that correct?

9 A. Yes, sir. I've done probably over 500 forensic
10 examinations on electronic items.

11 Q. And part of this forensic examination, does that
12 allow you to go into items like cellphones and extract
13 information from them?

14 A. Yes, sir, it does. It allows us to extract the
15 information and to build to interpret what the
16 information says.

17 Q. Now, you have testified to things like this in
18 court before?

19 A. Yes, sir, I have, many times.

20 Q. Have you done that as an expert?

21 A. Yes, sir. I've been qualified four different
22 times in the State of South Carolina as a computer
23 forensic expert.

24 Q. So as a computer forensic expert; is that correct?

25 A. Yes, sir.

1 MR. STONE: Your Honor, at this time we offer
2 the lieutenant as a computer forensic expert for the
3 purpose of examining this cellphone.

4 MR. HUGHES: Your Honor, I'm not sure I heard
5 anything about the ability to check out a cellphone. I
6 heard things about computers and only been qualified four
7 times. I would object to him being qualified as an
8 expert.

9 THE COURT: Well, would you like to lay a
10 further foundation for expertise?

11 MR. STONE: Sure.

12 BY MR. STONE:

13 Q. Lieutenant, you said you tested somewhere around
14 400 of these; is that correct?

15 A. Yes, sir.

16 Q. Tell me what allows you to do this and what the
17 process is involved.

18 A. Originally, when I began in this unit about nine
19 years ago with SLED in the computer crimes center, I
20 received training from Search.org in cellphone and
21 forensics and investigation and examination. I've also
22 received training from the United States Secret Service
23 and their national computer forensic institution on basic
24 data recovery from their courses out there.

25 I'm also a member of the South Carolina electronic

1 crimes task force and a member of the FBI cyber task
2 force. Along with that, what allows us to do that is we
3 have gone through and done other qualification of vetting
4 of our items to make sure that what we are extracting is
5 what it's supposed to be.

6 Q. And you actually have equipment that assists you
7 as well on that; is that correct?

8 A. Yes, sir. Once of the primary tools we use is a
9 Cell Bright Machine, which allows us to extract the
10 information. We also have other products like XRY and
11 also black light.

12 Q. And what type of information can you gather out of
13 these cellphones? And I guess that depends, first of
14 all, on the type of cellphone, does it not?

15 A. Yes, sir, it does. It depends on the type of
16 cellphone, also depends on the operating system of the
17 cellphone. Sometimes if you change the operating system,
18 like you update your phone, it will adjust as far as the
19 software what we'll be able to extract, so it really
20 depends on those kind of things. Also depends on the
21 proprietariness of the cellphone, whether it's one that
22 you would buy and just use minutes and get rid of versus
23 one that you would pay for every month.

24 Q. Now, in your testimony, you've testified as an
25 expert in forensic -- computer forensics; is that

1 correct?

2 A. Yes, sir.

3 Q. When you talk about computers, would that also
4 include cellphones?

5 A. Yes, sir. It includes cellphones.

6 Q. Tell me from the title and what you do as far as
7 being at SLED, how do you differentiate the two, or do
8 you work on both?

9 A. I work on both. Really, it depends on the case
10 that comes in; sometimes the backlog that we may have.
11 If I'm available and everybody else is tied up, I'll do
12 the case, either investigation or forensics.

13 Q. How long have you been doing there?

14 A. Nine years at SLED.

15 Q. And how many tests have you done on cellphones, do
16 you know?

17 A. No, sir. I would probably say, out of all the
18 tests I've done, it's probably been 300 plus on
19 cellphones.

20 Q. Have you ever not been qualified? In other words,
21 has the judge ever said, No, you're not qualified as an
22 expert?

23 A. No, sir.

24 Q. And of these four times that you have been
25 qualified to testify, would that have been in state

1 court?

2 A. Yes, sir, it has.

3 MR. STONE: Your Honor, at this time we offer
4 him as an expert in forensic computers.

5 THE COURT: Anything else at this time?

6 MR. HUGHES: Again, Your Honor, I've heard
7 computers. I haven't heard that he is an expert on
8 cellphones.

9 THE COURT: Well, he testified he went to
10 undergo training at various institutions, including the
11 Secret Service facility, where they have specialized
12 training, and he's done a number of training, not only on
13 computers, but also on cellphones in particular, so I
14 will find that he is qualified as an expert in the field
15 of computer forensics, including cellphone examination,
16 so that he's now been qualified as an expert. Folks, the
17 same instructions that I gave you with the previous
18 witness apply to this witness as well, so he'll be able
19 to tell you about his observations as well as give his
20 opinion.

21 You alone determine how much weight to give
22 his testimony based on all of the evidence that you hear
23 throughout the trial. You may continue.

24 MR. STONE: Thank you.

25 BY MR. STONE:

1 Q. Let me show you State's Exhibit 4. Did you
2 perform an extraction, or a test, on that item there?

3 A. Yes, sir, I did.

4 Q. Tell me, what type of cellphone is that?

5 A. This is a Samsung flip-style. I believe it's
6 Gusto. I would have to check my notes if the style is
7 Gusto, or Gusto 2, model cellphone.

8 Q. Now, that doesn't appear to be a normal smart
9 phone. That's just a flip phone, so what kind of
10 information can you get out of that?

11 A. Out of something like this, what I expect to find
12 is call logs, text messaging. I may find some calendar
13 information. It appears to have a camera. You may find
14 a few pictures on there. I would find -- would not
15 expect to find any kind of internet search history, apps
16 such as Facebook, Twitter, anything like that.

17 Q. It's separated into two parts. That's how I'm
18 assuming that you got it; is that correct?

19 A. Yes, sir, it is.

20 Q. And it appears to be, I guess, snapped off at the
21 base; is that correct?

22 A. It appears that way, yes, sir.

23 MR. STONE: Your Honor, at this time we move
24 State's Exhibit 4 into evidence.

25 THE COURT: Any objection?

BRITT DOVE - DIRECT EXAMINATION

1 MR. HUGHES: No, Your Honor.

2 THE COURT: Admitted.

3 (State's Exhibit 4 was marked for
4 identification and admitted into evidence.)

5 BY MR. STONE:

6 Q. I'm going to take it out of the bag, and
7 there's -- what is that?

8 A. That's going to be the battery.

9 Q. So that's in the back here?

10 A. Yes, sir.

11 Q. So when you get it, is it basically in two
12 sections?

13 A. Yes, sir, it is.

14 Q. And this is how you got it; is that correct?

15 A. It was actually separated, but yes, sir, it was in
16 two pieces, that's correct.

17 Q. Right. And I think we had testimony they were
18 separated pretty far. All right. And this is, again,
19 how you found it?

20 A. Yes, sir.

21 Q. Okay. Did you extract any text information from
22 that phone?

23 A. Yes, sir, I did. I utilized Cell Bright, which is
24 one of our primary tools, and I extracted a report from
25 that with text messages and call logs from that.

1 Q. Let me show you what's been marked as State's
2 Exhibit 16 ask if you can identify that please, sir.

3 A. Yes, sir. It appears to be a line from the report
4 I produced with Cell Bright.

5 Q. And that's a fair and accurate depiction of the
6 report you produced?

7 A. Yes, sir, it is.

8 Q. I know there's other stuff, but that's a redacted
9 version?

10 A. Yes, sir.

11 MR. STONE: Your Honor, at this time we move
12 State's Exhibit 16 into evidence.

13 MR. HUGHES: No objection.

14 THE COURT: Admitted.

15 (State's Exhibit 16 was marked for
16 identification and admitted into evidence.)

17 BY MR. STONE:

18 Q. I'll hand this back to you. I don't know if the
19 jury is able to see this or not, but this is, I guess, a
20 text message. Can you tell if it's an ingoing text or an
21 outgoing text?

22 A. Should be an outgoing.

23 Q. That's something sent by the person holding the
24 phone?

25 A. Yes, sir.

1 Q. And what does that say?

2 A. It says Dis Mack-Mack, and then it looks like
3 there's a signature line. It comes up with text messages
4 on this phone that's been sent. It says, Goals over
5 dreams.

6 Q. What is the time and -- or, actually, what the
7 date on that?

8 A. The date on it is 1/1/2016.

9 Q. Okay. Let me show you what's been marked as
10 State's Exhibit 15 and ask if you can identify that.

11 A. Yes, sir. This appears to be another line that I
12 produced from Cell Bright.

13 Q. And that's a fair and accurate depiction of the
14 report that you produced?

15 A. Yes, sir, it is.

16 MR. STONE: Your Honor, at this time we move
17 State's Exhibit 15 into evidence.

18 MR. HUGHES: No objection.

19 THE COURT: Admitted.

20 (State's Exhibit 15 was marked for
21 identification and admitted into evidence.)

22 MR. STONE: May we publish that, Your Honor?

23 THE COURT: You may.

24 BY MR. STONE:

25 Q. First of all, when is that dated?

1 A. This is dated 1/1/2016.

2 Q. And then if you can slide it over a little bit,
3 what does it read?

4 A. Wassup, Bruh. Dis Malcolm. Happy New Year's,
5 Bruh, and dis my new number. Goals over dreams.

6 MR. STONE: Thank you. Lieutenant, I don't
7 have any further questions. Please answer any questions
8 defense has.

9 CROSS-EXAMINATION

10 BY MR. HUGHES:

11 Q. Who actually sent that text?

12 A. I actually do not know. I can tell you it was
13 sent from that phone, but I can't tell you who was
14 pushing the buttons.

15 MR. HUGHES: No further questions, Your
16 Honor.

17 THE COURT: Redirect?

18 MR. STONE: Nothing else. Thank you, Your
19 Honor. Thank you, Lieutenant.

20 THE COURT: All right.

21 Let's take ten minutes, and I'll give
22 everyone the opportunity to go to the rest room. Don't
23 begin deliberations or discussions, and we'll have you
24 back in about ten, fifteen minutes.

25 (Recess taken.)

NEIL GREIFINGER - DIRECT EXAMINATION

1 THE COURT: Let the record reflect the
2 defendant's in the courtroom. Bring the jury back in.

3 (In open court, jury present.)

4 THE COURT: All right, folks. We'll resume
5 now with the State calling their next witness.

6 Mr. Solicitor?

7 MR. HOLLEN: Thank you, Your Honor. State
8 calls Sergeant Neil Greifinger.

9 NEIL GREIFINGER,
10 having been first duly sworn,
11 was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. HOLLEN:

14 Q. Sergeant Greifinger, good afternoon. How are you?

15 A. I'm good.

16 Q. I called you Sergeant. Who do you work for?

17 A. Memorial Hospital.

18 Q. And where is Memorial Hospital located?

19 A. Savannah, Georgia.

20 Q. And what is your position at Memorial Hospital?

21 A. I'm a supervisor.

22 Q. Say that again? I'm sorry.

23 A. I'm a supervisor.

24 Q. In what capacity? Do you work in security?

25 A. I work in security, provide safe environment for

1 the visitors, staff, and patients at the hospital.

2 Q. In your position as a security officer at Memorial
3 Hospital, do you ever handle evidence in cases?

4 A. Yes, sir.

5 Q. And were you employed with Memorial on January 4th
6 of 2016?

7 A. Yes, sir.

8 MR. HOLLEN: Your Honor, may I approach?

9 THE COURT: Yes.

10 BY MR. HOLLEN:

11 Q. All right. Sergeant, I'm going to hand you what
12 has been marked for identification as State's Exhibit
13 No. 12. Will you take a look at that for me, please?

14 A. Take it out?

15 Q. Well, you can look inside. That's not the
16 original packaging. Do you recognize that item?

17 A. Yes, sir.

18 Q. And what is that item?

19 A. Back on that date, I was on a call from the
20 OR saying that they had evidence that needed to be
21 secured. So when I went down there to go ahead and pick
22 it up, this was the evidence, and I signed for it and
23 secured it in our security office.

24 Q. And what is that piece of evidence?

25 A. It's a bullet.

1 Q. It's a bullet, and you signed for it. Who did you
2 get that bullet from?

3 A. I got it from the OR doctor. I can't recall his
4 name, but he was the one that called security to come
5 pick up the evidence.

6 Q. Okay. So you picked up the bullet from the
7 doctor, and what did you do?

8 A. Then I took it over straight to my office and I
9 secured it in our security office.

10 Q. And the security office at the hospital?

11 A. Yes; yes, sir.

12 Q. And how was it secured?

13 A. We have, I guess, a storage room, or perhaps it's
14 a closet, where we gain access by using our card. It
15 opens it up, and there's just multiple slots to store
16 evidence.

17 Q. So you took the bullet from the operating room to
18 the evidence locker where it was secured; is that
19 correct?

20 A. Yes, sir.

21 Q. And how long did you have that item in your
22 custody?

23 A. An educated guess, probably three to four minutes
24 to walk from the operating room to the security office,
25 three or four minutes.

1 Q. So when you picked it up, you carried it to the
2 evidence locker, did you alter it in any way? Did you
3 open the package?

4 A. No, sir.

5 Q. Okay. Did you have any more involvement in this
6 case, other than moving that piece of evidence?

7 A. No, sir.

8 Q. Sergeant Greifinger, let's back up a little bit.
9 You got it from the doctor. Do you know who the
10 doctor removed it from? Do you know where the doctor
11 got -- the person he took it from?

12 A. From a patient, a patient who had a gunshot wound.

13 Q. It's a gunshot wound. Now, did you -- the item
14 that is with that bullet, that piece of paper, did you
15 make any documentation on that? Did you sign it? Did
16 you notate that you had it in your custody?

17 A. I did.

18 Q. Okay.

19 A. Yes, sir.

20 Q. And does that piece of paper indicate who the
21 bullet came from, the patient?

22 A. Yes, sir.

23 Q. Can you tell us? Is it on that paper?

24 MR. HUGHES: Your Honor, I believe that would
25 come under the hearsay objection rule.

NEIL GREIFINGER - DIRECT EXAMINATION

1 THE COURT: Your argument?

2 MR. HOLLEN: It's a piece of paper to refresh
3 his recollection. I don't believe that's hearsay. His
4 name is listed on it, so I believe he could read it all.

5 THE COURT: Is it your handwriting? You
6 wrote that?

7 THE WITNESS: No, Your Honor. The name on
8 the custody sheet is a label that the doctor or his staff
9 puts on the evidence sheet. That's how we know the name
10 of the person.

11 THE COURT: Well, it's for the bullet, right?

12 MR. HOLLEN: Yes, sir.

13 THE COURT: Well, it's not fungible evidence,
14 so I don't believe you have the same chain requirements
15 as you do for blood or DNA, so overruled.

16 MR. HOLLEN: All right. Thank you, Your
17 Honor.

18 BY MR. HOLLEN:

19 Q. What is the name on that piece of paper as far as
20 the --

21 A. On this evidence form, it has the name of the
22 person with the bullet, but it has a trauma name, I
23 should say.

24 Q. Okay. Can you explain that just a little bit.

25 A. A lot of times that we have someone that comes to

JEFFREY GRANDON - DIRECT EXAMINATION

1 the hospital, trauma, to the trauma room that's been
2 shot, we call them GSW, or gunshot wound. As soon as
3 they come to the hospital, most of the times we lock the
4 hospital down per policy so that person doesn't come back
5 and finish the job, so we protect the person when they
6 come to the hospital by giving them a different name.

7 We call them a trauma name, and that is what is on
8 this chain of evidence. So most of the times when we
9 have someone that comes in the hospital that has been
10 shot, somebody already knows his name, his true name.

11 MR. HOLLEN: Thank you very much. I don't
12 have any further questions for you.

13 THE COURT: Cross?

14 MR. HUGHES: No questions, Your Honor.

15 THE COURT: You can step down. Thank you.

16 THE WITNESS: Thank you.

17 MR. HOLLEN: Lieutenant Jeffrey Grandon.

18 JEFFREY GRANDON,
19 having been first duly sworn,
20 was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. HOLLEN:

23 Q. Lieutenant Grandon, who do you work for?

24 A. I'm a lieutenant with the security department at
25 Memorial University Medical Center in Savannah, Georgia.

1 Q. So you work with Sergeant Greifinger?

2 A. I do.

3 Q. And did you handle an item of evidence in this
4 case?

5 A. I did.

6 Q. Where did you receive -- I'm going to show you
7 what's been marked again for identification as State's
8 12. Could you take a look at that.

9 A. This item was secured in our property room. I
10 retrieved it from the property room and brought it out to
11 our main office and signed it over to the officer who was
12 there to collect it.

13 Q. So an officer came from Hampton to collect that
14 item?

15 A. Yes.

16 Q. And you received that out of secure storage; is
17 that correct?

18 A. Yes.

19 Q. When that item was in your custody and control,
20 did you alter it, change it --

21 A. No, sir.

22 Q. -- in any way? Did you open the packaging?

23 A. No.

24 Q. Did you -- never mind. I'll withdraw that
25 question.

PERRY SINGLETON - DIRECT EXAMINATION

1 MR. HOLLEN: That's it. No further questions.

2 Please answer any questions Mr. Hughes has for you.

3 MR. HUGHES: No questions.

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

5 MR. HOLLEN: Lieutenant Perry Singleton.

6 PERRY SINGLETON,

7 having been first duly sworn,

8 was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. HOLLEN:

11 Q. Good afternoon, Lieutenant Singleton.

12 A. Good afternoon.

13 Q. Who do you work for?

14 A. Hampton sheriff's office.

15 Q. How long have you been with the Hampton Sheriff's
16 Department?

17 A. About 28 years.

18 Q. Where are you from originally?

19 A. I'm from Garnett.

20 Q. Garnett, South Carolina. Lieutenant Singleton,
21 did you pick up an item of evidence in this case?

22 A. I did.

23 Q. And did you go to Savannah to get the bullet that
24 was pulled out of Quincy Smith?

25 A. I did.

1 Q. Who did you receive that bullet from?

2 A. The last gentleman that was up here. He was a
3 lieutenant.

4 Q. Grandon?

5 A. Grandon, yes.

6 Q. What did you do with that piece of evidence when
7 you received it?

8 A. I held on to it until I got back to our office.
9 Agent McAllister was there doing some work, working this
10 case, and it was turned over to her.

11 Q. You turned it over to Agent McAllister from SLED?

12 A. Yes.

13 Q. And when the item was in your custody and control,
14 did you do anything with it? Did you alter it? Did you
15 change it? Did you do anything to mess with this item of
16 evidence?

17 A. I did not.

18 Q. So your involvement here is you picked up that
19 bullet from Savannah, and you drove it to Hampton?

20 A. That is correct.

21 MR. HOLLEN: Thank you. Nothing further.

22 MR. HUGHES: No questions.

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

24 Next witness?

25 MR. HOLLEN: Agent Katie McCallister.

KATIE McCALLISTER - DIRECT EXAMINATION

1 KATIE McCALLISTER,
2 having been first duly sworn,
3 was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. HOLLEN:

6 Q. Good afternoon, Agent McAllister.

7 A. Hello.

8 Q. Who do you work for?

9 A. The South Carolina Law Enforcement Division,
10 commonly known as SLED.

11 Q. How long have you been with SLED?

12 A. I've been with SLED almost nine years.

13 Q. What is your position there?

14 A. I'm a special agent in the Lowcountry region,
15 investigative services.

16 Q. And so what do your duties entail as an agent?

17 A. All kinds of things. When a local agency calls us
18 and requires our help, we go out. We work murders,
19 attempted murders, financial crimes. We assist them in
20 any way we can. With us being a bigger department, we
21 have a lab. We can help them, some of the smaller
22 agencies, if they need us. Our typical function is an
23 assisting agency.

24 Q. Agent McAllister, what was your position, what was
25 your duty in regards to the case, the shooting of Officer

1 Smith?

2 A. I was assigned the lead agent. The case was my
3 responsibility to work.

4 Q. So you were the lead agent on this case?

5 A. Yes.

6 Q. So you had a number of responsibilities?

7 A. Yes.

8 Q. One of the things -- did you receive an item of
9 evidence from Lieutenant Singleton of the Hampton County
10 sheriff's office?

11 A. I did.

12 Q. If you'll take a look at what's been marked for
13 identification as State's Exhibit 12, do you recognize
14 that?

15 A. I do.

16 Q. And what is it?

17 A. It is the bullet from Officer Smith's shoulder.

18 Q. And you received that from Lieutenant Singleton?

19 A. I did.

20 Q. And what did you do with that item?

21 A. It remained in my custody. I drove it to Columbia
22 to the SLED lab.

23 Q. And what did you do when you got to the SLED lab
24 with it?

25 A. I assigned it over to them for processing.

SUZANNE CROMER - DIRECT EXAMINATION

1 Q. Would it have been kept in a secure location when
2 you dropped it off there?

3 A. Yes.

4 Q. When it was in your custody and control, did you
5 open the packaging, alter or change it in any way?

6 A. I did not.

7 MR. HOLLEN: Nothing further, Your Honor.

8 MR. HUGHES: No questions.

9 THE COURT: You may step down.

10 THE WITNESS: Thank you, sir.

11 MR. HOLLEN: Suzanne Cromer, Agent Suzanne
12 Cromer.

13 SUZANNE CROMER,

14 having been first duly sworn,

15 was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. HOLLEN:

18 Q. Good afternoon, Agent Cromer.

19 A. Good afternoon.

20 Q. Who do you work for?

21 A. I'm employed by the South Carolina Law Enforcement
22 Division, commonly referred to as SLED, in the forensic
23 services laboratory as a firearm and tool mark examiner.

24 Q. Okay. And how long have you been with SLED?

25 A. I've been with SLED 18-and-a-half years.

1 Q. Eighteen-and-a-half years. Have you been in
2 firearms all that time?

3 A. I have been. I didn't start the firearms training
4 program for firearm and tool mark examiners till February
5 of 2000.

6 Q. What does some of your training involve in the
7 firearms?

8 A. I have a bachelor's degree from Clemson
9 University. I did some graduate work at the University
10 of South Carolina, and then I completed our SLED in-house
11 training program for firearm and tool mark examiners. It
12 is a three- to five-year intense study program. It's
13 more of an apprenticeship where you work with other
14 court-qualified firearms examiners. We take written
15 tests, oral tests, practical exercises. We prepare cases
16 for other examiners, and then upon completion of all the
17 modules of our training manual, we are given a
18 comprehensive final exam where we take an oral exam,
19 essay exam, practical knowledge exam, and actually work
20 mock cases, and that final exam is graded by your
21 training officer and your lieutenant before you're
22 allowed to take case work.

23 I've also taken classes with the Association of
24 Firearm and Tool Mark Examiners, which is an
25 international organization for our profession. They meet

1 once a year for week-long seminars and offer extra
2 classes. I've attended numerous of those and also take
3 in extra classes like barrel making machine gun
4 conversion, high point firearm familiarization, ethics.
5 I've also taken classes with the South Carolina chapter
6 of the international association, most pertinent being
7 shooting scene reconstructionist. I've taken classes
8 with the bureau of Alcohol, Tobacco & Firearms on serial
9 number restoration and integrated ballistics
10 identification system. I'm also a member of ATF's users
11 congress for that and attended several conferences, as
12 well as toured multiple firearm manufacturers and tool
13 mark manufacturers.

14 Q. All right. And have you ever been qualified as an
15 expert in court before?

16 A. Yes, sir, I have.

17 Q. Approximately how many times?

18 A. Over 100 times in federal and state court.

19 MR. HOLLEN: Your Honor, at this time the
20 State would offer Agent Cromer as an expert in firearms.

21 MR. HUGHES: I think I've already qualified
22 her in another case. I have no problems with this young
23 lady testifying.

24 THE COURT: All right. Well, this witness
25 has now been qualified as an expert in the field of

1 firearms and ballistics and will be allowed to give you
2 her opinion just the same as the other experts did. The
3 same instructions that I gave you apply to this witness
4 as well, and you determine how much weight to give her
5 testimony based on all of the evidence that you'll hear
6 throughout the trial.

7 Go ahead.

8 MR. HOLLEN: Thank you, Your Honor.

9 BY MR. HOLLEN:

10 Q. Agent Cromer, did you test any items in this case?

11 A. Yes, sir, I did.

12 Q. Let's see. I'm going to show you eight items from
13 State's No. 8 that's already been introduced into
14 evidence. Do you recognize those?

15 A. Yes, sir. These eight items, which are still
16 contained in heat-sealed envelope with my initials and
17 seal date, these are eight fired nine millimeter Luger
18 caliber cartridge cases.

19 Q. All right. And if you'll take a look at what has
20 been marked as State's Exhibit 12, do you recognize that?

21 A. Yes, sir. First, the original packaging has my
22 initials on it.

23 Q. Okay.

24 A. Again, my lab number, my item number, and my
25 initials; and, again, State's Exhibit 12 was my item 31,

1 and it's still contained in a heat-sealed bag with my
2 initials and seal date, and it is one fired bullet.

3 Q. So you received that item. Did you do any tests
4 on that item?

5 A. Yes, sir, I did.

6 MR. HOLLEN: Your Honor, at this time the
7 State would ask to admit State's 12 into evidence.

8 MR. HUGHES: I'm not sure as to why. We
9 don't even know where it came from.

10 THE COURT: You feel like you met the chain?

11 MR. HOLLEN: I think I have, Your Honor.
12 We've got the person that took it from the operating
13 room, the person who took it from evidence, handed it to
14 Perry Singleton, who delivered it to Agent McAllister,
15 who delivered it to the lab.

16 THE COURT: Overruled. I'll admit it.

17 MR. HUGHES: Your Honor, I would object.
18 They have no way to say that was the bullet that came out
19 of Quincy Smith. It came out of an unknown person.

20 THE COURT: I note your objection. It's
21 overruled.

22 (State's Exhibit 12 was marked for
23 identification and admitted into evidence.)

24 BY MR. HOLLEN:

25 Q. Okay. Agent Cromer --

1 A. Yes, sir.

2 Q. As far as -- let's get back first to the casings,
3 the cartridge casings. What findings were you able to
4 make in regard to this case?

5 A. I did a microscopic examination and comparison of
6 these cartridge cases versus each other and determined
7 that these eight cartridge cases were fired, in my
8 opinion, by one firearm, and they were having -- what I
9 do is I look at the markings that are left there from the
10 gun.

11 These fired imprint impressions were consistent
12 with what we call a Glock-type firearm, being that the
13 firing pin impression left on the gun, or on the
14 cartridge case, was from a firearm that had a rectangular
15 firing pin aperture, and that's the hole that the firing
16 pin comes through. So it had a rectangular firing pin
17 aperture impression on here, and I concluded that all of
18 these, in my opinion, were fired by the same firearm.

19 Q. What about State's Exhibit 12, the bullet that you
20 examined. Were you able to make any findings regarding
21 that?

22 A. Yes. A bullet is a little different from
23 cartridge cases. What I do is I measure it, I weigh it,
24 I try to determine a caliber, and I determined that this
25 was most consistent with a nine millimeter Luger caliber

1 bullet. It was fired by a firearm that had what we call
2 six right polygonal rifling, and when I'm talking about
3 rifling, it's what what's put in the gun barrel by the
4 manufacturer to give that bullet a rotary motion.

5 Very similar, if you watch football, to a
6 quarterback who throws that football. He throws that
7 into a tight spiral so it will go more accurately toward
8 its target. That's what rifling does to the bullet.
9 It's going to make it start to spin so it will go more
10 accurately toward its target, and rifling is made up of
11 what we call lands and grooves, number of raised and
12 depressed areas, so you can have any number of lands and
13 grooves. You can have three, nine, eight, six, five,
14 into the 20s. I think there's even some that have some
15 30s on there, so number of lands and grooves, caliber,
16 and direction that it's going to spin. Is it going to
17 spin to the left or to the right? And, importantly,
18 another one is the type of rifling. Is it a conventional
19 rifling, or is it polygonal rifling? This one had
20 polygonal rifling, meaning that those lands and grooves,
21 instead of coming to a right angle, are more scalloped,
22 so this was a nine millimeter Luger bullet with six right
23 polygonal rifling.

24 Q. That got fairly complicated fairly quickly, so
25 let's take a step back, if you don't mind.

1 Is it true that different manufacturers of guns
2 have different rifling characteristics that could go
3 different directions, right or left, you said, and -- I'm
4 sorry polygonal, versus --

5 A. Conventional.

6 Q. -- conventional. Okay.

7 A. Some manufacturers can use specific types or
8 specific numbers of lands and grooves and specific types
9 of rifling, whether it's conventional or polygonal, but
10 in other instances, say Smith & Wesson, they commonly use
11 five right conventional, but you can find some other
12 combinations with Smith & Wesson. So that doesn't mean
13 that just because it's a five right it's a Smith &
14 Wesson, but, like I said, this one was six right
15 polygonal.

16 Q. So as a result of your examination of that bullet,
17 were you able to come up with a list of possible
18 manufacturers for that gun that could have fired that
19 bullet?

20 A. Yes, sir, I did.

21 Q. And there are a number of possible manufacturers.
22 You weren't able to come up with actually one specific,
23 were you?

24 A. No. I gave a list of potential manufacturers in
25 my report.

1 Q. Okay. If I may, Agent Cromer, I want to hand you
2 what has already been entered into evidence as State's
3 Exhibit 29. You want to take a look at that?

4 A. Yes, sir.

5 Q. In looking at that picture, are you able to
6 determine if the gun the defendant appears to be holding
7 is consistent with the bullet and the casings that you
8 tested?

9 A. This firearm in this picture, it's consistent in
10 appearance with a Glock firearm. If you notice, above
11 his trigger finger, there's a little slot that is
12 consistent with a slide stock lever. I've also been
13 certified to work on Glock firearms since 2003, and it
14 appears to me to be consistent with a Glock firearm.

15 Q. All right. So a couple more questions. Is the
16 bullet, State's Exhibit No. 12, consistent with the shell
17 casings that you examined?

18 A. It was consistent in caliber. My cartridge cases
19 were nine millimeter Luger, nine millimeter Luger
20 caliber, and this projectile was consistent with being a
21 nine millimeter Luger.

22 Q. And are both the bullet and the shell casings
23 consistent with the gun you see in that picture?

24 A. It could be, yes.

25 Q. All right.

1 A. Glock manufacturer was one of the manufacturers on
2 my list as a possible firearm that could have fired this
3 bullet.

4 Q. All right.

5 MR. HOLLEN: Thank you, Agent Cromer. I
6 don't have any further questions. Please answer any
7 questions Mr. Hughes may have.

8 CROSS-EXAMINATION

9 BY MR. HUGHES:

10 Q. Let's see. I'm trying to remember -- Glock makes
11 nine millimeter, correct?

12 A. Correct.

13 Q. Ruger makes a nine millimeter?

14 A. That's correct.

15 Q. Smith & Wesson makes a nine millimeter?

16 A. That's correct.

17 Q. H-K makes a nine millimeter? Browning -- does
18 Browning make a nine millimeter?

19 A. Yes, sir.

20 Q. As a matter of fact, just about every arms
21 manufacturer I could come up with would probably make a
22 nine millimeter?

23 A. Correct. There are only ten possible
24 manufacturers of nine millimeter firearms that were on my
25 GRC list for this bullet.

1 Q. Okay. And are they all brand names or are they
2 major brand names?

3 A. There are some major names that you may be
4 familiar with, but there are some off-brand names.

5 Q. Okay. Can you say with any degree of certainty
6 that the gun that was in that picture fired that bullet?

7 A. No. I can say it's consistent in appearance with
8 a Glock, but without having that firearm, I cannot make a
9 definitive statement on what fired it.

10 Q. And you said -- you called the cartridge a nine
11 millimeter Luger. That's the cartridge type. That
12 doesn't mean it was fired from the old World War Two nine
13 millimeter broom grip, heavy exposed firing chamber or
14 firing pin that was manufactured by Luger?

15 A. Well, no. Nine millimeter Luger is the name of
16 the cartridge. We don't see broom-handle firearms, so
17 I'm not particularly familiar with those, but, again, the
18 firing pin impression on these cartridge cases was
19 indicative of a Glock-type firearm. The only known
20 firearm that I know that makes this type of firing pin
21 impression is Glock or some early Smith & Wesson.

22 Q. So you don't know what type of gun for sure, and
23 you don't know what gun at all?

24 A. I can't say with any scientific degree of
25 certainty. In my opinion, it was either a Glock or a

SEAN GERMANN - DIRECT EXAMINATION

1 Smith & Wesson -- an early Smith & Wesson sigma-type
2 firearm that could have fired these cartridge cases, and
3 that is a Glock manufacturer. It is on the list of what
4 could have fired this bullet.

5 Q. Well, I trust your expertise. Thank you.

6 MR. HUGHES: No further questions, Your
7 Honor.

8 MR. HOLLEN: Nothing on redirect, Your Honor.

9 THE COURT: You may step down.

10 MR. HOLLEN: State calls Sean Germann.

11 SEAN GERMANN,

12 having been first duly sworn,

13 was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. STONE:

16 Q. Mr. Germann, what do you do?

17 A. I'm a regulatory manager for the South Carolina
18 Law Enforcement Division.

19 Q. So you actually work at SLED, and you're not an
20 agent for SLED; is that correct?

21 A. That's correct.

22 Q. What is a regulatory -- you just said it, and I
23 want to make sure. Regulatory manager?

24 A. Regulatory manager oversees the administrative
25 duties for licensing for arms security in South Carolina,

1 concealed weapons permits holders in South Carolina,
2 constables.

3 Q. So you manage, among other things, the records at
4 SLED concerning people that own or have a concealed
5 weapons permit; is that correct?

6 A. That is correct.

7 Q. What is the purpose of having a concealed weapons
8 permit?

9 A. The purpose of having a concealed weapons permit
10 is to be able to have a permit to carry a legally
11 concealed weapon in the State of South Carolina.

12 Q. And you are the repository, or SLED is the
13 repository, of all those records; is that correct?

14 A. That's correct.

15 Q. Upon my request, or the request of my office, did
16 you check and see if Malcolm Orr is a concealed weapons
17 permit owner?

18 A. I did.

19 Q. And is he?

20 A. He is not.

21 Q. Has he ever been?

22 A. No, sir.

23 Q. Has he ever applied to get one?

24 A. No, sir.

25 MR. STONE: Okay. No other questions, Your

1 Honor. Thank you.

2 THE COURT: Cross?

3 MR. HUGHES: No questions.

4 THE COURT: You may step down.

5 MR. STONE: Jeffrey Maxwell.

6 JEFFREY MAXWELL,

7 having been first duly sworn,

8 was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. STONE:

11 Q. Officer Maxwell, you're off shift. You're a
12 correctional officer; is that correct?

13 A. Yes, sir.

14 Q. And where?

15 A. I'm a correctional officer at the Beaufort County
16 detention center.

17 Q. Is this the detention center that has housed
18 Malcolm Orr?

19 A. Yes, sir.

20 Q. Now, in your detention center in Beaufort County,
21 is there a telephone system that the inmates, or the
22 people being held there, can use?

23 A. Yes, sir. We use the ICS Solutions company. I am
24 the caretaker at the facility for that.

25 Q. Tell me about that system. How does that system

1 work?

2 A. When an inmate is booked into the facility, our
3 booking software gives him a name number. After they're
4 booked in, they are signed up into the ICS Solutions and
5 they are given, by the software, a four digit PIN number.
6 So they would use their name number along with a PIN
7 number to access the phone system.

8 Q. So when an inmate at the detention center uses the
9 telephone, the system knows who it is who is using it; is
10 that correct?

11 A. Yes. When he first gets booked in, they have to
12 enroll in the system. At that time they have to put in
13 their name number, their PIN number, and they go through
14 a voice verification process where each time they go on
15 the phone, they have to use their name number, their PIN
16 number, and either say their first and last name or
17 United States for the system to access the phone.

18 Q. So there is voice tracking, there is a PIN number,
19 a number of different procedures to make sure that is the
20 person using the phone; is that correct?

21 A. Yes, sir.

22 Q. Now, these calls that are made in and out of the
23 jail, I guess, from these inmates, are they recorded?

24 A. Yes, sir.

25 Q. And are they kept, I guess, in a computer system?

1 A. Yes, sir.

2 Q. And is that kept in the ordinary course of the
3 business of the detention center?

4 A. Yes, sir.

5 Q. These calls, are they recorded contemporaneously
6 with the time the calls are coming in? In other words,
7 are they being recorded as they're --

8 A. Yes, sir. I'm the person that overseas that, so I
9 can listen to them live or, the ones that came in, like
10 ones in the past or stuff like that.

11 Q. Let me show you what's been marked as State's
12 Exhibit 14 and ask, have you listened to that tape?

13 A. Yes, sir.

14 Q. And is that a fair and accurate depiction of a
15 jail call made by Malcolm Orr?

16 A. Yes, sir.

17 Q. And there is also a transcript that goes along
18 with this. Have you reviewed this as well?

19 A. Yes, sir.

20 Q. Is that an accurate transcript of what's on this
21 tape?

22 A. Yes, sir.

23 MR. STONE: Your Honor, at this time, we'd
24 move State's Exhibit 14 into evidence, and as we did with
25 the 911 as well as the body camera, we have a transcript

1 that goes along with it that is an exhibit.

2 MR. HUGHES: No objection.

3 THE COURT: Admitted. You may publish.

4 MR. STONE: Thank you.

5 (State's Exhibit 14 marked for identification
6 and admitted into evidence.)

7 (Whereupon, the audio portion of State's
8 Exhibit 14 was played for the jury.)

9 MR. STONE: No further questions, Your Honor.

10 THE COURT: Anything you want to ask him?

11 MR. HUGHES: No cross.

12 THE COURT: You may step down.

13 MR. STONE: With that, Your Honor, the State
14 rests.

15 THE COURT: All right. Well, folks, you've
16 heard now the evidence that the State's going to present
17 in this trial, so it's a good time for us to break for
18 the day. We've got a little bit more work to do this
19 afternoon to get it ready then for the finish of the
20 trial tomorrow, so I'm going to send you home with the
21 instructions, again, not to discuss the case with anyone,
22 including other members of the jury panel.

23 Don't try to find out anything about the
24 case, and please do not post anything on social media in
25 any form about the case. After it's over with, you'll be

1 able to do all of that you want to, but just hold off on
2 doing that until we finish trial.

3 So go home, enjoy your evening, and, if you
4 would, be back in the jury room at 9:45 tomorrow morning,
5 and we'll get started back up at 10 o'clock. Thank you
6 for your patience today, and we'll see you in the
7 morning.

8 (In open court, jury not present.)

9 THE COURT: All right. You have any motions
10 you want to make?

11 MR. HUGHES: Yes, Your Honor. I do not think
12 the State has proven attempted murder. I think at
13 best -- may I wait just a second while the jury goes out?
14 I don't want them to see me.

15 I think at best they may have assault and
16 battery of a high and aggravated nature, or, as it's
17 referred to, A and B first, which is not a violent crime,
18 so therefore I do not think they have managed to produce
19 evidence to support the use of a weapon during the
20 commission of a violent crime.

21 I would move that the charge of use of a
22 weapon during the commission of a violent crime be
23 dismissed, since they have not shown a violent crime took
24 place, and that the lesser included assault and battery
25 first, or assault and battery high and aggravated nature,

1 be substituted for the attempted murder in this matter.

2 THE COURT: You want to say anything?

3 MR. STONE: As Dr. Dunne put it, about a half
4 of a millimeter, it would have been a murder case instead
5 of an attempted murder case. You've got plenty of
6 testimony and a video that basically shows him shooting
7 the officer in the face at point blank range, hitting him
8 at least two, I believe three times, and, again, with
9 doctors' testimony and what appeared, it almost actually
10 was a murder case. With it, there is plenty of evidence
11 which the jury can infer that it is attempted murder,
12 and, of course, the possession of a firearm during the
13 commission of a violent crime is going to be attached to
14 that as well.

15 THE COURT: I agree. The State has provided
16 sufficient evidence for the issue to be decided by the
17 jury on both of the indicted charges, so the motion is
18 denied.

19 MR. HUGHES: Thank you, Your Honor. I would
20 also like to renew all my other motions.

21 THE COURT: They are denied for the same
22 reasons I gave earlier.

23 All right. Tomorrow morning we'll resume
24 trial at 10:00. How about if we meet at 9:30, and tell
25 me what your client has decided about putting up a

1 defense and testifying.

2 Mr. Orr, we talked yesterday at the break at
3 the end of the day, and I told you you would have to make
4 a decision about whether or not you wanted to testify.
5 Well, the State has presented all of the evidence they're
6 presenting in the case, and I have made a determination
7 that there's sufficient evidence to carry the indicted
8 charges to the jury for them to determine whether or not
9 you're guilty of the charge.

10 It's now at that point in time where you will
11 have to make a decision as to whether or not you want to
12 put up a defense in any form, and if you want, as part of
13 that defense, to testify. You do not have to testify,
14 and if you do not testify, I will tell the jury that they
15 are not to hold that against you while they are
16 deliberating. I'll give you overnight to make your
17 decision, but when we reconvene tomorrow morning at 9:30,
18 you will need to make your decision, and let us know so
19 we will know how to proceed.

20 All right. Is there anything else we need to
21 take up before the end of the day?

22 MR. STONE: I don't believe so. Not from the
23 State, Your Honor.

24 MR. HUGHES: Not from the defense, Your
25 Honor.

1 THE COURT: If y'all would, we're using
2 pretty much the standard jury instructions on these
3 charges, and my law clerk has prepared some preliminary
4 ones, but if you have anything that you want to have us
5 consider, either hand it up before you leave or e-mail it
6 tonight so we can have some. In case we just go charging
7 and argue in the morning, we can have a charge
8 conference, but, at any rate, I'll see y'all tomorrow
9 morning at 9:30. Thank you.

10 (Recess taken.)

11 (August 9, 2017.)

12 THE COURT: All right. Let the record
13 reflect the defendant is in the courtroom. Well, when we
14 left, the State had rested. The Court had denied the
15 defendant's directed verdict motions.

16 Mr. Hughes, what's your plan for the morning?

17 MR. HUGHES: Your Honor, first I would like
18 my client to be placed under oath and be questioned about
19 whether he plans to testify or not. I'll go from there.

20 THE COURT: All right. Well, Mr. Orr, stand
21 up and raise your right hand.

22 (Defendant duly sworn.)

23 THE COURT: All right. Now, we talked Monday
24 at the end of day, yesterday at the end of the day, about
25 your right to testify and put up a defense. As I told

1 you, you have the right to put up a defense if you want
2 to. You have the right to not put up a defense. Part of
3 your defense could be that you get up and testify and
4 tell your side of the story. Again, you have the right
5 to also not testify, and if you decide you do not want to
6 testify, I will tell the jury that they are not to hold
7 that against you in any way while they are deliberating.

8 You remember that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And you said you understood that.
11 You still understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. Have you made a
14 decision as to what you want do when it comes to
15 testifying?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: What do you want to do?

18 THE DEFENDANT: Not testify.

19 THE COURT: All right. And that is your
20 decision and your decision alone?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: You have had a chance to discuss
23 that with your lawyer?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you need any more time with

1 him before we proceed?

2 THE DEFENDANT: No, sir.

3 THE COURT: All right. Well, I find his
4 decision is freely, voluntarily and intelligently made.
5 Mr. Hughes, what would you like to say?

6 MR. HUGHES: Judge, in chambers we discussed
7 the possibility of me raising the defense of
8 self-defense. You stated that it would be improper, and
9 the charge would not be given if my client did not
10 testify.

11 I respectfully disagree with that, Your
12 Honor. I think self-defense is and always will be a
13 question of fact for a jury. I think there has been
14 enough evidence, especially with the video, that the jury
15 would be able to draw its own conclusion based upon that
16 and respectfully request a charge of self-defense in this
17 matter.

18 THE COURT: All right. Well, we had this
19 discussion, as you said, in chambers, and for the record,
20 I'll just put on what my reasoning is for telling you
21 that, and that was that I believe in this state, in the
22 United States, you have the right -- when you are
23 approached by a law officer who has the right to make a
24 valid arrest, you do not have the right to resist a valid
25 arrest.

1 You do have the right to resist an unlawful
2 arrest, and in South Carolina, I think we take the
3 minority position that you have the right to resist an
4 unlawful arrest with deadly force, self-defense, in other
5 words; however, this is not a lawful arrest or unlawful
6 arrest situation. This is a reasonable suspicion stop,
7 but by analogy, I think the same kind of reasoning would
8 apply, and that would be if the -- if it's a valid
9 reasonable suspicion stop, then you do not have the right
10 to flee.

11 You have the right -- you have the obligation
12 to stop and answer any questions the police officer may
13 ask insofar as it's necessary to ask questions about an
14 incident that he could articulate took place to give rise
15 to a reasonable suspicion that a crime has been
16 committed, and this is more or less an investigatory stop
17 and that the defendant may possibly have had something to
18 do with it. If so, that's a valid, reasonable suspicion
19 stop; however, if it's not a valid, reasonable suspicion
20 stop, arguably the person would have the right to resist
21 that and if he was able to articulate why he thought he
22 was in danger of his life or serious bodily injury could
23 arguably have a self-defense defense available.

24 In this case, the uncontroverted evidence was
25 that the police approached the -- responded to a call at

1 the store. A lady at the store gave a description that
2 matched the defendant's, even pointed to him being down
3 the road. The officer said, Yes, I can see him. I'll
4 go.

5 And he went, drove immediately and engaged
6 his blue lights and started to tell the defendant to
7 stop. It looked like he was talking on a cellphone, had
8 a gun in his hands. He did not stop; in fact, appeared
9 to take off in a different direction at a slightly faster
10 pace, so when the police got out of his vehicle to
11 approach, all of that was pursuant to a valid reasonable
12 suspicion stop.

13 The only way that I think that self-defense
14 would have been available is if there was some evidence
15 in the record that the defendant did not think that it
16 was a -- that he had nothing to do with the incident back
17 at the store, didn't know anything about an incident back
18 at the store, and that he was, you know, more or less, on
19 the phone, walking down the street, minding his own
20 business when he turns around and sees a police officer
21 aiming a Taser at him telling him to stop or he'll be
22 Tased.

23 There is no evidence of what he had in his
24 mind. The only evidence that's in the record is to
25 support a valid reasonable suspicion stop, and since

1 there's no evidence in the record that would support a
2 self-defense charge, I can't think of another scenario in
3 which it would be available to him under these facts, and
4 with him not testifying and there being no other
5 evidence, I do not believe you're entitled to a charge,
6 nor may you make that argument to the jury.

7 MR. HUGHES: Your Honor, if I may, I
8 respectfully disagree with you. I think what you're now
9 requiring would be a violation of Fifth Amendment in that
10 you're requiring my client to testify in order to avail
11 himself of a defense, a defense that is not a question of
12 law. It's a question of fact. I would never argue
13 anything that he thought or said or did, but based upon
14 the evidence the State has presented. It's a question
15 that I believe is up to the jury, not up to the Court.

16 I think self-defense is a valid defense in
17 this matter. I do not think the Fifth Amendment requires
18 at any time for anyone to take the stand, even in their
19 own defense, and I feel that by limiting what I can and
20 cannot argue, you're basically violating my client's
21 rights to testify or not to testify and avail himself to
22 the jury and have the jury decide what is fact and what
23 is not.

24 THE COURT: Would the State like to say
25 anything in regard to this issue?

1 MR. STONE: I agree with the Court, and I
2 would argue -- I was prepared to argue, actually, prior
3 to the time we even got here. State vs. Slater is
4 probably the last case on this, and it specifically talks
5 about the first element of self-defense, which is not
6 bringing about the harm that did result in the death and
7 whether or not that is a consequence of those actions.

8 Here, even from the very first element,
9 you've got uncontroverted testimony that the officer
10 approached because the defendant was wearing a red
11 bandanna, which is, of course, later located in his
12 pocket, wearing a hunting suit that he had on, at least
13 partially, when he was arrested, and he was trying to rob
14 people coming out of a convenience store.

15 He's also carrying -- and the reason we put
16 in the concealed weapons permit witness yesterday, he is
17 also carrying unlawfully, according to South Carolina
18 law, that firearm, which means that at this point, he's
19 already causing the problem that results in him being
20 approached by this police officer, and you cannot -- by
21 State vs. Slater, and another long line of cases, you
22 can't institute or instigate the problem and then claim
23 self-defense from it when you take your handgun out of
24 your pocket and you shoot somebody at point blank range,
25 so he doesn't even get past the first element of

1 self-defense, much less the testimony that would have to
2 be on the record in the second element of self-defense,
3 which is that he feared for his life. There's no
4 testimony of that.

5 Again, as you instructed the jury yesterday,
6 what Mr. Hughes says or what I say is not evidence, and
7 Mr. Hughes is the only one that's put any evidence in on
8 that. No one else did. The video doesn't say that.
9 Plus, also, Your Honor, you've got the jail calls that
10 the defendant makes to his girlfriend, and while he is
11 asked not once, but twice what happened, not once in that
12 did he say, I feared for my life, and I shot the police
13 officer.

14 So there's absolutely no evidence of the
15 second element, and I don't even, quite frankly, think he
16 gets past the first element. I don't think he's allowed
17 the jury charge, and I don't think he's allowed to argue
18 self-defense.

19 THE COURT: All right. Well, again, I deny
20 your motion to have a charge to the jury on self-defense
21 and caution you not to make that argument in closing.

22 Speaking of closing, I know we're all in a
23 little bit of a state of flux on the closing, but I'm
24 still of the opinion that currently the law is he didn't
25 put in any evidence, so you have to make your opening in

1 full and he gets to respond.

2 MR. STONE: At this point, I would agree with
3 that. Yes, sir, absolutely.

4 THE COURT: All right. Anything further from
5 the defense?

6 MR. HUGHES: Yes, Your Honor. When the jury
7 comes back, I will rest, and the question is, do we then
8 want the jury to go back out, me make my -- renew my
9 motions, and then bring the jury back in, or do I make my
10 motions now, nunc pro tunc, as if I'm doing it at the
11 close of my case and have you rule?

12 THE COURT: If you desire to have them
13 actually come in, rest on the record, and then sent out,
14 I'll accommodate you, but if you're all right, we'll just
15 let the record reflect that you have timely made those
16 after the jury -- after you have rested.

17 MR. HUGHES: And just one other thing for the
18 record, Your Honor. Yesterday I objected to the chain.
19 I believe in chambers that we discussed this. I do
20 consider the fact that there was no testimony whatsoever
21 that the bullet that the State entered into evidence came
22 from the Officer Quincy Smith, but I do not see where
23 there is anything but harmless error in admitting that,
24 Your Honor.

25 THE COURT: What are you asking me to do?

1 MR. HUGHES: I'm just basically acknowledging
2 that I did make the objection, you did overrule the
3 objection, and even though in chambers I think we have
4 come to an agreement that the objection should have been
5 sustained, I do not think that there is anything but
6 harmless error in the matter.

7 THE COURT: You just want to rub that in my
8 face a little bit?

9 MR. HUGHES: No, Your Honor. I just want
10 that on the record.

11 THE COURT: I got your point, and you're
12 right. I think there might have been a little bit of an
13 issue there, but I think it was harmless error.

14 Let me ask, is there -- you've had a chance
15 to go over the charges. Is there anything from the
16 defense on the jury charges?

17 MR. HUGHES: No, Your Honor.

18 THE COURT: Anything from the State?

19 MR. STONE: No, sir, I don't think so. My
20 only concern was yesterday -- and I'm actually trying to
21 analyze this as I was reviewing the jury charges. The
22 only concern I have is that yesterday there was a great
23 bit of cross-examination concerning whether or not -- and
24 what we all recognize as a Terry stop from that police
25 officer was proper police procedure and whether or not

1 the defendant could, basically, keep walking and whether
2 or not it was a violation of the law for the officer to
3 do that.

4 My concern is that the jury would be left
5 with the impression that a police officer has no Terry
6 versus Ohio type of right to stop and frisk on
7 articulable suspicion, which I think is clearly here, and
8 I've gone back and forth trying to decide whether or not
9 that's a necessary jury charge to them to explain exactly
10 what you just put on the record a few minutes ago about
11 self-defense.

12 It seems to me the proper thing to do would
13 be to clarify that to the jury. I don't know if that's
14 the right thing to do or not, quite frankly. I have not
15 had this incident come up in court in the years that I've
16 been practicing, so that's the only issue I have with the
17 jury charge. The jury charges, I think, are fine. I
18 don't think there's any problem with them at all, but I
19 am concerned that the jury is left with the impression
20 that the officer acted illegally or that the defendant
21 had a -- the officer had no right to even approach him,
22 just from the line of questioning.

23 That was the reason I objected yesterday, is
24 because I knew we were getting into this situation. I
25 didn't know how to stop it, and we had a lay witness --

1 we had an officer on the stand, but not somebody that
2 would be able to articulate Terry versus Ohio and the
3 issues behind articulable suspicion like that.

4 THE COURT: Well, my concern is always an
5 improper comment on the facts, and I understand your
6 concern about having that left up in the air. I'm
7 prohibiting him from arguing self-defense. I don't know
8 what that leaves him to argue, but an improper argument
9 on the law, charged or uncharged, would probably warrant
10 some kind of bench discussion, at a minimum, so I guess I
11 would just leave it with a caution on that.

12 MR. STONE: Thank you.

13 THE COURT: I don't want to tie his hands too
14 much, but I don't want to overstep and improperly comment
15 on the facts either.

16 MR. STONE: I agree, and that's why I was
17 going back and forth on it. Yes, sir. Thank you.

18 THE COURT: All right. Well, then, if
19 there's nothing else, then we will bring the jury in.

20 (In open court, jury present.)

21 All right, folks. Yesterday when we left,
22 the State had rested, so we now move to the point in the
23 trial in which the defense has the right to call any
24 witnesses.

25 Mr. Hughes, does the defense intend to call

1 any witnesses?

2 MR. HUGHES: Your Honor, at this time, the
3 defense rests.

4 THE COURT: All right. Well, folks, we have
5 now concluded the evidentiary portion of the trial so we
6 will move into the final phase in which you will hear
7 closing arguments from the lawyers, and then I will
8 charge you on the law that applies to this type of case
9 and go over with you the possible verdicts for your
10 consideration during your deliberations.

11 The rules that we follow state that when --
12 of course the State will always have the burden of proof,
13 and when the defendant offers no evidence in their case,
14 they have the right to have the State open and close in
15 full on their closing argument, and then the defendant
16 will have the opportunity to go last.

17 Normally, the State, having the burden of
18 proof, would go first and last, except in the cases where
19 the defendant put up no evidence, so you will hear from
20 the solicitor first, and then you will hear from the
21 defense last. All right?

22 So, Mr. Solicitor, if you are ready, you may
23 begin.

24 MR. STONE: May it please the Court, Your
25 Honor: Ladies and gentlemen, I told you at the beginning

1 of this trial that this case was about a man doing his
2 job, that Quincy Smith on January the 1st answered the
3 call, that he didn't know Malcolm Orr. He didn't have
4 anything personally against him, but his job was to
5 respond when somebody said, There's a man out here trying
6 to rob people. He's wearing a camouflage suit, and he's
7 wearing a red bandanna.

8 I have charged him with two offenses: One is
9 attempted murder. The other is the possession of a
10 firearm during the commission of a violent crime. The
11 issue in this case revolves around the attempted murder,
12 because if you don't find him guilty of attempted murder,
13 the gun charge, you should not find him guilty of that
14 either. The issue in this case, though, is whether or
15 not Malcolm Orr intended to kill Quincy Smith, a police
16 officer from Estill. That's the issue.

17 Now, what the judge will explain to you is
18 that the law behind this and what attempted murder is, is
19 the unlawful attempt to kill someone with malice. Now,
20 in order for me to prove that to you, I needed to first
21 prove to you identification. I needed to prove to you
22 that this man over here, now sitting in a light blue
23 shirt with a tie, was the man that day wearing that
24 camouflage suit with the red bandanna that shot Quincy
25 Smith. It's identification, and I have to prove that.

1 So let's take a look very quickly at the evidence that we
2 have presented to prove just that.

3 After the video was downloaded, two people
4 who lived in Estill, who have lived there all their
5 lives, two firemen looked at the video and said, I know
6 him. I've known him all my life. One knew him as
7 Mack-Mack, and the other knew him as Malcolm Orr. That
8 produced the photograph that everybody went out looking
9 for, and that's the same photograph of the person that's
10 sitting in this courtroom.

11 If that wasn't enough, however, we've got his
12 cellphone. What we introduced in the cellphone was the
13 cellphone that was left at the scene, broken in two, not
14 shot in two, like he said, but broken in two and held two
15 texts, one saying, This is Mack-Mack, and the other said,
16 This is my new cellphone number. This is Malcolm. That
17 was the cellphone at the scene.

18 Now, if that's all you had, that would still
19 be pretty good identification, two people that have known
20 him his whole life looking at the video saying, That's
21 Malcolm Orr. The fact that they arrested him wearing the
22 same clothes that he was in before, except for the
23 jacket, the fact that they pulled the bandanna out of his
24 pocket when they arrested him, but if that's not enough,
25 you can look at it yourself, and you can make that

1 decision yourself without that testimony.

2 Is that the same man in this picture? Is
3 that the same man that held a gun to the face of a police
4 officer and shot him, not once, not twice, not three
5 times, but eight times?

6 The second issue is whether or not he
7 intended to kill him. Most of us realize that if you
8 take a gun and you shoot somebody in the face with it,
9 you're intending to kill them, but think about what the
10 doctor told you. The doctor came in here and testified
11 that the bullet severed a vein, severed a vein in his
12 neck, that he had had people before actually die just
13 because of that, but, fortunately, it had clotted inside
14 and so there wasn't a lot of blood, despite the fact that
15 as the EMS technician explained, his neck was literally
16 flayed open from the bullet and that he could see the
17 inside of the trachea.

18 The doctor testified that the bullet cut that
19 vein, that fortunately it had clotted, but when they got
20 into the emergency room and started operating on him, it
21 burst forth and started filling with blood again, and
22 that was the low pressure vein, not the artery that's
23 right beside it, that had the bullet clipped that, Quincy
24 Smith wouldn't have made it off of the road that day.
25 Whether or not there's intent to kill, I think that's

1 pretty clear as well.

2 So then the last element of attempted murder
3 is this: Malice. What is malice? And what the judge is
4 going to explain to you is that somebody acts with malice
5 when they act with a total disregard for human life. We
6 think of malice as somebody that's just mean or hateful,
7 and it isn't something that has to be developed over
8 time. It can happen almost instantaneously, and what you
9 have an advantage of, which so many people don't, what
10 you have the advantage of is you saw this crime. You saw
11 it.

12 Whether or not Malcolm Orr acted with malice
13 is your final decision, and I would submit to you that
14 the evidence is overwhelming when it comes to how he
15 acted that day. Number one: Before the officer even got
16 there, before the officer even got there, he's wearing
17 this red bandanna around his face, hiding his identity,
18 wearing a hunting suit and carrying illegally a nine
19 millimeter loaded handgun, harassing people as they're
20 coming out of a store.

21 Isn't that alone somebody who is acting with
22 malice? And then when the police officer tried to stop
23 him -- again, you saw the video, but I want to ask you a
24 question. Looking at these series of photographs, I want
25 you to tell me, what's on his face? How does his face

1 look? Does he look afraid? Does he look concerned? No.
2 Not in that one or in that one or in that one or in that
3 one or in that one.

4 The defense tried to tell you he was afraid
5 for his life, except does he look afraid? Again, you
6 have the advantage of actually seeing this crime take
7 place, and if at any point you can look at his face and
8 he looks afraid, then that's a different view than any of
9 these pictures.

10 You've heard the jail call, where his
11 girlfriend asked him not once but twice, Hey, what
12 happened out there? Seriously, what were you thinking?

13 Was his response, I was afraid? No, not once
14 did he say that, and he's not talking to police officers.
15 He's talking to somebody that supposedly he says he loves
16 when he's on the phone with her. He's laughing about the
17 number of police officers that came out there, but what
18 does he say happened?

19 First, I don't know. That was his first
20 answer, and I apologize for the language, but what was
21 the second answer he gave? He rolled up, and I said fuck
22 it. Not, I was afraid, not, I was concerned, but fuck
23 it. That's a total disregard for somebody else's life,
24 and if that's not enough, again, you saw this crime. You
25 see the person in this courtroom that committed this

1 crime, and I want you to go back and I want you to look
2 at one more thing: If you truly want to decide whether
3 or not Malcolm Orr acted in malice that day, I want you
4 to think of something.

5 He shot, either hitting or tried to hit,
6 Officer Smith not once, not twice, not three times, not
7 four times, not five times, not six, not seven, but eight
8 times. Eight times. Can you play this video? I want
9 you to watch something.

10 (Video played for the jury.)

11 Okay. Stop it. Rewind back to the -- go
12 back. Play a little bit more. Play again. Stop. What
13 is he looking at? What is the officer looking at? The
14 video is from his glasses, so what position is this
15 officer in at this point? He's on the ground. He's
16 looking at the ground. And then what do you hear?

17 Stop it. How many did you hear after that?
18 Four more. Two, while he was on the ground, and two more
19 as this officer was running, literally, for his life back
20 to his police car. That's malice. That's Malcolm Orr.
21 He attempted to kill this officer, and almost did, with
22 malice, and I asked you at the very first of this that I
23 would come back here and ask you for one thing and one
24 thing only, and I'm going to do that. When you come back
25 with a verdict, speak the truth.

1 Thank you.

2 THE COURT: Mr. Hughes?

3 MR. HUGHES: May it please the Court,
4 Mr. Stone: Good morning. I made a promise to you. I
5 told you it wasn't going to be like anything you ever saw
6 on television. It wasn't, was it? I also told you a
7 secret. A lot of stuff was boring.

8 I watched y'all. Y'all paid very, very close
9 attention to everything that was said on this stand and
10 everything that was done and everything that happened,
11 and y'all watched the video and y'all get to watch the
12 video again. Y'all can watch it as many times as y'all
13 want. And what does the video show?

14 Well, it starts off in the car, and Officer
15 Smith drives up to the store. Still not sure why there
16 were two horses outside. I love the fact that there were
17 two horses outside, and he drives along this back and he
18 looks at a little group of trees. There are two people
19 standing there. One of them is the defendant.

20 Now, that's odd. He's supposed to have just
21 done a strong-arm robbery, but he's just standing there,
22 talking to someone else. Then the officer goes inside
23 and goes behind -- there's a fence between him and where
24 these people are, so then the defendant runs and hides in
25 his camouflage suit because he's just done a strong-arm

1 robbery.

2 Wait a minute. Is he running? No. He's
3 walking. And then the officer pulls up behind him and he
4 runs. No. No, he doesn't. He walks, and the officer
5 says, Come here, and he started running then. No? No,
6 he doesn't. He just walks. If you don't stop, I'll --
7 that's when he runs. No. No, he just walks. I'm going
8 to Tase you. That's when he runs. No. No, he just
9 walks.

10 What does he do after the shooting? Then he
11 runs, and then when the cops catch him, he puts up a
12 fight and he gets into an argument and he attacks the
13 officers and -- no. That's not what happened. He gives
14 up. He wanted a change of clothes, so he gets a change
15 of clothes. No, that's not what happened. He brags on
16 the phone at the jail about shooting somebody. No,
17 that's not what happens.

18 I am very, very, very glad that we now have
19 the technology that you can see exactly what happened. I
20 want you to look at it. We have the monitors here, but
21 you really can't look at it. You have the right to look
22 at that video as many times as you want, as close as you
23 want, so that you can see exactly what is on that video.
24 That video is evidence, and y'all are to judge evidence.
25 That's all I ask.

1 Remember, I told you at the start of this, I
2 love that video because unlike anything else, body cam
3 videos, anything else like that, you see exactly what
4 happened. You see what the defendant is doing when the
5 officer pulls up to the store. You can see he's just
6 standing there, not like somebody who just did a
7 strong-arm robbery. He's not running away. He sees the
8 cop. The cop goes inside. He can no longer see him.
9 Does he run and hide? No, he walks away.

10 Watch the entire interaction. That's all I
11 ask. Watch the video. Try to figure out exactly what
12 each person is doing. The great thing about you 12
13 people is you all have different viewpoints on life, and
14 together y'all are smarter than any single person because
15 you have 12 lifetimes of experience.

16 We don't ask you to leave that lifetime of
17 experience at the door when y'all come in. We want you
18 to use it. We want you to base your knowledge and your
19 decision upon the way you know people. That's all we
20 ask. After you look at the video -- because that's the
21 main evidence. The bullet casings, it's on the video.
22 The broken phone, it's on the video. The bandanna, I
23 don't actually remember that on the video, but I'll even
24 say that's on the video.

25 The main thing is that video is fantastic.

1 Look at it. Watch it, back it up, look at it again.
2 Now, sooner or later, that video is going to be made
3 public, and your friends and your family are going to
4 ask, how did you all find him not guilty?

5 And your answer is simple: Look at the
6 video. Once you look at the video and study the video
7 and know exactly what happened that day, you'll find my
8 client not guilty of attempted murder, and if you find
9 him not guilty of attempted murder, you can't even
10 consider the use of a weapon during the commission of a
11 violent crime.

12 Thank you.

13 THE COURT: All right. Well, folks, you've
14 now heard the closing arguments, and I told you at the
15 beginning of the trial that I have duties and you have
16 duties, and one of mine is to preside over the trial and
17 make sure the rules of admissibility and the rules of
18 procedure were all followed.

19 Your job, as the jurors, is only to consider
20 the evidence that was presented before you from the
21 witness stand in the form of testimony and documents in
22 evidence and photographs, things like that. I now also
23 have the additional duty of charging you on the law that
24 applies to this type of case, and it is your duty as
25 jurors to accept the law as I now charge it to you. If

1 you think you have some idea of what the law is or what
2 it ought to be and it does not agree with what I now tell
3 you the law is, then you must forget that idea and apply
4 the law exactly as I now charge you under the oath that
5 you took at the beginning of the trial.

6 So you're the judges of the facts. You're
7 the sole judges of the facts. My job as the trial judge,
8 I cannot comment on the facts. I can't state anything
9 about the facts. I can't make any kind of indication to
10 you about what I think about the facts. You're the sole
11 judges of the facts, and you can't infer from anything
12 that I said or did during the trial in ruling upon
13 admissibility or anything that I said during the course
14 of the trial that I have any opinion about the facts in
15 this case. The law does not allow me to have an opinion
16 about this case. That is solely a matter for you, the
17 jury, to determine, and it is your job as jurors to
18 determine the effect, the value, the weight, and the
19 truth of the evidence that was presented to you during
20 the trial.

21 Now, I want to remind you that the fact that
22 the defendant was arrested, charged, and indicted in this
23 case is not evidence in the case, and it can't be
24 considered by you as evidence of guilt in this case, nor
25 does it create any presumption or inference of guilt.

1 The indictments were simply the sole charging instruments
2 that put the defendant on written notice of what he is to
3 stand trial for, and it is the means by which this Court
4 gets jurisdiction of the case.

5 There were two indictments in this case. As
6 I told you, there was a charge of attempted murder, and
7 there was a charge of possession of a weapon during the
8 commission of or an attempt to commit a violent crime,
9 and I will explain the elements of those two charges to
10 you in just a moment. Each of those indictments are a
11 separate and distinct offense. You must decide each
12 indictment separately on the evidence and the law
13 applicable to it, uninfluenced by your decision as to any
14 other indictment. The defendant may be convicted or
15 acquitted on any or all of the offenses charged, and you
16 will be asked to write a separate verdict of guilty or
17 not guilty for each indictment.

18 Now, the defendant pled not guilty to those
19 indictments, and that plea puts the burden on the State
20 to prove the defendant guilty beyond a reasonable doubt.
21 I remind you that a person who is charged with a criminal
22 offense in South Carolina is never required to prove
23 himself innocent. This is an important rule of law in
24 this country, that a defendant in a criminal trial will
25 always be presumed to be innocent of the crime for which

1 he is indicted unless and until guilt has been proven by
2 evidence convincing you of that guilt beyond a reasonable
3 doubt.

4 This presumption of innocence is not a mere
5 legal theory. This isn't just some legal phrase. This
6 is a substantial constitutional right to which every
7 defend is entitled. This presumption of innocence
8 accompanies the defendant from the time he is charged
9 throughout the trial, unless and until you reach a
10 verdict of guilt based upon evidence satisfying you of
11 that guilt beyond a reasonable doubt, and I told you a
12 number of times about the phrase called guilt beyond a
13 reasonable doubt, and I told you that sometimes in civil
14 trials, you might have served as a juror in one, you were
15 told that it was only necessary to prove that a fact is
16 more likely true than not true. We call that evidence by
17 the greater weight of the evidence, or it's sometimes
18 called a preponderance of the evidence.

19 But in criminal cases like this, the State's
20 proof must be more powerful than that. It must be beyond
21 a reasonable doubt. Proof beyond a reasonable doubt is
22 proof that leaves you firmly convinced of the defendant's
23 guilt. Reasonable doubt has also been defined as the
24 kind of doubt that would cause a reasonable person to
25 hesitate to act. There are very few things in this world

1 that we can know with absolute certainty, and in criminal
2 cases, the law does not require proof that overcomes
3 every possible doubt.

4 If, based on your consideration of the
5 evidence, you are firmly convinced that the defendant is
6 guilty of the crime charged, you must then find the
7 defendant guilty. If, on the other hand, you think there
8 is a real possibility that the defendant is not guilty,
9 then you must give the defendant the benefit of the doubt
10 and find him not guilty. I also want to instruct and
11 emphasize the fact that the defendant did not testify is
12 not a factor to be considered by you in any way in your
13 deliberation and in your consideration on the question of
14 the guilt or innocence of the defendant. It must not be
15 considered by you in any manner whatsoever.

16 A defendant has a constitutional right to
17 remain silent, and the assertion of this right must not
18 be considered by you in your deliberations. I repeat,
19 under your oath that you took at the beginning of the
20 trial, you are to draw no conclusion whatsoever from the
21 fact that the defendant in this case did not testify.
22 The fact that the defendant did not testify should not
23 even be discussed in the jury room. The burden of proof,
24 as I stated more than one time, is on the State. The
25 defendant is not required to prove his innocence, and the

1 burden of proof remains on the State to prove guilt
2 beyond a reasonable doubt.

3 Now, during the course of the trial, we
4 generally have two types of evidence that is presented.
5 There's direct evidence, and there's circumstantial
6 evidence, and direct evidence directly proves the
7 existence of a fact, and it doesn't require any kind of
8 deduction. Circumstantial evidence is proof of a chain
9 of facts and circumstances that indicate the existence of
10 a fact. Now, crimes can be proven by circumstantial
11 evidence, and the law makes no distinction between the
12 weight or value to be given either direct or
13 circumstantial evidence; however, to the extent that the
14 State relies on circumstantial evidence, all of the
15 circumstances must be consistent with each other and,
16 when taken together, point conclusively to the guilt of
17 the accused beyond a reasonable doubt. If these
18 circumstances merely portray the defendant's behavior as
19 suspicious, the proof has failed. The State has the
20 burden of proving the defendant guilty beyond a
21 reasonable doubt, and this burden rests with the State
22 regardless of whether the State relies on direct
23 evidence, circumstantial evidence, or some combination of
24 the two.

25 Now, as jurors and the judges of the facts,

1 you must determine the credibility of witnesses who have
2 testified in this case. Credibility simply means
3 believability. It's your duty as jurors to analyze and
4 evaluate the evidence and determine which evidence
5 convinces you of its truth. In determining the
6 believability of witnesses who testified in this case,
7 you can believe one witness over several witnesses or
8 several witnesses over one witness.

9 You can believe the testimony of a witness in
10 its entirety or you can reject the testimony of a witness
11 in its entirety. You can believe a part of the testimony
12 of a witness and reject the remaining part of the
13 testimony of that same witness, and if you reject part of
14 it, you can still accept the remainder of a witness's
15 testimony.

16 You can consider whether a witness has
17 exhibited to you any interest, bias, prejudice, or other
18 motive in this case. You can consider such things as
19 appearance and demeanor of a witness while on the witness
20 stand. You are not bound to decide this case based on
21 the number of witnesses that a side produces. I also
22 told you during the course of the trial that we don't
23 ordinarily let people come in and give us their opinion
24 about their testimony or about evidence in the case, but
25 we do make an exception for expert witnesses, and these

1 are people, as I told you, they're experts because of
2 their education, specialized training in some field.
3 They can give you their opinion, and they can state the
4 reasons for their opinion.

5 As I told you, you can give an expert's
6 testimony as little or as much weight as you think it
7 deserves. If you don't think it's based on sufficient
8 education or experience or you conclude the expert's
9 opinions are not sound or that it's outweighed by other
10 evidence, you can disregard the opinion entirely. You're
11 not compelled to blindly accept an expert's opinion, and
12 you have the right to consider the testimony in light of
13 all of the circumstances that you heard and give it such
14 weight, if any, that you think it's entitled to.

15 Now, I want to go over the elements of the
16 two charges. I'm going to go over the charge of
17 attempted murder with you first.

18 In order to prove attempted murder, the State
19 must prove the defendant attempted to kill another person
20 with malice aforethought, which is either express or
21 implied. Malice is hatred, ill will, or hostility
22 towards another person. It's the intentional doing of a
23 wrongful act without just cause or excuse and with the
24 intent to inflict an injury or under other circumstances
25 that the law will infer an evil intent. Malice

1 aforethought does not require that malice exists for any
2 particular time before the act is committed, but malice
3 must exist in the mind of the defendant just before and
4 at the time the act is committed; therefore, there must
5 be a combination of the previous evil intent and the act.

6 Malice aforethought can be either express or
7 inferred. The terms express and inferred do not mean
8 different types of malice, but merely the manner in which
9 malice may be shown to exist; that is, either by direct
10 evidence or by inference from the facts and circumstances
11 which are proved.

12 Express malice is shown when a person speaks
13 words which express hatred or ill will for another, or
14 when the person prepared beforehand to do the act which
15 was later accomplished, for example, lying in wait for a
16 person or other acts of preparation going to show that
17 the deed was in the defendant's mind would be express
18 malice. Malice can also be inferred from conduct showing
19 a total disregard for human life.

20 If facts are proved beyond a reasonable doubt
21 sufficient to raise an inference of malice to your
22 satisfaction, then this inference would simply be an
23 evidentiary fact to be considered by you, along with any
24 other evidence in this case, and you may give it the
25 weight that you decide it should receive. A specific

1 intent to kill is not an element of attempted murder, but
2 there must be a general intent to commit serious bodily
3 injury.

4 Intent means intending the result which
5 actually occurred, not accidentally or involuntarily.
6 Intent may be shown by acts or conduct of the defendant
7 and other circumstances from which you may naturally and
8 reasonably infer intent. Evidence of the character of
9 the act, the character of the instrument used, the manner
10 in which it was used, the purpose to be accomplished, and
11 the resulting wounds or injuries may be considered in
12 determining the intent with which the act was committed.
13 Intent may also be inferred when it is demonstrated that
14 the defendant voluntarily and willfully commits an act,
15 the natural tendency of which is to destroy another's
16 life.

17 Now, the other indictment charged the
18 defendant with possession of a weapon during the
19 commission of or attempt to commit a violent crime. The
20 State must prove beyond a reasonable doubt that the
21 defendant was in possession of a firearm or visibly
22 displayed what appeared to be a firearm during the
23 commission of or attempt to commit a violent crime. A
24 firearm means any machine gun, automatic rifle, revolver,
25 pistol, or any weapon which will, is designed to, or may

1 be readily converted to expel a projectile.

2 In order to find the defendant guilty of
3 possession of a weapon during the commission of or
4 attempt to commit a violent crime, you must first find
5 the defendant guilty of either committing a violent crime
6 or attempting to commit a violent crime. I charge you as
7 a matter of law that attempted murder is a violent crime
8 under this statute. The State must prove beyond a
9 reasonable doubt that the weapon further advanced or
10 helped in the commission of a crime.

11 Now, while you are considering your verdict,
12 you may not consider any possibility -- or any possible
13 penalty for any particular crime. The punishment for any
14 crime is a matter for me to determine and should never be
15 considered by you in any manner whatsoever in arriving at
16 a verdict of guilty or not guilty.

17 Your verdict must be unanimous. In other
18 words, all 12 jurors must agree, and you have three
19 possible verdicts. I'm going to go over those possible
20 verdicts with you. There's no significance in the manner
21 in which I'm going over these. You got to go with
22 something first.

23 So indictment for attempted murder,
24 Mr. Foreman, there are two possible verdicts. There is
25 guilty or not guilty. After the jury has reached its

1 unanimous verdict on this, you write what that verdict
2 is, either guilty or not guilty. You sign it, date it,
3 and let the bailiffs know -- well, actually, you would
4 then go on to consider the indictment for possession of a
5 weapon during the commission of a violent crime.

6 If and only if the jury convicts the
7 defendant of attempted murder may you consider possession
8 of a weapon during the commission of a violent crime.
9 All right? If he is convicted of that, you then have two
10 possible verdicts, guilty or not guilty, and whatever
11 that verdict is, you state it, put it down, date it, and
12 write it, but if the jury does not unanimously find him
13 guilty of attempted murder, I charge you that you must
14 find him not guilty of possession of a weapon during the
15 commission of a crime. But if you find he is guilty of
16 attempted murder, then you consider possession of a
17 weapon during the commission of a violent crime. Is that
18 clear?

19 All right. So I'm going to send you back to
20 the jury room now. Don't begin your deliberations just
21 yet. I have to give the lawyers the opportunity to let
22 me know if I misspoke something. We also get the
23 evidence together, and we'll send it back to you along
24 with the verdict forms. This just takes a couple of
25 minutes, so just don't begin your deliberations until I

1 send the evidence back with you, along with word from the
2 bailiff that you can begin your deliberations. All
3 right?

4 (In open court, jury not present.)

5 THE COURT: All right. Anything from the
6 State?

7 MR. STONE: No, sir.

8 THE COURT: Anything from the defense?

9 MR. HUGHES: No, Your Honor.

10 THE COURT: Do y'all have any objection to me
11 sending a copy of the charges back during deliberations?

12 MR. HUGHES: I don't.

13 MR. STONE: That's fine.

14 THE COURT: Let's make sure we got everything
15 together then. Let the record reflect I discharged the
16 alternate.

17 (At 11:04 a.m., the jury commenced its
18 deliberations.)

19 THE COURT: All right. Everyone is here. I
20 understand the jury has reached a verdict, so bring them
21 back.

22 (11:46 a.m., in open court, jury present.)

23 THE COURT: All right. Mr. Foreman, I
24 understand the jury has reached a verdict; is that
25 correct?

1 THE FOREMAN: Yes, sir.

2 THE COURT: Is it unanimous as to both
3 charges?

4 THE FOREMAN: Yes.

5 THE COURT: Will you hand it to the bailiff,
6 please. The clerk will publish. The defendant will
7 rise.

8 THE CLERK: Indictment number
9 2016-GS-25-0013, the State of South Carolina versus
10 Malcolm Orr, indicted for attempted murder, guilty,
11 signed by the foreperson on August 9th, 2017. Indictment
12 No. 2016-GS-25-0012, the State versus Malcolm Orr,
13 indicted for possession of a weapon during the commission
14 of a violent crime, it's guilty by the foreperson on
15 August the 9th, 2017.

16 THE COURT: All right. Defendant may be
17 seated.

18 Now, if this is, in fact, your verdict, will
19 you please indicate that by raising your right hand? Let
20 the record reflect all the jurors have raised their right
21 hands. You can put your hand down.

22 Do you wish to have the jury polled?

23 MR. HUGHES: Yes, Your Honor.

24 THE COURT: Madame Clerk, will you poll the
25 jury, please.

1 THE CLERK: When I call your name, if you
2 will please stand, I have two questions to ask you, and
3 then you'll need to answer each question.

4 William White, is this your verdict?

5 THE JUROR: Yes, ma'am.

6 THE CLERK: And is it still your verdict?

7 THE JUROR: Yes, ma'am.

8 THE CLERK: Carl Burrell, is this your
9 verdict?

10 THE JUROR: Yes, ma'am.

11 THE CLERK: Is it still your verdict?

12 THE JUROR: Yes, ma'am.

13 THE CLERK: Angela Strother, is this your
14 verdict?

15 THE JUROR: Yes, it is.

16 THE CLERK: Is it still your verdict?

17 THE JUROR: It is.

18 THE CLERK: Luchelle Johnson, is this your
19 verdict?

20 THE JUROR: Yes.

21 THE CLERK: Is it still your verdict?

22 THE JUROR: Yes.

23 THE CLERK: Everette Williams, is this your
24 verdict?

25 THE JUROR: Yes, ma'am.

1 THE CLERK: Is it still your verdict?

2 THE JUROR: Yes, ma'am.

3 THE CLERK: Arthur Williams, is this your
4 verdict?

5 THE JUROR: Yes, ma'am.

6 THE CLERK: Is it still your verdict?

7 THE JUROR: Yes, ma'am.

8 THE CLERK: Rogan Gibson, is this your
9 verdict?

10 THE JUROR: Yes, ma'am.

11 THE CLERK: And is it still your verdict?

12 THE JUROR: Yes, ma'am.

13 THE CLERK: Chandra Spruils, is this your
14 verdict?

15 THE JUROR: Yes, ma'am.

16 THE CLERK: And is it still your verdict?

17 THE JUROR: Yes, ma'am.

18 THE CLERK: Donnie McClary, is this your
19 verdict?

20 THE JUROR: Yes, ma'am.

21 THE CLERK: Is it still your verdict?

22 THE JUROR: Yes, ma'am.

23 THE CLERK: Sharon Rice, is this your
24 verdict?

25 THE JUROR: Yes, it is.

1 THE CLERK: And is it still your verdict?

2 THE JUROR: Yes, it is.

3 THE CLERK: Melissa Kroupa, is this your
4 verdict?

5 THE JUROR: Yes, ma'am.

6 THE CLERK: Is it still your verdict?

7 THE JUROR: Yes, ma'am.

8 THE CLERK: And, Keith Pauls, is this your
9 verdict?

10 THE JUROR: Yes, ma'am.

11 THE CLERK: And is it still your verdict?

12 THE JUROR: Yes, ma'am.

13 THE COURT: All right. Thank you very much.

14 Now, ladies and gentlemen, I want to thank
15 you for your service this week. This was a short trial,
16 but it was still an important trial, and, you know, the
17 only thing that kept this from being a murder trial was
18 that the victim lived, and so you don't get any more
19 serious cases than those involving life and death.

20 This was a very important case to the people
21 of South Carolina and the people and the residents of
22 Hampton County, and I want to thank you for your service
23 this week. You took time to deliberate. It's clear that
24 you did a serious job on deliberation, and we thank you
25 for your verdict.

1 At this time, you are finished with your jury
2 service for the week, and you are free to go. If you
3 need any kind of note or anything for your work, the
4 clerk's office can provide that for you.

5 Now, all week long I have been telling you
6 that you are not permitted to talk to anyone, but you are
7 now free to talk to anyone you want, and, of course, I
8 have been admonishing you not to post anything on social
9 media or any forum, that sort of thing. You are free to
10 do that without regards to whatever you want to say, you
11 can feel free to say.

12 I hope you have enjoyed your jury service
13 this week. Most people, it's been my experience, when
14 they first get their notices, they go, Oh, I would like
15 to do this, but it's just not a good time, but if they
16 get here and they get picked, they really do appreciate
17 the process to learn about the way we do things.

18 It's different than TV. We don't take
19 commercial breaks every eight to twelve minutes. We have
20 a process which, you know, I tried to explain to you from
21 time to time to let you know what we were doing and why
22 we were doing it because probably the vast majority of
23 you have not ever been on a jury before. Our system is
24 designed to bring out the truth, and that's what I talked
25 about, the adversarial process.

1 Everybody gets a chance to say what they
2 want. They get to ask questions and follow up on their
3 questions and all of that. That's why I was asking you
4 to keep an open mind coming in because you just never
5 know what's going to be said. And so, you know, it might
6 very well be that you have the same impression you had
7 early on, but at the end, you heard all the evidence.
8 You had a chance to let both parties ask all the
9 questions they wanted to about it, and then the 12 of you
10 got to go back, and you all came to the same conclusion.
11 So you should have a lot of confidence in your verdict as
12 a result of the fact that, you know, 12 people agreed to
13 that.

14 I often have people ask me, I might have even
15 said this during qualification, they go, Did we do the
16 right thing? Did we make the right decision?

17 I always say, Twelve people came to the same
18 conclusion, so you ought to have a great deal of
19 confidence about that, and over time, you know, you'll
20 probably reflect upon your jury service. My hope, my
21 sincere hope, is that you enjoyed it and you feel like,
22 you know, if you had the opportunity to do it again you
23 would like to do it again. I hope that you enjoyed the
24 entire process enough to know that if anybody ever asked
25 you about jury service you could say, you know, not only

1 did I serve on a jury, I enjoyed it, and I feel like the
2 system works and we got a process, and now that I
3 understand it a little bit better, I feel better about
4 our government because this is our government at work.

5 We have the legislative, judicial, and
6 executive branches of government. This is the judicial
7 branch, and, as I told you, you all are 12 judges, and,
8 you know, you were as important as anybody is ever going
9 to be in a trial, the 12 of you, and so, you know, you
10 got to participate in your government. It's something
11 other than just voting and paying for taxes, which is
12 what most of us get to do, but you got to participate in
13 your government, and I hope you feel better about it as a
14 result of your experience this week.

15 So I want to thank you sincerely again for
16 your service this week, and you are now free to go for
17 the rest of the day and the rest of the week.

18 All right? Thank you very much.

19 (Jury dismissed.)

20 THE COURT: All right. We will move into
21 sentencing at this point. Is there anything that the
22 State would like to say?

23 MR. STONE: If I could have just a moment
24 with the officer, just a moment.

25 THE COURT: Sure.

1 MR. STONE: Your Honor, I spoke to the victim
2 in this case, Officer Smith. He feels like you heard
3 everything. He doesn't need to address you. The only
4 thing from the State's standpoint, he has a prior
5 conviction for grand larceny, at which time he actually
6 ended up doing prison time for that. That was in, I
7 believe, 2007.

8 The only thing that I would add, Your Honor,
9 you know everything as far as the facts of the case.
10 What was aggravating for me at the very beginning of this
11 was the way he did this. You look at these pictures.
12 There's no concern on his face when he pulls that gun and
13 shoots this officer, and but -- as I told the jury, but
14 for the grace of God and some very good doctors, this
15 would not just be a murder case, this would be a death
16 penalty case.

17 My concern, and what I have told the defense
18 attorney all along, was that I would be asking for the
19 maximum penalty in this, whether he pled guilty or went
20 to trial, because I think that's the appropriate sentence
21 in a situation like this. I don't think there's anything
22 redeeming about this particular defendant and the way he
23 and acted what he did; everything from having the loaded
24 handgun with him illegally, trying to harass people, to
25 literally just turning and shooting a police officer at

1 point blank range, four of which times he shot as the
2 officer had already gone down and was trying to run away.

3 That's our position, and that's what I would
4 ask you to consider. Thank you. Let me hand you up the
5 sentencing sheets, Your Honor. I apologize.

6 THE COURT: All right. Mr. Hughes?

7 MR. HUGHES: Your Honor, I would ask that you
8 look at the totality of the situation. You have seen the
9 video. You have -- the State has made no showing that he
10 acted in anywhere near an aggressive manner other than
11 that last second. This isn't -- doesn't appear to be
12 premeditated in any way, shape, or form. We're asking
13 for mercy in this situation. The State is wanting the 30
14 and the 5. I did not hear any type of consecutive, Your
15 Honor. We'd ask for any sentence to be concurrent with
16 the other instead of being consecutive, and we'd ask
17 mercy on the primary charge, Your Honor.

18 I've asked his mother if she wanted to
19 address the Court. She declined, if I may ask her one
20 more time. No, and if my client wishes to speak, he is
21 more than free to, Your Honor.

22 THE COURT: Mr. Orr, do you want to say
23 anything?

24 THE DEFENDANT: No, sir.

25 THE COURT: Well, Mr. Orr, I didn't know you

before I got here, didn't know anything about the case till I got here, and so the only thing I know is what I learned about you this week, and I learned that for whatever reason, you don't deserve to walk the streets of Hampton County for as long as I can make that happen.

The stone cold way in which you shot this officer, he's lucky to be alive. I suppose you're lucky that he's alive as well. I hope that at some point in time you realize the gravity of what you did. You've offered no explanation for it by way of mitigation, and at this point, I don't think you deserve anything other than the maximum sentence, so on attempted murder, I'm giving you 30 years. After you finish that, you can do five years on the possession of a weapon during the commission of a violent crime.

You'll get credit for any time served, and I'm sure you'll want your lawyer to file an appeal, so good luck to you.

— — —

(Whereupon, the proceedings were concluded.)

— — —

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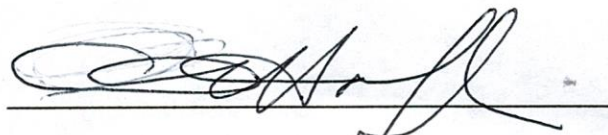
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I, the undersigned, Amanda Kelly Haffenden, RPR, CRR, Circuit Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Hampton County, South Carolina, on the 9th of August 2017.

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

December 27, 2017


Circuit Court Reporter

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Hampton County

Roger M. Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MALCOLM ANTWON ORR,

APPELLANT

APPELLATE CASE NO 2017-001707

ANDERS BRIEF OF APPELLANT

SUSAN B. HACKETT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

ORIGINAL

RECEIVED

JUL 06 2018

SC Court of Appeals

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in admitting portions of a video from a camera worn by the police officer where the video captured matters prior to and after the shooting and the probative value of those matters was substantially outweighed by the danger of unfair prejudice?

STATEMENT OF THE CASE

On February 1, 2016, a Hampton County grand jury indicted Appellant for attempted murder (2016-GS-25-0013) and possession of a weapon during the commission of a violent crime (2016-GS-25-0012). R. 337-338; R. 340-341. The state, represented by Isaac McDuffie Stone, III, and Brian Hollen, called the case to trial before the Honorable Roger M. Young, Sr., and a jury on August 7-9, 2017. R. 1. Robert Hughes represented Appellant. R. 1. When the trial judge instructed the jury regarding the elements of attempted murder, he told the jury that “[i]n order to prove attempted murder, the state must prove the defendant attempted to kill another person with malice aforethought, which is either express or implied.” R. 283, ll. 18-21. Thereafter, he defined malice and explained how it could be express or inferred. R. 283, l. 21 – R. 284, l. 25. Finally, he told the jury that “a specific intent to kill [was] not an element of attempted murder.” R. 284, l. 25 – R. 285, l. 1. Instead, there need only “be a general intent to commit serious bodily injury.” R. 285, ll. 2-3.¹

The jury found Appellant guilty as charged. R. 289, ll. 8-15. Judge Young sentenced Appellant to thirty years imprisonment for attempted murder. R. 298, ll. 12-13; R. 339. He also sentenced Appellant to five years imprisonment for the weapon. R. 298, ll. 13-15; R. 342. He ordered the sentences to be served consecutively. R. 298, ll. 13-15; R. 339; R. 342.

On August 10, 2017, Appellant served his notice of appeal. This brief follows.

¹ Although this Court held attempted murder requires a specific intent to kill on June 5, 2015, over two years prior to Appellant’s trial, trial counsel posed to no objection to the trial judge’s erroneous charge. See State v. King, 412 S.C. 403, 772 S.E.2d 189 (Ct. App. 2015), aff’d as modified, State v. King, 422 S.C. 47, 810 S.E.2d 18 (2017).

STANDARD OF REVIEW

“The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion.” State v. Hatcher, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011) (quoting State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006)). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” Id.; see also State v. Brockmeyer, 406 S.C. 324, 340, 751 S.E.2d 645, 653 (2013).

ARGUMENT

The trial judge erred in admitting portions of a video from a camera worn by the police officer where the video captured matters prior to and after the shooting and the probative value of those matters was substantially outweighed by the danger of unfair prejudice.

Relevant facts

Officer Quincy Smith had been a member of the Estill Police Department for approximately six months on January 1, 2016, when he was called to a store regarding an individual trying to steal items from another individual. R. 123, ll. 16-25; R. 125, ll. 3-15. On his way to the store, Smith activated the camera in his glasses. R. 125, ll. 23-24. Smith had purchased the glasses from Amazon for \$30. R. 136, ll. 1-8. The camera captured quite a bit, including Smith going to the store, his interaction with a patron inside the store, his interaction with a possible suspect, the shooting, his retreat to his car, his conversation with the police dispatcher, his conversation with an individual who attempted to render aid, statements by other bystanders, and statements by law enforcement and medical personnel. State's Exhibit #39. In fact, a member of law enforcement took Smith's glasses and carried them around with him after Smith received medical attention. State's Exhibit #39. The glasses then captured the conversations among other members of law enforcement. State's Exhibit #39.

Prior to trial, defense counsel moved to suppress or redact portions of the video. Counsel explained that the first part of the video showed Smith "communicating with a third party," who alleged Appellant "was potentially involved in a strong-arm robbery." R. 69, ll. 3-7. Defense counsel explained Appellant was never charged with robbery, and the third party's statements regarding the robbery "would be very prejudicial, would be considered a potential prior bad act." R. 69, ll. 8-12. Additionally, defense counsel moved to suppress the final ten to fifteen minutes

of the video that concerned conduct after the confrontation between Smith and the shooter. R. 69, ll. 14-22. This portion included communication between Smith and the police dispatcher, between Smith and a civilian bystander, and other civilians in the background. R. 69, ll. 16-19. Defense counsel argued those portions lacked probative value. R. 69, ll. 19-20. Counsel also noted a portion of the video during which Smith told dispatch to tell his family that he loved them. R. 69, ll. 21-22. This portion “would be considered extremely prejudicial.” R. 69, ll. 21-22.

Further, defense counsel argued any probative value was “greatly outweighed by the prejudicial aspects of the blood, the tug on the heartstrings, and the sheer fact that there [was] nothing” in those portions of the video implicating Appellant’s guilt. R. 69, l. 23 – R. 70, l. 2.

Instead of responding to the objection as made by defense counsel, the state argued the video fell within a hearsay exception. R. 70, ll. 7-11. Concerning the beginning of the video, the prosecutor explained it showed “him responding to the call,” and that without that portion, it would look like “he’s just rolling up on somebody walking down the street and he starts yelling at him to stop.” R. 70, ll. 11-15. Appearing to argue another hearsay exception was applicable, the solicitor contended that the video was admissible as “*res gestae*” because it showed the purpose of Smith going to the store. R. 70, ll. 16-23. The state admitted the video showed a witness providing a description of a suspect, but claimed the video was admissible to establish why Smith was there, what he was doing, and why he was questioning the individual on the side of the road. R. 70, l. 24 – R. 71, l. 6.

Additionally, the solicitor argued the last ten to fifteen minutes of the video were admissible as “*res gestae*.” R. 71, ll. 19-20. The solicitor considered Smith’s belief that he was “going to die” as “particularly relevant” because the state charged Appellant with attempted

murder. R. 71, ll. 19-22. The state also considered the presence of blood as “particularly relevant” because Smith was “shot in the face, the neck, and the arm.” R. 71, ll. 22-25. This was somehow relevant to the charge, but not explained by the solicitor. R. 71, l. 25 – R. 72, l. 1. In sum, the solicitor believed the entirety of the video was “relevant to show what happened to this officer in that situation.” R. 72, ll. 15-19.

Judge Young determined there was “definitely probative value in both the things” defense counsel sought to redact. R. 72, ll. 23-25. According to the judge, “the first part” was “res gestae” because it showed “somebody at the store telling the police what happened and the description of the person ... [who] had just left,” which explained “why the police officer [was], in fact, searching for somebody.” R. 73, ll. 1-5. This was the “probative value” of the first part of the video. R. 73, ll. 1-5.

Concerning “the other end of the tape” when Smith told the dispatcher to tell his family he loved them, Judge Young found this showed Smith “definitely thought he was dying and had a possibility of dying.” R. 73, ll. 6-9. In the judge’s view, Smith’s statements on the tape would “certainly counter any argument that it was not a serious attempt to harm somebody.” R. 73, ll. 9-11. Recognizing that the attempted murder statute required the state prove “an attempt to take a life,” the judge thought Smith’s belief that he was dying was probative. R. 73, ll. 13-16.

Overall, the judge did not find the prejudicial effect to be “that high.” R. 73, ll. 16-17. “In both cases, the probative value certainly outweigh[ed] any prejudicial effect,” according to the judge. R. 73, ll. 17-19. Therefore, he denied defense counsel’s request to suppress portions of the video. R. 73, l. 19.

During the trial, Smith testified that he approached an individual near a wooded area because Smith believed the individual was the person who attempted to steal groceries from

another individual at the store. R. 126, l. 13 – R. 128, l. 8. Smith repeatedly told the individual, who was walking, to stop, but the individual continued walking away. R. 128, ll. 9-17. Smith pulled out his taser and threatened to shoot the individual if he did not stop. R. 141, ll. 17-20. In response to Smith's threats, the individual pulled out a gun and shot Smith. R. 129, ll. 7-13.

Two firefighters arrived at the scene. R. 181, ll. 12-16; R. 182, ll. 2-5; R. 183, l. 25 – R. 184, l. 15. Both watched the video captured by the camera on Smith's glasses. R. 182, ll. 5-8; R. 184, ll. 16-20. Both believed the individual in the video was Appellant. R. 182, ll. 12-25; R. 184, l. 21 – R. 185, l. 13.

A short while later, the police arrested Appellant. R. 196, l. 19 – R. 197, l. 4.

Discussion

Pursuant to the South Carolina Rules of Evidence, all relevant evidence is generally admissible; however, even relevant evidence must be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. Rule 402, SCRE; Rule 403, SCRE. A determination on the admissibility of relevant evidence requires consideration of the evidence's probative value, the danger of unfair prejudice posed by the evidence, and the balancing of those two.

“‘Relevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Rule 401, SCRE. “Under Rule 401, evidence is relevant if it has a direct bearing upon and tends to establish or make more or less probable the matter in controversy.” State v. Preslar, 364 S.C. 466, 476, 613 S.E.2d 381, 386 (Ct. App. 2005). “Evidence is relevant if it tends to establish or make more or less probable some matter in issue upon which it directly or indirectly bears, and it is not required that the inference sought should necessarily follow from the

fact proved.” State v. Sweat, 362 S.C. 117, 126-127, 606 S.E.2d 508, 513 (Ct. App. 2004). “Evidence which assists a jury at arriving at the truth of an issue is relevant and admissible unless otherwise incompetent.” State v. Schmidt, 288 S.C. 301, 303, 342 S.E.2d 401, 403 (1986)(citing Toole v. Salter, 249 S.C. 354, 361, 154 S.E.2d 434, 437 (1967)).

Probative value

When looking at Rule 403, SCRE, the starting point for analyzing evidence under Rule 403 is determining the probative value of the evidence offered. “‘Probative’ means ‘[t]ending to prove or disprove.’” State v. Gray, 408 S.C. 601, 609, 759 S.E.2d 160, 165 (Ct. App. 2014). According to this Court, “‘[p]robative value’ is the measure of the importance of that tendency to the outcome of a case.” Id. at 610, 759 S.E.2d at 165. While relevant evidence and probative evidence are not synonymous, the two share many similarities as demonstrated through their definitions. The probative value of evidence is directly related to the how important that evidence is in assisting the jury in rendering a verdict. Id. Thus, when analyzing the probative value of evidence, the court must consider the importance of the evidence as it relates to the issues presented in the case. State v. Lee, 399 S.C. 521, 528, 732 S.E.2d 225, 228 (Ct. App. 2012).

Danger of unfair prejudice

After determining the probative value of the evidence, the court must next evaluate the danger of unfair prejudice presented by the evidence. “The determination of prejudice must be based on the entire record and the result will generally turn on the facts of each case.” State v. Wilson, 345 S.C. 1, 7, 545 S.E.2d 827, 830 (2001). “‘Unfair prejudice does not mean the damage to a defendant’s case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest [a] decision on an improper basis.’” State v. Gilchrist, 329 S.C. 621, 630, 496 S.E.2d 424, 429 (Ct. App. 1998)(quoting United States v. Bonds, 12 F.3d 540, 567

(6th Cir. 1993)). According to the United States Supreme Court, “[t]he term ‘unfair prejudice,’ as to a criminal defendant, speaks to the capacity of some concededly relevant evidence to lure the factfinder into declaring guilt on a ground different from proof specific to the offense charged.” Old Chief v. United States, 519 U.S. 172, 180 (1997). “Rule 403 only requires suppression of evidence that results in unfair prejudice – prejudice that damages an opponent for reasons other than its probative value, for instance, an appeal to emotion.” United States v. Mohr, 318 F.3d 613, 619-620 (4th Cir. 2003). Unfair prejudice means an undue tendency to suggestion a decision on an improper basis, commonly, but not necessarily, an emotional one. State v. Orozco, 392 S.C. 212, 218, 708 S.E.2d 227, 230 (Ct. App. 2011)(citing State v. Cheeseboro, 346 S.C. 526, 547, 552 S.E.2d 300, 311 (2001)); see also State v. Alexander, 303 S.C. 377, 382, 401 S.E.2d 146, 149 (1991)(providing that “[e]vidence is unfairly prejudicial if it has an undue tendency to suggest a decision on an improper basis, such as an emotional one”).

Balancing act

Once a court has determined the probative value and the danger of unfair prejudice of the evidence, the court must balance the two. State v. Dial, 405 S.C. 247, 260, 746 S.E.2d 495, 502 (Ct. App. 2013). “When juxtaposing the prejudicial effect against the probative value, the determination must be based on the entire record and will turn on the facts of each case.” State v. Lyles, 379 S.C. 328, 338, 665 S.E.2d 201, 206 (Ct. App. 2008). Only after balancing the probative value and the danger of unfair prejudice may the court determine if the danger of unfair prejudice outweighs the probative value of the proffered evidence as required by Rule 403, SCRE.

Analysis

Applying this analytical framework to the present case reveals that balancing of the low probative value of the portions of the video defense counsel sought to redact and the extreme danger of unfair prejudice posed by the evidence necessitated the exclusion of portions of the video.

The starting point for determining the relevancy, probative value, and danger of unfair prejudice is with the ultimate issue before the jury. The question before the jury was – did the state prove beyond a reasonable doubt that Appellant had the specific intent to kill Smith with malice aforethought?

The initial portion of the video was not probative of any question before the jury. During the beginning of the video, Smith spoke to a woman who looked like a patron at the store. State's Exhibit #39. This woman did not testify at the trial. The woman told Smith that a person was standing nearby under some trees and that the person had tried to steal a bottle of liquor from a man. State's Exhibit #39. She also told the officer that the man from whom there had been an attempted theft jumped in his car and left the store. State's Exhibit #39. The statements by the woman to the officer were not probative of any issue before the jury. The woman's statements served only to impugn Appellant's character and make unfounded accusations of criminal conduct against him. When the woman did not testify at his trial, Appellant was unable to cross-examine her regarding her accusations. The probative value of the initial portion of the video was extremely low.

Due to the woman's statements assassinating Appellant's character and accusing him of trying to steal from someone, the danger of unfair prejudice was extremely high. The jury was left with the woman's unchallenged statements that Appellant had engaged in criminal conduct.

The portion of the video that captured events after the shooting were likewise of little probative value regarding the issue before the jury. State's Exhibit #39. The video showed Smith

interacting with dispatch and other individuals. State's Exhibit #39. The video also showed his interaction with a bystander, who ultimately testified at trial. State's Exhibit #39. When the other police officers arrived with medical personnel, there was nothing captured on the video that concerned the offense. State's Exhibit #39.

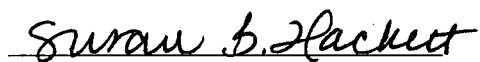
Rather, everything on the video after the shooting posed a danger of unfair prejudice to Appellant. The video captured showed Smith's blood on his hands and inside and outside of the police car. State's Exhibit #39. During this time, Smith actually told the dispatcher to tell his family he loved them. State's Exhibit #39. This could only serve to inflame the passions of the jury. At one point, individuals who appeared to be Smith's family members arrived. State's Exhibit #39. The family members expressed extreme emotions regarding Smith's condition, and even prayed over him. State's Exhibit #39. At one point, a woman prayed that he not die "in the name of Jesus." State's Exhibit #39. The prayer and the family's emotional reaction could serve only arouse the jurors' emotions. Thus, the danger of unfair prejudice was extremely high concerning the last portion of the video.

Only one conclusion may be drawn from balancing the extreme danger of unfair prejudice resulting from the admission of the challenged portions of the video against their low probative value - - any probative value of the portions of the video was substantially outweighed by the danger of unfair prejudice.

CONCLUSION

Appellant respectfully requests this Court reverse his convictions and remand for a new trial.

Respectfully Submitted,



Susan B. Hackett

Appellate Defender

ATTORNEY FOR APPELLANT

This 6th day of July, 2018.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Hampton County
Roger M. Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MALCOLM ANTWON ORR,

APPELLANT

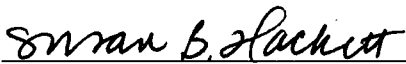
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Malcolm Antwon Orr states:

- (1) She is an Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent Appellant.
- (2) She has reviewed the record of appellant's trial before Judge Roger M. Young, which was held on August 7-10, 2017, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
- (3) Pursuant to Anders v. California, 386 U.S. 738 (1967), she has briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Malcolm Antwon Orr.

Respectfully Submitted,



Susan B. Hackett
Appellate Defender
ATTORNEY FOR APPELLANT

This 6th day of July, 2018.

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JUL 06 2018

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Hampton County
Roger M. Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MALCOLM ANTWON ORR,

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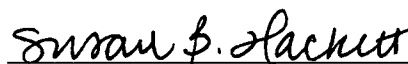
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (4) Entire trial transcript dated August 7-9, 2017;
- (5) State's Exhibit #1 (911 call);
- (6) State's Exhibit # 39 (Body Camera video);
- (7) True-billed indictments; and
- (8) Sentence sheets.

I certify that this designation contains no matter which is irrelevant to this appeal.

July 6, 2018.



Susan B. Hackett
Appellate Defender
S.C. Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330
ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

July 6, 2018.

Susan B. Hackett

Susan B. Hackett
Appellate Defender

South Carolina Commission on Indigent
Defense

Division of Appellate Defense

PO Box 11589

Columbia, SC 29211-1589

(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED

JUL 06 2018

SC Court of Appeals

Appeal from Hampton County

Roger M. Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MALCOLM ANTWON ORR,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter have been served on Malcolm Antwon Orr, 329462, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 6th day of July, 2018.

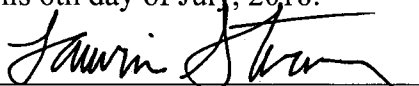


Susan B. Hackett

Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 6th day of July, 2018.

 (L.S)

Notary Public for South Carolina

My Commission Expires: July 5, 2027

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Malcolm Antwon Orr, Appellant.

Appellate Case No. 2017-001707

Appeal From Hampton County
Roger M. Young, Sr., Circuit Court Judge

Unpublished Opinion No. 2019-UP-204
Submitted May 1, 2019 – Filed June 5, 2019

APPEAL DISMISSED

Appellate Defender Susan Barber Hackett, of Columbia,
for Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General William M. Blicht,
Jr., both of Columbia, for Respondent.

PER CURIAM: Dismissed after review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.¹

APPEAL DISMISSED.

HUFF, THOMAS, and KONDUROS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

June 21, 2019

The Honorable Mylinda D. Nettles
PO Box 7
Hampton SC 29924-0007

REMITTITUR

Re: The State v. Malcolm Antwon Orr
Lower Court Case No. 2016GS2500012
Appellate Case No. 2017-001707

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

The following exhibits filed in this case are being returned to you:

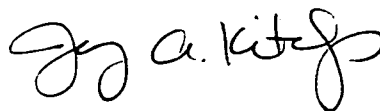
State's Exhibit #1 - 911 call and State's Exhibit #39 - body camera video

Please sign and return the enclosed copy of this letter acknowledging receipt of these items.

Exhibit Receipt Acknowledgement

Name: _____ Date: _____

Very truly yours,

A handwritten signature in cursive script, appearing to read "J. A. Kite".

CLERK

Enclosure

cc: Malcolm Antwon Orr, 329462
Alan McCrory Wilson, Esquire
John Benjamin Aplin, Esquire
Susan Barber Hackett, Esquire
William M. Blicht, Jr., Esquire

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF HAMPTON

MALCOLM ANTWON ORR (329462)

Full name and prison number (if any) of Applicant. JUN 4 2020

v.

State of South Carolina

MYLINDA D NETTLES
CLERK OF COURT
HAMPTON COUNTY, SC

IN THE COURT OF COMMON PLEAS

2020-CP-25.257

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 Lieber Correctional Institution
2. Name and location of Court which imposed sentence Hampton County General Sessions
3. Name(s) of co-defendant(s) (if any) none
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2016-GS-25-0013 Attempted Murder
 - (b) 2016-GS-25-0012 Possession of weapon during commission of violent crime
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) August 9, 2017 30 years for Attempted Murder
 - (b) August 9, 2017 5 years for Possession of Weapon consecutive to 30 year

sentence.

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty X
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Appeal Dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. June 5, 2019
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished opinion citing Anders v. California
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective assistance of trial counsel
- (b) Admission into evidence of highly prejudicial evidence: i. e. a video of the event.
- (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Trial counsel was not properly prepared to go to trial when the case was called and failed to properly object to the admission of highly prejudicial evidence.
- (b) The trial judge allowed the admission of the complete video of the event captured on the victim police officer's eyeglass camera which included the officer bleeding and making last minute/dying requests which were highly prejudicial and added no probative value to the guilt or innocence of the defendant.
- (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? _____

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

- (b) the name and location of the Court in which each was filed:

i. _____

ii. _____

iii. _____

iv. _____

- (c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

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:

- (a) _____
- (b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? No(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? No

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. Trial attorney: Robert Hughes, Esq. Hampton County Public Defender's OfficeRidgeland, S. C.ii. Appeal attorney: Susan B. Hackett, Esq. S. C. Office of Indigent DefenseColumbia, S. C.

iii. _____

(b) the proceedings at which each such attorney represented you:

i. Trialii. Appeal

iii. _____

19. State clearly the relief you seek in filing this application:

Dismissal of convictions and new trial.

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Hampton)

I, Malcolm Antwon Orr, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

SWORN to and subscribed before me this
day of June, 2020

Christine E. Jones (L.S.)
Notary Public

My Commission Expires: 1-22-2030

Malcolm A. Orr
1st By [Signature]

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HAMPTON	)	FOR THE FOURTEENTH JUDICIAL CIRCUIT
	)	
Malcolm Antwon Orr, SCDC #3294628,	)	Case No. 2020-CP-25-257
	)	
Applicant,	)	
	)	
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

FILED
 AM/PM
OCT 19 2020
 MYLINDA D NETTLES
 CLERK OF COURT
 HAMPTON COUNTY, SC

**RETURN, MOTION FOR A MORE
 DEFINITE STATEMENT, AND PARTIAL
 TO DISMISS THE APPLICATION
 FOR POST-CONVICTION RELIEF
 (Counsel Retained)**

In response to the post-conviction relief application filed by Applicant Malcolm Antwon Orr on June 4, 2020, by retained counsel James P. Craig, Esquire, Respondent the State of South Carolina makes the following return and partially moves to dismiss claims of trial court error.

I. FACTS & PROCEDURAL HISTORY

Applicant is currently incarcerated in the South Carolina Department of Corrections for the January 1, 2016, shooting of Estill Police Department Officer Quincy Smith while he was responding to a suspected robbery at a store. As a result of the shooting, the Hampton County Grand Jury indicted Applicant for attempted murder (2016-GS-25-00013) and possession of a weapon during the commission of a violent crime (2016-GS-25-00012).

Deputy Public Defender Robert Hughes represented Applicant. Fourteenth Circuit Solicitor Isaac McDuffie Stone, III, and Assistant Solicitor Brian Hollen prosecuted the case. On August 7, 2017, the State called the matter to trial before the Honorable Roger M. Young, Sr., circuit court judge, and a jury. Before trial began, Applicant moved to exclude portions of a video recording from before, during, and after the shooting made with Officer Smith's camera-equipped glasses. Following a hearing, Judge Young denied the motion and the case proceeded

to trial. The jury convicted Applicant as indicted. Judge Young sentenced Applicant to consecutive terms of imprisonment of thirty years for the attempted murder conviction and five years for the weapons conviction.

Applicant timely served and filed a Notice of Appeal and was represented by Appellate Defender Susan B. Hackett of the South Carolina Commission on Indigent Defense-Office of Appellate Defense. Appellate Defender Hackett filed a Brief of Appellant pursuant to Anders v. California, 386 U.S. 738 (1967) and a petition to be relieved as counsel based on “her opinion [that] the appeal is without legal merit sufficient to warrant a new trial.” In this Anders brief, Applicant asserted the trial court erred “in admitting portions of a video from a camera worn by the police officer where the video captured matters prior to and after the shooting and the probative value of those matters was substantially outweighed by the danger of unfair prejudice?” Following a review pursuant to Anders, the South Carolina Court of Appeals dismissed the appeal and granted Appellate Defender Hackett’s petition to be relieved as counsel. State v. Malcolm Antwon Orr, 2019-UP-204 (Ct. App. filed June 5, 2019). The remittitur was returned to the circuit court June 21, 2019.

Applicant initiated this action with the filing of his application for post-conviction relief on June 4, 2019.

II. CURRENT APPLICATION

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following:

- (a) Ineffective Assistance of Trial Counsel, specifically “[t]rial Counsel was not properly prepared to go to trial when the case was called and failed to properly object to admission of highly prejudicial evidence.”; and

(b) Trial Court error, specifically, “the [trial] judge allowed the admission of the complete video of the event captured by the victim police officer’s eyeglass camera which included the officer bleeding and making last minute/dying requests which were highly prejudicial and added no probative value to the guilt or innocence of the defendant.”

As the stated relief he is seeking, Applicant states, “[d]ismissal of conviction s and a new trial.”

Attached herewith and incorporated by reference are the Hampton County Clerk of Court records regarding the subject convictions, Applicant’s records from the South Carolina Department of Corrections, the trial transcript, Applicant’s appellate records, and the records of the current PCR action. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III. RESPONSE TO ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant asserts trial counsel was constitutionally ineffective because he was “not properly prepared to go to trial” and “failed to properly object to the admission of highly prejudicial evidence.” However, Applicant fails to provide any specificity for these claims or explain exactly how counsel was not properly prepared or specific exactly what evidence to which counsel failed to object. Based on this, it is impossible for Respondent to discern how exactly Applicant believes counsel was ineffective. Respondent moves for Applicant, through his counsel, to amend this allegation to include sufficient, specific facts to support his claim of ineffective assistance of counsel.

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 (1984). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. § 17-27-20(A) (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—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel’s conduct “was so ineffective as to require reversal” of the applicant’s conviction or sentence. 466 U.S. at 687. To obtain reversal of a conviction, the applicant must prove that (1) their attorney’s performance fell below an objective standard of reasonableness (the performance prong) and (2) the deficient performance prejudiced the defense to the degree that it deprived the defendant of a fair trial (the prejudice prong). *Id.* at 690–95; *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. The defendant’s burden for proving both of these components is heavy in light of the strong presumption that counsel’s conduct fell within the range of reasonable professional legal assistance. *Strickland*, 466 U.S. at 690. Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Id.* at 700.

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). In order to prove deficient performance, the applicant must show counsel’s representation fell below an

objective standard of “reasonableness under prevailing professional norms.” *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland, however, “does not guarantee perfect representation[—]only a ‘reasonably competent attorney.’” *Harrington v. Richter*, 562 U.S. 86, 110 (2011) (quoting *Strickland*, 466 U.S. at 687). 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. *Strickland*, 466 U.S. at 686. Just as there is “no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities.” *Harrington*, 562 U.S. at 110.

Accordingly, “[j]udicial scrutiny of counsel’s performance must be highly deferential, 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; see also *Yarborough v. Gentry*, 540 U.S. 1, 6 (2003) (“The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.”). 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. 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 reasonable professional assistance.” *Butler*, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

A reviewing court “must judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed at the time of counsel’s conduct.” *Strickland*, 466 U.S. at 690. 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.” *Id.*

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; *see also Harrington*, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel’s representation is a most deferential one. *Harrington*, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney’s representation amounted to incompetence under “prevailing professional norms,” *not* whether it deviated from best practices or most common custom. *Id.* (quoting *Strickland*, 466 U.S. at 690) (emphasis added).

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. In determining prejudice, the reviewing court must consider the totality of the evidence before the jury. *Id.* at 695.

Thus, it is not enough “to show the 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 668. 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 performance and prejudice standards, however, “do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged.” *Strickland*, at 696. Moreover, “there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one.” *Id.* at 697. The court “need not determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. *Id.* If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may

evaluate the prejudice prong only. *Id.*

As discussed above, it is impossible for Respondent to adequately respond to Applicant's allegation of ineffective assistance of counsel because Applicant has completely failed to provide any specific allegations or facts to support such claims. Respondent requests Applicant, through counsel, provide specific claims and facts to support this vague allegation.

The Uniform Post-Conviction Procedure Act requires that the Applicant must “. . . specifically set forth the grounds upon which the application is based.” Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965).

Applicant has failed to state with any specificity the specific facts giving rise to these allegations. Additionally, this allegation is not supported by any other additional information in the application. Respondent moves pursuant to Rule 12(c), SCRCF, to require Applicant to provide a more definite statement of her allegations of ineffective assistance of counsel. The Uniform Post-Conviction Procedure Act requires applicants to “specifically set forth the grounds upon which the application is based.” S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Furthermore, Rule 8(a), SCRCF, requires all civil pleadings include “a short and plain statement of the facts showing that the pleader is entitled to relief.” Therefore, Respondent moves to require Applicant to file an amended application well in advance of the hearing scheduled in this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the application.

Respondent submits Applicant cannot satisfy either requirement of *Strickland*. However, the record likely does not refute or disprove Applicant's vague allegations of ineffective assistance of trial counsel; therefore, the State requests an evidentiary hearing to fully resolve the issues after counsel properly amends these allegations to provide Respondent proper specificity and notice of all claims. *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").

III. RESPONSE TO ALLEGATIONS OF TRIAL COURT ERROR

Applicant asserts the trial court erred when "the [trial] judge allowed the admission of the complete video of the event captured by the victim police officer's eyeglass camera which included the officer bleeding and making last minute/dying requests which were highly prejudicial and added no probative value to the guilt or innocence of the defendant."

Respondent moves for summary dismissal of this claim of trial court error, as it raises a direct appeal issue that is procedurally barred by S.C. Code Ann. Section 17-27-20(b). Post-conviction relief is not a substitute for an appeal. *Simmons v. State*, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). PCR relief is only proper when the application collaterally attacks the validity of the conviction or sentence. *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). "In a direct appeal, the focus generally is upon the propriety of rulings made by the circuit court in response to a party's motions or objections. In PCR, the focus usually is upon alleged errors made by trial or plea counsel. Therefore, when asserting the erroneous admission of evidence, a violation of a constitutional right, or other errors in a proceeding, the applicant generally must frame the issue as one of ineffective assistance of counsel." *Id.* at 363-64, 527 S.E.2d at 747. A

post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. *Drayton v. Evatt*, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Applicant could have raised this issue on appeal, and his failure to do so has waived this allegation as grounds for relief. Accordingly, Respondent moved for summary dismissal of this allegation.

V. 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, SCRPC. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State 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. *See Love* (Kittredge, J., dissent) (“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, SCRPC. *See also* Rules 15(a)-(b), SCRPC. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. *See* Rule 15(a), SCRPC.

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.

VI. GENERAL DENIAL

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

VII. CONCLUSION

WHEREFORE, the State respectfully requests this Court convene an evidentiary hearing on the allegation of ineffective assistance of counsel after counsel has properly amended the application to provide sufficient specificity for these claims.

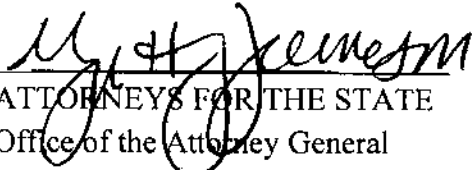
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

By:


ATTORNEYS FOR THE STATE
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

October 12, 2020.

State of South Carolina
County of Hampton

Malcolm Orr #329462)
Applicant

VS

State of South Carolina)
Respondents

TO Respondents

In The Court of Common Pleas

C/A 2020-CP25-00257

NOTICE MOTION AMEND
Post-Conviction Application

FILED
AM/PM

APR 22 2021

MYLINDA D NETTLES
CLERK OF COURT
HAMPTON COUNTY, SC

Now comes the Applicant moves before this Honorable Court pursuant to Motion to Amend pending Post-Conviction Relief application on grounds of ineffective assistance of counsel.

ARGUMENT I

Applicant contends that trial counsel provide ineffective assistance of counsel by failure to object to broken link in the chain of custody Report.

During Applicant jury trial by Direct examination by solicitor Hollen gu-

estation ofc Neil Greifinger pursuant to ofc Neil Greifinger receive evidence that was release by or doctor and the chain of custody Report does Not shows or doctor Name listed in the chain of custody Report, And counsel was ineffective assistance of counsel by failure to object to broken link in the chain of custody Report.

"see Trial Court transcript at Pg(225)

L(3) I got it from the or doctor, I can't recall his

L(4) Name, but he was the one that called security to come

L(5) pick up the Evidence.

L(6) okay so you picked up the bullet from

L(7) doctor, and what did you do?

The applicant believes that the chain of custody for the Evidence of Bullet was not and cannot be established. Proof of chain of custody need not negate all possibility of tampering so long as the chain of possession is complete." State v Carter 344 S.C. 419, 544 SE2d 835 (2001). "In applying this rule, we have found evidence inadmissible only where there is a missing link in the chain of possession because the identity of those who handled the [substance] was not established at least as far as practicable. see id.

"Evidence is still required as to how the item was obtained and how it was handled to ensure that it is, in fact, what it is purported to be." State v Hatcher 392 S.C. 86708 SE.2d 750 (2011). In Hatcher, the South Carolina Supreme Court

considered the following factors in reviewing the chain of custody: the Nature of the Article, the circumstances surrounding the preservation and custody of it, and the likelihood of intermeddlers tampering with it.

Applicant contends in the most common, and most general claim, is ineffective assistance of Counsel. The applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v State, 286 S. C. 441 334 S.E.2d 813 (1985).

First, the applicant ~~must~~ must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by

its "reasonableness under professional Norms" *Cherry*, 300 S.C. at 117, 385 SE2d at 625, citing *Strickland*. Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 SE2d at 625. However, Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Butler*, *Id.* The applicant must overcome this presumption to receive relief. *Cherry v. State* 300 S.C. 115, 386 SE2d 624 (1989).

Argument II

Applicant contends trial counsel provide ineffective assistance of counsel by failure conduct A Pre-trial investigation for search warrant Samsung Flip-style cellphone.

During the Applicant jury trial Respondent's enter exhibit (4) §(1b) into evidence A Samsung Flip-style cellphone and counsel prejudice Applicant by failure conduct a Pre-trial investigation to deter did the Respondent's had right to search his person property for text messages inside his Samsung Flip-style cellphone. Also this is 4th Amendment violation to seizure of the cellphone admitted in evidence invaded no right of privacy of person or premises. Which would entitle wrong sum to object to it use at trial. D.P 371 U.S. 491-492

To establish counsel was inadequately prepared for trial, an applicant must present evidence of what counsel could have discovered or what other defense could have been pursued had counsel been more fully prepared. Jackson v State, 329 S.C. 345, 495 SE2d 768 (1998)

(Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result). The most common, and most tence of counsel. The applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed2d 674, 692 (1984); Butler v State, 286 S.C. 441, 334 SE2d 813 (1985).

First, the applicant must prove that Counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." *Cherry*, 300 S.C. at 117, 385 S.E2d at 625, citing *Strickland*. Second, Counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for Counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E2d at 625. However, Courts presume that Counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Butler*, *id.* The applicant must overcome this presumption to receive relief. *Cherry v. State*, 300 S.C. 115, 386 S.E2d 624 (1989).

Conclusion

Wherefore, the applicant should be entitled to Evidentiary hearing on the allegation of ineffective assistance of counsel.

Dated 3-26- 2021

Respectfully Submitted
S/ Malcolm Orr

Malcolm Orr # 329462
136 Wilbourn Ave
Ridgely, S.C. 29472

FILED
AM/PM

APR 22 2021

MYLINDA D NETTLES
CLERK OF COURT
HAMPTON COUNTY, SC

Malcolm Orr (#329462)
Lieber Carr Inst
Post Office Box 205
Ridgeville S.C. 29472

Date 3-26-2021

2020-CP-25-00257

Dear James P. Craig, Esquire

Please find my motion to Amend
FOR Based on ~~the~~ ineffective assistance
of Counsel Request to be filed with
Clerk of Court Hampton County Request-
ing A clocked-Dated stamped copy.

Respectfully Submitted
s/ Malcolm Orr
Malcolm Orr

c/c: M. O.
c/c: J. P. C.
c/c: C. C. H. C.

STATE OF SOUTH CAROLINA
COUNTY OF HAMPTON

) IN THE COURT OF COMMON PLEAS
) FOR THE FOURTEENTH JUDICIAL CIRCUIT
)
)

Malcolm Orr, #329628,
Applicant,

) Case No.: 2020-CP-25-00257
)

v.
State of South Carolina,
Respondent.

) **APPLICANT'S AMENDED APPLICATION**
)
)
)

NOW COMES Applicant, Malcolm Orr, amending his application filed June 4, 2020. In addition to the allegations raised in his initial application, Mr. Orr, through PCR Counsel, submits the following:

1. Counsel was constitutionally ineffective for failure to object to the Court charging the jury that specific intent is not an element of attempted murder. (R. 284-85).
2. Counsel was constitutionally ineffective for failure to contemporaneously object to the video entered at trial. (R. 130).
3. Counsel was constitutionally ineffective for failure to contemporaneously object to the chain of custody. (R. 262).
4. Counsel was constitutionally ineffective for failure to object to the State burden shifting during closing argument. (R. 272).
5. Counsel was constitutionally ineffective for failure to properly prepare for trial, including preparing a proper defense at trial.

Conclusion

Based upon the above, Mr. Orr 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

The Law Office of Chelsey F. Marto, LLC
P.O. Box 8795
Columbia, SC, 29201

(864)-404-5583
info@chelseymarto.com

For Applicant Malcolm Orr

April 29, 2024

STATE OF SOUTH CAROLINA
COUNTY OF HAMPTON

) IN THE COURT OF COMMON PLEAS
) FOR THE FOURTEENTH JUDICIAL CIRCUIT
)
)

Malcolm Orr, #329628,
Applicant,

) Case No.: 2020-CP-25-00257
)

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: Danielle Dixon, Esquire
PCR Division
P.O. Box 11549
Columbia, SC, 29211



Attorney for Applicant

April 29, 2024

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
2020-CP-25-257

Malcolm A. Orr,

Plaintiff,

VS.

State of South Carolina,

Defendant.

-----)

TRANSCRIPT OF HEARING

May 7, 2024
Beaufort, South Carolina

B E F O R E:

The Honorable Derwin Cole, Judge Presiding

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

For the Applicant -
Chelsea Marto, Esquire
1122 Lady Street, Suite 206
Columbia, South Carolina 29201
864-404-5583

For the State -
Danielle Dixon, Esquire
1000 Assembly Street
Columbia, South Carolina 29201
803-734-3970

Cathy L. Young, CVR-M
Official Circuit Court Reporter
Post Office Box 4604
Beaufort, South Carolina 29903

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No exhibits were marked in this hearing.

1 P R O C E E D I N G S

2 * * * * *

3 THE COURT: Are you ready?

4 MS. DIXON: May it please the Court? I'm
5 Danielle Dixon, Assistant Attorney General for the
6 State of South Carolina. This is the case of
7 Malcolm Orr v. State, Docket Number 2020-CP-25-257.
8 Mr. Orr is currently serving an aggregate 35-year
9 sentence. His charges in February 2016 he was
10 indicted by the Hampton Grand Jury for attempted
11 murder and possession of a weapon during a violent
12 crime. Those are Indictment Numbers 2016-GS-25-12
13 and 13.

14 Your Honor, these charges arose from the
15 shooting of a Police Officer, Quincy Smith, on
16 January 1st, 2016. He was with the Estill Police
17 Department. He was responding to a 911 call about a
18 burglary, and a bystander pointed out the suspect,
19 and he started trying to apprehend him, and at that
20 time Mr. Orr pulled a weapon and shot at him. It
21 was all captured on the law enforcement officer's
22 camera that was in his glasses. He had glasses with
23 a camera in them. We do have that video today to
24 enter as an exhibit, but that was kind of the crux
25 of the trial. He was convicted as indicted. He had

1 a jury trial before Judge Young on August 7th, 2017.
2 He was represented by Robert Hughes, and this was
3 prosecuted by Solicitor Stone and Assistant
4 Solicitor Brian Holland. He was convicted as
5 indicted, and he received consecutive sentences of
6 30 years for attempted murder, five years for the
7 weapon charge. He filed a notice of appeal, which
8 was perfected by Appellate Defender Susan Hackett.
9 She filed a brief pursuant to Anders v. California.
10 The Court of Appeals dismissed it as pursuant to
11 Anders, and the remittitur was sent June 21st, 2019.
12 Mr. Orr did timely file this PCR application on June
13 4th, 2020, asserting ineffective assistance of
14 counsel for failing to prepare and object to highly
15 prejudicial evidence, and then there was trial court
16 where the Judge -- and the Judge allowing the
17 admission of the entirety of the video. He did have
18 prior counsel that was relieved. He was pro se for
19 a while. We did have a hearing, I want to say
20 sometime mid to late last year, and the Court
21 ordered appointment of counsel at that time; and Ms.
22 Marto was appointed October 18th, 2023, and she has
23 filed or sent us an amended application raising five
24 grounds that counsel was ineffective for failing to
25 object to a charge related to specific intent of

1 attempted murder, ineffective for failing to
2 contemporaneously object to the video at trial,
3 ineffective for failing to contemporaneously object
4 to the chain of custody, ineffective for failing to
5 object to the State's burden shifting during closing
6 argument, and ineffective for failing to properly
7 prepare for trial, including preparing a proper
8 defense. And at this time I'll let Ms. Marto
9 address the Court.

10 MS. MARTO: Good morning, Judge. We'd call
11 Malcolm Orr to the stand, please.

12 * * * * *

13 Malcom Orr,
14 having been duly sworn,
15 testifies as follows:

16 * * * * *

17 DIRECT EXAMINATION

18 BY MS. MARTO:

19 Q. Good morning, sir.

20 A. Good morning.

21 Q. So what was your -- what were you
22 charged with?

23 A. Attempted murder.

24 Q. Okay. And you went to trial in the
25 case?

1 A. Yes, ma'am.

2 Q. Who were you represented by?

3 A. Mr. Hughes.

4 Q. Roughly, how many times did y'all meet
5 to discuss the case?

6 A. I think once or twice.

7 Q. And how do you feel like counsel did at
8 trial?

9 A. I feel he could have did better.

10 Q. Did y'all discuss what trial defense you
11 were gonna use at trial?

12 A. No, not at the moment.

13 Q. Are you currently aware of what defense
14 was used at trial?

15 A. No, not that I know of.

16 Q. And we talked about you filing this
17 application, right?

18 A. Yes, ma'am.

19 Q. Okay. So now there was a video of the
20 incident entered at trial, correct?

21 A. Yes.

22 Q. Okay. Roughly, what did that document?

23 A. Ma'am?

24 Q. Roughly, what did that show? What did
25 the video show?

1 A. Well, the whole incident that took
2 place.

3 Q. And did counsel timely object to that
4 video coming in?

5 A. No, ma'am.

6 Q. Do you think that if he did, it would
7 have impacted the case?

8 A. Yeah, I think it would have.

9 Q. Okay, how so?

10 A. That the outcome would have been
11 different.

12 Q. And do you think counsel timely objected
13 to the chain of custody in this case?

14 A. No, ma'am.

15 Q. And how do you think the failure to
16 timely object to that impacted your case?

17 A. It also would have made a difference
18 too.

19 Q. Now, you wanted counsel to do a pretrial
20 motion for -- concerning the search warrant of a
21 cell phone; is that what you wrote in your pro se
22 amendment?

23 A. Yes, ma'am.

24 Q. Okay. Now, what -- what did the cell
25 phone show? What did it do?

1 A. I think they used it for identification
2 purpose.

3 Q. And how do you think it impacted you at
4 trial?

5 A. I -- I think it hurt a little, yeah.

6 Q. And we also talked about potential
7 burden shifting in the State's closing; is that
8 correct?

9 A. Yes, ma'am.

10 Q. So page 272, starting with line 17, it
11 reads, "Stop it. How many did you hear after that?
12 Around two more when this officer was running,
13 literally put his leg back to the police car.
14 That's malice, that's Malcolm Orr. He attempted to
15 kill an officer and almost did with malice. And I
16 asked you at the very first of this, and I will come
17 back here and ask you for one more thing, and one
18 thing only, and I'm gonna do that. When you come
19 back with the verdict, speak the truth." Do you
20 think that it was appropriate for the State to tell
21 the jury to speak the truth?

22 A. No, ma'am.

23 Q. Do you think that impacted your case?

24 A. I think it could have changed -- changed
25 their judgment.

1 Q. Do you think that that constituted
2 burden shifting?

3 A. Yes, ma'am.

4 Q. And then finally we talked about jury
5 instructions, and how the Court charged on pages 284
6 and 285 in the record, starting with line 25, and
7 read what the report says, "Specific intent to kill
8 is not an element of attempted murder, but there
9 must be a general intent to commit some serious
10 bodily injury." Do you think that that jury charge
11 is appropriate?

12 A. No, ma'am.

13 Q. Do you think that was an accurate
14 statement of the law?

15 A. Ma'am?

16 Q. Do you think it was an accurate
17 statement of the law?

18 A. No, ma'am.

19 Q. Do you wish counsel would have objected
20 to those instructions?

21 A. Yes.

22 Q. Do you think that it could have changed
23 the outcome of your trial?

24 A. Yes, ma'am.

25 Q. Do you have anything else you want to

1 address?

2 A. No, that's it.

3 MS. MARTO: No further questions.

4 MS. DIXON: Just briefly.

5 **CROSS-EXAMINATION**

6 BY MS. DIXON:

7 Q. What chain of custody do you think
8 should have been objected to?

9 A. Ma'am?

10 Q. What chain of custody do you think
11 should have been objected to?

12 A. For the bullet.

13 Q. For the bullet?

14 A. Yes, ma'am.

15 Q. Gotcha, okay, and was there an expert
16 that matched that bullet with any kind of weapon, or
17 anything?

18 A. All right, they had -- they had an
19 expert, but I don't know if he matched it to a gun
20 or not.

21 Q. Gotcha, nothing. Did they ever find a
22 gun?

23 A. No, ma'am.

24 Q. No, they didn't find a gun?

25 A. Uh-uh.

1 Q. Gotcha.

2 MS. DIXON: Nothing further.

3 MS. MARTO: No redirect.

4 THE COURT: Step down.

5 MS. MARTO: We'd call Robert Hughes.

6 * * * * *

7 Robert Hughes,

8 having been duly sworn,

9 testifies as follows:

10 * * * * *

11 DIRECT EXAMINATION

12 BY MS. MARTO:

13 Q. Good morning, sir.

14 A. Good morning.

15 Q. So you represented Mr. Orr at his trial,
16 correct?

17 A. Correct.

18 Q. And he was charged and convicted of
19 attempted murder, correct?

20 A. Attempted murder and use of a weapon
21 during the commission of a violent crime.

22 Q. Do you remember the jury instructions
23 that were given at the trial?

24 A. Standard judge's jury instructions.

25 Q. Do you recall the Judge charging that

1 specific intent is not an element of attempted
2 murder?

3 A. No.

4 Q. Okay, but you would agree that the
5 transcript is the best resource for what happens at
6 trial?

7 A. I'm sorry?

8 Q. Would you agree that the transcript is
9 the best resource for understanding what happened at
10 trial?

11 A. Sure.

12 Q. Okay. And so if you don't recall that
13 instruction being given, do you have any specific, I
14 guess, recollection of why you didn't object to it?

15 A. I had gone over it. It seemed to be
16 appropriate. I would rarely, if ever, object to a
17 judge's instructions. There was nothing that was
18 blatantly argumentative or blatantly in favor of the
19 State.

20 Q. Do you recall the video that was shown
21 at trial?

22 A. All too well.

23 Q. Okay. And you took some time before
24 objecting to that video; is that fair to say?

25 A. No, ma'am. I objected in chambers to

1 that video for half an hour. If I could have gotten
2 that video out, I would have won that case. There
3 was absolutely no way in the world I was ever going
4 to get that video out. That is the only case I have
5 ever argued that anything after the sixth shot was
6 extremely prejudicial. I argued and was told flat
7 out, "The video's coming in entirely."

8 Q. So you objected in chambers, but you
9 didn't object right before the video was entered on
10 the record, correct?

11 A. I've -- probably not, I may have
12 objected nunc pro tunc, but not -- not at the time.

13 Q. And then the chain of custody as well,
14 it sounds like that was another thing where you
15 objected in chambers, but didn't object on the
16 record in time?

17 A. Chain of custody to?

18 Q. For the bullet.

19 A. Why would I object to something they
20 never had a gun to shoot -- to match it to? It was
21 just a bullet found inside of Quincy.

22 Q. And so, yeah, I'm looking at the record
23 on page 262, start with line 17, it says, "Just one
24 other thing for the record, yesterday I objected to
25 the chain. I believe in chambers that we discussed

1 this. I do consider the fact that there was not
2 testimony whatsoever, that the bullet that the State
3 entered into evidence came from the Officer Quincy
4 Smith. I do not see where there is anything but
5 harmless error in admitting that." So you did put
6 something on the record, correct, about an objection
7 to ---

8 A. I may have -- the bullet was -- I fought
9 the video more than anything. The bullet was
10 secondary.

11 Q. Now, do you recall the State telling the
12 jury to speak the truth during their closing
13 argument?

14 A. Not off the top of my head.

15 Q. Is that the type of statement that you
16 would typically object to?

17 A. No.

18 Q. Okay. Do you think that under the law
19 that type of language is appropriate?

20 A. Sure. It's basically a translation of
21 the Latin for verdict. They all -- we always want
22 them to seek the truth. Sometimes the truth helps
23 us more than it helps the State.

24 Q. Now, what was the defense you decided to
25 present at trial?

1 A. I talked to as many defense attorneys as
2 I could get to sit down to find some type of
3 defense. They -- I talked with Mr. Orr a number of
4 times, he swore it was not him. He also said flat
5 out that he was not gonna testify. Mistaken
6 identity requires defense to testify. I attempted
7 an in-round of self-defense, even though self-
8 defense requires testimony. I tried to get that in
9 as best I could. I -- there was very little defense
10 once it was confirmed that the video was coming in.
11 I tried everything I could and snuck in a self-
12 defense without getting him to testify.

13 Q. Did you discuss that strategy with Mr.
14 Orr?

15 A. I talked to Mr. Orr ad nauseum.
16 Unfortunately, Mr. Orr was moved from Hampton County
17 to Beaufort County shortly after arrest for his
18 safety. He is accused of shooting a police officer
19 in Hampton County. He was moved back to Hampton
20 County about -- within -- I would like to say a
21 month before. I visited him over in Beaufort a
22 couple of times. I'd take his phone call many
23 times, but getting to Beaufort from Jasper was
24 extremely difficult. Getting into the Detention
25 Center was difficult, but I tried to see him as

1 often as possible. Each time I got the same answer,
2 as far as, "That's not me."

3 Q. Now, do you recall a cell phone being
4 entered at the trial?

5 A. Not really.

6 Q. Do you -- so because you don't recall
7 the cell phone, is there any recollection of why you
8 wouldn't have pursued a pretrial motion to suppress
9 that cell phone?

10 A. It would have been a minor thing that I
11 would have basically blinked and it'd be gone. Cell
12 phones were useless as far as any type of evidence
13 against him. Sometimes I would just basically go,
14 "It doesn't hurt us, it doesn't help us, it confuses
15 a jury, and a confused jury helps us."

16 MS. MARTO: One moment, Your Honor.
17 Nothing further.

18 MS. DIXON: One moment, Your Honor. May it
19 please the Court?

20 **CROSS-EXAMINATION**

21 BY MS. DIXON:

22 Q. How are you doing today, Mr. Hughes?

23 A. I am doing pretty good.

24 Q. Good. And can you tell me, in this
25 case, were you appointed or retained?

1 A. I am a public defender, I was appointed
2 in that I volunteered to take this case.

3 Q. Okay.

4 A. There are three attorneys in the
5 Beaufort, Jasper, Hampton office for the public
6 defenders. Two of those were primarily in Hampton
7 County and in Allendale. I work in Jasper
8 primarily, but this was a case where I knew a lot of
9 toes were gonna be stepped on in law enforcement, so
10 I went ahead and volunteered as an out-of-towner to
11 come in and trot on the Estill Police Department's
12 toes to keep from having the other attorneys get
13 into hot water with local law enforcement.

14 Q. Gotcha. And do you recall about how far
15 in advance of trial that you became counsel?

16 A. This happened on January 1st, he was
17 arrested shortly -- I think the same day. He would
18 have probably gone to arraignment -- I had it before
19 the end of January of that year, within a month of
20 him being arrested.

21 Q. Okay. And then I think you testified on
22 direct that you met with him ad nauseum times ---

23 A. I ---

24 Q. -- you met with him a lot. Do you
25 recall during those meetings, did y'all discuss the

1 State's evidence?

2 A. He had a copy of everything, which was
3 not that big. The incident report was a minor
4 thing. The primary evidence they had, and I showed
5 him that on day one, was the video. I showed him
6 the entire video as many times as he wanted to see
7 it.

8 Q. And then regarding the video itself, and
9 I know you said y'all discussed it in chambers, do
10 you recall putting an objection on the motion -- or
11 on the record?

12 A. I'm sure I did, I mean even if just to
13 be slapped down, I would have objected.

14 MS. DIXON: And, Your Honor, just for the
15 record, it's pages 69 to 71 is the pretrial motion.

16 BY MS. DIXON:

17 Q. And what you were objecting to, do you
18 recall the very beginning of the video, and then the
19 last maybe 18 minutes of it?

20 A. There was no reason for a -- what would
21 basically be considered a prior bad act of the
22 attempted strong-arm robbery at the store to come
23 in, 'cause -- and there was definitely extreme
24 prejudice after the -- I can't believe I'm saying
25 this, the sixth shot on the video that had nothing

1 to do with the actual shooting, and like I said, was
2 extremely prejudice.

3 MS. DIXON: And, Your Honor, I do have the
4 video. I think that this is the video that was
5 played at trial, which I believe Chelsea has
6 stipulated in terms of admissibility, and I'd like
7 to play just about two to three minutes of it.

8 THE COURT: Okay.

9 MS. DIXON: I think it's very relevant for
10 the substance in this case.

11 (Video being played for the Court.)

12 MS. DIXON: All right, Your Honor, I'm
13 gonna stop it there. And then we do have a couple
14 of still shots, just to kind of show, I guess, the
15 clarity of the video itself.

16 BY MS. DIXON:

17 Q. Mr. Hughes, when you saw this video,
18 what -- what kind of defense did you try to come up
19 with, or strategy did you have to come up with?

20 A. When I first saw the video back in
21 January of that year, I had absolutely no defense.
22 I had a solicitor who had made a fair offer. For
23 the record, let me explain that that is a glasses
24 camera purchased from Amazon. That is not your
25 standard vest camera, which law enforcement uses,

1 which is the reason why it's as clear as it is. But
2 as far as a defense was concerned, I looked at the
3 video, I got the offer, communicated the offer to
4 Mr. Orr, and then went looking for a defense. I --
5 I asked about 15 to 20 defense attorneys after
6 looking at the video to please give me a defense to
7 amand (sic) they basically go it's better you than
8 me. It wasn't until the trial that they tried to
9 sneak in a self-defense, because even at trial he
10 would not testify. I explained to him about
11 defense, and if anybody could come up with a
12 defense, I'd love to hear it. That's one of the
13 reasons why I was looking forward to a PCR hearing
14 is, hopefully, someone could give me a defense I
15 could have used.

16 Q. And then -- and did you discuss this
17 video and all of this with Mr. Orr?

18 A. I showed him the video shortly after
19 getting it back in January of that year. I showed
20 him the stills that were taken from it. We did not
21 have the readily availableness of showing a computer
22 video in the Detention Center, but every time I
23 could get a computer to him, I would show him the
24 video. Each time, "That's not me," that was his
25 defense.

1 Q. And then moving on to the issue today
2 about not objecting to a chain of custody for a
3 bullet, I believe, or a bullet fragment that was
4 recovered during the surgery, do you recall anything
5 about that bullet cartridge fragment?

6 A. There was no gun recovered. There was
7 no gun testified to as the bullet coming from.
8 Chain of custody of the bullet was moot. I mean
9 there was no reason to object to it because it
10 didn't hurt me, and like I said, anything that can
11 confuse a jury, more power to me.

12 Q. And then let's see, I think the final -
13 they've also raised that you failed to prepare for
14 trial, including a proper defense, and I think you
15 discussed that a little bit today. Is there
16 anything more you think you could have done in
17 preparation?

18 A. I have thought about nothing more. This
19 was a case that I was told I couldn't win, but
20 desperately wanted to win. If -- if I lost this
21 case, it wasn't gonna cost me a thing. If I won it,
22 I won the grand prize. A defense, please give me a
23 defense. I have asked -- I -- I used to carry that
24 video around on a flash drive I kept in my pocket.
25 Any time I could find a defense attorney who had not

1 seen it, I would show it to him. I would say, "This
2 is their case, please tell me what you would do." I
3 talked to Malcolm about it, excuse me, Mr. Orr, I
4 apologize, sir, and he told me it wasn't him. I had
5 the video shown to a relative and was told that was
6 him. I asked him, since he was a lifetime resident
7 of Estill, South Carolina, a small town, you know
8 everybody, "Give me the name of someone that looks
9 like you, not exactly like you." I didn't want a
10 twin, I just wanted someone that I could have
11 sitting in the courtroom and go, "You mean he looked
12 like that guy over there?" Anything as a defense, I
13 would have loved to have had one.

14 MS. DIXON: Nothing further, Your Honor.
15 Thank you.

16 MS. MARTO: No redirect, and no further
17 witnesses.

18 THE COURT: Thanks. You may step down.

19 WITNESS: Thank you, Your Honor.

20 MS. DIXON: Nothing further from the State,
21 other than argument, and she can go first.

22 **ARGUMENT BY MS. MARTO**

23 MS. MARTO: Judge, we certainly don't
24 abandon any of these issues that we have raised
25 today. The point I do want to highlight the most I

1 think is that the Court very clearly did charge
2 specific intent is not an element of attempted
3 murder, and counsel didn't object to that. This was
4 after the Court of Appeals opinion came out. It was
5 right before the Supreme Court opinion came out, but
6 still, I think that the controlling law was still
7 that that charge was inadmissible and impermissible,
8 and counsel wasn't able to give us a reason today.
9 In fact, I think he said that he felt the charge was
10 appropriate, and so based upon that we would just
11 request relief be granted in this case.

12 **ARGUMENT BY MS. DIXON**

13 MS. DIXON: May it please the Court? Going
14 first to the first one that she just addressed, Your
15 Honor, and we would concede that at the time of this
16 trial the Court of Appeals had issued an opinion
17 saying that attempted murder is a specific intent
18 crime, and the Judge here charged it as a general
19 intent crime. And then, of course, I mean I think
20 just a few months after this case, the Supreme Court
21 came out and affirmed the Court of Appeals finding
22 there, and kind of went a little bit further with
23 it. So we would concede that that was an incorrect
24 point of law, however, whenever addressing an error
25 of law in a jury charge, you can look to the whole

1 charge as well as the evidence, and determine
2 whether it was -- I think the language is, the
3 likelihood that it would affect the jury verdict.
4 And we would submit, Your Honor, it is not
5 reasonably likely that this affected the jury
6 verdict in any way for two reasons, number one, due
7 to the overwhelming evidence of guilt, which was
8 portrayed both in the video, and also the officer
9 did testify at trial and identified him as the
10 person at trial; but in addition to that, you know,
11 when you get into the weeds of the law related to
12 general versus specific intent crime, most of the
13 time it becomes irrelevant when there's an issue
14 regarding transfer to tenant. So if a shooter
15 intends to shoot person A, and the bullet strays and
16 hits person B, that's the concept of transferred
17 intent. And in murder, for example, because it's a
18 general intent crime, it can transfer. And,
19 obviously, in an attempted murder, which is specific
20 it cannot. Here, however, I would submit that, and
21 you saw it in the video, there was a guy in a red
22 shirt a little further up, but no evidence that
23 there was anyone else in the area other than the
24 police officer. And so when he -- when he pulls his
25 gun and turns, I don't think there's any compelling

1 argument that he intended to hit anyone other than
2 the officer that he looked right dead in the eye and
3 shot. So we would submit that while the charge was
4 error, it is not reasonable likely that it affected
5 the jury verdict at all. Going on, in terms of the
6 video, and we would concede there was not a
7 contemporaneous objection. He did argue pretrial
8 and in chambers against admitting the beginning
9 portion where the lady was speaking to the officer,
10 and then the part that I didn't play beyond that.
11 He did argue against that being admitted into
12 evidence. While he didn't make a contemporaneous
13 objection, we would submit that it's not reasonably
14 likely the Court would have changed its ruling had
15 he made a contemporaneous objection, and we would
16 also submit, again, due to the overwhelming evidence
17 of this case, it's not reasonably likely it would
18 have been reversed on appeal had this been a
19 preserved issue to present. Going on to the chain
20 of custody, we would just submit that counsel
21 articulated a valid reason for not objecting in that
22 the bullet itself it wasn't tested, it wasn't
23 analyzed, there was no expert, there was no gun, it
24 just wasn't really a material piece of evidence.
25 And then on that same end, it's not reasonably

1 likely the outcome would have been different had
2 there been an objection there.

3 As far as the part about the truth language
4 in the Solicitor's closing argument, and there are
5 several cases that address that in terms of a jury
6 charge. I have not seen one yet in South Carolina
7 addressing it in the context of a solicitor's
8 closing argument, but I would submit in State v.
9 Aleksey is 343 S.C. 20, and under that case they
10 dealt with, or they examined whether a judge's truth
11 seeking language during a jury -- jury charge
12 unconstitutionally shifted the burden of proof, and
13 they determined it did not, because it was not
14 charged in conjunction with the reasonable doubt
15 standard, or the circumstantial evidence standard.
16 So in light of that, we would submit that even if it
17 was error for the Solicitor to use that language,
18 which again, I have not seen a case yet, there are
19 cases saying that courts cannot use that language,
20 but I have not seen anything saying that a solicitor
21 cannot; but even if it was error, it's not
22 reasonably likely it affected the outcome or shifted
23 the burden of proof in any way.

24 And then, finally, we would just submit,
25 based on his testimony today, there was not much he

1 could do in defending this case with this video. I
2 think he did the best he could. He asked around
3 trying to find ways to get it out, but sometimes the
4 facts are just the facts.

5 MS. MARTO: No reply, Your Honor.

6 THE COURT: Do y'all want to address the
7 issue -- as I understand it, a -- a jury instruction
8 as volatile as State v. King is also subject to a
9 harmless error now as pursuant to State vs.
10 Jeffries. Do y'all want to address that?

11 MS. DIXON: I believe that's correct, Your
12 Honor. And I believe there's State v. Middleton
13 also, and I was trying to pull it up, and I just
14 don't have it, but, yeah, they basically can look at
15 like the overall charge, but also the evidence as a
16 whole to determine whether it -- I think that on a
17 direct appeal it's whether the improper charge did
18 not contribute to a -- to the jury verdict is kind
19 of the way they frame it.

20 MS. MARTO: Judge, I mean that's my
21 understanding as well, and it would just be our
22 argument that I don't see how it could have impacted
23 the jury's decision, and I do think that by and
24 large any appellate decision that's come out post
25 King has not been particularly favorable to the

1 State in terms of that determination.

2 MS. DIXON: Are you talking about truth
3 seeking language, or the ---

4 THE COURT: The King violation.

5 MS. MARTO: Yeah, the King violation, yeah.

6 THE COURT: Are you saying there is no case
7 where an Appellate Court has held a King violation
8 was harmless error?

9 MS. MARTO: I'm not aware of one.

10 THE COURT: But you're aware of some that
11 says it's not harmless error?

12 MS. MARTO: Judge, if you want a post-
13 hearing briefing, I'm happy to provide that.

14 THE COURT: Well, I don't know that it's
15 necessary if y'all are prepared to talk about it,
16 but I -- I think I'm right about King and Jeffries;
17 am I not? There might be some other cases, but ---

18 MS. MARTO: I agree, Judge.

19 THE COURT: -- those are the two I recall.

20 MS. MARTO: Right.

21 THE COURT: So a King violation, I mean,
22 obviously, attempted murder is a specific intent
23 crime, and it must be proven. However, if the Court
24 does not so instruct, or even instructs contrary,
25 the Court can apply a harmless error analysis to the

1 violation.

2 MS. MARTO: That's my understanding, Judge.

3 THE COURT: And it's fact intensive,
4 obviously.

5 MS. DIXON: That is my understanding as
6 well, and I can -- I had the case, and then I for
7 some reason closed it out. State v. Middleton I can
8 look for it again. I think it talks about like an
9 erroneous jury charge, and how you can look to the
10 evidence as a whole in determining the likelihood
11 that it ---

12 THE COURT: Well, I -- I ---

13 MS. DIXON: -- and I may be using the wrong
14 words, but ---

15 THE COURT: -- know that's true, but I mean
16 that's -- I don't know that that's gonna help me
17 here. I -- I mean I think Jeffries -- I'm not sure,
18 but it may have ---

19 MS. DIXON: I'll have to pull it up.

20 THE COURT: It may have related to a
21 specific intent error instruction, I can't remember
22 exactly.

23 MS. MARTO: I do think as it applies to
24 King, in particular, that is kind of a newer area of
25 law just because of the timeline chronologically,

1 frankly, I don't know if there have been many
2 appeals filed on that issue on the states.

3 THE COURT: Well, I hope there haven't been
4 any filed since King came out, because everybody
5 ought to be paying attention.

6 MS. MARTO: You'd be surprised, Judge.

7 THE COURT: No. I don't like surprises.

8 MS. DIXON: Yeah, if I'm in the right case,
9 they used harmless beyond a reasonable doubt. I
10 think that's the ---

11 MS. MARTO: I think -- yeah, I think that's
12 correct.

13 THE COURT: Yeah, that -- that's true. All
14 right, well, I'll -- anything else y'all need to
15 tell me?

16 MS. MARTO: No, Judge.

17 THE COURT: I'll review it and issue an
18 order.

19 MS. DIXON: Thank you.

20 (Whereupon, the hearing was concluded.)

21 - - -END OF TRANSCRIPT- - -

22

23

24

25

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
Beaufort County, South Carolina, on the 7th day of
May, 2024.

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



Cathy L. Young, CVR-M

Court Reporter and Notary

Public in and for South Carolina

My Commission expires: 3-28-2029

FILED
AM/PM

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
 COUNTY OF HAMPTON) **AUG 13 2024**
)
 Malcolm Antwon Orr, #329462,)
) **MYLINDA D NETTLES**
) **CLERK OF COURT**
) **HAMPTON COUNTY, SC**
 Applicant **FILED**
 v. **AM/PM** **ORDER OF DISMISSAL**
)
 The State of South Carolina, **AUG 13 2024**
)
 Respondent **MYLINDA D NETTLES**
) **CLERK OF COURT**
) **HAMPTON COUNTY, SC**

Case No.: 2020-CP-25-00257

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Malcolm Antwon Orr. (Applicant) on June 4, 2020. On May 7, 2024, an evidentiary hearing convened before Circuit Judge J. Derham Cole. Applicant was present and represented by Chelsey Marto, Esquire. Assistant Attorney General Danielle Dixon represented the State. At the hearing, Applicant testified on his behalf and called as a witness trial counsel Robert M. Hughes, Esquire. The State entered as evidence a video of the shooting that was introduced at trial. Following a thorough review of the records before this Court and the testimony and evidence presented at the hearing, this Court finds Applicant did not meet his burden of proof. The Court denies Applicant relief and dismisses his application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving an aggregate thirty-five-year sentence. In February 2016, the Hampton County Grand Jury indicted Applicant for attempted murder and possession of a weapon during the commission of a violent crime (2016-GS-25-12, -13). These charges arose from the shooting of Officer Quincy Smith on January 1, 2016, which was captured on an eyeglasses-camera worn by Officer Smith.

On August 7, 2017, Applicant proceeded to a jury trial before the Honorable Roger M.

Young, Sr. Robert Hughes, Esq., represented Applicant. Circuit Solicitor Isaac McDuffie Stone and Assistant Circuit Solicitor Brian Hollen prosecuted the case. Applicant was convicted as indicted and sentenced to consecutive terms of thirty years for attempted murder and five years for possession of a firearm during the commission or attempted commission of a violent crime.

Applicant filed a notice of appeal, which was perfected by Appellate Defender Susan B. Hackett through the filing of a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The Court of Appeals dismissed pursuant to Anders. State v. Orr, 2019-UP-204 (filed June 5, 2019). The remittitur was sent June 21, 2019.

CURRENT PCR APPLICATION

On June 4, 2020, Applicant timely filed this PCR application alleging the following:

- a. Ineffective assistance of counsel: counsel was not properly prepared for trial and failed to properly object to the admission of highly prejudicial evidence; and
- b. Trial court error: the trial court erred in allowing the admission of the complete video of the event captured by Officer Smith's eyeglass camera.

Applicant requested for a reversal of his convictions and granting of a new trial.

Prior to the hearing, Applicant filed an amended application alleging counsel was ineffective for:

1. Failing to object to the Court charging the jury that specific intent is not an element of attempted murder (Tr. 284-85);
2. Failing to contemporaneously object to the video entered at trial (Tr. 130);
3. Failing to contemporaneously object to the chain of custody (Tr. 262);
4. Failing to object to the State burden-shifting during closing argument (Tr. 272); and

5. Failing to properly prepare for trial, including preparing a proper defense for trial.

At the hearing, Applicant proceeded on the five allegations of his amended application. Applicant also argued counsel was ineffective for not challenging the search warrant of a cell phone. Applicant did not present any testimony, evidence, or argument on any other claim, and this Court finds any additional claims were waived.

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records before it, including the Beaufort County Clerk of Court records of the underlying convictions; Applicant's records from the South Carolina Department of Corrections; Applicant's appellate records; and the records of Applicant's PCR application. This Court has further had the opportunity to observe the witnesses presented at the evidentiary hearing, closely pass upon their credibility, and weigh their testimony accordingly. 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 fact and conclusions of law as required by section 17-27-80 of the South Carolina Code of Laws Annotated.

Ineffective Assistance of Counsel

In a PCR action, an applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When the application alleges ineffective assistance of counsel, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. at 687-88. First, an applicant must prove counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625

(1989). Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, the applicant must prove that 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.

Failure to object to specific intent jury charge

Applicant first contends counsel was ineffective for not objecting when the trial court charged the jury that attempted murder is not a specific intent crime. This Court finds Applicant did not prove prejudice from counsel's failure to object to this charge.

At trial, the Court charged, "A specific intent to kill is not an element of attempted murder, but there must be a general intent to commit serious bodily injury." Counsel did not object.

Although this charge was incorrect under State v. King, 422 S.C. 47, 810 S.E.2d 18 (2017),¹ there is no reasonable probability this charge affected the outcome due to the overwhelming evidence of guilt. Cf. State v. Campbell, No. 2022-000349, 2024 WL 3435066, at *4 (S.C. July 17, 2024) ("Erroneous jury instructions are subject to a harmless error analysis). In addition to Officer Smith's testimony about the shooting, the State entered into evidence the video from Officer Smith's eyeglasses-camera. The quality of the video is clear, and Applicant is depicted

¹ Although this opinion was decided after Applicants trial, the Court of Appeals had previously determined that attempted murder is a specific intent crime. State v. King, 412 S.C. 403, 772 S.E.2d 189 (2015), overruled on other grounds by State v. Burdette, 427 S.C. 490, 832 S.E.2d 575 (2019).

clearly and plainly in the video before the shooting. In the video, Officer Smith—who is attempting to detain Applicant based on reports that Applicant had just attempted to rob a man at a convenience store—repeatedly asks Applicant to stop and take his hands out his pocket. Officer Smith approaches Applicant; when he is in very close range, Applicant looks directly at him, pulls out a gun, and fires multiple times.² Based on this overwhelming evidence, this Court finds beyond a reasonable doubt the charge did not contribute to the verdict. Likewise, there is no reasonable probability the outcome would have been different had counsel objected. Thus, this claim is denied.

Failure to contemporaneously object to video

Applicant next contends counsel was ineffective for not contemporaneously objecting to the video entered at trial. At trial, Applicant generally averred counsel did not timely object to the video, and the outcome would have been different if he had. This Court finds Applicant did not prove counsel was ineffective in this regard.

At trial, counsel objected to the beginning of the video on the basis it contained evidence of a prior bad act by Applicant (i.e. an eyewitness statement that Applicant had attempted to rob another man). Counsel objected to the end of the video on the basis the probative value was outweighed by the danger of under prejudice. After hearing argument from the State, the Court determined the initial portion of the video was part of the *res gestae* of the incident itself and necessary for explaining why Officer Smith was approaching Applicant in the first place. The Court further determined the probative value of both the beginning and the end of the video outweighed any prejudicial effect.

Initially, although counsel did not object to the portion of the video depicting this shooting itself, Applicant did not set forth a valid objection to that portion of the video, and this Court is not

² Eight shots can be heard in the video. Law enforcement recovered eight cartridge casings from the scene, all of which were fired by the same firearm. (Tr. 239).

aware of one. Thus, counsel's performance in that regard was not deficient. Regarding the remaining portions of the video, this Court finds it is not reasonably likely a contemporaneous objection at the time the evidence was entered would have changed the outcome. (Tr. 130). At the PCR hearing, counsel credibly testified this was also an issue he raised in chambers with the Court. This issue was clearly before the trial court, who ruled on the record, and this Court finds it is not reasonably likely a renewed objection when the evidence was entered would have caused the judge to exclude the beginning or end of the video. Applicant likewise did not set forth what further argument counsel should have made that would have successfully excluded any portion of the video and thus did not meet his burden in this regard. Finally, even if the beginning and end of the video had been excluded, it is not reasonably likely the outcome would have been different. Critically, the shooting itself was clearly depicted in the video and constituted overwhelming evidence that Applicant in fact attempted to murder Officer Smith. As stated, Applicant has not set forth a viable objection to this portion of the video, and this Court is not aware of any. Thus, even if counsel had successfully excluded the beginning and end of the video, this Court finds it is not reasonably likely the outcome would have been different, and this claim is denied.

Failure to contemporaneously object to chain of custody (Tr. 262)

Applicant next argues counsel was ineffective for failing to contemporaneously object to the chain of custody for a bullet recovered from Officer Smith's body. At the PCR hearing, Applicant merely averred counsel did not timely object, and it would have made a difference if counsel had objected. This Court finds Applicant did not prove this claim.

Initially, counsel *did* contemporaneously object to the admissibility of the bullet, which was entered as State's Exhibit 12. (Tr. 236). Thus, counsel was not deficient in this regard. Applicant likewise cannot show prejudice due to the very low probative value of the bullet.

Although the firearms expert opined it “was most consistent with a nine-millimeter Luger caliber bullet,” she acknowledged there were several possible manufacturers for the bullet.³ Critically, based on other evidence presented by the State—specifically the video of the shooting itself—it is not reasonably likely the outcome would have been different had this bullet been excluded. Thus, this claim is denied.

Failure to object to the State's burden-shifting (Tr. 272)

Applicant next argues counsel was ineffective for not objecting to the State's burden shifting argument during closing argument.⁴ This Court finds Applicant did not prove this ground.

Initially, although the appellate courts have admonished trial courts from using truth-seeking language, this Court is not aware of any cases applying that same admonishment to solicitors during closing argument, and Applicant has not set forth any such case. See, e.g., State v. Beaty, 423 S.C. 26, 813 S.E.2d 502 (2018) (finding trial court's truth-seeking language during preliminary remarks were improper but did not warrant reversal); State v. Daniels, 401 S.C. 251, 256, 737 S.E.2d 473, 475 (2012) (“[W]e instruct the trial judge to remove any suggestion from his general sessions charges that a criminal jury's duty is to return a verdict that is “just” or “fair” to all parties.”). Thus, Applicant did not prove deficiency.

Further, it is not reasonably likely the outcome would have been different had counsel objected to this language. Critically, the trial court's jury charge was proper and did not include truth-seeking language, and the trial court charged the jury that it must accept the law as charged by the Court. (Tr. 276-77). Further, even if this statement by the solicitor was improper, it did not

³ Police recovered eight fired nine-millimeter Luger caliber cartridge casings from the scene, and the expert opined they were fired by the same gun. Law enforcement, however, never recovered a weapon and thus could not link the bullet or fired cartridges to a weapon owned or used by Applicant.

⁴ During closing argument, the State concluded, “When you come back with a verdict, speak the truth.” (Tr. 272).

amount to burden-shifting. See State v. Aleksey, 343 S.C. 20, 538 S.E.2d 248 (2000) (finding truth-seeking language in jury charge did not shift the burden of proof because it was not charged in conjunction with the reasonable doubt charge or the circumstantial evidence charge). Thus, Applicant did not prove deficiency or prejudice, and this claim is denied.

Failure to prepare

Applicant asserts counsel was ineffective for failing to properly prepare for trial, including preparing a proper defense. However, at the PCR hearing, Applicant did not set forth or introduce any evidence counsel should have introduced; any issue counsel should have further investigated that would have reasonably changed the outcome; or any defense counsel should have pursued. Applicant thus did not meet his burden of proving this ground. Further, this Court finds credible trial counsel's testimony that he discussed this case extensively with Applicant. Ultimately Applicant failed to meet his burden of showing any viable defense counsel should have pursued or any specific thing counsel did not prepare that would have reasonably changed the outcome. Thus, Applicant did not prove deficiency or prejudice, and this claim is denied.

Search warrant of cell phone

Finally, at the PCR hearing, Applicant stated he wanted counsel to challenge the search warrant of a cell phone that was used for identification purposes. This Court finds Applicant did not prove this ground.

At trial, the State entered without objection a cellphone recovered from the crime scene (State's Ex. 4). (Tr. 204, 208, 218-19). Lieutenant Britt Dove, an expert in forensic computers, testified he performed an extraction on the phone and recovered two outgoing texts:

- Dis Mack-Mack. Goals over Dreams.
- Wassup, Bruh. Dis Malcolm. Happy New Years's Bruh, and dis my new number. Goals over dreams.

Initially, Applicant did not set forth what challenge counsel should have made to the admissibility of the cell phone other than to generally aver counsel should have challenged the search warrant. To the extent Applicant is referring to the search warrant for the contents of the phone, Applicant did not produce any search warrant or set forth what was allegedly wrong with the warrant that counsel should have challenged and thus did not prove deficiency.

Likewise, even if there was a valid challenge to the search warrant for the cell phone extraction,⁵ this Court finds it is not reasonably likely the outcome would have been different without the text messages. The probative value of the messages themselves was very low in light of the properly-admitted video that clearly depicted Applicant's face right before the shooting. Thus, Applicant did not prove prejudice, and this claim is denied.

CONCLUSION

Based on the foregoing, this Court concludes Applicant has not established any constitutional violations that would require this Court to grant relief. The application for relief should be and therefore is denied and dismissed with prejudice.

Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty 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 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.

⁵ The phone itself was recovered from the crime scene, and Applicant has not set forth any valid objection (nor is this Court aware of any) to the admissibility of the phone itself.

IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and
2. Applicant shall be remanded to and remain in the custody of the State for completion of the sentence imposed.

AND IT IS SO ORDERED!

J. Derham Cole
Presiding Judge
Fourteenth Judicial Circuit

August 7, 2024
Spartanburg, South Carolina

WITNESSES

McCallister, SLED

DOCKET NO. 2016-GS-25-00013

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

The State of South Carolina
County of Hampton

Defendant

COURT OF GENERAL SESSIONS

February Term 2016

I hereby appear in my own proper person and plead guilty to the within indictment or to

THE STATE

vs.

Malcolm Antwon Orr

ARREST WARRANT NUMBER

2016A2510200002

Date of Arrest: January 1, 2016

Indictment For
Attempted Murder

SC Code: 16-3-29

CDR Code: 3410

TRUE BILL

Reber Olay
Foreperson of Grand Jury

Date: 2/1/16

Defendant

VERDICT

Guilty

Witness:

Alfred L. L.
Foreperson of Petit Jury

Date: 08/09/17

INDICT

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)

COUNTY OF HAMPTON)

INDICTMENT

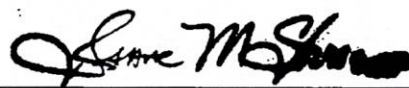
2016-GS-25-00013

At a Court of General Sessions, convened on February 1, 2016, the Grand Jurors of Hampton County present upon their oath:

Attempted Murder

That in Hampton County, South Carolina, on or about January 1, 2016, the Defendant, Malcolm Antwon Orr, did with the intent to kill, and with malice aforethought, attempt to kill Officer Quincy Smith, to wit: the Defendant did shoot the victim with a firearm, all in violation of Section 16-3-29, of the South Carolina Code of Laws (1976, as Amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

THAT BIT

WITNESSES

McCallister, SLED

DOCKET NO. 2016-GS-25-00012

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

The State of South Carolina

County of Hampton

Defendant

COURT OF GENERAL SESSIONS

February Term 2016

I hereby appear in my own proper person and plead guilty to the within indictment or to

THE STATE

vs.

Malcolm Antwon Orr

ARREST WARRANT NUMBER

2016A2510200001

Date of Arrest: January 1, 2016

Indictment For

Possession of Weapon During
Commission of a Violent Crime

SC Code: 16-23-490

CDR Code: 0549

TRUE BILL

Rebeccah Oly
Foreperson of Grand Jury

Date: 2/1/16

VERDICT

Guilty

W. J. Hall
Foreperson of Petit Jury

Date: 08/09/17

INDICT

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)

COUNTY OF HAMPTON)

INDICTMENT

2016-GS-25-00012

At a Court of General Sessions, convened on February 1, 2016, the Grand Jurors of Hampton County present upon their oath:

Possession of Weapon During Commission of a Violent Crime

That in Hampton County, South Carolina, on or about January 1, 2016, the Defendant, Malcolm Antwon Orr, did possess a firearm or did visibly display what appeared to be a firearm during the commission of or attempted commission of a violent crime, to wit: attempted murder, a violent crime for which he is convicted of committing or attempting to commit; in violation of Section. 16-23-490, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

STATE

VS.

Hampton
Malcolm Anthony Orr

AKA:

Race:

B

Sex:

M

Age:

29

DOB:

11-18-88

SS#:

[REDACTED]

Address:

City, State, Zip:

DL#

SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ 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

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 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

*Fine:

\$14-1-206 (Assessments 107.5%)	\$	_____
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ _____
\$14-1-211 (A)(2)(DUI Surcharge)	\$100	\$ _____
\$56-5-2995 (DUI Assessment)	\$12	\$ _____
\$56-1-286 (DUI Breath Test)	\$25	\$ _____
Proviso 61.6 (Public Def/Probation)	\$500	\$ _____
\$14-1-212 (Law Enforce. Funding)	\$25	\$ _____
\$14-1-213 (Drug Court Surcharge)	\$150	\$ _____
\$50-21-114 (BUI Breath Test Fee)	\$50	\$ _____
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ _____
3% to County (if paid in installments)		\$ _____

TOTAL

\$ _____

Clerk of Court/Deputy Clerk _____

Court Reporter: _____

Presiding Judge _____

Judge Code: 2154

Sentence Date 8/7/17

Sy

STATE OF SOUTH CAROLINA

RECEIVED

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

Hampton

AUG 14 2017

STATE

Malcolm Antwan Orr VS. SC Court of Appeals

AKA:

Race:

B

Sex:

M

Age:

29

DOB:

1-98

SS#:

[REDACTED]

Address:

City, State, Zip:

DL#

SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO:

Possession of Weapon during Commission of a Violent Crime

In violation of §

16-23-490

of the S.C. Code of Laws, bearing CDR Code #

0544

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

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.

ATTORNEY:

Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on:

2016-65-25-00013

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms:

Obtain GED ☐

☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

Recipient:

May serve W/E beginning

Substance Abuse Counseling ☐

*Fine:

\$14-1-206 (Assessments 107.5%)	\$	_____
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$
\$14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
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\$50-21-114 (BUI Breath Test Fee)	\$50	\$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

TOTAL

Clerk of Court/Deputy Clerk

Court Reporter:

☐ Appointed PD or appointed other counsel, Proviso 61.8 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge

Judge Code:

Sentence Date

2134
8/9/17