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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM COLLETON COUNTY
General Sessions Court
Robert J. Bonds, Circuit Court Judge

Appellate Court Case No.: 2024-000432

State of South Carolina, ... Respondent

v.

Antwan McMillan, ... Appellant

RECORD ON APPEAL - VOLUME I

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INDICTMENT#(s) 2010-GS-15-00501;
502; 504; 505; 507; 2010-GS-15-00703;
704; 705; 707; 707

Order Denying Motion for New Trial

Facts and Procedural History

Shortly before midnight on the night of June 3, 2010, Jesse King, an explosive disposal specialist in the United States Army, was driving along I-95 in Colleton County with his wife on the way to a military base in Pensacola, Florida, while his mother-in-law followed behind them towing a U-Haul trailer with her truck. As they passed through Colleton County, King's mother-in-law began to experience mechanical problems with her truck, and they all pulled off at an exit and stopped on a deserted road next to the highway. King then called a tow truck operator, arranged for him to come to their location, and began transferring the U-Haul trailer from his mother-in-law's truck to his own. While he was crouched down behind his truck connecting the trailer, a light-colored sedan screeched to a halt at a nearby intersection, and a man with something wrapped around his face jumped out of the back of the sedan, pointed a large pistol at King's mother-in-law, and yelled for her to put "em" up. In response, King sprang up, drew his own firearm, pointed it at the man, and ordered him to get back into his car and

drive away. However, the man turned his gun in King's direction, so King shot at the man until the man fell to the ground. At that moment, the man's confederates inside the sedan began yelling, and one of the men fired several shots at King and the others, striking both of their trucks with bullets. The man who had been shot by King then dropped his gun and crawled into the sedan, and the sedan rapidly sped away from the scene.

Once the would-be robbers were gone, King and the others called 911 to report the shooting and attempted robbery, and law enforcement officers were quickly dispatched to their location. Shortly thereafter, Detective Jeffrey Scott of the Colleton County Sheriff's Office arrived at the scene, interviewed the victims, and began searching for evidence. During his search, he located blood stains, a .50-caliber pistol that had been stolen from a California police department in 2002, and several spent shell casings fired from both a nine-millimeter pistol and a .357-caliber weapon. He then collected that evidence and took swabs of the blood stains, and the evidence was subsequently submitted to the South Carolina State Law Enforcement Division ("SLED") for analysis.

Meanwhile, David Jakes was brought to the emergency room at the Colleton Medical Center suffering from multiple gunshots wounds, and staff members at the hospital reported his arrival to law enforcement officers. In response, Sergeant Jackie Lawson of the Colleton County Sheriff's Office went to the hospital and spoke with the individuals who brought Jakes there, including Shaquita Bryant. However, those

individuals were all uncooperative and provided Sergeant Lawson with inconsistent stories about Jakes.¹

Shortly thereafter, law enforcement officers located the sedan involved in the incident at Jakes's grandmother's home. The officers then secured it, and a subsequent search of the vehicle led to the discovery and collection of fingerprints, palm prints, bloods stains, nine-millimeter shell casings, gloves, various items of clothing, and an open bottle of gin.² Upon further investigation, the officers discovered the sedan was registered to someone named David Jenkins while the vehicle's license plate was actually associated with a different vehicle registered to Brenda McMillan, who was the mother of Defendant McMillan.

Later that day, James Davis and his family contacted officers with the Colleton County Sheriff's Office to discuss Davis's role in the shooting and attempted robbery. During Davis's conversation with the officers, he initially denied any involvement in the crimes. However, after he spoke with his family, Davis told the officers about what happened and was placed under arrest.³ Then, on the following day, McMillan

¹ Although initially uncooperative, Bryant later provided more information to an investigator about how Jakes ended up at the hospital. Specifically, she told the investigator she saw "Chippy," "Dinky," and "Rat" together, "Chippy" helped load Jakes into her vehicle, and she and her friends brought Jakes to the hospital. Notably, James Davis's nickname was "Chippy," Jakes's nickname was "Dinky," and McMillan's nickname was "Rat."

² Upon analysis, a forensic DNA expert determined the blood found both at the crime scene and inside the sedan involved in the incident belonged to Jakes. Furthermore, the expert determined Jakes's DNA, Davis's DNA, and DNA similar to McMillan's were present on several of the items recovered from the sedan. Likewise, an expert in latent fingerprint examination conducted testing of the prints recovered from the sedan and determined many of the prints were left by McMillan and Davis.

³ Later on during trial, Davis recounted the details of the incident. Specifically, he stated he headed to Walterboro, South Carolina, in a gray sedan with Jakes and McMillan on

surrendered to authorities and was arrested for his role in the incident, and Jakes was also placed under arrest.⁴

On September 1, 2011, Defendants Antwan McMillan and David Jakes were both found guilty of two counts of Attempted Armed Robbery, two counts of Assault and Battery, 1st Degree, and one count of Possession of a Weapon During the Commission of a Violent Crime.

On December 10, 2021, Defendant McMillan filed a motion for a new trial based on after-discovered evidence. Thereafter, on December 29, 2021, Defendant Jakes filed a similar motion.

On July 12, 2023, this court heard the motion for a new trial at the Colleton County Courthouse. The State was represented by Assistant Solicitor Julie Kate Keeney. Defendant McMillan was represented by Jim Brown, Esquire. Defendant Jakes was represented by Tristan Shaffer, Esquire.

the night of June 3, 2010. As McMillan drove them towards their destination, Davis indicated they passed three people on the side of the road who appeared to be having car trouble. When they saw those people, Davis stated McMillan and Jakes decided to rob them. Davis testified they then turned around, drove back towards the stranded motorists, and stopped their vehicle in a manner that blocked a nearby exit ramp. After that, Davis stated Jakes jumped out, ran towards the people, and demanded they "give it up" at gunpoint. Davis testified he then heard gunshots, McMillan began firing at the motorists, and he helped Jakes—who had been "shot all over"—back into the sedan. Once Jakes was back inside the sedan, Davis indicated they sped back towards their homes despite Jakes's requests to be taken to a hospital until they passed a car driven by Bryant. At that point, Davis stated they got Bryant to stop and convinced her and her companions to take Jakes to the hospital. Davis indicated he and McMillan then went back to their homes and he remained there until deciding to turn himself in.

⁴ Shortly after McMillan was arrested, officers discovered numerous .50-caliber shell casings on a parcel of property located directly across the street from McMillan's home.

Law/Analysis

Rule 29 (b) of the South Carolina Rules of Criminal Procedure allows for a defendant to file for a motion for a new trial based upon after discovered evidence if the motion is made within (1) year after the date of the actual discovery of the evidence by the defendant or after the date when the evidence could have been ascertained by the exercise of reasonable diligence. Rule 29(b), SCRCrimP.

“The granting of a new trial based on after-discovered evidence is not favored.” State v. Irvin, 270 S.C. 539, 545, 243 S.E.2d 195, 198 (1978). In order to grant of a new trial based on after-discovered evidence, the defendant must show the evidence (1) is such as will probably change the result if a new trial is granted; (2) has been discovered since the trial; (3) could not have been discovered before the trial by the exercise of due diligence; (4) is material to the issue; and (5) is not merely cumulative or impeaching. State v. Harris, 391 S.C. 539, 545, 706 S.E.2d 526, 529 (Ct. App. 2011).

“Recantation of testimony ordinarily is unreliable and should be subjected to the closest scrutiny when offered as ground for a new trial.” State v. Porter, 269 S.C. 618, 621, 239 S.E.2d at 643 (quoting State v. Mayfield, 235 S.C. 11, 34-35, 109 S.E.2d 716, 729 (1959)).

A. Co-Defendant’s Affidavit Recanting Prior Testimony

During the motion for a new trial hearing, Defendants presented an affidavit of the cooperating co-defendant, James “Chippy” Davis. The affidavit was obtained by Jakes’ investigator.

In the affidavit, Davis claimed that he was questioned by one officer for hours, fell asleep, and then woke up to another officer (this time Officer Allen Inabinett) yelling

and threatening to throw him in prison for the murder of David Jakes if he did not survive his gunshot injuries. In the affidavit, Davis claims that Officer Inabinett told him that the only way for Davis to stay out of prison was to tell him what he wanted to hear. In the affidavit, Davis claimed he had no knowledge of a robbery occurring the night of the incident.

Notably, during the hearing for a new trial, Davis, who was represented by counsel, invoked his rights under the 5th Amendment for the majority of the questions asked of him.

This court reviewed the original interview of Davis that took place on June 4, 2010. In contradiction to Davis's affidavit, Officer Inabinett was the original officer who questioned Davis. Officer Inabinett left the interview room in order to speak with Davis's parents who were at the police station during the time of the interview. Thereafter, Investigator Jeffrey Scott entered the interview room and questioned Davis. Neither officer threatened to throw Davis in prison if he did not tell them what they wanted to hear. Additionally, Investigator Scott told Davis numerous times that he could not make any promises to Davis. Investigator Scott encouraged Davis to be honest and tell the truth.

At one point during the interview, law enforcement stepped out of the interview room and Davis's mom came in to talk to him. She begged him to be honest. After she left the interview room, Davis implicated Jakes and McMillan.

Additionally, this court reviewed Davis's December 21, 2010 written statement obtained by law enforcement. Davis's attorney, Margie Bright Matthews, Esquire was

present for that statement. In this written statement, Davis implicated McMillan and Jakes in the attempted robbery.

Furthermore, this court reviewed Davis's sworn testimony at trial. He testified about how McMillan and Jakes planned out the robbery and attempted to execute the crime. During the trial, Davis repeatedly testified that he was telling the truth about what happened that day.

After reviewing the trial transcript and other exhibits, this court finds Davis's affidavit/recantation unreliable and not credible. See State v. Mayfield, 235 S.C. 11, 35, 109 S.E.2d 716, 729 (1959) (noting that recantation of testimony is ordinarily unreliable and "[t]o hold such affidavits sufficient to require the granting of a new trial would be to open the door to fraud and perjury, as well as to invite interminable delays in the disposition of causes.").

Additionally, this court finds the following: (1) the affidavit's recantation is not credible, particularly in light of the fact Davis was not willing to repeat the assertion when under oath in a courtroom; and (2) the fact that it is so uncredible—inherently and otherwise—coupled with the contradictory and consistent position Davis previously took through his earlier interview statement, written statement, and trial testimony ensure that uncredible statement was not something that would probably change the result of trial in the event a new trial was granted.

B. Plea Deal or Implied Deal

During the new trial hearing, Defendant McMillan made an additional argument that the State has some type of either explicit or implied deal with Davis. However, this court finds no merit to that argument.

At trial, Davis testified that he did not have a "deal" at the time of trial. He testified that at one point he had an offer to plead to an accessory charge but that deal had expired. During the new trial hearing, Davis confirmed he did not have any type of deal when he testified at the original trial. There is absolutely no evidence that the Solicitor's Office made any type of explicit or implicit deal with Davis other than the accessory offer that was testified to during the trial.

A movant seeking a new trial bears the burden of proving the claim. The argument presented by defense counsel is premised entirely upon unsupported speculation and is directly refuted by the sworn testimony previously given.

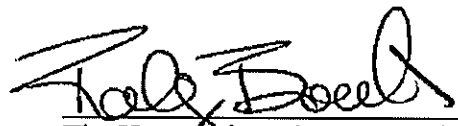
Therefore, this claim is devoid of any evidentiary support and lacks any credibility.

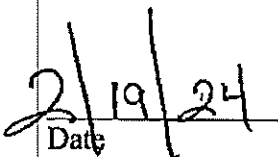
CONCLUSION

This court finds Davis's affidavit/recantation unreliable and not credible. In addition, this Court finds absolutely no evidence of an undisclosed plea deal or any implied plea deal.

THEREFORE, this Court DENIES the above-referenced Defendants' motion for a new trial based on after-discovered evidence.

IT IS ORDERED!


The Honorable Robert J. Bonds
Circuit Court Judge


Date

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF COLLETON	)	Indictment Nos: 2010GS1500501-0507
		2010GS1500703-0709
STATE OF SOUTH CAROLINA	)	
	)	
Plaintiff.	)	
	)	DEFENDANT MCMILLAN'S
VS.	)	OBJECTIONS TO PROPOSED
	)	ORDER DENYING RELIEF
ANTWAN D. MCMILLAN and	)	
DAVID JAKES	)	
	)	
Defendants	)	
	)	

THIS MATTER IS BROUGHT BEFORE THIS COURT by Defendant McMillan providing his objections to the proposed order denying relief. This filing is not intended as a motion to reconsider as this is not a civil action. Likewise, undersigned expressly preserves his previous objections and issues raised and ruled upon in the record but provides these objections so that any other matters sought to be addressed which have not been ruled upon are not waived.

To begin, undersigned filed a motion for a new trial based upon after discovered evidence following his receipt of a post-trial statement provided by cooperating witness James Davis. In this motion, the argument made by undersigned was that James Davis “provided false information during his testimony offered on behalf of the prosecution during the trial and that testimony went uncorrected by the prosecutor.” See Motion for a New Trial Pursuant to SCRCrimP Rule 29(B). Undersigned would request that the Order specify that this non-disclosure is the basis for Mr. McMillan’s motion and not a claim directly related to Mr. Davis’ recantation of his trial testimony about McMillan’s involvement. Undersigned does not dispute that Mr. Davis has problems telling the truth and will do whatever it takes to protect his own self-interests.

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To state this another way, objection is made to the proposed order to the extent that this order re-frames McMillan's claim as one in which Mr. Davis' new statement about McMillan's involvement should be given credit over his trial testimony. That is not the case.

Again, having received the new statement, undersigned then investigated and became aware for the first time that Mr. Davis' criminal charges had disappeared from public record in their entirety. It was only during the merits hearing on this motion that undersigned learned from the State's production of an otherwise undisclosed expungement order that, in fact, Mr. Davis' charges were dismissed outright and expunged within one month of his testimony against McMillan despite the State's contention that no negotiations or deals were in place at the time of the testimony.

Again, the proposed order should indicate that McMillan's motion asserts that the Davis trial testimony that he was testifying without a plea deal was a false statement as the facts clearly imply a wink-wink deal in which Mr. Davis would testify with the implicit understanding that his charges would later be dismissed.

The proposed order should also reflect that Mr. Davis, when asked about this deal and the details of his dismissal in the merits hearing on this motion, invoked his rights against self-incrimination. He did so with the advice of a his attorney, a lawyer-legislator, who provided real time legal advice during and between questioning. The proposed order should also reflect that undersigned objected to the court upholding the invocation of Davis' right against self incrimination given that his charges were dismissed. Further, the order should reflect that undersigned argued that this Court should construe the invocation by Davis of his right to remain silent as evidence of the false testimony at trial and that the denial of relief in the proposed order is effectively a ruling denying this argument.

The inference to be garnered from the invocation of the right to remain silent is of particular significance because Mr. Davis only provided two statements following the commencement of McMillan's criminal trial. Davis testified under oath during the trial that he had no deal and then he provided the post-trial written statement to co-defendant Jakes' private investigator. Davis would not be exposed to any jeopardy if he lied to a private investigator but he would face legal jeopardy if he lied at trial. Davis' lawyer would know this distinction and, thus, any advice from Davis' lawyer to Davis clearly implies he committed perjury during his trial not that he lied to Jake's investigator.

Further, the proposed order fails to reference the sole document remaining which addresses the disposition of Davis' criminal charges. While Davis testified at trial¹ that he did not "have the deal anymore," that the prosecutor did not make him "any promises," and that no one from "the State of South Carolina" made him or his attorney any promises related to his charges, his charges were dismissed less than one month from his testimony and without any intervening hearings, filings, motions or explanations. The order should reflect these facts to provide full credit to undersigned's argument on behalf of McMillan.

The proposed order is devoid of any reference to the law concerning disclosure of wink-wink deals or the duty of the state to correct false testimony. Cases which have been cited by undersigned which directly relate to this argument include *Giglio v United States*, 405 US 150 (1970); *Napue v Illinois*, 360 US 264 (1959); and *Riddle v Ozmint*, 631 SE2d 70 (SC 2006). All of these cases explicitly reference uncorrected false testimony concerning agreements made between the prosecution and cooperating witnesses. To give full credit to the strength of undersigned's argument, at least some reference and distinction should be made to this 65 years

¹Trial Testimony, page 241, l. 15 - p. 242, l. 5.

worth of law from the highest courts with precedential authority over this litigation.

Likewise, this order should also reference two very recent opinions from the appellate courts of South Carolina, bearing on undisclosed deals or plea negotiations, which were issued nearly contemporaneously with this new trial litigation. In *State v Dean*, the South Carolina Court of Appeals reversed a conviction following an after-discovered evidence motion citing an undisclosed “understanding” between the prosecution and the state’s witness. *State v. Dean*, 828 S.E.2d 243, 250 (SC Ct. App. 2019). In *Dean*, the State’s witness testified there were no deals. The Court of Appeals found that the later-discovered deal was newly-discovered evidence, that the cooperating witness was the sole witness implicating Dean and that the “understanding” constituted a deal.

In *State v Corey Brown*, the South Carolina Supreme Court found that due process was violated when the prosecution failed to disclose plea negotiations even in the absence of a deal. *State v. Brown*, 894 S.E.2d 525, 529 (SC 2023), reh'g denied (Dec. 12, 2023). Like the facts of the present case and those in *Dean*, the non-disclosure issue was raised through an after-discovered evidence motion. The *Brown* court “conclude[d] that a formal agreement is not always necessary to warrant disclosure” and reversed the convictions and granted a new trial. *Brown*, at 529.

Because of the striking similarity between the circumstances relating to the cooperating witness in this case and the ones in *Dean* and *Brown*, the order should at least address these cases so that a reviewing court can determine whether this order is based upon a correct view of the law.

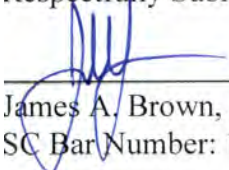
Further, this proposed order fails to note the finding of the Court of Appeals in the denial of his petition for a writ of certiorari in which it found that the evidence against McMillan was

not overwhelming evidence of guilt. See *McMillan v State*, SC Court of Appeals Unpublished Opinion No. 2022-UP-259, pages 4 - 5, Filed June 8, 2022. Like the situations portrayed in the *Dean* and *Brown* opinions, the cooperating witness was the sole direct evidence of McMillan's involvement in the crime. To the extent this proposed order references the testimony of Shaquita Latoya Bryant, this order misstates her trial testimony where she stated she *heard* that McMillan was in the car with the injured co-defendant Jakes *not that she saw him* in this car. See Trial Transcript, p. 276, l. 18 - p. 278, l. 25. In fact, the Court of Appeals does not even reference Ms. Bryant's testimony during its discussion of the evidence against McMillan.

Finally, the proposed order should note that, in opposition to this motion, the prosecution did not call either trial prosecutor to the stand to testify concerning the lack of any negotiations. While there are exhibits not mentioned in the order, undersigned is aware that the Court has made these exhibits part of the record for purposes of further review. These exhibits include responses to a court order requesting evidence related to the dismissal of Mr. Davis' charges.

Thus, undersigned respectfully requests that this Court review these objections and incorporate them into the order even if this information is not found sufficient to change the Court's mind as to its ruling.

Respectfully Submitted by,



James A. Brown, Jr.
SC Bar Number: 12213

February 23, 2024
Beaufort, SC

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ROA013

Appendix to Defendant McMillan's Objections to Proposed Order Denying Relief

- A) Proposed Order Denying Relief
- B) Court's Exhibits - Records of Dispositions
- C) Plaintiff's Exhibit - Expungement Order

A

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Order Denying Motion for New Trial

Facts and Procedural History

Shortly before midnight on the night of June 3, 2010, Jesse King, an explosive disposal specialist in the United States Army, was driving along I-95 in Colleton County with his wife on the way to a military base in Pensacola, Florida, while his mother-in-law followed behind them towing a U-Haul trailer with her truck. As they passed through Colleton County, King's mother-in-law began to experience mechanical problems with her truck, and they all pulled off at an exit and stopped on a deserted road next to the highway. King then called a tow truck operator, arranged for him to come to their location, and began transferring the U-Haul trailer from his mother-in-law's truck to his own. While he was crouched down behind his truck connecting the trailer, a light-colored sedan screeched to a halt at a nearby intersection, and a man with something wrapped around his face jumped out of the back of the sedan, pointed a large pistol at King's mother-in-law, and yelled for her to put "em" up. In response, King sprang up, drew his own firearm, pointed it at the man, and ordered him to get back into his car and

drive away. However, the man turned his gun in King's direction, so King shot at the man until the man fell to the ground. At that moment, the man's confederates inside the sedan began yelling, and one of the men fired several shots at King and the others, striking both of their trucks with bullets. The man who had been shot by King then dropped his gun and crawled into the sedan, and the sedan rapidly sped away from the scene.

Once the would-be robbers were gone, King and the others called 911 to report the shooting and attempted robbery, and law enforcement officers were quickly dispatched to their location. Shortly thereafter, Detective Jeffrey Scott of the Colleton County Sheriff's Office arrived at the scene, interviewed the victims, and began searching for evidence. During his search, he located blood stains, a .50-caliber pistol that had been stolen from a California police department in 2002, and several spent shell casings fired from both a nine-millimeter pistol and a .357-caliber weapon. He then collected that evidence and took swabs of the blood stains, and the evidence was subsequently submitted to the South Carolina State Law Enforcement Division ("SLED") for analysis.

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Law/Analysis

Rule 29 (b) of the South Carolina Rules of Criminal Procedure allows for a defendant to file for a motion for a new trial based upon after discovered evidence if the motion is made within (1) year after the date of the actual discovery of the evidence by the defendant or after the date when the evidence could have been ascertained by the exercise of reasonable diligence. Rule 29(b), SCRCrimP.

“The granting of a new trial based on after-discovered evidence is not favored.” State v. Irvin, 270 S.C. 539, 545, 243 S.E.2d 195, 198 (1978). In order to grant of a new trial based on after-discovered evidence, the defendant must show the evidence (1) is such as will probably change the result if a new trial is granted; (2) has been discovered since the trial; (3) could not have been discovered before the trial by the exercise of due diligence; (4) is material to the issue; and (5) is not merely cumulative or impeaching. State v. Harris, 391 S.C. 539, 545, 706 S.E.2d 526, 529 (Ct. App. 2011).

“Recantation of testimony ordinarily is unreliable and should be subjected to the closest scrutiny when offered as ground for a new trial.” State v. Porter, 269 S.C. 618, 621, 239 S.E.2d at 643 (quoting State v. Mayfield, 235 S.C. 11, 34-35, 109 S.E.2d 716, 729 (1959)).

A. Co-Defendant’s Affidavit Recanting Prior Testimony

During the motion for a new trial hearing, Defendants presented an affidavit of the cooperating co-defendant, James “Chippy” Davis. The affidavit was obtained by Jakes’ investigator.

In the affidavit, Davis claimed that he was questioned by one officer for hours, fell asleep, and then woke up to another officer (this time Officer Allen Inabinett) yelling

and threatening to throw him in prison for the murder of David Jakes if he did not survive his gunshot injuries. In the affidavit, Davis claims that Officer Inabinett told him that the only way for Davis to stay out of prison was to tell him what he wanted to hear. In the affidavit, Davis claimed he had no knowledge of a robbery occurring the night of the incident.

Notably, during the hearing for a new trial, Davis, who was represented by counsel, invoked his rights under the 5th Amendment for the majority of the questions asked of him.

This court reviewed the original interview of Davis that took place on June 4, 2010. In contradiction to Davis's affidavit, Officer Inabinett was the original officer who questioned Davis. Officer Inabinett left the interview room in order to speak with Davis's parents who were at the police station during the time of the interview. Thereafter, Investigator Jeffrey Scott entered the interview room and questioned Davis. Neither officer threatened to throw Davis in prison if he did not tell them what they wanted to hear. Additionally, Investigator Scott told Davis numerous times that he could not make any promises to Davis. Investigator Scott encouraged Davis to be honest and tell the truth.

At one point during the interview, law enforcement stepped out of the interview room and Davis's mom came in to talk to him. She begged him to be honest. After she left the interview room, Davis implicated Jakes and McMillan.

Additionally, this court reviewed Davis's December 21, 2010 written statement obtained by law enforcement. Davis's attorney, Margie Bright Matthews, Esquire was

present for that statement. In this written statement, Davis implicated McMillan and Jakes in the attempted robbery.

Furthermore, this court reviewed Davis's sworn testimony at trial. He testified about how McMillan and Jakes planned out the robbery and attempted to execute the crime. During the trial, Davis repeatedly testified that he was telling the truth about what happened that day.

After reviewing the trial transcript and other exhibits, this court finds Davis's affidavit/recantation unreliable and not credible. See State v. Mayfield, 235 S.C. 11, 35, 109 S.E.2d 716, 729 (1959) (noting that recantation of testimony is ordinarily unreliable and "[t]o hold such affidavits sufficient to require the granting of a new trial would be to open the door to fraud and perjury, as well as to invite interminable delays in the disposition of causes.").

Additionally, this court finds the following: (1) the affidavit's recantation is not credible, particularly in light of the fact Davis was not willing to repeat the assertion when under oath in a courtroom; and (2) the fact that it is so unbelievable—inherently and otherwise—coupled with the contradictory and consistent position Davis previously took through his earlier interview statement, written statement, and trial testimony ensure that unbelievable statement was not something that would probably change the result of trial in the event a new trial was granted.

B. Plea Deal or Implied Deal

During the new trial hearing, Defendant McMillan made an additional argument that the State has some type of either explicit or implied deal with Davis. However, this court finds no merit to that argument.

At trial, Davis testified that he did not have a “deal” at the time of trial. He testified that at one point he had an offer to plead to an accessory charge but that deal had expired. During the new trial hearing, Davis confirmed he did not have any type of deal when he testified at the original trial. There is absolutely no evidence that the Solicitor’s Office made any type of explicit or implicit deal with Davis other than the accessory offer that was testified to during the trial.

A movant seeing a new trial bears the burden of proving the claim. The argument presented by defense counsel is premised entirely upon unsupported speculation and is directly refuted by the sworn testimony previously given.

Therefore, this claim is devoid of any evidentiary support and lacks any credibility.

CONCLUSION

This court finds Davis’s affidavit/recantation unreliable and not credible. In addition, this Court finds absolutely no evidence of an undisclosed plea deal or any implied plea deal.

THEREFORE, this Court DENIES the above-referenced Defendants’ motion for a new trial based on after-discovered evidence.

IT IS ORDERED!

The Honorable Robert J. Bonds
Circuit Court Judge

Date

B



Colleton County Sheriff's Office
Sheriff Guerry L. "Buddy" Hill, Jr

394 Mable T Willis Blvd, Walterboro, SC 29488
Phone (843) 549-2211 Fax (843) 538-4384
www.colletoncountysheriff.com



September 7, 2023

RE: Order to Produce Disposition and Expungement Records – State v McMillian and Jakes

To whom it may concern,

The records clerks have reviewed all of the paper copy court orders that we have available at the Sheriff's Office and confirmed that we do not have an order to expunge anything for James Davis.

Respectfully,

Kelly Padgett
Administrative Services



ROA025



Colleton County Sheriff's Office

Sheriff Guerry L. "Buddy" Hill, Jr

394 Mable T Willis Blvd, Walterboro, SC 29488

Phone (843) 549-2211 Fax (843) 538-4384

www.colletoncountysheriff.com



September 21, 2023

To: The Honorable Robert Bonds

Re: Order Requiring the Production of Dispositions and Expungement Records
State v. Antwan D. McMillan (2010GS1500501-507)
State v. David Jakes (2010GS1500703-709)

The Colleton County Sheriff's Office has researched our records regarding the above matter. The Colleton County Sheriff's Office has no record of dismissal, disposition or expungement regarding the Order Requiring the Production of Dispositions and Expungement Records against Mr. James Davis, Jr (2010GS1500508-514).

Sincerely,

A handwritten signature in cursive script, appearing to read "Angela Stallings".

Angela Stallings
Administrative Captain

ROA026



South Carolina
Law Enforcement Division

P.O. Box 21398
Columbia, South Carolina
29221-1398

Henry D. McMaster, Governor
Mark A. Keel, Chief

Tel. (803) 737-9000

August 8, 2023

Via Email To: rbondssc@sccourts.org & U.S. Mail
The Honorable Robert Bonds
Post Office Box 2120
Walterboro, SC 29488

Re: SLED RESPONSE TO COURT ORDER
State v. Antwan D. McMillan (2010GS1500501-507)
State v. David Jakes (2010GS1500703-709)

Dear Judge Bonds:

I hope this correspondence finds you well. I write today in response to the Order Requiring the Production of Dispositions and Expungement Records that you issued in the above matter in which you ordered SLED to produce "the complete dispositional and expungement records for the charges levied against Mr. [James] Davis, [Jr.], numbered 2010GS1500508-514." Please be advised that SLED conducted a diligent search of its records and has no records responsive to this request. Please note that during the time in question, SLED would have deleted or destroyed any records in SLED's possession upon receipt of an Order for the Destruction of Arrest Records pursuant to S.C. Code Ann. § 17-1-40.

If I can be of any further assistance, please do not hesitate to let me know.

With kind regards, I am
Sincerely,


Adam L. Whitsett
SLED General Counsel



CALEA

An Accredited Law Enforcement Agency



ROA027

1. The first part of the document is a list of names and addresses. The names are written in a cursive script, and the addresses are written in a more formal, printed style. The list is organized into two columns, with names on the left and addresses on the right.

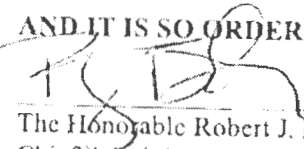
2. The second part of the document is a series of paragraphs of text. The text is written in a cursive script and appears to be a letter or a report. It discusses various topics, including the names and addresses listed in the first part. The text is organized into several paragraphs, with some paragraphs starting with a capital letter.

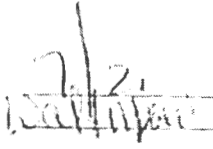


against Mr. McMillan and Mr. Jakes and captioned above.

THEREFORE, IT IS ORDERED ADJUDGED AND DECREED that SLED and CUSO seek out and produce to this Court, and not the parties to this action¹, the complete dispositional and expungement records for the charges levied against Mr. Davis, numbered 2010GS1500508-514.

AND IT IS SO ORDERED!


The Honorable Robert J. Bonds
Chief Administrative Judge
for General Sessions for the
Fourteenth Judicial Circuit

 2023
[illegible], SC

¹This Court asks that these documents be produced en camera and solely to this Court as an effort to balance the Defendants's "right to everyman's evidence" against Mr. Davis' rights under SC Code Section 17-01-40. See *United States v Nixon*, 418 US 683, at 709 (1974).

C

ROA030

STATE OF SOUTH CAROLINA
COUNTY OF Colleton

IN THE COURT OF GENERAL SESSIONS
ORDER FOR DESTRUCTION OF ARREST RECORDS

THE STATE OF SOUTH CAROLINA

Race Black Sex Male Age 21
DOB [REDACTED] 1969 SSN [REDACTED] 8711

STD #

1946809

James Lavert Davis
Defendant

Charges were disposed of in the court indicated below:

☐ Magistrate ☐ Municipal ☒ General Sessions

AKA

IT APPEARS that the defendant is entitled to have all records relating to this offense expunged and destroyed according to the applicable section of the South Carolina Code of Laws indicated below:

Warrant/GS No. M103091, M103092, M103093, M103094, M103095, M103096 & M103097 Date of Arrest 08/06/2010 Place of Arrest Colleton

Arrest Charge Assault with Intent to Kill (3counts), Attempted Armed Robbery(3counts) & Possession of Weapon during violent crime

- ☒ § 17-1-40. The charge was dismissed, *not* proessed or the defendant was found not guilty on 09/20/2011.
- ☐ § 17-22-150(a). The charge was *not* proessed on by the Solicitor because the defendant successfully completed the Pre-Trial Intervention Program (PTI). Director must attest to eligibility for expungement.
- ☐ § 17-22-530(A). The charge was *not* proessed on by the Solicitor because the defendant successfully completed the Alcohol Education Program Program (AEP). Director must attest to eligibility for expungement.
- ☐ § 34-11-90(e). The defendant was convicted of a first offense misdemeanor under the Fraudulent Check Law on and no additional criminal conviction as defined by § 34-11-90(e) has taken place in one year from date of conviction.
- ☐ § 44-53-450(b). The defendant was charged with first offense simple possession of marijuana or hashish on , received a conditional discharge and has successfully complied with the terms as set forth by the court.
- ☐ § 22-5-910. The defendant was convicted of a first offense for a crime carrying a penalty of not more than 30 days on , that offense did not involve the exceptions enumerated in § 22-5-910, and no additional criminal conviction as defined by § 22-5-910 has taken place within three years from date of conviction or five years from the date of conviction for criminal domestic violence. (Summary Court Judge must attest to eligibility).
- ☐ § 22-5-920. The defendant was convicted of a first offense as a youthful offender on , that offense did not involve the exceptions enumerated in § 22-5-920, and no additional criminal conviction as defined by § 22-5-920 has taken place during a five-year period following completion of his sentence, including probation and parole as a youthful offender.
- ☐ § 56-5-750(F). The defendant was convicted of a misdemeanor first offense failure to stop motor vehicle on and no additional criminal conviction has taken place for three years after completion of the sentence.

SLED verifies the offense listed above is eligible for expungement:

☒ Yes

☐ No

SLED

Date

1/20/12

IT IS ORDERED that all records relating to such arrest and subsequent discharge pursuant to the above-referenced section be dismissed, expunged and immediately destroyed and that no evidence of such records pertaining to such charge shall be retained by any municipal, county or state agency except nonpublic information retained on each person accepted for Pre-Trial Intervention pursuant to § 17-22-130, nonpublic information retained by SC Law Enforcement Division (SLED) pursuant to § 34-11-90(e), nonpublic information retained by the Department of Narcotic and Dangerous Drugs Under SLED pursuant to § 44-53-450, nonpublic information retained by SLED pursuant to § 22-5-910 and § 22-5-920, and nonpublic information retained by SLED and Department of Public Safety pursuant to § 56-5-750 (F).

Solicitor: ☒ Consents

☐ Declines to Consent

☐ Determined ineligible for expungement

Circuit Solicitor
Sean Thorne

I attest that the defendant is eligible for expungement pursuant to S.C. Code §17-22-150(a) (successful completion of PTI), §17-22-530(A) (successful completion of AEP), § 22-5-910 (summary court conviction) or § 44-53-450(b) (conditional discharge).

Signed this

31

day of

January, 2012

Circuit Court Judge

Director PTI / Director AEP/Summary Court Judge (circle one)

Defendant / Attorney for Defendant (Circle One)

#1320
Margie Brink
Mattiak

Expunged by SLED by: _____ Date: _____ (For SLED internal use only)

Expungement Application Process

- (1) Pursuant to § 17-22-950, the Summary Courts are required to automatically issue orders of expungement for cases tried in their courts when the defendant is found not guilty, or if the charges are dismissed or nolle prossed. In all other situations, expungements are processed through the Solicitor's office in the circuit in which the offense was committed.
- (2) In exchange for an expungement service that is provided by the solicitor's office, the applicant must pay the following amounts to the solicitor in the form of separate certified checks or money orders:
 - (a) a non-refundable administrative fee of \$250.00 made payable to the solicitor,
 - (b) a non-refundable SLED verification fee of \$25.00 made payable to SLED, when applicable,
 - (c) a filing fee of \$35.00 made payable to the county clerk of court, when applicable.
 - (d) **Fee Exemption:** Pursuant to § 17-22-940(B), SC Code, any person who applies to the solicitor's office for an expungement of general sessions charges pursuant to Section 17-1-40 is exempt from paying the administrative fee, unless the charge that is the subject of the expungement request was dismissed, discharged, or nolle prossed as part of a plea arrangement under which the defendant pled guilty and was sentenced on other charges.
- (3) The solicitor will send the application to SLED in order to verify that the offense is eligible for expungement, as provided by the South Carolina Code of Laws.
- (4) SLED will return the application to the solicitor and indicate if the offense(s) is eligible for expungement.
- (5) If the offense is determined to be eligible for expungement by SLED, the solicitor will obtain all necessary signatures, including the signature of the PTI Director, AEP Director, the summary court judge, and the circuit court judge.
- (6) Once the order is signed by the circuit court judge, the solicitor will file the order with the clerk of court.
- (7) The solicitor will provide copies of the expungement order to all pertinent governmental agencies as well as the applicant or the applicant's attorney.

Pursuant to Section 17-22-950, SC Code, the summary courts are responsible for expunging the records of all criminal cases handled in their courts, including offenses found in title 56 (Traffic), Title 50 (DNR) which are disposed of pursuant to Section 17-1-40. The summary courts are also required to automatically issue orders of expungement for cases tried in their courts when the defendant is found not guilty, or if the charges are dismissed or nolle prossed.

EXPUNGEMENT ORDERS **SHOULD NOT** BE FORWARDED TO S.C. COURT ADMINISTRATION (SCCA): (1) for magistrate or municipal court convictions/dispositions, because SCCA does not retain information which identifies defendants by name or SSN for these charges; or (2) for general sessions convictions/dispositions because disposition data (including expungements) is sent to SCCA electronically, and expungements are automatically entered into SCCA records; or (3) for family court convictions/dispositions because disposition data (including expungements) is sent to SCCA electronically, and expungements are automatically entered into SCCA records

Honorable Perry M. Buckner, III. presiding.

During this trial, the State elicited testimony from 18 witnesses of whom 12 were law enforcement officers or other government agents. A second co-defendant, James Davis, Jr., testified as a state 's witness along with his father and a female acquaintance of the three accused. Three persons testified as victims of the crimes.

At trial, co-defendant James Davis, Jr. testified that he, Defendant and co-defendant David Jakes blocked the exit ramp near Interstate 95 at dusk in an attempt to rob two women who were standing beside their stranded vehicle. When a third member of the stranded travelers, an active duty soldier in the US Army, made his presence known, the evidence indicated the soldier and Jakes engaged in prolonged gun fire. Jakes was struck and, during the break in shooting, the male victim reloaded his gun.

Davis' testimony indicated that Defendant then drove Jakes along with Davis away from the scene. Davis indicated the three met with two females who then assisted in the transportation of Jakes to the hospital for treatment for his multiple gunshot wounds. The three victims suffered no physical injury from the gunplay and lost no items of property.

Defendant's defense theory was mis-identification of him as a perpetrator. None of the three victims could identify any of their assailants and no law enforcement officer witnessed any criminal conduct. None of the forensic evidence presented through more than 100 exhibits directly implicated the Defendant.

Defendant presented the testimony of the lead detective during his case in chief. Defendant elicited testimony that cooperating witness Davis's first statements to law enforcement also exculpated Defendant. Defendant also elicited testimony that co-defendant Jakes provided a statement to law enforcement which exculpated the Defendant.

In an effort to counter this, the State elicited evidence from the lead detective indicating that he could not corroborate the existence of the third person Jakes implicated instead of Defendant.

Unlike the Defendant, according to the testimony, both Jakes and Davis confessed to involvement in the crimes. Further, forensic evidence also linked Jakes' wounds to the gunfire. However, the physical evidence only linked Defendant to the vehicle used in the crime and not to the crime scene itself.

The jury deliberated for nearly four hours and returned with three questions or requests. The jury returned a verdict convicting Defendant of three counts of Assault and Battery, First Degree, three counts of Attempted Armed Robbery, and one count of Possession of a Weapon During the Commission of a Violent Crime. Defendant was sentenced to 10 years for the assault convictions, 20 years for the robbery convictions, and five years for the gun charge with one assault sentence running consecutive to one of the robbery sentences.

Defendant filed a direct appeal arguing that the trial court should have struck a juror. The Court of Appeals affirmed the trial court's refusal to dismiss the juror. The South Carolina Supreme Court initially granted a petition of certiorari to entertain the direct appeal issue; however, the Court subsequently dismissed the petition as improvidently granted.

Defendant then filed an application seeking post conviction relief. A merits hearing was conducted in the Court of Common Pleas on June 6, 2017. The PCR court signed the Order of Dismissal finding that trial counsel was neither deficient nor was any prejudice shown. This Order was signed on April 23, 2018 and Defendant's counsel received a copy of this Order on May 7, 2018.

Defendant filed a Notice of Appeal and Proof of Service on or about May 23, 2018.¹ A Petition for Writ of Certiorari was filed with the South Carolina Supreme Court on October 29, 2018 and subsequently transferred to the South Carolina Court of Appeals. On January 14, 2021, the Court of Appeals granted the petition for a writ of certiorari and briefing followed. That matter remains pending and this Motion follows.

ARGUMENT

Because a cooperating co-defendant, James Davis, provided false information during his testimony offered on behalf of the prosecution during the trial and that testimony went uncorrected by the prosecutor, the trial court should grant a new trial, pursuant to Rule 29(b).

The United States Supreme Court categorically condemns the utilization of false testimony. In fact, for more than three quarters of a century, the Supreme Court has unequivocally indicated that the failure to correct the knowing presentation of false testimony will result in reversal of any conviction obtained therewith. *Mooney v. Holohan*, 294 US 103 (1935). In *Mooney*, the Court refuted the argument of the state attorney general that due process is satisfied when the “state has contrived a conviction...through deliberate deception of court and jury by the presentation of testimony known to be perjured.” *Mooney*, at 112. The Court held that “[s]uch a contrivance by a state to procure the conviction and imprisonment of a defendant is as inconsistent with the rudimentary demands of justice as is the obtaining of a like result by intimidation.” *Id.*, at 112.

More than half a century ago, the United States Supreme Court reversed a murder conviction based upon a prosecutor’s failure to correct false testimony regarding a plea

¹Undersigned counsel was retained to argue Defendant’s case in the appellate courts and did not serve as PCR counsel at the circuit court level.

agreement struck between the state and a cooperating witness. *Napue v. Illinois*, 360 US 264 (1959). In *Napue*, the Court reviewed the constitutionality of a murder conviction obtained, in part, by the testimony of a cooperating co-defendant. At the trial, the co-defendant testified that he had not struck any plea bargain with the state's attorney. This was false and this false assertion went uncorrected. The Supreme Court held that the prohibition on the use of false testimony applied even when the "false testimony goes only to the credibility of the witness." *Napue*, at 269. The Court continued to note that a "lie is a lie..." and that it was "of no consequence that the falsehood bore upon the witness' credibility rather than directly..." on the question of guilt. *Id.* at 269-270 (internal citations omitted).

Finally, the South Carolina Supreme Court more recently issued a ruling regarding a *Napue* claim. See *Riddle v. Ozmint*, 631 SE2d 70 (SC 2006). In *Riddle*, the state Supreme Court reversed a murder conviction, in part, because the state presented a witness's testimony that proved to be false and allowed that testimony to go uncorrected. In that case, a cooperating co-defendant falsely testified regarding the number of times he met with authorities to discuss his testimony. The state Supreme Court granted relief noting that the "issue is not why [witness] failed to tell the truth: rather, it is why the solicitor, who knew [witness'] testimony to be false, failed to correct it." *Riddle*, at 75. The Court reaffirmed the notion that the "failure to correct false evidence is as reprehensible as its presentation." *Id.*

Turning to the facts of this case and as a matter of review, Antwan McMillan was tried and convicted of various offenses based almost solely upon the testimony of James Davis, Jr. Mr. Davis' testimony was presented by the prosecution during its case in chief. At no time during this testimony, did the state court prosecutor indicate that the deal struck between the state and Mr. Davis was that Mr. Davis' charges would be dismissed and that he would not be held

criminally responsible for any of the events of the day in question. Instead, Mr. Davis testified that he did not “have the deal anymore,” that the prosecutor did not make him “any promises,” that no one from “the State of South Carolina” made him or his attorney any promises related to these charges. Trial Transcript, page 241, l. 15 - page 242, l. 5. This testimony went uncorrected by prosecution.

However, according to newly discovered evidence contained in a statement from James Davis now in the possession of undersigned, Davis was promised that he would “stay out of prison” if he told the investigating officer “what he wanted to hear.” Further, a review of the Colleton County Public Index does not contain any information about any charges involving James Davis, Jr and this incident. This suggests that the actual deal was even better than “stay(ing) out of prison.” The non-disclosure of a “wink wink” deal violates due process. See *Giglio v US*, 405 US 150 (1972)(holding that due process required the reversal of a conviction when an agreement or understanding between the government and the primary witness concerning future prosecution was not disclosed to the defendant or introduced to the jury.).

The truth contained in Mr. Davis’ recently provided statement indicates that the trial testimony was false. This falsehood related to the very question at issue in a credibility determination: is there any bias or motive to misrepresent? The bias inquiry is especially important because Davis’ trial testimony is the only evidence supporting McMillan’s conviction.

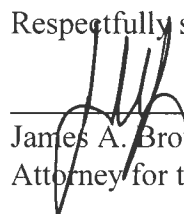
CONCLUSION

Therefore, Antwan McMillan requests that this Court convene a hearing, take testimony and evidence, vacate his convictions and sentences and award him a new trial based upon this recently discovered evidence.

AND I SO MOVE

ROA038

Respectfully submitted,

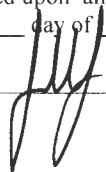


James A. Brown, Jr.
Attorney for the Defendant

December 8, 2021
Beaufort, South Carolina

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document
was served upon all counsel of record in this proceeding
this 8th day of December, 2021.



ROA039

Witness Statement

On June 04, 2010 the police showed up at my house telling my parents that they had enough evidence to arrest me. It was never made clear on what the charges were. My parents took me to the station where I was questioned for hours and about the night of June 03, 2010, the night my friend David was shot. After hours of questioning, I fell asleep exhausted from all the questioning only to wake up to yet another officer questioning me, this time it was officer Allen Inabinett yelling and threatening to throw me prison for 40-50 years and charge me with the murder of my friend David Jakes if he didn't survive his gun shot injuries. He told me repeatedly that the only way I would be able to stay out prison is for me to tell him what he wants to hear. So I did exactly what the officer told me to do. Except the truth is we were drinking heavy that night, I fell asleep while we were headed to Walterboro to link up with some friends. I woke up after hearing gunshots and ducked for cover. Still till this day, I have no knowledge of a robbery ever occurring that night. It was later brought to my attention when I being questioned by officer Allen Inabinett and he told me that it was a robbery and that if I didn't say anything either Antwaun or David would place all the blame on me. Even after repeatedly telling him I didn't know what happen which was the truth, he told if I wanted to stay out of prison I was to tell him what he wanted to hear. So I did exactly what the officer told me to do.

James J. Davis

Inw.

Witness

Christopher Reynolds

Chris

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SOLETON COUNTY
GENERAL SESSIONS COURT

1

ROA041

in the car where he was taken to the hospital by his friends.

Defendant, Antwan and Chippy were charged with attempted armed robbery, attempted murder, and possession of a weapon during the commission of a violent crime. On August 29, 2011, Defendant and Antwan McMillan proceeded to trial before the Honorable Perry M. Buckner, III. During the trial, Chippy Davis testified that when they initially drove past the car Antwan said it was "an easy lick." Although Chippy testified that he told them he did not want to, Chippy claimed that the other two attempted to rob the alleged victims.

Chippy testified that he received no promises from the State of South Carolina to get him to testify. Chippy claimed to also be facing charges for attempted armed robbery, attempted murder, and possession of a weapon during the commission of a violent crime. However, after his testimony was complete those indictments were dismissed.

Defendant was convicted of Attempted Armed Robbery, Assault and Battery 1st Degree, and Possession of a Weapon during the Commission of a Violent Crime. Defendant received 35 years of incarceration.

Newly Discovered Evidence

Within the proceeding year, Defendant has learned that Chippy now admits to lying during his testimony at Defendant's trial. In a recent statement Chippy has stated the following:

On June 4, 2010 the police showed up at my house telling my parents that they had enough evidence to arrest me. It was never made clear on what the charges were. My parents took me to the station where I was questioned for hours and about the night of June 3, 2010. The night my friend David was shot. After hours of questioning, I fell asleep exhausted from all the questioning only to wake up to yet another officer questioning me, this time it was officer Allen Inabinett yelling and threatening to throw me prison for 40-50 years and charge me with the murder of my friend David Jakes if he didn't survive his gunshot injuries. He told me repeatedly that the only way I would be able to stay out prison is for me to tell him what he wants to hear. So, I did exactly what the officer told me to do. Expect (sic) the truth is we were drinking heavy that night, I fell asleep while we were headed to

Walterboro to link up with some friends. I woke up after hearing gunshots and ducked for cover. Still till this day, I have no knowledge of a robbery ever occurring that night. It was later brought to my attention when I being questioned by Officer Allen Inabinett and he told me that it was a robbery and that I didn't say anything either Antwaun or David would place all the blame on me. Even after repeatedly telling him I didn't know what happen which was the truth, he told if I wanted to stay out of prison I was to tell him what he wanted to hear. So I did exactly what the officer told me to do.

Defendant submits that this and evidence which will be presented at a hearing on this motion is newly discovered evidence which would justify a new trial.

Based on the foregoing, Defendant respectfully request a hearing an a new trial based on after discovered evidence.

Respectfully Submitted,



Tristan M. Shaffer (SC Bar 77565)
P.O. Box 1027
Chapin, SC 29036
(o) 803-626-0188
tristan@shafferlawsc.com

December 9, 2021

E 00 1480Y

Witness Statement

On June 04, 2010 the police showed up at my house telling my parents that they had enough evidence to arrested me. It was never made clear on what the charges were. My parents took me to the station where I was questioned for hours and about the night of June 03, 2010, the night my friend David was shot. After hours of questioning, I fell asleep exhausted from all the questioning only to wake up to yet another officer questioning me, this time it was officer Allen Inabinett yelling and threatening to throw me prison for 40-50 years and charge me with the murder of my friend David Jakes if he didn't survive his gun shot injuries. He told me repeatedly that the only way I would be able to stay out prison is for me to tell him what he wants to hear. So I did exactly what the officer told me to do. Except the truth is we were drinking heavy that night, I fell asleep while we were headed to Waltherboro to link up with some friends. I woke up after hearing gunshots and ducked for cover. Still till this day, I have no knowledge of a robbery ever occurring that night. It was later brought to my attention when I being questioning by officer Allen Inabinett and he told me that it was a robbery and that if I didn't say anything either Antwan or David would place all the blame on me. Even after repeatedly telling him I didn't know what happen which was the truth, he told if I wanted to stay out of prison I was to tell him what he wanted to hear. So I did exactly what the officer told me to do.

7/1/11
COLLETON COUNTY
GENERAL SESSIONS

Tristan M. Shaffer
Attorney at Law

December 23, 2021

Colleton County Clerk of Court
P.O. Box 620
Walterboro, SC 29488

RE: State v. David Jakes

Dear Ms. Hill,

Please find the enclosed Motion for a new trial based on after discovered evidence.

Please file the attached and return a clocked copy.

Sincerely,

s/ Tristan Shaffer
Tristan M. Shaffer

CC: Colleton County Solicitor's Office

COLLETON COUNTY
GENERAL SESSIONS COURT
2021 DEC 29 PM 3:11

STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)

IN THE COURT OF GENERAL SESSIONS

Indictment Nos: 2010GS1500501-0507
2010GS1500703-0709

STATE OF SOUTH CAROLINA)

Plaintiff.)

VS.)

ANTWAN D. MCMILLAN and
DAVID JAKES)

Defendants)

**ORDER REQUIRING THE
PRODUCTION OF DISPOSITIONS
AND EXPUNGEMENT RECORDS**

THIS MATTER WAS BROUGHT BEFORE THIS COURT by the Defendants seeking an order requiring that the South Carolina Law Enforcement Division (SLED) and the Colleton County Sheriff's Office (CCSO) produce and provide certain records directly to this Court.

Specifically, the Defendants sought production of any and all records, documents, notes and the like concerning the disposition and expungement of charges for which Mr. James Davis, Jr. was arrested by the Colleton County Sheriff's Office on or about June 4, 2010. Argument about this request was made at a hearing held before this Court in the Colleton County Courthouse on July 12, 2023. The State of South Carolina was represented by Ms. Julie Kate Keeney, Defendant McMillan was represented by Mr. James Arthur Brown, Jr. and Mr. Jakes was represented by Mr. Tristan Shaffer.

After hearing the arguments of counsel and considering the issues raised in the SCRCrimP Rule 29(b) motion for a new trial, this Court found that it was appropriate to order that SLED and CCSO seek and produce to this Court the complete disposition and expungement records concerning the charges against Mr. Davis which arose from the same events alleged

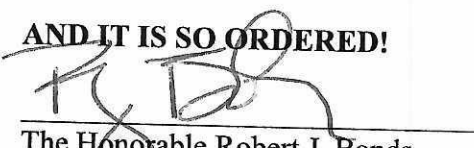
JUL 27 2023 AM 10:40
COLLETON CO CLERK OF COURT

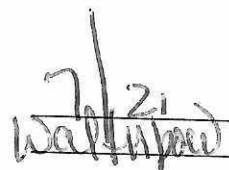
ROA046

against Mr. McMillan and Mr. Jakes and captioned above.

THEREFORE, IT IS ORDERED ADJUDGED AND DECREED that SLED and CCSO seek out and produce to this Court, and not the parties to this action¹, the complete dispositional and expungement records for the charges levied against Mr. Davis, numbered 2010GS1500508-514.

AND IT IS SO ORDERED!


The Honorable Robert J. Bonds
Chief Administrative Judge
for General Sessions for the
Fourteenth Judicial Circuit

 7/21/2023, SC

JUL 21 2023 AM 10:40
COLLETON COUNTY, SOUTH CAROLINA

¹This Court asks that these documents be produced en camera and solely to this Court as an effort to balance the Defendants's "right to everyman's evidence" against Mr. Davis' rights under SC Code Section 17-01-40. See *United States v Nixon*, 418 US 683, at 709 (1974).

STATE OF SOUTH CAROLINA
COUNTY OF Colleton

THE STATE OF SOUTH CAROLINA

VS.

James Everett Davis
Defendant

IN THE COURT OF GENERAL SESSIONS
ORDER FOR DESTRUCTION OF ARREST RECORDS

Race Black Sex Male Age 21
DOB 10/26/1989 SSN 251-79-8711

SID #

1946809

Charges were disposed of in the court indicated below:

☐ Magistrate ☐ Municipal ☒ General Sessions

AKA

IT APPEARS that the defendant is entitled to have all records relating to this offense expunged and destroyed according to the applicable section of the South Carolina Code of Laws indicated below:

Warrant/GS No. M103091, M103092, M103093, M103094, M103095, M103096 & M103097 Date of Arrest 06/05/2010 Place of Arrest Colleton County, S.C.

Arrest Charge Assault with Intent to Kill (3counts), Attempted Armed Robbery(2counts) & Possession of Weapon during violent crime.

- ☒ § 17-1-40. The charge was dismissed, *not pressed* or the defendant was found not guilty on 09/20/2011.
- ☐ § 17-22-150(a). The charge was *not pressed* on by the Solicitor because the defendant successfully completed the Pre-Trial Intervention Program. (PTI) Director must attest to eligibility for expungement.
- ☐ § 17-22-530(A). The charge was *not pressed* on by the Solicitor because the defendant successfully completed the Alcohol Education Program Program. (AEP) Director must attest to eligibility for expungement.
- ☐ § 34-11-90(e). The defendant was convicted of a first offense misdemeanor under the Fraudulent Check Law on and no additional criminal conviction as defined by § 34-11-90(e) has taken place in one year from date of conviction.
- ☐ § 44-53-450(b). The defendant was charged with first offense simple possession of marijuana or hashish on , received a conditional discharge and has successfully complied with the terms as set forth by the court.
- ☐ § 22-5-910. The defendant was convicted of a first offense for a crime carrying a penalty of not more than 30 days on , that offense did not involve the exceptions enumerated in § 22-5-910, and no additional criminal conviction as defined by § 22-5-910 has taken place within three years from date of conviction or five years from the date of conviction for criminal domestic violence. (Summary Court Judge must attest to eligibility).
- ☐ § 22-5-920. The defendant was convicted of a first offense as a youthful offender on , that offense did not involve the exceptions enumerated in § 22-5-920, and no additional criminal conviction as defined by § 22-5-920 has taken place during a five-year period following completion of his sentence, including probation and parole as a youthful offender.
- ☐ § 56-5-750(F). The defendant was convicted of a misdemeanor first offense failure to stop motor vehicle on and no additional criminal conviction has taken place for three years after completion of the sentence.

SLED verifies the offense listed above is eligible for expungement:

☒ Yes

☐ No

SLED

Date

B. Davis
Barbara Davis

1/20/12

IT IS ORDERED that all records relating to such arrest and subsequent discharge pursuant to the above-referenced section be dismissed, expunged and immediately destroyed and that no evidence of such records pertaining to such charge shall be retained by any municipal, county or state agency except nonpublic information retained on each person accepted for Pre-Trial Intervention pursuant to § 17-22-130, nonpublic information retained by SC Law Enforcement Division (SLED) pursuant to § 34-11-90(e), nonpublic information retained by the Department of Narcotic and Dangerous Drugs Under SLED pursuant to § 44-53-450, nonpublic information retained by SLED pursuant to § 22-5-910 and § 22-5-920, and nonpublic information retained by SLED and Department of Public Safety pursuant to § 56-5-750 (F).

Solicitor: ☒ Consents

☐ Declines to Consent

☐ Determined ineligible for expungement

Sean Thornton
Circuit Solicitor

I attest that the defendant is eligible for expungement pursuant to S.C. Code §17-22-150(a) (successful completion of PTI), §17-22-530(A) (successful completion of AEP), § 22-5-910 (summary court conviction) or § 44-53-450(b) (conditional discharge).

Signed this

31

day of January, 2012

Circuit Court Judge



SCCA 223A (11/2009)

ROA048

Director PTI / Director AEP/Summary Court Judge (circle one)

Defendant / Attorney for Defendant (Circle One)

#1320
Margie Brigg
Matti

Expunged by SLED by: _____

Date: _____

(For SLED internal use only)

Expungement Application Process

- (1) Pursuant to § 17-22-950, the Summary Courts are required to automatically issue orders of expungement for cases tried in their courts when the defendant is found not guilty, or if the charges are dismissed or nolle prossed. In all other situations, expungements are processed through the Solicitor's office in the circuit in which the offense was committed.
- (2) In exchange for an expungement service that is provided by the solicitor's office, the applicant must pay the following amounts to the solicitor in the form of separate certified checks or money orders:
 - (a) a non-refundable administrative fee of \$250.00 made payable to the solicitor,
 - (b) a non-refundable SLED verification fee of \$25.00 made payable to SLED, when applicable,
 - (c) a filing fee of \$35.00 made payable to the county clerk of court, when applicable.
 - (d) **Fee Exemption:** Pursuant to § 17-22-940(B), SC Code, any person who applies to the solicitor's office for an expungement of general sessions charges pursuant to Section 17-1-40 is exempt from paying the administrative fee, unless the charge that is the subject of the expungement request was dismissed, discharged, or nolle prossed as part of a plea arrangement under which the defendant pled guilty and was sentenced on other charges.
- (3) The solicitor will send the application to SLED in order to verify that the offense is eligible for expungement, as provided by the South Carolina Code of Laws.
- (4) SLED will return the application to the solicitor and indicate if the offense(s) is eligible for expungement.
- (5) If the offense is determined to be eligible for expungement by SLED, the solicitor will obtain all necessary signatures, including the signature of the PTI Director, AEP Director, the summary court judge, and the circuit court judge.
- (6) Once the order is signed by the circuit court judge, the solicitor will file the order with the clerk of court.
- (7) The solicitor will provide copies of the expungement order to all pertinent governmental agencies as well as the applicant or the applicant's attorney.

Pursuant to Section 17-22-950, SC Code, the summary courts are responsible for expunging the records of all criminal cases handled in their courts, including offenses found in title 56 (Traffic), Title 50 (DNR) which are disposed of pursuant to Section 17-1-40. The summary courts are also required to automatically issue orders of expungement for cases tried in their courts when the defendant is found not guilty, or if the charges are dismissed or nolle prossed.

EXPUNGEMENT ORDERS **SHOULD NOT** BE FORWARDED TO S.C. COURT ADMINISTRATION (SCCA): (1) for magistrate or municipal court convictions/dispositions, because SCCA does not retain information which identifies defendants by name or SSN for these charges; or (2) for general sessions convictions/dispositions because disposition data (including expungements) is sent to SCCA electronically, and expungements are automatically entered into SCCA records; or (3) for family court convictions/dispositions because disposition data (including expungements) is sent to SCCA electronically, and expungements are automatically entered into SCCA records

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

IN THE GENERAL SESSIONS COURT
FOURTEENTH JUDICIAL CIRCUIT
2010-GS-15-00501-00507

State of South Carolina,)
)
 Plaintiff,)
)
 vs.)
)
 Antwan McMillan,)
)
 Defendant.)
 -----)

TRANSCRIPT OF HEARING

March 17, 2023
Beaufort, South Carolina

B E F O R E:

The Honorable Robert Bonds, Judge Presiding

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

For the State -
Julie Kate Keeney, Esquire
Fourteenth Circuit Solicitor's Office
P.O. Box 366
Walterboro, South Carolina 29488-2941

For the Defendant -
Jim Brown, Esquire
Jim Brown Law Offices P.A.
1600 Burnside Street #100
Beaufort, South Carolina 29902

Tristan M. Shaffer, Esquire
Shaffer Law Firm
P.O. Box 1135
Irmo, South Carolina 29063
803-941-7514

Cathy L. Young, CVR-M
Official Circuit Court
Reporter
Post Office Box 4604
Beaufort, South Carolina 29903

ROA050

P R O C E E D I N G S

* * * * *

THE COURT: Solicitor, what do we have this morning?

MS. KEENEY: Judge, this is Defense's motion in State vs. David Jakes and Antwan McMillan for a new trial under Rule 29.

THE COURT: All right. Who represents Mr. Jakes?

MR. SHAFFER: I do, Your Honor. Tristan Shaffer.

THE COURT: And who represents Mr. McMillan?

MR. BROWN: I do. Jim Brown with the Beaufort County Bar.

THE COURT: So gentlemen, the motion is y'all's motion for a new trial pursuant to 29B?

MR. BROWN: That is correct, Judge.

THE COURT: All right. I'm happy to hear from one or both of you.

MR. SHAFFER: Your Honor, an issue has arisen this morning. We have a -- and I'll give you a little bit of background first, because -- about the case. We have -- our

1 clients went to trial, a joint trial, on a
2 robbery and attempted murder ABWIK case. It
3 was -- some people were moving.

4 THE COURT: I'm familiar with the
5 case. I live in Colleton County.

6 MR. SHAFFER: Yes, sir.

7 THE COURT: Now I don't know anything
8 about any of the case, I just know, I think,
9 some of the general -- this was the car stop on
10 the interstate and off-ramp?

11 MR. SHAFFER: Yes, sir.

12 THE COURT: And the ladies breakdown
13 and a good Samaritan who is in the military
14 stopped just to help them, and there's a
15 shootout?

16 MR. SHAFFER: Yes, and the individual
17 who is in the shootout from their side with the
18 ladies was actually moving the ladies.

19 THE COURT: Okay.

20 MR. SHAFFER: But yeah, that's the
21 general gist of the case is that there is an
22 alleged robbery and then a shootout. Our
23 client -- my client and Mr. Brown's client went
24 to trial together. They had the third person
25 in the car and was a testifying witness in the

1 case. His name was James Davis, James Jimmy
2 Davis, is the individual who was actually in
3 the car who testified. Mr. Davis initially
4 went to law enforcement fairly soon afterwards.
5 My client was shot in this incident, so he was
6 at MUSC. Mr. Davis went to the -- Mr. Davis
7 went to law enforcement and had given initially
8 a statement saying I had nothing to do with
9 this, I wasn't even there, I don't know
10 anything about it. That statement at that time
11 on June 4th of 2010, that statement changed to
12 something different saying that he was in the
13 car, that Mr. McMillan was driving the car, and
14 he was in the front passenger seat. And Mr.
15 Jakes, my client was in the back seat. He says
16 that Mr. McMillan pulled over on the side of
17 the road and at that point Mr. Jakes gets out
18 of the car, yells something, this is a June 4th
19 statement, yells something that he doesn't know
20 what it is, and then there's a shootout. My
21 client shot. He crawls back in the car. The
22 driver of the car leans over to the passenger
23 side window and shoots a gun out of the window
24 -- out of the window that he's -- and returns
25 fire. That was his statement that was from

1 June 4th. Then there's a subsequent statement
2 in December that's a written statement that
3 says they had planned a robbery and that the --
4 or that in the car, the two other individuals
5 planned a robbery and before he could say
6 anything, my client jumps out of the car and
7 says, give it up, or something like that. That
8 was consistent with his testimony. After that,
9 and I think this would have been around
10 February of 2021, my client's investigator had
11 said ---

12 THE COURT: When was the trial?

13 MR. SHAFFER: This was -- I don't
14 recall the date, Your Honor. This was 2013, I
15 think -- 2011.

16 MR. BROWN: August 9th through 11th,
17 2011, I believe, Judge.

18 THE COURT: All right. So when now
19 are you referencing?

20 MR. SHAFFER: In 2021, February of
21 2021, my client hires an investigator. He
22 still has a PCR pending. The investigator
23 speaks to James Davis. James Davis then gives
24 a different story essentially more consistent
25 with the first story, it is consistent with the

1 first story is my understanding -- and said
2 that essentially law enforcement -- the reason
3 that he gave the statement he did was that law
4 enforcement basically pushed him into it,
5 threatened him and made him feel threatened to
6 the point that he went ahead and gave him his
7 statement. Now we filed a timely 29B motion,
8 our co-defendant Mr. McMillan filed a timely
9 29B motion. I still have a PCR pending. Mr.
10 McMillan does not have a PCR pending currently
11 because his PCR got resolved previously and
12 went up to the Court of Appeals. We have ---

13 THE COURT: And it's still pending?

14 MR. BROWN: No, sir, Your Honor. We
15 argued that -- we had oral argument on a
16 petition we served last March and they denied
17 -- or they affirmed that the PCR judges denial
18 of relief.

19 THE COURT: Yes, sir.

20 MR. BROWN: Yes, sir.

21 MR. SHAFFER: Then yesterday --
22 obviously we had filed a motion. Yesterday Ms.
23 Keeney actually provided us with a video that
24 my client did not have of James Davis's ---

25 THE COURT: Well, you know, when I was

1 reviewing this, because I am new enough that I
2 still review things, I said to myself, if this
3 happened, there's got to be a recording. And
4 they provided you with a recording?

5 MR. SHAFFER: Yes, that's correct.

6 THE COURT: All right.

7 MR. SHAFFER: So we've got about an
8 hour and a half video in this case that
9 involves various things. Previously to that --
10 now my client hadn't ever seen that. He was
11 represented by Ms. Beach (Ph). There's going
12 to be some issues that I still think are newly
13 discovered because my client had never seen
14 this video, and based off his statements,
15 related to coercion. I certainly think that
16 there's something there. Because I got
17 provided that later, obviously in a few
18 minutes, we're also going to do a PCR of Mr.
19 Jakes's case at least, I'm moving to amend the
20 PCR to include additional claims based off of
21 things that happened in the video as well, but
22 we'll get to that.

23 THE COURT: So let me ask you, before
24 we get to that, what's your position on moving
25 forward today on this motion given the fact

1 that -- are you telling me that this needs to
2 be continued because you need to look at,
3 evaluate this video or what because I want to
4 follow you there, sir. That's what I'm trying
5 to figure out first off.

6 MR. SHAFFER: Your Honor, -- Court's
7 indulgence?

8 THE COURT: Yes, sir.

9 MR. SHAFFER: Your Honor, I think
10 we're in the position that we're okay going
11 forward on the 29B ---

12 MR. BROWN: I think the best thing is
13 we don't have a transcript of the recording,
14 which is a better practice to -- we actually
15 didn't get a copy of it until yester ---

16 THE COURT: Well, the fact that you've
17 got this recording yesterday, sir, that's --
18 you're still prepared to move forward on your
19 motion today?

20 MR. SHAFFER: On the 29B.

21 THE COURT: That's all I wanted to
22 know.

23 MR. SHAFFER: Yes, sir. There is an
24 issue, Mr. Davis has came to me this morning
25 and said that he -- well, I think his father

1 had told him that maybe he should consider
2 getting a lawyer to advise him. And Mr. Davis
3 is -- I'm not sure if he's going to ask for a
4 lawyer or not at this point. Ms. Keeney had
5 previously indicated to me that she would
6 likely be -- if he got up and testified
7 consistent with his statement that we had,
8 she'd likely be charging him with perjury. So
9 because of that, I'm not sure if he wants a
10 lawyer or not. I'm not trying to -- I told him
11 basically I can't ethically give him advice on
12 the liability of a perjury claim or the not
13 liability of a perjury claim or what will
14 happen. I will say that currently they're
15 threatening to charge you without -- I think
16 that it will probably be somewhat inappropriate
17 for the Fourteenth Circuit Solicitor's Office
18 to make a charging decision given the facts of
19 this particular case and the fact that they're
20 claiming that -- claiming that he was coerced
21 by law enforcement. I think it would be
22 inappropriate for them to do that.

23 MR. BROWN: And we would join in that
24 motion. Mr. Shaffer and I talked about the
25 fact that ---

1 THE COURT: Well, I'm not really
2 interested in that today, am I?

3 MR. BROWN: Well ---

4 THE COURT: What'd be the
5 appropriateness of that charge? I'm not going
6 to make a ruling on ---

7 MR. BROWN: No, it's the threatening
8 of the charge.

9 THE COURT: The threatening of the
10 charge, I'm not going to make a ruling on that
11 today.

12 MR. BROWN: No, we would move that it
13 -- if there is a review of whether he committed
14 perjury, that it be done by a appointed private
15 prosecutor. Because we both had the Attorney
16 General's Office and the Fourteenth Circuit and
17 so that's undue pressure now. Deceased
18 colleague of ours Beattie Butler successfully
19 moved to have a judge in a somewhat similar
20 situation force the State to grant immunity to
21 the witness ---

22 THE COURT: Well, can I just appoint a
23 solicitor in a neighboring circuit?

24 MR. BROWN: Potentially, but the AG's
25 involved in this, too.

1 THE COURT: All right. But I don't
2 have to do that today.

3 MR. BROWN: Well, we don't want it to
4 be this -- what we don't want is Mr. Jakes to
5 take the Fifth because of the threat of
6 prosecution.

7 MS. KEENEY: May I clarify?

8 THE COURT: Hold on, hold on. I can't
9 -- I've got two people -- what I want to do is
10 I want to hear everything these gentlemen want
11 to tell me. And then they're going to sit
12 down, and I'm going to hear everything you
13 folks want to tell me. Okay? That's the best
14 way for me to do it.

15 MR. BROWN: Thank you, Your Honor.

16 THE COURT: All right. Go right
17 ahead.

18 MR. BROWN: I wanted to tell a little
19 bit about my -- the way I see I want to present
20 it kind of like a little outline, Judge.

21 MR. SHAFFER: And Your Honor, the only
22 thing I would say is that we join in that
23 request that you go ahead and make a ruling so
24 that there's not currently a threat by the
25 people who essentially have a stake in the case

1 that he's going to get a perjury charge
2 afterwards. We would ask that you go ahead and
3 make a ruling that either he's immune from the
4 charge or appoint an outside prosecutor who's
5 not the AG or the Fourteenth Circuit Solicitor.

6 THE COURT: Anything else?

7 MR. BROWN: Not as to that. I want to
8 give you a little overview of what I plan to
9 present today.

10 THE COURT: All right. Well, what I
11 want to do is I want to deal with this now.

12 MR. BROWN: Sure.

13 THE COURT: All right.

14 MR. BROWN: Now Judge, at some point
15 in time I would ask for my client to be able to
16 sit by me as we get into the case.

17 THE COURT: Sure.

18 MR. BROWN: Yes, sir.

19 THE COURT: All right. I'll hear from
20 you. I've got two people standing, either one.
21 I'm happy to hear from whoever wants to go
22 first.

23 MS. DIXON: Judge, mine is quick. I
24 just want to note for the record, the AG's
25 office is not involved in this motion. I am

1 here for the PCR hearings that follow.

2 THE COURT: Okay. All right. Thank
3 you.

4 All right, Ms. Keeney?

5 MS. KEENEY: May it please the Court?

6 THE COURT: Yes, Solicitor.

7 MS. KEENEY: To clarify what I said to
8 Defense Counsel was that if Mr. Davis is going
9 to get up on the stand, he could be charged
10 with perjury, so do we know what he wants to do
11 with a lawyer, because at the time of trial and
12 at the time that he was charged with these
13 crimes, he was represented by Senator Margie
14 Bright-Matthews. So I want to make sure that
15 she was aware of the situation before he gets
16 up on the stand and potentially incriminates
17 himself, so that he at least knows that he has
18 the right to counsel. So I contacted Ms.
19 Matthews and said this is what they're planning
20 on doing, if you want to contact your client,
21 you can. She did want to contact her client.
22 She could not get in touch with him, and she
23 asked that her client call her if I see him so
24 that she could talk to him before he gets up on
25 the stand. And so I communicated that to Mr.

1 Shaffer because Mr. Shaffer is the one who had
2 Mr. Davis's contact information. I've never
3 spoken to Mr. Davis. I certainly have not
4 threatened to charge him with perjury. I was
5 just saying that was a possibility, and so I
6 wanted to make sure that he had counsel. I
7 thought that that would be appropriate.

8 MR. SHAFFER: Your Honor, I did try to
9 call the Senator, Ms. Bright Matthews. I did
10 try to call her. I left a message with her
11 office. I haven't gotten a response back yet.
12 However, that is -- this all happened like in
13 the last two days, I believe. And related to
14 the AG's office, Your Honor, I would submit
15 that the AG's office is somewhat vested in the
16 outcome of what Mr. Davis says because various
17 allegations of my PCR are related to what he
18 says.

19 THE COURT: All right. Was Mr. Davis
20 here?

21 MR. SHAFFER: That's correct, Your
22 Honor. He's ---

23 THE COURT: Mr. Davis?

24 MR. DAVIS: Yes, sir.

25 THE COURT: Hey, sir. Have you -- do

1 you need to contact or communicate with a
2 lawyer? Have you spoken with a lawyer
3 concerning this matter?

4 MR. DAVIS: I haven't, sir.

5 THE COURT: You have not?

6 MR. DAVIS: I haven't.

7 THE COURT: Do you want to?

8 MR. DAVIS: Yes, sir, I would like the
9 opportunity to reach out to my former attorney.

10 THE COURT: Have you attempted to?

11 MR. DAVIS: I have.

12 THE COURT: You just haven't
13 connected?

14 MR. DAVIS: I haven't connected.

15 THE COURT: All right, sir. Will you
16 step out and try to get ahold of your attorney?

17 MR. DAVIS: Yes, sir.

18 THE COURT: Why don't you try to go do
19 that?

20 MR. DAVIS: Okay.

21 THE COURT: And let's see what ---

22 MS. KEENEY: Ms. Matthews told me that
23 I could provide him her cell phone number to
24 him.

25 THE COURT: All right. Then why don't

1 we do that?

2 MS. KEENEY: So I just haven't talked
3 to him.

4 (Paused for Mr. Davis to make call to
5 attorney.)

6 THE COURT: Mr. Thornton, yes, sir.

7 MR. THORNTON: May it please the
8 Court, Your Honor? As far as the policy or
9 procedure that we would follow in deciding on
10 if even -- nobody knows what Mr. Davis is or is
11 not going to say at this point, whether that
12 would qualify for perjury or anything else. I
13 think it's a little early for Mr. Brown and his
14 co-counsel to be asking for some other
15 solicitor's office or not the attorney general
16 be appointed. We all have procedures in place
17 for that. Anything like that would come to me
18 and I would take it to the solicitor to be
19 reviewed. And at some point, if we charged him
20 and his attorney felt like that was improper,
21 then they could move at that point for the
22 Solicitor's office to be recused and someone
23 else appointed. So I think we're putting not
24 just the cart before the horse but, you know,
25 the cart before the driver, the horse, the

1 reins, the wheels and everything else. So I
2 would, you know, -- I would ask the Court to
3 respectfully deny that request. We're not -- I
4 mean we're not even there yet. Thank you,
5 Judge.

6 THE COURT: Well, I'm not going to
7 make a decision today, sir, on -- I'm not going
8 to make a decision on whether he should be
9 prosecuted or, if so, what agency should or
10 should not be able to prosecute him. I would
11 agree that if there's a decision -- if there
12 would be a decision to prosecute him, I'm not
13 saying there is or isn't, but if there would
14 be, that if at that point, if you had concern,
15 then I think the appropriate remedy would be to
16 raise that concern at that time. Not now, I'm
17 not going to do that.

18 All right, sir, have you had an
19 opportunity to speak with your lawyer?

20 MR. DAVIS: I wasn't able to get ahold
21 of her.

22 THE COURT: You weren't able to get
23 ahold of her?

24 MR. DAVIS: No, sir.

25 THE COURT: All right. What do y'all

1 want to do? Because he's told me he hasn't
2 been able to speak with his lawyer, ---

3 MR. BROWN: Well, Judge, I'm willing
4 to present the case, but part of it is
5 obviously putting him on the stand.

6 THE COURT: Right.

7 MR. BROWN: So Your Honor, I can call
8 him to the stand, and if he says I'd like a
9 lawyer, then I guess Your Honor would have to
10 -- we'll follow Your Honor's -- otherwise we're
11 ready to proceed. Mr. Davis is here. We're
12 ready to proceed, but we would suggest that his
13 invocation of his right to counsel is going to
14 prevent the Court from hearing all of the
15 evidence. And it would undermine your ability
16 to make a ruling based on the truth.

17 THE COURT: Well, he has that right
18 regardless, correct?

19 MR. BROWN: Well, believe it or not,
20 actually the Defendant's right sometimes
21 surpasses the State's right to prosecute a
22 witness, and that's back to the issue I raised
23 where Brother Beattie Butler in Charleston was
24 able to get a judge to order the State to
25 immunize the witness such that the defendant

1 present a defense.

2 THE COURT: All right. What about it,
3 Solicitor?

4 MR. THORNTON: Judge, I have a request
5 that might solve this issue. I've asked Julie
6 Kate to try to reach Senator Matthews herself
7 right now. Senator Matthews may be more
8 inclined to respond to a call she knows where
9 it's coming from. So I've asked her to reach
10 out to her. I would object to a -- and I think
11 I know the case Mr. Brown is talking about, but
12 that was a -- I think a wholly different
13 situation than we have here, so I certainly
14 don't think it's appropriate to order us to
15 immunize anybody on something whether we --
16 that we don't even know if or what he's going
17 to say.

18 THE COURT: Well, my concern is the
19 fact that this gentleman was represented by a
20 lawyer in this matter. Apparently may have --
21 still may have some interest in representing
22 this individual or at least it appears that the
23 lawyer may have indicated that, that were going
24 to put him on the stand, that there's a
25 possibility that depending on his testimony

1 there could be possible perjury charges, and he
2 hasn't had the opportunity to speak with this
3 lawyer concerning this matter. And, you know,
4 that just doesn't seem right and seems like
5 we're starting off on the wrong foot from the
6 get-go. And that's what concerns me. And --
7 because also by not knowing what she's going to
8 say or what advice she's going to provide him,
9 then that just puts us in the unknown in having
10 to deal -- having to anticipate things that --
11 then it makes more work for us.

12 MR. BROWN: Judge, we want you to hear
13 all the evidence. That's all we want.

14 MR. SHAFFER: Your Honor, I would
15 propose that perhaps we -- there's two PCRs for
16 the day.

17 THE COURT: Yeah, I'm going to have
18 y'all stand down. I'm going to hear the other
19 PCR right now.

20 MR. SHAFFER: Thank you, Your Honor.

21 (The following portion is on the
22 record after the PCRs and the Judge had a
23 conference in his chambers with the attorneys
24 concerning Mr. Jakes and Mr. McMillan's cases.)

25 THE COURT: Attorney General, we had

1 on another matter earlier today there was a
2 case that I continued. Perhaps I continued
3 that in chambers, and I don't -- I think
4 ultimately that message was communicated ---

5 Were you in chambers?

6 MS. DIXON: No. That's okay.

7 THE COURT: I apologize because it
8 started off with discussing the 29B issue. And
9 I think there was an acknowledgement at least
10 some point that that 29B issue probably needed
11 to be heard in these matters before any PCR.

12 MS. DIXON: The State's position is
13 that the 29B should be resolved first.

14 THE COURT: That was my understanding.
15 And so when I was unable to resolve the 29B
16 issue today, I by necessity had to continue
17 that case.

18 MS. DIXON: Absolutely.

19 THE COURT: So I wanted to let you
20 know I wasn't trying to exclude you. We didn't
21 discuss your case. It was a 29B issue that we
22 discussed, and when I made my ruling on the 29B
23 issue, it basically made the case necessarily
24 have to be continued. So I just wanted to put
25 that on the record, and that is in the Jakes'

1 case, and so ---

2 MS. DIXON: And I do want to be clear
3 and I think Your Honor is aware of this, but
4 the Attorney General's office is not involved
5 the Rule 29B motions. We are just involved in
6 the PCR.

7 THE COURT: Well, you made that
8 abundantly clear earlier this morning. Some
9 other folks -- you know, I don't know, I'm not
10 getting into that. But you certainly made that
11 clear on the record this morning. But I just
12 want to let you know, I wanted to go on the
13 record and formally continue the case. I'll do
14 orders -- I'll do some form orders for
15 everything that I continued, but I want to make
16 sure that I was not excluding you, ma'am -- I
17 want you to know I was not excluding you,
18 Attorney General, from that discussion. It's
19 just I brought back the 29B folks and when I
20 made that ruling, then it just out of
21 necessity, it forced the continuance of your
22 PCR. Do you have anything you need to put on
23 the record about that?

24 MS. DIXON: Nothing, Your Honor.

25 THE COURT: All right.

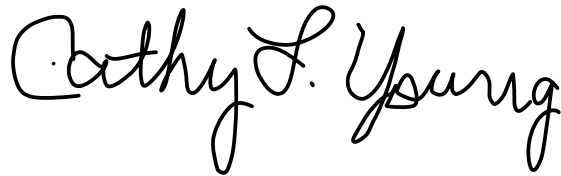
(Whereupon, the hearing was
concluded.)

- - -END OF TRANSCRIPT- - -

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 17th day of
March, 2023.

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

1 STATE OF SOUTH CAROLINA
2 IN GENERAL SESSIONS
3 COUNTY OF COLLETON

4 State of South Carolina,

5 vs.

Transcript of Record

2010-GS-15-00501

2010-GS-15-00502

2010-GS-15-00503

2010-GS-15-00505

2010-GS-15-00506

2010-GS-15-00506

2010-GS-15-00507

9 Antwan D. Mcmillan,

10 Defendant.

13 July 12, 2023

14 Colleton, South Carolina

15 B E F O R E:

16 The HONORABLE ROBERT BONDS

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

18 Julie Kate Keeney, Solicitor

19 James Brown, Representing Antwan D. Mcmillan

20 Tristan Michael Shaffer, Representing David Jakes

Joenathan Shelly Chaplin, Representing James Davis

24 SHARON G. HARDOON, CSR

25 Official Circuit Court Reporter, III

ROA073

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1 MS. KEENEY: State calls David Jakes,
2 Antwan Mcmillan.

3 THE COURT: All right. Solicitor, yes,
4 ma'am.

5 MS. KEENEY: May it please the Court?

6 Before Your Honor is David Jakes and
7 Antwan Mcmillan. They are both in the department
8 of corrections for 2010 indictments. Attempted --
9 two counts of attempted armed robbery and two
10 counts of assault and battery first degree, and a
11 weapons charge. They are serving a sentence now.
12 This is the defendant's motion -- both defendants'
13 motion for a new trial based on after-discovered
14 evidence.

15 THE COURT: All right. Thank you.

16 Mr. Brown.

17 MR. BROWN: May it please the Court,
18 Judge?

19 We kind of started this hearing once
20 before, but we're getting back up to speed, we
21 have filed a rule 29 motion and that is based upon
22 a statement that was provided by the cooperating
23 defendant named James Davis, Jr. that was provided
24 after the trial, and actually after my client's
25 PCR had been filed, and actually adjudicated, and

1 his case, at that point, was on a petition for
2 cert from the PCR. And essentially, Mr. Davis
3 indicated he provided some information during the
4 trial that was not truthful.

5 And in my client's case, Mr. Jakes is a
6 little differently situated. The Court of Appeals
7 in the ruling of the petition for cert found that
8 there was not overwhelming evidence of guilt. And
9 that's my way of saying that Mr. Davis, Jr. was
10 the evidence against my client. And so that is
11 the setting for his statement at the trial not
12 being true, but being immaterial. And we couldn't
13 have discovered it before because we didn't know
14 the information was untruthful with the context of
15 the disposition of Mr. Davis's criminal case, and
16 we could not have discovered that because his
17 charges were pending.

18 Now, if I may talk about what was false.
19 It's a conjunction of two things. Mr. Davis gave
20 a series of statements to police before the trial.
21 Those were disclosed. There are videos of taped
22 statements. And I'm going to call it two
23 statements. One statement where he denies knowing
24 anything about the allegations and one statement
25 where he implicates Mr. Mcmillan, my client,

1 Mr. Jakes in a shoot out. It's our argument that
2 he never says there's a robbery during that second
3 statement. Those statements are made in June.

4 He later gives a written -- and that
5 video is disclosed -- he then gives a written
6 statement in December and then he adds in that
7 there was a robbery. His testimony at trial --
8 And, Judge, I've got these excerpts, but I don't
9 want to break up what I'm going to indicate to
10 you.

11 THE COURT: Yes, sir.

12 MR. BROWN: During the handing all that
13 stuff up.

14 Then at trial he testifies and he gives a
15 statement saying that they were all three in a
16 car, that they saw some folks stranded and they
17 stopped, that there was a robbery, and a shootout
18 that occurred, and that my client, who was, at one
19 point, driving the car, and Mr. Jakes had gotten
20 out, and that both Mr. Jakes and my client were
21 shooting.

22 He testifies that he is testifying --
23 that he is providing that cooperation without a
24 deal, but he testified. It is significant that he
25 was originally offered a deal of accessory before,

1 accessory after the fact if he gave truthful
2 information. He says that he blew that deal
3 because he, I guess, gave false information and
4 statement. So there was no deal and he was just
5 testifying, I guess, in the hopes that it would
6 help him out by cooperating. That's what he
7 testifies to at trial.

8 Now, what I can't figure out is when he
9 gave a statement that got the deal made, because
10 the first statement he gave where he denied
11 knowing anything about it was before there was a
12 prosecutor involved in the case, before there was
13 a defense lawyer involved in the case. And, on
14 that video -- which I have a copy to mark and hand
15 up -- on that video, there is no discussion about
16 reduction to accessory before or after the fact at
17 all.

18 So, in trial he testifies that there were
19 three prior statements; the statement where he
20 denies knowing anything, the next statement
21 saying -- where he implicates our clients, and
22 then the third written statement. But, Judge,
23 somewhere that doesn't make sense now. Because
24 where did he get the offered deal and where did he
25 blow the deal? Because that would have implied

1 there was another false statement somewhere out
2 there. And, of course, we're asserting that the
3 false statement was the testimony our clients were
4 involved.

5 But, Judge, now we have some more
6 information. There are no charges. There is no
7 record of any charges in the clerk's office.
8 There are no records of any charges that SLED had
9 written them. We have not subpoenaed anybody here
10 because it's hard to subpoena somebody to say that
11 there's nothing there, and I didn't want to go
12 through the process of subpoenaing the court's
13 office, but I'm positive that Your Honor could
14 take judicial notice that there's nothing in the
15 public index for Mr. Davis, Jr.

16 But I did subpoena him and he's back here
17 with his lawyer, Mr. Gill Gatch. I will tell you,
18 he, I understand, intends to take the Fifth. I
19 believe there's some questions that would not be
20 incriminating, and I think you do have to look at
21 each question and see if whether it would
22 potentially incriminate him. I don't think he can
23 blanket take the Fifth and not testify about
24 anything at all.

25 But I tell you, Your Honor, it's my

1 understanding that he's since joined the military
2 and went in, and, I believe, got out. And there
3 are no charges.

4 There's only -- because of the nature of
5 the charges, there's only two potential ways that
6 I believe that can be expunged under State law.
7 Because he did testify at trial, he had these
8 charges against him. One would be if he pled to a
9 YOA sentence, and, of course, the charges would
10 have to be changed because you couldn't give him a
11 YOA on attempted armed robbery or attempted
12 murder. And, of course, our clients were
13 convicted of the lesser, assault and battery
14 first.

15 But, Judge, he would have had to wait
16 five years into his YOA sentence to get that
17 expungement.

18 THE COURT: Let me ask you one thing:
19 Was he represented by counsel at that time?

20 MR. BROWN: He was represent by
21 Miss Margie Bright Matthews at the time of
22 trial.

23 THE COURT: Okay, go ahead.

24 MR. BROWN: Yes, sir.

25 And so it just seems, I'm going to say,

1 at least unlikely timing-wise that he would have
2 been able to have pled guilty under a YOA, and
3 then waited five years to the end of the YOA
4 sentence, then have it expunged, then yet still be
5 convicted, because the expungement is not a
6 pardon, and then enter the military, and then get
7 out of the military. The only other way he would
8 have an expungement was if the charges were
9 dismissed.

10 Now, we believe that that would then
11 trigger this, what I'm going call a *Giglio*-type
12 violation. *Napue* dealt with a false statement
13 about having a deal, and then *Giglio* dealt with
14 not revealing the deal. Both of those are
15 considered part of the right to due process for
16 prosecuting cases, Judge. And there are some
17 South Carolina cases as well that deal with some
18 of the same stuff. It's a little bit of a
19 posture. In that case, Judge Addy granted a new
20 trial, and that was appealed, and that granting a
21 new trial was affirmed. And that was based upon
22 not revealing the fact that there had been a deal
23 in place.

24 Now, the prosecutors on the case, what
25 I'm hearing -- Miss Keeney was not the prosecutor

1 at the time on this case, Judge. There's a little
2 bit of a circumstantial gap there. I'm not going
3 to call it *res ipsa loquitur*, because we're not in
4 a civil setting, but some of this is circumstance.
5 Again, I don't have access to any of the
6 dispositional documents. So it was *nolle prossed*.
7 There's no reason why. I don't have access to it.
8 I don't have access to the expungement order
9 because those things are, kind of, in a vacuum
10 that sucks itself up.

11 And so there is that part of this case,
12 but it is ironic that we're making the argument
13 that the State didn't disclose this deal and that
14 the State would have been in a unique position to
15 have the documents which would fill in that
16 certain statute gap, Judge.

17 But that's what we've got today. Most of
18 what I want to present to Your Honor is on the
19 record, so I can just mark and hand that up. I
20 would to call Mr. Davis, but I, kind of, wanted to
21 hand that up and give you an idea before I got the
22 witness on the stand because I think we're going
23 to spend a lot of time over the Fifth Amendment
24 issue. But I believe that Mr. Shaffer would also
25 like to be heard about this, Judge. But that's

1 the only witness I plan to present.

2 Again, I have the video statement that my
3 client made the day he went to the police, the day
4 after the robbery. I have the testimony from the
5 trial. I have the written December statement,
6 Judge. And then I have his newly discovered
7 statement that he gave to a private detective,
8 Mr. Davis, Jr. did, after my client's PCR was
9 already filed and actually argued and adjudicated,
10 Judge.

11 THE COURT: All right. Yes, sir.

12 MR. SHAFFER: Your Honor, we're going to
13 join in a lot of the arguments made by Mr. Brown.
14 The one clarification I'll put forth is that, in
15 my client's case, we didn't know that the video
16 was disclosed. And this is more relevant. And
17 the reason I'm bringing this up is because we have
18 a PCR pending. Okay? We don't know that the
19 video was disclosed prior to trial. I mean, it
20 may very well have happened, but because of
21 the fact that we have a PCR pending and we don't
22 actually know that -- Mr. Beach was my client's
23 trial attorney, and, obviously, we haven't been
24 able to talk to him about getting the file from
25 him. So because of that, my client said that he

1 never saw the video, and I just want to make that
2 clear for the record now so that I'm not
3 foreclosing the argument that we're raising in the
4 PCR.

5 THE COURT: All right. Sure.

6 Solicitor, you got anything you need to
7 tell me before, I guess, Mr. Brown wants to call a
8 witness?

9 MS. KEENEY: Yes. I would just say two
10 things. Number 1, when I was trying to pull up
11 his file, because it was so old, I couldn't find
12 the video of Mr. Davis's statement, so I got the
13 video from the public defender's office. The
14 public defender's office represented both Mr.
15 Mcmillan and both Mr. Jakes, and I got it from
16 Mr. Mathews with consent of his counsel. And so I
17 got it from the PD's office. So the PD's office
18 had the video. And they were tried together, so I
19 highly doubt that one of the defendants got the
20 video and the one didn't. So I want to put that
21 on the record.

22 Number 2, the actual testimony at trial
23 from Mr. Davis was -- the question was: "Now, was
24 there a deal at some point for those charges of
25 this with the State of South Carolina."

1 "There was."

2 Question: "There was? Do you remember
3 what the deal was?

4 "Yes, it was to drop the charges to
5 accessory before and after the fact."

6 "Now, what happened to the deal?"

7 "It got gone away."

8 "It got gone away, it expired?, question
9 mark?

10 "Yes, sir."

11 So it wasn't that he blew the deal or
12 they're implying that he lied or something, but he
13 said it expired. There's no evidence whatsoever
14 that he lied and that's why the deal went away.
15 It just simply expired.

16 And then the next question was -- which
17 that information was valuable to them because they
18 were at trial and they got to cross-examine him on
19 that. Not those two, but the original ones,
20 obviously.

21 And then the State says: "So testifying
22 here today, you have no deal; is that right?"

23 "No, sir. I have the same charges."

24 "You still have the same charges, but you
25 don't have the deal anymore?"

1 "No, sir."

2 "Have I made you any promises?"

3 "No, sir."

4 "Has Miss Hickson made you any promises?"

5 "No, sir."

6 "Has anyone from the State of South
7 Carolina made you or your attorney any promises
8 whatsoever related to these charges?"

9 "No, sir."

10 Now, after he's testified and after
11 they're convicted, I don't know what happened to
12 the charges. I assume they got dismissed because
13 I don't see any record of it on the public index
14 either, but that's after the fact. At the time he
15 testified, there were no deals. There were no
16 promises. So the State on they're own -- that
17 happens all the time. They're on their own.

18 After the trial is over and they're
19 convicted, if the State wants to dismiss the
20 charge, reduce the charge, let them plead to
21 something, probation, whatever, that's perfectly
22 acceptable as long as any deals that were out
23 there were disclosed -- at the time of trial were
24 disclosed to defense counsel, and that clearly
25 happened here.

1 THE COURT: All right.

2 MS. KEENEY: And so we're going to
3 address that issue when we take up the testimony
4 of Mr. Davis.

5 THE COURT: All right. Mr. Brown, are
6 you ready to take up the testimony?

7 MR. BROWN: Yes, sir. If I can just hand
8 up some of these items. I think it would actually
9 be helpful.

10 THE COURT: Yes, sir.

11 MR. BROWN: So Your Honor would have some
12 of what we're looking at. I've got these things
13 spread across a couple of files. The first thing
14 I'm going to do is mark as Plaintiff's 1 (sic),
15 pages 200 through 260 of the trial transcript,
16 which is Mr. Davis's testimony.

17 THE COURT: All right.

18 MR. BROWN: Defendant's 1.

19 (DFT. MCMILLAN EXH. 1, Trial Excerpt; Pages
20 200 through 260, was marked and entered into
21 evidence.)

22 MR. BROWN: And, Judge, if I can mark the
23 videos as Defendant's 2.

24 THE COURT: All right. And, again, those
25 are the videos of what?

1 MR. BROWN: The videos -- Judge, let me
2 get the court reporter.

3 (DFT. MCMILLAN EXH. 2, Videos, was
4 marked and entered into evidence.)

5 THE COURT: All right.

6 MR. BROWN: And those are the videos of
7 the interrogation, Judge, that was done.

8 And then I got a copy of the written
9 statement that was given before trial of Mr.
10 Davis, Jr., and I'm going to mark that as
11 Defendant's 3.

12 (DFT. MCMILLAN EXH. 3, Written statement of
13 Davis, Jr., was marked and entered into evidence.)

14 THE COURT: All right. The written
15 statement, that's the written statement of what?

16 MR. BROWN: Those were the statements
17 before trial by Mr. James Davis, Jr.

18 THE COURT: All right.

19 MR. BROWN: And then, Judge, we have the
20 new statement as well. I beg the Court's
21 indulgence while I get to that.

22 THE COURT: Is that the statement --

23 MR. BROWN: That's the newly-discovered
24 evidence statement, Judge.

25 THE COURT: That the investigator got.

1 MR. BROWN: That's correct.

2 THE COURT: Yes, sir.

3 I think I'm going to have to keep these,
4 Sharon. Put it right there. I'm going to take
5 possession of this because I hadn't looked at a lick
6 of it. I don't have any copies of this.

7 THE COURT REPORTER: Okay.

8 THE COURT: So I'll take possession of
9 these exhibits, review them, and then take them
10 straight back to the clerk's office.

11 THE COURT REPORTER: Thank you.

12 (DFT. MCMILLAN EXH. 4, Newly-discovered
13 Statement, was marked and entered into evidence.)

14 MR. BROWN: And then, Judge, I believe
15 this will be Defendant's --

16 THE COURT: 4?

17 MR. BROWN: -- 4. And, Judge, that's the
18 newly discovered statement.

19 THE COURT: Yes, sir.

20 MR. BROWN: And then, Judge, again, I've
21 got an email from SLED that they had no record. I
22 asked them about putting that in writing on
23 letterhead and tell me I would have to talk to
24 general counsel. That's why I would ask that you
25 take judicial notice since there's nothing in the

1 clerk's office, no record of any charges.

2 MS. KEENEY: I can't find anything about
3 it. I asked the prosecutors before and they don't
4 remember. They thought we got a YOA.

5 THE COURT: I'll take notice that there's
6 nothing --

7 MS. KEENEY: On the public index.

8 THE COURT: -- on the public index.

9 MR. BROWN: Yes, sir.

10 THE COURT: Is that adequate?

11 MR. BROWN: That's adequate.

12 THE COURT: So then we're not going to
13 enter number 5?

14 MR. BROWN: I'm sorry.

15 THE COURT: So then we're not going to
16 use that, the emails, as number 5 because I've
17 taken notice.

18 MR. BROWN: No, because I didn't --

19 THE COURT: That's fine.

20 MR. BROWN: It was a casual conversation
21 with them.

22 THE COURT: That's fine.

23 So the four, we got the transcript of
24 Mr. Davis, we've got -- or certain portions of it.
25 We got the videos of the interrogation, we got the

1 written statement of Mr. Davis, Jr. before trial,
2 and we've got the statement taken after trial.
3 Those are the four things?

4 MR. BROWN: That is correct.

5 THE COURT: All right. I haven't looked
6 at all these. I've seen the statement afterwards,
7 but I haven't looked at this.

8 MR. BROWN: Yes, sir.

9 THE COURT: So I want to let you know,
10 what I'm going to do is, I'm going to take these
11 documents and we'll look at them and we'll return
12 them directly to the clerk's office.

13 Is that satisfactory from defense?

14 MR. BROWN: Sounds great, Judge.

15 THE COURT: Solicitor?

16 MS. KEENEY: That is -- when we took up
17 this motion the first time a few months ago we did
18 it jointly with the PCR, but severed it this time.
19 So I assumed you already had the record on appeal
20 for this.

21 THE COURT: Well, you know, I may have,
22 but I --

23 MS. KEENEY: Do you-all have the whole
24 record of appeal?

25 MR. BROWN: I had even more. I have an

1 appendix for my client's petition that would have
2 his record and my client's PCR.

3 MS. KEENEY: I think the whole transcript
4 is relevant. Because you're having to determine
5 whether or not it's merely cumulative or
6 impeaching, and so I think the whole transcript is
7 relevant to this hearing.

8 THE COURT: All right.

9 MR. BROWN: And, Judge, I can email these to
10 you.

11 MR. SHAFFER: I'll do it.

12 MR. BROWN: Okay.

13 MS. KEENEY: Okay.

14 THE COURT: All right. We'll let him put
15 that in. You got it on a disk.

16 MR. SHAFFER: Yes, Your Honor. I'm going
17 to do one individual exhibit. This one exhibit is
18 somewhat cumulative for the two videos that we
19 received from James Davis's interview for this
20 here, which they made a copy of. It has those
21 videos in it and it has sub-Exhibits A and B.

22 THE COURT: All right.

23 MR. SHAFFER: And then it has a clip, a
24 shortened version of a relevant portion that I
25 wanted to talk about which is C and D. The only

1 difference between C and D is D I played with the
2 sound equalization so that it sounds like you can
3 hear it a little bit better and play it through a
4 loud speaker without blowing out the speaker with
5 background noise.

6 THE COURT: All right.

7 MS. KEENEY: I haven't heard it, but I
8 don't see why it would be a problem.

9 THE COURT: I don't think that's going to
10 be a problem.

11 All right. We'll let you -- I'll give
12 you an opportunity. Do you want to do that now or
13 do you want to wait and let Mr. Brown finish?

14 MR. SHAFFER: I'll go ahead and wait.

15 THE COURT: That's fine.

16 MR. SHAFFER: And I'll go ahead and add
17 the record on appeal and the transcript.

18 THE COURT: Yes, sir.

19 MR. BROWN: May it please the Court,
20 Judge?

21 THE COURT: Yes, sir.

22 MR. BROWN: I would call James Davis, Jr.
23 to the stand.

24 THE CLERK: Raise your right hand. Do
25 you swear the testimony your about to give will be

1 the truth, so help you God?

2 THE WITNESS: Yes.

3 THE CLERK: State your name again for the
4 record and spell your last name.

5 THE COURT: Come on up.

6 THE CLERK: Spell your last name.

7 THE COURT: State your name, sir.

8 I'm going to get him. This is your
9 client?

10 MR. CHAPLIN: Yes, sir.

11 THE COURT: Come on. Come right over
12 there in the event that you might need to consult
13 with him.

14 THE WITNESS: James, J-a-m-e-s.

15 THE CLERK: Your last name?

16 THE WITNESS: Davis.

17 THE COURT: All right. Your witness.

18 MR. BROWN: May it please the Court?

19 WHEREUPON:

20 JAMES DAVIS, JR.,
21 after having been sworn, testified as follows:

22 DIRECT EXAMINATION

23 MR. BROWN: If I may approach the
24 witness?

25 THE COURT: Yes, sir.

1 BY MR. BROWN:

2 Q I'm going to show you what has been marked as
3 Defendant's Exhibit Number 4, Mr. Davis. And I'm
4 going to ask you to read this over. And, if you
5 would, look up when you finished it.

6 THE COURT: Counsel, you've seen that?

7 MR. CHAPLIN: Yes. He already had
8 that.

9 BY MR. BROWN:

10 Q Okay. Are you familiar with that document that's
11 marked as Defendant's 4?

12 A Yes.

13 Q Okay. And in that document -- let me ask you,
14 approximately when did you provide that statement or
15 sign that statement?

16 A I plead the Fifth.

17 MR. BROWN: Judge, I don't know that
18 that's incriminating. I mean --

19 THE COURT: Mr. Brown, I'm going to
20 sustain that. I mean, I'm not going to force him
21 to answer that. He's pled the Fifth. And I think
22 timing may or may not be an issue in this matter.
23 I can't -- I think that's -- I think that -- I'm
24 not going to force him to answer that, sir.

25 MR. BROWN: Okay.

1 BY MR. BROWN:

2 Q Is that your signature at the bottom of number 4?

3 A I respectfully plead the Fifth.

4 THE COURT: Sir, I'm going to -- no, sir.
5 I think you can acknowledge whether that's your
6 signature.

7 THE WITNESS: Yes, sir. This is my
8 signature.

9 THE COURT: Hold on. If you refuse to
10 acknowledge that, I potentially could hold you in
11 contempt. So, I mean, you may want to consult
12 with your lawyer on that. If you-all want to talk
13 for a minute.

14 MR. CHAPLIN: Just for a moment, please,
15 sir.

16 THE COURT: Yes, sir.

17 THE WITNESS: Yes.

18 THE COURT: All right. You had a chance
19 to speak with your client?

20 MR. CHAPLIN: Yes, Your Honor.

21 THE COURT: Is he going to answer that
22 question?

23 MR. CHAPLIN: He's going to answer that
24 question.

25 THE COURT: Yes, sir.

1 All right. Repeat the question.

2 MR. BROWN: Okay. Well, the first
3 question I had asked was, is that his signature on
4 that document?

5 THE COURT: Your question was, is that
6 his signature?

7 All right, sir?

8 THE WITNESS: Yes, sir. It is my
9 signature.

10 THE COURT: All right.

11 BY MR. BROWN:

12 Q Okay. And the typed portion of that statement
13 above your signature was that on the document when you
14 signed it?

15 A Can you repeat that question?

16 Q Yes, sir. Do you see -- and it's about 15 lines
17 of typed words. Do you see the typed --

18 A Yes, sir.

19 Q Was that typed material on there at the time you
20 signed it?

21 A Yes, sir.

22 Q All right. And do you know what happened to your
23 criminal charges?

24 A I respectfully plead the Fifth.

25 MR. BROWN: I don't see how that can be

1 incriminating.

2 THE COURT: Hold on.

3 MR. CHAPLIN: Your Honor?

4 THE COURT: Yes.

5 MR. CHAPLIN: If I may, would it benefit
6 if we had a chambers conference just for a moment?

7 THE COURT: Let's do that.

8 MR. BROWN: Sounds great.

9 THE COURT: Is that all right, Solicitor?
10 Let's meet for a minute in chambers?

11 MS. KEENEY: That's fine.

12 THE COURT: Sir, you can stand down and
13 have a seat. That would be great. Yes, sir.

14 MR. BROWN: Thank you, sir.

15 THE BAILIFF: All rise.

16 (Chambers conference.)

17 THE BAILIFF: All rise.

18 MR. CHAPLIN: Beg the Court's indulgence,
19 Your Honor.

20 THE COURT: Yes, sir.

21 You-all come on up. Yes, sir.

22 All right. I just want to remind you you're
23 still under oath. Okay?

24 THE WITNESS: Yes, sir.

25 THE COURT: All right. Thank you.

1 All right. You may proceed, Mr. Brown.

2 BY MR. BROWN:

3 Q Mr. Davis, before the break, I was asking you if
4 you knew what happened to your criminal charges?

5 A No, sir, I don't.

6 Q Okay. Let me just, kind of, set some background.
7 You had at one point in time seven warrants served
8 against you?

9 A Yes, sir.

10 Q And to, kind of, speed it along there were some
11 warrants for attempted murder?

12 A Yes, sir.

13 Q And there were some warrants for attempted armed
14 robbery?

15 A Yes, sir.

16 Q And then one warrant related to the possession of
17 a firearm?

18 A Yes, sir, that's correct.

19 Q And at the time you testified at trial, were those
20 still pending against you?

21 A Yes, sir.

22 Q All right. And did you ever come into any
23 courtroom and raise your hand and tell a judge that
24 you were guilty of anything related to the events that
25 evening?

1 A No, sir.

2 THE COURT: Anything related to what?
3 What was the last thing you said? Anything -- I
4 didn't hear your question.

5 BY MR. BROWN:

6 Q Did you plead guilty to anything related to that
7 evening where the robbery or shooting occurred?

8 A No, sir.

9 Q You never told anyone you were guilty?

10 A No, sir.

11 Q Okay. And then do you remember having conditions
12 of bond, like you might not be able to leave the
13 State?

14 A No, sir. I can't recall.

15 Q Let me back up. Those seven charges you had, you
16 were arrested on those, right?

17 A Yes, sir.

18 Q And did they book you, take a picture, put you in
19 a jump suit?

20 A Yes, sir.

21 Q Over at the county jail?

22 A Yes, sir.

23 Q And did you go see a judge the next morning?

24 A Yes, sir.

25 Q Okay. And they gave you a bond?

1 A The bond was denied at first. At first, I
2 was denied.

3 Q It was denied?

4 A Yes, sir.

5 Q And did you eventually get released from jail?

6 A Yes, sir.

7 Q And at the time of the trial, you were not
8 incarcerated, were you?

9 A No, sir.

10 Q Did you ever go back to the jail?

11 A What was that? I'm sorry.

12 Q Did you ever go back behind bars ever?

13 A No, sir.

14 Q And, in fact, did you ever see anyone from the
15 probation department?

16 A No, sir.

17 Q Did you ever speak to somebody about parole?

18 A No, sir.

19 Q Okay. And when is the last time you heard from
20 your bondsman?

21 A Never.

22 Q Never.

23 A You said bondsman, correct?

24 Q The bondsman.

25 A Never.

1 Q Did you have a bondsman?

2 A Yes, I had one, but I --

3 Q But you never heard from him?

4 A No, sir.

5 Q You testified at trial and you never heard from
6 your bondsman?

7 A That's correct.

8 Q Okay. And you never came back to the courtroom?

9 A That's correct.

10 Q Okay. And it's my understanding you've actually
11 been in the military.

12 A Yes, sir.

13 Q And when did you sign up for the military? After
14 the trial?

15 A Yes, sir.

16 Q Okay. When did you first try --

17 A Not directly after.

18 Q I'm sorry.

19 THE COURT: Hold on. Go ahead. Go
20 ahead.

21 THE WITNESS: Not directly after the
22 trial. Some years after.

23 BY MR. BROWN:

24 Q Some years afterwards, okay.

25 And when you applied for the military, what

1 did you tell them about having a prior record or being
2 arrested?

3 A Well, I made them aware of the charges.

4 Q You made them aware of the charges?

5 A Correct.

6 Q Okay. And did you tell them that they were still
7 pending against you?

8 A Well, at the time, they wasn't. They wasn't
9 pending against me.

10 Q How did you know they weren't pending against you?

11 A (No response.)

12 Q You said you didn't know that they had been
13 dismissed. How would you know that they weren't
14 pending?

15 A Well, I was able to join the military.

16 Q You knew they weren't pending because they let you
17 in the military?

18 A Yes, sir.

19 Q Okay. And did, in fact, the military tell you
20 that when they let you in?

21 A Yes, sir.

22 Q Okay. And they came back -- and you had a lawyer
23 at that time?

24 A During that time?

25 Q At the time of the trial you had a lawyer, a

1 different lawyer?

2 A I'm not understanding the question.

3 Q Yes, sir.

4 After you got arrested, you got an attorney,
5 didn't you?

6 A Correct.

7 Q All right. And then at the time of trial, did you
8 still have that same attorney?

9 A Yes, sir.

10 Q All right. And I don't want to ask you what you
11 and her talked about, but did you ever get any
12 documents that showed the existence that those charges
13 had been expunged?

14 A No, sir.

15 Q Okay. Have you had a chance to run your rap
16 sheet, or has anybody else, like an employer, run your
17 rap sheet?

18 A Other than the military, I can't recall.

19 Q Okay. Are you still in the military?

20 A No, sir.

21 Q All right. Since then, have you rented an
22 apartment or a house?

23 A I bought a home.

24 Q You bought one, okay. And did they ask you if had
25 any record?

1 A No, sir.

2 Q Okay. They didn't ask you that when you bought
3 the home?

4 A Correct, they didn't.

5 Q All right. And in between the time that you were
6 in the military and the time you bought the home,
7 where did you live? Like, in an apartment or a rental
8 house?

9 A Apartment.

10 Q An apartment?

11 A Yes, sir.

12 Q Was it in your name?

13 A No, sir.

14 Q Okay. Were you put down as a resident of that
15 apartment?

16 A Yes, sir.

17 Q I only ask you that because didn't they ask you
18 whether or not you had any pending charges or run your
19 rap sheet?

20 A (No response.)

21 Q Do you recall when your name was put down as a
22 potential resident of that rental about them running a
23 rap sheet on you or asking you if you had any prior
24 record?

25 A I don't recall.

1 Q You don't recall. Okay, fair enough.

2 You don't recall them ever saying, *Hey, what*
3 *about these charges you got out there?*

4 A No, sir, I don't.

5 Q Or what about these convictions you got?

6 A No, sir.

7 Q You don't recall ever being asked that anywhere?

8 A No, sir.

9 Q The last time was when you applied to the
10 military?

11 A That's correct.

12 Q And they let you in. That's how you know that
13 they were dismissed.

14 A Yes, sir.

15 Q Or weren't pending, okay.

16 MR. BROWN: All right. I beg the Court's
17 indulgence.

18 THE COURT: Yes, sir.

19 MS. KEENEY: And, Judge, I appreciate
20 your patience. I just want to talk to my client
21 about it.

22 THE COURT: Yes, sir.

23 MR. BROWN: Judge, I don't have any other
24 questions.

25 THE COURT: Counsel.

1 MR. SHAFFER: Your Honor, I understand
2 your ruling on this, but I think it's incumbent
3 upon me to at least ask questions.

4 THE COURT: Go ahead. Yes, sir, I
5 understand. Go ahead.

6 CROSS-EXAMINATION

7 BY MR. SHAFFER:

8 Q Mr. Davis, the statement that you saw and signed,
9 which is this document, is that statement true, the
10 one you gave to the private investigator?

11 A I respectfully plead the Fifth.

12 THE COURT: All right. I'm going to --
13 I'm not going to compel him to respond to that.

14 Go ahead.

15 MR. SHAFFER: Thank you, Your Honor.

16 BY MR. SHAFFER:

17 Q When you -- you met with a private investigator
18 prior to signing that document, correct?

19 A That's correct.

20 Q Okay. And that private investigator, what year
21 was that in?

22 A It had to be 2020, I guess.

23 Q 2020, okay.

24 Is it possible that it was in January of
25 2021?

1 A That could be correct. I can't quite recall
2 off the top of my head.

3 Q Do you know if it was before or after COVID
4 started?

5 A I'm going to say -- it was post-COVID I want
6 to say.

7 Q Okay, so post-COVID.

8 You would agree with me COVID-19, sort of,
9 really kicked off in South Carolina around March of
10 2020?

11 A I can't recall.

12 Q Okay. Now, I'm going to ask you some questions
13 about a video. Okay? And you may need to refer to
14 the video, to see it. And I'm happy to show it to you
15 if you need to. There is a video of you -- the day
16 after this alleged robbery, you going in there and
17 giving a statement to law enforcement, correct?

18 A Yes, there's a video.

19 Q Okay. Have you had a chance to review that
20 video?

21 A I have.

22 Q If I showed you the video, do you think you would
23 be able to tell whether or not that's you in the
24 video?

25 A Repeat the question, please.

1 Q If I showed you the video, do you think you would
2 be able to tell whether or not that's you in the video
3 talking to law enforcement?

4 A Yes.

5 Q All right.

6 (DFT. JAKES 1, Videos, was marked and
7 entered into evidence.)

8 THE COURT: All right. Jakes 1, any
9 objection?

10 MS. KEENEY: No, Your Honor.

11 THE COURT: Mr. Brown?

12 MR. BROWN: No, Your Honor.

13 MR. SHAFFER: Your Honor, Jakes 1 was
14 going to be just the two videos I talked about and
15 then the clips of those videos which I discussed.
16 I have added Sub-Exhibit E, which is the
17 transcript of the trial, Mr. Jakes's trial. It's
18 a full copy of the transcript to my knowledge.
19 And then Sub-Exhibit F is the appendix volume 1 of
20 Mcmillan's PCR appeal. Sub-Exhibit G is appendix
21 volume 2 of the PCR appeal. Those are the
22 exhibits that I had added in order -- so you'll
23 have a copy of the entire transcript.

24 THE COURT: Yes, sir. Thank you.

25 MR. SHAFFER: Thank you.

1 THE COURT: So what is it that you are
2 asking him, or what is it that you want him to do
3 or identify? Go ahead.

4 MR. SHAFFER: Your Honor, I just want him
5 to verify that that is actually him. I
6 think we're -- I'm not going to go -- I had
7 originally planned on going into detail about what
8 it said.

9 THE COURT: Right.

10 MR. SHAFFER: But I'll let the Judge see
11 it -- I mean, the Court see it. I'm happy to show
12 him the full video, but it's, like, more than an
13 hour and a half. So if he identifies it, I'll
14 then ask the State to stipulate that the remainder
15 of the videos are actually him as well.

16 THE COURT: So you --

17 MS. KEENEY: It's undisputed --

18 THE COURT: Right.

19 MS. KEENEY: -- that on the June 4, 2010,
20 video with him and Investigator Scott -- it's
21 him.

22 THE COURT: All right. So you just want
23 -- yes, ma'am. I didn't mean to cut you off. I'm
24 sorry.

25 MS. KEENEY: I'm just saying nobody is

1 disputing that.

2 THE COURT: You just want this gentleman
3 to identify if that's him --

4 MR. SHAFFER: That's correct, Your Honor.

5 THE COURT: -- that's appearing and
6 speaking in that video. Is that what you want?

7 MR. SHAFFER: Yes, Your Honor.

8 THE COURT: Okay. Go right ahead.

9 BY MR. SHAFFER:

10 Q Would you mind watching a brief clip and seeing if
11 that's you?

12 A Yes. I mean, can I ask -- that's me.

13 Q It is you?

14 A Yes.

15 Q Okay. Prior to trial, did you ever meet with the
16 solicitors in this case to go over what your testimony
17 was going to be?

18 A What trial was that? Can you repeat the
19 question?

20 Q Yes, sir.

21 Prior to trial, did you ever meet with any
22 solicitors to go over what your testimony was going to
23 be in the case?

24 A Yes, sir.

25 Q Okay. And who are those solicitors, do you

1 recall?

2 A I can't recall.

3 Q Okay. Is it fair to say those solicitors were the
4 same solicitors who were trying the case for the
5 State?

6 A Yes, sir.

7 Q All right. Did they ever go over that video with
8 you prior to going to trial?

9 A I can't recall.

10 Q Okay. During that meeting, were you ever told
11 that you would get some sort of consideration or
12 favorable treatment by testifying?

13 A No, sir.

14 MR. SHAFFER: Court's indulgence.

15 THE COURT: Yes, sir.

16 BY MR. SHAFFER:

17 Q At trial you had testified that you had previously
18 been offered a deal. Do you recall that?

19 A Yes, sir.

20 Q Okay. Did that deal expire before or after that
21 meeting with the prosecutors?

22 A Honestly, I can't recall.

23 Q Okay. But at some point it had expired, right?

24 A I can't recall.

25 MR. SHAFFER: No further questions, Your

1 Honor.

2 THE COURT: Solicitor, any questions?

3 MS. KEENEY: Yes.

4 CROSS-EXAMINATION

5 BY MS. KEENEY:

6 Q In 2021, when you talked with the defense
7 investigator, did you go to the investigator or did
8 the investigator come to you? Did the investigator
9 reach out to you or did you reach out to their
10 investigator?

11 A When I was first arrested?

12 Q No, no, no.

13 In 2021, that statement that you acknowledged
14 was your signature, you had already testified that you
15 had spoken with the defense investigator. You thought
16 it was in 2020 but it might have been 2021.

17 A Right. They approached me.

18 Q They approached you.

19 Okay. Did you have a lawyer with you when
20 they approached you?

21 A I didn't.

22 Q Did anyone advise you of what could happen if you
23 made any type of statement? Did anyone advise you of
24 any rights at that time?

25 A No, ma'am.

1 Q So, they approached you and you didn't have a
2 lawyer, correct?

3 A Correct.

4 Q And at the time of the trial, throughout the whole
5 portion you had pending charges, you did have a
6 lawyer, right, Margie Bright Matthews?

7 A That's correct.

8 Q And in June 4th of 2010, that video where you
9 acknowledge that was you, you spoke with Investigator
10 Inabinet -- I can't pronounce his name -- and then
11 Investigator Jeff Scott. You remember Mr. Scott?

12 A Yes, ma'am.

13 Q Okay. And you remember that your mama and daddy
14 were at the interview. Maybe not in the room with you
15 the whole time, but at the police station. Do you
16 remember that?

17 A Yes, I remember.

18 Q Okay. And you remember even at one point during
19 that interview, your -- law enforcement let your mom
20 and dad come speak with you; isn't that correct?

21 A I can't recall.

22 Q You can't recall. You don't recall you mama
23 coming in there and telling you, *I don't want you to*
24 *lie on anybody*. Do you recall that?

25 A I can't recall.

1 Q Okay. Do you remember saying at the end of the
2 interview, *I put in it in God's hands and I cannot lie*
3 *to God?*

4 A Do I remember me saying that?

5 Q Yes.

6 A No.

7 Q Okay. Do you remember your mama telling you over
8 and over again, *I just want you to be honest?*

9 A I can't recall.

10 Q Okay. And, in December of 2010, you also met with
11 law enforcement again with your attorney at the time
12 Margaret Bright Matthews. Do you remember that
13 meeting?

14 A Yes.

15 Q Okay. So Miss Matthews was there to represent
16 you, correct?

17 A Correct.

18 Q And you gave a statement, a written statement,
19 correct?

20 A Correct.

21 Q And you were advised of your Miranda rights.
22 Obviously, you had a lawyer. Your right to have a
23 lawyer, anything that you said could be used against
24 you. Do you remember acknowledging that?

25 A Yes.

1 Q Okay. And at trial you testified that there was
2 no deal at the time that you testified; is that
3 correct?

4 A That's correct.

5 Q And that was still correct at the time, you're
6 testifying that there was absolutely no deal at the
7 time you testified. No one promised you anything?

8 A That's correct.

9 Q And you were just told to tell the truth,
10 correct?

11 A Correct.

12 Q And I'm going to bring you back to that first
13 statement right after the incident happened. Do you
14 remember Investigator Scott telling you over and over
15 again he cannot promise you anything?

16 A I can't recall.

17 Q Okay, thank you.

18 MS. KEENEY: No further questions.

19 THE COURT: All right. Any -- go ahead.

20 MS. KEENEY: I do. Actually, I can wait.

21 I have my own witness.

22 THE COURT: All right. Anything else,
23 Mr. Brown?

24 MR. BROWN: Very briefly. Very
25 briefly.

1 THE COURT: Okay.

2 MR. BROWN: Yes, sir.

3 REDIRECT EXAMINATION

4 BY MR. BROWN:

5 Q Now that we've gone a little bit into the
6 interview questions, you've taken the Fifth here
7 because you fear that you might incriminate yourself.
8 Is that why you're taking the Fifth?

9 THE WITNESS: Objection.

10 THE COURT: Go ahead.

11 MR. CHAPLIN: I just have to object. I
12 believe it's self-explanatory what the Fifth is.
13 I don't know if it needs any explanation. I mean,
14 to explain why he's taking the Fifth might be an
15 open door to why he's taken the Fifth.

16 THE COURT: I'm going to sustain that
17 objection as to -- I think that's drawing a
18 conclusion or a legal conclusion as to what -- his
19 -- he's claimed the Fifth, and so I'm going to
20 allow him to stand on that.

21 I'll sustain the objection.

22 BY MR. BROWN:

23 Q The question is: Why didn't you take the Fifth in
24 trial when they asked you about what you did that
25 night with Mr. Mcmillan and Mr. Jakes?

1 A I plead the Fifth.

2 MR. BROWN: Judge, I don't know that
3 there's anything that he can incriminate himself
4 about why he decided to give testimony about his
5 involvement or why.

6 THE COURT: All right. I'm not going to
7 compel him to answer the question.

8 MR. BROWN: Okay.

9 BY MR. BROWN:

10 Q Let me ask you this: You did testify at trial,
11 didn't you?

12 A Yes, sir.

13 Q Okay. And if I can get you to take a look at what
14 has been marked as Defendant's Mcmillan's Exhibit 1,
15 and it's rather long. I'm going to let you see.

16 MR. BROWN: If I may approach the
17 witness?

18 THE COURT: Yes, sir.

19 BY MR. BROWN:

20 Q And do you see that it looks like before?

21 A Yes, sir.

22 THE COURT: I need you to speak up just a
23 little bit.

24 THE WITNESS: Yes, sir.

25 THE COURT: Thank you.

1 BY MR. BROWN:

2 Q All right. And it's got your name on there on
3 page 200? I mean, I know that the document speaks for
4 itself. I'm about to set up my question here, so if I
5 may.

6 It's got your name as being the person called
7 as a witness?

8 A Yes, sir.

9 Q All right. And at the end they ask if you're a
10 junior or a senior?

11 A Yes, sir.

12 Q And on the page 201 you say you're a junior?

13 A Yes, sir.

14 Q James Davis, Jr. And James Davis, Jr., is that,
15 in fact, your name?

16 A Yes, sir.

17 Q All right. And you do remember testifying at the
18 trial, correct?

19 A Yes, sir.

20 Q All right. Are you familiar with what you said at
21 the trial?

22 A Yes, sir.

23 Q All right. Do you recall at the trial talking
24 about Mr. Jakes having to crawl back to the car
25 because he had been shot?

1 MR. CHAPLIN: Judge, can we just
2 stipulate that what he said in the transcript is
3 what he said at the trial. I feel like we
4 don't --

5 MR. BROWN: Well, I'm trying to set up my
6 question. Because we can stipulate to it, but I
7 can't ask him a question if he doesn't know the
8 context.

9 MR. CHAPLIN: I think he says that he's
10 testified.

11 THE COURT: Yes, he's --

12 MR. BROWN: Right.

13 MR. CHAPLIN: Sorry, go ahead.

14 THE COURT: Go ahead, sir.

15 MR. CHAPLIN: He said that he's
16 testified. You got the testimony transcript.

17 MR. BROWN: Yeah.

18 MR. CHAPLIN: What he isn't going to do
19 is answer any questions with regard to the
20 veracity of any of those words that are on that
21 page.

22 So if that's what you're getting ready to
23 ask, I don't know what you're leading to.

24 MR. BROWN: That's not what I was going
25 to ask.

1 MR. CHAPLIN: All right.

2 THE COURT: All right.

3 MR. CHAPLIN: I just want to make sure.

4 THE COURT: Go ahead. Move along with
5 your questions.

6 MR. BROWN: Right.

7 BY MR. BROWN:

8 Q In fact, you gave a recollection of what you said
9 happened out on the interstate overpass, right?

10 A Yes, sir.

11 Q And part of that included testimony that you
12 reached back and helped open the door so Mr. Jakes
13 could get back in the car?

14 MS. KEENEY: Judge, I'm going to object.
15 This is outside my scope of cross.

16 MR. BROWN: Well, I haven't gotten to the
17 question yet.

18 THE COURT: Hold on. Hold on, Mr. Brown.

19 MS. KEENEY: This is outside the scope of
20 cross. I didn't ask him about any of the actual
21 allegations. I just went into what the defense
22 has already gone into about promises, deals, and
23 things of that nature.

24 MR. BROWN: And that's where my
25 question --

1 THE COURT: Hold on. Mr. Brown.

2 MR. BROWN: Yes, I'm sorry, sir.

3 THE COURT: All right. I'm going to
4 overrule your objection.

5 Mr. Brown, let's, as quickly as possible,
6 sir --

7 MR. BROWN: As quickly as possible.

8 THE COURT: Mr. Brown, let me finish.

9 MR. BROWN: Yes, sir.

10 THE COURT: As quickly as possible, let's
11 move to your question.

12 MR. BROWN: Yes, sir.

13 THE COURT: Ask it and see if there's
14 going to be an answer. Okay?

15 MR. BROWN: All right.

16 BY MR. BROWN:

17 Q And do you dispute that you indicated in the trial
18 that you reached back to open the back door so
19 Mr. Jakes could get back in?

20 A I plead the Fifth.

21 Q Okay.

22 THE COURT: Well, I'm going to sustain
23 that. I'm not going to compel him to answer it.
24 I mean, the document speaks for itself.

25 MR. BROWN: It does. It does.

1 BY MR. BROWN:

2 Q And so with the transcript before us, you and the
3 Court and all the parties to this, why would you take
4 the Fifth today and testify that you opened the door
5 for Mr. Jakes to get away from the shooting?

6 MR. CHAPLIN: Judge, I'm going to re- --

7 THE COURT: That's the -- I'm going to
8 sustain that objection. I think his objection is
9 the prior objection that you made just a moment
10 ago, sir?

11 MR. CHAPLIN: Yes, Your Honor.

12 THE COURT: All right. I'm going to
13 sustain that.

14 BY MR. BROWN:

15 Q You didn't have any fear about being prosecuted,
16 did you?

17 A I respectfully plead the Fifth.

18 MR. BROWN: Judge, I ask him to answer
19 that.

20 THE COURT: All right. I'm not going to
21 make him answer that. Go ahead.

22 MR. BROWN: I appreciate it, Your
23 Honor.

24 THE COURT: Yes, sir.

25 MR. BROWN: Thank you. And I think

1 usually I would have to proffer what the answer
2 would be, but I understand it's unique because it
3 deals with privilege.

4 THE COURT: Yes, sir.

5 MR. BROWN: So I would put that out to
6 there that we do object to him not answering why
7 he would testify to his involvement despite
8 exposure, criminal exposure.

9 THE COURT: I understand.

10 MR. BROWN: Yes, sir.

11 MR. SHAFFER: And, Your Honor, obviously
12 there were a lot of questions that I did not
13 proffer based off the Court's ruling that
14 essentially we're not getting into the veracity
15 because he's getting into the Fifth Amendment.

16 THE COURT: Right.

17 MR. SHAFFER: I just want to make that
18 clear for the record.

19 THE COURT: I think you have. We spoke
20 in chambers and I indicated that I didn't think it
21 was going to be appropriate for you to go through
22 and ask was this true, was this true, was this
23 true because the document speaks for itself, and
24 I'm not going to allow -- I'm going to allow him
25 to claim the Fifth on those types of responses.

1 Yes, sir.

2 MR. BROWN: Judge, I don't have any more
3 questions at this time.

4 THE COURT: All right. Anything else?

5 MR. SHAFFER: There's just a couple of
6 questions.

7 THE COURT: Go ahead.

8 RECROSS-EXAMINATION

9 BY MR. SHAFFER:

10 Q At the time that you spent with the private
11 investigator, did anyone force you to talk to them?

12 A No, sir.

13 Q Did anybody threaten you to talk to them?

14 A No, sir.

15 Q Did anyone pay you to talk to them?

16 A No, sir.

17 Q Did the investigator force you to sign that
18 document?

19 A No, sir.

20 Q Okay. So you put your signature on that document
21 of your own free will, correct?

22 A Yes, sir.

23 Q Okay. And we had a conversation, a brief
24 conversation last night, correct? I called you on the
25 phone?

1 A Yes, sir, I recall.

2 Q And you told me you had a lawyer, right?

3 A Correct.

4 Q And I said I'll go and ask all the questions from
5 your lawyer and not you, right?

6 A That's correct.

7 Q Okay. And, actually, we had a conversation before
8 the March hearing, correct, in the parking lot of the
9 Beaufort County courthouse?

10 A That's correct.

11 Q Okay. And in that conversation, you basically --
12 I basically told you I couldn't tell you whether or
13 not they would be going to prosecute you for making
14 these statements, right?

15 A Yes, sir.

16 Q And I said that, you know, there would be a
17 conflict of interest for me to give you legal advice,
18 right?

19 A Yes, sir, that's correct.

20 Q All right. Have I or anybody from the defense
21 side ever pressured you or made you answer any
22 questions that you don't want to, other than you
23 pleading the Fifth?

24 A No, sir.

25 MR. SHAFFER: No further questions.

1 THE COURT: All right. Solicitor,
2 anything else?

3 MS. KEENEY: No, Your Honor.

4 THE COURT: All right. Thank you. Thank
5 you very much, sir. You can sit down. Are you
6 going to stick around or are you going back?

7 MR. CHAPLIN: If he's free to leave, I
8 was going to -- my wife is about to have a baby.

9 THE COURT: Congratulations.

10 Any reason -- can he be excused, the
11 witness?

12 MR. BROWN: We can excuse him. We
13 subpoenaed him, Judge, and we release him.

14 THE COURT: Thank you so much.

15 MR. CHAPLIN: Thank you, Judge.

16 THE COURT: Good luck.

17 You can call your next witness.

18 MR. BROWN: Judge, we would now ask the
19 Court order the State to provide the dispositional
20 documents regarding the charges against Mr. Davis,
21 Jr.

22 THE COURT: Solicitor?

23 MS. KEENEY: Judge, first of all, I don't
24 genuinely know. I've told him repeatedly, my best
25 guess, and I'm 99 percent sure, it got dismissed

1 because there is no record of it. But
2 expungement, I truly don't have anything. I'm not
3 well versed on the expungement laws and what I can
4 hand over, but I don't have anything to hand over
5 right now. That would be a document they would
6 get from SLED.

7 THE COURT: Well --

8 MS. KEENEY: And if they say SLED doesn't
9 have the expungement, then I don't really --

10 THE COURT: Well, what I would say is --

11 MS. KEENEY: We need a court order.

12 THE COURT: -- I think if you -- there's
13 got to be some type of dispositional document, or
14 should be. There also would be an order that was
15 signed indicating that a document is -- that a
16 charge to be expunged.

17 MS. KEENEY: Right. I don't have that in
18 my system.

19 THE COURT: You don't have what in your
20 system?

21 MS. KEENEY: Any document saying it was
22 dismissed or it was expunged. I don't have any
23 order in my system. Because it's, like, from
24 2010, so we had a completely different system back
25 then. My best guess -- maybe the clerk's office

1 would still have it.

2 My next thing would be, let's just assume
3 it got dismissed. That doesn't mean anything
4 because that happens all the time. This is --

5 THE COURT: Well, I understand that. But
6 I think that -- I think that if the document
7 exists, he may -- one of the things that I think
8 he wants is, he wants to know, first of all, if
9 the document exists.

10 Now, whether he's -- I understand the
11 expungement issue of it, and I think that's why he
12 had mentioned perhaps having me see it in camera.
13 And to at least look at and be able to acknowledge
14 whether a document exists. If you're telling me
15 that a document doesn't exist, we could also
16 get -- if you don't have possession and can't find
17 it after you-all have searched, because I know I
18 sign those orders all the time. I get writer's
19 cramp signing order when things are getting
20 dismissed or expungement paperwork. I understand
21 it's been a long time. But if you don't have it
22 after a diligent search, I can get the clerk to
23 also look for it.

24 If it can be located, what I want to do
25 is, I want you to provide it to me. Okay? To me.

1 I'll get the clerk to look for it too.

2 If you cannot find the document, then
3 what I will do is, I will take note that the
4 document has not been found.

5 MR. BROWN: Can we also ask that it
6 extend to SLED?

7 THE COURT: Well, I mean, what you want
8 me to do is, you want me to order SLED to provide
9 any documents to you?

10 MR. BROWN: Yes, sir.

11 THE COURT: All right. I can do that.

12 MS. KEENEY: I think that's the best way
13 to go about it, because they would have it.

14 THE COURT: How about, if you will search
15 your information. I'll have the clerk do the
16 same. And you can affirm to me whether or not
17 you're able, after a diligent search, to find
18 anything. The clerk also.

19 And prepare an order, Mr. Brown --

20 MR. BROWN: Yes, sir.

21 THE COURT: -- for me to sign that will
22 go to SLED asking them to provide those documents
23 to me for my review.

24 MR. BROWN: Yes, sir.

25 THE COURT: Okay? Is that okay?

1 MS. KEENEY: That's perfect.

2 THE COURT: Mr. Brown.

3 MR. BROWN: Absolutely.

4 THE COURT: Counsel.

5 MR. SHAFFER: Yes, Your Honor.

6 THE COURT: All right. All right. What
7 else?

8 MR. BROWN: Nothing further from
9 Defendant Mcmillan.

10 MR. SHAFFER: Your Honor, related to
11 Defendant Jakes, the one thing that I would ask is
12 that I would be allowed to submit just affidavit
13 saying when the investigator received that from
14 the investigator. Or I can submit one for myself
15 as to when I received the document that I think is
16 Mcmillan's 4.

17 THE COURT: You can submit anything you
18 want.

19 MR. SHAFFER: Thank you, Your Honor.

20 That's the only thing I would ask because
21 I didn't anticipate he wouldn't be able to tell us
22 a conflict.

23 THE COURT: All right.

24 MS. KEENEY: No.

25 THE COURT: All right. Do you have

1 anybody you want to call?

2 MS. KEENEY: The State calls Investigator
3 Jeff Scott.

4 THE COURT: Yes, ma'am.

5 THE CLERK: Raise your right hand, left
6 on the Bible. Do you affirm the testimony you're
7 about to give the Court will be the truth so help
8 you God?

9 THE WITNESS: I do.

10 THE CLERK: Have a seat in the witness
11 stand, State your number again for the record.
12 Spell your last name.

13 THE WITNESS: Jeff Scott, S-c-o-t-t.

14 MS. KEENEY: May it please the Court?

15 THE COURT: Yes, sir. Yes, ma'am. I'm
16 sorry, Solicitor.

17 WHEREUPON:

18 JEFF SCOTT,
19 after having been sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MS. KEENEY:

22 Q Investigator Scott, where do you work now?

23 A I'm currently employed at Dorchester County
24 Sheriff's Office.

25 Q What is your position there?

1 A I am a sergeant of the crime scene
2 division.

3 Q Okay. Back in 2010, where did you work?

4 A Colleton County Sheriff's Office.

5 Q And what was your position back then?

6 A I was in the criminal division.

7 Q Were you one of the investigators that worked on
8 this case that we're here for today?

9 A Yes, ma'am, I was.

10 Q Did you have an opportunity to interview James
11 Davis?

12 A Yes, ma'am, I did.

13 Q And you interviewed him on June 4th of 2010; is
14 that correct?

15 A Yes, ma'am.

16 MS. KEENEY: And, Judge, the defense has
17 admitted a bunch of videos. I don't really know
18 if it's the full videos. I'm going to admit as
19 State's Exhibit 1, the full interview. I think it
20 should be viewed.

21 And you-all aren't objecting, right?

22 MR. BROWN: No objection.

23 MR. SHAFFER: No objection.

24 (STATE EXH. 1, Full Interview Video, was
25 marked and entered into evidence.)

1 BY MS. KEENEY:

2 Q And this was the interview that you reviewed June
3 4th of 2010.

4 A Yes, ma'am, it was.

5 Q So, during that interview, did you or
6 Investigator --

7 A Inabinet.

8 Q -- Inabinet, did you ever threaten Mr. Davis?

9 A I did not.

10 Q Or did either one of you threaten him into making
11 a statement?

12 A No, ma'am, we did not.

13 Q Did you-all promise him anything in exchange for a
14 statement?

15 A No, ma'am, we did not.

16 Q And, in fact, did you repeatedly tell him during
17 that interview that you could not promise him
18 anything?

19 A That is correct.

20 Q And did you ever see or witness the other
21 investigator yell at Mr. Davis, or do anything of that
22 sort?

23 A I did not.

24 Q During your involvement in this case and
25 throughout the trial, did you ever witness anything

1 from either the prosecutors or anybody in law
2 enforcement where you-all promised Mr. Davis a
3 dismissal in exchange for his testimony?

4 A I did not.

5 Q Did you-all -- anybody involved in this case, did
6 you-all promise him a better deal in exchange for a
7 better statement against those two defendants?

8 A I did not.

9 Q Okay. And you allowed -- or you-all allowed his
10 parents to come into the interview, correct?

11 A That is correct.

12 Q And he had a conversation with his parents and his
13 mom begged him to tell the truth, correct?

14 A That is correct.

15 Q Right after that conversation, is that when
16 Mr. Davis started admitting to his involvement and the
17 defendant's involvement in this case?

18 A That is correct.

19 Q Okay.

20 MS. KEENEY: That's all my questions.

21 THE COURT: Yes, ma'am.

22 Cross-examination?

23 MR. BROWN: Very briefly.

24 CROSS-EXAMINATION

25 BY MS. KEENEY:

1 Q Do you recall telling Mr. Davis that you thought
2 he was more of a man because he had indicated that he
3 and two other people had robbed and killed somebody?

4 A Without viewing the video in its entirety, I
5 really can't answer that specifically.

6 Q Okay.

7 A My involvement in the video -- or reviewing
8 the video for this hearing is simply for the
9 purpose of the threats or promises and coercion.

10 Q Okay. And I understand what you're saying. Do
11 you recall telling him that -- telling Mr. Davis that
12 Mr. Mcmillan had already implicated Mr. Davis and
13 Mr. Jakes had already implicated Mr. Davis?

14 A Once again, without reviewing the video in
15 its entirety, I'm not going to answer that. I
16 don't recall.

17 But, again, without reviewing the video in
18 its entirety, I am unsure.

19 Q Then how do you recall whether you threatened him
20 or not?

21 A Because that's specifically what I was
22 looking for.

23 Q Oh, so you have watched the video?

24 A Yes, sir. I have watched the video some
25 months back.

1 Q Oh, okay. You watched it months back, but the
2 question about whether you had threatened Mr. Davis --

3 A If there were any threats or coercion or
4 promises made.

5 Q What else did you -- when you were watching that
6 video, what focus did you have? If it wasn't on
7 whether you tried to pit Mr. Mcmillan or Mr. Jakes
8 against Mr. Davis, you don't remember that part,
9 what else were you looking for that you do remember
10 months ago about a video from a decade ago?

11 A Specifically whether there were any promises
12 made, if there was any coercion, or if there were
13 any threats.

14 Q Okay. Now, tell me about the dropping the charges
15 to accessory?

16 A I have no knowledge of that.

17 Q Okay. And is that the kind of plea you make?

18 A I don't make plea offers.

19 Q Oh, okay. Are you allowed to make a plea offer?

20 A I am not.

21 Q Okay. So if Mr. Davis testified in trial that he
22 had been given an offer to reduce the charges, that
23 would have not come from you?

24 A It should not have come from me, no.

25 Q All right. Have you ever made a plea offer to a

1 general sessions case?

2 A I don't make plea offers, no.

3 Q Okay. You never -- you're not a lawyer?

4 A I'm not a lawyer.

5 Q You never functioned as a prosecutor in general
6 sessions court?

7 A I have not.

8 Q All right. And were you the lead agent on this
9 case?

10 A I was, yes.

11 Q Okay. Are you aware of any other agent making a
12 plea offer to reduce charges?

13 A I am not aware.

14 Q Okay. And you've been to court a few times?

15 A I have.

16 Q All right. Suffice it to say the judge can't
17 reduce charges at a guilty plea, can he?

18 A I'm not aware of that.

19 Q You've never heard of that happening?

20 A I have not.

21 Q Okay. It's not like somebody comes up and says,
22 I'm pleading guilty to murder and the judge says,
23 Well, you know, I think it's an assault and battery so
24 I'm going to drop the charge down.

25 A Correct.

1 Q All right. So who would that leave that would
2 have made that offer to Mr. Davis?

3 A I would have to say a prosecutor.

4 Q Okay. And what was your understanding about the
5 deals that were made since you were the lead officer
6 on the case?

7 A I was not privy to any deals that were
8 made.

9 Q Ever?

10 A Ever.

11 Q Or even offered?

12 A Or even offered.

13 Q Okay. So is that even true what Mr. Davis said,
14 he was made an offer for a deal that he let it
15 expire?

16 A My involvement was to investigate the case,
17 determine probable cause to make an arrest, which
18 I did. Once the charges are made, the warrants
19 are served, it gets to the prosecution level --

20 Q Yes, sir.

21 A I'm not privy to any of that information. If
22 they don't tell me, they don't tell me. There's
23 been many times on many cases where I found out
24 much later that offers were made and executed and
25 handed out without my knowledge. That's not

1 anything that's uncommon.

2 Q Okay.

3 A Even as a lead investigator.

4 Q Even as a lead investigator.

5 A Yes.

6 Q Okay. So just to make sure to understand this,
7 you make the case based on the evidence, you make an
8 arrest, you clear a case by arrest. Does that sound
9 right?

10 A Correct.

11 Q And then you're done.

12 A Pretty much.

13 Q Okay.

14 A Unless new information comes up, then yes.

15 MR. BROWN: May I approach, Your Honor?

16 THE COURT: Yes, sir.

17 BY MR. BROWN:

18 Q If I may reach up and grab what has been marked as
19 Defendant Mcmillan's 3.

20 MR. BROWN: May I approach the witness
21 with it?

22 THE COURT: Sure.

23 BY MR. BROWN:

24 Q And this was a June interview that you initially
25 did with Mr. Davis? That first video recorded was in

1 June, right, Investigator Scott?

2 A Can I have one second to review this, please?

3 Q Well, not that one.

4 A Oh, okay. Well, that's the one you handed
5 me.

6 Q The first one was June, right?

7 A Correct.

8 Q All right. And you looked at this one and this is
9 dated December?

10 A I'm looking for the date on it. Stand by one
11 second.

12 Q Okay. How about at the top of the third page
13 where it says date on the top of it?

14 A That is correct. December 21st of 2010.

15 Q And how about further down below it says, "I've
16 been duly warned and advised by Detective J. Scott?"

17 A Yes.

18 Q And that's you?

19 A Yes, sir.

20 Q All right. So you were, in fact, involved six
21 months later in this case, weren't you?

22 A To take an initial -- to take another
23 statement, yes.

24 Q Okay. So at that point in time everybody has
25 already been arrested, correct?

1 A That's correct.

2 Q And then they bring you back in and do you see a
3 signature on the second page of Defendant Mcmillan's
4 Exhibit 3 and down at the bottom it's got a clip, but
5 it looks like Margie B. Matthews?

6 A Yes, sir, I do.

7 Q Okay. How many times did you engage with the
8 defendant's lawyer without a prosecutor being
9 involved?

10 A Honestly, I'm sure the prosecutor was aware
11 of this. I would imagine they were. I mean, I
12 can't answer whether or not they were or had
13 knowledge of this.

14 Q Oh, okay. You're saying there's a chance that you
15 conducted a follow-up interview with a suspect who has
16 not struck a deal and that suspect's lawyer without
17 the knowledge of the prosecutor's office?

18 A I mean, you're asking me something to
19 remember that happened --

20 Q Would you have ever done that, Investigator
21 Scott?

22 A I mean, I can't answer that.

23 Q Have you ever gone behind the prosecutor's back
24 and met with a defendant and their lawyer especially
25 in a case that carries -- let me try to get the

1 years -- 155 years in prison without parole?

2 A I can't answer that.

3 Q Why can't you answer whether you've ever gone
4 behind the prosecutor's back?

5 A I've worked many, many, many, many cases. I
6 can't recall each case that I've ever worked
7 throughout my career.

8 Q All right.

9 A You're asking me to remember specific details
10 on every single case that I've worked throughout
11 my 20-year law enforcement career.

12 Q This is a categorical question. Have you ever
13 gone behind a prosecuting attorney's back?

14 MS. KEENEY: Asked and answered.

15 THE COURT: Overruled. Go ahead.

16 BY MR. BROWN:

17 Q Have you ever gone behind a prosecuting attorney's
18 back and met with a defendant and their lawyer in a
19 general sessions case?

20 A Once again, I can't answer that. I cannot
21 recall.

22 Q Can you recall ever having gone behind their back?

23 A I cannot recall.

24 Q So, that's no, you can't recall ever having done
25 that?

1 A I cannot recall.

2 Q Right, right. Just making sure we're not mixing
3 this up.

4 THE COURT: All right. He's answered
5 that question. Let's move on.

6 MR. BROWN: I'm with you. I'm with you.

7 BY MR. BROWN:

8 Q Is it better practice to go behind their back?

9 A I'm not sure exactly I understand what you
10 mean, "Is it better practice." If a situation
11 comes up where we have additional information to
12 the case, I don't necessarily know that the
13 prosecutor needs to be made aware of that prior to
14 collecting that additional information. With that
15 being said, I don't really know how to answer that
16 question.

17 Q Okay. Would you have just called the suspect who
18 was represented by a lawyer behind their lawyer's
19 back?

20 A Would I have called a suspect that had a
21 lawyer behind their lawyer's back, no.

22 Q Why wouldn't you do that? Categorically, why
23 wouldn't you do that?

24 A Because it's unethical and it's illegal.

25 Q Fair enough. So at some point in time, somebody

1 had to reach Miss Matthews if you were the one that
2 was doing the interview without involving the
3 prosecutor's office; is that correct?

4 A Somebody could have reached out to her or
5 would have reached out to her, I would imagine.

6 Q Okay.

7 A Unless she reached out to us. Again, I don't
8 have that information.

9 Q Fair enough. And besides you, who else would have
10 been involved in that discussing with Miss Matthews?

11 A Lieutenant Inabinet.

12 Q Okay. So he could have set this up then.

13 A He could have. Anybody in my chain of
14 command all the way up to the sheriff could
15 have.

16 Q I asked you who was the head on the case?

17 A I was lead investigator on the case.

18 Q Okay.

19 A Now, that doesn't mean that I am a supervisor
20 at the time or could have made those decisions.
21 That could have come from the sheriff. I mean, it
22 wasn't uncommon for the sheriff to call and say,
23 *Hey, somebody has a additional information. Their*
24 *lawyer is coming in. You need to meet with them.*
25 *Okay, Yes, sir.*

1 Q Behind the prosecutor's back?

2 A Again, I'm not privy to those conversations
3 always.

4 Q I mean, you're telling me examples of things that
5 have happened. And those times that that happened and
6 the sheriff called you said, *Hey, there's a lawyer*
7 *coming over with a defendant*, was that -- I mean, you
8 remember those details. Was that not going behind the
9 prosecutor's back?

10 A I don't -- not every time. I don't know. I
11 don't know.

12 Q Ever.

13 A Unless they told me, I do not know.

14 Q Was it ever behind a prosecutor's back?

15 A Again, I don't recall. I cannot answer that
16 question.

17 Q All right.

18 A Specifically -- this is decades -- like you
19 put it, this is decades ago. I really cannot
20 recall that.

21 I refreshed my memory of the events in that
22 interview by watching that video, which is what I did.
23 Now you're asking me questions based on things that,
24 honestly, I don't recall.

25 Q Okay, that's fair. I can clear that up. The

1 video interview that you did look at, but only a
2 question about whether you had threatened Mr. Davis.
3 What else did you review in preparation for this
4 hearing?

5 A That's it.

6 Q Okay. Just that one thing?

7 A Yes, sir.

8 Q Nobody asked you to look at this statement, this
9 handwritten statement from December 2010?

10 A No, sir.

11 Q And nobody asked you to take a look at the
12 statement that was given in 2021?

13 A I did look at that, yes, sir.

14 Q Okay. Who did you look at all that with?

15 A I received an email from the solicitor's
16 office and I read it in my own leisure.

17 Q And they sent you those two items?

18 A The video, I believe I also received the
19 transcript of the case but it was hundreds of
20 pages, and then the video. I said the video. I'm
21 sorry. And then the statement from, I believe, it
22 was 2021, I believe.

23 Q And about how long ago do you think that was?

24 A I honestly don't remember. It was several
25 months ago. It was before the first hearing in

1 Beaufort.

2 Q How close before the first hearing? About the
3 same week?

4 A It was pretty close, yes, sir.

5 Q All right. I would glean that from the fact that
6 the prosecutor didn't even have a copy of the video
7 file and actually had to get it from my client's file
8 that I approved to be turned over.

9 A Okay.

10 Q That's the same video and same time frame you're
11 talking about?

12 A It got it prior to the hearing from the
13 solicitor.

14 Q Okay. So we're talking about just a couple of
15 months that you watched all this.

16 A Yes, sir.

17 Q All right. Okay, fair enough.

18 And then, when you talked to Miss Matthews
19 about the client taking the stand, what did she tell
20 you her concerns were for Mr. Davis?

21 A I don't recall.

22 Q Okay. What's your understanding about the
23 disposition of Mr. Davis's charges?

24 A To my understanding, he was still charged.

25 Q He was still charged after the interview in June

1 of 2010, right?

2 A Yes.

3 Q And he was still charged at the time that he made
4 this statement -- the written statement in December?

5 A Yes, sir.

6 Q And he was still charged at the time of trial?

7 A Yes, sir.

8 Q And then how long after the trial did you leave
9 employment here?

10 A It was February of 2013.

11 Q Okay.

12 All right. And at the time you left, were
13 you still in charge of that case?

14 A I mean, if any new or additional information
15 would have come in, then, yes.

16 Q Okay. To make sure I understand, you were in
17 charge of the case at the time you left a year after
18 the trial, but Mr. Mcmillan and Mr. Jakes had already
19 been convicted.

20 A Correct.

21 Q All right. Was that file still open for purposes
22 of prosecuting Mr. Davis or not?

23 A I don't recall. Again, 20 years ago.

24 Q Do you-all put those things in the sheriff's
25 department file?

1 A Do I put what things in there?

2 Q The disposition of the case.

3 A The disposition of the case, no, sir. We
4 have records clerks for that.

5 Q Right.

6 Does the sheriff's department keep a record
7 in the sheriff's department file of the dispositions
8 of the suspects of the cases that they --

9 A Once I closed the case out and it was put
10 into the cabinet, I don't -- I can't answer what
11 would happen after that. I can only assume that
12 there was a disposition in there.

13 Q Okay.

14 A But did I physically see one, no, I did not.

15 Q All right. So let me do a better job as a lawyer
16 here. I'm going to try to break it down a little more
17 simplistically. When you say when you close the case,
18 you don't mean by arrest, do you?

19 A Yes, sir. That's what I'm referring to,
20 close by arrest.

21 Q Okay. So you had closed the case by arrest before
22 this December-written statement, right?

23 A Yes, sir.

24 Q All right. So what disposition would you have had
25 in that file at the time that the charges were still

1 pending against all three of them?

2 A There shouldn't have been a disposition if
3 the charges were still pending.

4 Q But you do put dispositions -- the sheriff's
5 department puts them in --

6 A Again, I'm not a records clerk. I've never
7 been a records clerk. I do not know when the
8 dispositions are handed down what happens to them.

9 Q Investigator, I'll be honest with you. I know
10 there's some pride in making a call on somebody, but
11 you're telling me you-all don't ever write down what
12 happens at the end of your investigation in the court
13 proceedings?

14 A No, sir. I do the records. Again, we have
15 records clerks. We get dispositions from the
16 court. Records clerks take care of it after
17 that.

18 Q Fair enough. Bad question.

19 So, are you telling me that the sheriff's
20 department never puts in their files what happens to
21 the charges in court? Because I said "you." I meant
22 you and the collective plural entity of the sheriff's
23 department.

24 A Again, I've never worked in the records
25 division. I cannot answer that question because I

1 do not know what happens when the dispositions are
2 handed down.

3 Q And question is actually, are you telling me
4 they've never done it?

5 A I'm telling you, I don't know. I've never
6 done it.

7 Q Ever.

8 A I've never done it. I don't know.

9 Q All right. So if I go over there --

10 THE COURT: Whoa, whoa. We put that to
11 rest. Let's move on.

12 MR. BROWN: Fair enough. Fair enough.

13 BY MR. BROWN:

14 Q So you never had concern about Mr. Davis's case
15 after these two clients -- excuse me, the defendants
16 were convicted?

17 A Sir, I've had a huge case load. If I was to
18 sit there and worry about every single case that I
19 have made an arrest on, I would be up 24 hours a
20 day, seven days a week. I was carrying a very
21 large case load in a small investigative unit.

22 Q Yes, sir.

23 A The case was investigated, charges were made.
24 Arrests were made. It was turned over to the
25 Court. After that, I was on to the next one.

1 Homicides.

2 Q You recall talking about this almost being a
3 homicide?

4 A No, sir.

5 Q About Mr. Jakes almost dying?

6 A Yes, sir. But I mean, not in the context of
7 homicide, but Mr. Jakes almost dying.

8 Q Well, why wouldn't it be a homicide if Mr. Jakes
9 almost died?

10 A Because I don't think self-defense is
11 classified as a homicide?

12 Q You sure it's not justified --

13 A It could be justified.

14 Q -- homicide?

15 A It could be justified, yes.

16 Q Because homicide is just the killing of a person
17 by another, right? It doesn't matter whether it's
18 justified, excused, or criminal.

19 MS. KEENEY: I think we're --

20 THE COURT: I'm going to sustain that.
21 I'm assuming there's an objection.

22 MS. KEENEY: Relevance. Objection;
23 relevance.

24 THE COURT: I'll sustain that. Let's
25 move on.

1 MR. BROWN: Well, he just mentioned that
2 serious cases like murder.

3 MS. KEENEY: Yeah, but Mr. Jakes didn't
4 die. We're past that.

5 MR. BROWN: It was --

6 MS. KEENEY: Done.

7 MR. BROWN: Fair enough. Fair enough.

8 THE COURT: Yes, sir.

9 BY MR. BROWN:

10 Q Now, what's the policy for destroying files at the
11 sheriff's department?

12 A I have no idea.

13 Q If the charges are dismissed and expunged, what's
14 your understanding about destruction of files?

15 A Again, records clerks. I don't work in
16 records. I've never worked in records. I've
17 never dealt with expungements.

18 Q Well, have you ever had a file that was part of an
19 investigation of a suspect and there was some criminal
20 incidents that were open and some that were dismissed?
21 Somebody is charged with more than one crime. I don't
22 mean more than one charge, but more than one criminal
23 episode.

24 A You're talking about more than one event
25 related to the same event or more than one event

1 related to separate events?

2 Q Separate events.

3 Have you ever had somebody charged with, you
4 know, robbery at one store and robbery at another
5 store?

6 A Yes, sir.

7 Q All right. And if one of them gets dismissed,
8 what would you do with that file?

9 A Records clerks. We had records clerks.

10 Q But you wouldn't keep it together, like for
11 purposes of investigating whether it was a series of
12 robberies, whether there was overlapping guns, whether
13 the shell casings at robbery one matched the shell
14 casings at robbery two that matched the gun on a
15 suspect?

16 A If we had ongoing investigations and there
17 was evidence relating the crimes, I mean, yes, we
18 could potentially keep those together.

19 Q Okay.

20 A But, I mean, that's --

21 Q All right. Thank you.

22 And so on that note, there's not an
23 expungement that you're aware of for people who got
24 convicted like Mr. Mcmillan. I mean, his file in the
25 office didn't get expunged, did it?

1 A I don't work in records, sir. I can't answer
2 that question.

3 MS. KEENEY: Judge, we have exhausted
4 this records question, and we have also come up
5 with a remedy of how to handle Mr. Davis's
6 paperwork, which is we're going to send an order
7 to SLED after diligently looking. So I think --

8 MR. BROWN: I only have one more
9 question.

10 BY MR. BROWN:

11 Q Have you tried to look at the file in this case
12 from the sheriff's office?

13 A Have I tried to look at it?

14 Q Yeah.

15 A Are you referring to for this hearing?

16 Q Well --

17 A No, sir, I have not.

18 Q Okay, there you go.

19 MR. BROWN: No further questions.

20 CROSS-EXAMINATION

21 BY MR. SHAFFER:

22 Q It's fair to say you don't recall everything about
23 the case, correct?

24 A That is correct.

25 Q Okay. Is it also fair to say you can't sit here

1 on the stand and testify to every action that every
2 other officer did in this case, right?

3 A That is fair.

4 Q Okay. And specifically related to
5 Detective Inabinet, you can't say everything that he
6 did in this case, can you?

7 A I cannot, no, sir.

8 Q Detective Inabinet, he's no longer involved in law
9 enforcement, correct?

10 A That's correct.

11 Q He got charged by the federal government?

12 A Yes, sir. That's correct.

13 Q Okay. And because of that charge, he lost his
14 position in law enforcement, correct?

15 A That's correct.

16 Q And, essentially, that charge was related to
17 allegedly tipping off drug dealers about
18 investigations, correct?

19 A That was a federal case. I'm not privy to
20 the ins and outs of that. Even to this day, I
21 don't know what it was for.

22 Q Okay. Now, do you recall that statement that was
23 given that you had a chance to review the video
24 statement?

25 A The video?

1 Q Yeah.

2 A Of the interview?

3 Q Yeah.

4 A Yes, sir.

5 Q Do you recall James Davis saying that nobody said
6 anything about a robbery in that statement?

7 A Again, without reviewing it, specifically
8 looking for that, I can't recall.

9 Q So, if I showed you a 15-second clip of part of
10 that video, do you think it would help refresh your
11 recollection about whether or not James Davis made
12 that statement?

13 A I mean, I could comment on the 15-second
14 clip.

15 Q Yes.

16 A But as far as, you know, anything -- again,
17 any more specifics related to the video in its
18 entirety without reviewing the video in its
19 entirety, I'm not going to answer that.

20 Q Well, I mean, I get what you're saying.

21 What I'm saying is, if I showed you a
22 15-second clip where James Davis says that nobody
23 said anything about the robbery, would it help
24 recall -- would it refresh your recollection as to
25 whether or not that eventually occurred or not?

1 A I can comment on the 15-second clip if you
2 showed me the 15-second clip.

3 Q Fair enough.

4 A Yes, sir.

5 MR. SHAFFER: Your Honor, I'm going to
6 show him Jake's 1, Sub-Exhibit D at -- starting at
7 13:02.

8 (Video clip played.)

9 THE COURT: All right.

10 BY MR. CHAPLIN:

11 Q I may have shown you slightly more than 15
12 seconds, but after reviewing that clip, does that
13 refresh your recollection as to whether or not James
14 Davis actually said that nobody said anything about a
15 robbery?

16 A In that specific clip, that's what he said,
17 correct.

18 Q Okay. And that statement is materially different
19 than saying that there had been a plan for a robbery,
20 right? You would agree with me that what James Davis
21 said in that one little clip, that one little section
22 is definitely different than a story that says there
23 was a plan for a robbery, right?

24 A I mean, are you asking my opinion on that? I
25 mean, I would say, again, in the clip, I mean, he

1 said that there wasn't a discussion about a
2 robbery.

3 Q Okay. And if he had later said there was a plan
4 for a robbery that would be a different statement,
5 right?

6 A I mean, it could be. Yes, sir.

7 Q Okay.

8 A Again, without reviewing it in its entirety.
9 Without having context.

10 Q But if he had said months later or years later
11 that there was a plan for a robbery, that would be a
12 contradictory statement to what he said in that video,
13 correct?

14 A Yes, it would be different.

15 Q Okay. And do you recall -- well, first of all,
16 let me say this -- or let me ask you this: My client,
17 Mr. Jakes, went by the nickname Dankie, correct?

18 A Somebody did.

19 Q Somebody did, okay. Somebody else went by the
20 nickname Rat, correct?

21 A Correct.

22 Q And that would be the two people sitting at the
23 defense table currently, Mr. Mcmillan and Mr. James.

24 A Correct.

25 Q You can't recall which one went by which name?

1 A Not right off, no, sir.

2 Q Okay. But it's fair to say that Mr. Jakes was the
3 one who got hit by bullets, correct?

4 A Yes, sir. Yes, sir.

5 Q Okay. So whoever in the video that they're
6 talking about got hit by a bullet -- say if they say,
7 Dankie got hit by the bullet or is in the hospital,
8 you would agree with me that that's referring to my
9 client, correct?

10 A Correct. If your client is --

11 Q Mr. Jakes?

12 A Yes, sir.

13 Q And the other individual who goes by the nickname
14 Rat, you wouldn't disagree with me if they say that he
15 wasn't at the hospital or wasn't in the hospital with
16 gunshot wounds, that that would be referring to
17 Mr. Mcmillan, correct?

18 A That's correct.

19 Q Okay. Do you recall Mr. Davis saying that
20 whenever Dankie jumped out of the car, he didn't know
21 what Dankie had said to the alleged victims in this
22 case?

23 A I would have to view the interview.

24 Q If I showed you, say, a 10-second clip from that,
25 do you think that that would refresh your

1 recollection?

2 A I can talk about what's in the clip, yes.

3 Q Okay. I'm showing you Jakes 1, Sub-Exhibit D at
4 9:50, and I'm going to let you listen to it for a
5 little bit more than 10 seconds. Maybe 20 or 30
6 seconds. Just let me know whatever you hear.

7 (Video clip played.)

8 BY MR. SHAFFER:

9 Q I'm going to stop that at 10:30.

10 After hearing that clip, does that refresh
11 your recollection about whether or not Mr. Davis said
12 that he heard what was being said when Dankie jumped
13 out of the car?

14 A That video was very -- there was a lot of
15 background noise. I didn't hear where he said he
16 knew what was going on, no.

17 Q He actually said that he didn't hear what he was
18 saying, correct?

19 A It's very inaudible.

20 Q You did ask him what was being said, correct?

21 A Correct.

22 Q And his response to that was not, *I know what was*
23 *said*, right?

24 A That's correct.

25 Q He said, *I didn't even know what happened*,

1 correct?

2 A Correct.

3 Q Okay. You wouldn't disagree with me that anything
4 that is said in those video recordings are things that
5 he actually said during the interview, correct?

6 A I wouldn't -- I'm sorry. Say that again.

7 Q You wouldn't disagree -- you're not saying that
8 anything that's said in those statements are
9 incorrect, right?

10 A Correct.

11 Q It's probably an accurate copy. I think the State
12 has basically agreed to it without looking at --
13 compared with the State's copy?

14 A Correct.

15 THE COURT: What are you looking for?

16 MR. SHAFFER: Defendant's Exhibit 4, Your
17 Honor.

18 THE COURT: The only thing I have is
19 Defendant's 2. Everybody has come and got things
20 from me. 4 is what he's got right there. I think
21 4 is the new statement that the investigator took.

22 MR. SHAFFER: Can we make this 4?

23 THE COURT: So number 4, apparently the
24 witness walked out with Number 4 and so we're
25 going to mark a copy as Number 4. And I believe

1 everybody agrees that's the -- that's what I would
2 call the new statement, the statement that was
3 taken by the investigator.

4 Solicitor, is that satisfactory?

5 MS. KEENEY: Yes.

6 THE COURT: And defense?

7 MR. SHAFFER: Yes, Your Honor.

8 MR. BROWN: Yes, sir.

9 THE COURT: All right, good.

10 (DFT. MCMILLAN EXH. 4, Remarked,
11 Newly-Discovered Statement, was marked and entered
12 into evidence.)

13 BY MR. SHAFFER:

14 Q So you got shown Defendant's 4 and a copy of the
15 video and that's pretty much the extent of what you
16 had to review for preparation of this hearing?

17 A Correct.

18 Q Okay. I show you said you were only looking for
19 statements related to coercion, correct?

20 A Threats and coercion, promises, yes, sir.

21 Q Is it fair to say that whenever you're questioning
22 somebody, sometimes you need to ask -- I mean,
23 sometimes you need to best educate them, to some
24 degree, about what happens in the criminal justice
25 system in order to get them to talk?

1 A Can you give me an example?

2 Q Like, for example, saying that, *I've seen it a*
3 *million times, you know, People have near-death*
4 *experiences coming in and spilled their guts*
5 *afterwards?*

6 A I mean, not necessarily in that context. I
7 don't really know how to answer that question
8 specifically.

9 Q Okay. Well, do you recall --

10 A Go ahead. I'm sorry.

11 Q It's okay. You can finish.

12 A I was just going to say, no, sir, I don't,
13 other than just explaining the process.

14 Q Okay. Do you recall in this statement saying to
15 that Mr. Davis that more than likely Dankie is going
16 to get out of the hospital and telling him?

17 A Without watching the video in its entirety,
18 I'm sorry. I really -- I can't recall.

19 Q Do you recall saying that Rat may be telling him
20 in order to get a negotiated sentence?

21 A Again, I -- once again, without reviewing the
22 video in its entirety.

23 Q You're not -- if I represented to you that you
24 actually made those statements, would you have any
25 reason to disagree with me?

1 A If I saw those in the video, then I could
2 render an opinion on that. But, again, I just
3 don't recall.

4 Q I can show you the first couple minutes.

5 MS. KEENEY: Your Honor, the video speaks
6 for itself. You have it to review. All he
7 listened to -- the reason he listened was for
8 promises for threats because what Mr. Davis's new
9 statement refers to, about threats.

10 And so he says he doesn't recall the
11 details of the statement of the video and you have
12 it to review.

13 THE COURT: All right. Let me ask you
14 this, it seems to me you're asking if he remembers
15 something. He says he doesn't remember it. You
16 go and play 15 seconds and then he says that's
17 what that clip says.

18 I mean, where are we going? We've done
19 that two or three times now.

20 MR. SHAFFER: Yes, sir. In this one it's
21 a little bit different because there's about a
22 five-minute conversation. He's indicated that
23 he's given a statement based on -- or he reviewed
24 it for possible coercive statements.

25 THE COURT: Right.

1 MR. SHAFFER: And there's a five-minute
2 conversation where he talks about -- he talks
3 about how Rat is likely to testify against him.
4 If he testifies he'll get a negotiated sentence
5 and things like that. And I want to ask him why
6 he made those statements. But, obviously, he
7 needs to remember why -- remember making those
8 statements in order for me to ask him.

9 THE COURT: So now you want to basically
10 ask him if he remembers saying that or he's
11 already said he hasn't, then you want to play the
12 five-minute video for him?

13 MR. SHAFFER: It's approximately five
14 minutes.

15 THE COURT: I'll tell you what we're
16 going to do. I mean, why don't we just have him
17 stand down and watch the video and go to lunch.
18 Because, I mean -- you know, this is -- I mean,
19 that --

20 Solicitor, I mean, I understand where
21 you're coming from. I think that's a legitimate
22 question if he wants to ask. He's asking him why
23 he did something. I'm going to allow him to ask
24 it, but, I mean, I don't think it's -- I'm not
25 going to sit here for five minutes while he

1 reviews the video.

2 What other portions of the hour-plus-long
3 video do you want to ask him? Do you have those?

4 MR. SHAFFER: Yes, Your Honor, I do have
5 other ones I wanted to ask him about. A lot of
6 them -- the video does speak for itself, but I
7 want to ask him specifically related to why he
8 would be making that portion in that five-minute
9 initial --

10 THE COURT: I'm going to allow it. We're
11 going to stand down. He's going to watch the
12 video. We're going to be back here 1:15.

13 Thank you.

14 THE BAILIFF: All rise.

15 (A break was taken from 12:11 p.m. to 1:17 p.m.)

16 MS. KEENEY: We can go back on the record
17 with State vs. David Jakes.

18 THE COURT: That would be great.

19 MS. KEENEY: Judge, if I may real quick.

20 THE COURT: Yes, ma'am.

21 MS. KEENEY: I emailed general counsel
22 from SLED to inquire about James Davis's charges
23 and about the expungement. He was out of the
24 office. My email got forwarded to their deputy
25 general counsel, Dayna Wilkes Temple, and she

1 emailed me back and said, *I cannot find any South*
2 *Carolina criminal history for James Davis with the*
3 *date of birth that I was provided*, which was his
4 date of birth, *call me if you need anything*
5 *further*. And I tried our office, our expungement
6 department. They're still looking, but I think
7 the best course of action would just be an order
8 from Your Honor saying any expungement record or
9 expungement order regarding James Davis. But I
10 wanted to let you know they're actively trying to
11 find it.

12 THE COURT: All right.

13 So we had an opportunity to listen to
14 the -- I think the five-minute track that you
15 wanted Mr. Scott to listen to, and so we're ready
16 to move forward.

17 MR. SHAFFER: Yes, Your Honor.

18 THE COURT: Go right head. You're still
19 under oath, sir.

20 THE WITNESS: Yes, sir.

21 BY MR. SHAFFER:

22 Q In that audio clip, do you -- in that audio clip
23 you said -- or I think Mr. Davis asked you if he was
24 looking at possibly 30 years, and I think you
25 responded, *It could be more than that*, correct?

1 A That's correct.

2 Q In that you also indicate that Dankie and Rat
3 would likely roll over and flip on him and say he was
4 the master mind, correct?

5 A I did. Not verbatim, but, yes, sir, I did.

6 Q And what was the purpose of asking him that?

7 A That's just an investigative -- an interview
8 and investigation tool that we use. Obviously,
9 it's better if you can let them know what their
10 options are, and their options are that if -- if
11 the co-defendants decide to talk to them -- or
12 talk to us and admit their involvement, it really
13 looks bad if you didn't speak up and admit your
14 involvement as well.

15 Q And I'm thinking at one point you even say, *If*
16 *they come to me first, they'll come asking for a deal,*
17 correct? Or something related to that.

18 A Something related to that.

19 Q Now, at one point, you say that if they were to
20 give statements -- I think you, sort of, gave a
21 hypothetical that Dankie would likely do prison time
22 and Rat may get a reduced charge to a -- a reduced
23 charge or a negotiated sentence; is that correct?

24 A Again, not verbatim, but, yes, I did elude to
25 that.

1 Q Okay. And what was the purpose of mentioning by
2 giving a statement you may get a reduced charge or a
3 negotiated sentence?

4 A Again, I'm able to promise anybody anything
5 in these interviews. Obviously, I'm not able to
6 do that. It's just an investigative and
7 interrogation tool, interview and interrogation
8 tool method to provide them with the opportunity
9 to come forward and admit their involvement in a
10 crime or a case.

11 And that's really all it is because,
12 obviously, at the end of the day, I'm not equipped to
13 hand out deals. All I can do is mention to the
14 solicitor's office, *Hey, you know, Mr. Davis came*
15 *forward and explained to me his involvement in it.*
16 *This is what he said.* Same thing with Mr. Mcmillan
17 and same thing with Mr. Jakes had they come forward as
18 well.

19 Q Okay. So it's fair to say that investigative
20 tools generally are to -- or interrogation tools are
21 generally -- the general purpose of those is getting
22 people to talk, correct?

23 A Correct.

24 Q Okay. And the interrogation tool of actually
25 saying that the co-defendant, if he talked, he may

1 actually get a lesser sentence, was that a way to
2 imply that it's possible to get a lesser sentence if
3 you cooperate?

4 A It's possible, but, once again, I mean, it's
5 just a tool. Again, I'm not equipped to give
6 deals. And, usually, my spiel in any interview
7 and interrogation was always the same thing, which
8 is, I can't promise you anything. But if you come
9 forward and you admit your involvement, tell me
10 what you did, the only thing I could promise would
11 be that I would explain that to the solicitor, and
12 if asked by the judge, I would explain that to the
13 judge as well.

14 Q But it's fair to say that you were letting him
15 know that there's a possibility of a deal if you
16 actually give some sort of statement, correct?

17 A Yes, sir.

18 Q Okay. And just for clarification, obviously -- I
19 think we've talked about this before -- you don't know
20 everything that Investigator Inabinet did in the case,
21 correct?

22 A Correct.

23 Q So you can't really speak to what he did or did
24 not do in detail unless you were there with him,
25 correct?

1 A That's correct.

2 Q And you weren't there with him the entire time he
3 did stuff involving the case, to your knowledge?

4 A To my knowledge. But, again, that's years
5 ago.

6 Q Fair enough.

7 MR. SHAFFER: No further question.

8 MS. KEENEY: Nothing from the State.

9 MR. BROWN: Nothing from the Defendant
10 McMillan.

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

13 MS. KEENEY: May this witness be excused
14 if he wishes to leave?

15 THE COURT: Any objection to him being
16 excused?

17 MR. BROWN: None from Defendant Mcmillan.

18 THE COURT: You can stick around, if you
19 want.

20 THE WITNESS: No. Congratulations. I
21 haven't seen you since you took the bench.

22 THE COURT: Thank you.

23 Solicitor?

24 MS. KEENEY: Judge, I would say that this
25 hearing, kind of, took a turn from what was

1 originally argued. The original argument was his
2 new statement. Basically, Inabinet threatened him
3 and said he was going to go to prison for however
4 many years if he didn't tell him what he wanted to
5 hear. That's what the investigator for the
6 defense obtained from Mr. Davis. That's the
7 Court's exhibit -- or the defendant's exhibit.

8 Now, it's, kind of, morphed into
9 basically a prosecutorial misconduct that these
10 prosecutors had some conspiracy with the
11 co-defendant, this deal for his statement. At
12 least that's my interpretation of it. And they're
13 not here to defend themselves. I know they were
14 going to be here for the PCR, and Your Honor had
15 sent an email to Miss Hayes stating that she
16 doesn't need to be here for this hearing.

17 But I feel like either -- it's appropriate
18 for her to be here, along with Mr. Sheldon to address
19 this, or at least submit an affidavit about whether or
20 not there was any deals other than the one that was
21 mentioned at trial that had expired by the time trial
22 came forward.

23 So I would ask that either we can get --
24 I've already asked them if they can do an
25 affidavit and she said she would, but she couldn't

1 have it done this second. Or, if we could leave
2 this open and have her and Mr. Sheldon testify.

3 But, I mean, they're alleging that she was
4 basically involved in the -- they were both involved
5 in this conspiracy of covering up this deal,
6 dismissal, or whatever and hiding it from the defense
7 at the time of trial.

8 And so I feel like they should be here to
9 defend themselves.

10 MR. BROWN: May it please the Court, Your
11 Honor? In the motion I filed -- my signature is
12 on the last page. But on the last page with
13 anything that's on there it says: "The truth
14 contained in Mr. Davis's recently provided
15 statement indicates the trial testimony was false.
16 The falsehood related to the very question at
17 issue and the credibility and determination, is
18 there any bias or motive to misrepresent. That is
19 squarely on point about whether there is a deal.

20 And on that, Judge, I don't intend to
21 offer anything else, but I do have some cases that
22 I made copies of and they deal directly on that
23 issue. And so I did make copies for everybody on
24 this.

25 As to the statement that maybe there

1 needs to be more testimony, I would suggest that
2 before we decide whether we need testimony from
3 the prosecutors, we need to find out how SLED says
4 there's not any records at all at their agency
5 that Mr. Davis testified, supposedly truthfully,
6 that he had seven charges that now they are
7 nowhere to be found. I think that needs to be
8 addressed before we decide we need to have other
9 testimony. Because I need any other testimony
10 that says, *These charges were dismissed because we*
11 *struck a deal with Mr. Davis and his lawyer.* I
12 don't need any other testimony if that's what it
13 says. I mean, I'm ready to go home now. They may
14 definitely want to put that up.

15 But, Judge, there's this elephant in the
16 room, what happened to the charges? That's beyond
17 anybody else. But to come back on the idea that
18 I've shifted gears, I have consistently said that
19 Mr. Davis's trial testimony was false. Which
20 parts? More than one part. Specifically --

21 THE COURT: Well, there's two parts.
22 You're saying -- obviously the part where he
23 points the finger on your client.

24 MR. BROWN: Bingo.

25 THE COURT: That's wrong. You're saying

1 that's wrong.

2 MR. BROWN: Yes, sir.

3 THE COURT: You're saying that's false --

4 MR. BROWN: That's correct.

5 THE COURT: -- based upon the new
6 statement, correct?

7 MR. BROWN: Yes, sir. But -- yes, sir.
8 Yes, sir.

9 THE COURT: But --

10 MR. BROWN: But that's not it.

11 THE COURT: I understand that's not it.

12 MR. BROWN: Correct.

13 THE COURT: That's one of them.

14 MR. BROWN: That's one of them.

15 THE COURT: One of the places you're
16 saying he lied is based upon the newly discovered
17 evidence and the newly discovered evidence is the
18 statement, right?

19 MR. BROWN: Is his new statement. It
20 says that he didn't know anything about anything
21 that happened that night.

22 THE COURT: Right.

23 MR. BROWN: Now, he had already said that
24 before. In fact, that's -- when we were prepping
25 for that trial is when I was -- when we all

1 received a copy of the video for the first
2 statement. And I said that because I didn't
3 become my client's lawyer until after the PCR, so
4 I never had the trial filed.

5 THE COURT: Well, that's not --

6 MR. BROWN: That's neither here or there,
7 but I'm conceding that he had denied at the very
8 beginning.

9 THE COURT: Right, which is -- that's his
10 business. He denied it when he put the finger on
11 your client.

12 MR. BROWN: Right.

13 THE COURT: And now he's -- at a later
14 date he's recanting.

15 MR. BROWN: That's correct.

16 THE COURT: So as this relates to that
17 issue --

18 MR. BROWN: Yes, sir.

19 THE COURT: -- then the issue for the
20 Court is to decide -- as it relates to that
21 issue --

22 MR. BROWN: Yes, sir.

23 THE COURT: I think there's case law out
24 there that says there's five factors.

25 MR. BROWN: Yes, sir. There is case law

1 exactly on recantation, yes.

2 THE COURT: *Napue*.

3 MR. BROWN: Yes, sir.

4 THE COURT: And so that argument is
5 solely limited -- that issue is solely limited
6 there to what he changed as it relates to putting
7 the finger on your fellow. And if you haven't met
8 the five on that issue, you're out.

9 MR. BROWN: Yes, sir. We do --

10 THE COURT: Hold on.

11 MR. BROWN: Yes, sir. Yes, sir.

12 THE COURT: Would you agree with that?

13 MR. BROWN: I would.

14 THE COURT: I'm in the saying -- and I
15 haven't evaluated the five.

16 MR. BROWN: Yes, sir.

17 THE COURT: I just got the case.

18 MR. BROWN: Yes, sir.

19 THE COURT: And I perused the case and it
20 certainly appears to me to be almost exactly on
21 point as it relates to the after-discovered
22 changes that relate to what I call putting the
23 finger on your client.

24 MR. BROWN: Right.

25 THE COURT: Okay.

1 MR. BROWN: Yes, sir.

2 THE COURT: Okay. So now we got another
3 issue, though, and that's the issue about the
4 deal; is that correct?

5 MR. BROWN: That's correct, Judge. And
6 there's an interesting Supreme Court case that
7 talks about getting to the deal shows the bias,
8 and that's the Smalls case. And I'm paraphrasing.
9 In other words, it's not just what the deal was,
10 it's this bargaining process that shows the bias.

11 THE COURT: Well, see, I thought the
12 purpose of getting that deal was to then be able
13 to go -- the reason you reveal the deal, as
14 Mr. Scott Lee likes to call it, he goes to reveal
15 the deal in motions in limine. And I think the
16 reason that they want to reveal the deal, as I
17 understand it, is so that then you can go back and
18 potentially cross-examine on the deal because it
19 certainly could affect somebody's credibility or
20 give them some reason as to why they might want to
21 fabricate or make up some story or exaggerate.
22 Okay?

23 MR. BROWN: Yes, sir.

24 THE COURT: So are you saying now that
25 it's more than just reveal the deal? Is it it's

1 what goes on to get you there? I'm not following.

2 MR. BROWN: Well, that's what the Smalls
3 case says. 608(c) says any evidence of bias or
4 motive to misrepresent.

5 So, the classic is, we cut a deal, and
6 that's very discreet. They said, *If I testified,*
7 *my charges will be dropped,* and that's very
8 discreet. But the Smalls case talks about how
9 they work the process, because that case -- it was
10 an ineffective assistance of counsel PCR case but
11 the State had dismissed the charges against the
12 witness that morning, and that was not brought
13 before in court. And he talks about how it was
14 evolving. And that's -- Justice Few, when he goes
15 through how -- and I'm paraphrasing, but how
16 there's -- and I got copies for everybody -- but
17 how they bargained to get there. And, Judge, that
18 is in this case.

19 And I'll explain why. He says *I didn't*
20 *do it* on the video. They said, *You do, we'll cut*
21 *a deal with these other people.* He then says,
22 *Well, there was a shooting,* on the video. And
23 then at some point in time he's offered this
24 accessory deal and it expires. And then he gives
25 another statement where he uses the robbery,

1 that's the written statement. Then he comes to
2 court and instead of a one-page statement, there's
3 40 pages of testimony about what happened, and
4 there is no deal, and then the charges
5 disappear.

6 THE COURT: But aren't you trying to say
7 that basically there's something rotten in Denmark
8 based on the absence of the documentation?

9 MR. BROWN: I'm trying to say that this
10 entire process, even if it doesn't turn out to be
11 an expressed statement, like a contract deal in
12 writing, even if it doesn't, this process that we
13 now only know about today that there's this
14 revolving process from, *I didn't do it, Well,*
15 *we're going to cut a deal with the other people,*
16 *Well, I was there and there was some shootings,*
17 *and they said, Okay. We'll speak on your behalf,*
18 *and then they meet six months later and he says,*
19 *Well, there was a robbery, and I don't know when*
20 he was offered to drop to accessory.

21 THE COURT: Well, why did they wait ten
22 years to interview this guy to get his statement?

23 MR. BROWN: Judge, I don't know.

24 THE COURT: Because it seems to me --

25 MR. BROWN: I didn't --

1 THE COURT: I understand.

2 MR. BROWN: Yes, sir.

3 THE COURT: But the fact that you waited
4 -- hold on.

5 MR. BROWN: Yes, sir.

6 THE COURT: The fact that you wait 10
7 years is kind of like waiting that long has
8 somewhat contributed to the problem, and I would
9 think that -- I hadn't looked at the rule right
10 this second.

11 MR. BROWN: Right.

12 THE COURT: But I mean, they're at a
13 disadvantage because 10, 12 years have gone by and
14 you-all had the ability to interview this guy two
15 months after the trial, a month after trial.

16 MR. BROWN: I understand that.

17 THE COURT: Before the trial.

18 MR. BROWN: I understand that.

19 And if I may, and for what it's worth, my
20 client's case went up on appeal in 2018 and that's
21 when I was hired for the PCR.

22 THE COURT: But that --

23 MR. BROWN: Just to put that out there.

24 THE COURT: I'll be honest, that concerns
25 me.

1 MR. BROWN: It does me too, but, Judge, I
2 can put that back there. We don't have a record
3 that Mr. Davis was ever charged at all today. And
4 so, if it was dismissed, let's say, in 2018, we
5 couldn't have gone and got that interview. It was
6 dismissed in 2013, I guess we could have done it
7 then.

8 If he was never charged and his testimony
9 of not being charged was false, well, we'd be out
10 of luck on relief. But then we certainly couldn't
11 have done it sooner and they just made up all
12 this, *We charged Mr. Davis.*

13 Judge, I have not one sheet of paper -- I
14 don't have a copy of the warrant that has
15 Mr. Davis's name on it. And indictment. And I
16 know it was expunged, but, ironically, we did try
17 to get it.

18 THE COURT: Well, we don't what it was.

19 MR. BROWN: Well, we tried to get it from
20 my client before the trial happened.

21 THE COURT: We don't know that it was
22 expunged. We don't know if it was expunged, do
23 we?

24 MS. KEENEY: I do not know.

25 THE COURT: There you go. No one does.

1 MR. BROWN: So he has no charge. It never
2 ends. He lied about that?

3 THE COURT: We don't know.

4 MR. BROWN: Why would he lie about having
5 a set of charges?

6 MS. KEENEY: Judge, I'm sorry, I have to
7 correct this. On the video that you have, they
8 are literally reading him the warrants. He was
9 the first person arrested. They read him the
10 warrants. You're charged with attempted armed
11 robbery, attempted murder. So we do know he was
12 charged. And I gave him the indictment numbers he
13 was charged with.

14 THE COURT: Okay, hold on.

15 MR. BROWN: She did. But, again, I've
16 never seen them.

17 THE COURT: Well, you can hear it.

18 MR. BROWN: I've heard it, but I have
19 never seen a warrant. I've never, well, they also
20 lie and say my client gave a statement against
21 him. They also say Mr. Jakes gave a statement.

22 THE COURT: Hold on. You're talking
23 about the law enforcement?

24 MR. BROWN: Well, that's the interview
25 she's talking about.

1 THE COURT: Well, the investigator.
2 Investigative techniques, come on.

3 MR. BROWN: Right, because some of it's a
4 lie and some of it's not. Judge, I still haven't
5 seen the warrants.

6 THE COURT: I understand.

7 MR. BROWN: So, Judge, it's hard to fault
8 me for waiting too late when, in fact, we don't
9 know when too late was because we don't know
10 anything after -- because we don't know what
11 happened.

12 And I'll be honest with you, it would be
13 easy enough to provide to Your Honor a copy of it.
14 There is no way --

15 THE COURT: She's indicating she doesn't
16 have that.

17 MR. BROWN: And as far as Miss Keeney, I
18 am not trying to impune her. I find her to be
19 very forthright.

20 I will tell you this, there is not a
21 chance -- there is not a snowball's chance in Hades
22 that there is not a copy of what happened to Mr.
23 Davis's charges. There is a copy somewhere in this
24 government.

25 THE COURT: All right. So what else do

1 you want to tell me?

2 MR. BROWN: Just hand up these cases.

3 THE COURT: All right. What do you want
4 to tell me?

5 MR. SHAFFER: Your Honor, I sort of
6 understand why Miss Keeney may be a little bit
7 confused and think that there's some transition,
8 and there's a -- I will say this: It's not that
9 I'm not asserting what Mr. Brown is asserting,
10 it's just that I'm not asserting it here in this
11 case. I'm asserting that in my opinion -- in the
12 opinion of the PCR that has been pending since
13 2016 Okay? So I want to clarify the fact that my
14 29(b) is more straight on the nose.

15 Now, I understand that -- I am asserting
16 what he's asserting, it's just more advantageous
17 strategically for me to raise it in a PCR. And
18 that's the reason I'm raising that in a PCR and I
19 don't want to be collaterally estopped for not
20 making certain arguments here today for the
21 purposed of my PCR. There's -- it's advantageous
22 for me to raise it in a PCR.

23 If you look at my motion, my motion is
24 more -- a little bit more bare bones than
25 Mr. Brown's motion was. So I want you to

1 understand that just for the purposes of we
2 haven't -- we're not necessarily raising the exact
3 same issue. My issue really is more on the
4 recantation.

5 Now, in my PCR -- I'm darn sure arguing
6 basically everything Mr. Brown is arguing in my
7 PCR. So I just want to make sure that that's
8 clear.

9 I think you're going to, you know, look
10 and wonder why -- why it took ten years, or why no
11 one went there for ten years is -- I mean, my
12 client had a pending PCR. He had a pending appeal
13 until 2015. He filed a PCR thereafter. He
14 retained counsel soon thereafter. Not me, but a
15 different attorney. And that's when that attorney
16 suggested, well, you know, go out go and get an
17 investigator and go follow up with some stuff, and
18 that's one of the things that they followed up
19 with.

20 THE COURT: Right. Wouldn't it -- I
21 mean, his trial counsel could have gone and hired
22 an investigator.

23 MR. SHAFFER: But at that point --

24 THE COURT: Right?

25 MR. SHAFFER: At that point, I don't

1 think that you can say -- I don't disagree with
2 you. However, the trial counsel -- I think it's
3 unlikely to say that if the trial counsel had an
4 investigator to go talk to Mr. Davis that
5 Mr. Davis actually would have said, *Yeah, I'm*
6 *planning on getting up on the stand and lying.*
7 *Yeah, I got four sentences.* Because also he had
8 counsel at the time. He did not have counsel
9 because the case had ended. He did not have
10 counsel at the time that the private investigator
11 actually went over there to talk with him.

12 THE COURT: Well, yeah. I mean, if he
13 was -- he didn't have counsel the moment the trial
14 was over, right?

15 MR. BROWN: As soon as the charges are
16 dropped.

17 MR. SHAFFER: As soon as the charges are
18 dropped.

19 MR. BROWN: You know, he did a YOA for
20 five years.

21 MR. SHAFFER: I don't know when that
22 happened, but he did not have counsel at the time
23 that private investigator went over there. I
24 don't think that there's a lack of diligence on
25 behalf of my client because of that. It's

1 completely normal. You know, it would be odd for
2 me to send a private investigator to go talk to
3 someone who's represented and say, *Hey, do you*
4 *plan on lying?* You know, or, *Hey, did they force*
5 *you into this?* Because you don't even know what
6 he's going to testify at trial at that point
7 because of the fact that, honestly, the statements
8 are inconsistent which is something more for the
9 PCR than here.

10 MR. BROWN: Judge, I want to point out,
11 they were represented by public defenders. And I
12 only say this because it's a discreet
13 representation that ends with the filing of a
14 notice to appeal, then it goes to the appellate
15 defenders. And I can tell you, I have never heard
16 of them sending investigators out on appellate
17 defense. And my client himself is incarcerated.

18 And so it's not like they could have
19 personally done much more. I don't know that the
20 appellate defense would have gotten funding to
21 hire a detective to go do an interview during the
22 direct appeals stage.

23 MR. SHAFFER: Your Honor, I would say
24 this --

25 THE COURT: Hold on. There's two people

1 talking at the same time.

2 MR. BROWN: I understand.

3 THE COURT: Mr. Brown, you've talked to
4 me. I don't need to hear from you anymore.

5 MR. BROWN: Yes, sir. Thank you.

6 THE COURT: Unless it's unbelievably
7 important.

8 MR. BROWN: No, no. I just want to hand
9 these things up.

10 THE COURT: All right. Go ahead and then
11 Miss Keeney.

12 MR. SHAFFER: Your Honor, I was going to
13 add to Mr. Brown's statement by saying that, at
14 least when I was working for appellate defense,
15 there was no way I was getting an investigator to
16 go follow up on whether or not something at the
17 trial was legitimate or not. That would not have
18 happened. There would be no way that that --
19 there is no way that that would ever get approved,
20 or they would laugh at me if I even asked.

21 So, you know, I just want to reaffirm
22 that that probably wasn't an option until the PCR.
23 Like I say, my client filed the PCR. And once he
24 retained counsel, his counsel sent out the private
25 investigator. And that's Mr. Chaplin. That's not

1 me, because he initially retained Mr. Chaplin.

2 THE COURT: All right. Solicitor, yes,
3 ma'am.

4 MS. KEENEY: Judge, I think I'll start
5 with what I think might be the easiest issue to
6 deal with, just the argument about recantation.

7 So the State is going to rely on *State*
8 *vs. Wright*, a Supreme Court case, 269 S.C. 414. I
9 have a copy for Your Honor.

10 THE COURT: Okay.

11 MS. KEENEY: I'm going to hand this up to
12 Your Honor. Your Honor, the Supreme Court has
13 said that: "We have said that recantation of
14 testimony ordinarily is unreliable and should be
15 subjected to the closest scrutiny when offered as
16 ground for a new trial."

17 Again, in *State vs. Parker*, 249 S.C. 139,
18 another Supreme Court case. Once again, they say:
19 "We have held that recantation of testimony
20 ordinarily is unreliable and should be subject to
21 the closest scrutiny when offered as ground for a
22 new trial. To hold such affidavits sufficient to
23 require the granting of a new trial would open the
24 door --

25 THE COURT: Slow down. Slow down.

1 MS. KEENEY: I'm sorry, Sharon.

2 THE COURT: She didn't even look. I just
3 did that for her. I was being proactive.

4 MS. KEENEY: "To hold such affidavits
5 sufficient to require the granting of a new trial
6 would open the door to fraud and perjury as well
7 as invite interminable delays and disposition of
8 cases." I'll hand that up to Your Honor.

9 Then we got *State vs. Porter*, 269 S.C.
10 618, "Recantation of testimony ordinarily is
11 unreliable and should be subjected to the closest
12 scrutiny." So over and over and over again, our
13 Supreme Court said, that recantation testimony or
14 affidavits such as cases -- such as we have in
15 this case are unreliable and not something that we
16 should grant a new trial based upon.

17 And then again *State vs. Harris*, 391 S.C.
18 539, once again. So over and over again the
19 Supreme Court says that evidence like this is not
20 the basis for a new trial.

21 Then I want to actually point out to
22 what --

23 THE COURT: You guys need to sit down.
24 Okay. She didn't jump up one time while you-all
25 were talking. All right?

1 MS. KEENEY: Then I want to actually look
2 at what this says, what the defense investigator
3 got Mr. Davis in 2021.

4 THE COURT: Yes, ma'am.

5 MS. KEENEY: He says that, "I fell asleep
6 exhausted from all the questioning only to wake up
7 to yet another officer questioning me. This time
8 it was Officer Allen Inabinet yelling and
9 threatening to throw me in prison for 40 or 50
10 years and charge me with the murder of David Jakes
11 if he didn't survive the gunshots. He told me
12 repeatedly that the only way I would be able to
13 stay out of prison would be for me to tell him
14 what he wants to hear."

15 If you look at the actual video that we
16 entered as State's Exhibit 1, the officer after --
17 Inabinet is the first officer that talks to him.
18 He leaves the room. Mr. Davis, kind of, falls
19 asleep. And then the next person that comes in is
20 Investigator Scott. So he's not even referring --
21 in this statement, he doesn't even have the facts
22 right. That's not even the right investigator
23 that came in after the fact.

24 And when you watch that video, you will
25 hear Investigator Scott say over and over again, I

1 *cannot promise you anything. The only thing I can*
2 *do for you is tell the solicitor, tell the judge*
3 *if you cooperated.* Nobody told him that the only
4 way that you're going to get out of this is for
5 you to tell us what we want to hear. They said,
6 *Cannot promise you anything.*

7 And I want to remind you that that was
8 all available to defense counsel. That was all
9 subject to cross-examination at trial. That was
10 -- none of that after-discovered. They could have
11 cross-examined. They probably did cross-examine
12 him on those matters. And he lied initially, said
13 he had nothing to do with it, and he changes his
14 statement to the -- you know, he mentions the
15 robbery for the first time in December of 2010.
16 That was available to the defense for
17 cross-examination. None of that was
18 after-discovered.

19 So I think that that issue -- let me make
20 sure I didn't leave anything out. So what we've
21 got is, over a decade later in 2021, the defense
22 counsel sends an investigator to a guy who's long
23 done with these charges. Right? His buddies are
24 in jail -- or in prison for 30 years and now
25 Mr. Davis has no lawyer. They sent an

1 investigator. He's probably thinking he's just
2 doing his buddies a solid. That he -- I don't
3 know if his charges got dismissed. I assume they
4 did because we don't have record of it, but we do
5 not know that for a fact. He, without counsel,
6 writes this statement thinking that maybe he can
7 help his buddies out.

8 So I think that -- so then I guess we
9 turn to the next part of the argument, which is
10 about this deal or them implying that there's some
11 deal. Well, number one, at trial, it came out
12 that there was a deal at one point in time for
13 accessory after the fact. That's in the
14 transcript. Mr. Davis testified that that had
15 expired. The prosecution elicited that out of
16 Mr. Davis. Nobody was hiding that. That was all
17 available to their defense counsel at the time.

18 And then the next part of the testimony
19 was, *I have no deals in place, no promises.* And
20 the prosecutor said something along the lines of,
21 *Just to tell the truth, or, I was told just to*
22 *tell the truth.* And so there is no evidence of
23 any deals whatsoever. They want to imply one, but
24 even as of today when Mr. Davis testifies, he says
25 there was no deal at the time he testified. So

1 there is literally no evidence of any type of
2 deal, any type of agreement for a dismissal.
3 They're just implying one. They want to make
4 something out of nothing. But the truth is, is
5 that this -- they've been defending people for a
6 long time.

7 THE COURT: I'm sorry. There's not what
8 for a long? You're going --

9 MS. KEENEY: Sorry.

10 THE COURT: That last part, yes, ma'am.

11 MS. KEENEY: There's no evidence of any
12 type of deal or any type of conspiracy to have Mr.
13 Davis say more incriminating statements against
14 Mr. Jakes and Mcmillan in exchange for a dismissal
15 or some type of plea bargain. There is no
16 evidence of that. They just want to imply one.

17 THE COURT: By the actions of the
18 documentation.

19 MS. KEENEY: Right. And I would submit
20 to Your Honor, in my experience of what I think
21 happened, which we can try to get an order from
22 SLED, SLED's email to me was, *I don't see a*
23 *criminal history for him.* So what I take that as
24 is, they ran his NCIC and nothing comes up which
25 means it could have been expunged. So I think

1 that we need a specific order that says, *Do you*
2 *have anything in your possession of an expungement*
3 *order*, something along those lines. Not just, *Can*
4 *you just give me his NCIC*, because clearly his
5 NCIC doesn't have anything on it.

6 THE COURT: And let me stop you right
7 there because I'm thinking about this. I want
8 Mr. Brown to prepare an order --

9 MR. BROWN: Yes, sir.

10 THE COURT: -- not only for SLED --

11 MR. BROWN: Yes, sir.

12 THE COURT: -- but for the Colleton
13 County Sheriff's Office to look through their
14 files. Because as we've heard today many, many
15 times, is that Officer -- Sergeant Scott is not
16 a -- I don't want to say file clerk. That sounds
17 so -- that's 1950's. Whatever. In other words,
18 as far as papering the file, for lack of better
19 words, I want them to go back and look and see
20 whatever files they may have because it's possible
21 they could have some -- something had been slipped
22 into their file as it relates to expungement or
23 dismissal, things of that nature. So I think that
24 would be appropriate because it's possible that
25 there could be something there. He said he didn't

1 know, and I don't think he knows. So I want to
2 also include that.

3 But go ahead.

4 MS. KEENEY: I have no problem with that.

5 I would assume, and this is just me
6 assuming because there's nothing that comes up on
7 the NCIC because I know he was charged with these
8 crimes. I watched them read the warrants to him.
9 I have the indictment numbers in my system, but I
10 don't have any documents other than the indictment
11 in there.

12 THE COURT: Yes, ma'am.

13 MS. KEENEY: I assume that the charges
14 most likely were dismissed at some point and then
15 his attorney, Miss Matthews, helped him do an
16 expungement. That's what I assume happened. That
17 makes the most logical sense, but I do not know.

18 But even if that's true, even if, after
19 the fact, these charges were dismissed, that is
20 the course of business, that we got the record in
21 evidence that says -- even to this day, that there
22 were no promises or deals made other than the one
23 that had expired at the time of trial.

24 And so if the prosecutor, two weeks after
25 this trial was over with Mr. Jakes and Mr.

1 Mcmillan, decides, *Hey, we're satisfied with*
2 *everything that's happened here, we're going to*
3 *dismiss Mr. Davis's charge, that's completely*
4 within their discretion as long as they weren't
5 hiding the deal beforehand, which all the evidence
6 on the record states that they had no deals
7 besides the one that expired. That's
8 prosecutorial discretion, that they don't have
9 to -- they don't have to -- it may be every
10 defense -- you know, defendant, I'm sure, when
11 they cooperate with the State, they're hopeful
12 that something like that would happen. But, at
13 the end of the day, has anyone -- has anyone made
14 a deal with any promises? And the answer from
15 Mr. Davis was no and it's no today.

16 THE COURT: All right. I saw both of you
17 stand up. I'll give you just few brief minutes,
18 Mr. Brown.

19 MR. BROWN: The only thing I'd like to
20 say is this: Mr. Davis testified in court under
21 oath and he gave a statement to the investigator
22 that was not a sworn statement. But I asked him
23 or attempted to ask him about some substance of
24 that. He invoked the Fifth, and it was clear that
25 he was going to do so. He has no legal exposure

1 for giving a false statement to David Jakes's
2 investigator. The only criminal exposure would be
3 for lying under oath at trial.

4 You can take an adverse inference for him
5 taking the Fifth. You just cannot take the Fifth
6 and use it against him in his own trial. In fact,
7 Clarence Thomas says he wants to revisit that,
8 that you can actually use it against a defendant
9 at trial. That's not written in the Constitution.
10 *Captain vs. California*, we say that's the wrong
11 case.

12 Mr. Davis took the Fifth. The only
13 exposure he would have about whether his testimony
14 was truthful would be if his trial testimony was
15 false.

16 Now, I think that's enough to get us at
17 least in the ball game. And I'm arguing with
18 myself because everybody has conceded to an order.

19 And, Judge, I'd like to hand up these
20 case, and I don't know anything else to say.

21 THE COURT: All right.

22 MR. BROWN: And the first one I got in
23 the packet -- and the first one, Judge, is my
24 client's unpublished opinion from his PCR. And
25 it's significant. I'm not going to mark them

1 because they're cases. But it is significant
2 because the Court finds that there's not
3 overwhelming evidence of guilt. And I believe
4 that that's important when you weigh whether or
5 not whatever evidence I can put forward today for
6 the new trial -- because the PCR judge ruled there
7 was overwhelming evidence of guilt. Now, they
8 affirmed the denial of my client's PCR, but they
9 made a finding, the Court of Appeals, that the
10 evidence was not overwhelming. And that's
11 significant.

12 THE COURT: How is that an issue in this
13 case?

14 MR. BROWN: Because the only evidence is
15 Mr. Davis. And they're going to argue that my
16 client's DNA was in his mother's car.

17 THE COURT: Yeah, but --

18 MR. BROWN: Which is not evidence he did
19 anything.

20 But I just wanted to hand it up for that
21 because that has now been decided. There's not
22 overwhelming evidence of guilty. There's
23 different evidence against the two people here,
24 Judge. And I'm not trying to get away from Mr.
25 Jakes, but Mr. Jakes -- the evidence against him

1 and Mr. Mcmillan are not the same.

2 I want to hand up *Giglio*, which is the
3 classic cutting a deal case, reveal the deal.

4 I'm going to hand up *Smalls v. State*
5 which is a South Carolina case and that one talks
6 about evidence applies.

7 And then I'm going to hand up *State vs.*
8 *Dean*. And that case, Judge, deals with not
9 revealing the deal. And for what it's worth, that
10 one has testified there was no deal. And then the
11 defense found jail phone calls where the guy that
12 was the testifying witness said he had a deal.
13 Judge Addy granted a new trial, and Judge Lockemy,
14 I believe that's correct, affirmed that granting
15 of a new trial in the Dean case, Judge.

16 And so it's not on all fours, but it
17 deals with a very similar issue.

18 And Judge, I would say this: *Giglio*,
19 there's some fraud. There's a lot of law about
20 that. There's a law that says that you don't have
21 to reveal every time somebody tried to talk to
22 you. And that falls out there. I think there's
23 some 11th Circuit federal cases and things like
24 that.

25 However, there are other cases that talk

1 about, it does not have to be an expressed or
2 written. A wink, wink deal is enough. And I'll
3 be honest with you, it gets close because we're
4 going to reduce his charges and then he lost that
5 deal. But then all of a sudden after the
6 conviction, it's a complete sweep.

7 That's it, Your Honor.

8 THE COURT: Can't they do that?

9 MR. BROWN: I think they can do it. But
10 if it was a deal --

11 THE COURT: Why is that?

12 MR. BROWN: I'll give you an example. I
13 had a client testify last year in a case against
14 Scott Lee's client and Scott's client was
15 convicted of murder. And my client, it was part
16 of the deal that her charges would be dismissed if
17 she testified truthfully. She did testify. She
18 revealed that on examination from Mr. Lee.

19 THE COURT: Okay.

20 MR. BROWN: Yes, sir. And they dropped
21 it, and on the dismissal it said that she
22 cooperated with the State.

23 THE COURT: Right. Let's assume there's
24 no deal.

25 MR. BROWN: Why would you assume there's

1 no deal under these circumstances? I think it at
2 least gets me -- which you already said you'll
3 give the order that at least let me look at this
4 document next.

5 THE COURT: Well, I haven't made my mind
6 up yet.

7 MR. BROWN: Yes, sir.

8 THE COURT: All right. Anything else?

9 MR. BROWN: That's it from Mr. Mcmillan,
10 Your Honor.

11 MR. SHAFFER: Your Honor, I just want to
12 be a hundred percent clear that I'm arguing that
13 the traditional five factors matter before you in
14 general sessions, not the *Giglio* issue, which I'm
15 raising in a PCR currently.

16 But I do want to point out that the cases
17 that -- and I haven't read every single one of
18 these cases. I've read some of them that the
19 State handed up. What they are are abuse of
20 discretion cases. You know, the standard once you
21 get there and there's five factors whether or not
22 to grant a trial is abuse of discretion. What
23 they're saying is that, you know, there's reasons
24 to say a judge is within his right to say that the
25 recanting testimony is not correct. He's not

1 saying it categorically not correct. Okay? Which
2 I think that the solicitor's argument somewhat may
3 have sounded like the cases state it's
4 categorically not credible, and that's not the
5 case, Your Honor.

6 The one thing related to credibility that
7 I want to point out to the Court is this: The
8 statement that was given at trial -- and the
9 reason I brought up these questions that were,
10 sort of, off the wall with what he asked -- the
11 statement that was given by Mr. Davis at trial is
12 not consistent with that video statement. That
13 statement is -- honestly, it could have been used
14 to impeach it, but nobody bothered to impeach him
15 with it, which is another one of my PCR issues,
16 Your Honor.

17 But I bring that up here, not to argue
18 over the failure at trial to impeach, I bring that
19 up because of the fact that I think bears on
20 whether or not you can say that he was credibly
21 testifying at trial, and, therefore, his credible
22 testimony at trial outweighs his new statement
23 that's made. Okay? Because, honestly, that's,
24 sort of, the finding that you have to make. And
25 that's what those cases are saying, is that you

1 need to look at the trial testimony and the new
2 testimony to see which one is more credible.

3 THE COURT: In other words, it does say:
4 "The granting of a new trial because
5 after-discovered evidence is not favorable."

6 MR. SHAFFER: It's not favorable. You're
7 right.

8 THE COURT: And that's *Strickland v.*
9 *Harris*, which is the newest case.

10 MR. SHAFFER: But I think that you do
11 have the -- it is within your discretion --

12 THE COURT: Yes, sir.

13 MR. SHAFFER: You're not categorically
14 barred from bringing a new trial based on
15 after-discovered evidence.

16 I want to point out to you that, first of
17 all, he testifies differently at trial than he
18 does in the video statement. The video statement,
19 he does not say that there was a plan for a
20 robbery. The officer says that a bunch of times.
21 Okay? The officer says that a whole lot during
22 the interview. He does not say that. In fact, he
23 says, *Nobody said anything about a robbery.*
24 That's what he says in the audio recording.

25 THE COURT: But in trial, he said -- in

1 trial, he mentioned that, right?

2 MR. SHAFFER: Yeah. At trial, he says,
3 *Yes, I did that.* And also at trial he said that
4 he -- that when my client got out of the car he
5 said, *Give it up.* And then in the audio recording
6 he says, *I don't know what he said. He just*
7 *jumped out of the car. I didn't know what was*
8 *going on.* That's what he says to the cops.

9 Then at trial he also testifies -- which
10 this is one of the biggest issues --

11 THE COURT: But can't that just be --
12 shouldn't that have been cross-examined at trial?
13 I mean, because that's not -- that happens every
14 day. I represented people for years. My gosh,
15 you never know what your client is going to say
16 when they get on the stand. You're praying.
17 You're praying they're not going to do because --
18 I mean, that's not -- that's not -- there's
19 nothing newly discovered about any of that.

20 MR. SHAFFER: And I'm not saying that.
21 I'm saying that his testimony at trial was not
22 credible because of that. I'm saying -- I am
23 saying that that's inconsistent in a PCR that's
24 not related to this case. Or is related, but not
25 here today.

1 THE COURT: All right.

2 MR. SHAFFER: Your Honor, the only other
3 thing I would put out is the fact that at trial
4 also he testifies that his video-recorded
5 statement was the same as what he testified to at
6 trial. And that, Your Honor, is just false. I
7 mean, that's false testimony. That was wrong. If
8 you watch the video, you read the statement, it's
9 incorrect.

10 THE COURT: Did they impeach him at
11 trial?

12 MR. SHAFFER: No. nobody bothered to
13 impeach him at trial.

14 THE COURT: Well, that's a PCR matter.

15 MR. SHAFFER: That's a PCR issue, Your
16 Honor.

17 THE COURT: Okay.

18 MS. KEENEY: I'm sorry, I almost forgot
19 one little thing that's very, very important.

20 THE COURT: All right.

21 MS. KEENEY: I sorry. I know this show
22 needs to be over.

23 Looking at those five factors, the first
24 one says, *Would probably change result. With the*
25 *new evidence it would probably change the result,*

1 and I want to address David Jakes mainly because
2 David Jakes -- I don't know if we even gave you a
3 background of this case. This is the people that
4 broke down. They were out of town and they broke
5 down on the side of the road.

6 THE COURT: I'm familiar with this case.
7 Well, you know, I've lived here. I've lived here,
8 and I've here for 35 years. So, yeah, this is the
9 one on the interstate with the Marine dude.

10 MS. KEENEY: Yes.

11 THE COURT: All right.

12 MS. KEENEY: So David Jakes admits he was
13 there. Admits he got out of the car and
14 approached the females. Admits he had a gun.
15 Admits he was shot by the victim. He had a
16 projectile in his body from the victim's gun. And
17 his story was completely unbelievable. He says
18 that he got out of the car, hit on some pretty
19 lady -- he was just going to hit on some pretty
20 ladies even though it was dark outside, they were
21 broken down on the side of the road, and he was
22 concealing his face and had a gun on him.

23 THE COURT: This is the case on the
24 interstate, or on the off ramp, right?

25 MS. KEENEY: Yes, sir.

1 THE COURT: Yeah, yeah, yeah.

2 MS. KEENEY: Yes, sir.

3 So I don't even think -- they already
4 have impeachment evidence on Mr. Davis. They had
5 the first video at trial. They had a second
6 statement that was December of 2010. And then
7 they have his trial testimony.

8 THE COURT: All right.

9 MS. KEENEY: I wanted to put that on the
10 report.

11 MR. SHAFFER: To that point, Your
12 Honor -- I'm sorry. I apologize.

13 THE COURT: Well, I mean, she's finished.
14 It's like ping pong now.

15 MS. KEENEY: We found the expungement
16 order.

17 THE COURT: I'm sorry.

18 MS. KEENEY: We found the expungement
19 order. I have people from my office calling SLED
20 and this is what they just brought up to me.

21 THE COURT: Hold on.

22 MS. KEENEY: It was dismissed on
23 November 20th, 2011.

24 MR. BROWN: The trial was -- September 1,
25 2011, was the end of the trial.

1 MS. KEENEY: So it was dismissed two
2 months later.

3 THE COURT: All right.

4 MR. BROWN: My client's case was not
5 dismissed. What I mentioned -- my client was a
6 cooperating witness against somebody in another
7 trial that was dismissed because she cooperated
8 and it was not immediately dismissed.

9 THE COURT: Make that an exhibit.

10 MR. BROWN: But I'd like to see the
11 dismissal document. It should be with the
12 expungement.

13 MS. KEENEY: This is -- we can do an
14 order for SLED, but this is what we were able to
15 find.

16 THE COURT: Thank you.

17 MS. KEENEY: So I have done what the
18 Court wanted.

19 MR. SHAFFER: I mean, it does give us the
20 date. It does. I will agree it tells me how
21 diligent the efforts to get that information. I
22 would say that Mr. Mcmillan couldn't just go on
23 the computer and get that.

24 THE COURT: So what else do you want to
25 tell me? I know whatever it is, it's just going

1 to be like there's no way I can live without
2 knowing it.

3 MR. SHAFFER: Your Honor, the statement
4 that my client gave is not inconsistent that was
5 given by Mr. Davis to law enforcement in the
6 video. It is inconsistent with the testimony that
7 was given at trial.

8 I just -- what I want the Court to
9 understand is that my client didn't give -- I
10 understand the State's position is that it was
11 fanciful, or whatever terminology they used was.
12 Unbelievable. But it was not inconsistent with
13 what Davis told law enforcement the day
14 afterwards. It was inconsistent with how he
15 changed the story later on.

16 So, Your Honor, I think that it is --
17 and, obviously, we'll leave it alone, but I think
18 we met the burden.

19 THE COURT: There is no -- the only piece
20 of evidence that I have is Defendant's 2. All the
21 other evidence, I don't know where it is. Is it
22 all down there? 1, 2, 3, 4. Thank you so much.
23 Because I'm going to have to take that. One was
24 like 50 or 60 pages of information.

25 MR. BROWN: It was the trial transcript,

1 yes, sir.

2 THE COURT: I got the whole transcript
3 here, I believe.

4 MR. SHAFFER: That's correct. In Jakes
5 A, you have the transcript. I think it's -- you
6 have the transcript twice.

7 (Discussion off the record.)

8 MR. BROWN: He's got it.

9 THE COURT REPORTER: Thank you.

10 THE COURT: So that's it for this one?
11 We good?

12 MR. BROWN: We have everything over
13 there.

14 (End of hearing.)

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CERTIFICATE OF REPORTER

I, SHARON G. HARDOON, Official Circuit Court Reporter, III for the State of South Carolina at Large, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in General Sessions for Colleton County, South Carolina.

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

July 1, 2024

A handwritten signature in black ink, reading "Sharon G. Hardoon". The signature is written in a cursive, flowing style with a large initial 'S'.

Sharon G. Hardoon, CSR
Official Circuit Court Reporter, III

STATE'S EXHIBIT 1

SECOND MOTION HEARING TRANSCRIPT, JULY 12, 2023

RECORDING OF PRE-TRIAL INTERVIEW OF JAMES DAVIS, JR.

**(A FORMAL REQUEST FOR THIS EXHIBIT HAS BEEN MADE
PURSUANT TO SCACR RULE 210(f))**

ROA216

1 THE COURT: Mr. Davis, please come around and be sworn
2 by the Clerk.

3 MADAME CLERK: Please come forward and be sworn.

4 WHEREUPON, THE WITNESS, JAMES DAVIS, JR., IS DULY
5 SWORN.

6 THE COURT: Come right on up. Watch these stairs for
7 me. Step up here and have a seat on the witness stand. I
8 want you to pull that chair up to that microphone. I want
9 you to speak in that microphone and speak up so everybody on
10 this jury can hear you, and also, the people in the
11 Courtroom.

12 I want you to begin by stating your full name and
13 spelling your last name.

14 MR. DAVIS: James Davis, D-A-V-I-S.

15 THE COURT: Very good. Your witness, Counsel.

16 ASST. SOL. SHELTON: Thank you, Your Honor. May it
17 please the Court.

18 DIRECT EXAMINATION

19 BY ASST. SOL. SHELTON:

20 Q Mr. Davis, you got to speak up like the judge said.
21 Can you hear me?

22 A Yes, sir.

23 Q Okay, I can hear you if you keep talking like that; all
24 right? You said your name was James Davis, are you a Senior
25 or a Junior?



1 A Junior.

2 Q What's your dad's name?

3 A James Davis.

4 Q Where do you live?

5 A Smoaks.

6 Q Where about?

7 A 211 Johnsville Road, South Carolina.

8 Q How do you get to Johnsville Road from Walterboro?

9 A You can either take -- well, I take Bells Highway.

10 Then merge off of Stokes Road and then you turn and make a

11 right by the post office, then you'll be on Ruffin Road, and

12 you come straight into Smoaks from there.

13 Q Okay. Have you lived there your whole life?

14 A Partially.

15 Q I'm sorry?

16 A Partially.

17 Q Now, do you go by any other name besides James Davis?

18 A Yes, sir.

19 Q What's that?

20 A Chippy.

21 Q How'd you get that name?

22 A My granddaddy.

23 Q You're granddaddy give it to you or that's his name?

24 A He gave it to me.

25 Q Is that what most of your friends call you?

- 1 A Yes, sir.
- 2 Q Can I call you Chippy?
- 3 A Yes, sir.
- 4 Q All right. Would you rather be called Chippy or James?
- 5 A You can call me Chippy.
- 6 Q Okay. Did you go to high school?
- 7 A Yes, sir.
- 8 Q Where did you go?
- 9 A Colleton High.
- 10 Q Did you graduate?
- 11 A Yes, sir.
- 12 Q What year did you graduate?
- 13 A '09.
- 14 Q What did you do after high school?
- 15 A I tried to enroll in the military.
- 16 Q I'm sorry?
- 17 A First, I got a job, then later on I resigned from my
- 18 job, and then I tried to enroll in the military.
- 19 Q What job were you working at?
- 20 A Husqvarna, it's a plant in Orangeburg.
- 21 Q Did you work anywhere before that while you were in
- 22 high school?
- 23 A Yeah, I had a job all through high school. I was
- 24 working at Subway.
- 25 Q Subway?

- 1 A Subway in St. George.
- 2 Q St. George. What did you do at Husqvarna?
- 3 A Well, I was working on an assembly line; painting parts
- 4 onto a lawnmower.
- 5 Q Do you know a guy named David Jakes?
- 6 A Yes, sir.
- 7 Q Does he have another name?
- 8 A Yes, sir.
- 9 Q What's his other name?
- 10 A Dinky.
- 11 Q Dinky, is that his nickname?
- 12 A Yes, sir.
- 13 Q Do you see Mr. David Jakes in the courtroom today?
- 14 A Yes, sir.
- 15 Q Will you point him out for the jury?
- 16 A (WITNESS INDICATES BY POINTING.)
- 17 ASST. SOL. SHELTON: Please let the record reflect that
- 18 the witness has pointed at the defendant, Mr. David Jakes,
- 19 sitting next to his counsel, Mr. Harris Beach.
- 20 Q Do you know a fellow named Antwan McMillan?
- 21 A Yes, sir.
- 22 Q Does he have a nickname?
- 23 A Yes, sir.
- 24 Q What's his nickname?
- 25 A Rat.

1 Q What's that?

2 A Rat.

3 Q How do you spell that?

4 A R-A-T.

5 Q Is he in the courtroom today?

6 A Yes, sir.

7 Q Do you see him in the courtroom?

8 A Yes, sir.

9 Q Will you point him out for the jury?

10 A (WITNESS INDICATES BY POINTING.)

11 ASST. SOL. SHELTON: Please let the record reflect that
12 Mr. James Davis, Jr., has pointed to Mr. Antwan McMillan who
13 is seated next to his attorney, Mr. David Mathews.

14 Q Now, Mr. Davis, let's talk about June of last year,
15 okay? That would be in 2010. How well do you know Dinky, or
16 Mr. Jakes, over there?

17 A I know him pretty good. I've known him about a couple
18 of years. I've known him all my life, basically, we stay in
19 the same neighborhood, so everybody knows everybody; it's a
20 small community.

21 Q And you say you know him pretty well, do ya'll hang out
22 together? Do you consider yourselves friends, childhood
23 friends? What do y'all do together?

24 A We hang out every so often.

25 Q What about Mr. Antwan McMillan?

- 1 A I know him from being around the neighborhood. I don't
2 know him too good.
- 3 Q You say "around the neighborhood," how far away do you
4 live from David Jakes?
- 5 A Like three minutes.
- 6 Q Three minutes away driving?
- 7 A Driving.
- 8 Q What about from Antwan McMillan?
- 9 A It's closer.
- 10 Q Is there a lot of people who live up there or a few
11 amount of people?
- 12 A A few, it's a handful.
- 13 Q Do you know a Brenda McMillan?
- 14 A Do I know a person? no.
- 15 Q Do you who she is?
- 16 A I know that's his mother, but I don't know ---
- 17 Q Who's mom?
- 18 A Antwan.
- 19 Q Ms. Brenda McMillan is Antwan's mother?
- 20 A Yeah.
- 21 Q Does she live with Antwan?
- 22 A I assume so.
- 23 Q Yes or no?
- 24 A Yes.
- 25 Q Now, on June 3rd, 2010, do you remember that day?

1 A Yes, sir.

2 Q You got in trouble that day, didn't you?

3 A Yes, sir.

4 Q Are you ready to talk and tell the jury what happened
5 that day?

6 A Yes, sir.

7 Q Are you ready to tell them the truth?

8 A Yes, sir.

9 Q Now, June 3rd, 2010, let's take it from the beginning.
10 What did you do that day? Earlier in the day, during the
11 day, what were you doing?

12 A In the house, with my girlfriend, watching TV and just
13 chilling.

14 Q What's your girlfriend's name?

15 A Jasmine Morell.

16 Q Do ya'll have any babies or kids together?

17 A We've got one.

18 Q How old is he?

19 A He's a newborn.

20 Q What's his name?

21 A Keanan Davis.

22 Q How old is he now?

23 A Like three months.

24 Q Are you still with her?

25 A Yes, sir.

- 1 Q Your girlfriend?
- 2 A Yes, sir.
- 3 Q You were hanging out with her?
- 4 A Yeah, we was at the house -- at my sister's house.
- 5 Q Did you ever leave the house?
- 6 A At any time? No.
- 7 Q You didn't leave the house all day?
- 8 A All day? No, we were in the house all day.
- 9 Q Did you ever do anything with your dad that day?
- 10 A Yeah, he came over there and got me out the house and
- 11 told me to help him with the yard, my sister's yard.
- 12 Q What time was that?
- 13 A It had to have been in the afternoon, probably, like
- 14 mid day.
- 15 Q Midday. You said your sister's yard. Where is your
- 16 sister's yard?
- 17 A Next door to my house.
- 18 Q So you've got two houses that are right next door to
- 19 each other?
- 20 A Yeah. My parents stay next door to my sister's.
- 21 Q Okay. So you went to help cut grass with your dad for
- 22 your sisters yard.
- 23 A Correct.
- 24 Q How long were you cutting grass?
- 25 A We were cutting grass. We had to edge the trees up.

1 We were basically, like, rearranging stuff out in the yard,
2 so we had been out there, basically, until dark.

3 Q So you were cutting grass and working on the yard?

4 A Uh-huh (affirmative).

5 Q What time again -- was this June 3rd?

6 A Yeah, June 3rd.

7 Q And you were out there until dark?

8 A Uh-huh (affirmative).

9 THE COURT: Say "yes" or "no."

10 A Yes, sir.

11 Q Please say yes or no. Don't shake your head or nod
12 your head like the judge said, okay? What did you do after
13 you finished mowing the yard; what were you doing?

14 A Me, my sister, and my girlfriend had walked over to my
15 dad's house and we were over there chilling and eating.

16 Q Did you receive a phone call from anybody?

17 A Yeah, I got a phone call.

18 Q So you were chilling and eating and you got a phone
19 call?

20 A Correct.

21 Q Who called you?

22 A Dinky.

23 Q Who's Dinky, again?

24 A David.

25 Q David Jakes, sitting over there?

1 A Yes, sir.

2 Q What did he say?

3 A He asked me do I want to ride with him to Walterboro to

4 hook up with some girls.

5 Q With some girls?

6 A Correct.

7 Q You had a girlfriend at that time, correct?

8 A Correct.

9 Q What were you doing with those girls?

10 A I'd rather not get into that.

11 Q Okay. All right. Just got to say that. You were

12 calling these girls and you were going to ride with Dinky to

13 Walterboro?

14 A Correct.

15 Q Now, what did you do then? After he called you, what

16 did you do?

17 A Well, I chilled for like a little minute, then I left.

18 Then me, my sister, and my girlfriend left and walked to her

19 house. Then, my girlfriend left and went back to her house

20 in Ehrhardt, but I just chilled, and I washed up and got

21 ready then he came and picked me up.

22 Q Who is he?

23 A David Jakes.

24 Q What was he driving?

25 A Cadillac. Gray Cadillac.

1 Q Gray Cadillac? How many doors does that Cadillac have?

2 A It was a four door?

3 ASST. SOL. SHELTON: May I approach, Your Honor?

4 THE COURT: You may.

5 Q Mr. Davis, Chippy, I'm going to hand you what has been
6 previously marked for identification purposes, that means
7 you don't show it to the jury, okay?

8 A Correct.

9 Q State's Exhibit Number 7; do you recognize that?

10 A Yes, sir.

11 Q What is in that picture?

12 A I recognize it; it's the Cadillac. I recognize the
13 plates.

14 Q And who's Cadillac is it?

15 A J.J.'s car. Timothy's.

16 Q Was that the car that you were picked up in that night?

17 A Yes, sir.

18 Q Okay. Who was driving it when they picked you up from
19 your sister's house?

20 A Dinky.

21 Q At this point, you know, you might not remember what
22 time it was, but was it dark or light?

23 A It was dark.

24 Q It was dark when you finished mowing grass, right?

25 A Correct.

- 1 Q You were eating then you went over to your sister's
2 house, correct?
- 3 A Correct.
- 4 Q And then you washed, right?
- 5 A Correct.
- 6 Q And then he came to pick you up?
- 7 A Yes, sir.
- 8 Q So it's been dark since you got back from the mowing
9 the grass, and he came to pick you up, correct?
- 10 A Correct.
- 11 Q When he came to pick you up, was there anyone in the
12 car besides him?
- 13 A No, just him.
- 14 Q Did you get in the car?
- 15 A Yes, I got in. Yes, sir.
- 16 Q Exactly where did you go directly from your sister's
17 house then?
- 18 A To Antwan's house.
- 19 Q Where does Antwan live?
- 20 A Like ten minutes away from me, 217.
- 21 Q On Highway 217?
- 22 A Yes, sir.
- 23 Q And when you went there, who did you see there?
- 24 A Antwan.
- 25 Q Did you get out of the car?

1 A No, sir.

2 Q Who got out of the car?

3 A Dinky got out of the car.

4 Q Why did he get out of the car?

5 A I guess to talk to Antwan; they were talking.

6 Q Did anybody else get in the car again besides Dinky?

7 A When Dinky got in the car, Antwan got in the car back
8 with him.

9 Q Now, at that point, who got in the driver's seat?

10 A Dinky got back in the driver's seat.

11 Q Dinky got back in the driver's seat at that point?

12 A Correct.

13 Q Okay. And then where did you go?

14 A Then we went to Dinky's grandmother's house.

15 Q Where is that?

16 A Clatty Farm Road. No more than three minutes from
17 Antwan's house.

18 Q How did you get from Antwan's house to Dinky's house on
19 Clatty Farm Road?

20 A Make a right off 217, the first right.

21 Q You say it only takes a couple of minutes to get there?

22 A Yeah, only a couple of minutes, if that.

23 Q Okay. So, when you got to that house, what happened
24 then?

25 A Dinky went into the house and said he had to grab

1 something really quick.

2 Q All right. And how long was he in there for?

3 A Short amount of time, basically, like a run in and run
4 out thing.

5 Q When he got back out of the car, what happened? When
6 he got back out of the house, excuse me, what happened?

7 A By the time he had got back out of the house, Antwan
8 had already switched drivers, he said he was going to drive
9 from there on in, so, he got out the back seat and hopped in
10 the driver's seat. When Dinky came out, Antwan was already
11 in the driver's seat, so Dinky went ahead and got in the
12 back.

13 Q So Dinky got in the backseat at that point?

14 A Correct.

15 Q Antwan got in the driver's seat?

16 A Correct.

17 Q Where were you seated?

18 A Passenger seat.

19 Q Passenger seat in the front or the back?

20 A Front.

21 Q So the front right passenger seat, in that Cadillac
22 that you just saw?

23 A Correct.

24 Q Why did Antwan want to drive, do you know?

25 A I don't know.

1 Q So, at that point, Antwan was driving?

2 A Correct.

3 Q Dinky was in the back seat?

4 A Correct.

5 Q You were in the front passenger seat?

6 A Correct.

7 Q Where do you go from there?

8 A We was headed to Walterboro down Clatty Farm Road,
9 headed towards Mount Carmel Road.

10 Q Okay. So when you get to Mount Carmel Road, how do you
11 get towards Walterboro?

12 A Make a left at the stop sign -- at the end of Clatty
13 Farm Road make a left.

14 Q Then, what do you do?

15 A Keep straight.

16 Q Did you keep going to Walterboro? Did you turn off?
17 Did you stay on Mount Carmel Road all the way to the end?
18 How did you keep going to Walterboro?

19 A We turned off; we made a left on McLeod Road.

20 Q Okay. Why did you make a left on McLeod Road, do you
21 know?

22 A I guess he figured it was a shortcut -- it is a
23 shortcut.

24 Q All right. How? Hop on 95?

25 A No, just to go straight through. You don't need to hop

1 on 95, when you can just go straight through and merge on
2 15.

3 Q Okay. Now, I'm going to get to the nitty-gritty of
4 this. So you're on McLeod Road, correct?

5 A Correct.

6 Q You're in that Cadillac that I showed you earlier,
7 right?

8 A Correct.

9 Q Antwan's in the front driver seat, David Jakes is in
10 the back seat, you're in the front passenger seat, right?

11 A Correct.

12 Q Okay. You're driving down McLeod Road, what is the
13 next thing you remember?

14 A I remember passing three people on the side of the road
15 like they were having car trouble or tire problems or
16 whatever, on the ramp coming off of 95.

17 Q Do you remember who they were? You may not remember
18 what they looked like; do you remember whether they were
19 guys, girls, how many there were?

20 A There were girls and guys.

21 Q You sure?

22 A Yeah, I'm sure.

23 Q And then, after you pass them, what happened?

24 A What happened after we passed them? Well, after we
25 passed them, I guess like I said, we didn't notice

1 everybody, because everybody just looked -- you know what I
2 mean? Because the lights was -- Antwan came up with the
3 idea, like, you know what I mean, he was telling us that's
4 an easy lick, you know what I mean ---

5 Q It's a what?

6 A Easy lick.

7 Q What is a "lick"?

8 A A robbery.

9 Q Antwan said that?

10 A Correct.

11 Q What happened next?

12 A He asked us if were we down with it, and I was like,
13 "No man, I ain't down. I ain't down with that, man. It's
14 stupid." I was explaining how stupid it was and he was
15 getting Dinky pumped up, Dinky was like, "Yeah, man, I'm
16 down; I'll do it."

17 Q So Dinky was pumped up?

18 A Correct.

19 Q It was Antwan's idea?

20 A Correct.

21 Q And you just said, no?

22 A Correct.

23 Q Are you telling the truth?

24 A Correct.

25 Q Then what happened?

1 A Then, after we ride, we were down at, like, I don't
2 know, the time felt like it was going by fast ---

3 Q Did you turn around or did you just keep going? What
4 happened?

5 A We turned around after they had been planning it out,
6 we had turned around; and by the time we turned around, we
7 stopped -- we stopped like sideways facing ongoing traffic.

8 Q Okay. You say you stopped sideways, facing ongoing
9 traffic?

10 A Yeah, anybody that was coming off the ramp, that was
11 ongoing traffic, if you're coming off the ramp at 95 we was
12 parked sideways like blocking them.

13 Q So you were blocking the ramp off of 95?

14 A Correct.

15 Q How many cars were out that you saw?

16 A I think it was like, like, two.

17 Q And then what do you remember happened?

18 A I remember as soon as we stopped, before I could say
19 anything, David had done hopped out the car.

20 Q You said David?

21 A Yeah. He hopped out the car running towards, not
22 running towards -- like facing towards the people who was on
23 the side of the road, pointing the gun telling them to "Give
24 it up."

25 Q He was saying what?

1 A "Give it up."

2 Q Did he say anything else?

3 A All I heard was "give it up."

4 Q What were you doing at this time?

5 A I was just like panicking, looking around, and started
6 panicking.

7 Q Show the jury what you were doing.

8 A What I was doing? I was just looking around at what
9 was going on, like, dang, and before I could say anything,
10 it happened too quick, and then I just heard gunshots.

11 Q When you heard gunshots, what did you do?

12 A I ducked down for cover.

13 Q How did you duck down for cover?

14 A Like this. I ducked down to the floorboard of the car
15 on the passenger's side with the glove department. Yeah.

16 Q Then what happened?

17 A Then after that, the gunshots didn't cease, and Rat was
18 telling me, "Get out the car. Go get Dinky," telling me to
19 get out the car and go pick him up and go get him, but I was
20 like, "Nah, man, I ain't getting out," you know what I mean?
21 I was scared; and no, I ain't getting out. And he was like,
22 "Man, get out, get out, get out."

23 Q Then what happened?

24 A Then after that, I was still down, and Rat, he was
25 reaching over me and started firing shots.

1 Q He did what?

2 A Started firing shots.

3 Q He did what over you?

4 A Started firing shots.

5 Q How did he do that? Where were you again?

6 A I was still in the same position -- same position by
7 the glove department on the floor panel, like this right
8 here, and he just reached over me and started shooting.

9 Q So, he reached over you and started shooting out the
10 car?

11 A Correct.

12 Q How do you know if he was shooting if you weren't
13 looking at him?

14 A I could hear the gun in my ears.

15 Q What's the next thing you remember after that?

16 A I remember -- I just remember silence after that, like
17 everything was silent. After that, I kind of like tried to
18 open the door to see if Dinky was hit, so I reached behind
19 me like the seat in the Cadillac and opened the door.

20 Q How did you open the door if you were in the front seat
21 like that?

22 A Well, a Cadillac, you know what I mean, the seats are
23 basically like this right here, so it's easy for me to reach
24 back to the door right here and open it.

25 Q Was the seat up? Was the seat back? I don't

1 understand ---

2 A The seat was kind of slant. It went up the point I
3 couldn't get back, but just like slanted a little bit, so I
4 could reach behind me to open the door, like that, grab the
5 handle and not really shove the door all the way open, but
6 just enough; you know what I mean? For him to get in.

7 Q Now, at that point, Dinky, David Jakes, was he walking?

8 A No.

9 Q Where was he?

10 A He was squirming, crawling, like fighting it to crawl
11 in.

12 Q To crawl in the car?

13 A Correct.

14 Q Did you help him get in the car?

15 A The best way I could.

16 Q Did you get out of the car at any point?

17 A No, sir.

18 Q How did you help him get in the car if you didn't get
19 out of the car?

20 A When he was coming up, by the time he was doing good
21 getting himself in, I tried to grab his hands a little bit
22 and raise his hand up so I could grab him and give him as
23 much help as I could with helping him. He's helping himself
24 and we're helping him because, like, he got to get in.

25 Q Okay. Did you shut the door for him or did he shut the

1 door, do you remember?

2 A To tell you the truth I can't, man, it happened so
3 quick, man, I can't even tell you who shut the door.

4 Q Why didn't he just walk to get back in the car?

5 A Because he was shot all over.

6 Q After you had gotten him in the car, what's the next
7 thing you remember happening?

8 A Speeding off.

9 Q Where did you go?

10 A I thought we were about to go to the hospital, but we
11 were going back towards Smoaks. We went down McLeod Road,
12 going in the same direction that we came in.

13 Q From the same direction that you came?

14 A Uh-huh (affirmative).

15 Q So, how would you have gone to the hospital from there?

16 A We could -- at the end of McLeod Road, we could have
17 made a left and that would run you in to Bells Highway,
18 right there in Walterboro.

19 Q But you took a right at the stop, instead?

20 A Yeah, took a right instead of a left.

21 Q Who's driving at this point?

22 A Antwan's still driving.

23 Q Where's Dinky?

24 A In the back seat.

25 Q Where are you?

1 A Front seat.

2 Q You hadn't moved from that front seat?

3 A No, I ain't moved, but I was like turning around, like,
4 trying to keep him company, trying to keep him from going
5 into shock.

6 Q Okay. Did he say anything?

7 A Yeah.

8 Q What did he say?

9 A He was, like, screaming, like, panicking saying, "Take
10 me to the hospital. Get me to the hospital."

11 Q But ya'll turned away from the hospital?

12 A Correct.

13 Q Did you have a cell phone on you?

14 A Correct.

15 Q Did you call 911?

16 A No, sir.

17 Q Did Antwan have a cell phone on him?

18 A I believe so.

19 Q Did he call 911?

20 A No.

21 Q So you're going away from town, away from the hospital,
22 you both have cell phones, you got a fellow that's shot in
23 the backseat, and nobody calls 911?

24 A Correct.

25 Q Now, what's the next thing you remember as you're

1 driving on Mount Carmel Road, away from town?

2 A I remember just driving down the road; we was just
3 panicking. I'm telling Antwan to get him to the hospital,
4 he's telling Antwan to get him to the hospital, but he said
5 he ain't going to the hospital -- he ain't going to the
6 hospital. And I remember we passing a car, passing like an
7 oncoming car, Toya -- Toya and them's car is a blue -- a
8 blue station wagon and by the time we had recognized that
9 was Toya's car, so we started flashing the lights.

10 Q You said Toya?

11 A Yeah.

12 Q Who is Toya?

13 A Toya Bryant.

14 Q How do you know Toya?

15 A Neighborhood.

16 Q Okay. So go back, you passed the car and you started
17 doing what?

18 A Before we passed the car, while the car was oncoming,
19 like we was close to it, we were just flashing the lights
20 like giving the signal to stop, stop, stop. Then, after
21 that, we turned around to look at them and see that they
22 were braking a little bit, but they didn't really know who
23 we was, you know what I mean? Because it was dark, they
24 were like braking a little bit, like, I ain't really gonna
25 stop, so we turn around and got behind them and started

1 flashing them and pulled onto the ---

2 Q Did the car stop?

3 A Yeah, they stopped.

4 Q What did you do?

5 A When the car stopped, we was yelling at Toya, and we
6 were like, "Man, get him to the hospital."

7 Q Hold on. The car stopped, did Antwan pull up behind,
8 next, to the front; how did Antwan pull up?

9 A He pulled up beside them.

10 Q Beside him. So did the car stop in the middle of the
11 road, did it stop on the shoulder, did the car stop off the
12 road? Where did the car stop?

13 A It was on the other side of the road, for sure, and it
14 was kind of like -- -

15 Q On the right hand side or the left hand side of the
16 road?

17 A It had to be the left hand side, oncoming traffic side.

18 Q You saw the oncoming traffic side?

19 A Did I see?

20 Q No, I'm confused about which car is which now, okay.
21 You turned around and you're going back towards town, right?

22 A All right. Yeah, Toya was in the blue station wagon
23 heading towards town; we're headed towards Smoaks. By the
24 time we spotted them out, we flashed the lights at them, and
25 they were braking a little bit. We turned around and we

1 flashed the lights behind them. We went behind them now,
2 and now, we're pulling over in the ongoing traffic side.

3 Q Okay. So the car that you're in pulls onto the
4 oncoming traffic side?

5 A Correct.

6 Q The car that you say Toya's in, or whoever's car it is,
7 was on the right hand side?

8 A Yeah, correct.

9 Q Okay. Now, I understand better. Now, will you say for
10 the jury where exactly, you can use your hands if you want,
11 show them here, here, or wherever it is, where exactly your
12 car, the car that you were in, parked next to the car that
13 stopped after the lights were flashed at them.

14 A Well, it's probably like this (WITNESS INDICATING WITH
15 HANDS TOGETHER.) Toya's car here; this is our car.

16 Q Basically, side by side?

17 A Yeah, this is the passenger side of the car.

18 Q And you were in the front passenger seat, as you've
19 already told the jury.

20 A Yes, sir.

21 Q And who was driving?

22 A Antwan.

23 Q And who was in the backseat?

24 A Dinky.

25 Q Was there anybody else in that car?

1 A No, sir.

2 Q Now, the car that stopped -- did you know the people
3 who were in that car?

4 A Yes, sir.

5 Q Who was in that car that you saw?

6 A It was Toya, Montez ---

7 Q Montez who?

8 A Montez Jenkins.

9 Q Okay.

10 A Joseph.

11 Q Joseph who?

12 A Griffin.

13 Q Okay.

14 A There was another girl in there; I don't know her name.
15 I've seen her before, but I don't know her by name.

16 Q Now, when the car stopped, what did you do?

17 A We were just panicking. We were just telling Toya to
18 get him to the hospital; get him to the hospital. They --
19 Toya and them --- the other car, they was still trying to
20 figure out, like, man, what happened? Trying to figure out
21 what happened. They were asking questions and we weren't
22 really talking to them. We were just rushing, so I got out
23 the car, Rat got out the car ---

24 Q Who got out the car?

25 A I got out the car, Antwan got out of the car, Joseph

1 got out the car, the other car -- the station wagon. Montez
2 got out of the car, and that was it, and then they came and
3 helped me and Antwan get David in the backseat of the wagon.

4 Q How did you get David in the backseat of the wagon?

5 A Well, like two had the back legs and like two had the
6 front.

7 Q And you put him in the back of that wagon?

8 A Correct.

9 ASST. SOL. SHELTON: May I approach, Your Honor?

10 THE COURT: You may.

11 Q Just like last time, I'm going to show you this then
12 ask you if you know what it is, okay? State's Exhibit
13 Number Eight. Do not show it to the jury. It's for
14 identification purposes only, okay? Do you recognize what
15 that is?

16 A Yes, sir.

17 Q What is that?

18 A Ford Taurus station wagon.

19 Q Have you seen that station wagon before?

20 A Yes, sir.

21 Q Was that the station wagon that you put David Jakes in
22 that night?

23 A Yes, sir.

24 Q How do you know that? By looking at that picture?

25 A By the sticker on the window.

1 Q You recognize that sticker on the window?

2 A Uh-huh (affirmative); yes, sir.

3 Q So you said that Rat got out of the car, being Antwan?

4 A Correct.

5 Q You put David in the car along with Joseph Griffin and
6 Montez Jenkins and Antwan?

7 A Correct.

8 Q Who all -- you saw, in that other car, just repeating
9 what you said, you saw Toya Bryant.

10 A Yes, sir.

11 Q You saw Montez Jenkins.

12 A Yes, sir.

13 Q You saw Joseph Griffin.

14 A Yes, sir.

15 Q And who else?

16 A I can't really recall the other girl's name. I know
17 her by face, but I don't know her by name.

18 Q Okay. Now, do you know Joseph Griffin?

19 A Yeah, I know him.

20 Q Do you know where he lives?

21 A Yes, sir.

22 Q Where does he live?

23 A Next door to Antwan.

24 Q Next door to Antwan, meaning "the Rat" that's Antwan?

25 A Yes, sir.

- 1 Q Do you know Montez Jenkins?
- 2 A Yes, sir.
- 3 Q Do you know where he lives?
- 4 A No, sir.
- 5 Q And do you know Toya?
- 6 A Yes, sir.
- 7 Q Do you know where he lives?
- 8 A Yes, sir.
- 9 Q Where does he live?
- 10 A Right down the road from me.
- 11 Q So once you got Mr. Jakes, Dinky, into the car, what
- 12 did you do?
- 13 A I got back into the Cadillac with Antwan.
- 14 Q Where'd you get in the Cadillac at?
- 15 A Same spot.
- 16 Q Where is that, front driver seat?
- 17 A No, passenger seat.
- 18 Q Passenger seat. Who got in the driver seat?
- 19 A Antwan.
- 20 Q What did you do then?
- 21 A Turned around and went to Smoaks.
- 22 Q So you go to Smoaks. Where did you go?
- 23 A Dropped the car off back at Dinky's grandmother's
- 24 house.
- 25 Q What road is that on?

1 A Clatty Farm Road.

2 Q Once you dropped the car off, what did you do?

3 A We were just panicking then. We jumped out the car.

4 Antwan got up out the car and he started running and I

5 hopped up out of the car and started running, too; running

6 towards our house.

7 Q Towards your house?

8 A Yes, sir.

9 Q How do you get to your house from David's grandmother's
10 house?

11 A Off of Clatty Farm Road, make a left at the end of
12 Clatty Farm Road.

13 Q Do you pass Antwan's house?

14 A To get to my house? Yes, sir.

15 Q Where did Antwan go?

16 A He went home.

17 Q Was he in front of you or behind you?

18 A In front of me.

19 Q Where did you go?

20 A Home.

21 Q How did you get home from past Antwan's house?

22 A Past Antwan's house you make a right and I'm the first
23 house on the left.

24 Q When you got home, did you go to your sister's house or
25 did you go to your parent's house?

- 1 A I went back to my parent's house.
- 2 Q How did you get inside?
- 3 A Knock on the door; beat on the door.
- 4 Q You don't have a key?
- 5 A No, sir.
- 6 Q How did you get inside after beating on the door?
- 7 A My daddy answered the door.
- 8 Q Why did you go back to your parent's house?
- 9 A I was scared. That's where I usually stay at; I stay
- 10 at my sister's house, but I decided to go to my daddy's
- 11 house that night.
- 12 Q Did you tell your daddy when you opened the door, what
- 13 happened?
- 14 A No.
- 15 Q Why not?
- 16 A I was telling him like bits and pieces, but I never
- 17 told him the story.
- 18 Q Not that night?
- 19 A Not that night.
- 20 Q Was he upset with you?
- 21 A Yeah, he was upset, but he was basically trying to get
- 22 to the bottom of it, like, where we were at.
- 23 Q Of what?
- 24 A What happened.
- 25 Q Did you end up going to bed that night?

1 A Tried to.

2 Q Did you sleep at all?

3 A A little bit.

4 Q What happened the next morning?

5 A The next morning, just everything, just everything hit
6 the fan. Everybody calling the house and everybody was
7 saying this and saying that, then I finally came to my daddy
8 and I told him what happened. I told him everything that
9 happened.

10 Q Did you tell him the truth?

11 A Yeah, I told him the truth.

12 Q Did you tell him everything you're telling the jury
13 today?

14 A Yes, I told him everything I'm telling them today.

15 Q Are you leaving anything out to the jury that you told
16 him that morning?

17 A No, sir.

18 Q What happened after you told your daddy what happened?

19 A He was trying to get in touch -- he was trying to get
20 in touch with, like, any detective, for anybody he know. He
21 couldn't get in touch with a detective and then he tried to
22 get in touch with attorneys and stuff.

23 Q Did you get in touch with an attorney that day?

24 A No, we tried to, but my attorney was out of town.

25 Q What did you do later that day?

- 1 A Later that day, I stayed home.
- 2 Q And that night, what did you do?
- 3 A That night, I was at my sister's house.
- 4 Q Did you ever go to the detective's office that day?
- 5 A No, they came to me.
- 6 Q They came to you. Did they come to you before or after
- 7 your daddy contacted them?
- 8 A After.
- 9 Q They came to you; what did you do when they came to
- 10 you? Did you go with them? Did you stay at your house?
- 11 Did they pick you up? Did you ride in their car? Did you
- 12 drive with them? What happened?
- 13 A Well, I followed behind them -- I rode with my daddy up
- 14 there to the station.
- 15 Q You rode with your daddy where?
- 16 A To the station.
- 17 Q When you got to the station, what happened?
- 18 A They started questioning me.
- 19 Q Now, did you tell them the truth, at first?
- 20 A No.
- 21 Q What did you tell them at first?
- 22 A I told them I wasn't there and I didn't have nothing to
- 23 do with it.
- 24 Q Why?
- 25 A Because I was scared and I didn't want to really tell

1 anybody.

2 Q So you lied to them?

3 A Correct.

4 Q Are you lying today?

5 A No, sir.

6 Q So you told them that at first. At some point, did you
7 talk to your parents during that interview?

8 A Yeah, they came in there with me.

9 Q What did they tell you to do?

10 A Tell the truth.

11 Q Because they knew what the truth was at that point,
12 didn't they?

13 A Yes, sir.

14 Q Then after that, did you tell the officers what the
15 truth was?

16 A Yes, sir.

17 Q What did you tell them?

18 A I told them that I was riding with Dinky and Antwan and
19 I was going to hook up with some girls -- we were going to
20 hook up with some girls from Walterboro. And then we were
21 on the way going to Walterboro and we passed by some people
22 on the side of the road and they were having car trouble.
23 I told them that Antwan had came up with the idea to
24 rob them, trying to get me and Dinky pumped up, but Dinky
25 got pumped up and said he would do it, and we turned around.

1 Once we stopped the car, before I could say anything, before
2 anybody could say anything, Dinky had done hopped out the
3 car and went towards the people that were on the side of the
4 road telling them to "Give it up."

5 Q Is that what you told them? Then what did you tell
6 them happened?

7 A I told them Dinky -- when I heard the gunshots I hit
8 the floorboard of the car, ducking down for cover and I told
9 them Antwan tried to get me out of the car to go pick Dinky
10 up and get him to the car and I told them I said no.

11 I told them Antwan started shooting across me and I
12 told them how we left there and we were supposed to take him
13 to the hospital, but he didn't want to go to the hospital.
14 Antwan was saying no he's not going to the hospital and we
15 passed -- we was oncoming passing Toya, the blue station
16 wagon, and how we tried to stop them, but they weren't
17 really stopping at the time, but they braked, so we turned
18 around, flashed them from behind and he pulled on the side
19 in oncoming traffic and we switched Dinky -- me, Antwan,
20 Joseph, and Montez switched Dinky into Toya's car and they
21 took him to the hospital.

22 Q Now. I'm going to show you a map, I'm going to ask you
23 to step off the stand. Before I do that, I'm going to ask
24 that the judge give you a microphone, okay.

25 THE COURT: Madame Clerk, can you give him a portable

1 mic? Mr. Mathews, Mr. Beach, you may come around so you can
2 see the board, if you so desire. Counsel, show it to the
3 opposing counsel before you show it to the jury.

4 ASST. SOL. HASELDEN: Both attorneys have seen it
5 during the break, Your Honor.

6 THE COURT: Just a moment. Are y'all satisfied?

7 MR. MATHEWS: Yes, sir.

8 MR. BEACH: Yes, sir.

9 THE COURT: All right. Step down for me. She's going
10 to hand you a microphone. Use the microphone, Mr. Davis.
11 Hold it, speak into it, and let me hear you.

12 A Yes, sir.

13 THE COURT: All right. Mr. Mathews, you want to come
14 around. Mr. Beach, can you see the board?

15 MR. BEACH: Yes, Your Honor, I see it.

16 THE COURT: You're going to have to step back from my
17 jury and Mr. Beach, now. All right, Mr. Shelton, speak up,
18 you don't have a microphone.

19 ASST. SOL. SHELTON: Thank you, Your Honor.

20 Q Mr. Davis, Chippy, do you recognize what this is?

21 A Yes, sir.

22 Q What is it?

23 A It's a map.

24 Q It's a map of what?

25 A Smoaks.

1 Q The general area of Smoaks?

2 A Yes, sir.

3 Q Can you locate your house on that map? You can use

4 this to circle it once you find it. (HANDS WITNESS A PEN.)

5 Begin by road by road; what's that road? Have you seen this

6 map before?

7 A I've seen it.

8 Q We showed it to you, correct?

9 A Yes, sir.

10 Q What's this down here?

11 A Am I looking in the right area?

12 Q I don't think you are; this is not where you showed me

13 yesterday.

14 A My house is right here, 211 Johnsville Road.

15 Q Okay. You can circle, it. That's 211 Johnsville Road,

16 right there?

17 A Yes, sir.

18 Q Okay. Will you please show the jury how you got --

19 that's where Dinky picked you up, correct?

20 A Correct.

21 Q Now, show the jury where you went from there, first.

22 A I went from 211 to 217; when you get on 211, at the

23 stop sign on 211, you want to make a left coming out of 217.

24 Then, we made a stop somewhere up in here on 217.

25 Q Who's house is that?

1 A Antwan's house.

2 Q Antwan's house right there. Okay, then where did you
3 go from there?

4 A We went from Antwan's house to Clatty Farm Road.
5 Clatty Farm Road is only like two minutes up the street, so,
6 we traveled 217 to the end of -- not to the end of 217, but
7 the first road on your right is Clatty Farm Road, right
8 here, went to David Jakes' house. Dinky said his grandma's
9 house is on Clatty Farm, somewhere up in here.

10 Q Somewhere right up in there; can the jury see that,
11 because I'm not gonna mark it. Can everyone see that? All
12 right. Then, where'd you go?

13 A Went from Clatty Farm Road to Mount Carmel Road. So
14 at the end of Clatty Farm Road, you want to make a left at
15 the end of Clatty Farm Road, so you make a left right here,
16 make a left right here and travel down Mount Carmel.

17 Q And then, where'd you go from there?

18 A Went from Mount Carmel to McLeod Road.

19 Q Keep going down Mount Carmel until you find it.

20 A McLeod Road here. (INDICATING ON MAP.)

21 Q Did you turn on McLeod Road there?

22 A Yeah, you make a left on McLeod Road.

23 Q And then where did you go?

24 A Headed toward onto 95, towards 15 and the interstate.

25 Q Where did you see the people that Dinky jumped out and

1 tried to rob?

2 A It was down there by the ramp after we swing around
3 here.

4 Q You can make a big circle around that if you want. So
5 you said you passed them and then you turned around?

6 A Yes, sir.

7 Q And you went back the other way?

8 A Yes, sir.

9 Q Okay. After what happened, happened you went back the
10 other way. Show the jury which way you went.

11 A We passed by and then we were coming back towards the
12 other side of the road, so we passed by and made a left and
13 made a U-turn, came back towards them, we were facing them,
14 we were probably right here.

15 Q Okay. And then where'd you go?

16 A Then, after we left them, we went to the same direction
17 that I just showed y'all, the same direction that we came
18 in, that's the same direction, we turned around and headed
19 towards Mount Carmel Road, and instead of making a right and
20 going to Walterboro to go to the hospital ---

21 Q You mean right or left?

22 A (PAUSES A MOMENT.) We made a left, so ---

23 Q You can come to this side if you want.

24 THE COURT: You got to step back so the jury can see.

25 A So instead of making a left to go back to Walterboro,

1 we made a right going back towards Smoaks.

2 Q Okay. Can you show on that map the general area of
3 where you think that you met up with the car that you put
4 David Jakes in?

5 A I can't give you the exact spot.

6 Q Somewhere around that area? You don't have to circle
7 it, but can the jury see that? Okay. I ask that he may
8 return, Your Honor.

9 THE COURT: Step back from the witness stand.

10 Q Mr. Davis, there were three people in that car, weren't
11 there?

12 A Correct.

13 Q Who was in the car again?

14 A Antwan, Dinky, and me.

15 Q And you're saying that Antwan reached over you and
16 shot?

17 A Correct.

18 Q Did you shoot?

19 A No, sir.

20 Q Do you own a gun?

21 A No, sir.

22 Q Did you have a gun that night?

23 A No, sir.

24 Q Now. Isn't it true that you were charged with pretty
25 much everything -- you are charged with everything they're

1 charged with. You were charged originally, and then you've
2 been indicted and those indictments still exist for
3 everything they're charged with?

4 A Correct. We've got the same charges.

5 Q Now, was there a deal at some point for those charges
6 with us, with the State of South Carolina?

7 A There was.

8 Q There was? Do you remember what that deal was?

9 A Yeah, it was to drop the charges to accessory before
10 and after the fact.

11 Q Now, what happened to that deal?

12 A It got gone away.

13 Q It got gone away, it expired?

14 A Yes, sir.

15 Q So testifying here today, you have no deal; is that
16 right?

17 A No, sir. I still have the same charges.

18 Q You still have the same charges, but you don't have the
19 deal anymore?

20 A No, sir.

21 Q Have I made you any promises?

22 A No, sir.

23 Q Has Ms. Haselden made you any promises?

24 A No, sir.

25 Q Has anyone from the State of South Carolina made you or

1 your attorney any promises whatsoever related to these
2 charges?

3 A No, sir.

4 Q Why, in earth, are you up here testifying today?

5 A To tell the truth.

6 Q Why are you telling the truth?

7 A Because I feel like it's the right thing to do.

8 ASST. SOL. SHELTON: That's all the questions I have at
9 this time, Your Honor.

10 Q I please ask that you answer any questions respectfully
11 that Mr. Mathews and Mr. Beach has.

12 THE COURT: Cross-examination, by the defendant
13 McMillan.

14 MR. MATHEWS: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. MATHEWS:

17 Q Mr. Davis, when you first went into the police station
18 with your dad, were you charged at that time?

19 A Yes, sir.

20 Q You were under arrest at that time?

21 A Yes, sir.

22 Q Okay. You only talked to the police after you were
23 under arrest already, correct?

24 A I don't understand what you're asking me.

25 Q When you went into the police, you were under arrest at

1 that time; is that correct?

2 A Yes.

3 Q Okay. And the first thing you told me is that your
4 fingerprints would not be in that car, correct?

5 A Correct.

6 Q Your DNA would not be in that car, correct?

7 A Correct.

8 Q That you weren't in that car, that nobody was in that
9 car, right? You don't know anything about it because you
10 weren't there, right?

11 A Correct.

12 Q Okay. Now, Mr. Shelton asked you about no deal at this
13 point, but you didn't do anything wrong, did you?

14 A No, sir.

15 Q Okay. So if you're telling the truth, if you're
16 believed, then you escape, right? You didn't do anything
17 wrong?

18 A Yes, sir.

19 Q Okay. Now, you said J.J. owned this car. Is that your
20 cousin?

21 A No, that's Dinky's cousin.

22 Q Dinky's cousin. Okay, J. J., all right. And you said
23 first of all, that if Dinky's cousin owns the car, you said
24 Dinky at one point got out, didn't he? You got picked up
25 then you went to Dinky's house.

1 THE COURT: Mr. Mathews, one question at a time, okay?
2 Don't make a statement. Cross-examination, I'll let you
3 lead, but don't ask three questions of the witness and wait
4 on a response. One at a time.

5 MR. MATHEWS: Yes, sir

6 THE COURT: Proceed.

7 Q What did Dinky get from the house?

8 A I don't know. He ain't told me.

9 Q What was he wearing?

10 A I can't remember.

11 Q You said he went in to get something; what -- he got a
12 gun, right?

13 A I don't know.

14 Q Well, there were at least two guns in that car, right?
15 At least two, right?

16 A Correct.

17 Q All right. And you didn't see any gun?

18 A Correct.

19 Q Okay. So how do you -- okay, what did you think he
20 went to go get?

21 A I have no idea.

22 Q Okay. You had a -- you said you had a cell phone,
23 right, that night?

24 A Yes, sir.

25 Q Okay. You didn't call 911?

1 A No, sir.

2 Q Did you call anybody that night?

3 A No, sir.

4 Q Didn't call a soul that night? Why did you have your
5 cell phone?

6 A I always have my cell phone.

7 Q You always have your cell phone.

8 A Uh-huh (affirmative).

9 Q Okay. How long have you been knowing the people in
10 that other car that stopped?

11 A Toya's car?

12 Q Whoever -- Whoever's car; the blue car.

13 A Well, basically, like partial my life. She stay in the
14 same neighborhood. All of us been staying there, basically,
15 partially, all our life, so I've known her.

16 Q Okay. You got her cell phone number?

17 A No, sir.

18 Q No? What's your cell phone number?

19 A I don't have a cell phone right now. My cell phone
20 number was -- what was my cell phone number? I can't
21 remember my cell phone number, my old cell phone number. I
22 don't have a cell phone at all, now; but I can't remember my
23 old cell phone number.

24 Q Okay. All right. When the police talked to you to
25 start with, did you have your cell phone with you then?

1 A No, sir.

2 Q Okay. The police did a search of your house, did they
3 not?

4 A Yes, they searched my house.

5 Q And they took four cell phones from your house,
6 correct?

7 A Correct.

8 Q Okay. Now, when you stopped in the roadway, your
9 window was the one closest to the other people's car; is
10 that correct or is that not correct?

11 A That's correct.

12 Q Okay. So you were the one closest to what was going on
13 in the driver's car that was Toya?

14 A Correct.

15 Q All right. At some point, when the shots were fired,
16 were -- were -- were y'all driving off during the time that
17 any shots were fired?

18 A No, we were still parked.

19 Q You were still parked. Okay. You waited -- you waited
20 until after David was back into the car before you fired?

21 A No, it was before he got in the car.

22 Q Before? Okay. All right. You gave your truthful
23 statement, the statement, I guess, you said that was
24 truthful sometime in December of 2010; is that correct?

25 A I don't recall what month it was, but I know it was

1 sometime after.

2 Q Okay. Months, correct?

3 A Not months, probably like a month.

4 Q A month, maybe?

5 A Yeah, it might have been a couple months, maybe. I
6 can't recall.

7 Q Okay. And at that point, you had retained an attorney,
8 correct?

9 A Correct.

10 Q So y'all all three were under arrest and you talked to
11 your attorney and then you gave a statement, correct?

12 A Correct.

13 Q Which was completely different from the first statement
14 you gave?

15 A Correct.

16 Q And you testified that after you dropped off, you took
17 the car back when you said Antwan took the car back to
18 Dinky's house, because it belonged to J. J.'s cousin, to
19 Dinky's cousin, right?

20 A Correct.

21 Q Okay. And then how far -- is it about two miles? You
22 said it was about two minutes or about three minutes from
23 Dinky's house to your house?

24 A It's a couple miles.

25 Q Couple miles, okay. So you drove the car back and

1 dropped it off, and then y'all both ran back to your houses.

2 You went and ran past Antwan's house to your house?

3 A Correct.

4 Q Okay. Okay. Did you ask to be dropped off, first?

5 A No.

6 MR. MATHEWS: Your Honor, if I might have a moment.

7 (BRIEF PAUSE IN COURTROOM.)

8 MR. MATHEWS: No further questions, Your Honor.

9 THE COURT: Cross-examination by the defendant Jakes.

10 MR. BEACH: May it please the Court?

11 THE COURT: Yes, sir.

12 CROSS-EXAMINATION

13 BY MR. BEACH:

14 Q You gave a statement to the police when they first
15 talked to you, correct?

16 A Correct.

17 Q And you told them you had nothing to do with anything;
18 is that correct?

19 A Correct.

20 Q And you told them you weren't there?

21 A Correct.

22 Q That was a lie, wasn't it?

23 A Yes, sir.

24 Q And they didn't believe you?

25 A No, sir.

1 Q And they arrested you?

2 A Correct.

3 Q And you were indicted; is that correct?

4 A Uh-huh (affirmative).

5 Q There are charges pending now, is that also correct?

6 A Correct.

7 Q All right. Now, you gave another statement and that
8 other statement, didn't you say in there that you were
9 opposed to this supposed robbery?

10 A I don't understand your question.

11 Q Didn't you say that you were opposed to what was going
12 on?

13 A When you say "opposed," do you mean the alarm or know
14 what was going on?

15 Q You didn't want it to happen.

16 A Oh, correct. I didn't want it to happen.

17 Q In that statement where you said it was stupid? Didn't
18 you say that in your statement?

19 A Correct.

20 Q And when everything started, you hit the floor?

21 A Correct, when I heard the gunshots, I hit the floor.

22 Q Now, when did you open your door?

23 A I didn't never open my door.

24 Q You never opened your door?

25 A unh-unh.

1 Q How did you help Mr. Jakes get back in the car?

2 A By the best way I could, best way I could. Leaning
3 over, and the door handle's right here, so I reached over,
4 the door handle's right here.

5 Q So you got up out of the floor, over the seat, and
6 opened the door?

7 A No, I didn't really have to go, like, over the seat, I
8 just had to reach right there and open the door. Like crack
9 the door open the best way I could and help him.

10 Q But you had to get up into the passenger seat?

11 A Yeah, I had to get up in the seat.

12 Q And all this time, somebody else was shooting?

13 A No, nobody was shooting at the time.

14 Q Nobody was shooting at the time?

15 A Correct.

16 Q Now, how long -- you had heard gunshots. This was when
17 Mr. Jakes got shot.

18 A Correct.

19 Q How long was it before the person seated beside you
20 started shooting?

21 A It was like a -- okay, after David got shot, everything
22 was, like, quick and he was just telling me to get out the
23 way. Antwan was telling me to get out the car, go help
24 Dinky, get out the car, and I was telling him, "Man, let's
25 go. Let's leave, man. Get me out of this ride." He was

1 like, "No, man, ain't going nowhere, I ain't going nowhere
2 without Dinky." So then after that, he started shooting
3 across from me.

4 Q Who closed the door?

5 A What door?

6 Q Who closed the back door?

7 ASST. SOL. SHELTON: Objection, Your Honor.

8 THE COURT: Cross-examination. Ask a question,
9 counsel. Overruled.

10 Q Who closed the back door?

11 A The back door wasn't open at the time he was shooting,
12 but after the shooting, when he was trying to get in the
13 car, I can't recall who. It was happening so quick, I can't
14 recall if I shut the door or if he shut the door.

15 Q Well, how -- he was shot, how was he able -- how would
16 he be able to shut the door?

17 A No, I never said he shut the door.

18 Q All right. How would you be able to shut the door when
19 you're just reaching around to see? Doesn't that door open
20 out?

21 A Well, it wouldn't open outward, because I couldn't
22 really open the door outward. I could open the door, like,
23 crack the door open a little bit, like a good little piece.
24 I couldn't open the door outward. The door was just open.

25 Q How little bit?

1 A It was a good bit enough for him to get in.

2 Q But you don't remember whether you closed it or he
3 closed it?

4 A Unh-unh. I can't recall. It happened so quick.

5 Q When did the other person start shooting over your
6 head?

7 A That was before -- before Dinky got in the car.

8 Q Before he got in the car?

9 THE COURT: Identify who "he" is for the record,
10 please.

11 Q The driver of the car.

12 A Antwan.

13 Q The driver of the car, when did he start shooting in
14 relation to when Mr. Jakes got in the backseat of the car?

15 A He started shooting after I said I wasn't getting out
16 to get him. And I wanted to go, let's go, and that's when
17 he started shooting.

18 Q And this is before he got in the backseat of the car?

19 THE COURT: Identify -- just a moment. Identify who
20 "he" is in your question.

21 Q This is before Mr. Jakes got into the car?

22 A Correct.

23 Q When the shooting started?

24 A Correct.

25 Q And you said he was shooting over your head? That the

- 1 driver was shooting from back over your head?
- 2 A Pretty much over my back.
- 3 Q Now, what kind of car is this?
- 4 A It's a Cadillac.
- 5 Q Is it a big car or a little car?
- 6 A It's like a narrow car, narrow.
- 7 Q What size Cadillac is it? What model?
- 8 A Deville.
- 9 Q A Deville?
- 10 A Correct.
- 11 Q And that's -- all right. Is the front seat a bench
12 seat or was it bucket seats?
- 13 A I don't know what kind of seats.
- 14 Q Was there something down the middle between the seats?
- 15 A Yeah, it was like a small console.
- 16 Q A console was there?
- 17 A A small console.
- 18 Q So there was a seat for the driver, and a separate seat
19 for the passenger?
- 20 A Correct.
- 21 Q Now, the driver was in his seat?
- 22 A Correct.
- 23 Q Shooting over you?
- 24 A Correct. He slid over and started shooting.
- 25 Q All right. How did he slide past the console?

1 A I ain't know. He ain't slide past the console. You
2 can't make it past the console.

3 Q He did make it past the console?

4 A I just know he slide over.

5 Q Okay. Now, you say you don't have a deal with the
6 prosecution; is that correct?

7 A No deal.

8 Q Now, the first thing you did after you went home was
9 try and get in touch with your attorney, wasn't it?

10 A No. Unh-unh.

11 Q All right. Who did you get in touch with first, your
12 attorney or law enforcement?

13 A I believe it was my daddy. I ain't got in touch with
14 nobody. It was my daddy who tried to get in touch with
15 people. My daddy tried to get in touch with either attorney
16 or law enforcement agent. I don't know which one come
17 first, or anybody else that he know.

18 Q Did you ever call law enforcement yourself?

19 A No, sir.

20 Q Did you ever go to them and say, "This thing happened
21 and I didn't want anything to do with it?" Did you ever do
22 that?

23 A No, sir.

24 Q Did you ever call the hospital to check on your friend?

25 A No, sir.

1 Q Did you ever go to the hospital to check on your
2 friend?

3 A No, sir.

4 Q What did you tell your girlfriend that night about
5 going to see these women?

6 A What I tell my girlfriend? Well, I'd rather not get
7 into what I told her.

8 Q Okay. That's fair enough. But y'all were going to go
9 to the club on 15 weren't you?

10 A No, not me. I ain't know nothing about no club.

11 Q Where were y'all going?

12 A Just going to hook up some girls in Walterboro.

13 Q Okay. But you were headed toward 15?

14 A Correct.

15 Q Now, were you drinking that night?

16 A No, sir.

17 Q Not at all?

18 A No, sir.

19 Q What about the other two people, were they drinking?

20 A No.

21 Q Neither one of them?

22 A I think Dinky was drinking earlier; he was drinking
23 before.

24 Q Isn't that why Dinky wasn't driving was because he had
25 been drinking?

1 A Oh, I don't know why he wasn't driving.

2 Q Is your attorney here with you today?

3 A Yes, sir.

4 Q Isn't it true that they're watching your testimony to
5 see if you testify the way the State wants you to?

6 A I don't understand.

7 Q In order to get a deal for you?

8 A No, sir.

9 Q Well, when are you supposed to be tried?

10 A I don't know.

11 MR. BEACH: I don't have any other questions, Your
12 Honor.

13 THE COURT: Redirect.

14 ASST. SOL. SHELTON: Briefly, Your Honor.

15 REDIRECT EXAMINATION

16 ASST. SOL. SHELTON:

17 Q Mr. Davis, you told them you made a statement months
18 after the fact, but you told the truth in that statement; is
19 that correct?

20 A Correct.

21 Q You wrote that statement down, correct?

22 A Correct.

23 Q Now, isn't it also true that the same day, the day
24 after the incident, you went in and you told police the
25 truth then, as well?

- 1 A What was that?
- 2 Q Sorry, that was a confusing question. The next day,
3 the day after it happened, right?
- 4 A Correct.
- 5 Q You -- your daddy drove you to the police station,
6 correct?
- 7 A Correct.
- 8 Q And you first lied to them, didn't you?
- 9 A Correct.
- 10 Q So then, and that was in the interview room, right?
- 11 A Correct.
- 12 Q And did you see a camera in that interview room?
- 13 A Correct.
- 14 Q And there were police officers there asking you
15 questions, correct?
- 16 A Correct.
- 17 Q And at first, you lied to them, correct?
- 18 A Correct.
- 19 Q And what did you tell them?
- 20 A I told them I wasn't in there. I didn't know what
21 happened. I ain't got nothing to do with it.
- 22 Q Right. And then that same night, did your parents come
23 and talk to you in that interview room?
- 24 A Yes, sir.
- 25 Q And what did he tell you to do?

1 A Tell the truth.

2 Q And then that same night, the day after the shooting,
3 after your parents told you to tell police the truth, what
4 did you do?

5 A Told them the truth.

6 Q You told them the truth that night, didn't you?

7 A Correct.

8 Q You told them everything that you told the jury right
9 here, pretty much, that same night, didn't you?

10 A Correct, yes, sir.

11 Q The night after the shooting; not four months
12 afterwards.

13 A Yeah, it was the night after the shooting.

14 Q That's just not true, is it?

15 A What's not true?

16 Q It's true that you told the truth the night after the
17 shooting; is that true?

18 A That's true. That night, I told the truth.

19 Q And you lied at first, but then you told the truth the
20 night after the shooting?

21 A Yes, sir.

22 Q And then, four or five months later when you gave that
23 written statement, did you tell the truth again?

24 A Yes, sir.

25 Q So you actually gave two truthful statements, correct?

1 A Yes, sir.

2 Q Not one?

3 A Yes, sir.

4 Q Are you telling the truth today?

5 A Yes, sir.

6 Q Thank you, Mr. Davis.

7 THE COURT: Recross by the defendant McMillan, limited
8 to redirect?

9 MR. MATHEWS: No further cross.

10 THE COURT: No further recross?

11 MR. MATHEWS: That's correct.

12 THE COURT: Recross by the defendant Jakes, limited to
13 redirect?

14 MR. BEACH: Thank you, Your Honor

15 RECROSS-EXAMINATION

16 BY MR. BEACH:

17 Q You gave the first statement saying you had nothing to
18 do with it, correct?

19 A Correct.

20 Q The second statement saying you had nothing to do with
21 it?

22 A No, sir.

23 Q All right. A second statement saying that you did have
24 something to do with it?

25 A Second statement telling what happened.

1 Q Telling them what happened. Telling the truth?

2 A Correct.

3 Q You told them that was the truth?

4 A Correct.

5 Q Did they believe you?

6 A I assume they believe.

7 Q Did they indict you?

8 A I still got indicted.

9 Q You still got indicted even though you told them what
10 you're telling us is the truth?

11 A Correct.

12 MR. BEACH: No other questions, Your Honor.

13 THE COURT: As to this witness, Solicitor?

14 ASST. SOL. SHELTON: Ask that he remain under
15 sequestration for purposes of recall.

16 THE COURT: Have you advised the witness concerning my
17 order of sequestration?

18 ASST. SOL. HASELDEN: Yes, Your Honor.

19 THE COURT: Very well. If you'll step down, please,
20 and remain with us in the area that you were asked to stay
21 in prior to testifying, subject to the instructions from
22 counsel for the State.

23 Madame Foreperson, ladies and gentlemen of the jury,
24 I'm going to take my mid-afternoon break at this point, let
25 you stretch your legs, use the restroom. Please do not

Colleton County Sheriff's Office
Statement of Miranda rights

Name James Davis
Address 211 Johnsonville Rd
Case# 10-2022

SEX male AGE 20 DOB _____
POB _____
HGT. 5' 9" WGT. 156 SS# 251-79-8711
PHONE# (843) 562-2178

Miranda rights

- JD 1. You have the right to remain silent.
- JD 2. Anything you say can and will be used against you in a court of law.
- JD 3. You have the right to talk to a lawyer and have him present with you while you are being questioned.
- JD 4. If you cannot afford to hire a lawyer one will be appointed to represent you before being questioned.
- JD 5. You can decide at any time to exercise these rights and not answer any questions or make any statements.

Signature James Davis

Waiver of rights

I have read and have had read to me the above statement of my rights, and I understand each of these rights. Having those rights in mind, I waive them and willingly make a statement.

Signature James Davis

Witnessed by: _____
Officer's name: T. Allen Swanson 308
Department: CCSO
Date: 4/2/10

ROA278



**COLLETON COUNTY SHERIFF'S OFFICE
MIRANDA RIGHTS**CASE # 10-2622

NAME: James Davis SEX: M DOB: _____ AGE: _____
ADDRESS: 211 Johnson Ave. SSN #: 257-77-0711
Smoaks SC POB: _____
PHONE #: _____ HGT: _____ WGT: _____

MIRANDA RIGHTS

- JD 1. YOU HAVE THE RIGHT TO REMAIN SILENT.
JD 2. ANYTHING YOU SAY CAN AND WILL BE USED AGAINST YOU IN A COURT OF LAW.
JD 3. YOU HAVE THE RIGHT TO TALK TO LAWYER AND HAVE HIM WITH YOU WHILE YOU ARE BEING QUESTIONED.
JD 4. IF YOU CANNOT AFFORD TO HIRE A LAWYER, ONE WILL BE APPOINTED TO REPRESENT YOU BEFORE BEING QUESTIONED.
JD 5. YOU CAN DECIDE AT ANY TIME TO EXERCISE THESE RIGHTS AND NOT ANSWER ANY QUESTIONS OR MAKE ANY STATEMENTS

WAIVER OF RIGHTS

I HAVE READ AND HAD READ TO ME THE ABOVE STATEMENT OF MY RIGHTS, AND I UNDERSTAND EACH OF THESE RIGHTS. HAVING THOSE RIGHTS IN MIND, I WAIVE THEM AND WILLINGLY MAKE A STATEMENT.

WITNESSED BY: _____

OFFICER'S NAME: _____

DATE: 21 DEC 10DEPARTMENT: Colleton County Sheriff's OfficeTIME: 1500

Nazir B. Matthews 12/21/10
Present 3:52 pm

ROA279

Colleton County Sheriff's Office

VOLUNTARY STATEMENT

Date 12/21/10 Place 101 Hampton St Time Started 4:00 P.m.

I, the undersigned James Davis, am 21 years of age, having been born on Oct 26, 1989, at Walterboro SC, my social security number being 251-79-8311 and my level of education is 12th.

I now live at 211 Johnsville Rd. Smoaks SC, 29481.

I have been duly warned and advised by Ded J. Scott, a person who has identified himself as an officer/deputy with the Colleton County Sheriff's Office.

I declare that the following voluntary statement is made to the aforesaid person of my own free will without promise of hope of reward, without fear or threat of physical harm, without coercion, favor or offer of favor, without leniency, by any person or persons whomsoever.

I James Davis along with David and Antwaun was headed to Walterboro to hook up with some females. However along the way we pass by a couple of people broke down on side of the road. As we pass Antwaun came up ^{with JD} the idea to rob ^{JD} them. Telling David how easy it would be getting David all pump up. Antwaun then ask me ^{David} and ^{repeatedly} was we down to hit the lick (robbery) I said no and try to tell him how stupid it was, David ^{answer} ~~that~~ ^{JD} yeah you know im down. Antwaun then turn the car around driving headed toward the ~~the~~ ^{JD} people who was ~~for~~ having car trouble. Once he stop the car David then get out approaching the people who ^{JD} ~~was~~ ^{was} on the car, pointing ~~the~~ ^{JD} handgun in their direction telling them to give it up. Then I heard gun shots coming from the direction of the victims, I got down fearing that I ~~might~~ ^{JD} get shot in the cross fire. After all the shooting was over Antwaun told to ~~help~~ ^{JD} David get back in the car I told him no repeatedly telling him to ~~run~~ ^{JD} off, but he wouldn't then he reach under the seat grab a handgun and began shooting out the passenger side window for David safety. ~~Then~~ ^{JD} David then began ~~to~~ ^{to} ~~crawl~~ ^{JD} back to the car along with the help from me he made it back into the back passenger seat.

I have read each page of this statement consisting of 1 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.

This statement was completed at 4:45 P.M. on the 21 day of December 20 10.

Sworn before me on this _____ day of _____ 20____.

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: _____

DAVENPORT PRINT SHOP, WALTERBORO, SC - FORM NO. 008784

X James Davis
SIGNATURE OF PERSON GIVING VOLUNTARY STATEMENT

Witness: 321

ROA280

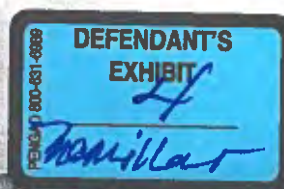
Witness Statement

On June 04, 2010 the police showed up at my house telling my parents that they had enough evidence to arrested me. It was never made clear on what the charges were. My parents took me to the station where I was questioned for hours and about the night of June 03, 2010, the night my friend David was shot. After hours of questioning, I fell asleep exhausted from all the questioning only to wake up to yet another officer questioning me, this time it was officer Allen Inabinett yelling and threatening to throw me prison for 40-50 years and charge me with the murder of my friend David Jakes if he didn't survive his gun shot injuries. He told me repeatedly that the only way I would be able to stay out prison is for me to tell him what he wants to hear. So I did exactly what the officer told me to do. Except the truth is we were drinking heavy that night, I fell asleep while we were headed to Walterboro to link up with some friends. I woke up after hearing gunshots and ducked for cover. Still till this day, I have no knowledge of a robbery ever occurring that night. It was later brought to my attention when I being questioning by officer Allen Inabinett and he told me that it was a robbery and that if I didn't say anything either Antwain or David would place all the blame on me. Even after repeatedly telling him I didn't know what happen which was the truth, he told if I wanted to stay out of prison I was to tell him what he wanted to hear. So I did exactly what the officer told me to do.

James D. Davis

In.

Witness
Christopher T. Reynolds
Ct



A54

STATE OF SOUTH CAROLINA) IN THE SOUTH CAROLINA CIRCUIT COURT
COUNTY OF COLLETON) C.A. NO. 2010-GS-15-00501-0507

STATE OF SOUTH CAROLINA	)
Plaintiff,	)
versus	)
ANTWAN D. MCMILLAN	)
Defendant.	)

H E A R I N G

DATE: August 31, 2023
TIME:
LOCATION: South Carolina Circuit Court 14
JUDGE: Robert J. Bonds

TRANSCRIBED BY: Lynda Monroe

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Attorney for the Defendant.

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IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

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1 PROCEEDING

2 MR. BROWN: Judge, this is a Rule 29 motion from a --
3 it ended up being not a murder trial but a smaller judgment
4 and there was a cooperating witness. His name is James
5 Davis, Jr., and he had testified in trial and then he later
6 provided a statement to an investigator for Mr. David Jake.

7 THE COURT: Is this the case that has the other lawyer
8 that's involved in it, too?

9 MS. KEENEY: Yes.

10 THE COURT: This is the case where you and some other
11 lawyer are representing this fellow. There was going to be a
12 PCR but you wanted to have -- this was another case?

13 MR. BROWN: This is -- my client's name is Antwan
14 McMillan. His PCR is finished. His co-defendant, David
15 Jakes, is still having a PCR.

16 THE COURT: All right.

17 MR. BROWN: So -- and he is --

18 THE COURT: This is the case that's a motion to
19 reconsider and you want me to send an order to SLED?

20 MR. BROWN: You did send an order to SLED and the
21 Colleton Sherriff's Department.

22 THE COURT: All right. And so what are we missing
23 because my recollection is SLED basically said we don't have
24 anything. So what are we missing, Mr. Brown, because what I
25 want to do is kind of wrap this up?

1 MR. BROWN: Yes, sir, and I understand that. So we
2 don't have the Colleton County Sheriff's Office response
3 because you, *sua sponte*, asked to add Colleton County
4 Sheriff's Office to the order, which I think was great, that
5 was good. And they wrote back to you yesterday, I guess, and
6 said is this an expungement order and I just wrote this
7 morning saying, no, please don't expunge anything. So we
8 don't have what Colleton County may have regarding the -- the
9 question's whether there was a deal that wasn't revealed.

10 THE COURT: Right. And as it turned out, actually, I
11 think at the hearing the solicitor came up with some
12 information that she found in her file or found somewhere
13 that actually you weren't aware of but as I recollect, for
14 lack of better words, that information maybe wasn't
15 beneficial to you.

16 MR. BROWN: Well, it was an expungement order and it
17 was expunged looks like in the next term of court but that's
18 -- I only saw it. I don't have a copy to go back and look
19 because, Judge, unfortunately this was a 2012 trial I believe
20 or something, 2010 trial.

21 THE COURT: Okay. So let me hear from you, Ms. Keeney.

22 MS. KEENEY: And, Judge, I think we're waiting on Mr.
23 Shaffer to -- Tristan Shaffer. I saw him -- he was listed as
24 an attendee but not a panelist yet, so I don't know --

25 THE COURT: Well, I don't mean to be --

1 MS. KEENEY: There we go. So, Judge, this is the --

2 THE COURT: Mr. Shaffer, you there? I didn't mean to
3 start this without you but I forgot that there were two
4 people involved. I don't know if we've done anything other
5 than what I did is I asked Mr. Brown to bring me up to speed
6 on what this case was about and I remembered that this was a
7 case we had a hearing on and there were some co-defendants.
8 This is the (inaudible) over at the where they got more than
9 they bargained for-case.

10 MR. SHAFFER: Yes, sir.

11 THE COURT: I remember this.

12 MR. SHAFFER: Okay.

13 THE COURT: And so I know that I ordered and we were
14 just kind of going back and I'm summarizing, I know I ordered
15 something from SLED and SLED sent something that basically
16 said they don't have anything and then I was asking Mr. Brown
17 what else does he need because I want to get this thing
18 wrapped up so I can make a decision. Everybody wants a
19 decision and deserves a decision. And I think that they had
20 indicated that they may still be waiting for some stuff from
21 the sheriff's department or from the county and so I just
22 turned it over to the solicitor.

23 So solicitor, go ahead, please, ma'am.

24 MS. KEENEY: Yes, Judge. So this is their motion for a
25 new trial that we had a pretty long hearing about. This is

1 the witness that got up on the stand and invoked the Fifth.
2 Gil Gatch (phonetically) in the murder trial this week
3 represented him. I don't know if you remember. He just
4 basically invoked the Fifth. He did --

5 THE COURT: Yes, I was there. I saw Mr. Gatch. I've
6 seen Mr. Gatch and he's been working this week.

7 MS. KEENEY: Yes, sir. So the clerk's office found the
8 expungement which we made a Court's exhibit or one of the
9 exhibits. There's an exhibit with the court reporter with
10 the expungement. They found it and it was expunged I believe
11 it was months after the trial. There was no direct evidence
12 of any deal or anything like that. Mr. Brown and Mr.
13 Shaffer's argument that it was an implied deal, basically the
14 essence of the argument.

15 So (inaudible) are saying they don't have anything.
16 The sheriff's office sent an e-mail yesterday. I think they
17 copied your secretary on it or her e-mail address and it was
18 like we don't have it --

19 THE COURT: Hold on a second. You know what, I wonder
20 if that's why --

21 MS. KEENEY: It's from Angela --

22 THE COURT: -- Jason Chapman wanted your e-mail.

23 MS. KEENEY: Angela Stallings would've been the person
24 that sent it.

25 THE COURT: Also, Jason Chapman e-mailed yesterday and

1 wanted my clerk's e-mail and so, of course, I gave it to him
2 (inaudible) but I haven't seen it. Go ahead.

3 MS. KEENEY: I'm going to forward it to you and your
4 law clerk right now.

5 THE COURT: Thank you. Thank you.

6 MS. KEENEY: And she basically said we don't -- we have
7 not received an expungement record for Mr. Davis regarding
8 this case. She was just confused. She said, "Do I need to
9 take this as an expungement order," and we all said no, no,
10 no. We're just looking if you have any record of it. I've
11 talked to her on the phone. They have nothing, they have
12 absolutely nothing and I can get her to, you know, get a
13 formal Colleton County Sheriff's Office letterhead that they
14 don't have anything to send to Your Honor. But there's
15 nothing else that's going to be provided.

16 THE COURT: Let me ask you this, gentlemen. I was
17 going to basically either A, have Angela -- ask that Angela
18 (inaudible), actually I was going to say just have her put
19 some two-sentence affidavit together but if they're going to
20 put a letter on their letter where she's signing that, is
21 that satisfactory to you gentlemen?

22 MR. SHAFFER: I have no objection to that.

23 MR. BROWN: It is, Your Honor. I think it needs to be
24 marked as some type of exhibit for the record.

25 THE COURT: Fine.

1 MR. BROWN: But the expungement order I don't have a
2 copy of and, obviously, assuming my client files an appeal
3 then I'm going to need that in the record but I'm going to
4 need access to it to put it in the record, assuming we don't
5 prevail. We prevail and I don't care what you all do with
6 it.

7 THE COURT: All right. So I've got a copy of the
8 expungement. I'll look to that. So let me ask you this.
9 Solicitor, can you go ahead and get and see if Ms. Stalling
10 can put something together on sheriff department letterhead
11 and forward a copy of that to each attorney and to me?

12 MS. KEENEY: Yes, I will.

13 THE COURT: All right. So let me ask you all this.
14 Once I have that information, because now I have the e-mail,
15 I just got it, it just came through on the computer, once I
16 have that information, I've already gotten from the State
17 that there's no additional information that I need to take
18 into consideration or I think I've been presented everything
19 I need to make my decision from the State; is that correct,
20 solicitor?

21 MS. KEENEY: Well, no, Judge, because I don't know if
22 you remember this but in the hearing I was a little bit
23 blunt. (Inaudible) the argument of this implied deal that
24 wasn't really in their written motion. So I didn't have the
25 prosecutor, Judge Hazleton, and Ben Sheldon at the hearing to

1 say that there was no -- I've talked to them. They said that
2 there was no deal or anything like that. So I don't know if
3 you want to hear that testimony or an affidavit from them.
4 I'd be willing to do either/or. I don't know if that would
5 be helpful for your determination.

6 Because they're being accused of basically hiding a
7 deal so I feel like the Court should hear from them.

8 THE COURT: Well, you know --

9 MS. KEENEY: But even Mr. Davis, the witness, said
10 there was no deal, so.

11 THE COURT: -- (inaudible), you know, I --

12 MR. BROWN: He took the Fifth.

13 MS. KEENEY: No. He said -- if you go back to his
14 testimony I asked him, specifically, if there was any deal at
15 the time and we can get the transcript from him but he said
16 there was no deal.

17 THE COURT: He indicated there was no deal.

18 MS. KEENEY: He (inaudible) to everything.

19 THE COURT: He indicated there was no deal.

20 MR. BROWN: And on cross, though, he took the Fifth or
21 on my examination (inaudible).

22 THE COURT: Well, I mean, you know, I mean, I don't
23 know that he's accusing them, Solicitor.

24 MS. KEENEY: Oh, Mr. Davis isn't accusing them but the
25 -- Mr. Brown definitely is.

1 THE COURT: No, but I mean it seems to be -- well,
2 look, I'm not going to -- beauty is in the eye of the
3 beholder and it's an interesting concept. So let me ask you
4 this. What do you -- I mean, I don't care. I don't think I
5 need anything from the two of them. I won't mind an
6 affidavit. If they just want to say there was no deal,
7 direct or indirect. It don't matter to me. I mean --

8 MR. BROWN: We would like to be able to question them
9 if there's evidence from them.

10 THE COURT: You mean if they say there is a deal?

11 MR. BROWN: Well, if they say there is a deal I don't
12 need to question them.

13 THE COURT: Well, now --

14 MR. BROWN: If they provide an affidavit saying there's
15 no deal, I would like to be able to examine them with
16 (inaudible) testimony and the expungement order.

17 THE COURT: Well, then -- well, I mean --

18 MR. BROWN: Otherwise, I don't think he --

19 THE COURT: -- because what if I say I don't need it?
20 If I don't need then you don't get to question them. I mean
21 --

22 MR. BROWN: And, Your Honor, I'm not asking to put
23 anything else up.

24 THE COURT: I'm sorry?

25 MR. BROWN: I don't -- you never asked me but I don't

1 need anything else. I don't intend to offer any other
2 evidence.

3 MS. KEENEY: And, Judge, if you don't need it then you
4 don't need it.

5 THE COURT: I don't need it.

6 MS. KEENEY: Okay.

7 THE COURT: I don't need anything from them. I think
8 I've got sufficient information. Once I have the opportunity
9 to review the document you just sent me and also once I have
10 the ability to review the document from Ms. Stalling.

11 MS. KEENEY: Okay.

12 THE COURT: So with that having been said, is there any
13 additional information that either counsel wants to provide
14 me or think that I need before I make my decision because
15 that's what I want to get done?

16 MR. BROWN: I don't have any more evidence, Judge. I
17 would like to point out a couple of things. In my motion,
18 the third paragraph from the end cites Giglio (phonetically)
19 and quotes the wink wink deal language. That's clearly --
20 and then my conclusion. That's clearly where I directed this
21 motion. I just want to point that out.

22 But, Judge, other than that, you know, we did make an
23 argument that he took the Fifth and that could be construed
24 to be an admission by him and because it can't be used
25 against a criminal defendant in his criminal trial and that's

1 it. And Mr. Davis was not a criminal defendant in this Rule
2 29 motion. And we also believe that there is a close
3 proximity from the testimony at trial and the expungement
4 which, by the way, the expungement is not the same date as
5 the dismissal but it -- if I -- Mr. Shaffer and I, when we
6 briefly looked at it, I think it fell at the next term of
7 court. They had this trial next term of court, Mr. Davis
8 (inaudible). That actually is a pretty close time frame for
9 Colleton County time. It's Richland County that may be like
10 (inaudible) that, you know, every six weeks or so is about
11 what you all have (inaudible) over there.

12 So that would be our argument. We did make argument in
13 conclusion, Judge, at the hearing. Simply, I don't have
14 anything else to provide new evidence-wise, Judge.

15 THE COURT: All right. Counsel, anything you want to
16 tell me?

17 MR. SHAFFER: Your Honor, not as to what I put on the
18 record as what I was arguing or to what I put in my written
19 motion as to what I was arguing and the reason I'm
20 referencing it that way is that my client still has an active
21 PCR and as a result of that, I don't want to say my 29(b)
22 motion is more narrowly tailored than Mr. Brown's is because
23 of the fact that certain issues that he may be alleging, I
24 plan on alleging in the PCR which is still pending. So I
25 don't want to be collaterally stopped from producing --

1 THE COURT: Well, any order that ultimately gets
2 written, depending on what my ruling is, would include
3 language that would say that nothing contained, herein, is
4 going to affect your PCR.

5 MR. SHAFFER: Yes, sir. Okay, that sounds great.
6 That's all I cared about.

7 THE COURT: I know that. I mean, whoever ends up
8 ultimately (inaudible) order on this, okay, whoever that is,
9 I think that language would be appropriate. I don't think
10 anybody here is trying to (inaudible) somebody's right as it
11 relates to a PCR. So I'm not going to -- I'm going to -- in
12 any order that might be prepared, depending on what the
13 outcome is, there would be language, sir, that would include
14 that and if something's missing or something along those
15 lines, depending on what I decide, needs to be included to
16 make sure that your client's rights are not prejudiced as it
17 relates to a PCR, please let me know. Okay?

18 MR. SHAFFER: Thank you, Your Honor. That addresses
19 any concern I would have or any need for additional --

20 THE COURT: Let me ask the solicitor one other
21 question. Is this the case where an offer was made but he
22 either didn't accept it or didn't comply with it so the offer
23 was, then, taken off the table and done and he said there was
24 no offer and then he ended up providing the testimony? Is
25 this that case?

1 MS. KEENEY: At trial he testified he initially had an
2 offer of accessory before or after, I can't remember, but he
3 didn't take -- he didn't accept it in time and so there was
4 nothing.

5 THE COURT: Right. So that offer was off the table or
6 something like that.

7 MS. KEENEY: Correct. And so the day of trial he said
8 he had no offer.

9 THE COURT: Right. I remember. I just want to make
10 sure I was remembering the case.

11 MR. BROWN: Yes, sir. And see, Judge, part of our
12 thing is that he has no deal because he blew a deal but then
13 his charges get dismissed? Accessory after the fact
14 (inaudible) murder is a felony charge. That's not dismissal.
15 And we know he didn't do a YOA (phonetically) because he
16 wouldn't have been able to plead guilty and complete an YOA
17 and get an expungement in six weeks. So we know the
18 expungement --

19 THE COURT: I'm familiar with the case. I ask those
20 questions because I just hear a lot of different things and I
21 just want to make sure that I'm not bleeding over from
22 something else.

23 MR. BROWN: Right. Yes, sir.

24 THE COURT: So that's the cake. I'll look to get Ms.
25 Stallings' letter. Send a copy of that to everybody. Once I

1 have that, I'll look over everything and hopefully by the
2 middle of next week I'll have something to you all. Okay?

3 MR. BROWN: Yes, sir.

4 MS. KEENEY: Thank you, Your Honor.

5 MR. BROWN: Can we get a copy of that expungement
6 order?

7 THE COURT: Yes. She just sent it to me. She can send
8 it to you.

9 MS. KEENEY: No, no, no, I didn't send that. I sent
10 Ms. Stallings' response. The expungement order was like a
11 Court's exhibit. I don't know if the court reporter let you
12 keep all those for your review.

13 THE COURT: I sure as hell hope not. Oh, pardon my
14 language. I forget this is being recorded. I'm sorry. I
15 don't have my robe on because it's real hot in here today.

16 MS. KEENEY: Jim or Tristan, do you all remember who
17 the court reporter was? Was it Sharon or Kimberly?

18 THE COURT: Either Sharon or Kimberly I feel sure.

19 MS. KEENEY: Okay.

20 MR. BROWN: I think it was Sharon or Kimberly.

21 THE COURT: I don't have the file right in front of me.
22 I think I've got a file. I think Karla started a file on
23 this. There should be a file in there.

24 MS. KEENEY: I can see if the clerk's -- we got a copy
25 from the clerk's office. I can see if -- I can get another

1 copy from them. I'm not there today, I'm at home, but I can
2 get it tomorrow.

3 THE COURT: Well, you must have some high ceilings
4 behind you. I almost thought you were in the courthouse.

5 MR. BROWN: And, again, if we could just have that
6 letter marked as an exhibit also, like the next Court's
7 exhibit for purposes of the record I guess.

8 THE COURT: I have no problem with that.

9 MR. BROWN: In the SLED letter, too, I guess.

10 THE COURT: All right. So get me that from Ms.
11 Stallings. Tomorrow could you see, solicitor, if that is in
12 the file and if it is, make another copy and send them a copy
13 and hopefully we can get this thing laid to rest one way or
14 the other. Okay?

15 MS. KEENEY: Yes, sir.

16 MR. BROWN: Thank you, Judge.

17 THE COURT: All right. Thank you all.

18 MS. KEENEY: Thank you.

19 THE COURT: Thank you all very much. Have a great
20 afternoon.

21 MR. BROWN: Yes, sir. You, too.

22 THE COURT: Bye-bye.

23

24 (THERE BEING NO FURTHER QUESTIONS, THIS HEARING IS CONCLUDED
25 AT 23:53)

CERTIFICATE OF TRANSCRIBER

I, Lynda Monroe, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in trial of the captioned case, relative to appeal, in the South Carolina Circuit Court 14, Colleton County, South Carolina, on the 31st day of August, 2023.

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

April 20, 2024

Lynda Monroe, Transcriber

STATE OF SOUTH CAROLINA) IN THE SOUTH CAROLINA CIRCUIT COURT
COUNTY OF COLLETON) C.A. NO. 2010-GS-15-00501-0507

STATE OF SOUTH CAROLINA	)
Plaintiff,	)
versus	)
ANTWAN D. MCMILLAN	)
Defendant.	)

H E A R I N G

DATE: October 12, 2023
TIME:
LOCATION: South Carolina Circuit Court 14
JUDGE: Robert J. Bonds

TRANSCRIBED BY: Lynda Monroe

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ROA302

1 PROCEEDING

2 THE COURT: Hey, folks. Good afternoon. Mr. Brown,
3 can you hear me, sir?

4 MR. BROWN: I can, sir.

5 THE COURT: Solicitor, are you there? I see you. Yes,
6 ma'am.

7 MS. KEENEY: Yes, Your Honor. I can hear you.

8 THE COURT: And Mr. Shaffer?

9 MR. SHAFFER: Yes, Your Honor. I'm here.

10 THE COURT: All right. So I can't even remember what
11 case this is but I know that the reason I wanted to have the
12 meeting today was because there was a letter or something
13 from the sheriff's office and I can't even remember what it
14 said but there was something that Mr. Brown thought that it
15 didn't address.

16 So, briefly, Mr. Brown, do you have the letter in front
17 of you, sir?

18 MR. BROWN: I will have the order and I'm actually
19 looking for that letter right now.

20 THE COURT: We're talking about a letter from the
21 Colleton County Sheriff's Department (inaudible).

22 MR. BROWN: Yes, sir. And, of course, wouldn't you
23 know that's the one I'm fumbling looking for. Here it is.
24 I've got it right here.

25 THE COURT: All right. So read me -- what -- and I

1 apologize to make you read me but I don't have it in front of
2 me. What was (inaudible) for?

3 MR. BROWN: Yes, sir. And I should have sent it to you
4 but I'm going to read it. "To Whom It May Concern, the
5 records (inaudible) have reviewed all of the paper copy court
6 ordered that we have available at the sheriff's office and
7 confirmed that we do not have an order to expunge anything
8 for James David (phonetically).

9 THE COURT: Do not have an order to expunge?

10 MR. BROWN: That's correct.

11 THE COURT: All right. And so basically I kind of said
12 okay, does that wrap it up? You indicated, Mr. Brown, you
13 thought there was something else that needed to be addressed.
14 What is it that you believe needs to be addressed, sir?

15 MR. BROWN: Yes, sir. And we've gotten the expungement
16 order but what we don't have is the disposition sheet showing
17 that it was dismissed. That is written on the expungement
18 order that it was dismissed but we don't have that
19 disposition order.

20 THE COURT: Right. Okay.

21 MR. BROWN: And your order says -- yes, sir. This is a
22 quote from the closing paragraph of your order. "Therefore,
23 it is ordered, adjudged and decreed that SLED at CPSO
24 (phonetically) seek out and produce to this Court, and not
25 the parties to this action, the complete dispositional and

1 expungement records for charges levied against Mr. Davis,
2 numbered 2010GS1500508 and 514.

3 THE COURT: All right. So Mr. Brown, would it be my
4 understanding that what you want is you want the disposition
5 sheet and, or the alternative, something from the sheriff's
6 department indicating that they do not have a disposition
7 sheet; is that correct?

8 MR. BROWN: That's correct, Judge.

9 THE COURT: So, solicitor.

10 MS. KEENEY: Yes, sir? So on September 21st, Angela
11 Stalling, from the sheriff's office, e-mailed your law clerk,
12 Nathan, a -- because I told them Mr. Brown's concerns with
13 them and I said go back, do you see any dispositions,
14 expungement, whatever? They sent an updated letter that
15 says, the Colleton County Sheriff's Office has researched our
16 records regarding the above matter. The Colleton County
17 Sheriff's Office has no record of a dismissal, disposition or
18 expungement regarding the order requiring reductions,
19 dispositions and expungement records against Mr. James Davis,
20 Jr., with the indictment numbers.

21 THE COURT: Okay.

22 MS. KEENEY: I think they -- I just looked at the e-
23 mail. They sent it to me, you, the county attorney, your
24 secretary and they didn't put the defense attorneys on it
25 when they e-mailed it.

1 THE COURT: Well, number one, I'll tell you if I got it
2 I'm not -- and I may have gotten it but I don't remember
3 seeing it. You've got that letter or e-mail?

4 MS. KEENEY: I do. I'm going to forward it to
5 everybody.

6 THE COURT: Okay.

7 MS. KEENEY: I thought it went to everybody but
8 apparently it didn't.

9 THE COURT: All right. So that e-mail is from Angela -
10 - she's captain, right?

11 MS. KEENEY: Yes, sir.

12 THE COURT: All right. So Mr. Brown, let me just ask
13 you, sir.

14 MR. BROWN: Yes, sir.

15 THE COURT: Is that satisfactory, sir? (Inaudible).

16 MR. BROWN: (Inaudible). Yes, sir. That would address
17 your order. I think so. Yes, sir.

18 THE COURT: Okay. Well, what I want to know is, Mr.
19 Brown --

20 MR. BROWN: Yes, sir.

21 THE COURT: -- I just want to make sure you got what
22 you need because a lot of this I think is being shaped in
23 such a way to protect the record --

24 MR. BROWN: Yes, sir.

25 THE COURT: -- potentially --

1 MR. BROWN: Yes, sir.

2 THE COURT: -- forward despite or regardless of what I
3 may decide I think that maybe --

4 MR. BROWN: Right.

5 THE COURT: -- that's -- so what I want to make sure is
6 you got what you need, sir, and she forwards that e-mail.

7 MR. BROWN: Yes, sir. The only thing I -- that's
8 correct. What she read would answer the question or -- yes,
9 sir. Comply with your order. The only thing, now, is I need
10 them in the record somehow because --

11 THE COURT: Weren't there several things that I took
12 that aren't in the record?

13 MR. SHAFFER: They're in the record.

14 MS. KEENEY: There's things that you took that were
15 made Court's exhibits.

16 THE COURT: We got those. All right.

17 MS. KEENEY: I just need to know, from Mr. Shaffer,
18 because (inaudible) is your e-mail good still for
19 shafferlawsc.com?

20 MR. SHAFFER: Yeah, that e-mail's still good and you
21 can --

22 MS. KEENEY: Okay. I just want to make sure. Thank
23 you.

24 THE COURT: All right. How can I put these in the
25 record. What's the easiest way? For me to take them and

1 give them to the clerk and do an order that says these are
2 made -- these were referenced in and are now all made part of
3 the record in this matter and just hand that to the clerk and
4 let them file it? Is that satisfactory?

5 MS. KEENEY: Or if you have any -- make them Court's
6 exhibits, right? I don't know if you have any stickers
7 making them Court's exhibits and then whenever you get back
8 everything --

9 THE COURT: Well, I mean, I can find those stickers. I
10 just want to make it so that there's no debate that these
11 matters are matters that can be used or discussed and I don't
12 want somebody on appeal to say oh, well, that didn't get
13 (inaudible). You don't have any objection to me doing that
14 or trying to mark it, leaving all this information, and I'll
15 make a list to get that to you all as to what's being
16 included and I'm ordering that's included.

17 Is that satisfactory to you, solicitor?

18 MS. KEENEY: Yes, sir.

19 THE COURT: All right. Mr. Brown?

20 MR. BROWN: It is, Judge.

21 THE COURT: All right. Mr. Tristan, is that
22 satisfactory to you, sir?

23 MR. SHAFFER: Yes, Your Honor.

24 THE COURT: All right. Well, then I'll do that and so
25 -- and I see, maybe, we just got the letter that you sent or

1 the e-mail and we'll get on that maybe next and try to get
2 that done and then what I will also do is I will issue an
3 order in this matter or let me rephrase that. I probably
4 will make a ruling in this matter and will have an attorney
5 prepare an order. I don't think I'm going to prepare the
6 order. Sorry, guys.

7 They asked me about that. They asked me about that
8 last week when I was getting interviewed by all the people
9 for reelection. How do you deal with orders? I said I give
10 it to other people. No, I mean, told her well, you know, it
11 was different ways. But probably what I'm going to do is I'm
12 going to have you all have somebody go and prepare an order
13 in this case and I'll just be honest, the reason is because I
14 have a feeling there's going to be some information that may
15 need to be included in the order and you all understand and
16 know this issue, quite frankly, better than I.

17 So I think that bring us to a conclusion. I'll take
18 care of that next week and solicitor, are you on a conference
19 with me at 3:00?

20 MS. KEENEY: I am.

21 THE COURT: All right. Well, I'm here (inaudible) will
22 hear some non-jury matters. I'm going to go back out there
23 and get started. We'll take a break and we'll address that
24 matter at 3:00 and that pertains to a case, potentially,
25 that's on the roster for next week in Colleton?

1 MS. KEENEY: Yes, sir. And we're just calling in.
2 We're not doing a video.

3 THE COURT: Okay. That's fine. Well, in that case
4 everybody, hope you have a good day, okay?

5 MS. KEENEY: Thank you. You, too.

6 MR. BROWN: You, too. Take care.

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24 (THERE BEING NO FURTHER QUESTIONS, THIS HEARING IS CONCLUDED
25 AT 16:04)

CERTIFICATE OF TRANSCRIBER

I, Lynda Monroe, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in trial of the captioned case, relative to appeal, in the South Carolina Circuit Court 14, Colleton County, South Carolina, on the 12th day of October, 2023.

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

April 20, 2024

Lynda Monroe, Transcriber

15/ 15

WITNESSES

Scott, CCSO

REST WARRANT NUMBER

103084

June 5, 2010

CTION OF GRAND JURY

TRUE BILL

representative of Grand Jury
date: 8/25/2011

INDICT

representative of Petit Jury

date:

INDICT

DOCKET NO. 2010-15-00501
(Corrective Indictment)

The State of South Carolina
County of Colleton

COURT OF GENERAL SESSIONS

August Term 2011

THE STATE

vs.

Antwan Demetric Mcmillan

Indictment for

Attempted Murder

SC Code: 16-03-0029
CDR Code: 3410

COLLETON COUNTY
GENERAL SESSIONS COURT
2011 AUG 25 PM 1:08

[Handwritten signature]

ROA312

(STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)

INDICTMENT

2010-GS-15-00501 (Corrective Indictment)

At a Court of General Sessions, convened on August 25, 2011, the Grand Jurors of Colleton County present upon their oath:

Attempted Murder

That in Colleton County, South Carolina, on or about June 3, 2010, the Defendant, Antwan Demetric Mcmillan, with malice aforethought accompanied by a present ability to complete the act and the intent to kill, either express or implied, did attempt to kill and murder Jesse King, to wit: the Defendant did shoot at the victim; in violation of S.C. Code of Laws §16-03-0029.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Isaac M. Stone, III, Solicitor

14/ 15

Scott, CCSO

WITNESSES

REST WARRANT NUMBER

03085

June 5, 2010

ATION OF GRAND JURY

TRUE BILL

Person of Grand Jury
te: 8/25/2011

RDICT

09-30-11;02:44PM;
ICT

Person of Petit Jury

te:

ICT

DOCKET NO. 2010-G-15-00502
(Corrective Indictment)

The State of South Carolina

County of Colleton

COURT OF GENERAL SESSIONS

August Term 2011

THE STATE

vs.

Antwan Demetric Mcmillan

Indictment for

Attempted Murder

SC Code: 16-03-0029
CDR Code:3410

COLLETON COUNTY
GENERAL SESSIONS COURT
2011 AUG 25 PM 1:08

Antwan Demetric Mcmillan

ROA314

STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)

INDICTMENT

2010-GS-15-00502 (Corrective Indictment)

At a Court of General Sessions, convened on August 25, 2011, the Grand Jurors of Colleton County present upon their oath:

Attempted Murder

That in Colleton County, South Carolina, on or about June 3, 2010, the Defendant, Antwan Demetric Mcmillan, with malice aforethought accompanied by a present ability to complete the act and the intent to kill, either express or implied, did attempt to kill and murder Jeannine Metzfield, to wit: the Defendant did shoot at the victim; in violation of S.C. Code of Laws §16-03-0029.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Isaac M. Stone, III, Solicitor

13/ 15

Scott, CCSO

WITNESSES

ARREST WARRANT NUMBER

103086

June 5, 2010

CTION OF GRAND JURY

TRUE BILL

representative of Grand Jury
date: 8/25/2011

INDICT

09-30-11:02:44PM;
INDICT

representative of Petit Jury
date:

DOCKET NO. 2010-G-15-00503
(Corrective Indictment)

The State of South Carolina

County of Colleton

COURT OF GENERAL SESSIONS

August Term 2011

THE STATE

vs.

Antwan Demetric Mcmillan

Indictment for

Attempted Murder

SC Code: 16-03-0029
CDR Code:3410

COLLETON COUNTY
GENERAL SESSIONS COURT
2011 AUG 25 PM 1:08

ROA316

STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)

INDICTMENT

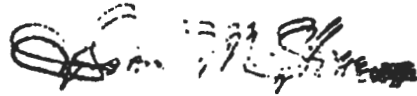
2010-GS-15-00503 (Corrective Indictment)

At a Court of General Sessions, convened on August 25, 2011, the Grand Jurors of Colleton County present upon their oath:

Attempted Murder

That in Colleton County, South Carolina, on or about June 3, 2010, the Defendant, Antwan Demetric Mcmillan, with malice aforethought accompanied by a present ability to complete the act and the intent to kill, either express or implied, did attempt to kill and murder Amanda Metzfield, to wit: the Defendant did shoot at the victim; in violation of S.C. Code of Laws §16-03-0029.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Isaac M. Stone, III, Solicitor

12/ 15

WITNESSES

Scott, CCSO

REST WARRANT NUMBER

03087

June 5, 2010

TION OF GRAND JURY

TRUE BILL

representative of Grand Jury

date: 8/25/2011

RDICT

representative of Petit Jury

ite:

DICT

DOCKET NO. 2010-G-00604
(Corrective Indictment)

The State of South Carolina

County of Colleton

COURT OF GENERAL SESSIONS

August Term 2011

THE STATE

vs.

Antwan Demetric Mcmillan

Indictment for

**Robbery / Attempted armed, or allegedly armed,
robbery**

SC Code: 16-11-0330(B)
CDR Code:0026

COLLETON COUNTY
GENERAL SESSIONS COURT
2011 AUG 25 PM 1:08

Antwan Mcmillan

ROA318

(STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)

INDICTMENT

2010-GS-15-00504 (Corrective Indictment)

At a Court of General Sessions, convened on August 25, 2011, the Grand Jurors of Colleton County present upon their oath:

Robbery / Attempted armed, or allegedly armed, robbery

(That on or about June 3, 2010, in Colleton County, South Carolina, the Defendant, Antwan Demetric Mcmillan, by use of force, threats or intimidation and while armed with a deadly weapon, to wit: a handgun, did attempt to take and carry away goods and/or monies from the person or immediate presence of Amanda Metzfield with the intent to permanently deprive her of possession thereof; in violation of Section 16-11-330(B) 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.



Isaac M. Stone, III, Solicitor

DOCKET NO. 2010-G 3-00505
(Corrective Indictment)

The State of South Carolina
County of Colleton

COURT OF GENERAL SESSIONS

August Term 2011

THE STATE

VS.

Antwan Demetric Mcmillan

Indictment for

Robbery / Attempted armed, or allegedly armed,
robbery

SC Code: 16-11-0330(B)
CDR Code:0026

WITNESSES

Scott, CCSO

REST WARRANT NUMBER

03088

June 5, 2010

ATION OF GRAND JURY

TRUE BILL

representative of Grand Jury

te: 8/25/2011

RDICT

representative of Petit Jury

te:

DICT

COLLETON COUNTY
GENERAL SESSIONS COURT
2011 AUG 25 PM 1:09

Demetric Mcmillan

ROA320

STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)

INDICTMENT

2010-GS-15-00505 (Corrective Indictment)

At a Court of General Sessions, convened on August 25, 2011, the Grand Jurors of Colleton County present upon their oath:

Robbery / Attempted armed, or allegedly armed, robbery

That on or about June 3, 2010, in Colleton County, South Carolina, the Defendant, Antwan Demetric Mcmillan, by use of force, threats or intimidation and while armed with a deadly weapon, to wit: a handgun, did attempt to take and carry away goods and/or monies from the person or immediate presence of Jeannine Metzfield with the intent to permanently deprive her of possession thereof; in violation of Section 16-11-330(B) 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.



Isaac M. Stone, III, Solicitor

10/ 15

WITNESSES

Scott, CCSO

ARREST WARRANT NUMBER

103089

June 5, 2010

ACTION OF GRAND JURY

TRUE BILL

representative of Grand Jury
date: 8/25/2011

INDICT

representative of Petit Jury

date:

INDICT

DOCKET NO. 2010-15-00506
(Corrective Indictment)

The State of South Carolina

County of Colleton

COURT OF GENERAL SESSIONS

August Term 2011

THE STATE

vs.

Antwan Demetric Mcmillan

Indictment for

**Robbery / Attempted armed, or allegedly armed,
robbery**

**SC Code: 16-11-0330(B)
CDR Code:0026**

COLLETON COUNTY
GENERAL SESSIONS COURT
2011 AUG 25 PM 1:09

09-30-11:02:44PM

ROA322

(STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)

INDICTMENT

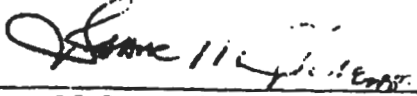
2010-GS-15-00506 (Corrective Indictment)

At a Court of General Sessions, convened on August 25, 2011, the Grand Jurors of Colleton County present upon their oath:

Robbery / Attempted armed, or allegedly armed, robbery

That on or about June 3, 2010, in Colleton County, South Carolina, the Defendant, Antwan Demetric Mcmillan, by use of force, threats or intimidation and while armed with a deadly weapon, to wit: a handgun, did attempt to take and carry away goods and/or monies from the person or immediate presence of Jesse King with the intent to permanently deprive him of possession thereof; in violation of Section 16-11-330(B) 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.


Isaac M. Stone, III, Solicitor

9/ 15
#

WITNESSES

Scott, CCSO

ARREST WARRANT NUMBER

1103090

June 5, 2010

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: 8/26/2010

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2010-GS-15-00507

The State of South Carolina

County of Colleton

COURT OF GENERAL SESSIONS

August Term 2010

THE STATE

VS.

Antwan Demetric Mcmillan

Indictment for

Weapons / Poss. weapon during violent crime,
If not also sentenced to life without parole or
death

SC Code: 16-23-0490

CDR Code: 0549

RECEIVED
CLERK OF COURT
2010 AUG 26 PM 2:58

ROA324

STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)

INDICTMENT
2010-GS 15-00507

At a Court of General Sessions, convened on August 26, 2010, the Grand Jurors of Colleton County present upon their oath:

**Weapons / Poss. weapon during violent crime, if not also sentenced to life
without parole or death**

That in Colleton County, South Carolina, on or about June 3, 2010, the Defendant, Antwan Demetric Mcmillan, did possess a handgun or visibly display what appeared to be a handgun during the commission, or attempted commission, of an attempted armed robbery and an attempted murder, violent crimes. This is in violation of 16-23-490 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.



Isaac M. Stone, III, Solicitor

JIB BIFF

ROA325

COUNTY OF Colleton
STATE VS.Antwan Mcmillan

AKA:

Race: B Sex: M Age: 22DOB: 1988 SS#: [REDACTED]Address: 1834 Sunrise RoadCity, State, Zip: Sumter SCDL#: [REDACTED] SID#: SC01916727*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Assault and Battery 1st Degreein violation of § 16-03-000(d) of the S.C. Code of Laws, bearing CDR Code # 3412☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45*The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Haselton, Amanda StilleySC Bar# 75079

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference. 2010-GS-15-00502; 2010-GS-15-00503; 2010-GS-15-00604;☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2010-GS-15-00505; 2010-GS-15-00506; 2010-GS-15-☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied 00507 by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL		\$ <u>133.90</u>

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May Serve OPE Beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be paid in equal, consecutive weekly/monthly

payments. SEAL CERTIFIED TRUE COPIES OF RECORDS

_____ paid to Public Defender Fund

Clerk of Court, Common Pleas Court

Colleton County, South Carolina

9/2/11

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.Clerk of Court/Deputy Clerk: Patricia C. GrantCourt Reporter: Rebecca A. Hill

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 0122Sentence Date: 9-1-11

ROA326

COUNTY OF
STATE

Colleton

VS.

Antwan Mcmillan

AKA:

Race: B Sex: M Age: 22

DOB: 1988 SS#: [REDACTED]

Address: 1834 Sunrise Rd.

City, State, Zip: SMOOKS SC

DL#: [REDACTED] SID#: SC019116727

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Assault & Battery - 1st Degree

in violation of § 16-03-0600(c)(1) of the S.C. Code of Laws, bearing CDR Code #

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45

w/minor 1st or Lewd Act)

The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Haselden, Amanda Stilley

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference. 2010-GS-15-00501; 2010-GS-15-00502; 2010-GS-15-00504;

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2010-GS-15-00505; 2010-GS-15-00506; 2010-GS-1☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied 00507

by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCA Surcharge)

3% to County (if paid in installments)

TOTAL

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

Obtain GED ☐Attend Voc. Rehab. or Job Corp. ☐

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

mnts. of \$ beginning

CERTIFIED TRUE COPIES OF RECORDS

paid to Public Defender's Office

CLERK OF COURT, COMMON PLEAS COURT

COLLETON COUNTY, SOUTH CAROLINA

9/2/11

☐ Appointed PD or appointed other counsel,

§ 47.12 requires \$500 be paid to Clerk

during probation.

Presiding Judge

Judge Code: 0122

Sentence Date: 9-1-11

Clerk of Court/ Deputy Clerk:

Court Reporter:

SCCA/217 (03/2011)

ROA327

COUNTY OF _____
STATE _____

Colleton

VS.

Antwan Mcmillan

AKA: _____

Race: B Sex: M Age: 22

DOB: 1988 SS#: _____

Address: 1834 Sunrise Rd.

City, State, Zip: SMOAKS, SC

DL#: _____ SID#: SC01916721

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Assault & Battery - 1st Degree

in violation of § 16-03-060(e)(1) of the S.C. Code of Laws, bearing CDR Code #

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ § 17-25-45

w/minor 1st or Lewd Act)

The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Amanda S. Haselden 75079
Haselden, Amanda Stilley SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2010 GS 15 505
☒ 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: CONCURRENT TO: 2010 GS 15 501; 2010 GS 15 00503; 2010 GS 15 00504
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL		\$ 133.90

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug Alcohol testing ☐

Fine may be paid in equal, consecutive weekly/monthly

mts. of \$ _____ beginning _____

SEAL CERTIFIED TRUE COPIES OF RECORDS

paid to Public Defender Fund

Other _____

CLERK OF COURT, COMMON PLEAS COURT

COLLETON COUNTY, SOUTH CAROLINA

DATE: 9/2/11

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code: 0122

Sentence Date: 9-1-11

Clerk of Court/ Deputy Clerk

Court Reporter: Rebecca A. Hill

SCCA/217 (03/2011)

ROA328

COUNTY OF
STATE

Colleton

VS.

Antwan Mcmillan

AKA:

Race: B Sex: M Age: 22

DOB: 1988 SS#: [REDACTED]

Address: 1834 Sunrise Road

City, State, Zip: Summerville, SC

DL#: SID#: SC019116727

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Robbery / Attempted armed, or allegedly armed, robbery

INDICTMENT/CASE#: 2010GS1500505

A/W#: M103088

Date of Offense: 6/3/2010

S.C. Code §: 16-11-0330(B)

CDR Code #: 0026

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-11-0330(B) of the S.C. Code of Laws, bearing CDR Code # 0026
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Haselden, Amanda Stillley

SC Bar#

Defendant

Attorney for Defendant

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WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
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2010-GS-15-00506, 2010-GS-15-00507, 2010-GS-15-00508, 2010-GS-15-00509, 2010-GS-15-00510, 2010-GS-15-00511, 2010-GS-15-00512, 2010-GS-15-00513, 2010-GS-15-00514, 2010-GS-15-00515, 2010-GS-15-00516, 2010-GS-15-00517, 2010-GS-15-00518, 2010-GS-15-00519, 2010-GS-15-00520, 2010-GS-15-00521, 2010-GS-15-00522, 2010-GS-15-00523, 2010-GS-15-00524, 2010-GS-15-00525, 2010-GS-15-00526, 2010-GS-15-00527, 2010-GS-15-00528, 2010-GS-15-00529, 2010-GS-15-00530, 2010-GS-15-00531, 2010-GS-15-00532, 2010-GS-15-00533, 2010-GS-15-00534, 2010-GS-15-00535, 2010-GS-15-00536, 2010-GS-15-00537, 2010-GS-15-00538, 2010-GS-15-00539, 2010-GS-15-00540, 2010-GS-15-00541, 2010-GS-15-00542, 2010-GS-15-00543, 2010-GS-15-00544, 2010-GS-15-00545, 2010-GS-15-00546, 2010-GS-15-00547, 2010-GS-15-00548, 2010-GS-15-00549, 2010-GS-15-00550, 2010-GS-15-00551, 2010-GS-15-00552, 2010-GS-15-00553, 2010-GS-15-00554, 2010-GS-15-00555, 2010-GS-15-00556, 2010-GS-15-00557, 2010-GS-15-00558, 2010-GS-15-00559, 2010-GS-15-00560, 2010-GS-15-00561, 2010-GS-15-00562, 2010-GS-15-00563, 2010-GS-15-00564, 2010-GS-15-00565, 2010-GS-15-00566, 2010-GS-15-00567, 2010-GS-15-00568, 2010-GS-15-00569, 2010-GS-15-00570, 2010-GS-15-00571, 2010-GS-15-00572, 2010-GS-15-00573, 2010-GS-15-00574, 2010-GS-15-00575, 2010-GS-15-00576, 2010-GS-15-00577, 2010-GS-15-00578, 2010-GS-15-00579, 2010-GS-15-00580, 2010-GS-15-00581, 2010-GS-15-00582, 2010-GS-15-00583, 2010-GS-15-00584, 2010-GS-15-00585, 2010-GS-15-00586, 2010-GS-15-00587, 2010-GS-15-00588, 2010-GS-15-00589, 2010-GS-15-00590, 2010-GS-15-00591, 2010-GS-15-00592, 2010-GS-15-00593, 2010-GS-15-00594, 2010-GS-15-00595, 2010-GS-15-00596, 2010-GS-15-00597, 2010-GS-15-00598, 2010-GS-15-00599, 2010-GS-15-00600, 2010-GS-15-00601, 2010-GS-15-00602, 2010-GS-15-00603, 2010-GS-15-00604, 2010-GS-15-00605, 2010-GS-15-00606, 2010-GS-15-00607, 2010-GS-15-00608, 2010-GS-15-00609, 2010-GS-15-00610, 2010-GS-15-00611, 2010-GS-15-00612, 2010-GS-15-00613, 2010-GS-15-00614, 2010-GS-15-00615, 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2010-GS-15-01001, 2010-GS-15-01002, 2010-GS-15-01003, 2010-GS-15-01004, 2010-GS-15-01005, 2010-GS-15-01006, 2010-GS-15-01007, 2010-GS-15-01008, 2010-GS-15-01009, 2010-GS-15-01010, 2010-GS-15-01011, 2010-GS-15-01012, 2010-GS-15-01013, 2010-GS-15-01014, 2010-GS-15-01015, 2010-GS-15-01016, 2010-GS-15-01017, 2010-GS-15-01018, 2010-GS-15-01019, 2010-GS-15-01020, 2010-GS-15-01021, 2010-GS-15-01022, 2010-GS-15-01023, 2010-GS-15-01024, 2010-GS-15-01025, 2010-GS-15-01026, 2010-GS-15-01027, 2010-GS-15-01028, 2010-GS-15-01029, 2010-GS-15-01030, 2010-GS-15-01031, 2010-GS-15-01032, 2010-GS-15-01033, 2010-GS-15-01034, 2010-GS-15-01035, 2010-GS-15-01036, 2010-GS-15-01037, 2010-GS-15-01038, 2010-GS-15-01039, 2010-GS-15-01040, 2010-GS-15-01041, 2010-GS-15-01042, 2010-GS-15-01043, 2010-GS-15-01044, 2010-GS-15-01045, 2010-GS-15-01046, 2010-GS-15-01047, 2010-GS-15-01048, 2010-GS-15-01049, 2010-GS-15-01050, 2010-GS-15-01051, 2010-GS-15-01052, 2010-GS-15-01053, 2010-GS-15-01054, 2010-GS-15-01055, 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2010-GS-15-01111, 2010-GS-15-01112, 2010-GS-15-01113, 2010-GS-15-01114, 2010-GS-15-01115, 2010-GS-15-01116, 2010-GS-15-01117, 2010-GS-15-01118, 2010-GS-15-01119, 2010-GS-15-01120, 2010-GS-15-01121, 2010-GS-15-01122, 2010-GS-15-01123, 2010-GS-15-01124, 2010-GS-15-01125, 2010-GS-15-01126, 2010-GS-15-01127, 2010-GS-15-01128, 2010-GS-15-01129, 2010-GS-

COUNTY OF
STATE

Colleton

VS.

Antwan Mcmillan

AKA:

Race: B Sex: M Age: 22

DOB: 1988 SS#: [REDACTED]

Address: 1834 Sunrise Road

City, State, Zip: Smarkets, SC

DL#: [REDACTED] SID#: SC01916727

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Robbery / Attempted armed, or allegedly armed, robbery

INDICTMENT/CASE#: 2010GS1500504

A/W#: M103087

Date of Offense: 6/3/2010

S.C. Code §: 16-11-0330(B)

CDR Code #: 0026

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-11-0330(B) of the S.C. Code of Laws, bearing CDR Code # 0026

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ATTEST:

Amanda S. Haselden 75079
Haselden, Amanda Stilley SC Bar#

Defendant

Attorney for Defendant

SC Bar#

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Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

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Recipient: _____

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§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

The may be paid on equal, consecutive weekly/monthly

prps. of \$ _____ TRUE BEGINNING OF RECORDS

\$ _____ paid to Public Defender Fund

Other: _____
CLERK OF COURT, COMMON PLEAS COURT
COLLETON COUNTY, SOUTH CAROLINA

DATE: 9/2/11

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk: Patricia C. Grant

Court Reporter: Rebecca A. Hill

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 0122

Sentence Date: 9-1-11

ROA230

COUNTY OF
STATE

Colleton

VS.

Antwan Mcmillan

AKA:

Race: B Sex: M Age: 22

DOB: 1988 SS#: [REDACTED]

Address: 1834 Sunrise Road

City, State, Zip: Smoaks, SC

DL#: SID#: S.C. 1916727

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Robbery / Attempted armed, or allegedly armed, robbery

INDICTMENT/CASE#: 2010GS1500506

A/W#: M103089

Date of Offense: 6/3/2010

S.C. Code §: 16-11-0330(B)

CDR Code #: 0026

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-11-0330(B) of the S.C. Code of Laws, bearing CDR Code # 0026

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Amanda S. Haselden T5079
Haselden, Amanda Stillely SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference. 2010-GS-15-00501; 2010-GS-15-00502; 2010-GS-15-00503

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2010-GS-15-00504; 2010-GS-15-00505; 2010-GS-15-00607☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL		\$ 133.90

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be paid in equal, consecutive weekly/monthly payments of \$ _____ beginning _____

Other: ☐ Public Defender Fund
CERTIFIED TRUE COPIES OF RECORDS

Other: _____

SE Patricia C. Grant
CLERK OF COURT, COMMON PLEAS COURT
COLLETON COUNTY, SOUTH CAROLINA
DATE: 9/12/11☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/Deputy Clerk

Court Reporter: Rebecca A. Hall

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 0122

Sentence Date: 9-1-11

ROA331

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

Colleton

VS.

Antwan Mcmillan

AKA:

Race: B

Sex: M

Age: 22

DOB: 1988

SS#: [REDACTED]

Address: 1834 Sunrise Road

City, State, Zip: SMOAKS, SC

DL#:

SID#: SC01916727

*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: Weapons / Poss. weapon during violent crime, if not also sentenced to life witho

in violation of § 16-23-0490

of the S.C. Code of Laws, bearing CDR Code #

0549

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Haselden, Amanda Stilley

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. 2010-GS-15-00501; 2010-GS-15-00502; 2010-GS-15-00503;

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2010-GS-15-00504; 2010-GS-15-00505; 2010-GS-15-00506☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

	\$	\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
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Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$133.90

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be paid in equal, consecutive weekly/monthly payments of \$ beginning _____

CERTIFIED TRUE COPIES OF RECORDS

paid by the Defendant Fund

Other:

CLERK OF COURT, COMMON PLEAS COURT
COLLETON COUNTY, SOUTH CAROLINA

DATE: 9/2/11

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

ROA332

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF COLLETON	)	CASE NUMBERS - ANTWAN MCMILLAN:
		2010-GS-15-501, 502, 503, 504,
		505, 506, 507
		CASE NUMBERS - DAVID JAKES:
		2010-GS-15-703, 704, 705, 706,
		707, 708, 709
STATE OF SOUTH CAROLINA,	)	
	)	
	)	
v.	)	
	)	
ANTWAN D. MCMILLAN AND	)	
DAVID JAKES,	)	<u>TRANSCRIPT OF RECORD</u>
	)	
DEFENDANTS.	)	
	)	

August 11TH, 2011
Walterboro, South Carolina
BEFORE THE HONORABLE PERRY M. BUCKNER, III, Judge.

APPEARANCES:

Asst. Sol. Amanda Haselden, Esquire
Asst. Sol. Ben Shelton, Esquire
Fourteenth Judicial Circuit Solicitor's Office
Attorneys for the State of South Carolina

Mr. David S. Mathews, Esquire
Attorney for the defendant McMillan
Public Defender of Colleton County
Walterboro, South Carolina 29488

Mr. Harris S. Beach, Esquire
Attorney for the defendant Jakes
Public Defender of Colleton County
Walterboro, South Carolina 29488

Rebecca H. Hill
Official Court Reporter

1 because it's pled in the alternative that you believe that's
2 what is defective?

3 MR. MATHEWS: I do. I do think that's -- that makes it
4 defective.

5 THE COURT: In other words, you don't think the State
6 can say and/or co-defendants?

7 MR. MATHEWS: In this instance, because attempted
8 murder requires a specific intent.

9 THE COURT: It requires an intent to kill and it also
10 requires malice.

11 MR. MATHEWS: Yes, sir.

12 THE COURT: But obviously, that's not the issue here.
13 The indictment says that Mr. Jakes and/or co-defendants,
14 with malice aforethought, accompanied by a present ability
15 to complete the act and the intent to kill, both of which
16 are alleged, either express or implied, did attempt to kill
17 and murder Jesse King, to wit the defendant, and/or co-
18 defendants, did shoot at the victim."

19 Now, you've explained to your client the theory of the
20 hand of one is the hand of all.

21 MR. MATHEWS: I'm not sure I have. I believe it's ---

22 THE COURT: But you will before the trial. You've also
23 explained to him that mere presence alone would not be
24 sufficient to make you criminally responsible.

25 MR. MATHEWS: I have, or I will.

1 This has been merely an attempt on my part to briefly
2 explain to you some of the procedure. We have strict rules
3 which the attorney's know. We have a rule as to who goes
4 first. I told you that the Solicitor would. They have the
5 burden of proof. They'll speak to you first and then you'll
6 have the attorney for the defendants. This has been an
7 attempt on my part to briefly explain the procedure that we
8 will follow in the trial of this case. Once the opening
9 statements are completed, the State will then present its
10 case, first. Followed, if they so choose, by each of the
11 defendants.

12 I want you to have an idea of what is happening from
13 time to time, so that you'll be better informed as a juror
14 as the trial takes place. Nevertheless, in order to
15 preserve everyone's rights, I will give the parties an
16 opportunity to object to anything that I may have said to
17 you during these brief remarks to you if they have any such
18 objections.

19 Any exceptions or objections from the State?

20 **ASST. SOL. HASELDEN:** No, Your Honor.

21 **THE COURT:** Any exceptions or objections, from the
22 defendant McMillan?

23 **MR. MATHEWS:** No, Your Honor.

24 **THE COURT:** Any exceptions or objections, from the
25 defendant Jakes?

1 **MR. BEACH:** No, Your Honor.

2 **THE COURT:** Ladies and gentlemen of the jury, we will
3 now begin the trial of the case. Solicitor.

4 **ASST. SOL. HASELDEN:** Thank you, Your Honor, may it
5 please the Court?

6 **THE COURT:** Yes ma'am.

7 **OPENING STATEMENT**

8 **BY ASST. SOL. HASELDEN:**

9 Good morning, ladies and gentlemen. This is a case
10 about three people trying to get from Fort Bragg, up in
11 North Carolina, down to Eglin Air Force Base in Florida.
12 They were moving because they were transferred. Three
13 people: Jesse King, his wife Amanda Metzfield, and her
14 mother, Jeanine Metzfield, was along helping them out with
15 her truck.

16 This is also a case about three other people. The
17 three other people who when the victims had the unfortunate
18 occurrence of breaking down in Colleton County, other people
19 who preyed upon them, who attacked them in the middle of the
20 road in the middle of the night here in Colleton County.

21 David Jakes, who is seated over here at the table in
22 the white shirt; and Antwan McMillan, seated over here at
23 the table in the blue shirt; and a third individual, James
24 Davis, were in a car, shortly before midnight, driving from
25 Smoaks where they lived into town into Walterboro to meet up

1 with some females; ;a common occurrence, probably.

2 They passed by on McLeod Road; through this, they only
3 saw two of them, because Jesse King was crouched down
4 working on some wires. They had to move the U-Haul from one
5 truck to another truck; the first truck that was towing it
6 had overheated.

7 So all they saw was two women standing on the side of
8 the road in the middle of the night. Antwan, who was
9 driving, tried to pump his people up inside his car, David
10 and James, "C'mon, y'all, easy lick, easy robbery." So,
11 they whipped the car around and come on back to them.

12 James Davis says, "Unh-unh, I'm having nothing to do
13 with it." David Jakes says, "Sure let's do it." And when
14 he screeched to a halt at the intersection of the off-ramp,
15 off of I-95 and McLeod Road, where those three people were
16 broken down, David Jakes jumped out of the back seat of that
17 car with a .50 Caliber Desert Eagle Handgun in his hand and
18 a black shirt wrapped around his head. He pointed that gun
19 at Jeanine Metzfield, who was standing at the front of her
20 car, and he said, "Give it up, pretty lady," and she's
21 backing away. Her daughter, Amanda, who's standing a little
22 bit further back, runs around the back of the U-Haul.

23 Thankfully, Jesse stands up with his own gun, active
24 duty military in the army, and he warns the robber and says,
25 "Get back in your car and leave us alone." But the robber

1 doesn't. Instead, he turns that .50 Caliber Desert Eagle
2 Handgun on Jesse, so Jesse shoots. He shoots several times,
3 and then he shoots several more times, until the individual
4 falls and drops the gun.

5 At that point, the individual crawls back into his car,
6 leaving his handgun and some of his blood on the ground,
7 crawls back in, and an individual inside the car shoots at
8 the victims further as they huddle behind the U-Haul
9 trailer, on the side of the road in Colleton County in the
10 middle of the night.

11 Now, they call 9-1-1, and minutes later, law
12 enforcement arrives, secures the scene, starts processing
13 that scene. A few minutes after that, in Walterboro, David
14 Jakes arrives at the hospital to be treated for gunshot
15 wounds in a personal vehicle driven by Angela Arnold.

16 Through their investigation that evening, they
17 determine that the car the defendants were in, actually
18 David Jakes' grandmother's car, she lives in Smoaks. So
19 very shortly thereafter, they go out to Smoaks and find and
20 secure that car, the silver Cadillac, and have it towed back
21 to the Sheriff's Office Annex, right here across the street,
22 where it was then processed for physical evidence,
23 fingerprints, some other forms of physical evidence, and
24 DNA.

25 Now, slowly, but surely, the story emerged, as it

1 always does. The story as to what exactly happened that
2 night. The story as to why these two gentlemen are charged
3 with three counts each of attempted armed robbery, three
4 counts each of attempted murder, a count each of possession
5 of a weapon during the commission of violent crime, and Mr.
6 Jakes has an additional charge of that stolen firearm.

7 The story as to why we're all here today. You're going
8 to hear a lot of testimonies over the next few days from
9 that stand, like the Judge told you. You're going to hear
10 from the paramedics of fire rescue, you're going to hear
11 from a bunch of law enforcement officers, you're going to
12 hear from the victims, you're going to hear from a couple of
13 professional analysts of DNA, and firearms, and
14 fingerprints, and you're going to hear from the third person
15 in the car that night, Mr. James Davis.

16 Some of that testimony is going to be technical, so
17 please, like the Judge said, pay close attention to that
18 testimony; it can be pretty confusing. You're also going to
19 review quite a few exhibits, so just take them slowly and
20 use your common sense. We're not asking you to leave that
21 out. In fact, that's the absolute basis of why we're here.
22 Use your common sense. Listen to those people, and review
23 these exhibits carefully, so that at the end of this trial,
24 you can actually return a true and a just verdict. Thank
25 you.

1 **THE COURT:** Mr. Mathews.

2 **MR. MATHEWS:** May it please the Court?

3 **THE COURT:** Yes, sir.

4 **MR. MATHEWS:** Thank you, Your Honor.

5 **OPENING STATEMENT**

6 **BY MR. MATHEWS:**

7 Madame Foreperson, ladies and gentlemen of the jury, as
8 I mentioned earlier, I'm David Mathews with the public
9 defenders office, and I represent Antwan McMillan.

10 I believe the evidence is going to show, and I believe
11 what you're going to hear, is that an investigation took
12 place that might could have helped you better to form your
13 opinions, but sadly some of the things that you're going to
14 hear are not going to be as helpful as they could have been.

15 You're going to see a lot of shells, spent bullet
16 shells coming from different places. You're going to see
17 finger prints and blood; I've got blood on myself. You're
18 going to see DNA evidence and you're going to hear
19 testimony; you're going to hear conflicting testimony.

20 You're going to hear testimony, or I believe you're
21 going to hear testimony from Detective Inabinett. Allen
22 Inabinett took a statement, took a couple of statements in
23 this case, and one of the statements that he took was from
24 the co-defendant, Mr. Jakes. There was a statement taken
25 from Mr. Jakes explaining exactly what happened, I believe

1 that will be admitted into evidence and I believe you will
2 have the opportunity to hear in that case what happened.

3 One of the things you will not hear from Mr. Jakes is
4 that Antwan McMillan was even present when this happened.
5 You may hear conflicting testimony, and sadly, one of the
6 things that you'll -- in all of the DNA, and all the
7 fingerprints, and bullets, and ballistics, and all of these
8 things, one of the things you will not get is evidence of
9 cell phone calls; other than I believe you'll hear Detective
10 Inabinett testify that when he talked to Mr. Jakes, Mr.
11 Jakes said that earlier in the evening he had called his
12 girlfriend. He was in communication with his girlfriend
13 talking from his cell phone.

14 I believe that you will hear testimony from either
15 Detective Thomas, or one of the other detectives, who was
16 present at the hospital, and took statements at the
17 hospital, also took pictures at the hospital, and in those
18 pictures you'll see at least three people that had cell
19 phones.

20 One of the things that would have been very helpful
21 that you probably will not see here, I don't expect that you
22 will, is any record of any cell phone calls that were made
23 that day. Some of the events that appear likely, some of
24 the events appear unlikely, but consider closely whether or
25 not this would be helpful in determining what's what.

1 When you have an opportunity, consider conflicting
2 testimony, physical evidence, cell phone calls, things like
3 that where people who don't have a motive to lie would be
4 helpful in figuring things out. Listen carefully to all of
5 the evidence that you get, look for what's there, also
6 consider what should have been there.

7 Consider all of that, listen carefully to all of the
8 testimony, and when you do, I believe the evidence will not
9 conclusively show that Mr. McMillan was even present. Thank
10 you.

11 **THE COURT:** Mr. Beach.

12 **MR. BEACH:** May it please the Court?

13 **THE COURT:** Yes, sir.

14 **MR. BEACH:** Thank you, Your Honor.

15 **OPENING STATEMENT**

16 **BY MR. BEACH:**

17 Ladies and gentlemen, I'm Harris Beach. I represent
18 Mr. Jakes who is also seated over at counsel table, and I
19 will be handling the case for him. I don't represent Mr.
20 McMillan, so I'm not going to be saying a whole lot about
21 him, and I'm going to be concentrating on Mr. Jakes.

22 I ask you to listen very carefully to the evidence in
23 this case. We will admit to you up front that Mr. Jakes was
24 there; no doubt about it. Mr. Jakes got shot; no doubt
25 about that.

1 You're going to hear a lot of evidence about that, but
2 we'll tell you up front that's exactly what happened. Mr.
3 Jakes and Mr. Davis and another individual were riding
4 around. They were going from Smoaks, leaving Mount Carmel
5 church and going down McLeod Road toward Highway 15, where
6 they were going to go clubbing. They had been drinking;
7 there was a lot of drinking that night.

8 They decided to come back to get to the girlfriend of
9 Mr. Jakes, who was supposed to meet them, and turned back
10 around and went back across the interstate. They had one of
11 these donut tires on the car. One of these little tires
12 that you replace your good tire with when you have a flat
13 tire. It was bumping. They stopped the car. When they got
14 out, that's when they saw the other cars, and my client made
15 a rude remark to the women. We'll tell you that up front.
16 He got out and acted like a jackass. He made a rude remark
17 to the women.

18 The young man who was with them got up and told them to
19 get out of there, and showed him his gun. My client showed
20 him his gun. Whereupon, my client got shot.

21 Our position is, there was no attempted murder. There
22 was no attempted armed robbery. There was none of that.
23 This was just something that happened on the road; it just
24 happened. It was stupid, but there's nothing to bring it to
25 the point of saying, "So you didn't try to kill anyone?" He

1 never fired his weapon; never fired once. The firing came
2 later from the car, from the State's own witness, Mr. Davis,
3 that's where the firing came from, and that's what I think
4 the evidence is going to show. I ask you to listen to the
5 witnesses, particularly Mr. Inabinett, as he recalls what
6 Mr. Jakes told him from the State, and also Mr. Davis, who
7 is a co-defendant in this, but who says he had nothing to do
8 with it. We would ask you to look at all of that and come
9 back with a not guilty verdict. Thank you very much.

10 **THE COURT:** Call your first witness.

11 **ASST. SOL. HASELDEN:** The State calls Christy Willis.

12 **THE COURT:** Counsel approach.

13 (WHEREUPON, A BENCH CONFERENCE IS HELD OFF THE RECORD
14 AND OUT OF THE HEARING OF THE JURY.)

15 WHEREUPON, CHRISTY WILLIS, IS DULY SWORN.

16 **THE COURT:** Watch the stairs for me. Make yourself
17 comfortable. I want you to speak up so everyone can hear
18 you in the courtroom.

19 **MS. WILLIS:** My name is Christy Willis. W-I-L-L-I-S.

20 **THE COURT:** It's your witness, counsel. Direct
21 examination.

22 **DIRECT EXAMINATION**

23 **BY ASST. SOL. HASELDEN:**

24 Q Ms. Willis, who do you work for?

25 A Colleton County Sheriff's Office, Communications

1 Division.

2 Q And what do you do in the Communications Division?

3 A Sergeant over Dispatch.

4 Q How long have you been with Dispatch with the Sheriff's
5 Office?

6 A Seven years.

7 Q As Sergeant over Dispatch, what do you do?

8 A Take a ride with my team of two people. We answer 911
9 calls, dispatch where they go, fire, medical, police. We
10 take the calls. We've got to get their address, name, phone
11 number, pertinent information, in case we lose the call and
12 then go into which kind of call it is, crime, medical, fire;
13 and then ask questions from there pertaining to the type of
14 call that it is, and then dispatch what, you know, whether
15 they need police, ambulance, or a firetruck.

16 Q Okay. And you said there's only two people on your
17 team; is that common?

18 A Yes, ma'am. Two, other than myself, before eleven, and
19 then one other than myself after.

20 Q So what is your typical shift that you're Sergeant
21 over?

22 A Time wise?

23 Q Yes, ma'am.

24 A 7 p.m. to 7 a.m.

25 Q All right. So there's just two people on between the

1 hours of seven and seven?

2 A There's three people on from seven to eleven p.m., and
3 then from eleven p.m. to seven a.m., there's two.

4 Q Including yourself?

5 A Including myself.

6 Q Okay. Were you working in Dispatch on the night of
7 June 3rd, 2010?

8 A Yes, ma'am.

9 Q Who else was working with you?

10 A Melody Hunt, and also, Cindel Lawson, before eleven.

11 Q Before 11:00 p.m.?

12 A Yes, ma'am.

13 Q Did you receive a phone call shortly before midnight on
14 June 3rd, 2010?

15 A Yes, ma'am.

16 Q Do you remember exactly what time that first call came
17 in?

18 A I looked back, and it was at 23:53.

19 Q In non-military time.

20 A I'm sorry, 11:53.

21 Q Were you able to ask your normal questions to determine
22 identity of person and nature of call?

23 A No, ma'am.

24 Q Why not?

25 A Because the call was dropped, either bad cell signal or

- 1 -- I'm going to go with that's probably what it was.
- 2 Q Okay, the call dropped.
- 3 A Yes, ma'am.
- 4 Q Did you call them back?
- 5 A No, ma'am.
- 6 Q Did they call back?
- 7 A Yes, ma'am.
- 8 Q Do you remember what time that second call came in?
- 9 A It was 11:54.
- 10 Q Were you then able to determine more information?
- 11 A Yes, ma'am.
- 12 Q And what information were you able to determine?
- 13 A The type of call, the caller, location; just what was
- 14 going on. If anyone was injured or if they needed the
- 15 police or ambulance or firetruck.
- 16 Q Who was the caller?
- 17 A Jesse King.
- 18 Q What was the nature of the call?
- 19 A Originally, when I took it, it had came in as a
- 20 shooting. After I had asked more questions and figured out
- 21 what it was, then it was attempted robbery.
- 22 Q Okay. What did you do based on this information?
- 23 A I put a call into the system for the dispatcher to get
- 24 law enforcement en route to them.
- 25 Q Were you able to determine a location of these

1 individuals that called?

2 A Yes, ma'am.

3 Q What was that location?

4 A On McLeod Road, at the exit off of 95.

5 Q Okay. Just a moment.

6 **ASST. SOL. HASELDEN:** Your Honor, may I approach?

7 **THE COURT:** You may.

8 Q Ms. Willis, I'm handing you what's been marked for
9 identification purposes only as State's Ninety-two; do you
10 recognize that item?

11 A Yes, ma'am.

12 Q What is that item?

13 A It's a copy of the 911 call.

14 Q The 911 calls that you just testified as to receiving
15 on June 3rd, 2010?

16 A Yes, ma'am.

17 Q Is that a truthful and accurate depiction of those
18 calls?

19 A Yes, ma'am.

20 Q And how do you know?

21 A I initialed it when I listened to it.

22 Q Had it been altered in any way from when you took that
23 call?

24 A No, ma'am.

25 Q So what did you do after receiving that call?

1 A I put a call into the system for the dispatcher to have
2 law enforcement en route to it.

3 Q Did you work the whole rest of that night?

4 A Until 7 a.m., yes, ma'am.

5 Q Seven a.m. on the morning of June 4th?

6 A Yes, ma'am.

7 Q Did you receive any other shooting calls?

8 A No, ma'am. Other than from the ER saying that they had
9 a gunshot victim.

10 Q Is that standard protocol for them to call you?

11 A Yes ma'am.

12 Q Did you do anything based on the ER notifying you of a
13 gunshot wound victim?

14 A I advised the supervisor on the road.

15 Q Okay. I have nothing further.

16 **THE COURT:** Just a moment, Counsel, are you offering
17 Ninety-two into evidence?

18 **ASST. SOL. HASELDEN:** Not at this time.

19 **THE COURT:** Very well. Anything further?

20 **ASST. SOL. HASELDEN:** Nothing for this witness.

21 Q Ms. Willis, if you'd answer anything the defense
22 counsel has.

23 **THE COURT:** Cross-examination by the defendant
24 McMillan?

25 **MR. MATHEWS:** Nothing, Your Honor.

1 **THE COURT:** Cross-examination by the defendant Jakes?

2 **MR. BEACH:** I don't believe we have any questions
3 either, Your Honor.

4 **THE COURT:** Very well. As to this witness, Solicitor?

5 **ASST. SOL. HASELDEN:** I asked that she be excused.

6 **THE COURT:** Any objection of this witness being
7 excused, by the defendant McMillan?

8 **MR. MATHEWS:** No, Your Honor.

9 **THE COURT:** By the defendant Jakes?

10 **MR. BEACH:** No, Your Honor.

11 **THE COURT:** You may step down, Ms. Willis. You are
12 excused from the trial of this case.

13 Madame Foreperson, ladies and gentlemen of the jury,
14 I'm going to take my one and only mid-morning break at this
15 point. Let you stretch your legs, use the restroom. Please
16 do not discuss the case. You haven't heard all of the
17 evidence in this case, and it would be improper for you to
18 discuss it amongst yourselves and anybody else.

19 We're not going to take long, but I'll give everybody
20 time to use the restroom, stretch your legs, get something
21 to drink. We'll come right back and continue to work until
22 at least 1:00.

23 (11:15 A.M., WHEREUPON, THE JURY EXITS, AND THE COURT
24 IS AT RECESS FOR A BRIEF TIME IN THIS CASE.)

25 **THE COURT:** Is the State ready to proceed?

1 **ASST. SOL. HASELDEN:** The State is ready, Your Honor.

2 **THE COURT:** Is the defendant McMillan ready to proceed?

3 **MR. MATHEWS:** Yes, Your Honor.

4 **THE COURT:** Is the defendant Jakes ready to proceed?

5 **MR. BEACH:** Yes, Your Honor.

6 **THE COURT:** Bring me the jury, please.

7 (11:40 A.M., WHEREUPON, THE JURY ENTERS, AND THE
8 FOLLOWING IS HELD ON THE RECORD.)

9 **THE COURT:** I hope everyone had a nice break. We will
10 now continue with the trial in this case.

11 Call your next witness, Solicitor.

12 **THE COURT:** All right. Madame Foreperson, ladies and
13 gentlemen of the jury, we'll now continue with the testimony
14 in the trial of this case.

15 **ASST. SOL. HASELDEN:** The State calls Jeanine
16 Metzfield.

17 **MADAME CLERK:** Please come forward and be sworn.

18 WHEREUPON, JEANINE METZFIELD, IS DULY SWORN.

19 **MADAME CLERK:** Please have a seat on the witness stand
20 and state your name for the record.

21 **THE COURT:** Watch your step. My microphone is going to
22 amplify your voice. You can pull the chair up and adjust
23 for that. If you would begin by stating your full name and
24 spelling your last name for my court reporter.

25 **WITNESS:** Jeanine Metzfield, M-E-T-Z-F-I-E-L-D.

1 **THE COURT:** Your witness, Solicitor.

2 **DIRECT EXAMINATION**

3 **BY ASST. SOL. HASELDEN:**

4 Q Ms. Metzfield, where are you from?

5 A I live in Richmond, Virginia.

6 Q Have you ever been to Colleton County before?

7 A Yes.

8 Q When?

9 A I was here about a year and a half ago on June the 2nd
10 or 3rd, driving on my way from Richmond, Virginia, to
11 Florida.

12 Q Okay. And why were you driving from Virginia to
13 Florida?

14 A My daughter and her husband were moving from
15 Fayetteville to Florida, and I was pulling a U-Haul with my
16 truck for them. And I was following them down there so that
17 we could just do the caravan move, two trucks full of
18 furniture and the U-Haul.

19 Q Okay. And why did you stop in Colleton County?

20 A We -- my radiator blew up; not blew up, but started
21 steaming up under my hood, and I called Jesse really quick
22 and told him to pull over at the next exit because the
23 temperature gauge went all the way up to the roof and -- and
24 -- so we pulled off at the next exit that we could come up
25 to, which happened to be -- all I can remember vividly is

1 the sign that said Road 34. So we pulled off at the exit
2 and I was behind Jesse and Jesse was in front of me with his
3 truck and he pulled up to the end of the ramp, almost close
4 to the stop sign and when we pulled up to the ramp, we had
5 to figure out how to get the U-Haul from Jesse's truck --
6 from my truck, excuse me, to Jesse's truck. And ---

7 Q What kind of truck were you driving?

8 A A Chevy S-10.

9 Q Do you know what kind of truck Jesse had?

10 A A Tacoma, I think; something like that.

11 Q Okay.

12 A You know, that is a -- I don't the exact make and model
13 of his truck, sorry.

14 Q That's okay. So you were trying to figure out how to
15 move the U-Haul trailer?

16 A Yeah. We had made a couple of calls to get a tow
17 truck, but they said they couldn't tow the U-Haul. So were
18 trying to figure out how to not leave the U-Haul there and
19 just leave my truck there until morning, because at
20 midnight, be had no way of getting any help, service
21 stations and stuff like that. So we made that decision and
22 Jesse pulled his truck up, or I pulled my truck up. We
23 unhooked the trailer and we got it all done. We got the
24 electric undone, and Jesse pulled his truck up and -- and he
25 was trying to rig the harness, and I was up stealing pieces

1 of electrical tape from my electrical harness for the U-
2 Haul, so I crouched down at the back of my truck, pulling
3 off little pieces of electrical tape so we could rig up the
4 U-Haul to the other truck.

5 Q Well, let me ask you just a quick question. What time
6 -- do you remember about what time it was that y'all
7 stopped?

8 A It was so late; it was close to midnight.

9 Q Okay. And so it was dark outside?

10 A It was dark.

11 Q How could you see what you were doing with the tape?

12 A There were lights and we had flashlights, and we had
13 our cell phones, which was like a light.

14 Q Could you see what you were doing to work on the tape?

15 A Yeah.

16 Q All right. And then when did you first become
17 concerned?

18 A Well, it was at that time when I was crouched down,
19 when right up there, I was one car back from the stop sign,
20 right at the back of my car, and so this car drove up and
21 stopped right in the middle of the intersection. So
22 there's the stop sign and the road going this way, and the
23 car just stopped in the middle really fast. It just
24 stopped.

25 And this guy jumps out of the back before I had time to

1 even blink. He jumped out of the back of the car.

2 Q Do you remember what side of the car he jumped out
3 from?

4 A The side where -- no. I just remembered that all of a
5 sudden, he was coming out of the car and he was coming
6 towards me.

7 Q Okay. And was he holding anything?

8 A Yes, ma'am. He had a very large pistol in his hand and
9 he was holding it with both of his hands and shaking it at
10 me.

11 Q Okay. Do you have any idea how far away from you he
12 was at that point?

13 A It was like being across a two -- two -- like two
14 streets. Like if a car is going this way and a car is this
15 way, he was across the street from me, literally, like I was
16 a car length and across the street.

17 Q So about where I am right now?

18 A Yes, ma'am.

19 Q Okay. Were you able to see the man?

20 A The man had a black t-shirt, or red, or something over
21 most of his head and face and it was drapy-like, and I could
22 see that he was African-American. He was dressed in black
23 clothing, and so I didn't get a good visual, just that.

24 Q Okay. Did he say anything to you?

25 A Yes. When he -- when he -- I was still crouched down,

1 I believe, and he said either "Get up, pretty lady" or
2 "Put'em up, pretty lady," or something, pretty lady, in a
3 very loud voice with -- it was hard to understand, because
4 he was yelling loudly. And he said something else after
5 that as well, but what I remember was the "Put'em up, pretty
6 lady," and at that moment, I stood up, and I was just so
7 scared, honestly. I was so scared, I did not know what to
8 do. I just stood there. And within a few moments, I heard
9 Jesse yell out, "Get in the car and drive away." I remember
10 those distinct words, over and over again, "Get in the car
11 and drive away." At that point, the gun was pointed right
12 at me, at that point, and he turned toward Jesse; at which
13 point, I went between the two cars, towards the side of the
14 road to find my daughter, and get behind the U-Haul. So at
15 that point, as I was backing up, I heard gunshots and I
16 literally grabbed my daughter and ran and hid behind the U-
17 Haul, which was the third -- it was after Jesse's truck, you
18 know, in the far back. So the car was up here and the U-
19 Haul was back here, so we were further away, back behind the
20 U-Haul, but the car was still up here and there were these
21 gunshots, a least a bullet hole sustained in my truck.

22 Q So your truck was hit?

23 A Yes, ma'am. I don't know when or where, I just know
24 that my truck has a hole by the mirror and it has a hole in
25 the seat, and the bullet went in the car and through my seat

1 and into my yoga blanket, that was behind the seat. I mean,
2 the car was full of stuff, so I'm just glad that we moved
3 the truck, and it still had the dog, because we had the dog
4 with us, too.

5 Q Were you able to determine the type of car these people
6 were in?

7 A I would not be able to identify the car. All I know is
8 that it was a big four-door sedan and that it was a light
9 color.

10 Q Okay. Were you able to determine who shot first?

11 A No, ma'am.

12 Q Okay. What happened after you ran behind the U-Haul?

13 A Well, as I was running, Jesse was saying, "Get in the
14 car and drive away. Get in the car and drive away." I had
15 left my cell phone on the bumper of my truck. My daughter's
16 cell phone was out of battery. So we had no way to -- my
17 daughter had -- my daughter had her husband's phone, but not
18 right away. So I'm talking to her, and then Jesse was
19 there, and then we got the cell phone and Amanda tried to
20 call 911, but we were shaky and upset, and it was an
21 unfamiliar phone, so we weren't having a lot of luck with
22 that.

23 Q When did these -- or were you able to determine when
24 the person left?

25 A Yes. We were back behind the U-Haul and you could hear

1 the car go off a ways, and I'm not sure if it went -- it
2 gets foggy right there. I mean, I was really just so afraid
3 and I was just holding my daughter and thanking God that
4 Jesse was there.

5 Q When this person jumped out of the car and pointed a
6 gun at you and said that to you, what did you think was
7 happening?

8 A I thought I was being robbed or like -- you know, I
9 thought -- I really thought I was going to die for a moment.
10 I didn't think that I was going to get out of there. I
11 thought that -- I was just so scared. I thought that was
12 the end and here I am in the middle of nowhere, on the road
13 with my daughter, and I -- I don't -- I mean, those thoughts
14 that were there, I just remember being completely
15 dumbfounded, not knowing what to do, not knowing what to
16 say, just -- did I answer the question?

17 Q Yes. I just have a couple more questions for you, Ms.
18 Metzfield. Did you move your car after the shooting? Did
19 you move your vehicle at all?

20 A No.

21 Q Okay. Had you ever been in Colleton County before that
22 incident?

23 A No.

24 Q Ever seen either of these two guys before?

25 A No.

1 Q So you didn't have any prior history with arguments or
2 any other issues with anybody here in Colleton County?

3 A No.

4 Q And other than the two bullet holes that you talked
5 about in your truck, was there any other damage?

6 A Well, there were actually three bullets that hit the
7 car. My back tire was one, so we had to replace the tire,
8 and then, we still have bullet holes in the side. The seat
9 inside the car where the bullet went through, so it came
10 through the door and into the seat and into the back.

11 Q Which back tire was hit?

12 A Interestingly enough, the one that was toward the side
13 of the road. So it would have been on the grass side of the
14 road. So if we were parked here, and here's the stop sign,
15 it would have been that tire, the passenger's back tire.

16 **ASST. SOL. HASELDEN:** May I approach the witness?

17 **THE COURT:** You may.

18 Q Ms. Metzfield, I'm showing you what's been marked for
19 identification purposes only as State's Exhibit Two. Can
20 you review that please?

21 A Yes.

22 Q Can you identify that scene?

23 A Yes. That is my truck and Jesse's truck.

24 Q And is that a truthful and accurate depiction of where
25 your trucks were parked that night?

1 A Yes, ma'am.

2 ASST. SOL. HASELDEN: Your Honor, at this time, I'd ask
3 that State's Exhibit Two be moved into evidence.

4 THE COURT: Any objection as to the defendant McMillan?

5 MR. MATHEWS: No, Your Honor.

6 THE COURT: As to the defendant Jakes?

7 MR. BEACH: No, Your Honor.

8 THE COURT: Ladies and gentlemen of the jury, State's
9 Exhibit Number Two will be admitted into evidence in the
10 trial of this case. You may publish to the jury.

11 (STATE'S EXHIBIT NUMBER TWO IS RECEIVED INTO EVIDENCE.)

12 Q Before I publish, Ms. Metzfield, can you clearly see
13 your truck in that exhibit two?

14 A Yes, I can.

15 Q So which tire was it that was ---

16 A It was the passenger's rear tire, the passenger that
17 had a bullet in it. They actually took the bullet out of it
18 at the repair shop.

19 ASST. SOL. HASELDEN: May I approach and publish?

20 THE COURT: You may. It's in evidence, State's Two
21 without objection.

22 Q Ms. Metzfield, how has this incident affected your
23 life?

24 A (BECOMES EMOTIONAL.) Emotionally, it's probably been
25 the most traumatic because I've always been a person who

1 does not have any prejudice and prides myself on that, but
2 it took me probably two months before I could not be afraid
3 of -- of black men that I didn't know. If I was walking
4 into a convenience store or -- or -- or anything. So it's
5 affected me that way, and it's caused me to be a lot more
6 cautious and never drive at night. There were nights when I
7 needed someone to go with me if I went somewhere at night in
8 my car, I couldn't go alone.

9 **ASST. SOL. HASELDEN:** A moment's indulgence, Your
10 Honor.

11 Q I have no further questions for you, Ms. Metzfield. If
12 you would answer anything that the defense attorneys have,
13 I'd appreciate it.

14 A Yes, ma'am.

15 **THE COURT:** Cross examination by the defendant
16 McMillan?

17 **MR. MATHEWS:** Thank you, Your Honor.

18 (BRIEF PAUSE.)

19 **MR. MATHEWS:** I have no questions.

20 **THE COURT:** Very well. Cross examination by the
21 defendant Jakes.

22 **MR. BEACH:** Thank you, Your Honor.

23 **CROSS EXAMINATION**

24 **BY MR. BEACH:**

25 Q Ms. Metzfield, were you in the first automobile, the

- 1 first truck?
- 2 A Well, it depends on what time you wanted to ask that
- 3 question about, because I was following Jesse.
- 4 Q When the shooting occurred?
- 5 A When the shooting occurred?
- 6 Q Yes.
- 7 A My truck was the first to the stop sign, yes.
- 8 Q So you were the closest to the car that drove up?
- 9 A I was the closest to the car that drove up.
- 10 Q And where was your daughter?
- 11 A She was behind me at the end or at the door of the next
- 12 car.
- 13 Q So she wasn't with you at your car?
- 14 A No.
- 15 Q All right. Now, did you actually see any of the
- 16 firing, any of the shots being fired?
- 17 A No, sir.
- 18 Q You had already ducked down?
- 19 A I was backing up and going to the -- behind the U-Haul.
- 20 As I stepped backwards, I heard the first shot. The gun was
- 21 already pointed towards Jesse.
- 22 Q All right. Now, the gun was pointed towards you,
- 23 initially?
- 24 A Yes, sir.
- 25 Q And then Jesse got up and spoke; is that correct?

1 A First, the man came out of the car and said, "Get up,
2 pretty lady" with a gun in his hand.

3 Q Right. Then after that, that's when Jesse got up and
4 he said something to them?

5 A That is -- and shortly after that, I heard Jesse yell
6 out, "Get in the car and drive away."

7 Q Okay. That's when you ---

8 A That's when I retreated.

9 Q Okay. And was there any other conversation between
10 Jesse and the man that you recall?

11 A I remember Jesse saying over and over again, "Get in
12 the car and drive away."

13 Q How many times did he say that, do you know?

14 A I would say he said it five times.

15 Q So it was a pretty good time between the first time ---

16 A This was all during -- yes, because there was a lull in
17 the shooting. There was like a few shots and then there was
18 a lull and then there was more shots, and then there was
19 more shots.

20 Q All right. Did you see the other car leave or did you
21 just hear it leave?

22 A I only heard it leave.

23 Q And when he got out of the car and said, "Hey, pretty
24 lady," what did he say?

25 A I heard the "pretty lady" part clearly. He said

1 "Put'em up" or "Get up," something up, pretty lady. "Get
2 up, pretty lady," "Put'em up, pretty lady." Something to
3 that effect, and then he said something else that was
4 inaudible to me.

5 Q So you're not sure whether he said "Put'em up" or "Get
6 up."

7 A Get'em up, put'em up - what exactly -- I don't know
8 exactly what was first.

9 Q Okay. And you were down ---

10 A I was crouched pulling electrical tape up.

11 **MR. BEACH:** I have no further questions, Your Honor.
12 Thank you, ma'am.

13 **THE COURT:** Redirect?

14 **ASST. SOL. HASELDEN:** Briefly, Your Honor.

15 **REDIRECT EXAMINATION**

16 **BY ASST. SOL. HASELDEN:**

17 Q Ms. Metzfield, you said there was a lull in the
18 shooting?

19 A Yes.

20 Q And a pause?

21 A Yes.

22 Q About how long do you think from the time somebody got
23 out of that car that sped up to the time that car left; any
24 estimate that you can give us?

25 A I'm sorry, I would be guessing.

1 Q Okay. That's fine. Thank you.

2 THE COURT: Recross, limited to redirect by the
3 defendant McMillan?

4 MR. MATHEWS: None, Your Honor.

5 THE COURT: By the defendant Jakes?

6 MR. BEACH: None, Your Honor.

7 THE COURT: As to the witness, she wishes to remain?

8 ASST. SOL. HASELDEN: Yes, Your Honor.

9 THE COURT: If you will step down for me, please,
10 ma'am. Watch your step and have a seat in the courtroom.

11 THE COURT: Call your next witness.

12 ASST. SOL. HASELDEN: The State calls Amanda Metzfield,
13 Your Honor.

14 MADAME CLERK: Please place your left hand on the Bible
15 and raise your right.

16 (WHEREUPON, AMANDA METZFIELD, IS DULY SWORN.)

17 THE COURT: Come on up here. Watch your step on my
18 stairs. Make yourself comfortable. Pull that microphone
19 closer. It's going to amplify your voice. Speak up so that
20 everyone can hear you in the courtroom. I want you to state
21 your full name and spell your last name for my court
22 reporter.

23 MS. METZFIELD: Amanda Metzfield, M-E-T-Z-F-I-E-L-D.

24 THE COURT: Your witness, Counsel. Speak up for me,
25 now.

1 **ASST. SOL. HASELDEN:** Thank you, Your Honor.

2 **DIRECT EXAMINATION**

3 **BY ASST. SOL. HASELDEN:**

4 Q Ms. Metzfield, have you ever been to Colleton County
5 before?

6 A Yes, I have.

7 Q And do you remember when it was?

8 A About a year ago, right around my sister's birthday.

9 **THE COURT:** You'll need to speak up, Ms. Metzfield.

10 A About a year ago, in June.

11 Q And what were you doing in Colleton County?

12 A We were moving from Richmond. We were going to be
13 restationed in Pensacola, Florida.

14 Q And who is "we"?

15 A Myself and my husband, and my mother was helping us.

16 Q Okay. So how did you end up stopping in Colleton
17 County?

18 A We had been driving since Richmond, and my mother's car
19 was having troubles and the radiator blew out, so we had to
20 pull over at the nearest exit, which is where we ended up.

21 Q What did you do once y'all stopped?

22 A We switched the cars so that the U-Haul would be on my
23 husband's truck and we could carry it to wherever we needed
24 it. We called a couple of tow places. One man came up in a
25 large truck from the exit and asked if we were all right.

1 He was very sweet and he warned us that we were in a bad
2 area. And then we were switching the U-Haul over and
3 working on that.

4 Q So you were able to make contact with a tow truck or a
5 garage nearby?

6 A We had called Triple A and they said that they were on
7 their way, and we had also called another tow place, and
8 some other places that weren't open. The only place I can
9 remember that was going to help us was Triple A.

10 Q Okay. Do you remember about what time it was?

11 A It was late, around midnight, before midnight.

12 Q What were your impressions about the lighting in the
13 area that you stopped?

14 A There were like three or four really tall streetlights.
15 They had fire ants at the bottom of them, which was not
16 cool. It was not well lit.

17 Q Could you see what you were doing?

18 A Yeah, we could see what we were doing, but, I mean,
19 there were like trees all around, so you couldn't see any
20 further than the road, really.

21 Q Okay. So when did you first realize that something was
22 wrong?

23 A I was just hanging out next to the truck, my husband's
24 truck, the Tacoma, while he was doing the wiring, and my
25 mother was up by her truck. And this light-colored car just

1 comes into the intersection, and this guy jumps out of the
2 back with a gun, and he pointed it at my mom, and that's
3 when I knew something was wrong. He yelled at us, and at
4 first I was going toward the driver's door, because I knew
5 that my husband had a pistol in there, and then my husband
6 jumped out and he was waving at us to get behind the U-Haul,
7 and my mother came towards me and I grabbed her, and we went
8 behind the U-Haul as they were shooting.

9 Q You say "as they were shooting." Who's "they"?

10 A I cannot say positively for sure, because I was not
11 looking.

12 Q Okay. That's fine. Did you hear what a person from
13 that light-colored car said?

14 A No, I did not hear the words that they said, but I knew
15 that they were yelling in an extremely threatening tone, and
16 I was very scared. They weren't friendly looking. You
17 know, they had their face concealed, and obviously did not
18 want us to be able to know who they were.

19 Q Were you able to determine anything about the person?

20 A It was a male, and he was kind of stocky. He had his
21 face covered. He was wearing dark clothing and he was
22 African-American, and that's about it.

23 Q So what did you do once you ran behind the U-Haul with
24 your mom?

25 A I ran behind the U-Haul, and my mom didn't have her

1 phone and my phone was dead from calling the tow places, so
2 I had my husband's phone, which is a Droid, and I don't know
3 how to use those things, because they're touch screen. So
4 I'm in the truck trying to call 911, and the stupid phone
5 won't work.

6 And I get 911 on the phone, and I don't really know
7 where we are, so I'm trying to tell the lady where we are
8 and what's happening. I told her we were being shot at, and
9 I'm, like, really scared, because my husband is out there,
10 and I just thought he was going to get shot and I didn't
11 know what I was going to do. And so I'm trying to talk to
12 the lady on 911, and then my mother tried to take over for
13 me, but she didn't know how to use the phone either, and we
14 lost the call.

15 So we were trying to call back, and I finally get it
16 back, and then I'm trying to put it on speakerphone, because
17 the people have gotten back in their car, and my husband is
18 closer back to where we are. So he tells me to put it on
19 speakerphone so he can talk to them as well. And then he
20 pretty much takes over because they drove further down the
21 road. They stopped at, like, the end of the road, and I
22 thought they were going to come back, and that's when I
23 totally broke down and I couldn't talk on 911 anymore, and
24 my husband took over the call.

25 Q Okay.

1 **ASST. SOL. HASELDEN:** Your Honor, may I approach?

2 **THE COURT:** You may.

3 Q Amanda, I'm going to hand you what's been marked for
4 identification purposes already as State's Ninety-Two.

5 A Okay.

6 Q When you got here this morning, were you given an
7 opportunity to review your 911 call?

8 A Yes.

9 Q And where did you review your 911 call?

10 A In the Solicitor's Office.

11 Q And was it a truthful and accurate depiction of your
12 911 calls, the first time you got disconnected, and then
13 called back?

14 A Yes.

15 Q Okay. And do you recognize the disc in front of you?

16 A Yeah.

17 Q And that was a truthful and accurate depiction of your
18 911 call?

19 A Yes.

20 Q Amanda, were you hurt physically in any way during this
21 event?

22 A I was not.

23 Q Was there any damage to your car?

24 A I did not have a car there, but my husband's car does
25 have a bullet hole in it.

1 Q Okay. So how did this event affect you?

2 A Emotionally. Psychologically.

3 Q How has it affected you?

4 **MR. BEACH:** Your Honor, we would object. I didn't
5 object to the other one, but I don't think it has any
6 relevance.

7 **THE COURT:** Counsel approach.

8 (WHEREUPON, A BENCH CONFERENCE IS HELD OFF THE RECORD
9 AND OUT OF THE HEARING OF THE JURY.)

10 **THE COURT:** Objection's overruled. Rephrase the
11 question, Solicitor, consistent with my bench conference,
12 and I will make a record at the appropriate time, outside
13 the presence of the jury. Proceed.

14 **ASST. SOL. HASELDEN:** Thank you.

15 Q Ms. Metzfield, were you in fear?

16 A Yes.

17 Q Why were you in fear?

18 A Well, at first, I thought I was going to get shot, and
19 then I was mostly afraid for my husband, because, for the
20 most part, my mother and I were behind the U-Haul, and my
21 husband was out there and there were a lot of gunshots, and
22 I just kept thinking that, well, what would I do if he got
23 shot?

24 (WITNESS BECOMES EMOTIONAL.)

25 Q Amanda, I know it was a very stressful event and there

1 was a lot going on, but were you able to determine how long
2 this event lasted?

3 A It was definitely not longer than a half an hour. It
4 was all very fast.

5 Q And you say a half an hour. Is that how long a person
6 was actually standing out there on the road and gunfire was
7 being exchanged?

8 A No.

9 Q How long is that?

10 A From the time when the car pulled up to the time when
11 the police got there, I would say it was not more than a
12 half an hour.

13 Q Okay. Do you have any idea of the amount of time how
14 long the car was there, from the time it pulled up to the
15 time it left?

16 A Guessing, I would say around 15 minutes.

17 Q Did you ever see any of these two men before?

18 A No, ma'am.

19 Q You've never had any history of arguments or
20 disagreements with them?

21 A No.

22 Q Never been in a previous altercation with them?

23 A No.

24 **ASST. SOL. HASELDEN:** Just a moment's indulgence, Your
25 Honor.

1 Q Amanda, I have no further questions for you. If you
2 would answer anything that defense counsel has, I'd
3 appreciate it.

4 THE COURT: Cross-examination by the defendant
5 McMillan.

6 MR. MATHEWS: None, Your Honor.

7 THE COURT: Cross-examination by the defendant Jakes.

8 MR. BEACH: Just a couple, Your Honor.

9 THE COURT: Yes, sir.

10 CROSS-EXAMINATION

11 BY MR. BEACH:

12 Q Did you actually see the gunshots being fired?

13 A No, sir.

14 Q Okay. And you were down behind the U-Haul at that
15 time?

16 A No, I was going towards behind the U-Haul.

17 Q Okay. But you didn't see who fired?

18 A No.

19 Q Now, you say you did not understand what was being said
20 between the gentleman and your mother?

21 A I do not recall my mother saying anything, and no, I
22 could not understand the man.

23 Q And what time of night was it again?

24 A Around before midnight.

25 MR. BEACH: No other questions, Your Honor. Thank you.

1 **THE COURT:** Redirect?

2 **ASST. SOL. HASELDEN:** Just briefly.

3 **REDIRECT EXAMINATION**

4 **ASST. SOL. HASELDEN:**

5 Q Amanda, you say that you weren't able to understand the
6 exact words, but you were able to determine the tone?

7 A Yes.

8 Q What kind of tone was that?

9 A It was very threatening.

10 **ASST. SOL. HASELDEN:** Nothing further, Your Honor.

11 **THE COURT:** Recross by the defendant McMillan, limited
12 to redirect?

13 **MR. MATHEWS:** Nothing, Your Honor.

14 **THE COURT:** Recross by the defendant Jakes, limited to
15 redirect?

16 **MR. BEACH:** No, Your Honor.

17 **THE COURT:** This witness is going to remain with us,
18 Solicitor?

19 **ASST. SOL. HASELDEN:** Yes, Your Honor.

20 **THE COURT:** You may step down, Ms. Metzfield, and
21 remain in the courtroom with us. Watch your step on my
22 stairs.

23 **MS. METZFIELD:** Thank you, Sir.

24 **THE COURT:** Call your next witness.

25 **ASST. SOL. HASELDEN:** The State calls Jesse King.

1 **MADAME CLERK:** Place your left hand on the Bible and
2 raise your right.

3 (WHEREUPON, MR. JESSE KING, IS DULY SWORN.)

4 **THE COURT:** Have a seat. Make yourself comfortable.
5 Adjust that chair, adjust that microphone. Speak into it
6 and speak up for me, if you would, please, and spell your
7 last name for the court reporter after you state your first
8 name.

9 **MR. KING:** Jesse Tyler King, K-I-N-G.

10 **THE COURT:** Your witness, counsel.

11 **ASST. SOL. HASELDEN:** Thank you, Your Honor.

12 **DIRECT EXAMINATION**

13 **BY ASST. SOL. HASELDEN:**

14 Q Mr. King, where are you from?

15 A I'm from Richmond, Virginia, ma'am.

16 Q And what do you do for a living?

17 A I'm a Specialist in the United States Army.

18 Q How long have you been doing that?

19 A Just over four years, ma'am.

20 Q And how old are you?

21 A I'm 26.

22 Q You went in when you were 22, 21?

23 A Yes, ma'am.

24 Q And you said you were a Specialist. What kind of
25 Specialist are you?

1 A I'm an explosive disposal specialist. I work with
2 bombs.

3 Q And what do you do with bombs?

4 A Basically, we'll go into a hazardous situation and
5 render them safe so other troops can pass through the area
6 bombs and roadside explosive -- improvised explosive
7 devices, IED's.

8 Q Have you ever been deployed?

9 A Yes, ma'am.

10 Q When and where?

11 A I was in Baghdad, Iraq, from November of '08 to
12 November -- the end of November '09.

13 Q And you were working with IED's and other types of
14 things in your specialty at that time?

15 A We did come into contact with those. At that time, I
16 was actually an Infantryman.

17 Q Part of your training with the U.S. Army, are you
18 trained how to deal with tense situations?

19 A Yes, ma'am. There were very strict rules of engagement
20 when we were deployed to Iraq.

21 Q Okay. And what type of training have you received
22 regarding firearms?

23 A There's basic rifle marksmanship training during our
24 deployment, and then when I was in Iraq I did some
25 specialized pistol training with the X-Delta Force

1 Operative.

2 Q Okay. Have you ever been in a tense situation before
3 where you've had to use firearms?

4 A No, ma'am. Actually in my whole year in Iraq, I did
5 not have to fire my weapon. However, we were shot at.

6 Q Have you ever been in Colleton County before today?

7 A Yes, ma'am.

8 Q When?

9 A The night of June 3rd a year ago.

10 Q Okay. And what were you doing here?

11 A I was on my way -- I had just had my PCS Orders to
12 travel down to Eglin Air Force Base to start my EOD
13 training.

14 Q Okay. And who was with you that night?

15 A My wife was driving with me in my truck and my mother-
16 in-law was with us driving her truck hauling the U-Haul for
17 us, because I didn't have the proper hitch system.

18 Q What kind of truck do you have?

19 A I drive a Toyota Tacoma.

20 Q How did you end up stopping here?

21 A Basically, we received a phone call from my mother-in-
22 law and she said that her temperature gauge had spiked and
23 that the radiator might have blown; it was steaming. So we
24 decided to pull over at the next available exit just to
25 prevent further damage to her truck, and when we pulled off

1 at the exit, it was just a deserted exit, you know, led off
2 onto just a country road. And so we pulled over on the side
3 of the road, the right-hand shoulder, and started to try and
4 figure out how we were going to get the trucks to anywhere,
5 calling all the tow trucks and what not.

6 Q And were you able to get in touch with any tow trucks?

7 A Yes. Shortly after we pulled over, a guy came off the
8 ramp behind us and stopped and asked if we needed any help.
9 He gave us a couple of numbers of people that he knew that
10 had tow trucks and he warned us that it might have been a
11 dangerous area; it had been in the past.

12 So basically, we did get in contact with the tow truck
13 and they had one on the way. In the meantime, we had to
14 move the trucks around so that we could put the U-Haul on my
15 truck to get it to our hotel room for the night. And when
16 we were -- after we had done that, I was trying to get the
17 brake lights to work on the trailer for my truck, so I was
18 crouched down behind my truck working with the wiring and I
19 heard a noise like a car coming to a very fast halt, kind of
20 screeching.

21 And when I looked from behind my vehicle, I saw --
22 actually, my first thought was, "Wow, that's a really big
23 gun." A man had gotten out of the back passenger side of a
24 silver, four-door type car, and he had it pointed at my
25 mother-in-law; and I was so far back that I didn't hear

1 exactly what he was saying, but it was kind of yelled in
2 somewhat of a pretty threatening manner.

3 And so I stood up, and in the process of standing up, I
4 drew my pistol, and I yelled at him, "Get back in your car
5 and drive away." When that happened, he turned towards me,
6 pointed his gun at me, and fearing for my life and that of
7 my mother-in-law, I shot about two or three times. The
8 person was still standing, still pointing his gun at me, and
9 I shot about two or three more times.

10 At that point, he fell to the ground. There was a lot
11 of yelling from inside the car. They started firing at me
12 from inside the vehicle. I thought that they were probably
13 shooting at me with some sort of automatic weapon. I
14 dropped down behind the tailgate of my truck. The whole
15 time I'm yelling at them to "Get in your car and drive away.
16 Get in your car and drive away."

17 I only had a very small subcompact pistol, and I
18 dropped the magazine on it and counted how many rounds I had
19 left, which were very few; reloaded my weapon. I was really
20 worried that they were going to fight through where I was
21 behind my truck and attempt to kill my family that was
22 behind me. I just kept yelling at them, "Get in your car,
23 drive away."

24 I saw the guy get back into the car and I saw him drop
25 the gun in the process and they drove away. I saw them stop

1 down the road a little ways, and I was really worried that
2 they were going to do a drive-by when they had to turn
3 around to get back onto the interstate. So I got confused
4 on whose truck was whose. I ran up to my mother-in-law's
5 truck to try to find my second pistol that I had in a bag
6 behind my seat; realizing I was at the wrong truck, I ran
7 back to my truck from where I started, grabbed my second
8 pistol from behind my seat, ran back to my mother-in-law and
9 wife to see to make sure that they were okay, and at the
10 same time, I could still see the car. Eventually, the brake
11 lights disappeared, and at that time, I was in the process
12 of talking to 911 on the phone.

13 Q Okay. Were you able to tell anything about the man
14 that got out of the back of the car?

15 A When they got out, I noticed that he had dark-colored
16 clothing on, as well as a dark towel, or t-shirt, wrapped
17 around his face, you know, to disguise that. I could also
18 tell that he was a black male. Other than that, I was
19 focused on the threat of the gun.

20 Q Okay. Were you scared?

21 A Yes. I was really worried about my mother-in-law. She
22 was the closest to him when everything started happening and
23 after the firing started, I didn't see her anymore, and I
24 was really worried about her.

25 Q What did you think was happening to y'all?

1 A When he got out of the car with the gun, I thought that
2 the -- I knew that as I was crouched down behind the truck
3 that they would have only seen my wife and mother-in-law,
4 two white females on the side of the road in the middle of
5 the night, and my mind only travels to the worst things that
6 could have possibly happened to them. And when he pointed a
7 gun at me, I felt my life was in danger as well.

8 Q Okay. So you spoke on the phone to 911 as well?

9 A Yes, ma'am.

10 **ASST. SOL. HASELDEN:** May I approach the witness?

11 **THE COURT:** You may.

12 Q Mr. King, I'm going to show you what's been marked for
13 identification purposes only previously as State's 92. Did
14 you have an opportunity when you got here this morning to
15 review the 911 call?

16 A Yes, ma'am, I did.

17 Q Do you recognize that disc?

18 A Yes, ma'am, I do.

19 Q And did that disc contain a truthful and accurate
20 depiction of your conversation with 911 on the night of June
21 3rd, 2010?

22 A Yes, ma'am, it did.

23 **ASST. SOL. HASELDEN:** Your Honor, at this time, I would
24 move State's Ninety-two into evidence.

25 **THE COURT:** Any objection as to State's Ninety-two,

1 from the defendant McMillan?

2 **MR. MATHEWS:** No, Your Honor.

3 **THE COURT:** From the defendant Jakes?

4 **MR. BEACH:** Yes, Your Honor.

5 **THE COURT:** Counsel approach.

6 (WHEREUPON, A BENCH CONFERENCE IS HELD OFF THE RECORD
7 AND OUT OF THE HEARING OF THE JURY.)

8 **THE COURT:** Objection overruled. I'll make a record at
9 the appropriate time, consistent with the conference at the
10 bench. Proceed Solicitor.

11 **ASST. SOL. HASELDEN:** Your Honor, may I approach then?

12 **THE COURT:** You may.

13 **ASST. SOL. HASELDEN:** Your Honor, State's Exhibit
14 Ninety-two is in evidence.

15 (WHEREUPON, STATE'S EXHIBIT NINETY-TWO IS RECEIVED INTO
16 EVIDENCE, AND THE SOLICITOR PREPARES EXHIBIT NINETY-TWO FOR
17 PLAY IN THE DVD PLAYER.)

18 **THE COURT:** In evidence over objection. You may
19 publish to the jury. Ladies and gentlemen of the jury,
20 State's exhibit Ninety-two will be admitted into evidence in
21 the trial of this case.

22 (WHEREUPON, STATE'S EXHIBIT NINETY-TWO, 911 CALL, IS
23 PLAYED FOR THE JURY. AUDIO BEGINS AT 12:16 P.M. AND ENDS AT
24 12:24 P.M.)

25 Q Mr. King, do you always carry a gun on your person?

1 A I do, now, ma'am.

2 Q Did you before this incident?

3 A Not all the time. Mostly when I was driving or would
4 be in areas that I suspected I might need to have it with
5 me, ma'am.

6 **ASST. SOL. HASELDEN:** May I approach the witness?

7 **THE COURT:** You may.

8 Q Mr. King, I'm handing you what's been marked for
9 identification purposes only as State's One, Three, and
10 Four. And what's previously been entered into evidence as
11 State's Exhibit Two. Could you review One, Three, and Four
12 for me, first?

13 A Yes, ma'am.

14 Q Do you recognize One, Three, and Four?

15 A Yes, I do.

16 Q What are One, Three and Four?

17 A State's Exhibit One is a picture of my concealed carry
18 permit from the State of Virginia.

19 Q Is it a truthful and accurate depiction of your
20 concealed carry permit?

21 A Yes, it is, ma'am. State's Exhibit Three is a picture
22 of my truck and the U-Haul and the scene where we were.

23 Q Okay.

24 A And Four is a picture of my two pistols.

25 Q All right. Are all of those photos a truthful and

1 accurate depiction of both the scene and your pistols and
2 your concealed weapons permit, as they existed on the night
3 of June 3rd, 2010?

4 A Yes, they are, ma'am.

5 **ASST. SOL. HASELDEN:** Your Honor, at this time, I'd
6 move State's One, Three, and Four into evidence and ask to
7 publish.

8 **THE COURT:** As to State's One, Three, and Four, from
9 the defendant McMillan?

10 **MR. MATHEWS:** No objection, Your Honor.

11 **THE COURT:** From the defendant Jakes?

12 **MR. BEACH:** No objection, Your Honor.

13 **THE COURT:** Ladies and gentlemen of the jury, State's
14 Exhibit's One, Three, and Four will be admitted into
15 evidence in the trial of this case without objection.

16 (STATE'S EXHIBIT ONE, PHOTO OF CONCEALED CARRY PERMIT
17 OF JESSE KING, IS RECEIVED INTO EVIDENCE.)

18 (STATE'S EXHIBIT THREE, PHOTO OF TRUCK AND U-HAUL AT
19 CRIME SCENE, IS RECEIVED INTO EVIDENCE.)

20 (STATE'S EXHIBIT FOUR, PHOTO OF TWO GUNS BELONGING TO
21 VICTIM, JESSE KING, IS RECEIVED INTO EVIDENCE.)

22 **THE COURT:** You may publish, Solicitor.

23 **ASST. SOL. HASELDEN:** Thank you.

24 Q Before publishing, Jesse, could you refer to the, I
25 believe, the second photo there, State's Two, showing the

1 two trucks; is that correct?

2 A Yes, ma'am.

3 Q Did you move your truck at all, or the U-Haul, after
4 the shooting occurred?

5 A No, I did not.

6 Q So that, State's Two, is exactly where your vehicles
7 were parked when this shooting occurred?

8 A Yes, ma'am.

9 Q And could you look at the photo of your truck, please?
10 I believe that is State's Three. Where were you standing
11 when this shooting occurred, when you returned fire or tried
12 to defend your family?

13 A When I stood up, I was at the back corner of my truck,
14 between -- so it would be driver's side rear, by the bumper,
15 between the truck and U-Haul trailer.

16 Q And State's Four, is one of those the firearm that you
17 were using?

18 A Yes, ma'am.

19 Q Which one were you using?

20 A The one with the Number 14 placard.

21 Q What kind of gun is that?

22 A It's a Glock 33; it's a .357 Sig; it's their subcompact
23 model.

24 Q To be able to carry those guns legally, you have to get
25 a permit, correct?

1 A Yes, ma'am.

2 Q What did you have to do in the State of Virginia to get
3 that permit?

4 A For the State of Virginia, I had to show proof of a
5 handgun safety course, or a permit, or equivalent training,
6 and fill out an application and have my fingerprints run
7 through the State Police.

8 Q And do you also carry a sidearm as part of your
9 military duty?

10 A No, I do not.

11 Q Okay. But you have gone through training with them ---

12 A Yes, ma'am.

13 Q --- regarding sidearms?

14 A Yes.

15 Q Have you gone through training with them about, if
16 engaged, where to shoot somebody?

17 A Yes, ma'am.

18 Q And where are you supposed to shoot somebody if you
19 have to defend yourself?

20 A Center body mass is what I've always been taught,
21 ma'am.

22 Q Okay. Now, was there any damage to your truck?

23 A Yes, ma'am. I had one bullet hit the front driver side
24 quarter panel of my truck. It went in, curved around in the
25 wheel well, and then struck the pavement below it.

1 Q Okay. Any physical damage to you?

2 A No, ma'am.

3 Q Did you personally observe any damage to your mother-
4 in-law's truck?

5 A I saw it as soon as the whole incident was over, yes,
6 ma'am.

7 Q Okay. How were you able to see to shoot this thing, if
8 it was dark outside?

9 A There were several, just, street lights at the
10 intersection there.

11 Q So you could see him pretty clearly?

12 A Yes, ma'am.

13 Q Can you give me any type of estimate as to how far away
14 that van was from you when you were shooting?

15 A Basically, I just describe it as the two truck lengths
16 that were between us.

17 Q So was it about from me to you?

18 (SOLICITOR STEPS BACK AWAY FROM THE PODIUM TO
19 DEMONSTRATE.)

20 A I would say just a little bit farther, ma'am, but
21 that's close.

22 Q Okay. So just on the other side of this, perhaps?

23 A Yes, ma'am.

24 Q You had no problem seeing the gun in this man's hand?

25 A No, ma'am. That was the first thing that I saw.

1 Q You said he pointed that gun at you?

2 A Yes, he did.

3 Q And then you fired?

4 A Yes, ma'am.

5 Q What did you say to this guy?

6 A At the whole time, all I really wanted them to do was
7 leave. Basically, everything I yelled was, "Get in your car
8 and drive away. Get in your car and drive away." I just
9 pretty much kept saying that throughout the entire time
10 because I just wanted them gone.

11 **ASST. SOL. HASELDEN:** Your Honor, may I approach and
12 publish?

13 **THE COURT:** You may. One, Three, and Four in evidence.

14 (ASST. SOL. HASELDEN GIVES THE JURY THE STATE'S
15 EXHIBITS ONE, THREE AND FOUR FOR REVIEW.)

16 Q Jesse, how did you shoot when you shot this firearm?
17 Was it steady shooting?

18 A Yes, ma'am. I fired two to three shots, and then
19 basically assessed the situation. He was still standing, as
20 well as still pointing the firearm at me, and that's when
21 they began shooting from the vehicle as well, so I fired two
22 or three more rounds and took cover behind my truck.

23 Q Okay. Were you able to determine where the shooting
24 was coming from in the car?

25 A No, ma'am. All I saw were the two people in the front

1 seat, so I knew it was the front of the vehicle.

2 Q Okay. Were you able to determine if there was anybody
3 else in the backseat of the car?

4 A I only saw the three people in the vehicle. The two in
5 the -- the driver, the passenger, and then the man who got
6 out.

7 Q Okay.

8 **ASST. SOL. HASELDEN:** Just a moment's indulgence, Your
9 Honor.

10 (BRIEF PAUSE IN THE COURTROOM.)

11 **ASST. SOL. HASELDEN:** Your Honor, may I approach?

12 **THE COURT:** You may.

13 **ASST. SOL. HASELDEN:** And Your Honor, prior to marking
14 them, these guns have been made safe by the Sheriff's Office
15 and they are unloaded and have chamber locks through them.

16 **THE COURT:** Very well. They are not capable of being
17 used?

18 **ASST. SOL. HASELDEN:** They are not capable of being
19 used.

20 **THE COURT:** Is it your intention to introduce them?

21 **ASST. SOL. HASELDEN:** Yes, Your Honor.

22 **THE COURT:** Proceed.

23 Q Mr. King, I'm handing you what's been marked for
24 identification purposes only as State's Eighty-five, Eighty-
25 five A, Eighty-six and Eighty-six A. Please review those.

1 **THE COURT:** Refer to the Exhibit number when you're
2 referring to them, for the record, so the court reporter
3 knows what you're holding by number.

4 A State's Exhibit Eighty-six, it is my Glock 33, .357
5 Sig. State's Exhibit Eighty-five, it is my H&K, USP, 9 mm
6 compact.

7 Q And are you able to determine as to two items in
8 Eighty-five A, and Eighty-six A, are those the ammunition
9 that was with those firearms? Yeah, they're sliced at the
10 bottom. You can take that out if you need to.

11 A That's okay. Those, Eighty-five A, are the Federal
12 Hydro-shok, two, hollow points, and Eighty-six A are the DPX
13 deep penetrating hollow points.

14 Q Were both of those guns loaded that night?

15 A Yes, ma'am.

16 Q You stated at one point that you had to reload your
17 firearm?

18 A I dropped my magazine to count the rounds I had left,
19 because they were still there firing. I did not have a lot
20 of ammunition left, so I was really worried that they were
21 going to come closer to try to attack my family, so I stayed
22 where I was and did not fire anymore.

23 Q Okay. Do you know how many times they fired at you?

24 A I do not.

25 Q So more than once?

1 A They fired -- I know they fired at least four times,
2 because that's how many times our trucks were hit and other
3 than that, I don't know.

4 Q Okay. And how many times did you fire?

5 A I fired six times.

6 Q Did you stop shooting once the man fell and dropped his
7 gun?

8 A Yes, I did.

9 Q Why?

10 A Because at that time, he was no longer a threat or
11 capable of firing his weapon at me.

12 **ASST. SOL. HASELDEN:** Just a moment's indulgence.

13 Q Mr. King, I have no further questions for you. If
14 you'd answer any questions that these attorneys have, I'd
15 appreciate it.

16 A Yes, ma'am.

17 **THE COURT:** Cross-examination by the attorney for
18 defendant McMillan?

19 **MR. MATHEWS:** None, Your Honor.

20 **THE COURT:** Cross-examination by the attorney for
21 Defendant Jakes?

22 **MR. BEACH:** May it please the Court?

23 **THE COURT:** Yes, sir.

24 **CROSS-EXAMINATION**

25 **BY MR. BEACH:**

1 Q Mr. King, you stated earlier they were shooting at you.
2 The man got out of the car and never fired his weapon, did
3 he?

4 A I couldn't say for certain. I know it was pointing at
5 me and it was very dark.

6 Q You testified that he pointed at you and you fired at
7 him.

8 A I did fire, yes, sir.

9 Q And you fired twice?

10 A Two to three rounds, sir.

11 Q Okay. And then he didn't fall down, so you fired
12 again?

13 A Yes, he was still pointing his weapon at me.

14 Q Okay. But you don't recall him actually firing at you?

15 A There were rounds being fired from that direction, sir.

16 Q Now, you say, how many guns were firing out of the car?

17 A I only heard eight gunshots coming from the car, so I
18 couldn't tell you how many pistols there were, sir.

19 Q All right. Was that coming from the front seat of the
20 car or the back seat of the car?

21 A It appeared to be from the front, sir.

22 Q The front seat. And was the person hanging out the car
23 shooting or could you tell?

24 A I could not tell you, sir.

25 Q Now, you did not hear what was said earlier between the

- 1 man and your mother-in-law; is that correct?
- 2 A Not specifically, sir.
- 3 Q Was it a threatening ---
- 4 A It was definitely a threat, sir.
- 5 Q Did anybody else get out of the car?
- 6 A No, sir.
- 7 Q And were you able to tell whether there were two people
- 8 in the car or one person in the car, other than the fellow
- 9 who had gotten out?
- 10 A I believe that there were two people in the front seat,
- 11 sir.
- 12 Q One was the driver and the other was the shooter?
- 13 A The passenger, sir.
- 14 Q Now, he was the passenger in the front seat or the back
- 15 seat?
- 16 A The front seat, sir.
- 17 Q The front seat. And that's where the gunshots came
- 18 from?
- 19 A Right, sir.
- 20 Q Okay. When he turned and pointed his weapon at you,
- 21 did he say anything to you?
- 22 A No, sir.
- 23 Q Did you say anything back to him other than "Get in the
- 24 car and go"?
- 25 A No, I just kept repeating to them to "Get in your car

1 and drive away."

2 Q Okay. And I believe somebody earlier had come up and
3 said this was a bad neighborhood?

4 A Yes, sir.

5 Q So you were already on edge; is that correct?

6 A I always have my weapon on me, sir.

7 Q Did you have it on you at the time or was it in the
8 car?

9 A Yes, sir. I carry it with me. I have a concealed
10 carry permit.

11 Q You had a second gun in the car, also?

12 A Yes, sir.

13 **MR. BEACH:** I have no other questions, Your Honor.

14 Q Thank you, Mr. King.

15 A No problem, sir.

16 **THE COURT:** Redirect?

17 **ASST. SOL. HASELDEN:** Just briefly.

18 **REDIRECT EXAMINATION**

19 **BY ASST. SOL. HASELDEN:**

20 Q When the man got out of the car with a large pistol,
21 did he come from the front seat or the back seat?

22 A The back seat.

23 Q And you think that there were two people in the front
24 seat of the car?

25 A Yes.

1 Q Were you able to see anything about those two people?

2 A No, ma'am.

3 Q And you think that that is where the rounds were coming
4 from when gunshots were fired at you?

5 A The second time when they were being fired from the
6 vehicle, yes, ma'am.

7 Q Okay. But you weren't able to determine who in that
8 car was shooting at you?

9 A No, ma'am.

10 **ASST. SOL. HASELDEN:** I have nothing further. Thank
11 you.

12 **THE COURT:** Recross, by the defendant McMillan, limited
13 to redirect?

14 **MR. MATHEWS:** Nothing, Your Honor.

15 **THE COURT:** Recross, by the defendant Jakes, limited to
16 redirect?

17 **MR. BEACH:** Nothing, Your Honor.

18 **THE COURT:** This witness is going to remain with us,
19 Solicitor?

20 **ASST. SOL. HASELDEN:** He is going to remain with us.

21 **THE COURT:** Very well. Mr. King, you may step down and
22 you may remain with us.

23 **MR. KING:** Thank you, Your Honor.

24 **THE COURT:** Solicitor, you had left -- without asking
25 to be admitted, so I'm going to ask you to retrieve what has

1 concerned about you not being prejudice by me telling the
2 jury to leave the courtroom, because the jury believes
3 you're trying to cover up something when you ask them to
4 step out, so, I have to fight that and balance it as we can.
5 Very often, you want to engage in a lengthy discussion at
6 the bench and then you are the only one in the courtroom
7 that seems to perceive the jury's hearing everything, but
8 you address those concerns, I'll try to take the side bars
9 up, and for the sake of Counsel for the State, I'll step
10 down to the bottom of the steps and take them up at the
11 bottom of the steps to try to prevent the jury from going in
12 and out. Anything further?

13 **MR. MATHEWS:** No, sir.

14 **THE COURT:** Anything further from the Counsel for
15 defendant Jakes?

16 **MR. BEACH:** No, Your Honor.

17 **THE COURT:** Bring in the jury, please.

18 (2:45 P.M., 8-30-11, WHEREUPON, THE JURY ENTERS THE
19 COURTROOM AND THE FOLLOWING IS HELD ON THE RECORD.)

20 **THE COURT:** All right. Madame Foreperson, ladies and
21 gentlemen of the jury, we're now going to continue with the
22 testimony in the trial of this case. Thank you for your
23 patience. Solicitor, you may call your next witness.

24 **ASST. SOL. SHELTON:** Thank you, Your Honor. The State
25 calls James Davis, Jr.

1 **THE COURT:** Mr. Davis, please come around and be sworn
2 by the Clerk.

3 **MADAME CLERK:** Please come forward and be sworn.

4 WHEREUPON, THE WITNESS, JAMES DAVIS, JR., IS DULY
5 SWORN.

6 **THE COURT:** Come right on up. Watch these stairs for
7 me. Step up here and have a seat on the witness stand. I
8 want you to pull that chair up to that microphone. I want
9 you to speak in that microphone and speak up so everybody on
10 this jury can hear you, and also, the people in the
11 Courtroom.

12 I want you to begin by stating your full name and
13 spelling your last name.

14 **MR. DAVIS:** James Davis, D-A-V-I-S.

15 **THE COURT:** Very good. Your witness, Counsel.

16 **ASST. SOL. SHELTON:** Thank you, Your Honor. May it
17 please the Court.

18 **DIRECT EXAMINATION**

19 **BY ASST. SOL. SHELTON:**

20 Q Mr. Davis, you got to speak up like the judge said.
21 Can you hear me?

22 A Yes, sir.

23 Q Okay, I can hear you if you keep talking like that; all
24 right? You said your name was James Davis, are you a Senior
25 or a Junior?

- 1 A Junior.
- 2 Q What's your dad's name?
- 3 A James Davis.
- 4 Q Where do you live?
- 5 A Smoaks.
- 6 Q Where about?
- 7 A 211 Johnsville Road, South Carolina.
- 8 Q How do you get to Johnsville Road from Walterboro?
- 9 A You can either take -- well, I take Bells Highway.
- 10 Then merge off of Stokes Road and then you turn and make a
- 11 right by the post office, then you'll be on Ruffin Road, and
- 12 you come straight into Smoaks from there.
- 13 Q Okay. Have you lived there your whole life?
- 14 A Partially.
- 15 Q I'm sorry?
- 16 A Partially.
- 17 Q Now, do you go by any other name besides James Davis?
- 18 A Yes, sir.
- 19 Q What's that?
- 20 A Chippy.
- 21 Q How'd you get that name?
- 22 A My granddaddy.
- 23 Q You're granddaddy give it to you or that's his name?
- 24 A He gave it to me.
- 25 Q Is that what most of your friends call you?

- 1 A Yes, sir.
- 2 Q Can I call you Chippy?
- 3 A Yes, sir.
- 4 Q All right. Would you rather be called Chippy or James?
- 5 A You can call me Chippy.
- 6 Q Okay. Did you go to high school?
- 7 A Yes, sir.
- 8 Q Where did you go?
- 9 A Colleton High.
- 10 Q Did you graduate?
- 11 A Yes, sir.
- 12 Q What year did you graduate?
- 13 A '09.
- 14 Q What did you do after high school?
- 15 A I tried to enroll in the military.
- 16 Q I'm sorry?
- 17 A First, I got a job, then later on I resigned from my
- 18 job, and then I tried to enroll in the military.
- 19 Q What job were you working at?
- 20 A Husqvarna, it's a plant in Orangeburg.
- 21 Q Did you work anywhere before that while you were in
- 22 high school?
- 23 A Yeah, I had a job all through high school. I was
- 24 working at Subway.
- 25 Q Subway?

1 A Subway in St. George.

2 Q St. George. What did you do at Husqvarna?

3 A Well, I was working on an assembly line; painting parts
4 onto a lawnmower.

5 Q Do you know a guy named David Jakes?

6 A Yes, sir.

7 Q Does he have another name?

8 A Yes, sir.

9 Q What's his other name?

10 A Dinky.

11 Q Dinky, is that his nickname?

12 A Yes, sir.

13 Q Do you see Mr. David Jakes in the courtroom today?

14 A Yes, sir.

15 Q Will you point him out for the jury?

16 A (WITNESS INDICATES BY POINTING.)

17 **ASST. SOL. SHELTON:** Please let the record reflect that
18 the witness has pointed at the defendant, Mr. David Jakes,
19 sitting next to his counsel, Mr. Harris Beach.

20 Q Do you know a fellow named Antwan McMillan?

21 A Yes, sir.

22 Q Does he have a nickname?

23 A Yes, sir.

24 Q What's his nickname?

25 A Rat.

1 Q What's that?

2 A Rat.

3 Q How do you spell that?

4 A R-A-T.

5 Q Is he in the courtroom today?

6 A Yes, sir.

7 Q Do you see him in the courtroom?

8 A Yes, sir.

9 Q Will you point him out for the jury?

10 A (WITNESS INDICATES BY POINTING.)

11 **ASST. SOL. SHELTON:** Please let the record reflect that
12 Mr. James Davis, Jr., has pointed to Mr. Antwan McMillan who
13 is seated next to his attorney, Mr. David Mathews.

14 Q Now, Mr. Davis, let's talk about June of last year,
15 okay? That would be in 2010. How well do you know Dinky, or
16 Mr. Jakes, over there?

17 A I know him pretty good. I've known him about a couple
18 of years. I've known him all my life, basically, we stay in
19 the same neighborhood, so everybody knows everybody; it's a
20 small community.

21 Q And you say you know him pretty well, do ya'll hang out
22 together? Do you consider yourselves friends, childhood
23 friends? What do y'all do together?

24 A We hang out every so often.

25 Q What about Mr. Antwan McMillan?

- 1 A I know him from being around the neighborhood. I don't
2 know him too good.
- 3 Q You say "around the neighborhood," how far away do you
4 live from David Jakes?
- 5 A Like three minutes.
- 6 Q Three minutes away driving?
- 7 A Driving.
- 8 Q What about from Antwan McMillan?
- 9 A It's closer.
- 10 Q Is there a lot of people who live up there or a few
11 amount of people?
- 12 A A few, it's a handful.
- 13 Q Do you know a Brenda McMillan?
- 14 A Do I know a person? no.
- 15 Q Do you who she is?
- 16 A I know that's his mother, but I don't know ---
- 17 Q Who's mom?
- 18 A Antwan.
- 19 Q Ms. Brenda McMillan is Antwan's mother?
- 20 A Yeah.
- 21 Q Does she live with Antwan?
- 22 A I assume so.
- 23 Q Yes or no?
- 24 A Yes.
- 25 Q Now, on June 3rd, 2010, do you remember that day?

- 1 A Yes, sir.
- 2 Q You got in trouble that day, didn't you?
- 3 A Yes, sir.
- 4 Q Are you ready to talk and tell the jury what happened
- 5 that day?
- 6 A Yes, sir.
- 7 Q Are you ready to tell them the truth?
- 8 A Yes, sir.
- 9 Q Now, June 3rd, 2010, let's take it from the beginning.
- 10 What did you do that day? Earlier in the day, during the
- 11 day, what were you doing?
- 12 A In the house, with my girlfriend, watching TV and just
- 13 chilling.
- 14 Q What's you girlfriend's name?
- 15 A Jasmine Morell.
- 16 Q Do ya'll have any babies or kids together?
- 17 A We've got one.
- 18 Q How old is he?
- 19 A He's a newborn.
- 20 Q What's his name?
- 21 A Keanan Davis.
- 22 Q How old is he now?
- 23 A Like three months.
- 24 Q Are you still with her?
- 25 A Yes, sir.

- 1 Q Your girlfriend?
- 2 A Yes, sir.
- 3 Q You were hanging out with her?
- 4 A Yeah, we was at the house -- at my sister's house.
- 5 Q Did you ever leave the house?
- 6 A At any time? No.
- 7 Q You didn't leave the house all day?
- 8 A All day? No, we were in the house all day.
- 9 Q Did you ever do anything with your dad that day?
- 10 A Yeah, he came over there and got me out the house and
- 11 told me to help him with the yard, my sister's yard.
- 12 Q What time was that?
- 13 A It had to have been in the afternoon, probably, like
- 14 mid day.
- 15 Q Midday. You said your sister's yard. Where is your
- 16 sister's yard?
- 17 A Next door to my house.
- 18 Q So you've got two houses that are right next door to
- 19 each other?
- 20 A Yeah. My parents stay next door to my sister's.
- 21 Q Okay. So you went to help cut grass with your dad for
- 22 your sisters yard.
- 23 A Correct.
- 24 Q How long were you cutting grass?
- 25 A We were cutting grass. We had to edge the trees up.

1 We were basically, like, rearranging stuff out in the yard,
2 so we had been out there, basically, until dark.

3 Q So you were cutting grass and working on the yard?

4 A Uh-huh (affirmative).

5 Q What time again -- was this June 3rd?

6 A Yeah, June 3rd.

7 Q And you were out there until dark?

8 A Uh-huh (affirmative).

9 **THE COURT:** Say "yes" or "no."

10 A Yes, sir.

11 Q Please say yes or no. Don't shake your head or nod
12 your head like the judge said, okay? What did you do after
13 you finished mowing the yard; what were you doing?

14 A Me, my sister, and my girlfriend had walked over to my
15 dad's house and we were over there chilling and eating.

16 Q Did you receive a phone call from anybody?

17 A Yeah, I got a phone call.

18 Q So you were chilling and eating and you got a phone
19 call?

20 A Correct.

21 Q Who called you?

22 A Dinky.

23 Q Who's Dinky, again?

24 A David.

25 Q David Jakes, sitting over there?

1 A Yes, sir.

2 Q What did he say?

3 A He asked me do I want to ride with him to Walterboro to
4 hook up with some girls.

5 Q With some girls?

6 A Correct.

7 Q You had a girlfriend at that time, correct?

8 A Correct.

9 Q What were you doing with those girls?

10 A I'd rather not get into that.

11 Q Okay. All right. Just got to say that. You were
12 calling these girls and you were going to ride with Dinky to
13 Walterboro?

14 A Correct.

15 Q Now, what did you do then? After he called you, what
16 did you do?

17 A Well, I chilled for like a little minute, then I left.
18 Then me, my sister, and my girlfriend left and walked to her
19 house. Then, my girlfriend left and went back to her house
20 in Ehrhardt, but I just chilled, and I washed up and got
21 ready then he came and picked me up.

22 Q Who is he?

23 A David Jakes.

24 Q What was he driving?

25 A Cadillac. Gray Cadillac.

1 Q Gray Cadillac? How many doors does that Cadillac have?

2 A It was a four door?

3 **ASST. SOL. SHELTON:** May I approach, Your Honor?

4 **THE COURT:** You may.

5 Q Mr. Davis, Chippy, I'm going to hand you what has been
6 previously marked for identification purposes, that means
7 you don't show it to the jury, okay?

8 A Correct.

9 Q State's Exhibit Number 7; do you recognize that?

10 A Yes, sir.

11 Q What is in that picture?

12 A I recognize it; it's the Cadillac. I recognize the
13 plates.

14 Q And who's Cadillac is it?

15 A J.J.'s car. Timothy's.

16 Q Was that the car that you were picked up in that night?

17 A Yes, sir.

18 Q Okay. Who was driving it when they picked you up from
19 your sister's house?

20 A Dinky.

21 Q At this point, you know, you might not remember what
22 time it was, but was it dark or light?

23 A It was dark.

24 Q It was dark when you finished mowing grass, right?

25 A Correct.

1 Q You were eating then you went over to your sister's
2 house, correct?

3 A Correct.

4 Q And then you washed, right?

5 A Correct.

6 Q And then he came to pick you up?

7 A Yes, sir.

8 Q So it's been dark since you got back from the mowing
9 the grass, and he came to pick you up, correct?

10 A Correct.

11 Q When he came to pick you up, was there anyone in the
12 car besides him?

13 A No, just him.

14 Q Did you get in the car?

15 A Yes, I got in. Yes, sir.

16 Q Exactly where did you go directly from your sister's
17 house then?

18 A To Antwan's house.

19 Q Where does Antwan live?

20 A Like ten minutes away from me, 217.

21 Q On Highway 217?

22 A Yes, sir.

23 Q And when you went there, who did you see there?

24 A Antwan.

25 Q Did you get out of the car?

- 1 A No, sir.
- 2 Q Who got out of the car?
- 3 A Dinky got out of the car.
- 4 Q Why did he get out of the car?
- 5 A I guess to talk to Antwan; they were talking.
- 6 Q Did anybody else get in the car again besides Dinky?
- 7 A When Dinky got in the car, Antwan got in the car back
- 8 with him.
- 9 Q Now, at that point, who got in the driver's seat?
- 10 A Dinky got back in the driver's seat.
- 11 Q Dinky got back in the driver's seat at that point?
- 12 A Correct.
- 13 Q Okay. And then where did you go?
- 14 A Then we went to Dinky's grandmother's house.
- 15 Q Where is that?
- 16 A Clatty Farm Road. No more than three minutes from
- 17 Antwan's house.
- 18 Q How did you get from Antwan's house to Dinky's house on
- 19 Clatty Farm Road?
- 20 A Make a right off 217, the first right.
- 21 Q You say it only takes a couple of minutes to get there?
- 22 A Yeah, only a couple of minutes, if that.
- 23 Q Okay. So, when you got to that house, what happened
- 24 then?
- 25 A Dinky went into the house and said he had to grab

1 something really quick.

2 Q All right. And how long was he in there for?

3 A Short amount of time, basically, like a run in and run
4 out thing.

5 Q When he got back out of the car, what happened? When
6 he got back out of the house, excuse me, what happened?

7 A By the time he had got back out of the house, Antwan
8 had already switched drivers, he said he was going to drive
9 from there on in, so, he got out the back seat and hopped in
10 the driver's seat. When Dinky came out, Antwan was already
11 in the driver's seat, so Dinky went ahead and got in the
12 back.

13 Q So Dinky got in the backseat at that point?

14 A Correct.

15 Q Antwan got in the driver's seat?

16 A Correct.

17 Q Where were you seated?

18 A Passenger seat.

19 Q Passenger seat in the front or the back?

20 A Front.

21 Q So the front right passenger seat, in that Cadillac
22 that you just saw?

23 A Correct.

24 Q Why did Antwan want to drive, do you know?

25 A I don't know.

1 Q So, at that point, Antwan was driving?

2 A Correct.

3 Q Dinky was in the back seat?

4 A Correct.

5 Q You were in the front passenger seat?

6 A Correct.

7 Q Where do you go from there?

8 A We was headed to Walterboro down Clatty Farm Road,
9 headed towards Mount Carmel Road.

10 Q Okay. So when you get to Mount Carmel Road, how do you
11 get towards Walterboro?

12 A Make a left at the stop sign -- at the end of Clatty
13 Farm Road make a left.

14 Q Then, what do you do?

15 A Keep straight.

16 Q Did you keep going to Walterboro? Did you turn off?
17 Did you stay on Mount Carmel Road all the way to the end?
18 How did you keep going to Walterboro?

19 A We turned off; we made a left on McLeod Road.

20 Q Okay. Why did you make a left on McLeod Road, do you
21 know?

22 A I guess he figured it was a shortcut -- it is a
23 shortcut.

24 Q All right. How? Hop on 95?

25 A No, just to go straight through. You don't need to hop

1 on 95, when you can just go straight through and merge on
2 15.

3 Q Okay. Now, I'm going to get to the nitty-gritty of
4 this. So you're on McLeod Road, correct?

5 A Correct.

6 Q You're in that Cadillac that I showed you earlier,
7 right?

8 A Correct.

9 Q Antwan's in the front driver seat, David Jakes is in
10 the back seat, you're in the front passenger seat, right?

11 A Correct.

12 Q Okay. You're driving down McLeod Road, what is the
13 next thing you remember?

14 A I remember passing three people on the side of the road
15 like they were having car trouble or tire problems or
16 whatever, on the ramp coming off of 95.

17 Q Do you remember who they were? You may not remember
18 what they looked like; do you remember whether they were
19 guys, girls, how many there were?

20 A There were girls and guys.

21 Q You sure?

22 A Yeah, I'm sure.

23 Q And then, after you pass them, what happened?

24 A What happened after we passed them? Well, after we
25 passed them, I guess like I said, we didn't notice

1 everybody, because everybody just looked -- you know what I
2 mean? Because the lights was -- Antwan came up with the
3 idea, like, you know what I mean, he was telling us that's
4 an easy lick, you know what I mean ---

5 Q It's a what?

6 A Easy lick.

7 Q What is a "lick"?

8 A A robbery.

9 Q Antwan said that?

10 A Correct.

11 Q What happened next?

12 A He asked us if were we down with it, and I was like,
13 "No man, I ain't down. I ain't down with that, man. It's
14 stupid." I was explaining how stupid it was and he was
15 getting Dinky pumped up, Dinky was like, "Yeah, man, I'm
16 down; I'll do it."

17 Q So Dinky was pumped up?

18 A Correct.

19 Q It was Antwan's idea?

20 A Correct.

21 Q And you just said, no?

22 A Correct.

23 Q Are you telling the truth?

24 A Correct.

25 Q Then what happened?

1 A Then, after we ride, we were down at, like, I don't
2 know, the time felt like it was going by fast ---

3 Q Did you turn around or did you just keep going? What
4 happened?

5 A We turned around after they had been planning it out,
6 we had turned around; and by the time we turned around, we
7 stopped -- we stopped like sideways facing ongoing traffic.

8 Q Okay. You say you stopped sideways, facing ongoing
9 traffic?

10 A Yeah, anybody that was coming off the ramp, that was
11 ongoing traffic, if you're coming off the ramp at 95 we was
12 parked sideways like blocking them.

13 Q So you were blocking the ramp off of 95?

14 A Correct.

15 Q How many cars were out that you saw?

16 A I think it was like, like, two.

17 Q And then what do you remember happened?

18 A I remember as soon as we stopped, before I could say
19 anything, David had done hopped out the car.

20 Q You said David?

21 A Yeah. He hopped out the car running towards, not
22 running towards -- like facing towards the people who was on
23 the side of the road, pointing the gun telling them to "Give
24 it up."

25 Q He was saying what?

1 A "Give it up."

2 Q Did he say anything else?

3 A All I heard was "give it up."

4 Q What were you doing at this time?

5 A I was just like panicking, looking around, and started
6 panicking.

7 Q Show the jury what you were doing.

8 A What I was doing? I was just looking around at what
9 was going on, like, dang, and before I could say anything,
10 it happened too quick, and then I just heard gunshots.

11 Q When you heard gunshots, what did you do?

12 A I ducked down for cover.

13 Q How did you duck down for cover?

14 A Like this. I ducked down to the floorboard of the car
15 on the passenger's side with the glove department. Yeah.

16 Q Then what happened?

17 A Then after that, the gunshots didn't cease, and Rat was
18 telling me, "Get out the car. Go get Dinky," telling me to
19 get out the car and go pick him up and go get him, but I was
20 like, "Nah, man, I ain't getting out," you know what I mean?
21 I was scared; and no, I ain't getting out. And he was like,
22 "Man, get out, get out, get out."

23 Q Then what happened?

24 A Then after that, I was still down, and Rat, he was
25 reaching over me and started firing shots.

1 Q He did what?

2 A Started firing shots.

3 Q He did what over you?

4 A Started firing shots.

5 Q How did he do that? Where were you again?

6 A I was still in the same position -- same position by
7 the glove department on the floor panel, like this right
8 here, and he just reached over me and started shooting.

9 Q So, he reached over you and started shooting out the
10 car?

11 A Correct.

12 Q How do you know if he was shooting if you weren't
13 looking at him?

14 A I could hear the gun in my ears.

15 Q What's the next thing you remember after that?

16 A I remember -- I just remember silence after that, like
17 everything was silent. After that, I kind of like tried to
18 open the door to see if Dinky was hit, so I reached behind
19 me like the seat in the Cadillac and opened the door.

20 Q How did you open the door if you were in the front seat
21 like that?

22 A Well, a Cadillac, you know what I mean, the seats are
23 basically like this right here, so it's easy for me to reach
24 back to the door right here and open it.

25 Q Was the seat up? Was the seat back? I don't

1 understand ---

2 A The seat was kind of slant. It went up the point I
3 couldn't get back, but just like slanted a little bit, so I
4 could reach behind me to open the door, like that, grab the
5 handle and not really shove the door all the way open, but
6 just enough; you know what I mean? For him to get in.

7 Q Now, at that point, Dinky, David Jakes, was he walking?

8 A No.

9 Q Where was he?

10 A He was squirming, crawling, like fighting it to crawl
11 in.

12 Q To crawl in the car?

13 A Correct.

14 Q Did you help him get in the car?

15 A The best way I could.

16 Q Did you get out of the car at any point?

17 A No, sir.

18 Q How did you help him get in the car if you didn't get
19 out of the car?

20 A When he was coming up, by the time he was doing good
21 getting himself in, I tried to grab his hands a little bit
22 and raise his hand up so I could grab him and give him as
23 much help as I could with helping him. He's helping himself
24 and we're helping him because, like, he got to get in.

25 Q Okay. Did you shut the door for him or did he shut the

1 door, do you remember?

2 A To tell you the truth I can't, man, it happened so
3 quick, man, I can't even tell you who shut the door.

4 Q Why didn't he just walk to get back in the car?

5 A Because he was shot all over.

6 Q After you had gotten him in the car, what's the next
7 thing you remember happening?

8 A Speeding off.

9 Q Where did you go?

10 A I thought we were about to go to the hospital, but we
11 were going back towards Smoaks. We went down McLeod Road,
12 going in the same direction that we came in.

13 Q From the same direction that you came?

14 A Uh-huh (affirmative).

15 Q So, how would you have gone to the hospital from there?

16 A We could -- at the end of McLeod Road, we could have
17 made a left and that would run you in to Bells Highway,
18 right there in Walterboro.

19 Q But you took a right at the stop, instead?

20 A Yeah, took a right instead of a left.

21 Q Who's driving at this point?

22 A Antwan's still driving.

23 Q Where's Dinky?

24 A In the back seat.

25 Q Where are you?

1 A Front seat.

2 Q You hadn't moved from that front seat?

3 A No, I ain't moved, but I was like turning around, like,
4 trying to keep him company, trying to keep him from going
5 into shock.

6 Q Okay. Did he say anything?

7 A Yeah.

8 Q What did he say?

9 A He was, like, screaming, like, panicking saying, "Take
10 me to the hospital. Get me to the hospital."

11 Q But ya'll turned away from the hospital?

12 A Correct.

13 Q Did you have a cell phone on you?

14 A Correct.

15 Q Did you call 911?

16 A No, sir.

17 Q Did Antwan have a cell phone on him?

18 A I believe so.

19 Q Did he call 911?

20 A No.

21 Q So you're going away from town, away from the hospital,
22 you both have cell phones, you got a fellow that's shot in
23 the backseat, and nobody calls 911?

24 A Correct.

25 Q Now, what's the next thing you remember as you're

1 driving on Mount Carmel Road, away from town?

2 A I remember just driving down the road; we was just
3 panicking. I'm telling Antwan to get him to the hospital,
4 he's telling Antwan to get him to the hospital, but he said
5 he ain't going to the hospital -- he ain't going to the
6 hospital. And I remember we passing a car, passing like an
7 oncoming car, Toya -- Toya and them's car is a blue -- a
8 blue station wagon and by the time we had recognized that
9 was Toya's car, so we started flashing the lights.

10 Q You said Toya?

11 A Yeah.

12 Q Who is Toya?

13 A Toya Bryant.

14 Q How do you know Toya?

15 A Neighborhood.

16 Q Okay. So go back, you passed the car and you started
17 doing what?

18 A Before we passed the car, while the car was oncoming,
19 like we was close to it, we were just flashing the lights
20 like giving the signal to stop, stop, stop. Then, after
21 that, we turned around to look at them and see that they
22 were braking a little bit, but they didn't really know who
23 we was, you know what I mean? Because it was dark, they
24 were like braking a little bit, like, I ain't really gonna
25 stop, so we turn around and got behind them and started

1 flashing them and pulled onto the ---

2 Q Did the car stop?

3 A Yeah, they stopped.

4 Q What did you do?

5 A When the car stopped, we was yelling at Toya, and we
6 were like, "Man, get him to the hospital."

7 Q Hold on. The car stopped, did Antwan pull up behind,
8 next, to the front; how did Antwan pull up?

9 A He pulled up beside them.

10 Q Beside him. So did the car stop in the middle of the
11 road, did it stop on the shoulder, did the car stop off the
12 road? Where did the car stop?

13 A It was on the other side of the road, for sure, and it
14 was kind of like -- -

15 Q On the right hand side or the left hand side of the
16 road?

17 A It had to be the left hand side, oncoming traffic side.

18 Q You saw the oncoming traffic side?

19 A Did I see?

20 Q No, I'm confused about which car is which now, okay.
21 You turned around and you're going back towards town, right?

22 A All right. Yeah, Toya was in the blue station wagon
23 heading towards town; we're headed towards Smoaks. By the
24 time we spotted them out, we flashed the lights at them, and
25 they were braking a little bit. We turned around and we

1 flashed the lights behind them. We went behind them now,
2 and now, we're pulling over in the ongoing traffic side.

3 Q Okay. So the car that you're in pulls onto the
4 oncoming traffic side?

5 A Correct.

6 Q The car that you say Toya's in, or whoever's car it is,
7 was on the right hand side?

8 A Yeah, correct.

9 Q Okay. Now, I understand better. Now, will you say for
10 the jury where exactly, you can use your hands if you want,
11 show them here, here, or wherever it is, where exactly your
12 car, the car that you were in, parked next to the car that
13 stopped after the lights were flashed at them.

14 A Well, it's probably like this (WITNESS INDICATING WITH
15 HANDS TOGETHER.) Toya's car here; this is our car.

16 Q Basically, side by side?

17 A Yeah, this is the passenger side of the car.

18 Q And you were in the front passenger seat, as you've
19 already told the jury.

20 A Yes, sir.

21 Q And who was driving?

22 A Antwan.

23 Q And who was in the backseat?

24 A Dinky.

25 Q Was there anybody else in that car?

1 A No, sir.

2 Q Now, the car that stopped -- did you know the people
3 who were in that car?

4 A Yes, sir.

5 Q Who was in that car that you saw?

6 A It was Toya, Montez ---

7 Q Montez who?

8 A Montez Jenkins.

9 Q Okay.

10 A Joseph.

11 Q Joseph who?

12 A Griffin.

13 Q Okay.

14 A There was another girl in there; I don't know her name.
15 I've seen her before, but I don't know her by name.

16 Q Now, when the car stopped, what did you do?

17 A We were just panicking. We were just telling Toya to
18 get him to the hospital; get him to the hospital. They --
19 Toya and them -- the other car, they was still trying to
20 figure out, like, man, what happened? Trying to figure out
21 what happened. They were asking questions and we weren't
22 really talking to them. We were just rushing, so I got out
23 the car, Rat got out the car ---

24 Q Who got out the car?

25 A I got out the car, Antwan got out of the car, Joseph

1 got out the car, the other car -- the station wagon. Montez
2 got out of the car, and that was it, and then they came and
3 helped me and Antwan get David in the backseat of the wagon.

4 Q How did you get David in the backseat of the wagon?

5 A Well, like two had the back legs and like two had the
6 front.

7 Q And you put him in the back of that wagon?

8 A Correct.

9 **ASST. SOL. SHELTON:** May I approach, Your Honor?

10 **THE COURT:** You may.

11 Q Just like last time, I'm going to show you this then
12 ask you if you know what it is, okay? State's Exhibit
13 Number Eight. Do not show it to the jury. It's for
14 identification purposes only, okay? Do you recognize what
15 that is?

16 A Yes, sir.

17 Q What is that?

18 A Ford Taurus station wagon.

19 Q Have you seen that station wagon before?

20 A Yes, sir.

21 Q Was that the station wagon that you put David Jakes in
22 that night?

23 A Yes, sir.

24 Q How do you know that? By looking at that picture?

25 A By the sticker on the window.

- 1 Q You recognize that sticker on the window?
- 2 A Uh-huh (affirmative); yes, sir.
- 3 Q So you said that Rat got out of the car, being Antwan?
- 4 A Correct.
- 5 Q You put David in the car along with Joseph Griffin and
- 6 Montez Jenkins and Antwan?
- 7 A Correct.
- 8 Q Who all -- you saw, in that other car, just repeating
- 9 what you said, you saw Toya Bryant.
- 10 A Yes, sir.
- 11 Q You saw Montez Jenkins.
- 12 A Yes, sir.
- 13 Q You saw Joseph Griffin.
- 14 A Yes, sir.
- 15 Q And who else?
- 16 A I can't really recall the other girl's name. I know
- 17 her by face, but I don't know her by name.
- 18 Q Okay. Now, do you know Joseph Griffin?
- 19 A Yeah, I know him.
- 20 Q Do you know where he lives?
- 21 A Yes, sir.
- 22 Q Where does he live?
- 23 A Next door to Antwan.
- 24 Q Next door to Antwan, meaning "the Rat" that's Antwan?
- 25 A Yes, sir.

- 1 Q Do you know Montez Jenkins?
- 2 A Yes, sir.
- 3 Q Do you know where he lives?
- 4 A No, sir.
- 5 Q And do you know Toya?
- 6 A Yes, sir.
- 7 Q Do you know where he lives?
- 8 A Yes, sir.
- 9 Q Where does he live?
- 10 A Right down the road from me.
- 11 Q So once you got Mr. Jakes, Dinky, into the car, what
- 12 did you do?
- 13 A I got back into the Cadillac with Antwan.
- 14 Q Where'd you get in the Cadillac at?
- 15 A Same spot.
- 16 Q Where is that, front driver seat?
- 17 A No, passenger seat.
- 18 Q Passenger seat. Who got in the driver seat?
- 19 A Antwan.
- 20 Q What did you do then?
- 21 A Turned around and went to Smoaks.
- 22 Q So you go to Smoaks. Where did you go?
- 23 A Dropped the car off back at Dinky's grandmother's
- 24 house.
- 25 Q What road is that on?

1 A Clatty Farm Road.

2 Q Once you dropped the car off, what did you do?

3 A We were just panicking then. We jumped out the car.

4 Antwan got up out the car and he started running and I

5 hopped up out of the car and started running, too; running

6 towards our house.

7 Q Towards your house?

8 A Yes, sir.

9 Q How do you get to your house from David's grandmother's
10 house?

11 A Off of Clatty Farm Road, make a left at the end of
12 Clatty Farm Road.

13 Q Do you pass Antwan's house?

14 A To get to my house? Yes, sir.

15 Q Where did Antwan go?

16 A He went home.

17 Q Was he in front of you or behind you?

18 A In front of me.

19 Q Where did you go?

20 A Home.

21 Q How did you get home from past Antwan's house?

22 A Past Antwan's house you make a right and I'm the first
23 house on the left.

24 Q When you got home, did you go to your sister's house or
25 did you go to your parent's house?

- 1 A I went back to my parent's house.
- 2 Q How did you get inside?
- 3 A Knock on the door; beat on the door.
- 4 Q You don't have a key?
- 5 A No, sir.
- 6 Q How did you get inside after beating on the door?
- 7 A My daddy answered the door.
- 8 Q Why did you go back to your parent's house?
- 9 A I was scared. That's where I usually stay at; I stay
- 10 at my sister's house, but I decided to go to my daddy's
- 11 house that night.
- 12 Q Did you tell your daddy when you opened the door, what
- 13 happened?
- 14 A No.
- 15 Q Why not?
- 16 A I was telling him like bits and pieces, but I never
- 17 told him the story.
- 18 Q Not that night?
- 19 A Not that night.
- 20 Q Was he upset with you?
- 21 A Yeah, he was upset, but he was basically trying to get
- 22 to the bottom of it, like, where we were at.
- 23 Q Of what?
- 24 A What happened.
- 25 Q Did you end up going to bed that night?

1 A Tried to.

2 Q Did you sleep at all?

3 A A little bit.

4 Q What happened the next morning?

5 A The next morning, just everything, just everything hit
6 the fan. Everybody calling the house and everybody was
7 saying this and saying that, then I finally came to my daddy
8 and I told him what happened. I told him everything that
9 happened.

10 Q Did you tell him the truth?

11 A Yeah, I told him the truth.

12 Q Did you tell him everything you're telling the jury
13 today?

14 A Yes, I told him everything I'm telling them today.

15 Q Are you leaving anything out to the jury that you told
16 him that morning?

17 A No, sir.

18 Q What happened after you told your daddy what happened?

19 A He was trying to get in touch -- he was trying to get
20 in touch with, like, any detective, for anybody he know. He
21 couldn't get in touch with a detective and then he tried to
22 get in touch with attorneys and stuff.

23 Q Did you get in touch with an attorney that day?

24 A No, we tried to, but my attorney was out of town.

25 Q What did you do later that day?

1 A Later that day, I stayed home.

2 Q And that night, what did you do?

3 A That night, I was at my sister's house.

4 Q Did you ever go to the detective's office that day?

5 A No, they came to me.

6 Q They came to you. Did they come to you before or after
7 your daddy contacted them?

8 A After.

9 Q They came to you; what did you do when they came to
10 you? Did you go with them? Did you stay at your house?
11 Did they pick you up? Did you ride in their car? Did you
12 drive with them? What happened?

13 A Well, I followed behind them -- I rode with my daddy up
14 there to the station.

15 Q You rode with your daddy where?

16 A To the station.

17 Q When you got to the station, what happened?

18 A They started questioning me.

19 Q Now, did you tell them the truth, at first?

20 A No.

21 Q What did you tell them at first?

22 A I told them I wasn't there and I didn't have nothing to
23 do with it.

24 Q Why?

25 A Because I was scared and I didn't want to really tell

1 anybody.

2 Q So you lied to them?

3 A Correct.

4 Q Are you lying today?

5 A No, sir.

6 Q So you told them that at first. At some point, did you
7 talk to your parents during that interview?

8 A Yeah, they came in there with me.

9 Q What did they tell you to do?

10 A Tell the truth.

11 Q Because they knew what the truth was at that point,
12 didn't they?

13 A Yes, sir.

14 Q Then after that, did you tell the officers what the
15 truth was?

16 A Yes, sir.

17 Q What did you tell them?

18 A I told them that I was riding with Dinky and Antwan and
19 I was going to hook up with some girls -- we were going to
20 hook up with some girls from Walterboro. And then we were
21 on the way going to Walterboro and we passed by some people
22 on the side of the road and they were having car trouble.

23 I told them that Antwan had came up with the idea to
24 rob them, trying to get me and Dinky pumped up, but Dinky
25 got pumped up and said he would do it, and we turned around.

1 Once we stopped the car, before I could say anything, before
2 anybody could say anything, Dinky had done hopped out the
3 car and went towards the people that were on the side of the
4 road telling them to "Give it up."

5 Q Is that what you told them? Then what did you tell
6 them happened?

7 A I told them Dinky -- when I heard the gunshots I hit
8 the floorboard of the car, ducking down for cover and I told
9 them Antwan tried to get me out of the car to go pick Dinky
10 up and get him to the car and I told them I said no.

11 I told them Antwan started shooting across me and I
12 told them how we left there and we were supposed to take him
13 to the hospital, but he didn't want to go to the hospital.
14 Antwan was saying no he's not going to the hospital and we
15 passed -- we was oncoming passing Toya, the blue station
16 wagon, and how we tried to stop them, but they weren't
17 really stopping at the time, but they braked, so we turned
18 around, flashed them from behind and he pulled on the side
19 in oncoming traffic and we switched Dinky -- me, Antwan,
20 Joseph, and Montez switched Dinky into Toya's car and they
21 took him to the hospital.

22 Q Now. I'm going to show you a map, I'm going to ask you
23 to step off the stand. Before I do that, I'm going to ask
24 that the judge give you a microphone, okay.

25 **THE COURT:** Madame Clerk, can you give him a portable

1 mic? Mr. Mathews, Mr. Beach, you may come around so you can
2 see the board, if you so desire. Counsel, show it to the
3 opposing counsel before you show it to the jury.

4 **ASST. SOL. HASELDEN:** Both attorneys have seen it
5 during the break, Your Honor.

6 **THE COURT:** Just a moment. Are y'all satisfied?

7 **MR. MATHEWS:** Yes, sir.

8 **MR. BEACH:** Yes, sir.

9 **THE COURT:** All right. Step down for me. She's going
10 to hand you a microphone. Use the microphone, Mr. Davis.
11 Hold it, speak into it, and let me hear you.

12 A Yes, sir.

13 **THE COURT:** All right. Mr. Mathews, you want to come
14 around. Mr. Beach, can you see the board?

15 **MR. BEACH:** Yes, Your Honor, I see it.

16 **THE COURT:** You're going to have to step back from my
17 jury and Mr. Beach, now. All right, Mr. Shelton, speak up,
18 you don't have a microphone.

19 **ASST. SOL. SHELTON:** Thank you, Your Honor.

20 Q Mr. Davis, Chippy, do you recognize what this is?

21 A Yes, sir.

22 Q What is it?

23 A It's a map.

24 Q It's a map of what?

25 A Smoaks.

- 1 Q The general area of Smoaks?
- 2 A Yes, sir.
- 3 Q Can you locate your house on that map? You can use
- 4 this to circle it once you find it. (HANDS WITNESS A PEN.)
- 5 Begin by road by road; what's that road? Have you seen this
- 6 map before?
- 7 A I've seen it.
- 8 Q We showed it to you, correct?
- 9 A Yes, sir.
- 10 Q What's this down here?
- 11 A Am I looking in the right area?
- 12 Q I don't think you are; this is not where you showed me
- 13 yesterday.
- 14 A My house is right here, 211 Johnsville Road.
- 15 Q Okay. You can circle, it. That's 211 Johnsville Road,
- 16 right there?
- 17 A Yes, sir.
- 18 Q Okay. Will you please show the jury how you got --
- 19 that's where Dinky picked you up, correct?
- 20 A Correct.
- 21 Q Now, show the jury where you went from there, first.
- 22 A I went from 211 to 217; when you get on 211, at the
- 23 stop sign on 211, you want to make a left coming out of 217.
- 24 Then, we made a stop somewhere up in here on 217.
- 25 Q Who's house is that?

1 A Antwan's house.

2 Q Antwan's house right there. Okay, then where did you
3 go from there?

4 A We went from Antwan's house to Clatty Farm Road.
5 Clatty Farm Road is only like two minutes up the street, so,
6 we traveled 217 to the end of -- not to the end of 217, but
7 the first road on your right is Clatty Farm Road, right
8 here, went to David Jakes' house. Dinky said his grandma's
9 house is on Clatty Farm, somewhere up in here.

10 Q Somewhere right up in there; can the jury see that,
11 because I'm not gonna mark it. Can everyone see that? All
12 right. Then, where'd you go?

13 A Went from Clatty Farm Road to Mount Carmel Road. So
14 at the end of Clatty Farm Road, you want to make a left at
15 the end of Clatty Farm Road, so you make a left right here,
16 make a left right here and travel down Mount Carmel.

17 Q And then, where'd you go from there?

18 A Went from Mount Carmel to McLeod Road.

19 Q Keep going down Mount Carmel until you find it.

20 A McLeod Road here. (INDICATING ON MAP.)

21 Q Did you turn on McLeod Road there?

22 A Yeah, you make a left on McLeod Road.

23 Q And then where did you go?

24 A Headed toward onto 95, towards 15 and the interstate.

25 Q Where did you see the people that Dinky jumped out and

1 tried to rob?

2 A It was down there by the ramp after we swing around
3 here.

4 Q You can make a big circle around that if you want. So
5 you said you passed them and then you turned around?

6 A Yes, sir.

7 Q And you went back the other way?

8 A Yes, sir.

9 Q Okay. After what happened, happened you went back the
10 other way. Show the jury which way you went.

11 A We passed by and then we were coming back towards the
12 other side of the road, so we passed by and made a left and
13 made a U-turn, came back towards them, we were facing them,
14 we were probably right here.

15 Q Okay. And then where'd you go?

16 A Then, after we left them, we went to the same direction
17 that I just showed y'all, the same direction that we came
18 in, that's the same direction, we turned around and headed
19 towards Mount Carmel Road, and instead of making a right and
20 going to Walterboro to go to the hospital ---

21 Q You mean right or left?

22 A (PAUSES A MOMENT.) We made a left, so ---

23 Q You can come to this side if you want.

24 **THE COURT:** You got to step back so the jury can see.

25 A So instead of making a left to go back to Walterboro,

1 we made a right going back towards Smoaks.

2 Q Okay. Can you show on that map the general area of
3 where you think that you met up with the car that you put
4 David Jakes in?

5 A I can't give you the exact spot.

6 Q Somewhere around that area? You don't have to circle
7 it, but can the jury see that? Okay. I ask that he may
8 return, Your Honor.

9 **THE COURT:** Step back from the witness stand.

10 Q Mr. Davis, there were three people in that car, weren't
11 there?

12 A Correct.

13 Q Who was in the car again?

14 A Antwan, Dinky, and me.

15 Q And you're saying that Antwan reached over you and
16 shot?

17 A Correct.

18 Q Did you shoot?

19 A No, sir.

20 Q Do you own a gun?

21 A No, sir.

22 Q Did you have a gun that night?

23 A No, sir.

24 Q Now. Isn't it true that you were charged with pretty
25 much everything -- you are charged with everything they're

1 charged with. You were charged originally, and then you've
2 been indicted and those indictments still exist for
3 everything they're charged with?

4 A Correct. We've got the same charges.

5 Q Now, was there a deal at some point for those charges
6 with us, with the State of South Carolina?

7 A There was.

8 Q There was? Do you remember what that deal was?

9 A Yeah, it was to drop the charges to accessory before
10 and after the fact.

11 Q Now, what happened to that deal?

12 A It got gone away.

13 Q It got gone away, it expired?

14 A Yes, sir.

15 Q So testifying here today, you have no deal; is that
16 right?

17 A No, sir. I still have the same charges.

18 Q You still have the same charges, but you don't have the
19 deal anymore?

20 A No, sir.

21 Q Have I made you any promises?

22 A No, sir.

23 Q Has Ms. Haselden made you any promises?

24 A No, sir.

25 Q Has anyone from the State of South Carolina made you or

1 your attorney any promises whatsoever related to these
2 charges?

3 A No, sir.

4 Q Why, in earth, are you up here testifying today?

5 A To tell the truth.

6 Q Why are you telling the truth?

7 A Because I feel like it's the right thing to do.

8 **ASST. SOL. SHELTON:** That's all the questions I have at
9 this time, Your Honor.

10 Q I please ask that you answer any questions respectfully
11 that Mr. Mathews and Mr. Beach has.

12 **THE COURT:** Cross-examination, by the defendant
13 McMillan.

14 **MR. MATHEWS:** Thank you, Your Honor.

15 **CROSS-EXAMINATION**

16 **BY MR. MATHEWS:**

17 Q Mr. Davis, when you first went into the police station
18 with your dad, were you charged at that time?

19 A Yes, sir.

20 Q You were under arrest at that time?

21 A Yes, sir.

22 Q Okay. You only talked to the police after you were
23 under arrest already, correct?

24 A I don't understand what you're asking me.

25 Q When you went into the police, you were under arrest at

1 that time; is that correct?

2 A Yes.

3 Q Okay. And the first thing you told me is that your
4 fingerprints would not be in that car, correct?

5 A Correct.

6 Q Your DNA would not be in that car, correct?

7 A Correct.

8 Q That you weren't in that car, that nobody was in that
9 car, right? You don't know anything about it because you
10 weren't there, right?

11 A Correct.

12 Q Okay. Now, Mr. Shelton asked you about no deal at this
13 point, but you didn't do anything wrong, did you?

14 A No, sir.

15 Q Okay. So if you're telling the truth, if you're
16 believed, then you escape, right? You didn't do anything
17 wrong?

18 A Yes, sir.

19 Q Okay. Now, you said J.J. owned this car. Is that your
20 cousin?

21 A No, that's Dinky's cousin.

22 Q Dinky's cousin. Okay, J. J., all right. And you said
23 first of all, that if Dinky's cousin owns the car, you said
24 Dinky at one point got out, didn't he? You got picked up
25 then you went to Dinky's house.

1 **THE COURT:** Mr. Mathews, one question at a time, okay?
2 Don't make a statement. Cross-examination, I'll let you
3 lead, but don't ask three questions of the witness and wait
4 on a response. One at a time.

5 **MR. MATHEWS:** Yes, sir

6 **THE COURT:** Proceed.

7 Q What did Dinky get from the house?

8 A I don't know. He ain't told me.

9 Q What was he wearing?

10 A I can't remember.

11 Q You said he went in to get something; what -- he got a
12 gun, right?

13 A I don't know.

14 Q Well, there were at least two guns in that car, right?
15 At least two, right?

16 A Correct.

17 Q All right. And you didn't see any gun?

18 A Correct.

19 Q Okay. So how do you -- okay, what did you think he
20 went to go get?

21 A I have no idea.

22 Q Okay. You had a -- you said you had a cell phone,
23 right, that night?

24 A Yes, sir.

25 Q Okay. You didn't call 911?

- 1 A No, sir.
- 2 Q Did you call anybody that night?
- 3 A No, sir.
- 4 Q Didn't call a soul that night? Why did you have your
5 cell phone?
- 6 A I always have my cell phone.
- 7 Q You always have your cell phone.
- 8 A Uh-huh (affirmative).
- 9 Q Okay. How long have you been knowing the people in
10 that other car that stopped?
- 11 A Toya's car?
- 12 Q Whoever -- Whoever's car; the blue car.
- 13 A Well, basically, like partial my life. She stay in the
14 same neighborhood. All of us been staying there, basically,
15 partially, all our life, so I've known her.
- 16 Q Okay. You got her cell phone number?
- 17 A No, sir.
- 18 Q No? What's your cell phone number?
- 19 A I don't have a cell phone right now. My cell phone
20 number was -- what was my cell phone number? I can't
21 remember my cell phone number, my old cell phone number. I
22 don't have a cell phone at all, now; but I can't remember my
23 old cell phone number.
- 24 Q Okay. All right. When the police talked to you to
25 start with, did you have your cell phone with you then?

- 1 A No, sir.
- 2 Q Okay. The police did a search of your house, did they
- 3 not?
- 4 A Yes, they searched my house.
- 5 Q And they took four cell phones from your house,
- 6 correct?
- 7 A Correct.
- 8 Q Okay. Now, when you stopped in the roadway, your
- 9 window was the one closest to the other people's car; is
- 10 that correct or is that not correct?
- 11 A That's correct.
- 12 Q Okay. So you were the one closest to what was going on
- 13 in the driver's car that was Toya?
- 14 A Correct.
- 15 Q All right. At some point, when the shots were fired,
- 16 were -- were -- were y'all driving off during the time that
- 17 any shots were fired?
- 18 A No, we were still parked.
- 19 Q You were still parked. Okay. You waited -- you waited
- 20 until after David was back into the car before you fired?
- 21 A No, it was before he got in the car.
- 22 Q Before? Okay. All right. You gave your truthful
- 23 statement, the statement, I guess, you said that was
- 24 truthful sometime in December of 2010; is that correct?
- 25 A I don't recall what month it was, but I know it was

1 sometime after.

2 Q Okay. Months, correct?

3 A Not months, probably like a month.

4 Q A month, maybe?

5 A Yeah, it might have been a couple months, maybe. I
6 can't recall.

7 Q Okay. And at that point, you had retained an attorney,
8 correct?

9 A Correct.

10 Q So y'all all three were under arrest and you talked to
11 your attorney and then you gave a statement, correct?

12 A Correct.

13 Q Which was completely different from the first statement
14 you gave?

15 A Correct.

16 Q And you testified that after you dropped off, you took
17 the car back when you said Antwan took the car back to
18 Dinky's house, because it belonged to J. J.'s cousin, to
19 Dinky's cousin, right?

20 A Correct.

21 Q Okay. And then how far -- is it about two miles? You
22 said it was about two minutes or about three minutes from
23 Dinky's house to your house?

24 A It's a couple miles.

25 Q Couple miles, okay. So you drove the car back and

1 dropped it off, and then y'all both ran back to your houses.

2 You went and ran past Antwan's house to your house?

3 A Correct.

4 Q Okay. Okay. Did you ask to be dropped off, first?

5 A No.

6 **MR. MATHEWS:** Your Honor, if I might have a moment.

7 (BRIEF PAUSE IN COURTROOM.)

8 **MR. MATHEWS:** No further questions, Your Honor.

9 **THE COURT:** Cross-examination by the defendant Jakes.

10 **MR. BEACH:** May it please the Court?

11 **THE COURT:** Yes, sir.

12 **CROSS-EXAMINATION**

13 **BY MR. BEACH:**

14 Q You gave a statement to the police when they first
15 talked to you, correct?

16 A Correct.

17 Q And you told them you had nothing to do with anything;
18 is that correct?

19 A Correct.

20 Q And you told them you weren't there?

21 A Correct.

22 Q That was a lie, wasn't it?

23 A Yes, sir.

24 Q And they didn't believe you?

25 A No, sir.

- 1 Q And they arrested you?
- 2 A Correct.
- 3 Q And you were indicted; is that correct?
- 4 A Uh-huh (affirmative).
- 5 Q There are charges pending now, is that also correct?
- 6 A Correct.
- 7 Q All right. Now, you gave another statement and that
- 8 other statement, didn't you say in there that you were
- 9 opposed to this supposed robbery?
- 10 A I don't understand your question.
- 11 Q Didn't you say that you were opposed to what was going
- 12 on?
- 13 A When you say "opposed," do you mean the alarm or know
- 14 what was going on?
- 15 Q You didn't want it to happen.
- 16 A Oh, correct. I didn't want it to happen.
- 17 Q In that statement where you said it was stupid? Didn't
- 18 you say that in your statement?
- 19 A Correct.
- 20 Q And when everything started, you hit the floor?
- 21 A Correct, when I heard the gunshots, I hit the floor.
- 22 Q Now, when did you open your door?
- 23 A I didn't never open my door.
- 24 Q You never opened your door?
- 25 A unh-unh.

1 Q How did you help Mr. Jakes get back in the car?

2 A By the best way I could, best way I could. Leaning
3 over, and the door handle's right here, so I reached over,
4 the door handle's right here.

5 Q So you got up out of the floor, over the seat, and
6 opened the door?

7 A No, I didn't really have to go, like, over the seat, I
8 just had to reach right there and open the door. Like crack
9 the door open the best way I could and help him.

10 Q But you had to get up into the passenger seat?

11 A Yeah, I had to get up in the seat.

12 Q And all this time, somebody else was shooting?

13 A No, nobody was shooting at the time.

14 Q Nobody was shooting at the time?

15 A Correct.

16 Q Now, how long -- you had heard gunshots. This was when
17 Mr. Jakes got shot.

18 A Correct.

19 Q How long was it before the person seated beside you
20 started shooting?

21 A It was like a -- okay, after David got shot, everything
22 was, like, quick and he was just telling me to get out the
23 way. Antwan was telling me to get out the car, go help
24 Dinky, get out the car, and I was telling him, "Man, let's
25 go. Let's leave, man. Get me out of this ride." He was

1 like, "No, man, ain't going nowhere, I ain't going nowhere
2 without Dinky." So then after that, he started shooting
3 across from me.

4 Q Who closed the door?

5 A What door?

6 Q Who closed the back door?

7 **ASST. SOL. SHELTON:** Objection, Your Honor.

8 **THE COURT:** Cross-examination. Ask a question,
9 counsel. Overruled.

10 Q Who closed the back door?

11 A The back door wasn't open at the time he was shooting,
12 but after the shooting, when he was trying to get in the
13 car, I can't recall who. It was happening so quick, I can't
14 recall if I shut the door or if he shut the door.

15 Q Well, how -- he was shot, how was he able -- how would
16 he be able to shut the door?

17 A No, I never said he shut the door.

18 Q All right. How would you be able to shut the door when
19 you're just reaching around to see? Doesn't that door open
20 out?

21 A Well, it wouldn't open outward, because I couldn't
22 really open the door outward. I could open the door, like,
23 crack the door open a little bit, like a good little piece.
24 I couldn't open the door outward. The door was just open.

25 Q How little bit?

1 A It was a good bit enough for him to get in.

2 Q But you don't remember whether you closed it or he
3 closed it?

4 A Unh-unh. I can't recall. It happened so quick.

5 Q When did the other person start shooting over your
6 head?

7 A That was before -- before Dinky got in the car.

8 Q Before he got in the car?

9 **THE COURT:** Identify who "he" is for the record,
10 please.

11 Q The driver of the car.

12 A Antwan.

13 Q The driver of the car, when did he start shooting in
14 relation to when Mr. Jakes got in the backseat of the car?

15 A He started shooting after I said I wasn't getting out
16 to get him. And I wanted to go, let's go, and that's when
17 he started shooting.

18 Q And this is before he got in the backseat of the car?

19 **THE COURT:** Identify -- just a moment. Identify who
20 "he" is in your question.

21 Q This is before Mr. Jakes got into the car?

22 A Correct.

23 Q When the shooting started?

24 A Correct.

25 Q And you said he was shooting over your head? That the

- 1 driver was shooting from back over your head?
- 2 A Pretty much over my back.
- 3 Q Now, what kind of car is this?
- 4 A It's a Cadillac.
- 5 Q Is it a big car or a little car?
- 6 A It's like a narrow car, narrow.
- 7 Q What size Cadillac is it? What model?
- 8 A Deville.
- 9 Q A Deville?
- 10 A Correct.
- 11 Q And that's -- all right. Is the front seat a bench
- 12 seat or was it bucket seats?
- 13 A I don't know what kind of seats.
- 14 Q Was there something down the middle between the seats?
- 15 A Yeah, it was like a small console.
- 16 Q A console was there?
- 17 A A small console.
- 18 Q So there was a seat for the driver, and a separate seat
- 19 for the passenger?
- 20 A Correct.
- 21 Q Now, the driver was in his seat?
- 22 A Correct.
- 23 Q Shooting over you?
- 24 A Correct. He slid over and started shooting.
- 25 Q All right. How did he slide past the console?

1 A I ain't know. He ain't slide past the console. You
2 can't make it past the console.

3 Q He did make it past the console?

4 A I just know he slide over.

5 Q Okay. Now, you say you don't have a deal with the
6 prosecution; is that correct?

7 A No deal.

8 Q Now, the first thing you did after you went home was
9 try and get in touch with your attorney, wasn't it?

10 A No. Unh-unh.

11 Q All right. Who did you get in touch with first, your
12 attorney or law enforcement?

13 A I believe it was my daddy. I ain't got in touch with
14 nobody. It was my daddy who tried to get in touch with
15 people. My daddy tried to get in touch with either attorney
16 or law enforcement agent. I don't know which one come
17 first, or anybody else that he know.

18 Q Did you ever call law enforcement yourself?

19 A No, sir.

20 Q Did you ever go to them and say, "This thing happened
21 and I didn't want anything to do with it?" Did you ever do
22 that?

23 A No, sir.

24 Q Did you ever call the hospital to check on your friend?

25 A No, sir.

1 Q Did you ever go to the hospital to check on your
2 friend?

3 A No, sir.

4 Q What did you tell your girlfriend that night about
5 going to see these women?

6 A What I tell my girlfriend? Well, I'd rather not get
7 into what I told her.

8 Q Okay. That's fair enough. But y'all were going to go
9 to the club on 15 weren't you?

10 A No, not me. I ain't know nothing about no club.

11 Q Where were y'all going?

12 A Just going to hook up some girls in Walterboro.

13 Q Okay. But you were headed toward 15?

14 A Correct.

15 Q Now, were you drinking that night?

16 A No, sir.

17 Q Not at all?

18 A No, sir.

19 Q What about the other two people, were they drinking?

20 A No.

21 Q Neither one of them?

22 A I think Dinky was drinking earlier; he was drinking
23 before.

24 Q Isn't that why Dinky wasn't driving was because he had
25 been drinking?

1 A Oh, I don't know why he wasn't driving.

2 Q Is your attorney here with you today?

3 A Yes, sir.

4 Q Isn't it true that they're watching your testimony to
5 see if you testify the way the State wants you to?

6 A I don't understand.

7 Q In order to get a deal for you?

8 A No, sir.

9 Q Well, when are you supposed to be tried?

10 A I don't know.

11 MR. BEACH: I don't have any other questions, Your
12 Honor.

13 THE COURT: Redirect.

14 ASST. SOL. SHELTON: Briefly, Your Honor.

15 REDIRECT EXAMINATION

16 ASST. SOL. SHELTON:

17 Q Mr. Davis, you told them you made a statement months
18 after the fact, but you told the truth in that statement; is
19 that correct?

20 A Correct.

21 Q You wrote that statement down, correct?

22 A Correct.

23 Q Now, isn't it also true that the same day, the day
24 after the incident, you went in and you told police the
25 truth then, as well?

- 1 A What was that?
- 2 Q Sorry, that was a confusing question. The next day,
3 the day after it happened, right?
- 4 A Correct.
- 5 Q You -- your daddy drove you to the police station,
6 correct?
- 7 A Correct.
- 8 Q And you first lied to them, didn't you?
- 9 A Correct.
- 10 Q So then, and that was in the interview room, right?
- 11 A Correct.
- 12 Q And did you see a camera in that interview room?
- 13 A Correct.
- 14 Q And there were police officers there asking you
15 questions, correct?
- 16 A Correct.
- 17 Q And at first, you lied to them, correct?
- 18 A Correct.
- 19 Q And what did you tell them?
- 20 A I told them I wasn't in there. I didn't know what
21 happened. I ain't got nothing to do with it.
- 22 Q Right. And then that same night, did your parents come
23 and talk to you in that interview room?
- 24 A Yes, sir.
- 25 Q And what did he tell you to do?

1 A Tell the truth.

2 Q And then that same night, the day after the shooting,
3 after your parents told you to tell police the truth, what
4 did you do?

5 A Told them the truth.

6 Q You told them the truth that night, didn't you?

7 A Correct.

8 Q You told them everything that you told the jury right
9 here, pretty much, that same night, didn't you?

10 A Correct, yes, sir.

11 Q The night after the shooting; not four months
12 afterwards.

13 A Yeah, it was the night after the shooting.

14 Q That's just not true, is it?

15 A What's not true?

16 Q It's true that you told the truth the night after the
17 shooting; is that true?

18 A That's true. That night, I told the truth.

19 Q And you lied at first, but then you told the truth the
20 night after the shooting?

21 A Yes, sir.

22 Q And then, four or five months later when you gave that
23 written statement, did you tell the truth again?

24 A Yes, sir.

25 Q So you actually gave two truthful statements, correct?

1 A Yes, sir.

2 Q Not one?

3 A Yes, sir.

4 Q Are you telling the truth today?

5 A Yes, sir.

6 Q Thank you, Mr. Davis.

7 **THE COURT:** Recross by the defendant McMillan, limited
8 to redirect?

9 **MR. MATHEWS:** No further cross.

10 **THE COURT:** No further recross?

11 **MR. MATHEWS:** That's correct.

12 **THE COURT:** Recross by the defendant Jakes, limited to
13 redirect?

14 **MR. BEACH:** Thank you, Your Honor

15 **RECROSS-EXAMINATION**

16 **BY MR. BEACH:**

17 Q You gave the first statement saying you had nothing to
18 do with it, correct?

19 A Correct.

20 Q The second statement saying you had nothing to do with
21 it?

22 A No, sir.

23 Q All right. A second statement saying that you did have
24 something to do with it?

25 A Second statement telling what happened.

1 Q Telling them what happened. Telling the truth?

2 A Correct.

3 Q You told them that was the truth?

4 A Correct.

5 Q Did they believe you?

6 A I assume they believe.

7 Q Did they indict you?

8 A I still got indicted.

9 Q You still got indicted even though you told them what
10 you're telling us is the truth?

11 A Correct.

12 **MR. BEACH:** No other questions, Your Honor.

13 **THE COURT:** As to this witness, Solicitor?

14 **ASST. SOL. SHELTON:** Ask that he remain under
15 sequestration for purposes of recall.

16 **THE COURT:** Have you advised the witness concerning my
17 order of sequestration?

18 **ASST. SOL. HASELDEN:** Yes, Your Honor.

19 **THE COURT:** Very well. If you'll step down, please,
20 and remain with us in the area that you were asked to stay
21 in prior to testifying, subject to the instructions from
22 counsel for the State.

23 Madame Foreperson, ladies and gentlemen of the jury,
24 I'm going to take my mid-afternoon break at this point, let
25 you stretch your legs, use the restroom. Please do not

1 discuss the case. I'll be right back with you just as soon
2 as I can. You may retire to your jury room at this time.

3 (3:45 P.M., 8-30-11, WHEREUPON, THE JURY EXITS THE
4 COURTROOM AND A BRIEF RECESS IS HELD IN THE TRIAL OF THE
5 CASE.)

6 (4:00 P.M., 8-30-11, WHEREUPON, COURT RESUMES AND THE
7 FOLLOWING IS HELD ON THE RECORD.)

8 **THE COURT:** Is the State ready?

9 **ASST. SOL. HASELDEN:** Yes, Your Honor, with just a
10 preliminary matter, if I might. During the break, one of
11 my last witness's family members was pushed on the stairwell
12 by an individual in the courtroom. She's been removed from
13 the courtroom and is being talked to by Lt. Inabinett. But
14 I would just appreciate, perhaps, a cautionary word from
15 Your Honor regarding witnesses, intimidation and the like.

16 **THE COURT:** Very well. Ladies and gentlemen, I'm now
17 speaking to people that are here in the courtroom as
18 spectators. This Court, or any Court in South Carolina,
19 will not tolerate any spectator, family member, or party, or
20 friend of a party, friend of a victim, anyone, approaching
21 any witness in this case and attempting to intimidate them,
22 influence them, or change their testimony in any way, and I
23 will enforce those rules with the contempt powers of this
24 Court.

25 I will place anyone who violates those rules in the

1 custody of law enforcement for obstruction of justice. So
2 if you don't think you can control your actions or your
3 speech toward any potential witness in the trial of this
4 case, I suggest you get up and leave this courtroom at this
5 time, because if any such acts of this nature are reported
6 to me by law enforcement, I intend to use the contempt
7 powers of this Court. Does everyone in the courtroom
8 understand what I've just said? Please indicate by raising
9 your hand.

10 (HANDS ARE RAISED.)

11 Very well. Is the State ready to proceed?

12 **ASST. SOL. SHELTON:** Yes, sir, Your Honor.

13 **THE COURT:** Is the defendant McMillan ready to proceed?

14 **MR. MATHEWS:** Yes, Your Honor.

15 **THE COURT:** Is the defendant Jakes ready to proceed?

16 **MR. BEACH:** Yes, Your Honor.

17 **THE COURT:** Very well. Bring us the jury, please. Go
18 ahead and call your next witness. Who is it, Solicitor?

19 **ASST. SOL. SHELTON:** Latoya Bryant.

20 (4:05 P.M., 8-30-11, WHEREUPON THE JURY ENTERS THE
21 COURTROOM AND THE FOLLOWING PROCEEDINGS ARE HELD ON THE
22 RECORD.)

23 **THE COURT:** All right. Madame Foreperson, ladies and
24 gentlemen of the jury, we will now continue with the
25 testimony in the trial of this case. Solicitor, you may

1 call your next witness.

2 **ASST. SOL. HASELDEN:** Thank you, Your Honor. The State
3 calls Shaquita, otherwise known as Latoya Bryant.

4 **THE COURT:** Come around and be sworn by the Clerk,
5 please.

6 **MADAME CLERK:** Please come forward and be sworn. Raise
7 your right hand and place your left hand on the Bible.

8 WHEREUPON, LATOYA BRYANT, IS DULY SWORN.

9 **THE COURT:** Watch your step on the stairs. Have a
10 seat. Be comfortable. I want you to pull the chair up and
11 address that microphone. That microphone is going to
12 amplify your voice. Speak up like I'm doing so they can
13 hear you on the jury and out in the courtroom.

14 I'd like for you to begin by stating your full name and
15 spelling your last name for the court reporter who is seated
16 below you.

17 **WITNESS:** Shaquita Bryant, B-R-Y-A-N-T.

18 **THE COURT:** Your witness, counsel.

19 **ASST. SOL. SHELTON:** Thank you, Your Honor.

20 **DIRECT EXAMINATION**

21 **BY ASST. SOL. SHELTON:**

22 Q How are you, Ms. Bryant?

23 A Fine. How you doing?

24 Q Now, your name is Shaquita, but people call you Toya;
25 is that correct?

- 1 A Yes, sir.
- 2 Q Where are you from?
- 3 A Smoaks, South Carolina.
- 4 **THE COURT:** Got to speak up, Ms. Bryant.
- 5 A Smoaks, South Carolina.
- 6 Q How long have you lived there?
- 7 A Basically, all my life.
- 8 Q Where do you live now?
- 9 A Summerville.
- 10 Q I'm sorry?
- 11 A Summerville.
- 12 Q Where were you living on June the 3rd, 2010?
- 13 A 6096 Sunrise Road.
- 14 Q Sunrise Road, and I think the jury knows where that is,
- 15 but will you tell the jury where that is?
- 16 A That's in Smoaks, South Carolina.
- 17 Q You know the defendant, Mr. Antwan McMillan?
- 18 A Yes, sir.
- 19 Q How do you know him?
- 20 A Well, he kind of grew up with us.
- 21 Q Grew up with you?
- 22 A Uh-huh (affirmative).
- 23 Q Where was your house at the time that you were living
- 24 on June the 3rd, 2010, in relation to his house?
- 25 A Right down the road.

1 Q Right down the road, being down the road a mile? Down
2 the road ten feet? Down the road, how far down the road?
3 How many houses down?

4 A Three.

5 Q How far -- how long would it take you to walk from your
6 house to his house?

7 A Less than two minutes.

8 Q On June 3rd, 2010? That's where you were living?

9 A Uh-huh (affirmative).

10 **THE COURT:** You have to say "yes" or "no".

11 A Yes, sir.

12 Q Now, how do you know Mr. David Jakes? Do you know him,
13 first of all?

14 A Yes, sir.

15 Q How do you know him?

16 A I used to date his uncle a couple of years back. His
17 mom and my mom are friends.

18 Q Do you know Mr. James Davis, Jr.?

19 A Who?

20 Q James Davis, Jr.

21 A Yes, sir.

22 Q Otherwise known as "Chippy"?

23 A Uh-huh (affirmative).

24 Q How do you know him?

25 A I know his parents. I don't really know him like that.

- 1 Q Okay. Are you related to any of the people that I just
2 mentioned?
- 3 A No, sir.
- 4 Q Now, you grew up just down the street from Mr. Antwan
5 McMillan, who is seated over there?
- 6 A Yes, sir.
- 7 Q Do you remember June the 3rd, 2010?
- 8 A Yes, sir.
- 9 Q Do you remember what you were doing that day, earlier
10 in the day?
- 11 A I was on Drain Road.
- 12 Q Sorry?
- 13 A I was on Drain Road.
- 14 Q How do you spell that?
- 15 A Drain Road.
- 16 Q Dream Road?
- 17 A D-R-A-I-N.
- 18 Q Drain Road, okay. At any time that evening, did you
19 leave that road?
- 20 A Yes, sir. That night.
- 21 Q That night? What were you doing before you left?
- 22 A Playing pool and drinking.
- 23 Q Were you drinking a lot? Little bit?
- 24 A A good bit.
- 25 Q When you left, who did you leave with?

1 A Angie Dicks.

2 Q Angie Dicks, does she go by anything else?

3 A Angie.

4 Q Angie? Is her last name Dicks, though?

5 A Yes, sir.

6 Q Does she have any other last name or used to have
7 another last name? Or you know her as Angie Dicks?

8 A Yes, sir.

9 Q How do you know Angie?

10 A She's my cousin.

11 Q What car did you leave in?

12 A Her Ford Station wagon.

13 Q Ford Station wagon? What color is it?

14 A Blue.

15 **ASST. SOL. HASELDEN:** Beg the Court's indulgence. May
16 I approach, Your Honor?

17 **THE COURT:** You may.

18 Q I'm going to hand you a picture, Ms. Bryant, that's
19 been previously marked State's Exhibit Number Eight, for
20 identification purposes. I ask that you don't show it to
21 the jury; just look at it. I ask you if you recognize what
22 that is.

23 A Yes, sir.

24 Q What is it?

25 A Angie's car.

- 1 Q Angie's car? How do you know it's Angie's car?
- 2 A Because all the stuff that's in the back.
- 3 Q All the stuff that's in the back? Be specific.
- 4 A That's her kids stuff in the back.
- 5 Q Okay. Thank you. So you left with Angie driving in
- 6 that car?
- 7 A Yes, sir.
- 8 Q When you left, where did you go?
- 9 A We went to my moma's house.
- 10 Q Where is your moma's house?
- 11 A At 6096 Sunrise Road.
- 12 Q The place where you grew up?
- 13 A Uh-huh (affirmative).
- 14 Q That's four doors down from Antwan?
- 15 A Yes, sir.
- 16 Q And then what did you do?
- 17 A She was waiting on me. We was about to go to town.
- 18 Q Why were you going to go to town?
- 19 A Because I was going to my cousin Joseph's house to go
- 20 to Spirits.
- 21 Q Do you remember about what time that was?
- 22 A Not really.
- 23 Q What is Spirit's?
- 24 A A club on 15.
- 25 Q Okay. So you left, who was in the car at that point?

- 1 A Me and my cousin, Angie, my cousin, Joseph, and Montez.
- 2 Q Do you know their last names?
- 3 A Yes, sir.
- 4 Q What are their last names?
- 5 A Angela Dicks, Joseph Griffin, and I think -- I don't
- 6 really know Montez's last name. I'm not sure if it's
- 7 Jenkins or not.
- 8 Q Okay. So when you left your moma's house, who was in
- 9 what seats in the car?
- 10 A Angie was driving. I was in the front passenger side.
- 11 Montez was behind Angie on the driver's side, and Joseph was
- 12 behind me on the passenger side.
- 13 Q Could you tell just by looking at them, in appearance,
- 14 and talking to them, if any of those people had been
- 15 drinking that night?
- 16 A Yeah.
- 17 Q Who?
- 18 A All three of us was drinking. I can't remember if Angie
- 19 had something to drink or not, but I know Joseph was drunk.
- 20 Q What about Montez?
- 21 A I can't really say how he was, but I know me and Joseph
- 22 was like -- I know he was drunk and I was.
- 23 Q Okay. So you were in the car together. Now, was
- 24 Joseph -- Joseph, does he have a nickname?
- 25 A Kay.

1 Q Were they at the house together at your mother's house?

2 A (NO RESPONSE.)

3 Q Or did you pick them up someplace else? Do you
4 remember?

5 A When Angie dropped me off and she came back, Joseph and
6 Montez was with her.

7 Q Okay. So Angie left and came back and picked you up
8 and Montez and Joseph was in the car?

9 A Yes, sir.

10 Q Why were you in the front seat and Joseph and Montez
11 were in the back of the car when she came and picked you up?

12 A Because they had got out and I wasn't about to sit in
13 the back.

14 Q Okay. Gotcha. So you were going to sit in the front?
15 That's Angie's car, that's not your car?

16 A No, sir.

17 Q You ride in that car often?

18 A I did.

19 Q Okay. At that point, you're leaving Sunrise Road,
20 where do you go?

21 A We made a right on to Clatty Farm Road to go to
22 Walterboro, onto Mt. Carmel Road.

23 Q On Mt. Carmel Road, did something odd happen?

24 A Angie was saying that a car was flashing her.

25 Q Did you see a car flashing her?

1 A I didn't see it right then, because I was like -- my
2 head was on the side and I was trying to get to town.

3 Q Gotcha. Did you see the car flashing coming back from
4 behind?

5 A I saw the car lights.

6 Q Car lights? Did you tell Angie anything?

7 A I told her don't stop her car.

8 Q Why?

9 A Because we didn't know who it was that was stopping us.

10 Q Did she stop or did she keep going?

11 A She stopped.

12 Q Did her car -- what happened to the car that was
13 flashing its lights behind you?

14 A It stopped beside us.

15 Q Who did you see in that car?

16 A I saw Chippy.

17 Q Where was Chippy?

18 A On the passenger side.

19 Q Front or back?

20 A Front.

21 Q Who else did you see?

22 A David.

23 Q David who?

24 A David Jakes, Dinky.

25 Q Dinky? Where was he?

1 A They was putting him in the car.

2 Q Who is "they"?

3 A Angie got out the car and Chippy got out the car.

4 Montez had to get out to put him in the backseat and he

5 nudged Joseph so he could get in the front seat with me, but

6 we never got out the car.

7 Q So Angie got out the car?

8 A Yes, sir.

9 Q When Angie got out the car, did you hear her say
10 anything?

11 **MR. MATHEWS:** Objection, Your Honor. Leading -- I
12 mean, hearsay.

13 **THE COURT:** Sustained. Rephrase the question.

14 **ASST. SOL. HASELDEN:** I think it depends on the
15 context. I'd ask that a proffer ---

16 **THE COURT:** Counsel approach.

17 (WHEREUPON, A BENCH CONFERENCE IS HELD OFF THE RECORD
18 AND OUT OF THE HEARING OF THE JURY.)

19 **THE COURT:** Proceed. Objection is sustained.

20 **ASST. SOL. SHELTON:** Thank you, Your Honor.

21 Q When all those folks were outside of the car that you
22 mentioned, Montez, Joseph ---

23 A I never said Joseph.

24 Q You never said Joseph? You said Montez, and Angie;
25 what was the scene like at that point?

1 A I don't know. It just happened so fast. She got out
2 and they was seeing would we take him to the emergency room.

3 Q Were people excited? Were they bored? What was going
4 on?

5 A We was just trying to get him in the car and take him
6 to the emergency room.

7 Q Why were you trying to get him in the car and take him
8 to the emergency room?

9 A Because they said he was shot.

10 Q Were you anxious at the time?

11 A Anxious like how?

12 Q Were you worried for him?

13 A Yeah, because he went into shock.

14 Q When he was outside the car, were people yelling?

15 A They was, like, talking, but they was kind of, like,
16 yelling.

17 Q Kind of like yelling? Were they yelling loud? Were
18 they yelling in short verse or were they yelling in long
19 verse or were they talking in a soft tone like this or were
20 they talking fast and excited?

21 A Almost fast and excited.

22 Q Fast and excited. Now, I'm not going to ask you what
23 Angie said; I'm going to ask you when Angie was talking, was
24 she talking loud? Was she talking soft? Was she talking
25 fast and excited? How was she talking?

1 A She was talking, like, basically, like, what happened.

2 Q Uh-huh (affirmative). Was she -- I'm sorry. I'll
3 ask the question again. Was she talking fast? Was she
4 talking excited?

5 A She was talking like she was hysterical.

6 Q Hysterical. She was hysterical. And while she was
7 talking while she was hysterical, did you hear her say
8 anyone's name?

9 A Excuse me?

10 Q When she was hysterically talking like that, talking
11 hysterical, did you hear her say anyone's name?

12 A I heard her say a name.

13 Q What name?

14 A She said Dinky and Rat.

15 Q Dinky and Rat? Now, what happened after that?

16 A I told Montez to down the window and push Dinky's legs
17 up so he'd be able to breathe, but then he went into shock
18 three times while we was trying to take him to the emergency
19 room.

20 Q Now, what happened to the other car? I mean, did it
21 follow you to the emergency room? Where did it go?

22 A I don't know where it went, but it didn't go to the
23 emergency room.

24 Q Who was driving to the emergency room?

25 A Angie.

- 1 Q Was she driving fast or slow?
- 2 A Fast.
- 3 Q How fast?
- 4 A Fast so we could get him there. We was driving over
- 5 90.
- 6 Q Did Dinky say anything while he was on the ride to the
- 7 emergency room?
- 8 A He was just screaming.
- 9 Q What was he screaming?
- 10 A It wasn't like a scream like that; it was like a shock
- 11 scream.
- 12 Q Was he in pain?
- 13 A (WITNESS NODS HEAD AFFIRMATIVELY.)
- 14 **THE COURT:** You have to say "yes" or "no".
- 15 A Yes, sir.
- 16 Q When you got into the emergency room, what did you do?
- 17 A I got by the car, I knocked on the door and maybe took
- 18 about seven and a half minutes for the man to come and get
- 19 him. And when we got there and came, Montez went inside
- 20 with him, but then, we turned back around and all the
- 21 polices were there and they told us that we couldn't go
- 22 anywhere.
- 23 Q Did you give police a statement that night?
- 24 A Yes, sir.
- 25 Q Did you tell them the truth in that statement?

1 A I told the truth, but I didn't say, like, who I saw
2 that night.

3 Q You didn't say who you saw. What did you say in that
4 statement?

5 A I said that we was riding down the Mt. Carmel Road and
6 a car stopped, we stopped.

7 Q Did you tell them that, that night?

8 A On my statement?

9 Q Uh-huh (affirmative).

10 A In so many words, yes, sir.

11 Q "In so many words," what do you mean by that?

12 A I said everything except for who I saw. I said we
13 stopped on the Mt. Carmel Road.

14 Q Did you say you picked up Dinky?

15 A I can't remember.

16 Q Did you tell them everything you knew that night?

17 A I told them everything about I knew that night.

18 Q The next day, did you contact law enforcement?

19 A No, law enforcement contact me the next day.

20 Q Is it not true that you called Allen Inabinett?

21 A Not actually called him. I can't remember calling him,
22 but I know I said that night that I'd rather talk to him,
23 because the police was talking to us. He was like -- he
24 wasn't really talking. He was, like, yelling.

25 Q Gotcha. Did you end up talking to Allen Inabinett?

- 1 A The next day, yes, sir.
- 2 Q The next day? Do you remember where?
- 3 A I don't know where exactly we went at, but I know we
- 4 went somewhere down here in Walterboro.
- 5 Q What were you in when you talked to him?
- 6 A A black Trailblazer.
- 7 Q Was it just you and him?
- 8 A Yes, sir.
- 9 Q Do you remember what day that was?
- 10 A The day after.
- 11 Q The day after the incident? You remember what time it
- 12 was?
- 13 A No, sir.
- 14 Q Do you remember telling him that you saw Rat, Chippy,
- 15 and Dinky were in the car?
- 16 A I told him I never saw Rat's face.
- 17 Q Do you remember writing a statement that you saw and in
- 18 fact said Rat's name first; Rat, Chippy and Dinky in the
- 19 car?
- 20 A Uh-huh (affirmative).
- 21 **THE COURT:** You have to say "yes" or "no".
- 22 A Yes, sir. But I also told him I never saw his face.
- 23 Q How did you know Rat was in the car?
- 24 A I don't know if he was in the car.
- 25 Q But you told law enforcement he was in the car that

1 night?

2 A I told him I went on what I heard my cousin say "Rat."

3 Q Did you tell Allen in that statement that you gave to
4 him the next day in his patrol car, did you write that
5 statement down?

6 A Yes, sir.

7 Q Was that statement true when you wrote it down?

8 A Yes, sir.

9 Q Did you tell him that you didn't feel comfortable
10 talking to police that night, that you wanted to talk to
11 him?

12 A Yes, sir, because the man was yelling. Instead of
13 talking to me, he was yelling at me.

14 Q Gotcha. And you pretty much said everything there.
15 You told him as well that there were three people in the
16 car, right?

17 A Well, I know there was three people in the car, but I
18 just didn't know who the third person was.

19 Q And you told him that day that it was Rat, didn't you?

20 A Well, he told me.

21 Q He told you it was Rat?

22 A Uh-huh (affirmative). But I also told him that I never
23 saw his face.

24 Q But you wrote it down that it was Rat?

25 A Yes, I wrote down that it was him.

1 **ASST. SOL. HASELDEN:** Beg the Court's indulgence.

2 **THE COURT:** Yes, sir.

3 **ASST. SOL. HASELDEN:** Your Honor, may I approach?

4 **THE COURT:** You may.

5 Q Ms. Bryant, I ask that you review this, and once you
6 have a chance to review it, tell me what it is.

7 A (WITNESS REVIEWS DOCUMENT.)

8 Q Well, first of all, do you recognize it?

9 A Yes, sir.

10 Q What is it?

11 A It's my statement that I wrote with Allen.

12 Q Do you remember what day you wrote that statement?

13 A The day after.

14 Q The day after?

15 A Uh-huh (affirmative).

16 Q Is that statement true?

17 A Yes, it's true, but I never saw -- you know, I can
18 place the two that was in there, but ---

19 Q You knew there was a driver?

20 A I know it was a driver, but I just didn't know who it
21 was.

22 Q You heard your cousin say Rat's name?

23 A Yes, sir.

24 Q That's all the questions I have for you. Thank you so
25 much. Please answer any questions that Mr. Mathews or Mr.

1 Beach has.

2 **THE COURT:** Cross-examination by the defendant
3 McMillan?

4 **MR. MATHEWS:** No questions, Your Honor.

5 **THE COURT:** Very well. Cross-examination by the
6 defendant Jakes?

7 **MR. BEACH:** None, Your Honor.

8 **THE COURT:** As to this witness, Solicitor?

9 **ASST. SOL. HASELDEN:** Ask that she remain for purposes
10 of possible rebuttal witness, Your Honor.

11 **THE COURT:** Have you instructed her concerning my
12 Order?

13 **ASST. SOL. SHELTON:** Yes, sir, Your Honor. I ask that
14 she be placed on stand-by.

15 **THE COURT:** That's fine. You can leave the courtroom,
16 but you're subject to orders that I issued that you heard
17 about from the Solicitor's Office concerning sequestration
18 of witnesses. You may go back to work, but you're on stand-
19 by to return to the trial of this case if necessary; do you
20 understand?

21 **MS. BRYANT:** Yes, sir.

22 **THE COURT:** You may leave the courtroom at this time.
23 Call your next witness.

24 **ASST. SOL. HASELDEN:** The State calls Stephen Sanders
25 with Colleton County Fire and Rescue.

1 **MADAME CLERK:** Please come forward to be sworn. Place
2 your left hand on the Bible and raise your right hand.

3 WHEREUPON, MR. STEPHEN SANDERS, IS DULY SWORN.

4 **THE COURT:** Good afternoon. Have a seat. Make yourself
5 comfortable. Adjust the microphone to your height. It's
6 going to amplify your voice. Speak up so everybody can hear
7 you. State your full name and spell your last name for my
8 court reporter.

9 **MR. SANDERS:** Stephen Eugene Sanders, S-A-N-D-E-R-S.

10 **THE COURT:** Your witness, counsel.

11 **DIRECT EXAMINATION**

12 **BY ASST. SOL. HASELDEN:**

13 Q Mr. Sanders, who do you work for?

14 A I'm a firefighter/paramedic with Colleton County Fire
15 and Rescue.

16 Q And as a firefighter/paramedic, what do you do?

17 A Pretty much, just that we, obviously, do firefighting
18 for the county and we also treat and transport patients
19 within the county.

20 Q Now, isn't a paramedic the highest level of EMT or is
21 it something different?

22 A Paramedic is one of the highest in this state, yes.

23 Q Okay. Can you describe a little bit the differences
24 between the levels?

25 A An EMT, which is one of the levels, an EMT Basic, they

1 attend to basic needs, as far as basic medical. And a EMT
2 Intermediate is allowed to start IV's and also they're
3 allowed to push certain medications like D50 for diabetics,
4 and as a paramedic, we can do a full range of life support
5 from cardiac drugs to treating cardiac MI's to trauma, as
6 well as securing airways in the field.

7 Q Okay. And what kind of education or training did you
8 have to go through to become a paramedic?

9 A A paramedic basically involved going through EMT school
10 and anatomy and physiology, as well as EMT intermediate
11 paramedic, and then I continued my education on after that.

12 Q What did you continue your education on in?

13 A I -- up at Johns Hopkins at UNVC, I'm also a Critical
14 Care paramedic, as well as a Pediatric Neo-Natal Critical
15 Care Transport paramedic.

16 Q How long have you been a paramedic?

17 A My career started in 1983 in fire and EMS, paramedic
18 school in '85, and I had a little break in there, but
19 basically my career goes back to '83.

20 Q Okay. Have you ever testified as an expert here in
21 Colleton County before?

22 A No, ma'am.

23 **ASST. SOL. HASELDEN:** Your Honor, at this time, I'd
24 move that Chief Sanders be recognized as an expert in the
25 field of critical care and emergency medical treatment.

1 **THE COURT:** Any objections as to the qualifications
2 from the defendant McMillan?

3 **MR. MATHEWS:** No, Your Honor.

4 **THE COURT:** Any objections as to the qualifications
5 from the defendant Jakes?

6 **MR. BEACH:** None, Your Honor.

7 **THE COURT:** All right. Ladies and gentlemen of the
8 jury, you're about to hear the testimony of a witness who
9 claims to have special knowledge, skill, training,
10 education, or experience in the field of paramedic and
11 critical care treatment.

12 Normally, the law does not permit witnesses to get on
13 the witness stand and give opinions or testify to
14 conclusions. An exception to this rule is what we call an
15 expert exception. Experts are qualified by the Court are
16 permitted to give opinions to the matters in which they
17 claim to be so skilled and give a reason for their opinion.

18 In this case, the witness is qualified without
19 objection. You should consider the qualifications and the
20 credibility or believability of the expert, and the reasons
21 given for his or her opinion. You are not bound by any
22 expert opinion. You give it the weight, if any, to which
23 you deem it should be entitled. You may proceed, counsel,
24 without objection.

25 Q Mr. Sanders, were you working on the night of June 3rd,

1 2010?

2 A Yes, ma'am, I was.

3 Q And right about midnight, or perhaps shortly
4 thereafter, did you respond as part of your duties, to the
5 Colleton Medical Center?

6 A Yes, ma'am, we were paged to Colleton ER from Station
7 26.

8 Q Why were you paged?

9 A We were paged for an emergency transport for a victim
10 who had gunshot wounds.

11 Q Okay. And what happened when you got there?

12 A Our transport -- I'm sorry, our response to that
13 location is only a couple of minutes from the station. We
14 were told that a patient had been brought in with multiple
15 GSW's, or gunshot wounds. The patient had apparently only
16 been there several minutes prior to our arrival. When we
17 came in, I believe he was in room 16 in the ER and we walked
18 in to find the ER Physician, as well as the staff, treating
19 the patient.

20 Q And when did you become involved?

21 A Pretty much as soon as we came in. Normally, they
22 don't call us to transport until the patient is stabilized
23 or treatment is finished due to the critical nature of the
24 patient. And the call, we were called right away, as I
25 stated, and Dr. Ward asked us to assist in treatment and

1 preparing the patient for transport.

2 Q Were you able to firsthand view this individual's
3 wounds?

4 A Yes, ma'am, I was.

5 Q And could you describe the extent of those wounds?

6 A As I walked into the room, from the patient's feet
7 area, I noticed obvious deformity to the right leg, right
8 upper thigh area, which is the femur. I also noticed
9 deformity to the left arm, as well as a gunshot wound to the
10 right shoulder.

11 Q And when you say "deformities," what do you mean?

12 A Well, basically deformities is just that. When you're
13 dealing with long bones as we call them, being a femur or an
14 arm or what have you, everybody is pretty well adept at what
15 a normal bone should look like, so basically a deformity is
16 just that, the bone is lined up properly and is offset and
17 gives obvious deformity to the joint.

18 Q Okay. And you mentioned that they asked you to help
19 stabilize, get the patient ready for transport. What did
20 you do?

21 A I instructed my partner, as well as another crew, to go
22 get me a traction splint, as well as another splint used to
23 stabilize the arm. We started with the right femur traction
24 splint device that is attached to the ankle and it is put up
25 into the groin area or under the leg. It's used to pull

1 traction to realign the bones, stabilize it so that things
2 aren't moving around so much, basically.

3 Q You say "realigned", would that then indicate it to be
4 a break?

5 A Yes, ma'am, it would.

6 Q And were you able to determine exactly how severe the
7 break was in this case?

8 A The deformity in the leg, when you think about your
9 thigh, it's basically straight down, and the thigh bone, the
10 femur, is the largest bone in the body. It was broke to the
11 point where the leg was shifted out in the thigh region.

12 Q So a complete break?

13 A Yes, ma'am. It would appear.

14 Q Would that leg have been able to support weight?

15 A No, ma'am.

16 Q What about the injuries to the arm?

17 A The arm had, again, obvious deformity to the arm.
18 Again, this is one of the bones that stabilizes the arm and
19 the arm actually was shifted in several different positions
20 upon examination. At that point, again with that, we took a
21 splint to apply and try to stabilize that. We don't want
22 the bone fragments to do any further harm to the patient.
23 So we try to stabilize it the best we can.

24 Q So throughout your assistance in the ER and then the
25 subsequent transport, were you able to determine what had

1 caused those bones to break?

2 A We -- at the ER, the doctor had pointed out, and they
3 were visible, there were multiple entrance wounds. A couple
4 of them had exit wounds, but some just had entrance wounds
5 to the area.

6 Q Do you remember exactly how many GSW's this person had?

7 A There was an entrance wound to the right thigh, with no
8 exit wound. There was also a GSW to the right shoulder, and
9 I believe that had no exit wound. And then there was a
10 gunshot wound to the left arm, lower, then it exited higher,
11 so that had an entrance, as well as an exit wound.

12 Q Okay. Now, as a part of your internal protocol with
13 Colleton County Fire and Rescue, are you required to type up
14 a report and memorialize everything that you do?

15 A Yes, ma'am, we are, because of the different
16 procedures, as well as the drugs that we use to transport.

17 Q And as a part of that protocol, do you have to
18 determine the patient's name?

19 A Yes, ma'am, we do.

20 Q And were you able to determine a patient's name in this
21 case?

22 A Yes, ma'am. We were given a copy of a face sheet,
23 which had been filled out, which is one of the things that
24 we ask for during the transport. The receiving facilities,
25 for the most part, would like to know who that patient is

1 that we're bringing in, and they were able to supply us with
2 that information.

3 Q And what was the individual's name that you were
4 working on, on the night of June 3rd, the morning of June
5 4th?

6 A The individual's name that we were working on and
7 transported to MUSC would be David Jakes.

8 **ASST. SOL. HASELDEN:** Just a moment's indulgence, Your
9 Honor. I have no further questions for you at this time.
10 If you would answer anything that the defense attorneys
11 have, I'd appreciate it.

12 **MR. SANDERS:** Yes, ma'am.

13 **THE COURT:** Cross-examination by the defendant
14 McMillan?

15 **MR. MATHEWS:** No questions, Your Honor.

16 **THE COURT:** Cross-examination by the defendant Jakes?

17 **MR. BEACH:** None, Your Honor.

18 **THE COURT:** As to this witness, Solicitor?

19 **ASST. SOL. HASELDEN:** Ask that he be excused.

20 **THE COURT:** Any objection to this witness being excused
21 by the defendant McMillan?

22 **MR. MATHEWS:** No, Your Honor.

23 **THE COURT:** Any objection to this witness being excused
24 by the defendant Jakes?

25 **MR. BEACH:** No, Your Honor.

1 **THE COURT:** Mr. Sanders, you are excused and you may
2 step down. You may leave the courtroom.

3 (WITNESS LEAVES THE STAND AND EXITS THE COURTROOM.)

4 **THE COURT:** Call your next witness.

5 **ASST. SOL. SHELTON:** The State calls James Davis, Sr.

6 **THE COURT:** Come around and be sworn by the Clerk of
7 Court.

8 **MADAME CLERK:** Please come forward and put your left
9 hand on the Bible and raise your right hand.

10 WHEREUPON, MR. JAMES DAVIS, SR., IS DULY SWORN.

11 **THE COURT:** Watch those stairs. Have a seat for me.
12 Make yourself comfortable. Pull up that chair and adjust
13 that microphone. That microphone is going to amplify your
14 voice. I want you to speak into it and I want you to speak
15 up so everybody in the courtroom can hear you, particularly
16 members of the jury.

17 Please begin by stating your full name and spelling
18 your last name, including whether there is a Senior, Junior,
19 Third, or Fourth on your name, for the court reporter.

20 **MR. DAVIS:** I am James Allen Davis, last D-A-V-I-S.

21 **THE COURT:** Are you a Senior or Junior?

22 **MR. DAVIS:** No, sir.

23 **THE COURT:** Very well.

24 **ASST. SOL. SHELTON:** I apologize, Mr. Davis. I thought
25 your son was a Junior and I thought you were a Senior. My

1 mistake.

2

DIRECT EXAMINATION

3 **BY ASST. SOL. SHELTON:**

4 Q Do you have a son named James Davis?

5 A Yes, I do.

6 Q What's his nickname?

7 A Chippy.

8 Q Who gave him his nickname?

9 A His grandfather.

10 Q Do you remember June 3rd, 2010?

11 A Yes, sir.

12 Q You kind of grimaced there.

13 A Yeah, I remember it.

14 Q What were you doing during the afternoon of that day?

15 A We was cutting grass.

16 Q You say "we." Who's we?

17 A Me and my son and my wife. All of us was in the yard.

18 Both of my sons, Chippy, Sammy, my wife was out there, and

19 my mother was out there. All of us was out there together.

20 We was cutting grass, drank sodas, and that's it.

21 Q Do you work, Mr. Davis?

22 A I used to work at Eaton Aerospace for 10 years and I'm
23 on medical leave.

24 Q You're on medical leave, now?

25 A Yes, sir.

1 Q Going back to cutting grass; your son was cutting
2 grass, everybody was helping you cut grass. How long did
3 you cut grass for?

4 A We cut grass until about -- we finished up everything
5 about dusk/dark.

6 Q And this is June the 3rd. Do you have any idea about
7 what time that would have been?

8 A Ah, no, I know it was dusk/dark.

9 Q It was dusk/dark on June the 3rd?

10 A It was dusk/dark on June 3rd.

11 Q What do you remember doing next?

12 A Well, after I put the lawnmower up and everything, and
13 all of us went into the house and sit down.

14 Q You said "all of us"; who is all of us?

15 A Me, Chippy, Sammy, and my wife, and my mother.

16 Q Uh-huh (affirmative).

17 A And his girlfriend and my daughter, Tamara. All of us
18 went into the house, sit down. We got on the computer.
19 Well, Tamara was on the computer and Chippy and them, we was
20 on the chair, sitting down talking. And then, later on that
21 night, they left out the house and went back next door.

22 Q What's next door?

23 A Tamara's house, which is my daughter.

24 Q Uh-huh (affirmative). Is that James?

25 A Uh-huh (affirmative). James, and where James stays at,

1 also. James, his girlfriend, all of them went next door.
2 So then, after that, me and my wife and my son was in the
3 house, and shortly after that, you know, we went to bed. It
4 wasn't bed, bed. We done go and got ready to go to bed.

5 Q Yeah, went back to your bedroom and got ready to go to
6 bed?

7 A Right.

8 Q Do you remember -- you don't have to give us the exact
9 time, but do you have any idea what time you went to bed?
10 What time you fell asleep that night?

11 A I wasn't asleep, sleep, but it was -- it should have
12 been around, I don't know, right after midnight, or close.

13 Q Close to it?

14 A Yeah.

15 Q And James was with you at dusk/dark after you stopped
16 mowing the grass?

17 A Right.

18 Q And then went back to your house for a little bit.
19 Y'all sat down for a while, and then they left and that's
20 the last time you saw him on the 3rd, correct?

21 A Right.

22 Q When is the next time you saw James?

23 A Well, the next time I saw him, he come knocking on the
24 door, and about out of breath.

25 Q Where were you at the time?

1 A When he knocked? I was laying in the bed. So when he
2 knocked on the door, I say well, who that is to myself. And
3 I got up and went to the door and opened the door and I
4 wasn't sure who it was at first, and he stated his name, and
5 I opened the door and I said, "What wrong with you?" like
6 that.

7 Q Why did you ask him what's wrong with you?

8 A Because he was about out of breath.

9 Q About out of breath?

10 A Right. And so we came in and we paused a little bit,
11 and he start, you know, telling me something about him ---

12 **MR. MATHEWS:** Objection. Hearsay, Your Honor.

13 **THE COURT:** Sustained. Don't refer to what someone
14 else said unless I instruct you. Ask a question, counsel.

15 Q Please don't say anything that anybody else said. He
16 was out of breath?

17 A He was out of breath.

18 Q And what did you say to him?

19 A I ask him what wrong, like that. And he tell me what
20 was wrong. And he state that ---

21 **MR. MATHEWS:** Objection, Your Honor. Hearsay.

22 **THE COURT:** Sustained. Do not refer to what someone
23 else said. Only what you saw with your eyesight or your
24 sense of smell or you observed, and not what someone else
25 said. Counsel, ask a question.

1 **ASST. SOL. SHELTON:** Yes, sir, Your Honor.

2 **THE COURT:** Proceed.

3 Q Did you let him in the door?

4 A Yes, I did.

5 Q Were you happy with him? Upset with him? How did you
6 feel about him?

7 A I was kind of puzzled, you know, what was going on?
8 Because I felt like something was wrong, you know.

9 Q Uh-huh (affirmative). Now, don't talk about what he
10 said, but why did you feel like something was wrong?

11 A Because he was out of breath and I could look in his
12 eyes and he was scared, you know, like, scared. I know my
13 child, so I knew at that point, something was wrong.

14 Q Uh-huh (affirmative). Did you ask him what was wrong?

15 A Yes, I did.

16 Q Okay. Now, that night, were you able to talk to him
17 about it?

18 A Well, we paused a little bit, and well, he said
19 something that night. So then that was, you know.

20 Q Y'all went to bed?

21 A Yeah, I couldn't sleep, because -- I left him on the
22 couch. I couldn't sleep. I went in the bed, but I could
23 feel something was wrong, you know.

24 Q Uh-huh (affirmative). Were you able to talk to him
25 the next day?

1 A Yes, I did.

2 Q Don't talk about the substance of what he talked about,
3 but did you talk about -- were you able to find -- did he
4 tell you more about what happened the day before?

5 A Yes, he did.

6 Q At that point, what did you do?

7 A All right. He told me what was going on. I asked him,
8 "Man, what's going on?" and he told me what was going on.
9 Him, Rat, and David ---

10 **MR. MATHEWS:** Objection, Your Honor. He's doing it
11 again.

12 **THE COURT:** Solicitor, you're going to have to direct
13 your questions so the witness does not believe you're
14 eliciting statements from another person that they said.
15 The objection is sustained and I expect you to ask a
16 question that does not elicit hearsay.

17 **ASST. SOL. SHELTON:** Thank you, Your Honor.

18 **THE COURT:** Proceed.

19 Q What did you do that morning?

20 A That morning, I got up and went back to him and we
21 start talking.

22 Q Okay. Then, after that, did you call anyone after you
23 talked to him?

24 A After I talked to him, I called Ms. Lynah.

25 Q Ms. Lynah?

- 1 A Right.
- 2 Q Who is Ms. Lynah?
- 3 A Ms. Lynah is a cousin of my wife. She works on the
4 police force.
- 5 Q Okay. Were you able to get in touch with her?
- 6 A Yes, I got in touch with her.
- 7 Q Don't -- and did you try to get in touch with anybody
8 else?
- 9 A Yes, I tried to get in touch with Allen.
- 10 Q Who is Allen?
- 11 A Allen, he is on the police force.
- 12 Q He's on the police force. Were you able to get in
13 touch with him?
- 14 A No, I wasn't able to get in touch with him.
- 15 Q Later that night, did you try to contact anybody else?
- 16 A Well, after everything was going on, and all the
17 commotion, I say, well, you know, see what's going on. Then
18 we wait and then the police came to us.
- 19 Q Uh-huh (affirmative). When the police came to you, did
20 they arrest your son?
- 21 A No, they didn't .
- 22 Q Did -- how did -- did you leave with the police on your
23 own accord?
- 24 A Yes, I did.
- 25 Q Did your son ride with the police or did he ride with

- 1 you?
- 2 A He ride with me and my wife.
- 3 Q Where did y'all go?
- 4 A To the sheriff's office.
- 5 Q When you got to the sheriff's office, did they put
- 6 handcuffs on him?
- 7 A No, sir.
- 8 Q What did they do?
- 9 A They were asking -- you know, we went in the room, they
- 10 were asking what was going on? So I already know what he
- 11 told me and my wife, so I tell him to tell the truth.
- 12 Q At first, was he telling the -- were you in the room
- 13 with him when they were initially asking him questions?
- 14 A Right.
- 15 Q Was he telling the truth then?
- 16 A Yes.
- 17 Q When they first started asking him questions, was he
- 18 telling the truth?
- 19 A Yes, sir.
- 20 Q He was telling the truth?
- 21 A When we were in the room, I want to say -- I forgot who
- 22 was in there with us. And they were asking him, you know,
- 23 what happened. And he still wouldn't say nothing. I tell
- 24 him, say, man, me and my wife ---
- 25 Q Then, after that, did the police leave the room?

- 1 A When we were telling him to tell the truth?
- 2 Q Uh-huh (affirmative).
- 3 A Yeah, they gave us a moment together, you know. Told
- 4 us to talk.
- 5 Q At that point, had you contacted Margie Bright
- 6 Matthews?
- 7 A No, I haven't.
- 8 Q Are you the one who ended up hiring Margie Bright
- 9 Matthews?
- 10 A Partly.
- 11 Q Partly?
- 12 A Yeah.
- 13 Q But she represents your son, right?
- 14 A Right.
- 15 Q At that point, though, you hadn't gotten in touch with
- 16 her, had you?
- 17 A No, I didn't.
- 18 Q While you were in the room with your son, did you ever
- 19 -- was Ms. Matthews there?
- 20 A No, she didn't.
- 21 Q Was your son talking to the police?
- 22 A Yes.
- 23 Q And after you told him to tell the truth, did he
- 24 continue to talk to the police?
- 25 A Yes.

1 Q But that night, June the 4th, the night after it
2 happened, you hadn't retained Margie Bright Matthews as an
3 attorney?

4 A No.

5 Q He didn't have an attorney at that time, did he?

6 A No.

7 Q When he was in that interview room, did he have cuffs
8 on him?

9 A No.

10 Q Were y'all restrained in any way?

11 A No.

12 Q Could you have left if you had wanted to?

13 A Yes.

14 Q Do you believe your son could have left if he wanted to
15 at that time?

16 A Yes.

17 Q That's all the questions I have for you, Mr. Davis.
18 Please answer any questions that Mr. Beach or Mr. Mathews
19 may have for you.

20 **MR. MATHEWS:** No questions, Your Honor.

21 **THE COURT:** Very well. Cross-examination by the
22 defendant Jakes?

23 **MR. BEACH:** Thank you, Your Honor.

24 **CROSS-EXAMINATION**

25 **BY MR. BEACH:**

1 Q Mr. Davis, you say you felt like he could have left the
2 room at any time?

3 A Yes.

4 Q Did he ever ask to leave the room?

5 A Well, not in initial way. We were just talking. I
6 mean, you know, I instruct him to stay in there until he
7 tell the truth.

8 Q When did they put the handcuffs on him?

9 A Afterwards. We ain't never seen them put the handcuffs
10 on him. When he start telling the truth, we just left.

11 Q Did he go home with you that day?

12 A No.

13 Q He was detained, was he not?

14 A Well, not in my presence.

15 Q He was arrested that day; isn't that correct?

16 A Well, we drove him down there and he was in the office
17 talking to them, but I never did see them put handcuffs on
18 him.

19 Q But he didn't go home after that?

20 A No, sir.

21 Q And he went to jail?

22 A I assume.

23 Q After y'all had talked?

24 A Yes, sir.

25 Q And this is when he supposedly made his truthful

1 statement; this was after this, correct?

2 A Repeat that.

3 Q After he made what was supposedly his truthful
4 statement, they arrested him?

5 A Well, after he made a statement, we left. I mean, we
6 instructed him to tell the truth, so while he was telling
7 the truth, we left. We left out the room.

8 Q Was your son arrested or was he not arrested?

9 A He wasn't arrested in my presence, because we left him
10 in the room telling the truth, because I didn't want to
11 intimidate him in no way and I didn't want the officer to
12 think I'm trying to tell him something, so we left out the
13 room while he was telling them the truth.

14 Q Were charges brought against him?

15 A Yes, sir.

16 Q Are they still pending?

17 A Yes, sir.

18 Q So they didn't believe him, did they?

19 A I don't know.

20 Q Did he tell them that he didn't have anything to do
21 with the ---

22 A No, sir.

23 Q Okay. But they still arrested him?

24 A Yes.

25 Q Did you have anything to do with the plea bargain that

1 Ms. Mathews had with the State?

2 A No, sir.

3 Q You don't know anything about that?

4 A Well, I know about it, but I wasn't in the room when
5 they was talking, discussing it.

6 Q But charges are still pending against him; is that
7 correct?

8 A Yes, sir.

9 **MR. BEACH:** No other questions, Your Honor.

10 **THE COURT:** Redirect?

11 **ASST. SOL. SHELTON:** None for this witness, Your Honor.
12 Thank you.

13 **THE COURT:** As to this witness, Solicitor?

14 **ASST. SOL. SHELTON:** We ask that he also may remain as
15 a possible rebuttal witness, Your Honor.

16 **THE COURT:** Have you advised him concerning my order?

17 **ASST. SOL. SHELTON:** Yes, sir, Your Honor.

18 **THE COURT:** All right. Mr. Davis, I'm going to ask you
19 to step down and remain in the area in which you were
20 requested to remain prior to testifying, subject to my prior
21 order. Thank you. You may step down from the witness
22 stand.

23 Call your next witness.

24 **ASST. SOL. SHELTON:** The State calls Tony Buchanan.

25 **MADAME CLERK:** Please come forward to be sworn. Place

1 your left hand on the Bible and raise your right.

2 WHEREUPON, ANTHONY BUCHANAN, IS DULY SWORN.

3 **THE COURT:** You know what to do. State your full name
4 and spell your last name for the court reporter, please.

5 **MR. BUCHANAN:** Anthony Buchanan, B-U-C-H-A-N-A-N.

6 **DIRECT EXAMINATION**

7 **BY ASST. SOL. SHELTON:**

8 Q Thank you, Mr. Buchanan. How are you today?

9 A Good. How are you doing, sir?

10 Q People call you Tony sometimes?

11 A Yes.

12 Q I apologize. I called your name out as Tony instead of
13 Anthony.

14 A That's fine.

15 Q Where do work now?

16 A Ridgeland Police Department.

17 Q What do you do there?

18 A I'm a patrol officer.

19 Q And where did you used to work before you worked for
20 Ridgeland?

21 A Colleton County Sheriff's Office.

22 Q What were you there?

23 A I was a supervisor over the traffic team.

24 Q Were you working on the night of June the 3rd into June
25 the 4th 2010?

