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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Bamberg County

Honorable Walton J. McLeod, IV, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DERRICK EDWARD GATHERS,

APPELLANT

APPELLATE CASE NO. 2025-000487

RECORD ON APPEAL

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	)	COURT OF GENERAL SESSIONS
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	)	2023-GS-05-00059
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	)	
	)	
	)	
STATE OF SOUTH CAROLINA,	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
DERRICK GATHERS,	)	
DEFENDANT.	)	
_____	)	

March 3-5, 2025
Bamberg, South Carolina

B E F O R E:

THE HONORABLE WALTON J. MCLEOD, IV, JUDGE.

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I N D E X

(PW) - Denotes Plaintiff's Witness

(DW) - Denotes Defense Witness

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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2	Photograph - Defendant in Car	4	99
3	Georgia Driver's License	4	101
4	Surveillance Video - Crash Scene	4	109
5	Cartridge Case - SLED Item 5	4	140
6	Wallet From Defendant's Car	4	113
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9	Deputy Preacher In-Car Camera	4	149
10	Photograph - Deputy Preacher's BWC	4	152
11	Photograph - Entry Bullet Wound	4	100
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1	Jury Note		74
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All Exhibits were retained by the Clerk of Court for Bamberg County.

P R O C E E D I N G S

(WHEREUPON, State's Exhibit Nos. 1 through 12 were marked
for identification.)

THE COURT: So obviously, we're ready for trial.
You've got some motions you want heard before?

MS. ALVES: Yes.

THE COURT: Okay.

MS. ALVES: Your Honor, my first motion would be --
it's my understanding that the State intends to elicit
evidence that Mr. Gathers had a pending Georgia charge and
that he had a bench warrant that had been issued in March of
2023, about a month prior to this incident. I would object
to any reference to the Georgia charge or to that bench
warrant unless the State can establish some type of nexus
between what happened on the date of this incident and the
Georgia charges.

Specifically, I don't know what evidence the State has
that Mr. Gathers even knew he had a Georgia -- that he knew
he had a bench warrant for the Georgia charge. I don't know
under what circumstances that bench warrant was issued. I
don't know what notice -- it was issued for his not
appearing in court, I don't know what notice he would have
had to appear in court. And I would object to any reference
to that bench warrant unless the State can establish some
type of nexus between the conduct on the date in question

1 and that bench warrant.

2 THE COURT: Any other motions you want heard?

3 MS. ALVES: Yes, sir.

4 Judge, I, also, would have some question regarding what
5 record the State has -- if my client were to testify what
6 record the State has. The majority -- well, all of his
7 record where there's been convictions appears to be out of
8 the State of South Carolina -- excuse me, out of the State
9 of New York. These are the only charges he is facing in
10 South Carolina. And, of course, he has the charges that are
11 pending in Georgia that I just referenced.

12 But the Solicitor has provided me with the rap sheet
13 and they have provided me with a copy of a criminal -- a
14 summary of his criminal history that was provided to the
15 State by the Assistant U. S. Attorney. That's something
16 that they prepared for the federal court case that's pending
17 as well. But I have not -- I have some question about what
18 record they have and whether or not the State has -- I would
19 object to any record coming in unless there's certified
20 copies from New York.

21 That New York rap sheet is a little challenging to
22 examine and understand exactly what happened on all of the
23 charges and the timeframes, so I would object to any
24 reference to any record. I know we're early on that because
25 we haven't gotten to where he may or may not testify, but I

1 am bringing that up.

2 THE COURT: Okay.

3 MS. ALVES: Judge, I have an objection to a portion of
4 the video. In the video -- when this happened, Corporal
5 Frazier had his body cam video on. He, also, had an in-car
6 video that was playing.

7 During the time, the video does show -- it does show
8 Corporal Frazier behind the vehicle that, ultimately, turned
9 out to be Mr. Gathers's vehicle. For some time, it does
10 show when the trooper put his blue light on. That is some
11 time -- the video starts and then you can see him following
12 behind the vehicle. And then at some point, he does turn
13 his blue light on. And after he turns his blue light on,
14 they go about maybe a mile or so and then Mr. Gathers pulls
15 over and the trooper gets behind him and the traffic stop
16 commences at that point.

17 On the video, after the traffic stop started, a second
18 officer comes up -- a second sheriff's department officer
19 comes up to assist the trooper with the stop and there's
20 conversation between for about -- it's about 45 seconds or
21 so. And during that conversation, there's conversation
22 about the trooper saying that he didn't know what the car
23 was going to do. He was like, I didn't know what he was
24 going to do. I thought he was going to take off on me.
25 That's, clearly, not what happened because once he turned

1 his blue light and siren on, he didn't go miles. He just
2 went a little short distance and the he pulled over where
3 there was a clearing wide enough for him to pull over.

4 So I would object to any of that conversation coming in
5 regarding the speculations about what the person might have
6 done when that's, clearly, not what happened. And I have
7 told the Solicitor what parts of the video I am objecting
8 to. I've told him from what second to what second I'm
9 objecting to on that video.

10 THE COURT: Okay.

11 MS. ALVES: Judge, in the paperwork -- and I don't know
12 if the State intends to put in any of this or not, but in
13 the paperwork that I received showing the criminal history,
14 it alleges the nickname of my client and it alleges that he
15 was involved in gang activity. I would object to any
16 reference to the nickname coming in. I don't know if that's
17 his actual nickname or not. All I know is it's on the
18 paperwork. I don't know if the State intends to put it in.
19 But it list the nickname Tragedy and it elicits that it was
20 possible gang activity. I would object to any references to
21 either one of those coming in.

22 THE COURT: Okay.

23 MS. ALVES: Judge, the Solicitor advised me this
24 morning that he intends to put in the portion of the
25 videotape where Mr. Gathers's girlfriend was making

1 statements to somebody on a telephone. I would object to
2 any reference to those statements coming in unless that
3 person is here to testify. I'd be objecting on the basis of
4 hearsay.

5 THE COURT: Okay.

6 MS. ALVES: And, Judge, my last issue concerns police
7 officers in the courtroom. I know this is an open
8 courtroom. I know it's a free country, anybody can come in
9 or out, but in this situation, obviously, we're not in our
10 regular courtroom here. We're in a situation where
11 everything is open out here. We're only separated by
12 curtains.

13 Judge, in every case that I've ever had where a police
14 officer is injured, obviously, and I would rightfully expect
15 there would be a strong law enforcement support for Corporal
16 Frazier. In fact, when we had our bond hearing sometime
17 last year, there was strong support for Corporal Frazier and
18 there were a lot of uniformed officers present.

19 Also, Mr. Gathers was recently arraigned in federal
20 court. And during that hearing, there were a number of
21 officers present. From what his federal public defender --
22 I wasn't there, but from what the federal public defender
23 told me, it was about 15 officers present.

24 In this situation, we don't have the luxury of having a
25 whole lot of separation between the jurors and people coming

1 in and out. I would object to there being a large presence
2 of uniformed officers present. I think that would have a
3 chilling effect on the jurors. I think that would be
4 prejudicial. I mean, I know it's a free country and people
5 can come in and out. But even in this courtroom, you see
6 how limited the space is.

7 I think for there to be a large number of marked police
8 cars in this very small parking lot that we have, a large
9 number of police officers surrounding the jurors and present
10 with the jurors when they're coming in and out and in the
11 same room with the jurors when we have limited or no way of
12 separating everybody, I think that that would have a very
13 chilling effect on the jury. And I would object to there
14 being that large of a presence present while the jury is
15 here -- while the jury panel is here and as well in this
16 very small courtroom.

17 THE COURT: All right. We're not, obviously, getting
18 into too much depth right now, but I just wanted to deal
19 with those motions.

20 MS. ALVES: Yes, sir.

21 THE COURT: Mr. Miller, anything?

22 MR. MILLER: Your Honor, as to the Defendant having a
23 warrant in Georgia, she wants us to establish a basis for
24 it. Well, that's going to have to be done during the course
25 of the trial. And if the Defendant testifies, we intend to

1 ask him about the fact that he had a pending warrant from
2 Georgia.

3 As far as his prior record goes, again, the Court
4 pointed out that we'll have to cross that bridge when we get
5 to it. I have told Ms. Alves that I don't intend to get
6 into his prior record if he testifies. I do intend to get
7 into his prior record at sentencing.

8 Kind of hand-in-hand with that, what I have is the
9 fourth issue that she raised was this gang name and the
10 compiled information that the Feds got for their charging
11 determination that we got from the U.S. Attorney's Office.
12 Again, Your Honor, that wouldn't be something that we would
13 be discussing in front of the jury. When we bring it up to
14 the Court, Ms. Alves can object at that time for whatever
15 basis that she's got, but we're not bringing any of that
16 information up in front of the jury, don't have any
17 intention of bringing that information up in front of the
18 jury.

19 I want to jump down to the officers in the courtroom.
20 Your Honor, I said officers. I categorize it as officers in
21 the courtroom. She doesn't want them to be on the property.
22 She doesn't want them to be able to drive their cars here
23 and be in the parking lot or be anywhere around the
24 building. I don't think that that is reasonable, number
25 one. And number two, Your Honor, this, like all of these

1 decisions, is up to the Court, but the facts and
2 circumstances of our physical condition should not be
3 impacting the Constitutional rights that these officers have
4 to be present in this courtroom.

5 It is a close quarters. We all recognize that. We've
6 been talking about that and discussing it since before this
7 ever happened, but we are where we are. And in that regard,
8 Your Honor, we would object to any type of limitation on the
9 ability of the officers, whether they're from the Highway
10 Patrol -- I mean, this incident involves Highway Patrol,
11 Bamberg Police Department, Bamberg County Sheriff's Office,
12 Dorchester County Sheriff's Office, Orangeburg County
13 Sheriff's Office, Branchville Police Department, all those
14 agencies were involved in this one way or the other.
15 Obviously, because of the circumstances, the Highway Patrol
16 intends to support Corporal Frazier in this matter. So I'll
17 leave that at that.

18 Your Honor, I believe for the Court to rule on the
19 motion regarding the conversation between Officer Frazier
20 and Sergeant Duckson, who is the Bamberg County deputy that
21 arrived on the scene as the traffic stop was going on, that
22 conversation, that 45 seconds, I can get that queued up and
23 I can play it for the Court, but we do not believe there's
24 anything objectionable in that conversation as it relates to
25 Ms. Alves's client.

1 THE COURT: It's a conversation where exactly?

2 MR. MILLER: So what happens is Trooper Frazier makes
3 this traffic stop. He's got on his body-worn camera and his
4 in-car camera. He goes up, approaches the vehicle, gets the
5 information, comes back to his patrol vehicle and as he's
6 sitting in his patrol vehicle typing on his mobile data
7 terminal and all that kind of stuff, you know, going through
8 and doing his State Trooper job, Sergeant Duckson with the
9 Bamberg County Sheriff's Office arrives to back him up. And
10 Sergeant Duckson doesn't have a body camera on and he
11 doesn't have his in-car camera activated because he only cut
12 on his rear facing lights, so it didn't automatically start
13 his in-car camera operating.

14 Sergeant Duckson walks up to Trooper Frazier's car and
15 is standing outside the door watching the vehicle -- Mr.
16 Gathers's vehicle and he and Sergeant Frazier -- excuse me,
17 Trooper Frazier, they're sitting there talking. And Trooper
18 Frazier makes some comment to the effect of, Man, I turned
19 around on him and I thought for a while he was going to go
20 ten zero on me and I said man, I don't want to do that. But
21 then he pulled over. Basically, he tells him how he got to
22 where they were. There's nothing prejudicial about it at
23 all.

24 But it is important to us because it establishes the
25 mindset of Trooper Frazier during this conversation. Again,

1 we'll play it for the Court, it's only 45 seconds long, but
2 the significance is Trooper Frazier was not agitated at all.
3 He wasn't -- I think we've all either heard or experienced a
4 highway patrolman being kind of upset whenever they pull you
5 over for speeding, especially at 3:30 in the morning on a
6 desolate highway. But he wasn't like that at all. He was
7 calm. He was cool. He said, I thought he was going to take
8 off on me, but he didn't. So I don't know how it's
9 prejudicial in any respect, but we do think it is important
10 for the context of the situation.

11 Because, frankly, Your Honor, there isn't any
12 explanation for why Derrick Gathers shot Trooper Frazier in
13 the face. Trooper Frazier gets out of his car with the
14 Georgia ID that the Defendant had handed to him, which was
15 not his ID, and he's walking back up to the car. And before
16 he can really say anything to him, Mr. Gathers comes out of
17 the car with his right hand and fires a single shot shooting
18 Trooper Frazier in the face.

19 So it wasn't anything that was provoked or even under
20 the wildest theory could have been justified, but we do
21 think that that is significant for the jury to hear the
22 entirety and the -- and I say entirety, Trooper Frazier's
23 body worn camera video is approximately 16 and a half
24 minutes long from beginning to end. And we would be seeking
25 to introduce that video.

1 Your Honor, one of the officers -- after shooting
2 Trooper Frazier in the face, Derrick Gathers fled the scene
3 in a dark-colored Mazda SUV. And several officers that were
4 coming to Trooper Frazier's aid were coming down Highway 78
5 and this vehicle was going towards Bamberg on Highway 78.
6 As a result of that, there ended up being a multi-car chase.
7 Included in that chase were three officers that were there
8 for an extended period of time. There was a Bamberg Police
9 Department officer, Sergeant Hall, who now works for the
10 Allendale Police Department. Then there was a trooper,
11 Trooper Tartar, ended up taking the lead in the chase. And
12 then there was Preacher, Richard Preacher, who was a deputy
13 for the Bamberg County Sheriff's Office.

14 As the chase is going on, Tartar ends up being the
15 first car behind the Defendant, Preacher is the second car
16 behind Tartar and Hall is in the third car behind Preacher.
17 When the Defendant, ultimately, wrecks and the car rolls
18 over multiple times, everybody stops and Preacher's vehicle
19 is close by. Obviously, it's close to Tartar's vehicle.
20 He's kind of behind Tartar's vehicle, more vehicles came up
21 on the side. And they immediately go to the vehicle and
22 they see the Defendant's passenger. The Defendant's
23 passenger is clearly alive and they pull her from this
24 wreckage and they check her for a minute to make sure she
25 doesn't have anything broken and that she could walk. She

1 gets puts in handcuffs and she gets taken back to Preacher's
2 vehicle.

3 Less than two and a half minutes after being put into
4 Preacher's vehicle, she makes a phone call to a person that
5 she refers to as mom. And she tells mom in a very shaky
6 voice -- and I've got it prepared to play for the Court.
7 She tells mom that she doesn't know what just happened, that
8 Derrick ran from the police and he shot the police and she's
9 freaking out because she didn't know it was going to happen.

10 And her mother, or the person on the phone she
11 identifies as mom, first of all, was upset because she was
12 on the way to Charleston at 3:30 in the morning from Aiken.
13 And she says, Well, just cooperate with the police. She
14 says something -- doesn't really matter to the point of this
15 argument, but she says something to the effect of if you
16 don't know anything, then you don't know anything. That is
17 consistent with what she told law enforcement.

18 In contradiction to her statement that she made on the
19 telephone to this person, she told law enforcement she
20 didn't remember anything about it. That she knew she was in
21 the car with him, but she didn't have any independent
22 recollection of the events. It was so traumatic and then
23 she was involved in this crash.

24 Your Honor, we think that the statements in that
25 telephone call -- first of all, they absolutely are hearsay.

1 There's not any question about that. But, Your Honor, this
2 is -- this will be a hearsay statement that was, we believe,
3 covered and admissible under 803 Subsection 1 and 2. And I
4 have a copy here for the Court.

5 And, Your Honor, as the Court is aware, both
6 subsections talk about the present sense impression, which
7 is a statement describing or explaining an event or
8 condition made while the Defendant was preceding the event
9 or condition or immediately thereafter. We would argue,
10 Your Honor, that less than 10 minutes after being involved
11 in this massive car wreck and less than two and a half
12 minutes after being put in the back of Preacher's vehicle
13 would qualify that statement as present sense impression.
14 And, also, Your Honor, under 803(2), an excited utterance,
15 which is a statement relating to a startling event or
16 condition made while the declarant was under the stress of
17 the excitement caused by the event or condition.

18 And, Your Honor, we would submit and I will now play
19 this -- I think it's about a minute and 15 seconds long --
20 phone call. And our reasons for arguing that she was still
21 under the stress of the event will be evident from the tone
22 of her voice. And, again, Your Honor, just to clarify for
23 the record, this is from the in-car video of Preacher,
24 Deputy Preacher from the Bamberg County Sheriff's Office.
25 And this was captured on the audio in his vehicle. Your

1 Honor, this occurs -- and this has been provided to Ms.
2 Alves, but this occurs at 26 minutes and nine seconds on the
3 video provided to Ms. Alves.

4 THE COURT: The audio I'm listening to is the statement
5 made by the Defendant's --

6 MR. MILLER: Passenger.

7 THE COURT: -- passenger?

8 MR. MILLER: Yes, sir.

9 (WHEREUPON, audio was played for the Court.)

10 MR. MILLER: That is the portion of the video, Your
11 Honor. It ends at 27 minutes and 58 seconds.

12 THE COURT: All right. What other pretrial motions
13 does the State have?

14 MR. MILLER: That's it.

15 THE COURT: Did he give a statement to law enforcement?

16 MR. MILLER: He did not.

17 THE COURT: I really intended to get into full blown
18 pretrial motions first things in the morning. We have other
19 -- let's just get through the rest of our cases first.

20 MR. MILLER: Yes, sir, absolutely.

21 THE COURT: We have our first case ready for trial
22 ready to go, some record to make on pretrial motions,
23 otherwise, ready to go to trial tomorrow morning.

24 (WHEREUPON, a short break was taken.)

25 THE COURT: All right. We're back on the State vs.

1 Derrick Gathers. We're choosing this jury tomorrow morning.
2 We sort of had a rundown of pretrial motions this morning.
3 At this time, we'll have full arguments and go from there.

4 Ms. Alves, we went through a list of about six of them,
5 if I remember correct. I know we, essentially, discussed
6 some of them in chambers.

7 Mr. Miller, if you can recall, I think there were a
8 couple things you were, essentially -- like the gang issue
9 or something like that.

10 MR. MILLER: Yes, Your Honor. As regards the
11 information in the packet that was prepared for the Federal
12 authorities, there was a reference to gang affiliation as
13 well as street name for the Defendant. We are not seeking
14 to introduce any of that to the jury.

15 Also, Your Honor, there was an issue that was raised
16 about the Defendant's warrant status at the time of the
17 traffic offense. We understand that there would have to be
18 some preliminary foundation for that and only that would
19 became an issue if the Defendant chose to testify. So we
20 don't know what information we're going to have until we
21 know what happens in the course of the trial.

22 THE COURT: Right. You're not going to seek to enter
23 it in your case in chief?

24 MR. MILLER: Correct, we're not going to seek to enter
25 it in our case in chief.

1 Additionally, Your Honor, there was a question raised
2 by Ms. Alves about what prior convictions of the Defendant
3 we would seek to use for impeachment purposes. We're not
4 trying to use any of his convictions for impeachment
5 purposes.

6 I'm trying to remember what the other motions were.
7 The three I think that we have left are the motion relative
8 to the conversation between Sergeant Duckson and Trooper
9 Frazier. That's the one approximately minute-long
10 conversation that is on Trooper Frazier's body-worn camera.

11 Then there's a motion about the female passenger in Mr.
12 Gathers's car. When she was in Deputy Preacher's vehicle,
13 there is approximately a two-minute conversation that she
14 has with somebody she identifies as mom on the phone. We're
15 seeking to have that allowed in.

16 And then, finally, there is Ms. Alves's motion as
17 regards officers in the courtroom.

18 So those last three would need to be -- I think you
19 need to hear, but the other three, I believe we've agreed on
20 all of those.

21 Is that correct, Ms. Alves?

22 MS. ALVES: I just want to verify that the State is not
23 planning to introduce any information regarding the Georgia
24 charge or the Georgia bench warrants in their case in chief.

25 MR. MILLER: That's correct.

1 MS. ALVES: Then that would resolve my issue. If they
2 intend to put it up at the time should Mr. Gathers decide to
3 testify, then I would have to renew my motion.

4 THE COURT: We'll cross that bridge when we get to it.

5 MS. ALVES: Yes, sir.

6 But I would still have the issue regarding the State
7 putting portions of the video that I objected to, the
8 objection to Ms. Moments's statements coming in and my
9 objection to an excessive number of police officers in the
10 courtroom.

11 THE COURT: All right. We can start off with law
12 enforcement presence. I think you were concerned -- I don't
13 want to put words in your mouth, but there would be too much
14 presence. Is that --

15 MS. ALVES: Yes, sir. Judge, I think it's important to
16 describe how we're set up. This is not just -- obviously,
17 we're not in a typical courthouse setting. And I just
18 thought the record should be clear about how our situation
19 is set up. That we are currently in what's considered --
20 having court in what's considered the Bamberg Civic Center,
21 which has the Bamberg Police Department in the front of it
22 with a large open area behind it and then a very small
23 courtroom where we're having court.

24 Judge, typically, on an average court day, we only have
25 one officer present in the courtroom, which is, typically,

1 the sheriff, and he's sitting here currently. When the
2 sheriff isn't available, then it's always one of the
3 deputies. Typically, when there's somebody from the jail
4 here, there's one jail officer in the courtroom.

5 But you see at this point, we only have one -- and, of
6 course, Officer Hall is here as a witness in another case.
7 But, typically, for security purposes and in general, we
8 only have maybe two officers present, the jailer and the
9 sheriff or the sheriff's designee. In many of the cases we
10 have, we don't even have officers who testify. Obviously,
11 there will be officers testifying in this case.

12 Judge, even though this is a city police department, we
13 rarely see city officers in this courtroom. Sometimes, you
14 see them coming and going. Sometimes they have their cars
15 parked outside here. But they, typically, park on the grass
16 on the far side of the door over here closer to the door
17 instead of in the parking lot.

18 The parking lot is not that big. I mean, once the
19 jurors come in, they're pretty much going to take up the
20 parking lot all the way to the end. Sometimes, we have to
21 circle for parking where people are parked in front of the
22 big doors in front of the what would be considered the
23 driveway. So there's not a whole lot of space here.

24 Also, outside in the open area, I would point out that
25 the open area is only separated by curtains. Quite often

1 when -- every time the jurors come in, the jurors sit on the
2 bigger side and the Defendants or family members or
3 witnesses are sitting on the smaller section of the
4 curtains. You can still see them when you come in.
5 Obviously, they can be seen, but the jurors sit on the other
6 side of the curtain and everybody else sits on the other.

7 I just put all that out to describe for the record the
8 limited space that we're dealing with here. I understand
9 that this is an open courtroom and even though it's very
10 small, we've had to limit people coming in here before
11 during trials because of the complete lack of space that we
12 have in here. You see how far back we've had to pull the
13 chairs.

14 And I would point out that in this courtroom, these
15 tables are going to be pulled back even further for the
16 trial because we're going to have to fit 12 to 14 chairs
17 over there in front of the window where one of the
18 solicitors is currently sitting. So that tells you how
19 limited the room is in this courtroom.

20 Judge, I've seen situations where there has been
21 support from other officers for an officer who was a victim
22 in a case. I know that there would be -- I'm suspecting
23 there to be a large police presence to support Trooper
24 Frazier, as he's the victim in this case. There has been a
25 lot of support -- I'm not just saying they might come, the

1 last hearing that we had here, which was his bond hearing,
2 there was a lot of support. There were about 10 or 12
3 officers. Not all highway patrol, some of them were
4 sheriff's department as well.

5 THE COURT: We might not have enough space for them. I
6 mean, like you said, I have tried a case in this courtroom
7 and I'm aware that space is going to be limited even more
8 during trial than it is right now.

9 MS. ALVES: Yes, sir. So my concern is not only the
10 officers in the courtroom -- I mean, my concern is the
11 courtroom. I mean, this tiny space and the officers don't
12 necessarily need to be here to testify. I think that would
13 be somewhat overwhelming to me as a juror in reaching a fair
14 verdict when I have that much law enforcement here. I think
15 that would have a very intimidating effect on the jury.

16 Also, my concern is outside. If the jurors are coming
17 in and the parking lot is full of marked police cars -- and
18 I can't say there will or won't be, I don't know. But if
19 the parking lot is taken up by police cars, there's officers
20 out there everywhere, there's a large number of officers
21 sitting -- I would assume they would have to sit in the
22 curtain area because there's no place for them to sit in the
23 area where the jurors sit, that area is usually reserved for
24 the jurors, unless they're going to be standing around the
25 back. I think that that would have a very intimidating

1 effect on the jurors, so my -- and, of course, I don't know
2 who's going to be here. There might not be any here, but
3 the way they --

4 THE COURT: You're talking about jury selection?

5 MS. ALVES: I'm talking about jury selection, while the
6 jurors are coming in, seeing a large number of officers
7 present here, a large number of officers out there where the
8 jurors are, a large number surrounding them. I mean, my
9 concern is -- we don't have the space here. So my concern
10 is all those officers in the small area with the jurors, I
11 just have a concern about the chilling effect, the
12 intimidation effect that that could potentially have on the
13 jurors. And I would object to that -- a large number of
14 officers being present at the -- particular uniformed
15 officers being present during the time that the jurors are
16 coming in, during the time that the jurors are being
17 qualified and selected and in the courtroom during the
18 trial.

19 THE COURT: Mr. Miller.

20 MR. MILLER: Your Honor, I don't understand -- or, I
21 guess, I question where does the presence of police officers
22 intimidating jurors come from? I mean, that seems to be,
23 like, the -- the first step of Ms. Alves's argument is well,
24 if there's police officers, of course, the jurors are going
25 to be intimidated into saying that my client's guilty and

1 not listening to your instructions to them, not following
2 their oath, not doing any of the things that we count on
3 those jurors to do. I don't know that there is any real
4 evidence that any jurors are, actually, going to be
5 intimidated by the presence of the police officers who are
6 here supporting -- or will be here supporting Trooper
7 Frazier.

8 Your Honor, this case involves a lot of police
9 officers. In fact, we have on our witness list 16 people
10 listed and the only one of those people who is not a law
11 enforcement officer is, in fact, Ms. Kieanya Moment, who is
12 going to be the subject of one of the later motions that is
13 going to be heard today.

14 These are all officers that we have listed as potential
15 witnesses. The majority of them would be in all likelihood
16 in the room, if not in the building for the testimony that
17 is being offered in the case. I just don't know why -- and
18 this was something that -- I share Ms. Alves's concern and
19 the Court's concern, but I don't think we change the rules
20 because Bamberg County has given us this place to try court
21 cases in. Yes, it is tight. Yes, it is what we've got to
22 work with.

23 But, you know, we've had the same situation where these
24 jurors are having to walk within feet of the Defendant who
25 is standing trial for, you know, in some cases, the last

1 case, murder, that we tried here. The jurors are having to
2 file in and out past the Defendant who is being tried. I
3 don't know how that that is any less or differently
4 intimidating than walking past a bunch of uniformed police
5 officers going in and out of the courtroom to the back.

6 Obviously, the issue of, you know, now we're talking
7 about where they can park and where they can -- when they
8 can come into the building versus when they can come into
9 the courtroom versus where they can stand when they're not
10 in the courtroom so as not to create this idea of some kind
11 of intimidation with the jurors.

12 Your Honor, I don't know that it's appropriate to
13 assume that the jurors are going to be intimidated or to
14 just say that the officers can't come into the courthouse or
15 into the courtroom to support their coworker who got shot
16 during this incident.

17 THE COURT: All right.

18 Ms. Alves, anything else you want to say?

19 MS. ALVES: Yes, sir. Judge, just responding to the
20 solicitor's argument, he commented on one thing that we just
21 have to work with the space that we're given. While I do
22 understand that and I've had multiple trials in this space
23 that we're given, so I am familiar with the limitations,
24 particularly on the space -- especially if they're going to
25 be showing videos and other things. But I don't think the

1 fact that Bamberg County hasn't prepared the courthouse and
2 they've given us this limited space that we're working with
3 should work to affect the Defendant's right to a fair trial.

4 And I am concerned that while the jurors might not be
5 intimidated by some officers, we have a highway patrol
6 officer who was shot in the face. That's what this case is.
7 Then we have all these other officers who are going to be
8 out here with the jury. I mean, I think that would be
9 intimidating in and of itself.

10 I mean, there's no way for me to officially find out.
11 I mean, I don't have jurors here to ask will you be
12 intimidated, are you intimidated. I mean, I think that
13 question -- even if we were to ask the jurors, I think that
14 -- number one, I think that's not a question you can
15 properly ask them.

16 THE COURT: Right.

17 MS. ALVES: My concern is the amount of officers who
18 may be present in this limited space. We don't have the
19 opportunity to separate jurors from other people like we do
20 in other courthouses.

21 THE COURT: Sure. And I think -- to your point,
22 generally speaking, I'm not going to -- I'll deny your
23 objection in the sense that I'm not going to deny access to
24 anyone from either side. We are subject to limitations in
25 this courtroom by seating. At the conclusion of this

1 hearing, I'll take a look at the space where we'll be during
2 jury selection. And I may talk with you and the sheriff and
3 Mr. Miller. There may be some seating limitations. I mean,
4 we wouldn't have a Defendant's family sitting around the
5 jury panel when they're getting selected and we won't have
6 troopers sitting around the panel as they're getting
7 selected. But it's still a public space and we've just got
8 to find the right balance. I'll work with y'all to make
9 sure that happens.

10 MS. ALVES: Yes, sir. Judge, I would ask for the right
11 to renew this motion should there be a large number
12 tomorrow.

13 THE COURT: Sure. Of course. We'll cross the bridge
14 when we get to it.

15 MS. ALVES: Yes, sir.

16 THE COURT: All right. The next matter, female
17 passenger in the car. Ms. Alves, that was --

18 MS. ALVES: Judge, it was Mr. Gathers's girlfriend.
19 Kieanya Moment is her name.

20 THE COURT: Okay.

21 MS. ALVES: I would just note that when Ms. Moment was
22 questioned by the officers at the hospital, she said they
23 questioned her for about two hours. And they were giving
24 her information about what they said happened while they
25 were questioning her. That's, obviously, after the part of

1 the video that we're talking about here. But she maintained
2 that she did not have any memory. She said that she suffers
3 from panic attacks, that she really didn't know what was
4 going on and that she didn't recall what happened.

5 The police, also, talked to Ms. Moment -- I can't
6 remember the length of time, but they talked to her after
7 she was released from the hospital and she maintained the
8 same thing at that time.

9 Judge, during this incident -- and you've had an
10 opportunity to see the tape when the accident happened. The
11 State intends to put in the video of Deputy Richard
12 Preacher. Deputy Preacher was -- he was one of the first
13 officers going to the scene when the call came out about
14 Trooper Frazier being shot. He, actually, I think was the
15 second car behind the SUV because he had to wind up turning
16 around because the car passed him. Then he got the
17 description and then he turned around. So he was the second
18 car in line. He was, actually, the second car in line. The
19 cars, they wound up switching positions a couple of times,
20 the officers did, but he was the second car when the crash
21 happened. So we can see when the crash happened at about 15
22 minutes, 15:12, something like that, when the crash
23 happened. The conversation starts at about 26:05, so that's
24 about a little under 11 minutes after the crash happened.

25 When the crash happened, numerous police officers came

1 to the car. They were trying to get -- sorry, let me go
2 back. When Trooper Tartar got behind the vehicle, he tries
3 to do a pivot in the road, was hitting the front of his
4 vehicle against the front of Mr. Gathers's vehicle and it
5 didn't work. So they were driving down the road and Mr.
6 Gathers lost control of the vehicle and the SUV wound up
7 hitting a porch on a house that was on the side -- on the
8 left side, then it flipped over a couple of times. It
9 landed upside down. So he and Ms. Moment were both dangling
10 from the vehicle.

11 There were numerous officers and another EMS person who
12 just happened to be out who came to assist, who came to the
13 vehicle and they were using, like, a razor blade to cut the
14 seatbelt to get Ms. Moment out of the vehicle. Mr. Gathers
15 was unconscious when he was eventually taken out of the
16 vehicle. Ms. Moment was alert the whole time. She was
17 talking to the officers. They were talking to her. There
18 were numerous officers and body cams of people talking to
19 her. They laid her on the ground. They put handcuffs on
20 her. She was, actually, calling to the officers saying
21 things about Mr. Gathers.

22 Ultimately, she was put into Deputy Preacher's vehicle
23 and that's about 20 minutes, 26 minutes according to what
24 the solicitor said. Then she has the conversation with the
25 person that she refers to as momma on the phone that she's

1 talking to them.

2 My argument is the conversation is hearsay. I don't
3 believe that the State has subpoenaed -- the conversation is
4 hearsay. I don't believe the State has subpoenaed Ms.
5 Moment's mother to be in court. The conversation is
6 hearsay. And the conversation -- I don't agree that it's a
7 present sense impression or an excited utterance because
8 number one, the time passed. The fact that she was talking
9 to multiple other officers before she got into Deputy
10 Preacher's vehicle.

11 Also, we don't know what conversations she was having
12 with the other officers because they have not provided what
13 -- there were numerous conversations with several people.
14 But the State has to show that that conversation that she
15 was having with her mother was from her own present sense
16 impression, which they can't because we don't know if
17 somebody else was asking Ms. Moment about it. Obviously,
18 the police would be asking about where the gun was, what
19 happened, getting her out of the vehicle at the same time
20 that they're getting -- that they got her out of the vehicle
21 and they got Mr. Gathers out.

22 We don't know if the information that she gave her
23 mother was from her own personal or what somebody else told
24 her. The only thing she said on the tape that we heard was
25 that she said Derrick shot somebody and he ran from the

1 police. We don't know what she actually remembers because
2 all of her other statements say she doesn't remember. So
3 it's not a present impression unless they can show that
4 she's testifying -- or that her statements were from her own
5 personal knowledge. And it's not an excited utterance
6 because she had an opportunity to talk to other people
7 before she spoke to her mother.

8 THE COURT: What was the time separation?

9 MS. ALVES: According to the video that I have, the
10 accident happened at 15:12. The conversation was at 26:05.

11 THE COURT: Okay.

12 MS. ALVES: So that's a little under 11 minutes after
13 the cars crashed. And during that time, as I said, she was
14 out of the vehicle talking to other officers. She was
15 crying. She cried the whole time. She cried the whole
16 two-hour video.

17 THE COURT: Okay.

18 MS. ALVES: That's my objection to that.

19 MR. MILLER: Your Honor, this is exactly why these
20 exceptions are in the hearsay rule. When somebody doesn't
21 have the opportunity to make up a lie, when they're speaking
22 of an event under the stress of the event, when they are
23 speaking of the event at the time or immediately after the
24 event happened, the whole foundation of that is they are
25 unlikely to make up a story and not be truthful in their

1 statements. Particularly, statements that are not made to
2 law enforcement.

3 This statement is made to her mother, who she
4 presumably has no reason to lie to. She is scared. She
5 says, Momma, I don't know what's going on. She is
6 frightened. She said, We almost died. The Court's seen the
7 video of the actual wreck itself as it occurred. It's not
8 surprising at all that she would think she almost died in
9 that wreck. She got pulled out of the wreckage of that
10 wreck and she got very personally searched and put in
11 handcuffs and put in the back of that car. She didn't tell
12 her mother in that conversation, Momma, they told me this
13 happened. She said, Derrick ran from the police. He shot
14 the police and I didn't know it was going to happen.

15 So any time there is a statement like this which is
16 recorded, there's not any question about what she actually
17 said, it is right there for the jurors to listen to and for
18 the Court to listen to. She's telling her mother what
19 happened. She is acting under the stress of the event. She
20 is still shaken, noticeably shaken by what has happened to
21 her less than 15 minutes before. Because they're going a
22 hundred plus miles an hour down the road and less than 15
23 minutes later, she's in the back of a police car with
24 handcuffs on somehow getting her cellphone out calling and
25 talking to her mother and crying to her mother about it.

1 This whole -- excited utterances don't start with an
2 attestation that I have not gained information from anywhere
3 other than my personal observation, which is what Ms. Alves
4 seems to think should be required in this case. She says,
5 Momma, Derrick ran from the police. He shot the police.
6 That's information from her easily within the timeframe.

7 Now, two days later at the hospital when SLED goes and
8 talks to her, we're not talking about present sense
9 impression. We're not talking about an excited utterance
10 two days later or two months later when they go back to
11 interview her again. But in this circumstance, the way that
12 she got in the back of that patrol car, the vocal cues that
13 the Court can hear from listening to the actual recording,
14 she is absolutely under the stress of this event.

15 And Your Honor, we would submit that there really isn't
16 another thing she could have told her mother. I mean, it
17 was on video that she was, also, sitting there whenever it
18 happened and -- talking about the shooting of Trooper
19 Frazier. They got caught and she called her mom and said,
20 I'm sitting in the back of a police car and I almost died in
21 this wreck.

22 So we think it falls under both present sense
23 impression as well as the excited utterance because the
24 timeframe, even though it is 11 minutes from the time that
25 the crash occurred, it is really not a great deal of time

1 and it was not as a result of some kind of questioning or
2 anything else that she made this statement. This is
3 completely on her own. In fact, I would submit that
4 probably none of the law enforcement officers even knew she
5 was making any kind of statement because they didn't know
6 she had her phone with her whenever they put her in the back
7 of the car.

8 THE COURT: Ms. Alves.

9 MS. ALVES: Judge, I'm going to stand on my previous
10 motion. And I would, also, add that should the State be
11 allowed to elicit this testimony and play this video with
12 Ms. Moment's statement, I would say that that would be a
13 violation of the confrontation clause because I wouldn't be
14 able to cross-examine her or question her about anything
15 that was said or where -- or if she got this information
16 from her personal knowledge from her own present sense
17 impression or whether this was information that was provided
18 by the officers at the scene.

19 THE COURT: Any response from the State?

20 MR. MILLER: Your Honor, the purpose of these rules is
21 to ensure that when it is required that there is the ability
22 to confront the witness. This is a situation where this is
23 the statement that was made and it was made under one of the
24 exceptions to the hearsay rule so that statement could be
25 allowed into the trial of the case.

1 And I apologize, Your Honor, there was one other very
2 brief issue, because Ms. Alves mentioned the fact that the
3 State could have subpoenaed the witness, I would note that
4 Rule 803 of the hearsay exception is actually -- is specific
5 to those situations where the availability of the declarant
6 is not material to the Court's determination.

7 THE COURT: All right. Well, Ms. Alves can reassert
8 the objection at the appropriate time, but I'm going to find
9 the statement is admissible under the hearsay exception,
10 particularly excited utterance. Hearing it, the time from
11 the actual rollover crash to the statement was approximately
12 11 minutes. I still think she was under the stress and
13 excitement caused by the event, which is provided for in
14 Rule 803(2). That's my ruling on that.

15 All right. Last thing was the conversation between the
16 deputy sheriff and the trooper, I believe, just prior to the
17 shooting.

18 Happy to hear from you.

19 MS. ALVES: Yes, sir.

20 Judge, in this case, after the trooper stopped Mr.
21 Gathers, he took the paperwork that he had been provided,
22 the license he had been provided and went back to his
23 vehicle. A deputy came to assist him. I acknowledge they
24 greeted each other, they had friendly conversation, but then
25 Trooper Frazier immediately started talking about man, he

1 thought that -- he said he thought that guy wasn't going to
2 stop.

3 He didn't have his blue lights on. As you can see in
4 the video, he did not put his blue lights on immediately
5 when he gets behind the vehicle. In the video, he keeps
6 driving along. He's following behind the vehicle.
7 Ultimately, he does put on his blue lights and you can see
8 the minute he puts his blue lights on because you see the
9 reflection of the blue lights.

10 After he puts his blue lights on, Mr. Gathers's vehicle
11 pulled over to the side of the road. It wasn't
12 instantaneous, but it was within a minute that he pulled
13 over to an area where it was wide, a wide grassy area. Both
14 he and police officer pulled over into the grassy area.

15 It's after he got back to his vehicle with the
16 paperwork regarding the vehicle and the license that he was
17 provided that Deputy Duckson came up. That's when they had
18 their conversation and he said, Man, I thought he wasn't
19 going to stop. I had to put my high beams on him. I had to
20 try to blind him. And he's saying that he got behind him
21 and the car wouldn't stop. He thought he was going to have
22 to go into, and he uses a code. He thought he was going to
23 have to, basically, chase him. And then he -- but that
24 didn't happen. He was speculating.

25 In that conversation, he's telling -- Trooper Frazier

1 is telling Deputy Duckson what he thought might happen.
2 That is not actually what happened. You can see what
3 happened on the in-car video regarding the fact that Mr.
4 Gathers did actually stop his vehicle. He didn't try to run
5 up on the officers. He did actually pull over and stop once
6 the blue light was on him. The mere fact that he didn't
7 stop before the blue light --

8 THE COURT: I guess he drove for, like, a mile? Is
9 that what y'all agreed to?

10 MS. ALVES: It's about after the blue light was on.

11 THE COURT: Right. Right.

12 MS. ALVES: Before the blue light, I don't remember the
13 exact, but after the blue light, it's about a mile or so.
14 It wasn't he had to chase him down. Actually, it's not even
15 high speed. When the blue light came on, you can see Mr.
16 Gathers put his -- he put his brakes on. You can see the
17 brake lights come on. The car is slowing down and then,
18 ultimately, he pulls over when they get to a wide area.

19 So there wasn't any high speed chase at that point. So
20 the fact that the trooper was saying what he thought might
21 happen I think is irrelevant and I think that's prejudicial
22 to Mr. Gathers because that's, actually, not what happened.
23 He's just telling the deputy what he thought might happen.
24 And it's after that that he, ultimately, goes -- he's still
25 working on his computer while they're talking.

1 THE COURT: The primary focus of your objection is what
2 the trooper said on the video; is that right?

3 MS. ALVES: Yes.

4 THE COURT: Hypothetically, if he got on the witness
5 stand and described what happened, would you have the same
6 objection?

7 MS. ALVES: I would, because it's not relevant that he
8 didn't stop before the blue lights were on. You don't have
9 to stop your vehicle until there's a blue light and siren on
10 unless you're -- until you're signaled by the police. So
11 the mere fact that he didn't stop his vehicle just because
12 the trooper is behind him, I think is irrelevant. And the
13 trooper speculating about what he thought might happen I
14 think is irrelevant and prejudicial.

15 THE COURT: Mr. Miller.

16 MR. MILLER: Your Honor, the jury is going to be able
17 to see exactly what happened in the six minutes leading up
18 to that conversation. The jury knows -- and I don't know --
19 I'm having a problem -- I'm having difficulty figuring this
20 one out. The jury knows the car that's right in front has
21 been stopped. He's made contact with the driver. He's
22 talked to the passenger. He's back in his patrol car. What
23 he tells Sergeant Duckson that comes up there, I thought he
24 was going to run, but he didn't.

25 THE COURT: The portion of the video you intend to show

1 the jury begins where?

2 MR. MILLER: It begins with -- actually, with Trooper
3 Frazier having turned around his car and he's accelerating
4 in the direction of the Defendant, who has already passed
5 him going in the other direction.

6 THE COURT: So from the moment he turns around to where
7 he comes up behind the car to where he ultimately turns on
8 the blue lights until the Defendant pulls over somewhere,
9 all that is incapsulated?

10 MR. MILLER: It is.

11 THE COURT: Okay. I just wanted to make sure I
12 understood the context.

13 MR. MILLER: And, again, Your Honor, he will be
14 testifying tomorrow. So if there's some question about what
15 he was talking about -- based on my conversations with him,
16 it was -- there was really nothing to it. I mean, Sergeant
17 Duckson walked up, he was telling Sergeant Duckson what he
18 had and expressed his relief -- and I do have the segment
19 for the Court. We can play it. It's probably too big to
20 e-mail, but we can definitely get it and let Ms. Alves hear
21 it as well.

22 But Your Honor, he's talking about, I thought I was
23 going to have to run. Man, I'm glad I didn't have to. I
24 thought he was going to run. I'm glad I didn't have to
25 chase him. I don't understand how that is prejudicial to

1 the Defendant.

2 But it is important from our standpoint because of the
3 fact that the -- it shows -- not to go back to the well, but
4 it shows the present sense impression of Trooper Frazier.
5 He's sitting there in the car and he says, Man, this is what
6 I thought was going to happen, but it didn't.

7 So then he gets into a conversation with Sergeant
8 Duckson about the fact that the Defendant does not really
9 resemble the person that is on the driver's license he's
10 been handed. And he says, This doesn't even look like that
11 guy, but he's wearing a hat. Talking about the Defendant,
12 he says, But he's wearing a hat. I'll just go up and take a
13 good look at him.

14 So he thinks that there's something wrong potentially
15 with the driver's license, but there's not any indication
16 that he thinks that they're about to get into a high speed
17 chase or he's about to stick a gun out the window and shoot
18 him in the face or that anything else is going to happen
19 other than I'm going to talk to this guy about this ID that
20 doesn't really look like him all that much.

21 THE COURT: Okay. Ms. Alves.

22 MS. ALVES: Your Honor, I don't have anything further.

23 THE COURT: Okay.

24 (Pause.)

25 THE COURT: All right. I'll deny the motion to exclude

1 that testimony or video regarding what the trooper was
2 perceiving after the initiation of -- I use the word
3 perceive generally before the blue lights were on when he
4 was getting back up to the vehicle. I think he can testify
5 about that, certainly, from the stand. The video is nothing
6 but a documentation of what his real life perception was in
7 the moment. That's my ruling for the moment. Hopefully,
8 that's clear enough. The motion to exclude that is denied.

9 I don't think there's anything regarding the other
10 witness -- not the other witness, the other deputy who was
11 on the video. Is that accurate?

12 MS. ALVES: Judge, the deputy who was on the video
13 didn't say anything. Basically, his comments were just like
14 --

15 THE COURT: They weren't really statements offering
16 anything other than --

17 MS. ALVES: I would say commiseration, I guess, with
18 the other officer.

19 THE COURT: Okay.

20 I think that concludes your portion; is that correct?

21 MS. ALVES: Yes, sir.

22 THE COURT: Mr. Miller, does the State have any other
23 matters?

24 MR. MILLER: No, Your Honor.

25 THE COURT: Let me speak with the lawyers real quick.

1 (WHEREUPON, a bench conference was held.)

2 (WHEREUPON, proceedings were concluded.)

3 TUESDAY, MARCH 4, 2025

4 THE CLERK: Ladies and gentlemen, I'm going to call
5 your number. If you will please stand, speak loud and
6 clear, tell us your place of employment. If self-employed,
7 please state your type of business, your marital status. If
8 married, place of employment of your spouse.

9 (WHEREUPON, jury roll call was conducted.)

10 THE COURT: Good morning.

11 Ladies and gentlemen, my name is Walton McLeod. I'm a
12 circuit judge here. We're here for a week of general
13 session or criminal court. We have a trial that's ready to
14 begin after we select a jury today. I know you've been
15 through the roll call process. The next step in the
16 qualification process will be a list of questions that will
17 determine your eligibility to serve, then I'll have some
18 followup questions about that.

19 I know y'all have been in here for a while. If
20 something comes up and someone needs to step out, please,
21 get our attention and we'll try to accommodate anything that
22 comes up. I'll try to move as quickly as I can, but I
23 appreciate your patience.

24 You've already been sworn. Some of these questions,
25 you may not feel comfortable giving a response. That's

1 okay. I don't want anybody to suffer any sort of
2 embarrassment today, but it is important that I get
3 responses to each question. There will be an opportunity at
4 the end of these questions for you to speak to me privately.
5 So if there's something you don't answer, please, make a
6 mental note of it and I'll speak with you at the end of all
7 the questions.

8 JURY QUALIFICATIONS

9 THE COURT: So I'll start off with this, is there any
10 member of the jury panel that is not a citizen of the United
11 States or a resident of Bamberg County? If so, please,
12 stand.

13 (There was no response.)

14 THE COURT: Any member of this jury panel unable to
15 read, write, speak or understand the English language or
16 have less than a sixth grade education or its equivalent?
17 If so, please, stand.

18 (There was no response.)

19 THE COURT: Is there any member of this jury panel
20 unable because of mental or physical infirmities to render
21 efficient jury service? For example, any member on this
22 jury panel have a medical condition which would prevent them
23 from serving on jury duty this week? If so, please, stand.

24 Can I get your number, please?

25 PROSPECTIVE JUROR: 101.

1 THE COURT: You can have a seat.

2 What's your number?

3 PROSPECTIVE JUROR: 129.

4 THE COURT: And you, sir?

5 PROSPECTIVE JUROR: 160.

6 THE COURT: 160.

7 PROSPECTIVE JUROR: 72.

8 THE COURT: 72, okay.

9 Anyone else?

10 PROSPECTIVE JUROR: 117.

11 THE COURT: I'll speak with y'all about these issues
12 privately.

13 Just the nutshell of a day around here, if you're
14 selected for the jury, you can anticipate we'll obviously
15 start today. You can plan to start tomorrow morning at 9:30
16 with testimony. I certainly will take a morning break and
17 we'll take a lunch break. And I'll certainly work to have
18 everybody out of here before five o'clock because I
19 recognize y'all have lives outside of this building. Unless
20 there was some witness in the middle of testimony, I don't
21 anticipate that being a problem. I anticipate we will start
22 today. We will be done on Thursday. I'm confident in
23 telling you that.

24 Has any member of this jury panel been convicted by
25 guilty plea or trial in a state or federal court of record

1 of a crime punishable by imprisonment for more than one year
2 and your civil rights have not been restored by pardon or
3 amnesty?

4 Now, punishable by more than one year means that you
5 could have received a sentence of more than one year
6 regardless of what sentence you actually may have received.

7 If this applies to anyone, please, stand.

8 Your number?

9 PROSPECTIVE JUROR: 14.

10 THE COURT: Yes, sir.

11 PROSPECTIVE JUROR: 20.

12 THE COURT: 20.

13 PROSPECTIVE JUROR: 196.

14 THE COURT: 119, all right.

15 THE CLERK: 196.

16 THE COURT: Everybody else heard it right. Thank you.

17 Next question, is there any member of this jury panel
18 who's a clerk or deputy clerk of court, constable, sheriff
19 or other commissioned law enforcement officer, probate
20 judge, county commissioner, magistrate or other county
21 officer or employed within the walls of any courthouse? If
22 so, please, stand.

23 (There was no response.)

24 THE COURT: Next question deals with those who have
25 previously served on jury duty this calender year. Anybody

1 get brought up here last month for jury duty? I doubt it.

2 (There was no response.)

3 THE COURT: All right. We'll move on to the next
4 question.

5 Anyone here served on the Bamberg County Grand Jury
6 during the past several years?

7 What's your number?

8 PROSPECTIVE JUROR: 22.

9 THE COURT: Juror Number 22?

10 PROSPECTIVE JUROR: Yeah. And I served two years in a
11 row in '20 and '21 and was the foreman in '21. I think I
12 turned in my paperwork late.

13 THE COURT: I think for this purpose you're okay, but
14 there will be another question.

15 PROSPECTIVE JUROR: Okay.

16 THE COURT: Now, we'll move on to jury exemptions. The
17 State law provides for several exemptions from jury service.
18 An exemption does not mean you're not qualified to serve, it
19 simply means you have the right to say I choose not to
20 serve.

21 Those of you who are 65 years of age or older may be
22 exempted from jury service. However, if you're over the age
23 of 65, you represent a pool of tremendous talent to serve on
24 a jury because of your life experiences. I would certainly
25 encourage you to stay if you're willing. But if you're over

1 the age of 65 and you wish to be excused, you may do so.

2 Is anyone here over the age of 65?

3 Your number?

4 PROSPECTIVE JUROR: 117.

5 THE COURT: You're not over 65, what are you talking
6 about?

7 PROSPECTIVE JUROR: I'm 70.

8 THE COURT: Are you willing to stay or wish to go?

9 PROSPECTIVE JUROR: Wish to go.

10 THE COURT: Are you sure?

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: You're excused. We'll miss you.

13 Another exemption is prior jury service. No person is
14 required to serve as a juror more often than once every
15 three calender years. Therefore, if any member of the jury
16 panel served on jury duty during the last two calendar
17 years, you may be exempt from service this week if you
18 choose to be exempted. Now, this exemption would not apply
19 for service in magistrate court, municipal court or even
20 federal court. It would have to be in circuit court, which
21 I think for the last three calendar years is in this
22 building.

23 So anyone serve on a circuit court jury in the last two
24 to three years?

25 (There was no response.)

1 THE COURT: All right. Persons who served as grand
2 jurors in the last five calendar years may, also, be exempt
3 from jury service.

4 And I think you're in the last five years. You're
5 Juror Number 22.

6 Anyone else serve on a grand jury in the last five
7 years?

8 (There was no response.)

9 THE COURT: Number 22, you're excused.

10 PROSPECTIVE JUROR: Thank you, sir.

11 THE COURT: Unless you want to stay.

12 PROSPECTIVE JUROR: I'm good.

13 THE COURT: The next exemption deals with you who have
14 legal custody of young children. Please listen very
15 carefully to this exemption, it has several parts, all which
16 must apply for you to be exempted on this basis.

17 You may be exempted from jury service if you have a
18 child under the age of seven years, you have legal custody
19 of your child or children, you're have the principle
20 custody, care and control of your child or children and
21 you're unable to make arrangements for the adequate care of
22 your child or children while performing jury duty. If all
23 these requirements apply to you, then you may be exempted on
24 this basis.

25 If this applies to anyone, please, stand.

1 Your number?

2 PROSPECTIVE JUROR: 104.

3 THE COURT: 104.

4 PROSPECTIVE JUROR: 57.

5 PROSPECTIVE JUROR: 129.

6 THE COURT: Anyone else with young kids?

7 PROSPECTIVE JUROR: Do they have to be under seven?

8 THE COURT: Under seven is a requirement, yeah. There
9 will be a catchall question at the end.

10 What's your number?

11 PROSPECTIVE JUROR: 102.

12 THE COURT: 102, all right.

13 All right. If you're the primary caretaker of a person
14 65 years of age or older or primary caretaker of a severely
15 disabled person who's unable to care for himself or herself
16 and cannot be left unattended and you're unable to provide
17 adequate care for the person while performing jury duty, you
18 may be exempt. If this exemption applies to you, please,
19 stand.

20 Your juror number?

21 PROSPECTIVE JUROR: 14.

22 THE COURT: 14.

23 PROSPECTIVE JUROR: 129.

24 THE COURT: Thank you.

25 And I'm just going to speak with everyone at the end.

1 The next exemption applies to those of you who may be
2 attending school at this time or working in some capacity
3 with the school. If this exemption applies to you and you
4 wish to be exempted, we will transfer your service to
5 another term of court at a time which will not conflict with
6 your school responsibilities.

7 Is there any member of the jury panel who is a
8 full-time student, school teacher, school crossing guard,
9 school bus driver or who serves in any other school-related
10 function and is unable to serve on jury duty this week as a
11 result of that school involvement? If so, please, stand.

12 Your number?

13 PROSPECTIVE JUROR: 109.

14 THE COURT: 109.

15 PROSPECTIVE JUROR: 146.

16 THE COURT: 146.

17 PROSPECTIVE JUROR: 65.

18 THE COURT: 65.

19 PROSPECTIVE JUROR: 115.

20 THE COURT: 115.

21 Is there any member of this jury panel who is employed
22 with the Department of Corrections at a penitentiary? If
23 so, please, stand.

24 PROSPECTIVE JUROR: 129.

25 THE COURT: 129. Where do you work?

1 PROSPECTIVE JUROR: At the detention center.

2 THE COURT: Okay. You've got a couple things. I'll
3 speak with you shortly.

4 Is there any juror who performs services for a
5 business, commercial or agricultural enterprise which are so
6 essential to the operations of the business or enterprise
7 that if you were required to perform jury duty, the business
8 or enterprise would have to close or stop functioning? If
9 so and you wish to be exempted, please, stand.

10 Your number?

11 PROSPECTIVE JUROR: 108.

12 THE COURT: 108.

13 PROSPECTIVE JUROR: 104.

14 PROSPECTIVE JUROR: 9.

15 THE COURT: 09?

16 PROSPECTIVE JUROR: 09.

17 THE COURT: All right.

18 PROSPECTIVE JUROR: 57.

19 THE COURT: 57.

20 PROSPECTIVE JUROR: 18.

21 THE COURT: 18.

22 PROSPECTIVE JUROR: 17.

23 THE COURT: 17.

24 That concludes the statutory list of qualifications and
25 exemptions for jury service. It may be that you're

1 qualified and no exemption applies to you, but jury service
2 this week would constitute an extreme hardship on you for a
3 particular reason. I cannot excuse a qualified juror from
4 jury service, but in extreme and compelling circumstances, I
5 may excuse a juror from this term of court and transfer the
6 juror to another term of court, particularly jurors who have
7 not been previously transferred.

8 Please understand that general inconvenience is not a
9 sufficient reason to transfer you to another term of court.
10 To justify a transfer to another of court, service this week
11 must constitute an extreme hardship for you.

12 If this applies to anyone, please, stand.

13 Your number?

14 PROSPECTIVE JUROR: 1.

15 THE COURT: All right. I'll talk with you separately.

16 PROSPECTIVE JUROR: 192.

17 THE COURT: 192.

18 You at the back?

19 PROSPECTIVE JUROR: 196.

20 THE COURT: 196.

21 All right. Final question. Anyone planning on going
22 to Disney World this week? Anyone have any flights to
23 France or some vacation that you haven't thought about until
24 just this very minute. It happens. It's happened.

25 (There was no response.)

1 (WHEREUPON, the Court confers with Juror Number 101.)

2 THE COURT: Let's transfer 101. Medical condition.

3 Thank you. You're free to go.

4 129.

5 (WHEREUPON, the Court confers with Juror Number 129.)

6 THE COURT: 129 is excused.

7 160.

8 (WHEREUPON, the Court confers with Juror Number 160.)

9 THE COURT: 160 is transferred.

10 72.

11 (WHEREUPON, the Court confers with Juror Number 72.)

12 THE COURT: Juror Number 14.

13 (WHEREUPON, the Court confers with Juror Number 14.)

14 THE COURT: Number 14 is excused.

15 Next will be Juror Number 20.

16 (WHEREUPON, the Court confers with Juror Number 20.)

17 THE COURT: Thank you for being here, you're excused.

18 196.

19 (WHEREUPON, the Court confers with Juror Number 196.)

20 THE COURT: 196 is excused.

21 104.

22 (WHEREUPON, the Court confers with Juror Number 104.)

23 THE COURT: We'll excuse you this time. When your
24 child is over seven, see you then.

25 57.

1 (WHEREUPON, the Court confers with Juror Number 57.)

2 THE COURT: All right. We'll see you in a few years.

3 Juror 102.

4 (WHEREUPON, the Court confers with Juror Number 102.)

5 THE COURT: You're excused.

6 Juror Number 109.

7 (WHEREUPON, the Court confers with Juror Number 109.)

8 THE COURT: We'll transfer you to June.

9 146.

10 (WHEREUPON, the Court confers with Juror Number 146.)

11 THE COURT: We'll transfer 146.

12 65.

13 (WHEREUPON, the Court confers with Juror Number 65.)

14 THE COURT: Transfer Number 65.

15 115.

16 (WHEREUPON, the Court confers with Juror Number 115.)

17 THE COURT: 115 will be transferred.

18 108.

19 (WHEREUPON, the Court confers with Juror Number 108.)

20 THE COURT: Number 9.

21 (WHEREUPON, the Court confers with Juror Number 9.)

22 THE COURT: You should be okay. I'll get you a final
23 answer in a minute.

24 18.

25 (WHEREUPON, the Court confers with Juror Number 18.)

1 THE COURT: Number 17.

2 (WHEREUPON, the Court confers with Juror Number 17.)

3 THE COURT: Have a seat.

4 Juror Number 1.

5 (WHEREUPON, the Court confers with Juror Number 1.)

6 THE COURT: 192.

7 (WHEREUPON, the Court confers with Juror Number 192.)

8 THE COURT: Juror 164.

9 (WHEREUPON, the Court confers with Juror Number 164.)

10 THE COURT: Yes, sir.

11 PROSPECTIVE JUROR: 143. I'm not on her list, but I've
12 got a doctor's appointment this afternoon. I'm over 65.

13 THE COURT: Well, if you're over 65, you can exercise
14 --

15 PROSPECTIVE JUROR: I think I want to do that.

16 THE COURT: How old are you?

17 PROSPECTIVE JUROR: 68.

18 THE COURT: Juror Number 143 is 68 years old and wants
19 to exercise his exemption.

20 You're excused.

21 PROSPECTIVE JUROR: Thank you, sir. Have a great day.

22 THE COURT: 160, excused. 72 --

23 You need to talk to me? What's your number?

24 PROSPECTIVE JUROR: 106.

25 (WHEREUPON, the Court confers with Juror Number 106.)

1 THE COURT: Go ahead and have a seat.

2 72, you're excused. Number 9, excused. 18, excused.

3 17, excused. 106, you're excused.

4 Madam Clerk, the jury is qualified.

5 Ladies and gentlemen, we're going to take 15 minutes.

6 I know y'all have been sitting here a while. Don't go far.

7 If you need to use the restroom, feel free to do that.

8 We'll select the jury when we come back in 15 minutes.

9 After the jury is selected, the balance of y'all will be
10 able to go. Also, while you're walking around, please don't
11 talk to people about any cases or anything. Let's not talk
12 about being a juror this week.

13 (WHEREUPON, a short break was taken.)

14 THE COURT: All right. Ladies and gentlemen, we're
15 ready to select our jury for the trial this week.

16 Is the State ready to call the case?

17 MR. MILLER: We are, Your Honor.

18 THE COURT: Proceed.

19 MR. MILLER: Your Honor, the State calls State of South
20 Carolina vs. Derrick Edward Gathers, indictment
21 2023-GS-05-00057, true billed indictment for attempted
22 murder, indictment ending in 059, a true billed indictment
23 for possession of a firearm during the commission of a
24 violent crime and indictment ending in 060, that is a true
25 billed indictment for failure to stop a motor vehicle when

1 signaled by a law enforcement vehicle.

2 THE COURT: Can I see the indictments?

3 MR. MILLER: These are just copies.

4 THE COURT: Okay.

5 All right, ladies and gentlemen, the State has called
6 this case against Derrick Gathers. The indictment provide
7 that on or about April 16th of 2023, Derrick Edward Gathers
8 did feloniously and with malice aforethought attempt to
9 murder Trooper Bentrice Frazier by means of shooting him
10 with a handgun during a traffic stop.

11 The State, also, alleges in the other two indictments
12 that on the same date, April 16th, 2023, the Defendant failed
13 to stop for a blue light when signaled by law enforcement
14 and that on April 16th, he did possess and display a firearm
15 during the commission of a violent crime as aforementioned
16 in the previous allegations.

17 The indictments charge the Defendant with attempted
18 murder, failure to stop for a blue light and possession of a
19 firearm during the commission of a violent crime. I remind
20 you that the fact the Defendant was arrested, charged and
21 indicted in this case is not evidence in this case and
22 cannot be considered by you as evidence of guilt in this
23 case. Nor does it create any presumption or inference of
24 guilt. These documents are simply the formal written
25 instruments which contain the charges made against the

1 Defendant. It is the formal document by which this case is
2 brought into this courtroom.

3 The Defendant has pled not guilty to these indictments
4 and that plea puts the burden on the State to prove the
5 Defendant guilty. A person charged with committing a
6 criminal offense in South Carolina is never required to
7 prove himself innocent. No matter what the seriousness of
8 the charge may be, the Defendant will always be presumed to
9 be innocent of the crime for which the indictment was issued
10 unless guilt has been proven by evidence satisfying you of
11 that guilt beyond a reasonable doubt.

12 Now, ladies and gentlemen, I've got a list of questions
13 I need to ask you. There is no wrong answer to these
14 questions. If the question applies to you, you'll know.
15 You'll stand up and I'll get your juror number again and I
16 may have some followup questions after that.

17 Is any member of this jury panel related by blood or
18 marriage or have a close personal relationship with the
19 Defendant, Derrick Edward Gathers, or the victim in this
20 case, Trooper Bentrice Frazier? If so, please, stand.

21 (There was no response.)

22 THE COURT: The following is a list of possible
23 witnesses in this case: Kieanya Moment; Lance Corporal
24 Bentrice Frazier, South Carolina Highway Patrol; Trooper
25 Bradley Tartar; Sergeant Dwayne Duckson, Bamberg County

1 Sheriff's Department; Deputy Richard Preacher of the Bamberg
2 County Sheriff's Department; Sergeant James Hall, Bamberg
3 Police Department; Master Deputy Don Smith of the Dorchester
4 County Sheriff's Office; Lieutenant Shawn Buckmon,
5 Dorchester County Sheriff's Office; Corporal W. Tolson,
6 Dorchester County Sheriff's Office; Master Deputy B. Roy,
7 Dorchester County Sheriff's Office; Master Deputy D.
8 Southard, Dorchester County Sheriff's Office; Sergeant Jeff
9 Scott, Dorchester County Sheriff's Office; Special Agent
10 Kade Steppe, South Carolina Law Enforcement Division;
11 Lieutenant Todd Schenk, South Carolina Law Enforcement
12 Division; Olivia Chapman Nobles, South Carolina Law
13 Enforcement Division; Agent James Green, South Carolina Law
14 Enforcement Division.

15 Any of the names I've called, are you related by blood
16 or marriage or have a close personal, social or business
17 relationship with any of the potential witnesses I have just
18 called out?

19 Ma'am, if you would just stand up. Tell me your juror
20 number.

21 PROSPECTIVE JUROR: 50.

22 THE COURT: Who do you know on the list?

23 PROSPECTIVE JUROR: A bunch of them. I'm an ER nurse,
24 so I've worked with --

25 THE COURT: You're what?

1 PROSPECTIVE JUROR: So I've worked with Tartar,
2 Frazier, a whole bunch of them.

3 THE COURT: Okay. So the fact that you know some of
4 the law enforcement names, I think they're local names from
5 Bamberg that I called out, the fact that you know them, do
6 you think that would affect your ability to be a fair and
7 impartial juror in hearing this case?

8 PROSPECTIVE JUROR: Probably.

9 THE COURT: What is your number?

10 PROSPECTIVE JUROR: 50.

11 THE COURT: Thank you. You can have a seat.

12 Has any member of this jury pool -- I'm sorry, I didn't
13 allow the attorneys to introduce themselves. Before I ask
14 any more questions, let me allow the attorneys of record to
15 stand up and introduce themselves and their respective
16 client.

17 MR. MILLER: Thank you, Your Honor.

18 My name is David Miller. I'm a Deputy Solicitor in the
19 Second Judicial Circuit that covers Aiken, Barnwell and
20 Bamberg. Specifically, I cover the Barnwell and Bamberg
21 Counties for the Circuit Solicitor, Bill Weeks, who is the
22 Second Circuit Solicitor. I'll be trying this case this
23 week along with Senior Assistant Solicitor Leigh Staggs.
24 This is Investigator Calvin Coach, who is the Solicitor's
25 investigator.

1 MS. ALVES: My name is Wallis Alves. I'm an attorney
2 licensed in the State of South Carolina. This is my
3 co-counsel, his name is David Hayes. This is my client. My
4 client is Derrick Edward Gathers. Also, my investigator
5 will be with us at the table here, Wayne Martin. Another
6 attorney in the office is Ali Ponder.

7 THE COURT: Thank y'all.

8 Folks, I ask if anyone knew Mr. Gathers earlier, but I
9 haven't had the chance to have him stand up. Having seen
10 Mr. Gathers, does anyone know or have a friendship, business
11 relationship, social or otherwise? If so, please, stand.

12 (There was no response.)

13 THE COURT: Mr. Gathers is accused of attempting to
14 kill a police officer. Does anyone have such strong
15 feelings about the allegations that it would be difficult
16 for you to give Mr. Gathers or the State a fair and
17 impartial trial? If so, please, stand.

18 (There was no response.)

19 THE COURT: Have you or any member of your family or
20 your close friends ever been a victim of a gunshot wound?
21 If so, please, stand.

22 Yes, sir, what is your juror number?

23 PROSPECTIVE JUROR: 39.

24 THE COURT: Was it you or a family member?

25 PROSPECTIVE JUROR: Back in 1995, I was a teacher at

1 Blackville/Hilda High School. We had a school shooting and
2 I was with the victim.

3 THE COURT: The fact that you were involved in that,
4 would that affect your ability to be a fair and impartial
5 juror?

6 PROSPECTIVE JUROR: No.

7 THE COURT: Thank you, sir.

8 You, any member of your family or close friend ever
9 been the victim of an assault or any other violent crime?
10 If so, please, stand.

11 (There was no response.)

12 THE COURT: Have you or a member of your family ever
13 been accused of assaulting another person? If so, please,
14 stand.

15 (There was no response.)

16 THE COURT: Have you or any member of your family or
17 friend been impacted in any way by an assault or any violent
18 crime?

19 (There was no response.)

20 THE COURT: Has any member of the jury or your family
21 members or close personal friends worked for a law
22 enforcement agency or for the Second Circuit Solicitor's
23 Office, which would be Bamberg, Barnwell, Aiken Counties?
24 If so, please, stand.

25 Yes, sir. Your number?

1 PROSPECTIVE JUROR: Juror 132. I did some contract
2 work about five years ago for the solicitor's office.

3 THE COURT: Contract work?

4 PROSPECTIVE JUROR: Civil forfeiture work.

5 THE COURT: Okay. The fact that you did some
6 contractual work five years ago for the Second Circuit
7 Solicitor's Office, do you think that would affect your
8 ability to be a fair and impartial juror?

9 PROSPECTIVE JUROR: Not at all.

10 THE COURT: Very well. Have a seat.

11 Is there any member of the jury panel who is a member
12 of or contributor to any group which has as its primary
13 concern the promotion of law enforcement for victims'
14 rights? These groups would include, but certainly not be
15 limited to MADD, SADD, CAVE or similar organizations. If
16 so, please, stand.

17 (There was no response.)

18 THE COURT: Just for clarification, that is Mother's
19 Against Drunk Driving, Students Against Drunk Driving, those
20 types of groups.

21 (There was no response.)

22 THE COURT: Has any member of this jury panel heard
23 anything about this case, Corporal Bentrice Frazier or
24 Derrick Gathers from any source outside of this courtroom,
25 be it news, social media, paper, anything of the sort?

1 Yes, ma'am. You're Number 50?

2 PROSPECTIVE JUROR: 50. I heard about it. I read it
3 in the news.

4 THE COURT: The fact that you heard about it, do you
5 think that would affect your ability to be a fair and
6 impartial juror?

7 PROSPECTIVE JUROR: It might.

8 THE COURT: Okay. Have a seat. Thank you.

9 Any member of this jury panel ever make a comment or a
10 like or a love or some emoji on any Facebook post or any
11 other social media website regarding this incident you heard
12 about the indictments?

13 (There was no response.)

14 THE COURT: Does anyone on this jury panel have such
15 strong feelings about people having and/or using guns that
16 it would be difficult for you to set those opinions aside
17 and base your verdict solely on the evidence presented
18 during the trial?

19 (There was no response.)

20 THE COURT: Okay. So earlier, the attorneys involved
21 in this case introduced themselves to you. Any member of
22 this jury panel know them, have a friendship with them, a
23 business or social relationship with any of the attorneys
24 involved in this case or have any of you ever been
25 represented by any of the attorneys involved in this case?

1 If so, please, stand.

2 (There was no response.)

3 THE COURT: Does anyone have such strong feelings about
4 people using drugs that it would be difficult for you to set
5 those opinions aside and base your verdict solely on the
6 evidence presented during the trial?

7 (There was no response.)

8 THE COURT: Any member of this jury panel aware of any
9 bias or prejudice toward either the State or the Defendant
10 in this case?

11 (There was no response.)

12 THE COURT: Does any member of this jury panel know of
13 any reason whatsoever why he or she should not serve as a
14 juror in this case with particular emphasis being placed on
15 your ability to be fair and impartial to both the State and
16 the Defendant?

17 (There was no response.)

18 THE COURT: Juror Number 39, if you would come up,
19 please, sir.

20 (WHEREUPON, the Court confers with Juror Number 39.)

21 THE COURT: All right. Counsel, are you ready to
22 proceed with selection?

23 MS. ALVES: Yes, Your Honor.

24 THE COURT: State ready?

25 MR. MILLER: State's ready, Your Honor.

1 THE COURT: The strikes are five and five, two
2 alternates.

3 Madam Clerk.

4 JURY SELECTION

5 THE CLERK: I'm going to call your original number and
6 name. If you will step forward once I call your name and
7 your number. If you are excused, you may be seated. If you
8 are seated, then please go to my left in the white chairs.

9 Lisa Phillips, 141.

10 (Juror No. 141, a white female, came forward.)

11 THE CLERK: What says the State?

12 MR. MILLER: Please present the juror.

13 THE CLERK: The Defense?

14 MS. ALVES: Please excuse the juror.

15 THE CLERK: You're excused.

16 193, Vicki Whitaker.

17 (Juror No. 193, a white female, came forward.)

18 THE CLERK: What says the State?

19 MR. MILLER: Please present the juror?

20 THE CLERK: The Defense?

21 MS. ALVES: Please seat the juror.

22 THE CLERK: You may have a seat.

23 33, Johnny L. Chavis.

24 (Juror No. 33, a white male, came forward.)

25 THE CLERK: What says the State?

1 MR. MILLER: Please present the juror.

2 THE CLERK: The Defense?

3 MS. ALVES: Please seat the juror.

4 THE CLERK: You may have a seat.

5 191, Amy Waltz.

6 (Juror No. 191, a white female, came forward.)

7 THE CLERK: What says the State?

8 MR. MILLER: Please present the juror.

9 THE CLERK: The Defense?

10 MS. ALVES: Please seat the juror.

11 THE CLERK: 26, Shirley P. Bryant-Sease.

12 (Juror No. 26, a black female, came forward.)

13 THE CLERK: What says the State?

14 MR. MILLER: Please present the juror.

15 THE CLERK: The Defense?

16 MS. ALVES: Please seat the juror.

17 THE CLERK: You may be seated.

18 19, Hayden G. Brown.

19 (Juror No. 19, a white male, came forward.)

20 THE CLERK: What says the State?

21 MR. MILLER: Please present the juror.

22 THE CLERK: The Defense?

23 MS. ALVES: Please seat the juror.

24 THE CLERK: You may be seated.

25 55, Tanga Dunty.

1 (Juror No. 55, a white female, came forward.)

2 THE CLERK: What says the State?

3 MR. MILLER: Please present the juror.

4 THE CLERK: The Defense?

5 MS. ALVES: Please seat the juror.

6 THE CLERK: You may be seated.

7 140, Laporshua C. Perry.

8 (Juror No. 140, a black female, came forward.)

9 THE CLERK: What says the State?

10 MR. MILLER: Please present the juror.

11 THE CLERK: The Defense?

12 MS. ALVES: Please seat the juror.

13 THE CLERK: You may be seated.

14 32, Matthew W. Chassereau.

15 (Juror No. 32, a white male, came forward.)

16 THE CLERK: What says the State?

17 MR. MILLER: Please present the juror.

18 THE CLERK: The Defense?

19 MS. ALVES: Please seat the juror.

20 THE CLERK: You may be seated.

21 79, Anthony Heatwole.

22 (Juror No. 79, a white male, came forward.)

23 THE CLERK: What says the State?

24 MR. MILLER: Please present the juror.

25 THE CLERK: The Defense?

1 MS. ALVES: Please excuse the juror.

2 THE CLERK: 79, Anthony Heatwole.

3 (Juror No. 79, a white male, came forward.)

4 THE CLERK: What says the State?

5 MR. MILLER: Please present the juror.

6 THE CLERK: The Defense?

7 MS. ALVES: Please excuse the juror.

8 THE CLERK: You may have a seat back.

9 151, Patricia Rice.

10 (Juror No. 151, a black female, came forward.)

11 THE CLERK: What says the State?

12 MR. MILLER: Please present the juror.

13 THE CLERK: The Defense?

14 MS. ALVES: Please seat the juror.

15 THE CLERK: You may have a seat.

16 138, Jerry Odom.

17 (Juror No. 138, a black male, came forward.)

18 THE CLERK: What says the State?

19 MR. MILLER: Please present the juror.

20 THE CLERK: The Defense?

21 MS. ALVES: Please seat the juror.

22 THE CLERK: You may have a seat.

23 132, Adam Ness.

24 (Juror No. 132, a white male, came forward.)

25 THE CLERK: What says the State?

1 MR. MILLER: Please present the juror.

2 THE CLERK: The Defense?

3 MS. ALVES: Please seat the juror.

4 THE CLERK: You may have a seat.

5 82, Jennifer Hightower.

6 (Juror No. 82, a white female, came forward.)

7 THE CLERK: What says the State?

8 MR. MILLER: Please present the juror.

9 THE CLERK: The Defense?

10 MS. ALVES: Please excuse the juror.

11 THE CLERK: You're excused.

12 124, Brant Mitchell.

13 (Juror No. 124, a white male, came forward.)

14 THE CLERK: What says the State?

15 MR. MILLER: Please present the juror.

16 THE CLERK: The Defense?

17 MS. ALVES: Please seat the juror.

18 THE CLERK: You may be seated.

19 Now we will pick our alternates.

20 77, Glenda Hartzog.

21 (Juror No. 77, a white female, came forward.)

22 THE CLERK: What says the State?

23 MR. MILLER: Please present the juror.

24 THE CLERK: The Defense?

25 MS. ALVES: Please excuse the juror.

1 THE CLERK: You can have a seat back.

2 59, Ashton Florie.

3 (Juror No. 59, a white male, came forward.)

4 THE CLERK: What says the State?

5 MR. MILLER: Please excuse Mr. Florie from the trial of
6 this case.

7 THE CLERK: You may have a seat.

8 217, Clinton Moody.

9 (Juror No. 127, a white male, came forward.)

10 THE CLERK: What says the State?

11 MR. MILLER: Please present the juror.

12 THE CLERK: The Defense?

13 MS. ALVES: Please seat the juror.

14 198, Joshua Williams.

15 (Juror No. 198, a white male, came forward.)

16 THE CLERK: What says the State?

17 MR. MILLER: Please present the juror.

18 THE CLERK: The Defense?

19 MS. ALVES: Please seat the juror.

20 THE CLERK: You may be seated.

21 THE COURT: Counsel, any issue with the jury selection?

22 MR. MILLER: None from the State, Your Honor.

23 MS. ALVES: None from the Defense.

24 THE COURT: Very well.

25 Ladies and gentlemen, you have been chosen as our jury

1 for our trial this week. Thank you in advance for your
2 service.

3 First thing I'm going to have you do is have you go
4 back to the jury room, refresh yourselves. I'd like you to
5 sit down and choose your foreperson. You can give a note to
6 one of the bailiffs and they will give that back to me and I
7 will give further instructions thereafter.

8 So you'll be escorted back to the jury room at this
9 time. Please do not discuss the case. You haven't heard
10 any evidence in this case. There's no reason for you to
11 discuss this case at all. You're more than welcome to talk
12 about the weather or how Gamecock baseball didn't do too
13 well this weekend, but you can't talk about the case or
14 anyone involved in the case.

15 Also, the last two persons chosen cannot be the
16 foreperson.

17 Thank you.

18 (WHEREUPON, the jury exits the courtroom.)

19 THE COURT: Ladies and gentlemen, you've been here
20 since about 9:15 this morning. We appreciate all your
21 patience. You were not chosen for the jury. If you have
22 any questions about employment or anything like that, the
23 clerk of court has forms for you up here.

24 Thank you for your willingness to serve even though you
25 were not chosen. You are free to go at this time.

1 (WHEREUPON, the jury venire was released.)

2 (Pause.)

3 THE COURT: Our foreman for the jury trial will be
4 Juror Number 132, that's Ness. So I'm going to make this a
5 Court's Exhibit.

6 (WHEREUPON, Court's Exhibit No. 1 was marked for
7 identification.)

8 THE COURT: I'm going to walk to the jury room and tell
9 them to come back at 1:45.

10 (WHEREUPON, a lunch break was taken.)

11 THE COURT: Good afternoon, everyone. The jury is
12 back.

13 Anything else for the record before we bring the jury
14 back in from the State or the Defense?

15 MR. MILLER: Nothing from the State, Your Honor.

16 MS. ALVES: Yes, sir. I would renew my motion from
17 yesterday regarding the number of law enforcement officers
18 in the courtroom. I would just note that now we are here
19 with a number of law enforcement officers in the courtroom,
20 who I would point out the number of uniformed law
21 enforcement in the courtroom and non-uniformed officers in
22 the courtroom greatly outnumber even the court personnel. I
23 think this would have a chilling effect on the jury.

24 I applaud everyone coming to support Trooper Frazier, I
25 truly do, but we have to consider, also, fairness to the

1 Defendant as well as fairness to Corporal Frazier. I think
2 that the number of highway patrol in the courtroom would be
3 potentially intimidating to the jury and I would ask that
4 the Court reduce that number some, at least, by half.

5 THE COURT: Anything from the State?

6 MR. MILLER: No, Your Honor.

7 MS. ALVES: And, Judge, for the record, I would note
8 there are ten highway patrol officers. There are other
9 uniformed officers and there are other officers present who
10 are in plain clothes.

11 THE COURT: All right. Your objection is noted. I
12 tried to mitigate any potential issue during jury selection.
13 We didn't really have a presence there at all during jury
14 selection. I'm not going to make any changes at all at this
15 time. Your objection is noted for the record.

16 MS. ALVES: Judge, I, also, would like to put on the
17 record that -- because once again, I don't know how clear
18 the record would be that we're not in the typical Bamberg
19 County Courthouse, we are in a very small municipal
20 courtroom.

21 THE COURT: We are in the National Guard Armory of days
22 past, which is the Bamberg Civic Center. We're in a space
23 about the size of a middle school classroom.

24 MS. ALVES: Yes, sir.

25 THE COURT: I recognize that. I think that's clear on

1 the record.

2 Anything else before we bring in the jury?

3 Now, we do have adequate space for people to get in and
4 out, correct?

5 SHERIFF BAMBERG: Yes.

6 THE COURT: We'll bring them in. I'll have Madam Clerk
7 swear them. I have some introductory remarks, then we'll
8 turn it over to opening statements of the parties and then
9 the State will call their first witness.

10 Let's bring in the jury, please.

11 (WHEREUPON, the jury enters the courtroom at 1:57 p.m.)

12 THE COURT: Mr. Foreman, ladies and gentlemen of the
13 jury, welcome back. I hope you had a nice lunch. We're
14 about to begin the trial of the State vs. Derrick Gathers.
15 I've got some remarks to give you to start things off.

16 Before I do that, I'll ask the Clerk of Court to swear
17 you in.

18 (WHEREUPON, the jury was sworn.)

19 INTRODUCTORY REMARKS BY THE COURT

20 THE COURT: Ladies and gentlemen, before we get into
21 the actual trial of the case, I thought it might be helpful
22 if I explained to you, basically, how a trial proceeds.

23 First, the State will make an opening statement. An
24 opening statement is not evidence. It is simply an outline
25 to help you understand what that party expects the evidence

1 will show. The Defendant, if he wishes, may present an
2 opening statement, but does not have to for reasons that I
3 will explain.

4 Following the opening statements, you will hear
5 testimony and evidence in the case. This will consist of
6 testimony from the State's witnesses as well as any physical
7 exhibits which will be introduced into evidence.

8 Following the completion of the testimony, the
9 attorneys will again have an opportunity to make what is
10 called a closing argument or summation to you. This is an
11 opportunity for the attorneys to summarize a case from their
12 respective points of view. Again, these arguments are not
13 evidence.

14 Following closing arguments by the attorneys, I will
15 instruct you on the law of South Carolina as it pertains to
16 the issues that have arisen in this case. When I have
17 completed my instructions to you, you will then be permitted
18 to begin your deliberations in order to reach a verdict.

19 Now, ladies and gentlemen, you are the jury in this
20 case. I want to take a minute to explain to you about your
21 duty as jurors. At the end of the trial, I will give you
22 more detailed instructions and those instructions will
23 control your deliberations. It will be your duty to decide
24 from the evidence what the facts are. You and you alone are
25 the judges of the facts. You will hear the evidence, decide

1 what the facts are and then apply those facts to the law
2 which I will give to you. This is how you will reach your
3 verdict.

4 In doing so, you must follow the law whether you agree
5 with it or not. The evidence will consist of the testimony
6 of witnesses, documents and other things received into
7 evidence as exhibits and any facts which the lawyers may
8 agree or which I may instruct you to accept.

9 You should not take anything I may say or do during the
10 trial as indicating what I think of the evidence or what
11 your verdict should be.

12 Now, this is a criminal case brought by the State of
13 South Carolina. The State charges the Defendant with
14 attempted murder, possession of a weapon during the
15 commission of a violent crime and failure to stop for a blue
16 light. The charges against the Defendant are contained in
17 the indictments. The indictments are not evidence of
18 anything. It's simply the description of the charges made
19 by the State against the Defendant. The Defendant has pled
20 not guilty to the charges and is presumed innocent unless
21 and until proven guilty beyond a reasonable doubt.

22 Proof beyond a reasonable doubt is proof that leaves
23 you firmly convinced of the Defendant's guilt. A defendant
24 has the right not to testify and never has to prove
25 innocence or present any evidence. The burden of proof is

1 always upon the State of South Carolina.

2 Now, the following things are not evidence and you must
3 not consider them as evidence in deciding the facts of the
4 case. One, statements and arguments of the attorneys. Two,
5 questions and objections of the attorneys. Three, any
6 testimony I've instructed you to disregard. Four,
7 allegations contained in the indictment. Or five, any
8 questions or responses heard in jury selection process.

9 Now, evidence here may be direct or circumstantial.
10 Direct evidence is testimony by a witness about what that
11 witness personally saw, heard or did. Circumstantial
12 evidence is indirect evidence, that is it is proof of one or
13 more facts from which one can find another fact. You are to
14 consider both direct and circumstantial evidence. The law
15 permits you to give equal weight to both, but it is up to
16 you to decide how much weight to give any evidence.

17 Now, there are rules of evidence which control what can
18 be received into evidence. When a lawyer ask a question or
19 offers an exhibit into evidence and a lawyer on the other
20 side thinks that it is not permitted by the rules of
21 evidence, that lawyer may object. If I overrule the
22 objection, the question may be answered or the exhibit may
23 be received. If I sustain the objection, the question
24 cannot be answered and the exhibit cannot be received.

25 Whenever I sustain an objection to a question or deny a

1 motion to admit an exhibit into evidence, you must ignore
2 the question or the existence of the exhibit and you must
3 not guess what the answer would have been or what the
4 exhibit would have shown.

5 Sometimes it may be necessary for me to request that
6 you leave the courtroom while I discuss the attorneys' legal
7 questions that come up during the trial. If this occurs,
8 you should not speculate about our discussions or the reason
9 you were asked to leave the room. This is simply a
10 procedure that the law requires when certain legal issues
11 arise. There, also, may be occasions where I ask the
12 attorneys to approach the bench so that I can discuss a
13 legal issue with them in private. I'll do this as often as
14 possible so that you will not be required to leave the
15 courtroom more than is absolutely necessary.

16 If I ask the attorneys to step up to the bench or if I
17 ask you to leave the courtroom, please don't think anybody
18 is trying to hide anything from you or keep any evidence
19 from you. This is simply a procedure used by all lawyers
20 and by all courts to determine and decide legal questions.

21 Now, in deciding the facts of the case, you may have to
22 decide which witnesses to believe and which witnesses not to
23 believe. You may believe everything a witness says or only
24 part of it or none of it.

25 In deciding what to believe, you may consider a number

1 of factors, including the following: The witness's ability
2 to see, hear or know the things testified to, the quality of
3 the witness's memory, the witness's manner while testifying,
4 whether the witness has an interest in the outcome of the
5 case or any motive, bias or prejudice, whether the witness
6 was contradicted by anything the witness said or wrote
7 before the trial or by other evidence or how reasonable was
8 the witness's testimony when considered in light of other
9 evidence you believe.

10 Now, until I advise you to begin your deliberations,
11 you must not discuss this case with anyone, including your
12 fellow jurors, friends, family members or anyone involved in
13 the case. That includes face-to-face conversations or text
14 messages, e-mails, any media form whatsoever. You are not
15 to discuss this case with anyone until you're told to do so
16 by me.

17 Also, while you're out, please, don't do any
18 independent research about the parties involved or the law
19 involved. As I told you before you went to lunch,
20 everything you need to hear to fulfill your duty as jurors
21 will come from the witness right here in this courtroom.
22 There's no need for you to do any independent research on
23 your own. If you happen to see anything about this case in
24 the newspaper or on the news, please turn away from it. If
25 you do see it, let me know about it the next morning.

1 Obviously, you don't need to be reviewing anything about
2 this if it happens to be in the news.

3 After the case is submitted to you, you must discuss it
4 only in the jury room with your fellow jurors. And the
5 attorneys and parties in this case, I have advised them not
6 to talk with you if they see you in the hallway. If you
7 happen to come close to one of the attorneys as you're
8 walking and they're not speaking to you, they're not being
9 rude, they're just following my instructions. I would ask
10 you to just move on by without speaking to them as well.

11 It's important that you keep an open mind and not
12 decide any issue in this case until all the evidence has
13 been presented, the parties have made their closing
14 arguments and I've instructed you on the law in this case.
15 It is your solemn responsibility to determine the guilt or
16 innocence of the Defendant and your verdict must be based
17 solely on the evidence as it is presented to you in this
18 trial and the law as I instruct you during and at the close
19 of the trial.

20 I don't see anyone with any note pads out there, but if
21 you happen to have something, please, don't take any notes.
22 I want you to focus directly on the witness and the
23 questions and the back and forth with the attorneys during
24 the trial.

25 If someone needs a break -- we'll certainly take a

1 break at some point this afternoon before we adjourn for the
2 day, but if someone needs a break, just raise your hand and
3 we'll get right to you.

4 With that said, please give your complete and undivided
5 attention to the attorneys as they make opening statements
6 at this time.

7 OPENING STATEMENT BY THE STATE

8 MS. STAGGS: Thank you, Your Honor.

9 Ms. Alves.

10 May it please the Court.

11 THE COURT: Yes, ma'am.

12 MS. STAGGS: Thank you.

13 On April 16th of 2023, Trooper Bentrice Frazier with
14 the South Carolina Highway Patrol was on patrol in Bamberg
15 County. He was doing his job. He saw a black Mazda SUV
16 speeding and he initiated a traffic stop, which is part of
17 his job duties.

18 He pulls this Mazda over for speeding and he makes
19 contact with the driver. The driver of that car was Derrick
20 Gathers, the Defendant. He gets his driver's license and he
21 goes back to his patrol car. He prints a speeding ticket
22 and he looks at that ID.

23 While he's conducting this traffic stop, Deputy Duckson
24 from the Bamberg County Sheriff's Office had pulled up.
25 They have a short conversation. Trooper Frazier doesn't

1 think that that photo on that driver's license looks like
2 the guy that he just saw in the car. So he goes back to get
3 a better look before making a decision. He has that
4 speeding ticket in his hand ready to give it to him.

5 He walks up to that Mazda and as he gets in between the
6 back driver's side door and the driver's side door, Derrick
7 Frazier [sic] pulls out a gun and he shot him at close range
8 in the face. That bullet went into his cheek and came out
9 of his neck. And then Derrick Gathers sped away while
10 Trooper Frazier laid on the ground bleeding from a gunshot
11 wound.

12 Deputy Duckson is on scene. He calls for backup and he
13 stayed with Trooper Frazier until EMS arrived to transport
14 him to the hospital.

15 Meanwhile, a chase ensues. Law enforcement responds
16 and they respond quickly. Multiple agencies are involved in
17 the chase of this black Mazda. They catch up to it. They
18 follow it into Orangeburg County where the Defendant, Mr.
19 Gathers, wrecks this car. His passenger, a female, his
20 girlfriend, is pulled from the car and she's detained. He's
21 taken out of the car and he's arrested.

22 And SLED is called. SLED is called in to investigate
23 this case because it's an officer-involved shooting. So
24 they respond to the scene where Trooper Frazier had been
25 shot. At the scene, they collected one single shell casing

1 because that gun was fired one time.

2 So he wrecked his vehicle in Orangeburg, like I told
3 you. Well, Orangeburg County did not have an accident
4 investigation team. Highway Patrol is involved in this
5 shooting, so they call in Dorchester County. Dorchester
6 County comes to investigate this wreck that the Defendant
7 had as he's speeding away from law enforcement trying to get
8 away.

9 They locate a gun under the brake pedal of that car.
10 That shell casing and that gun are sent for testing and they
11 match. That shell casing came when that gun was fired at
12 Trooper Frazier.

13 That is what happened. And it is the State's job to
14 tell you this story, to put these facts before you and
15 present you this evidence. It's almost like a newspaper
16 reporter. We take this piece and this piece and try to show
17 you what happened in a way to highlight what the State
18 thinks are the most important facts here.

19 So how do we do that? Through evidence. That evidence
20 comes in a few different forms, witness testimony, exhibits,
21 such as videos or photos or items collected by law
22 enforcement.

23 You know, law enforcement deals with a lot every single
24 day. They have an inherently dangerous job. But nothing is
25 going to make a police officer to respond like a call that

1 another police officer has just been shot. That night in
2 Bamberg County, it was all hands on deck. Every available
3 local law enforcement agency responded. And then outside
4 agencies are called to help with the investigation. So a
5 lot of that evidence will be through written testimony. We
6 are going to put a number of witnesses on the stand that are
7 law enforcement, police officers from different agencies.

8 Even the victim in this case is a police officer. He's
9 a state trooper. His job is inherently dangerous. But
10 that's all that he was doing on April 16th of 2023. He went
11 to work that day. He was doing his job when he pulled that
12 Mazda over for speeding. He was doing his job when he
13 printed that ticket. And he was doing his job when Derrick
14 Gathers pulled out a gun and shot him in the face and left
15 him in the road.

16 And that is what we are going to prove to you. When
17 that trigger was pulled, that is attempted murder. Derrick
18 Gathers was driving that car. Derrick Gathers led police on
19 that chase. Derrick Gathers shot Trooper Frazier in the
20 face. And Derrick Gathers is guilty of attempted murder,
21 failure to stop for a blue light and possession of a weapon
22 during the commission of a violent crime.

23 Thank you.

24 OPENING STATEMENT BY THE DEFENSE

25 MS. ALVES: May it please the Court?

1 THE COURT: Yes, ma'am.

2 MS. ALVES: Counsel.

3 Now, you're going to see the evidence. This is not a
4 long trial. The Judge said we would probably be done by
5 Thursday.

6 Now, the evidence in this case is going to show you
7 what happened. You're going to see a video of what
8 happened. You're going to potentially see a video of the
9 accident that happened after this, what the police were
10 doing that day. But don't just look at a video, one piece
11 of evidence and think okay, that's the end of this case, why
12 are we even here? Because this case isn't just about what
13 happened, it's about what Mr. Gathers is charged with.

14 Now, the State has charged Mr. Gathers with attempted
15 murder, possession of a weapon during the commission of a
16 violent crime and failure to stop for blue light and siren.
17 I will tell you, the Judge is going to tell you what the law
18 is at the end of the trial. He'll tell you. Attempted
19 murder, that's a violent crime because our law in South
20 Carolina says it is. But that's not the end of this case.
21 The State has to prove all of the elements of all of those
22 charges beyond a reasonable doubt.

23 And for attempted murder, the State has to prove to you
24 that Derrick Gathers had an intent to kill Trooper Frazier.
25 They have to prove to you that he acted with malice

1 aforethought. And they have to prove to you that he did
2 actually attempt to kill Trooper Frazier. That's what this
3 case is about pretty much. They have to prove all those
4 elements. They can't just prove one. They can't just say
5 oh, he shot Trooper Frazier in the face and that's it, he's
6 guilty of attempted murder. They have to prove to you that
7 there was an intent, there was malice -- there was intent,
8 malice and an attempt.

9 Now, at the end of this trial, the Judge is going to
10 tell you what the law is. He's going to explain some of
11 this stuff, like I just said, malice aforethought. There's,
12 actually, an explanation about what that is. Beyond a
13 reasonable doubt and what reasonable doubt is, the Judge is
14 going to tell you what reasonable doubt is. So he's going
15 to explain a lot of the terms that we're talking about.

16 The only thing I'm asking you to do is wait until the
17 end of the trial. I know you're going to see all of the
18 evidence. Nobody is going to try to hide anything. You're
19 going to see the evidence about what happened that night.
20 But then keep in mind that the question is, was this
21 attempted murder or was it something else? The State has to
22 prove to you that it was what they're accusing Mr. Gathers
23 of.

24 And I just ask you to keep an open mind and it will be
25 your decision at the end of the trial whether the State has

1 proven beyond a reasonable doubt that Mr. Gathers is guilty
2 of attempted murder. Perhaps, he's guilty of something
3 else, maybe he's not guilty.

4 THE COURT: The State may call their first witness.

5 MS. STAGGS: Thank you, Your Honor. The State calls
6 Trooper Bentrice Frazier.

7 THE CLERK: Put your left hand on the Bible and raise
8 your right hand. Please state your full name for the
9 record, please.

10 THE WITNESS: Bentrice Alonza Frazier.

11 BENTRICE FRAZIER,

12 after being duly sworn, testified as follows:

13 THE CLERK: Thank you, sir.

14 DIRECT EXAMINATION

15 BY MS. STAGGS:

16 Q Trooper Frazier, would you please tell the jury where
17 you work?

18 A I work with South Carolina Highway Patrol.

19 Q And what is your rank with the Highway Patrol?

20 A Lance Corporal.

21 Q How long have you been a trooper with the Highway
22 Patrol?

23 A 2018, April of 2018 is when I started as a trooper.

24 Q Were you in law enforcement before that?

25 A I did work for Allendale County Sheriff's Department.

1 Q When did you --

2 A In 2014 until I started as a trooper.

3 Q What are some of your job duties as a trooper?

4 A Duties as a trooper is highway safety, educate the
5 public about road safety, highway safety, drunk drivers,
6 speeders. To work -- any violation that's on the highway,
7 it's our job to protect the public, drivers on the highway.

8 Q Obviously, you are a police officer --

9 A I am.

10 Q -- so you make arrests?

11 A Yes.

12 Q And they involve traffic events specifically?

13 A Yes.

14 Q Were you working on April 16th of 2023?

15 A Yes.

16 Q What were you doing that night?

17 A I was patrolling U.S. 78, which is the highway that
18 runs east and west up through Bamberg County. I was
19 westbound on U.S. 78 just outside of the City of Denmark.
20 And I met this vehicle going about 77 in a 55-mile-per-hour
21 zone.

22 Q Were you traveling in the same direction?

23 A No, we were not.

24 Q Okay. So what did you do?

25 A That vehicle was traveling east, I was traveling west.

1 As I approached the vehicle, I made the turn. After I
2 passed him, I turned around behind him to initiate a traffic
3 stop so I could inform this driver of the violation.

4 Q When that car pulled over and you got out of your car,
5 then what did you do? How did you approach that vehicle?

6 A I made a passenger side approach of the vehicle,
7 meaning when I stepped from my vehicle -- because of all the
8 blue lights going, when I stepped from my vehicle I walked
9 around the back of my vehicle and then approached the
10 passenger side of his vehicle.

11 Q Why would you approach on the passenger side?

12 A Well, the reason for that is trooper safety. The
13 lights are going and you've got other cars passing. The
14 last thing we want to do is be hit in the highway. Or if
15 this violator decides they want to attack us, we don't want
16 to be knocked into the highway. So being able to get out of
17 the highway to a safer side of the vehicle.

18 Q When you got to that car, who was in the car?

19 A So when I approached the car, there was a passenger, a
20 female passenger and Mr. Gathers as the driver as I
21 approached the car.

22 Q And you checked to see if there were other people in
23 the car?

24 A I did.

25 Q And you didn't see anyone else?

1 A No.

2 Q What happened? Describe your interaction with the
3 passenger and the driver, Mr. Gathers.

4 A So when I approached the vehicle, I walked up to the
5 vehicle with my flashlight just making sure I see how many
6 occupants in the car and what's in the car is what we're
7 looking for. And as I walked up to the car, the music was
8 beating real loud. They dropped the window and I asked them
9 to turn the music down so they could hear me. So I
10 introduced myself to them. I explained to him the reason
11 why I stopped him and asked him, you know, for his driver's
12 license, registration and proof of insurance. And looking
13 in that car, you know --

14 Q Yes, sir, you can tell us what you observed.

15 A In looking through the car window, like I said, I
16 observed a butt. Now, I can't say what was in it, but it
17 looked like a marijuana butt in the ashtray. I asked Mr.
18 Gathers did he have any weapons, any drugs or alcohol in the
19 car. Mr. Gathers showed me a shot bottle of liquor. When I
20 asked him about the gun, I don't know for sure if he said
21 yes or no. But I asked him that twice. I wasn't sure
22 exactly what he said in response because, again, I was
23 talking with the music going.

24 Q Did he give you his driver's license and registration?

25 A He gave me an ID and that was it. It took -- so we're

1 not spending a lot of time waiting for him to find
2 registration and insurance. So at the time he was looking
3 for it, he couldn't find it, so I said keep looking for your
4 registration and driver's license. I'm going to go back
5 here to my car and initiate the traffic ticket.

6 Q And that's what you did?

7 A That's what I done.

8 Q Okay. After you initiated that traffic ticket, did
9 anyone else arrive on scene?

10 A Yeah. In leaving Mr. Gathers's vehicle, I start
11 turning to walk to my vehicle and Deputy Duckson with the
12 Bamberg County Sheriff's Department arrived on scene with
13 blue lights. Once I got back into my car, he stood at my
14 door and we were talking back and forth about how our night
15 went, about this particular traffic stop and things of that
16 nature.

17 Q And what did you notice at that point as you had that
18 ID and you were working on that speeding ticket?

19 A Well, I knew after looking at the ID, I said this is
20 not the driver of the car. So I said to Deputy Duckson, I
21 said, Man, look at this ID. I said, That's not that driver.
22 And at that time, Deputy Duckson was telling me, he said --

23 MS. ALVES: Objection, Your Honor, hearsay.

24 BY MS. STAGGS:

25 Q Without telling us what he said to you, then what did

1 you do from there?

2 A So at that time, I said, We need to identify the
3 driver. I know that wasn't him on the driver's license. I
4 said, We need to identify the driver. That's when I stepped
5 out of my vehicle and along with the deputy, we went walking
6 back to the driver's side of the -- Mr. Gathers's vehicle.

7 Q Because you weren't sure? You wanted to get a better
8 look at his face?

9 A Yes.

10 Q And as you approached, as you went back to his car,
11 what happened then?

12 A Oh, just as I approached the driver's side door is when
13 he came around and shot me. Pow. Shot me right here in the
14 face.

15 Q Where were you approximately in proximity to this
16 vehicle --

17 A If you're familiar with the pillow between the front
18 door and the back door, there's a pillow there that separate
19 the doors. I was about in that spot when he came around and
20 shot me.

21 Q And you didn't have very much time to react whatsoever?

22 A No time to react.

23 Q Can you show the jury where the bullet hit you?

24 A He shot me right here.

25 Q And where did it exit?

1 A It exit right here. You can see it. I can undo this
2 --

3 Q In your neck?

4 A Yes.

5 Q Do you remember what happened after you got shot?

6 A I remember -- so at the time, I heard the gun go off
7 and I felt the bullet when it hit me. I didn't know -- it
8 blinded me for a moment. The fire from the gun blinded me.
9 So I was kind of out of it. I remember when I came to, I
10 was like headed back to my car, so, obviously, it spun me
11 around and I was going back toward my car. And that's when
12 the deputy said, Frazier, he shot you.

13 And at that moment, I went to the ground. And I'm
14 thinking at this time, either when I spun around and went
15 down, but I remember him saying Frazier, he shot you. And I
16 just remember, you know, I was on the ground and noticed
17 him.

18 Q And what did Deputy Duckson do after that?

19 A Then he aided me, you know, gave me aid. I asked him
20 to please apply pressure to where the wound was because I
21 didn't know where the wound was, but I know there was blood
22 running from this side of my body.

23 Q Did he make any radio calls?

24 A He did. We both made calls to our TCC,
25 Telecommunication dispatchers, that I'd been shot.

1 Q Where did you go after? What happened after that?

2 A So after that, moments later, I think we got in the
3 ambulance and in route. The ambulance arrived on scene.
4 From that point, I think -- well, I was transported to
5 Orangeburg, which is MUSC Orangeburg, which was Orangeburg
6 Regional at one time.

7 Q And were they able to treat your injuries?

8 A They couldn't, no. They transferred me to Charleston
9 MUSC.

10 Q How long did you spend in the hospital in Charleston?

11 A I think that was a Sunday morning that it happened and
12 I believe I was released on Thursday.

13 Q So about four days?

14 A Yes.

15 Q What were your injuries in the hospital? What were you
16 treated for?

17 A Well, I was wired -- my mouth was wired shut because it
18 shattered my jawbone, which is still -- I mean, it's still
19 there. But my mouth was wired because the damage from the
20 bullet shattered my jawbone and it damaged the nerves that
21 control this side. Like now, I'm still numb from here,
22 around here and down my neck. But, yeah, it damaged my
23 right side. And now, I'm finally able to use this right
24 side, this arm, but I'm still numb from here around. And
25 that nerve may never come back.

1 Q You're talking about your arm?

2 A Yeah.

3 Q Describe the limitations that you had.

4 A At that time, what I'm doing now, I could -- I had no
5 control of this shoulder at the time.

6 Q So you couldn't really move it at all?

7 A Right.

8 Q When were you able to go back to work?

9 A I stayed out of work about a year. This happened April
10 16th, I think, of 2023. So I went back to work April 29th
11 of 2024.

12 Q And did you go back into the same position? Are you
13 still on the road?

14 A No, no, I'm not on the road. I'm on the administrative
15 side now.

16 Q Is that change in position a result of what happened to
17 you?

18 A Yes.

19 Q I'm going to show you what's previously been marked as
20 State's Exhibit No. 1. Do you recognize that disk?

21 A Yes, that's my body cam.

22 Q And how do you recognize it?

23 A I watched it and signed here.

24 Q Those are your initials on that disk?

25 A Yes.

1 Q And is that a true and accurate copy of the footage of
2 your body-worn camera from the night of this incident?

3 A Yes, it is.

4 MS. STAGGS: Your Honor, at this time, the State moves
5 to introduce State's Exhibit No. 1 into evidence.

6 THE COURT: Any objection?

7 MS. ALVES: Judge, I still have my previous objection
8 that we discussed yesterday regarding the portion of the
9 conversation on the video.

10 THE COURT: I understand. It will be admitted subject
11 to previous objection.

12 (WHEREUPON, State's Exhibit No. 1 was admitted into
13 evidence.)

14 BY MS. STAGGS:

15 Q I'm handing you what has been marked as State's Exhibit
16 No. 2. Do you recognize that?

17 A Yes.

18 Q And what is it?

19 A This is a picture from my body cam of the passenger and
20 Mr. Gathers inside the vehicle.

21 Q And that's a true and accurate copy of a still shot
22 from your body-worn camera?

23 A Yes, ma'am.

24 MS. STAGGS: Your Honor, at this time, the State moves
25 to introduce State's Exhibit No. 2 into evidence.

1 THE COURT: Any objection?

2 MS. ALVES: Judge, I don't have any objection to
3 State's Exhibit No. 2. Also, for State's Exhibit No. 1, I
4 just wanted to clarify my -- my objection specifically was
5 the conversation between Deputy Duckson and Trooper Frazier.

6 THE COURT: Very well. I think we addressed that on
7 the record yesterday.

8 MS. ALVES: Yes, sir.

9 THE COURT: Your objection is noted and overruled.
10 State's Exhibit No. 1 is admitted subject to objection.
11 State's Exhibit No. 2 is admitted without objection.

12 (WHEREUPON, State's Exhibit No. 2 was admitted into
13 evidence.)

14 BY MS. STAGGS:

15 Q And, finally, Trooper Frazier, I know we've sort of
16 been through this in a roundabout way, but do you see the
17 driver of that car that shot you in this courtroom today?

18 A Yes, right there.

19 MS. STAGGS: Beg the Court's indulgence.

20 (Pause.)

21 BY MS. STAGGS:

22 Q Trooper Frazier, I'm going to hand you what's been
23 marked as State's Exhibit Nos. 11 and 12. Do you recognize
24 those?

25 A Yes, those are my wounds.

1 Q From shortly after?

2 A Yes.

3 MS. STAGGS: Judge, at this time, the State would move
4 to introduce State's Exhibit Nos. 11 and 12 into evidence.

5 THE COURT: Without objection?

6 MS. ALVES: No objection.

7 THE COURT: State's Exhibit Nos. 11 and 12 are admitted
8 into evidence.

9 (WHEREUPON, State's Exhibit Nos. 11 and 12 are admitted
10 into evidence.)

11 BY MS. STAGGS:

12 Q Trooper Frazier, I'm going to hand what is marked on
13 the outside as State's Exhibit No. 3. Do you recognize
14 that?

15 A This is the ID that was given to me by the driver.

16 Q On the night of the incident?

17 A Yes.

18 Q This same ID?

19 A Same one.

20 MS. STAGGS: At this time, Your Honor, we'd move to
21 admit State's Exhibit No. 3 into evidence.

22 THE COURT: Without objection?

23 MS. ALVES: Without objection.

24 THE COURT: State's Exhibit No. 3 admitted into
25 evidence.

1 (WHEREUPON, State's Exhibit No. 3 was admitted into
2 evidence.)

3 MS. STAGGS: Trooper Frazier, I have no further
4 questions. Please answer any questions the Defense might
5 have.

6 THE COURT: Cross-examination.

7 MS. ALVES: Yes, sir.

8 CROSS-EXAMINATION

9 BY MS. ALVES:

10 Q Trooper Frazier -- I'm sorry, Corporal Frazier --

11 A It's Lance Corporal.

12 Q Lance Corporal Frazier, have you had an opportunity to
13 look at the video recently? This video?

14 A Yes.

15 Q I'm referring to State's Exhibit No. 1. And that is
16 the video from your body-worn camera?

17 A That is the video from my body-worn camera.

18 Q Okay. And that video shows the whole interaction
19 between you and Mr. Gathers from the night in question?

20 A Yes, it does.

21 Q And when you pulled Mr. Gathers over, when you
22 approached on the passenger side, you asked him for
23 information about the car, license, registration and
24 information about the car; is that correct?

25 A Yes.

1 Q And he was, actually, fumbling for it in the glove
2 compartment and papers were falling out when he was trying
3 to find the paperwork for the car?

4 A He reached for his -- he had the ID. When I took it,
5 he was shaking like this with papers in his hand. Whatever
6 the papers were, I don't know. I never got the papers. I
7 got the ID. That's all I got. But he was sitting there
8 shaking with papers in his hand saying he was looking for
9 the registration.

10 Q Okay. So you told him to keep looking?

11 A Yes.

12 Q And then you asked him whether he had any alcohol in
13 the car?

14 A Yes.

15 Q And he actually reached into, I guess, the side of the
16 driver's door and pulled out a bottle and showed it to you,
17 but it was closed?

18 A It was a shot bottle.

19 Q And then he actually picked up what you referred to as
20 a blunt, a cigarette, cigar?

21 A Yeah, I call it a blunt.

22 Q A blunt, okay. For people that don't know, a blunt is
23 a cigar that people hollow out and sometimes put marijuana
24 in it?

25 A I'm a trooper, I don't know a whole lot about the

1 cigarette business, but on the street, they call it a blunt.

2 Q Okay. And a blunt -- I'm just trying to clarify what a
3 blunt is.

4 A A blunt is a cigarette paper that they usually stuff
5 marijuana in.

6 Q Okay. And he held that up and showed it to you?

7 A I saw it in plain view.

8 Q Okay. But when you were asking him about it, he,
9 actually, picked it up out of the cup and he held it up and
10 showed it to you?

11 A I don't recall.

12 Q But if that's what happened, it would show it on the
13 video?

14 A It should show it on the video, yeah.

15 Q But you didn't take that, he just showed it to you?

16 A No, I didn't take anything from him but his ID.

17 Q And you don't know what was in that blunt?

18 A No.

19 Q And then do you know -- do you recall how long you were
20 back at your vehicle?

21 A The video should give you. I don't know how long I sat
22 in the car. I know we don't hold you side the road very
23 long, but as far as how much time I was there, I don't know
24 how much time I was there.

25 Q Okay. The video will show us that?

1 A Yes.

2 Q And while you were back at your car, the -- when you
3 went back to your car, you were, actually, typing
4 information in the laptop that you have in your vehicle?

5 A Yes.

6 Q And that's when Deputy Duckson came up and he was
7 standing outside the vehicle talking to you while you were
8 typing information in?

9 A Correct.

10 Q And the whole time, Mr. Gathers and the lady were
11 sitting in the car in front of you?

12 A Yes.

13 Q And then after you printed out the ticket, you went
14 back to the car?

15 A Yes.

16 Q And did Mr. Gathers say -- or anybody, did either one
17 of them say anything to you at all?

18 A Neither one of them.

19 MS. ALVES: Thank you. No further questions.

20 THE COURT: Redirect?

21 MS. STAGGS: Nothing from the State, Your Honor.

22 THE COURT: The witness is excused.

23 Thank you.

24 Next witness.

25 MR. MILLER: Thank you, Your Honor. The State calls

1 Master Deputy Don Smith of the Dorchester County Sheriff's
2 Office.

3 THE CLERK: Place your left hand on the Bible and raise
4 your right hand. Please state your full name for the
5 record.

6 THE WITNESS: Don Smith.

7 DON SMITH,

8 after being duly sworn, testified as follows:

9 THE CLERK: Thank you, sir.

10 DIRECT EXAMINATION

11 BY MR. MILLER:

12 Q Good afternoon, sir.

13 A Good afternoon.

14 Q Who do you work for?

15 A Dorchester County Sheriff's Office.

16 Q And what do you do for Dorchester County?

17 A I'm a corporal now on the traffic unit, enforce traffic
18 laws, accident investigations.

19 Q Did you work for the Dorchester County Sheriff's Office
20 on April 16th of 2023?

21 A Yes.

22 Q And did you -- were you part of the team from the
23 Dorchester County Sheriff's Office that got called in to
24 investigate the wreck that occurred after Mr. Gathers fled
25 from the scene where he had shot the trooper?

1 A Yes.

2 Q Kind of explain to the jury how it is that you got
3 involved as far as your agency getting involved and, also,
4 what you kind of did to start off your investigation?

5 A Our agency has a traffic unit. We have a couple
6 deputies, including myself that have advanced training in
7 traffic collision investigation. Orangeburg County has
8 limited resource on traffic investigation and they have
9 relied on us previously to come and help investigate major
10 collisions or fatal collisions that involve highway patrol
11 or themselves and highway patrol cannot assist them.

12 Q So in this particular instance, this wreck occurred in
13 Branchville, which is in Orangeburg County, correct?

14 A Yes, sir.

15 Q So Orangeburg County couldn't investigate it and they
16 called Dorchester. So as a result of that, you guys get
17 called out. Do you have an idea of what time y'all actually
18 got out to the scene?

19 A It was early morning, right at dawn. There was a
20 little bit of light, but not too much when I first got
21 there.

22 Q And how long do you think you were there that day, if
23 you recall?

24 A Five, six hours.

25 Q It was a while?

1 A It was a long day, yes.

2 Q I want to show you what's been marked for
3 identification as State's Exhibit No. 8 and ask you if you
4 can tell us what that is?

5 A That is the home on Edwards Drive, I believe it was,
6 that was struck after the vehicle began rolling during the
7 collision.

8 Q And down here towards the edge of the sidewalk, is that
9 the actual vehicle itself?

10 A Yes, that was a Black Mazda SUV that was upside down in
11 the side yard of that residence.

12 Q That morning when y'all went out to investigate this
13 collision, that was -- does that fairly and accurately
14 represent what you saw when you came out there?

15 A Yes.

16 MR. MILLER: Your Honor, at this time, the State would
17 move to introduce State's Exhibit No. 8.

18 MS. ALVES: No objection.

19 THE COURT: State's Exhibit No. 8 admitted into
20 evidence.

21 (WHEREUPON, State's Exhibit No. 8 was admitted into
22 evidence.)

23 BY MR. MILLER:

24 Q So as part of your investigation, do you guys look for
25 in today's world potential video cameras or video-recorded

1 evidence?

2 A Yes.

3 Q And in this particular situation, did you find any
4 residences or businesses nearby that had video that might
5 have captured this crash?

6 A The home across the street had, I believe it was a
7 doorbell camera.

8 Q And did you contact that homeowner?

9 A Yes.

10 Q And as a result of contacting the homeowner, were you
11 able to get a video that -- were you able to, actually, get
12 footage of the crash as it occurred?

13 A Yes.

14 Q I'm going to show you what's been marked for
15 identification as State's Exhibit No. 4 and ask you if you
16 recognize that?

17 A I do.

18 Q What is this?

19 A That is a DVD copy of the video from the home, I
20 believe it was [REDACTED] Edwards Drive that I viewed.

21 Q And those are you initials there on the disk?

22 A Yes.

23 Q The video on this disk, does that fairly and accurately
24 -- is it a fair and accurate copy of the video that was
25 downloaded from their doorbell camera system?

1 A Yes.

2 MR. MILLER: Your Honor, at this time, the State would
3 move to introduce State's Exhibit No. 4.

4 MS. ALVES: No objection.

5 THE COURT: State's Exhibit No. 4 is admitted into
6 evidence.

7 (WHEREUPON, State's Exhibit No. 4 was admitted into
8 evidence.)

9 BY MR. MILLER:

10 Q So now you've got a -- were y'all able to see the video
11 while you were out there on the scene?

12 A I do believe the homeowner showed us on their phone.

13 Q Okay. So, hopefully -- you know that you've got a copy
14 of the crash happening, but in this type of investigation,
15 you, actually, continue to look for other evidence, don't
16 you?

17 A Yes, sir.

18 Q And as a part of that process, would you conduct a
19 search warrant on the vehicle itself that was involved in
20 the crash?

21 A Yes.

22 Q And as part of that process, is that something you're
23 going to do on the side of the road or how would y'all go
24 about doing that?

25 A We can initially do it on the side of the road, but to

1 open up roads and make sure everybody is able to travel
2 safely, we can remove the vehicle from the scene after the
3 initial investigation is done and conduct a search warrant
4 at a secure lot.

5 Q Is that what you did in this case?

6 A Yes.

7 Q And when you went into the vehicle there, it was at the
8 Dorchester County Sheriff's impound lot?

9 A Yes, sir.

10 Q When you were looking at the vehicle there pursuant to
11 the search warrant, did you observe any items of evidentiary
12 value or that you thought might be of evidentiary value
13 inside the vehicle?

14 A Yes.

15 Q And what did you -- what was the most shocking thing to
16 you, I guess is the best way to put it?

17 A While we were conducting a search on the vehicle with
18 the assistance of a Mt. Pleasant detective for the
19 infotainment system, he observed a black firearm wedged
20 between a firewall and the brake pedal.

21 Q So you were talking about getting the infotainment
22 system. Is that part of the kind of stuff you take out of a
23 vehicle so you can get information from it, download
24 information, that type of thing?

25 A Yes. Sometimes we're able to get information off of

1 those centers to determine speeds, brake usage, stuff like
2 that.

3 Q Kind of the black box for lack of a better term?

4 A Yes.

5 Q All right. But this officer who was assisting you and
6 you're there, they see this gun wedged up underneath the
7 brake pedal. Did you collect that firearm?

8 A I did, yes.

9 Q I want to show you what's been marked for
10 identification as State's Exhibit No. 7 and ask you if you
11 can identify this item. What are each one of these things
12 that are in here?

13 A There's a black Sig Sauer firearm, a magazine that came
14 out of the firearm and live ammunition that came out of the
15 firearm.

16 MR. MILLER: Your Honor, I would note for the record
17 and for the Court, the gun lock has been installed and I
18 have the key to the gun lock secured on my person, so it
19 will not be going back without being secured.

20 BY MR. MILLER:

21 Q So what did you do with State's Exhibit No. 7 after you
22 collected it from the vehicle? Explain how you kind of
23 handled the evidence. What happened?

24 A The Mt. Pleasant detective backed out of the vehicle.
25 I removed the gun with gloves on my hands, placed it into a

1 firearm box after unloading the live round from the chamber
2 and the magazine, counted the rounds. I put it on the chain
3 of custody and I turned it into our evidence custodian
4 that's at the sheriff's office.

5 Q And that would have been Sergeant?

6 A When we take evidence, we put it into a secured locker
7 at the sheriff's office and every morning or every day, they
8 come and take that evidence and put it into the main
9 evidence locker.

10 Q So Sergeant Jeff Scott with the Dorchester County
11 Sheriff's Office would have been one of those people that
12 did that, correct?

13 A Yes, sir.

14 Q No questions about that. I want to show you what's
15 been marked for identification as State's Exhibit No. 6 and
16 ask you if you can identify State's Exhibit No. 6?

17 A So the black wallet that was on the driver's floorboard
18 from the vehicle.

19 Q And what's inside that wallet?

20 A Inside the wallet --

21 MS. ALVES: Judge, I would object until it's actually
22 in evidence.

23 MR. MILLER: Your Honor, at this time, the State would
24 move to introduce the wallet.

25 MS. ALVES: No objection.

1 THE COURT: All right. State's Exhibit No. 6 admitted
2 into evidence.

3 (WHEREUPON, State's Exhibit No. 6 was admitted into
4 evidence.)

5 THE WITNESS: Inside the wallet, the same as when I
6 grabbed the wallet out of the car is a license from Georgia
7 for Mr. Gathers.

8 BY MR. MILLER:

9 Q Are there other cards that are in there?

10 A There is another ID in there for a female and then
11 there's Stars and Stripes. There's a business ID for a
12 company with Mr. Gathers's photo and name as well.

13 Q But all of these cards that are in the wallet that is
14 State's Exhibit No. 6 were, actually, located in the wallet
15 in the vehicle?

16 A Yes.

17 MR. MILLER: That's all the questions that I have.
18 Please answer any questions Ms. Alves might have for you.

19 THE COURT: Ms. Alves, can I ask you a quick question?

20 (WHEREUPON, a bench conference was held.)

21 CROSS-EXAMINATION

22 BY MS. ALVES:

23 Q Corporal Smith, were you at the scene that night or did
24 you come in the next morning?

25 A I was called in after the collision occurred.

1 Q So you were there that night right after the collision?

2 A Early morning.

3 Q This happened around three o'clock in the morning?

4 A Without referring to the report, I'm not sure what time
5 the actual collision happened. It was dawn, right before
6 daybreak that Dorchester County showed up.

7 Q And do you know how long after the incident that was?

8 A Not without looking at my report.

9 Q You did a separate report for Dorchester?

10 A Yes, ma'am.

11 Q Do you have it with you?

12 A It's in my vehicle.

13 Q You didn't bring it in here to testify with?

14 A No, I didn't.

15 Q Can you give us an estimation for how long it was after
16 the accident?

17 A After the accident, probably two hours.

18 Q Do you know if anybody else went in or out of the
19 vehicle during that time?

20 A No, ma'am.

21 Q And when you got to the vehicle, it was still upside
22 down?

23 A Yes.

24 Q And so what did you do as part of your investigation?

25 A Part of my investigation, I spoke with Trooper Tartar

1 regarding his attempt at pitting the vehicle, making sure
2 that that wasn't a part of the actual result end collision.
3 I took photographs at the scene. I sprayed the scene with
4 paint to mark evidence on the ground, roadway, whatnot. We
5 measured distances. We measured with the drag sled and I
6 used the 3D scanner to scan the scene.

7 Q So your part of the investigation was determining how
8 the accident occurred?

9 A Correct.

10 Q And then did you look at in the vehicle?

11 A I did look in the vehicle.

12 Q You didn't see a gun?

13 A I did not see the gun.

14 Q And when was the vehicle removed?

15 A The vehicle was removed that day.

16 Q The same day?

17 A Yes.

18 Q Around what time?

19 A Probable 3:00 something in the afternoon.

20 Q So it was out there a good portion of the day?

21 A Yes.

22 Q Was law enforcement out there with it?

23 A Yes.

24 Q The whole day?

25 A The whole day.

1 Q Do you know if anybody went in or out of the vehicle
2 during the day?

3 A SLED conducted a search warrant on the vehicle.

4 Q Do you know if any of them went into the vehicle?

5 A I'm assuming so, it was a search warrant.

6 Q But nobody told you that they found a gun?

7 A Correct.

8 Q So when was the vehicle -- you said it was around 3:00
9 in the afternoon that the vehicle was, actually, taken from
10 the accident scene?

11 A I believe it was around 3:00.

12 Q And then it was taken to where?

13 A Dorchester County impound lot.

14 Q Why was it taken to the Dorchester County impound lot?

15 A Because Dorchester County was called to investigate the
16 collision as mutual aid for Orangeburg County.

17 Q Did that require you to take the vehicle to the impound
18 lot?

19 A Yes.

20 Q Now, the vehicle was then searched at the impound lot?

21 A Yes.

22 Q Why was it searched at the impound lot?

23 A Because we're still investigating the cause of the
24 collision.

25 Q Okay. So that's why you were trying to pull out the

1 info system?

2 A Yes, ma'am.

3 Q Because that would have given you the information about
4 the cause of the collision?

5 A It could lead us to help to determine the cause of the
6 collision, such as speed.

7 Q And while you were pulling that out, that's when the
8 gun was found?

9 A Yes.

10 Q And it was found by who?

11 A I believe it was Detective Balentine, Mt. Pleasant
12 Police Department, who is the analyzer and technician for
13 the infotainment system. He's the one that's trained on
14 removing those systems and getting the data off of them. So
15 we brought Mt. Pleasant in to handle that portion. He told
16 me he saw the gun under there. He got out and we removed
17 the gun from the car.

18 Q It was wedged pretty good up under there?

19 A Yes.

20 Q So this would be like under the dashboard?

21 A Yeah, right behind the brake pedal.

22 Q Behind the brake pedal. So isn't that to the side of
23 where the dashboard is?

24 A So you have the dashboard, you have the brake pedal
25 that comes up, you have the firewall that separates the

1 engine bay from the passenger compartment. And it was
2 wedged between the brake pedal and the firewall.

3 MS. ALVES: No further questions.

4 THE COURT: Redirect?

5 MR. MILLER: No, Your Honor.

6 THE COURT: The witness is excused.

7 MR. MILLER: Your Honor, may he be excused from his
8 subpoena?

9 THE COURT: Without objection?

10 MS. ALVES: No objection.

11 MR. MILLER: Your Honor, the State calls Lieutenant
12 Todd Schenk with the State Law Enforcement Division.

13 THE CLERK: Place your left hand on the Bible and raise
14 your right. State your full name for the record.

15 THE WITNESS: Todd Schenk.

16 TODD SCHENK,

17 after being duly sworn, testified as follows:

18 THE CLERK: Thank you, sir.

19 DIRECT EXAMINATION

20 BY MR. MILLER:

21 Q Good afternoon, Lieutenant Schenk. How are you?

22 A Good, sir. How are you?

23 Q Doing okay. Who do you work for?

24 A The South Carolina Law Enforcement Division, commonly
25 referred to as SLED.

1 Q And what do you do for SLED?

2 A I'm a crime scene investigator.

3 Q And what does your position as a crime investigator
4 require of you?

5 A So SLED is an assisting agency. Our job is to show up
6 and help with investigations at our local partners in the
7 State and/or County. Crime scene, specifically, we are the
8 forensics guys. We are the guys who show up and help with
9 documentation at the scene. We're collecting the evidence,
10 taking photographs. Kind of doing the science part of the
11 investigation, not necessarily the interviews and such that
12 a normal investigator would.

13 Q And so, were you working for SLED crime scene unit on
14 the night of April -- or, actually, the early morning hours
15 of April the 16th of 2023?

16 A I was.

17 Q And were you involved in the response out to Heritage
18 Highway where Trooper Frazier had been shot?

19 A I was.

20 Q Explain kind of to the jury just in very general terms
21 kind of what was going on that night as far as where y'all
22 were trying to collect evidence from.

23 A Yes, sir. So at the time, I was the on-call
24 supervisor, so I had my two crime team folks, who were with
25 the on-call team. They responded to the initial scene first

1 where the shooting, actually, occurred. I ended up going
2 directly to the hospital to document the officer, the
3 subject and the suspect that were involved in this case.
4 And then once we both kind of finished up at those separate
5 locations, we met at the final location where the vehicle
6 had overturned.

7 Q So we've already heard from the master deputy --
8 actually, he's a corporal now, Smith, but he was with
9 Dorchester County. How did Dorchester County get involved?
10 Was that something y'all did or was that something
11 Orangeburg did?

12 A I am not sure who requested them, but we were working
13 alongside each other.

14 Q So as a result of that cooperation with them, at some
15 point after they found out that there was potential evidence
16 inside the vehicle, did you get notified by them?

17 A We did.

18 Q And what did you do when you found out they had found
19 some stuff in the vehicle?

20 A So I responded down to the sheriff's office in
21 Dorchester, met with the investigators. I photographed the
22 vehicle again and looked through some other things, did a
23 chain of custody with them on what they had found and
24 brought everything back to the lab.

25 Q Now, this vehicle, whenever it was being processed,

1 there was a lot of garbage in it, wasn't it?

2 A There was a lot of items in the car, yes.

3 Q And then, of course, is looked over multiple times, so
4 it was everywhere in the car?

5 A Yes.

6 Q There were a couple of different items that you picked
7 up from Dorchester County. I want to show you what's been
8 marked for identification as State's Exhibit No. 7 and ask
9 if you can identify that?

10 A Yes, sir, I can.

11 Q And what is that?

12 A This is a handgun that I collected via chain of custody
13 from Dorchester County.

14 Q Do you recall who you collected it from?

15 A If I may refer to my notes?

16 Q Yes, sir.

17 A On the chain of custody, it was J. Scott from
18 Dorchester County.

19 Q While this firearm was in your possession, what did you
20 do with it?

21 A So once I receive it, I secure it, bring it back to the
22 lab. Then I ended up transferring it to Olivia Nobles, who
23 is the case agent for this case.

24 Q And while it was in your possession, did you make any
25 changes to it, try to alter it in any way, fiddle around

1 with it, anything like that?

2 A I did not.

3 MR. MILLER: Beg the Court's indulgence.

4 (Pause.)

5 MR. MILLER: Lieutenant Schenk, please answer any
6 questions that Ms. Alves might have for you.

7 CROSS-EXAMINATION

8 BY MS. ALVES:

9 Q Investigator Schenk, did you report to the scene that
10 night or was it the next morning?

11 A So we got the call -- if I may refer to my notes. I
12 believe it was around 4:00 in the morning is when we were
13 notified. Once we got notified, I responded initially to
14 the hospital and then from there, I went to the location
15 where the vehicle had overturned. So that would have been
16 the morning of the 16th, I believe it was.

17 Q So you went to the hospital first?

18 A I did.

19 Q Did you talk to anybody at the hospital?

20 A I met with my regional agents who were on scene. And
21 then after that point, getting information from my regional
22 agents, that's when I would then go document the parties
23 involved with photographs and collect evidence.

24 Q So you didn't talk to Trooper Frazier?

25 A When I was there, Trooper Frazier did not have the

1 ability to speak.

2 Q So you went from the hospital out to the scene of the
3 accident or the scene of the shooting?

4 A I did not go to the scene of the shooting. I went to
5 where the vehicle had overturned. I believe it was [REDACTED] --
6 if I can refer to my notes, I can tell you exactly. It was
7 the [REDACTED] Edwards Street in Branchville.

8 Q And what did you do while you were at the scene of the
9 vehicle where the crash was?

10 A So at this point, I had already finished collecting
11 evidence from the hospital, so then I began meeting with
12 investigators trying to figure out a game plan, how we were
13 going to process the scene, what needed to be done and then
14 I began documenting the scene with photographs until the
15 rest of the team showed up to finish working on the scene.

16 Q So you were taking pictures of the outside of the
17 vehicle?

18 A Yes.

19 Q Did you take pictures of the inside of the vehicle?

20 A I believe I had started to, but I don't remember
21 exactly when my team showed up. So when the camera changed
22 hands, I don't remember.

23 Q Did you look in the vehicle?

24 A We did.

25 Q Did you find a gun?

1 A We did not.

2 Q Were you looking for a gun?

3 A We were.

4 Q And you still didn't find a gun?

5 A We did not.

6 Q And then how long did you remain out there?

7 A I'd say I cleared the scene a little after noon.

8 12:18ish is when I cleared the scene that day.

9 Q So you left before they took the vehicle?

10 A Yes.

11 Q To the impound lot?

12 A Yes, ma'am, I did.

13 Q And do you know who all was in and out of the vehicle?

14 A Prior to us, I do not know who all went through it.

15 I'm sure -- I am not sure who went through it. I know me
16 and my team all went through that vehicle.

17 Q Were there a lot of officers around?

18 A Dorchester was on scene. We had several SLED agents
19 that were, also, on scene. I don't recall who exactly was
20 at the scene at that time.

21 Q Any highway patrol?

22 A I want to say there was some troopers that were out
23 there, but I don't remember exactly.

24 Q Was Bamberg County still out there? Any officers with
25 Bamberg County, do you remember?

1 A I apologize. I don't remember.

2 Q You don't remember?

3 A I don't remember.

4 Q So they might have been, you just don't remember?

5 A That's correct.

6 Q Can you tell us who -- you don't know who all was in
7 and out of that vehicle?

8 A I didn't --

9 Q From the time of the crash until you were out there?

10 A From the time of the crash, I do not recall. I don't
11 know exactly who went in that vehicle, but I can tell you
12 that myself and my two agents did go through that vehicle.

13 MS. ALVES: Thank you. No further questions.

14 MR. MILLER: No further questions, Your Honor.

15 THE COURT: All right. This witness is excused.

16 MR. MILLER: Your Honor, the State would call Agent
17 Olivia Nobles from the South Carolina Law Enforcement
18 Division.

19 THE CLERK: Ms. Nobles, will you state your full name
20 for the record, please?

21 THE WITNESS: Yes. Olivia Nobles.

22 OLIVIA NOBLES,

23 after being duly sworn, testified as follows:

24 THE CLERK: Thank you.

25 DIRECT EXAMINATION

1 BY MR. MILLER:

2 Q Agent Nobles, who do you work for?

3 A I work for the South Carolina Law Enforcement Division,
4 also, known as SLED.

5 Q And what do you do for SLED?

6 A I'm a special agent assigned to the crime scene unit.

7 Q And how long have you been doing that kind of work?

8 A I began with the crime scene unit in June of 2021, so a
9 little over three and a half years.

10 Q So you're familiar with the incident that occurred
11 involving Corporal Frazier where he was shot on April the
12 16th of 2023 here in Bamberg County. Did you respond to
13 that incident location?

14 A Yes, I did.

15 Q And we just heard from Lieutenant Schenk and he said he
16 went to the hospital, some people went to the scene of the
17 shooting and some people went to the scene of the crash, the
18 ultimate car crash. Did you, actually, go to the shooting
19 scene?

20 A Yes, I did.

21 Q Explain to the jury just a little bit in general terms,
22 what do you do when you get to a scene like that? What are
23 you looking for and what are you trying to accomplish by
24 documenting that scene?

25 A Yeah, so we arrived on scene and we met with our

1 regional investigators, highway patrol, Bamberg County
2 Sheriff's Office, we met with all of them. We discussed a
3 little bit about information that they had maybe received
4 from the time that we had responded from Columbia to
5 Denmark, South Carolina. From there, we began to document
6 with photographs. We marked evidence, collected evidence
7 and then transported it back to the lab for testing.

8 Q And so when you say you mark evidence, how do you go
9 about marking evidence?

10 A Yeah, so we use, like, a little -- it's like a yellow
11 tent with numbers on it and we'll just put those throughout
12 the scene on any items of evidentiary value.

13 Q And then if there's something that you identify as
14 potential evidence, you've got it marked and you collect it.
15 Then what do you do with it -- well, what steps do you take
16 to make sure you don't contaminate anything that you're
17 collecting?

18 A Yeah, so we wear gloves throughout the scene. We
19 change them often. We will then collect the items of
20 evidence and secure them in our vehicle. We'll collect them
21 and secure them in our vehicle and then we'll transport them
22 to the lab for processing.

23 Q I want to show you what's been marked as identification
24 as State's Exhibit No. 5. It is SLED Item 5. Can you
25 identify this item?

1 A Yes, I can.

2 Q And what is that?

3 A This is a cartridge case that we collected from we
4 placed as marker one.

5 Q And marker one was at the scene of the shooting,
6 correct?

7 A Yes, in Denmark, South Carolina.

8 Q And you collect that, you package it, you get it to
9 SLED. Once you get it to the lab, what do you do with it?

10 A We will log it into our computer system and then we
11 will submit it to our evidence control, who then will
12 disburse it throughout the lab to wherever we assign it to
13 go.

14 Q So whatever testing you need done, that's when you tell
15 them we want firearms testing done on this or whatever it
16 happens to be?

17 A Yes.

18 Q Now, I want to show you what's been marked for
19 identification as State's Exhibit no. 7 and see if you
20 recognize that item as well?

21 A Yes, I do.

22 Q And what is that item?

23 A This is the handgun that was transferred to me at the
24 lab from Lieutenant Schenk.

25 Q Okay. So that was my next question, you got this from

1 Lieutenant Schenk at the lab?

2 A Yes, I did.

3 Q And what did you do with it after you got it from him?

4 A I took photographs of it and then I logged it into our
5 computer system and then submitted it to the lab for
6 testing.

7 Q Okay. And while it was in your possession, you didn't
8 make any changes to it, alter it, do anything to it to test
9 its functionality or anything like that?

10 A No, sir. I just put a zip tie in the chamber to secure
11 it.

12 MR. MILLER: Thank you. Please answer any questions
13 Ms. Alves might have for you.

14 CROSS-EXAMINATION

15 BY MS. ALVES:

16 Q Investigator Nobles, when did you arrive at the scene
17 of this incident?

18 A So I arrived at the scene in Denmark at approximately
19 5:22 a.m. on the 16th of April.

20 Q Did you, also, go to the accident scene?

21 A I did. After I cleared the initial scene, I went to
22 the scene of the accident.

23 Q So you said it was about 5:22?

24 A The initial scene, yes.

25 Q How do you know the time?

1 A So we will document -- when we arrive on scene, we will
2 document the time that we arrive as well as the weather.

3 Q And then that's when you said you took pictures and you
4 marked the items of interest?

5 A Yes. On the initial scene, we placed markers and we
6 documented with photographs.

7 Q When you went to the scene -- was anybody still at the
8 scene? Was Trooper Frazier still there?

9 A The initial scene, no.

10 Q So who was there?

11 A On the initial scene, we met with highway patrol,
12 Bamberg County Sheriff's Office as well as our regional
13 investigators.

14 Q And you said after you left there, you went straight to
15 the scene in Branchville?

16 A Yes. We cleared the initial scene and went to the
17 scene in Branchville.

18 Q And what did you do in Branchville?

19 A So from there, I met with Lieutenant Schenk as well as
20 additional regional investigators and I received additional
21 information. And then we began to document -- or continued
22 to document and collect evidence from the scene.

23 Q So you were picking up whatever items might be of
24 interest?

25 A Yes, ma'am.

1 Q Sometimes you pick up stuff and you don't know whether
2 it's evidence or not, but it might be, so you document it
3 and took pictures of it?

4 A Yes, we will take our overall pictures, which is just
5 an overall picture of the scene. And then we will take
6 mid-range photographs, which kind of just puts it in
7 relation. And then we will take close-ups of items of
8 evidentiary value.

9 Q And you were aware there was a gun used in this
10 incident?

11 A I was aware that there was a gun used in this incident,
12 yes.

13 Q Were y'all looking for a gun?

14 A We were looking for a gun.

15 Q You didn't find one?

16 A No, we did not. However, we did search the scene and
17 we had search dogs out there as well.

18 Q Looking for the gun?

19 A Yes, looking for the gun.

20 Q You said you had dogs out there searching for the gun?

21 A Yes, we had article search dogs out there as well.

22 Q Tell me what these dogs -- what's an article search
23 dog?

24 A So I am not a K-9 handler, but I do believe -- if I may
25 refer to my notes. I'm not sure exactly whose K-9 it was,

1 but it was an article search dog from an outside agency.

2 They were, also, searching for a gun.

3 Q Does the dog search specifically for firearms?

4 A I'm not exactly sure what they search for specifically,
5 but I know that they were utilized to search for a gun in
6 this particular situation.

7 Q But they didn't find any?

8 A No, we did not find a gun.

9 Q Do you know if they brought the dogs to the car?

10 A I'm not sure. I'm not a K-9 handler.

11 Q Well, you were there. What did you see?

12 A Yes, I was there. Like I said, they did what -- you
13 know, they, I guess, ran the dog around the scene, but I am
14 not particularly sure if they went inside the vehicle or
15 not.

16 Q But you and law enforcement were looking for a weapon
17 of some sort?

18 A Yes, we were.

19 Q And did you look in the car?

20 A I did look in the vehicle.

21 Q But you didn't see a gun?

22 A I did not see a gun.

23 Q Do you know how many people looked in the vehicle
24 before you did?

25 A I'm not sure how many people looked in the vehicle

1 before me.

2 Q Okay. How long were you on the scene?

3 A If I may refer to my notes?

4 Q Yes.

5 A I arrived at approximately 10:26 a.m. and I believe I
6 cleared at approximately 12:56 p.m., so, roughly, two and a
7 half hours.

8 Q So were you out there when -- so you were out there
9 when Lieutenant Schenk was there?

10 A Yes, I was.

11 Q But you left before he did?

12 A I left after Lieutenant Schenk. Lieutenant Schenk left
13 before me.

14 Q But you left before the vehicle was taken to the
15 Dorchester impound yard?

16 A Yes.

17 Q During the time that you were out there, how many
18 people were in and out of there?

19 A I can't give you an exact number. I know myself and my
20 partners, Lieutenant Schenck, but I can't tell you how many
21 were in and out of the vehicle.

22 Q Was it more than just the three of you?

23 A I'm not sure.

24 Q You don't know?

25 A No.

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

2 THE COURT: Any redirect?

3 MR. MILLER: No, Your Honor.

4 THE COURT: The witness is excused.

5 MR. MILLER: Your Honor, may she and Lieutenant Schenk
6 be excused from their subpoenas?

7 THE COURT: Without objection?

8 MS. ALVES: No objection.

9 THE COURT: They're excused.

10 MR. MILLER: Your Honor, may we approach?

11 (WHEREUPON, a bench conference was held.)

12 THE COURT: Folks, we're going to break for the day.
13 What I'm going to have you do is come back tomorrow morning
14 and be in your jury room by 9:30 a.m. We will start shortly
15 thereafter.

16 As I told you earlier, please don't discuss the case
17 with anyone, your family, your friends. Please don't do any
18 independent research about the case or any of the parties
19 involved. We will see you tomorrow.

20 Thank you.

21 (WHEREUPON, the jury exits the courtroom at 3:17 p.m.)

22 THE COURT: Before we recess, anything else?

23 MR. MILLER: Nothing from the State, Your Honor. We
24 discussed briefly about tomorrow morning. When the Court
25 tells jurors to show up at 9:30, some of them will be here

1 at 7:45, some may be here at 9:35. We think it's safest
2 probably to -- safest for Mr. Gathers not to be seen by the
3 jurors being brought over by the jail. If we could have the
4 jurors come in and as soon as their accounted for and in the
5 jury room, we can have the jail bring him over. They'll
6 have him on standby. It won't take them five minutes to get
7 here from the jail. So if that suits you.

8 THE COURT: Okay. Maybe they'll show up early.

9 MR. MILLER: Maybe. And if we get all 14, there's no
10 reason in the world why we can't just go ahead and get him
11 over here and get it started right away. But we'll be ready
12 to go in the morning. We'll have everything set up.

13 THE COURT: Anything else?

14 MR. MILLER: Nothing from the State, Your Honor.

15 MS. ALVES: Nothing from the Defense?

16 THE COURT: All right. Y'all have a nice evening.
17 We'll be in recess until tomorrow morning at 9:30.

18 (WHEREUPON, the proceedings were concluded.)

19 WEDNESDAY, MARCH 5, 2025

20 THE COURT: Good morning. As best we can, when we
21 bring in the jury, if there's any issues that come up, let's
22 try to deal with them at a sidebar. I really don't want to
23 move them back and forth in the rain if we don't have to.
24 But it is what it is. I did walk outside to the jury
25 building and there's no puddles for them to walk through.

1 Let's bring in the jury, please.

2 MS. ALVES: Judge, before the jury comes in, I would
3 like to put something on the record. Judge, I would just
4 renew my motion from yesterday and the day before regarding
5 the number of law enforcement in the courtroom. I still
6 think it is an intimidating effect. Also, I did address
7 that with Your Honor this morning. I would object to the
8 jurors being around other people, particularly law
9 enforcement, other people who are involved with the trial
10 while they're outside of the courtroom.

11 THE COURT: And I'll note that's an objection to,
12 basically, the proximity of the jury. But the objection
13 regarding law enforcement present is noted and my ruling
14 remains. You can make additional record about --

15 MS. ALVES: Yes, sir.

16 THE COURT: -- everyone's close proximity due to the
17 weather.

18 (WHEREUPON, the jury enters the courtroom at 9:55 a.m.)

19 THE COURT: Okay. Ladies and gentlemen of the jury,
20 it's a beautiful day in Bamberg. I can't control the
21 weather. Thank you for being on time this morning. We're
22 ready to start back where we left off yesterday.

23 State can call their next witness.

24 MR. MILLER: Thank you, Your Honor. The State Calls
25 Jamie Green with the South Carolina Law Enforcement

1 Division.

2 THE CLERK: Mr. Green, place your left hand on the
3 Bible and raise your right hand. Will you please state your
4 full name for the record?

5 THE WITNESS: James Green.

6 JAMES GREEN,

7 after being duly sworn, testified as follows:

8 THE CLERK: Thank you, sir.

9 DIRECT EXAMINATION

10 BY MR. MILLER:

11 Q Agent Green, who do you work for?

12 A I'm employed by the South Carolina Law Enforcement
13 Division, commonly referred to as SLED.

14 Q And how long have you been employed by SLED?

15 A Since June of 2005, so not quite 20 years.

16 Q What do you do for SLED?

17 A I'm a forensics firearms examiner in the forensics
18 services laboratory.

19 Q So what does that job entail?

20 A So we examine fired bullets, fired cartridge cases and
21 firearms to determine if they were fired by the same source.

22 Q So what kind of training and experience do you have to
23 have to be able to do the job that you do?

24 A SLED requires a Bachelor's Degree. I have a Bachelor's
25 Degree and a Master's Degree. Then when I started at SLED,

1 I started the firearm and tool mark course of instruction,
2 which is approximately a three, three and a half year course
3 of instruction studying under court-qualified firearms
4 examiners in an apprentice-type fashion learning to do what
5 I do now.

6 Q And what other kind of trainings have you done -- or
7 how long have you been certified to testify as to firearms
8 analysis?

9 A We have training throughout the year and we have a
10 rotating basis. We have so many people in our department
11 that we can't train every year, but we do take annual
12 proficiency tests in every discipline that we're qualified
13 in, so firearms, tool mark, IBIS. So every year we're
14 tested externally and internally.

15 We, also, go to armor courses to see how firearms work.
16 We tour manufacturing facilities for both firearms and
17 ammunition so we can know how ammunition is made and then we
18 can see how the firearms are made. If we can see how the
19 firearms are made, we can understand the markings left on
20 the fire bullets and fired cartridge cases.

21 Q Have you ever been qualified as an expert witness in
22 South Carolina?

23 A Yes, sir.

24 Q How many times?

25 A Either 123 or 124 times in both state and federal

1 courts.

2 MR. MILLER: Your Honor, at this time, the State would
3 move to submit James Green as an expert witness in the field
4 of firearms identification.

5 THE COURT: Without objection?

6 MS. ALVES: Without objection.

7 THE COURT: All right. Ladies and gentlemen, a person
8 testifying cannot give opinion testimony, but testify as to
9 what they personally saw, heard or sensed by smell or
10 something of that nature. However, there's an exception
11 when someone is qualified because of knowledge, education or
12 experience that they're permitted to give their opinion in
13 certain areas which they're qualified in.

14 This witness will be qualified in the area of firearms
15 identification and may give opinion testimony in that area.
16 This does not mean you must accept his opinion, but it is
17 evidence for you to use in any way you see fit.

18 MR. MILLER: Thank you, Your Honor.

19 BY MR. MILLER:

20 Q Mr. Green, I'm going to show you what's been marked for
21 identification as State's Exhibit No. 5. I'm showing this
22 to you and ask you if you can identify what it is?

23 A Yes, sir. State's Exhibit No. 5 is a fired nine
24 millimeter Luger caliber cartridge case that I examined as
25 SLED Item 5 in this case.

1 Q And how did you get that?

2 A It was submitted to -- our crime scene agents who
3 worked the scene submitted it to the laboratory. It went to
4 our evidence control department and then through the
5 different departments.

6 Q When you received that particular item, was it packaged
7 up?

8 A Yes, sir, it was in a sealed container.

9 MR. MILLER: Your Honor, at this time, the State would
10 move to introduce State's Exhibit No. 5 into evidence.

11 THE COURT: Without objection?

12 MS. ALVES: Without objection.

13 THE COURT: Very well. State's Exhibit No. 5 admitted
14 into evidence.

15 (WHEREUPON, State's Exhibit No. 5 was admitted into
16 evidence.)

17 BY MR. MILLER,

18 Q Mr. Green, I'm going to show you what's been marked for
19 identification as State's Exhibit No. 7 and ask you if you
20 can identify that item?

21 A Yes, sir. State's Exhibit No. 7 is the Sig Sauer
22 pistol I examined in this case as SLED Item 41.

23 Q And you received that through the evidence control at
24 SLED?

25 A Yes, sir.

1 MR. MILLER: Your Honor, at this time, State would move
2 to introduce State's Exhibit No. 7 into evidence.

3 THE COURT: Without objection?

4 MS. ALVES: Without objection.

5 THE COURT: State's Exhibit No. 7 is admitted into
6 evidence.

7 (WHEREUPON, State's Exhibit No. 7 was admitted into
8 evidence.)

9 BY MR. MILLER:

10 Q So you previously testified that you examined State's
11 Exhibit No. 5 as well as State's Exhibit No. 7. What
12 conclusions were you able to reach through that analysis?

13 A When we get firearms to make test specimens, we'll
14 examine the firearm to make sure it's safe to shoot. I like
15 my fingers, I don't want to lose any of them. So we made
16 sure the firearm was safe to fire. Test fired test
17 specimens, test cartridge cases and test bullets were fired
18 out of this gun beyond a shadow of a doubt because I fired
19 them myself.

20 Then I compared those test cartridge cases
21 microscopically looking for tiny imperfections left on the
22 working surface of the cartridge case, so the primer. So
23 we'll see the breach face marks in the firing pin
24 impressions to see that those are marking consistently. And
25 then I'll examine, microscopically compare the test

1 specimens with the evidence cartridge case in this case.
2 And through those comparisons, my results were that State's
3 Exhibit No. 5 was fired by the State's Exhibit No. 7 pistol.

4 MR. MILLER: Thank you. I don't have any further
5 questions.

6 THE COURT: Cross-examination.

7 CROSS-EXAMINATION

8 BY MS. ALVES:

9 Q In your examination of firearms, do you often examine
10 bullets?

11 A Yes, ma'am.

12 Q And did you have any bullets in this case?

13 A Not that would have corresponded with State's Exhibit
14 No. 7.

15 Q So you don't have any bullets that were fired from that
16 gun, State's Exhibit No. 7?

17 A Correct.

18 Q And do your tests just tell you that State's Exhibit
19 No. 5, which is that cartridge, was fired by State's Exhibit
20 No. 7?

21 A Yes, ma'am. The cartridge case that I examined, SLED
22 Item 5 or State's Exhibit No. 5 was fired by State's Exhibit
23 No. 7.

24 Q Your examination doesn't tell you who fired this
25 weapon?

1 A Correct. I can't say who fired it, when it was fired,
2 why it was fired. All I can say is that it was fired by
3 that pistol.

4 Q And did you do any fingerprint testing?

5 A No, ma'am. That doesn't fall under my purview. I just
6 do the firearm identification, was this cartridge case fired
7 by this gun. I don't print it. I don't do DNA. I don't do
8 any of those.

9 Q Could that testing be done?

10 A Yes, ma'am.

11 Q It would have been done by somebody else?

12 A Correct. It would have been done by somebody else
13 prior to it getting to me.

14 Q And how are these tests requested?

15 A I'm sorry?

16 Q How are these tests requested? Who told you to test
17 this stuff?

18 A When evidence is logged into SLED, the submitting
19 agency, whether it be SLED, Bamberg City, Bamberg County,
20 Charleston County, whoever, they tell -- when they do the
21 pre-log form, they put on there what request they are asking
22 for. So once it's in that pre-log form, it's populating to
23 our system. And every department knows hey, you've got a
24 new assignment on this case, on this item and this item in
25 this one case.

1 Q So the investigating officer is the one who logs the
2 evidence in, gets the evidence to SLED and ask for what
3 tests they want done on a piece of evidence?

4 A Yes, ma'am. Most of the time, the investigating
5 officer does not log the evidence in. Evidence departments
6 throughout the State will do that, but they are told what to
7 request by the people investigating the case, if that makes
8 sense.

9 Q I just want to clarify, once the evidence comes to
10 SLED, you're told what tests to perform by the agency
11 investigating?

12 A Correct. They request certain things to be tested.
13 They request if they want DNA, which, obviously, is another
14 department. If they want latent prints, which is another
15 department. If they want these drugs tested or whatever,
16 that's another department. So the investigating agency
17 request certain tests to be done by SLED. Sometimes we can
18 do them, sometimes we can't.

19 Like, a lot of times, we get a request for a drop test
20 on a firearm. That's not a test we do. I don't want to
21 drop somebody's firearm and break it or damage it. And
22 it's, also, not safe to do so. So even though they request
23 it, it doesn't necessarily mean we'll do it. If we don't
24 have a policy for or protocol for it, we won't do it. If we
25 do, we do what they request?

1 Q Do you, also, do the test for gunshot residue?

2 A No, ma'am, that is our trace department that does GSR
3 or gunshot residue.

4 Q And do you have any information about the case or your
5 information is strictly limited to the test you did on these
6 two items?

7 A I prefer not to know what happens in a case because I
8 don't want any bias creeping in. So all I know is I had a
9 firearm and a cartridge case and I needed to compare them.

10 MS. ALVES: Thank you. No further questions.

11 THE COURT: Any redirect?

12 MR. MILLER: No, Your Honor.

13 THE COURT: All right. Witness is excused.

14 Thank you.

15 MR. MILLER: Your Honor, at this time, the State calls
16 Richard Preacher.

17 THE CLERK: Would you state your full name for the
18 record, please?

19 THE WITNESS: Richard Lamont Preacher.

20 RICHARD LAMONT PREACHER,

21 after being duly sworn, testified as follows:

22 THE CLERK: Thank you.

23 DIRECT EXAMINATION

24 BY MR. MILLER:

25 Q Mr. Preacher, where do you work now?

1 A Right at the moment, I'm currently self-employed and,
2 also, I'm a minister.

3 Q Prior to getting into the preaching business and being
4 self-employed, did you work in law enforcement in Bamberg
5 County?

6 A Yes, sir.

7 Q How long did you work -- or where did you work in law
8 enforcement in Bamberg?

9 A The Bamberg County Sheriff's Office.

10 Q And how long did you work there?

11 A I'd say three years.

12 Q And were you working for the Bamberg County Sheriff's
13 Office on the night of April 16th, 2023?

14 A Yes, sir.

15 Q I guess it would technically be the very early morning
16 of April 16th?

17 A Yes, sir.

18 Q There was an incident that was called out over the
19 radio involving Lance Corporal Frazier stopping the vehicle.
20 Did you become involved in that incident in any way?

21 A Yes, sir.

22 Q And how did you become involved in that?

23 A At night, I was scanning my radio and I heard Trooper
24 Frazier stated that he was doing a traffic stop on a
25 vehicle. Myself and Sergeant Duckson was contacting each

1 other on the phone. I said, Well, I'm going to back Trooper
2 Frazier. And he said, Where is he located? I said, He's on
3 78, which is Heritage Highway in Denmark. I said, Well, I'm
4 going to go to him. He said, Well, I'm closer, I'll go to
5 him. I said, Okay. Then we had a call come out on Manard
6 (ph) Lane, which is in the County of Bamberg. I said, You
7 go back Trooper Frazier and I'll go to the call.

8 And I went to the call. And after I got off the call,
9 I was headed towards them going towards 78 leaving out of
10 Bamberg, that's when I heard Sergeant Duckson come across
11 the radio saying that Trooper Frazier was shot, or officer
12 down.

13 Q And what did you do whenever you heard the officer down
14 go out over the radio?

15 A I started heading toward the area, which was 78 going
16 toward Denmark leaving out of Bamberg. I got on the radio,
17 I asked Sergeant Duckson to describe the vehicle to me. And
18 as he was describing the vehicle, I was passing by what
19 would be the Bamberg Disability Board and that's when I
20 realized that the vehicle passed by me, the description that
21 he gave, which was a dark-colored SUV. And I notified
22 Bamberg City that the vehicle was possibly heading toward
23 the Bamberg City limits and I started to turn around on the
24 vehicle.

25 Q So after you turned around on the vehicle and started

1 -- you were pursuing him at that point, correct?

2 A Yes.

3 Q And after you turned around, you said you had radioed
4 ahead to Bamberg City. Did anybody from Bamberg City make
5 contact with the car?

6 A Yes.

7 Q And who was that?

8 A That, at the time, was Officer Hall.

9 Q Okay. And after Officer Hall made contact with the
10 car, you're catching up to them. Was there anybody else,
11 any other law enforcement that was involved in the pursuit?

12 A Yes. Trooper -- I can't -- another trooper got -- I
13 can't -- my apologies.

14 Q Trooper Tartar?

15 A There you go, Trooper Tartar, he got involved as well.

16 Q So you've got Trooper Tartar, you've got Officer Hall
17 and yourself and y'all are all chasing, correct?

18 A Yes, sir.

19 Q Now, while you were doing this, were you in a marked
20 law enforcement vehicle?

21 A Yes, sir.

22 Q And did you have blue lights on the vehicle?

23 A Yes, sir.

24 Q And were your blue lights activated?

25 A Yes, sir.

1 Q Did you have a recording system inside the vehicle?

2 A Yes, sir.

3 Q I want to show you what's been marked for
4 identification as State's Exhibit 9 and ask you if you can
5 tell me what that is?

6 A Yes, sir. This is a copy of my in-car camera on the
7 night of the incident.

8 MR. MILLER: Your Honor, at this time, the State would
9 move to introduce State's Exhibit No. 9.

10 THE COURT: Any objection?

11 MS. ALVES: Judge, I do have an objection to State's
12 Exhibit No. 9. It contains a statement that I would
13 consider hearsay and in violation [indiscernible].

14 THE COURT: Let me ask y'all to come up here.

15 (WHEREUPON, a bench conference was held.)

16 THE COURT: Defense's objection is noted, previously as
17 well -- or record was made on it. Objection is overruled
18 and admitted subject to objection.

19 (WHEREUPON, State's Exhibit No. 9 was admitted into
20 evidence.)

21 BY MR. MILLER:

22 Q Mr. Preacher, if you could take a look at this --

23 MR. MILLER: I'm sorry, I need to show this to Ms.
24 Alves. This has previously been marked for identification
25 as State's Exhibit 10.

1 BY MR. MILLER:

2 Q Now, ultimately, in this case that's going on, there
3 was a crash, correct?

4 A Yes, sir.

5 Q And were there any law enforcement vehicles involved in
6 the actual wreck itself?

7 A None that I know of, no.

8 Q But the Defendant's vehicle was damaged pretty badly,
9 correct?

10 A Yes.

11 Q And at some point in time, the Defendant's passenger
12 was taken out of the vehicle. Did you do that?

13 A Yes.

14 Q And explain to the jury what happened. When you
15 arrived there and you see this car that's flipped over, what
16 happened next?

17 A What happened at that time is the vehicle was flipped
18 over. Myself and Trooper Tartar engaged the vehicle, made
19 sure that it was clear. I got the female out of the
20 vehicle, which was the passenger. We got her out and took
21 her to my patrol vehicle and had her sit in my patrol
22 vehicle.

23 Q And the Defendant was, actually, trapped inside the
24 vehicle, wasn't he?

25 A Yes.

1 Q And were you part of the group that was helping get him
2 out of the vehicle as well?

3 A Yes.

4 Q Tell the jury what happened in that situation.

5 A The subject was trapped inside the vehicle. Once he
6 was -- he was hanging, actually, upside down inside the
7 vehicle. Once we got him out, he was detained and laid on
8 the ground.

9 Q At some point -- was he receiving medical attention?

10 A Yes.

11 Q And at some point, did he start struggling with the EMS
12 or the medical people?

13 A Yes.

14 Q And what happened next?

15 A At that point, we all went towards him again,
16 approached him again and got him under control.

17 Q And I want to show you what's been marked for
18 identification as State's Exhibit 10. Do you recognize
19 that?

20 (WHEREUPON, video was played in open court for the
21 jury.)

22 THE WITNESS: Yes, sir, that's from my body cam. You
23 can, actually, see the subject laying on the ground.

24 Q So that's the person who got taken out of the vehicle,
25 correct?

1 A Yes, sir.

2 MR. MILLER: Your Honor, at this time, we would move to
3 introduce State's Exhibit No. 10.

4 MS. ALVES: No objection, but I, also, would note that
5 it's being published to the jury prior to it being admitted.

6 THE COURT: It's now being submitted as State's Exhibit
7 No. 10?

8 MR. MILLER: State's Exhibit No. 10, Your Honor.

9 THE COURT: All right. It's admitted. You may
10 publish.

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

13 BY MR. MILLER:

14 Q Do you know what time this wreck happened?

15 A Not exactly the time, I know it was early morning.

16 Q When the wreck happened, your vehicle was in sight of
17 the wreck itself, correct?

18 A Yes.

19 Q And were there other officers that were around?

20 A Yes.

21 Q And do you remember if Branchville PD showed up?

22 A Yes, they did.

23 Q How about Orangeburg County Sheriff's Office?

24 A Yes.

25 Q SLED?

1 A Yes.

2 Q Highway Patrol?

3 A Yes.

4 Q You were Bamberg County. How about Bamberg PD?

5 A Yes.

6 Q Everybody ended up at that scene?

7 A Yes.

8 Q Did you ever get to the scene where Lance Corporal
9 Frazier was, actually, shot?

10 A No, sir, I never got to that scene.

11 MR. MILLER: Please answer any questions Ms. Alves
12 might have for you.

13 THE COURT: Cross-examination.

14 CROSS-EXAMINATION

15 BY MS. ALVES:

16 Q How close were you -- were you the first car directly
17 behind the car when it wrecked?

18 A I wasn't the first car.

19 Q When it crashed, what car in line were you?

20 A I was the second car.

21 Q So Trooper Tartar had wound up being the first car?

22 A Yes.

23 Q And then you were the second car?

24 A Yes.

25 Q Behind Mr. Gathers?

1 A Yes.

2 Q So you were able to see the crash?

3 A Yes.

4 Q And how soon would you say you got there? Seconds
5 after the crash?

6 A Seconds after the crash.

7 Q Seconds after the crash?

8 A Yes.

9 Q So you and Trooper Tartar were the first two to the
10 vehicle after the crash?

11 A Yes.

12 Q And you said there were two people in the vehicle?

13 A Yes.

14 Q There was Mr. Gathers?

15 A Yes.

16 Q And his girlfriend?

17 A Female.

18 Q A female who was in the passenger seat?

19 A Yes.

20 Q Okay. And you said -- you testified that Mr. Gathers
21 was trapped in the vehicle? He was hanging upside down from
22 the seatbelt?

23 A I guess that's what it was.

24 Q Just hanging upside down?

25 A Yes.

1 Q And he was unconscious?

2 A Yes.

3 Q So, eventually, other people came to assist and I think
4 there was another -- somebody else from -- was there an
5 off-duty EMS person there assisting, too?

6 A Yes.

7 Q So y'all were able to get Mr. Gathers out of the
8 vehicle?

9 A Yes.

10 Q And he was laying on the ground?

11 A Yes.

12 Q Still unconscious?

13 A Yes, at that time.

14 Q And, actually, y'all thought he might be dead?

15 A Yes.

16 Q But then they realized he had a pulse?

17 A Yes.

18 Q At this time, did you do any type of search of the
19 vehicle?

20 A I looked around, but that's about it.

21 Q What were you looking for?

22 A Making sure no guns were in there.

23 Q So you --

24 A Making sure he didn't have no weapons on his person or
25 in the vehicle.

1 Q So after you got him out, you looked around?

2 A I had put the female in my car and went back and tried
3 to help.

4 Q But you looked around to see if you could see a gun?

5 A Yeah, when we first approached the vehicle.

6 Q You didn't see any gun?

7 A No.

8 Q Do you remember seeing anything else?

9 A It was mess.

10 Q There was stuff everywhere?

11 A Yeah.

12 Q Inside the car and outside the car?

13 A Yeah.

14 Q Did you make note of anything?

15 A Beside the female, trying to get her out of the.

16 Q Did you make a note of any items in the car?

17 A I don't recall.

18 Q You don't recall?

19 A No.

20 MS. ALVES: No further questions.

21 THE COURT: Any redirect?

22 REDIRECT EXAMINATION

23 BY MR. MILLER:

24 Q When this all happened, when this wreck happened and
25 you're initially out there and trying to get her out of the

1 car, trying to get him out of the car, it's still dark,
2 isn't it?

3 A Yes.

4 Q And there were a lot of people there and a lot of
5 things going on, correct?

6 A Yes.

7 Q And you already indicated, the car when it was flipping
8 over, it's throwing everything that was inside the car,
9 everything that the car hit, it's all over the place,
10 correct?

11 A Yes.

12 MR. MILLER: No further questions.

13 THE COURT: Recross?

14 MS. ALVES: No, Your Honor.

15 THE COURT: The witness may step down.

16 MR. MILLER: Your Honor, at this time, the State would
17 like to publish State's Exhibit No. 1.

18 THE COURT: That's the video?

19 MR. MILLER: Yes, sir.

20 (WHEREUPON, State's Exhibit No. 1 was played for the
21 jury.)

22 MR. MILLER: Your Honor, at this time, the State rests.

23 THE COURT: Ladies and gentlemen, the State has rested
24 their case. I've got some matters I have to take up with
25 the attorneys. So I'm going to send you back out to your

1 jury room. Refresh yourselves. Please don't discuss the
2 case or anything involving the case. I'll get you back in
3 here in a few minutes.

4 (WHEREUPON, the jury exits the courtroom at 10:40 a.m.)

5 THE COURT: The State has rested their case. Any
6 motions?

7 MS. ALVES: Your Honor, taking the evidence in the
8 light most favorable to the State, I would move for a
9 directed verdict on the charge of attempted murder. Judge,
10 for attempted murder, the State has to show there was an
11 intent to kill, that there was an attempt to kill another
12 person with malice aforethought, either expressed or
13 implied.

14 In this case, while we do have -- obviously, there's --
15 I can't deny there's evidence of Mr. Gathers being the
16 person who shot a shot toward Trooper Frazier. I think
17 there is some question about showing intent. There is no --
18 while I acknowledge that motive is not an element here,
19 there's nothing showing that there's any motive for Mr.
20 Gathers to have shot toward Trooper Frazier.

21 Judge, in the video, the one we just saw, Trooper
22 Frazier is approaching the car back with the license even
23 though it was not the license, it was a fake license, and he
24 was approaching with a ticket. While Mr. Gathers did show
25 him that he did have some type of drugs, what Trooper

1 Frazier referred to as a blunt, he didn't take that. That
2 didn't appear to be an issue. He was walking back towards
3 him with the ticket. So at no point did Mr. Gathers know
4 about the conversation between Trooper Frazier and Deputy
5 Duckson regarding Trooper Frazier's doubt that that was even
6 Mr. Gathers in the picture. I would argue there's no intent
7 to kill. This appeared to have been something that happened
8 in a split second.

9 I would, also, point out even though the jury did not
10 hear testimony or see the video of Deputy Preacher, that
11 video is in evidence. It includes the statement of Kieanya
12 Moment. Even though that was put in over the Defense's
13 objection, it is in evidence and it includes the statement
14 of Kieanya Moment where she says when she's on the phone
15 telling her mother that Mr. Frazier shot the police officer
16 and that she didn't even know it was going to happen.

17 The State's own argument was that that must be the
18 truth because it was an excited utterance made after the
19 accident when she was saying she thought she might die. And
20 it was a statement that they even argued to Your Honor that
21 that statement was most likely the truth because of the
22 circumstances under which she made it.

23 Well, in that statement, she said that she didn't know
24 this was going to happen. That means she could not have
25 seen Mr. Gathers with the gun in the vehicle prior to him

1 pulling it and shooting at the trooper.

2 So with that, Judge, it doesn't seem to have been
3 malice aforethought and it does not appear to have been any
4 type of intent to kill Trooper Frazier even if there was a
5 shot fired at Trooper Frazier.

6 Judge, also, when you're looking at the video and you
7 see what happened -- I mean, it's not often that we can,
8 actually, see that close what happened. It appears in the
9 video that when Mr. Gathers turns and fires, he is just
10 turning, firing. He wasn't aiming at anybody in particular.
11 Well, obviously, Trooper Frazier was the one who was there,
12 standing right there in front of the driver's side window,
13 but it's like a shot, turn around and take off. So it
14 doesn't appear to be any kind of aim, just a shot being
15 fired. So I think there would be a question about whether
16 he had, actually, attempted to kill or was just aiming a
17 bullet in his direction.

18 Judge, I don't think the State has established beyond a
19 reasonable doubt the elements of attempted murder for the
20 reasons I've stated. I think this case would be more on the
21 line of assault and battery of a high and aggravated nature
22 where there's an assault on another person, but that does
23 not require the malice aforethought, which I don't think the
24 State has established. I acknowledge that malice
25 aforethought can be obtained in seconds, but it has to be

1 shown that there was malice aforethought here. There's no
2 evidence of any reason why Mr. Gathers would have malice
3 aforethought towards this officer.

4 Judge, the evidence in this case shows yes, he did give
5 a fake license or somebody else's license, but there's no
6 evidence shown there's any reason why he would have tried to
7 kill the officer.

8 The testimony from Trooper Frazier was that after the
9 blue lights came on, he pulled over. The conversation that
10 I objected to was going into detail about what happened, but
11 the conversation he was talking about is that he appeared to
12 have sped up and didn't stop when the trooper turned around
13 on him. But the conversation in the video as well as the
14 testimony said that once the blue light was on, he did pull
15 over.

16 You're not obligated to pull over just because an
17 officer turns around on you or just because they put a
18 spotlight on you. But you do have to stop once they put on
19 the blue lights and sirens. And in this case, he did stop
20 after the blue lights and sirens. There was no attempt to
21 flee or elude or anything else.

22 He gave the license, which I would just note once again
23 that the trooper did come back to the vehicle with a ticket
24 in hand. That would lead anybody to believe that he was
25 giving him a ticket and he was going to be on his way. He

1 didn't try to hide when the trooper asked about alcohol or
2 even drugs. He held up what the trooper referred to as a
3 blunt. So there was no evidence to evade law enforcement at
4 that point.

5 Also, I would point out that we don't know what Deputy
6 Duckson was doing. In the body cam video, we see him on the
7 side. That's been nothing presented by the State to show
8 what Deputy Duckson was doing or where he was or what
9 position he was taking, whether he had his gun in his hand
10 or anything else at the point that the shot was fired. So
11 we don't know what prompted the shot.

12 And I know we can't see inside somebody's brain to see
13 what their intent was, but here in this situation, I think
14 that the evidence shows that the shot was fired, perhaps,
15 spontaneously with whatever was going on out there without
16 any conscious thought, without any malice aforethought. And
17 I would just argue that the State has not established those
18 elements.

19 I would, also, point out that I think the State has
20 established more the elements of assault and battery of a
21 high and aggravated nature, even possibly, assault and
22 battery in the first degree more than they have established
23 that it was an intent to kill, malice aforethought and an
24 attempt to kill. And I would base my motion on those
25 points.

1 THE COURT: Any response from the State?

2 MR. MILLER: Your Honor, he shot him in the face from
3 close range. That's intent to kill right there. You don't
4 shoot somebody in the face because you're trying to scare
5 them. You shoot them in the face because you want them to
6 die. What he did know from his interaction with Trooper
7 Frazier was Trooper Frazier had on a bulletproof vest. So
8 he didn't shoot him in the chest, he shot him in the face.
9 That is intent to kill.

10 As soon as Trooper Frazier walks up, there's no
11 discussion of a ticket. He didn't know Trooper Frazier had
12 a ticket in his hand. And the reason we know that is
13 because they never spoke. Trooper Frazier walked up and
14 he's laying in wait waiting on him to get to that car window
15 so he could stick the gun out the window and shoot him in
16 the face and he could drive away. And that's what he did.
17 He tried to kill Trooper Frazier and then he fled from every
18 law enforcement agency in two counties. So he wrecked the
19 vehicle that he was in.

20 There absolutely was malice. There was malice while he
21 was sitting in that car and Trooper Frazier was writing. He
22 was getting the gun. He had the gun in his hand. He didn't
23 reach for the gun. We saw on the video. He's sitting there
24 with his back up against the seat waiting on Trooper Frazier
25 to get in his range. And when Trooper Frazier does come up

1 to the window, that's when he reaches out and he shoots him,
2 not in the chest where a bulletproof vest would have helped
3 him, but in the face. Because he isn't trying to scare him,
4 he's trying to kill him.

5 If this is not evidence without the Defendant saying I
6 am attempting to kill you now before he pulls the trigger,
7 then we might as well get rid of this statute. All of the
8 circumstantial evidence here points to the fact that he was
9 trying to kill Trooper Frazier when he pulled that trigger.
10 Fortunately, he wasn't successful. But there is ample
11 evidence in front of this jury for them to find him guilty
12 of each one of the offenses charged.

13 THE COURT: Anything else?

14 MS. ALVES: Yes, sir.

15 Judge, I would just note that we can see what happened
16 here. There was a shot fired in the direction of the
17 trooper. I don't think there was any -- I can't say there
18 was intent to hit him in the face or in the vest or anywhere
19 else. It was just a shot fired in his direction, which
20 happened to, unfortunately, hit Trooper Frazier in the
21 cheek. I would just note for an attempt, I think they would
22 have to show that he was deliberately firing at the trooper.
23 He was firing in the direction, but I don't think that that
24 alone shows there was an intent to kill.

25 As I said, that shows an intent to assault, which I

1 think would go more toward assault and battery of a high and
2 aggravated nature, but I don't think that alone can
3 establish intent to kill.

4 THE COURT: So at this stage, I'm concerned with the
5 existence of the evidence, not its weight. I find there is
6 certainly direct and circumstantial evidence from which the
7 jury could find the Defendant guilty of the charge and
8 respectfully deny the motion for directed verdict.

9 Are you renewing all your previous objections?

10 MS. ALVES: Judge, yes. I base my motion on that, plus
11 my previous objections.

12 THE COURT: While we're here, that would be an
13 opportunity for you to give a little more detail of your
14 concerns about this morning.

15 MS. ALVES: Yes, sir.

16 Judge, when I came in this morning, I was walking to
17 the bathroom, I realized there were a lot of people -- there
18 were people going around on both sides of the curtain, on
19 the larger side and the smaller side. And I noticed that
20 there were several people sitting outside in the chairs on
21 the smaller side of the curtain. I realized they were
22 jurors. I, actually, went in the bathroom, saw there was a
23 juror in there, so I came back out.

24 Realized there were other people -- people were just
25 having general conversation. Nobody was interacting with

1 the jury, however, there were several law enforcement people
2 on both sides of the curtains having conversations right
3 there where they were sitting.

4 I asked the bailiff why the jury was sitting there and
5 he said they were waiting to get them all out because it was
6 raining.

7 THE COURT: They were waiting to get them all out to
8 the jury temporary building behind the armory?

9 MS. ALVES: Yes, sir. It was raining and they were
10 still waiting for six jurors. There were eight of them out
11 there. I immediately came in and addressed that with the
12 clerk of court and she went out and arranged to have the
13 jurors moved to the jury trailer outside.

14 My concern was that -- I made motions regarding the
15 number of law enforcement around here and the potential
16 intimidation of jurors having them in these close quarters.
17 While I don't think -- I'm not saying anybody was
18 intimidating jurors, nobody was even interacting with them.
19 My concern is having everyone, not just law enforcement, but
20 everyone having conversation, potentially, about this case
21 around the jury while they should be totally sequestered
22 from such conversations.

23 THE COURT: Anything from the State?

24 MR. MILLER: No, Your Honor.

25 THE COURT: I just need to make the record clear. I

1 mean, we're once again in the Bamberg County Civic Center in
2 a classroom-style courtroom. We're experiencing severe
3 weather this morning around the Midlands. I know I went
4 through a tornado warning on the way down here. We've got
5 some heavy rains down here this morning, which you can hear
6 on the roof of the courtroom. I think the situation was
7 just the best that we could do with the weather this
8 morning.

9 Upon being notified there were jurors in the vicinity
10 of other people or even law enforcement in the same part of
11 the building, they were moved promptly out to the temporary
12 structure outside of the armory where the jury sits right
13 now.

14 Just for the record, this building has a -- this is an
15 old armory and there's a large room, which was probably an
16 old drill deck or something. The space is divided by black
17 curtains. That's just where we are. But we don't know any
18 specific issues of jury contact.

19 So I think your concerns are valid, but I don't think
20 there's anything that would prevent us from proceeding thus
21 far, subject to previous objections.

22 We've reached the stage where I need to advise your
23 client of his rights under the Fifth Amendment.

24 MS. ALVES: Your Honor, I know the State has previously
25 stated that -- when I previously made my motions regarding

1 matters that the State might bring up, the State did confirm
2 that they were not going to bring up anything regarding his
3 alleged nickname or any alleged gang affiliation.

4 The solicitor, also, stated he was not going to bring
5 up anything regarding Mr. Gathers's prior record or anything
6 regarding the charges in Georgia or the bench warrant that
7 was placed on him from Georgia in April of 2023. I just to
8 confirm that is still his intent not to bring up those
9 matters.

10 THE COURT: Mr. Miller.

11 MR. MILLER: That's correct, Your Honor.

12 THE COURT: Madam Clerk, place the Defendant under
13 oath.

14 THE CLERK: Would you raise your right hand, please.

15 DERRICK GATHERS,

16 after being duly sworn, testified as follows:

17 THE DEFENDANT: Yes, ma'am.

18 THE CLERK: Thank you, sir.

19 THE COURT: Mr. Gathers, good morning.

20 THE DEFENDANT: Good morning.

21 THE COURT: At this time, I'm going to explain to you
22 some of your rights. If you do not understand anything I
23 say, please, let me know. If you need me to explain
24 anything in further detail, let me know that as well.

25 We've now reached the stage of the trial where you may

1 present your defense. You have the right to claim the
2 protections given to you by the Fifth Amendment of the
3 Constitution of the United States. This amendment states in
4 part that no person shall be compelled in any criminal case
5 to be a witness against themselves. This means you cannot
6 be required to testify in this case. You have a right to
7 testify on your behalf. However, no one can make you
8 testify. This is a personal right and no one can waive this
9 right except you.

10 Do you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: If you decide to testify, you'll be subject
13 to the same rules that govern other witnesses. You may be
14 examined and cross-examined on any relevant issue in this
15 case. In addition, if you have any convictions involving
16 dishonesty or false statement or for crimes punishable by
17 imprisonment for more than one year and this Court
18 determines that the probative value of admitting this
19 evidence outweighs its prejudicial effect to you, the
20 solicitor will be able to introduce your record and attack
21 your credibility.

22 Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: If you decide to testify, the decision on
25 your part must be freely, voluntarily and intelligently made

1 with the knowledge of the protections given to you by the
2 Fifth Amendment and the consequences of your decision to
3 testify.

4 If you decide not to testify, I will instruct the
5 jurors that they cannot give the fact that you did not
6 testify any consideration whatsoever and there is to be
7 absolutely no prejudice to you because you did not testify.
8 It is left entirely up to you whether or not you testify.
9 You may talk about it with your attorney, your family, your
10 friends or anyone else, but the final decision will be left
11 entirely up to you.

12 Do you understand what I've explained to you?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And do you have any questions about what
15 I've explained to you?

16 THE DEFENDANT: No, sir.

17 THE COURT: Do you wish to discuss this matter with
18 your attorney at this time?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: All right. Very well.

21 (Pause.)

22 THE COURT: Ms. Alves, I don't mean to interrupt, but
23 are y'all still discussing?

24 MS. ALVES: We are, Judge.

25 (Pause.)

1 THE COURT: Mr. Gathers, have you decided on whether
2 you will testify or not testify?

3 THE DEFENDANT: Yes, sir. I'm going to testify.

4 THE COURT: Are we ready to proceed with the Defense's
5 case?

6 MS. ALVES: Yes, sir.

7 THE COURT: Is the State ready?

8 MR. MILLER: Yes, sir.

9 THE COURT: Let's bring in the jury, please.

10 (WHEREUPON, the jury enters the courtroom at 11:23
11 a.m.)

12 THE COURT: Mr. Foreman, ladies and gentlemen, welcome
13 back. The State has rested and completed their case in
14 chief. We are now about to hear from the Defense.

15 Ms. Alves.

16 MS. ALVES: I call Derrick Gathers.

17 THE COURT: Mr. Gathers, please, come up.

18 THE CLERK: Mr. Gathers, will you state your full name
19 for the record, please?

20 THE DEFENDANT: Derrick Edward Gathers.

21 DERRICK EDWARD GATHERS,

22 after being duly sworn, testified as follows:

23 THE DEFENDANT: Yes, ma'am.

24 THE CLERK: Thank you, sir.

25 DIRECT EXAMINATION

1 BY MS. ALVES:

2 Q State your name, please.

3 A Derrick Edward Gathers.

4 Q Okay. I need you to speak loud so all of these people
5 can hear you, okay?

6 A Yes.

7 Q How old are you, Mr. Gathers?

8 A I'm currently 39.

9 Q And where were you born and raised?

10 A Bronx, New York.

11 Q Where did you live almost of your life?

12 A In New York.

13 Q And when did you leave New York?

14 A In February of 2020.

15 Q And where did you go?

16 A Augusta, Georgia.

17 Q What brought you to Augusta, Georgia?

18 A I have family out here, my mom, my dad, my sisters, my
19 nieces.

20 Q And when you came to Augusta, were you working?

21 A Yes.

22 Q Where did you work in Augusta?

23 A My first job was at the Village Deli. My second job
24 was at Applebee's as a cook and I was doing cash rides for
25 extra money.

1 Q What do you mean cash rides?

2 A Like, people would post on Facebook that they needed a
3 ride and I would say I was available to help them out to
4 give them a ride where they needed to go.

5 Q And that's what you did for extra money?

6 A Yes, ma'am.

7 Q And at any point did you move from Augusta?

8 A I was in the process of moving to Charleston.

9 Q Why were you moving to Charleston?

10 A My uncle lived there. My sister was in the process of
11 moving, too. She wanted to go back to where she was raised.
12 I said I would agree as long as I could get a job and a
13 place to live.

14 Q So you had a sister who wanted to relocate to
15 Charleston as well?

16 A Yes.

17 Q And did you and your sister ever, actually, move to
18 Charleston?

19 A We stayed in a hotel in Moncks Corner. I wasn't there
20 when she, actually, got a place. I stayed there till I got
21 a job and tried to save enough money to get a place to stay.

22 Q You got a job in Charleston?

23 A Yes.

24 Q Where did you get a job?

25 A Kontane, it's a manufacturing place for Mercedes.

1 Q Okay. I'm going to show you what's marked as State's
2 Exhibit No. 6. Do you recognize State's Exhibit No. 6?

3 A Yes, ma'am, it's my wallet.

4 Q That's your wallet?

5 A Yes, ma'am.

6 Q And let's open it up. It has contents in it. Do you
7 recognize the contents of the wallet?

8 A Yes, I recognize it.

9 Q What's in there -- well, let me just ask you, is this
10 your Georgia identification card?

11 A Yes, ma'am.

12 Q That's yours?

13 A Yes, ma'am.

14 Q And there's a work ID?

15 A Yes, ma'am.

16 Q Where is the work ID from?

17 A From Kontane in Charleston, South Carolina.

18 Q So you were, actually, working for Kontane?

19 A Yes.

20 Q And you said they're a manufacturing plant for Mercedes
21 Benz?

22 A Yes, ma'am.

23 Q What were you doing there?

24 A I was driving forklifts.

25 Q Did you consider that a good job?

1 A Yes, a very good job.

2 Q And you said that you were relocating to be closer to
3 where your sister wanted to be?

4 A Yes, I have an uncle there.

5 Q And what's your sister's name?

6 A Destiny Gathers.

7 Q Her license was in your wallet?

8 A Yes, ma'am.

9 Q Why is Destiny's license in your wallet?

10 A We're always together. Most of her clothes didn't have
11 pockets. She didn't want to lose it, so she asked me to
12 hold onto it for her.

13 Q And you just forgot to give it back to her?

14 A Yes, ma'am.

15 Q Do you have any kids?

16 A Yes, I have two children.

17 Q And tell me about your children.

18 A I have a 22-year-old that's still in New York, Latoya.

19 Q Victoria?

20 A Latoya.

21 Q Latoya?

22 A Yes, ma'am. She have a child. And I have a
23 20-month-old name Keloni (ph), she's in Augusta.

24 Q You have a child in Augusta?

25 A Yes.

1 Q 20 months old?

2 A Yes.

3 Q Tell me about the lady who was in the car with you on
4 the night of this incident?

5 A At that point in time, she was my girlfriend. We was
6 living together.

7 Q What's her name?

8 A Kieanya Moment.

9 Q She was your girlfriend and y'all were living together?

10 A Yes.

11 Q Where were you living together?

12 A We were living together in Augusta, but being that I
13 was in transition to move, she moved back home to Aiken with
14 her family.

15 Q So she moved back to her family's house in Aiken?

16 A Yes.

17 Q While you were in transition?

18 A Yes.

19 Q All right. And how long had you been seeing her?

20 A On and off for two years.

21 Q Now, how long had you been planning on moving to
22 Charleston?

23 A Not very long. We decided maybe the end of 2022, I
24 believe, like November, December.

25 Q That's when you started talking about moving to

1 Charleston?

2 A Yes, ma'am.

3 Q When did you get the job at Kontane, do you remember?

4 A I want to say, like, maybe the beginning of March.

5 Q So you had just gotten that job?

6 A Yes, ma'am.

7 Q You said you were staying in hotels in Moncks Corner?

8 A Yes, ma'am.

9 Q How often would you see Kieanya?

10 A Maybe once, twice a week at most. I would drive back
11 to Aiken.

12 Q And do you remember the events of April 16th of 2023?

13 A All I can remember is going to pick Kieanya up from
14 work and we were headed back to Charleston.

15 Q All right. So on the day in question of this incident
16 that we've been talking about in the courtroom for the past
17 two days, you and Kieanya were going to Charleston?

18 A Right.

19 Q Do you remember what you were doing earlier that day?

20 A Earlier that day, I was --

21 Q Where were you?

22 A I was in Augusta because she had to work. I left -- I
23 got off work -- excuse me. I got off work at 11 o'clock
24 Saturday afternoon and I drove straight to Aiken. I dropped
25 her off at work and I went to Augusta.

1 Q Okay. And what did you do?

2 A I went to Augusta and went and got some paraphernalia,
3 drugs.

4 Q Drugs?

5 A Yes.

6 Q You have a drug problem?

7 A Yes.

8 Q What drugs do you use?

9 A A little bit of everything.

10 Q What drugs were you using that day?

11 A Ecstasy, spice, K2, marijuana, alcohol, tobacco.

12 Q That was that day?

13 A Yes.

14 Q All right. Was this while Kieanya was at work?

15 A While she was at work, after she got off of work. I
16 used throughout the whole day.

17 Q Do you remember what time she got off of work?

18 A Not precisely, no.

19 Q Well, what was your plan when she got home from work?

20 A She said she wanted to go to the beach.

21 Q She wanted to go to the beach?

22 A Yeah. She said she wanted to go to Folly Beach
23 specifically, so I said all right, we'll go to Folly Beach.
24 When she got off work, we couldn't leave her house because
25 the officers had the block locked down because they was

1 looking for someone. So I couldn't leave the driveway.

2 Q Because the entire street was locked down?

3 A Yes, ma'am. They had drones in the air. They were
4 searching for someone. I was, actually, on the porch most
5 of the time watching, seeing what was going on. I went back
6 inside and I dozed off on the couch. She woke me saying we
7 got to go, it's getting late. I said okay. I rolled up
8 another blunt, couple more blunts, popped a couple more
9 pills.

10 Q What pills?

11 A Some Ecstasy pills.

12 Q All right.

13 A Took a couple shots of liquor and then got in the car.

14 Q At this point, was the block still locked down?

15 A No, ma'am. It was about an hour and a half, two hours
16 passed since I dozed off on the couch.

17 Q All right. You know what time this was?

18 A Not offhand, no.

19 Q Well, was it early in the evening or late at night?

20 A Oh, it was pitch black outside, so it was -- I don't
21 know if it was early evening, late evening, early morning.
22 I didn't really know the time.

23 Q It was dark?

24 A Yes.

25 Q Do you know where you went?

1 A First, we went to the gas station.

2 Q Gas station where?

3 A In Aiken. The Enmark, I believe it was to get some
4 gas. I don't know if I bought anything else there. I know
5 I was going to get gas. And then I got on the road.

6 Q So what happened after you went to the gas station?

7 A I don't remember.

8 Q You don't remember?

9 A No, ma'am.

10 Q Do you remember being stopped by Trooper Frazier?

11 A No, ma'am.

12 Q Do you remember having a car accident in Branchville?

13 A No, ma'am.

14 Q What do you remember?

15 A Getting gas at the Enmark.

16 Q What do you remember next?

17 A Waking up in the hospital, Charleston, I believe it
18 was.

19 Q You were at a hospital in Charleston?

20 A Yes, ma'am.

21 Q Was it the same day or was it another day?

22 A Next time I knew what the date was, I was getting
23 booked into the detention center and they said it was the
24 18th.

25 Q Okay. So the next time you knew what date it was, but

1 do you remember what happened the day before you got booked
2 in the detention center?

3 A No, ma'am.

4 Q When you were at the hospital?

5 A No, ma'am.

6 Q What was your intent when you left Aiken?

7 A Go to the beach.

8 Q You don't remember anything else that happened during
9 that time?

10 A No, ma'am.

11 Q Let me ask you, were you going to be off to take
12 Kieanya to the beach?

13 A Yes, ma'am. I got off Saturday morning. I, actually,
14 went overtime that day because I got off at 11 o'clock. And
15 I was off on Sunday. I wasn't off, I didn't have to be at
16 work till ten o'clock Sunday night.

17 Q So you would have had time to go to the beach?

18 A Yes, ma'am. I had all day Sunday.

19 Q And when were you going to come back to bring Kieanya
20 back to Aiken?

21 A She didn't have to go back to work I believe until some
22 time later in the week. I don't know exactly the day. So
23 she was going to stay with me in the hotel. I work nights.
24 So I guess while I was at work, she would get some sleep.

25 Q So it was your plan for Kieanya to stay at the hotel

1 and y'all were going to spend time together around the time
2 that you worked?

3 A Correct.

4 Q I'm going to show you what's marked as State's Exhibit
5 No. 3. That is the license of someone named Darius Ramonte?

6 A Yes, that's right.

7 Q That's what this is?

8 A Yes, ma'am.

9 Q Do you know this person?

10 A No, ma'am.

11 Q You saw the video when we all watched it?

12 A Yes.

13 Q You saw this is the license that you handed to Lance
14 Corporal Frazier?

15 A From the video, yes, ma'am.

16 Q You saw in the video where that happened?

17 A Yes, ma'am.

18 Q You don't remember doing it?

19 A No.

20 Q Why did you have this person's license?

21 A Maybe he left it in my car after a ride. Like, I
22 really don't know.

23 Q You don't know why you had it?

24 A No, ma'am.

25 Q You know why you would have handed it to him?

1 A It might have been the first thing I seen. I heard ID
2 and I probably just handed it to him.

3 Q Okay. Do you recall seeing that in your car earlier
4 that day?

5 A No.

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

7 (Pause.)

8 BY MS. ALVES:

9 Q Now, I want to ask you about the video that we saw.
10 You're telling us that you don't remember what happened?

11 A No, ma'am.

12 Q You don't remember the incident?

13 A No, ma'am.

14 Q But you saw the video?

15 A Yes, ma'am.

16 Q Is that you in the driver's side of the car?

17 A Yes, ma'am.

18 Q And you're saying that based on what you saw in the
19 video?

20 A Yes, ma'am.

21 Q Is that you who shot the gun?

22 A From the video, yes, ma'am.

23 Q And you're basing that on what you see in the video?

24 A Yes, ma'am.

25 Q You don't have any memory?

1 A No, ma'am.

2 Q And that was you in the car?

3 A I was driving the car, yes, ma'am.

4 Q You saw that on the video?

5 A Yes.

6 Q And you were in the car when it crashed? You saw the
7 video of the crash?

8 A I seen the video of the crash.

9 Q And that was you and Kieanya in the vehicle?

10 A Yes, ma'am.

11 Q And you were taken to the hospital?

12 A I woke up in the hospital, I don't know who took me.

13 Q You don't remember getting there?

14 A No.

15 Q And you woke up in the hospital?

16 A Yes, ma'am.

17 Q Were you injured?

18 A Not that I can remember.

19 Q Okay.

20 A Not that I can remember, no, ma'am.

21 Q Do you remember waking up at the site of the crash?

22 A No, ma'am.

23 Q And the last thing you remember about this was stopping
24 for gas?

25 A Yes, ma'am.

1 Q On your way to have a pleasant couple of days with your
2 girlfriend?

3 A Yes, ma'am.

4 MS. ALVES: I don't have any further questions. Please
5 answer any the solicitor may have.

6 THE COURT: Cross-examination.

7 CROSS-EXAMINATION

8 BY MR. MILLER:

9 Q This Georgia identification, it's not a driver's
10 license, it's an identification that came out of your
11 wallet, correct?

12 A Yes, sir.

13 Q And how long have you had a Georgia identification
14 instead of a driver's license?

15 A Approximately three years to the date of the incident,
16 I guess.

17 Q Three years? Three years you didn't have a driver's
18 license and you're driving back and forth from Augusta to
19 Charleston. You're driving back and forth to work. You're
20 even taking money from people to drive them. You didn't
21 have a driver's license any of that time, did you?

22 A No, sir.

23 Q But you got drugs. You got Ecstasy, you got marijuana.
24 What other drugs were you using back then?

25 A Like I said, I was on some synthetic marijuana, I guess

1 it was, spice, Kc, whatever. Tobacco, alcohol.

2 Q You said when you were getting ready to go on this trip
3 that you popped some pills, rolled a blunt or a couple
4 blunts and you drank some liquor; is that correct?

5 A Yes, sir.

6 Q And then you get behind the wheel of a car unlicensed,
7 correct?

8 A Yes, sir.

9 Q And you're driving and you get to the gas station. And
10 you don't remember anything else that happened till you woke
11 up in the hospital, correct?

12 A Correct.

13 Q All right. So tell me this, when did you put the
14 bullets in the magazine for this gun?

15 A I don't recall putting bullets in any gun.

16 Q Do you deny that that's your gun?

17 A I'm not confirming or denying anything, sir.

18 Q I'm asking you right now, is that your gun? I can show
19 it to you so you can see it. Your attorney has shown it to
20 you. Here's the magazine and the bullets and this Sig Sauer
21 pistol. Is that your gun?

22 A Do you mind turning it over?

23 Q (Solicitor turned gun over.)

24 A No, sir.

25 Q So you say this isn't your gun? You don't know where

1 this gun came from? You don't have any idea because you
2 don't remember the incident, correct?

3 A Correct.

4 Q So you can't say what your intent was whenever you
5 pulled that trigger, can you?

6 A I don't remember pulling the trigger, sir.

7 Q So you're high and you'd been drinking, you don't have
8 a driver's license and you're driving a car 77 miles an hour
9 in a 55-mile-an-hour zone, which catches the attention of
10 Lance Corporal Frazier, so he turned around. But you don't
11 remember any of that?

12 A No, sir.

13 Q And you don't give him your driver's license because
14 you don't have one. But you don't give him your ID which
15 has all of your identifying information on it, you give him
16 somebody else's driver's license, correct?

17 A I see on the video, yes, sir.

18 Q Why would you do that?

19 A Like I said, sir, I don't recall. I figure that was
20 the only thing I seen at the time.

21 Q Well, that's very convenient of you not being able to
22 recall. But why would you give a highway patrolman who has
23 stopped you for a speeding ticket someone else's ID?

24 A I just answered that question. I don't remember.

25 Q You don't remember from all the police officers in the

1 car?

2 A Right.

3 Q You don't remember the wreck?

4 A No.

5 Q Who did that car belong to?

6 A My dad bought it.

7 Q Your dad bought it. When did your dad buy that car?

8 A I don't know the exact date.

9 Q But, I mean, recently? It had paper tags. Had it ever
10 had a tag on it?

11 A No, it was a new car, sir.

12 Q You don't remember getting pulled out of the vehicle
13 and you don't remember getting taken to the hospital?

14 A No, sir.

15 Q You don't remember how that gun ended up in the car?

16 A No, sir.

17 Q Did that happen between the gas station and you
18 shooting Trooper Frazier with it?

19 A I don't recall, sir.

20 Q Well, if you don't recall, is it your testimony it must
21 have happened between the gas station and you shooting
22 Trooper Frazier?

23 A No, my testimony is that I don't recall, sir.

24 Q So you don't know how that gun ended up in the car?

25 A No, sir.

1 MR. MILLER: No further questions.

2 THE COURT: Redirect?

3 MS. ALVES? No, Your Honor.

4 THE COURT: The witness may step down.

5 Let me speak to y'all.

6 (WHEREUPON, a bench conference was held.)

7 THE COURT: All right. Ms. Alves, next witness.

8 MS. ALVES: Defense rests.

9 THE COURT: Very well.

10 Ladies and gentlemen, the Defense has rested their
11 case. I've got some matters to take up with the attorneys
12 now. It's 11:50. We'll go ahead and break for lunch now.
13 I'll ask you to be back in your jury room at 1:30.

14 While you're out, don't discuss the case with anyone.
15 Don't do any research about the case. Have a nice lunch.
16 See you back at 1:30.

17 (WHEREUPON, the jury exits the courtroom at 11:51 a.m.)

18 THE COURT: Ms. Alves.

19 MS. ALVES: I renew my motion for directed verdict.
20 Taking the evidence in the light most favorable to the
21 State, I would argue that the State has not established the
22 elements of attempted murder. Particularly, I think there
23 is some question about whether the State has established
24 that there was an intent to kill and whether there was
25 malice aforethought.

1 I base that on the testimony previously entered in the
2 State's case as well as the video that -- while it was not
3 played for the jury, it is in evidence regarding what the
4 sole witness in the car says, that she didn't know this was
5 about to happen. I think based on that and the State's
6 argument, I would point out, that her statements had no
7 credibility according to the solicitor because of his
8 categorization of them as an excited utterance and the
9 circumstances under which she gave that statement, that she
10 didn't know anything was about to happen, which tells me
11 there wasn't a gun pulled out and no one was laying in wait,
12 as the solicitor characterized it, in the vehicle for the
13 officer to come back.

14 Mr. Gathers testified about his state of mind at the
15 time, at least, the state of mind when they were in Aiken,
16 not long before they came into Bamberg County. That he was
17 high. I don't think you can characterize him as being -- he
18 acknowledged having some alcohol. I don't think he was
19 drunk because there was no concern of Trooper Frazier that
20 this was a DUI situation.

21 But he told what his state of mind was, that he was on
22 drugs, high. I think that while I know that voluntary
23 intoxication is not a defense, I think that that can
24 potentially negate what his intent was for the intent to
25 kill at the time Trooper Frazier was shot.

1 So, Judge, for all those reasons and the reasons
2 previously stated, I would move for a directed verdict
3 regarding the charge of attempted murder.

4 THE COURT: Mr. Miller.

5 MR. MILLER: We will stand on our prior argument.

6 THE COURT: My prior ruling stands. I still think
7 there is ample evidence for the jury -- or to have these
8 charges presented to them.

9 What's next?

10 MR. MILLER: Your Honor, we will be asking for a
11 voluntary intoxication charge to be added given the
12 circumstances. We discussed last evening -- and I know it
13 was a working charge that was disseminated around. We need
14 to include expert witness now. We need to exclude
15 Defendant's failure to testify.

16 And I did make some typos in the attempted murder as
17 well as the possession of a weapon during the commission of
18 a violent crime.

19 THE COURT: We removed the transfer or will remove the
20 transfer.

21 MR. MILLER: Right. That was the other one that Mr.
22 Hayes had brought up, so there was a little paragraph in
23 there about transferred intent, which wouldn't apply in the
24 attempted murder, obviously.

25 So I think we're probably pretty close on the jury

1 charges. I need to check the bench book to see what the
2 voluntary intoxication charge is that's in there.

3 THE COURT: I can tell you the one I intend to use is
4 from --

5 MR. MILLER: Okay. I'm sure it's fine, I just wasn't
6 --

7 THE COURT: It provides, I remind you that a person who
8 voluntarily becomes intoxicated is just as responsible for
9 the acts committed while intoxicated as when the person is
10 not intoxicated. Now, if there's more language, I'm happy
11 to discuss it, but that's what I usually charge.

12 MR. MILLER: I think that's fine, Judge.

13 THE COURT: Ms. Alves.

14 MS. ALVES: Yes, Your Honor. One moment.

15 THE COURT: So the Defense put up a case, so the State
16 will have an opportunity to --

17 MR. MILLER: First and last?

18 THE COURT: Yes.

19 MR. MILLER: Your Honor, I generally waive the first.
20 If Ms. Alves is okay with that, she can go, then I'll go and
21 that will be the end of it. If she insist, then I'll argue
22 twice.

23 THE COURT: Okay.

24 MS. ALVES: Judge, as to the charge on attempted
25 murder, on Page 9, the last paragraph where it says relates

1 to attempted murder, malice aforethought is shown through
2 words that express hatred or ill will for another or through
3 the performance of an act or acts which tend, but failed to
4 kill Bentrice Frazier or another human being. I would
5 object to Trooper Frazier's name being in there because the
6 law is that it fails to kill another person. I think this
7 personalizes the charge too much toward this particular
8 case.

9 MR. MILLER: I think I added the name in there in
10 error. It should not -- that name shouldn't even be there.

11 MS. ALVES: Also --

12 THE COURT: We'll remove the specific name.

13 MS. ALVES: Yes, sir. Also, the name is referenced on
14 Page 10. And on Page 10, there was somebody else.

15 THE COURT: We just wanted to make sure you were
16 reading the charge.

17 MS. ALVES: Yes, sir. Okay. I would ask for you to
18 charge the lesser-included offenses of assault and battery
19 of a high and aggravated nature and assault and battery
20 first degree.

21 THE COURT: What says the State?

22 MR. MILLER: Judge, there is absolutely no evidence
23 that has been adduced that would support a charge of assault
24 and battery in the first degree. Because the difference
25 between assault and battery in the first degree and ABHAN is

1 there's an injury for ABHAN. There is no evidence that
2 there was a miss. You know, that he shot and he missed.
3 That would be if it wasn't attempted murder, it would A & B
4 first.

5 In this situation, it is attempted murder. But if the
6 jury decides there wasn't an attempted murder, the only
7 thing that supports -- the only thing the facts support
8 would be an ABHAN, not an A & B first. Because for an A & B
9 first to occur, it has to be accomplished by means likely to
10 cause death or great bodily injury, but there is no injury.
11 There is no actual battery associated with an A & B first in
12 that consequence.

13 THE COURT: So your objection is really A & B first,
14 not ABHAN?

15 MR. MILLER: It is to A & B first. The ABHAN is what
16 the ABHAN is. I think that the record supports charging the
17 ABHAN.

18 THE COURT: All right. We'll add ABHAN, but I don't
19 see the point of assault and battery first degree based on
20 the evidence that's been presented.

21 Any other charges, Ms. Alves?

22 During the lunch, we will print out copies and get you
23 a fresh copy.

24 MS. ALVES: Yes, sir. Thank you. I don't have
25 anything more.

1 THE COURT: The verdict form, we'll add the lesser
2 included under the attempted murder paragraph.

3 MR. MILLER: Yes, sir.

4 MS. ALVES: Yes, sir.

5 THE COURT: Anything else?

6 MR. MILLER: We'll be ready to go with closing
7 arguments at 1:30, Your Honor.

8 THE COURT: We'll be in recess.

9 (WHEREUPON, a lunch break was taken.)

10 THE COURT: Ms. Alves.

11 MS. ALVES: Your Honor, I would ask that the Court
12 consider charging that the jury can determine whether the
13 Defendant's intoxication affected his ability to form a
14 specific intent. I know that there is cases in South
15 Carolina that does say that that's not a proper statement of
16 what the law was in South Carolina in 1977. In looking at
17 any cases that talked about this, I don't see any that are
18 dated after the adoption of the attempted murder statute in
19 2010.

20 I would note that there are some cases outside of this
21 jurisdiction which have allowed that. Specifically, I have
22 two cases, which is U.S. V. Sneezer, which was a rape case
23 that was decided in 1990 in the U.S. District Circuit for
24 the District of Arizona. And there's another case that was
25 from 1997, which is U. S. V. Sayetsitty, which was, also,

1 decided in the U.S. District Court for the District of
2 Arizona.

3 I know those are two old cases, but those are two cases
4 in which they did -- there was discussion and it was finding
5 that the defendant's intoxication did negate a charge that
6 require specific intent. They had some discussion in those
7 cases of general intent versus specific intent, but they
8 found that intoxication did negate that. While I know those
9 are not binding on this Court, I would note that this is a
10 concept which has been adopted in other jurisdictions in the
11 past. So I would ask Your Honor to consider charging the
12 jury with that one statement at the end of where you discuss
13 voluntary intoxication.

14 I just note that the testimony in this case from Mr.
15 Gathers, he was so intoxicated that -- well, he was
16 intoxicated even with using drugs to the point that he
17 didn't remember. I don't know whether it's not remembering
18 because of what happened in the accident, any type of
19 injury, or from the drugs. Regardless of that, he did
20 testify to using drugs, which would alter one's state of
21 mind. So I would ask for the charge for that.

22 THE COURT: Mr. Miller?

23 MR. MILLER: Your Honor, the law that is still good law
24 in South Carolina in Vaughn literally says -- in the opinion
25 itself, it says, We are asked to hold that voluntary

1 intoxication is a defense to crimes requiring proof by the
2 State of specific intent.

3 It then says, Since it appears that we've never had
4 occasion to rule definitely on this particular point, it's
5 clear that the majority of American jurisdictions permit
6 voluntary intoxication to be interposed as a defense to
7 specific intent crimes.

8 It then states the general rule and it specifically
9 says, We've considered this. We're not following that rule.
10 Here's the rule that we're following. And that case -- that
11 particular headnote of that case has been cited ten times in
12 South Carolina since then, most of which were in string
13 cites and unpublished opinions, it looks like.

14 But it is still good law in the State of South
15 Carolina. The court in 1977 knew what was going on whenever
16 it -- that there was this alternative view that was in use
17 in other jurisdictions and the court considered that and
18 said no, this is the rule in South Carolina. And that is
19 unchanged. And that was well before the adoption of the
20 passage of the attempted murder statute. The legislature
21 knew what the law was when that statute was passed. If
22 their intent was to change that, then that's when they
23 needed to do it.

24 THE COURT: Okay.

25 Ms. Alves, anything else?

1 MS. ALVES: No, sir.

2 THE COURT: I'm not going to charge any additional
3 language than what I've already determined with voluntary
4 intoxication. Your request is noted for the record.

5 MS. ALVES: Yes, sir.

6 (WHEREUPON, a short break was taken.)

7 THE COURT: The State ready to proceed with closing
8 arguments?

9 MR. MILLER: Yes, sir.

10 THE COURT: Defense ready?

11 MS. ALVES: Yes, sir.

12 THE COURT: Bring the jury in.

13 (WHEREUPON, the jury enters the courtroom at 1:49 p.m.)

14 THE COURT: Mr. Foreman, ladies and gentlemen, welcome
15 back. I hope you had a nice lunch. Ladies and gentlemen,
16 the parties have presented their evidence in this case. It
17 is now time for the attorneys to make their closing
18 arguments.

19 The arguments of the attorneys are not evidence in the
20 case. Their statements and arguments are meant to help you
21 understand the evidence and apply the law to the evidence.
22 You should disregard any of the remarks stated in the
23 argument which is not supported by evidence presented during
24 the trial or the law that I will explain to you after the
25 arguments.

1 At this time, give your complete and undivided
2 attention to the attorneys as they make closing arguments.

3 CLOSING ARGUMENT BY THE DEFENSE

4 MS. ALVES: May it please the Court?

5 THE COURT: Yes, ma'am.

6 MS. ALVES: Counsel.

7 I told you at the beginning of the trial, the Judge
8 told you and I mentioned it in my opening that this wasn't
9 going to be long. And we kept to our word. This is a
10 pretty short trial, but very important trial. But as I told
11 you, there's a lot more to the story. I mean, you see the
12 evidence and you saw the video and you heard the testimony
13 and you're like, well, why are we here? What's there to
14 decide?

15 I remember once there used to be an old radio show
16 where the guy would say something and then he'd go, well,
17 this is the rest of the story. And this is the rest of the
18 story. And I told you, this case is not just about what
19 happened. We can see what happened. We saw that video.
20 And you're going to have the video to go back with you as
21 evidence. But this case is not only about what happened,
22 but what the charge is.

23 The Defendant in this case is Mr. Derrick Gathers and
24 you heard a little bit about him and his life and what was
25 going on with him that day back in April of 2023. And he's

1 charged with attempted murder, failure to stop for a blue
2 light and possession of a weapon during the commission of a
3 violent crime.

4 Now, the State has the burden of proof in this case.
5 And what that means is that Mr. Gathers doesn't have to get
6 up here and say anything. He didn't have to testify.
7 Really and truly, he didn't even have to be here. They
8 could have gone on with the trial without him. That means
9 the State had all the burden.

10 Just because we charge somebody with a crime doesn't
11 mean they're guilty of it. And the indictment, as the Judge
12 told you, is not evidence. They have to prove each and
13 every element of every crime beyond a reasonable doubt.

14 So for the charge of attempted murder, that means they
15 have to prove that Mr. Gathers intended to kill Trooper
16 Frazier. They have to prove that Mr. Gathers had malice
17 aforethought. And the Judge is going to explain to you what
18 malice aforethought is. He's going to explain to you it's
19 the wickedness, it's the ill intent, it's the one thing to
20 do with ill intent towards someone else.

21 And it doesn't have to be long before that. It could
22 be fast, it could be slow. It could be said, like, let's
23 say, I hate you or I'm going to kill you or it can be
24 something done by actions. But they have to prove beyond a
25 reasonable doubt that there was malice aforethought. And

1 the State, meaning the solicitor, has to prove beyond a
2 reasonable doubt that there was an attempt to actually kill
3 someone.

4 Now, the mere fact that Corporal Frazier got shot in
5 the face, that is a sad thing and I know we're all glad that
6 his injury wasn't worse, that he is able to be here today to
7 testify. But the mere fact that he was injured does not
8 just say okay, well, that's the end of the case. No. The
9 question is, was this attempted murder?

10 You're going to be told that there's another charge
11 here that you can consider. Was this attempted murder or
12 was this assault and battery of a high and aggravated
13 nature? So the question is going to be, did they have
14 those? And the main difference between them is was there
15 malice aforethought? Was there an intent to kill? Or was
16 this an injury -- or was this Mr. Gathers causing an injury
17 to Corporal Frazier that resulted in great bodily harm to
18 Corporal Frazier?

19 Now, your decision is going to be three-fold. You're
20 going to have three decisions for the purposes of the
21 attempted murder charge. You're going to have to decide did
22 they find [sic] Mr. Gathers guilty of attempted murder
23 beyond a reasonable doubt? Did they find [sic] Mr. Gathers
24 guilty of assault and battery of a high and aggravated
25 nature beyond a reasonable doubt? Or did they not even meet

1 their burden at all and find him not guilty? If you find
2 that they haven't met their burden at all that either one of
3 those charges were proven beyond a reasonable doubt by the
4 State.

5 Now, in order to get to your decision, you're going to
6 have to look at a lot here. You're going to have to look at
7 what happened. Now, what did we hear happened? We heard
8 the testimony from Corporal Frazier and you saw the video
9 about what happened.

10 Now, Mr. Gathers was driving down the road. He told
11 you where he was going. He was going to pick up his
12 girlfriend in Aiken and they were driving back to Charleston
13 and they came through Bamberg County. They stopped at a gas
14 station. And after the gas station, he said he didn't
15 remember what happened, but then the trooper picks it up
16 that he saw him speeding.

17 Now, yeah, Mr. Gathers talked about the intoxication
18 that he had from taking the drugs, but even then, he wasn't
19 to the point where he was DUI because Trooper Frazier -- I'm
20 sorry, I call him trooper, but Corporal Frazier saw him. He
21 didn't do a DUI stop. He didn't even indicate that there
22 was a concern about DUI, but he was speeding.

23 Now, on the video when Corporal Frazier is talking to
24 Deputy Duckson, he says -- he's talking about, Man, I didn't
25 think this guy was going to stop. I didn't know what was

1 going on. But if you remember his testimony, he said once
2 he put the blue lights on, Mr. Gathers pulled over. There
3 wasn't any question. There wasn't any hesitation.

4 Now, let me just tell you this, too. There's a point
5 that we talked about that conversation that Corporal Frazier
6 and Deputy Duckson had. Because in that conversation, they
7 were talking about, Man, I didn't know what this guy was
8 going to do. He didn't stop. But at that point where he
9 didn't stop, that was when Corporal Frazier had turned
10 around on him and had put his high beams on. You don't have
11 to stop just because the police put their high beams on you
12 and just because they turned around on you. You do have to
13 stop once they put the blue lights and siren on you. Once
14 he put the blue lights and siren on, he did pull over. But
15 they still had that conversation at the car.

16 And then what happened when he pulled over? He didn't
17 try to keep going once the blue light was on. He didn't do
18 as Corporal Frazier said he'd have to go, I think he said
19 1078 on him. Whatever that means. He didn't have to run
20 him down the road at that point. Once he turned on the blue
21 lights and siren, he pulled over.

22 When Corporal Frazier went to the car, he asked him, Do
23 you have anything in the car? He pulled out the liquor
24 bottle and showed him he had the liquor bottle that he said
25 it wasn't opened. He said, Okay. He's not interested with

1 that. What else did he do? He held up the blunt. And
2 Corporal Frazier told you it was a blunt. He sat right
3 there and testified about what a blunt was, you had the
4 cigarette paper, you hollow it out and put marijuana or
5 something in it. So he showed him the blunt. He wasn't
6 interested in that.

7 But then he was getting his license out. And yes, he
8 did give Corporal Frazier somebody else's license. He
9 testified he doesn't know how it got in his car. He doesn't
10 know when it got in his car. He just handed him something
11 and he handed him the license. So he had a blunt in the
12 car. He wasn't getting arrested for that. Officer wasn't
13 making a big deal about that. He handed him a driver's
14 license.

15 Now, what happened after he handed him the driver's
16 license and he's looking for the paperwork of the car. So
17 what happened after he handed him the driver's license.
18 Corporal goes back to his car and he's doing his -- typing
19 it on the computer to get the information and print a ticket
20 out.

21 Then the next thing that happens is that Corporal
22 Frazier went back to the car with the paper in hand. So,
23 you know, when you get stopped on the side of the road and
24 the officer is coming back, you can see them in the mirrors.
25 He could have seen Corporal Frazier walking up with the

1 paper in hand. And you can see all that on the body cam
2 video.

3 But what you don't see on the body cam video is what
4 Deputy Duckson is doing. I don't know if Deputy Duckson was
5 just standing there. Was he just standing there relaxed
6 with his hand on his hips watching what happened? Was he
7 standing with his hand on his gun watching what happened?
8 Did he have his gun out? We don't know. We don't know what
9 prompted the shooting to happen. We don't know what was
10 going on in the car.

11 Now, the solicitor, I'm quite certain -- I don't know
12 what he's going to say. I can't predict, but I suspect he's
13 going to say that Mr. Gathers was laying in wait, pulled his
14 gun out waiting for the officer. The only way we can know
15 what was in Mr. Gathers's mind -- we don't know what was in
16 Mr. Gather's mind. Even he doesn't know because he doesn't
17 remember. But the only way we can know what happened in the
18 car or what was going on in the car is from the other person
19 who was in the car.

20 The State did not bring her here to testify, but what
21 they did do was they entered into evidence the in-car video
22 of Deputy Preacher, which is State's Exhibit No. 9. And
23 when they entered in the in-car video of Deputy Preacher,
24 one of the things they introduced was the statement from
25 Kieanya Moment who was in the car.

1 Now, it wasn't played for you here in court, but the
2 tape is in evidence so you'll get to go back and you can
3 listen to it all you want. I'm going to start this at 26
4 minutes and five seconds, which is after the car has hit the
5 side of the house and after Ms. Moment has been taken out of
6 the vehicle. And let's hear what she had to say.

7 (WHEREUPON, State's Exhibit No. 9 was played in open
8 court for the jury.)

9 MS. ALVES: So you hear what she says. Obviously, she
10 is talking to her mother on the telephone. You heard her --
11 the deputy put her in the back of the police car. And she
12 says that she's in the police car and they just had the
13 accident, thought they were going to die. She didn't know
14 what was going to happen. She said, I didn't know what was
15 going to happen.

16 Well, that tells me that he didn't have the gun out
17 sitting there waiting on the officer. That somehow it was
18 pulled out and shot, yes, but this was not something where
19 it was planned. It doesn't show that he had specific intent
20 to kill someone. And as I said, we don't know what Deputy
21 Duckson was doing. We have a man who by his own admission
22 had been using drugs and had something to drink. While
23 maybe he wasn't to the point he was under the influence
24 because the officer didn't have any concerns about driving
25 under the influence, but at some point, he pulled out a gun

1 and shot him. But I'm arguing that doesn't show an intent
2 to kill.

3 And look what happened, you saw the video. I'm not
4 playing that one -- I'm personally not playing that one
5 again, but you saw the video. It wasn't something where
6 somebody was out there aiming. It was so fast. As soon as
7 the officer walked up to the car, point, turn around and
8 shoot, then they took off. That wasn't somebody who was
9 aiming, plotting, planning. It doesn't even look like he
10 shot in any particular area on Corporal Frazier. He just
11 shot the gun and took off.

12 Now, you've got to look at this, too. What reason?
13 Why? What reason would he want to have -- he had no malice,
14 no ill will. They didn't know each other. I mean, he
15 hadn't had any run-ins with the police. There was none
16 testified to with Corporal Frazier before. So why would he
17 do this? Because he gave somebody somebody else's license?
18 Is that really going to be worth forming an intent to kill a
19 police officer just because you gave him somebody else's
20 license.

21 And then there was testimony about the fact that he
22 didn't have a license. The man had been driving around a
23 long time without a license. I'm not condoning that. I
24 like people to be licensed on the road when I'm on the road,
25 but that doesn't mean that that's something that's going to

1 get you -- I mean, that's not taking you to jail forever. I
2 mean, that's not something that's going to cause you to want
3 to shoot your way out of an interaction with the police just
4 because you didn't have a license.

5 There's no reason for him to have formed ill will
6 against the trooper in that situation. We don't know what
7 was in his mind. We don't know what was going on with him.
8 We don't know how clear he was thinking. And like I said,
9 we don't know what was going on with Duckson that might have
10 prompted him to spontaneously pull and gun, shoot and then
11 take off.

12 Now, one of the other things was the attempt, the
13 attempt to kill. And like I said, I don't think -- the
14 video did not show that he specifically aimed at any part of
15 Corporal Frazier. He shot the gun and took off.

16 Now, I'm not saying in this situation that just because
17 I'm saying my client was high that he should go free. And
18 that's not what the law says. The Judge is going to tell
19 you that voluntary intoxication is not a defense to the
20 crime. I'm not sitting here trying to say anything
21 different from what the law actually says, but I am saying I
22 don't think the State can establish that Mr. Gathers was
23 able to form an intent to kill -- to specifically kill
24 Corporal Frazier. And that's what it has to be. It can't
25 be oh, yeah, he wanted to harm him. They have to say he

1 specifically wanted to kill him, that he specifically
2 attempted to kill him and that he had malice aforethought
3 while he did it.

4 Now, my argument to you is not this, I'm not saying oh,
5 nothing happened. That's not me sitting here saying that at
6 all. But I am saying consider the charges, consider whether
7 or not he's guilty of attempted murder or whether he's
8 guilty of assault and battery of a high and aggravated
9 nature.

10 The Judge is going to tell you what the elements are on
11 both of those. He's going to tell you what you have to look
12 for. He's going to explain to you the basics of a jury
13 decision. And all I'm asking for you when you go back into
14 the jury room is to consider everything that you heard in
15 the courtroom, everything that you heard from all of the
16 witnesses, including Mr. Gathers, consider what the Judge
17 tells you about the elements of each offense, attempted
18 murder and assault and battery of a high and aggravated
19 nature and render a verdict that is supported by the
20 evidence. Because I think that based on the evidence, this
21 charge should probably be assault and battery of a high and
22 aggravated nature.

23 Thank you.

24 CLOSING ARGUMENT BY THE STATE

25 MR. MILLER: Ms. Alves.

1 Ladies and gentlemen of the jury, I showed you a video
2 earlier today and I know that it was a little bit shocking,
3 but that's how this case began. This case started with a
4 traffic stop. And we put some videos in evidence that you
5 haven't seen, although some of them you haven't seen
6 anything of, but I'm going to show you one of them right
7 now. This is how the case ended. You'll see them coming
8 from the left-hand side. And you'll want to pay particular
9 attention to this area through here.

10 (WHEREUPON, a video was played in open court for the
11 jury.)

12 MR. MILLER: There were four police cars that were
13 right there. You know it from Preacher's testimony today.
14 The first car behind him when he wrecks is Sergeant Tartar
15 from the highway patrol. And then there's Preacher and then
16 there's Hall and then there's another officer that they
17 pass. You'll see him in Preacher's video. So that's how it
18 ended. And that's the failure to stop for a blue light.

19 You're going to see in Preacher's video for miles and
20 miles and miles three cars with their lights on, with their
21 sirens going at 3:45 in the morning chasing the vehicle he's
22 driving and he's not stopping. That's the failure to stop
23 for a blue light.

24 But really, the important thing is what's gone on at
25 the traffic stop. What is in his mind? Well, ladies and

1 gentlemen, malice was in his mind. Hatred was in his mind.
2 His own testimony, using drugs all day long. Whenever he
3 gets ready to go out to make a drive from Aiken to
4 Charleston, he's going to do some more drugs, drink some
5 alcohol, roll up a couple of blunts and then get behind the
6 wheel of a car that he doesn't have a license to drive. And
7 he knows that. But his story is he was so messed up that he
8 doesn't remember anything after he left the gas station.

9 Well, he wasn't so messed up that when Trooper Frazier
10 walked to the car he handed him somebody else's driver's
11 license. And that's not an accident. He handed him
12 somebody else's driver's license because he didn't have a
13 driver's license. That's why he gave this ID to Trooper
14 Frazier. He had an ID. It was in his wallet with all of
15 his other stuff. But the rules don't apply to him. He's
16 got a gun in the car. He's high. He's maybe drunk,
17 depending on how much he's had to drink.

18 But if he's that messed up, why didn't Lance Corporal
19 Frazier suspect that he was under the influence? Listen to
20 his video. Listen to what he says. The guy's acting
21 suspicious. He doesn't have any idea that he's under the
22 influence. Watch the video from Preacher's in-car camera of
23 the chase. This guy's exceeding speeds of 125 miles an
24 hour, but he's so intoxicated he doesn't have any idea
25 what's going on? People that are that messed up can't

1 drive. They certainly can't drive effectively. He led them
2 on a chase that went all the way into Branchville before he
3 rolled the car over.

4 What was going on in his mind? Look at the beginning
5 of Trooper Frazier's body-worn camera video. Trooper
6 Frazier makes that approach, that passenger-side approach
7 that he talked about. There's the Defendant in the car
8 talking, communicating with the girlfriend, looking through
9 paperwork. This isn't some guy who's so intoxicated he has
10 no idea what's going on. You know what you don't see in the
11 beginning of the video? You don't see his gun because he's
12 hidden it. He doesn't want Trooper Frazier to see his gun.

13 So then Trooper Frazier goes back to the car and here's
14 where he does something unfortunately necessary, but
15 brilliant. Every one of you who has driven a car before has
16 had somebody come up behind you with their high beams on
17 right in your rearview mirror and you can't see anything.
18 For officer safety, Lance Corporal Frazier put that
19 spotlight right into his rearview mirror so he couldn't see
20 what was going on behind him.

21 I submit to you, ladies and gentlemen, he had no idea
22 Sergeant Duckson had even pulled up. Because Lance Corporal
23 Frazier has already talked to them by the car and there's
24 only one of him. Then he goes back to his car and he's in
25 his car. And Gathers can't see what's going on behind him

1 because Trooper Frazier has effectively blinded him by
2 putting that spotlight in his mirror.

3 (WHEREUPON, video was played in open court for the
4 jury.)

5 MR. MILLER: But watch what happens, watch as Trooper
6 Frazier exits his vehicle and he goes up to the Defendant.
7 And I want you to pay special attention because you know
8 what's about to happen. Watch the Defendant's head. You're
9 going to see him in a split second, he's going to turn his
10 head, look at Lance Corporal Frazier before the gun comes
11 out and he shoots him in the face.

12 (WHEREUPON, video was continued to be played in open
13 court for the jury.)

14 MR. MILLER: How far away was Trooper Frazier? The
15 lights were on, spotlight was on. It wasn't like he
16 couldn't see him. He turns, looks at him and points the gun
17 up at his head and pull the trigger. That's attempted
18 murder. Why didn't he shoot him in the chest? Well, he's a
19 highway patrolman, he's going to have on a bulletproof vest.
20 Why take the chance of shooting him in the head and missing?
21 The chest is much larger. It's right there at your level.
22 That ain't going to get the job done.

23 God kept Lance Corporal Frazier from dying on the side
24 of the road that night, but it wasn't because of any intent
25 he didn't have. He tried to murder him. He tried to murder

1 him because he was going to get away. And if Sergeant
2 Duckson hadn't have been there, if Lance Corporal Frazier
3 hadn't have been able to immediately get on the radio, what
4 would have happened to him? If he had been able to drive
5 off, some other dude's driver's license is all that they had
6 to say who was in that vehicle. That's why he gave him that
7 driver's license. He knew he was going to be leaving the
8 side of the road that night. He decided that he was going
9 to do it by killing the trooper who had stopped him.

10 Where's the malice? Where's the hatred? Where's the
11 gun come from? Because while Trooper Frazier is in that
12 car, he's arming himself. He is sitting in that car with
13 his gun in his hand knowing it is loaded and knowing that
14 he's going to pull the trigger. If all he wanted to do was
15 try to get away and take his chances, he didn't have to stop
16 in the first place. He would have been charged with failure
17 to stop for a blue light if and when they caught him. When
18 he stopped on the side of the road, he knew he was going to
19 have to use that gun, but he was okay with that.

20 So if he really just wants to get away, why not wait
21 until Trooper Frazier is sitting in his car and just get out
22 of the car and unload the gun into the front of his car,
23 disable that Charger or that Suburban or Explorer, whatever
24 that police vehicle was. Shoot the car and disable it and
25 then get in your car and drive away. Nope, I wasn't trying

1 to kill him, I was just trying to get away. No. He waited.
2 He sat there and he waited for him to walk back up when he
3 had the advantage. Because now, he can see.

4 Lance Corporal Frazier didn't have any idea what was
5 about to happen. You can hear him whenever he's on his body
6 cam laying on the highway bleeding all over the place. That
7 bullet went in his face and came out his neck. That wasn't
8 because Derrick Gathers wasn't trying to murder him.

9 Ladies and gentlemen, we have put up a very small
10 number of witnesses relatively. This is a trial which could
11 have gone on for days and days and days, but we put in
12 evidence what we felt like you needed to see to have a very
13 good and complete understanding of what was going on in this
14 case. You've seen the beginning. You've seen how it ended.
15 There is, as Ms. Alves stated, the video from Preacher's
16 in-car where you can watch. Honestly, it's only about the
17 first 15, 16 minutes of it. But you can cover a lot of
18 ground in 16 minutes when you're going 125 miles an hour.
19 But that's what happened in the middle.

20 But the important thing is, in the first ten minutes of
21 Trooper Frazier's body camera, that's when the crime occurs.
22 That's whenever he decides he'd rather kill a South Carolina
23 State Trooper and go on the run than go to jail for driving
24 without a license or not having a ticket or having a gun
25 when you're not supposed to have a gun. Whatever else it is

1 he thought in his head he could possibly be going to jail
2 for that night, the better option to him was to try to
3 murder Lance Corporal Frazier.

4 And everything else that happened just stemmed from
5 that decision that he made, that he made. He had to have
6 gotten that gun somehow because you've seen his hands. It's
7 not in his hands. Where is that gun when Trooper Frazier
8 walks up to the car the first time? But he gets the gun and
9 he holds onto the gun and he's sitting there with the gun
10 whenever he gets the chance to take a shot at Lance Corporal
11 Frazier. And he does. He doesn't shoot him in the chest.
12 He doesn't shoot him in the leg. He doesn't just shoot out
13 the window. He turns, he looks at him and he comes out with
14 the gun pointed at his head and he shoots him in the head.

15 Ladies and gentlemen, you don't need anything other
16 than the fact that he shot him in the head from a distance
17 of, you can decide by looking at it, less than three feet.
18 If you do that to somebody, you're intending to kill them.

19 There's only one verdict that is appropriate in this
20 case. There's only one verdict as to all of these charges,
21 every single one of them. And the Judge will tell you that
22 you have to go through each indictment. Each one, we have
23 to prove each element of each indictment beyond a reasonable
24 doubt.

25 So what's beyond a reasonable doubt? The Judge will

1 give you a charge -- a copy of his charge in the jury room.
2 You can look at it. Reasonable doubt, proof beyond a
3 reasonable doubt is proof that leaves you firmly convinced
4 of the Defendant's guilt. He's told you that's him in the
5 car. You see him shoot Lance Corporal Frazier in the face.
6 You'll see that car -- now, on Preacher's camera, you can't
7 tell that it's him that is driving the whole time, but when
8 this wreck occurs, they go and get the passenger out of the
9 car and he's hanging upside down in the driver's seat, so
10 you know it was him.

11 Ladies and gentlemen, this is a serious case. I think
12 everybody understands the gravity of this case. But it
13 isn't hard. When the Judge gives you the instructions,
14 you're going to have all of this evidence. You'll be able
15 to watch these videos over and over again if you want to,
16 but I can understand why some of you might not want to. You
17 know what happened. He told you what happened. Only he
18 just didn't remember the middle part. The video was enough
19 to convince him he was guilty. That video is enough to
20 convince you that he is guilty.

21 Ladies and gentlemen, we ask that you do the right
22 thing in this case and that you find the Defendant guilty of
23 attempted murder, possession of a firearm during the
24 commission of a violent crime and failure to stop for a blue
25 light.

1 Thank you.

2 CHARGE ON THE LAW

3 THE COURT: All right. Members of the jury, it is now
4 my duty as the trial judge to instruct you on the law
5 applicable to this case. In that regard, it is your duty as
6 jurors to accept and apply the law as I now state it to you.
7 Furthermore, it is your exclusive duty to decide all the
8 issues of fact in this case and determine the effect, value,
9 weight and the truth of the evidence. All the parties have
10 a right to expect you will carefully consider and evaluate
11 the evidence and apply the law of this case to it so that in
12 the end, all parties receive a fair and impartial trial.

13 Now, during this trial, you and I have separate duties
14 to perform. As the trial judge, it's my responsibility to
15 preside over this trial and rule upon the admissibility of
16 the evidence offered during the trial. You as members of
17 the jury are to consider only the evidence before you. If
18 you have any preconceived ideas as to what the law is or
19 what you think the law ought to be and it does not agree
20 with what I now tell you the law is, you are obligated under
21 your oath to abandon those preconceptions because you are
22 sworn to accept the law as I now state it to you.

23 In this trial, you are the sole and exclusive judge of
24 the facts. Do not infer that I have an opinion about the
25 facts from anything I have said or done during the course of

1 this trial. The law simply does not permit me to have an
2 opinion about the facts. As jurors, it is your duty and
3 your duty alone to determine the effect, value, weight and
4 truth of the evidence presented during this trial.

5 Now, the evidence from which you will decide the facts
6 of the case are one, the sworn testimony of the witnesses on
7 direct and cross-examination; two, exhibits which will get
8 admitted into evidence; and three, any facts in which all
9 attorneys have agreed and stipulated.

10 Evidence may be direct or circumstantial. Direct
11 evidence is the testimony by a witness about what the
12 witness personally saw, heard or did. Circumstantial
13 evidence on the other hand is indirect evidence. Stated
14 differently, it's proof of one or more facts in which one
15 can find another fact.

16 You may consider both direct and circumstantial
17 evidence equally and crimes may be proven by circumstantial
18 evidence. The law makes no distinction between the weight
19 or value to be given to either direct or circumstantial
20 evidence, however, to the extent the State relies on
21 circumstantial evidence, all the circumstances must be
22 consistent with each other and when taken together, point
23 conclusively to the guilt of the accused beyond a reasonable
24 doubt. If the circumstances merely portray the Defendant's
25 behavior as suspicious, the proof has failed. The State has

1 the burden of proving the Defendant guilty beyond a
2 reasonable doubt. This burden rest with the State
3 regardless of whether the State relies on direct evidence,
4 circumstantial evidence or some combination thereof.

5 Now, I remind you the following things are not evidence
6 and you must not consider them as evidence when deciding the
7 facts of the case. One, statements and arguments of the
8 attorneys. Two, questions and objections of the attorneys.
9 And three, any testimony I instruct you to disregard.

10 While arguments of counsel is a beneficial part of
11 every trial, you should remember the statements made by
12 counsel are not evidence. In presenting arguments, counsel
13 often refer to evidence. However, you should base your
14 verdict on the evidence as you remember it. Therefore, if
15 there are any conflicts between the recollection of counsel
16 about the evidence and your own recollection, you should
17 rely upon your own understanding of the evidence.

18 I remind you the fact the Defendant was arrested,
19 charged and indicted in this case is not evidence and cannot
20 be considered by you as evidence in this case. Nor does it
21 create any presumption or inference of guilt.

22 Furthermore, it is your job as jurors to determine the
23 credibility or believability of the witnesses who testified
24 in this case. You must evaluate the evidence and determine
25 which evidence convinces you of its truth. In determining

1 the believability of witnesses who have testified in this
2 case, you may believe one witness over many or many over
3 one. You may believe part of the testimony of a witness and
4 reject the remaining part. You may believe the testimony of
5 a witness in its entirety or reject it in full. You may
6 consider whether the witness has an interest in the result
7 of the trial, whether the witness is prejudice toward either
8 party, the opportunity for the witness to have seen the
9 matters and things about which the witness may testify and
10 the way the witness acts on the witness stand.

11 The rules of evidence ordinarily do not permit
12 witnesses to testify to opinions and conclusions. An
13 exception to this rule exist for witnesses we call expert
14 witnesses. A witness who by education and experience has
15 become an expert in some art, science, profession or calling
16 may state an opinion as to relevant and material matter in
17 which the witness claims to be an expert and may, also,
18 state the reasons for the opinion.

19 You should consider any expert opinion received in
20 evidence in this case like any other evidence, give it the
21 weight you think it deserves. If you decide that the
22 opinion of an expert witness is not based on sufficient
23 education and experience or if you conclude that the reasons
24 given in support of the opinion are not sound or that the
25 opinion is outweighed by other evidence, you may disregard

1 the opinion entirely. An expert witness's testimony is to
2 be given no greater weight than that of other witnesses
3 simply because the witness is an expert. Furthermore,
4 you're not required to accept an expert's opinion even
5 though it is not contradicted.

6 Now, the Defendant has pled not guilty to these
7 indictments. And that plea puts the burden on the State to
8 prove the Defendant guilty. A person charged with
9 committing a criminal offense in South Carolina is never
10 required to prove his or her innocence. I charge you that
11 it is an important rule of the law that a defendant in a
12 criminal trial no matter what the seriousness of the charge
13 may be will always be presumed to be innocent of the crime
14 for which the indictment was issued unless guilt has been
15 proven by evidence satisfying you of that guilt beyond a
16 reasonable doubt.

17 A presumption of innocence does not end when you begin
18 your deliberations. It accompanies the Defendant throughout
19 the trial unless you reach a verdict of guilt based on
20 evidence satisfying you of that guilt beyond a reasonable
21 doubt. The presumption of innocence is like a robe of
22 righteousness placed about the shoulders of the Defendant
23 which remains with the Defendant unless it has been stripped
24 from the Defendant by evidence satisfying you of the
25 Defendant's guilt beyond a reasonable doubt.

1 The presumption of innocence is not mere legal theory.
2 It is not just a legal phrase. It's a substantial right to
3 which every defendant is entitled unless you, the jury, are
4 satisfied from the evidence of the Defendant's guilt beyond
5 a reasonable doubt.

6 Now, the State has the burden of proving the Defendant
7 guilty beyond a reasonable doubt. Some of you may have
8 served as jurors in civil cases where you were told it is
9 only necessary to prove that a fact is more likely true than
10 not true, such as by the greater weight or preponderance of
11 the evidence. In criminal cases, the State's proof must be
12 more powerful than that. It must be beyond a reasonable
13 doubt as to each element of each offense charged.

14 What is a reasonable doubt in the law? A reasonable
15 doubt is the kind of doubt that would cause a reasonable
16 person to hesitate to act. Proof beyond a reasonable doubt
17 is proof that leaves you firmly convinced of the Defendant's
18 guilt. There are very few things in this world that we know
19 with absolute certainty and in criminal cases, the law does
20 not require proof that overcomes every possible doubt.

21 If based on your consideration of the evidence you are
22 firmly convinced the Defendant is guilty of the crime
23 charged, then you must find the Defendant guilty. If on the
24 other hand, you think there is a real possibility the
25 Defendant is not guilty, you must give the Defendant the

1 benefit of the doubt and find him not guilty. Mere
2 suspicion, however strong, is not enough to sustain a
3 conviction. Suspicion implies a belief or opinion as to
4 guilt based upon the facts and circumstances which do not
5 amount to proof.

6 In order to establish criminal liability, criminal
7 intent is required. The dictionary defines intent as the
8 state of a person's mind that directs his actions towards a
9 specific act. Criminal intent must be proven by the State
10 beyond a reasonable doubt. Criminal intent is always a
11 matter that must be determined by the jury from the
12 circumstances surrounding the situation.

13 There's no way to prove intent to a mathematical
14 certainty. There is no medical science that can dissect a
15 person's brain and determine what the person had in mind.
16 So the law says that criminal intent may be inferred from
17 the circumstances shown to have existed. This is how you
18 make a determination whether or not the element requiring
19 intent was present. Criminal intent is a mental state, a
20 conscious wrongdoing. It is up to you to determine what the
21 Defendant intended to do based on the circumstances shown to
22 have existed.

23 Now, I remind you that a person who voluntarily becomes
24 intoxicated is just as responsible for the acts committed
25 while intoxicated as when a person is not intoxicated,

1 regardless of whether the crime was one involving general or
2 specific intent.

3 The indictments in this case allege three different
4 offenses against the Defendant. The Defendant, Derrick
5 Gathers, is charged with attempted murder, possession of a
6 firearm during the commission of a violent crime and failure
7 to stop for a blue light.

8 Each indictment charges a separate and distinct
9 offense. You must decide each indictment separately on the
10 evidence and the law applicable to it uninfluenced by your
11 decision as to any other indictment. A defendant may be
12 convicted or acquitted on any or all of the offenses
13 charged. You will be asked to write a separate verdict of
14 guilty or not guilty for each indictment.

15 The fact that the Defendant was arrested, charged and
16 indicted in this case is not evidence and cannot be
17 considered by you as evidence of guilt in this case nor does
18 it create any presumption or inference of guilt. The
19 documents are simply the formal written instrument which
20 contain the charges made against the Defendant.

21 Now, I'm going to explain to you the law as it applies
22 to the charges against the Defendant.

23 The Defendant is charged with attempted murder. In
24 order to prove this crime, the State must prove the
25 Defendant attempted to kill another human being with malice

1 aforethought. Malice is hatred, ill will or hostility
2 towards another person. It is the intentional doing of a
3 wrongful act without just cause or excuse with the intent to
4 injure another.

5 Malice aforethought can be either expressed or implied.
6 As it relates to attempted murder, malice aforethought is
7 shown through words that express hatred or ill will for
8 another or through the performance of an act or acts which
9 tend, but fail to kill another human being. An attempt is
10 an effort to accomplish a crime which does not succeed. An
11 attempt includes a specific intent to do a particular
12 criminal act along with an act falling short of the act
13 intended.

14 The State must show more than mere preparation and
15 intent. There must be some overt act committed in the
16 effort to commit the crime. Therefore, the content of
17 specific intent means that the Defendant consciously
18 intended the completion of the killing of another, but
19 failed to do so.

20 Therefore, if you, the jury, find the State has proven
21 beyond a reasonable doubt it was the Defendant's specific
22 intent to kill another human being with malice aforethought,
23 then you must find him guilty. However, if you find the
24 State has not proven beyond a reasonable doubt that it was
25 the Defendant's specific intent to kill another human being

1 with malice aforethought, you must find him not guilty.

2 If you find the State has not proven the charge of
3 attempted murder beyond a reasonable doubt, you may consider
4 the lesser-included charge of assault and battery of a high
5 and aggravated nature. In order to prove this crime, the
6 State must first prove beyond a reasonable doubt the
7 Defendant unlawfully injured another person. Next, the
8 State must prove beyond a reasonable doubt that either great
9 bodily injury resulted or that the act was accomplished by
10 means likely to produce death or great bodily injury.

11 Great bodily injury is defined as a bodily injury which
12 causes a substantial risk of death or which causes a serious
13 permanent disfigurement or protracted loss or impairment of
14 the function of a bodily member or organ.

15 The Defendant is charged with possession of a weapon
16 during the commission of or attempt to commit a violent
17 crime. The State must prove beyond a reasonable doubt the
18 Defendant was in possession of a firearm or visibly
19 displayed what appeared to be a firearm during the
20 commission of a violent crime. Firearm means any machine
21 gun or automatic rifle, revolver, pistol or any weapon which
22 will, is designed to or may be readily converted to expel a
23 projectile.

24 In order to find the Defendant guilty of possession of
25 a weapon during the commission of a violent crime, you must

1 first find the Defendant guilty of committing a violent
2 crime or attempting to commit a violent crime. Attempted
3 murder is a violent crime. Assault and battery of a high
4 and aggravated nature is a violent crime. The State must
5 prove beyond a reasonable doubt the weapon further advanced
6 to help in the commission of the crime.

7 Failure to stop for a blue light. It is unlawful for a
8 motor vehicle driver while driving on the road or highway of
9 the state fail to stop when signaled by a law enforcement
10 vehicle by means of siren or flashing light. An attempt to
11 increase the speed of a vehicle or in other manner avoid
12 pursuing law enforcement vehicle when signaled by a siren or
13 flashing light is prima facie evidence of a violation of
14 this section. Failure to see the flashing light or hear the
15 siren does not excuse. A failure to stop when the distance
16 between the vehicles and other road conditions are such that
17 it would be reasonable for a driver to hear or see the
18 signals from the law enforcement vehicle.

19 Now, a verdict in this case cannot be based upon
20 sympathy, passion, prejudice or emotion or some other
21 consideration not found in the evidence. I charge you that
22 as jurors, you must decide the issues involved in this
23 proceeding based solely upon the evidence that you hear
24 during the course of the trial. Your verdict must be
25 without bias and without prejudice to any party. You cannot

1 allow yourselves to be governed by sympathy, by prejudice,
2 by passion, by public opinion or some other consideration
3 not found in the evidence.

4 Now, let me say something about your deliberations.
5 Deliberation is defined as careful consideration weighing up
6 with a view to decision. The genius of our jury system is
7 it allows 12 good men and women from 12 different
8 backgrounds, life experiences and perspectives to consider
9 the evidence, talk about it, ultimately, reach a verdict.
10 We call it deliberations for a reason. You are to consider
11 the evidence in this case carefully and deliberately and
12 discuss it in a calm, thorough and courteous manner. Listen
13 to the views of all your fellow jurors and consider other
14 people's points of view and talk through and discuss the
15 evidence.

16 And remember, if you're doing something deliberately,
17 you're not in a big hurry and you should not be in a hurry
18 here. This case is very important to all the parties and
19 this trial is their only day in court. When you retire to
20 the jury room, you should discuss the case with your fellow
21 jurors and reach an agreement, if you can do so. Your
22 verdict must be unanimous. Each of you must decide the case
23 for yourself, but you should do so only after you have
24 impartially considered all the evidence, discussed it fully
25 with the other jurors and listened to the views of your

1 fellow jurors. Do not be afraid to change your opinion if
2 the discussion persuades you that you should, but do not
3 come to a decision simply because other jurors think it is
4 right.

5 It is important that you attempt to reach a unanimous
6 verdict, but, of course, only if each of you can do so after
7 having made your own decision. Do not change an honest
8 belief about the way you factored the evidence simply to
9 reach a verdict. In other words, do not change your view
10 solely for the sake of reaching a unanimous verdict.

11 I will give you a copy of these instructions. During
12 your deliberations, you may refer to the instructions to
13 guide your decisionmaking. You must consider the
14 instructions as a whole and not follow some and ignore
15 others. Please return the instructions to the Court at the
16 time your verdict is rendered.

17 There are two possible verdicts in this case, guilty or
18 not guilty. There is no significance whatsoever in the
19 order which I state these possible verdicts. Simply, one
20 must be stated first.

21 Ladies and gentlemen, your verdict must be a unanimous
22 one.

23 Mr. Foreman, when the jury agrees on the verdict, you
24 will write the verdict on the verdict form, knock on the
25 jury room door and inform the bailiff that you have reached

1 a verdict. At that time, we will receive you back into the
2 courtroom.

3 Now, I'm going to ask you return to your jury room. Do
4 not begin your deliberations until you are told by the clerk
5 or bailiff to do so. There are some matters which must be
6 discussed with the attorneys before you can begin your
7 deliberations.

8 Please return to the jury room. Do not discuss the
9 case.

10 Thank you.

11 (WHEREUPON, Court's Exhibit No. 2 was marked for
12 identification.)

13 (WHEREUPON, the jury exits the courtroom at 2:43 p.m.)

14 THE COURT: Any issues with the charge?

15 MR. MILLER: Nothing from the State, Your Honor.

16 THE COURT: Other than previously noted objections, any
17 additional issues?

18 MS. ALVES: Judge, the only thing I would have is my
19 previously requested sentence that you charge the jury that
20 they can determine whether the Defendant's intoxication
21 affected his ability to form a specific intent of guilt.

22 THE COURT: So noted.

23 Anything before I bring the alternates in?

24 MR. MILLER: No, sir. We have a clean computer that
25 will not connect to the internet. It has a disk drive, but

1 the videos -- the videos are, actually, on the desktop as
2 well.

3 THE COURT: Do y'all have the evidence ready to go,
4 basically? I'd like the alternates brought back, Jurors 127
5 and 198, Moody and Williams. So can we get our alternates
6 back in here?

7 (WHEREUPON, the alternate jurors entered the courtroom
8 at 2:48 p.m.)

9 THE COURT: All right. Well, we got through the trial
10 and we didn't lose anybody. You'd be surprised, sometimes
11 people get sick or oversleep. Anyway, we appreciate your
12 service. We're about to give the case to the jury, so we
13 won't need you for deliberations.

14 You're free to stick around or you're free to go. We
15 thank you for your service.

16 (WHEREUPON, the jury was excused at 2:49 p.m.)

17 THE COURT: Madam Clerk, we can take the evidence back
18 to the jury.

19 We'll be at ease until we hear something.

20 (WHEREUPON, the jury began deliberations at 2:50 p.m.)

21 (WHEREUPON, Court was in recess awaiting a verdict.)

22 THE COURT: We have a verdict.

23 Bring in the jury.

24 (WHEREUPON, the jury enters the courtroom at 4:06 p.m.)

25 THE COURT: Mr. Foreman, I understand y'all have a

1 verdict.

2 MR. FOREMAN: We do.

3 THE COURT: Is your verdict unanimous?

4 MR. FOREMAN: It is.

5 THE COURT: Very well.

6 Madam Clerk, if you will publish the verdict.

7 VERDICT

8 THE CLERK: Your Honor, we have case number
9 2023-GS-05-00057, the State vs. Derrick Gathers. We, the
10 jury, as to indictment 2023-GS-05-00059, for the charge of
11 possession of a firearm during the commission of a firearm
12 unanimously find beyond a reasonable doubt Defendant,
13 Derrick Gathers, guilty. Indictment number
14 2023-GS-05-00060, we, the jury, as to the indictment for the
15 charge of failure to stop for a blue light, unanimously find
16 beyond a reasonable doubt Defendant, Derrick Gathers,
17 guilty. Signed by Juror Foreperson, Adam Ness, 3/5/2025.

18 THE COURT: Any matters before the jury is discharged?

19 MS. ALVES: I would just ask to poll the jury.

20 THE COURT: Madam Clerk, please, poll the jury.

21 THE CLERK: As I call your name and number, please,
22 answer the following questions.

23 Adam Ness, No. 132, is this your verdict?

24 JUROR NUMBER 132: Yes, ma'am.

25 THE CLERK: Do you still agree?

1 JUROR NUMBER 132: Yes, ma'am.

2 THE CLERK: No. 193, Vicki Whitaker.

3 Is this your verdict?

4 JUROR NUMBER 193: Yes.

5 THE CLERK: Do you still agree?

6 JUROR NUMBER 193: Yes.

7 THE CLERK: No. 33, Johnny Chavis.

8 Is this your verdict?

9 JUROR NUMBER 33: Yes, ma'am.

10 THE CLERK: Do you still agree?

11 JUROR NUMBER 33: Yes, ma'am.

12 THE CLERK: No. 26, Shirley P. Bryant-Sease.

13 Is this your verdict?

14 JUROR NUMBER 26: Yes.

15 THE CLERK: Do you still agree?

16 JUROR NUMBER 26: Yes.

17 THE CLERK: No. 19, Hayden G. Brown.

18 Is this your verdict?

19 JUROR NUMBER 19: Yes, ma'am.

20 THE CLERK: Do you still agree?

21 JUROR NUMBER 19: Yes, ma'am.

22 THE CLERK: No. 55, Tanga Dunty.

23 Is this your verdict?

24 JUROR NUMBER 55: Yes, ma'am.

25 THE CLERK: Do you still agree?

1 JUROR NUMBER 55: Yes, ma'am.

2 THE CLERK: No. 140, Laporshua Perry.

3 Is this your verdict?

4 JUROR NUMBER 140: Yes.

5 THE CLERK: Do you still agree?

6 JUROR NUMBER 140: Yes.

7 THE CLERK: No. 32, Matthew Chassereau.

8 Is this your verdict?

9 JUROR NUMBER 32: Yes, ma'am.

10 THE CLERK: Do you still agree?

11 JUROR NUMBER 32: Yes, ma'am.

12 THE CLERK: No. 151, Patricia E. Rice.

13 Is this your verdict?

14 JUROR NUMBER 151: Yes, ma'am.

15 THE CLERK: Do you still agree?

16 JUROR NUMBER 151: Yes, ma'am.

17 THE CLERK: No. 138, Jerry L. Odom.

18 Is this your verdict?

19 JUROR NUMBER 138: Yes.

20 THE CLERK: Do you still agree?

21 JUROR NUMBER 138: Yes.

22 THE CLERK: Juror No. 124, Brant Z. Mitchell.

23 Is this your verdict?

24 JUROR NUMBER 124: Yes, ma'am.

25 THE CLERK: Do you still agree?

1 JUROR NUMBER 124: Yes, ma'am.

2 THE CLERK: 191, Amy N. Waltz.

3 Is this your verdict?

4 JUROR NUMBER 191: Yes, ma'am.

5 THE CLERK: Do you still agree?

6 JUROR NUMBER 191: Yes, ma'am.

7 THE CLERK: Did I miss anyone?

8 (There was no response.)

9 THE COURT: Anything else from the jury before they are
10 discharged?

11 MS. ALVES: No, Your Honor.

12 THE COURT: Anything from the State?

13 MR. MILLER: No, Your Honor.

14 THE COURT: Ladies and gentlemen, when you come to
15 serve on jury duty, you never know what you're going to get.
16 We want to thank you for your service over the last few
17 days. Thank you for your attention, your attentiveness to
18 hear the evidence in this case. Jury duty is a public
19 service and we thank you for doing your public service.

20 So you are free to go at this time. If you still have
21 any of your belongings in the jury room, I think you're free
22 to go get those. You're welcome to stay as well, but thank
23 you for your service and you're free to go.

24 (WHEREUPON, the jury was released.)

25 THE COURT: Counsel, can I speak to y'all real quick?

1 (WHEREUPON, a bench conference was held.)

2 THE COURT: Before we get to the next stage, any
3 additional motions?

4 MR. MILLER: None from the State?

5 MS. ALVES: Your Honor, I would make my motion for a
6 new trial based on all of the previous motions and
7 objections that I've made during the trial. I would, also,
8 make my motion that I don't believe taking the evidence in
9 the light most favorable to the State that the State
10 established all of it. Regardless of the jury verdict, I
11 don't believe the State established the elements of
12 attempted murder, particularly in light of the charge on
13 assault and battery of a high and aggravated nature. I
14 don't think the State effectively established there was
15 malice aforethought or an intent to kill Trooper Frazier on
16 the part of Mr. Gathers and I think the more appropriate
17 charge should have been assault and battery of high and
18 aggravated nature.

19 THE COURT: As to your motion for a new trial, I find
20 there was sufficient evidence for the jury to have made the
21 decision they made. They could have laid the evidence
22 however they decided to and that's the verdict they came up
23 with. So your motion for a new trial is respectfully
24 denied. All your other pretrial, trial objections and
25 motions are hereby renewed.

1 MS. ALVES: Yes, sir. Thank you.

2 THE COURT: Okay. Mr. Solicitor.

3 MR. MILLER: Thank you, Your Honor. The State is ready
4 to proceed forward with sentencing at this time if it
5 pleases the Court. Your Honor is aware and has seen
6 throughout the week the number of law enforcement officers
7 involved in the case and those that have shown up to
8 support, specifically, Lance Corporal Frazier, but, also,
9 Your Honor, I would point out this kind of incident affects
10 all of the police officers that are involved in it.
11 Specifically, Sergeant Duckson, who was there with Lance
12 Corporal Frazier whenever he got shot. I know it's been
13 difficult for him.

14 Frankly, I think that the law enforcement response was
15 obviously overwhelming, but at the same time, I would note
16 that any harm that came to Mr. Gathers as a result of his
17 apprehension was his own doing because of the car wreck. He
18 was not -- the officers showed a lot of restraint in dealing
19 with him throughout the course of his apprehension and
20 taking him into custody. But that doesn't mean that they
21 weren't affected by what he had done. I think this is safe
22 to call every officer's worst nightmare because there's just
23 absolutely no reason at all for this kind of response from
24 the Defendant.

25 As far as his prior record, Your Honor, he has an

1 extensive record out of New York State. He is a convicted
2 sex offender. On January 7th of 2005, that's the first
3 conviction from New York that we have. He pled guilty to
4 the offense of criminal sale of a controlled substance in
5 the fifth degree.

6 Later in 2005, on December 20th of 2005, the Defendant
7 went to trial and was convicted by verdict of the offense of
8 rape in the third degree, criminal sexual act in the third
9 degree in violation of Section 130.40 of the penal law of
10 New York. He was sentenced to a period of incarceration of
11 two to four years for that offense back in 2005.

12 Then in 2006, February of 2006, he pled guilty to
13 tampering with physical evidence and got a concurrent two to
14 four year sentence on that case.

15 Then in 2011, he was convicted by plea of the offense
16 of criminal possession of a weapon in the second degree in
17 violation of New York penal law 265.03-3 and received a
18 sentence of eight years with five years of post-release
19 supervision.

20 So, basically, he was in trouble a lot while he was in
21 New York. He ended up going to prison for a period of time.
22 I don't know how long that was that he, actually, served,
23 but he then came down to Georgia, as he has indicated, and
24 based upon information obtained from the Southern Tier Crime
25 Analysis Center, he was arrested in the State of Georgia

1 April 29th of 2020 for possession of a schedule I controlled
2 substance, possession or transportation of a firearm and
3 unlawful possession of a firearm or knife.

4 Then in May of 2022, he was arrested in Richmond
5 County, Georgia by the County Sheriff's Office for fleeing
6 or attempting to elude a police officer and driving without
7 a valid license.

8 The reason that is significant, Your Honor, is almost a
9 month prior to this incident, he got a bench warrant issued
10 for his arrest in the State of Georgia. Now, whether he
11 knew that that bench warrant had been issued or not, someone
12 who doesn't go to court after they get charged with a
13 criminal offense, you could think that it would be logical
14 that they would believe that there was some kind of
15 repercussion for that.

16 Based on his own testimony, he's doing drugs. We know
17 he has a firearm. He's driving wherever he wants to go,
18 doing whatever he wants to do whenever Lance Corporal
19 Frazier had the misfortune of running into him.

20 Your Honor, this warrant notice that is in his rap
21 sheet says that the date of the warrant was March 17th of
22 2023. This incident happened April the 16th of 2023.

23 So I've spoken to Lance Corporal Frazier about this. I
24 know that he would like to address the Court. I told him
25 that the Court would make time for that to happen. But,

1 Your Honor, it is still my belief and I believe that the
2 jury would agree that when Lance Corporal Frazier cut on
3 those blue lights that night, Derrick Gathers decided he was
4 not going to jail. And he didn't have any compunction,
5 obviously, if you look at the video with shooting Lance
6 Corporal Frazier in the face and attempting to leave him
7 dead on the side of Highway 78.

8 I continue to believe that he had no idea that Sergeant
9 Duckson was even there because if he did think he was there,
10 he would have pulled the trigger more times than he did.
11 But he knew he had shot Lance Corporal Frazier and he drove
12 off. And you saw the video of that interaction.

13 I've heard judges say and I don't disagree, you know,
14 prison is for the most violent people in our society. They
15 shouldn't be the people -- people shouldn't get sentenced to
16 prison because you're mad at them. They should get
17 sentenced to prison because you should be afraid of them.
18 And Derrick Gathers is somebody that this Court and the
19 people in Bamberg, South Carolina should be afraid of and he
20 should go to prison for every single day that this Court has
21 the authority to sentence him to.

22 We are asking for maximum consecutive sentences on each
23 of the three offenses because of the facts and circumstances
24 of this case and because of just the extreme indifference
25 and reckless disregard for the safety of everybody. Even

1 after he shoots Officer Frazier and leaves him on the side
2 of the road, this car chase went on for miles and miles.
3 And even though it was at 3:30 or four o'clock in the
4 morning, there are people that are out and he just was, for
5 lack of a better word, determined he was going to run until
6 he was stopped. Fortunately, no lives were lost whenever
7 he, ultimately, did stop.

8 So, Your Honor, based upon that, I would ask you to
9 hear from Lance Corporal Frazier. After that, the State
10 would conclude its presentation.

11 THE COURT: Very well.

12 LANCE CORPORAL FRAZIER: Your Honor, I'd just like to
13 say thank you to the prosecuting team.

14 I'd like to look over at Derrick Gathers and say, Man,
15 I forgive you for what you've done to me. I have a family.
16 I have children. My daughters are almost your age. Man, I
17 was only out doing my job that morning, that's all I was
18 doing, was protecting you. That's all I wanted to do. But
19 in turn, you know, I end up shot in the face. The most
20 miserable feeling I've ever had in my life. I'll be numb
21 for the rest of my life from here and around and down my
22 neck.

23 Your Honor, I honestly in my heart think that he is a
24 menace to society. And I believe he'll do it again if he
25 has the opportunity to be on the streets of South Carolina.

1 I just want to say thank you to the highway patrol for
2 supporting me and being here for me today.

3 Again, I honestly in my heart forgive you for what
4 you've done to me. I hold no ill feelings for what you've
5 done to me. I know as a trooper when we leave home in the
6 afternoon, there ain't no guarantee we going to make it
7 back, but because of the grace of God. And I hope you find
8 that in your heart, Jesus in your heart, man, that you'll
9 have some remorse for what you done to me.

10 Thank you for the opportunity to stand here and speak
11 today, Your Honor.

12 THE COURT: Thank you.

13 MR. MILLER: That concludes the State's presentation.

14 THE COURT: Thank you.

15 Ms. Alves.

16 MS. ALVES: Your Honor, may it please the Court.

17 Mr. Gathers is 39 years old. You heard some of his
18 history. He is from New York. He was born and raised
19 there. And we don't deny that's where all of his criminal
20 convictions stem from. He does have two children, his
21 22-year-old daughter, which he testified about his daughter
22 and his grandchild. And he has a 20-month-old child who he
23 has not had an opportunity to form a relationship because
24 that child was born right after he was incarcerated.

25 You heard his history. He was working when he came

1 down here to South Carolina. He, actually, came down for a
2 fresh start. He was hoping to get his life on track, come
3 down and put everything that he had been involved with in
4 the past behind him. He came down here because his mother
5 and his father were both living in Augusta. And that's
6 where he started. His mother, ultimately, moved to
7 Charlotte. He remained in Augusta, where he worked at
8 multiple jobs, including Applebee's, and he met the young
9 lady that he was dating at that time.

10 It was then he decided to try to relocate with his
11 sister. He stayed with his uncle periodically in
12 Charleston. As he testified, he and his sister were living
13 in a hotel in Moncks Corner. He got the job at Kontane and
14 he was hoping that that would help him get a fresh start.
15 It was a good job. It was a job that paid better than the
16 other jobs. And that's why he was going there and coming
17 back and forth until he could get himself a solid place to
18 live and established in the Charleston area.

19 Judge, it's unfortunate that this happened. At that
20 time, he didn't have any plans to go out and do this.
21 Perhaps, nobody ever does, but that wasn't his plan. He
22 told you his plan. And we did, actually, talk to the young
23 lady. And even though she maintained that she didn't
24 remember anything about what happened, she did remember what
25 happened earlier and the plans they had. They were just

1 going to Charleston, hang out at the beach, have a good time
2 and then he was going to take her back home, but then this
3 happened.

4 Judge, Mr. Gathers, in his early life, he's had -- he's
5 had a very difficult life. He was originally living with
6 his mother and stepfather and between the ages of three and
7 six, he was sexually abused. He has had nightmares about
8 this. He's suffered from this. He was, also, physically
9 abused. His mother did confirm a lot of what I'm telling
10 you. We did consider the possibility of a mental health
11 defense. That's where a lot of this information came out.

12 He, also, was witnessing physical abuse between his
13 mother and stepfather. There was attempts -- he was heavily
14 physically abused by his stepfather. To that reason, he
15 does get somewhat aggressive because of that.

16 He acknowledges being in and out of prison. He's had
17 some problems in prison where he was assaulted in prison.
18 When he came down here to Georgia, he, actually, went
19 through the Department of Mental Health in Georgia. He
20 started out with counseling. He went to Serenity and at
21 that point, they diagnosed him with PTSD for a lot of the
22 issues that he dealt with in the past. They did give him
23 medication, but he, unfortunately, he started
24 self-medicating using drugs. That's, unfortunately,
25 something he was involved with. He said he mostly used

1 molly and marijuana.

2 Judge, he did suffer -- he had difficulty adjusting to
3 his life out of prison. He would be overly hypervigilant.
4 He was suffering from the PTSD not only from things that
5 happened to him in prison, but, also, from his early life.

6 Judge, he got in trouble first at the age of 14 for a
7 fight in middle school and, unfortunately, his record has
8 continued from there. So while not everybody who has a
9 rough start in life ends up in this situation, Mr. Gathers
10 really didn't have much of a chance from his early life to
11 be on the straight and narrow.

12 He does have some family support, although his family
13 wasn't able to come here for the trial. His mother has
14 called us pretty regularly and she has been supportive. But
15 she helps take care of her grandchildren in Charlotte, so
16 she wasn't able to come here. They would have to work
17 around getting the -- with the child and the child's school.

18 Judge, Mr. Gathers, this is not something he took
19 lightly what happened. He's been pretty emotional about
20 what happened. I mean, he tells me he doesn't remember.
21 And I tend to believe that based on the video of the
22 accident and how that car flipped over and the fact of the
23 testimony about him hanging upside down. He was in the
24 hospital.

25 At one point, according to the medical records, he

1 started out -- after he came to -- he was down there for a
2 while. At first, they thought he was dead. And then they
3 realized they got a pulse and that's -- and EMS came. He
4 was unconscious for a while and when EMS came is when he
5 revived and was trying to get up.

6 Judge, his -- I think they call it the Glasgow score
7 was pretty -- I think it was at ten, so that's pretty good,
8 when he was in the ambulance. When he got to the hospital,
9 it dropped down to a four where they had to intubate him.
10 He said he wasn't in the hospital overly long, but between
11 all of that happening as well as the drugs he was taking,
12 that's probably why he doesn't remember.

13 The only thing that he's indicated to me -- looking at
14 the video -- when I showed him the video the first time, I
15 would just say he was very emotional about what happened
16 because he couldn't believe that this was something that he
17 had done, what they were accusing him of, so he saw the
18 video. So this is not something that I think that he took
19 lightly. It's been very emotional for him to have to see
20 himself in that situation doing what the video shows and to
21 realize what happened out there and what could have happened
22 to Corporal Frazier.

23 Mr. Gathers has been in jail as of today for 690 days.
24 He still faces additional charges as a result of this
25 incident because he's got a federal indictment, which he

1 still has to deal with for this.

2 I would ask Your Honor to consider a sentence of 25
3 years for this. I know there's a lot we went to trial on,
4 but that's not a light sentence, what I'm asking for,
5 particularly in light of the fact that he still has to deal
6 with the federal charges. He understands that any sentence
7 he gets would be 85 percent with no possibility of parole.
8 He would have to do that 85 percent.

9 I would ask you to consider allowing him to do the
10 charges for the gun charge as concurrent to the sentence for
11 the attempted murder. And I would ask you to consider
12 either allowing the sentence for the failure to stop to run
13 concurrent or give time served since that's a maximum of
14 three years and he has been in jail for 690 days.

15 Once again, I do feel like that he does still -- I
16 mean, it's not a light sentence I'm even asking for, even
17 though that's less than the minimum, that's still a lot of
18 time that he will have to serve. Even if he were to get
19 out, based on my calculations, he would be about 60 years
20 old if you were to sentence him in the manner I'm
21 requesting. He, also, still has to deal with his federal
22 charge and, possibly, the Georgia charges.

23 THE COURT: Does he wish to speak?

24 MS. ALVES: Yes.

25 THE DEFENDANT: Your Honor, I'd like to say to Lance

1 Corporal Frazier that I'm truly sorry for the incident. It
2 wasn't intended to happen. I don't really remember
3 anything, but I am deeply sorry that your family had to
4 endure that. I'm glad you made it through, I mean that
5 sincerely. God bless you.

6 Thank you, Your Honor. That's all I wanted to say.

7 THE COURT: First, let me thank the attorneys. There
8 were strong arguments on the respective points of view.

9 You know, Lance Corporal, I'm sorry you went through
10 this, but at the same time, I'm just grateful you're here.
11 Life is a game of inches. Well, I can't imagine what the
12 situation would have been if it had gone an inch to the
13 right or an inch up. So as horrible as this whole thing has
14 been, it's just good that you're here and we were able to
15 hear your story live and in person.

16 Obviously, an aggravating case. I mean, the video sort
17 of takes your breath away when you see it.

18 Mr. Gathers, apparently, you had a pretty tough go at
19 life. You've been in and out of the criminal justice
20 system. I'm sorry you're in this position, too. I'm sorry
21 for your family and I'm sorry for your two kids. They're
22 going to miss you, but we are where we are.

23 The reality is, you know, our state troopers go out 24
24 hours a day and do the job. And, you know, an attack like
25 this on one of them warrants a very substantial penalty.

1 The type of conduct we heard about in this trial cannot be
2 and will never be tolerated. So the sentence I give is
3 certainly not because anybody is asking for it, but I think
4 it's appropriate based upon the evidence I heard.

5 SENTENCE

6 THE COURT: On the charges of attempted murder, the
7 sentence is 30 years. On the charge of possession of a
8 weapon during the commission of a violent crime, that's a
9 five-year sentence. On the charge of failure to stop for a
10 blue light, that is three years. All time is to run
11 consecutive for a total of 38 years in the Department of
12 Corrections.

13 That's all. Court is adjourned.

14 (WHEREUPON, the proceedings were concluded.)
15
16
17
18
19
20
21
22
23
24

25 CERTIFICATE OF REPORTER

1
2
3 STATE OF SOUTH CAROLINA)

4 COUNTY OF BAMBERG)
5

6 I, PENNY M. JOHNSON, Official Court Reporter for the
7 Second Judicial Circuit of the State of South Carolina, do
8 hereby certify that the foregoing is a true, accurate, and
9 complete Transcript of Record of the proceedings had and the
10 evidence introduced in the hearing of the captioned case,
11 relative to appeal, in the Court of General Sessions for
12 Bamberg County, South Carolina, on the days of March 3rd
13 through 5th, 2025.

14 I do further certify that I am neither of kin, counsel,
15 nor interest to any party hereto.
16

17 September 9, 2025
18
19

20 Penny M. Johnson
21 Penny M. Johnson
22 Official Court Reporter
23
24
25

WITNESSES

State Law Enforcement Division

S/A Shawn Murray *SM*
SS/A Ryan Kelly

Law Enforcement Case #: 31-23-0039

David Smith *SC110* *DWM*

ARREST WARRANT NUMBER

2023A0510100081

ACTION OF GRAND JURY
*True Bill**Dawn Fairchild*
Foreperson of Grand Jury
Date: June 15, 2023**VERDICT***Guilty.**Alan C. Khan*
*3/5/25*Foreperson of Petit Jury
Date:DOCKET NO. 2023GS0500057**The State of South Carolina**

County of Bamberg

COURT OF GENERAL SESSIONS
JUNE TERM 2023

THE STATE
vs.**DERRICK EDWARD GATHERS**

CDR #: 3410
Indictment for**ATTEMPTED MURDER**

§ 16-03-0029(A)

BILL WEEKS, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF BAMBERG)
)

INDICTMENT FOR
ATTEMPTED MURDER

§ 16-03-0029(A)

At a Court of General Sessions, convened on June 20, 2023, the Grand Jurors of Bamberg County present upon their oath:

That **DERRICK EDWARD GATHERS** did in Bamberg County on or about April 16, 2023, feloniously and with malice aforethought, attempt to murder Trooper Bentrice Frazier by means of shooting him with a handgun during a traffic stop. All in violation of Section 16-3-29 of the South Carolina Code of Laws (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



BILL WEEKS, SOLICITOR

WITNESSES

State Law Enforcement Division

S/A Shawn Murray *SM*
SS/A Ryan Kelly

Law Enforcement Case #: 31-23-0039

David Smith SLP DWM

ARREST WARRANT NUMBER

2023A0510100082

ACTION OF GRAND JURY
*True Bill**David Smith*Foreperson of Grand Jury
Date: June 15, 2023

VERDICT
*Guilty.**Adrian C. Lee**3/5/25*Foreperson of Petit Jury
Date:DOCKET NO. 2023GS0500059

The State of South Carolina

County of Bamberg

COURT OF GENERAL SESSIONS

JUNE TERM 2023

THE STATE

vs.

DERRICK EDWARD GATHERS

CDR #: 0549

Indictment for

POSSESSION OF A FIREARM DURING
COMMISSION OF A VIOLENT CRIME

§ 16-23-0490

BILL WEEKS, SOLICITOR

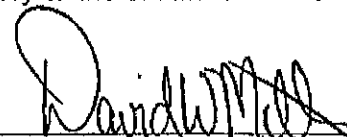
STATE OF SOUTH CAROLINA	)	INDICTMENT FOR
	)	POSSESSION OF A FIREARM DURING
COUNTY OF BAMBERG	)	COMMISSION OF A VIOLENT CRIME
	)	

§ 16-23-0490

At a Court of General Sessions, convened on June 20, 2023, the Grand Jurors of Bamberg County present upon their oath:

That **DERRICK EDWARD GATHERS** did in Bamberg County on or about April 16, 2023, possess or visibly display a firearm during the commission of a violent crime, to wit: attempted murder, all in violation of Section 16-23-490, Code of Laws of South Carolina (1976); as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


BILL WEEKS, SOLICITOR

WITNESSES

State Law Enforcement Division

S/A Shawn Murray *SM*
SS/A Ryan Kelly

Law Enforcement Case #: 31-23-0039

DAVID Smith

DWM

ARREST WARRANT NUMBER

2023A0510100083

ACTION OF GRAND JURY
*TRUE Bill**David Panchild*Foreperson of Grand Jury
Date: June 15, 2023**VERDICT***Guilty.**Adam C. Hen**3/5/25*Foreperson of Petit Jury
Date:DOCKET NO. 2023GS0500060**The State of South Carolina**

County of Bamberg

COURT OF GENERAL SESSIONS

JUNE TERM 2023

THE STATE

vs.

DERRICK EDWARD GATHERS

CDR #: 0065
Indictment for**FAILURE TO STOP MOTOR VEHICLE
WHEN SIGNALLED BY LAW
ENFORCEMENT VEHICLE**

§ 56-05-0750(B)(1)

BILL WEEKS, SOLICITOR

STATE OF SOUTH CAROLINA	)	INDICTMENT FOR
	)	FAILURE TO STOP MOTOR VEHICLE WHEN
COUNTY OF BAMBERG	)	SIGNALED BY LAW ENFORCEMENT
	)	VEHICLE

§ 56-05-0750(B)(1)

At a Court of General Sessions, convened on June 20, 2023, the Grand Jurors of Bamberg County present upon their oath:

That **DERRICK EDWARD GATHERS** did in Bamberg County on or about April 16, 2023, in the absence of mitigating circumstances, unlawfully fail to stop while driving a motor vehicle on a road, street, or highway of the state for a law enforcement vehicle after being signaled to do so by means of a flashing light and/or siren, and the road conditions were such that a reasonable driver could hear and/or see the signals. All in violation of §56-5-750 of the Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 BILL WEEKS, SOLICITOR

STATE OF SOUTH CAROLINA

SENTENCE ORDER

IN THE COURT OF GENERAL SESSIONS

COUNTY OF BAMBERG

FILED
BAMBERG COUNTY

STATE

VS.

2025 MAR -5 AM 9:01

Derrick Edward Gathers

AKA: SSN: [REDACTED]

JANNIE C. JOHNSON

RACE: Black SEX: Male

DOB: [REDACTED]

) INDICTMENT/CASE#: 2023GS0500057

) AWW#: 2023A0510100081

) Date of Offense: 04/16/2023

) S.C. Code §: 16-3-29

) CDR Code #: 3410

) Range of Offense: 0-30 years

In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Attempted murder Range of Offense Pled: _____

In violation of § 16-3-29 of the S.C. Code of Laws, bearing CDR Code # 3410

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ w/o Rec/Negotiations ☐ Negotiated _____ ☐ Recommendation _____

David Warren Miller

69553

Wallis April Alves

SC Bar #

Solicitor

SC Bar #

Attorney For Defendant

SC Bar #

The Defendant is committed to the ☒ SCD ☐ County Detention Center ☐ Home Incarceration Program
for a determinate term of 30 days/months/years/Time Served ☐ YOA NTE _____ years and/or shall pay a fine

of \$ _____; provided that upon the service of _____ days/months/years/Time Served and or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to SCDPPPS standard conditions of probation, which are incorporated by reference.

☐ The sentence shall run CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCD

690 days/month

☐ To include time spent on monitored house arrest prior to trial and sentencing.FILED IN COURT
MAR 05 2025
Bamberg Clerk of Court

SPECIAL CONDITIONS:

☐ PTUP☐ No Contact with Victim ☐ Domestic Violence Intervention Program☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135☐ Other: _____☐ Hold for Inpatient Treatment☐ SAC/MHC if necessary☐ RESTITUTION See Separate Order (20% per S.C. Code § 24-21-490 (B))

§14-1-208 (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)

§14-1-212 (Law Enforce. Funding)

§14-1-213 (Drug Court Surcharge)

§34-11-70(b)and(c), and 34-11-80(c)and(d) (Admin Fraud Check Court Costs)

§50-21-114 (BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

3% to County (If paid in installments)

☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees☐ §17-3-30(B) Unpaid Application Fee to be paid to the Public Defender FundJannette S. Johnson
Clerk of Court/Deputy ClerkJannette S. Johnson
Court Reporter2765
Judge Code3/5/25
Sentence DateWallis April Alves
Presiding Judge

TOTAL

Restitution	\$
FINE:	\$
\$100	\$ 100.00
\$100	\$
\$12	\$
\$25	\$
\$25	\$ 25.00
\$150	\$
\$41	\$
\$50	\$
\$40/ea	\$
TBD	\$ 3.75
\$500	\$
TBD	\$
TOTAL	\$ 128.75

SCCA217B
01/27/2025

STATE OF SOUTH CAROLINA

SENTENCE ORDER

IN THE COURT OF GENERAL SESSIONS

COUNTY OF BAMBERG

FILED
BAMBERG COUNTY

STATE

VS.

2025 MAR -6 AM 9:01

Derrick Edward Gathers

AKA: SSN: [REDACTED]

JANNIE C. JOHNSON

RACE: Black SEX: Male

DOB: [REDACTED] G, SC

) INDICTMENT/CASE#: 2023GS0500059

) AW#: 2023A0510100082

) Date of Offense: 04/16/2023

) S.C. Code §: 16-23-490

) CDR Code #: 0549

) Range of Offense: 5 years

In disposition of the above Indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Possession of Weapon During Violent Crime

Range of Offense Pled: _____

In violation of § 16-23-490 of the S.C. Code of Laws, bearing CDR Code # 0549

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ w/o Rec/Negotiations ☐ Negotiated _____ ☐ Recommendation _____David Warren Miller
Solicitor89553
SC Bar #Wallis April Alves
Attorney For DefendantSC Bar #
65401
SC Bar #The Defendant is committed to the ☒ SCDC ☐ County Detention Center ☐ Home Incarceration Program
for a determinate term of 5 days/months/years Time Served ☐ YOA NTE years and/or shall pay a fineof \$; provided that upon the service of days/months/years/Time Served and or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to SCDPPPS standard conditions of probation, which are incorporated by reference.☐ The sentence shall run CONCURRENT or ☒ CONSECUTIVE to sentence on: 2023-GS-05-00057☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCD690 days/month☐ To include time spent on monitored house arrest prior to trial and sentencing.

SPECIAL CONDITIONS:

- ☐ PTUP
- ☐ No Contact with Victim ☐ Domestic Violence Intervention Program ☐ Hold for Inpatient Treatment
- ☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ SAC/MHC if necessary
- ☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135
- ☐ Other: _____

☐ RESTITUTION See Separate Order (20% per S.C. Code § 24-21-490 (B))

§14-1-206 (Assessments 107.5%)

§14-1-211 (A)(1)(Conv. Surcharge)

§14-1-211 (A)(2)(DUI Surcharge)

§58-5-2995 (DUI Assessment)

§58-1-288 (DUI Breath Test)

§14-1-212 (Law Enforce. Funding)

§14-1-213 (Drug Court Surcharge)

§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)

§50-21-114 (BUI Breath Test Fee)

§58-5-2942(J) (Vehicle Assessment)

3% to County (If paid in installments)

☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund

Clerk of Court/Deputy Clerk

Jenny Johnson
Court Reporter2765
Judge Code3/5/2025
Sentence DateWalsh
Presiding Judge

TOTAL

Restitution	\$
FINE:	\$
	\$
\$100	\$ 100.00
\$100	\$
\$12	\$
\$25	\$ 25.00
\$25	\$
\$150	\$
\$41	\$
\$50	\$
\$40/ea	\$
TBD	\$ 3.75
\$500	\$
TBD	\$ 40.00
	\$ 168.75

SOCA217B
01/27/2025FILED IN COURT
MAR 05 2025
Bamberg Clerk of Court

CERTIFICATE OF COUNSEL FOR APPELLANT

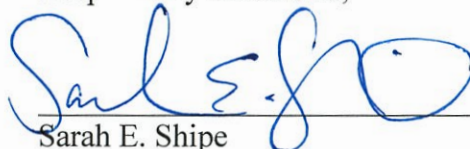
Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

RECEIVED

Mar 11 2026

SC Court of Appeals

Respectfully Submitted,



Sarah E. Shipe
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 11th day of March, 2026.

RECEIVED

Mar 11 2026

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Bamberg County

Honorable Walton J. McLeod, IV, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

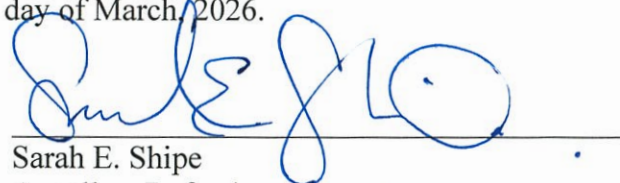
DERRICK EDWARD GATHERS,

APPELLANT

APPELLATE CASE NO. 2025-000487

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Record on Appeal in the above-referenced case has been served upon Mark Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Derrick Gathers, #396697, at Kershaw Correctional Institution, 4848 Gold Mine Highway, Kershaw, SC 29067-8069, this 11th day of March, 2026.



Sarah E. Shipe
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT